

IS-72186
 Department Of Fish And Wildlife
 24 Fairview Industrial Drive SE
 97302

SALEM SHUTTLE

Application No. 72186

Permit No. _____

Certificate No. 98266

Stream Index, Page No. _____

Lake Co Burnt R

FEES PAID		
Date	Amount	Receipt No.

Cert. Fee

FEES REFUNDED		
Date	Amount	Check No.

Date filed 1-29-1992

Priority _____

Action suspended until _____

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion 06/27/2015

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 _____

ASSIGNMENTS

Date	To Whom	Address	Volume	Page


REMARKS

See 72160

Mailing List for FO Copies

Application IS-72186

Certificate 98266

Copies Mailed
By:  (SUPPORT STAFF)
On: 06/27/2015 (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:

- ✓ SHAWN KLAUS
BURNT RIVER IRRIGATION DISTRICT
19498 HWY 245
HERFORD, OR 97387
- ✓ ELIZABETH HOWARD
SCHWABE WILLIAMSON & WYATT PC
1211 SW 5TH AVENUE, SUITE 1900
PORTLAND, OR 97301

Sent via auto email:

1. WRD – Watermaster District #8
2. WRD – Jason Spriet
3. WRD – SW Section

Copies sent to:

- ✓ 1. WRD – File IS-72186
- ✓ 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

*See more on
back*



- ✓ 4. Protestant Burnt River Irrigation District's attorney – Elizabeth Howard, Schwabe Williamson & Wyatt PC – ehoward@schwabe.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

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

NOTICE OF CERTIFICATE ISSUANCE

June 27, 2025

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

Reference: Application IS-72186 (Certificate 98266)

The enclosed instream certificate confirms the water right established under the terms of the enclosed order issued by this Department. The water right is now appurtenant to the specific place as described by the certificate.

If you have any questions related to the issuance of this certificate, you may contact Amanda Mather at Amanda.L.Mather@water.oregon.gov.

Sincerely,

Amanda Mather

Amanda Mather
Water Rights Program Analyst
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

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

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

APPLICATION FILE NUMBER: IS-72186

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

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

DATE OF PRIORITY: JANUARY 29, 1992

TO BE MAINTAINED IN: **REACH 1** - NORTH FORK BURNT RIVER FROM CAMP CREEK AT APPROXIMATELY
RIVER MILE 16.5 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E, WM) TO THE
OWRD GAGE 13269450 ABOVE THE BIG FLAT DIVERSION DITCH AT
APPROXIMATELY RIVER MILE 8.7 (NENE, SECTION 25, TOWNSHIP 11S, RANGE
36E, WM)
REACH 2 – NORTH FORK BURNT RIVER AT UNITY RESERVOIR NEAR THE OUTLET
OF NORTH FORK BURNT RIVER ABOVE WEST FORK BURNT RIVER WATER
AVAILABILITY BASIN, APPROXIMATELY RIVER MILE 2.4 (NENW, SECTION 17,
TOWNSHIP 12S, RANGE 37E, WM)

The right is established under Oregon Revised Statutes 537.341. The reaches in which water is to be maintained under this right reflect the Settlement and Water Bypass Flow Agreement entered into by the Burnt River Irrigation District and the Oregon Department of Fish and Wildlife on January 21, 2025 (Settlement Agreement). The Settlement Agreement is not incorporated into this certificate by reference and is not an "existing water right of record" as that term is defined and used in ORS 540.045 or a "relative entitlement to water" as that term is used in ORS 540.045. All terms and conditions of this right are set forth in this certificate.

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:

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1 st ½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2 nd ½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

2. The water right holder shall measure and report the in-stream flow along the reaches 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 reach 2 to protect necessary flows throughout reach 1 and reach 2.

ISSUED **JUNE 27, 2025**

Katherine Ratcliffe

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

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

Water Right Application IS-72186)	
)	
Oregon Department of Fish and Wildlife,)	
Applicant)	
)	FINAL ORDER INCORPORATING CONSENT
Burnt River Irrigation District,)	AGREEMENT
Protestant)	
)	

Summary: Order approving Application IS-72186 and issuing Certificate 98266.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.140 to 537.252 and 537.332 to 537.360, Oregon Administrative Rules (OAR) Chapter 690, Division 77, and the Powder Basin Program (OAR Chapter 690, Division 509).

These statutes and rules can be viewed on the Oregon Water Resources Department's website: <https://www.oregon.gov/owrd/programs/policylawandrules/Pages/default.aspx>

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

This final order is issued pursuant to ORS 537.170(6) to (9), 183.417(3), and OAR 690-077-0047, 137-003-0510(4), and 137-003-0665(5).

APPLICATION HISTORY

1. The Application History section of the May 14, 1996, Proposed Final Order is incorporated herein by reference.

FINDINGS OF FACT

1. The findings of fact in the May 14, 1996, Proposed Final Order are incorporated herein by reference, with the additions and changes shown below.
2. On January 29, 1992, the Oregon Department of Fish and Wildlife submitted an application for an instream water right to the Oregon Water Resources Department (Department).

3. On May 14, 1996, the Department issued a Proposed Final Order recommending approval of the application.
4. On July 25, 1996, the Burnt River Irrigation District filed a timely protest of the Proposed Final Order.
5. On September 14, 2021, the Department referred the protest to the Oregon Office of Administrative Hearings for a contested case hearing.
6. On January 21, 2025, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District entered into a Settlement and Water Bypass Agreement to resolve Burnt River Irrigation District's protest. The Settlement and Water Bypass Agreement was conditioned and contingent upon the Department issuing a Final Order and Certificate that sets the instream reach for the instream water right requested by the Oregon Department of Fish and Wildlife consistent with the terms of the Settlement and Water Bypass Agreement.
7. On June 2, 2025, the Department, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District (Parties) entered into a Consent Agreement to resolve this matter. The Settlement and Water Bypass Agreement is attached to the Consent Agreement as Exhibit A for convenient reference but is not incorporated into the Consent Agreement. The Consent Agreement is incorporated into this final order by reference and is attached hereto and made a part of this order. The Settlement and Water Bypass Agreement is not incorporated into or made part of this order.
8. Pursuant to the terms of the Consent Agreement, the Department shall issue a certificate that reflects an amendment of the reach of the requested instream water right from the reach described in the August 27, 1996, Proposed Final Order to following reach (Revised Reach):

REACH 1 - NORTH FORK BURNT RIVER FROM CAMP CREEK AT APPROXIMATELY RIVER MILE 16.5 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E, WM) TO THE OWRD GAGE 13269450 ABOVE THE BIG FLAT DIVERSION DITCH AT APPROXIMATELY RIVER MILE 8.7 (NENE, SECTION 25, TOWNSHIP 11S, RANGE 36E, WM)

REACH 2 – NORTH FORK BURNT RIVER AT UNITY RESERVOIR NEAR THE OUTLET OF NORTH FORK BURNT RIVER ABOVE WEST FORK BURNT RIVER WATER AVAILABILITY BASIN, APPROXIMATELY RIVER MILE 2.4 (NENW, SECTION 17, TOWNSHIP 12S, RANGE 37E, WM)

The Revised Reach amends the reach described in the Proposed Final Order by omitting a portion of the middle of the reach, thereby shortening the reach and splitting it into two separate reaches.

In addition, both the reach described in the Proposed Final Order and the Revised Reach identify Camp Creek as the upstream terminus of the instream water right reach. However, the Revised Reach updates the description of the upstream terminus by describing the location of Camp Creek as "at approximately river mile 16.5," rather than "at approximately river mile 14.8." This update to the description of the upstream terminus does not change the location of the upstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the upstream terminus under current conditions.

Finally, both the reach described in the Proposed Final Order and the Revised Reach identify Unity Reservoir as the downstream terminus of the instream water right reach. However, the Revised Reach updates the description of the downstream terminus by adding "near the outlet of North Fork Burnt River above West Fork Burnt River Water Availability Basin," and by describing the location of Unity Reservoir as "at approximately river mile 2.4," rather than "at approximately river mile 2.0." This update to the description of the downstream terminus does not change the location of the downstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the downstream terminus under current conditions.

The requested instream water right, as amended to reflect the Revised Reach, is referred to herein as the Revised Proposed Use.

9. All findings of fact in the May 14, 1996, Proposed Final Order concerning the "proposed use" apply equally to the Revised Proposed Use.
10. Certificate condition #5 in the draft certificate included with the Proposed Final Order reads "[t]he flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach." Certificate condition #5 in Certificate 98266 issued with this order has been modified to reflect that the Revised Proposed Use includes two instream flow reaches and reads "[t]he flows are to be measured at the lower end of reach 2 to protect necessary flows throughout reach 1 and reach 2."

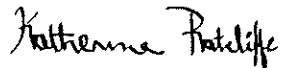
CONCLUSIONS OF LAW

1. The conclusions of law in the May 14, 1996, Proposed Final Order are incorporated herein by reference.
2. All conclusions of law in the May 14, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.

ORDER

Application IS-72186, as amended by the Consent Agreement, is approved, and Certificate 98266 is issued.

DATED JUNE 27, 2025



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

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF:

Water Right Applications IS-72168, IS-72169
and IS-72186

Oregon Department of Fish and Wildlife,
Applicant

Burnt River Irrigation District,
Protestant

WaterWatch of Oregon,¹
Intervenor.

OAH Reference Nos. 2021-OWRD-00051, 2021-OWRD-00053 and 2021-OWRD-00083

Agency Case Nos. IS-72168, IS-72169, IS-72186

**ODFW, OWRD, BRID, AND WATERWATCH
CONSENT AGREEMENT**

Whereas, on January 21, 2025, the Oregon Department of Fish and Wildlife (ODFW) and the Burnt River Irrigation District (BRID or Protestant) entered into a Settlement and Water Bypass Agreement, attached as Exhibit A (Settlement Agreement).² As set forth in Sections 9 and 31, the Settlement Agreement is conditioned and contingent on the Oregon Water Resources Department's (OWRD) issuance of Final Orders and Certificates for all of the Instream Water Rights (IS-72168, IS-72169, and IS-72186) that set instream reaches for the Instream Water Rights consistent with the terms of the Settlement Agreement. Section 31 further provides that BRID will withdraw its protests and that BRID and ODFW will not challenge OWRD's issuance of final orders for the Instream Water Rights so long as such orders are consistent with the terms of the Settlement Agreement.

Whereas, WaterWatch of Oregon (WaterWatch or Intervenor) was advised of the Settlement Agreement and given opportunity to comment on it, and does not intend to seek a

¹ WaterWatch of Oregon is a party to IS-72168 and IS-72169, but not to IS-72186.

² The Settlement Agreement is attached to this Consent Agreement only for convenient reference. The Settlement Agreement is not incorporated into this Consent Agreement.

different outcome in the contested cases for IS-72168 or IS-72169 (WaterWatch is not a party to IS-72186).

Whereas, OWRD intends to issue Final Orders and Certificates that set instream reaches for the Instream Water Rights that are consistent with the terms of the Settlement Agreement, which are attached hereto and incorporated herein as Exhibit B.

Whereas, ODFW and BRID agree that OWRD's issuance of Final Orders and Certificates attached as Exhibit B will constitute issuance of Final Orders and Certificates consistent with the terms of the Settlement Agreement as contemplated by Sections 9 and 31 of the Settlement Agreement.

The ODFW, OWRD, BRID, and WaterWatch (each individually a "Party" and collectively "Parties") do hereby stipulate and agree as follows:

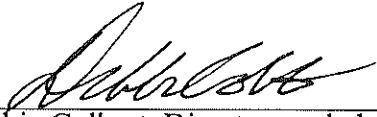
A. Terms of the Agreement

1. After signing of this Consent Agreement by all Parties, the Protestant will within 7 days withdraw their protests in the above referenced matters (Water Right Applications IS-72168, IS-72169 and IS-72186), and OWRD will within 7 days thereafter withdraw the referral of the protests of these matters from the Office of Administrative Hearings.
2. Within 28 days of the signing of this Consent Agreement by all Parties, OWRD will issue final orders incorporating this Consent Agreement and certificates, in the form of the draft final orders and certificates attached hereto and incorporated herein as Exhibit B.
3. By signing this Consent Agreement, each Party waives the right to a further contested case hearing on these matters and any and all right to petition for reconsideration or judicial review of any final orders issued in these matters in accordance with this Consent Agreement.

4. All terms and conditions of the Instream Water Rights are set forth in the draft Certificates included in Exhibit B. The Settlement Agreement is not incorporated into the Instream Water Rights and is not an existing water right of record or relative entitlement to water under ORS 540.045. OWRD is not responsible for enforcing any terms of the Settlement Agreement. OWRD's agreement to this Consent Agreement does not constitute agreement to any portion of the Settlement Agreement.

B. Consent

1. Each Party to this Consent Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Consent Agreement on behalf of that Party and bind that Party to the terms of this Consent Agreement.
2. Each Party to this Consent Agreement certifies that it has had a reasonable opportunity to review and request changes to the Consent Agreement, and that it has signed this Consent Agreement of its own free will and accord.
3. Each Party to this Consent Agreement certifies that it has read the entire Consent Agreement, including the draft final orders and draft certificates attached hereto as Exhibit B.
4. Each Party to this Consent Agreement agrees that nothing in this Consent Agreement establishes factual, legal, or policy precedent.
5. This Agreement may be signed in counterparts.



Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

May 28, 2025

DATE

Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

DATE

William Moore on behalf of
Burnt River Irrigation District

DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

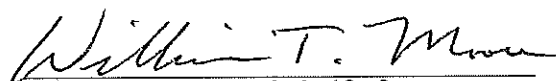
DATE

Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

DATE

Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

DATE



William Moore on behalf of
Burnt River Irrigation District

5-21-2025
DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

DATE

Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

DATE

Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

DATE

William Moore on behalf of
Burnt River Irrigation District

DATE



Brian Posewitz on behalf of
WaterWatch of Oregon

DATE

5-30-25

Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

DATE

Katherine Ratcliffe

Katherine Ratcliffe, Administrator,
Water Right Services Division, on behalf of
Oregon Water Resources Department

June 2, 2025

DATE

William Moore on behalf of
Burnt River Irrigation District

DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

DATE

SETTLEMENT AND WATER BYPASS AGREEMENT

Burnt River Irrigation District (“**BRID**”) and the Oregon Department of Fish and Wildlife (“**ODFW**”), referred to collectively as the “**Parties**” and each individually as “**Party**”, do hereby stipulate and agree in this Settlement and Water Bypass Agreement (“**Agreement**”), as follows:

Recitals

- A. BRID is the operator of the Unity Dam, located on the Burnt River. The dam is a channel-spanning dam, constructed by the U.S. Department of the Interior, Bureau of Reclamation in 1936 to 1938. Unity Dam is operated by BRID pursuant to the Contract Between the United States and the Burnt River Irrigation District, dated December 24, 1935, as amended.
- B. Prior to construction of Unity Dam, the Burnt River and its tributaries had robust flows in the spring, with greatly decreased flows during the summer. Tributaries froze on occasion, suspending or reducing flows in Burnt River and its tributaries during the coldest parts of the year.
- C. As of the date of this Agreement, BRID operates Unity Dam to bypass flows to the Burnt River primarily when flows are not needed for storage. BRID also bypasses high springtime flows, which may provide scouring benefits in the Burnt River. BRID generally stores water between October and April and releases stored water for irrigation use by its members between May and September. During the late fall and winter months (October through February), BRID limits releases and bypass flows, sometimes to as low as a monthly average of 1 cfs or less, depending on conditions and downstream demands. In the winter, an ice sheet may form on parts or the whole of the reservoir pool. When that condition occurs, BRID may hold the reservoir level static to prevent suspension of the ice layer, a condition that can lead to structural damage and may be a public safety hazard.
- D. Springs and return flows feed the Burnt River, maintaining base flows year round, regardless of bypass flows. The Burnt River and its tributaries also freeze on occasion such that water flows sharply decline or cease in certain parts of the system, above and below the dam.
- E. BRID’s Drought Resolutions are specific to local conditions affecting the BRID and are based on snow pack, precipitation, and water levels in the watersheds that supply water to the BRID system.
- F. BRID conducts annual maintenance activities on the dam and related structures, usually in October or November. These activities may interrupt flows for a short period, normally one to two hours, if at all. BRID is sometimes required to draw down water levels in Unity Reservoir to perform major maintenance or to allow the Bureau of Reclamation to complete inspections to verify the integrity of the dam and related structures. These activities depend on conditions of the dam and related infrastructure. They are infrequent and do not occur on a set cycle.

- G. Inflows to Unity Reservoir are estimated based on the reservoir pool elevation as measured by the staff gage located on the dam. Inflows are calculated using a rating curve that is based on a reservoir survey conducted by the Bureau of Reclamation. As of April 15, 2024, stream flows in the Burnt River are measured year round at the following gage locations:

13273000 Burnt River near Hereford (operated by OWRD; partially funded by BRID)
 13274020 Burnt River above Clarks Creek near Bridgeport (operated by Idaho Power Company; partially funded by BRID)
 13274400 Burnt River above Banks Diversion near Durkee (operated by OWRD; partially funded by BRID)
 13275000 Burnt River at Huntington (operated by Idaho Power Company)
 13272500 Hydromet Gage at Unity Dam (operated by Bureau of Reclamation; partially funded by BRID)

Data from the staff and stream gages is uploaded nearly instantaneously to the respective stream gage operator's websites.

- H. On January 29, 1992, ODFW filed instream water right applications IS-72168, IS-72169, and IS-72186 (collectively, "**ODFW Instream Applications**") with the OWRD. The ODFW Instream Applications request instream water rights in the following reaches:

IS-72168

To be maintained in:

BURNT RIVER FROM USGS GAGE 13274200 AT RIVER MILE 41.5 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E WM); TO BROWNLEE RESERVOIR POOL AT RIVER MILE +1.0 (SW1/4, SECTION 8, TOWNSHIP 14S, RANGE 45E WM)

IS-72169

To be maintained in:

BURNT RIVER FROM UNITY DAM AT RIVER MILE 77.1 (SWSE, SECTION 21, TOWNSHIP 12S, RANGE 37E WM); TO USGS GAGE 13274200 AT RIVER MILE 41.5 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E WM)

IS-72186

To be maintained in:

NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, T12S, R37E, WM)

- I. The purpose of the ODFW Instream Applications is to provide water for "migration, spawning, egg incubation, fry emergence and juvenile rearing of rainbow trout" ("**Fish Life Cycle Purposes**").
- J. Reaches of the Burnt River referenced in this agreement support all life stages of native Redband Trout (*Oncorhynchus mykiss gibbsi*) in addition to various native whitefish, pikeminnow, sculpin, dace, and sucker populations. Redband trout are remnants of Snake River steelhead that, along with Chinook salmon, were historically present in the Burnt River. The construction of Unity Dam in 1938 precluded fish from accessing the North and South Forks of the Burnt River, documented as principal spawning areas for steelhead and

Chinook salmon. Lower reaches of the Burnt River were subsequently blocked by the construction of the Hells Canyon Complex of dams on the Snake River, completed in 1967. A 1967 basin investigation report conducted by the Oregon State Game Commission found that guaranteed releases of water below Unity Reservoir during fall and winter filling periods would significantly increase the fish production capabilities of the Burnt River segment below the reservoir.

- K. OWRD issued a Proposed Final Order and draft water right certificate for ODFW's instream application IS-72186 on May 14, 1996, and Proposed Final Orders and draft water right certificates for ODFW's instream applications IS-72168 and IS-72169 on August 27, 1996.
- L. In July and October 1996, BRID filed timely protests of the Proposed Final Orders (collectively the "**BRID Protests**").
- M. On September 14, 2021, OWRD referred the BRID Protests to the Oregon Office of Administrative Hearings ("**OAH**") for contested case hearings.
- N. The Parties each desire to resolve the BRID Protests and support the Fish Life Cycle Purposes set forth in the ODFW Instream Applications.
- O. The Parties are entering into this Agreement on the conditions that once effective by signature of all parties:
 - a. The Parties will pursue withdrawal of the cases from the OAH by supporting OWRD's written notification to the OAH pursuant to OAR 137-003-0515(4)(b) that all of the issues in the case have been resolved without need to hold a hearing; and
 - b. The Parties will agree to OWRD's issuance of Final Orders and instream water right certificates ("**Certificates**") that are consistent with the terms and conditions of this Agreement (the "**Instream Water Rights**").

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER CONSIDERATION GIVEN AND RECEIVED, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals.** Each of the recitals set forth above are provided for the sole purpose of explaining the understanding of the parties at the time of formation of this Agreement.
2. **Base Flows.** Except as set forth in Section 4, BRID shall modify its operations to bypass 15 cfs to the Burnt River ("**Base Flows**").
3. **Measurement of Flows; Obligation with Respect to Maintaining Gages.** For purposes of determining compliance with Base Flows and Minimum Flows required by this Agreement, flows shall be measured at the gage stations 13273000 (Burnt River near Hereford) and 13274020 (Burnt River above Clarks Creek near Bridgeport) and reservoir inflows calculated using measurements at 13272500 (Hydromet Gage at Unity Dam) (collectively "**Flow Measurement Locations**"), and BRID shall provide funding sufficient to maintain these gages absent mutual agreement on an alternative means of obtaining the necessary information obtained by such gages. If gage stations 13273000 or 13274020 are temporarily inoperable, BRID shall use the 13272500

(Hydromet Gage at Unity Dam) to provide reasonable flow estimates for the purposes of this provision. Base Flows and Minimum Flows, where applicable, shall be measured as daily averages and as weekly rolling (7 day) averages at each gage independently. Rolling 7-day averages are evaluated for each day, and are calculated as the average of daily flows for the day in question and the six previous days. For example, the 7-day average for March 7th is the average of daily flows from March 1st-7th. Base Flows and Minimum Flows requirements will be met when, at all Flow Measurement Locations being used to determine compliance, daily average flows are not less than twenty percent (20%) of the required flows, and weekly rolling (7 day) average flows are at or above the required flows. Whether BRID has complied with this Base Flows and Minimum Flows requirements will be based on raw data maintained by BRID rather than final published data. Raw discharge data can have errors. Any instantaneous measurement that is less than fifty-percent (50%) or exceeds one hundred and fifty-percent (150%) of the average daily or weekly stream flow shall be reviewed for errors. Where there is an error, BRID will evaluate the neighboring reported raw measurements that are not in error, identify the cause of the error, and when appropriate interpolate between the non-erroneous measurements to arrive at a substitute for the erroneous measurement. Final, preliminary, and provisional data can be used to aid in the error correction process. When the Burnt River freezes, water released from Unity Dam may not reach or may not be flowing past the Flow Measurement Locations (each a "**Freeze Condition**"), or both. During any Freeze Condition, the absence of some or any recorded stream flows at any one or all of the Flow Measurement Locations shall not be considered a breach of or default under this Agreement as long as BRID notifies ODFW, within a reasonable period of time not to exceed seven (7) calendar days, of the time and date the Freeze Condition commenced and concluded. However, during a Freeze Condition, BRID shall use the 13272500 (Hydromet Gage at Unity Dam) to the extent possible to provide reasonable flow estimates for the purposes of determining daily and weekly flow averages. Weekly rolling (7 day) average flows will be calculated using the day prior to commencement of a Freeze Condition.

4. **Minimum Flows.** BRID may bypass less than the 15 cfs Base Flows ("**Minimum Flows**") under the following limited circumstances:

a. **Reduced Inflow.** Where inflows to the Unity Reservoir, as measured at the Hydromet Gage at Unity Dam, drop below 15 cfs, BRID will ramp the bypass flows down to a level equal to inflows. BRID shall thereafter maintain bypass flows at a level that is at least equal to inflows, increasing bypass flows as inflows increase, until inflows to the Unity Reservoir, as measured at the Hydromet Gage at Unity Dam, return to 15 cfs.

b. **Drought Declarations.** Drought Declarations may be adopted by BRID board resolution, but shall only be adopted when the following criteria are met: On February 1, (1) Unity Reservoir is at less than forty-percent (40%) of its storage capacity; or, (2) the snow-water equivalent measured at the Natural Resources Conservation Service Tipton SNOTEL site is less than eight (8) inches. Provided however that for the purposes of this Agreement BRID may not adopt a Drought Declaration more than one (1) time in a three-year period. Prior to adopting a Drought Declaration, BRID shall consult with local ODFW staff to set criteria that, when met, will terminate the Drought Declaration. Each Drought Declaration shall expire on September 30, if not earlier terminated. From the effective date of a Drought Declaration until its termination or expiration, BRID shall bypass a minimum of 5 cfs and make reasonable efforts to bypass, but is not required to bypass, the 15 cfs Base Flows.

c. **Frozen Unity Reservoir Safety Hazard.** When Unity Reservoir freezes to the extent that it creates an ice layer, and outflows exceed inflows, the reservoir can experience a condition referred to as a suspended ice layer. A suspended ice layer creates a safety hazard, which is particularly of concern due to public use of the reservoir. Should a suspended ice layer occur, BRID shall, for public safety reasons, immediately reduce bypass flows to a minimum of 5 cfs, if necessary, in order to increase reservoir water levels such that the ice layer is no longer suspended and is no longer creating a safety hazard. BRID agrees to notify ODFW, within a reasonable period of time, not to exceed seven (7) calendar days, of the time and date of this safety hazard and to return to Base Flows immediately upon resolution of the safety hazard, which shall be resolved with the reservoir levels returning to the level of the ice layer or melting of the ice layer, whichever occurs first. At the commencement of this Agreement, no Party anticipates that BRID will not be able to bypass 5 cfs when a frozen Unity Reservoir safety hazard condition occurs, and BRID has provided information that this rare condition has not lasted longer than a few days historically.

d. **Minimum Pool.** When Unity Reservoir reaches its minimum pool elevation of 3776.5 feet, BRID shall not be required to bypass flows until the elevation increases to 3790 feet. Upon attaining the elevation of 3790 feet, BRID shall bypass 5 cfs and thereafter increase bypass flows by ten percent (10%) per one (1) foot of elevation gain until it reaches the Base Flow of 15 cfs. The elevation of Unity Reservoir shall be determined using the water surface elevation data available on the Bureau of Reclamation's Hydromet website for Unity Reservoir. At the commencement of this Agreement, Parties understand that Unity Reservoir rarely reaches its minimum pool elevation.

5. **Normal Maintenance and Repairs.** Routine inspections, maintenance, and repairs are required for the Unity Dam on a regular, annual basis, generally in October and November ("**Normal Maintenance**"). During any Normal Maintenance, BRID shall provide Base Flows or Minimum Flows, as applicable, except when doing so will create an unreasonable safety or public health risk or unreasonably impede BRID's ability to complete the inspection, maintenance or repairs in a timely and cost-effective manner, all of which shall be determined in BRID's reasonable discretion but in consultation with ODFW. BRID shall give ODFW thirty (30) calendar days advanced notice of Normal Maintenance, during which time ODFW may provide input to BRID regarding preferred timing and duration of flow interruptions, if any. BRID shall consider and incorporate ODFW's input to the maximum extent possible.

6. **Major Repairs and Modifications.** BRID may be required to drain or partially drain Unity Reservoir to inspect the dam or to perform major repairs or modifications ("**Major Maintenance**"). Not less than ninety (90) calendar days before drawdown will start, or as soon as possible, if less than ninety (90) calendar days, BRID shall notify and initiate consultation with ODFW regarding the planned timing and duration of the drawdown and of bypass flows during the Major Maintenance period. BRID shall implement ODFW's drawdown and flow recommendations obtained during that consultation to the maximum extent reasonable and feasible, accounting for economic, public health and safety, and environmental considerations, as well as direction from other agencies who may authorize or approve activities associated with the Major Maintenance.

7. Measurement Records. In the event that streamflow measurements at the Flow Measurement Locations become unavailable on OWRD's website or Idaho Power Company's website, or the reservoir elevation level data becomes unavailable on the Bureau of Reclamation's website, the Parties shall collaboratively secure an alternative means to maintain and provide a record of flows as contemplated in this Agreement; provided, however that BRID shall bear the expense, if any, of providing that alternative means of maintaining and providing measurement records. Except where such changes are temporary, the agreed-upon changes related to measurement records shall be in writing and documented as an addendum to this Agreement. This requirement related to measurement records is distinct from BRID's obligations set forth in Section 3 of this Agreement to provide funding sufficient to operate or otherwise operate Flow Measurement Gages absent mutual agreement on an alternative means of obtaining the necessary information obtained by such gages.

8. Annual Compliance Report. BRID shall submit an annual compliance report to ODFW that outlines the dates that Base and Minimum Flows were provided and the dates that relevant exceptions were triggered or in effect such that flow releases were minimized or curtailed. The report shall also identify any instances of non-compliance with the terms and conditions of this Agreement and provide an explanation for non-compliance. The report shall be submitted to ODFW on or before May 1 of each year, and shall cover the period of April 1 to March 31.

9. ODFW Instream Reaches. Parties agree, and this Agreement is contingent upon, OWRD issuing Final Orders and Certificates that set the instream reaches to the following:

- a) IS-72168: Reach 1- Burnt River from former USGS Gage 13274200 at approximately River Mile 41.7 (NWNW, Section 10, Township 12S, Range 41E, WM) to OWRD Gage 13274400 at Burnt River above Banks Diversion near Durkee, approximately River Mile 31.3 (NESW, Section 26, Township 11S, Range 42E, WM); Reach 2- Burnt River from cement plant bridge at approximately River Mile 22.9 (SESW, Section 11, Township 12S, Range 43E, WM) to Brownlee Reservoir Pool at approximately River Mile +1.0 (SW1/4, Section 8, Township 14S, Range 45E, WM).
- b) IS-72169: Reach 1- Burnt River from the base of Unity Dam at approximately River Mile 82.9 (SWSE, Section 21, Township 12S, Range 37E, WM), downstream approximately 2,500 ft to just upstream of High Line Ditch Diversion at approximately River Mile 82.5 (SWSW, Section 22, Township 12S, Range 37E, WM); Reach 2 - Burnt River from gage 13274020 above Clarks Creek near Bridgeport, approximately River Mile 46.1 (SWSW, Section 20, Township 12S, Range 41E, WM) to former USGS Gage 13274200 at approximately River Mile 41.7 (NWNW, Section 10, Township 12S, Range 41E, WM).
- c) IS-72186: Reach 1- North Fork Burnt River from Camp Creek at approximately River Mile 16.5 (NESW, Section 34, Township 10S, Range 36E, WM) to the OWRD Gage 13269450 above the Big Flat Diversion Ditch at approximately River Mile 8.7 (NENE, Section 25, Township 11S, Range 36E, WM); Reach 2 - North Fork Burnt River at Unity Reservoir near the outlet of North Fork Burnt River Above West Fork Burnt River Water Availability Basin, approximately River Mile 2.4 (NENW, Section 17, Township 12S, Range 37E, WM).

Specific descriptive information including published coordinates and aerial imagery reference points and locations regarding the agreed-upon reaches of the Instream Water Rights is attached as Exhibit A. Parties understand and agree that river miles are approximate and change naturally over time, and that the additional information in Exhibit A is provided to ensure more precise, durable and understandable reference points for future reference.

10. New Instream Water Right Applications. ODFW shall not file new instream water right applications on the reaches described in the ODFW Instream Applications. For avoidance of doubt, these reaches are depicted in Exhibit B.

11. Default; Remedies. Where a party fails to comply with the terms and conditions of this Agreement, the non-defaulting Party may provide written notice to the defaulting party of the default and the defaulting party shall cure, or, where such default is not immediately curable, take all reasonable steps to cure, its noncompliance within ten (10) calendar days of receipt of written notice. If the party fails to exercise reasonable efforts to cure its noncompliance, the other party's exclusive remedy, after compliance with Dispute Resolution process set forth below, will be to seek specific performance of the terms and conditions set forth in this Agreement. Either party may file for a temporary restraining order and injunction seeking to compel the other party to comply with the terms of this Agreement. In no case, however, shall any party be entitled to a remedy of monetary damages. The Parties understand and agree that OWRD watermasters will continue to regulate the distribution of water in accordance with existing water rights of record and relative entitlements to water pursuant to ORS 540.045; provided further that OWRD is not responsible for enforcing Base Flows, Minimum Flows, or other bypass flows described in this Agreement.

12. Dispute Resolution. The Parties agree to use best efforts to pursue, in good faith, implementation of the terms and conditions of this Agreement. It is the intent of the Parties to resolve any dispute arising out of this Agreement through unassisted, informal negotiations outside of court, and that litigation will be used only after good faith efforts to resolve disagreements are unsuccessful. To this end, Parties understand and agree to prioritize resolution of any noncompliance or alleged noncompliance with the terms and conditions of this Agreement through consideration of mitigation equal to the value of the flow releases as a first step in the dispute resolution process. In considering the need for mitigation, the Parties shall consider the benefits and provide credit for flows that exceeded the Base or Minimum Flows during the 15 days prior to and 15 days after (a 31 day period) the day on which noncompliance occurs. When Base Flows are not met, mitigation is two (2) times the amount of noncompliance minus credit for flows that exceeded Base Flows during the 31 day period; and when Minimum Flows are not met, mitigation is three (3) times the amount of noncompliance minus credit for flows that exceeded Minimum Flows during the 31 day period. Any mitigation shall be provided within one year of the date of default and shall occur from October – March, except that such mitigation may be deferred by up to one year where BRID adopts a Drought Declarations in accordance with Paragraph 4.b.

13. Process. The Parties agree to assign authorized representative(s) to comply with the following informal resolution process. Within five (5) business days of receipt of a written notice of default that sets forth a summary of the disagreement and any documents or supporting materials that assist in describing the issue or appropriate resolution (the “Dispute”), the Parties shall assign representatives to make good faith efforts to resolve the Dispute. If these representatives cannot resolve the Dispute within the next ten (10) business days, the Parties shall designate senior

managers, in the case of ODFW, and one or more board members and the district manager, in the case of BRID, to meet at a mutually agreed upon location, which may include an electronic meeting forum if agreed to by both Parties, to resolve the Dispute. The additional representatives shall seek to resolve the Dispute within thirty (30) calendar days of the date of receipt of the Dispute notice.

14. Attorney Fees. In the event of any litigation between the Parties with respect to this Agreement, all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party at and in preparation for such litigation, excluding any mediation or non-binding arbitration, but including any court proceeding, appeal, petition for review or in any proceeding before a U.S. Bankruptcy Court, shall be paid by the other party, subject to the prevailing party's good faith participation in informal resolution efforts prior to initiating any court proceeding.

15. Force Majeure. Notwithstanding any conditions in this Agreement to the contrary, no Party shall be deemed to be in default by any other Party by reason of failure of performance caused by or resulting from an act of God, strike, lockout or other disturbance, act of public enemy, pandemic, war, blockage, riots, lightning, fire, flood, explosion, dam failure, failure to timely receive necessary government approvals, or restraints of the government, or any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party claiming such.

16. Termination. This Agreement may not be terminated, canceled or rescinded by the Parties, except by mutual written consent of both Parties, except that after compliance with the Dispute Resolution process set forth in Section 12 above, ODFW may seek unilateral termination of the Agreement if BRID has defaulted on its obligation to provide Base or Minimum flows as required by this Agreement more than three (3) times within one (1) year and the Parties do not have an agreed-upon mitigation plan and timeline for implementation to compensate for the value of the bypass flows.

17. Five Year Reviews. The Parties shall meet on each five (5) year anniversary following the Effective Date of this Agreement and shall, at that time, discuss whether amendments to the Agreement may be necessary to address conditions that could not have been anticipated at the time the Parties entered into the Agreement, and to otherwise assess and improve the effectiveness of the Agreement. The Parties agree that conditions that could not have been anticipated shall include any change in law or change in interpretation of existing laws related to this Agreement or the Parties' compliance with its terms; the Parties further agree that such changes may necessitate a review prior to the five (5) year anniversary. No amendments shall be made without mutual consent of the Parties; provided further that no amendments shall be made that would either increase Base Flows or diminish the benefits to the fishery resource intended by the original Agreement.

18. Notices; Designated Representatives. Unless specified otherwise herein, any written notice required under this Agreement shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified mail with a return receipt requested, addressed to the address below or to such other address as may be specified from time to time by either of the Parties in writing.

All notices to BRID shall be sent to:

Burnt River Irrigation District (BRID)
c/o District Manager
19498 Hwy 245
Hereford, OR 97837 Tel.: 541-480-4465
Email: briver@ortelco.net
Designated Representative: District Manager

All notices to ODFW shall be sent to both:

Oregon Department of Fish and Wildlife
La Grande/Grande Ronde Watershed District Office
c/o Watershed Manager
107 20th Street
LaGrande, OR 97850
Tel: 541-963-2138 Fax: 541-963-667
Email: jeff.yanke@odfw.oregon.gov
Designated Representative: LaGrande Watershed Manager

And

Oregon Department of Fish and Wildlife
Headquarters
c/o Water Program Manager
4034 Fairview Industrial Drive SE
Salem, OR 97302
Tel: (503) 947-6000
Email: spencer.r.sawaske@odfw.oregon.gov
Designated Representative: Water Program Manager

The Parties consent that all other written communications may be by electronic mail to the Designated Representative noted above. Both Parties shall update such addresses within five (5) business days of a change in any Designated Representative or provide a replacement Designated Representative and their associated electronic mail address should the position be empty for a period of more than five (5) business days.

19. Cooperation. The Parties agree to cooperate fully to execute any and all supplemental documents, and to take all additional actions, that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

20. Choice of Law; Venue. It is understood and agreed that this Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any circuit court action or suit brought by the Parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Baker County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District

Court for the District of Oregon. ALL PARTIES HEREBY CONSENT TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVE ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVE ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State Agencies of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State Agencies to the jurisdiction of any court.

21. Constitutionality. The State's obligations under this Agreement are conditioned upon the State receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the State, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

22. Severability. In the event that any of the terms or conditions, or any portion of them, contained in this Agreement are unenforceable or declared invalid for any reason whatsoever, the same shall not affect the enforceability or validity of the remaining terms and conditions hereof.

23. No Waiver. No waiver of any right under this Agreement will be binding on a Party unless it is in writing and signed by the Party making the waiver.

24. Counting of Days. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or legal holiday, the time period shall be extended until the next day which is not a Saturday, Sunday or legal holiday in the State of Oregon.

25. Opportunity to Review. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.

26. No Interpretation in Favor of Any Party. It is understood and agreed that the Parties drafted the Agreement together and that its provisions should not be interpreted to favor any Party against another Party as the drafter.

27. Review of Entire Agreement. Each Party to this Agreement certifies that it has read the entire Agreement and understands and agrees with the contents thereof.

28. No Precedent. The Parties agree that nothing in this Agreement establishes factual, legal, or policy precedent.

29. Authority of Signor; BRID Representation. Each Party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Agreement. In addition, BRID represents that it shall faithfully comply with all obligations established in its contract with the United States related to the Unity Dam and reservoir works

(contract number ILR-821) for the express purpose of ensuring no cause exists for the United States to take back such transferred works.

30. Counterparts; Electronic Signatures. The Agreement may be executed in one or more counterparts, and all counterparts so executed shall constitute one agreement, binding on all of the Parties to this Agreement, even though all of the Parties are not signatories to the original or the same counterpart. Any counterpart of this Agreement, which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, is for all purposes deemed a fully executed instrument. The Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original, manual signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature or any symbol adopted by either party with the intent to sign this Agreement.

31. Final Orders; Consent to Withdrawal of Protests. This Agreement is conditioned on and contingent on OWRD's issuance of Final Orders and Certificates for all of the Instream Water Rights; provided further that BRID agrees to withdraw its protests and all Parties agree not to challenge OWRD's issuance of Final Orders for all of the Instream Water Rights consistent with the terms of this Agreement.

32. Defense of the Agreement. The Parties agree to support this Agreement, including responding to any third-party challenge to this Agreement or the Final Orders. However, the form, manner and timing of each Party's support are reserved to the discretion of each Party; provided further that in no case shall the BRID or any attorney engaged by the BRID defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor shall they purport to act as the legal representative of the State of Oregon or any of its agencies.

33. Consent. The Parties hereby acknowledge that they have read and understand the terms of this Agreement. The Parties understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the Parties.

WHEREAS, the Parties have entered into this Agreement effective as of the date of the last signature below.


Burnt River Irrigation District

Name: _____

Date: _____

Position: _____

Oregon Department of Fish and Wildlife

Name:  _____

Date: ____01/15/25____

Position:

Director

(contract number ILR-821) for the express purpose of ensuring no cause exists for the United States to take back such transferred works.

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WHEREAS, the Parties have entered into this Agreement effective as of the date of the last signature below.

Burnt River Irrigation District

Name: William T. Moon

Date: 1-21-2025

Position: Board Chairman

Oregon Department of Fish and Wildlife

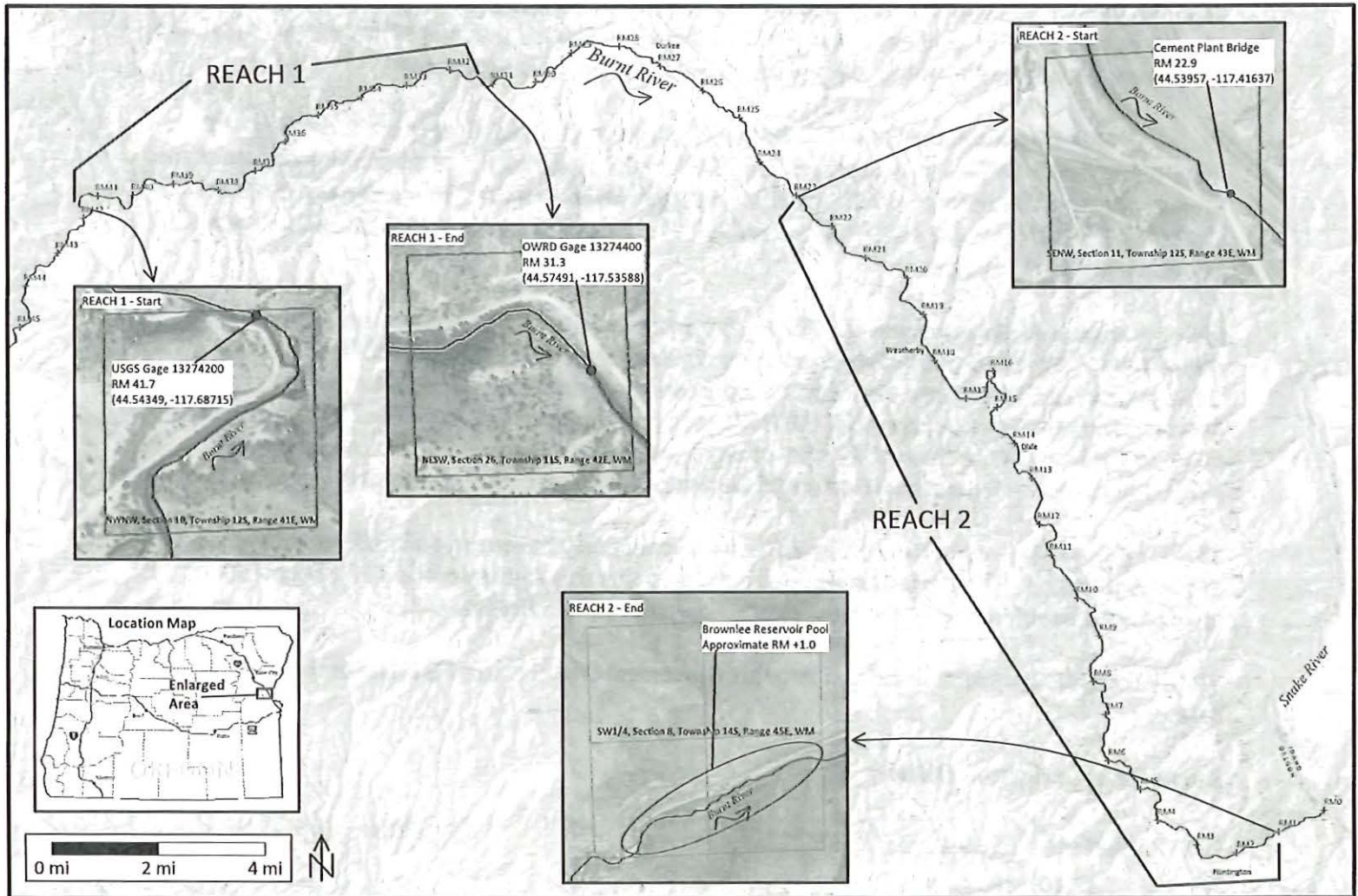
Name: _____

Date: _____

Position: _____

COPY

IS-72168 Reach Location Map



NOTE: River Miles derived from OWRD provided stream layer (5/3/24)

Mailing List for Commenter Letters

Applications IS-72168, IS-72169, IS-72186

Certificates 98264, 98265, 98266

Copies Mailed
By: <u>AH</u> (SUPPORT STAFF)
On: <u>06/27/2025</u>

Copies mailed to:

Spear C Hindman Corporation
Stephen R. Hindman
PO Box 204
Durkee, OR 97905

LaVerne Buchan
Rt 1_Rye Valley
Huntington, OR 97907

Sam Ramos
HCR 86 Box 133
Hereford, OR 97837

Freemen Angus Ranch, Inc.
David Freeman
37494 Sutton Creek Rd.
Baker City, OR 97814

Christensen Ranch
Norm Christensen
PO Box 74
Bridgeport, OR 97819

Andrew Racey
HCR 86 Box 49
Hereford, OR 97837

William D. Shumway
PO Box 58
Bridgeport, OR 97819

Elliott Ranches, Inc
Barbara E. Lewis
PO Box 57
Bridgeport, OR 97819

Arleta M and Lynn F Langley
Rt. 1 Box 4
Huntington, OR 97907

Helen M. Langley
Rt. 1 Box 3
Huntington OR, 97907

Tamera & Dwight Langley
PO Box 238
Huntington, OR 97907

Mark Bennett
PO Box 145
Unity, OR 97884

Shook Ranch
Harold J. Baker, Jr
PO Box 256
Durkee, OR 97905

Anita York
PO Box 169
Durkee, OR 97905

Gordon E. Van Cleave
PO Box 282
Durkee, OR 97905

Steven J. Vuyovich
PO Box 115
Unity, OR 97884

Ione M. Woods
PO Box 203
Durkee, OR 97905

Cheryl A. & Chuck Buchanan
PO Box 262
Durkee, OR 97905

Kathryn L. Vaughan
PO Box 259
Durkee, OR 97905

Terry Bates
1404 Cris Ct
La Grande, OR 97850

Water for Life
Todd Heidgerken
PO Box 4233
Salem, OR 97302

Commented [WD1]: Address does not appear to be in file, appears Angee found it on an OregonLive site reporting expenditures on lobbyists in 2014.

Teresa A. Orr
4409 Frieda Ave
Klamath Falls, OR 97603

Burnt River Soil & Water Conservation District
Jim Sinkbeil
PO Box 906
Baker, OR 97814

Deborah J. & Michael R. Moxley
HCR 62 Box 13
Huntington, OR 97907

Miriam L. & Gary Martin
PO Box 5045
Bridgeport, OR 97819

Floyd L. Vaughan
PO Box 965
Baker City, OR 97814

Rhea & Rod Bunch
PO Box 212
Durkee, OR 97905

Jean L. & Lawrence D. Bunch
PO Box 206
Durkee, OR 97905

Betty & Charles Bates
PO Box 146
Durkee, OR 97905

F. Wilbur Smith
1915 Chestnut St
Baker City, OR 97814

Larry R. Green
PO Box 158
Hereford, OR 97837

Stanley M. Follett
PO Box 235
Durkee, OR 97905

Sullivan Z Ranch
Kathleen Sullivan
26151 HWY 245
Hereford, OR 97837

J.L. & M.K. Hindman
PO Box 208
Durkee, OR 97905

Loverin Ranch
Lee Loverin
22277 HWY 245
Hereford, OR 97837

Dorothy E. Bloomer
PO Box 289
Durkee, OR 97905

Trimble Ranch, Inc
Trimble Land Co.
Beverly Duby & Arthur Trimble
PO Box 188
Hereford, OR 97837

Larry L. Smith
PO Box 5027
Bridgeport, OR 97819

Pat Sullivan
HCR 86 Box 34
Hereford, OR 97837

Broken Pick Mining, Inc.
Beth and Michael T. Dolan
Rt 1 Box 13
Huntington, OR 97907

Richard L and Claudia Gasser
PO Box 159
Huntington, OR 97907

Bar Running N Ranches, Inc
Walter R. Shumway
2880 Pioneer Ln
Baker City, OR 97814

Ruth E. & Joe L. Barber
Box 1 Rt 2
Huntington, OR 97907

Mabel Shaw
414 E 14th Ave
Anchorage, AK 99501

Vernon M. Simpson
PO Box 170
Durkee, OR 97905

Nelson C-C Ranches
Kent, Anita, and Katherine Nelson
PO Box 187
Herford, OR 97837

Roger K, Dusty, Alison J, Darla S, and Chad E Derrick
PO Box 4
Unity, OR 97884

Edith Derrick
PO Box 3
Unity, OR 97884

Daryl E. Hawes
HCR 86 Box 140
Hereford, OR 97837

Eastern Oregon Mining Association
Terry Drever-Gee
PO Box 932
Baker City, OR 97814

J.T. Toll
PO Box 274
Durkee, OR 97905

Jennie and Alfred Moeller
PO Box 147
Unity, OR 97884

Baker County Commissioners
1995 Third Street
Baker City, OR 97814

Debbie Moeller
PO Box 72
Unity, OR 97884

Vivian M and William J Zikmund
PO Box 192
Durkee, OR 97905

Richard and Inez Cartwright
PO Box 230
Durkee, OR 97905

Bernard F and Colleen Hutcheon
PO Box 136
Hereford, OR 97837

Mike Payne and Michelle Neal-Payne
PO Box 149
Unity, OR 97884

Jan and Ken Alexander
PO Box 153
Unity, OR 97884

Unity, Oregon City Council
PO Box 7
Unity, OR 97884

Wayne E. Morin
HCR 86 Box 138
Hereford, OR 97837

Burnt River Community Development Counsel
Thomas R and Bonnie Clugston
PO Box 102
Unity, OR 97884

Evelyn Keith
1205 Washington Ave
Baker City, OR 97814

Fay L. Ross
PO Box 11
Unity, OR 97884

Bennett Trust
Paul V. Bennett
Box 135 Loop Rd
Hereford, OR 97837

Schollenberger Farms
Keith Shollenberger
PO Box 31
Unity, OR 97884

Miriam K Aschim
HCR 86 Nox 168
Unity, OR 97884

Forest Supervisor
Wallowa-Whitman National Forest
US Department of Agriculture- Forest Service
1550 Dewey Avenue, Suite A
Baker City, OR 97814

WaterWatch
Kimberly Priestley
213 SW Ash St. #208
Portland, OR 97204

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

Protest Coordinator: Will Davidson



Oregon
John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

March 11, 2014

Burnt River Irrigation District
19498 Hwy. 245
Hereford, OR 97837

Re: Protest to ODFW Instream Water Right Applications IS-72168, 72169, 72186

Dear Mr. Franke:

In 1992 the Oregon Department of Fish and Wildlife filed numerous applications for instream water rights on various streams in Oregon. The District protested Applications # 72168 and 72169 on the Burnt River, and # 72186 on the North Fork of the Burnt River.

Water Resources is required by statute to determine whether to hold a contested case hearing on protests received on applications. At this time, the Department has determined not to refer the District's protests to hearing. Before the Department takes further action on this application, we would like the opportunity to meet with the District to discuss your concerns regarding the impact that this proposed instream water right would have on the District's water rights.

To refresh your memory I have enclosed copies from WRD files for the applications protested by the District. I will contact you in March to arrange a discussion with you about the Department's decision and how it may affect your organization. The number I have for the District is (541) 446-3313. Please advise me if this is not correct.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Phone: 503-986-0820



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130

VIA MAIL

February 16, 2001

Lynn R. Shumway
P.O. Box 5053
Bridgport, OR 97819

RE: Water Right Application 72186 in the Name of the Oregon Department of Fish
and Wildlife

Dear Mr. Shumway:

Enclosed is a copy of the entire water right file for Application IS 72186. I have been discussing your settlement ideas with the Oregon Department of Fish and Wildlife and will keep you updated.

Please feel free to call if you have any questions: 1-800-624-3199 ext. 239.

Sincerely,

Renee Moulun
Protest Program Coordinator

Enclosures



Page 1 of Limiting Water Availability Basins

Total Pages: 1

LIMITING WATERSHEDS

Stream: N FK BURNT R > BURNT R - AB W FK BURNT R

Watershed ID Number: 72186

Basin: POWDER

Time: 09:30

Exceedance Level: 50

Date: 01/25/2001

Mnth	Limiting Watershed	Stream Name	Water Avail?	Net Water Available
1	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-34.8
2	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-35.3
3	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-38.1
4	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-29.1
5	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-28.0
6	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-18.6
7	30920215	BURNT R > SNAKE R - AB SWAYZE CR	NO	-26.5
8	30920215	BURNT R > SNAKE R - AB SWAYZE CR	NO	-19.7
9	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-12.2
10	72186	N FK BURNT R > BURNT R - AB W FK BURNT R	NO	-1.0
11	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-43.6
12	30920227	BURNT R > SNAKE R - AB BIG CR	NO	-41.9
Stor	72186	N FK BURNT R > BURNT R - AB W FK BURNT R	NO	.0

Page 1 of Water Availability Tables

Total Pages: 2

WATER AVAILABILITY TABLE

Stream: N FK BURNT R > BURNT R - AB W FK BURNT R

Basin: POWDER

Watershed ID Number: 72186 (and Nested Subbasins)

Time: 09:29

Exceedance Level: 50

Date: 01/25/2001

Item #	Watershed ID #	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Sto
1	72168	YES	YES	YES	YES	YES	YES	NO	NO	NO	YES	NO	YES	YES
2	30920215	YES	YES	YES	YES	YES	NO	NO	NO	NO	YES	NO	NO	YES
3	72169	NO	NO	YES	YES	YES	NO	NO	NO	NO	YES	NO	NO	YES
4	30920227	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	YES
5	72186	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO

DETAILED REPORT ON THE WATER AVAILABILITY CALCULATION

Stream: N FK BURNT R > BURNT R - AB W FK BURNT R

Basin: POWDER

Exceedance Level: 50

Watershed ID Number: 72186

Time: 08:53

Date: 01/25/2001

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	CU + Stor After 1/1/93	Expected Stream Flow	Reserved Stream Flow	Instream Water Rights	Net Water Available
1	12.70	.11	.00	12.60	1.77	6.00	4.82
2	26.10	.11	.00	26.00	3.63	12.00	10.40
3	92.80	2.64	.01	90.10	12.90	25.00	52.20
4	209.00	12.20	.58	196.00	106.00	25.00	65.50
5	143.00	31.00	1.45	111.00	19.90	25.00	65.60
6	43.10	25.10	1.16	16.80	.00	25.00	-8.17
7	12.90	8.45	.00	4.45	.00	12.00	-7.55
8	4.07	3.44	.00	.63	.00	6.00	-5.37
9	2.69	1.83	.08	.78	.00	4.90	-4.12
10	4.08	.11	.00	3.97	.00	5.00	-1.03
11	7.27	.11	.00	7.16	1.01	6.00	.15
12	9.88	.11	.00	9.77	1.37	6.00	2.40
Stor	34200	5160	200	28900	8760	9520	12200

DETAILED REPORT ON THE WATER AVAILABILITY CALCULATION

Stream: N FK BURNT R > BURNT R - AB W FK BURNT R

Basin: POWDER

Exceedance Level: 50

Watershed ID Number: 72186

Time: 09:12

Date: 01/25/2001

Month	Natural Stream Flow	CU + Stor Prior to 1/1/93	CU + Stor After 1/1/93	Expected Stream Flow	Reserved Stream Flow	Instream Water Rights	Net Water Available
1	12.70	.11	.00	12.60	1.77	6.00	4.82
2	26.10	.11	.00	26.00	3.63	12.00	10.40
3	92.80	2.64	.01	90.10	12.90	25.00	52.20
4	209.00	12.20	.58	196.00	106.00	25.00	65.50
5	143.00	31.00	1.45	111.00	19.90	25.00	65.60
6	43.10	25.10	1.16	16.80	.00	25.00	-8.17
7	12.90	8.45	.00	4.45	.00	12.00	-7.55
8	4.07	3.44	.00	.63	.00	6.00	-5.37
9	2.69	1.83	.08	.78	.00	4.90	-4.12
10	4.08	.11	.00	3.97	.00	5.00	-1.03
11	7.27	.11	.00	7.16	1.01	6.00	.15
12	9.88	.11	.00	9.77	1.37	6.00	2.40
Stor	34200	5160	200	28900	8760	9520	12200

DETAILED REPORT OF ISWRs

Stream: N FK BURNT R > BURNT R - AB W FK BURNT R

Basin: POWDER

Watershed ID Number: 72186

Time: 09:12

Date: 01/25/2001

ISWRs								
APP #	72186A	0	0	0	0	0	0	MAXIMUM
Status	App.							
1	6.00	.00	.00	.00	.00	.00	.00	6.00
2	12.00	.00	.00	.00	.00	.00	.00	12.00
3	25.00	.00	.00	.00	.00	.00	.00	25.00
4	25.00	.00	.00	.00	.00	.00	.00	25.00
5	25.00	.00	.00	.00	.00	.00	.00	25.00
6	25.00	.00	.00	.00	.00	.00	.00	25.00
7	12.00	.00	.00	.00	.00	.00	.00	12.00

8	6.00	.00	.00	.00	.00	.00	.00	6.00
9	4.90	.00	.00	.00	.00	.00	.00	4.90
10	5.00	.00	.00	.00	.00	.00	.00	5.00
11	6.00	.00	.00	.00	.00	.00	.00	6.00
12	6.00	.00	.00	.00	.00	.00	.00	6.00

INTEROFFICE MEMORANDUM
Water Rights Section

TO: ~~Eric 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 Wright

69949 A

69949 S

69951 S

69951 A

69958 S

69958 A

69958 S

69959 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

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OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

8

9

18

74

2

1

3

9

19

2

12

12

Basin App Num

6

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

Total for Basin 6 : 38

9

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

Instream Applications with Protests

4/2/97

Basin	App Num		
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	

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

14

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

Instream Applications with Protests

4/2/97

Basin	App Num	
14		
	70824	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70826	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 14 :	46	
15		
	70982	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70993	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70998	W OREGON DEPARTMENT OF FISH & WILDLIFE
	71008	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71201	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71614	A OREGON DEPARTMENT OF FISH & WILDLIFE
	71622	A OREGON DEPARTMENT OF FISH & WILDLIFE
	72843	A OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 15 :	8	
16		
	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

Basin	App Num		
17			
	70229	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70230	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70348	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70448	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70574	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70877	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70891	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70895	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70915	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71697	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	80446	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 17 :	15		
173			

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 72186

WATERMASTER # VERN CHURCH

REGIONAL MANAGER: KENT SEARLES

ODF&W - County: BAKER

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; FRONT COUNTER

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

RECEIVED

JUL 25 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Burnt River Irrigation District
HCR 86 Box 151
Hereford, Or 97837
(541) 446-3313

July 23, 1996

To: Water Resources Department
158 12th Street N.E.
Salem, OR 97310-0210
(Attn: Michael J. Mattick)

Subject: Protest of Proposed Final Order of Application IS - 72186

Burnt River Irrigation District protests the Proposed Final Order (PFO) of Instream Water Right filing IS - 72186 based on the following reasons:

1. We protest the in-stream filing on any stream that is already classed as "over appropriated". If the stream is over appropriated, the current water right holders are limited to a specific duty and rate, any water over the authorized amount must be left in the stream under existing law and no new water rights can be issued.
2. We protest the amount of water requested in this filing. WRD decision to grant instream rights without regard to existing withdrawal is un-realistic. Record after record of water measurement for this portion of the North Fork of the Burnt River shows that the amount of water to be granted by the PFO does not exist. For a consumptive use water right to be granted, the water must be proven to exist. We feel instream rights should be held to the same criteria.
3. We believe the methods of determining flow which have been approved by administrative rule of the agency submitting the application to be highly suspect and unfair.
4. We take exception to estimated average natural flows when measurement records exist that contradict the estimated flows.

RECEIVED

JUL 25 1996

WATER RESOURCES DEPT.
SALEM, OREGON

5. The presumption set forth in ORS 537.153 has not been established, yet the Department intends to proceed without that statutory presumption. We believe this to be a deliberate attempt to circumvent established procedures.

6. We challenge the statement that even though the proposed use exceeds the available water, ... the proposed use is in the public interest up to the limits of the estimated average natural flow.

This protest is filed on behalf of:

Burnt River Irrigation District
HCR 86 Box 151
Hereford, OR 97837
Phone: (541) 446-3313

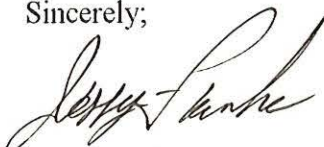
A water management agency representing district patrons with consumptive use water rights through this portion of the instream filing.

We believe this filing to be detrimental to the security of our existing rights.

We believe the technical data as to stream flows to be flawed and based primarily on estimates rather than firm recorded data.

Enclosed find our check for \$200.00 for the protest fee.

Sincerely;



Jerry Franke, Manager

(This proof of service, by regular mail is required for all protests by parties other than the applicant. The applicant is not required to submit a proof of service to the Water Resources Department of a protest against a Proposed Final Order.)

RECEIVED

JUL 31 1996

WATER RESOURCES DEPT.
SALEM, OREGON**PROOF OF SERVICE**

I, LYNN R. SHAWWAY, being first duly sworn, depose and say that on JULY 29TH, 1996, I mailed a copy of the attached protest against a proposed final order on application number 15-72186 to the applicant by regular mail. A copy of the protest was placed in an envelope addressed to:

MARK LIVERMAN
Name

DDF+61 P.O. Box 59
Street Address

PORTLAND
City

OR
State

97207
Zip Code

and deposited in the United States mail with sufficient postage.

7-29-96
Date

Lynn R. Shawway
Signature

Subscribed to and sworn before me this 28TH day of JULY, 1996.

Jerry L. Franke



Notary Public for Oregon

My commission expires 7-11-97

June 11, 1996

To the party addressed

Regarding: Extension of Protest Deadline for specific Instream
 Water Right Proposed Final Orders.

On May 14, we issued proposed final orders on 16 instream water right applications in the Powder River Basin. The issuance of a proposed final order starts a 45 day protest period. Unfortunately, we did not notify all interested parties of the availability of the proposed final orders until May 28, 1996.

Because we are concerned that this may have disadvantaged interested parties, we are attempting to contact those who may have been notified late and are allowing an additional 45 days (from this letter, until July 26, 1996), for the submittal of protests to the proposed final orders.

Enclosed is a complete list of all instream water right proposed final orders issued on May 14, 1996.

You are receiving this letter because our records indicate that you have some interest in one or more of these applications.

Copies of the final order are available from the Water Resources Department in Salem for a statutorily established fee of \$10 each. Copies are also available for review at the watermaster office in Baker City.

Please call if you need additional assistance. Our toll free number is 1-800-624-3199.

Sincerely,



MICHAEL J. MATTICK
Water Rights Specialist

enclosure

cc: Kent Searles, Vern Church, Rick Kruger, File



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

Oregon Water Resources Department

Water Rights/Adjudication Section

Water Right Application Number: IS 72186

Proposed Final Order

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

Application History

On 1/29/1992, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: N FK BURNT R tributary to BURNT R

County: BAKER

Purpose: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE AND JUVENILE REARING OF RAINBOW TROUT.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	6.0	6.0	6.0	6.0
2nd½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	6.0	6.0	6.0	6.0

To be maintained in:

NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, T12S, R37E, WM)

The Department mailed the applicant notice of its Technical Review on November 25, 1994, determining that the requested flows exceeded the estimated average natural flow during some months but that flows at a reduced amount, with exceptions for human and livestock consumption, are appropriate. The objection period closed February 1, 1995. Objections and comments were received (from ALFRED & JENNIE MOELLER, ALISON DERRICK, ALLEN FLETCHER, BAKER COUNTY COURT, BERNARD HUTCHEON, BURNT RIVER CDC, BURNT RIVER IRRIGATION DIST, BURNT RIVER SOIL & WATER, CHAD E & DARLA DERRICK, CITY OF UNITY, COLLEEN HUTCHEON, DARYL HOWES, DAVID B FREEMAN, DAVID SCHIEVE, DEBBIE MOELLER, DUSTY DERRICK, EASTERN OREGON MINING ASSOCIATION, EDITH DERRICK, EVELYN J KEITH, FAY L ROSS, INEZ CARTWRIGHT, JAMES SINKBEIL, JAN ALEXANDER, JERRY FRANKE, JOHN & ROBERTA MORIN, KEN ALEXANDER, MICHELLE NEAL-PAYNE, MIKE PAYNE, MIRIAM ASCHIM, NELSON C-C RANCHES INC, OREGON DEPT OF FISH AND WILDLIFE, PAUL BENNETT, RICHARD CARTWRIGHT, ROGER DERRICK, SHOLLENBERGER FARMS, TERESA A ORR, THOMAS CLUGSTON, WATER FOR LIFE, WATERWATCH OF OREGON, WAYNE MORIN).

The following supporting data was submitted by the applicant:

- (a) The Fish and Wildlife Resources of the Powder Basin and Their Water Requirements; August 1967.
- (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 Powder Basin Program allows the proposed use.

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

The source of water is not 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
9.40	21.5	88.6	217	131	35.2	15.4	6.97	4.88	4.99	6.50	8.01

Water is NOT available for further appropriation (at a 50 percent exceedance probability) for the period July, August, September and October.

The flows available for further appropriation are shown below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
9.2	21.3	88.2	212.0	125.1	28.4	5.3	-1.0	-1.0	4.8	6.3	7.8

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 Powder 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.

While the proposed use meets the other tests, the full amount of water requested is not available during some months of the year.

Water is not available for the proposed use at the amount requested during July, August, September and October because the unappropriated water available is less than the amounts requested during these 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, shall except future use of water for human and 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
1st%	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2nd%	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

Recommendation

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

DATED MAY 14, 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.

Your protest must be received in the Water Resources Department no later than June 28, 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.

Oregon Water Resources Department

Application	Basin	Source	Use	County	May 14, 1996 Priority							
IS 72178	09	ELK CR tributary to S FK BURNT R	FI	BAKER	1/29/1992.							
Reach: ELK CREEK FROM THE HEADWATERS (TOWNSHIP 13S, RANGE 35½E WM); TO THE MOUTH AT RIVER MILE 0.0 (NW¼, SECTION 32, TOWNSHIP 13S, RANGE 36E WM)												
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	2.99	3.14	3.39	4.6	7.36	4.75	3.86	3.34	3.23	3.27	3.21	3.14
IS 72181	09	LITTLE EAGLE CR tributary to EAGLE CR	FI	BAKER	1/29/1992							
Reach: LITTLE EAGLE CREEK FROM SPRING CREEK (NESW, SECTION 36, TOWNSHIP 6S, RANGE 44E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 7, TOWNSHIP 8S, RANGE 45E WM)												
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	2.0	2.0	11.0	11.0	11.0	11.0	2.0	2.0	2.0	2.0	2.0	2.0
2nd½	2.0	5.0	11.0	11.0	11.0	5.0	2.0	2.0	2.0	2.0	2.0	2.0
IS 72183	09	MCCULLY FK tributary to POWDER R	FI	BAKER	1/29/1992.							
Reach: MCCULLEY FORK CREEK FROM THE HEADWATERS AT RIVER MILE +9.2 (SE¼, SECTION 21, TOWNSHIP 8S, RANGE 36E WM); TO THE MOUTH AT RIVER MILE 0.0 (NW¼, SECTION 32, TOWNSHIP 9S, RANGE 37E WM)												
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	5.0	5.0	12.2	15.0	15.0	15.0	6.0	4.02	1.72	1.32	1.79	3.48
2nd½	5.0	5.92	12.2	15.0	15.0	10.0	6.0	4.02	1.72	1.32	1.79	3.48
IS 72185	09	N FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.							
Reach: NORTH FORK BURNT RIVER FROM AN UNNAMED TRIBUTARY AT RIVER MILE +28.5 (NENW, SECTION 12, TOWNSHIP 10S, RANGE 35 E WM); TO CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM)												
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	3.22	5.0	20.0	20.0	20.0	12.1	5.29	2.39	1.67	1.71	2.23	2.7
2nd½	3.22	7.36	20.0	20.0	20.0	12.1	5.0	2.39	1.67	1.71	2.23	2.7
IS 72186	09	N FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.							
Reach: NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, T12S, R37E, WM)												
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2nd½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

<u>Application</u>	<u>Basin</u>	<u>Source</u>
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<u>Application</u>	<u>Basin</u>	<u>Source</u>	<u>Use</u>	<u>County</u>	<u>Priority</u>							
IS 72191	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992							
Reach:	POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NWNE, SECTION 26, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE +74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd%	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0
IS 72192	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992							
Reach:	POWDER RIVER FROM THIEF VALLEY RESERVOIR AT RIVER MILE 69.5 (NESW, SECTION 26, TOWNSHIP 6S, RANGE 40E WM); TO GOC CREEK AT RIVER MILE 36.5 (NWNW, SECTION 4, TOWNSHIP 9S, RANGE 43E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	50.0	50.0	70.0	70.0	70.0	70.0	50.0	50.0	50.0	50.0	50.0	50.0
2nd%	50.0	60.0	70.0	70.0	70.0	60.0	50.0	50.0	50.0	50.0	50.0	50.0
IS 72193	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992							
Reach:	POWDER RIVER FROM GOOSE CREEK AT RIVER MILE 36.5 (NWNW, SECTION 4, TOWNSHIP 9S, RANGE 43E WM); TO BROWN L RESERVOIR AT RIVER MILE 10.0 (NE1/4, SECTION 35, TOWNSHIP 9S, RANGE 45E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	60.0	60.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	60.0
2nd%	60.0	70.0	80.0	80.0	80.0	70.0	60.0	60.0	60.0	60.0	60.0	60.0

Oregon Water Resources Department

<u>Application</u>	<u>Basin</u>	<u>Source</u>	<u>Use</u>	<u>County</u>	<u>Priority</u>							
IS 71684	09	W EAGLE CR tributary to EAGLE CR	FI	WALLOWA	6/ 7/1991.							
Reach:	WEST EAGLE CREEK FROM EAST FORK AT RIVER MILE 7.0 (NE1/4, SECTION 29, TOWNSHIP 5S, RANGE 43E WM); TO THE MOUTH A RIVER MILE 0.0 (NENW, SECTION 28, TOWNSHIP 6S, RANGE 43E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	10.0	10.0	31.0	40.0	40.0	40.0	15.0	10.0	10.0	10.0	10.0	10.0
2nd%	10.0	23.1	31.0	40.0	40.0	25.0	15.0	10.0	10.0	10.0	10.0	10.0
IS 72160	09	S FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.							
Reach:	SOUTH FORK BURNT RIVER FROM HEADWATERS AT RIVER MILE 17.0 NW1/4, SECTION 23, TOWNSHIP 14S, RANGE 35.50E WM); T ELK CREEK AT RIVER MILE 11.4 (NW, SECTION 32, T13S, R36E, WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	7.0	7.0	8.94	12.1	15.0	12.5	7.0	7.0	7.0	7.0	7.0	7.0
2nd%	7.0	8.28	8.94	12.1	15.0	12.0	7.0	7.0	7.0	7.0	7.0	7.0
IS 72167	09	BIG CR tributary to POWDER R	FI	BAKER	1/29/1992.							
Reach:	BIG CREEK FROM LICK CREEK (NE1/4, SECTION 28, TOWNSHIP 6S, RANGE 42E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE SECTION 20, TOWNSHIP 7S, RANGE 41E)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	3.0	3.0	9.0	9.0	9.0	9.0	3.0	3.0	3.0	3.0	3.0	3.0
2nd%	3.0	5.0	9.0	9.0	9.0	5.0	3.0	3.0	3.0	3.0	3.0	3.0
IS 72170	09	CLEAR CR tributary to PINE CR	FI	BAKER	1/29/1992.							
Reach:	CLEAR CREEK FROM EAST AND WEST FORKS AT RIVER MILE 17.0 (NWNW, SECTION 18, TOWNSHIP 6S RANGE 46E WM); TO RIVER MIL 10.6 (NW1/4, SECTION 8, TOWNSHIP 7S, RANGE 46E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	15.0	15.0	30.0	30.0	30.0	30.0	15.0	9.93	9.0	9.02	10.6	15.0
2nd%	15.0	23.0	30.0	30.0	30.0	23.0	15.0	9.93	9.0	9.02	10.6	15.0
IS 72172	09	CRACKER CR tributary to POWDER R	FI	BAKER	1/29/1992.							
Reach:	CRACKER CREEK FROM SARDINE GULCH (NWNE, SECTION 29, TOWNSHIP 8S, RANGE 37E WM); TO THE MOUTH AT RIVER MILE 0. (NW1/4, SECTION 32, TOWNSHIP 9S, RANGE 37E WM)											
Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	9.0	9.0	20.0	20.0	20.0	20.0	12.0	7.45	3.18	2.44	3.31	6.44
2nd%	9.0	11.0	20.0	20.0	20.0	15.0	12.0	7.45	3.18	2.44	3.31	6.44

IS 70863 09 PINE CR tributary to SNAKE R FI BAKER 11/8/1990.

Reach: PINE CREEK FROM FULLER CREEK AT RIVER MILE 27.0 (SESE, SECTION 15, TOWNSHIP 7S, RANGE 45E WM); TO LONG BRANCH AT RIVER MILE 13.5 (NESW, SECTION 7, TOWNSHIP 8S, RANGE 47E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	40.0	40.0	65.0	65.0	65.0	65.0	40.0	40.0	40.0	40.0	40.0	40.0
2nd½	40.0	50.0	65.0	65.0	65.0	50.0	40.0	40.0	40.0	40.0	40.0	40.0

IS 70864 09 PINE CR tributary to SNAKE R FI BAKER 11/ 8/1990.

Reach: PINE CREEK FROM WEST FORK PINE CREEK AT RIVER MILE 34.0 (SWSE, SECTION 16, TOWNSHIP 6S, RANGE 45E WM); TO FULLER CREEK AT RIVER MILE 27.0 (SESE, SECTION 15, TOWNSHIP 7S, RANGE 45E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	20.0	20.0	30.0	30.0	30.0	30.0	20.0	18.6	16.9	16.9	19.9	20.0
2nd½	20.0	25.0	30.0	30.0	30.0	25.0	20.0	18.6	16.9	16.9	19.9	20.0

IS 70870 09 E PINE CR tributary to PINE CR FI BAKER 11/ 8/1990.

Reach: EAST PINE CREEK FROM BEECHER CREEK AT RIVER MILE 10.3 (SE1/4, SECTION 16, TOWNSHIP 7S, RANGE 46E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNW, SECTION 18, TOWNSHIP 8S, RANGE 47E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	16.0	16.0	16.0	16.0	6.0	6.0	6.0	6.0	6.0	6.0
2nd½	6.0	10.0	16.0	16.0	16.0	10.0	6.0	6.0	6.0	6.0	6.0	6.0

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FEB 10 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Burnt River Irrigation District

HCR 86 Box 151
Hereford, Or 97837
(503) 446-3313

January 24, 1995

To: Water Resources Department
158 12th Street N.E.
Salem, Or 97310-0210
(Attn: Michael J. Mattick)

Subject: Objection to ODF&W Instream Water Right Application Technical Review

Reference Application File Numbers IS 72185 and IS 72186.

Burnt River Irrigation District(BRID) hereby objects to the following portions of the technical reviews for the reasons indicated:

1. We object to the in-stream filing on any stream that is already classed as "over appropriated". The reason for this is: If the stream is over-appropriated, the current water rights holders are limited to a specific duty and rate. Any water over the authorized rate must be left in the stream under existing law.
2. The amount of water requested. At a public meeting in Baker City on December 8, 1994, a member of WRD staff told the assembly that these amounts of water were derived without regard to existing or pending authorized diversions. We believe the existing and pending authorized diversions should be taken into account. We further believe all applications should be processed in the order received.
3. The supporting data submitted by the applicant. Believe this data to be out-dated and un-reliable. The watershed changes over the years. Fires and forest management practices have had a significant impact on the way water goes out. With good ground-cover and root systems, the ground will retain the water longer and allow it to go out gradually. Fires and forest management practices have changed this. Water now goes out all at once in the spring melt to the detriment of late summer flows.
4. Statement: "The source of water is not withdrawn from appropriation." On or about March 25, 1936 the Burnt River Irrigation District (BRID) adopted a resolution declaring Burnt River tributaries within the boundaries of BRID above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water.
5. Proposed Certificate Conditions. All the reported average flows have been proposed for in-stream use even though the flows are lower than what is considered minimum flow for the fishery. This makes no sense whatsoever. If the water does not meet minimum fish

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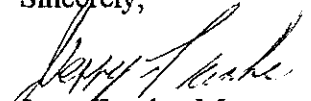
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WATER RESOURCES DEPT.
SALEM, OREGON

requirements why grant the in-stream flow?? Additionally, there is a major irrigation diversion down-stream of the measuring site, giving further need for consideration of existing authorized diversions .

6. We believe that all applications should follow the same procedures and rules as to filing fees and waiting periods before certificates are issued.

Sincerely;


Jerry Franke, Manager

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FEB - 2 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to the applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.
2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.
3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is out dated.
4. Instream applications are not compatible with local government comprehensive Land Use Plan.
5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters which have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over; an estimated 8,000 acres have been logged; and an estimated 500 - 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988 - Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

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SALEM, OREGON

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1. Data used to set flow levels was outdated. The impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any further development of lands, business or industry in the Valley. It could also have a long term negative impact on current water rights. In 1994, irrigators using water from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights.

2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. All lands below Unity Reservoir are privately owned and no permission has been granted to ODF&W to access that land. Therefor, there is no way accurate or current information could have been obtained for these applications.

3. The seasonal stream discharge patterns have changed over the last 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. I again question the data and methodology used.

2. If the water right holder is required to measure the instream flow, who is going to pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could have a long term negative impact on our current water rights. It would place the "State ODF&W" in a position that in time will lead to conflicts over water usage. The State has so many more resources that a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will become biased in favor of the State. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. As a landowner, irrigator and taxpayer I object to these addition known and unknown costs.

I also object to ODF&W not having to pay filing fees for their instream water rights as do other individual applicants.

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SALEM, OREGON

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4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Darla S. Derrick
Name: Darla S. Derrick
Date: 1-28-95
Address: P.O. Box 4
Unity, Or. 97884

cc: Lundquist

FREEMAN ANGUS RANCH INC.
HC 87 BOX 1045 + BAKER CITY, OR 97814
(503) 523-6881

Oregon Water Resources Department
158 12TH ST NE
Salem, Oregon 97310

January 31, 1995

Attn: Michael J. Mattick

Reference Files: 1S72160 - 1S72161 - 1S72168 - 1S72169 - 1S72178
1S72185 - 1S72186 - 1S72190 - 1S72191 - 1S72192 - 1S72193

Dear Sir

I object to the above so called "instream" applications that have been filed upon by our ODF&W. As you know these streams have already been filed on by previous older water rights so called "out-of stream" rights. There isn't any water left to give them.

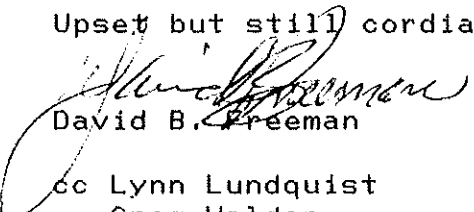
As you well know the above filings are simply a legal hassle to steal water for the ODF&W for dubious purposes.

Here is a prime example of the State of Oregon working hand-in-hand with different departments of the state to steal water in the name of a new type of water called "instream". Shame on you folks! Why would the ODF&W file on nonexistent water and why would you people grant it? Again shame on you!

We the people are getting tired of paying for all sides of silly proceedings including this very questionable issue.

Check the history of Burnt River and Powder River and the North Powder River. They went dry in the summertime shortly after spring runoff. There was NO "INSTREAM". The farmers and ranchers built reservoirs: Phillips, Unity, Thief Valley to name a few for irrigation. Now we have some year around water. Shame on your department. Quit fooling with us. We are not helpless you know. We are landowner citizens. This is a vicious joke when viewed in its entirety. If the ODF&W needs some water why sneak around? "Instream vs. out-of-stream" give us a break! Fish in the Burnt River ha! Fish in the Powder River ha! Not until after the reservoirs were built. Check your records. Talk to the people!

Upset but still cordial


David B. Freeman

cc Lynn Lundquist
Greg Walden

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WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Matlack
Water Rights Specialist
Oregon Water Resources Dept.
State of Oregon
Commerce Building
158 12th Street N.E.
Salem, Oregon 97310-0210

Dear Mr. Matlack

As a land owner and water right holder, I would like to object to the ODF&W applications; IS 72160, IS 72161, IS 72178, IS 72815, IS 72186, IS 72168, and IS 72169.

IS 72160, IS 72161, IS 72178 are all on the South Fork of the Burnt River above Unity Dam, and the water has been over-appropriated for over 60 years.

IS 72185, IS 72186 are above the Unity Dam on the North Fork of the Burnt River. The North Fork after the 1st of June would have very little water if it were not for irrigators using their water rights to bring water in from the Pete Mann Ditch. If ODF&W wants instream flows in Burnt River they should support

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SALEM, OREGON

the Hardman and Rico Dams
IS 72168 and IS 72169 between Unity
Dam and the Snake River. Historically,
without the Unity Dam, there
would be periods of no flow
in this area.

Basically I feel that, all these
should be repeated until ODFW
starts to work with the Burnt
River Irrigation District to create
new storage on the Burnt River
with the Hardman and Rico
Dams

Sincerely,
Daryl E. Hawes
Jan 28, 1995
HCR 86 Box 140
Hereford, Or.
97837

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**WATER RESOURCES DEPT.
SALEM, OREGON**

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to the applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.

2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.

3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is out dated.

4. Instream applications are not compatible with local government comprehensive Land Use Plan.

5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters which have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over; an estimated 8,000 acres have been logged; and an estimated 500 - 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988 - Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

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2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. All lands below Unity Reservoir are privately owned and no permission has been granted to ODF&W to access that land. Therefor, there is no way accurate or current information could have been obtained for these applications.

3. The seasonal stream discharge patterns have changed over the last 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. I again question the data and methodology used.

2. If the water right holder is required to measure the instream flow, who is going to pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could have a long term negative impact on our current water rights. It would place the "State ODF&W" in a position that in time will lead to conflicts over water usage. The State has so many more resources that a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will become biased in favor of the State. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. As a ^{future} landowner, irrigator and taxpayer I object to these addition known and unknown costs.

I also object to ODF&W not having to pay filing fees for their instream water rights as do other individual applicants.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. The proposed Ricco and Hardman Dams could possibly provide needed water but ODF&W is opposing the construction of these reservoirs. These applications will also eliminate future water storage opportunities.

4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Chad E. Derrick
Name: Chad E. Derrick
Date: 1/25/95
Address: P.O. Box 4 Unity
OR 97884

cc: Lundquist

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WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

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Signature: Alison J. Perri (Future
Name: Alison J. Perri Ck Landowner)
Date: 1-28-95
Address: P.O. Box 4
Unit 9, O.R. 97884

cc: Lundquist

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WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

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Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Roger K. Derrick
Name: ROGER K. DERRICK
Date: 1-29-95
Address: P.O. Box 4
Unity Or. 97884

cc: Lundquist

71 IWP's in
Baker County

70863, 64, 70,

71864, 72150, 61, 67, 68, 69, 70, 72, 78, 81, 83, 85, 86, 89, 90, 91, 92, 93

EOMA

Eastern Oregon Mining Association, Inc.
(a nonprofit corporation)

COMMENTS RELATING TO INSTREAM WATER RIGHTS FILED BY

OREGON DEPARTMENT OF FISH AND WILDLIFE

P.O. Box 932 503-523-3285
Baker City, Oregon 97814

January 29, 1995

The Eastern Oregon Mining Association is located in Baker County Oregon. Our membership consists of over 300 throughout Oregon, Washington, Idaho, California and Nevada. Many of the miners have claims they are actively working or under exploration in Baker County where the Oregon Department of Fish and Wildlife have filed instream water rights.

We question the validity of the data collection that is being used as a basis for the instream rights. Most of the streams that are being targeted are over appropriated now. The attack on the instream rights will hamper industrial use in the future. In most cases, during placer mining, the water is used in a non-consumptive way and the process of mining will release additional water that can be used by down stream users.

The mining association opposes the instream water right grab on the streams throughout the state of Oregon, but in particular the streams located in Baker, Grant and Union Counties. The impact to the small communities of Baker, Unity and Pine Valley where many of these streams are located could have adverse affects on the current and future economic well being; could stop future land development, business and industry that depend on water. Future reductions could make it unfeasible to operate the business that depend on future water usage if these water rights are granted. The state should be looking at ways to construct off stream impoundments to collect water during high spring run off to later put back into the streams during the summer and fall when water is low. Work with the land owners instead of taking future water rights.

We also oppose the fact that Oregon Department of Fish and Wildlife is allowed to file water rights without being assessed the same fees that are charged the public at large.

Respectfully Submitted,

Terry Drever - Gee

Terry Drever-Gee

President, Eastern Oregon Mining Assoc.

Director of Government Affairs, Oregon Independent Miners

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WATER RESOURCES DEPT.
SALEM, OREGON

Copy:

Representatives Lundquist, Norris, Baum

Senators Walden, G. Smith

Terry Drever
President

Charles E. Chase
Executive Director

Lorraine Litteral
Treasurer

72186
72086

FEB 01 1995

WATER RESOURCES DEP.
SALEM, OREGON**WATER FOR LIFE'S OBJECTION TO TECHNICAL REVIEW: APPLICATION # 72186**

Submitted to the Oregon Water Resources Department, January 31, 1995

Water for Life hereby submits the following objection to Application # 72186, an instream water right application filed by the Oregon Department of Fish & Wildlife ("ODFW"). Water for Life asserts that the technical review by the Water Resources Department ("WRD" or "Department") is defective and there are elements of the water right as approved that may impair or be detrimental to the public interest, based on the facts and issues set forth below. The applicant has requested flows that exceed the level of flow necessary to support the uses applied for (ORS 537.336 and OAR 690-77-015 (9)). For the reasons set out herein, the application should be rejected or returned to the applicant for the curing of defects.

A. WRD FAILED TO ANALYZE FLOW NEEDS

The flow levels approved by the technical review are not based on any analysis of the need for the flows requested. ORS 537.336 sets out the statutory standard which the Department is supposed to follow when determining instream water rights; the "quantity of water necessary to support those public uses." Water for Life asserts this standard means the minimum quantity necessary to support the public use. The technical review does not address the 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)). At the very least, the flows approved should not exceed the lesser of EANF or the minimum flow recommended in the Basin Investigations.

B. NO SUPPORTING DATA SUBMITTED FOR REQUESTED FLOW LEVELS

An integral part of the technical review by the WRD is the analysis of the application and supporting data (see OAR 690-77-026 (1)(a)). OAR 690-77-015 also requires an application to include at a minimum "a description of the technical data and methods used to determine the requested amount;" (emphasis added).

No analysis of supporting data, or the lack thereof, appears in the WRD file for the application. The technical review is defective in that the WRD did not evaluate "whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency." (OAR 690-77-026 (1)(h)).

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation has apparently been lost or destroyed. Such information is essential to understand and evaluate the requested flows and assess their accuracy. No supporting data or "technical data" was submitted by the applicant as required by OAR 690-77-020 (4). Since no technical data was included with ODFW's application, the application should be returned to the applicant for curing of defects or resubmittal (OAR 690-77-021 and 022).

C. OREGON METHOD IS INHERENTLY FLAWED - WRD SHOULD REJECT APPLICATION

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 (note testimony of Albert H. Mirati, Jr. on the Oregon Method at the Water Resources Commission, December 6, 1990 meeting).

The Oregon Method was further critiqued in Instream Flow Methodologies, EA Engineering, Science and Technology, Inc. (1986), a publication referenced ODFW's own publication also entitled Instream Flow Methodologies, Louis C. Fredd, Oregon Department of Fish and Wildlife (1989). In that critique at page 10-71, the authors stated:

"The principal limitation is the arbitrariness of the flow criteria. There is no way of knowing if they are necessary or sufficient. The binary velocity and depth criteria are also arbitrary and can result in misleading conclusions. It [Oregon Method] is one of the earliest developments of the concept of depth, velocity, and especially substrate size and dissolved oxygen, but has now been superseded."

The determinations made for 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).

D. OREGON METHOD WAS NOT FOLLOWED TO OBTAIN FLOW LEVELS REQUESTED

One of the requirements of the Department's technical review is contained in OAR 690-77-026 (1)(h): "Evaluating whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency." This requirement does not mean 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. 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 use, 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), p. 12.

E. "EANF" CALCULATIONS ARE DEFECTIVE OR INCOMPLETE

There are no calculations or information in the WRD file to show what ratios or models were used or how adjustments were made 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, p. 22 and 23.) The EANF calculations are defective, resulting in high EANF levels and thus allowing excessive recommended flows by the WRD. The model used to calculate EANF should be reviewed and revised to properly set EANF figures.

F. FISH SPECIES MAY NOT BE PRESENT IN STREAM

The application is defective in that the purpose listed in the application (to provide required stream flows for several different types of fish species) listed fish species that may not be present in the stream. Insufficient information was submitted with the application to determine if the fish species listed in the application are actually present in the stream reach applied for. No supporting data was submitted to show the presence of the listed species as required by ODFW's rules (OAR 635-400-015 (8)(a)).

G. "REPORT CONCLUSIONS" CONTAIN BOILERPLATE LANGUAGE

The "Report Conclusions" of the technical review contain boilerplate language apparently agreed upon by the Department and ODFW, some of which is not applicable to this application. There is no information in the application file to indicate the "conclusions" were actually reached as part of the technical review.

H. "REACH" REQUESTED IS TOO EXTENSIVE

A significant defect in the application and supporting data that the Department failed to consider concerns the reach of the stream allowed under this instream water right. The flow rates allowed would be applicable to the entire reach requested. This reach is far too long for the flow rates allowed, especially in light of the incoming tributaries between the mouth and the upstream end of the reach (see basin maps). The instream right "shall be approved only if the amount, timing and location serve a public use or uses." OAR 690-77-015 (9).

OAR 690-77-015 (6) states that instream rights "shall, insofar as practical, be defined by reaches of the river rather than points on the river."; OAR 690-77-202 (4)(d) requires that the application shall include the stream "reach delineated by river mile." It is neither practical nor reasonable to approve the same flow rates for the entire reach given the length of the reach applied for, the water available in the stream and the additional tributaries that flow into the stream within the reach.

The stream reach is also excessive according to ODFW's own instream rules. OAR 635-400-015 (11) details the requirements for a specific stream reach. A stream reach is limited to a point where "Streamflow diminishes by at least 30%" (OAR 635-400-015 (11)(B)). OAR 635-400-015 (11)(C) also appears to have been violated since the "stream order" (OAR 635-400-010 (19)) changes within the reach requested due to the incoming tributaries.

The flow requests by ODFW are based on the old Basin Investigations. The Basin Investigations lists the location of the recommended flows in the appendix listing the recommended flows. It is clear that the flow recommendations in the Basin Investigation did not extend upstream and the facts cited above further prove that the reach approved should be limited significantly.

I. ODFW'S GAGE RULE NOT FOLLOWED

The application fails to abide by another rule applicable to ODFW's instream applications, OAR 635-400-015 (10)(a). This rule requires ODFW to compare hydrological estimates or gaging data to the amount of water they request for instream flows ("instream flow requirements"). A specific evaluation is set out in subsection (10)(b) regarding appropriate levels for any given time period in relation to the naturally occurring stream flows. ODFW never performed this evaluation for the application.

CONCLUSION

This objection is filed in accordance with OAR 690-77-028. The issues raised should be considered as part of a contested case hearing. The WRD technical review is inadequate and defective and has failed to follow applicable rules. A thorough review of the application is necessary to determine the flow levels necessary to support the public uses applied for.

For the reasons set forth above, the objector asserts the application is defective and should be returned to the applicants. The flow levels requested are excessive and not necessary to support the public uses proposed. Flow levels set at the rates proposed interfere with future maximum economic development. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170). The flow rates approved should be set the minimum quantity necessary to support the public use applied for.



Todd Heidgerken
Executive Director of Water for Life

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WATER RESOURCES DEPT.
SALEM, OREGON

Michael J Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to that applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.

2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir for appropriation. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.

3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is outdated.

4. Instream applications are not compatible with local government comprehensive Land Use Plan.

5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters that have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over. An estimated 8,000 acres have been logged over. An estimated 500- 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988- Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

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SALEM, OREGON

The following are objections to the Report Conclusions:

1. Data used to set flow levels is outdated. The impact of this application could devastate the economy of the Burnt River Valley. The instream water rights would stop any further development of lands, business, or industry in the Valley. It could also have a long term negative effect on current water rights. In 1994, irrigators using water from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights.

2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. ODF&W currently stalk Rainbow Trout fingerlings in the So. Fork of the Burnt River. All lands below Unity Reservoir are privately owned. Land owners to my knowledge did not grant ODF&W access to their land. Therefore, there was no legal way that ODF&W could have obtained accurate or current information for these applications.

3. The seasonal stream discharge patterns have changed over the past 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. Again I question the data and methodology used.

2. Who is required to measure the instream flow; who will pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could devastate our current water rights, by superseding our water rights in the future. It would place the Local ODF&W in a position that will lead to conflicts over water usage. The local ODF&W could have to measure, state ODF&W would have to monitor.

The data system will become biased in favor of the State. A private individual could not produce and present data at the same level and in the same detail as the State. The administrative costs will fall to the taxpayers. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. As a landowner, irrigator, and a taxpayer I object to these additional known and unknown costs.

I also object to ODF&W not having to pay filing fees for their instream water rights as do other applicants.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife and domestic animals. The proposed Ricco and Hardman Dams could possibly provide needed water but ODF&W is opposing the construction

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of these reservoirs. These applications will also eliminate future water storage opportunities.

4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS72168, IS 72169.

Signature:

Name: Teresa A. Orr

Date: January 29, 1995

Address: 4409 Frieda Ave.
Klamath Falls, Oregon 979603

cc: Lundquist

cc: Waldern

cc: Norris



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JAN 31 1995

BAKER COUNTY COURT
1995 Third Street
Baker City, OR 97814
(503)523-8200
Fax: (503)523-8201

WATER RESOURCES DEPT.
SALEM, OREGON

January 26, 1995

Mr. Michael Mattick
Water Rights Specialist
Oregon Water Resources Department
Commerce Building
158 Twelfth Street NE
Salem, OR 97310-0210

RE: Technical Reports for Instream Water Rights
Burnt River Application File Nos.: 72160, 72161, 72168,
72169, 72178, 72185, 72186

Dear Mr. Mattick:

After reviewing the technical reports for the above named applications, Baker County wishes to register objections to the reports. The objections are organized by their location on the Burnt River. They are presented in full in this document to show the interrelationships among the various applications.

Applications Nos.: 72160, 72161, 72178

There are no calculations or information in the technical reports to show how the Water Resources Department estimated the average natural flow for the reaches described in #72160 and #72178. The technical report should show how the flows are calculated, as there are no gages on these reaches.¹

The applicant should supply information on the means and location for measuring the instream water right; the strategy and responsibility for monitoring flows for the instream right and provisions needed to managing the water right to protect the public uses, as requested by OAR 690-77-020, so the County can better examine the benefits of the application in relation to the costs to the public.

At the very least, the technical report should condition the approval for certification so that the instream right shall not

¹Information regarding the number and location of gaging stations is from the Baker County Watermaster's Office.

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have priority over rights to use the water for storage in addition to human or livestock consumption. The Oregon Department of Agriculture is sponsoring an application for a reservation of water for storage purposes on the streams named in these applications. A report by the U.S. Department of the Interior, Bureau of Reclamation on the project, dated July 1971, concluded that the Hardman Dam project "would have a beneficial effect on the basin fishery resource. The proposed Hardman...Reservoir would provide favorable habitat to support a trout population equal to or greater than that existing in the natural stream habitat to be inundated...." (Burnt River Project, Oregon, Dark Canyon Division, Wrap up Report, July 1971, U.S. Department of the Interior, Bureau of Reclamation). By conditioning the application, potential conflicts between the instream rights and the storage application can be reduced.

This request for a condition is supported by OAR 690-77-015, which states "The development of environmentally sound multipurpose storage projects that will provide instream water uses along with other beneficial uses shall be supported."

Application No. 72168

Baker County questions the basis for determining the average flow on this reach. According to information from the Water Resources Data for Oregon, Part 1, Surface Water Records (U.S. Department of the Interior, Geological Survey, 1966), the actual flow in these reaches is below those calculated by the Water Resources Department from April through September. Information from a USGS gaging station at the same location in 1993 records even lower levels.

Anecdotal information suggests that the natural stream flow is far below that calculated by the department, as the Burnt River tended to pool or dry up during the summer months prior to the installation of the Unity Dam. (Photo submitted by Richard Cartwright, c. 1933, showing Burnt River at Twp. 14, Rng. 44, Sec. 22).

It should be noted that this application requests an instream flow for a reach that exceeds 30 miles. The flow rate allowed would be applicable to the entire reach requested. It is neither practical nor reasonable to approve the same flow rates for the entire reach given the length of the reach applied for, the water available in the stream and the additional tributaries that flow into the stream within the reach. (OAR 690-77-015(6); OAR 635-40-015(11).)

This reach has a gaging station at the point of beginning, and north of Huntington, Oregon. The application or technical report should determine which gaging station should be used to determine

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the flow calculations.

Application No. 72169

This reach has a gaging station at the point of beginning at Unity Dam, River Mile 77.1, and at the end of the reach at USGS Gage 13274200 at River Mile 41.5. The application or technical report should determine which gaging station should be used to determine the flow calculations.

Application No. 72185

There are no calculations or information in the technical report to show how the Water Resources Department estimated the average natural flow for the reach described in this application. The technical report should show how the flows are calculated, as there is no gage on this reach.

To be consistent with average measured flows, the flows listed for June under the Proposed Permit Conditions should be changed from 20 (1st 1/2) and 15 (2nd 1/2) to 12.1 cfs.

Application No. 72186

In 1938, the Burnt River Irrigation District passed a resolution which indicated that the water above the Unity Dam was severely over appropriated (Resolution of the Burnt River Irrigation District, dated March 12, 1938). At that time the District determined that it would be in the best interest of the people of Baker County to deny future permits. While the intent was to limit out of stream uses, the extent of over appropriation (legal water rights total more than three times the average annual yield²) has an effect on the efficacy of an in-stream water right in this case.

A letter from Tom Sheehy of Wallowa, Oregon, attached, indicates that the estimated flow for this reach is excessive. Mr. Sheehy lived on a ranch located at approximately Twp. 11, Rng. 37, Sec. 31.

Finally, this application has a gaging station in the middle of the described reach. The application or technical report should indicate whether that gaging station will be used to determine

²According to the 1967 Powder River Basin Plan, legal water rights cover 294,000 acre feet, while a Water Availability Study sponsored by Oregon Department of Agriculture indicates an average annual yield of 94,000 acre feet.

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SALEM, OREGON

the flow calculations.

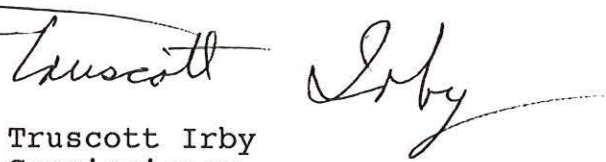
SUMMARY:

As a whole, Baker County is concerned about the precedential effect of establishing instream water rights based on theoretical modelling, when the "on the ground" conditions indicate extreme over appropriation. We ask that the optional provisions of OAR 690-77-020(5) be a requirement on applications for in-stream water rights in the county.

We ask to be included as a party to any contested case hearing which may arise out of any and all of these applications.

Sincerely,

For the Baker County Court


Truscott Irby
Commissioner

TI:ALC:a5:\ccourt\burntriv.com

Attachments — See File 72160

cc: G. Walden
L. Lundquist
File

BURNT RIVER



Soil and Water Conservation District

January 30, 1995

P. O. BOX 906

BAKER, OREGON 97814

Dear Mr. Mattick,

The Burnt River Soil and Water Conservation District is objecting to the Technical Review Report for instream flow applications IS 72160, IS 72161, IS 72178, IS 72168, IS 72169, IS 72185, and IS 72186.

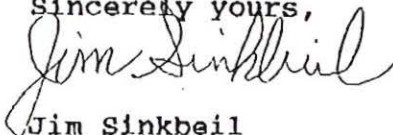
The data used by ODF&W to substantiate its instream water right application is incomplete and unreliable. An admission of this fact was made by Duane West, who was then ODF&W Regional Fish Biologist, to the South Fork Co-ordinated Resource Management Plan Committee.

Burnt River SWCD sponsored a CRMP for the North and South forks of the Burnt River. All public agencies and interested private groups and individuals were invited to attend. ODF&W, most often represented by Duane West, was an integral part of the committee. Many watershed enhancement projects have been completed, more are being planned with several major projects ongoing at this time.

Mr. West was questioned as to how many fish per mile the Burnt River could support. The answer was approximately 200. Next it was asked how many fish Unity Reservoir supports. Mr. West stated the number was many times larger than the Burnt River.

Burnt River SWCD feels very strongly the public interest is best served by co-operative efforts arrived at through the framework we worked very hard to establish with the CRMP process. The unilateral filing of instream water rights by ODF&W serves no useful purpose.

Sincerely yours,



Jim Sinkbeil
Director,
Burnt River Soil and Water Conservation District

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SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to the applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.

2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.

3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is out dated.

4. Instream applications are not compatible with local government comprehensive Land Use Plan.

5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters which have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over; an estimated 8,000 acres have been logged; and an estimated 500 - 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988 - Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

REC'D

JAN 31 1995

The following are objections to the Report Conclusions:

WATER RESOURCES DEPT.
SALEM, OREGON

1. Data used to set flow levels was outdated. The impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any further development of lands, business or industry in the Valley. It could also have a long term negative impact on current water rights. In 1994, irrigators using water from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights.

2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. All lands below Unity Reservoir are privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate or current information could have been obtained for these applications.

3. The seasonal stream discharge patterns have changed over the last 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. I again question the data and methodology used.

2. If the water right holder is required to measure the instream flow, who is going to pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could have a long term negative impact on our current water rights. It would place the "State ODF&W" in a position that in time will lead to conflicts over water usage. The State has so many more resources that a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will become biased in favor of the State. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. As a landowner, irrigator and taxpayer I object to these addition known and unknown costs.

I also object to ODF&W not having to pay filing fees for their instream water rights as do other individual applicants.

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3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. The proposed Ricco and Hardman Dams could possibly provide needed water but ODF&W is opposing the construction of these reservoirs. These applications will also eliminate future water storage opportunities.

4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Debbie Moeller
Name: DEBBIE MOELLER
Date: 1/27/95
Address: PO Box 72
UNITY OR 97884

cc: Lundquist
cc: Walden
cc: Norris

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JAN 31 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

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Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Jennie E. Moeller

Name: JENNIE MOELLER

Date: 1-27-95

Address: PO Box 147
UNITY OR 97884

cc: Lundquist
cc: Walden
cc: Norris

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JAN 31 1995

**WATER RESOURCES DEPT.
SALEM, OREGON**

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
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SALEM, OREGON

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Signature: Alfred Moeller
Name: ALFRED MOELLER
Date: 1-27-95
Address: PO Box 147
UNITY OR 97884

cc: Lundquist
cc: Walden
cc: Norris

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JAN 31 1995

Nelson C-C Ranches, Inc. - WATER RESOURCES DEPT.
P.O. Box 187
Hereford, Oregon 97837
(503)446-3474
SALEM, OREGON

January 25, 1995

Michael J. Mattick
Water Rights Specialist
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Dear Mr. Mattick,

This letter is a formal protest of the instream water rights applications filed by the Oregon Department of Fish and Wildlife numbers IS 72168, IS 72169, IS 72185 and IS 72186. The Technical Review Report which supports these applications does not provide accurate or current data on which a sound decision can be made.

If these applications are approved, the results will adversely affect our ranching operation and those of our neighbors. Our family settled near Hereford, Oregon on the Burnt River in 1882. Until the Unity Dam was built in the late 1930's, water flow in the river was seasonal. The "return flow" method of irrigation has been used in the valley for over fifty years. This proven method has enabled the Burnt River to remain a viable water source for crops, livestock, wildlife, fish and home use.

ODFW has not demonstrated that the instream flow asked for in the above applications, would support wildlife or fish any better than the present method does. However, it can be clearly demonstrated that to disallow the present use of water would dramatically affect the livelihood, economy, tax base, and businesses which depend on Burnt River water.

Given the above mentioned concerns I strongly feel the applications of the ODFW be rejected.

Sincerely,



Katherine Nelson

RECEIVED

Nelson C-C Ranches, Inc.

P.O. Box 187
Hereford, Oregon 97837
(503)446-3474

JAN 31 1995

WATER RESOURCES DEPT.
SALEM, OREGON

January 25, 1995

Michael J. Mattick
Water Rights Specialist
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Dear Mr. Mattick,

This letter is a formal protest of the instream water rights applications filed by the Oregon Department of Fish and Wildlife numbers IS 72168, IS 72169, IS 72185 and IS 72186. The Technical Review Report which supports these applications does not provide accurate or current data on which a sound decision can be made.

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Given the above mentioned concerns I strongly feel the applications of the ODFW be rejected.

Sincerely,

Nelson C-C Ranches, Inc.
By R. Keith Nelson Sec Treas
Nelson C-C Ranches, Inc.

RECEIVED

Nelson C-C Ranches, Inc.

P.O. Box 187
Hereford, Oregon 97837
(503)446-3474

JAN 31 1995

WATER RESOURCES DEPT.
SALEM, OREGON

January 25, 1995

Michael J. Mattick
Water Rights Specialist
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

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Given the above mentioned concerns I strongly feel the applications of the ODFW be rejected.

Sincerely,



Kent Nelson

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JAN 31 1995

Nelson C-C Ranches, Inc.
P.O. Box 187
Hereford, Oregon 97837
(503)446-3474

WATER RESOURCES DEPT.
SALEM, OREGON

January 25, 1995

Michael J. Mattick
Water Rights Specialist
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Dear Mr. Mattick,

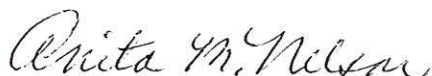
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If these applications are approved, the results will adversely affect our ranching operation and those of our neighbors. Our family settled near Hereford, Oregon on the Burnt River in 1882. Until the Unity Dam was built in the late 1930's, water flow in the river was seasonal. The "return flow" method of irrigation has been used in the valley for over fifty years. This proven method has enabled the Burnt River to remain a viable water source for crops, livestock, wildlife, fish and home use.

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Given the above mentioned concerns I strongly feel the applications of the ODFW be rejected.

Sincerely,



Anita Nelson

WaterWatch

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2/1/95
8

Hand Delivered

January 31, 1994

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

Re: Technical Reports for:
70863, 70864, 70870, 71684, 72160, 72161, 72167, 72168, 72169, 72170,
72172, 72178, 72181, 72183, 72185, 72186, 72189, 72190, 72191, 72192 and
72193
ODFW, Instream Applications, Powder River Basin

WaterWatch of Oregon strongly supports the flows requested in the above referenced Oregon Department of Fish and Wildlife applications. The Powder River and its tributaries support a variety of instream uses, including providing habitat for fish. It also drains into the Snake River where the Chinook and Sockeye salmon have been listed under the Federal Endangered Species Act. Streamflows are critical to the survival of these sensitive fish. By this letter WaterWatch requests copies of any objections filed on these applications.

In addition, we file the following objections to the water availability analyses in the technical reports pursuant to OAR 690-77-028:

The Water Availability Analysis is Defective

Instream water rights are a means for the state to achieve equitable allocation of water and Oregon Statutes place a duty on the state to act in a way that will protect instream flows needed for fish populations. OAR 690-77-015(2), ORS 496.430, OAR 690-410-070(2)(h). The agencies administrative rules require the technical reports to contain an evaluation of the estimated average natural flow (ENAF) available from the proposed source. OAR 690-77-026(1)(g). The rules also state that the amount of appropriation for out of stream uses is not a factor in determining the amount protected under the instream water right. OAR 690-77-015(3).

However, the technical reports state that they contain an:
"evaluation of the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application . . .
The recommended flows take into consideration planned uses and reasonable anticipated future demands for water from the source for agricultural and other uses as required by the standards for public interest review . . ."

Water Resources Department

Page 2

Technical reports page 2 (emphasis added). Clearly, this analysis is contrary to the agencies rules because it takes into account out-of-stream uses. These instream water right application requests must be evaluated according to the higher ENAF figures.

The technical reports for 70864, 71684, 72164, 72170, 72172, 72178, 72183, 72185, 72186, and 72190 propose to issue instream water rights for the Department's lower "average flows" rather than those requested for several months of each year. 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. There should be no reduction in the requested flows. ODFW's flow requests are either within the ENAF or are needed to account for high flow events that are needed for fish passage and habitat maintenance pursuant to OAR 690-77-015(4).

The federal and state Endangered Species acts place an additional burden on the Commission. Under the state Act, the Commission is required to consult with the Oregon Department of Fish and Wildlife to ensure that any action taken by the Commission is consistent with ODFW programs to conserve the species or, if no plan is in place, that the act will not "reduce the likelihood of the survival or recovery of the threatened species of endangered species." ORS 496.182(2). The federal Act prohibits the "taking" of endangered species. 16 USCA § 1538(a)(1)(B). Taking is defined in Section (3)(18) includes "harm" as well as killing and capturing. 16 USCA § 1532 (19). The regulatory definition of "harm" includes "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 CFR § 17.3. The failure to protect sufficient instream flows for listed fish clearly causes habitat destruction or modification that can harm the fish. Habitat destruction or modification that harms fish can rise to the level of an unpermitted taking of a species under the Federal Endangered Species Act. See Palilia v. Hawaii Department of Land and Natural Resources, 649 F.Supp. 1070 (D. Hawaii 1986), aff'd, 852 F.2d 1106 (9th Cir. 1988). In Palilia, the Court found that a state agency action that allowed goats to destroy the food source of an endangered bird was a habitat alternation that rose to the level of a take under the Endangered Species Act. Failing to protect streamflows for fish and continuing to issue water rights which taking water from fish is at least as clear a causal connection. ODFW instream flow requests should be granted in full.

The proposed conditions are contrary to the public interest.

The technical reports propose to subordinate these instream flow requests to human consumption or livestock. The technical reports do not provide any support or reasoning behind its proposal. These uses, while they use small amounts of water individually, have cumulative adverse effects on streamflows needed for fish.

As noted above, the state has a duty to protect instream flows needed for public uses of water. Fish need water to survive. The Powder River system supports a variety of fish life including chinook, redband trout and bull trout. Moreover, the system is tributary to the Snake river where populations of Chinook and Sockeye are protected under the Federal Endangered Species Act. Part of the decline of fish populations can be attributed to low flows during summer months which impair fish survival by, among other things, raising water temperatures and decreasing aquatic habitat and trout rearing areas. Low flows in the winter adversely affect fish habitat in a number of ways, including exposing spawning gravel and reducing feeding and rearing areas in the river. In addition, water diversions create problems for fish passage and survival in the basin.


Streamflows are not only critical for fish survival, they help abate water quality problems. The Department of Environmental Quality (DEQ) has designated segments of the Powder River as water quality limited. The river is not able to support the designated beneficial use of water contact. Rivers can not assimilate pollution loadings unless there is sufficient water instream. Thus, streamflow protection is critical to pollution abatement.

These requested flows are necessary to protect severely depressed fish populations which are listed under the Federal Endangered Species Act. Listing under the state and federal endangered species acts is not only a sign of the health of a particular species but also a warning signal for the health of the human environment.

These proposed conditions are 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 coastal river system have been impaired. Adoption of these instream water rights without conditions is just one small step towards restoring this system.

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. WaterWatch supports the Department's efforts to finally begin to implement an Act that has been "on the books" for the past six years. We look forward to the adoption of these instream water rights.

Sincerely,


Kimberley Priestley
Legal/Policy Analyst

10 MICHAEL J. MATTICK

OREGON WATER Resources Dept
SALEM, OREGON

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JAN 30 1995

WATER RESOURCES DIV
SALEM, OREGON

1-26-95

DEAR MR. MATTICK

AS A property owner & water right holder, I wish to OBJECT to the Technical Review Report for the instream flow applications 70863, 70864, 70870, ~~71684~~ 71684, 72160, 72161, 72167, 72170, 72172, 72178, 72181, 72183, 72185, 72186, 72189, 72190, 72191, 72192, and 72193 by the OREGON Department of Fish and Wildlife. These applications will pose serious economic harm to our County.

I OBJECT to the excess flows requested which at times are not available.

I OBJECT to their ability to remove water from productive land, reducing its value and increasing my taxes.

Richard Cartwright

RICHARD CARTWRIGHT

WEATHERBY BOX 230

DUPKEE OREGON

97005

SHOLLENBERGER FARMS

VOICE/FAX
(503) 446-3365

P.O. BOX 31
UNITY, OR 97884

ORGANICALLY GROWN
POTATOES, HAY & GRAINS

SERVING AGRICULTURE IN HARMONY WITH THE ENVIRONMENT

January 27 1995

Oregon Water Resources Department
Michael J. Mattick
Commerce Building
158 12th Street NE
Salem OR 97310-8130

RE: Technical Review of ISWR 72160,72161,72178,72168,72169,72185,72186

I hereby submit the following objection to the above mentioned applications for instream water rights filed by the Oregon Department of Fish & Wildlife (ODFW). I assert that the technical reviews by the Water Resources Department (WRD) are defective and there are elements of the water rights as approved that may impact or be detrimental to the public interest, based on the facts and issues set forth below. The applicants have requested flows that exceed the level of flow necessary to support the uses applied for (ORS 537.336 and OAR 690-77-015 (9)). For the reasons set out herein, the application should be rejected or returned to the applicants for the curing of defects.

1. The flow levels approved by the technical reviews are not based on any analysis of the need for the flows requested. ORS 537.336 sets out the statutory standard which the WRD is supposed to follow when determining instream water rights: the "quantity of water necessary to support those public uses". I assert that this standard means the minimum quantity necessary to support the public use. The technical review does not address the 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)).

The Burnt River watershed has changed dramatically due to USFS logging prescriptions, and four catastrophic fires in the basin. This in turn has changed the quantity of water released throughout the watershed and the timing of release. Current evaluation controls administered by WRD need to be updated to account for the change in watershed during the last 20 years. Water availability analysis model is not current with the basin and sub-basin changes as described above.

2. An integral part of the technical review by the WRD is the analysis of the application and supporting data. OAR 690-77-015 also requires an application to include at a minimum "description of the technical data and methods used to determine the requested amounts;" ODFW's application under 5, states: (QUOTE FROM APPLICATION REGARDING METHODOLOGY or statement that the method used to determine the requested flows was the "Oregon Method".) No analysis of supporting data, or the lack thereof, appears in the WRD file for the application. The technical review is defective in that the WRD did not evaluate "whether the level of instream flow

Plan. (Taken from Page A-2 Dark Canyon Division Burnt River Project, Oregon Wrap-up Report July 1971)

5. There are no calculations or information in the WRD file to show what ratios or models were used or how adjustments were made to determine the 50% exceedance flows, and there is also no information in the technical review to show the type of statistics used. The Eanf calculations are defective, resulting in high Eanf levels and thus allowing excessive recommended flows by the WRD. The model used to calculate Eanf should be reviewed and revised to properly set Eanf figures.

Updating the model of the Burnt River is needed to reflect the large changes in the watershed which have occurred during the last 20 years. Also there is a conflicting information on stream flows depending on the source as mentioned in the last paragraph.

6. A condition should be added to the instream water right that the right shall not have priority over multipurpose storage facilities and water.

This objection is filed in accordance with OAR 690-77-028. The issues raised should be considered as part of a contested case hearing. The above WRD technical reviews are inadequate and defective and have failed to follow applicable rules. A thorough review of the applications are necessary to determine the flow levels necessary to support the public uses applied for. For the reasons set forth above, the objector asserts that the applications are defective and should be returned to the applicants. The flow levels requested are excessive and not necessary to support the public uses proposed. Flow levels set at the rates proposed will interfere with future maximum economic development. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170).

Keith Shollenberger



P.O. Box 31
Unity OR 97884

January 27 1995

Oregon Water Resources Department
Michael J. Mattick
Commerce Building
158 12th Street NE
Salem OR 97310-8130

RE: Technical Review of ISWR 72160,72161,72178,72168,72169,72185,72186

I hereby submit the following objection on behalf of Burnt River Irrigation District to the above mentioned applications for instream water rights filed by the Oregon Department of Fish & Wildlife (ODFW). I assert that the technical reviews by the Water Resources Department (WRD) are defective and there are elements of the water rights as approved that may impair or be detrimental to the public interest, based on the facts and issues set forth below. The applicants have requested flows that exceed the level of flow necessary to support the uses applied for (ORS 537.336 and OAR 690-77-015 (9). For the reasons set out herein, the application should be rejected or returned to the applicants for the curing of defects.

1. The flow levels approved by the technical reviews are not based on any analysis of the need for the flows requested. ORS 537.336 sets out the statutory standard which the WRD is supposed to follow when determining instream water rights: the "quantity of water necessary to support those public uses". I assert that this standard means the minimum quantity necessary to support the public use. The technical review does not address the 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)). The Burnt River watershed has changed dramatically due to USFS logging prescriptions, and four catastrophic fires in the basin. This in turn has changed the quantity of water released throughout the watershed and the timing of release. Current evaluation controls administered by WRD need to be updated to account for the change in watershed during the last 20 years. Water availability analysis model is not current with the basin and sub-basin changes as described above.

2. An integral part of the technical review by the WRD is the analysis of the application and supporting data. OAR 690-77-015 also requires an application to include at a minimum "description of the technical data and methods used to determine the requested amounts;" ODFW's application under 5. states: (QUOTE FROM APPLICATION REGARDING METHODOLOGY or statement that the method used to determine the requested flows was the "Oregon Method".) No analysis of supporting data, or the lack thereof, appears in the WRD file for the application. The technical review is defective in that the WRD did not evaluate "whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency." (OAR 690-77-026 (1) (h)). ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation has apparently been lost or destroyed. Such information is essential to understand and evaluate the requested flows and assess their accuracy.

5. There are no calculations or information in the WRD file to show what ratios or models were used or how adjustments were made to determine the 50% exceedance flows, and there is also no information in the technical review to show the type of statistics used. The Eanf calculations are defective, resulting in high Eanf levels and thus allowing excessive recommended flows by the WRD. The model used to calculate Eanf should be reviewed and revised to properly set Eanf figures.

Updating the model of the Burnt River is needed to reflect the large changes in the watershed which have occurred during the last 20 years. Also there is a conflicting information on stream flows depending on the source as mentioned in the last paragraph.

6. A condition should be added to the instream water right that the right shall not have priority over multipurpose storage facilities and water.

The Burnt River Irrigation District presents its objections along with and in addition to the Baker County Court letter of objection dated January 26, 1995

This objection is filed in accordance with OAR 690-77-028. The issues raised should be considered as part of a contested case hearing. The above WRD technical reviews are inadequate and defective and have failed to follow applicable rules. A thorough review of the applications are necessary to determine the flow levels necessary to support the public uses applied for. For the reasons set forth above, the objector asserts that the applications are defective and should be returned to the applicants. The flow levels requested are excessive and not necessary to support the public uses proposed. Flow levels set at the rates proposed will interfere with future maximum economic development. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170).

The Burnt River Irrigation District stands on its petition to the WRD for a contested case hearing dated April 6 1992. The district re-emphasises the objections in the petition. (see attached)

Kelth Shollenberger



Director Unit 1
P.O. Box 31
Unity OR 97884

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JAN 30 1995
WATER RESOURCES
SALEM, OREGON

January 19, 1995

Mr. Michale J. Mattick
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is apposing the construction of those reservoirs.
2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law. All land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate and current information could have been obtained for this application.
3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. These applications will also eliminate any future water storage opportunities.
4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry in the Valley. In 1994 irrigators using waters from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights. Folding of these businesses would have a domino effect on the community and local school.

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SALEM, OREGON

5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures.

6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

For the reasons set herein, the applications should be rejected or returned to the applicants for the curing of defects.

Sincerely,

City Council of Unity

Cherry L. Dickson, Mayor

Pat Schiewe, City Recorder

CLD/ps

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JAN 30 1995

January 21, 1995
WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Michael J. Mattick
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Re: IS 72160, 72161, 72178, 72185, 72186, 72168, 72169

Dear Mr. Mattick:

As a concerned citizen of Eastern Oregon and particularly of the Burnt River Valley, I am protesting the technical reviews of ODF&W filings for instream water rights in this area. The certificates involved are #IS 72160, 72161, 72178, 72185, 72186, 72169, 72168.

I will address the river segments in the applications individually and explain why the technical reviews are defective. In general, the fact that water in this basin has been overappropriated since before 1930 should give the Department the first clue there is no water for ODF&W to appropriate. And using average stream flows as the amount of water for appropriation is a flaw in thinking, not what I would term "scientific analysis". Many streams in this area run little or no water in late summer and fall. The main stem of the Burnt River was known to go dry by August nearly every year before Unity Dam was constructed, the North Fork still is dry every year during irrigation season, and each fall the river below the dam is nearly dry as the dam is filled. "Average" flows mean nothing. Maintaining minimum flows in these river segments during these periods would cause financial hardship on the economy of the valley. In addition, approving these instream rights would place an unfair financial burden on the Irrigation District which must bear the cost of measuring these flows. Measuring, of course, will be easier in streams which have no flows.

IS 72160, 72161, 72178

These three stream reaches of the South Fork Burnt River are located within National Forest, however, land exchanges could result in private parcels where irrigation needs could not be met, even with storage projects and temporary water rights, if instream water rights existed. Future needs might also be for mineral extraction and processing. Since the instream flow rates for these segments in many cases is far more than what the stream actually flows, these future needs have not been allowed for. These are obvious elements of the water rights as approved that may impair or be detrimental to the public interest.

The requested flows exceed the level of flow necessary to support fish rearing and spawning. This is a fact. Fish are reared and spawn now in the South Fork and it certainly does not run the amounts ODF&W has requested. Oregon law states the flow rates should be reasonable and set at the minimum quantity necessary to

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support the fish.

The Oregon Method obviously wasn't followed for these first stream segments. They are all spring fed. Also, it is not reasonable to approve the same flow rates for the entire length of the reaches. The South Fork is a good example of this. It nearly doubles in volume where Mammoth Spring flows into the river.

IS 72185

The segment of river which includes the headwaters of the North Fork Burnt clear down to Camp Creek is far too long and varies in flow too much due to tributaries flowing into the river to include in one application. The Oregon method was not followed for this stream segment since it is spring fed and also fed by water from the Pete Mann Ditch. Depending on the use, sometimes the ditch empties into the headwaters, sometimes it empties in miles downstream at Tony Creek. It is not reasonable to approve the same flow rate for the entire reach of IS 72185 and it is not even possible to come up with any kind of meaningful flow rate since the flow of the river is dependent on when the miners and irrigators use the water and which way they chose to dump it.

Mining is the big use in the area and there are many mining ditches and old water rights. There are also many irrigation ditches in the area which bring water to the Whitney Valley. Both mining and irrigation water is gathered in the Pete Mann Ditch beginning in the North Fork John Day Basin. This water empties into the North Fork of the Burnt. The river transports ditch water for many miles until the water is taken out at Big Flatt to irrigate the North Fork ranches. Although currently the water is overappropriated, early in the spring in good years there is extra water in the system which could be put to beneficial use through off-channel, non consumptive mining projects where once ponds are filled, process water is recycled. Instream water rights would preclude new water rights being filed as old ones are abandoned, would preclude temporary water rights in good years and would preclude storage projects to provide water late in the year for mining. Mining is an important industry on the National Forest and mineral extraction activities are critical for the local, State and National economy. Thus, it is obvious there are elements of the water right as approved which would be detrimental to the public interest.

The requested flows exceed the level of flow in the stream segment. By July you can step across the river unless Pete Mann Ditch water is augmenting the flows. The newly constructed gaging station on this segment of the North Fork Burnt is the first attempt made to measure these flows. The data submitted at this time by the applicant is incomplete and inaccurate with no mapping or verifiable stream flow records to back up the suggested flows. It is unreasonable to approve a water right for this stream segment. The North Fork Burnt River in this section is essentially a ditch which carries water from its headwater springs and the Pete Mann ditch downstream into the Big Flatt Ditch. The North Fork River channel is dry below the Big Flatt

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SALEM, OREGON

diversion. (see IS 72186).

Forage production on private land in the Whitney Valley is essential to the maintenance of the resident elk herds by ODF&W. Approving instream water rights which would preclude storage facilities such as the proposed Ricco Dam would have an adverse effect on development of new fields. And since there isn't enough water to effectively irrigate the fields now in production, any reduction in available water would cause an adverse effect of the elk population. This would constitute a detrimental effect on the public interest.

IS 72186

The North Fork Burnt River immediately below Camp Creek is essential for irrigation of the lower Whitney meadows. The river is spread on the meadows to produce hay and forage, which is utilized not only by domestic livestock but also by the same herd of over 200 head of elk mentioned in IS 72185. Instream water rights in this area which precluded future development of irrigation rights and storage rights could adversely affect forage available for the elk and be detrimental to the public interest.

This river segment is far too long and diverse to treat as one application. The upper part of the reach flows year-round because of return flows from irrigation on the Whitney meadows. The gaging station measures fairly accurate flows at Petticoat but in no way represents what the flows are near Whitney. Near Whitney this segment of the river dries up to the point where you can easily step across it unless Pete Mann Ditch water augments flows. This is private land and no permission has been granted to ODF&W to access this land to measure flows. Therefore there is no way accurate information could be obtained for this application.

And below the gaging station near the Forest Boundary where the river is diverted into Big Flatt, there is no river at all. The application is for the North Fork Burnt from Camp Creek to the Dam. However, there is no water at all for four miles of this reach during irrigation season. North Fork water enters the Burnt River below the dam during this time period. Averaging a dry river channel with a portion of the river that runs year round (just barely in the summer, good flows during the spring flood) is not a reasonable or scientific way to come up with flow amounts for this application.

The technical review states the instream water right is for migration, spawning, egg incubation, fry emergence and juvenile rearing of rainbow trout. Forest Service records show stream temperatures on the North Fork Burnt River exceed State standards for trout habitat except for a brief time in the spring during run-off. Even then when stream temperatures are low, sediment generated by melting snow usually precludes fish spawning or fry emergence. The watershed is on the mend and perhaps in years to come fish may use the North Fork. But granting a water right now for a beneficial use that does not exist for at least part of the year is not correct. The dates of trout use should be modified.

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WATER RESOURCES DEPT.
SALEM, OREGON

IS 72169

The Burnt River below Unity Dam is essential for maintaining the irrigation needs of the valley. Flows fluctuate quite a bit between the two gaging stations. All the lands in the Burnt River Valley are private and no permission was granted to ODF&W to access the land. Thus, accurate information about stream flows could not have been used in this application. Often during the summer, the whole valley finishes haying at about the same time and its essential all the irrigators get their ground wet again as quickly as possible. As upper ditches are turned on to capacity, the river is dried up until more water is turned out at the dam and return flows begin to augment the flow of water to downstream users. Usually there is some water flowing in the river during irrigation season but not always. It would cause a detrimental effect on the ranchers not be able to take the water when they needed it, just because of some instream water right for water which naturally would not even be available. As stated previously, before Unity Dam was built, the Burnt River simply dried up in late summer. Issuing instream water rights for the Burnt River would not be reasonable and would be detrimental to the local economy and the public interest.

After irrigation season ends each year the gates on the dam are shut and no water is released. The river dries up to pools while the dam is being filled. There is no water available for instream water rights during the fall and winter months. Maintaining a minimum flow would have adverse affects on downstream users who expect a full reservoir in the spring.

The water rights application is in error in that the beneficial use is for migration, spawning, egg incubation, fry emergence and juvenile rearing of rainbow trout. Habitat for this use does not exist. Water temperatures during the summer are too great in this segment of the Burnt River to allow survival of trout, much less spawning, egg incubation, fry emergence and juvenile rearing. In many sections of the Bridgeport Valley the river has little gradient and braids throughout the area in separate channels which are sometimes dry, depending on which fields are being irrigated. The river is dry in the fall after the dam is shut down. None of these conditions provides habitat for trout. An occasional trout is caught in Dark Canyon by the miners there, but the fish are small and the flesh soft and inedible because of warm stream temperatures and murky water. Huge, ugly suckers are the main fish species in this segment of the Burnt. The application is for the wrong fish species.

The Burnt River from Clark's Creek to Durkee is an important mineralized area and production of minerals is important to the local, State and National economy. The lower half of IS 72169 falls into this mineralized zone. Instream water rights which preclude future temporary water rights, storage projects and filing for abandoned water rights could adversely affect these operations and would not be in the interest of developing minerals for the public good.

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WATER RESOURCES
SALEM, OREGON

IS 72168

The final segment of the Burnt River is quite similar to segment IS 72169. The first part of the segment flows through Dark Canyon and is important for its mineral resources. Filing of instream water rights that precluded future development in this area would be detrimental to the public good since minerals are necessary for the local, State and National economy.

The river then flows through the Durkee Valley where it is spread on the fields. Mineral extraction is also an important industry in this segment of the river. Finally, at Huntington the river flows into the Snake River. This river segment is too long and too diverse in flows to qualify as one segment for technical review. As with application IS 72169, flows fluctuate tremendously between the two gaging stations. The lands are all private from Durkee to the Snake River and no permission has been granted by those landowners to give ODF&W access. Thus, no accurate records of flows could have been used to arrive at the instream water right amount on the technical review.

Even the section of this segment of river which flows through Dark Canyon where no irrigation occurs is not trout habitat. Many large, healthy suckers inhabit the slow deep pools but trout do not spawn, eggs are not incubated and fry do not emerge in water where temperatures exceed 85 degrees in the summer months. Some fish from the Snake River may possibly move into the lower river near the Snake but the river above the confluence is little used, except by suckers. The application is in error as to fish species.

No application was made by ODF&W for the South Fork Burnt River stream segment from the gaging station through the South Fork Valley to the reservoir. Evidently, personnel from ODF&W could drive by on Highway 26 where the dry channel of the South Fork Burnt River crosses under the highway and see there is no water available. This is good thinking on that agency's part. There is no "extra" water anywhere in this basin to appropriate for ODF&W instream water rights. Approval of these certificates would not be in the best interest of the community or of the public. All applications should be denied.

Sincerely,



Jan Alexander
P.O. Box 353
Unity, OR 97884
503-446-3413

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JAN 30 1995

January 19, 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Michale J. Mattick
Water Resources Department
158 12th Street Department NE
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is apposing the construction of those reservoirs.

2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law. All land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate and current information could have been obtained for this application.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. These applications will also eliminate any future water storage opportunities.

4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry in the Valley. In 1994 irrigators using waters from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights. Folding of these businesses would have a domino effect on the community and local school.

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SALEM, OREGON

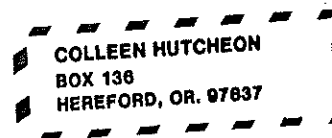
5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures.

6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

For the reasons set herein, the applications should be rejected or returned to the applicants for the curing of defects.

Sincerely

Colleen Hutcheon



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WATER RESOURCES DEPT.
SALEM, OREGON

January 19, 1995

Mr. Michale J. Mattick
Water Resources Department
158 12th Street Department
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

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1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is opposing the construction of those reservoirs.
2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law. All land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate and current information could have been obtained for this application.
3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. These applications will also eliminate any future water storage opportunities.
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SALEM, OREGON

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6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

For the reasons set herein, the applications should be rejected or returned to the applicants for the curing of defects.

Sincerely

Wayne E. Morin
HCR 86 Box 138
Hersford, Oregon
97837

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JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

January 19, 1995

Mr. Michale J. Mattick
Water Resources Department
158 12th Street Department
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is apposing the construction of those reservoirs.
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4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry in the Valley. In 1994 irrigators using waters from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights. Folding of these businesses would have a domino effect on the community and local school.

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SALEM, OREGON

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6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

For the reasons set herein, the applications should be rejected or returned to the applicants for the curing of defects.

Sincerely

Thomas P. Olegatos

P.O. Box 102

Unit 5, OR 97884

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JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

January 24, 1995

To: Water Resources Department
158 12th Street NE
Salem, Or. 97310-0210
(Attn: Michael J. Mattick)

Subject: Objection to ODF&W Instream Water Right
Application Technical Review
File # 72160, 72161, 72168, 72169, 72178, 72185, 72186.

This is an objection to the in-stream water rights filed by ODF&W on the Burnt River and its tributaries .

I am the ranch manager for Castle Rock Ranch and have been in the area for less then a year. Without being able to devote the time required to analvze in detail the technical reviews.

It was a dry year and there was not very much water to go around , but we all got by . So where is the water that ODF&W is going to use for their In-stream water. That is the million dollar question .

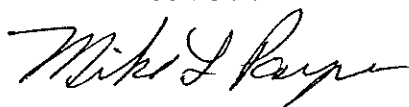
If there was water available the people that already have water rights in the area would use it . Even the State Engineer in 1936 said that this area was over-appropriated.

Will the granting of these instream water right affect prior existing water rights?

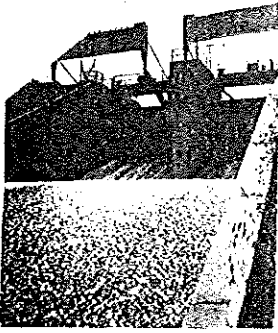
If the in-stream water right is granted there will be no more development in the future, such as hydroelectric or any other water storage like Reservoirs, Dams, Lakes, Ponds.

This will affect future generations to come.

Sincerely,



Mike Pavne
P.O. Box 149
Unity, Or. 97884
Ph. (503) 446-3321



UNITY RESERVOIR

Burnt River Irrigation District

Baker County, Oregon

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WATER RESOURCES DEPT.
SALEM, OREGON

OBJECTIONS TO TECHNICAL REVIEWS - ODFW IWR APPLICATIONS

BURNT RIVER IRRIGATION DISTRICT'S OBJECTIONS TO TECHNICAL REVIEW:
Application numbers 72168, 72169, 72185, 72186, 72160, and 72161.

Submitted: January 25, 1995

Burnt River Irrigation District objects to the technical review on the main stem of the Burnt River, application numbers 72168 and 72169.

ODFW has used faulty streamflow data in their application. You will find included with our protest streamflow data compiled by the Bureau of Reclamation over a 36-year period. The data is both before and after construction of Unity Dam. We feel it is a far more accurate record of actual streamflow than what ODFW used. As you will see, there is almost no natural flow in the months of July, August, and September, with June and October also being short of water in a lot of years.

Burnt River has been my home for 55 years and I am a third generation operator on our ranch. My dad often told me of having to go up the valley tearing out beaver dams, so they could get stock water down the river in late summer and fall. That was prior to the construction of Unity Dam.

We are also enclosing page 25 from the Burnt River Project, Oregon, Wrap-up Report, 1971, Bureau of Reclamation. That portion of the report shows that ODFW had determined 25 cfs April 1 to June 30 and 10 cfs the rest of the year were sufficient for fishery needs in the reach through the lower part of Burnt River Canyon.

We further object to the fact that ODFW made no study to determine if there were indeed any rainbow trout in the reaches filed on. River miles 76 to 49 and 31 to Brownlee pool are almost exclusively private property. At no time did ODFW ask or were they granted permission to make any study on those river miles. There are no rainbow trout in the majority of that reach nor has there historically been.

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We also object to the filing on the North Fork of Burnt River, application numbers 72185 and 72186.

WATER RESOURCES DEPT.
SALEM, OREGON

Again we would challenge ODFW's streamflow data. Also, we would point out from the minutes of Burnt River Irrigation District, dated March 12, 1938, that the waters of the North Fork are over appropriated. Therefore, no further right should be granted. A copy of the above mentioned minutes are enclosed.

We also object to the filing of the South Fork of Burnt River, applications numbers 72160 and 72161.

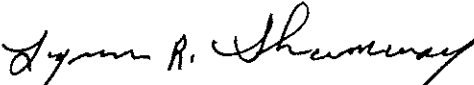
Our objections are the same as on the North Fork. We cannot see how an additional right can be issued on an over-appropriated stream. However, if that is possible, it seems it would be an unnecessary expense to the County Water Master's office to have to measure those flows in the South Fork filing as they are all above Burnt River Irrigation District's first diversion point and there is nothing to be gained by these filings.

We would again point out the study in Burnt River Project, Wrap-up Report, page 25 (enclosed). In this study ODFW acknowledges that an 1,850 acre foot minimum storage pool at the Hardman Site would be more desirable than an instream fishery.

We feel that as long as ODFW is contesting our reservation request on the South Fork, they should not be granted any instream rights on the Burnt River.

In talking with the directors of the other irrigation districts and ditch companies in the county, it has become apparent that ODFW's technical reviews were similarly botched or fraudulently done throughout Baker County. We feel very strongly that ODFW should be held to the same degree of accuracy that we as irrigation districts or individuals are held.

We request all of ODFW's technical reviews be returned to ODFW for correction and that ODFW be held to the same standards to which we are held. We also request an opportunity to enter further protest when we have had an opportunity to review the material requested earlier by Director Keith Schollenberger.


Lynn R. Shumway, Chairman
Burnt River Irrigation District

c Senator Greg Walden
Representative Lynn Lundquist
Representative Chuck Morris
Oregon Water Resource Congress

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SALEM, OREGON

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APPENDIX

A-1

TABLE 1
HISTORICAL (REGULATED) FLOWS AT HUNTINGTON
BURNT RIVER BASIN, OREGON
(cfs)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Average
1927-28	61.8	94.8	107.4	94.0	186.5	264.0	623.9	242.8	59.3	3.3	2.6	0.0	144.3
-29	13.0	43.7	52.0	52.0	69.6	231.0	206.7	99.2	52.1	6.5	1.6	3.4	69.2
1929-30	11.4	35.3	73.1	53.6	96.5	143.2	43.7	13.0	10.1	1.6	0.0	0.0	39.9
31	1.6	11.8	43.9	39.0	48.2	110.7	191.6	8.1	6.7	1.6	0.0	0.0	38.4
32	0.0	3.4	19.5	35.8	48.2	299.2	719.3	291.0	50.4	3.3	0.0	0.0	122.5
33	15.6	39.4	29.1	35.8	32.0	76.1	485.4	350.4	70.7	2.6	0.6	4.0	95.1
34	13.3	34.6	58.2	90.5	85.8	96.1	55.5	13.0	9.6	0.0	0.0	4.0	37.4
1934-35	13.3	16.1	33.5	47.0	49.1	127.5	342.0	74.1	9.6	0.0	0.0	1.7	59.3
-36	20.2	23.2	22.4	31.2	41.8	102.8	651.8	83.4	28.8	0.6	0.0	4.0	83.6
-37	9.0	23.2	26.8	20.2	34.3	98.5	268.0	100.2	30.6	0.0	0.0	8.7	51.5
* -38	50.3	68.2	193.8	120.3	106.5	174.3	1224.2	266.4	38.5	28.1	41.8	48.7	196.0
-39	46.6	36.1	35.0	23.4	21.4	166.6	528.2	142.6	82.0	44.1	48.6	48.7	102.0
1939-40	66.0	48.2	38.8	31.1	21.4	159.0	552.1	163.6	90.3	37.2	56.6	37.0	108.4
-41	35.0	40.2	38.8	38.9	123.4	414.0	424.2	200.5	131.1	56.6	58.8	39.3	133.5
-42	178.0	116.2	178.6	174.3	153.2	244.0	952.0	276.9	158.4	72.5	56.6	100.6	221.2
-43	73.6	48.2	93.0	151.0	293.4	461.0	1488.3	369.1	240.0	79.4	73.7	133.5	290.2
-44	83.4	144.3	162.6	35.0	25.7	23.4	56.1	142.6	41.2	57.7	56.6	88.8	77.1
1944-45	38.9	100.2	31.1	23.4	25.7	131.7	424.2	189.9	190.9	48.6	72.5	95.9	114.2
-46	110.6	42.0	35.8	45.5	146.4	432.5	1062.2	265.0	181.6	65.0	80.5	119.4	214.7
-47	120.3	77.3	113.9	191.9	121.4	47.8	463.9	214.6	166.5	59.4	61.8	119.4	146.2
-48	68.2	47.1	126.9	133.4	71.5	65.0	642.0	461.8	342.9	77.2	68.3	138.8	186.8
-49	214.5	87.4	87.9	133.4	164.4	426.0	843.7	292.7	168.1	58.5	75.2	131.5	223.3
1949-50	203.2	131.1	97.6	97.6	107.2	164.2	596.7	256.9	181.5	65.0	65.0	124.4	173.9
-51	152.9	114.3	133.4	87.9	114.4	365.9	966.4	224.4	146.3	52.8	68.3	95.8	209.7
-52	110.6	94.2	96.0	104.1	130.4	286.2	1347.9	190.2	198.3	87.0	73.1	119.4	235.2
-53	169.0	82.4	91.1	97.6	117.9	242.3	571.5	416.3	510.9	82.1	81.3	126.9	215.5
-54	242.3	174.8	150.2	96.0	71.5	61.8	215.1	185.4	105.9	50.4	71.5	124.4	127.6
1954-55	185.4	100.9	79.7	84.6	50.0	27.6	20.0	117.1	161.3	39.8	60.1	6.7	76.4
-56	29.3	30.3	29.3	178.9	228.5	614.6	1270.6	422.8	198.3	70.7	81.3	85.7	269.2
-57	76.4	67.2	65.1	50.4	232.0	315.5	539.5	382.1	163.0	84.5	58.5	55.5	173.5
-58	63.4	70.6	86.3	97.5	368.0	422.8	897.5	765.9	270.6	120.4	99.2	111.0	280.0
-59	82.9	79.0	110.6	92.7	80.4	78.0	225.2	91.0	53.8	55.3	42.3	87.4	89.8
1959-60	170.4	120.2	65.9	42.8	47.0	65.9	480.2	208.4	190.9	71.4	60.0	62.9	132.0
-61	62.2	36.1	38.8	42.8	34.1	38.8	120.2	226.8	178.2	60.0	56.6	34.6	73.6
-62	29.3	28.6	27.6	27.6	32.2	65.0	453.8	221.1	75.6	56.9	55.3	47.1	93.2
-63	71.5	55.5	53.6	34.1	232.1	71.5	215.1	177.3	94.1	66.6	63.4	72.3	99.6

SOURCE: U. S. Bureau of Reclamation

*Unity Reservoir in operation.

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JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

APPENDIX

A-2

TABLE 2
NATURAL FLOW AT HUNTINGTON (ADJUSTED FOR REGULATION)
BURNT RIVER BASIN, OREGON
(cfs)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Average
1927-28	61.8	94.8	107.3	94.0	186.7	263.8	623.8	242.8	59.3	3.3	2.6	0.0	144.3
-29	13.0	43.7	52.0	52.0	69.6	230.8	206.8	99.2	52.1	6.5	1.6	3.3	69.2
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-32	0.0	3.4	19.5	35.8	48.2	299.2	719.3	291.1	50.4	3.3	0.0	0.0	122.5
-33	15.6	39.3	29.1	35.8	32.0	76.1	485.4	350.4	70.7	2.6	0.6	3.9	95.1
-34	13.3	34.6	58.2	80.5	85.9	96.0	55.5	13.0	9.6	0.0	0.0	3.9	37.4
1934-35	13.3	16.1	33.5	47.0	49.1	127.5	342.0	74.1	9.6	0.0	0.0	1.6	59.3
-36	20.2	23.2	22.4	31.2	41.8	102.8	651.8	83.4	28.8	0.6	0.0	3.9	83.6
-37	9.0	23.2	26.8	20.2	34.3	98.4	268.1	100.2	30.6	0.0	0.0	8.4	51.5
* -38	50.4	68.2	193.7	120.2	106.4	174.3	1239.8	260.5	20.7	0.0	0.0	0.0	185.4
-39	59.2	76.0	67.8	46.8	52.2	316.0	603.0	82.9	18.6	0.0	0.0	9.3	110.8
1939-40	52.3	57.5	51.4	46.3	91.6	374.1	552.1	89.8	10.1	0.0	0.0	2.8	110.4
-41	72.7	66.9	66.2	63.3	127.2	541.5	504.7	193.0	108.4	0.0	0.0	35.6	148.3
-42	138.4	117.3	181.4	173.2	153.3	292.4	1117.3	291.8	104.1	0.0	0.0	36.4	216.5
-43	74.7	69.3	106.2	150.2	260.7	534.2	1709.1	367.6	184.6	0.0	0.0	42.4	289.8
-44	93.4	134.0	133.8	58.7	58.6	105.6	161.8	105.8	29.4	0.0	0.0	36.4	76.6
1944-45	57.7	146.0	75.0	54.3	48.2	158.0	543.7	257.4	109.8	0.0	0.0	22.6	122.5
-46	100.4	75.3	80.9	86.3	153.6	483.8	1188.4	288.2	95.8	0.0	0.0	58.8	216.7
-47	122.8	108.4	170.2	162.5	189.3	247.5	482.2	139.6	82.4	0.0	0.0	46.1	145.2
-48	80.2	79.5	131.9	149.5	123.4	138.6	761.3	551.2	327.7	0.0	0.0	73.1	200.9
-49	168.8	117.4	112.6	136.5	163.1	499.0	1019.3	298.6	74.1	0.0	0.0	56.8	220.0
1949-50	176.9	138.7	106.6	110.4	124.0	212.2	839.2	308.6	122.4	0.0	0.0	50.3	181.9
-51	144.3	126.8	154.0	117.1	178.0	402.1	1112.6	225.8	62.4	0.0	0.0	24.0	211.2
-52	102.8	108.0	116.3	118.3	139.0	303.2	1514.1	308.8	121.9	0.0	0.0	57.5	239.4
-53	141.7	92.6	107.4	141.9	170.0	341.8	746.9	413.2	486.7	0.0	0.0	38.8	222.7
-54	174.9	171.2	139.7	118.8	161.6	174.0	380.6	110.3	72.1	0.0	0.0	47.5	128.6
1954-55	144.4	112.8	87.7	84.6	60.7	47.0	146.6	155.2	66.6	0.0	0.0	0.0	75.6
-56	43.4	47.4	188.8	190.9	237.8	700.8	1376.5	427.5	119.8	0.0	0.0	16.8	278.4
-57	43.1	82.0	123.4	101.9	346.6	358.0	528.9	286.1	45.1	0.0	0.0	0.0	158.1
-58	52.0	90.6	96.5	109.2	470.7	420.5	1065.5	104.2	216.5	35.3	0.0	24.2	300.3
-59	68.4	103.9	159.2	136.8	135.2	184.5	326.2	48.6	0.0	0.0	0.0	34.1	99.4
1959-60	165.9	133.8	86.2	74.3	80.9	241.4	610.8	149.5	83.2	0.0	0.0	17.0	136.6
-61	64.0	82.8	69.9	70.3	101.8	156.6	234.4	118.0	41.4	0.0	0.0	7.7	78.6
-62	38.7	62.3	66.0	76.9	85.9	142.0	611.4	151.6	0.0	0.0	0.0	0.0	102.4
-63	92.7	107.1	116.8	67.8	380.2	155.3	234.0	151.3	6.9	0.0	0.0	0.0	107.6

AVERAGE: 141.8

NOTE: The above flows are estimated for natural (unregulated) conditions and equal recorded and estimated historical flow, plus change of storage in Unity Reservoir.

SOURCE: U. S. Bureau of Reclamation.

*Unity Reservoir in operation.

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Fish and Wildlife

JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Conservation Pools and Sustained Streamflow

The Fish and Wildlife Service states that the proposed conservation pool (1,850 acre-feet of dead and inactive space) would provide an optimum trout fishery in Hardman Reservoir and that a minimum sustained release from the reservoir of at least 10 cubic feet per second would be desirable to maintain a stream fishery in the South Fork of the Burnt River downstream from the dam. However, the Service states that the reservoir fishery would be more significant than the limited downstream fishery; and therefore if available water supplies are inadequate to provide both the desired minimum reservoir pool and the downstream release, the latter should be sacrificed. Water-use studies show that both requirements could not be provided in many years; and, accordingly, only the minimum reservoir pool would be provided in the proposed development.

A high quality sport fishery would be created in Dark Canyon Reservoir by the proposed conservation pool (2,000 acre-feet of dead and inactive space). Further, to improve the stream fishery, the Fish and Wildlife Service requested a minimum streamflow in the river below Dark Canyon downstream to Chambeam Diversion Dam. Desired flows are 25 cubic feet per second from April 1 through June 30 and 10 cubic feet per second for the remainder of the year except in extreme drought years when flows would have to be reduced. The operating plan for the division would meet these requirements.

Access and Public-Use Facilities

Adequate access for fishermen and hunters to Hardman and Dark Canyon Reservoirs would be provided by roads paralleling the reservoirs. Only short spur roads would be necessary to connect parking-area and boat-launching facilities with the primary access roads.

Facilities needed for angler use at each reservoir would include a vehicle parking area, toilet facilities, and a boat-launching ramp. The public use facilities for recreation included in the plan of development would meet the needs of hunters and fishermen as well as other recreationists.

Big-Game Replacement-Habitat

Development of Hardman and Dark Canyon Reservoirs would inundate some big-game habitat. Lands to serve as replacement have been provided in planning at both reservoir sites.

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WATER RESOURCES DEPT.

FROM MINUTES OF BURNT RIVER IRRIGATION DISTRICT, March 12, 1938.

"Whereas, the primary purpose of the contract entered into between the Burnt River Irrigation District and the United States, providing for the construction of the Unity Reservoir, was to provide a supplementary water supply to the irrigated land, the water certificates of which were of record and the points of diversion and canals in connection with which were recited in said contracts, and

"Whereas, certain prior storage rights to the recited water rights and diversions are recognized as being necessary, desirable and proper and

"Whereas, pursuant to that certain resolution adopted by the directors of this district on or about the 25th day of March, 1936, and approved insofar as the same applies within the boundaries of the district by Charles E. Stricklin, State Engineer, it was declared that the waters of Burnt River and its tributaries above Unity Dam are over-appropriated and the State Engineer was petitioned to deny further permits to appropriate said water, and

^a
"Whereas, it is desirable that a definite policy be adopted for the Board of Directors of this district to pursue,

"NOW THEREFORE, be it resolved:

"First: That no expanded or increased acreage over and above the water certificates appurtenant to the lands in what is now Unit 1 shall be permitted.

"Second: Prior and superior rights for the use of the storage waters of Unity Reservoir will be restricted to the rights appurtenant to the land, the water certificates of which were of record prior to the 25th day of March, 1936.

"Third: Contracts or agreements to furnish storage water from Unity Reservoir to increased or expanded acreage or "for other lawful purposes" shall be inferior to rights appurtenant to the lands as of record prior to the 25th day of March, 1936.

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JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick,

all of the
As a water right holder under Oregon law, I wish to formally object to the Technical Review Report for the instream flow applications IS 72168 and IS 72169 by the Oregon Department of Fish and Wildlife. These applications will pose serious harm both economically and socially to ourselves and our community.

1572160-1572161-1572178-1572185-1572186

I object to the Technical Review Report for the Oregon Department of Fish and Wildlife applications for the following reasons:

1. The data presented is not accurate and better data is available from historic sources, such as our irrigation district, that more truly reflect the actual situation.
2. The methodology used by the State to determine the average annual flow is not the most reasonable method for looking at applications like this, in this drainage basin.
3. The methodology used by ODFW, leads them in some cases, to request an instream water right where historic records show that in many years there is no flow.
4. The ODFW has requested flows in excess of the monthly flows.
5. The ODFW has not demonstrated, or even made a logical case for having an instream fishery flow in months where historically the stream would not support such a fishery.
6. The granting of an instream flow to the ODFW could have a long-term negative impact on our current water rights. It would place the "STATE ODFW" in a position that in time will lead to conflicts over water usage. The State has so many more resources than a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will the become biased in favor of the State.

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SALEM, OREGON

7. Granting an application such as this without full public understanding and acceptance of the data base and methodology does not make for sound water resource management.

8. The basin is currently "over-appropriated" and it does not make sense to compound the problem further.

Given the above mentioned concerns we strongly feel the applications of the ODFW be rejected.

Sincerely,

Signature Bernard E. Hutcheon

Name: Bernard E. Hutcheon

Date: 1-24-95

Address: Box 136
Hereford, Or 97837

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WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to the applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.

2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.

3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is out dated.

4. Instream applications are not compatible with local government comprehensive Land Use Plan.

5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters which have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over; an estimated 8,000 acres have been logged; and an estimated 500 - 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988 - Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

The following are objections to the Report Conclusions:

1. Data used to set flow levels was outdated. The impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any further development of lands, business or industry in the Valley. It could also have a long term negative impact on current water rights. In 1994, irrigators using water from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights.

2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. All lands below Unity Reservoir are privately owned and no permission has been granted to ODF&W to access that land. Therefor, there is no way accurate or current information could have been obtained for these applications.

3. The seasonal stream discharge patterns have changed over the last 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. I again question the data and methodology used.

2. If the water right holder is required to measure the instream flow, who is going to pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could have a long term negative impact on our current water rights. It would place the "State ODF&W" in a position that in time will lead to conflicts over water usage. The State has so many more resources that a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will become biased in favor of the State. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. As a landowner, irrigator and taxpayer I object to these addition known and unknown costs. *Future*

I also object to ODF&W not having to pay filing fees for their instream water rights as do other individual applicants.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. The proposed Ricco and Hardman Dams could possibly provide needed water but ODF&W is opposing the construction of these reservoirs. These applications will also eliminate future water storage opportunities.

4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Dusty Derrick
Name: Dusty Derrick
Date: 1/29/95
Address: P.O. Box 41
Unity OR. 97884

cc: Lundquist

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JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

January 19, 1995

Mr. Michale J. Mattick
Water Resources Department
158 12th Street
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is apposing the construction of those reservoirs.

2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law. All land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate and current information could have been obtained for this application.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. These applications will also eliminate any future water storage opportunities.

4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry in the Valley. In 1994 irrigators using waters from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights. Folding of these businesses would have a domino effect on the community and local school.

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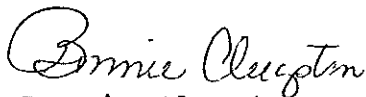
JAN 30 1995

5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures. WATER RESOURCES DEPT. SALEM, OREGON

6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

Objections #4 and #5 could have a big economic impact on our community. Consideration should be given to what impact new regulations will have on small rural communities such as ours. Any additional burdens put on this community could have a very negative effect on our school.

Sincerely,



Bonnie Clugston
Burnt River Community
Development Council
P.O. Box 102
Unity, OR 97884

Sincerely

Michael J. Mattick
Water Rights Specialist
Oregon Water Resources Department
State of Oregon
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

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WATER RESOURCES DEPT.
SALEM, OREGON

Dear Mr. Mattick:

Subject: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169.

As a water right holder under Oregon law, I wish to formally object to the applications by the Oregon Department of Fish and Wildlife.

The following are objections to the Technical Review Reports:

1. The data submitted is outdated and incomplete, with no mapping as required by Oregon Law. Methods used are not adequate for the stream location, or current with technology presently available and used within scientific and biological communities.

2. In 1936, Burnt River Irrigation District petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water from tributaries within the boundaries of the Burnt River Irrigation District above Unity Reservoir. All free flowing water is currently "over appropriated" and it does not make sense to compound the problem further.

3. Instream applications are not consistent with the Powder Basin Plan. The Powder Basin Plan is out dated.

4. Instream applications are not compatible with local government comprehensive Land Use Plan.

5. All instream filings on streams already classified "over appropriated" should be denied. Interviews with long time area residents have pointed out that the water goes off the watershed at a different rate than it did in previous years. Significant events have occurred in the headwaters which have major impacts on the holding capacity and discharge patterns of the watershed. An estimated 10,000 acres have been burned over; an estimated 8,000 acres have been logged; and an estimated 500 - 700 acres have been burned and logged. Fire activity occurred in 1979 - Stevens Creek Fire and 1988 - Monument Rock Fire. Documented logging activities have occurred since 1979 to present. Also, a major influencing factor has been the drought.

If the estimated natural flow data is not current, how can the requested average be valid?

The following are objections to the Report Conclusions:

1. Data used to set flow levels was outdated. The impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any further development of lands, business or industry in the Valley. It could also have a long term negative impact on current water rights. In 1994, irrigators using water from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights.

2. When was data collected for Minimum flow requirements? Significant events (fire, logging, and drought) have changed the watershed ecology. All lands below Unity Reservoir are privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate or current information could have been obtained for these applications.

3. The seasonal stream discharge patterns have changed over the last 30 years. To base Minimum Stream flow recommendations on 1965 and 1966 studies, when approximately 18,000 acres within the headwaters have drastically changed, is not sound management.

The following are objections to the Proposed Certificate Conditions:

1. I again question the data and methodology used.

2. If the water right holder is required to measure the instream flow, who is going to pay for it? Where does CFS get measured, at the beginning of the reach or at the end? Who absorbs the evaporation loss?

The granting of an instream flow to the ODF&W could have a long term negative impact on our current water rights. It would place the "State ODF&W" in a position that in time will lead to conflicts over water usage. The State has so many more resources than a private individual it would be very costly and almost impossible for a private individual to produce and present data at the same level and in the same detail as the State. The data system will become biased in favor of the State. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. As a landowner, irrigator and taxpayer I object to these additional known and unknown costs.

I also object to ODF&W not having to pay filing fees for their instream water rights as do other individual applicants.

3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. The proposed Ricco and Hardman Dams could possibly provide needed water but ODF&W is opposing the construction of these reservoirs. These applications will also eliminate future water storage opportunities.

4. A condition not listed: Multipurpose facilities have priority over instream flows.

Based on these objections, I request denial of ODF&W's applications listed under subject at the beginning of this letter.

Signature: Edith Derrick
Name: EDITH DERRICK
Date: 1/29/95
Address: Box 3
Unity, ORE
97884

cc: Lundquist

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1-26-1995 JAN 30 1995

WATER RESOURCES DEPT.
SALEM, OREGON

Michael J. Matlick:
Ore Water Res. Dept.
Salem, Ore.

Dear Sir:

As a property owner, water rights
user and tax payer, I am submitting
my objection to the technical review
report for the instream flow applications:
70863, 70864, 70870, 71684, 72160, 72161,
72167, 72170, 72172, 72178, 72181, 72183,
72185, 72186, 72187, 72190, 72191, 72192,
and 72193, by ODFW.

The amount of water requested would
have an adverse effect on our economy,
and is more water than needed.

Sincerely,
Jay Cartwright
P.O. Box 230
Turk, OR 97905

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JAN 27 1995
WATER RESOURCES DEPT.
SALEM, OREGON

Oregon Water Resources Dept.
158 12th Street N.E.
Salem, OR 97310

January 24, 1995

OBJECTION TO TECHNICAL REVIEWS:

IS72160, IS72161, IS72178, IS72168, IS72169, IS72185, IS72186.

These are in-stream rights filed by the ODF&W on Burnt River and its tributaries.

As former Burnt River Irrigation District Manager, former deputy watermaster for this area and a local resident for over 30 years, I have some familiarity with water flows in the Burnt River reaches described in these applications.

Without being able to devote the time required to analyze in detail the deficiencies in each of the technical reviews, I see several areas where it looks like you are basing your decisions on erroneous information. I feel strongly that the WRD needs to gain a better understanding of the Burnt River watershed before it issues these in-stream water rights.

From the many conversations I had over the years with residents whose families settled this area, it is clear that before the Unity Dam was built, Burnt River dried up to stagnant pools in the late summer, even when the older downstream rights shut off all of the upstream rights and no irrigation was allowed. This is verified by hydrologic records which show a total flow of zero for entire months in the Burnt River at the Bridgeport Gaging Station before the construction of Unity Dam. (This G.S. is located approximately at the end of reach IS72169 and the beginning of reach IS72168.) These practically non-existent flows occurred even in "average" water years.

IS72185 and IS72186 cover reaches on the North Fork of the Burnt River. Historically, water in these reaches was first used by miners in the late eighteen hundreds. One of the first projects the miners had to undertake was to gather up water from other watersheds and ditch it to the N.F. of the Burnt River so they would have enough water to mine. Ranchers presently use some of this same system to bring water into the North Fork of the Burnt River from other watersheds, and they still run out of water in the late summer. Obviously, there was not enough water available to even begin to meet the needs of the first development, let alone sustain minimum flows.

IS72160, IS72161, & IS72178 apply to reaches on the South Fork of the Burnt River. The South Fork of the Burnt River is one of the few streams in the area that actually has water in it in the late summer. This is because it arises on a small watershed that is almost totally fed by springs. Unfortunately, the amount of water in the S.F. is very limited. The flow averages aprox. 22 c.f.s. which is divided among over 4,000 acres in the Unity area.

These Unity water rights are junior to the older downstream water rights (aprox. 8,0000 acres) and are only allowed to use the S.F. waters under a contract with the Burnt River Irrigation District as part of an exchange agreement put in place when the Unity Dam was built. This means there are aprox. 12,000 acres that have prior rights to the use of the South Fork which runs an ave. of 22 c.f.s.. In your opinion, doesn't that qualify as being "over-appropriated" with no water available for new appropriations? In fact, in order to avoid further conflicts over the already over-appropriated stream, the Burnt River Irrigation District applied to the then State Engineer in 1936 to restrict any further appropriations in the Unity area.

All of the forgoing is indicative of the water availability (or more correctly the unavailability) issue, and can be substantiated by early hydrological records as well as volumes of the early court decrees to settle battles waged by the early settlers over the limited amount of water. Isn't water availability a concern when issuing these in-stream rights?

Other issues raised by these in-stream water rights that should be addressed and corrected before any rights are granted include:

1. If reaches IS72160, IS72161, & IS72178 were determined by using the Oregon Method, was it done in error since the South Fork of the Burnt River is a spring-fed stream?
2. There are times during the summer months when inflow into Unity reservoir is zero (or negative due to evaporation). Any minimum flows required at these times would have to be maintained by releasing storage water. It is clearly beyond the authority of the WRD to require such releases, and it would further complicate a difficult job if in-stream minimum flows are thrown into the mix. How will this be resolved to prevent the waste of water being released when it is not required for irr.?
3. All the flows requested for all the months for IS72178 exceed the EANF considerably (some by over 500%, i.e. Mar.) . My best guess is that the flows requested exceed any flows that have ever been in that reach. In fact, the requested flows in the applications above Unity Dam, IS72160, IS72161, IS72178, IS72185, & IS72186 all have months that exceed the EANF by several hundred per cent. Shouldn't the requested flows at least have some relation to the "average" amount of water in the stream?
4. As a practical matter, isn't it erroneous to use the "average" flows of a stream in order to make determinations of minimum streamflows? In the last 100 years of streamflow records, I doubt that you would find more than a few years that would qualify as "average." With all the variables that affect streamflow in this region besides just the amount of precipitation (temperatures, ripeness of snowpack, condition of ground, timing of rainfall, etc.) streamflows tend to range to the extremes. If WRD is trying to establish whether there is a possibility of

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WATER RESOURCES DEPT.
STATE OF OREGON

maintaining a minimum streamflow for fisheries shouldn't be your first Department be looking at the lower end of the spectrum of flows in a stream? Otherwise, don't requested minimum streamflows just become wishful thinking with little relation to reality?

5. There will be a problem in the future in determining which channel in the Hereford and Bridgeport areas is required to maintain the minimum flows unless the channel is pinpointed in the requested right. Each affected irrigator will obviously claim that the other channel is the one that should be carrying the minimum flow. This will be a problem in IS72168, IS72169 & possibly IS72185 & IS72186 where there are multiple channels and the channels occasionally change. How will this be resolved if the channels are not definitely located?

6. In the fall, before it is known if there will be enough precipitation during the winter to provide enough water to fill Unity reservoir it is necessary to shut off the streamflow to a bare minimum. This is SOP for dams that have no minimum flow requirements. Presumably these in-stream rights will not affect prior existing rights. Therefore, there is no way these in-stream flows can be maintained during the months requested in the fall and winter. If you grant these rights, won't you be creating a presumption in the minds of many people that there actually is water available to meet this need, which is currently not true?

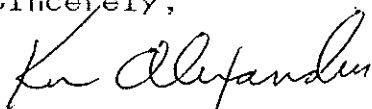
7. Are the methods used to determine these minimum streamflows and analysis of the needs of the fishery based on conditions found on Burnt River or are they based on a generic method that may or may not apply to the Burnt River and its tributaries?

8. Will granting these in-stream rights prevent building storage projects that may be of greater public benefit in the future?

9. Will the granting of these rights create an inefficiency and waste of water due to the additional complexity of attempting to deliver extra water for an uncertain goal?

Before the WRD grants these requests, I hope you will take a more realistic look at the Burnt River watershed. Fish habitat is not going to be improved by making poor decisions based on inaccurate information. Granting these in-stream rights in their present form will only complicate and delay any actual chance of reaching that goal.

Sincerely,



Ken Alexander
P.O. Box 153
Unity OR. 97884
Ph. 503 446-3413

CC. Water for Life

CC. Lynn Lundquist

January 21, 1995

RECEIVED

JAN 27 1995

Michale J. Mattick
Water Resources Department
158 12th Street
Salem, Or. 97310-0210

WATER RESOURCES DEPT.
SALEM, OREGON

Dear Mr. Mattick:

Subject: IS 72160, 72161, 72168, 72169, 72178, 72185, and IS72186

We, the land and water rights owners of the water herein-mentioned in these applications filed by the Oregon Department of Fish and Wildlife, submit the following objections to their claims as unwarranted and devastating to our community and ranch operations.

Around March 25, 1936 our Burnt River Irrigation District adopted a resolution stating that the Burnt River Irrigation District above the Unity Reservoir had been over-appropriated and asked Charles E. Stricklin, State Engineer, to deny further permits on these water rights.

The information provided by Mr. Stricklin is neither reliable nor factual since it does not provide the necessary information concerning our district and its needs. There has been no mapping as required by our Oregon Law and all the land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to have access to this land. The information used for these applications is both erroneous and not up-to-date!

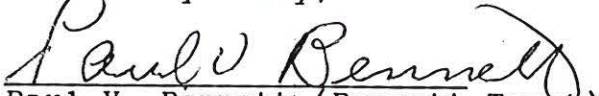
On years such as last year, the ditches did not provide enough water for the rancher on the upland. Both cattle and forage along with wildlife suffered from this shortage. Storage for protection of the rancher and wildlife would be impossible with the drain on the lack of water due to these appropriations.

It is possible that with the construction of the Ricco and Hardman Dams the needed water could provide a water source but the ODF&W opposes having these two dams constructed.

In 1994 users of the water from the South Fork Burnt River were permitted only 16% of their allocated water. A government agency taking over without a legitimate reason would effect our livelihood of ranching, stifle the community and have an adverse effect on our local school system. Future development necessary for business achievements for the land owners in the Burnt River Valley would be crippled. The known and unknown expenses to implement the instream water rights would fall on we the landowner-taxpayer.

We feel that the applications should be rejected as drawn until such time when the ODF&W study this with an honest and clear picture of our water rights and use of the water.

Yours very truly,


Paul V. Bennett (Bennett Trust)
Box 135 Loop Road
Hereford, Or. 97837

RECEIVED

JAN 27 1995

WATER RESOURCES DEPT
SALEM, OREGON

January 19, 1995

Mr. Michale J. Mattick
Water Resources Department
158 12th Street Department
Salem, OR 97310-0210

Dear Mr. Mattick:

SUBJECT: IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168, IS 72169

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated. The proposed Ricco and Hardman Dams could possibly provide that needed water but ODF&W is opposing the construction of those reservoirs.
2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law. All land below the Unity Reservoir is privately owned and no permission has been granted to ODF&W to access that land. Therefore, there is no way accurate and current information could have been obtained for this application.
3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. These applications will also eliminate any future water storage opportunities.
4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry in the Valley. In 1994 irrigators using waters from the South Fork Burnt River were allowed only 16% of their allocated water. Any further reductions would make it unfeasible to operate the businesses that depend on prior water rights. Folding of these businesses would have a domino effect on the community and local school.

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JAN 27 1995

WATER RESOURCES DEPT.
SALEM, OREGON

5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures.

6. We also object to ODF&W not having to pay filing fees for their instream water rights as other individual applicants.

For the reasons set herein, the applications should be rejected or returned to the applicants for the curing of defects.

Sincerely

Fay L Ross

Box 11 UNITY, OREGON
97884

RECEIVED

JAN 27 1995

WATER RESOURCES DEPT.
SALEM, OREGON

7. Granting an application such as this without full public understanding and acceptance of the data base and methodology does not make for sound water resource management.

8. The basin is currently "over-appropriated" and it does not make sense to compound the problem further.

Given the above mentioned concerns we strongly feel the applications of the ODFW be rejected.

Sincerely,

Signature Evelyn J. Keith

Name: Evelyn J. Keith

Date: Jan. 24, 1995

Address: 1205 Washington Av

Baker City, OR 97814

No prior pages
dep
2/10/95

JAN 26 1995

WATER RESOURCES DEPARTMENT
SALEM, OREGON

January 18, 1995

Water Resources Department
158 12th Street N.E.
Salem, OR 97310-0210

Mr. Michael J. Mattick:

SUBJECT: IS 72185, IS 72186

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

1. On or about March 25, 1936 the Burnt River Irrigation District adopted a resolution declaring Burnt River tributaries within the boundaries of Burnt River Irrigation District above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water. This clearly indicates that all free-flowing water is already over appropriated unless the proposed Ricco Dam was constructed.
2. We believe the data submitted by the applicant is out-dated, unreliable, and incomplete with no mapping as required by Oregon Law .
3. On low water years ditches that reach into the upland sagebrush ground would not have enough water to provide for livestock and wildlife needs. These same ditches also irrigate upland ground that provides forage for wildlife as well as domestic animals. This will also eliminate any future water storage opportunities.
4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry.
5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures.
6. We also object to the Fish and Game Commission not having to pay filing fees for their instream water rights.

7. If there is a need for instream water then the Fish and Game Commission should provide dams for storage.

For the reasons set herein, the application should be rejected or returned to the applicants for the curing of defects.

Respectfully yours,
David Schewe

JAN 28 1995

Miriam K. Aschim
HCR 86 Box 168
Unity, OR 97884
January 27, 1995

Mr. Michael J. Mattick
Water Resources Dept.
158 12th Street Department
Salem, OR 97310-0210

Re: Instream water rights

Dear Mr. Mattick:

The Burnt River Irrigation District held a meeting on Jan. 17, 1995 which I attended because I have been aware of a chronic water shortage for some time. My home receives its irrigation water from the South Fork of Burnt River and our water right dates back to 1896. The instream water rights controversy affects not only my personal interests but larger local issues as well.

As a supporter of the Burnt River Economic Development council I am hoping to help Unity and the upper Burnt River community to grow a little and be more like it was when I moved here forty five years ago, especially the school. To keep our ranches functioning and if we are to grow at all we need what water we have. We need to keep our school operating. Other districts are just too far away.

I love living here in this beautiful country among people who look out for each other and for the land. I worry what might happen to the environment if ranchers are forced to leave for lack of water. Most are good husbandmen and seek to preserve the land and the balance of nature. If the Oregon Department of Fish and Wildlife applications, numbers IS 72160, IS 72161, IS 72178, IS 72185, IS 72186, IS 72168 and IS 72169, are approved it will do great harm to this area both financially and ecologically. Please reject them.

Yours truly,

Miriam K. Aschim

RECEIVED
JAN 25 1995
WATER RESOURCES DEPT
SALEM, OREGON

January 18, 1995

Water Resources Department
158 12th Street N.E.
Salem, OR 97310-0210

Mr. Michael J. Mattick:

SUBJECT: IS 72185, IS 72186

We hereby submit the following objections to the above stated applications filed by the Oregon Department of Fish and Wildlife.

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4. The adverse impact of this application would be devastating to the economy of the Burnt River Valley. The instream water rights would stop any future development of lands, business or industry.
5. The burden of the cost of implementing the instream water rights will be born by the landowners and irrigators. The administrative costs will fall on the taxpayers. We as taxpayers, landowners and irrigators object to these additional known and unknown expenditures.
6. We also object to the Fish and Game Commission not having to pay filing fees for their instream water rights.

7. If there is a need for instream water then the Fish and Game Commission should provide dams for storage.

For the reasons set herein, the application should be rejected or returned to the applicants for the curing of defects.

Sincerely,

A handwritten signature in cursive script that reads "Allen Fletcher". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

N. Fork
RECEIVED
JAN 25 1995
WATER RESOURCES DEPT.
SALEM, OREGON

January 18, 1995

Water Resources Department
158 12th Street N.E.
Salem, OR 97310-0210

Mr. Michael J. Mattick:

SUBJECT: IS 72185, IS 72186

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6. We also object to the Fish and Game Commission not having to pay filing fees for their instream water rights.

7. If there is a need for instream water then the Fish and Game Commission should provide dams for storage.

For the reasons set herein, the application should be rejected or returned to the applicants for the curing of defects.

Sincerely,

John C. Morin
Roberta L. Morin
North Fork Burnt River Land Owners

M. Fark
JAN 24 1995
WATER RESOURCES DEPT
SALEM, OREGON

January 18, 1995

Water Resources Department
158 12th Street N.E.
Salem, OR 97310-0210

Mr. Michael J. Mattick:

SUBJECT: IS 72185, IS 72186

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7. If there is a need for instream water then the Fish and Game Commission should provide dams for storage.

For the reasons set herein, the application should be rejected or returned to the applicants for the curing of defects.

Sincerely,

John C. Morin
Roberta L. Morin
North Fork Burnt River Land Owners

RECEIVED

JAN 23 1995

Burnt River Irrigation District

HCR 86 Box 151
Hereford, Or 97837
(503) 446-3313

WATER RESOURCES DEPT.
SALEM, OREGON

January 24, 1995

To: Water Resources Department
158 12th Street N.E.
Salem, Or 97310-0210
(Attn: Michael J. Mattick)

Subject: Objection to ODF&W Instream Water Right Application Technical Review

Reference Application File Numbers IS 721685 and IS 72186.

Burnt River Irrigation District(BRID) hereby objects to the following portions of the technical reviews for the reasons indicated:

1. We object to the in-stream filing on any stream that is already classed as "over appropriated". The reason for this is: If the stream is over-appropriated, the current water rights holders are limited to a specific duty and rate. Any water over the authorized rate must be left in the stream under existing law.
2. **The amount of water requested.** At a public meeting in Baker City on December 8, 1994, a member of WRD staff told the assembly that these amounts of water were derived without regard to existing or pending authorized diversions. We believe the existing and pending authorized diversions should be taken into account. We further believe all applications should be processed in the order received.
3. **The supporting data submitted by the applicant.** Believe this data to be out-dated and un-reliable. The watershed changes over the years. Fires and forest management practices have had a significant impact on the way water goes out. With good ground-cover and root systems, the ground will retain the water longer and allow it to go out gradually. Fires and forest management practices have changed this. Water now goes out all at once in the spring melt to the detriment of late summer flows.
4. **Statement: "The source of water is not withdrawn from appropriation."** On or about March 25, 1936 the Burnt River Irrigation District (BRID) adopted a resolution declaring Burnt River tributaries within the boundaries of BRID above Unity Reservoir to be over-appropriated, and petitioned Charles E. Stricklin, State Engineer, to deny further permits to appropriate water.
5. **Proposed Certificate Conditions.** All the reported average flows have been proposed for in-stream use even though the flows are lower than what is considered minimum flow for the fishery. This makes no sense whatsoever. If the water does not meet minimum

fish requirements why grant the in-stream flow?? Additionally, there is a major irrigation diversion down-stream of the measuring site, giving further need for consideration of existing authorized diversions .

6. We believe that all applications should follow the same procedures and rules as to filing fees and waiting periods before certificates are issued.

Sincerely;

(signed)
Jerry Franke, Manager

RECEIVED

JAN 23 1995

WATER RESOURCES DEPT.
SALEM, OREGON

November 25, 1994

Oregon Department of Fish and Wildlife
P.O. Box 59
Portland OR 97207

WATER
RESOURCES
DEPARTMENT

Reference: Files 70863, 70864, 70870, 71684, 72160, 72161, 72167,
72168, 72169, 72170, 72172, 72178, 72181, 72183, 72185,
72186, 72189, 72190, 72191, 72192 and 72193.

Dear Department of Fish and Wildlife:

The Water Resources Department has finished the first step of its analysis of the above referenced applications. Enclosed are copies of this report, which is called the Report of Technical Review.

The technical review is the Department's legal and scientific analysis of the application, including a calculation of the expected availability of water for the proposed use. Step two, is the 60-day public review period.

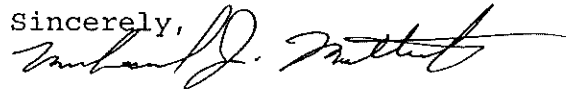
In the case of your application, the Technical Review was satisfactory, and it concluded that water would be available for this use for the time period described in the proposed certificate conditions of the attached Report.

The Report does not represent any commitment by the Department to ultimately approve your application. Before a certificate may be granted, the Department must complete a public interest review.

In this second step of the review process, state regulations require that other water users and the general public be given an opportunity to object to your proposed water use. You also may object to any of the Department's findings or proposed certificate conditions contained in the technical report. If you wish to object, you must file your objection with the Department in writing by 5 p.m. on or before February 1, 1995. Interested parties must also submit their objections before the same deadline.

If you have questions, please feel free to telephone me or any of the Department's Water Rights Division staff members. My telephone number is 378-3739 in Salem, or you may call toll-free from within the state to 1-800-624-3199.

Sincerely,



Michael J. Mattick
Water Right Specialist

Enclosures: 21 Technical Reviews



t:\instream\cover

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

Date: November 25, 1994

OREGON WATER RESOURCES DEPARTMENT

SATISFACTORY REPORT OF TECHNICAL REVIEW

FOR AN INSTREAM WATER RIGHT APPLICATION

OBJECTIONS TO THE PROPOSED INSTREAM WATER RIGHT TECHNICAL REVIEW REPORT, AS DESCRIBED BELOW, MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 158 12th St. NE, SALEM, OREGON 97310, ON OR BEFORE 5 PM: February 1, 1995.

1. APPLICATION FILE NUMBER - IS 72186
2. APPLICATION INFORMATION

Application name/address/phone:

Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207
503-229-5400

Date application received for filing and/or tentative date of priority: 1/29/1992

Source: N FK BURNT R tributary to BURNT R

County: BAKER

Purpose: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE AND JUVENILE REARING OF RAINBOW TROUT.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st $\frac{1}{2}$	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	6.0	6.0	6.0	6.0
2nd $\frac{1}{2}$	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	6.0	6.0	6.0	6.0

To be maintained in:

NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, TOWNSHIP 12S, RANGE 37E WM)

The application is complete and free of defects.

The following supporting data has been submitted by the applicant:

- (a) The Fish and Wildlife Resources of the Powder Basin and Their Water Requirements; August 1967.
- (b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.
- (c) Development 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.

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

An assessment with respect to other Commission administrative rules, including but not limited to the applicable basin program 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.

The evaluation of the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application is described below. The recommended flows take into consideration planned uses and reasonably anticipated future demands for water from the source for agricultural and other uses as required by the standards for public interest review:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	6.0	6.0	6.0	6.0
2nd%	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	6.0	6.0	6.0	6.0
	9.40	21.5	88.6	217	131	35.2	15.4	6.97	4.88	4.99	6.50	8.01
1st%	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	6.0	6.0	6.0	6.0
2nd%	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	6.0	6.0	6.0	6.0

4. REPORT CONCLUSIONS

The proposed water use, as conditioned, passed this technical review. The information contained in the application along with the supporting data submitted by the applicant indicate that the flow levels set out in this report are necessary to protect the public use.

The supporting data states that the recommended flows are necessary to meet the biological requirements for spawning and rearing of salmonids and resident game fish. Consideration of habitat type, stream depth and water velocity were considered by the applicant in development of the flow levels. (See *Determining Minimum Flow Requirements for Fish*, ODFW Report January 20, 1984.) The recommended flow volumes are necessary to ensure appropriate levels of dissolved oxygen, turbidity, pH and temperature.

Minimum stream flow recommendations (ODFW MIN) developed from the 1965 and 1966 study are intended to provide suitable environment during appropriate seasons to perpetuate minimum desirable conditions capable of maintaining trout populations. The recommended minimums are based primarily on the biological requirements of the fish present and follow seasonal stream discharge patterns to which the life cycles of salmonids have become adapted. (See 1967 report)

5. PROPOSED CERTIFICATE CONDITIONS

[The following proposed conditions will apply to water use and will appear on the face of the 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
1st½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2nd½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

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. This instream right shall not have priority over rights to use water for 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.

245
22
216

COPY CHECK-OFF SHEET FOR INSTREAM TECHNICAL REVIEWS

CC: FILE # 21 Bolin I TWR

- ✓ WATERWATCH
- ✓ ODF&W (DEPENDING ON - IF NOT APPLICANT) COUNTY (IES): 3. 10. 7 2 Field off/line
- ✓ WATERMASTER # 8
- ✓ REGIONAL MANAGER - E
- ✓ KEN STAHR

OTHER ADDRESSES: (OVER FOR MORE ADDRESSES)

- ✓ AGRICULTURE, DEPARTMENT OF, VES GARNER
- ✓ BOYER, JOHN, JR.
- ✓ COALITION FOR REPOSNSIBLE WATER PLANNING
- ~~COOS COUNTY BOARD OF COMMISSIONERS, GORDON ROSS (COOS RIVER BASIN ONLY)~~
- ✓ CROOK COUNTY STOCKGROWERS ASSOC., JEFF & RUNINDA MCCORMACK
- ✓ DEPARTMENT OF ENVIRONMENTAL OUALITY
- ✓ DOUGLAS COUNTY LIVESTOCK ASSOCIATION

CASEWORKER

ORIGINAL TO APPLICANT 10/14/94

COPY CHECK-OFF SHEET FOR INSTREAM TECHNICAL REVIEWS

OTHER ADDRESSES:

- ✓ F. A. I. R.
- ✓ FRUIT GROWERS LEAGUE
- ✓ HURRICANE CREEK IRRIGATION DITCH CORPORATION, RICHARD A. BOUCHER, SEC./TREAS.
- ✓ ILLINOIS VALLEY WATER RIGHT OWNERS ASSOC.
- ✓ LAKE COUNTY STOCKGROWERS, ANN TRACY, PRESIDENT
- ✓ MORROW COUNTY COMMISSIONER, RAY FRENCH
- ✓ MOON, DAVID, ATTORNEY
- ✓ OREGON ASSOCIATION OF NURSERYMEN, INC., CLAYTON W. HANNON, EXECUTIVE DIRECTOR
- ✓ OREGON ASSOCIATION OF REALTORS, JERRY SCHMIDT, WATER CONSULTANT
- ✓ OREGON CATTLEMEN'S ASSOC.
- ✓ OREGON HOP GROWERS ASSOC.
- ✓ OREGON SHEEP GROWERS ASSOCIATION, INC.
- ✓ OREGON WHEAT GROWERS LEAGUE, MACK KERNS
- ✓ WALLOWA COUNTY COURT, OFFICE OF THE JUDGE
- ✓ WALLOWA COUNTY STOCKGROWERS ASSOC., C/O JEAN STUBBLEFIELD, SECRETARY
- ✓ WATER FOR LIFE
- ✓ WATER RESOURCES CONGRESS

REVISED: 10/14/94

and 216 other addresses from Cindy's list (203) and
other commentators found in other County Board & files.

RECEIVED

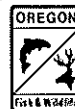
FEB 17 1994

WATER RESOURCES DEP
SALEM, OREGON

72186
Oregon

DEPARTMENT OF
FISH AND
WILDLIFE

February 17, 1994



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

RE: Instream Water Right Application #s 70249, 70288,
70942 through 70944, 70946 through 70960, 71221
through 71280, 71282 through 71890, and 71921 through
72946; Reports of Technical Review

General Comments

According to OAR 690-77-026 (1), WRD "shall undertake a technical review...and prepare a report." This subsection further lists 8 [(a) - (h)] mandatory criteria which, as a minimum, must be assessed during the technical review. ODFW has concerns with the apparent level of assessment relative to subsection (c):

OAR 690-77-026 (1) (c)--Assessing the proposed instream water right with respect to conditions previously imposed on other instream water rights granted for use of water from the same source.

In the 115 subject reports of technical review, WRD is proposing to condition each application to exempt human and livestock consumption from regulation in favor of these instream rights as follows:

This instream right shall not have priority over human or livestock consumption.

Instream water right certificates in the North Coast basin based on conversion of minimum perennial streamflows generally contain similar conditioning language giving preference to the listed uses.

By rule, WRD's technical review process includes assessing conditions previously imposed on other instream water rights from the same source. If found to be appropriate, WRD may propose that new instream water rights contain the same exemption. There is no requirement that this exemption be automatically included as part of a technical review.



2501 SW First Avenue
PO Box 59
Portland, OR 97207 -
(503) 229-5400
TDD (503) 229-5459

When ODFW reviewed WRD files on some of these applications for documentation of assessments of prior conditions, we found nothing to indicate that any such assessments had been done. ODFW, therefore, assumes that the required assessments were not done and, therefore, objects to the routine placement of the proposed exemption on any of these applications on the grounds that to do so would be contrary to the public's interest in maintaining fish populations in North Coast basin streams. OAR 690-11-195 (4d).

Specific Comments

Application # 70948

Section 5, Proposed Conditions, is missing from this Report of Technical Review.

Application # 71241

For the month of December:

1. The minimum flow level recommended by ODFW in the North Coast basin Environmental Investigation Report is 88 cfs.
2. The reported estimated average natural flow for December here is 131 cfs.
3. WRD is proposing in the Report of Technical Review to allocate 80 cfs.

ODFW believes the proper amount to be protected during December is 88 cfs.

Application # 71258

Here, the estimated average natural flow is less than the minimum flow recommended by ODFW for the entire year. Because this is the only instance where this has happened to date, the occurrence is suspect. ODFW requests that the water availability analysis for this reach of Miami River be reexamined.

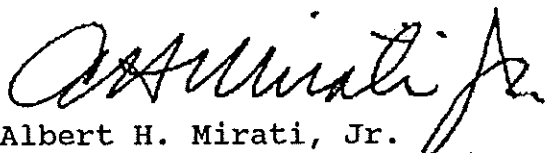
Application # 71280

The recommended flow numbers listed for September through April in the Application Information and Technical Review sections of the Report of Technical Review do not agree. Those listed in the Application Information section are correct.

North Coast Basin IWRs
February 17, 1994
Page 3

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Mirati Jr.", written in dark ink.

Albert H. Mirati, Jr.
Water Right Review Coordinator

c. WaterWatch of Oregon (public information request)
Jill Zarnowitz/Stephanie Burchfield
Penny Harrison, DOJ

FILE: NCOAST.IWR

04/06/92 16:05

X 503 499 3239

BEN LOMBARDO, JR.

P. 01

PostNet Brand

Fax Transmittal Memo 7672

To Keith
Company Burnt River ID
Location

Fax # 446-3365

Comments

Telephone #

No. of Pages	3	Today's Date	4.6.92	Time	440
From	Penny				
Company	Kip Lombard				
Location					
Fax #					
Original Disposition:	<input type="checkbox"/> Destroy	<input type="checkbox"/> Retain	<input type="checkbox"/> Call for pickup		

BEFORE THE WATER RESOURCES COMMISSION OF OREGON

In the Matter of
Instream Water Rights,
Applications No.'s 72160,
72161, 72162, 72168, 72169,
72177, 72178, 72185, and
72186, being all those
applications filed by the
OREGON DEPARTMENT OF FISH
AND WILDLIFE ON THE BURNT
RIVER SYSTEM.

PETITION OF BURNT RIVER
IRRIGATION DISTRICT FOR
PUBLIC HEARING, UNDER
ORS 537.343

The BURNT RIVER IRRIGATION DISTRICT respectfully petitions the Commission for a public hearing pursuant to ORS 537.343 regarding the above instream water rights applications filed by the Oregon Department of Fish and Wildlife and represents as follows in support of this petition:

1. The Burnt River Irrigation District has previously requested the Water Resources Commission to establish a reservation for unappropriated water from the South Fork of the Burnt River pursuant to OAR 690-77-200, for the reasons which are stated in said reservation request which is specifically incorporated herein. The combined rulemaking and contested case proceedings pursuant to OAR 690-77-200 have been continued by the Department pending negotiations between the District, the Oregon

Department of Fish and Wildlife, and other interested parties.

It would be in public interest to withhold action on the pending

as well as to publicly advise to withhold action on the pending

instream water rights applications in the Burnt River System

pending the conduct of the foregoing negotiations.

2. Agriculture, and particularly irrigated agriculture, is

Page 1 - PETITION

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SEN LONBARD, JR.

P.02

the dominant land use along the Burnt River System. The Baker County Comprehensive Plan recognizes the predominance of agriculture within the area. The instream water rights as requested may preclude planned agricultural uses which have a reasonable chance of being developed and which would provide a greater benefit to the public from the use of the unappropriated water available.

3. Under its reservation request referred to above, the District is contemplating one or more multipurpose storage projects which may be a source, in part, of future instream flows. A public hearing would allow evidence to be presented and considered whether instream flows can or should be satisfied in part from future storage projects verses natural flows.

4. Existing water rights may be impaired due to the unique delivery system for most agriculture in the Burnt River System. Most irrigated lands are along side the river and the irrigators withdraw directly from the river. Any unused irrigation waters return immediately to the system and are used by downstream irrigators. Management of the requested instream flows would be very difficult if not impossible and may very well impair the rights of the irrigators who currently have rights along the system.

5. Petitioner is aware that the Northwest Power Planning Council is currently considering establishment of certain fisheries policies which may or may not require different flows

04/06/92 16:00

X 503 488 3239

BEN LOMBARD, JR.

P.03

in those tributaries which serve the Snake and Columbia Rivers than those flows which are being requested here. The pending applications should be coordinated and be consistent with the fisheries policies established by the Northwest Power Planning Council.

6. A hearing is further requested to determine whether the amounts applied for are those reasonably necessary to support the public uses recommended and do not exceed the estimated average natural stream flows.

Petitioner requests that the Director commence the negotiations process under OAR 690-77-030(3).

DATED: April 6, 1992.

Respectfully Submitted:

BURNT RIVER IRRIGATION DISTRICT

BY: 

BEN LOMBARD, JR., OSB #65069
Attorney



United States
Department of
Agriculture

Forest
Service

Wallowa-Whitman
National Forest

P. O. Box 907
Baker City, OR 97814

Reply to: 2540

Date: March 18, 1992

72185
86
87
78
60
61
62
77
62

State of Oregon
Water Resources Department
ATTN: Water Rights Section
3850 Portland Road NE
Salem, OR 97310

Enclosed is a summary of the impacts of 36 new ODFW instream water right applications in the Powder Basin on Forest programs associated with non-reserved acquired lands managed by the Wallowa-Whitman National Forest.

We request that the Department, the Water Resources Commission, and the Department of Fish and Wildlife review this information and discuss it with Tim Bliss, Water Rights Program Coordinator, Wallowa-Whitman NF (503-523-6391) and Mike Lohrey, Regional Water Rights Program Coordinator (503-326-5927), as needed.

The Forest is raising many of the same concerns expressed in a July 29, 1991 letter to you regarding 40 ODFW instream water right applications in the Grande Ronde Basin and adjacent basins. We acknowledge receipt of Michael J. Mattick's January 17, 1992 response to this letter. Even though Mr. Mattick's response to our concerns and requested relief appear to be adequate, we are restating many of our concerns "for the record."

The policy of the Pacific Northwest Region is to support the State's instream water right acquisition program in order to protect stream-dependent flora and fauna. Yet, the Wallowa-Whitman NF also has the obligation to notify the State of potential impacts to other Forest programs and outputs identified in our Forest Plan.

Sincerely,

R. M. RICHMOND
Forest Supervisor



Enclosure

cc: (see next page)



cc: Mike Lohrey, Watershed, Regional Office
District Rangers: Baker RD, Unity RD, La Grande RD, Pine RD

Al Mirati
Oregon Department of Fish and Wildlife
2501 SW First Avenue
Portland, OR 97207

Jim Lauman
Oregon Department of Fish and Wildlife
107 Twentieth Street
La Grande, OR 97850

V. Kent Searles, Regional Manager
Oregon Water Resources Department
Baker County Courthouse
Baker City, OR 97814



WaterWatch

O F O R E G O N

72186

February 7, 1992

Stephen C. Brown
Senior Water Rights Specialist
Applications and Permits Section
Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

Re: Application for Instream Water Rights #72159 thru 72194
Oregon Department of Fish and Wildlife
Powder River and Burnt River Basins, Baker & Union Co.

The Burnt and Powder River basins in Baker and Union County have been adversely effected by past water management activities. Native fish in these streams are now confined to small tributary streams because of overappropriation of the surface waters and unscreened irrigation diversions.

WaterWatch supports the efforts of the Oregon Department of Fish and Wildlife to obtain instream water rights in these streams in order to provide some level of future protection for the region's valuable fish and wildlife. WaterWatch urges the Oregon Water Resources Department to issue these instream water rights at the earliest opportunity in the amounts requested.

Please inform us of any protests that you may receive to these applications.

Sincerely,


Jim Myron

Witness the signature of the Water Resources Director affixed this 1st
day of _____, 19__.

Water Resources Director

Recorded in State Record of Water Right Certificate number _____.

IS72186

JUL 29 1992

IWR Application # 72186 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

**Application for Instream Water Right
by Oregon Department of Fish and Wildlife**

There is no fee required for this application.

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

1. The name of the stream of the proposed instream water right is North Fork Burnt River, a tributary of Burnt River (Snake River).
2. The public use this instream water right is based on is providing required stream flows for rainbow trout.
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
6	6/12	25	25	25	25/20	12/6	6	6	6	6	6

4. The reach of the stream identified for an instream water right is from (upstream end) Camp Creek, river mile 14.8, within the NE quarter of the SW quarter of Section 34, Township 10S, Range 36E W.M., in Baker County...

Downstream to Unity Reservoir, river mile 2, within the NE quarter of the NW quarter of Section 17, Township 12S, Range 37E W.M., in Baker County.

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

Dept. of Environmental Quality	Date: January 8, 1992
ODFW (Fish, Wldlf, and Habitat)	Date: January 8, 1992
Parks and Recreation Division	Date: January 8, 1992

IWR Application # _____ Certificate # _____

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

Use USGS gage 13269300 and maintain flows to Unity Reservoir.

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 a monitoring plan and 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: The requested flows are the minimum required to maintain salmonid populations at their current levels. No provision is made at these flows for population restoration or enhancement.

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: 1/22/92

Oregon Department of Fish and
Wildlife

Signed: _____


Assistant Director
Habitat Conservation Div.

File: NFBURNT2.APP

IWR Application # 72186 Certificate # _____

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

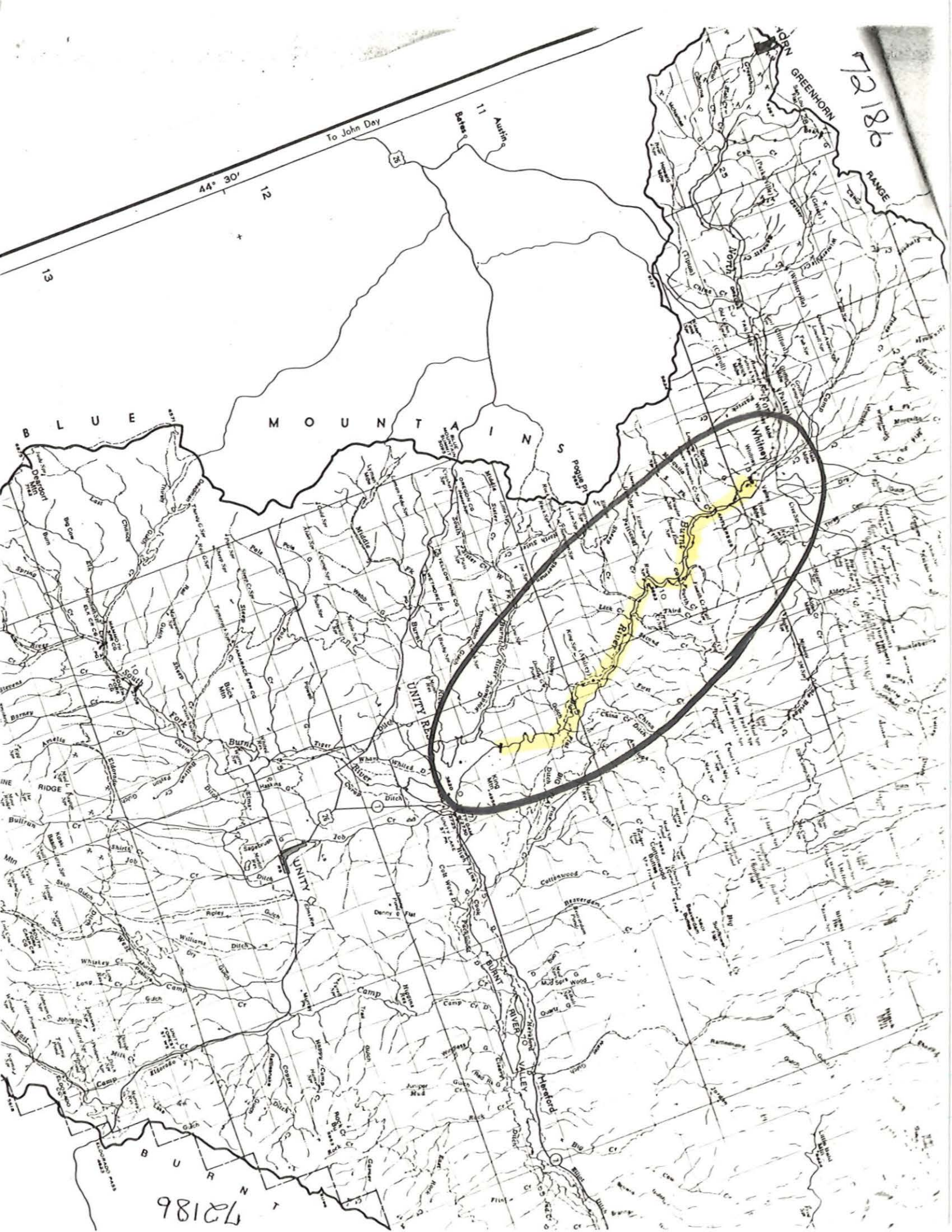
In order to retain its priority, this application must be returned to the Water Resources Department with corrections on or before

_____, 19____.

Date: _____, 19____.

This document was first received at the Water Resources Department in Salem, Oregon, on the 29th day of January, 1992, at 8:00 o'clock A M.

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



72186

72186

<u>DATE</u>	<u>INITIALS</u>	<u>MINIMUM REQUIREMENTS TO FILE</u>
_____	_____	Name and mailing address
_____	_____	Source of water
_____	_____	Quantity of water
_____	_____	Location of project
_____	_____	Use of water
_____	_____	Signature of applicant
_____	_____	Allowable use by policy
_____	_____	State Engineer withdrawal
_____	_____	Legislative withdrawal
_____	_____	Land use approved _____ pending _____
<u>FIELD OPERATIONS</u>		
_____	_____	Application date stamped per money receipt date
_____	_____	Stream Indexed
_____	_____	Stream Code _____
_____	_____	Scenic Waterway _____
_____	_____	Findings:
_____	_____	1) Concluded - Scenic-Reg Ack letter
_____	_____	2) Under Study - Scenic-Ack letter
_____	_____	3) Basin 2 - Willamette-Ack letter
_____	_____	Plat Carded and copy made YES NO
_____	_____	Conflicts (well _____ surface _____) _____
_____	_____	Prior ISWR # _____
_____	_____	Within Irrigation District _____ (name)
_____	_____	Notified _____
_____	_____	District excerpt received _____
_____	_____	Entered in Paradox
_____	_____	Prepare six copies of Draft Permit
_____	_____	Send one copy to Data Center
<u>SUPPORT SERVICES</u>		
_____	_____	Stamp contents with application number
_____	_____	Mail/Provide copies of draft permits to DEQ, ODFW, PARKS, AND WATERMASTER
_____	_____	Mail ack letter (provided by Data Center) with receipt to applicant, cc to CWRE and file
_____	_____	Place label on file and card
_____	_____	If dam is over 10 feet or storage exceeds 9.2 AC-FT, route file to Dam Safety Section
_____	_____	Notify Irrigation District
<u>FIELD OPERATIONS</u>		
_____	_____	Ownership Statement YES NO
_____	_____	Name and address of all owners _____
_____	_____	Other landowners notified _____
_____	_____	Legal Description _____
_____	_____	Need Commission review _____
_____	_____	Requests greater than 5.0 cfs
_____	_____	Dam height greater than 20 feet
_____	_____	Storage greater than 100 acre-feet
_____	_____	Out of Basin diversion
_____	_____	Groundwater recharge project
_____	_____	Other substantial public interest
_____	_____	GW comments received _____ resolved _____
_____	_____	ODFW comments received _____ resolved _____
_____	_____	DEQ comments received _____ resolved _____
_____	_____	Interest Groups _____
_____	_____	Water availability received
_____	_____	Objections received _____ resolved _____
_____	_____	Protest received _____ resolved _____
_____	_____	Management Codes
EXAMINATION FEE:	_____	REMARKS: _____
RECORDING FEE:	_____	_____
TOTAL:	_____	_____
REFUND:	_____	_____
DEFICIENT:	_____	_____

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT #

4702

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

INVOICE #

IS 72186

RECEIVED FROM:

Burnt River

BY:

APPLICATION	
PERMIT	
TRANSFER	

CASH:

☐

CHECK: #

124-12

OTHER: (IDENTIFY)

☐

TOTAL REC'D

\$ 200⁰⁰

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$

TC165 DEPOSIT LIAB. (IDENTIFY)

\$

WATER RIGHTS:

0201 SURFACE WATER

EXAM FEE

\$

0202

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0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

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WELL CONSTRUCTION

EXAM FEE

\$

0219

\$

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

0220

\$

0223

OTHER (IDENTIFY)

Protest

200⁰⁰

PCA 77235

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HYDRO APPLICATION

\$

RECEIPT #

4702

DATED:

7-25-96

BY:

Flo L

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

NUMBER 7311

Check 200⁰⁰ Mo _____ Cash _____

- _____ Surface Application
_____ Reservoir Application
_____ Ground Water Application
_____ Transfer Application
_____ PFO Request
_____ Research
_____ Hydroelectric Fees
_____ Copying
_____ Assignment
_____ Extension of Time
☒ Protest
_____ Other

adam

Application No. **72186**
Permit No.

ODFW

PO BOX 59, PORTLAND, OR 97207

Assigned

Address

Beginning construction

Completion of construction

Extended to

Complete application of water

Extended to