

ASSIGNED

Name Mt. Hood Meadows, Oregon, Ltd.

By

Address Post Office Box 470

Mt. Hood, OR 97041

Date filed June 21, 1989

Priority

Action suspended until 002-2-10

Return to applicant

Date of approval 4/14/98 12/9/99

CONSTRUCTION

Date for beginning 4/14/99 12/9/00

Date for completion

Extended to

Date for application of water 4/1/02 10/1/04

Extended to

PROSECUTION OF WORK

Form "A" filed

Form "B" filed

Form "C" filed

FINAL PROOF

Plank mailed

Proof received

Date certificate issued

Application No. 69976

Permit No. 53637

Certificate No.

Stream Index, Page No. 4.24A

04.1740.0150.0920

see 49732

FEES PAID

Date	Amount	Receipt No.
6-21-89	385.-	58338
MR 9-8-97	50.00	2.71657
MT 9-8-97	35.00	6.00000
3-17-05	25.00	73380
Ext. - 3-17-05	250.00	73381
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.
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ASSIGNMENTS

Date	To Whom	Address	Volume	Page
10-15-99	Meadows Utilities LLC - POB	470-Mt Hood, OR 97041	8	588

REMARKS



**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **73381**

INVOICE # _____

RECEIVED FROM: Int. Hood Meadows, Oregon, LTD

BY: _____

APPLICATION	69976
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 38379 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 250.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ 1
 OTHER: (IDENTIFY) \$ 1

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

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES	\$ <u>1</u>
0410	RESEARCH FEES	\$ <u>1</u>
0408	MISC REVENUE: (IDENTIFY) _____	\$ <u>1</u>
TC162	DEPOSIT LIAB. (IDENTIFY) _____	\$ <u>1</u>
0240	EXTENSION OF TIME	\$ <u>250.00</u>

WATER RIGHTS:

0201	SURFACE WATER	EXAM FEE \$ _____	0202	RECORD FEE \$ _____
0203	GROUND WATER	EXAM FEE \$ _____	0204	RECORD FEE \$ _____
0205	TRANSFER	EXAM FEE \$ _____		

WELL CONSTRUCTION

0218	WELL DRILL CONSTRUCTOR	EXAM FEE \$ _____	0219	LICENSE FEE \$ _____
	LANDOWNER'S PERMIT		0220	LICENSE FEE \$ _____

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$ _____	CARD # _____
0210	MONITORING WELLS	\$ _____	CARD # _____

OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

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

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ \$ _____

RECEIPT: **73381**

DATED: 3/17/05 BY: [Signature]



Oregon

Kate Brown, Governor

S-69976

Water Resources Department

North Mall Office Building

725 Summer St NE, Ste A

Salem, OR 97301

Phone: 503-986-0900

Fax: 503-986-0904

www.Oregon.gov/OWRD

July 24, 2020

Meadows Utilities, LLC
Attn: Steve Warila
PO Box 470
Mount Hood, OR 97041

Subject: Water Management and Conservation Plan

Dear Meadows Utilities, LLC:

Enclosed; please find the final order approving your Water Management and Conservation Plan. The final order authorizes the following:

- The limitation of the diversion of water under Permit G-13388 established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to divert up to **0.11 cfs** under **Permit G-13388**.
- The limitation of the diversion of water under Permit S-53637 established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to divert up to **0.27 cfs** under **Permit S-53637**.
- The limitation of storage of water under **Permit R-12758** established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to store up to **2.48 AF** (being 1.54 AF in an existing reservoir and 0.94 AF in a proposed reservoir).

The attached final order specifies that Meadows Utilities's plan shall remain in effect until **July 24, 2030**. Additionally, Meadows Utilities is required to submit a progress report to the Department by **July 24, 2025**, detailing progress made toward the implementation of conservation benchmarks scheduled in the plan. Finally, Meadows Utilities must submit an updated Water Management and Conservation Plan to the Department by **January 24, 2030**.

***NOTE:** The deadline established in the attached final order for submittal of an updated water management and conservation plan (consistent with OAR Chapter 690, Division 086) shall not relieve Meadows Utilities, LLC from any existing or future requirement(s) for submittal of a water management and conservation plan at an earlier date as established through other final orders of the Department.*

We appreciate your cooperation in this effort. Please do not hesitate to contact me at 503-986-0919 or Kerri.H.Cope@oregon.gov if you have any questions.

Sincerely,

Kerri H. Cope

Kerri Cope
Water Management and Conservation Analyst
Water Right Services Division

Enclosure

cc: WMCP File
Bob Wood District #3 Watermaster (via email)
Schwabe, Williamson & Wyatt, Attn: Elizabeth Howard
Cascade Resources Advocacy Group, Attn: Ralph Bloemers

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of the Proposed Water	)	FINAL ORDER APPROVING A
Management and Conservation Plan for	)	WATER MANAGEMENT AND
Meadows Utilities, LLC, Hood River	)	CONSERVATION PLAN
County		

Authority

OAR Chapter 690, Division 086, establishes the process and criteria for approving water management and conservation plans required under the conditions of permits, permit extensions and other orders of the Department. An approved water management and conservation plan may authorize the diversion and use of water under a permit extended pursuant to OAR Chapter 690, Division 315.

Findings of Fact

1. The Meadows Utilities, LLC submitted a Water Management and Conservation Plan (plan) to the Water Resources Department (Department) on September 6, 2005. The required statutory fee for review of the plan was received by the Department on September 7, 2005. The plan was required by a condition set forth under Permit G-13388.
2. The Department published notice of receipt of the plan on September 13, 2005, as required under OAR Chapter 690, Division 086. Timely comments were received from Cascade Resources Advocacy Group on behalf of Friends of Mt. Hood on October 13, 2005.
3. The Department provided written comments on the plan to the Meadow Utilities, LLC on January 26, 2006, September 13, 2019, April 14, 2020, and June 29, 2020. In response, Meadow Utilities, LLC submitted revised plans on July 8, 2019, April 10, 2020, June 4, 2020, and a final revised plan on July 8, 2020.
4. The Department reviewed the final revised plan, as well as the comment received, and finds that it contains all of the elements required under OAR 690-086-0125 and OAR 690-086-0130.
5. The projections of future water needs in the plan demonstrate a need for 0.11 cfs of water available under Permit G-13388, storage of 2.48 AF under Permit R-12758, and 0.27cfs under Permit S-53637 to help meet overall projected 20-year demands. These projections are reasonable and consistent with the Meadow Utilities, LLC's land use plan.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

6. The system is fully metered and the rate structure includes a base rate and volumetric charge. Unaccounted-for water is estimated at eight (8) percent.
7. The final revised Plan includes 5-year benchmarks for implementation and/or continuation of the following: annual water audits; system-wide metering; leak detection and repair, and rebates on replacement of inefficient fixtures.
8. The final revised Plan includes 5-year benchmarks for evaluation, development, and implementation of the following conservation measures:
 - a. Public Education
 - i. Beginning in 2020, Meadows Utilities, LLC will provide employee education annually in November of each year, and will post conservation educational material on the Mt. Hood Meadow's website.
 - b. Meter Testing and Maintenance
 - i. Beginning in 2020, Meadows Utilities, LLC will test every meter every five (5) years and replace or repair as necessary.
9. The final revised Plan identifies groundwater, and the two unnamed springs as the source of Meadows Utilities, LLC's water rights. The final revised Plan also describes the aquatic resource concerns and the water quality parameters for these sources and that the wells are not located in a designated critical groundwater area.
10. The water curtailment element included in the plan satisfactorily promotes water curtailment practices and includes a list of three (3) stages of alert with concurrent curtailment actions.
11. The diversion of water under Permits G-13388, S-53637 and the fill rate for storage of water under Permit R-12758 will be initiated during the next 20 years and is consistent with OAR 690-086-0130(7), as follows:
 - a. As evidenced by the 5-year benchmarks described in Findings of Fact #7 and #8, the final revised plan includes a schedule for the continuation and/or implementation of conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources;
 - b. Considering that water savings alone from identified conservation and curtailment measures cannot fully meet Meadows Utilities' demand projections, and that the current water sources cannot adequately meet Meadows Utilities' water demand projections, access to increased diversions of water under existing Permits G-13388, G-53637, and R-12758 is the most feasible and appropriate water supply alternative to the supplier; and
 - c. Meadows Utilities, LLC is not legally required to provide mitigation or address limitations or restrictions in the development of permits G-13388, G-53637, and R-12758.

Conclusion of Law

The Water Management and Conservation Plan submitted by the Meadows Utilities, LLC is consistent with the criteria in OAR Chapter 690, Division 086.

Now, therefore, it is **ORDERED**:

Duration of Plan Approval:

1. The Meadows Utilities, LLC Water Management and Conservation Plan is approved and shall remain in effect until **July 24, 2030**, unless this approval is rescinded pursuant to OAR 690-086-0920.

Development Limitation(s):

2. The limitation of the diversion of water under Permit G-13388 established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to divert up to **0.11 cfs** under **Permit G-13388**.
3. The limitation of the diversion of water under Permit S-53637 established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to divert up to **0.27 cfs** under **Permit S-53637**.
4. The limitation of storage of water under **Permit R-12758** established by the extension of time approved on November 8, 2019 is removed and, subject to other limitations or conditions of the permit, Meadows Utilities is authorized to store up to **2.48 AF** (being 1.54 AF in an existing reservoir and 0.94 AF in a proposed reservoir).
5. Failure to meet the conservation benchmarks contained in the Findings of Fact listed below may result in the reduction of the quantity of water authorized for diversion under Permits G-1338 and S-53637 and the amount authorized for storage under Permit R-12758 during review of Meadows Utilities, LLC's next plan update.
 - a. Finding of Fact #7 of this final order; and
 - b. Finding of Fact #8 of this final order.

Plan Update Schedule:

6. The Meadows Utilities, LLC shall submit an updated plan meeting the requirements of OAR Chapter 690, Division 086 within **10 years** and no later than **January 24, 2030**.

Progress Report Schedule:

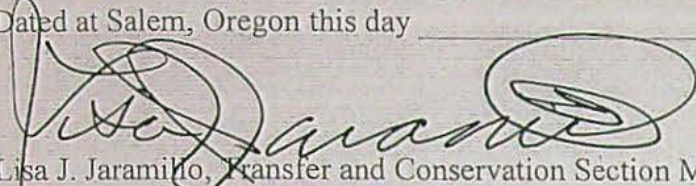
7. The Meadows Utilities, LLC shall submit a progress report containing the information required under OAR 690-086-0120(4) by **July 24, 2025**.

Other Requirements for Plan Submittal:

8. The deadline established herein for the submittal of an updated Water Management and Conservation Plan (consistent with OAR Chapter 690, Division 086) shall not relieve the Meadows Utilities, LLC from any existing or future requirement(s) for submittal of a Water Management and Conservation Plan at an earlier date as established through other final orders of the Department.

AUG 11 2020

Dated at Salem, Oregon this day _____


Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources

Mailing date: _____ AUG 12 2020

Notice Regarding Service Members: Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Mailing List for Extension FO Copies

FO Date: November 8, 2019

Copies Mailed

Application S-69976
Permit S-53637

By: TM
On: 11/8/2019

Original mailed to permit holder:

Meadows Utilities
Steve Warila
PO Box 470
Mt. Hood, OR 97041

Copies sent to:

1. WRD - App. File S-69976 / Permit S-53637
2. Agent &/or CWRE representing applicant
3. Schwabe, Williamson & Wyatt
Elizabeth Howard
1211 SW 5th Ave., Suite 1900
Portland, OR 97204

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

5. WRD - Watermaster District 3 – Robert Wood
6. WRD - Kerri Cope, Water Supply and Conservation Team (WMCP)
Done by _____ Date _____

CASEWORKER: JDP

Oregon Water Resources Department
Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time
for Permit S-53637, Water Right Application S-69976,
in the name of the Meadows Utilities

)
) FINAL
) ORDER

Permit Information

Application File S-69976/ Permit S-53637

Basin 4 – Hood Basin / Watermaster District 3

Date of Priority: June 29, 1989

Authorized Use of Water

Source of Water:	two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, and two unnamed springs, tributaries of East Fork Hood River
Purpose or Use:	Quasi-Municipal Use
Maximum Rate:	0.27 Cubic Foot per Second (cfs) total from one or both of the unnamed
LIVE FLOW	springs, further limited to not more than 0.055 cfs for erosion control
Maximum	2.48 Acre-Feet (AF) from stored water only, being 1.54 AF from an
Volume:	existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir,
STORED WATER	further limited to a maximum cumulative total of live flow and stored water of 166.0 AF per year

**This Extension of Time request is being processed in accordance with
Oregon Revised Statute 537.230 and 539.010(5), and
Oregon Administrative Rule Chapter 690, Division 315.**

Appeal Rights

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

Application History

The Department issued Permit S-53637 on April 14, 1998. The permit called for complete application of water to beneficial use by October 1, 2004. On March 17, 2005, Meadows Utilities submitted an application to the Department for an extension of time for Permit S-53637. In accordance with OAR 690-315-0050(2), on September 10, 2019, the Department issued a Proposed Final Order proposing to extend the time to fully apply water to beneficial use to October 1, 2039. The protest period closed October 25, 2019, in accordance with OAR 690-315-0060(1). No protest was filed.

FINDINGS OF FACT

The Department adopts and incorporates by reference the Proposed Final Order dated September 10, 2019.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2025, 2030, and 2035. A form will be enclosed with your Final Order.**

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

2. Development Limitations

No diversion of water is currently allowed under Permit S-53637. Diversion of any water (not to exceed the maximum authorized amount of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under

OAR Chapter 690, Division 86 which grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit R-12758 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-53637 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

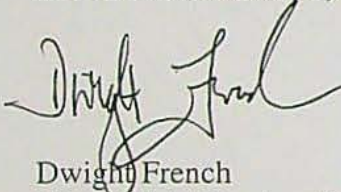
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0080(3).

ORDER

The extension of time for Application S-69976, Permit S-53637, therefore, is approved subject to conditions contained herein. The deadline for applying water to full beneficial use within the terms and conditions the permit is extended from October 1, 2004, to October 1, 2039.

DATED: November 8, 2019



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

If you have any questions about statements contained in this document, please contact Jeffrey Pierceall at (503) 986-0802.

If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900

Mailing List for Extension PFO Copies

September 10, 2019

Copies Mailed

Application S-69976
Permit S-53637

By: TM
On: 9/10/2019

Original mailed to:

Meadows Utilities
Steve Warila
PO Box 470
Mt. Hood, OR 97041

Copies sent to:

1. WRD - App. File S-69976 / Permit S-53637
2. Agent &/or CWRE representing applicant
3. Schwabe, Williamson & Wyatt
Elizabeth Howard
1211 SW 5th Ave., Suite 1900
Portland, OR 97204

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving electronic copy via e-mail (10 AM Tuesday of signature date)

5. CRAG/FOMH – Ralph Bloomers – ralph@crag.org
6. Oregon Chapter/Sierra Club – Oregon.chapter@sierraclub.org
7. WRD - Watermaster District 3 – Robert Wood
8. WRD - Kerri Cope, Water Supply and Conservation Team (WMCP)
Done by _____ *Date* _____

CASEWORKER: JDP

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

Application for Extension of Time

In the Matter of the Application for an Extension of Time
for Permit S-53637, Water Right Application S-69976,
in the name of the Meadows Utilities, LLC

) PROPOSED
) FINAL
) ORDER

Permit Information

Application File S-69976/ Permit S-53637

Basin 4 – Hood Basin / Watermaster District 3

Date of Priority: June 29, 1989

Authorized Use of Water

Source of Water:	two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, and two unnamed springs, tributaries of East Fork Hood River
Purpose or Use:	Quasi-Municipal Use
Maximum Rate:	0.27 Cubic Foot per Second (cfs) total from one or both of the unnamed
LIVE FLOW	springs, further limited to not more than 0.055 cfs for erosion control
Maximum	2.48 Acre-Feet (AF) from stored water only, being 1.54 AF from an
Volume:	existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir,
STORED WATER	further limited to a maximum cumulative total of live flow and stored water of 166.0 AF per year

This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315.

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

This Proposed Final Order applies only to Permit S-53637, water right Application S-69976.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- Grant an extension of time to apply water to full beneficial use from October 1, 2004, to October 1, 2039.
- Make the extension of time subject to certain conditions as set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources

Meadows – Meadows Utilities, LLC

PFO – Proposed Final Order

WMCP – Water Management and Conservation Plan

Units of Measure

cfs – cubic foot per second

gpm – gallons per minute

mgd – million gallons per day

AUTHORITY

Generally, see **ORS 537.230** and **OAR Chapter 690 Division 315**.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under **ORS 539.010(5)** and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0080 provides in pertinent part that the Department shall make findings to determine if an extension of time for municipal and/or quasi-municipal water use permit holders may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(5) authorizes the Department to include in an extension order, but is not limited to, any condition or provision needed to: ensure future diligence; mitigate the effects of the subsequent development on competing demands on the resource; and periodically document the continued need for the permit.

OAR 690-315-0050(6) requires the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

OAR 690-315-0090(3) authorizes the Department, under specific circumstances, to condition an extension of time for municipal and/or quasi-municipal water use permit holders to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a WMCP Plan under **OAR Chapter 690, Division 86**.

FINDINGS OF FACT

1. On April 14, 1998, Permit S-53259 was issued by the Department. On December 9, 1999, superseding Permit S-53637 was issued to correctly describe the name of the permittee, the priority date, and the amount of stored water that is allowed. The permit authorizes the use of up to 0.27 cfs of water from one or both of two unnamed springs, further limited to not more than 0.055 cfs for erosion control; and up to 2.48 AF from stored water only from the two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, being 1.54 AF from an existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir, all a tributary to the East Fork Hood River for quasi-municipal use. The combined use of live flow and stored water is further limited to no more than 166.0 AF per year. The permit specified that complete application of water was to be made on or before October 1, 2004.
2. On March 17, 2005, the permit holder, Meadows Utilities, LLC (Meadows) submitted an "Application for Extension of Time" (Application) to the Department requesting the time to apply water to full beneficial use under the terms and conditions of Permit S-53637 be extended from October 1, 2004, to October 1, 2017. This is the first extension of time request for Permit S-53637.
3. Notification of the Application for Extension of Time for Permit S-53637 was published in the Department's Public Notice dated April 5, 2005. Comments were received from Friends of Mount Hood and Oregon Chapter of the Sierra Club.
4. Meadows has requested, and has been granted administrative holds on the Application to allow for the parties involved to concentrate efforts on resolving land use issues. The most recent administrative hold expired on January 1, 2019.
5. On July 15, 2019, the permit holder submitted an amendment to their Application for Extension of Time. The amendment requested the extended time to apply water to full beneficial use be changed from October 1, 2017, to October 1, 2039, and provided updated information to reflect changes to the population projections, project completion schedule, and the federal legislation necessary to complete the land exchange associated with the project.
6. Notification of the updated Application for Extension of Time for Permit S-53637 was published in the Department's Public Notice dated July 23, 2019.

Review Criteria for Quasi-Municipal Water Use Permits [OAR 690-315-0080(1)]

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0080(1). This determination shall consider the applicable requirements of ORS 537.230¹, 537.630² and/or 539.010(5)³

¹ ORS 537.230 applies to surface water permits only.

² ORS 537.630 applies to ground water permits only.

³ ORS 537.010(5) applies to surface water and ground water permits.

Complete Extension of Time Application [OAR 690-315-0080(1)(a)]

7. On March 17, 2005, the Department received a completed application for extension of time and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0080(1)(b)]

8. Actual construction began prior to the June 29, 1990, deadline specified in the permit.

Duration of Extension [OAR 690-315-0080(1)(c)(d)]

Under OAR 690-315-0080(1)(c),(d), in order to approve an extension of time for municipal and quasi-municipal water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

9. The remaining work to be accomplished under Permit S-53637 consists of, completing construction of the water system, which includes installation of electrical service to the pump-house, and construction of a water line to the water treatment facility; and applying water to full beneficial use.
10. In addition to physical work remaining to be accomplished, numerous land use approvals, an appraisal and land exchange, and other administrative and governmental requirements are necessary; and anticipated opposition to each of these necessary steps to the development of the resort, will impact the development timeline.
11. No water authorized under Permit S-53637, has been appropriated for quasi-municipal use.
12. In addition to the 0.27 cfs of live flow water, and 2.48 AF of stored water authorized under Permit S-53637, Meadows holds the following rights:
 - Permit R-12758 for storage of 2.48 AF of water from two springs and a well within the East Fork Hood River Basin for quasi-municipal use;
 - Permit G-13388 for 0.11 cfs of water from a well in the East Fork Hood River Basin for quasi-municipal use;
 - Certificate 48445 for 0.22 cfs of water, being 0.21 cfs of water for ski facility (commercial use) and 0.01 cfs of water for fire suppression from East Fork Hood River;
 - Certificate 88981 for 0.78 cfs of water from a well within the Buck Creek Basin for commercial use;
 - Limited License 1741 for 0.27 cfs of water from a spring within East Fork Hood River Basin for commercial use (expires April 30, 2023); and
 - Limited License 1742 for 0.21 cfs of water from a spring within East Fork Hood River Basin for commercial use (expires April 30, 2023).

Meadows permits, limited licenses, and certificates total 0.38 cfs of water and 2.48 acre-feet (AF) of water for quasi-municipal use, and 1.47 cfs of water for commercial use,

including snowmaking, and 0.01 cfs of water for fire suppression. Meadows Utilities, LLC has not yet made use of 0.27 cfs of water under Permit S-53637, 2.48 AF of water under Permit R-12758, and 0.11 cfs of water under Permit G-13388.

13. Meadows peak water demand within its service area boundaries was 0.46 cfs in 2018.
14. According to the Application, Meadows estimates the peak daily visitation rate to increase at an estimated growth rate of 4.5 percent per year, reaching an estimated population of 14,288 by the year 2039. The estimate is based on the average numbers of skier visiting Mount Hood Meadows on an average peak day.
15. According to the Application, the peak demand is projected to be approximately 0.49 cfs of water by the year 2039.
16. Full development of Permit S-53637 is needed to meet the future water demands of Meadows, including system redundancy and emergency use.
17. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2039, to accomplish the application of water to beneficial use under the terms of Permit S-53637 is both reasonable and necessary.

Good Cause [OAR 690-315-0080(1)(e) and (3)(a-g)]

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0080(3).

Reasonable Diligence and Good Faith of the Appropriator [OAR 690-315-0080(3)(a) and (1)(c) and (4)]

Reasonable diligence and good faith of the appropriator must be demonstrated during the permit period or prior extension period as a part of evaluating good cause in determining whether or not to grant an extension. In determining the reasonable diligence and good faith of a municipal or quasi-municipal water use permit holder, the Department shall consider activities associated with the development of the right including, but not limited to, the items set forth under OAR 690-315-0080(4) and shall evaluate how well the applicant met the conditions of the permit or conditions of a prior extension period.

18. Actual construction began prior to the June 29, 1990, deadline specified in the permit.
19. Work accomplished during the original development time frame under Permit S-53637 includes entering into an installation and access agreement with Mt. Hood Railroad.
20. Since October 1, 2004, work accomplished by Meadows Utilities includes:
 - a. purchase and installation of material to construct and maintain a data logger on East Fork Hood River.

The Department has determined that work has been accomplished since permit issuance, which provides evidence of good cause and reasonable diligence in developing the permit.

21. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.
22. No water has been used under Permit S-53637.
23. The Department has considered the permit holder's compliance with conditions, and did not identify any concerns. The Application identifies that the required meter has not yet been installed, however, no water has been used under Permit S-53637.

Cost to Appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0080(3)(b)]

24. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.

The Market and Present Demands for Water [OAR 690-315-0080(3)(d) and (5)(a-f)]

For quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to 690-315-0080(3)(d), the Department shall also consider, but is not limited to, the factors in 690-315-0080(5)(a-f).

The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife [OAR 690-315-0080(5)(a-f)].

25. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-53637; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. The points of diversion for Permit S-53637, located within East Fork Hood River Basin, are not located within a Withdrawn Area. East Fork Hood River is not located within or above any state or federal scenic waterway, however it is located within an area ranked low for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. East Fork Hood River is listed by the Department of Environmental Quality as a water quality limited stream for Iron, Biological Criteria, Thallium, Temperature, and Copper.

Economic investment in the project to date [OAR 690-315-0080(5)(d)].

26. As of July 15, 2019, the permit holder has invested approximately \$885,194, which is less than 1 percent of the total projected cost for complete development of this project. The permit holder estimates an additional \$209,585,343 investment is needed for the completion of this project.

Other economic interests dependent on completion of the project [OAR 690-315-0080(5)(e)].

27. Meadows has identified surrounding communities as having economic interest in the continued development of the project, in that, the use of water under this permit will allow for increased visitation to Mount Hood Meadows ski area. Additional visitation will necessitate additional employees to be hired, who will in turn provide additional economic benefit to the area from local tax payments, as well as providing increased economic activity for local businesses.

Other factors relevant to the determination of the market and present demand for water and power [OAR 690-315-0080(5)(f)].

28. As described in Findings 12 through 17 Meadows Utilities has indicated, and the Department finds that Meadows Utilities must rely on full development of Permit S-53637 to meet future water demands.
29. Meadows Utilities projects a population increase of 4.5 percent per year over a 20 year period, being the years 2019 to 2039.
30. Given the current water supply situation of Meadows Utilities, as well as current and expected demands including system redundancy and emergency use, there is a market and present demand for the water to be supplied under Permit S-53637.
31. OAR 690-315-0050(6) requires a checkpoint condition on this extension of time in order to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.
32. OAR 690-315-0090(3) requires the Department to place a condition on this extension of time to provide that diversion of any water (not to exceed the maximum authorized of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) under Permit S-53637 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). A "Development Limitation" condition is specified under Item 2 of the "Conditions" section of this PFO to meet this requirement.

Fair Return Upon Investment [OAR 690-315-0080(3)(e)]

33. Use and income from the permitted water development project would result in reasonable returns upon the investment made in the project to date.

Other Governmental Requirements [OAR 690-315-0080(3)(f)]

34. Delays in the development of this project that have been caused by other governmental requirements have been identified. Federal Legislation to authorize a land exchange was necessary to begin development of the resort expansion where this water right is to serve. With additional appraisals necessary to complete the land exchange, it is not expected that the land exchange will occur until December 2020.

Events which Delayed Development under the Permit [OAR 690-315-0080(3)(g)]

35. According to Application, delay of development under Permit S-53637 was due, in part, to opposition to the expanded resort and subsequent protests, litigation and mediation, as well as slow progress on legislation and the subsequent land exchange with U.S Forrest Service.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.230(2).
2. The applicant has submitted a complete extension application form and the fee specified under ORS 536.050(1)(k), as required by OAR 690-315-0080(1)(a).
3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.230 as required by OAR 690-315-0080(1)(b)
4. The time requested to apply water to full beneficial use is reasonable, as required by OAR 690-315-0080(1)(c).
5. Full application of water to beneficial use can be completed by October 1, 2039⁴, as required by OAR 690-315-0080(1)(d).
6. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and the fair return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the water right permit holder had no control, and the Department has determined that the permit holder has shown good cause for an extension of time to apply the water to full beneficial use pursuant to OAR 690-315-0080(1)(e).

⁴ Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department..

7. For extensions exceeding five years, the Department shall establish progress checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between progress check points will not exceed five years periods, as required by OAR 690-315-0050(6).
8. As required by OAR 690-315-0090(3) and as described in Finding 27, above, and specified under Item 2 of the "Conditions" section of this PFO, the diversion of any water (not to exceed the maximum authorized of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) under Permit S-53637 shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan(s) under OAR Chapter 690, Division 86 that grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7).

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

extend the time to apply the water to beneficial use under Permit S-53637 from October 1, 2004, to October 1, 2039.

Subject to the following conditions:

CONDITIONS

1. Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2024, 2029, and 2034. A form will be enclosed with your Final Order.**

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

2. Development Limitations

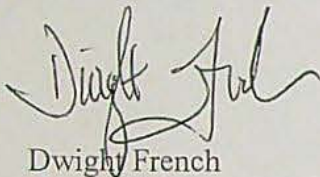
No diversion of water is currently allowed under Permit S-53637. Diversion of any water (not to exceed the maximum authorized amount of 0.11 cfs of live flow water and 2.48 AF of stored water under this permit) shall only be authorized upon issuance of a

final order approving a Water Management and Conservation Plan(s) (WMCP) under OAR Chapter 690, Division 86 which grants access to a greater rate of diversion under the permit consistent with OAR 690-086-0130(7). The required WMCP shall be submitted to the Department within 3 years of this Final Order. Use of water under Permit R-12758 must be consistent with this and subsequent WMCP's approved under OAR Chapter 690, Division 86 on file with the Department.

The Development Limitation established in the above paragraph supersedes any prior limitation of the diversion of water under Permit S-53637 that has been established under a prior WMCP or Extension final order issued by the Department.

The deadline established in the Extension Final Order for submittal of a WMCP shall not relieve a permit holder of any existing or future requirement for submittal of a WMCP at an earlier date as established through other orders of the Department. A WMCP submitted to meet the requirements of this order may also meet the WMCP submittal requirements of other Department orders.

DATED: September 10, 2019



Dwight French
Water Right Services Division Administrator

*If you have any questions,
please check the information
box on the last page for the
appropriate names and phone
numbers.*

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **October 25, 2019**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.
2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
 - d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

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

-
- If you have any questions about statements contained in this document, please contact Jeffrey Pierceall at 503-986-0802.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
 - Fax: 503-986-0901 Salem, OR 97301-1266
-

Ext App Update Notice

Application: S-69976

Permit: S-53637

Public Notice Route Slip ... New Application Extension of Time
per Division 315 Rules... (Extensions received on July 1, 2001 or after)

Applicant/Permit

Holder(s)

Meadows Utilities LLC

ATTN: STEVE WARILA

PO Box 470

MT Hood OR 97041

Proposed Completion Date: 10-1-2039

☒ WRIG...Money Received on: March 17, 2005

☒ Extension Specialist ...

☒ Added to tracking spreadsheet

After fee is receipted and app is added to spreadsheet, route to...

☒ Tonya Miller...

☒ Recent Assignment (Check WRIS for Update)

☒ Publish on Public Notice (initial 30-day comment): Date of
notice 7/30/2019

☒ Update WRIS Database

☒ In the "PNotice Date" field... Enter the date the Extension Application
was published on the Public Notice.

☒ In the "Ext Filed" field... Enter the date the Extension Application was
received.

☒ Yes or ☐ No: Return file to Extension Specialist after PN Jeffrey

NOTES:

App has been on hold since 2005.
Updated July 15, 2019. Need to notice
with new requested C-DATE



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits

Make use of this form, *Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits*, only if the permit uses the word "Municipal" or "Quasi-municipal" in the description of the purpose or use to which water is to be applied.

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

A separate extension application must be submitted for each permit as per OAR 690-315-0070(2). This page, with an original signature by the permit holder of record, must accompany the extension of time application.

This application and a summary of review criteria and procedures that are generally applicable to this application are available at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>

I, Meadows Utilities, LLC

NAME OF PERMIT HOLDER [OAR 690-315-0070(1) and (3)(a)]

Steve Warila

NAME OF CONTACT

P.O. Box 470
ADDRESS

Mt. Hood
CITY

OR
STATE

97041
ZIP

(503) 337-2222
PHONE

Steve.Warila@skihood.com
E-MAIL ADDRESS

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the permit holder of: Application Number S-69976

Permit Number S-53637
[OAR 690-315-0070(3)(b)]

do hereby request that the time in which to:

- ☒ complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on October 1, 2004, be extended to October 1, 2039,

and/or the time in which to:

- ☒ apply water to full beneficial use under the terms and conditions of the permit, which time now expires on October 1, 2004, be extended to October 1, 2039.

I am the permittee, or have written authorization from the permittee, to apply for an extension of time under this permit. I certify that the information I have provided in this application is true and correct to the best of my knowledge.

[Signature]
Signature

7-9-19
Date

time period of the most recent extension granted. Present the list in chronological order in Chart-I.

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CHART-I

INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED BEFORE PERMIT WAS ISSUED <i>List work/actions done before the permitted was issued – e.g. Well drilled.</i>	COST
8/1998	Installed new valves, piping, reducers, “t”s	\$5541.00
8/1998	Installed new flowmeter on spring	\$1073.00
12/4/1998	Purchase of phone modem for gauging station	\$378.00
6/1999	Installation of modem	\$320.00
INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED DURING PERMITTED TIME PERIOD (after permit was issued and prior to permit “C-date”) <i>List work/actions done during the permitted time period.</i>	COST
12/9/1999	Date the permit was signed - find date above signature on last page of permit.	
4/14/1998	(Date original permit S-53259 was signed)	
12/9/2000	Date the permit specified “Actual Construction Work” shall begin (“A-Date”) - not all permits contain this date.	
6-2001	Installation and Access Agreement signed with Mt. Hood Railroad Co.	\$300.00
10/1/2004	Date the permit specified complete application of water to the use shall be made (“C-Date”) - all permits contain this date.	
INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED AFTER PERMIT “C-Date” and PRIOR TO THE MOST RECENT EXTENSION OF TIME REQUEST <i>For the 1st Application for Extension of Time: List work/actions done after the permit “C-date” up to the date of this extension request. For Other than the 1st Application for Extension of Time: List any work/actions done after the permit C-Date but prior to the most recent extension.</i>	COST
5/17/2005	Applied for extension application (OWRD application fees)	\$ 250.00
4/2005	Purchase of Data logger, bubbler, software for E.Fork gage telemetry	\$1863.00
4/2005	Field laptop for downloading data logger readings from East Fork Gage	\$1200 est
4/2005	Solar controller, batteries for data logger – East Fork Gage	\$1100 est
4/2005	Piping materials for East Fork Gage	\$ 100
5/2005	Cellular modem for required permit condition East Fork Gage	\$ 507.00
5/2005	Wading rod, Price meters for streamflow measurements in E.Fork Hood River	\$3500 est
9/2005	East Fork Gage equipment – drains, vents, mounts	\$ 902.00
2005-2015	Replaced bubblers x 2 in East Fork Gage	\$1200 est.
2011	Water Treatment Plant filter system upgrade	\$ 87,095
2015	Replaced telemetry – sonar depth sensor, micro- controller, data logger, solar panel In East Fork Gage	\$3200 est

11/2015	East Fork gage repairs	\$ 64.90
10/1/2017	The date requested in this extension application that was placed on administrative hold on 12/14/2005	
10/2017	Reservoir tank replacement	\$494,239
7/2018	Clearing for parking lot expansion	\$139,889
7/2018	NEPA costs for clearing and parking lot expansion	\$150,000
9/2018	Replace 2 damaged staff gages for East Fork gage	\$ 84.24
	*These costs have been updated since the submission of permit extension application for G-13388	
3/11/2019	OWRD request to submit extension application on updated form	
CHART-I (continued)		
INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED DURING THE MOST RECENT EXTENSION OF TIME GRANTED	COST
	<i>For Other than 1st Application for Extension of Time: List any work/actions done during the time period most recent extension.</i>	
	Date of the last "Extended From Date" for complete application of water (used on the most recently approved extension of time).	
	This is Meadows Utilities first extension request for this permit. The extension application was placed on administrative hold on 12/14/2005	
	Last "Extended To" date for complete application of water (resulting from the most recently approved extension of time).	
INSERT DATES	ALL WORK AND ACTIONS ACCOMPLISHED AFTER THE MOST RECENT EXTENSION OF TIME GRANTED	COST
	<i>List work/actions done after the last authorized date for complete application of water has passed.</i>	
	Non-Applicable	
Total Cost to Date		\$ 885,194.14

[OAR 690-315-0070(3)(f)]

5. Provide evidence of compliance with conditions contained in the original permit, in any previous extension(s), and/or in any permit amendments (Chart II), or the reason the condition was not satisfied (Chart III).

Conditions requiring a response in the extension of time application include those which:

- Stipulate a specific date by which the permit holder was to accomplish a specific action, such as a condition that requires plans and specifications for a reservoir, a Water Management and Conservation Plan, a ground water monitoring plan or some other document which "...shall be submitted...within two years of permit issuance." If your permit requires submittal of a Water Conservation and Management Plan, please indicate the date the plan was submitted to or approved by OWRD, or whether it is still being drafted, etc.;
- and/or
- Are triggered by the use of water, but do not stipulate a specific date. These conditions represent a milestone in development of the project and use of water, such as the permit holder, "shall install...a water meter or other suitable measuring device approved by the

Director...before any use of water begins.” Another common condition triggered by the use of water is that; “fish screens are to be installed according to Oregon Department of Fish and Wildlife specifications.”



TIP:

Any supporting documentation submitted to demonstrate compliance with time-sensitive permit conditions or any conditions from prior permit extension(s) must be clearly referenced and may include, but is not limited to: well construction logs; static water level measurement reports, annual water use reports; a Water Management and Conservation Plan; an alternative long-term water supply plan; and/or a plan to monitor the effect of water use on ground water aquifers utilized under the permit. If needed, please contact OWRD for assistance in identifying and/or interpreting which conditions in the water permit are pertinent to the Application for Extension of Time.

- 5-A) Describe how each condition has been complied with. Include conditions contained in the original permit (and, if applicable, each condition contained in any order approving a permit amendment and/or a final order approving a prior extension of time). Include the date when the condition was satisfied.**

CHART-II

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Condition No.**	Date Satisfied	Describe How Permit Condition Has Been Satisfied
S4, S5	10/1998	Sewage treatment plant operation and totalizer installed
S6	9/2005	Installed East Fork Gage
S8, S9, S10	8/1998	Flow meter installation, record keeping began
1	8/1998	Enlargement of reservoir began
S11	9/1/2005	Water Management and Conservation Plan submitted to OWRD (updates are in process – 7/2019)

**** Condition No:** Attach a copy of the permit and, if applicable, any prior permit extensions or permit amendments with conditions identified and hand-numbered in a continuous number sequence throughout all such documents. Responses to Items 5-A and 5-B should reference each condition by number to correspond with the hand-written number sequence on the attached documents containing permit conditions.

- 5-B) If applicable conditions have NOT complied with all, explain the reasons why and indicate with a date certain (in the near future) when compliance will occur.**

CHART-III

Condition No.**	Date Will Comply	Explain Why Each Permit Condition Has NOT Been Satisfied
S1, S2, S3, S7, S11, S12	2020-2035	In 2005, Meadows Utilities LLC and Meadows North LLC (“Meadows”) entered into a settlement agreement that resolved certain water right protests, appeals, and other litigation pertaining to its planned ski area development near Cooper Spur Inn on the north side of Mt. Hood. The settlement agreement sought to permanently protect portions of Mt. Hood

		as wilderness, with a key component being a land exchange between Meadows and the US Forest Service so that Meadows may develop a resort near Government Camp instead. At about the same time, in October 2005, Meadows and the Friends of Mt. Hood agreed to abate (for an undetermined amount of time) each of Meadows' pending water right applications, including extensions and protests of those applications, to allow the parties to focus on the settlement, land exchange and related efforts. During the abatement period, there have been successive administrative holds, each approved by OWRD, on applications, protests, extensions, and relatedly, the perfection of these water rights. With the land exchange nearing completion, and the most recent administrative holds expired, Meadows is now ready to complete the process of perfecting its water rights. No measuring device has been installed to record groundwater diversion as the well has not been connected to the system as of yet.
--	--	--

[OAR 690-315-0070(3)(g)]

6. Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit. Report water use as of June 29, 2005, or the C-Date of the permit (whichever is later).

6-A) For Surface Water Permit Extensions: *Water has not been diverted under this permit*

6-B) For Ground Water Permit Extensions: Non-Applicable

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CHART-IV

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Well # as identified on Permit	Water User's Well #	Has this well been drilled?	IF DRILLED						
			Well Log Number E.g. MULT 60493	Well Tag Number E.g. # 40151 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See below)	Maximum instantaneous rate used by June 29, 2005, or C-date (whichever is later) -- from this well -- under this permit only (CFS or GPM)	Is this well authorized or utilized under any OTHER water rights?	If yes, provide the rate used from this well under each water right. (Typically the total of all uses from a single well will not exceed the well's pumping capacity.)	
		Yes ☐ No ☐			Yes ☐ No ☐	0	Yes ☐ No ☐	Permit, Certificate, or Transfer No.	Rate (CFS or GPM)
								N/A	
								N/A	
Total instantaneous rate from all wells utilized under this permit used as of June 29, 2005, or C-date (whichever is later)						0			

- 6-C) If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location. Has or will a permit amendment application been/be filed with OWRD? *Non-Applicable*

[OAR 690-315-0070(3)(h)]

7. Provide an estimate of the current population served under this permit and a description of the methodology(ies) used to make the estimate.

Estimate the current population that is supplied water by the municipality or quasi-municipality and if applicable, current population served under this permit. Describe how that estimate was derived, or cite the source document from which the data was obtained. Include any calculations, formulas, supporting documentation, including copies of source documents.

Current Population: 7600 as of Year: 2019

Methodology used to estimate current population served: Population supplied by Meadows Utilities, LLC is determined by the number of skiers who visited Mount Hood Meadows on an average peak day. Water has not been used under this permit as of 2019.

[OAR 690-315-0070(3)(p)]

8. Report the current peak water demand of the current population served, and a description of the methodology(ies) used to make the estimate.

Identify the total rate, or duty if applicable, of water being used to meet the current peak demand for water from all water rights held by the municipal or quasi-municipal entity. This must be reported in the same units of measurement as specified in the permits, being cfs (cubic feet per second), gpm (gallons per minute), and/or AF (acre-feet – usually only specified on a reservoir right to store water). This total rate should be based on the information provided on "Attachment A" in the column named "Max Amount of Beneficial Water Used to Date" [under Item 10-A (a)].

Current Peak Water Demand: 0.46 cfs as of Year: 2018 *This is the recorded peak average hourly flow on 2/12/2018 as result of snowmaking plus ski area operations.*

Methodology used to estimate current peak demand:

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Methodology is based on the highest of the average peak hourly flow. The data logger records hourly flow through the meter in gallons. The data logger currently records the flow from Certificate 48455, LL-1741 and LL-1742. Actual peak water use likely exceeds the instantaneous rate of diversion. These peaks are managed using a bulgd in system tank to ensure compliance with the water authorizations and permit/certificate terms and to meet user demands.

Note: Meadows Utilities also holds water rights for the Cooper Spur Resort, but that system is not connected to the Meadows system, nor is it within the Place of Use for permit S-53637. Therefore, it is not considered to be part of the quasi-municipal entity for purposes of this question.

[OAR 690-315-0070(3)(k)]

9. Provide a summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements (if any), relating to the project that have significantly delayed completion of construction or perfection of the right.

In 2001 Meadows Utilities LLC and Meadows North LLC ("Meadows") began a process to secure authorization to expand the Inn at Cooper Spur and the Cooper Spur Ski Area. The proposed expansion required approvals from a number of governmental agencies. Meadows Utilities LLC filed water right applications as part of the expansion process. On July 5, 2005, after receiving multiple protests and appeals on the water right and land use matters related to the Cooper Spur ski resort, Meadows reached a settlement agreement with opponents of the resort and the U.S. Forest Service (USFS). The settlement agreement specified as its primary objective a land exchange to protect portions of the north side of Mt. Hood while allowing Meadows to develop property in Government Camp for a resort. The agreement had several contingencies. First, federal legislation authorizing the land exchange with the USFS was required, along with a provision for providing wilderness protection for certain lands on Mt. Hood. The first legislative effort took three years, with federal legislation finally passing as the Mt. Hood Legacy Act in Section 1206 of the Omnibus Public Land Management Act of 2009. This statute specified an 18 month period for completion of the land exchange by the USFS; however, the work was not accomplished despite on-going efforts by all participants in the process. The timeline for the appraisal work and land exchange was revised several times by the USFS and in January 2018, new federal legislation was passed as the Mount Hood Cooper Spur Land Exchange Clarification Act. This Act required that the land exchange be completed within one year. A new appraisal was also required. Area stakeholders (Water Watch, NEDC, Friends of Mt. Hood, Hood River Valley Residents Committee) objected to instructions for the new appraisal. This objection led to federal court mediation, which also stipulated the development of a new set of appraisal instructions. According to a recent status report filed with federal Judge Anna Brown by the USFS, the new supplemental appraisal is underway but the land exchange is not expected to be complete until at least December 2020.

In conjunction with their opposition to the Cooper Spur expansion, The Friends of Mt. Hood protested water right applications, extension applications, and proposed final orders related to the Meadows resort and ski area where the quasi-municipal water rights at issue in this application are located. In October 2005, Meadows and The Friends of Mt. Hood and OWRD agreed to temporarily abate (for an unspecified amount of time) the water right proceedings related to the Meadows ski resort, with the primary purpose being to allow the parties to focus at that time on the land exchange and related efforts. For example, in order to proceed with the storage water quasi-municipal water right, Meadows would have been required to develop the second spring, build another reservoir, and connect both to existing and expanded infrastructure. This work was anticipated to require approvals from the USFS, including National Environmental Policy Act public notice, comment, objections, and issuance of an environmental assessment or environmental impact statement. These efforts would have detracted from the USFS's efforts to complete the appraisal and land exchange. Similarly, continued litigation by The Friends of Mt. Hood regarding these water rights would have detracted from the parties' collective efforts to pass legislation approving the land exchange, which the parties had agreed to collectively support. Therefore, the temporary abatement was an extension of the settlement agreement related to the Cooper Spur area for the period where the parties were focused on obtaining authorization of the land exchange. That effort has been successful, with the land exchange process now well underway and expected to be wrapped up, though no sooner than December of 2020.

The water and land use litigation and time delays related to efforts to complete the land exchange process, including the legislative efforts, were extensive and had a direct impact on the timing of Meadows' water right development. The delays that extended the abatement period were outside of Meadows' control.

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Application for Extension of Time
For Municipal and Quasi-Municipal Water Use Permits
Page 11 of 16

Last Revised: 2/14/2018

- 10-A. Provide an estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use.

In developing your estimated demand projections for the permit being extended, you should include the following items:

- a) Inventory of Water Rights Held – See Attachment A

Use the “Use Limitations” column to identify and explain why any water right is not currently utilized to meet current peak water demands, or which is used only in a limited capacity.

- b) Water Supply Contracts and/or Agreements

List any water supply contracts or agreements for water that will be supplied by the permit holder to other entities. – *Non-Applicable*

List any water supply contracts or agreements for water that will be supplied from other entities that the permit holder will depend on to meet its own current or anticipated future water needs. – *Non-Applicable*

- c) Projected Population

Identify the projected population growth rate. The population projection must be extended out, at a minimum, to the year requested for complete application of water. Describe the methodology used to create the population projections such as historical growth rates or any factors affecting growth trends.

Population Growth Rate: 4.5% (Estimated)

Projected Population: 13,900 as of Year: 2039

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Methodology used to estimate projected population and population growth rate:

Projected population growth rate of approximately 4.5 percent a year based on past and current peak day visitation numbers.

- d) Future Peak Water Demands

Identify the projected peak water. The peak water demand projection must be extended out, at a minimum, to the year requested for complete application of water. Describe

the methodology used to create the water demand projection, such as historical growth rates or any factors affecting growth trends. Include a summary of how the subject permit, and other water rights and /or supply contracts held by the permit holder are planned or expected to be used to meet anticipated future water needs

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Projected Peak Water Demand: 0.49 cfs as of Year: 2039

Methodology used to estimate peak water demand:

Methodology is based on the highest of the average peak hourly flow from the data logger on the meter presently connected to the springs for commercial ski resort operations, including snow-making, anticipated conservation measures, and anticipated population growth rate. The data logger records hourly flow through the meter in gallons. The data logger currently records the flow from Certificate 48455, LL-1741 and LL-1742. These flows are anticipated to estimate peak demands into the future because they incorporate use authorizations under two limited license that were developed to approximate the pending surface water rights and applications. Projected peak demand is also related to the instantaneous rate allowed under the existing water rights. Though the anticipated actual one-day peak demand is anticipated to be 1.0 cfs in 2039, Meadows expects to be able to accommodate this demand while staying within the authorized diversion rates through the use of an 300,000 gallon above-ground tank, which is used as a temporary bulge-in-system and to treat water as required by the Oregon Health Authority.

e) Potential Growth

Describe the potential for growth of the service area (such as the annexation of lands or new industrial and/or commercial ventures locating within the service area) and describe how those projects are expected to affect future water demands.

Meadows is awaiting the completion of the land trade with the USFS. When completed Meadows proposes to develop the property acquired in Government Camp. This development will provide additional customers who wish to visit Mt Hood Meadows Resort. This is in addition to the normal growth of resort visitation driven by population growth in the Portland Metro area and the popularity of skiing and snowboarding anticipated in the pending permit. In addition, Meadows has experienced increased visitation by non-winter visitors. Meadows plans to pursue this new business segment to augment the winter business.

f) Completion Date

Provide the date by which the water development is anticipated to be completed and water put to full beneficial use. **October 1, 2039**

[OAR 690-315-0070(3)(I)]

10-B. Application for Extension of Time requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of

lands and uses proposed to be served by the permit holder. *Non-Applicable. The applicant is not requesting an extension greater than 50 years.*

[OAR 690-315-0070(3)(j) and OAR 690-315-0070(3)(m)]

11. Provide an estimate of the costs to complete water development and summary of the future plan and schedule to complete construction and/or perfect the water right.

Considering the demand projections in Item 10-A, describe major future work and actions that must be accomplished in order to fully develop and perfect the subject permit. Provide a list of the major planning, work and/or actions needed, the approximate time frames, and estimated costs anticipated to complete the water development within the parameters of this permit.

The review of a Capital Improvement Plan (CIP) or other system infrastructure improvement plans may help when formulating a response.

CHART-V

APPROXIMATE DATE RANGE	WORK AND ACTIONS TO BE ACCOMPLISHED	ESTIMATED COST
5/2019-10/2019	*Hwy 35 intersection improvements – Left turn lane – support of growing use	\$1,678,152
6/2019-10/2019	Installation of utilities including water line and footings for new lodge in support of expanded summer use.	\$3,072,191
6-2019-10/2019	*Grade and pave parking lot in support of expanded use	\$1,900,000
2021-2030	US Forest Service Right of Way/Use Permit and NEPA	\$150,000
2005-2022	Complete land exchange (administrative and legal fees)	\$1,350,000
2023-2033	Develop Government Camp Resort (permitting, construction, and legal/administrative costs)	\$200,000,000
2025-2030	Development of second spring (permitting, construction, and legal/administrative costs)	\$ 185,000
2030-2035	Construct/connect second reservoir (permitting, construction, and legal/administrative costs)	1,250,000
Year: <u>2039</u>	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Estimated Total Cost to Complete Development		\$209,585,343

*(Estimated cost has been updated since submission of permit extension application for G-13388)

[OAR 690-315-0070(3)(n)]

12. Justify the time requested to complete the project and/or apply the water to full beneficial use.

A justification should integrate information from Items 5-B, 6-A or 6-B, 9, 10-A, and 11 of this application, and should include any other information or evidence to establish that the requested amount of time is reasonable, and that you will be able to complete the project within the amount of time requested.

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For more than fifteen years, Meadows has been working to develop this surface water permit and the infrastructure related to it. This effort was postponed with OWRD's approval in 2005 as a result of a settlement agreement with opponents of the Cooper Spur resort to focus efforts on federal legislation for a land exchange with the U.S. Forest Service. The implementation of two acts of Congress to progress with the land exchange moved at a glacial pace. The additional time needed to develop this permit is requested due to the extended delays in completing the land exchange (which continue today) and the anticipated slow response and action by federal entities to issue the approvals necessary for Meadows to be able to continue its own efforts to complete development of this permit. It is expected that, the land exchange process will take until at least December 2020; and, other federal permit and approval processes specific to this surface water permit would take a minimum of 5 years. In addition the population growth and usage is expected to increase after the Government Camp resort is built on the property obtained through the land exchange, but that is anticipated to take 10 years after the land exchange due to the anticipated legal challenges by opponents and time to develop the resort itself. We also anticipate, based on past experience and approach that there will be more legal challenges of this application and efforts to continue to develop the water right. Therefore, based on these facts and circumstances, we believe that 2035 is a fair and reasoned timeframe for a further extension.

[OAR 690-315-0070(3)(o)]

13. **Provide any other information you wish OWRD to consider while evaluating the Application for Extension of Time**

Based on the information stated above in items 7-12, an extension of time is both reasonable and necessary. Please also see attached answers to questions 12-20 from the standard permit extension application form.

[OAR 690-315-0070(3)(q)]

14. **For Municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, provide a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.**

Non-Applicable

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Water Rights Inventory for (Name of Entity) Meadows Utilities, Inc.

(List of All Permits, Permit Amendments, Certificates, Transfers, New Applications)

Ground Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. ¹ or Transfer No.	Source of water identified in water right	Facility Name used by entity	Use	Rate identified in water right (cfs or AF)	Actual Diversion	Authorized Completion Date ²	Notes or Limitations to water use ³
									Maximum Instantaneous Rate Diverted to Date (cfs)		
G-12550	G-13388	5-23-1991	N/A	N/A	GW - well	Meadows Utilities	Quasi-Mun	0.11	0	10-1-2017	Use limited to Aug. 1-Oct. 31
G-14655	G-13484	12-3-1997	88981	N/A	GW - well	Meadows Utilities	Comm.	0.78	0.78	10-1-2002	Year round

Surface Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. or Transfer No.	Source of water identified in water right	Facility Name used by entity	Use	Rate identified in water right (cfs or AF)	Actual Diversion	Authorized Completion Date	Notes or Limitations to water use
									Maximum Instantaneous Rate Diverted to Date (cfs)		
S-50037	S-38081	2-9-1973	48445	N/A	springs	Mt Hood Meadows	COMM, fire suppression	0.22	0.22	10-1-1978	Year-round use
S-69976	S-53637	6-29-1989	N/A	N/A	Springs, reservoir	Meadows Utilities	Quasi-Muni	0.27	0	On-hold	Use limited to Nov. 1 to July 31
R-71657	R-12758	6-5-1991	N/A	N/A	Springs, reservoir	Meadows Utilities	Quasi-Muni	2.48	0	On-hold	Year round use
LL-1741			N/A	N/A	Spring	Meadows Utilities	COMM Snow Making	0.27	0.27	4-30-2023	Use limited to 11-1 to 4-30 annually from 2018 to 2023
LL-1742			N/A	N/A	spring	Meadows Utilities	COMM Snow Making	0.21	0.21	4-30-2023	Use limited to 11-1 to 4-30 annually from 2018 to 2023

Pending New Water Right Applications

Application No.	Priority Date	Source	Proposed Use	Proposed Rate
G-16401	3-7-2005	GW - well	COMM	0.11 cfs
S-86185	3-2-2005	EF Hood River	COMM	1.1 cfs

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Attachment "A"
For Extension of Time Application

¹ P.A. = Permit Amendment

² Date by which full application of water is to be made within the terms and conditions of the permit (date will be specified in the permit or on the last extension Final Order).

³ If a particular water right certificate, permit, or transfer is not being utilized to meet current demands, or its use is somehow limited due to quality, seasonal, etc. limitations, or if a the actual diversion rate is less than a certificated rate, please explain why.

Municipal or Quasi-Municipal

Extension PFO Checklist for Water Use Permits

issued after November 2, 1998

(OAR 690-315-0010 through OAR 690-315-0060)

Application: S - 69976 Permit: S - 53637 Permit Amendment? No ☒ Yes ☐ T -

Permit Holder's Name: Meadows Utilities LLC

Permit Holder's Mailing Address: PO Box 470 Mt. Hood, OR 97041

Phone Number (503) 337-2222

Agent M. Pagel, Schwabe, Williamson & Wyatt

Drainage Basin: 4 - Hood County: Hood River Watermaster District: 3 - Robert Wood

Date Permit was issued: December 9, 1999 Priority Date: June 29, 1989 Date of PN: April 5, 2005

Source: Two unnamed reservoirs to be constructed or enlarged under Application R-71657, Permit R-12758, and two unnamed springs, tributaries of East Fork Hood River

Use: ☐ Municipal ☒ Quasi-Municipal

"Q": Live Flow = 0.27 cfs total flow from one or both of the unnamed springs, further limited to not more than 0.055 cfs for erosion control; stored water = 2.48 AF from stored water only, being 1.54 AF from an existing reservoir (to be enlarged) and 0.94 AF from a proposed reservoir, further limited to a maximum cumulative total of live flow and stored water of 166.0 AF per year

Orig "A" Date: December 9, 2000 Orig "B" Date: 10-1- Orig "C" Date: 10-1- 2004

Extension request received: March 17, 2005 Last Authorized "B" Date: 10-1- Last Authorized "C" Date: 10-1-

Request Number (1, 2, 3...): 1 Proposed "B" Date: 10-1- Proposed C Date: 10-1- 2017

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
X		Existing system – additional work started and completed in August 1998
		(S5) Recording flow meter with totalizer to measure discharge from w.w.treatment plant
	X	(S6) Recording devices (determined by OWRD, ODFW, Watermaster) East Fork Hood River prior to use of water
X		(S8) Meter above first diversion
	X	(S10) Periodic water use reports
	X	(S11) WMCP prior to first diversion of water

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0080(4)]:

Yes No

- ☐ X Work was accomplished within the time allowed in the permit or previous extension
☐ X Water right permit holder conformed with the permit or previous extension conditions
☐ X Beneficial use made of the water during the permit or previous extension time limits

- Permit holder has beneficially used _____ cfs/gpm/af Undeveloped portion 0.27 live flow/2.48 AF stored water _____ cfs/gpm/af

X ☐ Financial investments were made toward developing the beneficial water use.

GW REVIEW: Y N

MITIGATION REVIEW: Y N

Application _____ - _____ Permit _____ - _____ Township _____ Range _____ Section _____
• Amount Invested to date: \$ 1,073 Estimated Remaining Cost: \$ 400,000

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes ☐ No ☐

Population _____ As of _____ Population _____ Projected _____
(Year) _____ ☐ Growth _____ % ☐ Population _____ by (Year) _____ Calculated? Yes ☐

Peak Demand _____ cfs/gpm (Year) _____ ☐ Peak Demand _____ cfs/gpm by (Year) _____ Calculated? Yes ☐

Determination of the market and the present demand for water or power to be supplied:

Ground Water Permits: Identify the closest surface water or localized water basin. _____
Is it located...

Surface Water Permits: Is the POD located...

Yes No

☐ X within or above a state scenic waterway? Source: OWRD "Areas Above State Scenic Waterways" Map

☐ X within a stream segment designated as a federal wild and scenic river? Source: www.rivers.gov/wildriverslist.html#or

☐ X within a critical or limited Ground Water Area? Name of area _____

X ☐ within a sensitive, threatened or endangered species area source: "/gisdata/dev/projects/salmon/div33map.aml"

X ☐ in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list _____

X ☐ within an area ranking low / medium / high (circle one) for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. ☐ Approval of Extension Request

No ... "Good Cause" cannot be found. ☐ Denial of Extension Request

Conditions to be included in Extension PFO (if applicable)? Yes ☐ No ☐

(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

X Max "Q" Development Limitations and Div. 856 Water Management and Conservation Plan

☐ Other: _____

Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

☐ COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987

"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."

X COBU Requirement - Surface Water - post July 9, 1987

"Pursuant to ORS 537.230(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use."

☐ COBU Requirement - Ground Water - post July 9, 1987

"Pursuant to ORS 537.630(4), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Mailing / Issuance Date: _____ Protest Deadline Date: _____

Reviewer's Name: _____ Date: _____

July 12, 2019

Elizabeth E. Howard

Admitted in Oregon, Washington and
North Dakota

T: 503-796-2093

C: 503-312-8765

ehoward@schwabe.com

VIA FIRST CLASS MAIL

Jeffrey Pierceall
Extension and Adjudication Specialist
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Extension Applications: Meadows Utilities LLC's Permits S-53637 and R-12758
Our File No. 110069-141738

Dear Mr. Pierceall:

On behalf of our client, Meadows Utilities, LLC, and per the request of the Oregon Water Resources Department ("OWRD"), we are submitting updated permit extension applications for permits S-53637 and R-12758 on OWRD's current quasi-municipal extension application forms and providing answers to additional questions from OWRD's standard extension application form for both of the applications.

These permit extension applications were originally submitted on March 17, 2005 and have been placed on administrative hold several times since then, with the most recent administrative hold expiring on January 1, 2019. Per the request of Jeffrey Pierceall in his March 11, 2019 email, conversations with Dwight French on March 13 and April 12, 2019, and following submission of draft forms in April, further conversations with Mr. Pierceall on May 16, 2019, Meadows Utilities is resubmitting these applications on OWRD's current municipal/quasi-municipal permit extension application forms and also providing answers to questions from OWRD's standard permit extension application form. As discussed and confirmed with Mr. French, this submission does not constitute a new extension application for either of these permits.

Jeffrey Pierceall
July 12, 2019
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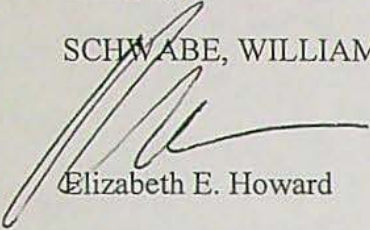
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We look forward to your review and issuance of an order regarding these extensions. If there is any further information we can provide to facilitate your review, please do not hesitate to reach out.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.



Elizabeth E. Howard

EEH
Enclosures

cc: Dwight W. French (Via First Class Mail)
Molly A. Reid (Via First Class Mail)
Steve Warila (Via First Class Mail)

PDX\110069\141738\EEH\25775178.1

Application # S-69976 / Permit # S-53637

Permit Holder: Meadows Utilities, LLC

Use interactive mapping to check: Drainage Basin

Watermaster Name and #3 - Bob Wood

Place a (✓) in the box if the item is satisfied	Division 315 - Municipal/Quasi-Municipal Extension of Time - Completeness Checklist OAR 690-315-0070(3)
✓	1. [OAR 690-315-0070(3)] The appropriate extension of time fee (as specified in ORS 536.050). \$100 - applications received by September 30, 2003 / \$250 - applications received on or after October 1, 2003 Paid \$250 on 3-17-05
✓	* [OAR 690-315-0070(3)(a)] The name and mailing address of the water right permit holder(s);
✓	* [OAR 690-315-0070(3)(b)] The application number and the permit number for which an extension is requested;
✓	2. [OAR 690-315-0070(3)(c)] For quasi-municipal water use permit holders, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d), if required under the applicable statute; NOTE: ORS 537.230(1) [1997 edition] only exempts surface water municipal use permits from the "A" Date requirement. If you are reviewing a <u>ground water</u> municipal use permit, they must provide evidence that the "A" Date has been met. "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence; "Actual construction" <u>does not</u> include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying. "A" date: 12-9-2000 "B" date: N/A "C" date: 10-1-2004 "A" Date Met? YES Permit prior to 10/23/99? NO -a portion of the system was existing when the permit was issued. -Also, in August 1998, installed a flow meter, piping, reducers, "t"'s and valves. Permit #S-53637 was issued on December 9, 1999. NOTE: Munis issued after 11/2/98 will need to be reviewed under 690-315-0040(4) on Checklist
✓	3. [OAR 690-315-0070(3)(d)] - This is extension request # 1st Evidence of actions taken to develop the right within the original permitted time period OR, during the most recent extension period from 12-9-1999 to 10-1-2004 -a portion of the system was existing when the permit was issued. -Also, in August 1998, installed a flow meter, piping, reducers, "t"'s and valves. -Acquired an easement to meet the required condition for a gaging station on the East Fork Hood River.
✓	4. [OAR 690-315-0070(3)(e)] Evidence of compliance with conditions contained in the permit <u>and</u> any previous extension(s) or the reason the condition was not satisfied; OK... all applicable conditions met (some conditions not applicable yet because water use has NOT begun.) See application and supplemental e-mail from Dave Riley received on 3/29/05.
✓	5. [OAR 690-315-0070(3)(f)] Evidence of the maximum INSTANTANEOUS rate of diversion, if any, made to date; NONE (zero)... No water use yet.
✓	6. [OAR 690-315-0070(3)(g)] An estimate of the population served and a description of the methodology(ies) used to make the estimate; NONE..... No water used yet, so no population served under this permit.

Place a (✓) in the box if the item is satisfied	Division 315 - Municipal/Quasi-Municipal Extension of Time - Completeness Checklist OAR 690-315-0070(3)
✓	7. [OAR 690-315-0070(3)(h)] A description of financial expenditures made toward completion of the water development; \$1073 - construction, materials & labor (including phone modem water sensor meter)
✓	8. [OAR 690-315-0070(3)(i)] An estimate of the cost to complete the water development; \$400,000 - design and construction of facilities & apply to Forest Service for approvals and permits.
✓	9. [OAR 690-315-0070(3)(j)] A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right; Forest Service approvals have been a delaying factor as several construction projects must be approved & permitted in order to complete application of the water.
✓	10. [OAR 690-315-0070(3)(k)] An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. Extension requests for <u>greater than 50 years</u> must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder. Current Peak Water Demands - OK... identify current & projected water demands. Projected Population - OK...2017 population estimated to reach 27,459 served. Potential Growth - OK...Expect increased population served & skier participation. Inventory of Water Rights Held - OK... See Muni Use & Projected Needs Form and "Attachment A" - use limitations.
✓	11. [OAR 690-315-0070(3)(l)] A summary of the applicant's plan and schedule to complete construction and/or perfect the water right; OK... 1) Design work; 2) Forest Service approval; 3) construct facilities; and 4) Full development by 2017.
✓	12. [OAR 690-315-0070(3)(m)] Justification for the time requested to complete the project and/or apply the water to full beneficial use; USFS, NEPA process & development of projects is a lengthy, complicated & time-consuming process. Each project requires site specific NEPA and decisions for construction.
✓	13. [OAR 690-315-0070(3)(n)] Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules; Invested hundreds of thousands of dollars in planning & legal fees. Events beyond the permit holder's control have slowed the process. This water is needed for the planned resort.
✓	* [OAR 690-315-0070(3)(o)] Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements.
✓	* Signature(s) of the water right permit holder(s). OK

S:\groups\wr\extensions\Municipal\muni_ext_completeness checklist\s69976_meadows utilities.wps.wpd

Name of Reviewer: _____	Date: _____
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JUL 15 2019

[OAR 690-315-0020(3)(j)]

12. Provide a summary of your plan to complete construction, meeting all permit conditions and apply the water to beneficial use: (List all tasks or steps needed to complete the project, the date when each task will be completed, and the cost associated with each task; attach additional pages if necessary.)

APPROXIMATE DATE RANGE	WORK AND ACTIONS TO BE ACCOMPLISHED	ESTIMATED COST
5/2019-10/2019	*Hwy 35 intersection improvements – Left turn lane – support of growing use	\$1,678,152
6/2019-10/2019	Installation of utilities including water line and footings for new lodge in support of expanded summer use.	\$3,072,191
6-2019-10/2019	*Grade and pave parking lot in support of expanded use	\$1,900,000
2021-2030	US Forest Service Right of Way/Use Permit and NEPA	\$150,000
2005-2022	Complete land exchange (administrative and legal fees)	\$1,350,000
2023-2033	Develop Government Camp Resort (permitting, construction, and legal/administrative costs)	\$200,000,000
2025-2030	Development of second spring (permitting, construction, and legal/administrative costs)	\$ 185,000
2030-2035	Construct/connect second reservoir (permitting, construction, and legal/administrative costs)	1,250,000
Year: <u>2039</u>	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
Estimated Total Cost to Complete Development		\$209,585,343

[OAR 690-315-0020(3)(k)]

13. Justify the time requested to complete the project and/or apply the water to full beneficial use. (Include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.)

See response to Question 9. Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits for Permit R-12758 (the "Application"), to which these questions are attached.

For more than fifteen years, Meadows has been working to develop this surface water permit and the infrastructure related to it. This effort was postponed in 2005 as a result of a settlement agreement with the U.S. Forest Service (USFS) and opponents of the Cooper Spur resort to focus efforts on federal legislation for a land exchange with the USFS. The land exchange will allow for development of a resort at Government Camp, in place of a resort on federal lands at Cooper Spur, where originally planned. Development of the Government Camp Resort is anticipated to

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Permit Extension Application – Update Questions – Permit S-53637

July 2019

drive population growth and further use of quasi-municipal water, including the quasi-municipal water used under permit S-53637.

The additional time needed to develop this permit is requested due to the slow response and action by federal entities to complete the land exchange, thus delaying developing of the resort, and completing the infrastructure to support the fully anticipated quasi-municipal use. Additional time is also requested because, based on past history, Meadows anticipates opposition to the land exchange appraisal, to the completion of the land exchange, to development of a resort at Government Camp, and to water right authorizations and approvals related to this permit and the related quasi-municipal groundwater and reservoir permits

Currently, the US Forest Service is completing the land exchange appraisal process in accordance with certain Acts of Congress and with regular check-ins with federal Judge Anna Brown. However, it is expected that the land exchange appraisal and related objections by opponents will take until at least December 2020 to complete. Other objections and opposition can be anticipated related to the NEPA associated with the land exchange process. And, Meadows anticipates challenges from opponents to the Government Camp Resort, including protests and appeals of the necessary permitting and approvals associated with the same. Therefore, resort development is anticipated to take 8-10 years after the land exchange is complete. Other federal permit and approval processes specific to this surface water permit, including the development of the second spring and reservoir for storage of water from the spring, are anticipated to take a minimum of 5 years each as well due to the slowness of the federal permitting and likelihood of legal challenges.

Once constructed, the population growth and use of Meadows is expected to increase due to occupation and use of the Government Camp Resort. Taken together, these processes, approvals, legal challenges, construction, and growth leading to full beneficial use are anticipated to take until 2039.

[OAR 690-315--0020(3)(I)]

14a. Will a denial of the extension result in undue hardship? (Describe the hardship and the effects.) The extension and other protests/litigation were put on hold to allow progress on the land exchange. The land exchange has now made meaningful progress, though there is still work to be done. Denying the extension would nullify the purpose for the administrative holds authorized by OWRD over the past 14 years, and discredit Meadows' reliance thereon.

From an economic perspective, denial of this extension would result in a loss of investment made to Meadows' facilities, which have been developed to provide a high quality recreational and ski resort in the Pacific Northwest. Without additional water, Meadows would be limited in the number of visitors it could serve. And, this would provide less revenue, fewer employment opportunities, and far fewer inputs and revenue to the local and state economy. It would also result in reduced public access to the outdoors.

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Permit Extension Application – Update Questions – Permit S-53637

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Denial would greatly inhibit the continued growth and improvement of Meadows. This would have a direct impact on nearby Mt. Hood communities that rely on the Meadows and other, local (smaller) ski resorts to draw tourists and recreators to the mountain as a significant part of their economic engine. There would also be an immediate hardship on winter and summer time recreationalists who are frequent or often skiers and summer hikers or bikers who rely upon Meadows for a nearby and high quality recreational opportunity.

14b. Are there any other reasonable alternatives that exist for meeting your water use needs? (Explain in detail) No, there are no other reasonable alternatives that exist for meeting Meadows' water use needs. Meadows is located in a remote area. The surface and groundwater rights that were issued to supply the stored water are already limited to address concerns about instream uses and water availability. Also, trucking is not a feasible option due to demand and the high costs associated with the extent of and peaks in use. Stored water is needed to provide a sufficient supply throughout the year, particularly when other sources are not available.

[OAR 690-315-0020(3)(h)]

15. Was the delay in the timely completion of this water development project and/or timely application of water to full beneficial use caused by any additional government requirements, other than the conditions contained within the permit, which significantly delayed the completion and perfection of this right? (Explain in detail, including how much time did this delay the project; list dates.)

Yes, the delay was largely a result of the U.S. Congress and USFS's extensive delays in obtaining the necessary appraisal and legislation for the land exchange. This is outside of Meadow' control. See also response to Question 9 in the Application.

[OAR 690-315-0020(3)(h)]

16. Describe any unforeseen events which contributed to the delay of completion of this project that you had no control over. (Explain in detail what the unforeseen events were and how much time was spent addressing the unforeseen events.)

The litigation described in response to Application Question 9 to the delays that began in the early 2000s and though generally settled, the process related to the settlement (including threats to challenge whether and how it is being followed) continue today. The efforts to complete the land exchange process, including the legislative efforts, were extensive and were generally outside of Meadows' control. Those efforts began in 2005 and continue today. There continue to be delays due to challenges and threats of challenges by protestants to the land exchange and related appraisal.

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Permit Extension Application – Update Questions – Permit S-53637

July 2019

[OAR 690-315-0020(3)(h)]

17. Describe an additional reasons why the construction was not completed, and/or water was not beneficially used within permit time limits. (Provide supporting information for the reason(s) that best fits your circumstances.)

The reasons for delay in completion of construction and the beneficial use of the water are detailed in items 13-17 and in the Application.

[OAR 690-315-0020(3)(m)(n)]

18. Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

The request for an extension and the information we would like OWRD to consider while evaluating this application, is described above in items 13-17 and in the Application.

[OAR 690-315-0040(2)(f)]

19. Will the income or use of the water project provide a fair and reasonable return on your investment? (Explain in detail) Yes, income and use of the water project will provide a fair and reasonable return on the investment. Meadows is a for-profit company, and the board of directors would not authorize a project that does not meet return of investment goals.

[OAR 690-315-0040(4)(d)]

20. Describe in detail if there are other economic interest, beyond those of the permit holder, which are dependent upon the completion of this project. (Who will be affected and how?) Completion of this project would provide capacity for more visitors to Mt. Hood Meadows. This would require the need for additional employees who would live in local communities near the resort (supporting those communities' economics), increase tax payments to Hood River County, increase fees paid to the U.S. Forest Service, and increase supplies purchased from vendors.

From: "Ralph Bloemers" <ralph@crag.org>

To: <lisa.j.juul@wrд.state.or.us>

Subject: Comments on Surface & Reservoir Rights

Date: Thu, 5 May 2005 16:22:58 -0700

X-Security: MIME headers sanitized on kettle.wrd.state.or.us

See <http://www.impsec.org/email-tools/sanitizer-intro.html>

for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07

X-Mailer: Microsoft Outlook, Build 10.0.6626

X-Virus-Scanned: by amavisd-new at revoltltd.org

X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrd.state.or.us

X-Spam-Status: No, hits=-3.6 required=5.0 tests=BAYES_00,FORGED_OUTLOOK_TAGS,
HTML_FONTCOLOR_RED,HTML_FONTCOLOR_UNKNOWN,HTML_MESSAGE autolearn=no
version=2.63

X-Spam-Level:

-->

Dear Lisa,

I have attached comments from Friends of Mt. Hood. Thanks again for your assistance last week, please confirm your receipt of these comments when you get them.

Sincerely,

Ralph

Ralph Bloemers

Cascade Resources Advocacy Group

917 SW Oak St.

Suite 417

Portland, OR 97205

ph 503.525.2724

fx 503.296.5454

ralph@crag.org

File # S-69976

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WATER RESOURCES DEPT
SALEM, OREGON



Cascade Resources
ADVOCACY GROUP

Ralph Bloemers
Staff Attorney
503.525.2724
ralph@crag.org

May 5, 2005

Via Email to lisa.j.juul@ wrd.state.or.us

Ms. Lisa Juul
Oregon Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301

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MAY 05 2005
WATER RESOURCES DEPT
SALEM, OREGON

Re: Comments on Meadows Utilities Water Rights Extensions
Application File Number: S-69976, Permit Number: S-53637
Application File Number: R-71657, Permit Number R-12758

Dear Ms. Juul:

Thank you for assisting me last week with my review of the water rights files for the two extension application. I appreciate you taking the time to answer questions and clarify outstanding issues. I submit these comments on behalf of the Friends of Mt. Hood (the "FOMH") on the following two water rights extensions:

MEADOWS UTILITIES, LLC

LIVE FLOW: 0.27 CFS FROM UNNAMED SPRINGS FURTHER LIMITED TO 0.055 CFS FOR EROSION CONTROL & STORED WATER: 2.48 AF, BEING 1.54 AF FROM EXISTING RESERVOIR & 0.94 AF FROM PROPOSED RESERVOIR, FURTHER LIMITED TO A MAX CUMULATIVE TOTAL OF 166.0 AF EACH YEAR TWO UNNAMED RESERVOIRS (CONSTRUCTED UNDER PERMIT R-12758) & TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER
Application Number: S-69976 Permit Number: S-53637
QUASI-MUNICIPAL USE
OCTOBER 1, 2017

MEADOWS UTILITIES, LLC

2.48 ACRE-FEET (BEING 1.54 AF IN EXISTING RESERVOIR & 0.94 AF IN PROPOSED RESERVOIR - FURTHER LIMITED TO THE FILL RATE OF 0.27 CFS FROM THE SPRINGS) & 0.11 CFS FROM THE WELL
TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER, & ONE WELL IN THE EAST FORK HOOD RIVER BASIN
Application Number: R-71657 Permit Number: R-12758
APPROPRIATED UNDER PERMIT S-53637 (APPLICATION S-69976) & PERMIT G-13388 (PERMIT G-12550) FOR QUASI-MUNICIPAL USE
OCTOBER 1, 2017



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FOMH does not believe these two applications are responsive to the requirements of OAR 690-315. FOMH requests that the Oregon Water Resources Department ("OWRD") obtain the requisite information before it issues a proposed final order ("PFO"), if at all, on the extension requests for the permits referenced above. FOMH requests that the WRD not prepare or issue a proposed final order until the applicant complies with the procedures and standards that the WRD uses to evaluate extension applications. See ORS 537.230 and 537.630; OAR 690-315. In addition, FOMH submits that the applicant has not complied with the terms of its permits.

The FOMH has identified the following issues and requests that OWRD investigate and resolve them either by returning the extension applications to the applicant, conducting additional investigation and review of water availability and streamflow conditions and/or by imposing appropriate conditions in the proposed final order.

1. **Information Removed from File for S-69976 by Applicants' Attorney.** In reviewing the existing files for the pending extension applications, I discovered that a vast amount of relevant technical information had been removed by Richard Whitman, the attorney for the applicant, Meadows Utilities, LLC. According to the documents in the file, Mr. Whitman removed a large portion of the file for permit S-69976 and promised to return that information (see OWRD note by Steve Brown & single sheet of yellow lined paper written with list of documents by Richard Whitman). The file does not contain these documents and it appears that those documents were not returned. The files that were removed include files related to public hearings in 1984 regarding water availability, compilations of water rights, studies of water availability, studies and analysis of groundwater availability and basin investigations. All together, Mr. Whitman indicated that he removed over sixteen different documents from the file. Those files were not returned, and this matter must be fully resolved by the applicant before further action can be taken on this permit. The file also appears to be missing additional information including, but not limited to, information from the Oregon Department of Fish and Wildlife and professional hydrologist Jon Rhodes.

2. **No Description of Plan to Use Water.** The applicant's summary and future plan to use the water is deficient for both S-69976 and R-71657. The proposal does not include a schedule of time and steps that will be taken to complete development and water put to full beneficial use. OAR 690-315-0020(3)(i). The applicant has not provided a meaningful plan or schedule for completion of the construction and perfection of the water right. OAR 690-315-0020 (3)(j).

3. **No Permission from the Forest Service.** The extension rules require the applicant to show that it has the necessary land use and development permits to carry out the project. The applicant states that: "Forest Service approvals have been a delaying factor as several construction projects must be approved and permitted in order to complete application of the water." The applicant also states: "permitting process delays cause delays in implementing master plan." In fact, the applicant already applied for and did not receive permission from the Forest Service to construct their planned resort. The master plan does not authorize construction of a destination resort. Therefore, FOMH is concerned that the applicant's real reason for the request is to ask for an extension of this water right to use it for snowmaking. The applicant does not have permission to conduct snowmaking from the Forest Service, nor does the applicant have the right to use these water rights for snowmaking.



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In sum, the applicant previously applied to build a destination resort and was denied permission to do so. The original purpose of the water right was to serve this destination resort. Since the applicant does not have the necessary NEPA and National Forest Management Act clearance and approval, the extension application should be put on hold pending any required NEPA or NFMA review so that analysis would be available to Water Resources for consideration. The applicant has not justified and cannot justify why additional time is needed to complete the project given that the ski area master plan does not include a destination resort or snowmaking in the desired future condition of the area. The development of a destination resort was rejected by the Forest Service. The applicant is required to provide justification of why the requested time is needed to complete the project and/or apply the water to full beneficial use. OAR 690-315-0020 (3)(k).

4. **Permit Condition S7 on Application S- 69976 – No Waste.** The applicant has not provided sufficient detail on the planned uses of either of these two water rights. One potential but not permitted use of this water would be for snowmaking. Application S-69976 provides that: "This permit is for the beneficial use of water without waste." If the water is used for snowmaking, there will be waste of water via evaporation, sublimation, transpiration and other waste. If an extension is granted, the extension must specifically provide that Meadows may not utilize these two water rights for snowmaking. FOMH requests that OWRD require Meadows to agree to this limitation. Oregon statutes and rules call for the state to "aggressively promote" water conservation and place a high priority on eliminating waste and improving the efficiency of water use. Efficient water use is especially important in this instance where the surface water is over-allocated and there are listed species in the affected Basin.

5. **Error in Exhibit #4 to Application S-69976 and R-71657.** The applicant did not provide the required description of the methodologies used for the estimated demand projection. In addition, the calculation in the note to Exhibit # 4 is incorrect. The note states that the "maximum permitted rate is 0.49 cfs at any one time. According to the figures in that chart, the maximum permitted rate is 0.33 cfs from August 1st through October 31st and 0.49 from November 1 to July 31.

6. **Permit Conditions on R-71657.** The application states that the "[s]torage and use of water from the well under this permit is subject to the conditions and limitations in Permit G-13388." The application does not provide current information on the compliance with the conditions in G-13388. The extension application does not address whether the permit conditions in this application have been met, and if so, how they have been met. The applicant must provide this information.

7. **Comprehensive Review of Meadows Rights and Pending Applications.** FOMH requests that these two extensions be reviewed in light of all the recommendations, findings and conditions in the existing water rights file that the applicant has at this location and its application for new surface water and groundwater rights. For example, the outflow from the sewage treatment plant is part of the mitigation for the existing groundwater withdrawal. See Oregon Water Resources Department Memorandum date 1.19.1996 from Donn Miller to Weisha Meize regarding GW/SW Analysis of Application G-12250 and Possible Mt. Hood Meadows Permit Conditions to Mitigate Well Pumping Interference with Surface Water. The applicant may attempt to use these existing water rights to store water for the winter months and then use



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them for snowmaking. However use of the groundwater right in the summer for storage has the potential to interfere with flows in the East Fork of the Hood River. Furthermore, use for this purpose would violate permit condition S7 for S-69976 which prohibits the waste of water. OWRD previously determined that there was a potential for interference between surface and groundwater. FOMH requests that OWRD consider the documentation that is contained in the files for the existing groundwater rights, and consider it in conjunction with the application for the new groundwater and surface water rights. The newest groundwater application is # G-16401 and the new surface water application is S-86185.

8. **Additional Information and Analysis from Federal Fish Agencies.** If the applicant wishes to use this water right for snowmaking, the applicant should be required to submit statements from NOAA Fisheries and the United States Fish and Wildlife Service regarding the impacts on endangered fish.

9. **Protection of Scenic flows & Instream rights.** FOMH requests that OWRD conduct a water availability analysis and determine whether the proposed extension conflicts with the flows needed for the federal Wild and Scenic River designations in the Hood River basin and senior instream water rights. Hood River scenic flows must be protected from any diminishment. ORS 390.825. According to information from the WRD, "the minimum streamflows in the E. Fork Hood River vary from 150 cfs in Oct. - Dec., 100 cfs Jan. - March, 150 cfs April - June, and 100 cfs July - Sept., as measured at the mouth of the East Fork. The priority date is November 3, 1983.

The minimum streamflow has been converted this year to an instream water right, and is treated as any other water right in terms of priority dates. It does not have priority over the CSWD [Crystal Springs Water District] water rights, but would have priority over the Mt. Hood application." See September 14, 1989 Letter to Thomas Hachtel from Weisha Mize. The FOMH requests that the Department prepare an estimate of streamflow and water use in the East Fork, and determine from that analysis whether the minimum flow frequency will be met. This is critical information for WRD to have in making a public interest determination on this extension request. WRD has a duty to protect the water resource and maintain the minimum streamflow.

In a July 8, 1991 letter from the Mt. Hood Irrigation District, Leonard Aubert sent an letter opposing the S-69976 and stated that: "We have been diligently working, for the past several years, to conserve water, thus lowering the irrigation impact on instream water. Mt. Hood Meadows use of East Fork water would significantly diminish instream resources which are already, by our estimates, below the figure arrived at (100CFS) during the hearings two years ago." Similar concerns were expressed by the ODFW, East Fork Irrigation District and the Crystal Springs Water District. These issues persist and FOMH requests that WRD address them as part of this extension review.

The applicant is also required to provide any other information that is relevant to evaluate the application in accordance with applicable statutes and these rules; including, but not limited to, information regarding ability to complete the project, factors speaking to the issue of good cause, reasonable diligence, and the market demand for water.



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Finally, while the OWRD rules may provide preferences for applicants seeking extension of municipal water rights, according to the terms of the permits, FOMH would like to underscore that no preferences according municipal or quasi-municipal rights were afforded to this permit.

As stated above, the WRD cannot approve the application for an extension of time without a completed application. Therefore, the FOMH requests that the WRD return this incomplete application to the applicant and request the requisite information. If the WRD receives the necessary information from the applicant in a timely fashion, the WRD must only provide an extension for the reasonable amount of time necessary to complete water development or apply all the water to beneficial use.

If the requisite information is provided in a timely manner, and the WRD finds it is sufficient, the FOMH request that they be provided an opportunity, as provided by the rules, to comment on the completed extension of time request. Furthermore, if the applicant does provide the requisite information, the FOMH request that the WRD look closely at the legal requirements in determining whether or not the request should be considered, let alone granted. In addition, the WRD should include any condition or provision needed to (a) ensure future diligence; (b) mitigate the effects of the subsequent development on competing demands on the resource; and (c) document the continued need for the permit.

These comments constitute an initial set of issues that FOMH has identified in response to the limited information in the file. As additional information becomes available, FOMH may provide additional comments, requests for information and identify additional issues. The FOMH request copies of the proposed final order and associated documents issued on this application. Please do not hesitate to call if you have any questions.

Sincerely,

Ralph O. Bloemers, Staff Attorney
Cascade Resources Advocacy Group
Counsel for Friends of Mt. Hood

cc: Doug Jones – United States Forest Service
Oregon Department of Fish & Wildlife

Dave Riley, 12:27 PM 3/29/05, FW: water rights

Page 1 of 2

From: "Dave Riley" <driley@skihood.com>

To: JUUL Lisa J <Lisa.J.JUUL@state.or.us>

Subject: FW: water rights

Date: Tue, 29 Mar 2005 12:27:16 -0800

X-Security: MIME headers sanitized on kettle.wrd.state.or.us

See <http://www.impsec.org/email-tools/sanitizer-intro.html>

for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07

X-Mailer: Microsoft Office Outlook, Build 11.0.6353

Thread-Index: AcU0nDpx4ldkUyNDTU+pjNVPLYiwOgAAVeVQ

X-WinProxy-AntiVirus: Passed

X-WinProxy-AntiVirus-Message: Scanned by <http://www.WinProxy.com/WinProxy>

X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrd.state.or.us

X-Spam-Status: No, hits=0.2 required=5.0 tests=HTML_70_80,
HTML_FONTCOLOR_UNKNOWN,HTML_MESSAGE autolearn=no version=2.63

X-Spam-Level:

-->

Lisa,

Let me know if this answers your questions. Thank you.

>Dave Riley

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MAR 29 2005

**WATER RESOURCES DEPT
SALEM, OREGON**

From: Steve Warila [mailto:swarila@skihood.com]

Sent: Tuesday, March 29, 2005 12:22 PM

To: Riley, Dave

Subject: water rights

S3 - We comply

S4 - We comply, we adjust discharge rate periodically to provide more continuous effluent release

S5 - We comply, we record flow and nearly every thing that flows into the sewer system eventually flows out to the stream. (we haul out < 40,000 sludge annually)

We have not begun use of the water under this permit so complying with the above conditions is voluntary.

Appl # S-69976
(Permit # S-53637)

APPLICATION FOR EXTENSION OF TIME
for Quasi-Municipal and Municipal Water Use Permits

TO THE WATER RESOURCES DIRECTOR OF OREGON

A separate extension application must be submitted for each permit pursuant to OAR 690-315-0070(2). This page, with your original signature, must accompany your application for extension of time.

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/publication/reports/index.shtml.

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I, Meadows Utilities LLC Dave Riley, President
NAME OF ENTITY NAME OF CONTACT
P.O. Box 470 Wt. Hood OR 97041 503-337-2222
ADDRESS CITY STATE ZIP PHONE (x)259

permit holder, or duly authorized agent, of Application No. S-69976, Permit No. 53637
[OAR 690-315-0070(3)(b)], do hereby request that the time in which to:

☒ complete the construction of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, 2004, be extended to October 1, 2017,

and/or the time in which to:

☒ accomplish beneficial use of water to the full extent under the terms of the permit, which time now expires on October 1, 2004, be extended to October 1, 2017.

I am the permittee, or have written authorization from the permittee, to apply for an extension of time under this permit. I certify that the information I have provided in this application is true and correct to the best of my knowledge.

Dave Riley, President
Signature

March 15, 2005
Date

Application for Extension of Time
For Quasi-Municipal Water Use Permit
Application No. S-69976, Permit No. 53637

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- 1) \$250 Statutory Fee provided with this application for extension of time.
- 2) Provide evidence of the actions taken to begin actual construction on the project as required under the applicable statute:

Attached is Exhibit #1. The dotted lines represent the system that was existing. The solid lines represent work that was done to start construction for this permit. The work included installing a new 3" flow meter, piping, reducers, "t"s, and valves. This work was started and completed in August, 1998.

- 3) Describe and supply documentation of actions taken to develop the water right permit:
 - A) If this is the first extension request for this permit, identify the dates for completion of construction and/or full beneficial use of water specified in the permit and provide evidence that includes dates of work accomplished and actions taken that occurred within the original authorized dates for completion of construction and/or beneficial use of water:
 - See Exhibit #1 which shows work performed to date.
 - See Exhibit #2 which show easement acquired to meet required condition for gauging station on the East Fork Hood River
 - Remaining work will be completed prior to 2017 and full beneficial use of the water will be prior to 2017.
 - B) If a prior extension was granted for this permit... N/A
- 4) Provide evidence of compliance with conditions contained in the original permit, as well as any conditions added by previous extensions. If any conditions have not been satisfied, please explain the reason(s) why:
 - Condition #1 – S6: We have acquired the easement in order to install the gauging station, and have purchased equipment, but have not installed the equipment yet. See Exhibit #2
 - Condition #2 – S8: A meter has been installed. See invoice for meter we purchased and installed.
 - Condition #3 – S11: We have started writing the water management and conservation plan but have not completed it.

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SALEM, OREGON

- Condition #4: Actual construction work did in fact begin within one year from permit issuance. See invoices.
- Condition #5: Claim of beneficial use has not been submitted yet. This will be done prior to 2017.

5) Document evidence of the maximum instantaneous rate of water diverted to the date of this application, if any, for beneficial Quasi-Municipal or Municipal purposes: No water has been diverted under this permit for beneficial use as of the date of this application extension.

6) Provide an estimate of the population served under this permit and a description of the methodology(ies) used to make this estimate: None so far.

7) Provide a description of the financial expenditures made toward completion of the water development under this permit: \$1,073 in construction materials and labor. Much more in planning and legal fees.

8) Provide an estimate of the cost necessary to complete the water development:

\$400,000 estimated remaining costs

9) List and describe all events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements (if any), relating to the project that have significantly delayed completion of construction or perfection of the right:

Forest Service approvals have been a delaying factor as several construction projects must be approved and permitted in order to complete application of the water.

10) – A. Provide an estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights and contracts held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use:

See Exhibit #4

10) – B Extension requests for greater than 50 years much include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder: N/A

11) Provide a summary of future plan and schedule to complete construction and/or perfect the water right: Design, apply to Forest Service for approval, construct facilities and put water to beneficial use by 2017.

12) Justify the time requested to complete the project and/or apply the water to full beneficial use: USFS, NEPA process and development of projects is a lengthy, complicated, and time consuming process. The ski area master plan identifies the desired future conditions. Each project under the master plan requires site specific NEPA and decisions for construction.

13) Provide any other information you wish the Department to consider while evaluating the extension of time application: We have invested hundreds of thousands of dollars in planning and legal fees in these water rights. Events beyond our control have slowed the process of application of the water. This water is necessary for our planned resort.

Signature:

Dane Riley, Pres. Meadows Utilities LLC

Date:

March 15, 2005

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SALEM, OREGONPoint of
Diversion
(Spring)Overflow
existing
to StreamFire Reservoir
existingDomestic Water
Filter System
existingExisting
Water
System
MeterTo
Storage
Reservoir4x4x4
Tee
new4" valve
existing4" valve
newFrom
Storage
Reservoir4x4x4
Tee
new4" valve
new

To Lodge

8x4
reducer
4" valve
existing4x3
reducer
new3" flow
meter
new3x8
reducer
new8x8x8
existing
Tee8x4
reducer4x4x4
existing
Tee4" valve
existing4x4x4
existing
Tee8x4
reducer

Mt Hood Meadows: Water System

1998 Modifications

SIZE	FSCM NO.	DWG NO.	REV
SCALE	NTS	Steve Warfield 08/18/98	SHEET 1 of 1

EXHIBIT #2

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WATER RESOURCES DEPT
SALEM, OREGON

INSTALLATION AND ACCESS AGREEMENT

This agreement is made this 7th day of June, ~~19~~ 2001, between Mount Hood Railroad Co., Inc., an Oregon Corporation, hereinafter called "Railroad," and Mt. Hood Meadows (in cooperation with Oregon Water Resources Dept. and ODFW), hereinafter called "Licensee."

1. Grant of License.

Railroad hereby gives Licensee permission to construct, maintain, operate, and monitor a water gauging system on or across a portion of the right-of-way of Railroad. The water gauging system and associated monitoring devices, in relation to said right-of-way and trackage, is located at or near milepost 16.60, in Hood River County, Oregon, as shown on Exhibit "A" attached hereto, and hereby incorporated in by reference on the terms and conditions set forth herein. Said water gauging system is hereafter referred to as "System."

2. License Fee.

Licensee agrees to pay Railroad for this license, a one-time fee of \$300.00 upon the execution of this agreement. This applies only to new installation agreements.

3. Conditions.

The foregoing grant is made expressly subject to the observance and performance by Licensee of all the following conditions and agreements.

a. System shall be used for the sole purpose of gauging and recording water flow at that location of the East Fork of the Hood River.

b. System shall be constructed, maintained, and operated in accordance with any standards required by Railroad and in accordance with all applicable laws.

c. Soil or rock disturbed or structures utilized in any such construction, maintenance, or operation shall be returned to their pre-construction condition following installation. Under no condition shall structures be damaged, weakened, or undermined.

d. All work performed by Licensee or its agents on the property shall be done under the supervision of and to the satisfaction of Railroad.

e. Before beginning any work on the property, Licensee shall submit work plans to Railroad and shall not proceed until these plans have been approved by Railroad. Railroad may, at its discretion, provide materials, personnel, or equipment as it deems necessary for safety reasons during any work by Licensee. The cost of such items provided by Railroad shall be paid by Licensee. The cost of such items provided by Railroad shall be paid to Railroad by Licensee within 30 days after billing. Actual costs shall be marked up 10% for overhead not capable of

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SALEM, OREGON

f. After work plans have been approved, Licensee shall give Railroad 48 hours advance notice of commencement of any work, except in an emergency when reasonable notice shall be given as the circumstances allow.

g. Licensee shall take all reasonable precautions to insure that radiant transmissions from System do not interfere with Railroad own use of Cellular and/or radio transmissions, or electrified rail circuitry.

4. Access.

a. Access for installation, maintenance, and monitoring shall be allowed only to authorized and instructed personnel.

b. All access must be made from the north side of the river. At no time will personnel access the site by way of crossing the railroad bridge.

c. All tools, equipment, vehicles, etc. will be kept a cautious distance from tracks and trains. Under no circumstance may equipment, tools, vehicles, or personnel be left on or in between rails.

5. Duration and Termination.

This agreement shall take effect upon the date first herein written, and shall continue in force and effect until December 31, 2009, automatically renew for ~~an~~ additional ten year term, unless terminated prior to the end of the current agreement period. Written notice of termination may be given by either party to the other within 30 days prior to the intended termination date. Railroad may terminate this agreement for cause by giving Licensee 24 hours written notice. Failure to correct any violations of the terms of this agreement within 10 days after written notice from Railroad specifying the violation shall be cause for termination unless the violation affects the safety of Railroad's operations; in which case no notice to correct need be given. SW

Upon termination, Licensee shall, at its sole cost and expense, remove System within 30 days unless Railroad gives Licensee written notice that Railroad will remove System prior to approving Licensee's work plans for the removal work. If Railroad elects to remove System of its own accord, the costs shall be billed to Licensee and are payable within 30 days after billing. Termination shall not impair any right of action for damages or otherwise.

Termination shall not relieve, release, or discharge Licensee from any debt, duty, or obligation which shall have attached or accrued prior to such termination. Termination by either party shall not entitle Licensee to the refund of all or any part of fees and considerations paid in advance, nor shall it entitle Licensee to reimbursement of any action taken or expense incurred pursuant to this agreement.

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6. Relocation.

If requested by Railroad, due to its operational needs, Licensee shall move System to such location as designated by Railroad. Such a relocation would be the sole cost and expense of Licensee.

7. Restoration of Property.

At the conclusion of any work performed under this license, to include the removal of System, Licensee shall restore Railroad's property to good and usable condition.

8. Superior Interests.

This license is subject to Railroad's right to operate, construct, and maintain its railroad and related facilities on the property without liability to Licensee or any other party. No rights are given hereunder to interfere in any way with Railroad's operations or the safety of those operations. This license is also subject to all existing encumbrances on the property, Railroad's right to renew any such agreements, and is given without covenant of quiet enjoyment.

9. Assignment.

Licensee may not assign this agreement in whole or in part without the written consent of Railroad. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10. Claims, Liens, and Taxes.

Licensee shall not allow any claim or lien to attach to the property which may be superior to the rights of Railroad. Licensee shall pay, when due, any taxes or assessments levied on account of System; whether such charges are separately made to Licensee or included with Railroad's tax bill.

11. Indemnification and Insurance.

Licensee shall indemnify and hold Railroad harmless from any and all claims of any kind arising out of this agreement and Licensee's exercise of the rights given hereunder. Licensee hereby releases Railroad from any liability for damages to the System from any cause. Licensee shall at all times maintain in effect public liability insurance in a form satisfactory to Railroad and in an amount of at least \$1,000,000.00 for injury or death to one or more persons and/or property damage. Railroad shall be named as an additional insured on this policy. Railroad shall be given evidence satisfactory to Railroad of the policy number, company, and effective dates of the insurance at the time of execution of this agreement and at least annually thereafter. Railroad may reduce the liability insurance limit at the discretion of Railroad. Unless waived by Railroad, any persons or companies performing any work on the property for Licensee shall be subject to the same insurance requirements.

12. Waiver.

The waiver of the breach of any provision of this agreement by either party shall not affect that party's right to later enforce that provision or to enforce any other provision of the agreement.

13. Attorney Fees.

In any litigation arising out of this agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs of litigation from the loser. Including reasonable fees of experts, depositions, and so on, as set by the court.

Executed on the date first herein written.

Mount Hood Railroad, Co., Inc.

By: Ron J. Kaufman

Title: Op mgr

Licensee: Mt Hood Meadows

By: Stewart

Title: Director of Mt. Operations

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SALEM, OREGON

NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4
SECTION 10

ALL
SECTION 11

NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SECTION 14

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 15

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

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SALEM, OREGON

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

#1
S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

#2
S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

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SALEM, OREGON

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S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

3
S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued to correctly describe the name of the permittee, the priority date, and the amount stored water that is allowed. Permit

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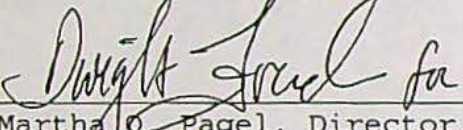
WATER RESOURCES DEPT
SALEM, OREGON

PAGE 6

53259, dated April 14, 1998 is superseded by this instrument and is of no further force or effect.

#4 Actual construction work shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued December 9, 1999


Martha O. Pagel, Director
Water Resources Department

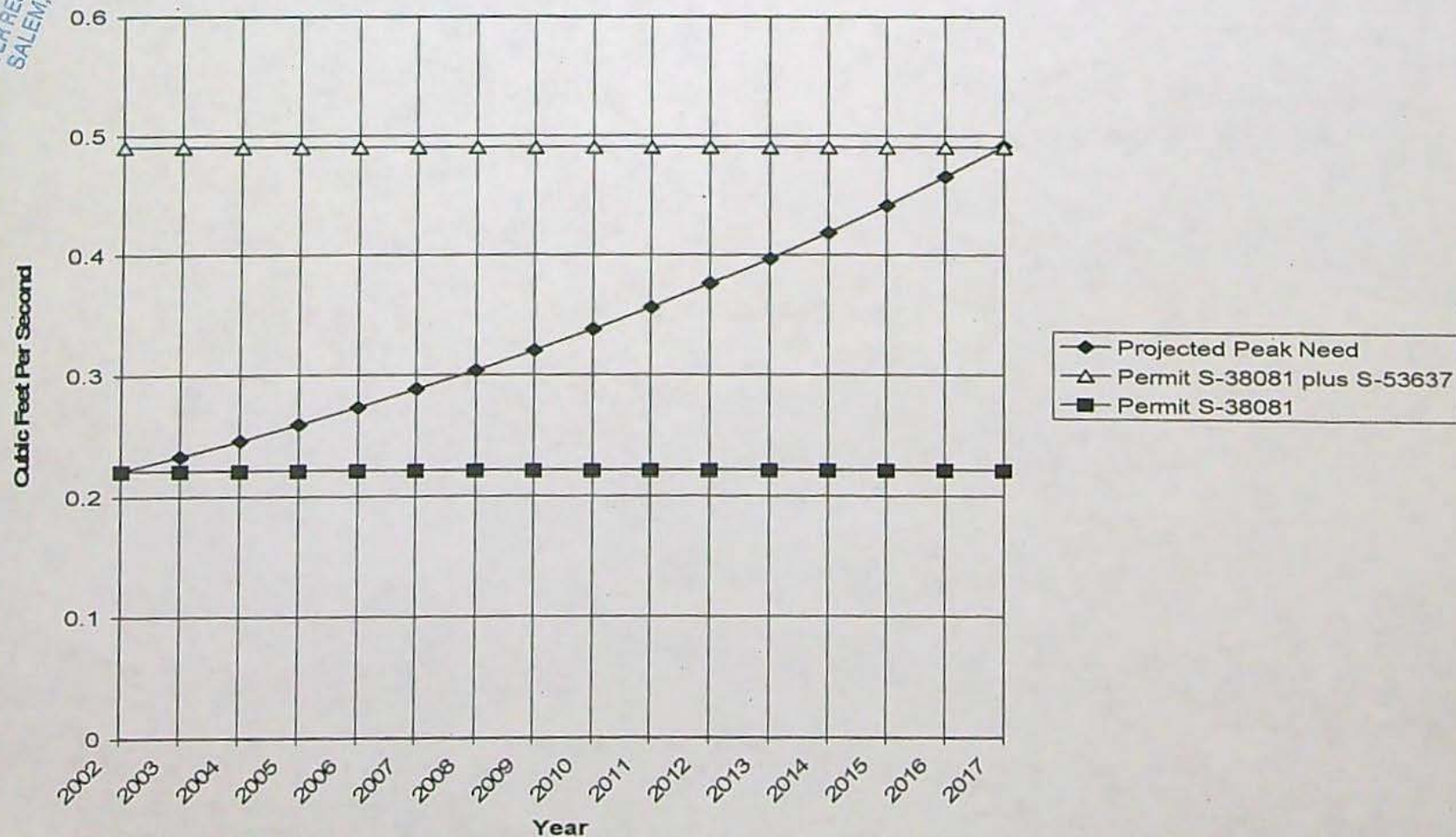
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EXHIBIT #4

Water Needs for Meadows Utilities LLC



Note: Permit S-38081 (0.22cfs) period of use is unrestricted, S-53637 (0.27cfs) period of use is Nov 1 – July 31, G-13388 (0.11cfs) period of use is limited to Aug 1- Oct 31 therefore maximum permitted rate is .49cfs at any one time

Water Resources Department

MUNICIPAL WATER USES AND PROJECTED NEEDS FORM

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WATER RESOURCES DEPT
SALEM, OREGON

1. POPULATION AND GROWTH:

	Current Year: 2002	2010	2017 2020	2030	2040	2050
Population:	12,300	18,876	27,459			
Growth Rate:	5.5%	5.5%	5.5%			

2. EXISTING WATER RIGHTS AND PERMITS:

Ground Water

Permit Number	Description	Amount	Priority Date
13388 G	Main Well	0.110 C	05/23/91

Surface Water

Permit Number	Description	Amount	Priority Date
38081 S	South Spring FP	0.010 C	02/09/73
38081 S	South Spring CM	0.210 C	02/09/73
53637 S	South Spring QM	0.270 C	06/29/89

Pending Applications

Application Number	Description	Amount	Priority Date
G 16401	Snowmaking	50 GPM	3/7/05
S 86185	Snowmaking	1.1 CFS	3/2/05

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3. EXISTING AND FUTURE WATER USE:

	Current Year: 2002	2010	2017 2020	2030	2040	2050
Current Peak Demand:	0.22 cfs	0.34	0.49			
Current Water Use:						
Peak Day Demand: (gallons/capita/day)	11.25	11.25	11.25			
Peak Daily Demand: (million gallons/day)	0.081	0.124	0.184			
Average Daily Demand: (gallons/capita/day)	15.	15.	15.			
Average Summer Demand: (gallons/capita/day)	250	250	250			

4. EXPLANATION FOR PROJECTED GROWTH RATE:

A combination of increased population,
increased skier participation rate, and
increased market share.

5. EXPLANATION FOR EXTENSION TIME PERIOD:

Permitting process delays cause delays in
implementing master plan.

Meadows Utilities LLC

EXISTING WATER RIGHTS AND PERMITS:

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ATTACHMENT A

Ground Water

Application /Permit Number	Certificate Number	Source	Use	Priority Date	Authorized Amount of Water	Max Amount of Beneficial Water Use	*Use Limitations/notes
G-12550/G-13388		Well	Quasi-Municipal	May 23, 1991	0.11cfs	0 as of 02/28/05	Construction started but not completed Period of use Aug 1- Oct 31

Surface Water

Application /Permit Number	Certificate Number	Source	Use	Priority Date	Authorized Amount of Water	Max Amount of Beneficial Water Use	*Use Limitations/notes
S-50037/S-38081	48445	Unnamed Spring	for ski facility and fire suppression	Feb 9, 1973	0.22cfs	0.22cfs	Certified year-round use
S-69976/S-54637		2 Unnamed Springs and 2 Unnamed Reservoirs	Quasi-Municipal	June 29, 1989	0.27cfs	0 as of 02/28/05	2nd spring has not been developed yet Period of use Nov 1 - July 31 Construction started but not completed
R-71657/R-12758		2 Unnamed Springs and 2 Unnamed Reservoirs	Quasi-Municipal	June 5, 1991	2.48 AF	0 as of 02/28/05	Construction started but no water stored yet



CAMPBELL SCIENTIFIC, INC.

815 W 1800 N • Logan Utah 84321-1784
PHONE (435) 753-2342 • Fax (435) 750-9540
Fed. I.D. #87-0305157 • DUNS: 06-798-0730

INVOICE

92751
* PAGE 1 *

JAN 14 REC'D

7646

DATE

31 Dec 98

SHIP TO:

GENEVIEVE SCHOLL
MT HOOD MEADOWS SKI AREA
HWY 35
MOUNT HOOD OR 97041

S
O
L
D
T
O

ACCOUNTS PAYABLE
MT HOOD MEADOWS SKI AREA
ATTN GENEVIEVE SCHOLL
PO BOX 470
MOUNT HOOD OR 97041

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SALEM, OREGON

DUE DATE: 30 Jan 99

YOUR ORDER NO.		OUR ORDER NO.		DATE SHIPPED		VIA		FOB POINT		DUE DATE: 30 Jan 99		TERMS																	
57072		78039		31 Dec 98		UPS		Logan, Utah		NET 30 DAYS																			
QTY. ORD.		QTY.SHP'D		DESCRIPTION						PRICE		PER		AMOUNT															
1		1		COM200 9600 BAUD PHONE MODEM						375.00				375.00															
														Sub-total		375.00													
														Freight		3.73													
														* T O T A L *		378.73													
THIS COMPLETES YOUR ORDER																													
1 PARCEL(S) IN SHIPMENT/SHORTAGE MUST BE REPORTED WITHIN 7 DAYS																													
1/23 <table><tr><td>P. O.</td><td>APPR.</td></tr><tr><td>COST CODE</td><td>AMOUNT</td></tr><tr><td>M 9846.000</td><td>375.00</td></tr><tr><td>U</td><td>3.73</td></tr><tr><td></td><td>378.73</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table> 1/20 882 7/99																P. O.	APPR.	COST CODE	AMOUNT	M 9846.000	375.00	U	3.73		378.73				
P. O.	APPR.																												
COST CODE	AMOUNT																												
M 9846.000	375.00																												
U	3.73																												
	378.73																												

By acceptance of the above described property, goods and equipment (collateral), the purchaser grants Campbell Scientific, Inc. (CSI) a security interest, until payment in full, in the collateral above described, continuing if the collateral becomes a part of a whole, product or mass, together with all proceeds and/or products, and upon failure to pay as agreed, CSI shall have all rights and remedies of a secured party under applicable state statutes.

Buyer will be charged a **finance fee** of 1 1/2 % (18% annual interest) per month of any amount past due until paid.
Buyer will also be charged reasonable attorney's fees should collection by suit be required.

ORIGINAL

OD MEADOWS

DEC 15 1998

POST OFFICE BOX 470
MT. HOOD, OREGON 97041-0470
AREA CODE 503-337-2222
FAX 503-337-2232

NAME Campbell Scientific
815 W. 1800N
Logan, UT 84321
ADDRESS
CITY STATE ZIP

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WATER RESOURCES DEPT
SALEM, OREGON

PURCHASE ORDER

DATE 12/4/98	NUMBER 57072
PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, DOCUMENTS, AND CORRESPONDENCE.	
TERMS:	

(435) 750 9543

DATE REQUIRED	SHIP TO DEPARTMENT MTN	FREIGHT PREPAID COLLECT C.O.D.			VIA UPS	VENDOR CONTACT Lorraine
					G	VENDOR PHONE NO. (801) 753-2342

REASON FOR PURCHASE

Water Meter date logger for water rights

PART NO.	DESCRIPTION	QTY. ORD'D.	QTY. REC'D.	UNIT PRICE	\$ TOTAL	ACCOUNT NO.
1	Modem for CR10	1		375.00	375.00	9846.00
2	Com200 —					
3						
4						
5						
6						
7						
8						
9						
0						
1						
2						
3						
4						
5						
6						
NET TOTAL					375.00	

Schall
ORDERED BY

12/11/98
DATE

8W
DIRECTOR APPROVAL

12/14/98
DATE

ACCOUNTS PAYABLE COPY

2

ORIGINAL

X-Sender: juullj@mailhub.wrd.state.or.us

X-Mailer: QUALCOMM Windows Eudora Version 6.1.2.0

Date: Thu, 24 Feb 2005 08:55:23 -0800

To: "Dave Riley" <driley@skihood.com>

From: Lisa Juul <Lisa.J.JUUL@wrđ.state.or.us>

Subject: Re: Surface water right

Cc: Lisa.J.JUUL@wrđ.state.or.us

X-Security: MIME headers sanitized on kettle.wrd.state.or.us

See <http://www.impsec.org/email-tools/sanitizer-intro.html>

for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07

X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrd.state.or.us

X-Spam-Status: No, hits=0.6 required=5.0 tests=HTML_20_30,HTML_FONTCOLOR_BLUE,
HTML_MESSAGE autolearn=no version=2.63

X-Spam-Level:

File # S-69976

Hello Dave,

The Department hereby grants your request to have additional time through March 31, 2005, to submit an Application for Extension of Time for Permit #S-53637 (Appl #S-69976).

A copy of this e-mail will be placed in the permit file record and the Department's tracking database will be updated accordingly.

Thank you,
Lisa

At 03:56 PM 2/23/05, you wrote:

-->

Lisa,

As per our telephone conversation today, by this email I am requesting additional time to file an Application for Extension of Time on File #S-69976, Permit 53637.

I should be able to get the forms in to you by March 31, 2005. Please let me know if this is acceptable by replying to this email. Thank you.

Dave Riley

Meadows Utilities LLC

President

Lisa J. Juul

Printed for Lisa Juul <Lisa.J.JUUL@wrđ.state.or.us>

2/24/05

2003

Oregon Water Resources Department
October 2003 through September 2004
Annual Water Use - Monthly Quantities Form

USER-ID 28857

2004



Facility POD-ID	Main Well 47109	South Spring 51513	51514	51515	51516
October - 2003		568,127			
November - 2003		307,624			
December - 2003		777,024			
January - 2004		1,004,290			
February - 2004		853,805			
March - 2004		610,110			
April - 2004		477,245			
May - 2004		383,525			
June - 2004		346,190			
July - 2004		338,990			
August - 2004		299,650			
September - 2004		286,050			
TOTAL * G	0	6,252,630	0	0	0

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: Meter. If use is irrigation, total number acres irrigated _____

I certify this information is true and accurate to the best of my knowledge.

Steve Warila
Signature

Steve Warila

Name - Please Print

Vice President
Title

Meadows Utilities LLC
Reporting Entity

1-12-2005
Date

Please complete and mail to: Water Resources Department; Water Use Reporting Program;
725 Sumner Street NE; Suite A, Salem, OR 97301-1271, or Fax 503-986-0902.

JOB TRANSACTION DETAIL REPORT

MT HOOD MEADOWS, OREG., LTD.

JOB NUMBER: 9846 - 000 Water Storage Reservoir
 JOB TYPE: 905 MEADOWS UTILITY
 JOB STATUS: X CLOSED JOB
 CONTRACT NO:
 % COMPLETE: .00%

CUSTOMER NO: 00 - 0000000 SWP EXPENSE
 BILL METHOD: T TIME & MATR ESTIMATOR:
 STATUS DATE: 06/30/00 MANAGER: SW
 CONTR DATE: 09/25/98
 REPORTED DATE:

START DATE:
 COMPL DATE:
 REV. CONTRACT: 00
 REV. ESTIMATE: 6,084.00
 CALC% CMP: 6.23%

COST CODE/ TRANS DATE	TYPE	SRC	REFERENCE/POSTING	REMARKS	BILLED?	UNIT COST	UNITS	DOLLARS	REVISED ESTIMATE	% OF ESTMT
030				CONSTRUCTION						
01/20/99	F	AP	Freight	00CAMP20 92751	N			3.73	.00	0%
01/20/99	M	AP	Material	00CAMP20 92751	N			375.00	6,084.00	6.2%
COST CODE 030 TOTAL:								378.73	6,084.00	6.2%
JOB 9846-000 TOTAL:								378.73	6,084.00	6.2%
REPORT TOTAL:								378.73	6,084.00	6.2%

Handwritten notes on yellow sticky note:
 - familiar
 - United pipe supply
 - Qual on water metrics
 - sup → Water Rights
 Water meter

Handwritten notes:
 Surface -
 - Campbell
 - water meter
 - labor

RECEIVED
 MAR 17 2005
 WATER RESOURCES DEPT
 SALEM, OREGON

19"

Handwritten notes:
 2x 4" cast iron elbow
 3x 4" water system valve
 6x 4" sch 80 4" pvc flange
 40' sch 80 pvc pipe
 2 4" sch 80 pvc cap
 water meter part - 4400

Handwritten notes:
 Surface
 100' x 12'
 Right
 Right

Handwritten notes:
 2 days labor
 4 days at 10 = 1 hr
 3000 W350



App: 50037, 699716, 612250, 71657

USER-ID 28857

Oregon Water Resources Department
October 1999 through September 2000
Annual Water Use - Monthly Quantities Form



Facility  POD-ID 	South Spring 51513	North Spring 51514	Main Well 47109	Res 51515	Res 51516
October - 1999	365,970	0	0	0	0
November - 1999	769,500				
December - 1999	714,251				
January - 2000	842,207				
February - 2000	716,675				
March - 2000	793,002				
April - 2000	590,420				
May - 2000	517,540				
June - 2000	279,270				
July - 2000	257,111				
August - 2000	293,900				
September - 2000	234,600				
TOTAL * Gallons	6,372,442	0	0	0	0

RECEIVED

MAR 22 2001

WATER RESOURCES DEPT.
SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: 3" turbine meter. If use is irrigation, total number acres irrigated 0

I certify this information is true and accurate to the best of my knowledge.

[Signature]
Signature

Director of Mtn Operations
Title

Meadow's Utilities LLC
Reporting Entity

3-19-01
Date

Steve Warila
Name - Please Print

Please complete and mail to: Water Resources Department; Water Use Reporting Program;
158 12th Street NE; Salem, OR 97310-0210

PROPOSED MINIMUM PERENNIAL STREAMFLOWS
HOOD BASIN

APPLICATION EXPLANATION

In 1983, the Oregon Legislature passed SB 225. The law required the Departments of Fish and Wildlife and Environmental Quality to jointly submit an application for establishment of minimum perennial streamflows at up to 75 priority points on Oregon streams. Under the law, the Water Policy Review Board may adopt, reject or change the amount of flow requested. Changes in flows must be based on streamflow levels that are more appropriate for maintaining aquatic life or minimizing pollution. A flow may be rejected only if the Board finds that the purposes of the minimum flow are of lesser importance than other uses.

The application covering streams in 13 basins was submitted to the Water Policy Review Board on November 3, 1983. The Board must make its final determination on each requested flow before January 1, 1986. The minimum streamflows, if adopted, will affect only water rights with priority dates after November 3, 1983.

In response to SB 225, an initial series of public meetings was held to gather information on water needs, problems and conditions in each area as well as to receive comments on each of the streamflow requests. Information and comments for the Hood River Basin minimum flow requests were analyzed in developing the proposed action described in this report. A public hearing on the proposed minimum flows will be held on November 29, 1984, in Hood River, Oregon.

HOOD RIVER SUBBASIN

Minimum Streamflow Locations

The Departments of Fish and Wildlife and Environmental Quality requested minimum streamflows on four streams in the Hood River subbasin. Minimum streamflows requested in the Hood River subbasin are on the Hood River, East and Middle Forks Hood River, and Neal Creek (Figure 1).

MINIMUM STREAMFLOW REQUEST

Hood River Mainstem: from Powerdale Dam to Mouth

Oct-Nov	Dec-Jan	Feb-Apr	May-Jun	Jul	Aug-Sep
100	170	270	170	130	100

Neal Creek: at Mouth

Oct-Nov	Dec-Mar	Apr-Jun	Jul-Aug	Sep
20	13	20	13	5

East Fork Hood River: at Mouth

Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep
150	100	150	100

Middle Fork Hood River: at Mouth

Oct-Nov	Dec-Mar	Apr-Jun	Jul-Sep
150	100	150	100

The requested flows are for both anadromous fish and resident trout production, and to support a catchable trout fishery on both Neal Creek and East Fork Hood River.

Basin Location/Description

The Hood River is located in Hood River County. The subbasin is bordered on the north by the Columbia River, on the east and south by Wasco County and on the west by the Cascade Mountain Range. The Hood River originates on the eastern slopes of Mt. Hood, the predominant land feature in the basin. The basin is somewhat rectangular in shape measuring about 50 miles from east to west, and 30 miles from north to south.

Climate/Topography

The Hood River subbasin is influenced by the Cascade Range and is in a transitional zone between the predominating influences of maritime air characteristic of western Oregon and the much drier continental climate of eastern Oregon.

Annual precipitation varies with elevation from 130 inches along the crest of the Cascade Range to less than 10 inches along the eastern boundary of the subbasin. The growing season varies from 217 days at Cascade Locks decreasing to 146 days in the lower valleys. In the Hood River Valley cool summer temperatures somewhat limit the species of crops that can be grown, but the climate is excellent for apple and pear production with good air

circulation and favorable temperature during the growing season. Snowfall is light at the lower elevations but heavy in the hill and mountain areas.

Land Ownership

Hood River subbasin contains 482 square miles or 91% of Hood River County. The mountainous terrain of the watershed is under public ownership while the valley is primarily under private ownership.

The federal government owns 64% of the land in the county which is managed in the Mt. Hood National Forest. The county owns 9% of the land, while the state and the local governments own less than 1%. Private land holdings account for 26% of the land primarily located in the Hood River valley.

Land Use

Much of the land in the Hood River subbasin is either in forest or orchard production. Agricultural production is the main industry, but food processing, lumbering and recreation are also important.

In Hood River County 33% of the private land base, 45 square miles, is zoned for exclusive farm use. About 87% of the EFU lands are in orchards, 12% in hay and forage and 2% in small fruits, berries and vegetables.

There are numerous farms in the valley with the majority between 1 and 40 acres in size. Cropland and the number of farms have decreased because of rural-residential development and land costs.

There are approximately 66 square miles of forest land in private holdings. Forest land accounts for 88% of the county. Forests in Hood River are managed for tree harvest and recreational uses such as skiing, camping, wilderness and hunting. A variety of campsites as well as winter and summer sports opportunities are offered on National Forest Service lands. The Mt. Hood Wilderness is located on the northern slopes of Mt. Hood.

The city of Hood River is the only city in the subbasin. The population is 4370 and is expected to increase to 7,880 by the year 2000. Growth will come from a variety of factors including agriculture, timber and proximity to the Columbia River and the city's importance as a port.

The Comprehensive Plan for Hood River County has not been adopted. The city plan has been acknowledged for all but 2 small land areas.

FUTURE LAND USE

Hood River County expects that present land use patterns will not change significantly over the next 20 years. The county has adopted exclusive farm use zoning to protect farms from further encroachment by other land uses. Agriculture and forestry will continue to provide most of the jobs and income. Recreation in Hood River County is already diverse and should increase as continued improvements are made in the winter sports area. In order to improve the aquatic environment, the Department of Fish and Wildlife is developing bank and stream restoration projects.

WATER

Hydrologic Characteristics

Streamflow patterns in the Hood River drainage are characterized by fairly high flows from December through May. Peak flows generally occur during December or January due to large amounts of precipitation. Spring flows remain high because of melting snow on Mt. Hood. Summer flows consist primarily of glacial melt from Mt. Hood and discharge from ground water. Middle Fork, East Fork and Hood River all have similar runoff characteristics.

Neal Creek, with a lower elevation watershed, is dependent on rainfall instead of snowmelt or glacial melt. High winter flows and low summer flows generally occur.

Extensive streamflow records are available for Hood River at Tucker Bridge, Hood River near Powerdale, and West Fork Hood River near Dee. There are also numerous gages which measure some of the irrigation diversions for Middle Fork, Mt. Hood, Farmers, Dee, and East Fork Irrigation Districts. Data is available from 1966-1982 for flows at Tucker Bridge, 1913-1964 for flows at Powerdale, and 1933-1982 for the West Fork near Dee. The flows at Tucker Bridge are representative of the flows at Powerdale since there are no diversions and only limited inflow between the two points. Neal Creek is the largest tributary to Hood River between Tucker Bridge and Powerdale.

To determine runoff from ungaged areas, annual yields for West Fork and Hood River were adjusted for gaged diversions. The data indicate that 50% of the runoff at Tucker Bridge comes from the West Fork. Based on area and rainfall, it was determined that the East Fork accounts for about 30% of the runoff at Tucker Bridge and Middle Fork produces about 15%. Since no actual data was available, monthly flows in Neal Creek were estimated using data from Mosier Creek, Dog River and the Hood River.

Probability of exceedance curves, developed from the annual yields show the percentage of years that a particular yield will be equalled or exceeded on the respective streams. The curves were used to determine the percentage of years that monthly flows on the East Fork, Middle Fork, Hood River and Neal Creek would equal or exceed the minimum flows and consumptive water uses.

The results of the statistical analysis along with other water use data are shown in Table 1.

The main water quality problem in the basin results from excess sediment in the streams due to glacial melt. The Middle Fork, East Fork and Hood River have sediment problems. Flows in Neal Creek are generally free of sediment. East Fork Irrigation District uses Neal Creek as part of its delivery system which introduces some sediment to the stream from the waters of the East Fork.

Due to the availability of surface water, the ground water resource has undergone little development. The Columbia River Basalt formation underlies the entire area and generally produces adequate quantities of water for domestic and some irrigation use. The upper and lower Hood Valleys consist of alluvium which may produce moderate quantities of water in some locations.

ADMINISTRATIVE AND STATUTORY PROVISIONS

The waters of upper Dog River, a tributary of the East Fork have been classified for municipal use only. The city of The Dalles presently transports Dog River water to the Mill Creek basin.

In 1917, the State Engineer withdrew the unappropriated waters of the Hood River and East Fork Hood River in the Mt. Hood vicinity for development of the Tygh Valley-Wamic Irrigation project and the Fifteenmile Creek project. No action has been taken on the projects and the order does not preclude issuance of water rights on those streams.

The Hood Basin program includes three minimum perennial streamflows: 45 cfs on the Hood River from Powerdale diversion dam to the mouth; 100 cfs on the West Fork Hood River from gage 1185 to the mouth; and 10 cfs on the Middle Fork Hood River at the mouth. The program also limits certain uses of waters of natural lakes. Other waters of the basins can be used for all beneficial purposes except pollution abatement.

Water Use

The following sections describe water uses in the Hood River Basin. Table 1 lists water rights on the respective streams. On East Fork, Middle Fork and Neal Creek, the consumptive water use is added to the proposed minimum flow to determine the exceedance probability and compared to estimated flows because there are no stream gages. For the Hood River, water rights above and below the Tucker Bridge gage are listed to show the percentage of time that the minimum flows can be met at Powerdale with or without the 500 cfs that can be diverted for power development.

Irrigation: Most of the irrigation in the Hood River Basin occurs within five irrigation districts. Irrigation is the largest consumptive water use in the basin. Many of the water rights are adjudicated, predating the 1909 water laws.

About 24,000 to 25,000 acres are irrigated in the Hood River Basin. The main irrigated areas and the sources of water are listed below:

Middle Fork Irrigation District	6,200 acres	tributaries of the Middle and East Forks Hood River and Laurance Lake
East Fork Irrigation District	9,000 acres	East Fork Hood River
Farmers Irrigation District	6,100 acres	Hood River and tributaries of West Fork and Hood River
Mt. Hood Irrigation District	800 acres	East Fork Hood River
Dee Irrigation District	950 acres	West Fork Hood River

In the Middle Fork drainage, irrigation rights total about 120 cfs to irrigate 9,700 acres. That figure includes a 25 cfs right to irrigate 2,000 acres in the Middle Fork Irrigation District which has not yet been developed. Laurance Lake, developed by the Middle Fork Irrigation District, stores about 3,600 acre-feet and is used primarily for irrigation within the district.

Water rights in the East Fork basin total 157 cfs for irrigation of about 13,000 acres. While most irrigated areas are within irrigation districts there are also numerous individual users. Most of the land irrigated from the East Fork lies outside the East Fork watershed. The East Fork and Mt. Hood Irrigation Districts often divert all of the flow in the East Fork at the diversion dam located about six miles upstream from the mouth. Some flow generally reappears a few hundred yards downstream of the diversion.

In the Neal Creek drainage, water rights for irrigation total about 7.5 cfs to irrigate 570 acres. All irrigation is done by individual users along the creek and tributaries.

Water rights for irrigation from the Hood River above Powerdale total about 400 cfs covering some 32,000 acres. The primary user from the main stem Hood River is Farmers Irrigation District.

In estimating water consumption, it was assumed that out of basin diversions were 100 percent consumptive since there would be no return flows. For diversions serving areas within a watershed, crop requirements were used to estimate consumption and return flows were assumed to reappear in the affected stream reach. The primary crops in the basin are orchards, hay and pasture. In most irrigation districts, orchards make up 70 to 80 percent of the irrigated crop. The Oregon Engineering Handbook - Irrigation Guide was used to estimate crop requirements.

Stock: There is only a limited amount of stock use in the basin. The adjudication allowed stock use at some 23 places, but did not specify an amount. Water rights for stock use total over 0.3 cfs in the basin above Powerdale including 0.15 cfs from the Middle Fork; 0.07 cfs from the East Fork; and 0.1 from Neal Creek. All stock use was considered consumptive.

Other Agricultural Uses: Water rights for temperature control, and spraying and fertilizing orchards total 117 cfs and 27 cfs, respectively. These uses only occur for short durations and frost control often occurs outside the irrigation season when flows are high. Because of the short period of use and the unspecified time periods, consumption was assumed to be negligible.

Municipal: Water rights for municipal and group domestic use total about 40 cfs. In addition, the City of The Dalles has an adjudicated right to all of the water of Dog River above the city's diversion point. There are several water companies serving areas in the Hood River vicinity including Crystal Springs, Westside-Ice Fountain, and Parkdale Water Companies.

The City of Hood River diverts a maximum of 12 cfs from Cold Springs on the West Fork, which is reflected in the gage records at Tucker Bridge. Crystal Springs Water District has rights for about 7.2 cfs from the East Fork

drainage, but diverts about 3.2 cfs. The 3.2 cfs is used outside the basin, and is considered to be fully consumptive. The Parkdale Water Company has rights for 1.5 cfs from the East Fork drainage. The Parkdale right is considered to be fully consumptive because no better estimate of use was available for the unmetered diversion.

The City of Hood River has limited summertime usage to only household use during some periods. This limitation was a result of a leaky supply system rather than the water supply. Crystal Springs Water District always limits water use to only inhouse needs.

Domestic: Water rights for domestic use total nearly 4 cfs. Ground water is also a source of domestic water in the basin. Domestic use totals 1.67 cfs from East Fork; 0.58 cfs from the Middle Fork; 0.02 cfs from Neal Creek; and about 1.7 cfs from Hood River. Domestic use was assumed to be 100 percent consumptive during the entire year.

Industrial Use: Water rights for industrial use and fire protection total about 55 cfs. Most of the rights are for use in lumber mills. One large right is no longer used to the extent envisioned, so actual use is believed to be much lower than the total rights. It is estimated that about 5.7 cfs is used for fire protection and about 28 cfs for other wood products applications. About 1.3 cfs of the total use is from Neal Creek and 2.5 cfs from the Middle Fork. The latter uses are assumed to be consumptive during the entire year. The remainder of the use involves diversions from the Hood River where consumption is reflected in the gage records.

Power Development: There is substantial power development in the basin. The largest development is the PP&L plant near the mouth of the Hood River with rights to divert 500 cfs. There are several other hydro projects using 63 cfs in the basin and numerous proposed projects. Farmers Irrigation District, Middle Fork Irrigation District, the City of Hood River and individual developers are currently developing or investigating additional hydro projects. Rights for hydroelectric use total 4.5 cfs on Middle Fork, 0.3 cfs on East Fork, 8.4 cfs on Neal Creek and about 550 cfs for the remainder of the basin. Rights for hydraulic rams total 1.1 cfs. These rights are generally considered non-consumptive, however, the 500 cfs Pacific Power and Light right is diverted from the river some 4 miles. In 1971, PP&L and fishery agencies worked out a plan whereby PP&L does not fully exercise its water right to insure a minimum flow in the stream from Powerdale to the mouth.

Recreation: Water rights for recreation total less than 0.5 cfs in the basin. The major recreational activities include hiking, fishing and skiing. There is also some boating on the rivers and Laurance Lake. The East Fork has the highest level of use and is annually stocked with thousands of legal sized trout. Numerous parks, trails, and roads provide access to the streams for fishing and other activities. The ski areas, Mt. Hood Meadows and Cooper Spur, are used primarily during winter. Use for recreation was considered consumptive.

Wildlife: There is one water right for a wildlife watering pond. In general, water supplies appear adequate to meet wildlife requirements.

Fish Life: The Hood River system contains coho and chinook salmon, steelhead, sea-run cutthroat, resident rainbow and Dolly Varden trout, white fish, squaw fish and lamprey. The Oregon Department of Fish and Wildlife has had an active habitat restoration program in Hood Basin to construct fish passage facilities, screen diversion intakes, and stock salmon and trout. There are water rights for over 36 cfs for fish culture and fish passage, in addition to the three established minimum streamflows.

Coho salmon, steelhead, and resident trout are the primary species in the Middle Fork Hood River and tributaries. ODFW estimates that 200 winter steelhead and 100 coho enter the stream annually. The present minimum flow of 10 cfs is not considered sufficient to support aquatic life. A small amount of storage in Laurance Lake is allocated for fish enhancement in Clear Branch below the dam. Middle Fork Irrigation District also releases between 3 and 30 cfs throughout the year to maintain flows in Clear Branch. The Hood River National Forest has a grant from BPA to improve habitat on lower Clear Branch this year. There is one water right of 0.1 cfs for fish propagation on the Middle Fork which is considered non-consumptive.

ODFW estimates that 200 steelhead, 100 coho salmon and 50 sea-run cutthroat trout enter the East Fork Hood River each year. The East Fork also supports a resident trout fishery. ODFW stocks 15,000 to 20,000 legal size trout yearly in the East Fork, primarily above Parkdale.

Neal Creek supports runs of steelhead (100 fish), coho (50 fish), sea-run cutthroat (50 fish) as well as resident trout. About 2,000 legal size trout are stocked in Neal Creek each year. ODFW maintains a rotary fish screen on the East Fork Irrigation District diversion to prevent fish from entering the canal.

The mainstem Hood River provides a valuable steelhead, salmon and trout fishery. The river supports runs of steelhead (5,500 to 5,600 fish), coho (250 to 300 fish), chinook (50 fish) and sea-run cutthroat (100 fish) along with resident trout and other non-game species. Rainbow trout and summer steelhead are planted in the system each year. A fish ladder and screens at the Powerdale dam aid fish migration in the Hood River.

Other Uses: There are no other surface water uses of record in the Hood River Basin.

Issues, Problems and Conflicts: At the public meeting, numerous issues were raised about establishing the proposed minimum flows in the Hood River Basin. Some concerns addressed specific streams, however, many were applicable to the entire basin. The major issues and comments included:

- * The requested flows are often too high, exceeding present streamflows.
- * The proposed minimum flows were not based on flow data.

- * Agriculture is important in the local economy and the proposed flows would curtail future development.
- * Certain irrigation projects could be jeopardized by the minimum flows.
- * Alternate flows at lower levels were proposed for the East Fork, Middle Fork and Hood River.
- * Middle Fork Hood River is not a major fish stream.
- * Fish values are limited by sediment load on East and Middle Forks.
- * The proposed flows are necessary for the continued maintenance of six species of anadromous salmonids as well as resident trout and other non-game species.
- * The Hood River anadromous fish runs help support the Indian Tribal fisheries guaranteed by treaties.

The proposed minimum flows, on the main stem Hood River are generally always equalled due to the fact that PP&L passes those levels by its diversion structure at Powerdale. The minimum flows on the Middle Fork are generally exceeded from November through May under existing water use conditions. There is a much lower chance of equalling the minimum flows the remainder of the year.

On the East Fork, the proposed flow levels are equalled or exceeded from October through June. There is a much lower chance of maintaining the proposed flow levels July through September.

It is estimated that the proposed flows for Neal Creek are usually equalled or exceeded from November through May and September. Estimated flows are generally less than the proposed flow levels for the remainder of the year.

Future Water Use Factors: The primary future water uses in the Hood River Basin are expected to be irrigation, municipal/group domestic, fish life, recreation, and power development. These future uses have been identified as important by public testimony and/or proposed developments. All future uses could be limited by existing rights, particularly PP&L's, although no junior uses have been curtailed to date. Public testimony indicated that additional irrigation development is estimated to include 1,000 to 2,000 acres in the short-term, and 7,000 to 10,000 acres in the long term.

Middle Fork Irrigation District applied for 25 cfs from the Middle Fork to irrigate 2,000 acres which has not yet been developed. The permit application predates the application for minimum flows.

Mt. Hood Irrigation District is trying to develop a pressure pipe project which would increase irrigated acres by about 270 acres and increase efficiency. Mt. Hood's water supply is the East Fork and an additional 3 or 4 cfs may be required to cover the new lands. However, the project should greatly increase efficiency and may actually reduce diversion requirements.

Farmers Irrigation District is presently developing a piped delivery system in conjunction with hydroelectric facilities. Eventually, up to 1,200 additional acres may be irrigated from the system. Additional water will come from Hood River and tributaries of the West Fork. The project should improve the

efficiency of water use. Development in the upper portion of the district is limited by water supply. Future development in the lower portion may be limited by downstream rights.

East Fork Irrigation District could irrigate an additional 4,000 acres in the long run, however, the short term gain is expected to be in the 400 to 800 acre range. Additional development appears to be limited by present water supplies which cannot always meet existing needs. Dee Irrigation District includes about 300 acres of potential irrigable land which would be supplied with water from the West Fork Hood River. Due to open systems, irrigation districts suffer substantial water losses. In some cases, conservation could reduce losses and diversion requirements providing water for additional development as well as helping to maintain instream flows.

Ice Fountain Water District has applied for 9 cfs from Ice Fountain Springs, a tributary of the Middle Fork, for municipal purposes. Actual use is expected to be 2 to 3 cfs. The application was made after November 3, 1983. Presently, the water is supplied by the City of Hood River which indicated that present supplies are adequate through the year 2000. Tony Creek and Rogers Creek have also been identified as future municipal water supplies. Both streams are tributaries of the Middle Fork. Crystal Springs Water District and Parkdale Water Company have adequate supplies to meet anticipated future needs.

The four proposed minimum flows identify the flow levels desired to maintain the existing fish resources in the basin. Fish life is an important use in the basin, providing recreation and economic value to the area. The Hood River also adds to the Columbia River fishery. The continued maintenance of anadromous fish runs and resident trout is an important future consideration. Much of the area recreation depends on fish life. No specific amounts of water have been identified for recreational purposes.

Numerous hydro developments are presently in various stages of planning and development. Farmers and Middle Fork Irrigation Districts and the City of Hood River are developing projects which would utilize and/or improve existing delivery systems. Generally, increased diversions would only occur during the higher flow periods. Other projects being developed by individuals are located primarily on tributaries of the West Fork and Hood Rivers with one project on the Middle Fork. The effects of these projects on other uses are not known.

Potential storage sites have been identified in previous reports on Neal Creek, East Fork, and tributaries of the West Fork and Hood Rivers. Two of the more feasible sites are located on Neal Creek and East Fork Hood River. No potential storage sites were found on the Middle Fork. Stored water could provide for future irrigation as well as instream flows.

The development of ground water could also provide water for some additional irrigation. Ground water appears to be available throughout much of the basin. Improving the efficiency of water delivery systems is another way to provide for future needs. Reducing diversion requirements would also aid in maintaining instream flows.

Findings

- 1) The East Fork, Middle Fork and main stem Hood Rivers, and Neal Creek support important runs of anadromous salmonids and resident trout.
- 2) Existing minimum flows on Middle Fork and Hood River do not provide adequate protection for maintenance of fish life.
- 3) Agriculture is an important part of the local economy and depends on use of water from the Hood River system.
- 4) Irrigation is the largest consumptive use of water in the basin.
- 5) Municipal, domestic, hydropower and recreation are also important uses of water.
- 6) Total quantities of water are adequate for current and anticipated needs, however, certain uses are limited by location, runoff patterns, prior rights and delivery systems.
- 7) Prominant future water uses will be irrigation, municipal, hydropower, and instream use for fish life and recreation.
- 8) Natural flows in Middle Fork, East Fork, Hood River, and Neal Creek are not adequate to provide for all future uses during the entire year.
- 9) There is significant potential to conserve water through more efficient water use and store winter runoff.
- 10) Development of ground water may be required to satisfy some future needs.

Conclusion

The Hood River supports a timber-agrarian economy along with significant recreational activities. The existing minimum flows on the Middle Fork and Hood River do not provide adequate protection for maintaining fish life. Seasonal flow patterns and prior claims to water limit streamflows in the Middle Fork, East Fork, and Neal Creek to levels below the proposed minimum flows during part of the year.

The requested minimum flows would offer greater protection than the established flow levels when water is available. Attainment of flows sufficient to meet the proposed minimum streamflows and other potential water uses on a regular basis will likely require development of additional storage and more efficient water use.

The support of aquatic life was not found to be of lesser importance than any other future use.

Proposed Action

Modify the Hood Basin water use program by incorporating the following minimum flows on Neal Creek and East Fork Hood River and modifying the existing minimum flows on Middle Fork Hood River and Hood River to the requested levels:

(cfs)

Neal Creek: at the mouth

<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>
20	20	13	13	13	13	20	20	20	13	13	5

East Fork Hood River: at the mouth

<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>
150	150	150	100	100	100	150	150	150	100	100	100

Middle Fork Hood River: at the mouth

<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>
150	150	100	100	100	100	150	150	150	100	100	100

Hood River: at the mouth

<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>
100	100	170	170	270	270	270	170	170	130	100	100

Impacts

Adoption of the recommended flows would identify flows necessary to maintain fish life on the four streams. The minimum flows will provide instream protection when flows are available. The minimum flows would have no impact on existing water use, however, water rights initiated subsequent to November 3, 1983, would be subject to the proposed flows. In some cases, additional appropriations are already limited by prior rights and seasonal flow patterns. In some parts of the basin, establishment of the proposed minimum flows will be limiting factors to future irrigated agricultural use relying on direct flows.

Alternatives

Lower flow levels were identified for the support of aquatic life in the Middle Fork Hood River for the month of September in an early report. Current information suggests that the higher proposed flow level may be more appropriate because of the presence of coho salmon.

Supplemental Action

A review of the State Engineer's withdrawal for the Tygh Valley-Wamic and Fifteemile Creek projects to determine current applicability may be appropriate. Further investigation into future demands and use classifications may also be desirable.

Streamflow and Water Use Analysis

East Fk. Hood River

Requested Minimum
Flow

Est. Average Flows

Water Rights⁽¹⁾

Est. Consumption

% Exceedance

at Mouth

Recommended

Minimum Flows

Annual Average Yield

Water Rights⁽²⁾

Requested Minimum Flows

250,000 acre-feet

47,000 acre feet

90,500 acre-feet

- (1) The Dalles has rights to all waters of upper Dog River which is not included in the total.

- (2) Does not include rights for spraying and temperature control.

TABLE 1
Streamflow and Water Use Analysis

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
<u>Neal Creek</u>												
Requested Flow	20	20	13	13	13	13	20	20	20	13	13	5
Est. Average Flows	15	30	75	85	85	65	45	30	20	15	10	10
Total Water Rights	9.9	9.9	9.9	9.9	9.9	12.9	20.5	20.5	17.8	17.8	17.8	17.8
Est. Consumption	2	2	2	2	2	2	2	4	6	7	6	3
% Exceedance at Mouth	13	76	99	99	99	97	89	62	10	4	1	64
Recommended Minimum Flows	20	20	13	13	13	13	20	20	20	13	13	5
<u>Middle Fk. Hood River</u>												
Requested Flow	150	150	100	100	100	100	150	150	150	100	100	100
Est. Average Flows	80	160	270	300	270	220	200	200	140	90	60	60
Total Water Rights	7.7	7.7	7.7	7.7	7.7	7.7	127.7	127.7	127.7	127.7	127.7	127.7
Est. Consumption	3	3	3	3	3	3	3	12	44	64	53	13
% Exceedance at Mouth	1	56	99	99	99	98	83	78	8	1	1	1
Recommended Minimum Flows	150	150	100	100	100	100	150	150	150	100	100	100
Average Annual Yield	Neal Creek			Middle Fk. Hood River								
Water Rights(1)	29,000 acre-feet			124,000 acre-feet								
Requested Minimum Flows	8,730 acre-feet			26,500 acre-feet(2)								
	11,040 acre-feet			87,500 acre-feet								

(1) Does not include rights for spraying or temperature control.

(2) Does not include 25 cfs for irrigation of 2,000 acres not yet developed or rights for spraying.

TABLE 1 CONTINUED
Streamflow and Water Use Analysis

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
<u>Hood River at Powerdale</u>												
Requested Minimum Flow	100	100	170	170	270	270	270	170	170	130	100	100
Average Monthly Flows at Gage 14120000	499	1043	1663	1722	1657	1352	1317	1298	1059	674	448	424
Water Rights Above Gage	200	200	200	200	200	200	600	600	600	600	600	600
Water Rights Below Gage-Mainstem Hood R.	500	500	500	500	500	500	500	500	500	500	500	500
% Exceedance of Minimum Flow	99	99	99	99	99	99	99	99	99	99	99	99
% Exceedance of Minimum Flow + 500 cfs	14	90	99	99	97	93	90	95	78	28	2	2
Recommended Minimum Flows	100	100	170	170	270	270	270	170	170	130	100	100

Average Annual Yield at Gage 1412000 789,000 acre-feet
 Water Rights at Powerdale 216,800 acre-feet
 Water Rights at Mouth* 578,800 acre-feet
 Requested Minimum Flows 121,900 acre-feet

* Does not include water rights on tributaries downstream from Powerdale.

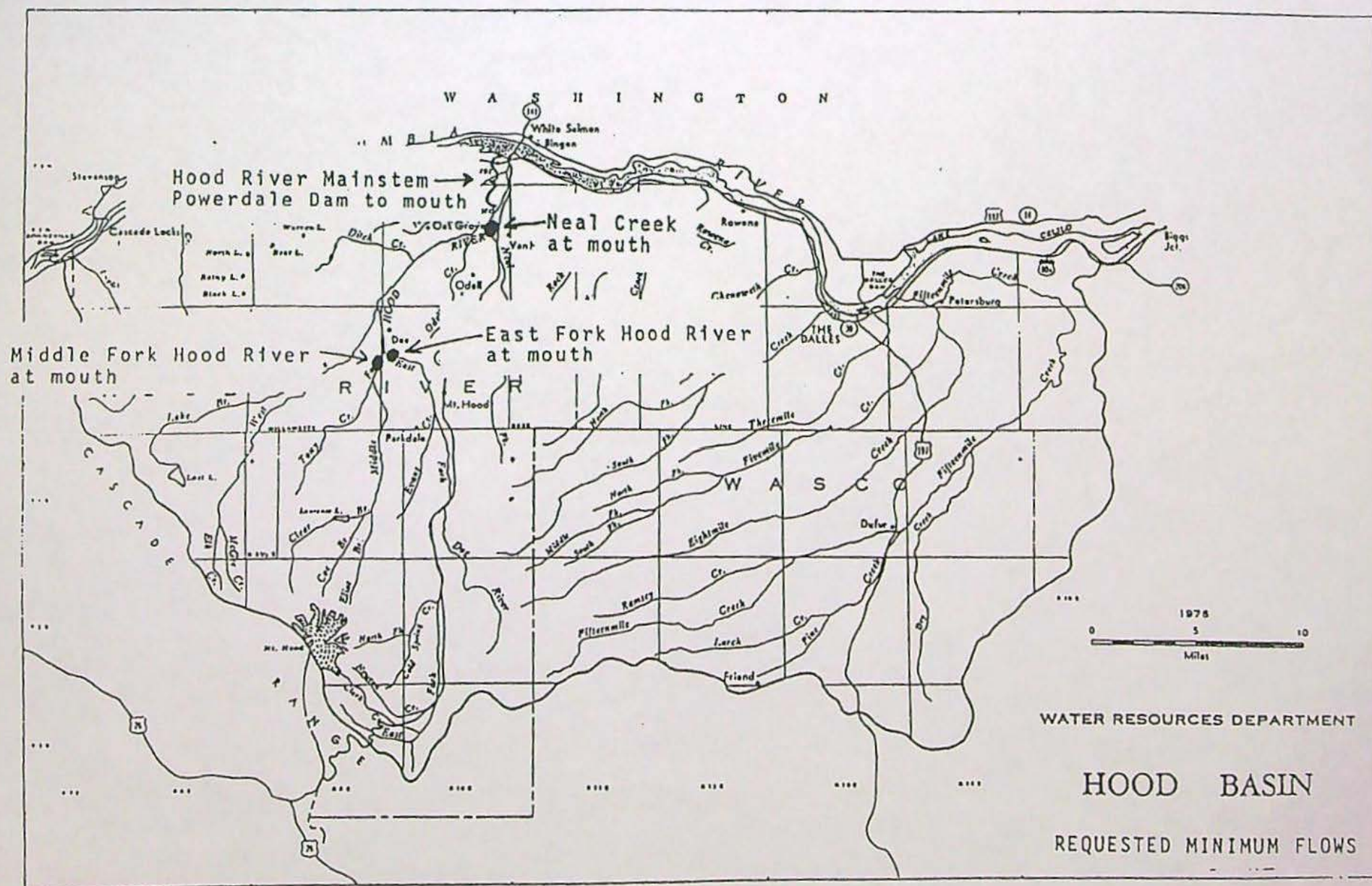


FIGURE 1

MILL CREEK SUBBASIN

Minimum Streamflow Location

The Departments of Fish and Wildlife and Environmental Quality requested a minimum streamflow on Mill Creek in the Mill Creek subbasin located in Wasco County (Figure 2).

MINIMUM STREAMFLOW REQUEST

The minimum flow point is:

Mill Creek: at Mouth

Oct	Nov-Jun	Jul-Aug	Sep
4	15	10	4

The requested flow is for steelhead, coho, chinook, searun cutthroat and resident trout production and to support a catchable trout fishery.

Basin Description

Mill Creek originates in the eastern slopes of the Cascades in eastern Hood River County and flows to the north east and drains into the Columbia River at The Dalles. The drainage covers an estimated 62 square miles.

In the subbasin, the climate is temperate to semiarid characterized by low annual precipitation, low winter temperatures, and high summer temperatures. Mill Creek is located in the 'rain shadow' of the Cascades with about 14 inches of annual precipitation falling at The Dalles. The growing season varies from 30 days in the western part of Mill Creek to 180 days at The Dalles. This climate is satisfactory to produce alfalfa, pasture, and tree-fruit. Portions of the creek flows through a narrow valley.

Land Ownership

In the Mill Creek drainage, the upper two-thirds of the watershed are located in the Mt. Hood National Forest. The rest of the land is privately owned. The lower two miles of the creek flows through the city of The Dalles.

Land Use

Agricultural production is the main industry in the subbasin with some timber and recreation occurring in the upper watershed.

Private lands occur along the lower eight miles of Mill Creek and are either in tree crops or irrigated agriculture with some land being converted to grape production. On the western side of Mill Creek near The Dalles, land is being converted to residential use. The Dalles has a current population of 11,050 and is expected to increase to 17,000 by the year 2000. The city is the regional center for the agricultural industry in the area and is the port used to export the wheat from the region.

The Comprehensive Plan for Wasco County has not been adopted. The Comprehensive Plan for The Dalles has been acknowledged.

FUTURE LAND USE

Wasco County predicts the present land use patterns will not change significantly. Agriculture will continue to provide most of the jobs and income. Forest and recreation in the drainage should remain fairly stable.

The Dalles urban growth boundary appears to be sufficient to accomodate growth resulting from the communities position as a regional center.

WATER

Hydrological Characteristics

Streamflow in Mill Creek is dependent on rainfall due to the low elevation of most of the watershed. The headwater areas of the drainage consist of forest lands which delay runoff and tend to level out peak flows.

Precipitation varies from 45 inches in the head waters to about 15 inches at The Dalles, averaging 30-35 inches for the entire basin. Most of the rain falls between November and March resulting in the higher flows. Flows generally become extremely low during the summer and fall.

Streamflow data is available on the South Fork Mill Creek for the years 1960 to 1975. Those flows include augmentation from the Dog River Basin by the city of The Dalles for its municipal water supply. Flows in South Fork Mill Creek adjusted for that diversion are available for the years 1963 to 1970 and were utilized to develop monthly flows and a frequency curve. Data from the Fifteemile Creek basin were used to estimate yields in the lower portion of the watershed.

A probability of exceedance curve was developed from the annual yield estimates. The curve shows the percentage of years that any particular annual yield will be equalled or exceeded. It was also used to determine the percentage of years that estimated monthly flows would equal or exceed the minimum flow and estimated consumption. The results of the analysis are shown in Table 2.

Ground water is used for a moderate amount of irrigation and domestic use. A declining water table resulted in declaration of The Dalles Critical Ground Water Area which limits use at the lower end of the watershed. The potential for development of the ground water in the remainder of the watershed is not known.

Administrative and Statutory Provisions

The critical ground water area order is the only limitation on water use in the basin. The water use program allows all beneficial uses except pollution abatement.

WATER USE

The following sections describe current water rights and instream water uses in Mill Creek. Water consumption was estimated to develop values for flows at the mouth. The Mill Creek basin has been adjudicated.

Irrigation:

During the adjudication process, the court established the irrigation season as April 1 to October 1 and the duty of water at 3 acre-feet per acre. Rights for irrigation total about 13 cfs to irrigate 1050 acres. Primary irrigated crops are alfalfa, orchards with cover, and pasture. No crop requirements for The Dalles were available so the estimated water consumption is based on the "SCS-Engineering Handbook" requirements for alfalfa at Dufur. The respective crop acreages are not known, but alfalfa and orchards with cover have similar requirements. Most irrigation is done by sprinkler. There is also a moderate amount of irrigation from wells.

Stock:

Stock use is very small with rights for 0.02 cfs which are considered consumptive. Decreed rights also allow domestic and stock use.

Municipial:

The city of The Dalles has water rights for 2 cfs from South Fork Mill Creek and a storage reservoir of nearly 1000 acre-feet. Water from Dog River in the Hood River Basin is diverted into South Fork Mill Creek. Water is diverted from the mouth of South Fork Mill Creek and piped to The Dalles with no return to Mill Creek. The 2 cfs is considered fully consumptive. The City also uses ground water.

Domestic:

There are a few domestic water rights (0.045 cfs) from Mill Creek. Ground water is a major source for domestic use. Domestic consumption was considered negligible.

Recreation:

Recreation facilities along Mill Creek include a camp and a picnic ground. Recreational use of the upper South Fork Mill Creek is prohibited by the city of The Dalles. The Dalles is promoting a Mill Creek nature trail near the city. There is no specific data on angling or other instream uses, however, legal size trout are stocked. No water rights for recreation facilities have been issued.

Wildlife:

Water requirements for wildlife are not known.

Fish Life:

Mill Creek supports runs of coho (50 fish), chinook (30-50 fish), steelhead (200 fish) and a population of resident trout. There are also several warm water and rough fish species in the lower portion of the stream. About 1000 legal-size trout are stocked in Mill Creek each year.

An additional 2.5 miles of steelhead habitat was opened up in 1982 by the removal of an old dam on Mill Creek. Steelhead fishing is closed because of reduced populations.

Other Uses:

There are no other uses of record from Mill Creek.

Issues, Problems and Conflicts:

At the public meeting in The Dalles, February 21, 1984, many issues were raised concerning the proposed minimum flows on Mill Creek, including:

- . The declining water table near The Dalles may limit potential use of ground water.
- . Curtailing irrigation may reduce stream flow, because return flows contribute to summer flow levels.
- . Irrigators require more than 3 acre-feet for irrigation and may be affected by the proposed minimum flows.
- . The city of The Dalles sometimes spills water at Wicks Reservoir for irrigation.
- . The minimum flows are necessary for the runs of anadromous fish and resident trout.
- . Mill Creek contributes to the wild winter steelhead run in the Columbia River.

Curtailment of use has stabilized the ground water levels. The relationship between flow levels and return flows is not fully understood. Even though most of the irrigation in the narrow stream valley is by sprinkler, a portion of the water diverted probably returns to the stream.

Future Water Use Factors

Water use is not expected to change from existing patterns. Only one small right has been issued since 1979. There is little potential for increased irrigation due to the narrow valley and low summer flows. Municipal use from South Fork Mill Creek is not expected to increase. Domestic and stock use may increase slightly, but those uses can also be supplied from ground water in most areas.

Fish life has been identified as an important future use. The requested flow levels are important to the continued maintenance of the fishery. The minimum flow levels are generally equalled or exceeded during October, and December through May. The flow levels are estimated to generally be lower than the minimum flows the remainder of the year.

One potential storage site has been identified on North Fork Mill Creek. The current feasibility of such a project is not known. The potential for improvement in water use efficiency and watershed management is not known.

Findings

- 1) Fish life is an important use of Mill Creek.
- 2) Irrigation is the largest consumptive use in the basin.
- 3) Future irrigation development is limited by land resources and low summer flows.
- 4) Municipal and domestic uses are important to the area, but are not expected to increase in the foreseeable future.

- 5) There is limited recreational use in the basin which may grow in the future.
- 6) There is limited potential to augment supplies from ground water and additional storage.
- 7) The proposed minimum flow levels are equalled or exceeded only during part of the year.

Conclusions

The most important uses of water are for irrigation, fish life, municipal, and domestic purposes. Future consumptive water uses are expected to be small. Although the proposed flow levels are currently equalled or exceeded only a portion of the year opportunities for storage and flow augmentation appears to exist. The support of aquatic life was not found to be of less importance than other uses of the stream.

Recommendation:

Modification of the Hood Basin Program to include the following minimum perennial streamflow (cfs).

Mill Creek: at the mouth

Oct	Nov-Jun	Jul-Aug	Sep
4	15	10	4

Impacts

The proposed action would identify flows to maintain fish life. The potential for additional appropriations is already limited by land resources and runoff patterns.

Alternatives

The 1973 basin investigation identified lower flow levels on Mill Creek during the period from November through February. The higher flow levels reflect requirements of coho salmon present in the system.

Supplemental Action

No supplemental action is recommended.

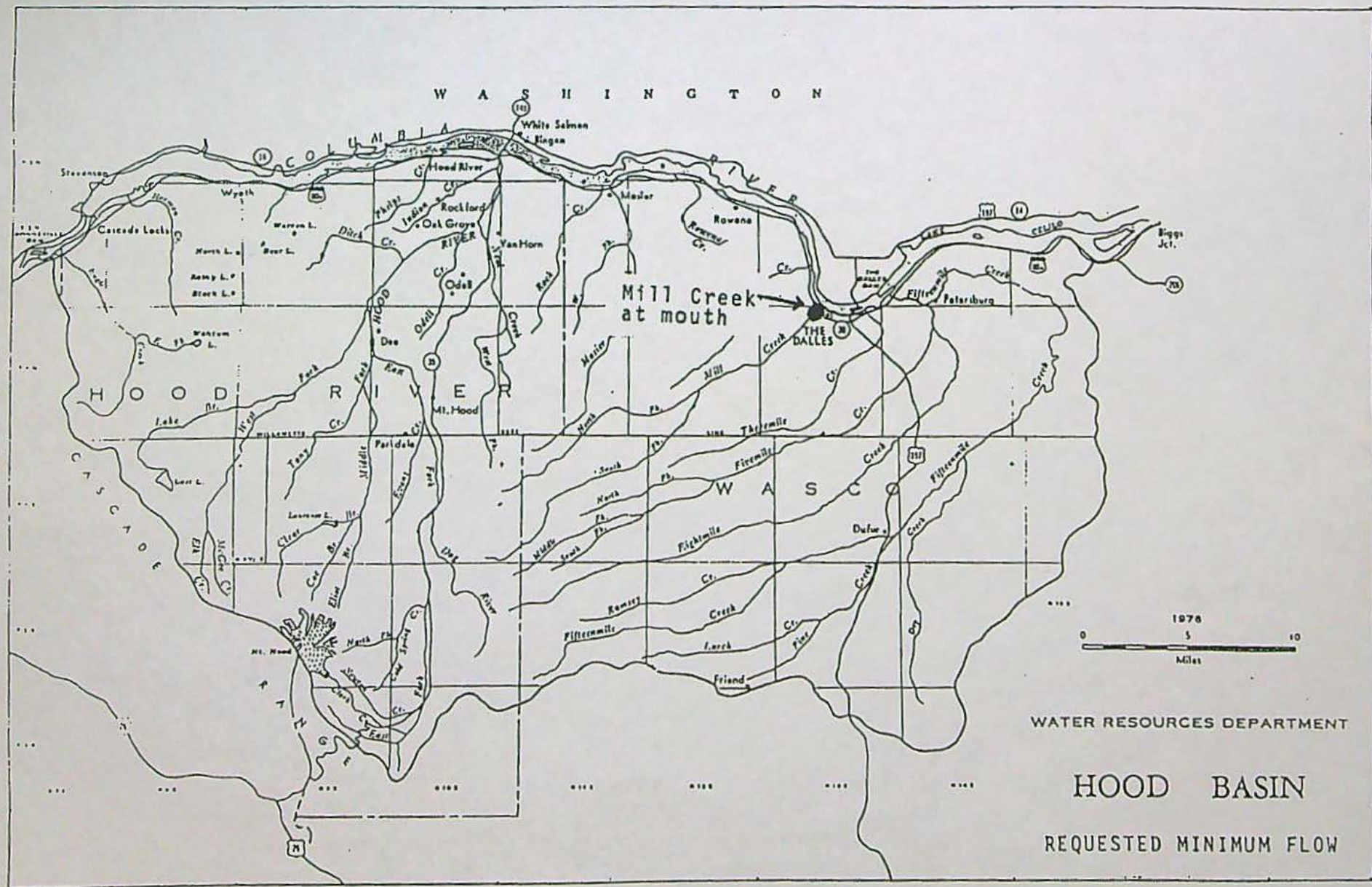


FIGURE 2

TABLE 2
Streamflow and Water Use Analysis

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Mill Creek at the Mouth Requested Minimum Flows	4	15	15	15	15	15	15	15	15	10	10	4
Est. Average Flows	6	10	35	55	75	70	75	40	10	7	7	7
Total Water Rights	2	2	2	2	2	2	15	15	15	15	15	15
Est. Consumption	2	2	2	2	2	2	4	8	10	12	10	8
% Exceedance Probability	54	14	93	99	99	99	99	87	6	1	2	13
Recommended Minimum Flows	4	15	15	15	15	15	15	15	15	10	10	4
Annual Average Yield		24,000 acre-feet										
Water Rights		4,600 acre-feet										
Requested Minimum Flows		8,900 acre-feet										

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FIFTEENMILE CREEK SUBBASIN

Minimum Streamflow Location

The Departments of Fish and Wildlife and Environmental Quality requested a minimum streamflow on one creek in the Fifteenmile Creek subbasin (Figure 3).

MINIMUM STREAMFLOW REQUEST

Fifteenmile Creek: from Rice to Mouth

Oct-Feb	Mar	Apr-Jun	Jul-Aug	Sep
4	13	20	13	4

The requested minimum flow is for steelhead and resident trout production and to support a catchable trout fishery. On Fifteenmile Creek, the flow requested for fisheries is adequate for assimilation of treated wastes and for water quality.

Basin Location/Description

Fifteenmile Creek is located in Wasco County and originates in the Hood River Mountains of eastern Hood River County and drains to the northeast into the Columbia River near The Dalles. The subbasin is characterized by rolling hills with valley bottomlands along the creek. The subbasin covers about 255 square miles.

Climate/Topography

In the Fifteenmile Creek subbasin the climate is temperate to semiarid, characterized by low annual precipitation, low winter temperatures, and high summer temperatures. Fifteenmile Creek is located in the rain shadow of the Cascades. Average annual precipitation of 44 inches in the headwaters diminishes to 10 inches in the eastern margins of the drainage. The growing season varies from 30 days in the western part of the subbasin to 180 days at The Dalles. The climate supports production of wheat, pasture, and alfalfa.

Land Ownership

Part of the upper Fifteenmile Creek watershed is located in the Mt. Hood National Forest under federal ownership. The majority of the subbasin is privately owned.

Land Use

In the Fifteenmile Creek subbasin, agriculture is the primary industry with forestry less important. The eastern three-quarters of the subbasin are in dryland cultivation with small amounts of irrigated agriculture along the creek. Wheat is the predominate crop and is raised on the higher portions of rolling hills. The steeper portions of the hills provide rangeland. Irrigation of alfalfa occurs on the valley bottomlands.

Approximately 145 square miles of land are in crops and 81 square miles in either hay or range land for livestock production. The remaining 29 square miles are forest land.

Dufur is the only city within the subbasin and has a population of 575.

The Comprehensive Land Use Plan for Wasco County has not been adopted.

FUTURE LAND USE

The present land use patterns are not expected to change significantly over the next 20 years. Agriculture will continue to provide most of the jobs and income. Recreation in the upper watershed should continue but may not increase significantly because of the limited amount of public lands.

The county, with the cooperation of the Department of Fish and Wildlife is developing bank and stream restoration projects to improve fish runs. Existing land uses are being protected for agriculture. The county encourages additional agricultural growth.

WATER

Hydrologic Characteristics

Rising on the east slopes of Lookout Mountain about nine miles east of Mt. Hood, Fifteenmile Creek spans the physiographic transition zone from the Cascade Range to the Columbia Basin Plateau. For 54 miles Fifteenmile Creek flows, first eastward through the community of Dufur, then northeasterly and finally westward to its confluence with the Columbia River at The Dalles Dam.

Elevations in the drainage range from about 6,500 feet near the headwaters to 120 feet at Fifteenmile Creek's mouth. Natural vegetation in the drainage grades from the Cascade's coniferous forests to the grass and sage lands of the Columbia Basin Plateau.

The rain shadow effect imposed by the Cascade Range is reflected in the precipitation characteristics of the basin. About 80 percent of the average annual precipitation occurs during the period October to March.

The records from U.S.G.S. gage 14104500, Fifteenmile Creek near Rice, were used to determine the average monthly flow and yield distribution for the minimum flow reach. The gage is located at Rice near stream mile 23.5. Whole or partial records for 20 years during the period 1947 to 1982 were used to make flow estimates.

Eightmile Creek is the largest tributary of Fifteenmile Creek, joining that stream near river mile 3. A hydrological analysis was not done for Eightmile Creek because runoff from the stream affects such a small portion of the Fifteenmile Creek system.

Hydrologically, the watershed exhibits the pattern of high spring runoff from snowmelt combined with spring rains and an almost completely dry period through the summer. Records show September to be the low flow month with an average flow of 3.9 cfs and February to be the high flow month with an average flow of 151 cfs. Over 94 percent of the runoff occurs from December through June.

Ground water resources in the Fifteenmile Creek watershed have been developed for domestic and irrigation purposes. The greatest concentration of ground water wells is generally along Fifteenmile Creek on either side of Dufur. Columbia River basalts underlying the watershed are capable of providing large water yields. It is likely that the ground water resource is instrumental in

maintaining a base streamflow in the area's streams. Critical ground water declines in Columbia River basalt aquifers near The Dalles suggests that sustained pumping by a concentration of wells may result in excessive drawdowns elsewhere in Columbia River basalt aquifers.

WATER USE

Irrigation

Irrigation rights on Fifteemile Creek amount to 61 cfs for the irrigation of 4,885 acres. Of this amount, 3,844 acres requiring 53 cfs are irrigated with water diverted upstream from the gage near Rice. The remaining 1,041 acres requiring eight cfs are irrigated with water diverted downstream from the gage.

Water rights on Fifteemile Creek have been adjudicated and irrigation rights on the stream date back to 1856. The irrigation season established in the Fifteemile Decree specifies that water use for irrigation shall be allowed "... when necessary for beneficial use in connection with the irrigation of their respective lands..." effectively creating a year round irrigation season. In practice, irrigation seldom occurs prior to April or after October each year.

Lands irrigated from Fifteemile Creek are located nearly exclusively along the creek bottom. Cropping is split almost evenly between wheat and alfalfa. However, the vast majority of irrigated wheat is located upstream from the gage near Rice. A few acres of orchards are irrigated in the lower Fifteemile Creek watershed. In at least one instance, land is being double cropped with turnips after the wheat crop has been harvested.

The allowable duty of water for irrigation is three acre feet per season. While alfalfa usually requires the full duty of water, wheat is successfully raised with only 1.5 to two acre feet of water per season. Irrigation is almost entirely by sprinkler application.

For the purposes of this recommendation, it is assumed that all of the irrigated acreage downstream from the gage is in alfalfa. The consumptive use estimates shown in Table 3 are based on monthly irrigation requirement figures for alfalfa in the Dufur area prepared by the Soil Conservation Service.

Livestock

Water use by livestock is given special consideration in the Fifteemile Decree which specifies that live flow must be maintained in Fifteemile Creek for the benefit of livestock. Historically, it has been necessary to regulate water diversions on occasions to insure live flow. The maintenance of live flow for livestock, however, does not approach the minimum flow levels requested by the Department of Fish and Wildlife.

Municipal

Dufur with a population of about 575, is the only community in the Fifteemile Creek drainage. Dufur utilizes Fifteemile Creek as a source of municipal water as well as a receiving stream for the towns sewage effluent. The town diverts its water at about stream mile 40; well above its sewage outfall and

about 17 miles upstream from the gage near Rice. Dufur has water rights totalling 1.87 cfs. However, summer low flows and turbid conditions can make the use of Fifteenmile Creek impossible or undesirable. The city does have a well as a backup source of water. The city discharges about 0.14 cfs of sewage effluent during summer months requiring a dilution flow of about three cfs.

Domestic

Use of Fifteenmile Creek for domestic purposes appears to be minimal. Adjudicated domestic rights are not quantified in the Fifteenmile Decree and domestic permit rights amount to 0.225 cfs of which only 0.025 cfs is located near the mouth of Fifteenmile Creek.

Industrial, Mining, Power

No use of water is made from Fifteenmile Creek for industrial, mining or power purposes.

Recreation

Fifteenmile Creek does provide some limited opportunities for recreation, mostly in the form of angling. The Department of Fish and Wildlife annually stocks about 500 catchable-sized rainbow trout at Dufur. Private ownership of lands bordering Fifteenmile Creek in the Dufur area, however, restricts angler access to the stream. Fifteenmile Creek has been closed to steelhead angling for the past several years in an effort to allow recovery of the depleted stock.

A park in Dufur, through which Fifteenmile Creek flows, provides a popular summertime play area for children. Low flow conditions resulting in stagnant water and algae growth occasionally detract from the recreational use of the stream in the park.

Wildlife

Upland game birds, small furbearers and some larger game animals may be found throughout the Fifteenmile Creek drainage. The longstanding agricultural use in the area has had an impact on the quantity and quality of wildlife habitat available. Wildlife water needs, however, have not been quantified.

Fish

Fifteenmile Creek supports populations of resident trout and has the distinction of supporting the eastern most stock of wild winter steelhead. In Oregon's Columbia Basin, both trout and steelhead spawn and rear in Fifteenmile Creek primarily above Dufur. Low flows, excessive summer water temperatures and a heavily silted streambed make most of Fifteenmile Creek below the gage near Rice unusable for fish life.

Fifteenmile Creek has been and is expected to continue to be the object of extensive efforts by private organizations, local, state and federal agencies to develop and improve fish passage, restore and stabilize streambank areas and improve instream habitat. The value of these efforts may be compromised unless minimum instream flows are established to protect flows from additional future appropriations. Conversely, successful implementation of the improvement measures may contribute measurably to the ability to maintain an instream flow in Fifteenmile Creek.

Issues, Problems and Conflicts

At the public meeting, the major concerns raised for and against Fifteemile Creek minimum streamflows included:

- . The greater economic importance of agriculture over fish.
- . Insufficient flows to meet the proposed minimums during some months.
- . The need for improved and increased conservation and management efforts to benefit fish.
- . The value of the Columbia Basin fishery to Columbia Basin Indian Tribes.
- . Minimum flows will be enforced at the expense of existing water rights.

The proposed minimum flows have a high percentage of availability at the gage near Rice during most months of the year. It is unlikely the proposed minimum would ever be met with natural flow during the month of August. Existing water use below the gage at Rice would effectively use all of the available water during the months of July through September and about half the month of October.

FUTURE WATER USE FACTORS

Fifteemile Creek flows through a sparsely populated, agricultural area. Irrigation development of Fifteemile Creek dates back to the mid 1800's. Most of the arable lands along Fifteemile Creek capable of supporting irrigation have been developed. No water use permits for significant amounts of irrigation or other uses have been issued on Fifteemile Creek since mid 1981. One application involving irrigation of 54 acres is currently pending. It is expected that current land and water uses along Fifteemile Creek will continue with little change. Evidence suggests that ground water resources will likely be developed to supply future water needs.

The Fifteemile Creek drainage has been the subject of past water development project investigations. A 1974 study by area soil and water conservation districts, and state and federal resource agencies, identified potential storage sites on Rail Hollow and Dry Creek, intermittent tributaries to Fifteemile Creek upstream from the gage near Rice. Combined, the two reservoirs would have a capacity of 7,600 acre-feet. The project could provide water for irrigation, municipal use, recreation, limited flood control and some streamflow enhancement benefits. An unfavorable benefit to cost ratio prevented the project from being pursued.

As shown in Table 3, the average annual yield at the gage near Rice is adequate to supply the total irrigation requirements as well as meet the requested minimum flows. Additional water development of Fifteemile Creek is possible assuming the development of storage.

Findings

1. Fifteemile Creek is used as a source of irrigation water for nearly 4,900 acres.

2. The City of Dufur uses Fifteenmile Creek as its primary municipal water supply and as a receiving stream for sewage effluent.
3. Fifteenmile Creek contains populations of resident trout and supports a run of wild winter steelhead of value to the area and the state.
4. Fifteenmile Creek experiences low summer flows generally from mid-July through mid-October.
5. About 80% of the irrigation diversions from Fifteenmile Creek are upstream from the gage near Rice.
6. Average monthly flows measured at the gage near Rice are sufficient to meet the requested minimums in most months except August and September.
7. Irrigation diversions downstream from the gage deplete flows below requested minimum levels during the months of July and October.
8. There is little potential for further irrigation development dependent upon the natural flows in Fifteenmile Creek.
9. Storage sites have been identified on Rail Hollow and Dry Creeks which combined, could supply irrigation, municipal, recreation, fish and flood control benefits.
10. Average annual yield of Fifteenmile Creek at the gage near Rice is more than adequate to supply existing irrigation needs and meet the requested minimum flows.
11. The implementation of planned improvements in streambank management, instream habitat practices, fish passage measures and facilities will benefit resident and anadromous fish populations in Fifteenmile Creek.
12. Fifteenmile Creek from the gage near Rice to the mouth currently experiences extremely low flows, excessively high water temperatures and streambed silting detrimental to fish life.

Conclusion

For the past 130 years, Fifteenmile Creek has been a primary source of water for irrigation. All other appropriative uses are incidental to irrigation diversions. Land management practices to maximize agricultural production, and irrigation depletion of natural streamflows have severely degraded the aquatic habitat in much of Fifteenmile Creek to the detriment of resident and anadromous fish populations utilizing the stream.

Fifteenmile Creek is the target of ongoing efforts to improve riparian habitat and upstream fish passage directly beneficial to fish life. These efforts may also indirectly benefit fish life by contributing to improved flow levels in Fifteenmile Creek. The requested minimum flows are needed in order to realize the full value of the other management efforts. Attainment of sufficient flow to meet the requested minimums with regularity, however, will likely require development of upstream or off stream storage.

Proposed Action

Adopt the requested minimum perennial streamflows for Fifteenmile Creek to be maintained from U.S.G.S. gage 14104500, Fifteenmile Creek near Rice, to the mouth for the following specified flows (cfs):

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
4	4	4	4	4	13	20	20	20	13	13	4

Impacts

Adoption of the recommended minimums would insure that flows currently available from November through June would be protected from future appropriations. Adoption of the recommended minimum for months in which the flows are not currently available would establish flow objectives recognized as necessary to sustain a viable aquatic regime and would protect the flows in the event future changes in the watershed make them available.

Adoption of the recommended flows will not affect existing rights nor significantly impact future irrigation development as the stream is fully appropriated and substantially all lands suitable for irrigation from Fifteenmile Creek have been developed.

Alternatives

No other rates of flow were found to be more appropriate to support aquatic life or minimize pollution. The support of aquatic life was not found to be of lesser importance than other uses of the stream.

Supplemental Action

Water demands represented by existing rights, currently meet or exceed available flow in Fifteenmile Creek during the months of August and September. Regulation of existing diversions occurs nearly every year during the summer months. In practice, further water development of natural flows during the August-September period is essentially precluded. Withdrawal of Fifteenmile Creek and tributaries from further appropriation, except for stored water, during low-flow periods should be considered.

4325C

BEFORE THE WATER POLICY REVIEW BOARD
OF THE
STATE OF OREGON



In the matter of formulating an)
integrated, coordinated program)
for the use and control of the)
water resources of the Hood)
Basin)

Hood Basin

February 26, 1985*

WHEREAS the State Water Resources Board under the authority of ORS 536.300 has undertaken a study of the Hood Basin as delineated on State Water Resources Board Map, File 4.6;

WHEREAS results of this study have been published in the State Water Resources Board Report, Hood Basin;

WHEREAS in this study consideration was given to means and methods of augmenting, conserving, and classifying such water resources, existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and for pollution abatement as well as other related subjects including drainage, reclamation, and flood control; and

WHEREAS the Water Policy Review Board under the authority of ORS 536.340 may reclassify the water resources of the Hood Basin;

WHEREAS as a result of said study the following findings and conclusions were reached by this board pertaining to the Hood Area of the Hood Basin;

1. There is enough surface water on a critical year basis to meet existing and contemplated needs for all beneficial uses.
2. An undetermined quantity of lower quality ground water is available.
3. Land resources are sufficient to increase the irrigated acreage by 6,200 acres.
4. Diversion of the surplus Hood River Valley water to adjacent areas of need appears to be impractical due to high lifts involved.
5. Augmentation of water supply during low flow periods can come through storage of surplus runoff, development of ground water supplies, and more efficient use of presently appropriated waters.
6. Depletions on some streams are such that the simultaneous use of major portions of existing rights could result in zero flows during critical low flow periods.

* Modifies Hood Basin Program dated March 30, 1966, January 10, 1980 and April 4, 1981.

7. Further clarification of water rights both as to quantity of water and irrigated area is needed in the Hood River Valley.
8. The waters of the streams forming waterfalls near the Columbia River Highway have been withdrawn from appropriation, condemnation, diversion or interruption by statute under ORS Chapter 538.
9. Domestic, industrial, recreation, mining, livestock, and wildlife uses, while important, represent comparatively small quantities of water in existing and contemplated future needs.
10. Municipal use, mainly from springs, is a small, but important consumptive use when determining water needs.
11. Irrigation accounts for over 95 percent of the consumptively used water and will continue to be the major consumptive use.
12. Additional development of orchards within the watershed is of great importance to the local economy and the state.
13. Green Point and Dead Point Creeks and tributaries have been identified as future water sources for irrigation of additional orchards. Irrigation of orchards from those streams is more important than the support of aquatic life.
14. Efficiency of water use could be improved by extensive rehabilitation of transmission and distribution facilities.
15. Development of additional hydroelectric power appears economically and physically feasible.
16. Recreational use of inland waters including the Columbia River reservoir pools is of major importance and is associated primarily with sport fishing, boating, swimming, sightseeing, and waterfowl hunting.
17. There are several natural and manmade lakes available for water-based recreation within the basin.
18. Use of the Hood River and gorge headwater streams by fish life is of importance to the Hood Area and the state. Development proposals on the Hood River and other major streams should consider anadromous fish runs.
19. Restrictions on further appropriation of natural streamflow would materially aid in maintaining minimum flows to support aquatic life and recreation on the main stem, Middle Fork, and West Fork of Hood River.
20. Maintenance of minimum perennial streamflows to support aquatic life in the Hood River Basin would be beneficial to the area and the state.
21. Minimum perennial flow levels recommended by the Oregon Department of Fish and Wildlife are based on anadromous fish requirements.

22. Pollution of surface and ground water is localized, intermittent in occurrence and is only critical in a few urban and industrial areas.
23. Serious damage, caused by flooding and erosion, frequently occurs along major streams fed by Mt. Hood glaciers and in cropped areas.
24. Drainage problems exist in a few urban and rural areas.
25. Physical and economic factors justify limited-purpose use of certain waters.
26. The maximum beneficial use of the waters of the Hood Area is for domestic and livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life purposes.

WHEREAS as a result of said study the following findings and conclusions were reached by this board pertaining to the Wasco Area of the Hood Basin:

1. Total quantities of surface water are inadequate to meet all contemplated future needs for water.
2. The ground water resource is inadequate in most areas to meet existing needs.
3. The area underlain by The Dalles and Threemile Ground Water Pools has been declared a critical ground water area.
4. Coordinated development of surface and ground water, is required for progressive, stable growth.
5. Augmentation of water supply during low flow periods can come through storage of surplus runoff, management of ground water supplies to include artificial recharge where feasible, and more efficient use of presently appropriated waters.
6. An adjudication decree provides for the diversion of all Dog River water at the present diversion point from the Hood Area to the Mill Creek drainage basin for municipal use, but does not fully protect flows existing above the diversion point.
7. Maximum utilization of water requires further clarification of water rights both as to quantity of water and irrigated area in the Wasco Area.
8. Domestic, industrial, recreation, livestock, and wildlife uses, while important, represent comparatively small quantities of water in existing and contemplated future needs.
9. Municipal use, mainly from Mill Creek and ground water, is an important and growing consumptive use when determining water needs.
10. Water requirements for suitable irrigable areas greatly exceed presently available water supplies although there are sufficient water resources that could be made available to more than treble the irrigated acreage to 21,500.

11. The efficiency of water use could be improved by extensive rehabilitation of irrigation facilities.
12. Use of water for hydroelectric power is nonexistent at present and the physical and economic potential is limited.
13. Recreational use of inland waters including the Columbia River reservoir pools is of considerable importance to the area and is associated primarily with sport fishing, boating, swimming, and waterfowl hunting.
14. Use of the basin's headwater streams by resident fish life is of importance to the basin.
15. Mill and Fifteemile Creeks support runs of anadromous fish and a population of resident trout.
16. Maintenance of minimum perennial streamflows would be beneficial to the basin and the state.
17. Attainment of flow levels recommended by the Oregon Department of Fish and Wildlife will require the development of storage or other measures.
18. Restrictions on further appropriations of natural streamflow would not materially aid in maintaining minimum flows because of existing over-appropriation during the low-flow season, but limitations on use could help protect flows during other parts of the year.
19. Pollution of surface and ground water is localized and intermittent in occurrence.
20. Streamflow levels sufficient to assimilate treated waste at Dufur would be important for maintaining water quality in Fifteenmile Creek.
21. Serious damage, caused by flooding and erosion, is an annual occurrence along all major streams in cropped areas.
22. No serious drainage problems presently exist.
23. Physical and economic factors justify limited-purpose use of certain waters.
24. The highest and best use of the waters of the Wasco Area is for domestic and livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, fish life and pollution abatement purposes.

NOW THEREFORE BE IT RESOLVED that this Board hereby adopts the following program in accordance with ORS 536.300(2) pertaining to the water resources of the Hood Basin:

- A. The maximum economic development of this state, the attainment of the highest and best use of the waters of the Hood Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, fish life, pollution abatement uses, and the waters of the Hood Basin are hereby so classified with the following exception:

The maximum economic development of this state, the attainment of the highest and best use of the waters of Dog River above its point of diversion at Water Resources Department - U.S. Geological Survey Gage 1134, as shown on State Water Resources Board Map 4.6, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for municipal use and the waters of Dog River above its point of diversion at Water Resources Department - U.S. Geological Survey Gage 1134, as shown on State Water Resources Board Map 4.6, are hereby so classified.

- B. The maximum economic development of this state and the attainment of the highest and best use of the waters of the natural lakes of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7 1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of natural lakes of the basin are hereby so classified.
- C. For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic, livestock or municipal uses or waters to be legally stored or legally released from storage shall be made or granted by a state agency or public corporation of the state for the waters of:
1. Hood River above Powerdale Diversion Dam for flows below 45 cubic feet per second measured at said dam and maintained to the mouth of Hood River.
 2. West Fork Hood River and its tributaries above U.S. Geological Survey - Water Resources Department Gage 1185 one-half mile above the mouth for flows of below 100 cubic feet per second measured at said gage and maintained to the mouth of West Fork Hood River.
 3. Middle Fork Hood River and its tributaries above its mouth for flows of below 10 cubic feet per second measured at said point.

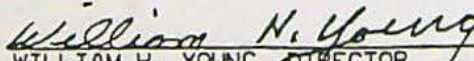
- D. To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the streams listed in Table 1 and tributaries when flows are below the specified levels. This limitation shall not apply to:
1. Human and livestock consumption
 2. Municipal use
 3. Water legally released from storage.
 4. Irrigation use from Green Point and Dead Point Creeks and tributaries (applicable to flow on the mainstem Hood River priority 11-3-83 only)
 5. Water legally stored on Mill or Fifteemile Creek and tributaries.

Attainment of the specified flow levels on most streams during some portions of the year will require development of water storage or implementation of other measures.

- E. Applications for the use of these specified waters of the Hood Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.
- F. Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.
- G. Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Dated March 25, 1985.

WATER POLICY REVIEW BOARD


WILLIAM H. YOUNG, DIRECTOR
WATER RESOURCES DEPARTMENT

4592A

TABLE 1
Minimum Perennial Streamflows
(Cubic Feet per Second)

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	<u>Priority Date</u>
<u>Hood River: at Powerdale Dam to be maintained to the mouth</u>												
45	45	45	45	45	45	45	45	45	45	45	45	9-22-65
100*	100*	170*	170*	270*	270*	270*	170*	170*	130*	100*	100*	11-3-83
<u>Middle Fork Hood River: at the mouth</u>												
10	10	10	10	10	10	10	10	10	10	10	10	9-22-65
<u>East Fork Hood River; at the Mouth</u>												
150	150	150	100	100	100	150	150	150	100	100	100	11-3-83
<u>West Fork Hood River: at stream gage 14118500 (located in the E 1/2, Section 1, T1N, R9E WM) and maintained to the mouth</u>												
100	100	100	100	100	100	100	100	100	100	100	100	9-22-65
<u>Neal Creek: at the mouth</u>												
20	20	13	13	13	13	20	20	20	13	13	5	11-3-83
<u>Mill Creek: at the mouth</u>												
4	15	15	15	15	15	15	15	15	10	10	4	11-3-83
<u>Fifteermile Creek: at stream gage 14104500 at Rice (Section 3, T1S, R14E, WM) and maintained to the mouth</u>												
4	4	4	4	4	13	20	20	20	13	13	4	11-3-83

* Earlier priority date for a portion of the indicated flow.

ALBIN Leona M * WRD

From: FRENCH Dwight W * WRD
Sent: Wednesday, April 17, 2019 8:18 AM
To: ALBIN Leona M * WRD
Subject: FW: Question from Mt. Hood Meadows

Please put a copy of this email string in the 3 files listed below.
Thank you,
Dwight

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@oregon.gov
503-986-0819

From: Howard, Elizabeth E. [<mailto:EHoward@SCHWABE.com>]
Sent: Wednesday, April 17, 2019 7:57 AM
To: FRENCH Dwight W * WRD
Subject: RE: Question from Mt. Hood Meadows

Dwight, Good morning and thanks for the quick follow up! The permit numbers are G-13388 (application file no. G-12550), R-12758 (application file no. R-71657), and S-53637 (application file no. S-69976). Best, Elizabeth

Schwabe Williamson & Wyatt

Elizabeth E. Howard
Shareholder
Direct: 503-796-2093
Cell: 503-312-8765
ehoward@schwabe.com

Ideas fuel industries. Learn more at:
www.schwabe.com

From: FRENCH Dwight W * WRD <Dwight.W.French@oregon.gov>
Sent: Wednesday, April 17, 2019 7:51 AM
To: Howard, Elizabeth E. <EHoward@SCHWABE.com>
Subject: FW: Question from Mt. Hood Meadows

Elizabeth,
I checked in with Ivan after our meeting last week and then he checked in with his regional managers. We agree that snow making falls within the uses allowed within quasi-municipal use. If snow making were all that you wanted to do we would recommend you apply for commercial use – commercial use is included in quasi-municipal use.

(Commercial is included in the def of municipal use and I snow making can be part of the operation and maintenance of a commercial facility.)

I've included some definitions from OAR 690-300 that we passed around during our internal conversations for reference.

Would you please let me know what file numbers you want this email printed and copied too? Then I'll have my assistant print and copy to the files for consistency.

Thanks,
Dwight

(40) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program.

(29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power.

(6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance.

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@oregon.gov
503-986-0819

NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

PIERCEALL Jeffrey D * WRD

From: FRENCH Dwight W * WRD
Sent: Thursday, April 18, 2019 4:28 PM
To: Howard, Elizabeth E.
Cc: PIERCEALL Jeffrey D * WRD
Subject: FW: Meadows Utilities Extension Applications Pending since 2005

Hi Elizabeth,

Good chance this is on your radar already:

We are going to need to extension applications for the two files listed below in order to proceed. Can you give us a date for having revised extension applications? Or, can you tell me when you can give me a date?

Thank you,
Dwight

Dwight French

Water Right Services Division Administrator
Oregon Water Resources Department
dwight.w.french@oregon.gov
503-986-0819



OREGON
WATER
RESOURCES
DEPARTMENT

Integrity + Service + Technical Excellence + Teamwork + Forward-Looking

From: PIERCEALL Jeffrey D * WRD
Sent: Thursday, April 18, 2019 3:07 PM
To: FRENCH Dwight W * WRD
Subject: Meadows Utilities Extension Applications Pending since 2005

Dwight,

Meadows Utilities has two applications for extensions pending for Permit R-12758 (Application R-71657), and Permit S-53637 (Application S-69976) that were submitted March 2005. Over the years, they have requested a number of holds, the most recent having lapsed on January 1, 2019. I began to review these two applications during a review of an EOT for Permit G-13388, which was submitted December 2018. We had discussed processing all three applications simultaneously, however the two older applications are too out of date to proceed. We are in need of new applications for both of these in order to move forward. A request was sent to their agent March 11, requesting the application be updated, with a response by April 15. We have not yet received an updated application.

[Jeffrey D. Pierceall](#)

Extension and Adjudication Specialist

Oregon Water Resources Department

503-986-0802

Jeffrey.D.Pierceall@oregon.gov

Water Use Report from OWRD Water-Use Database (Some paper records may not have been entered)
Summarized by Water Year

1

user_id	owner	water use report_id	pod_facility_name	Logid (wells only)	Water Year	Water Used (acre feet)	Nbr of Months in Summary
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2000	19.56	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2001	20.82	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2002	35.53	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2003	14.24	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2004	19.19	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2008	26.56	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2013	31.09	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2014	27.85	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2015	26.50	12
28857	STEVE WARILA MEADOWS UTILITIES LLC	51513	S SPRING		2016	25.92	12

Water Rights Inventory for Meadows Utilities LLC

(List of All Permits, Permit Amendments, Certificates, Transfers, New Applications)

Ground Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. ¹ or Transfer No.	Source as identified in water right	Facility Name used by entity	Use	Allowed Rate (cfs)	Actual Diversion	Authorized Completion Date ²	Notes or Limitations to water use ³
									Maximum Instantaneous Rate Diverted to Date (cfs)		
G-14655	G-13484	December 3, 1997	88981		A well in the Buck Creek Basin		Commercial use	0.78 cfs	0.78		
G-12550	G-13388	May 23, 1991			A well within the E.F. Hood River Basin		Quasi-muni	0.11 cfs	0 as of 5/1/03	Ext. to 10/1/2017	
G-16401					A well within the E.F. Hood River Basin		Commercial uses	0.11 cfs			Admin Hold since 2/28/2006

Surface Water

Application No.	Permit No.	Priority Date	Certificate No.	P.A. or Transfer No.	Source as identified in water right	Facility Name used by entity	Use	Allowed Rate (cfs)	Actual Diversion	Authorized Completion Date	Notes or Limitations to water use
									Maximum Instantaneous Rate Diverted to Date (cfs)		
R-71657	R-12758	June 5, 1991			Two unnamed springs, trib of E Fork Hood River, and a well w/ E.F. Hood River Basin		Quasi-muni	2.48 AF	0 as of 3/17/05	2004	
S-69976	S-53637	June 29, 1989			Two unnamed reservoirs under Permit R-12758, and two unnamed springs, trib. of E.F. Hood River		Quasi-muni	Live flow=0.27 cfs Stored water= 2.48 AF, further limited to max cumulative total of 166.0 AF/year	0 as of 3/17/05	2004	
S-86185					E.F. Hood River		Commercial uses		1.1 cfs		Admin hold since 2/28/2006

Pending New Water Right Applications

¹ P.A. = Permit Amendment

² Date by which full application of water is to be made within the terms and conditions of the permit (date will be specified in the permit or on the last extension Final Order).

³ If a particular water right certificate, permit, or transfer is not being utilized to meet current demands or its use is limited, please explain why.

Apps G-12500, 569970, R 11001

USER-ID 28857

50037
69976
R 71657

2002

Oregon Water Resources Department
October 2002 through September 2003
Annual Water Use - Monthly Quantities Form

2003



35
9E
41
Same
next

Facility POD-ID	Main Well P=613388 47109	South Spring P=553637 51513	P=553637 51514	P=R12758 P=553637 51515	P=R12758 P=553637 51516
October - 2002	0	265540	0	0	0
November - 2002		289855			
December - 2002		483380			
January - 2003		657080			
February - 2003		527646			
March - 2003		526390			
April - 2003		344991			
May - 2003		88142			
June - 2003		160624			
July - 2003		163964			
August - 2003		476042			
September - 2003		656526			
TOTAL * G	0	4640180	0	0	0

COPY

RECEIVED

FEB 25 2004

WATER RESOURCES DEPT
SALEM, OREGON

* Describe the units of measure as G (gallons), KG (thousand gallons), MG (million gallons), CF (cubic feet), MCF (million cubic feet), or AF (acre-feet)

Describe method of measuring the water used: 3" Turbine Meter. If use is irrigation, total number acres irrigated _____

I certify this information is true and accurate to the best of my knowledge.

Steve Warila
Signature

Vice President
Title

Meadows Utilities LLC
Reporting Entity

2-22-04
Date

Steve Warila
Name - Please Print

Please complete and mail to: Water Resources Department; Water Use Reporting Program;
725 Summer Street NE, Suite A; Salem, OR 97301-1271



MT. HOOD
MEADOWS
SKI RESORT

File # S-69976

RECEIVED

APR 24 2003

WATER RESOURCES DEPT.
SALEM, OREGON

April 22, 2003

Ms. Lisa Juul
Water Rights Specialist
Water Rights Section
Water Resources Department of Oregon
Commerce Building
158 12th Street NE
Salem, OR 97301-4172

Dear Ms. Juul,

This letter confirms our telephone conference yesterday where you agreed that the following permits do not require complete application of water until October 1, 2004:

Permit #S53637, App File #S69976
Permit #R12758, App File #R71657

Thank you for your assistance.

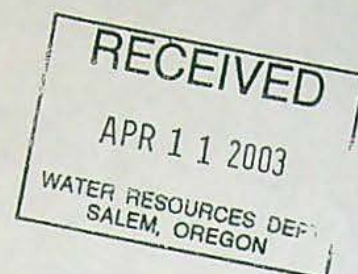
Sincerely,

Dave Riley
President
Meadows Utilities LLC



MT. HOOD
MEADOWS
SKI RESORT

File # S-69976



April 11, 2003

Ms. Lisa Juul
Water Rights Specialist
Water Rights Section
Water Resources Department of Oregon
Commerce Building
158 12th Street NE
Salem, OR 97301-4172

Dear Lisa,

As per our recent telephone conversation, I wish to confirm that you have allowed me additional time to respond to your request for additional information regarding the following:

Permit #G13388 (Application File # G12550)

Permit #S53637 (App File #69976)

Permit #R12758 (App File #R71657)

I'll respond to your request prior to the end of April, 2003. Thank you for your patients and accommodation.

Sincerely,

Dave Riley
President
Meadows Utilities, LLC



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

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

December 28, 1999

MEADOWS UTILITIES LLC
PO BOX 470
MT HOOD OR 97041

REFERENCE: File G12550, R71657, & 69976

The assignment of Permits G13388, R12758, and 53637 from Meadows Water Company to you has been recorded in the records of the Water Resources Department. Our records have been changed accordingly and the original assignment is enclosed.

Our receipt number 33888 covering the \$25 recording fee has been sent to Ball Janik LLP.

Sincerely,

Dallas S. Miller
Water Rights Specialist

DSM:jh

enclosure

cc: Watermaster #3
Ball Janik LLP - 101 SW Main St. Ste 1100 - Portland OR 97204-3219





Oregon

Kate Brown, Governor

R-71657

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.wrd.state.or.us

August 4, 2017

Martha O. Pagel
Schwabe Willimason & Wyatt
530 Center Street, NE
Suite 400
Salem, OR 97301

RE: Meadows Utilities LLC and Meadows North LLC – Continuation of Admin. Holds

Dear Martha:

Thank you for responding to my request for additional information with your letter of April 12, 2017.

Your letter requests an administrative hold for the following applications and actions:

- Water Right Applications: G-16401 and S-86185
- Permit Extension Applications: Files S-69976 (permit S-53637), and R71657 (permit R-12758)
- Water Management and Conservation Plan Submittal

Water Right Applications G-16401 and S-86185:

Given your explanation of the situation, the Department finds that, consistent with OAR 690-310-0270(2) that a continued administrative hold for application S-86185 is both reasonable and necessary. The administrative hold provision of this rule does not apply to application G-16401. However, the Department agrees that, under the circumstances, it is appropriate to not move forward with a contested case hearing or final order at this time. We are hopeful, as you are, that a continued administrative hold will allow the parties to resolve the protest without the need of a contested case hearing. For both of these applications, the Department will not move forward with any processing until at least January 1, 2019.

Permit Extension Applications: Files S-69976 (permit S-53637), and R-71657 (permit R-12758)

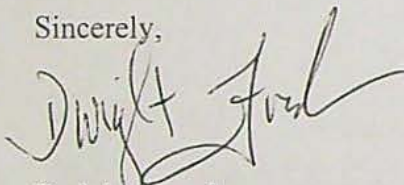
These two extension applications have been pending since 2005 when they were submitted. There is no mention of administrative holds in our extension processing rules or the governing statutes. However, given the circumstances explained in your recent letter, it seems appropriate to provide an additional delay in processing until at least January 1, 2019. After this date, the Department reserves the right to issue a proposed final order on these extension applications without further notice. We can discuss the timing of next steps in the event that protests are filed.

Water Management and Conservation Plan Submittal

The Department discovered, earlier this year, that allowing an entity additional time to submit a WMCP could, in some circumstances, cause misunderstandings about the status of a previously submitted and approved WMCP or the status of a condition that requires submittal and subsequent approval of a WMCP. In order to avoid future misunderstanding in this regard, we are no longer "approving" requests to delay submittal of a WMCP. Instead, we want to work with entities that have a WMCP due and make sure they understand the consequences, if any, of delays in submittal. We do understand that Mt. Hood Meadows want to avoid potential challenges that might arise if a plan were to be submitted and processed while the negotiations are proceeding. Please call me if you wish to discuss this item in more detail.

The Department understands that the issues that surround the potential land swap is a complex undertaking and wish the applicant well as they continue to proceed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dwight French", with a stylized, flowing script.

Dwight French

Water Right Services Division Administrator

Copies to files: G-16401; S-86185; S-69976; R71657

Application # S-69976 / Permit # S-53637

Route Slip ... Extension of Time

per Division 315 Rules... (Extensions received on July 1, 2001 or after)

♦ **WRIG...**
Money Received on: \$250 on 3-17-05

♦ **Lisa Juul...**
Extension Completeness: OK
(If **NOT** complete, send certified letter requesting additional information.)

If Extension Appl complete and \$250 fee submitted, route to...

♦ **Jonnine Fuss...**

☒ Publish on Public Notice (initial 30-day comment): 4/5/05 JS

Update "cdatewext.DB" Database:

☒ In the "PNotice Date" field... Enter the date the Extension Application was published on the Public Notice.

☒ In the "Ext Filed" field... Enter the date the Extension Application was received.

At the close of the Initial 30-day Comment Period...

♦ **Lisa Juul...**

Pull files for Ext PFO review: _____

Extension PFO completed: _____

Once Extension PFO signed by Dwight French...

♦ **Jonnine Fuss...**

Prepare Ext PFO for mailing to applicant: _____

Mail to those who commented **and** paid copy fee: _____

Include Ext PFO on weekly Public Notice: _____

Municipal or Quasi-Municipal EXTENSION REVIEW CHECKLIST for PFO... per Div. 315 Rules

Application #: S-69976 / Permit #: S-53637

Permittee's Name: Meadows Utilities LLC

Permittee's Mailing Address: PO Box 470, Mt. Hood, OR 97041

POD Location: Township 3-S Range 9-E Section 4 $\frac{1}{4}$ $\frac{1}{4}$ SE NE

Drainage Basin: #4 - Hood Basin County: Hood River Watermaster District: #3

✓ 1. Has the applicant submitted the appropriate fee? Yes / No \$250 on 3-17-05
***If "No".....STOP. (Extension of Time cannot be processed if insufficient fees submitted.)
*** (NOTE: Any missing Extension information that is needed before an Extension PFO can be completed???)

___ 2. Has the applicant completely filled out the Extension Application form? Yes / No
***If "No"..... List the shortcomings below and send a letter requesting the additional/missing information that is needed before the Extension of Time can be processed.

✓ 3. Date Permit was issued: 12-9-99 Priority Date: 6-29-89

✓ 4. Source: Two Unnamed Reservoirs (constructed under Permit R-12758) & Two Unnamed Springs, Hood River ^{tribs of East Fork}

✓ 5. Use: Quasi-Municipal
Live Flow: 0.27 cfs from Unn. Springs → further limited to 0.055 cfs for Erosion Control

✓ 6. "Q": Stored Water: 2.48 AF, being 1.54 AF from existing res. & 0.94 AF from proposed res. → further limited to a max cumulative total of 166.0 AF ea. yr.

✓ 7. Orig "A" Date: 12-9-2000 Orig "B" Date: - N/A - Orig "C" Date: 10-1-2004

✓ 8. Conditions of Permit: YES →

★ See permit for special conditions.

✓ 9. Extension request received: 3-17-2005 Request Number (...1st 2nd, 3rd): 1st

✓ 10. Last Authorized "B" Date: - N/A - Last Authorized "C" Date: 10-1-2004

✓ 11. Proposed "B" Date: - N/A - Proposed C Date: 10-1-2017

___12. Amount Invested to date: _____ Estimated Total Cost: _____
(***Estimated Remaining Cost: _____)

___13. The water project development made to date has been accomplished in accordance with the terms and conditions contained in the permit. **Yes / No** ***If "No"..... What permit terms and/or conditions have not been met?

___14. Work on the water development project completed to date includes: _____

___15. The work remaining to be completed consists of: _____

___16. Progress in perfecting the permit is being held up by: _____

___17. Has the applicant pursued perfection of the right in good faith and with reasonable diligence? **Yes / No**

___18. Determination of the market and the present demand for water or power to be supplied: _____

___19. Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. → Approval of Extension Request

No ... "Good Cause" cannot be found. → Denial of Extension Request

___20. Conditions to be included in Extension PFO (if applicable)? **Yes / No**
(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

- ☐ Max "Q" Development Limitations (Municipal/Quasi-Municipal)
☐ Div. 86 Water Management and Conservation Plan
☐ Other: _____

___21. Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

- ☐ **COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987**
"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."
- ☐ **COBU Requirement - Surface Water - post July 9, 1987**
"Pursuant to ORS 537.230(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use."
- ☐ **COBU Requirement - Ground Water - post July 9, 1987**
"Pursuant to ORS 537.630(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use."

NOTES:

Extension "PFO" Dates

Checklist Last Revised: 1 / 31 / 2003

Mailing / Issuance Date: _____ WRD Project Manager: _____

Protest Deadline Date: _____ Date: _____



Oregon

Kate Brown, 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.wrd.state.or.us

August 4, 2017

Martha O. Pagel
Schwabe Willimason & Wyatt
530 Center Street, NE
Suite 400
Salem, OR 97301

RE: Meadows Utilities LLC and Meadows North LLC – Continuation of Admin. Holds

Dear Martha:

Thank you for responding to my request for additional information with your letter of April 12, 2017.

Your letter requests an administrative hold for the following applications and actions:

- Water Right Applications: G-16401 and S-86185
- Permit Extension Applications: Files S-69976 (permit S-53637), and R71657 (permit R-12758)
- Water Management and Conservation Plan Submittal

Water Right Applications G-16401 and S-86185:

Given your explanation of the situation, the Department finds that, consistent with OAR 690-310-0270(2) that a continued administrative hold for application S-86185 is both reasonable and necessary. The administrative hold provision of this rule does not apply to application G-16401. However, the Department agrees that, under the circumstances, it is appropriate to not move forward with a contested case hearing or final order at this time. We are hopeful, as you are, that a continued administrative hold will allow the parties to resolve the protest without the need of a contested case hearing. For both of these applications, the Department will not move forward with any processing until at least January 1, 2019.

Permit Extension Applications: Files S-69976 (permit S-53637), and R-71657 (permit R-12758)

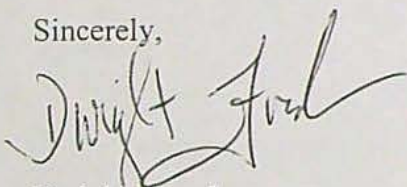
These two extension applications have been pending since 2005 when they were submitted. There is no mention of administrative holds in our extension processing rules or the governing statutes. However, given the circumstances explained in your recent letter, it seems appropriate to provide an additional delay in processing until at least January 1, 2019. After this date, the Department reserves the right to issue a proposed final order on these extension applications without further notice. We can discuss the timing of next steps in the event that protests are filed.

Water Management and Conservation Plan Submittal

The Department discovered, earlier this year, that allowing an entity additional time to submit a WMCP could, in some circumstances, cause misunderstandings about the status of a previously submitted and approved WMCP or the status of a condition that requires submittal and subsequent approval of a WMCP. In order to avoid future misunderstanding in this regard, we are no longer "approving" requests to delay submittal of a WMCP. Instead, we want to work with entities that have a WMCP due and make sure they understand the consequences, if any, of delays in submittal. We do understand that Mt. Hood Meadows want to avoid potential challenges that might arise if a plan were to be submitted and processed while the negotiations are proceeding. Please call me if you wish to discuss this item in more detail.

The Department understands that the issues that surround the potential land swap is a complex undertaking and wish the applicant well as they continue to proceed.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight French", written over a horizontal line.

Dwight French

Water Right Services Division Administrator

Copies to files: G-16401; S-86185; S-69976; R71657

MARTHA O. PAGEL

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

RECEIVED BY OWRD

DEC 21 2015

December 18, 2015

SALEM, OR

Dwight French
Administrator, Water Rights & Adjudication
Division
Oregon Water Resources Department
725 Summer St NE Ste A
Salem OR 97301-1271

Re: Meadows Utilities, LLC and Meadows North LLC – Administrative Hold
Requests

Dear Dwight:

I am writing in follow-up to our recent conversation to confirm a request for extending the “administrative hold” period for the following applications/actions that are currently pending before the Oregon Water Resources Department:

Water Right Applications G-16401 and S-86185

Permit Extension Applications for S-69976, S-54637 and R-12758 (R-71657)

Water Conservation and Management Plan Review

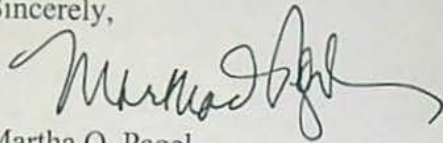
As you are aware from a long history of prior communications, these applications and actions are all related to and affected by a settlement agreement negotiated in connection with a proposed ski area expansion at Mt Hood. The settlement agreement called for a land exchange that has in turn required Congressional action and administrative implementation by the U.S. Forest Service. At this point, the implementation process is moving forward, but slowly. As a result of recent complications, I understand the process will require at least another year or two.

On behalf of the applicant, Meadows Utilities LLC, I am therefore requesting extension of the administrative hold period for a two year period.

Dwight French
December 18, 2015
Page 2

Thank you for your assistance. Please let me know if you have questions or need additional information in order to process this request.

Sincerely,



Martha O. Pagel

MOP

cc: Matthew Drake
Ralph O. Bloemers Esq.

RECEIVED BY OWRD

DEC 21 2015

SALEM, OR

S&W



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

July 23, 2014

Martha Pagel
Schwabe, Williamson & Wyatt
530 Center St, NE Suite 400
Salem, OR 97301

RE: Request for Administrative Holds for Permit Extension Applications S-69976 (Permit S-69976)
and R-71657 (Permit R-12758) in the name of Meadows Utilities LLC

Dear Ms. Pagel,

I recently noticed these two extension applications were noted as "on hold" on my working spreadsheet, but I could not find in the record any response from the Department to your December 2, 2013 email request to Dwight French for an administrative hold of these two permit extensions.

In response to your December 2, 2013 request on behalf of Meadows Utilities LLC for an administrative hold of these two permit extensions, the Applications for Extension of Time for Applications S-69976 (Permit S-69976) and R-71657 (Permit R-12758) will remain on administrative hold until December 31, 2015, unless the Department is notified otherwise.

Sincerely,

Ann Reece
Water Rights Services Division

CC: File S-69976
File R-71657



Oregon

Theodore R. Kulongoski, 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

January 27, 2009

Martha Pagel
Schwabe, Williamson & Wyatt
530 Center St. NE Suite 400
Salem, OR 97301

RE: Request for Administrative Hold to Pursue Settlement Negotiations

Dear Ms. Pagel,

Oregon Water Resources Department received your request for an administrative hold on January 20, 2009. The following applications have been placed on hold through January 31, 2010.

1. Water Right Applications G-16401 and S-86185 for Snowmaking.
2. Permit Extension Applications S-69976 (Permit S-53637), R-71657 (Permit R-12758).

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Oregon Water Resources Department
503-986-0820

Cc: Renee Moulun, ODOJ
Denise Fjordbeck, ODOJ
Ralph Bloemers, CRAG

Water Right Information Query Results

Contact Information

▼ Current contact information

OWNER:
▶ MEADOWS UTILITIES LLC
PO BOX 470
MT HOOD, OR 97041

Water Right Information

Status: Non-Cancelled
County: Hood River
File Folder Location: Salem
Watermaster District: 3

Documents

[View all scanned documents](#)

▼ Application: R 71657 [digital map](#)

▶ Received: 6/5/1991

▼ Permit: R 12758 [document](#), [digital map](#), [paper map](#)

▶ Signature: 12/10/1999

Permit Workflow

Action	Date	Result	Completed By
Permit Issued	4/15/1998		
▶ Completion Date [C Date]	10/1/2004		
Extension Received	3/17/2005		
Extension Received	3/22/2005		
Extension Public Notice	4/5/2005		

▼ Order(s)

Volume-Page	Signature	Description
▶ 51-955	8/28/1997	APPROVING APPLICATIONS 69976, C

▶ [View right with New Web Mapping \(beta\)](#)

Point(s) of Diversion

▶ POD 1 - UNNAMED SPR/RES > EAST FORK HOOD RIVER

▶ POD 2 - UNNAMED SPR/RES > EAST FORK HOOD RIVER

Place(s) of Use

[Add TRS grouping](#)

▶ Use - QUASI-MUNICIPAL USES (Primary); Priority Date: 6/5/1991

Water Right Genealogy

☐ [Permit: R 12248 CN](#)

└ [Permit: R 12758 *](#)

[View Water Rights in same Family](#)

[Help understanding and working with the Water Rights Information System](#)

[Report Errors with Water Right Data](#)

[Return to WRIS Query](#)



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

May 8, 2008

Martha Pagel
Schwabe, Williamson & Wyatt
530 Center St. NE Suite 400
Salem, OR 97301

RE: Request for Administrative Hold to Pursue Settlement Negotiations

Dear Ms. Pagel,

Oregon Water Resources Department received your request for an administrative hold on May 2, 2009. The following applications and review have been placed on hold through January 31, 2009.

1. Water Right Applications G-16401 and S-86185 for Snowmaking.
2. Permit Extension Applications S-69976 (Permit S-53637), R-71657 (Permit R-12758).
3. Water Conservation and Management Plan Review.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Oregon Water Resources Department
503-986-0820





SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

RECEIVED

MAY 02 2008

WATER RESOURCES DEPT
SALEM, OREGON

Equitable Center, 530 Center St., NE, Suite 400, Salem, OR 97301 | Phone 503.540.4262 | Fax 503.399.1645 | www.schwabe.com

MARTHA O. PAGEL

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

May 1, 2008

Dwight French
Administrator, Water Rights & Adjudication
Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Request for Administrative Hold to Pursue Settlement Negotiations
Our File No.: 110069/141738

Dear Dwight:

I am writing on behalf of our client, Meadows Utilities, LLC (Meadows), to request that the Oregon Water Resources Department (OWRD) extend the "administrative hold" previously in place for the applications listed below. As you may recall, the administrative hold was previously approved through January 31, 2008, to allow time for comprehensive settlement negotiations among the parties. At this point, the parties are still working on implementation of a preliminary settlement plan that requires federal legislation. They are also pursuing discussions on additional issues not included in the preliminary plan. Accordingly, we request additional time, until January 31, 2009, to continue the settlement effort.

The specific pending applications or actions for which administrative hold is requested are as follows:

1. Water Right Applications G-16401 and S-86185 for Snowmaking.
2. Permit Extension Applications S-69976, S-54637, R-71657, R-12758.
3. Water Conservation and Management Plan Review

In addition to the above applications, we have recently joined in a motion filed by Ralph Bloemers to request an extension of time for further proceedings in Case A 126183, before the Oregon Court of Appeals (Judicial review of Permit Extension approval for G-13484, Cooper Spur Project).

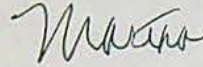
Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

PDX/110069/141738/MOP/2570756.1

Dwight French
May 1, 2008
Page 2

Thank you for your assistance in this request. If you have questions or need any additional information from us, please let me know.

Sincerely,



Martha O. Pagel

MOP:kdo

cc: Patricia McCarty
Renee M. Moulun
Ralph O. Bloemers, Esq.
Matthew Drake

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MAY 02 2008

WATER RESOURCES DEPT
SALEM, OREGON

S&W



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

App S-69976

Equitable Center, 530 Center St., NE, Suite 400, Salem, OR 97301 | Phone 503.540.4262 | Fax 503.399.1645 | www.schwabe.com

MARTHA O. PAGEL

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

February 19, 2007

Dwight W. French
Administrator, Water Rights and Adjudication
Division
Oregon Water Resources Department
725 Summer St. SE, Suite A
Salem, OR 97301-11271

Re: Request for Administrative Hold to Pursue Settlement Negotiations
Our File No.: 110069/141738

Dear Dwight:

I am writing on behalf of our client, Meadows Utilities, LLC (Meadows), to request that the Oregon Water Resources Department (OWRD) extend the "administrative hold" previously in place for the applications listed below. The administrative hold action was previously approved through January 1, 2007, to allow time for comprehensive settlement negotiations among the parties. At this point, a preliminary settlement agreement has been reached; however, implementation of the settlement plan is contingent on federal legislation which is still being pursued. Accordingly, we request additional time, until January 31, 2008, to continue the settlement effort.

The specific pending applications or actions for which administrative hold is requested are as follows:

1. Water Right Applications G-16401 and S-86185 for Snowmaking.
2. Permit Extension Applications S-69976, S-54637, R-71657, R-12758.
3. Water Conservation and Management Plan Review

In addition to the above applications, we have recently joined in a motion filed by Ralph Bloemers to request an extension of time for further proceedings in Case A 126183, before the Oregon Court of Appeals (Judicial review of Permit Extension approval for G-13484, Cooper Spur Project).

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Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

Dwight W. French
February 19, 2007
Page 2

Thank you for your assistance in this request. If you have questions or need any additional information from us, please let me know.

Sincerely,



Martha O. Pagel

MOP:kd

cc: Mike Reynolds, OWRD
Renee Moulun, DOJ
Ralph Bloemers, CRAG
Dave Riley, MUC

RECEIVED

FEB 21 2007

WATER RESOURCES DEPT
SALEM, OREGON





Oregon

Theodore R. Kulongoski, Governor

File Copy

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

April 27, 2006

Martha Pagel
Schwabe, Williamson & Wyatt
1011 Liberty Street. SE
Salem, OR 97302

Dear Martha,

Thank you for your letter of April 13, 2006 regarding Meadows Utilities. This letter is confirming that Water Right Applications G-16401 and S-86185 are on hold until January 1, 2007. In addition Permit Extension Applications S-69976/S-53637 and R-71657/R-12758 are hold until January 1, 2007.

Bill Fujii has sent a letter to Mr. Warila regarding the Water Management and Conservation Plan granting the new deadline for the plan which is January 1, 2007.

Mike Reynolds has checked with Renee Moulun and verified that Case A126183 is in abeyance until briefs are due on August 2, 2006.

Please let me know if you have any questions. I can be reached on 503-986-0819.

Sincerely,

Dwight French
Water Right and Adjudications Administrator



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

1011 Liberty St. SE, Salem, OR 97302 | Phone 503-399-7712 | Fax 503-399-1645 | www.schwabe.com

MARTHA PAGEL

Direct Line: 503-540-4260 (New Number)

Cellular Phone: 503-507-7293

E-Mail: mpagel@schwabe.com

April 13, 2006

Dwight French
Administrator, Water Rights and Adjudication
Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Administrative Hold / Abatement of Proceedings for Settlement Negotiations
Our File No.: 110069/141738

Dear Dwight:

I am writing to confirm the status of various water right matters currently pending before the Oregon Water Resources Department (OWRD), involving our client, Meadows Utilities (Meadows). As originally described in my letter dated December 15, 2005, Meadows is engaged in comprehensive settlement negotiations that are intended to resolve disputed issues associated with these pending OWRD actions. At that time, we requested the pending OWRD matters be placed on administrative hold until the end of February, 2006. At this point, the parties are still involved in the settlement efforts and have requested a continuation of the department's administrative hold process.

As a result of e-mail correspondence during the past week, I understand OWRD has approved extension of the administrative hold through January 1, 2007 for the following pending applications:

Water Right Applications: G-16401 and S-86185 (Case Worker – Jeana Eastman)

Permit Extension Applications: S-69976/S-53637 and R-71657/R-12758 (Case Worker – Ann Reece)

In addition to the above applications, Meadows has submitted a Water Management and Conservation Plan (WMCP) for approval by OWRD, as required under a permit conditions. The WMCP action was included within the previous request for administrative hold and it is my

Portland, OR 503-222-9981 | Salem, OR 503-399-7712 | Bend, OR 541-749-4044
Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

PDX/110069/141738/MOP/1411862.1

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APR 13 2006

**WATER RESOURCES DEPT
SALEM, OREGON**

Dwight French
April 13, 2006
Page 2

understanding that the WCMP process will now remain on hold until January 1, 2007. This process is being coordinated in OWRD by Bill Fujii.

Finally, we note that Case A126183 is pending before the Oregon Court of Appeals. This action is an appeal by WaterWatch, et al (represented by Mr. Bloemers), of a permit extension granted to Meadows in connection with the Cooper Spur project (Permit G-13484). Although the appeal was filed in September, 2004, the case has not been briefed or argued because the parties have been engaged in a separate settlement process. At this point, a settlement agreement has been signed, but it includes several contingencies that are still in the process of unfolding. For this reason, the parties recently obtained the Court's approval to abate further action until August 1, 2006. This matter is being coordinated at OWRD by Mike Reynolds, in cooperation with Renee Moulun and Denise Fjordbeck, in the Attorney General's office.

In the interest of confirming a shared understanding of the status of these various actions, I am forwarding copies of this letter to the affected OWRD staff and attorneys.

Thank you, again, for your on-going assistance in supporting the parties' settlement efforts.

Sincerely,



Martha Pagel

MOP:kdo

cc: Tim Wallin
Ann Reece
Mike Reynolds
Bill Fujii
Renee M. Moulun
Ralph O. Bloemers Esq.
David Riley



RECEIVED
APR 13 2006
WATER RESOURCES DEPT
SALEM, OREGON



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

1011 Liberty St. SE, Salem, OR 97302 | Phone 503-399-7712 | Fax 503-399-1645 | www.schwabe.com

MARTHA PAGEL

Direct Line: 503-540-4260 (New Number)

Cellular Phone: 503-507-7293

E-Mail: mpagel@schwabe.com

April 13, 2006

Dwight French
Administrator, Water Rights and Adjudication
Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Administrative Hold / Abatement of Proceedings for Settlement Negotiations
Our File No.: 110069/141738

Dear Dwight:

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Permit Extension Applications: S-69976/S-53637 and R-71657/R-12758 (Case Worker – Ann Reece)

In addition to the above applications, Meadows has submitted a Water Management and Conservation Plan (WMCP) for approval by OWRD, as required under a permit conditions. The WMCP action was included within the previous request for administrative hold and it is my

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Portland, OR 503-222-9981 | Salem, OR 503-399-7712 | Bend, OR 541-749-4044
Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

PDX/110069/141738/MOP/1411862.1

APR 14 2006
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SALEM, OREGON

Dwight French
April 13, 2006
Page 2

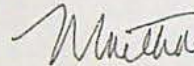
understanding that the WCMP process will now remain on hold until January 1, 2007. This process is being coordinated in OWRD by Bill Fujii.

Finally, we note that Case A126183 is pending before the Oregon Court of Appeals. This action is an appeal by WaterWatch, et al (represented by Mr. Bloemers), of a permit extension granted to Meadows in connection with the Cooper Spur project (Permit G-13484). Although the appeal was filed in September, 2004, the case has not been briefed or argued because the parties have been engaged in a separate settlement process. At this point, a settlement agreement has been signed, but it includes several contingencies that are still in the process of unfolding. For this reason, the parties recently obtained the Court's approval to abate further action until August 1, 2006. This matter is being coordinated at OWRD by Mike Reynolds, in cooperation with Renee Moulun and Denise Fjordbeck, in the Attorney General's office.

In the interest of confirming a shared understanding of the status of these various actions, I am forwarding copies of this letter to the affected OWRD staff and attorneys.

Thank you, again, for your on-going assistance in supporting the parties' settlement efforts.

Sincerely,



Martha Pagel

MOP:kdo

cc: Tim Wallin
Ann Reece ✓
Mike Reynolds
Bill Fujii
Renee M. Moulun
Ralph O. Bloemers Esq.
David Riley



Oregon

Theodore R. Kulongoski, 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

April 6, 2006

Martha O. Pagel
Schwabe Williamson & Wyatt
1011 Liberty St SE
Salem, OR 97302

Dear Ms. Pagel,

In response to your e-mail dated April 5, 2006, the Department has placed the following Meadows Utilities LLC permits with pending extensions of time applications on hold until January 1, 2007:

Application S-69976 (Permit S-53637)
Application R-71657 (Permit R-53637)

Sincerley,

Ann L. Reece
Extensions
Water Rights and Adjudications Division

Cc: Files S-69976 and R-71657

Ann Reece

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Wednesday, April 05, 2006 1:25 PM
To: ann.l.reece@wrđ.state.or.us
Cc: Tim Wallin; Mike.J.Reynolds@wrđ.state.or.us; Ralph Bloemers; Dave Riley
Subject: Meadows Utilities LLC, Administrative Hold Requests for Settlement Negotiations

Dear Ann:

Thank you for your assistance in coordinating an additional administrative hold period for pending permit extension applications filed on behalf of our client, Meadows Utilities, LLC. (Permit Extension Applications S-69976/S-53637 and R-71657/R-12758.) Based on our e-mail exchange from last week, I understand the department is willing to continue the administrative hold period until January 1, 2007. This will coincide with the administrative hold approved for Meadows' two pending water right applications (G-16401 and S-86185), as confirmed by a letter to Meadows Utilities from Tim Wallin (dated April 5, 2006).

I will be sending a separate confirming letter or e-mail to summarize all of the pending actions and hold periods, but in the meantime, I would like this e-mail to serve as our "official" request for the administrative hold approval, as you suggested.

Thank you.

Martha

Martha O. Pagel
Schwabe Williamson & Wyatt
Please note my new Salem Number:
Salem: 503.540.4260 (ph)
Portland: 503.796.2872
503.796.2900 (fax)

To comply with IRS regulations, we are required to inform you that this message, if it contains advice relating to federal taxes, cannot be used for the purpose of avoiding penalties that may be imposed under federal tax law. Any tax advice that is expressed in this message is limited to the tax issues addressed in this message. If advice is required that satisfies applicable IRS regulations, for a tax opinion appropriate for avoidance of federal tax law penalties, please contact a Schwabe attorney to arrange a suitable engagement for that purpose.

X-Mailer: QUALCOMM Windows Eudora Version 6.2.3.4
Date: Thu, 05 Jan 2006 12:19:00 -0800
To: "Ralph Bloemers" <ralph@crag.org>, Lisa.J.JARAMILLO@wrdd.state.or.us
From: Lisa Jaramillo <Lisa.J.Jaramillo@wrdd.state.or.us>
Subject: RE: Administrative Hold for Meadows Utilities
Cc: Lisa.J.JARAMILLO@wrdd.state.or.us
X-Security: MIME headers sanitized on kettle.wrdd.state.or.us
See <http://www.impsec.org/email-tools/sanitizer-intro.html>
for details. \$Revision: 1.139 \$Date: 2003-09-07 10:14:23-07
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrdd.state.or.us
X-Spam-Status: No, hits=0.8 required=5.0 tests=HTML_30_40,HTML_MESSAGE
autolearn=no version=2.63
X-Spam-Level:

Hello Ralph,

As requested in Martha Pagel's letter dated December 14, 2005 and e-mail to Jeanna Eastman dated December 30, 2005, the Department has placed the following Meadows Utilities, LLC permits with pending extension of time applications on hold until February 28, 2006:

Application #R-71657 (Permit #R-12758), and
Application #S-69976 (Permit #S-53637).

Sincerely,
Lisa J. Jaramillo

At 01:56 PM 1/4/2006, Jeana Eastman wrote:

-->

Hi Ralph,

I'm the caseworker for applications G-16401 and S-86185 and that is why I only referenced those file numbers in my letter approving the administrative hold. I believe the other files have had extensions submitted which means Lisa Jaramillo would be working on those files. I'm copying this e-mail to her so she can let you know the status.

Thanks,

-jeana

<8> <8> <8> <8> <8> <8> <8> <8> <8> <8> <8>

Jeana Eastman

Oregon Water Resources Dept.

Water Rights Caseworker

725 Summer St NE, Suite A

Water Rights Section

Salem, OR 97301-1271

Direct 503-986-0859

Front Desk 503-986-0800

Fax 503-986-0901

<http://oregon.gov/OWRD/>

Messages to and from this e-mail address may be available to the public under Oregon law.

-----Original Message-----

From: Ralph Bloemers [mailto:ralph@crag.org]

Sent: Tuesday, January 03, 2006 12:16 PM

To: Pagel, Martha

Cc: Jeana Eastman; Dwight French; Dave Riley; chris@crag.org

Subject: Re: Administrative Hold for Meadows Utilities

Martha, thanks for the note. February may be ambitious but the parties are working on it.

Jeana, in your letter of December 27, 2005 you only reference two pending applications (G-16401 and S-86185). There were other applications referenced in Martha's letter that the parties have requested be put on hold. Please advise on the status of those applications.

Regards,

Ralph

Pagel, Martha wrote:

>Jeana: Thank you for your letter of December 27, 2005, which indicates
>approval of our recent request for an administrative hold on various
>pending applications for Meadows Utilities. In reviewing your letter, I
>realized that I had mistakenly asked for the hold period through January
>31, 2006, rather than February 28, 2006.

>

>In developing the administrative hold request, I coordinated with
>Attorney Ralph Bloemers, representing Friends of Mt. Hood, and agreed
>with him to request administrative hold through February, rather than
>through January as proposed in an early draft of the letter.
>Unfortunately, I failed to make this correction in the final version of
>the letter that went to OWRD. Because we are already at the beginning
>of January, the parties will need additional time to proceed with
>settlement efforts. Therefore, we request that the hold period be
>extended through February 28, 2006. Please let me know if this e-mail
>will be sufficient, or if you will need to have another letter.

>

>Thanks for your help -- I'm sorry for the inconvenience.

>

>Martha

>

>

>

>

>

>

>

>Martha O. Pagel

>Schwabe Williamson & Wyatt

>1011 Liberty St. SE

>Salem, OR 97302

>503-399-7712

>fax 503-796-2900

>

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penalties

>that may be imposed under federal tax law. Any tax advice that is expressed in
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>is limited to the tax issues addressed in this message. If advice is required
that satisfies

>applicable IRS regulations, for a tax opinion appropriate for avoidance of

Appl # S-69976
(permit # S-53637)

Jeana Eastman

From: Pagel, Martha [MPagel@SCHWABE.com]
Sent: Friday, December 30, 2005 1:40 PM
To: Jeana Eastman
Cc: Dwight French; Dave Riley; Ralph Bloemers
Subject: Administrative Hold for Meadows Utilities

Jeana: Thank you for your letter of December 27, 2005, which indicates approval of our recent request for an administrative hold on various pending applications for Meadows Utilities. In reviewing your letter, I realized that I had mistakenly asked for the hold period through January 31, 2006, rather than February 28, 2006.

In developing the administrative hold request, I coordinated with Attorney Ralph Bloemers, representing Friends of Mt. Hood, and agreed with him to request administrative hold through February, rather than through January as proposed in an early draft of the letter. Unfortunately, I failed to make this correction in the final version of the letter that went to OWRD. Because we are already at the beginning of January, the parties will need additional time to proceed with settlement efforts. **Therefore, we request that the hold period be extended through February 28, 2006.** Please let me know if this e-mail will be sufficient, or if you will need to have another letter.

Thanks for your help -- I'm sorry for the inconvenience.

Martha

Ext. Appl on Hold til
2-28-06.

[Signature]
1-5-06.

Martha O. Pagel
Schwabe Williamson & Wyatt
1011 Liberty St. SE
Salem, OR 97302
503-399-7712
fax 503-796-2900

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To comply with IRS regulations, we are required to inform you that this message, if it contains advice relating to federal taxes, cannot be used for the purpose of avoiding penalties that may be imposed under federal tax law. Any tax advice that is expressed in this message is limited to the tax issues addressed in this message. If advice is required that satisfies applicable IRS regulations, for a tax opinion appropriate for avoidance of federal tax law penalties, please contact a Schwabe attorney to arrange a suitable engagement for that purpose.



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

1011 Liberty St. SE, Salem, OR 97302 | Phone 503-399-7712 | Fax 503-399-1645 | www.schwabe.com

MARTHA O. PAGEL

Direct Line: Salem (503) 399-7712

E-Mail: mpagel@schwabe.com

December 14, 2005

RECEIVED

DEC 15 2005

WATER RESOURCES DEPT
SALEM, OREGON

Dwight W. French
Administrator, Water Rights and Adjudication
Division
Oregon Water Resources Department
725 Summer St. SE, Suite A
Salem, OR 97301-11271

Re: Request for Administrative Hold to Pursue Settlement Negotiations

Dear Dwight:

I am writing on behalf of our client, Meadows Utilities, LLC (Meadows), to request that the Oregon Water Resources Department (OWRD) place the following applications on "administrative hold" in order for Meadows to pursue comprehensive settlement negotiations with affected adverse parties.

The specific pending applications for which administrative hold is requested are as follows:

1. Water Right Application G-16401 (Snowmaking): The protest period for this new water right application ended on October 7, 2005.
2. Water Right Application S-86185 (Snowmaking): An initial review was completed, but the Proposed Final Order has not yet been issued.
3. Permit Extension Applications S-69976, S-54637, R-71657, R-12758: Extension applications have been filed, but proposed orders have not been issued.
4. Water Conservation and Management Plan: The public comment period ended on October 13, 2005; no further action has been taken.

Comments or protests have been filed in each of the above-listed matters by the Friends of Mt. Hood (FOMH), and the Applicant has agreed with FOMH to pursue comprehensive settlement discussions. The settlement process would begin in early November, 2005 and is expected to conclude by January 31, 2006 (unless that deadline is further extended by mutual agreement). To facilitate these efforts, the Applicant requests the above proceedings be placed

Portland, OR 503-222-9981 | Salem, OR 503-399-7712 | Bend, OR 541-749-4044
Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

Appl # S-69976
(Permit # S-53637)

Two pending
Extension
Applications.....
NOT four.
J. Duane
1-5-06

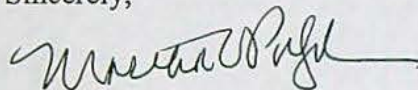
Dwight W. French
December 14, 2005
Page 2

on administrative hold until January 31, 2006. At that time, we hope the Applicant will be able to advise the department of settlement. If settlement has not been reached, the Applicant may request that the administrative hold be continued, or that the applications proceed through normal processing.

In addition to the above-listed matters, OWRD recently issued a Final Order approving a permit extension Meadows' Permit G-13388. A request for reconsideration was filed by FOMH on August 12, 2005. We understand that OWRD did not take action on these requests within 60 days of filing (by October 15, 2005), and that the request is therefore deemed denied. As a result, no further action is contemplated by OWRD with respect to this permit extension, and the permit is therefore not included in the request for administrative hold.

Thank you for your assistance in these requests, and for the department's support of settlement efforts. If you have questions or need additional information from us, please let me know.

Sincerely,



Martha O. Pagel

MOP:kd

cc: Mike Reynolds, OWRD
Renee Moulun, DOJ
Ralph Bloemers, CRAG
Dave Riley, MUC

SW
&W

RECEIVED
DEC 15 2005
WATER RESOURCES DEPT
SALEM, OREGON

RECEIVED

SEP 15 2005

RECEIVED
OVER THE COUNTERWATER RESOURCES DEPARTMENT
REIMBURSEMENT AUTHORITY ESTIMATE APPLICATION

SALEM, OREGON

House Bill 2551 (2003 Oregon Laws) authorizes the Oregon Water Resources Department to expedite or enhance regulatory processes voluntarily requested under the agreement. The voluntary agreement can be entered into with any person requesting services and agreeing to pay the Department's costs of providing the service.

The Department has established a pool of qualified contractors to perform expedited services for water right transfers, water right permits extensions, and water right certificates.

The purpose of this application is to obtain an estimate from the next qualified contractor in the appropriate pool. There is a non-refundable application fee of \$125.00 per request. The contractor will provide an estimate of the cost and of the time required to process and develop a recommendation on the request of a: (check one):

REQUEST	TYPE	FILE NUMBER
☐	Transfer Application	
☐	Certificate Request	
☒	Extension of Time Request	S-69976 / Permit S-53637

Applicant Information		Applicant's Representative/Contact
Name: (Please Print)	Meadows Utilities LLC	Dave Riley, President
Address:	PO Box 470	PO Box 470
	Mt. Hood, OR 97041	Mt. Hood, OR 97041
Phone:	503-337-2222 (x) 259	503-337-2222 (x) 259
Fax	503-337-2232	503-337-2232
E-Mail Address:	driley@skihood.com	driley@skihood.com

I understand the following:

- There is a non-refundable application fee of \$125.00 per request.
- That upon receipt of my non-refundable application fee in the amount of \$125.00, OWRD will assign my request to the next contractor in the pool of contractors performing expedited services.
- That this fee covers the copying, the mailing cost, as well as the cost for the contractor to evaluate and provide the estimate for processing of the request.
- That OWRD will provide all pertinent information to the assigned contractor within three (3) business days.
- That OWRD will, within fourteen (14) days, notify me in writing of the estimates of costs and time frame for the expedited service.
- That upon receiving the estimates I may agree or decline to enter into a formal contract to pay the estimated cost in advance to initiate the expedited service.
- An incomplete or inaccurate application may delay the process and increase the cost to process my request.
- Expedited processing does not guarantee a favorable review of my request.
- Send completed Application and payment to: OWRD - Reimbursement Authority Program
725 Summer St. NE, Suite A
Salem, OR 97301-1271.

I certify that I am the (check one) ☐ Applicant ☒ Applicant's Representative ☐ Other (Please specify) _____

Signature: Dave Riley Name: Dave Riley

OWRD USE ONLY

Contractor Assigned: <u>HDR</u>	Total Amount Paid: \$ <u>125</u>
OWRD Approval:	

92 copies
9/19/05 C.D.

Reimbursement Authority
Application
Withdrawn

per Salem Office
1-5-2006

Revised: 6/21/2004

per 1-5-06

5-68976

Jeana Eastman

From: Jeana Eastman [Jeana.M.EASTMAN@wrđ.state.or.us]
Sent: Thursday, June 09, 2005 10:34 AM
To: Ralph Bloemers
Subject: RE: Comments on Groundwater Right

Hi Ralph,

This is confirmation that I received your e-mail, the attached pdf document (7 pages), and a fax of the pdf document (7 pages) along with the testimony of Jon Rhodes (35 pages).

Thanks,
-jeana

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Jeana Eastman Oregon Water Resource Dept.
Water Rights Caseworker 725 Summer St NE, Suite A
Water Rights Section Salem, OR 97301-1271
Direct 503.986.0859 Front Desk 503.986.0800
Fax 503.986.0902 <http://www.wrđ.state.or.us>

-----Original Message-----

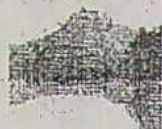
From: Ralph Bloemers [mailto:ralph@crag.org]
Sent: Wednesday, June 08, 2005 4:44 PM
To: Jeana Eastman
Cc: chris@crag.org; jbragar@lclark.edu; Pagel, Martha; us, dgjones@fs.fed.
Subject: Comments on Groundwater Right

Dear Ms. Eastman,

Attached please find comments from Friends of Mt. Hood on the groundwater application. I will fax you Jon Rhodes testimony on the existing water right application so you receive it today. I will also drop a copy of both documents in the mail to you today.

When you get a chance, please confirm that you have received these comments.

Thanks,
Ralph Bloemers



Cascade Resources ADVOCACY GROUP

Ralph Bloemers
Staff Attorney
503.525.2727
ralph@crag.org

June 8, 2005

Via Email to jeana.m.eastman@wrд.state.or.us

Via Fax and Regular Mail to

Ms. Jeana Eastman

Oregon Water Resources Department

North Mall Office Building

725 Summer Street NE, Suite A

Salem, OR 97301

Re: Comments on New Groundwater Water Right for Snowmaking
System -- Permit Application G-16401 & Related Surface Water
Application -- S-86185, Extensions on Existing Groundwater
(Application G-12550, Permit G-13398 and Application S- 69976,
Permit S-53637) and Existing Reservoir Applications

Dear Ms. Eastman:

This letter provides the Friends of Mt. Hood's initial comments on the request submitted to the Oregon Water Resources Department ("WRD") by Meadows Utilities, LLC ("Meadows") for additional groundwater rights in the Hood River Basin. As you know, the Friends of Mt. Hood has commented on the surface water rights and on the two extension applications, one of which is for groundwater and the other for reservoir use.

The Friends of Mt. Hood is particularly concerned about the impacts of excessive water use and groundwater pumping on the East Fork of the Hood River. A comprehensive analysis of the water supply and effect of ground water withdrawals needs to be conducted in light of the most recent historical data on precipitation and stream flow. The WRD must determine the amount of consumptive loss from this use. The impacts on vegetation and wetlands must be considered. The Friends of Mt. Hood ask that the WRD ensure that the proposal preserves the public welfare, health and safety through further review and analysis of the potential for substantial interference with the minimum flows in the East Fork that protect fish, their habitat and recreation uses of the river.

Given the limited review conducted and limited information gathered by the WRD to date, these comments will be similarly brief. In addition, we request that the department also consider the comments and documentation submitted by Friends of Mt. Hood on the related new surface water application and the two extensions of time to



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perfect the existing groundwater and reservoir right permits. The Friends of Mt. Hood request that this new application be considered in light of the information in the water right file Application G-12550/S-69976 and the Final Order on that water right dated August 28, 1997, including the information that was removed from that file by Meadows' counsel Richard Whitman, once that information is recovered. The Friends of Mt. Hood has also included the findings of Jonathan J. Rhodes, a hydrologist who provided science-based comments on the previous groundwater and surface water application.

I. Land Use Approval Has Not Been Obtained.

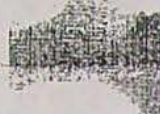
Meadows has yet to obtain land use permission from the Forest Service under its master plan to construct a snowmaking system on public lands. In addition, the Forest Service has yet to conduct the basis analysis required by the safeguards contained in the National Environmental Policy Act and the National Forest Management Act.

Unless and until land use approval is obtained, the Water Resources Department would be providing an advisory opinion on whether the water right should be granted. Without the full information needed and required by Oregon Water Resources law, the Oregon Water Resources Department cannot proceed.

II. Comprehensive Consideration of Water Rights Applications.

Meadows has two existing water rights, one for groundwater and one for surface water. The Friends of Mt. Hood requests the WRD to take a comprehensive look at all the requests for public water and review the potential cumulative impacts from these withdrawals on the system. Meadows received a groundwater right (G-12550/S-69976) to appropriate groundwater. The WRD coordinated with a number of agencies to devise conditions for that permit, and given Meadows new water rights applications it appears that it would be impossible to comply with certain conditions in that old unused groundwater right if the new surface and groundwater rights are granted.

For example, the Final Order for the groundwater rights requires Meadows effluent to be diluted by a ratio of 1 part effluent to 20 parts dilution flow in the East Fork Hood River. In the Matter of Water Use Applications 69976, G12550 AND R71657 IN THE NAME OF MEADOWS WATER COMPANY, HOOD RIVER COUNTY, OREGON, dated August 28, 1997, Findings of Fact # 15. (hereinafter "August 28, 1997 Final Order"). The Final Order further states that sewage treatment plant operations can be regulated... "and done at times when little or no diversion is occurring upstream which would further reduce available dilution flows in the East Fork Hood River." A condition was added to the final permit to address these findings of fact. Now, with its new applications, Meadows proposes to augment the flows with wastewater. Unfortunately, the wastewater effluent already serves as mitigation for groundwater pumping in the vicinity.



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In its initial application for the new surface water right, Meadows proposed to provide a minimum streamflow of 1.5 cfs in the East Fork of the Hood River from the sewage treatment plant. However, the sewage treatment plant effluent is already being used as mitigation for the groundwater pumping proposed under Meadows' existing groundwater right. The sewage effluent limitations in the permit from the Department of Environmental Quality count on dilution from active flows in the headwaters of the East Fork of the Hood River. Although it is unclear, it appears that Meadows has changed its position in response to Friends of Mt. Hood's initial letter and now intends to leave a trickle of natural flow in the East Fork of the Hood River to mix with the effluent from its facility. However, the proposed minimum stream flow that Meadows plans to leave above the wastewater plant, and its ratio to the amount of effluent, must be substantively addressed by the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife and the Forest Service. Streamflows are already too low in the East Fork of the Hood River during the winter months to dilute the pollution from the sewage treatment plant. Testimony of Jon Rhodes at page 9.

With respect to this condition and many others, the Friends of Mt. Hood requests the WRD to analyze and consider the cumulative impact of the new surface water application and this new groundwater application. Meadows has not provided any data to identify the actual impact on the Hood River Basin from groundwater pumping in the Basin. The existing water rights have been largely unused and there is a serious question whether the existing withdrawals ensure minimum streamflows in the East Fork Hood River.

III. Consumptive Loss

The Friends of Mt. Hood has reviewed the WRD's initial review (IR) and that IR does not contain a determination regarding the amount of consumptive loss from snowmaking. As Friends of Mt. Hood has underscored in its comments on the surface water application, the use of this water for snowmaking is highly consumptive. The science simply does not support the view that snowmaking is equivalent to non-consumptive water storage.

The Friends of Mt. Hood have researched the issue of consumptive loss carefully, and that research confirms FOMH's comments on this particular issue. According to scientific studies on this issue, consumptive use must be measured at two different stages during the snowmaking process:

"Initial loss: This is the consumptive water use which occurs during the actual snowmaking process due to evaporation and sublimation.

Watershed loss: This is the consumptive water loss that occurs from the time the man-made snow particle has fallen on the snowpack through spring melt. These losses are due to evapotranspiration and sublimation." *Estimated Loss from Man-Made Snow,*



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Mills, Eisel and Leaf, 54th Annual Meeting of the Western Snow Conference, Phoenix, Arizona, April 15-17, 1986. (Mills, et al.)

The WRD must address the significant losses from the proposed withdrawal to return flows. A description of the snowmaking process **does not** equate to a description or quantification of consumptive loss. The Friends of Mt. Hood requests the WRD to carefully review the scientific literature that was submitted along with the comments on the pending surface water withdrawal, which we summarize here.

The Mills et al study found the mean estimated Initial Loss from two different methodologies to be approximately 6 percent. However, the Watershed Loss estimates ranged between 7 to 33 percent. A loss of 20% was common, and that combined with the Initial Loss, would result in about a 26% loss of water. In other words, for every hundred gallons taken from the East Fork of the Hood River, at the very most, only 74 gallons would return to the river. Meadows' claim that snowmaking involves minimal consumptive loss is simply not true.

Another study found that: "...at least 22% and as much as 70% of the snowpack at this high elevation site may be lost to sublimation and, therefore, that the date of snowpack accumulation is critical to the runoff efficiency of high elevation snowpacks." *Where has all the snow gone? Snowpack Sublimation in Northern Arizona*, Avery, Dexter, Wier, Delinger, Tecle and Becker, 60th Annual Meeting of the Western Snow Conference, April 14-16, 1992, Snow King Resort, Jackson Hole Wyoming. (Avery et al.) The earlier in the season that the snowpack accumulates, the greater the percent of snow water equivalent that is lost due to evapo-sublimation. Avery at 92. Given this scientific data, it is possible that for every 100 gallons of water that Meadows takes from the East Fork of the Hood River (or the interconnected groundwater system) only 50 gallons would return to the river system. The Friends of Mt. Hood have provided these studies to WRD for its review of the pending surface water application.

IV. Impact from Anthropogenic Global Warming & Climate Change on Peak Flows in the East Fork of the Hood River.

Another, and perhaps more troubling, scientifically documented development is that peak snowpack in the Cascade Mountains has been decreasing significantly during the past 6 decades. Snowpack records have been kept in the Cascades for 60 years and an analysis of long-term records show a dramatic downward trend in peak snowpack accumulations. Pattee, Scott, 2001, *Is peak snowpack in the North Cascades Mountains decreasing over time?*, pages 88-97, In: Proceedings, 69th Annual Meeting, Western Snow Conference, 17-19, April 2001, Sun Valley, Idaho.

The reason for the decrease in snowpack has been linked to anthropogenic climate change. According to scientists from the University of Washington, the Pacific Northwest is unusually vulnerable to a warming climate owing to its heavy reliance on



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snowpack for spring and summer run off. Phillip Mote and Alan Hamlet, Climate Impacts Group, University of Washington, *Anthropogenic Climate Change and Snow in the Pacific Northwest*, 69th Annual Meeting of the Western Snow Conference, 2001. That study estimated that Snoqualmie Pass, just east of Seattle, would see a reduction in ski season length (defined as the number of days when snow water equivalent exceeds 240mm) from 118 days for present climate to 87 days in the climate of 2020 and 58 days in the climate of 2040. Moreover, in a warmer climate, the study found that snowfed rivers like the Columbia and its major tributaries east of the Cascades see a shift in their hydrograph. Winter streamflow increases modestly, the spring runoff begins earlier in the year, and summer streamflow decreases markedly. The study found that these changes will have a profound and largely negative impact on the uses of water in the Northwest.

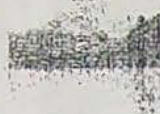
Governor Kulongoski has expressed a strong interest in addressing climate change. Contrary to that interest, this proposal would use vast amounts of energy for snowmaking to counter the effects of global warming and climate change. While this unsustainable over-consumptive response should be questioned for this contradiction and examined by the Forest Service and other agencies in the context of global warming, the key issue for the Water Resources Department is that any authorized water use must include conditions that respond to potentially drastic changes in watershed conditions due to climate change and global warming.

The potential for increase in peak flows, change of timing and other changes may exacerbate the problems caused by climate change in the Pacific Northwest. Any snowmaking proposal must try to mimic the historic variation, not the mean or the median, of snowmaking. Contrary to Meadows claim, the predictability and reliability of return water delivery to the system must be very well-considered as a condition to any diversion. Meadows pins its hopes on a Thanksgiving start date. The snowfall history of Mt. Hood does not support this position. The historical variation and norms must be factored into the equation.

V. Making Snow is Not Water Storage.

Meadows has not applied to store water, rather Meadows has made an application to draw water and convert it into snow. "Storage" means the retention or impoundment of surface or groundwater by natural and/or artificial means for public or private uses and benefits. OAR 690-400-0010 (15). Meadows is not seeking to store water by natural or artificial means, rather Meadows is seeking to withdraw water and then convert that water into snow across the landscape.

OAR 690-410-0080 allows storage facilities that would increase water management flexibility and control. However, this snowmaking plan does nothing to increase the flexibility and control over the timing of run-off. Once the snow is made, there is no way for Meadows to control the timing and amount of water delivery back



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into the system. Just as this ski area owner is trying to adjust to climate variation, the living organisms in the Hood River Basin will be trying to adapt to these changes. Additional snowmelt from Mt. Hood Meadows could raise the peak flow, cause temperature drops that would not naturally occur or artificially affect seasonal flow. The ecosystem may not be able to adjust to these changes in flow patterns.

Meadows has suggested that its proposal is encouraged by Water Resources Department rules because the water use would store water using natural means. The fact is that this is not an application to store water, and even if it were, the proposal seeks to use engineered structures to divert the water, run it through storage tanks and then make snow. The piping, water storage tank and snow blowing machines are not natural. The application is not for storage, and it cannot be considered an innovative natural process to store water. The applicants proposal does not involve a natural process, as is encouraged by OAR 690-410-0080(1)(e).

VI. Peak Flows & Aquatic Life

FOMH also has concerns about how this proposal would impact peak flows that are critical for triggering biological responses in fish and for maintaining stream habitat. The instream water rights, which are based on average flows, do not adequately capture the peak flows needed for this essential stream function. Protection of peak flows is especially important in this stream given the critical status of listed fish in the river system. The state would be violating law if it to take any action that would exacerbate this situation. Low flows have already been judged to constrain fish production in the East Fork of the Hood River. *Testimony of Jonathan J. Rhodes, p. 15*. These reductions in winter low flow occur during critical periods when stream icing occurs. *Id.* When stream icing occurs, fish mortality is typically caused. *Id.* The Friends of Mt. Hood requests WRD to obtain direct input from the Oregon Department of Fish & Wildlife, the Columbia River Intertribal Fish Commission and the Oregon Department of Environmental Quality.

Run-off from snowmaking may well increase peak flows in the spring, yet the timing of the run-off may not mean that there will be additional water in the summer months. Water "stored" in the form of snow may well increase peak flows during the spring run-off events. The likelihood of return flows at critical times is far less likely. How does this proposal provide any benefits for fish and ensure that it is not going to harm the minimum streamflow needs in the East Fork of the Hood River?

VII. Conclusion.

While the Friends of Mt. Hood understands Meadows interest in maximize their facilities, we do so with the desire that they approach the project in a balanced and environmentally friendly fashion. The Friends of Mt. Hood values minimal environmental impacts, serious evaluation of options and a sensible approach to this



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project. Vast amounts of resources have been put into protecting instream flows, considering the impact on the upper headwaters from groundwater and surface water withdrawals and protecting the basin from wastewater effluent. Sensible water planning and current safeguards do not permit allocations outside of the terms of the Hood Basin Plan. The Friends of Mt. Hood looks forward to seeing a complete explanation of any legal analysis that ignores the Hood Basin Plan and the current status of over-allocation in the Hood River Basin.

In addition, the Water Resources Department's safeguards call for land use compliance with respect to any new water right. Mt. Hood Meadows does not have permission from the Forest Service for this proposal, and appropriate review is needed to fully inform the WRD's response to Meadows' two new water rights and the two extensions on existing water rights.

The Friends of Mt. Hood looks forward to receiving a reasoned response from WRD to these issues, after informed consultation and specific input from the Department of Environmental Quality, the Oregon Department of Fish and Wildlife, and the United States Forest Service.

Please do not hesitate to call if you have any questions.

Sincerely,

Ralph O. Bloemers, Staff Attorney
Cascade Resources Advocacy Group
Counsel for Friends of Mt. Hood

cc: Doug Jones - United States Forest Service
Oregon Department of Fish & Wildlife

TESTIMONY OF

JON RHODES, M. Sc.1 I. QUALIFICATIONS

2 1. My name is Jon Rhodes. I am a professional hydrologist employed by the Columbia
3 River Inter-Tribal Fish Commission.

4 2. I received a Bachelor of Science degree in hydrology and water resources in 1981 from
5 the University of Arizona. In 1985, I received a Master of Science degree in hydrogeology from the
6 University of Nevada-Reno, where I investigated the seasonal delivery of nitrate by groundwater to a
7 stream in an alpine watershed. I received a degree for Candidacy for Doctor of Philosophy in forest
8 hydrology from the University of Washington in 1989. I have completed all requirements for my
9 doctorate except the dissertation, which is in progress.

10 3. Over the past three years with the Columbia River Inter-Tribal Fish Commission, I have
11 examined silvicultural, agricultural, roadbuilding, mining, and other activities that alter streamflow or
12 water quality. I have developed monitoring programs to measure changes in channel condition and
13 water quality caused by various land uses, and evaluated extant channel morphology and water quality
14 data. I have also served as a technical adviser on water quality monitoring as a member of several
15 technical committees addressing nonpoint source issues in the Columbia basin.

16 4. Prior to my current position, I worked for the University of Washington investigating
17 chemical weathering of bedrock by groundwater in a forested watershed. I have also been employed
18 as a consulting hydrologist for the Tahoe Regional Planning Association. I also worked for the U.S.
19 Geological Survey in Carson City, Nevada where I worked on the modelling of water quality and
20 nonpoint pollution in the Truckee River, Nevada. I also worked as a Research Assistant at the

1 University of Nevada-Reno where my responsibilities included design of a water quality monitoring
2 network, analysis and interpretation of hydrologic and water quality data, and writing technical reports.

3 5. I have published several scientific papers in peer-reviewed science journals and have
4 co-authored numerous technical reports on my research findings. The subject of most of these papers
5 has been the effects of nonpoint sources on water quality as controlled by streamflow and seasonal
6 runoff generation mechanisms. I have delivered technical talks at regional and national conferences
7 concerning nonpoint sources of water pollution. I have also taught several university classes on
8 hydrology and water quality.

9 6. For the past three years, my work has focused on analyzing the effects of current and
10 proposed uses of land and water on nonpoint sources of pollution, water quality, channel morphology,
11 and anadromous fish habitat. Much of my work has involved the development of measures to protect
12 existing stream conditions from further degradation and to restore forested watersheds and their streams
13 consistent with the regional efforts to rebuild the anadromous fish runs of the Columbia River basin.

14 II. DOCUMENTS REVIEWED

15 7. I have reviewed Oregon Water Resource Department's (hereinafter: "OWRD") draft
16 staff report: Consideration of Formal Protest to Director's Preliminary Determination on Application
17 G-12550, Consideration of Formal Protest against Application 69976, dated March 23, 1992
18 (hereinafter: "OWRD Draft"), including all the attachments. I also reviewed the final staff report
19 Memorandum to the Water Resources Commission from OWRD Director Bill Young: Consideration
20 of Formal Protest to Director's Preliminary Determination on Application G-12550, Consideration of
21 formal Protest against Application 69976, dated April 24, 1992 (hereinafter: "OWRD, 1992"). I also
22 reviewed the Hood River Basin Salmon and Steelhead Production Plan written by the Oregon
23 Department of Fish and Wildlife and the Confederated Tribes of the Warm Springs Reservation of
24 Oregon (hereinafter: "ODFW and CTWS, 1990"). I reviewed Chapter 690, Division 9 of the Oregon

1 Administrative Rules (hereinafter: "OAR-690-09") pertaining to groundwater interference with surface
2 water. I also reviewed the Geology and Geochemistry of Mt. Hood Volcano by Craig White
3 (hereinafter: "White, 1980"), Geology and Geothermal Resources of the Mount Hood Area, Oregon
4 edited by G. R. Priest and B.F. Vogt (hereinafter: "Priest and Vogt, 1982"), and Data From
5 Geothermal Wells Near Mount Hood Oregon, by J.H. Robison, L.S. Forcella, and M.W. Gannett
6 (hereinafter: "Robison et al., 1981"). I also reviewed other pertinent scientific literature. The list of
7 this literature is too lengthy to list here, so I have listed it separately and attached it to this
8 declaration.

9 III. SUMMARY

10 8. Water Right Application 69976 proposes the use of 0.48 cfs from two springs from
11 November 1 to May 30. Water Right Application G-12550 proposes the use 0.48 cfs from a well
12 throughout the year. The purpose of my review of OWRD's recommendations on these water rights
13 has been to evaluate the adequacy of the information on which the recommendations were based and
14 adequacy of the recommendations in protecting downstream aquatic resources and the public interest.

15 9. OWRD (1992) recommends that both applications be granted based, primarily, on the
16 following assumptions: 1) There is enough available instream flow to meet the instream water right
17 in the East Fork of the Hood River from November 1 through May 30; 2) Groundwater will be
18 withdrawn from a confined aquifer; 3) Groundwater withdrawals from a confined aquifer will not
19 substantially interfere with surface water; and 4) It is possible to assure, through well construction, that
20 groundwater-surface water interactions do not occur. I have concluded that all four of these
21 assumptions are not reasonably supported by data and are without any scientific merit.

22 10. Based on my review of available information I have concluded the following:

23 a) The use of Application 69976 will reduce EFHR flows contrary to the public interest
24 and harm fish and wildlife.

1 b) The existing instream water right is not met during the summer months at the mouth
2 of the EFHR.

3 c) It has not been adequately determined that instream water rights are consistently met
4 at the mouth of the EFHR from November 1 through May 30. It is likely that the
5 existing instream water right is not met during winter low-flow periods.

6 d) More data collection on flows in the EFHR is needed to determine if water is
7 available during winter low flow periods, prior to granting water rights during the
8 winter, because there is no actual streamflow data from the mouth of the EFHR during
9 the winter months. Surface water and groundwater withdrawals during periods of
10 inadequate instream flow will adversely impact fish, water quality, and other aquatic
11 resources.

12 e) Flow gaging on the EFHR is also necessary to regulate junior water rights during
13 low flow periods.

14 f) The available information on the aquifers in the vicinity of the Mt. Hood Meadows
15 Ski Area (hereinafter: "MHMSA") is inadequate to determine if confined aquifers exist
16 in the area. It is not possible to reasonably determine if the aquifers in the project area
17 are confined or unconfined, given available data.

18 g) The degree of hydraulic connectivity between an aquifer and surface water is not
19 solely dependent on aquifer confinement. Confined aquifers are often directly
20 connected to streams and other surface water, especially in high relief, mountainous
21 terrain with sloping geologic strata, such as occurs in the area of the MHMSA.

22 h) The available hydrogeologic information is inadequate to determine if aquifers in the
23 MHMSA are in hydraulic connection with the stream system. The existing data do not
24 adequately support the OWRD's conclusion that there is limited potential for substantial

1 interference with surface water.

2 i) Although the data is insufficient to make a reasonable determination of the nature of
3 the aquifers in project area, the best available data (Priest and Vogt, 1982) actually
4 indicate that it is likely that the aquifer system in the project area is unconfined and in
5 hydraulic connection with the stream system.

6 j) More data is needed to determine the nature of the aquifers within the MHMSA and
7 their hydraulic connection to the stream system.

8 k) It is not possible, through well construction, to ensure there will be no interference
9 with surface water by groundwater pumping, if the pumped aquifer is hydraulically
10 connected to the stream system.

11 l) No effort was made to determine the effect of groundwater pumping on important
12 wetlands within the MHMSA. It is likely that groundwater pumping will adversely
13 effect these important wetland systems.

14 m) It is likely that these reductions in summer low flows will be in addition to
15 reductions in low flows that will occur if the ski area expands the developed area; the
16 Mt. Hood National Forest acknowledged that paving, compaction, and wetland
17 destruction are likely to reduce summer low flows in the ski area and downstream on
18 the EFHR (Mt. Hood National Forest Mt. Hood Meadows Ski Area Record Of
19 Decision (hereinafter: "ROD, 1991"), p. E - 3, 1991). The combined effect of these
20 likely, additional reductions in low flows associated with paving, wetland disruption,
21 and soil compaction should be considered in evaluating the applications. However, the
22 combined reductions in low flows have not been considered.

23 11. In aggregate, the treatment of the water applications and the formal protests, the
24 hydrologic conclusions are too cursory and insufficient to adequately address the likely effect of the

1 withdrawals on streamflow within the EFHR, fish, water quality, and downstream water rights. It is
2 likely that the two proposed withdrawals will reduce summer low flows, affect downstream water
3 rights, and adversely impact fish production in the EFHR. The evaluation of the applications has been
4 made with almost no reliance on data or other applicable case studies. Granting Applications G-12550
5 and 69776 is premature because the adequate information is lacking. There is a high level of
6 uncertainty involved with the assumed nature of the hydrology of the EFHR.

7 IV. DISCUSSION

8 A. Aquatic Resources and Beneficial Uses Affected By Surface Water Diversion
9 and Groundwater Pumping

10 12. Most of the analysis of water availability has focused on flow quantities at the mouth
11 of the EFHR. However, surface water and groundwater diversions in the MHMSA will not only affect
12 water quantities at the mouth of the EFHR, but rather from point of diversion down into the Hood
13 River. Groundwater pumping of the aquifers within the MHMSA will not only reduce streamflows but
14 also lower local water tables and alter subsurface flow pathways which is likely to affect the important
15 wetlands found within the MHMSA.

16 13. Coho, steelhead, and cutthroat trout are all found in the EFHR below Sahalie Falls (Mt.
17 Hood National Forest Environmental Analysis for the Gulch Chairlift (hereinafter: "EA"), p. 44).
18 Coho and winter steelhead use the EFHR below the Sahalie Falls for spawning and rearing (EA, p. 44);
19 fall chinook use the lower reaches of the EFHR and the EFHR is believed to be the one of the primary
20 destinations for the Hood River winter steelhead run (ODFW and CTWS, pp. 68, 111-112, 135-136,
21 Appendix D--Table 1, 1990). Existing information indicates that low summer flows throughout the
22 EFHR and downstream in the Hood River are major constraints to the production of coho salmon and
23 winter and summer steelhead (ODFW and CTWS, pp. 89, 114-115, 138, Appendix D--Table 1, 1990).
24 Low flows are also a major habitat constraint to the production of fall and spring chinook salmon, coho,

1 and summer and winter steelhead in the Hood River (ODFW and CTWS, pp. 45, 49, 89, 114-115, 138,
2 Appendix D--Table 1, 1990). This an extremely serious situation because winter steelhead populations
3 are at very low levels. (ODFW and CTWS, p. 111, 1990). Inadequate holding water for adult and
4 juvenile coho, chinook, and steelhead is also a problem throughout the Hood River basin (ODFW and
5 CTWS, pp. 45, 49, 67, 89, 114, 138, Appendix D--Table 1, 1990).

6 14. The Oregon Department of Environmental Quality (hereinafter: "ODEQ") has made
7 the assessment that low flows in the Hood River are moderately impairing the beneficial use of the river
8 by cold-water fish, such as steelhead, coho, and chinook salmon (1988 Oregon Statewide Assessment
9 of Nonpoint Sources of Water Pollution (hereinafter: "ODEQ, 1989")). ODEQ (1989) notes that water
10 withdrawals in both the EFHR and Hood River are probable causes contributing to existing water
11 quality problems which are impairing the beneficial use of the streams by anadromous fish.

12 15. In an effort to rebuild the anadromous fish runs throughout the Columbia basin, the
13 Northwest Power Planning Council (hereinafter: "NPPC") and the agencies and Indian Tribes of the
14 Columbia Basin Fish and Wildlife authority funded the development of 31 Salmon and Steelhead
15 Subbasin Production Plans. These Plans were prepared by fisheries managers from a variety of state,
16 federal, and tribal organizations with extensive public review. These Plans summarize the management
17 goals and problems and opportunities associated with rebuilding the anadromous fish runs within the
18 specific subbasins. Notably, provision of high quality habitat and improved passage are two primary
19 objectives in rebuilding the Hood River fish runs (ODFW and CTWS, pp. 27-28, 1990). The primary
20 strategy to meet both of these objectives is enforcement of existing laws and especially the enforcement
21 of instream water rights (ODFW and CTWS, p. 28, 1990). Much of the basin fish habitat has already
22 been seriously degraded or lost entirely (ODFW and CTWS, pp. 23, 25-28, 67, 1990); habitat
23 enhancement via instream work is planned as part of the recommended strategies to rebuild the
24 anadromous fish stocks in the Hood River basin (ODFW and CTWS, pp. 134, 149, 153, 157, 1990).

1 Habitat improvement in the EFHR is expected to have potential to increase egg-to-smolt survival
2 (ODFW and CTWS, p. 23, 1990). Under the preferred strategy for rebuilding the coho salmon and
3 winter steelhead runs in the EFHR, about 12 miles of the EFHR will receive instream habitat
4 enhancement at a cost of \$14,000 per mile (ODFW and CTWS, pp. 127-128, 134, 149-150, 153,
5 1990). However, it was concluded that strict enforcement of all laws designed to protect and enhance
6 the fishery resource coupled with habitat enhancement is necessary to significantly increase the carrying
7 capacity of the drainage (ODFW and CTWS, pp. 26, 28, 1990). ODFW and CTWS (p. 119, 1990)
8 state that "Under current conditions, the implementation of all the preferred strategies designed to
9 increase runs of natural and hatchery winter steelhead will be necessary to prevent the winter steelhead
10 run from going extinct."

11 16. Efforts to rebuild the naturally sustaining summer and winter steelhead and spring
12 chinook runs in the Hood River basin include the supplementation of these populations via the Hood
13 River Production Project and the Pelton River Project (hereinafter: "HRPP" and "PLP") prepared by
14 CTWS and ODFW and approved by the NPPC in April 1992. The NPPC approval of the HRPP
15 authorized the Bonneville Power Administration (hereinafter: "BPA") to fund the HRPP and the PLP.
16 Both projects had been in the planning stage for three years, but are now in the implementation phase.
17 The investment of ratepayer dollars in these projects by BPA is considerable: the HRPP is expected
18 to cost about \$3.5 million over eight years and the PLP is expected to cost about \$223,380. Because
19 inadequate holding water and summer low flows already impede fish production and egg-to-smolt
20 survival (ODFW and CTWS, pp. 45, 49, 67, 89, 114, 138, Appendix D--Table 1, 1990), any
21 incremental reduction of flows in Hood River will serve to hamper the success of these supplementation
22 projects and reduce the return on BPA ratepayer investments in the projects.

23 17. Summer water temperatures are a concern for resident and anadromous fish production
24 in the EFHR and downstream in the Hood River (ODFW and CTWS, pp. 26, 1990). As virtually all

1 available information indicates, water temperatures in parts of the EFHR will increase, during the
2 summer months, as flows are decreased (Theurer et al., 1984; Beschta et al., 1987), which will tend
3 to reduce fish production in the EFHR. Water temperatures in the Hood River basin already regularly
4 exceed optimal temperatures for steelhead and coho (ODFW and CTWS, p. 13, 16, 26, 1990). Data
5 in ODFW and CTWS (pp. 13, 16, 1990) indicate that water temperatures in the Hood River already
6 exceed 58°F regularly during the summer low-flow period. State water standards do not allow any
7 increases in water temperatures in the Hood River basin where water temperatures already meet or
8 exceed 58°F.

9 18. Streamflow in the EFHR below Umbrella Falls is used to dilute the sewage effluent
10 from the sewage treatment plant (hereinafter: "STP") at MHMSA. The current discharge permit for
11 the MHMSA STP requires that streamflow must be high enough to provide at least a 20:1 dilution of
12 effluent (Mt. Hood National Forest Final Environmental Impact Statement for the MHMSA (hereinafter:
13 "FEIS, 1991"), p. IV-45). The STP currently discharges sewage effluent at about 50 gpm, or about
14 0.11 cfs, for a few hours a day (FEIS, p. IV-45, 1991). Therefore, a minimum instantaneous flow of
15 at least 2.2 cfs is required to meet existing dilution requirement and discharge permit. These flow
16 conditions in the EFHR are not always met; streamflows at the STP were less than 2.2 cfs in 12 days
17 of January, 1990 (Declaration of Jack Douglas Smith, Ph.D., Exhibit M of Appeal by 1000 Friends
18 of Oregon, et al. to Regional Forester of the U.S. Forest Service Pacific Northwest Region In the
19 Matter of the Decision of Forest Supervisor M.S. Edrington Approving Expansion of the MHMSA
20 dated June 25, 1991 (hereinafter: "Smith, 1991"), p. 22). Streamflows are already too low in the
21 EFHR at times during the winter to dilute pollution from the STP (Smith, p. 13, 15, 22, 1991).

22 19. Separately, and in concert, these conditions make any reduction in summer low flows
23 in the EFHR extremely significant. The EFHR is already overappropriated during the summer months;
24 summertime low flows are a primary constraint to the fish production capability of the EFHR (ODFW

1 and CTWS, pp. 45, 49, 89, 114-115, 138, Appendix D--Table 1, 1990) and minimum instream flow
2 water rights are not met during the summer months (OWRD, 1992).

3 20. The wetlands in the MHMSA downslope from the proposed diversion and groundwater
4 pumping are extremely significant. The FEIS (p. IV-57, 1991) notes that these wetlands "...are
5 considered to function as systems having important hydrologic, wildlife habitat, scenic, and recreational
6 values..." In particular, the 28 acre wetland complex downslope of Umbrella Falls along the margins
7 of the EFHR, known as the "Stringer Meadows" area, has been extensively studied and deemed to be
8 especially significant and perform functions critical to the area's hydrology, water quality, and wildlife
9 (FEIS, pp. III-34, IV-57, 1991). In recognition of the high public interest and ecological values of the
10 Stringer Meadows wetland complex, the EPA proposed that the wetlands be included on the EPA
11 Region 10 Wetland Priority List (FEIS, pp. III-34, IV-58, 1991). Likewise, the FEIS also designated
12 approximately 110 acres of the wetland complex as a Special Interest Area, in recognition of the
13 exceedingly high wildlife and public interest values (FEIS, pp. IV-58, 1991). Any impacts to this
14 wetland complex are considered significant and activities which alter the hydraulic characteristics of
15 these wetlands are "...highly likely to impair their hydrologic function" (FEIS, IV-58, 1991).

16 B. Probable Effect of the Use of Application 69976 On EFHR Flows and the
17 Public Interest

18 21. Granting a permit for Application 69976 is unwarranted because it has not been
19 adequately determined that instream flow rights are met during winter periods. There is very limited
20 basis for the Draft's assertion that there is available surface water in the EFHR to meet both additional
21 upstream withdrawals and instream water rights during the November to May period. It is likely that
22 instream flow rights are not met during "freeze-up" periods during the winter. The use of Application
23 69976 will reduce streamflows at the mouth of the EFHR; this reduction during periods of inadequate
24 instream flow will prevent the exercise of the instream flow right. The use of the application will

1 reduce winter flows from point of diversion on down through the EFHR; during winter low flow
2 periods this will cause violations of current discharge permit for the STP, reduce water quality and
3 cause probable harm to the endemic fish in the EFHR. I also conclude that the surface water diversion
4 also poses a threat to local wetlands because the local hydrology and connectivity of surface water,
5 groundwater, and wetlands is unknown.

6 22. Both the OWRD Draft and OWRD (1992) acknowledge that actual streamflow in the
7 EFHR are unknown because the stream is ungaged. The OWRD Draft notes that its own estimates of
8 flows constitute nothing more than a "guess" (OWRD Draft, p. 4). However, streamflows at the mouth
9 of the EFHR have now been measured during July and August. The measured flows range from about
10 35 to 58 cfs (Steve Pribyl, pers. comm., ODFW biologist), well below the 100 cfs instream flow right
11 in existence for these months at the mouth of the EFHR.

12 23. The method used by OWRD to determine water availability in the EFHR mouth
13 probably provides a reasonable estimate of water availability during summer low flow periods but it is
14 likely to have limited accuracy during low flow periods in the winter. Although the OWRD did not
15 document the method used to estimate flows in the EFHR, I performed regression analysis on the
16 average monthly flows recorded at gages on the West Fork and Hood River mainstem (U.S. Geological
17 Survey Open File Report 90-118, Statistical Summaries of Streamflow Data in Oregon, 1988
18 (hereinafter: "USGS, 1988")) and the flows estimated for the EFHR as contained in both the OWRD
19 Draft and OWRD (1992) (OWRD Draft, Attachment 14; OWRD, Attachment 14, 1992). I also
20 performed a similar analysis of percent exceedance flows determined from the flow records at the West
21 Fork and Hood River stream gage records (USGS, pp. 155-156, 1988) and those estimated by OWRD
22 for the mouth of the EFHR (OWRD Draft, Attachment 14). The average and exceedance flows by
23 month estimated for the EFHR by OWRD are almost perfectly correlated with the corresponding
24 monthly average and exceedance flows determined from stream gage records at the West Fork and

1 mainstem of the Hood River. Therefore, my analysis indicates that there is little doubt that the monthly
2 average and flow duration statistics estimated for the EFHR were developed via assumed relationships
3 between measured flows at the Hood River mainstem and West Fork gages downstream and flows
4 upstream as a function of drainage area, average precipitation, and water withdrawals. It is unlikely
5 that such a regression has been calibrated or verified for use in the Hood River watershed, in general,
6 or on the EFHR, in particular, because there is no data available for calibration or verification of the
7 estimation method.

8 24. This method of flow estimation is probably reasonable for periods during the summer
9 when the mechanisms generating flows (base flow and continuing melt of snow and glaciers) are similar
10 among the watersheds. However, the mechanisms generating flows during the mid-winter period
11 probably differ appreciably between the EFHR and the Hood River mainstem and West Fork. Both the
12 West Fork and the Hood River mainstem gages are located at a lower elevation and drain watersheds
13 with a lower average elevation than the EFHR. Both the West Fork and the mainstem watersheds
14 receive a larger portion of total precipitation as rain which is rapidly transformed into runoff than the
15 EFHR which has a larger percentage of total precipitation received as snow which may not appreciably
16 contribute to streamflow for months. During the same, frequent winter storms it is likely that a much
17 larger area of the West Fork and Hood River receive rain than the EFHR. Winter streamflows in the
18 West Fork and Hood River are continually pulsed by rain while streamflows in the EFHR may actually
19 drop during cold winter storms with a low snowline and low temperatures that cause snowmelt to cease.
20 It is probable that winter flows in the EFHR periodically drop at the same time that they are increased
21 in the West Fork and Hood River mainstem because the flow generation mechanisms respond differently
22 at different elevations. High elevation watersheds that predominantly receive precipitation in the form
23 of snow, such as many of the headwater tributaries of the EFHR, typically have winter low flows that
24 are almost as low as summer flows, due to the lack of runoff generated by snowmelt (Rhodes, 1985;

1 Fountain and Tangborn, 1985); in contrast, winter low flows are neither expected nor observed in the
2 West Fork and Hood River streamflow records (USGS, pp. 155-156, 1988). Because the watersheds
3 used to estimate EFHR flows are hydrologically dissimilar during the winter period, the EFHR winter
4 streamflows in the OWRD Draft and OWRD (1992) (Attachment 14) are probably overestimated.
5 Homogeneity of flow mechanisms is one of the most critical factors affecting the validity and accuracy
6 of estimating flows on ungaged watersheds from records on gaged streams (Dunne and Leopold, 1978).
7 The estimation method used typically breaks down in mountainous watersheds due to differences in
8 elevation and flow mechanisms (Dunne and Leopold, 1978).

9 25. The dissimilarity among gaged basins of differing elevations is illustrated by comparison
10 of flow records on the Dog River, a high elevation tributary of the EFHR, with the flow records from
11 the West Fork and Hood River mainstem. Although the Dog River watershed is relatively small, it is
12 likely to be fairly representative of many of the tributaries of the EFHR, and as representative of the
13 EFHR as the West Fork and Hood River mainstem watersheds. Regression analysis of streamflow data
14 from Dog River, Hood River mainstem, West Fork Hood River (USGS, p. 154, 1988) indicate that the
15 corresponding monthly average and percent exceedance flows from Dog River records are completely
16 uncorrelated with the corresponding flows on both the Hood River mainstem and West Fork.
17 Therefore, it is apparent that seasonal flow patterns of these streams differ considerably. This
18 difference is probably due primarily due to elevation effects such as a lower average mid-winter melt
19 rates and a greater fraction of precipitation received as snow in the Dog River watershed. This lack
20 of correspondence among flow patterns in the Dog River and the lower Hood River place the accuracy
21 of the water availability estimates for the EFHR in considerable doubt, especially because the seasonal
22 flow patterns of Dog River should be representative of many of the tributaries to the EFHR.

23 26. The Dog River streamflow records and flow duration statistics (USGS, p. 154, 1988)
24 also indicate that winter streamflows at the mouth of the EFHR may be inadequate to meet instream

1 flow rights during midwinter periods. I estimated the average and exceedance flows at the mouth of
2 EFHR by the same method apparently used in the Draft and OWRD (1992), except that I used the
3 records from Dog River (USGS, p. 154, 1988) rather than the data from the lower Hood River gages
4 (USGS, pp. 155-156, 1988) to estimate EFHR flows. Subject to the corrections for watershed area,
5 total precipitation and water withdrawals, the analysis indicated that the instream flow right at the mouth
6 of the EFHR is met or exceeded only about 35% of the time in December, about 65% of the time in
7 January, and 87% of the time in February (See Table in Attachment 1 to this Testimony). The Dog
8 River watershed may not be completely hydrologically similar to the EFHR, but it may be as reasonable
9 a representation as the lower Hood River. Therefore, this analysis casts considerable doubt that
10 instream flow rights are consistently met during the winter months at the mouth of the EFHR, even in
11 the absence of additional surface water and/or groundwater diversions.

12 27. Available flow data also indicate that the EFHR periodically has midwinter low flows
13 which approach summer low flows. The Dog River experienced its lowest monthly average flows
14 during the period of record in December and February of 1966 (USGS, p.154, 1988). Reported
15 streamflow data from the MHMSA STP indicate that streamflow there was at 1.2 cfs on January 31,
16 1990 and at 2 cfs or less on 12 days in January, 1990 (Smith, p. 22, 1991). By comparison, summer
17 low flows are estimated to be approximately 0.9 cfs at approximately the same location on the EFHR
18 (FEIS, p. III-16, 1991). These data indicate that the EFHR undergoes periods of winter low flows
19 during which instream flow rights may not be met.

20 28. Based on the foregoing analysis and data, I conclude that it has not been adequately
21 determined that water is consistently available in excess of the instream flow right at the mouth of the
22 EFHR during the midwinter period. Further, the existing data, professional experience, and the
23 foregoing analysis lead me to conclude that it is probable that instream flow rights are probably
24 periodically not met at the mouth of the EFHR in midwinter, in the even in the absence of any further

1 diversions from the stream, such as the use of Application 69976. I conclude that additional surface
2 water diversions during low flow periods during the midwinter will probably further reduce flows below
3 the instream water right, contrary to the public interest. I also conclude that existing surface water
4 availability during midwinter low flow periods has probably been overestimated in OWRD (1992).

5 29. I also conclude that the method used to estimate summer flows in the EFHR is probably
6 reasonable. Recent measurements of flow in the EFHR indicate that instream water rights are far from
7 being met in July and August. Therefore, I conclude that water is not generally not available in excess
8 of the instream flow right from June 1 to Oct. 30.

9 30. The use of Application 69976 would further reduce midwinter streamflows by an
10 additional 0.48 cfs. This reduction in flow is likely to harm downstream fisheries. Given the reported
11 low flows from the MHMSA STP it appears that the use of the application during low flow periods this
12 would reduce flows in the upper reaches of the EFHR to levels below those estimated to occur during
13 the summer; low flows of this magnitude have already been judged to constrain fish production in the
14 EFHR (ODFW and CTWS, Appendix D--Table 1, 1990). Further, these reductions in winter low flow
15 probably occur during a critical period, during cold snaps on the mountain. These cold snaps represent
16 periods when stream icing is most likely, other factors remaining equal. When stream icing occurs,
17 fish mortality is typically caused; anchor ice formation also smothers overwintering eggs in redds in
18 the stream beds (Platts, 1981). Stream icing in high elevation streams can be a significant source of
19 fish mortality (Boise National Forest Land Management Plan and Final Environmental Impact
20 Statement, p. B-33, 1990). Other factors remaining equal, the likelihood of stream icing increases with
21 decreasing flow, at sub-freezing temperatures. I conclude that the use of Application 69976 is likely
22 to cause harm to downstream fish because it would reduce winter low flows by about 24-40% within
23 the MHMSA during a period when streams are at a high risk of icing.

24 31. It is also apparent that existing streamflows reported at the MHMSA STP during winter

1 cold snaps are already frequently below the dilution requirement of the STP discharge permit (Smith,
2 pp. 15, 22, 1991). The use of Application 69976 will further reduce winter streamflows by about 0.48
3 cfs at the STP. This will not only exacerbate violations of the permit terms, it will also increase the
4 frequency of violations of the discharge permit dilution requirement and reduce downstream water
5 quality during low flow periods. Notably, turbidity will be increased below the STP as dilution flows
6 drop. Increased turbidity due to loss of dilution flows may harm fish and violate state water quality
7 standards downstream of the STP. Also, if the 0.48 cfs withdrawn under the use of Application 69976
8 is returned to the EFHR via the STP outfall, it will create the need for more dilution flows under the
9 existing permit, because it will have to be diluted by a factor of 20. For these reasons, I conclude that
10 flow decreases caused by the appropriation during winter low flow periods will harm the public interest.

11 32. The recommended permit conditions for the application are inadequate to protect water
12 quality, downstream fish from harm caused by incremental reductions in low flow or to assure that
13 instream flow rights are met at the mouth of the EFHR. First, although OWRD (1992) repeatedly
14 states that the water right for Application 69976 will be junior to instream water rights at the mouth of
15 the EFHR, there is currently no reliable means of measuring the instantaneous flow rate in the EFHR.
16 Thus, there will be no way to ensure that instream flow rights are met during times of upstream
17 appropriation at the MHMSA. Therefore, the instream flow right will not be enforceable. To remedy
18 this, a gage should be installed at the mouth of the EFHR. As discussed, existing stream gages on the
19 lower Hood River are not adequate to determine winter low flow magnitudes at the mouth of the EFHR.
20 The new gage should be used to measure flows continuously and interrupt upstream junior diversions
21 such as Application 69970 when flows at the mouth are found to be less than the instream water right.
22 Otherwise, the seniority of the instream water right is meaningless. Second, even if instream flow
23 rights are met there is no means to assure that flows adequate for fish and dilution of pollution will exist
24 below the MHMSA. To remedy this, the OWRD should condition the use of the Application 69976

1 on the existence of adequate dilution flows at the STP. When flows at the STP are less than 2.2 cfs
2 (as required by the existing STP discharge permit), the use of Application 69970 should be prohibited.
3 This minimum flow value at the STP would also help provide some protection of downstream fisheries
4 during winter low flow periods.

5 C. Available Data is Inadequate to Reasonably Determine that Aquifers Proposed for
6 Pumping Are Confined

7 33. It has been suggested that the aquifer that is proposed as a source for application G-
8 12550 is "...probably confined..." (OWRD Draft, Attachment 15). However, the no reasonable
9 rationale or evidence for this assertion has been presented; indeed, Attachment 15 in the Draft does not
10 contain any indication of what, if any, data was used to determine that aquifers in the MHMSA might
11 be confined. However, given available data and scientific knowledge, the assertion that the aquifer is
12 confined is both unwarranted and unsupported.

13 34. Apparently, even the OWRD is unsure of the available data because in a memo dated
14 September 5, 1991, (Attachment 15) it was concluded that heads in applicable wells were within about
15 30 feet of the surface and that the aquifer was probably confined. In a memo dated April 6, 1991,
16 (Attachment 15) it was concluded that water levels in the Meadows Geothermal Well were about 97 feet
17 below the land surface and that either unsaturated materials or a confining layer separated the surface
18 water from groundwater. Neither of these interpretations of aquifer properties based on water level data
19 cited in the respective memos in Attachment 15 are supported by available data.

20 35. Some very limited geologic and hydrologic data do exist from a geothermal wells drilled
21 on the volcano during the 1980's. The OWRD apparently relied on data from two of the wells in
22 making its recommendations to grant Application G-12550. The Meadows Geothermal Well was drilled
23 approximately 0.5 mile downslope (Priest and Vogt, p. 35, 1982) of the well site proposed in
24 Application G-12550. Priest and Vogt (p. 35, 1982) give an elevation of approximately 5360 feet for

1 the Meadows Geothermal Well, however, Robison et al. (p. 10, 1981) reports the well elevation to be
2 at about 5460 feet above sea level. The Pucci Geothermal Well was drilled at an elevation of about
3 5350 feet approximately 2.5 miles west of the proposed well site (Priest and Vogt, p. 35, 1982). Even
4 the data from the Meadows Geothermal Well may not be applicable to the site of the proposed well site
5 because the geology of the area is highly variable horizontally and in cross section (Priest and Vogt,
6 p. 6-12, 1982) as is typical for complex volcanic sequences. However, it is clear that the hydrologic
7 and geologic data from the Pucci Well is essentially irrelevant to hydrogeologic conditions existing at
8 the proposed G-12550 well site due to the distance involved and the spatial variability of the complex
9 volcanic geology. In Priest and Vogt (1982), the applicability of the hydrogeology data of the Pucci
10 Well to other areas is described as follows: "These data may not be applicable to other areas on the
11 volcano, where holes encountered high vertical permeability to depths of at least 300m..." (p. 13). I
12 concur with this assessment. Further, it is also noted in Priest and Vogt (p. 41, 1982) that well data
13 generally indicate that the shallow groundwater circulation on the volcano "...is variable from place to
14 place" and that although some data from the Pucci well indicate that part of the mountain has low
15 vertical permeability (a condition needed for confinement) in rocks below 200m, wells drilled in other
16 areas suggest high vertical permeability to depths of at least 300m (emphasis added). Confined aquifers
17 are not expected to be found where there is high vertical permeability (Davis and DeWiest, 1966;
18 Freeze and Cherry, 1979).

19 36. The hydrologic and geologic data from the Meadows Geothermal Well does not contain
20 any direct evidence of the existence of confined aquifers in the vicinity of the well. Rather, the limited
21 geologic data only weakly indicate that a confined aquifer could exist. While some of volcanic
22 lithologies described in the well log (Robison et al., 1981) can sometimes act as confining layers, they
23 also typically serve as highly permeable units that would not contribute to confinement (Davis and
24 DeWeist, 1966; Freeze and Cherry, 1979). Therefore, the geology data do not reasonably support the

1 assertion that the aquifer is confined. Even then, the geology from the Meadows Well is applicable
2 only to the immediate vicinity and at the depth of the geothermal well because complex volcanic
3 sequences are typically discontinuous and associated hydrogeology tends to be highly variable both
4 horizontally and vertically (Freeze and Cherry, 1978). Notably, the Applicant has failed to make any
5 mention of the variability of the volcanic geology or the dubious nature of spatially extrapolating very
6 limited borehole geology given the physical setting.

7 37. Water levels in confined aquifers often show indications of artesian head (Davis and
8 DeWeist, 1966). There is no evidence that artesian heads exist in local aquifers in the MHMSA which
9 might provide some indication that local aquifers could be confined. Water level data cited in OWRD
10 (1992) indicate that artesian heads were not found in the Meadows Geothermal Well. Therefore,
11 available water data indicate that it is unlikely that confined aquifers exist in the vicinity of the
12 Meadows Geothermal Well, because there is no indication of artesian water levels.

13 38. Even if artesian heads did exist, artesian water levels, alone, do not indicate that a
14 confined aquifer exists. Artesian water levels and well flow commonly occur in topographic
15 depressions in high relief terrain with unconfined aquifers (Freeze and Cherry, 1979). Notably, the
16 Meadows Geothermal Well appears to have been located in a topographic depression in high relief
17 terrain (Preist and Vogt, p. 3, 1982). Even if confinement in the area of the geothermal wells does
18 exist, it does not follow that a confined aquifer is present at the site of the proposed groundwater
19 withdrawal because of both the variable volcanic geology (Freeze and Cherry, 1979) and the distance
20 of the proposed well site from the geothermal wells. However, there is no water level data by which
21 to reasonably conclude that local aquifers are probably confined. In fact, available data indicates that
22 artesian heads, which are often found in confined aquifers, do not exist in the immediate vicinity of the
23 Meadows Geothermal Well.

24 39. The available data from the Meadows Well indicates that the local groundwater system

1 is unconfined. It is noted in Priest and Vogt (p. 38, 1982) that the temperature profiles with depth from
2 the Meadows Well indicate "...a uniform downward component of water flow in the aquifer" (p. 38)
3 because the water temperature profile with depth is concave. Bredehoeft and Papadopoulos (1965)
4 developed methods to determine the direction and rate of groundwater flow from temperature profiles.
5 Sorey (1971) provided field verification that water temperature profiles ~~and~~ were valid tools for
6 determining both flow direction and velocity of groundwater. Application of these methods to the
7 temperature profile of the Meadows Geothermal Well (Priest and Vogt, p. 39, 1982) does, indeed,
8 indicate that there is a downward component of groundwater flow. It is unlikely that uniform
9 downward flow would occur in a system with confined aquifers. This component of downward flow
10 also suggests strongly that the local groundwater is discharging elsewhere into some nearby surface
11 water system.

12 40. Given my review of available data, I conclude that the available data does not reasonably
13 support the assertion that confined aquifers exist in the area. Artesian water levels appear to be absent.
14 The available evidence indicates that unconfined rather than confined aquifers exist in the area because
15 there is a uniform, downward component to groundwater flow indicated by water temperature profiles.

16 D. Available Evidence Does Not Reasonably Support the Assertion that Local Groundwater
17 is Not Hydraulically Connected to the Surface Water System

18 41. There is no evidence to suggest that groundwater in the area of the proposed well is not
19 in hydrologic connection with the stream system. The assumption that confined aquifers are not
20 typically hydrologically connected to surface water systems is not valid. If a confined aquifer does exist
21 in the area, all that is necessary for there to be hydrologic connection is an intersection of the aquifer
22 with the stream system. Such a connection is likely and relatively common. Many artesian spring
23 systems are caused by the intersection of confined aquifers with the ground surface (Freeze and Cherry,
24 1979); such systems are relatively common in steep mountainous terrain with confined aquifers and

1 dipping geologic strata (Freeze and Cherry, 1979). Indeed, the methods recommended in OAR-690-09
2 to calculate stream depletion by groundwater pumping (Techniques of Water-Resources Investigation
3 of the U.S. Geological Survey, Ch. D1, Computation of Rate and Volume of Stream Depletion by
4 Wells by C.T. Jenkins, 1970 (hereinafter: "Jenkins, 1970")) were developed for application to confined
5 aquifers that intersect streams. Further, available hydrologic data indicate that there is a hydrologic
6 gradient towards the stream system and wetlands from the aquifer penetrated by the geothermal wells.

7 42. The water level in Meadows Geothermal Well do not indicate that there is an
8 unsaturated layer between the groundwater system and surface water system (the streams and
9 downstream wetlands). Rather, the data suggest that the groundwater and surface water systems are
10 probably in hydraulic connection. As mentioned, OWRD (1992) indicates that the water level in the
11 Meadows Geothermal Well is at about 97 feet below the land surface. The elevation of the Meadows
12 Geothermal Well is about 5460 feet (Robison et al., p. 10, 1981) or 5360 feet (Priest and Vogt, p. 35,
13 1982), so OWRD's determination of the water level puts the water level elevation at about 5260 to 5360
14 feet above sea level (depending on which reported well elevation is used). It appears that there is a
15 gradient from the groundwater towards the stream system, given either of these water level elevations.
16 There is a pronounced gradient from the measured water level towards the stream with a groundwater
17 level elevation of 5360 feet. About 0.25 mile downslope of the location of the Meadows Geothermal
18 Well, the stream is downgradient from a water level of 5260 feet. Therefore, the water level
19 determined by OWRD (1992), if correct, indicates that the gradient is from the aquifer towards the
20 stream and the wetlands downslope. Therefore, if the aquifer is in connection with the stream and
21 wetlands, the aquifer is providing baseflow as indicated by the water level data. To date there has been
22 no evaluation or consideration of the available evidence which indicates that a gradient appears to exist
23 between groundwater and the stream in the vicinity of the Meadows Geothermal Well. However, the

1 data do not support that there is unsaturated layer separating the groundwater system from the surface
2 water system. Rather, the data indicate that a gradient exists between the groundwater system and the
3 stream. The existence of this gradient makes it likely that the systems are connected and are not
4 separated by an unsaturated zone.

5 43. Notably, the water level from the Meadows Geothermal Well was collected in August
6 (OWRD, 1992). It is likely that water levels are considerably closer to the surface earlier in the year
7 when snowmelt recharge is more actively recharging the aquifer. Shallow mountainous aquifers
8 typically have water levels which are considerably closer to the land surface during active snowmelt
9 than in the late summer period (Rhodes, 1985). The gradient from groundwater to surface water would
10 be greater when water levels are closer to the surface, during snowmelt. Therefore, given that the
11 water level in Meadows Geothermal Well was measured in August, it is likely that water levels in the
12 well are higher during the spring and that the gradient from the groundwater to the surface water system
13 is more pronounced during the snowmelt period.

14 44. The geology in the area of the proposed well site makes it likely that there is a
15 hydrologic connection between groundwater and streamflow. The permeability of volcanic deposits
16 tends to be greatest in the direction of the dip of the strata (Freeze and Cherry, 1979). The strata in
17 the area of the proposed well site generally dip to the southeast, toward the stream. This increases the
18 likelihood that there is a hydrologic connection between groundwater and the stream. The proximity
19 of a well to the stream has a strong influence on the degree of connectivity. Generally, the closer the
20 well is to a stream, the greater the likelihood of alteration of streamflow by groundwater withdrawals
21 (Freeze and Cherry, 1979). The proposed well site is only 300 feet from a branch of the EFHR
22 (OWRD, 1992)) making it highly likely that groundwater withdrawals will reduce streamflows.
23 Therefore, it is probable that there is some degree of connectivity between groundwater and surface
24 water given the local geology, terrain and location of the well. There is little credible basis for

1 assuming there is no hydrologic connection. As noted in the OWRD Draft, "...little is known about
2 the groundwater hydrology of the mountain..." (p. 4). Plainly, too little is known and the potential is
3 too great to reasonably state that there is no connection between groundwater and the stream system.

4 E. The Use of Application G-12550 Is Likely to Cause Substantial Interference With
5 Surface Water and Harm the Public Interest

6 45. As mentioned, it is likely that groundwater and surface water are hydraulically
7 connected in the area of the proposed location of the proposed well, given available water level data
8 and local geology. The proximity of the proposed well to a stream also makes it likely that the use of
9 Application G-12550 will cause reductions in streamflow. These reductions will are likely to adversely
10 affect downstream fish production. Reductions in streamflow during the summer and winter low flow
11 periods are likely to reduce flows at the mouth of the EFHR which are already inadequate to meet the
12 senior instream water right. Groundwater pumping is also likely to adversely effect important wetlands
13 in the area, contrary to the public interest.

14 46. I applied the methods recommended in OAR-690-09 (Jenkins, 1970) to determine the
15 rate of stream depletion under the assumption that the streams and the well will be hydraulically
16 connected. Although there considerable uncertainty regarding the aquifer properties, using reasonable
17 values from the published literature (aquifer transmissivity of 200 gallons/day/ft), I found that it was
18 likely that the groundwater pumping would derive more than 25% of its flow from the stream after 30
19 days of pumping. OAR-690-09 directs that when groundwater appropriations cause more than a 25%
20 depletion of streamflow when pumping is continued for 30 days, the well is assumed to have the
21 potential to cause substantial interference.

22 47. Notably, direct withdrawals of streamflow by pumping are not the only way in which
23 groundwater pumping reduces streamflows. When aquifers are in hydraulic connection with streams,
24 groundwater pumping also prevents recharging groundwater from entering the stream system.

1 Streamflow is also lost as streamflow recharges the groundwater system after pumping has ceased.
2 Jenkins (1970) noted that in many cases, that streamflow losses after the cessation of groundwater
3 pumping ("residual effects") were greater than the direct losses incurred during pumping.

4 48. Concerns about the degree of hydraulic connection with the stream and groundwater are,
5 indeed, serious. If the aquifer and stream system are connected, the pumping of groundwater will
6 deplete streamflows in the EFHR throughout the year. Unlike the proposed surface water right, there
7 is no seasonal restriction on the proposed pumping of groundwater. Where connection is complete,
8 pumping from wells not only decreases baseflow contributions from groundwater, it actually removes
9 water from the stream channel. For instance, in the Methow Valley, it has been estimated via modeling
10 and hydrogeologic investigations that 90 to 98% of water pumped from a well less than 0.5 miles from
11 the Methow was comprised of water directly derived from streamflow (Golder and Assoc., 1991). A
12 similar situation is entirely possible in the EFHR headwaters.

13 49. Summer low flows in the EFHR and Hood River are already a serious constraint to fish
14 production for several important anadromous fish species, as previously discussed (ODFW and CTWS,
15 Appendix D, 1990). Reductions in streamflows in the summer period caused by groundwater pumping
16 will exacerbate these problems to the detriment of downstream fish production.

17 50. Reductions in groundwater flow to nearby streams caused by groundwater pumping will
18 also affect water quality in ways which are likely to adversely affect fish in the EFHR. Groundwater
19 temperature is typically near the average annual air temperature and is typically a source of cold water
20 during the summer which is important for maintaining temperatures desirable for fish production.
21 Reductions in groundwater inflows to streams caused by pumping can be expected to cause increased
22 summer water temperatures in the EFHR. Groundwater flows during the winter also provide a source
23 of relatively warm water which helps to maintain water temperatures desirable for fish production. This
24 relatively warm groundwater also helps prevent stream icing during winter low flow periods during cold

1 snaps. Reductions in groundwater inflows to streams caused by pumping during the winter can be
2 expected to cause decreased winter water temperatures in the headwaters of the EFHR which will
3 render these small streams more susceptible to icing events. Groundwater is also typically extremely
4 low in suspended sediments, so groundwater inflows dilute sediment concentrations. This dilution of
5 sediment loads by groundwater is important because high sediment loads during the summer months
6 is believed to be a major factor causing high egg-to-smolt mortality for anadromous fish in the EFHR
7 (ODFW and CTWS, p. 23, 1990). Reduced groundwater inflows caused by pumping can be expected
8 to increase sediment concentrations to the detriment of fish production downstream in the EFHR.

9 51. As mentioned, data indicate that there is already inadequate streamflow at the mouth of
10 the EFHR to meet the existing instream water right during the summer months. Reductions in
11 streamflows caused by groundwater pumping during the summer will exacerbate the problem.

12 52. It is also likely that groundwater pumping will adversely affect the Stringer Meadows
13 wetland complex downslope from the proposed well site. The FEIS (p. IV-51, 1991) states that
14 "Changes in drainage patterns, groundwater discharge and recharge, surface flow or water table levels
15 may result in dewatering and subsequent loss of some wetlands..." The hydrology of these wetlands
16 is complex and poorly understood; their interactions with surface flows and groundwater is uncertain
17 because specific information on the local hydrology is lacking (FEIS, p. IV-38, 1991). However, it
18 is believed that most of the groundwater system drains towards local streams and discharge points
19 (FEIS, p. IV-40, 1991), such as the Stringer Meadow wetland complex. Notably, this wetland complex
20 is located at an elevation of about 5200 ft which is downgradient of the approximate elevation of the
21 water level as determined by OWRD (1992) in the vicinity of the proposed well. Direct, long-term
22 impacts to area wetlands are likely to occur if there is any alteration of local drainage patterns (FEIS,
23 p. IV-59, 1991). Reductions in subsurface discharge to the wetlands could reduce discharge from the
24 wetlands to downstream areas (FEIS, p. IV-58). There is no doubt that the use of G-12550 will alter

1 subsurface flows and local groundwater drainage patterns upslope from these critically important
2 wetlands; therefore, I conclude based on the information available, that the proposed groundwater
3 withdrawals are likely to significantly and adversely affect the Stringer Meadows complex and the
4 public interest. The alteration of wetland function is made more likely because it is probable that the
5 upslope groundwater that will be pumped under the use of Application G-12550 is a significant source
6 of water for the wetlands because the estimated elevation of the groundwater level indicates that there
7 is a gradient between groundwater and the wetlands.

8 53. Interactions between surface water and groundwater can be complicated and difficult
9 to accurately predict. However, in its simplest form, the upper EFHR watershed can be adequately
10 modeled via conservation of mass principles. Conservation of mass requirements must be met. The
11 conservation of mass means that matter is neither created nor destroyed and that when inputs to a
12 system are less than outputs, storage within the system is decreased. In groundwater systems, decreases
13 in storage also generally decrease discharge to stream systems. Groundwater and surface water are
14 probably part of a runoff continuum that is typical of most mountain hydrologic systems. If this is the
15 case, any and all groundwater that is pumped and lost through consumptive use, represents the amount
16 of reduction in streamflow that will ultimately occur. Models and field studies can and should be used
17 to predict and refine these estimates. However, such studies and models can only estimate the
18 magnitudes and disposition of the streamflow reductions throughout the year. If the aquifer is in
19 connection with the surface water system, groundwater withdrawals will reduce streamflow (as even
20 more sophisticated models will predict since they, too, are based on conservation of mass principles).

21 F. Expansion Of the MHMSA Will Also Reduce Summer and Winter Low Flows

22 54. The use of Applications 69976 and G-12550 will not be the only activities in the
23 MHMSA that will act to decrease low flows. The planned expansion of the MHMSA is also expected
24 to significantly reduce streamflow especially during the summer period. Unfortunately, the combined

1 effect of these reductions have not been included in evaluating the effects of Applications 69976 and
2 G-12550 on downstream water rights and the public interest.

3 55. Flow reduction is assured under planned expansion of the MHMSA due to a number
4 of factors. First, substantial amounts of impervious surfaces will be introduced into the watersheds
5 in the project area (FEIS, p. IV-36, 1991). These impervious areas will preclude the recharge of the
6 local groundwater system by snowmelt and rain. As a result, the baseflow to streams from the
7 groundwater system during low flow periods will be reduced. Second, soil compaction is a likely
8 consequence of the implementation of all expansion alternatives (FEIS, pp. IV-24, -31, 1991).
9 Compaction not only reduces infiltration rates which increases direct surface runoff (FEIS, p. IV-24,
10 1991), it also reduces the water storage capacity of the soil profile by reducing porosity. The reduction
11 in water storage capacity in the soil will also serve to reduce baseflow during the summer low flow
12 period. This reduction in available storage also increases the amount of direct surface runoff, because
13 in most undisturbed, forested areas overland runoff is typically caused by profile saturation, rather than
14 the exceedance of infiltration rates (Dunne and Leopold, 1978). Third, some wetlands are also likely
15 to be directly and indirectly damaged by expansion (FEIS, p. IV-62, 1991). The wetlands are important
16 contributors of summer baseflow (FEIS, pp. III-28, IV-40, 1991). Fourth, road construction intercepts
17 subsurface flow (Megahan, 1972) which would otherwise contribute to baseflow.

18 56. These consequences of expansion, separately, and in concert, promise to greatly reduce
19 low flows both in the project area and downstream. While the FEIS made no quantitative assessment
20 of the effect of these factors on changes in low flow for any of the alternatives, the ROD did concede,
21 as part of the FEIS errata (ROD, p. E - 3), that low flows will be decreased by MHMSA expansion

22 57. The introduction of impervious areas to the project area is likely to cause significant
23 reductions in summer and fall low flow. In many mountainous areas, groundwater recharge during the
24 snowmelt period is an important component of summer baseflow for streams (Dunne and Leopold,

1 1978). However, precipitation falling on impervious surfaces will be rapidly shunted to streamflow as
2 surface runoff instead of recharging groundwater. The ROD (B - 8) states that under the preferred
3 alternative (Alt. P), impervious surfaces will cover about 166 acres with "100% buildout." Average
4 annual precipitation in the project ranges from about 65 inches to 140-170 inches over the project area
5 (ROD B -8); average annual precipitation in the MHMSA is approximately 90 inches/year (OWRD,
6 1965). Assuming that 40% of precipitation on the impervious areas is typically lost to
7 evapotranspiration or infiltrated to the soil elsewhere, the introduction of impervious surfaces results
8 in the direct loss of about 760 acre-feet/year of groundwater recharge to streamflow. Much of the
9 groundwater recharge lost to surface runoff from impervious areas would otherwise be stored and
10 recharged to the stream as baseflow during the low flow period. The amount of groundwater recharge
11 lost due to impervious surfaces is significant in terms of streamflow. For instance, if the estimated 760
12 acre-feet lost from recharge were to be recharged and then released from the groundwater system to
13 the streams at a steady rate, it is equivalent to approximately 4.2 cfs of baseflow to the project streams
14 for three months. By comparison, the combined annual low flow in the five watersheds draining the
15 MHMSA is only estimated to be 4.5 cfs (FEIS, p. III-16, 1991). Plainly, the loss of groundwater
16 recharge due to impervious areas is likely to be significant. The ultimate loss to streamflow may be
17 nearly as large as the combined summer streamflows in the five watersheds in the project area.
18 Clearly, then, the introduction of impervious surfaces will significantly reduce baseflow and low flows
19 in the EFHR. The estimation, given here, of groundwater recharge loss and subsequent loss of
20 streamflow is both simplistic and approximate. It is presented here only in order to make some estimate
21 of the likely impact to stream baseflow resulting from expansion. The analysis provided here is
22 premised on assumptions that are both explicitly listed and physically reasonable. The analysis also
23 provides at least some estimate of the likely magnitude of the impact of paving areas.

24 58. The effects of soil compaction and wetland disruption are caused by MHMSA expansion

1 are likely to further decrease summer low flows in the EFHR. The FEIS (pp. III-28, IV-40, 1991)
2 repeatedly acknowledges that wetlands are important for baseflow augmentation. The FEIS concedes
3 that some wetlands will be directly lost with MHMSA expansion (FEIS, pp. IV-62, 1991).

4 59. These additional reductions in streamflow are significant and will be in addition to
5 reductions caused by the use of Applications 69976 and G-12550. However, these additional reductions
6 in streamflows have not been considered in evaluating the Applications. The combined effects of
7 MHMSA expansion on streamflows should be considered in evaluating Applications 69976 and G-
8 12550.

9 G. Well Construction Cannot Ensure That Substantial Interference Will Not Occur

10 60. It has been suggested that well construction may be able to mitigate for an erroneous
11 determination of the degree of hydraulic connection between surface and groundwater. However, well
12 construction does not control the degree to which the aquifer and stream system are connected. Careful
13 well design and construction can maintain the integrity of confining layers if, and only if, they do exist.
14 However, it otherwise has no effect on the degree of surface water interference caused by water
15 withdrawals. If the aquifer and the stream are in hydraulic connection, the well's construction cannot
16 negate surface water interference and the effects on downstream water quantities. Well construction
17 also cannot compensate for errors in judgment regarding the aquifer-surface water interactions.
18 However, better data and more complete information can temper poor assumptions. H.

19 Information Needed to Provide a Reasonable Basis For Granting or Denying the Water

20 Right Applications

21 61. It has not been credibly determined whether instream flow rights are actually being met
22 from November to May at the mouth of the EFHR. A monitoring program should be initiated to at
23 least provide some "spot" monitoring of streamflows for a full year, particularly in January-February.
24 There is no provision for the measurement of instream flows on the EFHR from which to adequately

1 regulate upstream surface and groundwater diversions. It is critical that a gaging station on the EFHR
2 be put in place to adequately determine if instream flow rights on the EFHR are being met year-round,
3 now and in the future. The surface water permit must be made conditional on meeting measured
4 instream flows at the mouth of the EFHR.

5 62. The degree of aquifer confinement and/or connection to surface water has not been
6 adequately determined. The degree of confinement of the aquifer is important to determine. However,
7 it is more important to determine the degree of hydraulic connection between aquifer and stream; that
8 is the "bottom line." There are several additional investigations that can be implemented in order to
9 reduce the uncertainty over groundwater/surface water interactions. One approach is to compare the
10 water chemistry of the aquifer proposed for pumping with that of the adjacent stream during the
11 baseflow period. A similar approach would be to inject tracers into the aquifer and monitor
12 downstream water chemistry. Another approach to determining the level of hydraulic connectivity is
13 through the analysis of stable environmental isotopes in both groundwater and streamflow (Space et al.,
14 1991). Another approach is to conduct aquifer tests, including the monitoring of observation wells and
15 stream flows. Such an approach can provide an indication of whether the aquifer is actually truly
16 confined or in hydraulic connection with the stream system (Freeze and Cherry, 1979). The monitoring
17 of observation wells can also provide an indication of the aquifer's level of connectivity. The water
18 levels in truly confined aquifers that are hydraulically isolated from stream systems do not undergo
19 seasonal water level fluctuations due to seasonal bank storage effects near streams. In short, there are
20 many approaches available to decreasing the uncertainty to an acceptable level. They have just not been
21 implemented. The various approaches vary in cost, but most can be implemented at a reasonable
22 cost.

23 V. CONCLUSION

24 63. Given the current level of uncertainty associated with the water right applications and

1 hydrology and hydrogeology of the EFHR, granting the water right permits would be premature. There
2 is currently no need to a rush a decision because an immediate need for additional water is not indicated
3 by the applicant. Additional investigations would not only reduce uncertainty but also improve the
4 content of future environmental assessments of the impacts on water resources caused by the ski area.

5 64. I my review of available information, I have concluded that the use of Application 69976
6 will reduce EFHR flows contrary to the public interest. This reduction in flows is likely to harm fish
7 and wildlife. I also conclude that the existing instream water right is not met during the summer
8 months at the mouth of the EFHR. I conclude that it has not been adequately determined that instream
9 water rights are consistently met at the mouth of the EFHR from November 1 through May

10 65. It is likely that the existing instream water right is not met during winter low-flow
11 periods. More data collection on flows in the EFHR is needed to determine if water is available during
12 winter low flow periods, prior to granting water rights during the winter, because there is no actual
13 streamflow data from the mouth of the EFHR during the winter months. Surface water and
14 groundwater withdrawals during periods of inadequate instream flow will adversely impact fish, water
15 quality, and other aquatic resources. Flow gaging on the EFHR is also necessary to regulate junior
16 water rights during low flow periods.

17 66. The available information on the aquifers in the vicinity of the Mt. Hood Meadows Ski
18 Area is inadequate to determine if confined aquifers exist in the area. It is not possible to reasonably
19 determine if the aquifers in the project area are confined or unconfined, given available data. However,
20 the existing data weakly indicates that local aquifers are unconfined.

21 67. The degree of hydraulic connectivity between an aquifer and surface water is not solely
22 dependent on aquifer confinement. Confined aquifers are often directly connected to streams and other
23 surface water, especially in high relief, mountainous terrain with sloping geologic strata, such as occurs
24 in the area of the MHMSA.

1 68. I have also concluded that the available hydrogeologic information is inadequate to
2 determine if aquifers in the MHMSA are in hydraulic connection with the stream system. The existing
3 data do not adequately support the conclusion that there is limited potential for substantial interference
4 with surface water. I also conclude that more data is needed to determine the nature of the aquifers
5 within the MHMSA and their hydraulic connection to the stream system.

6 69. I have also concluded that it is not possible, through well construction, to ensure there
7 will be no interference with surface water by groundwater pumping, if the pumped aquifer is
8 hydraulically connected to the stream system.

9 70. I have also concluded that the planned expansion of the MHMSA will significantly
10 reduce low flows in the EFHR especially in summer and fall. These reductions will be caused by
11 paving, compaction, and wetland destruction as acknowledged in the ROD (p. E - 3, 1991). These
12 additional sources of flow reduction should be considered in evaluating the applications. However, the
13 combined reductions in low flows have not been considered.

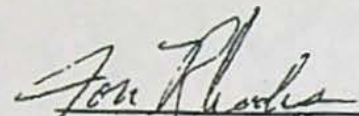
14 71. I also conclude that it is probable that groundwater pumping will adversely effect these
15 important wetland systems downgradient from the well site proposed for pumping in Application G-
16 12550. No effort has been made to determine the effect of groundwater pumping on important wetlands
17 within the MHMSA. Such an assessment should be made prior to making granting the permit to use
18 Application G-12550.

19 72. It is my professional opinion based on my training, experience and review of available
20 information that approval of the water right Applications 69776 and G-12550 would require the OWRD
21 to completely ignore the lack of applicable and adequate hydrologic and geologic data, the uncertainty
22 surrounding the hydrology issues, the probable impacts to water quality and downstream fisheries, as
23 well as the likely effects on downstream streamflows and instream water rights. The Applicant's
24 proposals to approve these applications are based on layer upon layer of unwarranted assumptions about

- 1 the hydrologic system. Given the degree of uncertainty, the approval of these applications is simply
- 2 not prudent.

I declare under penalty of perjury that I believe the foregoing is true and correct.

DATED 11/11/92.


Jon Rhodes

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S-69976

Jeana Eastman

From: Ivan Maluski [ivan.maluski@sierraclub.org]
Sent: Wednesday, June 08, 2005 2:24 PM
To: JEANA.M.EASTMAN@wrd.state.or.us
Cc: Ivan.Maluski@sierraclub.org
Subject: Fw: Sierra Club comments on Meadows' Snowmaking proposal

Not sure this went through.

Thanks

----- Original Message -----

From: Ivan Maluski
To: fs.fed.usJEANA.M.EASTMAN@wrd.state.or.us
Cc: dgjones@fs.fed.us
Sent: Wednesday, June 08, 2005 2:22 PM
Subject: Sierra Club comments on Meadows' Snowmaking proposal

June 8, 2005

Oregon Chapter Sierra Club
Re: Comments on Snowmaking Proposal & Requests for Public Water from the East Fork Hood River.
 2950 SE Stark, #110

Portland, OR 97214
New Water Rights Applications & Extensions on Old Water Rights

- Water Rights Filed by Meadows Utilities, LLC for a Massive Snowmaking System on Mt. Hood (Applications: S-18865, G-16401 and all current extensions of existing but unused water rights applications) & Proposal to Use a Categorical Exclusion for Constructing and Operating a Snowmaking without Existing Land Use Permission.

Dear Ms. Eastman and Mr. Jones,

The Oregon Chapter Sierra Club represents 24,000 Sierra Club members in Oregon. We support your efforts to carefully and thoughtfully manage our public resources. Our local constituents that enjoy the East Fork of the Hood River and these lands have been monitoring and reviewing the recent proposal by Mt. Hood Meadows to build a snowmaking system at their ski area.

The Oregon Chapter is very concerned about the Forest Service plan to avoid the most basic analysis required by the National Environmental Policy Act. That combined with the fact that Mt. Hood Meadows does not have permission to use the land for snowmaking under the current master plan is a plain violation of law. We urge the Forest Service to prepare the most basic NEPA document, an environmental assessment, to determine whether there are

06/09/2005

significant impacts, and if so, whether they can be address and how. Without land use permission, the Oregon Water Resources Department is wasting resources with a premature and rushed consideration of whether these water rights should be granted.

The Oregon Chapter is also concerned about the over-allocation situation in the Hood River Basin, and the impacts of an unsustainable use in the basin. Given the number of water rights at issue here, we request the Oregon Water Resources Department to undertake a comprehensive and fresh look at all the outstanding water rights and these requests for new water rights.

There is a known hydrologic connection in this closed basin. Take that in combination with the volume of the use, the timing of the use, the timing of run-off, the effects of global warming and climate change and an unpredictable maritime climate, it is imperative that the agencies take a comprehensive look at this request does not harm the East Fork of the Hood River.

The Sierra Club requests the Water Resources Department to consult with the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality. From the permit application for these water rights, it is unclear how much water is going to be left in the East Fork to be combined with the waste and effluent coming from Meadows facilities. The Clean Water act requirements must be met.

This proposal involves excessive groundwater pumping and a paucity of data on the actual impact when this amount of water is taken. The consumptive loss through sublimation of this use also needs to be scientifically examined and mapped out.

Local citizens have provided you with science-based information and we ask that you take the time to careful consider the options, do your homework, before approving a massive and unsustainable system.

The Club may well support Meadows making a limited amount of snow for skiing on the mountain, particularly if that snowmaking is needed to comply with their obligation to restore wetlands the company damaged on the mountain. There is no surface water is available in the Hood Basin, additional groundwater withdrawal may exacerbate that situation. We request that you consult the best available science, adhere to the applicable safeguards in state water resources and federal environmental law.

We look forward to learning about a dialogue with your office, local citizens, and the responsible agencies at the state and federal level.

Sincerely,



Oregon Chapter Sierra Club
2950 SE Stark, #110
Portland, OR 97214

June 8, 2005

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from the East Fork Hood River.**

**New Water Rights Applications & Extensions on Old Water Rights
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We look forward to learning about a dialogue with your office, local citizens, and the responsible agencies at the state and federal level.

Sincerely,

Ivan Maluski
Conservation Organizer
Oregon Chapter Sierra Club
503-238-0442, x304

5-69476

Jeana Eastman

From: Ralph Bloemers [ralph@crag.org]
Sent: Wednesday, June 08, 2005 4:44 PM
To: Jeana Eastman
Cc: chris@crag.org; jbragar@lclark.edu; Pagel, Martha; us, dgjones@fs.fed.
Subject: Comments on Groundwater Right



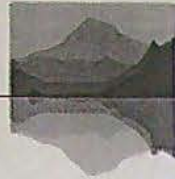
OMH - Comments
on Meadows' Gr...

Dear Ms. Eastman,

Attached please find comments from Friends of Mt. Hood on the groundwater application. I will fax you Jon Rhodes testimony on the existing water right application so you receive it today. I will also drop a copy of both documents in the mail to you today.

When you get a chance, please confirm that you have received these comments.

Thanks,
Ralph Bloemers



Cascade Resources
ADVOCACY GROUP

Ralph Bloemers
Staff Attorney
503.525.2727
ralph@crag.org

June 8, 2005

Via Email to jeana.m.eastman@wrд.state.or.us

Via Fax and Regular Mail to

Ms. Jeana Eastman
Oregon Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301

**Re: Comments on New Groundwater Water Right for Snowmaking
System -- Permit Application G-16401 & Related Surface Water
Application -- S-86185, Extensions on Existing Groundwater
(Application G-12550, Permit G-13398 and **Application S- 69976,**
Permit S-53637) and Existing Reservoir Applications**

Dear Ms. Eastman:

This letter provides the Friends of Mt. Hoods initial comments on the request submitted to the Oregon Water Resources Department ("WRD") by Meadows Utilities, LLC ("Meadows") for additional groundwater rights in the Hood River Basin. As you know, the Friends of Mt. Hood has commented on the surface water rights and on the two extension applications, one of which is for groundwater and the other for reservoir use.

The Friends of Mt. Hood is particularly concerned about the impacts of excessive water use and groundwater pumping on the East Fork of the Hood River. A comprehensive analysis of the water supply and effect of ground water withdrawals needs to be conducted in light of the most recent historical data on precipitation and stream flow. The WRD must determine the amount of consumptive loss from this use. The impacts on vegetation and wetlands must be considered. The Friends of Mt. Hood ask that the WRD ensure that the proposal preserves the public welfare, health and safety through further review and analysis of the potential for substantial interference with the minimum flows in the East Fork that protect fish, their habitat and recreation uses of the river.

Given the limited review conducted and limited information gathered by the WRD to date, these comments will be similarly brief. In addition, we request that the department also consider the comments and documentation submitted by Friends of Mt. Hood on the related new surface water application and the two extensions of time to



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perfect the existing groundwater and reservoir right permits. The Friends of Mt. Hood request that this new application be considered in light of the information in the water right file Application G-12550/S-69976 and the Final Order on that water right dated August 28, 1997, including the information that was removed from that file by Meadows' counsel Richard Whitman, once that information is recovered. The Friends of Mt. Hood has also included the findings of Jonathan J. Rhodes, a hydrologist who provided science-based comments on the previous groundwater and surface water application.

I. Land Use Approval Has Not Been Obtained.

Meadows has yet to obtain land use permission from the Forest Service under its master plan to construct a snowmaking system on public lands. In addition, the Forest Service has yet to conduct the basis analysis required by the safeguards contained in the National Environmental Policy Act and the National Forest Management Act.

Unless and until land use approval is obtained, the Water Resources Department would be providing an advisory opinion on whether the water right should be granted. Without the full information needed and required by Oregon Water Resources law, the Oregon Water Resources Department cannot proceed.

II. Comprehensive Consideration of Water Rights Applications.

Meadows has two existing water rights, one for groundwater and one for surface water. The Friends of Mt. Hood requests the WRD to take a comprehensive look at all the requests for public water and review the potential cumulative impacts from these withdrawals on the system. Meadows received a groundwater right (G-12550/S-69976) to appropriate groundwater. The WRD coordinated with a number of agencies to devise conditions for that permit, and given Meadows new water rights applications it appears that it would be impossible to comply with certain conditions in that old unused groundwater right if the new surface and groundwater rights are granted.

For example, the Final Order for the groundwater rights requires Meadows effluent to be diluted by a ratio of 1 part effluent to 20 parts dilution flow in the East Fork Hood River. In the Matter of Water Use Applications 69976, G12550 AND R71657 IN THE NAME OF MEADOWS WATER COMPANY, HOOD RIVER COUNTY, OREGON, dated August 28, 1997, Findings of Fact # 15. (hereinafter "August 28, 1997 Final Order"). The Final Order further states that sewage treatment plant operations can be regulated..."and done at times when little or no diversion is occurring upstream which would further reduce available dilution flows in the East Fork Hood River." A condition was added to the final permit to address these findings of fact. Now, with its new applications, Meadows proposes to augment the flows with wastewater. Unfortunately, the wastewater effluent already serves as mitigation for groundwater pumping in the vicinity.



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In its initial application for the new surface water right, Meadows proposed to provide a minimum streamflow of 1.5 cfs in the East Fork of the Hood River from the sewage treatment plant. However, the sewage treatment plant effluent is already being used as mitigation for the groundwater pumping proposed under Meadows' existing groundwater right. The sewage effluent limitations in the permit from the Department of Environmental Quality count on dilution from active flows in the headwaters of the East Fork of the Hood River. Although it is unclear, it appears that Meadows has changed its position in response to Friends of Mt. Hood's initial letter and now intends to leave a trickle of natural flow in the East Fork of the Hood River to mix with the effluent from its facility. However, the proposed minimum stream flow that Meadows plans to leave above the wastewater plant, and its ratio to the amount of effluent, must be substantively addressed by the Oregon Department of Environmental Quality, the Oregon Department of Fish and Wildlife and the Forest Service. Streamflows are already too low in the East Fork of the Hood River during the winter months to dilute the pollution from the sewage treatment plant. Testimony of Jon Rhodes at page 9.

With respect to this condition and many others, the Friends of Mt. Hood requests the WRD to analyze and consider the cumulative impact of the new surface water application and this new groundwater application. Meadows has not provided any data to identify the actual impact on the Hood River Basin from groundwater pumping in the Basin. The existing water rights have been largely unused and there is a serious question whether the existing withdrawals ensure minimum streamflows in the East Fork Hood River.

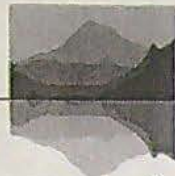
III. Consumptive Loss

The Friends of Mt. Hood has reviewed the WRD's initial review (IR) and that IR does not contain a determination regarding the amount of consumptive loss from snowmaking. As Friends of Mt. Hood has underscored in its comments on the surface water application, the use of this water for snowmaking is highly consumptive. The science simply does not support the view that snowmaking is equivalent to non-consumptive water storage.

The Friends of Mt. Hood have researched the issue of consumptive loss carefully, and that research confirms FOMH's comments on this particular issue. According to scientific studies on this issue, consumptive use must be measured at two different stages during the snowmaking process:

"Initial loss: This is the consumptive water use which occurs during the actual snowmaking process due to evaporation and sublimation.

Watershed loss: This is the consumptive water loss that occurs from the time the man-made snow particle has fallen on the snowpack through spring melt. These losses are due to evapotranspiration and sublimation." *Estimated Loss from Man-Made Snow,*



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Mills, Eisel and Leaf, 54th Annual Meeting of the Western Snow Conference, Phoenix, Arizona, April 15-17, 1986. (Mills, et al.)

The WRD must address the significant losses from the proposed withdrawal to return flows. A description of the snowmaking process **does not** equate to a description or quantification of consumptive loss. The Friends of Mt. Hood requests the WRD to carefully review the scientific literature that was submitted along with the comments on the pending surface water withdrawal, which we summarize here.

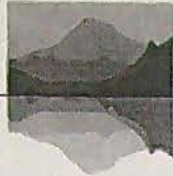
The Mills et al study found the mean estimated Initial Loss from two different methodologies to be approximately 6 percent. However, the Watershed Loss estimates ranged between 7 to 33 percent. A loss of 20% was common, and that combined with the Initial Loss, would result in about a 26% loss of water. In other words, for every hundred gallons taken from the East Fork of the Hood River, at the very most, only 74 gallons would return to the river. Meadows' claim that snowmaking involves minimal consumptive loss is simply not true.

Another study found that: "...at least 22% and as much as 70% of the snowpack at this high elevation site may be lost to sublimation and, therefore, that the date of snowpack accumulation is critical to the runoff efficiency of high elevation snowpacks." *Where has all the snow gone? Snowpack Sublimation in Northern Arizona*, Avery, Dexter, Wier, Delinger, Tecle and Becker, 60th Annual Meeting of the Western Snow Conference, April 14-16, 1992, Snow King Resort, Jackson Hole Wyoming. (Avery et. al.) The earlier in the season that the snowpack accumulates, the greater the percent of snow water equivalent that is lost due to evapo-sublimation. Avery at 92. Given this scientific data, it is possible that for every 100 gallons of water that Meadows takes from the East Fork of the Hood River (or the interconnected groundwater system) only 50 gallons would return to the river system. The Friends of Mt. Hood have provided these studies to WRD for its review of the pending surface water application.

IV. Impact from Anthropogenic Global Warming & Climate Change on Peak Flows in the East Fork of the Hood River.

Another, and perhaps more troubling, scientifically documented development is that peak snowpack in the Cascade Mountains has been decreasing significantly during the past 6 decades. Snowpack records have been kept in the Cascades for 60 years and an analysis of long-term records show a dramatic downward trend in peak snowpack accumulations. Pattee, Scott, 2001, *Is peak snowpack in the North Cascades Mountains decreasing over time?*, pages 88-97, In: Proceedings, 69th Annual Meeting, Western Snow Conference, 17-19, April 2001, Sun Valley, Idaho.

The reason for the decrease in snowpack has been linked to anthropogenic climate change. According to scientists from the University of Washington, the Pacific Northwest is unusually vulnerable to a warming climate owing to its heavy reliance on



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snowpack for spring and summer run off. Phillip Mote and Alan Hamlet, Climate Impacts Group, University of Washington, *Anthropogenic Climate Change and Snow in the Pacific Northwest*, 69th Annual Meeting of the Western Snow Conference, 2001. That study estimated that Snoqualmie Pass, just east of Seattle, would see a reduction in ski season length (defined as the number of days when snow water equivalent exceeds 240mm) from 118 days for present climate to 87 days in the climate of 2020 and 58 days in the climate of 2040. Moreover, in a warmer climate, the study found that snowfed rivers like the Columbia and its major tributaries east of the Cascades see a shift in their hydrograph. Winter streamflow increases modestly, the spring runoff begins earlier in the year, and summer streamflow decreases markedly. The study found that these changes will have a profound and largely negative impact on the uses of water in the Northwest.

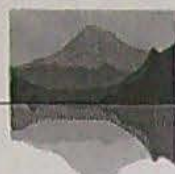
Governor Kulongoski has expressed a strong interest in addressing climate change. Contrary to that interest, this proposal would use vast amounts of energy for snowmaking to counter the effects of global warming and climate change. While this unsustainable over-consumptive response should be questioned for this contradiction and examined by the Forest Service and other agencies in the context of global warming, the key issue for the Water Resources Department is that any authorized water use must include conditions that respond to potentially drastic changes in watershed conditions due to climate change and global warming.

The potential for increase in peak flows, change of timing and other changes may exacerbate the problems caused by climate change in the Pacific Northwest. Any snowmaking proposal must try to mimic the historic variation, not the mean or the median, of snowmaking. Contrary to Meadows claim, the predictability and reliability of return water delivery to the system must be very well-considered as a condition to any diversion. Meadows pins its hopes on a Thanksgiving start date. The snowfall history of Mt. Hood does not support this position. The historical variation and norms must be factored into the equation.

V. Making Snow is Not Water Storage.

Meadows has not applied to store water, rather Meadows has made an application to draw water and convert it into snow. "Storage" means the retention or impoundment of surface or groundwater by natural and/or artificial means for public or private uses and benefits. OAR 690-400-0010 (15). Meadows is not seeking to store water by natural or artificial means, rather Meadows is seeking to withdraw water and then convert that water into snow across the landscape.

OAR 690-410-0080 allows storage facilities that would increase water management flexibility and control. However, this snowmaking plan does nothing to increase the flexibility and control over the timing of run-off. Once the snow is made, there is no way for Meadows to control the timing and amount of water delivery back



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into the system. Just as this ski area owner is trying to adjust to climate variation, the living organisms in the Hood River Basin will be trying to adapt to these changes. Additional snowmelt from Mt. Hood Meadows could raise the peak flow, cause temperature drops that would not naturally occur or artificially affect seasonal flow. The ecosystem may not be able to adjust to these changes in flow patterns.

Meadows has suggested that its proposal is encouraged by Water Resources Department rules because the water use would store water using natural means. The fact is that this is not an application to store water, and even if it were, the proposal seeks to use engineered structures to divert the water, run it through storage tanks and then make snow. The piping, water storage tank and snow blowing machines are not natural. The application is not for storage, and it cannot be considered an innovative natural process to store water. The applicants proposal does not involve a natural process, as is encouraged by OAR 690-410-0080(1)(e).

VI. Peak Flows & Aquatic Life

FOMH also has concerns about how this proposal would impact peak flows that are critical for triggering biological responses in fish and for maintaining stream habitat. The instream water rights, which are based on average flows, do not adequately capture the peak flows needed for this essential stream function. Protection of peak flows is especially important in this stream given the critical status of listed fish in the river system. The state would be violating law if it to take any action that would exacerbate this situation. Low flows have already been judged to constrain fish production in the East Fork of the Hood River. *Testimony of Jonathan J. Rhodes, p. 15*. These reductions in winter low flow occur during critical periods when stream icing occurs. *Id.* When steam icing occurs, fish mortality is typically caused. *Id.* The Friends of Mt. Hood requests WRD to obtain direct input from the Oregon Department of Fish & Wildlife, the Columbia River Intertribal Fish Commission and the Oregon Department of Environmental Quality.

Run-off from snowmaking may well increase peak flows in the spring, yet the timing of the run-off may not mean that there will be additional water in the summer months. Water "stored" in the form of snow may well increase peak flows during the spring run-off events. The likelihood of return flows at critical times is far less likely. How does this proposal provide any benefits for fish and ensure that it is not going to harm the minimum streamflow needs in the East Fork of the Hood River?

VII. Conclusion.

While the Friends of Mt. Hood understands Meadows interest in maximize their facilities, we do so with the desire that they approach the project in a balanced and environmentally friendly fashion. The Friends of Mt. Hood values minimal environmental impacts, serious evaluation of options and a sensible approach to this



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project. Vast amounts of resources have been put into protecting instream flows, considering the impact on the upper headwaters from groundwater and surface water withdrawals and protecting the basin from wastewater effluent. Sensible water planning and current safeguards do not permit allocations outside of the terms of the Hood Basin Plan. The Friends of Mt. Hood looks forward to seeing a complete explanation of any legal analysis that ignores the Hood Basin Plan and the current status of over-allocation in the Hood River Basin.

In addition, the Water Resources Department's safeguards call for land use compliance with respect to any new water right. Mt. Hood Meadows does not have permission from the Forest Service for this proposal, and appropriate review is needed to fully inform the WRD's response to Meadows' two new water rights and the two extensions on existing water rights.

The Friends of Mt. Hood looks forward to receiving a reasoned response from WRD to these issues, after informed consultation and specific input from the Department of Environmental Quality, the Oregon Department of Fish and Wildlife, and the United States Forest Service.

Please do not hesitate to call if you have any questions.

Sincerely,

Ralph O. Bloemers, Staff Attorney
Cascade Resources Advocacy Group
Counsel for Friends of Mt. Hood

cc: Doug Jones – United States Forest Service
Oregon Department of Fish & Wildlife

STATE OF OREGON WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

September 25, 1997

TO: Dwight French
CC: FILES
FROM: D Baer

SUBJECT: Approval of applications R-71657 and S-69976

On August 28 1997 an order relating to these files was issued by the commission. It stated, "NOW, THEREFORE, it is ORDERED that Application 69976 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between November 1 and July 31 of up to 0.27 cfs from two unnamed springs, tributary to the East Fork Hood River, subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application."

Jake and I have developed the attached permits, which we believe to be technically correct. Please note however, that the SW permit varies from the order in several ways, including:

- ▶ *Stored water in two reservoirs has been added as a source.*
- ▶ *A maximum volume and a season have been added for use of stored water.*
- ▶ *All references to "Certificate 59677" changed to "Certificate 68457."*

Since the order contained no specific conditions for R-71657, that permit only includes standard, "boilerplate" conditions.

Please review the permits to ensure they correctly represent the department's intent.



FO CHECKLIST

FILE # 69976

REVIEW DATE: 9/3 / 10 / 97

REG. DATE _____

REGISTRATION TO FO CONVERSION

INITIALS: **DB**

COMMENTS _____

In preparing the FO, you should check the following:

1. Y / N Were comments or protests received? If so, from whom and when?
2. _____ On the CC list, verify names and addresses of ALL commentors (regardless of comment date), AND affected landowners.
3. Y / N Have affected landowners been notified?
4. Y / N Is the file lacking a signed oath of accuracy for the application?
5. Y / N Has ODFW asked for self certification of screening condition? If so, write "ODFW CERT" in the permit blank on the front of the file.
6. #35 Verify payment of recording fees (circle the appropriate option) 200 Exam 100 Rec 300 total Reg'd \$385 paid - 50 transfer \$335 to R
 (Transfer to G-12550)
 (1) Issue FO w/permit if fees are paid -- Prepare refund request for excess fees, including standing fees if no protest is filed and no modifications are being made to the PFO
 (2) Issue FO w/o permit if fees are lacking
7. Y / N Is further processing possible? If not state reason: _____
8. _____ Notify applicant of additional information or fees required prior to permit issuance. (SEND CERTIFIED LETTER & use standard wording from M:\...\FO\TOOLS if possible)
9. _____ Assign permit numbers to files with oath, fees, and no protests or other issues
10. Y / N Do the Registration conclusions requires modification? Why? _____
 (If YES, circle FOMOD and one other type below)

FO Type: (circle types)	DENIAL	FO w/o PERMIT	<u>FO & PERMIT</u>	FOMOD
COMMENTS:				MGMT CODES:

Modify FO as needed to:

Initials **DB**

11. _____ Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)
 12. ✓ Include or exclude permit conditions and management codes
 13. ✓ Correct errors (such as POD or POU location (verify from map), Permit format)
- Once FO document is completed:
14. ✓ Save WordPerfect document in M:\...\FO\WEEK 100 & delete duplicates
 15. ✓ Print final draft of document and submit to team leader for review
 16. Y / N Team leader review completed

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF WATER USE)
APPLICATIONS 69976, G12550 AND)
R71657 IN THE NAME OF MEADOWS) FINAL ORDER
WATER COMPANY, HOOD RIVER)
COUNTY, OREGON)

INTRODUCTION AND HISTORY OF PROCEEDINGS

The applicant, Meadows Water Company (MWC), filed three water use applications with the Water Resources Department (Department). MWC is a private corporation formed primarily to submit the water use applications in question as a part of a proposed expansion of the Mt. Hood Meadows ski facilities.

MWC filed application 69976 on June 29, 1989, and an amended application on May 24, 1991, for use of 0.48 cubic feet per second (cfs) of water from two unnamed springs, tributary to the East Fork Hood River. Spring "A" is located 2,730 feet north and 1,000 feet west of the southeast corner of Section 4, Township 3 South, Range 9 East, in Hood River County. Spring "B" is located 2,790 feet north and 990 feet west of the southeast corner of Section 4, T3S, R9E. The place of use will be in Sections 28, 34 and 35 of T2S, R9E, and Sections 2, 3, 4, 5, 8, 9, 10, 11, 14, 15 and 16 of T3S, R9E, WM.

MWC requested the water right for quasi-municipal use for year-round operation of a water supply system at the Mt. Hood Meadows resort facility and proposed expansion. The application contemplates use of water for domestic, commercial, and industrial uses, as well as irrigation, park and recreation facility uses, street washing, lawn and garden irrigation, resort facility uses and fire suppression.

MWC filed application G12⁵50 on May 23, 1991, for use of up to 0.48 cfs (215 gallons per minute, or gpm) from a well for the same uses and place of use requested under Application 69976. The proposed well, which is not yet constructed would be located in the SW1/4 SE1/4 of Section 3, T3S, R9E, 850 feet north and 1,150 feet west of the southwest corner of Section 3.

MWC also filed application R71657 on June 5, 1991, for storage of 2.48 acre feet (af) in two concrete reservoirs for quasi-municipal use. <The source of water would be either the unnamed springs, the proposed well or both.>

Oregon Department of Fish and Wildlife (ODFW), Friends of Mt. Hood (FOMH) and Crystal Springs Water District (CSWD) filed protests against one or more of these applications. ODFW and FOMH asserted potential harm to the public interest, and CSWD asserted potential harm to its senior water rights.

Staff reviewed these applications and the objections. Staff concluded that water was available in the East Fork Hood River above the amount needed to satisfy existing rights and expected demands 95 percent of the time, and that water was available to allocate to the surface water application November 1 through May 30 of each year. Staff determined that the proposed groundwater appropriation would likely be from a confined aquifer that was most likely not in hydraulic connection with the East Fork Hood River. Consequently, use of the well would have minimal potential for impacts on the East Fork Hood River. Staff also concluded that quasi-municipal use was an allowable use in the Hood Basin. In addition, staff concluded that no

substantial public interest issue had been raised by the protestants and that CSWD's senior rights would not be adversely affected by the proposed surface water appropriation. Finally, staff recommended that the Commission approve the applications with proposed conditions. However, staff noted that a Memorandum of Understanding between the Department and ODFW required the Department to recommend that the Water Resources Commission (Commission) refer the matter to contested case hearing because ODFW and the applicant could not agree on permit conditions.

The Department forwarded the applications, protests and recommendation to the Commission. On April 24, 1992, the Commission considered these applications and protests and referred the matter to contested case hearing.

The Department announced the contested case hearing and the opportunity and manner for petitioning for party status May 6, 1992. ODFW was admitted as an interested agency. FOMH and CSWD were admitted as parties. WaterWatch of Oregon, Inc. (WWO), Hood River Valley Residents' Committee (HRVRC) and the Confederated Tribes of the Warm Springs Indian Reservation (Warm Springs Tribes) petitioned for party status and were admitted as parties. The matter was set for hearing for December 8, 1992, before Weisha Mize, Administrative Law Judge (ALJ).

Richard Whitman, legal counsel, and Mark Cushing, co-counsel, of the Portland law firm of Ball, Janik and Novack, appeared on behalf of applicant MWC.

Mike McCarthy, district president, appeared on behalf of protestant CSWD.

Karl Anuta, attorney at law, formerly of the Portland firm Jolles, Sokol and Bernstein, and now of the law firm Sokol and Associates, appeared on behalf of FOMH and HRVRC.

Karen Russell, attorney at law, appeared on behalf of WWO.

Penny Harrison, from the Oregon Department of Justice, appeared on behalf of ODFW.

Chris Eck, of the Bend law firm Karnopp, Petersen, Noteboom, Hubel, Hansen & Arnett, represented protestant Warm Springs Tribes but did not appear at the hearing.

The contested case hearing concluded January 5, 1993. The record was closed at that time except to receive rebuttal testimony from Jon Rhodes and James Lenhart and the parties' post-hearing briefs.

The ALJ issued a Proposed Order on October 6, 1993. MWC, ODFW, and WWO, FOMH and HRVRC together (FOMH *et al.*), filed timely exceptions.

The ALJ evaluated the exceptions and recommended actions on the exceptions. A Commission subcommittee considered the exceptions and directed preparation of a final order consistent with their deliberations to be presented to the entire Commission for adoption.

On recommendation of counsel and prior to final Commission action, Department technical staff prepared supplemental analyses of the hydraulic interference between groundwater and surface water and on water availability for the proposed use. Concurrently, FOMH *et al.* moved to reopen the hearing record to address an amendment of MWC's special use permit application to the Mt. Hood National Forest regarding the expansion of the Mt. Hood Meadow's lodge facilities.

On January 25, 1995, the Commission subcommittee remanded the proposed order and directed the hearing record be reopened for the limited purpose of admitting the new staff work, evidence on changes in water use needs resulting from the amendment to the special use permit, and argument on certain limited questions raised by the materials admitted after reopening the record. The subcommittee further directed that a new proposed order be issued which reflected the subcommittee's earlier deliberations on the exceptions, as well as any necessary modifications resulting from the additional evidence in the record. The parties were to be given an opportunity to file exceptions to those factual findings, legal conclusions or elements of the revised proposed order which had substantially changed.

After reviewing the new evidence and argument submitted, the ALJ issued a revised proposed final order on March 10, 1997. ODFW, FOMH *et al.*, MWC and the Warm Springs Tribes filed timely exceptions.

A Commission subcommittee met on May 19, 1997, to review a draft of the staff report discussing these exceptions and consider argument presented by the parties. The subcommittee issued a memorandum to the full Commission on May 21, 1997, outlining its recommendations on the exceptions.

During the May 30, 1997, Water Resources Commission meeting, the Commission requested argument by the parties related to the public interest considerations posed by sensitive fish stocks. The Commission then directed the Department to issue a final order which reflected the findings of the Commission subcommittee, staff recommendations contained in the staff report, modifications agreed to by all parties and alternative conditions proposed by the applicant.

Having incorporated the changes required by the Commission, this final order is now issued.

RULING ON MOTION TO DISMISS

In its post-hearing brief, FOMH *et al.* moved to dismiss the pending applications on the basis that permits may not be issued for unclassified uses. For the reasons set out below in the body of this Order, the Motion is DENIED.

RULING ON BURDEN OF PROOF

A determination of which party has the burden of proof is necessary only when insufficient evidence exists to make a determination on an issue. Here, sufficient evidence was presented to make each necessary factual and legal finding based on the preponderance of the evidence. Accordingly, a determination of who had the burden of proof is unwarranted.

MOTIONS TO SUPPLEMENT RECORD

ODFW filed a Motion to Supplement the Record concurrently with filing its exceptions, on November 5, 1993. ODFW attached an affidavit and additional data including direct flow measurements and gage readings.

On November 24, 1993, MWC filed a memorandum in opposition to ODFW's motion and attached supporting data and affidavits.

On December 6, 1993, ODFW filed a Motion to Supplement the Motion to Supplement the Record with a supporting affidavit and data.

The ALJ determined that while the record supported the findings, conclusions and determinations in the Proposed Order, it would be in the best interests of the parties and the process to admit the proffered data rather than to further delay the proceedings pending a probable motion for reconsideration. The motions were granted and the affidavits and data were admitted into the record. The parties were directed to file argument addressing what effect, if any, the additional data submitted would have on the water availability analysis for Application 69976, calculated at a 50% exceedence level.

ODFW, FOMH *et al.* and MWC submitted arguments pursuant to the above ruling during January 1994. ODFW misunderstood the meaning and extent of the prior ruling admitting the data submitted with its motions to supplement the record, and submitted further measurements and data, and discussion of that new information, with its argument. The "new" data and related argument filed by ODFW on January 11, 1994, are not admitted into the record.

Staff reviewed the data and arguments accepted, and determined that there was no foundation for revision of the water availability analysis or for denial of the applications based on the additional data presented. The Commission subcommittee agreed.

The protestants' arguments were not persuasive for several reasons. ODFW argued that the record contained insufficient evidence to determine whether the instream water right was being met from November to July. The Department's revised water availability analysis, using 50% exceedence, showed that water was available from November 1 through July 31 for the proposed uses. The lack of available water from August through October does not affect water availability the remainder of the year and does not involve the period of use allowed in the permit.

ODFW argued that not enough actual flow data was available to verify the results of theoretical models in predicting periods of available flows. However, staff believe the three years of flow data used to create the model are sufficient to reliably predict available flows. The 50% percent exceedence standard, as applied here, means that there is sufficient water to satisfy existing rights and the proposed use at least 50% of the time.

The water availability model established that the instream right and all other senior rights, are met or exceeded at least 50% of the time between November 1 and July 31. The water allocation policy and the 50% exceedence standard do not guarantee that water will be available for all uses all of the time, or that the instream right will be met 100% of the time. Department staff determined that water is available 50% of the time, even though there will be times when the watermaster will be regulating water use to satisfy senior instream and out-of-stream rights.

ODFW also asserted that information from the Oregon Climate Service demonstrated that 1993 was not a "drought" year. Therefore, ODFW argued, if the streamflow measurements in 1993 demonstrated that the instream right was not being met, then that right was routinely not being met. However, the 1993 precipitation year was below normal, and more importantly, the specific monthly precipitation pattern was unusual. For this reason, conclusions about monthly conditions should not be drawn from annual averages.

ODFW's relatively limited number of measurements were taken during months with very low precipitation. Consequently, the streamflows were not representative of long-term flow conditions. Miscellaneous streamflow measurements represent the flow only at the moment they are taken. It is extremely difficult to accurately extrapolate long-term flow conditions from these

snapshots in time. Additionally, such miscellaneous measurements must be viewed in the context of immediate and past precipitation conditions. ODFW's measurements were taken during years with below-average rain and snowfall. Accordingly, below normal streamflow would be expected and the established instream right would not be expected to be met.

In summary, the data and analysis submitted by ODFW do not require a change in the factual determination on water availability.

NEW DATA ON WATER AVAILABILITY

It was previously determined that surface water was available for appropriation from November 1 through May 30. Recalculation using the most current methodology shows that surface water is available at the 50% exceedence rate between November 1 through July 31. This new analysis was admitted into the record at the direction of the Commission subcommittee.

In calculating water availability, the Department hydrologist used the full face value of all water rights with the exception of those for municipal and irrigation uses. Where municipal rights had no diversion structure in place, and thus no way to exercise the right, the right was not considered at all. For irrigation rights, the 1990 USGS consumptive use calculations for irrigation use in the Hood Basin were used. The USGS consumptive use calculations are revised every five years.

There is no reason to discount the validity of the current Department staff analysis, which was done in a manner consistent with all water availability analyses done by staff and relied on in all application reviews for both out-of-stream and instream uses. No new arguments or facts were presented in the parties' response to the new staff analysis which would require or justify disregarding the water availability analysis or which show by a preponderance of the evidence that it is in error.

JUDICIAL NOTICE TAKEN

Notice is taken of two tables compiled by Department staff in providing technical assistance to the ALJ. Table 1 is a comparison of watershed characteristics for the East Fork Hood River to watershed characteristics for gaged watersheds in the Hood Basin. Table 2 is a comparison of 50% exceedence streamflows estimated for the East Fork Hood River, the Hood River and the Dog River. The parties were notified of the taking of judicial notice of the tables, and a copy of the tables was provided to the parties on June 8, 1994.

Notice is taken of the July 27, 1993, Commission adoption of amendments to OAR Ch. 690 Div. 400. The rule modifications direct that the 80% exceedence standard in OAR Ch. 690 Div. 400 applies only to applications filed after July 17, 1992. Water availability determinations for all applications filed prior to that time are to be calculated on a 50% exceedence standard.

Notice is taken of House Bill 3234, signed into law on August 4, 1993, and effective on passage. This bill amended ORS 536.295 to provide that an application pending before the Commission for a quasi-municipal use of water before January 1, 1993, shall be considered an application for a classified use under ORS 536.340 if two requirements were met. At the time the application was submitted, the basin program must have identified municipal use as a classified use and the Commission must determine that the proposed use would qualify as a quasi-municipal use. The Commission is authorized to determine by rule the specific uses permitted within a classified use.

Notice is taken of OAR Ch. 690, Div. 500, relating to Basin Program definitions, and of the Commission's January 31, 1996, adoption of definitions in OAR Ch. 690 Div. 300. In pertinent part, OAR 690-300-010(40) defines "quasi-municipal uses" as those uses usual and ordinary to municipal water use and provides that quasi-municipal rights shall not be granted the statutory municipal preferences of ORS 537.190(2), 537.352, 537.410(2), 540.510(3), 540.610(2-3), or those preferences over minimum streamflows designated in a basin program.

FINDINGS OF FACT

GENERAL

1. The headwaters of the East Fork Hood River originate high on the southeast side of Mt. Hood. The East Fork Hood River flows in a northerly direction, joining the mainstem of the Hood River at Dee. The mainstem Hood River ultimately flows into the Columbia River at the town of Hood River.
2. The East Fork Hood River is fed in its upper reaches by small tributary streams, springs, glacial and snow melt, and discharge of groundwater. Groundwater contributes a base flow of approximately 3.83 cfs in the area above Sahalie Falls.
3. The Mt. Hood Meadows ski facility operates under a revocable permit issued by the United States Forest Service. A proposed expansion has been approved by the Forest Supervisor and is currently under appeal.
4. The Mt. Hood Meadows ski facility holds water right certificate 48445, priority date February 2, 1973, for 0.21 cfs for ski facility use and 0.01 cfs for fire suppression use. The source of water for this right is a spring located 2,370 feet north and 1,000 feet west from the southeast corner of Section 4, T3S, R9E. Measured monthly output of the spring averages between 190 and 225 gpm (0.42 and 0.5 cfs). The spring is a source of water for the headwaters of the East Fork Hood River.
5. The entirety of the spring output is diverted at the spring via an infiltration gallery at elevation 5,680 feet above sea level. Some of the diverted water flows through a meter to the water treatment facility and from there to the ski lodge facilities. The remainder of the water flows into a 50,000 gallon fire reservoir. Overflow from the reservoir flows back into the East Fork Hood River at elevation 5,560 feet.
6. The average amount of water going daily to the treatment facility and lodge between September and December, 1992 was 9,422 gallons per day (gpd) (0.01 cfs). During that same period, the water which returned to the East Fork Hood River as reservoir overflow averaged between 273,600 and 316,673 gpd (0.41 and 0.49 cfs).
7. Use of water at the lodge facilities is currently highest during the winter ski season. This pattern is expected to continue even with the proposed expansion.
8. A small portion of the water diverted to the lodge facilities is used between May and October for erosion control, also referred to as slope stabilization or irrigation. Additional unauthorized erosion control withdrawals are made from a number of other small streams in the ski facility area. Current total water usage for erosion control is approximately 18,000 gallons per day (0.03 cfs). This amount is expected to double with the proposed expansion. Use of water for erosion control represents between 25-35% of total summer water usage.

9. Water for uses other than erosion control is treated at the sewage treatment plant and returned to the East Fork Hood River under a permit from the Oregon Department of Environmental Quality (DEQ). The average outflow from the sewage treatment plant is 9,480 gpd, calculated on an annual basis.

10. At present, approximately 100 gpd is diverted from the East Fork Hood River for use in the chlorine contact chamber at the sewage treatment plant. Assuming approval of application 69976 and issuance of a permit, water for the chlorine contact tank would be diverted from the springs.

11. Dehumidifier units in the Mt. Hood Meadow's North Lodge remove approximately 1,200 gallons of water (0.004 cfs) from the air daily during the ski season. This water currently goes to the treatment plant. This water could, instead, be used for the chlorine contact tank in the sewage treatment plant, for dilution flows or for irrigation.

12. After undergoing the requisite amount of processing, the sewage treatment plant discharges treated effluent into the East Fork Hood River twice daily in the winter and once daily in the summer for two to three hours at a time. This form of treatment process and discharge is referred to as batching. The rate of discharge at the time of the contested case hearing was set at 30 gpm.

13. Effluent discharges made in this manner cause slightly greater fluctuations in flow levels in the East Fork Hood River than the normal diurnal fluctuations and do not mirror the timing of those natural diurnal fluctuations.

14. Releases up to 30 gpm for 2 to 3 hours twice daily in winter and once daily in summer have not impacted the fisheries below Sahalie Falls due to flows from tributaries and groundwater base flows between the sewage treatment plant and Sahalie.

15. The DEQ permit requires the effluent discharge to be made at a ratio of 1 part effluent to 20 parts dilution flow in the East Fork Hood River, computed on total daily flows.

16. The sewage treatment plant operations and releases can be regulated to meet the necessary dilution flow ratio and substantially reduce the effects of batching, and can be done at times when little or no diversion is occurring upstream which would further reduce available dilution flows in the East Fork Hood River. Discharges can also be adjusted to mitigate for impacts of groundwater pumping on flows in the East Fork Hood River. A condition has been added to the proposed groundwater permit to require operation of the sewage treatment plant in this manner.

DEMAND

17. Testimony and evidence presented by MWC at the hearing, as well as figures submitted in April 1996, demonstrated a reduction in the peak demand requirements from the original expansion proposal. However the change does not warrant alteration of water use proposed to be allowed in these permits.

18. Average peak winter demand after completion of the proposed expansion is projected at 309,600 gpd (0.48 cfs). Of this 0.48 cfs peak demand, 0.21 cfs will be satisfied by MWC's existing right, leaving 0.27 cfs actually needed to meet peak winter demand.

19. The projected peak demand between April and October is 0.32 cfs. Surface water is available for MWC's use in April through July. Groundwater is available August through October. MWC's existing water right will satisfy 0.21 cfs of the 0.32 peak summer demand. Therefore, the total amount of additional water needed to meet peak summer demand is 0.11 cfs.

UNPERMITTED USE

20. The U.S. Forest Service (USFS) stated in a June 28, 1991, letter to MWC's general manager that until Mt. Hood Meadows Ski Area was able to obtain a water right for irrigation, the provisions of the USFS's 1897 Organic Act and the 1960 Multiple-Use Sustained Yield Act allowed water use for irrigation or erosion control work at the ski facility.

21. The Water Resources Department's policy is not to take any enforcement action against unpermitted uses if a reserved right claim is made, pending resolution of the claim.

22. A copy of the June 28, 1991, USFS letter was sent to the watermaster but neither the USFS nor MWC submitted a formal claim of a reserved right for irrigation or erosion control use at the Meadows Ski facility.

WATER AVAILABILITY

23. Flow levels in the East Fork Hood River and its tributaries are impacted primarily during the irrigation season by exercise of existing irrigation rights, the majority of which were issued prior to 1917.

24. The rules in effect when MWC's application was filed required water availability determinations to be based on a 50% exceedence standard.

25. Water availability was calculated in 1995 by the Department hydrologist. The new analysis showed surface water is available for this use at the applicable 50% exceedence standard in all months except August, September and October. Additionally, groundwater is available and may be used from August through October under the permit issued on application G12550.

26. The water availability analysis done by Department staff for this application is consistent with the requirements of the Commission's allocation policies and principles in OAR Ch. 690 Divisions 400 and 410.

27. FOMH submitted a contradictory water availability analysis developed using the Dog River as a model for projecting available flows. However, use of the Dog River as a model is inappropriate due to differences in elevation, precipitation, and subbasin area between the Dog River and the East Fork Hood River.

28. Over the seven or more years prior to 1994, Oregon experienced lower than historic average precipitation and increasingly low flows. The Governor approved a drought declaration in Hood River County on October 3, 1992.

29. Sufficient quantities of water are available in the East Fork Hood River, considering the needs of all existing uses, to allocate up to 0.48 cfs for use under a permit issued on Application 69976 between November 1 and July 31 of each year.

30. A permit issued on Application 69976 will be limited to the amount of water actually shown to be necessary to satisfy peak demand, or for up to but no more than 0.27 cfs.

INSTREAM WATER RIGHT

31. The Commission established a minimum streamflow for the East Fork Hood River by administrative rule on November 3, 1983, for support of aquatic life and pollution abatement.

32. The minimum streamflow was subsequently converted to an instream water right, evidenced by Certificate 59677, pursuant to ORS 537.346 and OAR Ch. 690 Div. 77.

*superceded by
68457*

33. The instream right is for the following flows (in cfs) measured at the confluence of the East Fork Hood River with the Middle Fork Hood River:

Jan.-March: 100 April-June: 150 July-Sept.: 100 Oct.-Dec.: 150

34. ODFW took flow measurements and staff gage readings near the mouth of the East Fork Hood River on eight days between August 4 and November 9, 1992. As measured, the actual flows in the East Fork Hood River were insufficient to satisfy the instream water right on each of those eight days. Flows measured on November 9, 1992, were 142.6 cfs, which most closely approached the instream right flow level for that month.

35. ODFW also took staff gage readings without corresponding flow measurements five days a week for the weeks from August 5 through November 15, 1992. A rating curve was developed from the eight staff gage and flow measurements and used to develop predicted flows for days on which gage readings only were made. Predicted flows for the East Fork Hood River were not sufficient to satisfy the instream water right for any day in August on which gage readings were taken, for all but the last few days of September, or for days in October through November 15 on which readings were taken.

36. The flows measured by ODFW during the summer and early fall of 1992 represented drought conditions and should not be considered reliable predictors of longer-term flows in average water years.

37. In an average water year, the flows in the East Fork Hood River are sufficient between November 1 and July 31 to satisfy the instream water right.

38. If the instream water right is not being met, as confirmed by readings from a measuring device at or near the mouth of the East Fork Hood River, all junior users, including MWC, are subject to being regulated. Regulation can be a directive to reduce the amount of water appropriated or to cease diversion altogether.

AQUATIC LIFE IN EAST FORK HOOD RIVER

39. Coho salmon, resident and searun cutthroat trout, fall chinook and winter steelhead are known to be present in or utilize the East Fork Hood River. No fish are reported in the portion of the East Fork Hood River above Sahalie Falls, which is located at river mile 26.

40. The Columbia Basin System Planning Salmon and Steelhead Production Plan, Hood River Subbasin, (September 1, 1990), lists a number of physical and environmental constraints limiting salmonid production. The list of major constraints does not include existing permitted or proposed uses by MWC. The plan does not refer to MWC's authorized uses.

41. The East Fork Irrigation District, diverting upstream from the mouth of the East Fork Hood River, is the largest diverter of water for irrigation use on the East Fork Hood River. Its rights all precede the instream right in priority. Until 1996, the East Fork Irrigation District's diversion was unscreened since its creation in 1892, with the exception of the 1964 irrigation season. Both the size of the diversion and the fact that it was unscreened made it one of the primary human-induced constraints on fish production in the East Fork Hood River.

42. A number of tributary streams contribute additional inflow to the East Fork Hood River between the MWC's existing and proposed points of diversion and the East Fork Irrigation District diversion.

43. The use of water by MWC as proposed and as further conditioned would neither significantly impair the fisheries management and production goals and activities presented in the Subbasin Plan, nor impact or adversely affect the instream water right or the fisheries habitat in the East Fork Hood River.

44. Conditions placed on the groundwater right will result in additional flow returning to the East Fork Hood River. This increased flow is expected to improve conditions for downstream fish resources. Thus, these rights will lead to a net benefit to both the applicant and to important public values.

CONSUMPTIVE USE BY MWC

45. The Department calculates the average rate of consumption for municipal use (the amount diverted and not returned to the stream) at 50% to 70% of waters diverted. The Department calculates the average rate of consumption for irrigation use at 50%.

46. Excluding water diverted for irrigation use, MWC's present average consumption ranges between 3% and 10%.

47. Assuming a consumptive rate of 50%, use of 36,000 gpd (0.055 cfs) of groundwater for erosion control would result in consumption of 18,000 gallons (0.0278 cfs) per day. The remaining 36,000 gpd of groundwater would be used within the lodge water treatment and delivery system and processed through the sewage treatment plant. 90 to 97% of this water would be returned to the East Fork Hood River. Cumulatively, approximately 70% of the groundwater pumped would return to the stream, resulting in a net increase in flows in the reach below the sewage treatment plant during summer low flow periods.

48. If MWC diverts the full 0.27 cfs from the East Fork, 10% consumption reduces the flows in the East Fork Hood River by 0.03 cfs, with 0.24 cfs being returned to the stream at the sewage treatment plant.

49. If MWC diverts the maximum 0.48 cfs from the East Fork under existing and proposed rights, 10% consumption reduces flows in the East Fork Hood River by 0.048 cfs (31,021 gpd) and returns 0.43 cfs at the sewage treatment plant.

50. If MWC diverts 0.48 cfs under existing and proposed surface rights and uses up to 0.055 cfs of surface water for erosion control, 0.3825 cfs would be returned to the river at the sewage treatment plant.

GROUNDWATER

51. Application G12⁵250 proposes use of groundwater from a well yet to be constructed. The well is proposed to be drilled at the location of the Meadows geothermal well 840 feet horizontal distance from the East Fork Hood River, as measured at ground surface, and drilled at least to the depth of 1,972 feet.

52. The Meadows Geothermal well was drilled to a depth of 1,972 feet, and cased and sealed to a depth of 164 feet below ground surface. There is an uncased interval below the casing of between 1,001 and 1808 feet which is open to one and likely more aquifers.

53. The geologic/lithologic makeup of Mt. Hood is a series of relatively impermeable volcanic layers interspersed with materials which can be aquifers of varying transmissivities and yields. The vertical permeability of and between these layers is minimal to nonexistent.

54. The Dames and Moore study prepared for ODFW posited three general aquifer zones in Mt. Hood. The upper zone was felt to be an unconfined, water table-type aquifer. The aquifers in the middle and lower zones are expected to be confined to varying degrees with slow recharge and discharge rates.

55. Based on information from the geothermal well log, a map showing surface features, a map showing geologic features and composition of the Mt. Hood area, and correlation of that data with lava flows appearing as surface outcroppings, uncontradicted evidence demonstrated a number of different aquifers separated by relatively impermeable layers termed marker beds or marker units.

56. Moving vertically from ground surface downward, the first aquifer encountered is the water table aquifer, which is underlain by marker unit 2. Marker unit 2 is approximately 50 feet thick, extending from 98 to 148 feet below land surface at the geothermal well, and outcrops, or emerges from the ground, in the area of Umbrella Falls, approximately 1,600 feet from the geothermal well. Some of the water in the aquifer above marker unit 2 contributes to the flow of the East Fork Hood River at Umbrella Falls.

57. Between marker units 2 and 3 are one or more lower confined aquifers. Marker unit 3 is approximately 53 feet thick, extending from 167 to 210 feet below land surface at the geothermal well, and outcrops in the area of the sewage treatment plant about 4,800 feet from the geothermal well.

58. Marker unit 4 is approximately 53 feet thick, extending from 236 to 289 feet below land surface at the geothermal well, and outcrops at Sahalie Falls, 1 1/2 miles from the geothermal well. Basalt in marker unit 4 was first encountered in the geothermal well at 269 feet below land surface. Some of the water in the aquifer or aquifers between units 3 and 4 discharges as flows in Sahalie Falls. In the area of the main lodge at the Mt. Hood Meadows Ski Facility, these units may extend to the west as much as two miles and be as wide as one mile.

59. The relative impermeability of these volcanic layers, in conjunction with the area over which these units extend, indicates that at least for the area described, the units act as confining layers, which is consistent with a determination of the existence of confined aquifers in the lower zones.

OAR CHAPTER 690 DIVISION 9 REVIEW

60. For the purposes of permitting and distributing groundwater, OAR 690-09-040 requires the Department to determine the potential for substantial interference with surface water supplies.

61. OAR 690-09-040(1) requires the Department to first determine, based on the best available information, whether a well produces water from a confined or unconfined aquifer. If the aquifer is confined, the Department must determine whether the aquifer is hydraulically connected with the surface water source.

62. A confined aquifer is one in which the water is under sufficient hydrostatic head to rise above the bottom of the overlying confining bed. If water rises above the bottom of the casing of a

well which is cased and sealed only to the confining layer, it indicates the well is drawing from a confined aquifer.

63. Marker unit 2 appears to be a confining layer overlying the aquifer(s) below it. The bottom of marker unit 2 is at 148 feet below land surface. The Meadows geothermal well is cased and sealed through marker unit 2. The water in the Meadows geothermal well rose between 66-69 feet above the bottom of the casing, which is at 164 feet below land surface. This indicates that the water in the aquifer or aquifers entering the uncased interval below the casing was under sufficient hydrostatic head to rise above the bottom of the overlying confining bed into which the well was cased and sealed.

64. The preponderance of the evidence supports the conclusion that the lower aquifers, including the aquifer tapped by the Meadows geothermal and proposed wells, are confined.

65. Where the aquifer is determined to be confined, OAR 690-09-040(1) further requires the Department to determine, based on the best available information, whether the aquifer is in hydraulic connection with the surface water source.

66. An aquifer is hydraulically connected to a surface water source if water can move between the surface source and the aquifer. Water movement can be in both directions, or from the aquifer to the surface water body at a natural discharge point.

67. If a proposed well would produce water from an aquifer which is determined to be in hydraulic connection with the surface water body, the Department is directed to assume that the potential for the well to cause substantial interference with the surface water source exists if the proposed well falls within one of four categories listed in OAR 690-09-040(4)(a-d).

68. OAR 690-09-040(4)(a) provides that if the horizontal distance between the point of appropriation at the proposed well and the nearest surface source is less than one-quarter mile, the proposed well is assumed to have the potential to cause substantial interference with the surface source. The proposed point of appropriation for the MWC well is located a horizontal distance of 840' from the East Fork Hood River, therefore, the potential for substantial interference is assumed.

69. Substantial or undue interference is defined in OAR 690-08-001(8). In the context of this groundwater application, substantial interference would be found if groundwater pumping caused the spread of the cone of depression in the aquifer to intersect with the East Fork Hood River. The nearest point at which the cone of depression would intersect with the East Fork Hood River is near Sahalie Falls. Substantial interference would also be found if the ground water gradient and flow were reduced resulting in a reduction in surface water availability so that any senior water right could not be satisfied.

70. Under the conditions proposed, the probable source for the well is from aquifers between marker units 3 and 4, which might result in reduced seepage or discharge in the area of Sahalie Falls. If the proposed well is ultimately drilled into the aquifer(s) below marker unit 4 and cased and sealed into the marker unit 4 basalt layer, any effects would be outside the ski facility area, two and more miles distant from the point of appropriation.

71. The effects of pumping groundwater are dampened over time and distance. While pumping during the summer will eventually reduce the flow that would otherwise reach the stream, the reduction in groundwater discharge at the point of hydraulic connection approaches the average pumping rate spread over the entire year. Thus, pumping at the rate of 0.11 cfs during half the

year would result in a net loss to the stream, on average, of approximately 0.055 cfs, year round, at the point of aquifer discharge.

72. The discharge at the sewage treatment plant of close to 90-97% of the groundwater pumped and used at the lodge facilities will enhance streamflow during summer low flow periods.

73. The proposed permit conditions reduce the likelihood of and potential for impacts from groundwater-surface water interference.

74. The aquifer from which the Meadows geothermal well draws or the proposed production well will draw is not the source for the Stringer Meadows wetlands. The source of water for the Stringer Meadows wetlands is water from the water table aquifer, subsurface or storm flow, or a combination of water from those sources.

CRYSTAL SPRINGS WATER DISTRICT

75. Crystal Springs is located approximately 10 miles from Mt. Hood, on a hillside two or three hundred yards from the East Fork Hood River.

76. Crystal Springs Water District (CSWD) holds Certificate 10115 for 1 cfs for group domestic use with a priority date of 1930, permit 29377 for 2.65 cfs for group domestic use with a priority date of 1964, and permit 34196 for 3.5 cfs for municipal use with a priority date of 1969. The source of water for these rights is Crystal Springs. Approximately 1,700 connections receive water from the distribution system.

77. The flow at the Crystal Springs fluctuates seasonally and is lower during the winter months and higher in the spring and summer. Total flows available at the Springs have diminished over the years, and have further been affected by the drought-like conditions prevailing in the 7 years prior to 1994. The collection box at the spring has never been cleaned nor has the spring been reconditioned to improve the flow at the spring. However, demand on the system has apparently never exceeded the available flow nor has the full amount of CSWD's water right been required.

78. The East Fork Hood River is not the source of water for Crystal Springs. The proposed use will not impact the Crystal Springs Water District's senior rights.

QUASI-MUNICIPAL

79. Municipal uses include, but are not limited to, domestic, commercial, industrial, fire protection, irrigation and other water uses in park and recreation facilities, irrigation of lawns and gardens, and street washing. OAR 690-300-010(29).

80. Quasi-municipal use is defined in OAR 690-300-010(40) as uses which are usual and ordinary to a municipal water supply system. The statutory preferences extended to municipalities are expressly not extended to quasi-municipal users. Non-municipalities with municipal-like uses may apply for a quasi-municipal use permit.

81. ORS 537.352 provides that where an instream water right is established by conversion of a minimum streamflow previously set by administrative rule, later-established municipal rights shall not have precedence over such converted instream rights.

82. The Department and MWC agreed that MWC's proposed quasi-municipal permit shall not be entitled to any preference over Instream Water Right Certificate 59677 nor shall this instream water right be subordinated to MWC's proposed quasi-municipal use. 68457

83. When the applicant is not a municipality, it is the nature of the proposed uses and the nature of the applicant that determines qualification for the quasi-municipal appellation.

84. Commission policy and practices and the municipal-like nature of MWC's proposed uses indicates that quasi-municipal is the most appropriate label for these uses.

ECONOMIC DEVELOPMENT OF WATERS INVOLVED

85. The Mt. Hood Meadows Ski Facility (MHMSF) presently employs 650 seasonal and 50 year-round employees, paying approximately \$2.3 million annually in salary. In addition, MHMSF pays approximately \$145,000 in property tax, \$125,000 in payroll tax and \$186,000 in U.S. Forest Service fees. Of these USFS fees, 25%, or \$46,500, is dedicated to roads and schools in Hood River County.

86. The fishery on the East Fork Hood River generates an estimated net economic value to the state of \$706,636, and an estimated annual state level income of \$1,061,414.

TREATY RIGHTS

87. The Warms Springs Tribes' treaty fishing rights have been recognized in U.S. v. Oregon. However, the conditions imposed by the Order provide adequate protection of those rights.

CONCLUSIONS OF LAW

1. OAR 690-410-070 was adopted after the instant applications were referred to contested case hearing. Applications filed or referred to contested case hearing prior to its adoption are not expressly excluded from consideration under this rule.

2. OAR 690-410-070(2)(a) provides that in general, applications for out-of-stream uses shall be approved only during months or half-month periods when the allocations will not contribute to overappropriation. Some exceptions to this provision are allowed.

3. "Overappropriated," as applied to surface water, is defined in the December 7, 1990 version of OAR 690-400-010 as a condition of water allocation in which, for a specified period, the quantity of surface water available an average of four out of five years is not sufficient to meet the expected demands from all water rights during the specified period. Water availability determinations made under this version of the rule were done on a 50% exceedence basis.

4. "Overappropriated" is defined in the July 17, 1992, version of OAR 690-400-010 as a condition of water allocation in which the quantity of surface water available during a specified period is not sufficient to meet the expected demands from all water rights at least 80% of the time during that period. OAR 690-400-010(11) was amended July 27, 1993, to include the following provision: The standards for determining over-appropriation described in paragraph (A) of this subsection shall apply to water availability determinations for permit applications submitted after July 17, 1992. OAR 690-400-010(11)(b).

5. If a surface water source is found to be overappropriated for a month or half-month period, OAR 690-410-070(2)(a) prohibits further allocations of water to new uses unless the public

interest in those uses is high and the uses are conditioned to protect instream values. Further allocations may be made for those month or half-month periods when water is determined to be available. Daily flow data is used to determine whether water is available in monthly or half-monthly increments for a proposed use.

6. Under the 50% standard applicable here, water is available in the East Fork Hood River for allocation to MWC between November 1 and July 31. Issuance of these permits as conditioned below would not be in conflict with the Commission's water availability and water allocation policies and rules.

7. Contrary to FOMH's claim, diversion and use of less water than the full amount to which a water right holder is entitled by permit or certificate does not constitute waste. Waste is the continued use of more water than is needed to satisfy the specific beneficial uses for which a right is granted. OAR 690-400-000(16).

8. Use of water for erosion control under the instant applications is an allowed quasi-municipal use. The watermaster may regulate this use at times when senior rights, including the instream right, are not satisfied.

9. MWC is not authorized to divert water for erosion control from any source not authorized under these quasi-municipal permits.

10. Due to insufficient funding and staff, the watermaster cannot constantly monitor the flows in the East Fork Hood River. This does not constitute a failure to secure the maximum beneficial use and control of the state's water resources or to protect all vested and inchoate rights to the waters of this state. It is not grounds for denial of these applications.

11. Quasi-municipal use is a restricted subset of municipal use which is not entitled to the municipal exceptions or privileges available to municipal use under ORS 537.190(2), 537.352, 537.410(2), 540.510(3), 540.610(2-3), or any other preferences over minimum streamflows designated in the applicable basin program.

12. The determination that quasi-municipal use is an approvable use in the Hood Basin is authorized by ORS 536.295, by the definition of quasi-municipal in OAR 690-300-010(40) and by OAR Ch. 690 Div. 500.

13. A proposed use need not include overnight lodging facilities to constitute a quasi-municipal use.

* 14. The two reservoirs applied for under application R71657 are part of the lodge's water supply and delivery system and do not require a separate permit. Nevertheless, a permit having been applied for and there being no factual or legal reason to deny it, application R71657 should be approved.

15. As modified by the conditions proposed in this order, use of water under applications 69976 and R71657 will not impair or be detrimental to the public interest. The public interest presumption applicable to these applications under ORS 537.153 has not been overcome.

16. A determination that a proposed well has the potential to cause, or will cause, substantial interference, as defined by rule, does not require denial of the permit. However, in order to determine whether the proposed use will ensure the preservation of the public welfare, safety and health, further review must occur. The likelihood of actual interference may be determined to be

minimal as demonstrated by the particular facts of the case, or may be reduced by permit conditions modifying the manner, timing or other elements of the proposed use.

17. As modified by the conditions proposed in this order, use of water under groundwater application G12550 will ensure the preservation of the public welfare, safety and health. The public welfare, safety and health presumption applicable to this application by ORS 537.621 has not been overcome.

18. The use of water as proposed in these applications and as further conditioned or limited herein will not harm, impair or have a significant adverse effect on the public interest or on senior rights.

19. The use of water as proposed in these applications and as further conditioned or limited herein is consistent with the considerations outlined in ORS 537.170(8), OAR Ch. 690 Division 300, OAR 690-400-010, OAR 690-410-070, the Hood Basin Program, and other applicable statutes, rules and policies governing permit issuance, water allocation and water use.

OPINION

QUASI-MUNICIPAL USE

A major point of contention between the parties was whether a permit for quasi-municipal use could be issued in a basin which lacks a specific classification for that use. Although ORS 536.300, 537.170(8)(a) and 537.625(3)(a) list beneficial uses, these are not the only allowable uses of water in Oregon. ORS 537.170(8)(a) and 537.625(3)(a) also refer to any other beneficial use to which the water may be applied. The legislature did not provide a statutory laundry list of all possible beneficial uses of water, and instead established broader, more general statutory guidelines to be further developed by the Commission.

Passage of ORS 536.295 removed any question or ambiguity about whether the Commission may approve an application for quasi-municipal use, and whether quasi-municipal use is an allowed use, in a basin where the basin program references only municipal use in its classifications.

WATER QUALITY STANDARDS

Another point of disagreement between the parties was whether it was appropriate or even lawful for questions of water quality and possible impacts on wetlands to be considered in relation to these applications.

DEQ has primary responsibility for administration and enforcement of its statutes and administrative rules regarding water quality and pollution, including permits issued under its jurisdiction. The Commission does not determine whether DEQ can issue a water quality permit or if DEQ is properly monitoring and regulating a permitted use.

However, the Commission has complementary authority to require compliance with DEQ's water quality statutes and rules as a condition of water use and to consider potential impacts to water quality when considering a proposed use under its public interest analysis. This analysis requires the Commission to consider conserving the highest use of water for all purposes. In this instance, there is an existing instream water right established for the purposes of fish life and pollution abatement. Both uses require undegraded water quality. Consequently, consideration of water quality impacts from a proposed use is within the Commission's jurisdiction.

Evidence in the record establishes that MWC is properly operating under its DEQ permit. No evidence demonstrates that MWC is likely to violate its permit in the future or that DEQ will fail to adequately monitor and regulate use under the permit or enforce its statutes and administrative rules.

QUANTITY OF WATER RIGHTS

Another significant issue is whether an application should grant the amount of water requested or the amount needed. Water rights are issued for diversion and use of "up to" a certain amount of water. Commonly, less than the full amount of a water right is actually diverted and put to beneficial use. The "up to" amount establishes a maximum amount which may be developed during the permit stage, and provides some flexibility to respond to changing circumstance once the right is perfected.

FOMH argued that granting a permit for more than the needed amount constituted waste. In this case, the amount of water requested in the original and amended applications was greater than the actual amount for which need was demonstrated. As a result, and due in part to the quantity available under the applicant's existing right, the amount proposed to be allowed is 0.21 cfs less than requested from surface water in winter, and 0.37 cfs less than requested from groundwater in the summer. However, FOMH confuses the potential for use of up to the maximum allowed with actual appropriation where the ability to put the entirety of the appropriation to beneficial use is lacking. The former is appropriate; the latter constitutes waste.

The opponents in this case further argued that if water rights on a stream were regulated at any time, the stream is overappropriated and further allocation is improper. However, the water allocation policy does not require such a stream closure. Rather, the policy requires a water availability determination based on the best available evidence following adopted Commission methodologies, and denial for those periods when it is determined that water is not available to meet expected demands by existing uses and proposed uses under consideration. In this case, surface water was found to be available between November 1 and July 31 each year based on the 50% exceedence standard. The finding of water availability does not ensure against possible regulation to protect more senior water rights, but it is intended to provide a reasonable estimate of expected flows over time.

UNPERMITTED USE

The opponents also asserted that the Commission should deny these applications because MWC diverted and used water without a permit and used water under an existing right for an unauthorized use. Opponents argued that since MWC continued irrigating after the watermaster informed MWC that irrigation was not authorized under MWC's existing right, this demonstrated that the use, or at least the user, could not be controlled. Therefore, they argue, granting the applications would not be consistent with the Commission's statutory directive to control the waters of the state.

MWC, on the other hand, asserted that the USFS had decided that MWC's use of water from whatever source was covered by the 1897 Organic Act and the 1960 Multiple-Use Sustained-Yield Act. Consequently, MWC asserted, at least until the MWC obtained an irrigation right from the state it was not required to comply with the watermaster's directive. Moreover, it appears that MWC believed that the USFS's determination, as expressed in its letter to MWC's general manager, satisfied the underlying requirements of the Department's policy not to enforce for or

against a use, where a claim sufficient to substantiate a federal reserved right is submitted and until such time as the claim is resolved through adjudication.

The assertions of the opponents have been answered elsewhere in this order and will not be addressed here. The assertion of a possible reserved right, however, bears further examination.

The U.S. Supreme Court has clearly stated that Congress did not intend, in enacting the Multiple-Use Sustained-Yield Act, to reserve additional water for the secondary forest use purposes established in that Act. Recreation, fish and wildlife, or range uses which were additional purposes for national forest administration authorized under the Multiple-Use Sustained-Yield Act were to be supplemental to, but not in derogation of, the purposes for which the national forests were established in the Organic Act. United States v. New Mexico, 438 U.S. 696, 714-716 (1978). In short, the Multiple-Use Sustained-Yield Act will not support any claim of a federal reserved right for use in national forests beyond the right reserved to fulfill the two purposes for which the national forest was originally established pursuant to the Organic Act of 1897. Those purposes were to furnish a continuous supply of timber and to insure favorable conditions of water flow so that sufficient quantities of water would be available to the settlers of the arid West. United States v. New Mexico, *supra*.

It could be argued that the use of water for erosion control would contribute to protection of favorable water flow conditions. Nevertheless, it cannot be denied that but for the construction of the Meadows ski facility there would be no reason to now find it necessary to use water for erosion control at that facility.

No determination is made on the potential success of a federal reserved right claim if one is finally submitted to the Department. However, a courtesy copy of a letter from the Mt. Hood National Forest Supervisor to the applicant in this case does not constitute a claim which would justify invocation of the Department's "non-regulation" policy.

In order for the Department to forebear regulation of apparently unauthorized or unpermitted uses, there must be both a legal basis for the claim and an actual claim. Here, there is neither. Until a proper legal claim is submitted, the watermaster may regulate any irrigation from surface water within the Mt. Hood Meadows ski area. Regardless of the validity of a reserved rights claim, these applications must be judged on their merits alone.

DIVISION 9

The final issue relates to the Division 9 rules on groundwater-surface water interference. Regardless of confinement, all groundwater and surface water must perforce be in connection at some point in the world. The Division 9 rules focus the inquiry primarily on the potential for impacts within a one-mile radius from the well. The Division 9 rules do not, however, require denial of a permit if hydraulic connection is found, nor even if the potential for substantial interference is found pursuant to OAR 690-09-040(4) or (5). Additionally, the rules do not require that mitigating conditions completely negate any impact or return the system to the condition it was in prior to the exercise of the right. The rules simply require a determination of the potential for substantial interference, and provide for regulation, through conditions or otherwise, where that potential is found.

WEIGHT OF EVIDENCE PRESENTED

There were a number of conflicts in the testimony, evidence and analyses of the applicant and the opponents. In the process of developing further analysis and testimony, the applicant discovered

that even less water was required than had been requested in amended application. Testimony was thus developed with that focus. On the other hand, the opponents in some instances developed their analyses and testimony on the full amounts of water requested in the original, not the amended, applications, and assumed year-round use at the full amount with 100% consumption. Recently-taken measurements and the Dog River were used to develop predicted flows for water availability, rather than longer term measurements and a reliable estimate of East Fork contributions to mainstem flows as were used by the Department and MWC. In addition, the opponents' testimony focused on what the Commission's rules and policies should require, rather than what is required. While the opponents' evidence was credible, as far as it went, the reliability of much of opponents' testimony was necessarily reduced because of the differences in base data and focus.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that Application 69976 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between November 1 and July 31 of up to 0.27 cfs from two unnamed springs, tributary to the East Fork Hood River, subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application.

It is further ORDERED that Reservoir Application R71657 be approved, subject to any conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application.

It is further ORDERED that Application G12250 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between August 1 and October 31 of up to 0.11 cfs (50 gpm), subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application.

It is further ORDERED that the permit issued on application 69976 shall contain the following conditions:

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 59677, and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

It is further ORDERED that the permit issued on application G12250 shall contain the following conditions:

G1 The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon and shall further be constructed so as to appropriate water from a confined aquifer below the basalt encountered in the geothermal well beginning at 289 feet below land surface. The works shall be equipped with a usable access port and may also include an air line and pressure gage adequate to determine water level elevation in the well at all times.

G2 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

G3 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

G4 The Director shall require the permittee to keep and maintain a record of the rate and duty of water diverted and shall require the permittee to report water use at least annually on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

G5 The permittee shall conduct or cause to be conducted static water level measurements in all water-producing zones encountered during drilling. In addition, one pump test shall be conducted within one week following completion of the well, and a second pump test shall be conducted no earlier than three months and no later than four months after completion of the well. The pump tests will be conducted to determine aquifer properties, presence of flow boundaries in the aquifer and well recovery characteristics. The tests shall be designed in consultation with Department staff. The results of the pump tests and static water level measurements shall be submitted to the Department no later than one month after the last pumping test and static water level measurements are conducted.

G6 The use of water for erosion control allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 59677, and no other preferences accorded municipal rights are applicable to this permit.

G7 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

G8 A maximum of 0.055 cfs may be used under this permit for erosion control.

G9 From August 1 through October 31 for any year after the initial use of groundwater under this permit, the permittee shall discharge effluent from the waste water treatment plant beginning not earlier than 5:00 a.m. and continuing at a rate consistent with the NPDES permit, but not to exceed

0.11 cfs, until all effluent has been discharged, provided, however, that the permittee shall not be required to discharge effluent that does not meet the standards of the NPDES permit.

G10 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

G11 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

G12 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

G13 Any use which is to be supplied water under this permit shall use the best available water-saving devices.

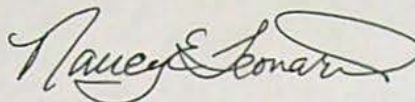
G14 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

G15 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

G16 At the request of the Department, the permittee shall obtain approval from the Department for a monitoring program. The permittee shall retain the services of a groundwater geologist licensed in Oregon and cause the geologist to submit a plan for monitoring groundwater and surface water to the Department for approval. The plan shall provide for a long-term monitoring program which shall be conducted in a manner that will assist the Department in detecting any interference with surface water.

G17 In the event the Water Resources Department determines that use from the well for erosion control interferes with a senior surface water right, use from the well shall be regulated as surface water. Regulation may be initiated at any time and in any manner in order to assure protection of senior surface water rights, provided that prior to controlling the use of the well, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner.

Issued and Placed in the U.S. Mail this 28th day of AUGUST, 1997.



Nancy E. Leonard
Chair, Oregon Water Resources Commission

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

Certificate of Service

I certify that on August 28, 1997, a copy of this Final Order was mailed, first-class postage prepaid, to the following individuals:

Karen Russell, Esq.
WaterWatch of Oregon
213 S.W. Ash, Suite 208
Portland OR 97204

Karl G. Anuta, Esq.
Sokol & Associates, P.C.
735 S.W. First Ave.
Portland OR 97204

Bill Cook, Esq.
Oregon Dept. of Justice
1515 S.W. Fifth, Suite 410
Portland OR 97201

Stephanie Burchfield
ODFW
2501 S.W. First Street
P.O. Box 59
Portland OR 97207

Howard Arnett, Esq.
Karnopp, Petersen *et al.*
1201 N.W. Wall Street, Suite 300
Bend OR 97701-1957

Richard Allan, Esq.
Ball, Janik & Novack
One Main Place
101 S.W. Main Street, Suite 1100
Portland OR 97204-3274

Bob Duddles
Crystal Springs Water District
P.O. Box 186
Odell OR 97044

WATER RESOURCES DEPARTMENT

file 69976
Year

Year

File No.

Discharge measurements of

....., during the year ending September 30, 19.....

No.	Date	Made by	Width Feet	Area Sq. ft.	Mean Velocity Ft./Sec.	Gage Height Feet	Discharge C.F.S.	Rating		Meth- od	Meas. Sec. No.	G. Ht. Chge. Ft.	Time Min.	Tempera- ture		REMARKS
								Corr.	% diff					Wtr.	Air	
	7/16/42	L. Toll	35	42.8	1.24	—	52.9			.6	19			17	30	
	7/30/42	ODFW X					34.8									
	8/4	L. Toll S. Pribyl	33.7	43.5	1.03	1.78	44.6			.6	19	28	24	14	19	stiff gage installed
	8/11	ODFW				1.72	28.9									
	8/20	L. Toll	28	33.2	0.88	1.62	29.3			.6	25	31	40	13 1/2	20	EFID 9990 2.80 @ 1000 P.M. Tucker Bridge 1.89 @ 9.24 AM
	8/26	L. Toll	33.1	37.0	0.97	1.74	35.9			.6	21	—	33	16	24	EFID 9992 2.43 @ 1350 P.M. Tucker Bridge 1.6 @ 1546 P.M.
	9/10	L. Toll	32.2	43.0	1.23	1.91	52.9			.6	28	50	52	13	22	
	9/17	L. Toll	36.5	46.5	1.42	2.04	65.8			.6	26	0	45	13	18	
	10/6	L. Toll	34.0	38.5	2.47	2.33	95.0			.6	27	0	51	9	16	
	10/15	L. Toll	34.0	37.2	2.34	2.28	88.8			.6	27	0	60	5	11	

27996 27

* ^{8/21/92.} using a Marsh-McBirney Meter

no calibration between WRD meter & ODFW meter.

January 27, 1992

Richard M. Whitman
Ball, Janik & Novack
101 SW Main Street, Suite 1100
Portland, OR 97204-3274

Reference: Application 69976 - Mt. Hood Meadows, Oregon Ltd.
Application R-71657 - Meadows Water Company
Application G-12550 - Meadows Water Company

Dear Mr. Whitman:

I am in receipt of your letter of January 17, 1992, regarding my January 13, 1992, letter. While we do not agree with your contention that only the Commission may send matters to contested case hearing, we do not feel that there would be any significant advantage to press that issue here.

The above referenced applications will be presented by staff to the Water Resources Commission with recommendations to approve, reject or refer to contested case hearing no earlier than the March 13, 1992, Commission meeting.

Sincerely,

William H. Young
William H. Young
Director

cc: Applicant

Mr. Greg Robart, ODFW
WaterWatch of Oregon
Mr. Karl Anuta, Friends of Mt. Hood
Mr. Charles Parker, Mt. Hood National Forest
Mr. Larry Toll, Watermaster, District 3
Ms. Martha O. Pagel
Mr. Fred Hansen
Ms. Gabriella Lang
Ms. Jill Zarnowitz
Ms. Penny Harrison
Ms. Cheryl Coon
Mr. Eck, Confederated Tribes'
Ms. Weisha Mize

SB/0650



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

August 29, 1991

Richard Whitman
BALL, JANI & NOVAK
One Main Place
101 SW Main St., Suite 1100
Portland, OR 97204-3274

Karl Anuta
JOLLES, SOKOL & BERNSTEIN
7721 SW Oak Street
Portland, OR 97205-3791

WATER
RESOURCES
DEPARTMENT

Gentlemen:

I am in receipt of your letters of July 22 and August 5, respectively, regarding the status of protested application 69976.

As was previously indicated, it is my position that this matter is in a contested case status and has been since the filing of protests by ODFW, Crystal Springs Water District and Friends of Mt. Hood some 2 years ago. Mr. Anuta correctly noted that the Commission delegated to the Director the authority to do all things under ORS Ch. 537, an action which was taken by the Commission at their regular meeting of October 25, 1985. This includes making preliminary determinations on the processing of applications, encouraging informal negotiations with or without the involvement of the Department, and holding contested case hearings.

By rule, the authority to carry out all activities related to the conduct of contested case hearings, including directing certain filings, encouraging negotiations, setting filing and hearing schedules, and conducting the hearing and issuing proposed orders has been delegated to the Hearings Referee. As was noted in an earlier letter, because the Referee has been overseeing this matter since the protests were filed, I was not previously aware, when Mr. Whitman met with Steve Brown and myself in March, that protests had been filed. That information was brought to my attention shortly after that meeting, and my position that this application was in contested case status was made clear shortly thereafter.

The Department is currently reconsidering the rules regarding processing applications, and the internal process for receiving protests and making determinations on public interest and sending certain applications to contested case hearing was revised earlier this year. In some cases, the Director may elect to refer the matter to the Commission with a recommendation on public interest issues and on sending the application to contested case hearing for a determination on those issues. Alternatively, the Director may determine independently that public interest issues are involved and direct the matter to hearing without first referring the matter to the Commission.



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

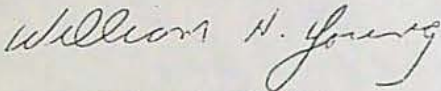
That Application 69766 is, and has been, considered to be in contested case status does not prevent the matter being held in abeyance while the parties continue to negotiate, nor does it prevent Mt. Hood Meadows' groundwater and reservoir applications from being considered by the Department jointly with the spring application. This would be our recommendation to the Commission in the event objections are filed to these more recent applications and they are referred to the Commission for their determination on whether a public interest contested case should be held.

It also appears that there is information currently being compiled which would be necessary to any public interest determination by the Commission, or by the Referee in a contested case hearing, but that this information is not presently available.

Given that discussions between Mt. Hood Meadows and the protestants appear to be moving forward, and in light of the data being developed and the fact that objections to the groundwater and reservoir applications have not yet been filed, it would be premature to send either Application 69766 or the groundwater and reservoir applications to hearing, or to make any referrals to the Commission, at this time.

I trust this clarifies the situation.

Sincerely,

A handwritten signature in cursive script, reading "William H. Young".

WILLIAM H. YOUNG
Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS *
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

August 5, 1991

RECEIVED

AUG - 6 1991

William Young, Director
Water Resources Department
3850 Portland Road NE
Salem, OR 97303

**WATER RESOURCES DEPT.
SALEM, OREGON**

Weisha Mize, Hearings Referee
Water Resources Department
3850 Portland Road NE
Salem, OR 97303

Re: Protested Application no. 69976

Dear Mr. Young and Referee Mize:

I strongly disagree with Mr. Whitman's 7/22/91 letter. This protest was filed and this contested case begun well over two years ago. It has been processed under the agency's original interpretation of its Division 11 rules for that entire time. There is no reason or basis for changing these procedures in mid stream. Friends of Mt. Hood and the other protesters have been proceeding on the assumption that this is a contested case. Each of the recent letters from the Hearings Referee both to Meadows and to others have reinforced this understanding.

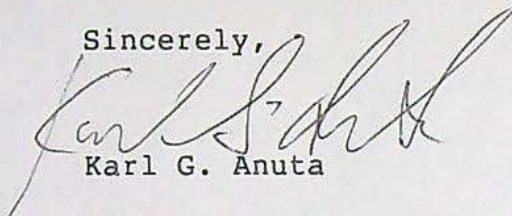
Mr. Whitman's legal citations overlook the basic facts. The Commission appointed Ms. Mize to act on their behalf. In addition, I believe the commission has long ago delegated authority to handle these issues to the department. As you know, absent a valid delegation I too have insisted on the Commission handling the matters directed to them by statute. Here there has already been a valid delegation to the Hearings Officer to conduct this contested case.

If Meadows is concerned about having more than one on-going process, then we suggest the referee/department consolidate the review of the groundwater right and the reservoir right (no. G12550 and R71657 respectively) with the current contested case and address all of them in this current proceeding. This case should continue as it has been, under the direction of Referee Mize. If Meadows wants to limit the number of forums in which it is participating, we urge them to join us in requesting that the Hearings Officer consolidate these matters.

My understanding from talking with Mr. Whitman is that Meadows is in the process of gathering hydrology water quality and water use data that will be critical to the department in evaluating all of these rights. We look forward to seeing that information. We also look forward to a contested case in this matter.

By this letter I am advising Mr. Whitman of Friends of Mt. Hood's perspective on this matter and to my vehement objections to the method by which he raised this issue. If either the Hearings Officer or the Director have any questions on this issue, please don't hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', written in a cursive style.

Karl G. Anuta

KGA:lh

cc: clients
Richard Whitman
Tom Hatchel
Leonard Aubert
Clarence Neville

CRYSTAL SPRINGS WATER DISTRICT
DOMESTIC WATER SYSTEM

JULY 26, 1991

RECEIVED

JUL 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

WEISHA MIZE
HEARINGS REFEREE
OREGON WATER RESOURCES DEPT
3850 PORTLAND ROAD NE
SALEM OR 97310

RE: PROTEST OF WATER RIGHT APPLICATION 69976, MT HOOD MEADOWS

DEAR MS MIZE:

THE BOARD OF COMMISSIONERS OF THE CRYSTAL SPRINGS WATER DISTRICT REVIEWED THE ISSUE OF THE PROTEST OF MT HOOD MEADOWS' WATER RIGHTS APPLICATION NO. 69976 AT ITS REGULAR MEETING ON JULY 25, 1991. THE BOARD TOOK NO FORMAL ACTION TO RESCIND ITS PREVIOUS PROTEST OF AUGUST 31, 1989. THAT IS, THE FORMAL PROTEST REMAINS IN EFFECT.

THE BOARD DID REQUEST THAT STAFF PREPARE A RESPONSE TO YOUR LETTER OF SEPTEMBER 14, 1989, AND TO SPECIFICALLY CORRECT SOME OF THE TECHNICAL INFORMATION IN YOUR LETTER.

THE SECOND PARAGRAPH OF YOUR LETTER MAKES REFERENCE THAT NO APPARENT HYDROLOGICAL CONNECTION EXISTS BETWEEN THE UNNAMED SPRINGS TO BE TAPPED BY MT HOOD MEADOWS AND THE EXISTING CRYSTAL SPRINGS. NEITHER THE BOARD OF COMMISSIONERS, THE CRYSTAL SPRINGS STAFF, NOR THEIR TECHNICAL ADVISORS ARE AWARE OF ANY INFORMATION WHICH SHOWS A CONNECTION OR LACK OF CONNECTION BETWEEN THE TWO PROPOSED WATER SOURCES. THE BOARD HAS NOT INFERRED THIS EXISTENCE OR LACK OF EXISTENCE OF A CONNECTION BETWEEN THE TWO WATER SOURCES IN ITS PREVIOUS COMMUNICATIONS. THE BOARD DOES NOT WISH TO PROCEED ON THIS ISSUE, AND BELIEVES IT IS THE RESPONSIBILITY OF THE APPLICANT AND THE WATER RESOURCE DEPARTMENT TO PROVE OR DISPROVE A CONNECTION.

THE PRIMARY EMPHASIS OF THE PROTEST OF THE CRYSTAL SPRINGS WATER DISTRICT IS THE USE OF WATER FROM THE EAST FORK OF THE HOOD RIVER. THE CRYSTAL SPRINGS WATER DISTRICT DIVERTS WATER FROM CRYSTAL SPRINGS, A TRIBUTARY TO THE EAST FORK OF HOOD RIVER. IT IS THE BOARD'S UNDERSTANDING THAT ALL WATER OF THE EAST FORK, INCLUDING WATERS IN TRIBUTARIES, ARE AFFECTED BY WATER RIGHTS ON THE MAIN STEM OF THE EAST FORK OF HOOD RIVER. THEREFORE, IF THERE IS INSUFFICIENT WATER WITHIN THE MAIN STEM OF THE EAST FORK TO MEET CURRENT DEMANDS, THEN THERE CAN BE AN IMPACT ON THE WATER RIGHTS HELD ON THE TRIBUTARIES OF EAST FORK. THE BOARD DOES NOT FEEL IT IS THEIR RESPONSIBILITY TO ASSESS THE CONDITION ON THE MAIN STEM EXCEPT AS IT AFFECTS THEIR INTEREST IN THEIR EXISTING WATER RIGHTS. THE BOARD'S FEELING

IS THAT IF PUBLIC FUNDS ARE TO BE SPENT TO CLARIFY THE ISSUES WITH REGARD TO MT HOOD MEADOWS' WATER RIGHTS APPLICATIONS, THOSE PUBLIC FUNDS SHOULD COME FROM THE WATER RESOURCE DEPARTMENT, NOT FROM THE CRYSTAL SPRINGS WATER DISTRICT.

THE SECOND PARAGRAPH ON PAGE 2 OF YOUR LETTER EXTRAPOLATES CERTAIN FIGURES TO ARRIVE AT POTENTIAL FUTURE CAPACITY AND EXTENT OF SERVICE BASED ON THE DISTRICT'S EXISTING WATER RIGHTS CERTIFICATES AND PERMITS. YOU PROJECT THAT THE TOTAL ADDITIONAL USERS COULD BE ABOUT 18,000, ASSUMING 500 GPD PER USER. WE BELIEVE THIS NUMBER IS MORE ACCURATELY 9,200. YOU HAVE PROJECTED 60,000 POTENTIAL USERS AT 150 GPD PER USER. WE BELIEVE THIS NUMBER TO BE MORE ACCURATE AT 30,000. THERE APPEARS TO BE A MATHEMATICAL ERROR IN YOUR PROJECTIONS.

THE DISTRICT HAS RECENTLY COMPLETED AN ENGINEERING STUDY AND HAS PUBLISHED A REPORT ENTITLED CRYSTAL SPRINGS WATER DISTRICT - WATER SYSTEM ANALYSIS. THE REPORT CONCLUDES THAT THE AVERAGE ANNUAL FLOW AT THE SPRINGS IS SLIGHTLY LESS THAN 2,000 GPM, OR APPROXIMATELY 4.4 CFS, NOT THE 7.1 CFS CONTAINED IN OUR WATER RIGHTS. THE SPRING FLOW VARIES FROM SEASON TO SEASON. MAXIMUM FLOW OCCURS IN THE SUMMERTIME AND IS APPROXIMATELY 7 CFS. MINIMUM SPRING FLOW OCCURS IN THE COLDER WINTER MONTHS AND AMOUNTS TO APPROXIMATELY 3.3 CFS (1,500 GPM). THEREFORE, THE SPRINGS CONTAIN SUFFICIENT WATER TO SERVE ONLY ABOUT 10,000 TO 15,000 USERS, RATHER THAN THE PROJECTIONS SHOWN IN YOUR LETTER.

THE THIRD PARAGRAPH ON PAGE 2 OF YOUR LETTER SUGGESTS THAT THE DISTRICT PROVIDE SUPPORTING INFORMATION REGARDING MINIMUM STREAM FLOW LEVELS AND DESCRIBE UNACCEPTABLE IMPACTS. THE DISTRICT DOES NOT WISH TO PROVIDE THIS INFORMATION BECAUSE THEY ARE RELUCTANT TO AUTHORIZE THE EXPENDITURE OF PUBLIC FUNDS THROUGH THE DISTRICT FOR THE DEVELOPMENT OF THIS INFORMATION. THEY BELIEVE THIS INFORMATION SHOULD BE DEVELOPED BY THE APPLICANT AND/OR THE WATER RESOURCE DEPARTMENT.

THE LAST PARAGRAPH ON PAGE 2 STATES THAT AN ANALYSIS MADE BY THE WATER RESOURCE DEPARTMENT SHOWED THAT FROM JUNE THROUGH OCTOBER, THE MINIMUM FLOW FREQUENCY IN THE EAST FORK OF HOOD RIVER WILL NOT BE MET. YOUR OWN STATEMENT OBVIOUSLY RAISES CONCERNS FOR ALL WATER USERS OF THE EAST FORK AND ITS TRIBUTARIES.

THE SECOND PARAGRAPH ON PAGE 3 OF YOUR LETTER SUGGESTS THAT THE BASIS OF THE WATER DISTRICT'S PROTEST MAY BE ONE OF PUBLIC INTEREST CONCERN, RATHER THAN TECHNICAL MATTERS. IN PART, THAT IS TRUE. THE DISTRICT UNDERSTANDS THAT IN THE EVENT OF A WATER SHORTAGE, THE MOST JUNIOR USERS WOULD BE CUT OFF FIRST. WE WOULD ANTICIPATE THAT THIS WOULD INCLUDE MT HOOD MEADOWS AND OTHERS WHOSE CERTIFICATES ARE JUNIOR TO THE CRYSTAL SPRINGS WATER DISTRICT. HOWEVER, THERE ARE A NUMBER OF ISSUES, INCLUDING WATERSHED PROTECTION, CONSERVATION MEASURES, FUTURE MUNICIPAL AND INDUSTRIAL USES, AND POTENTIALLY MANY OTHERS THAT COULD ECONOMICALLY IMPACT THE CRYSTAL SPRINGS WATER DISTRICT. THERE ARE ALSO PUBLIC INTEREST CONCERNS REGARDING IRRIGATION INTERESTS, PROTECTION OF EXISTING WATER RESOURCES, INCLUDING GLACIAL GROWTH AND DETERIORATION, FOREST PRACTICES, ETC., WHICH CAN HAVE AN IMPACT ON THE YIELDS OF THE SPRING AND OTHER WATER RESOURCES.

IN SUMMARY, THE CRYSTAL SPRINGS WATER DISTRICT HAS A NUMBER OF QUESTIONS FOR WHICH THERE DO NOT APPEAR TO BE ANY CLEAR ANSWERS. IF THESE ANSWERS ARE OBTAINABLE, THEY SHOULD BE OBTAINED BY THE APPLICANT AND/OR THE WATER RESOURCE DEPARTMENT. THE CRYSTAL SPRINGS WATER DISTRICT IS RELUCTANT TO SPEND ITS RESOURCES TO PROTECT ITS EXISTING WATER RIGHTS. RATHER, THE BURDEN OF PROOF SHOULD LIE WITH THE APPLICANT. THE WATER DISTRICT BOARD REMAINS CAUTIOUS ON THIS ISSUE. ANY ACTION OF THE WATER RESOURCE BOARD SHOULD PROTECT EXISTING WATER RIGHTS TO THE FULLEST EXTENT.

RESPECTFULLY SUBMITTED,

Tom Hachtel

TOM HACHTEL, SUPERINTENDENT
CRYSTAL SPRINGS WATER DISTRICT

CC: MIKE MCCARTHY, BOARD PRESIDENT
LARRY BOWE, ATTORNEY
F DUANE LEE, LEE ENGINEERING INC

W. Young
JLB Borden

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
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TELEPHONE (503) 228-2525
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10TH FLOOR, 1101 PENNSYLVANIA AVE., N.W.
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

RICHARD M. WHITMAN

July 22, 1991

RECEIVED

JUL 23 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Karl Anuta
Joles, Sokel & Bernstein
721 SW Oak Street
Portland, OR 97205

Re: Enclosed Letter to William Young Regarding Mount
Hood Meadows' Surface Water Application

Dear Karl:

I believe our meeting last Thursday was a constructive start to resolving the public interest issues the Friends of Mount Hood have raised regarding water supply issues associated with the expansion of Mount Hood Meadows. As we develop further information regarding water supply and availability, we intend to continue providing this data to you.

As you will see from the enclosed letter, however, I believe the proposition that we are already in a formal contested case proceeding is outrageous and has the potential to disrupt further negotiations. If, after reviewing my letter to Mr. Young you agree, I would appreciate your confirming this with him.

Very truly yours,



Richard M. Whitman

cc. Mr. Clay Simon
✓ Mr. William Young
Ms. Weisha Mize
Mr. Stephen Brown
Mr. Steve Applegate
Mr. Stephen T. Janik

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058

RICHARD M. WHITMAN

RECEIVED
JUL 23 1991
WATER RESOURCES DEPT.
SALEM, OREGON
10TH FLOOR, 1101 PENNSYLVANIA AVE. N.W.
WASHINGTON, D.C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

July 22, 1991

Mr. William Young, Director
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Pending Water Right Applications for Mount Hood
Meadows

Dear Mr. Young and Ms. Mize:

Last Thursday, July 18, 1991, we had a very productive meeting with Mr. Karl Anuta regarding the concerns the Friends of Mount Hood have with the Mount Hood Meadows expansion project in general, and its pending water right application in particular. As a result of this meeting, we are incorporating several additional items into the technical work we are currently preparing in support of these applications.

One issue arose, however, which I find very disturbing. Apparently, Mr. Anuta and I have different understanding of the nature of the administrative process Mount Hood Meadows is now involved in before the Water Resources Department. It has been my understanding since I began working on this project that Mount Hood Meadows surface water application (No. 69976), that the stage we are now in with this application is one of informal negotiation as described in OAR 690-11-080(2)(d), and that this application would not enter a formal contested case status until and unless there was a determination by the Water Resources Commission that a significant public interest issue may be present. This understanding was based on that same administrative rule, and was specifically discussed and verified to me and Mr. Simon in our meeting with you and Steve Brown on March 13, 1991.

At our meeting last Thursday, Mr. Anuta relayed that it was his understanding that Mount Hood Meadows surface water right application is in contested case status, while the groundwater and reservoir applications are not. This interpretation is completely untenable, both in policy and legal terms.

The two appropriation permit applications that Mount Hood Meadows has filed are inextricably linked. The whole purpose of filing a groundwater application is to make it

Mr. William Young
July 22, 1991
Page 2

possible to replace and supplement the surface water right during periods of low flow on the East Fork of the Hood River. These applications involve an area with complex hydrology and it makes no sense to split the two applications into separate proceedings. They should and must be considered together by the Department staff with the expertise to evaluate them.

In legal terms it is also clear that there is no right to a contested case until these applications have been evaluated by the Department and brought before the Commission. The issue of whether a non-applicant has a right to a contested case in the context of an administrative process to consider issuance of a permit or license has been considered twice in Oregon, once by the Supreme Court and once by the Court of Appeals. In both cases, it was held that a non-applicant third party had no right to a contested case under the Oregon Administrative Procedures Act (APA). The Supreme Court decision involved the approval of a textbook for distribution to public school districts by the State Board of Education. Oregon Environmental Council v. Oregon State Board of Education, 307 Or 30 (1988). The Court of Appeals case involved a decision by the Oregon Department of Environmental Quality to issue an air contaminant discharge permit. Northwest Environmental Defense Center v. Mid-Willamette Air Pollution Authority, 16 Or App 638 (1974).

Both cases hold that a non-applicant third party has a right to a contested case in the context of an agency's review of a license or permit only if either the applicable agency statutes or regulations provide such a right. Oregon Environmental Council, at 38-40; Northwest Environmental Defense Center, at 644-646. In this case, the applicable statutes are ORS 537.170(1) and 537.180, which provide that:

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Mr. William Young
July 22, 1991
Page 3

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In conclusion, I can see no basis, either in policy or law, for Mount Hood Meadows' surface right to be in contested case status. Let me assure you that, although we take this procedural issue very seriously, we are working actively with the Friends of Mount Hood to resolve their concerns with the proposed water use and we intend to continue to do so. The issues that the Friends are raising are not easily answered and involve a high degree of technical analysis. It is very premature to force these negotiations and analyses into an adversarial proceeding.

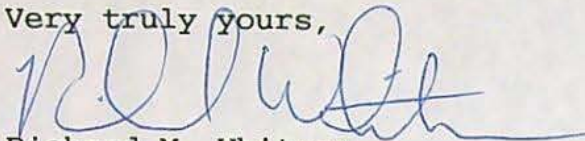
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Mr. William Young
July 22, 1991
Page 4

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Very truly yours,

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Richard M. Whitman

cc. Mr. Clay Simon
Mr. Karl Anuta
Ms. Weisha Mize (by separate cover)
Mr. Stephen Brown (by separate cover)
Mr. Steve Applegate (by separate cover)
Mr. Stephen T. Janik

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058

10TH FLOOR, 1101 PENNSYLVANIA AVE. N.W.
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

RICHARD M. WHITMAN

July 22, 1991

Mr. Karl Anuta
Joles, Sokel & Bernstein
721 SW Oak Street
Portland, OR 97205

Re: Enclosed Letter to William Young Regarding Mount
Hood Meadows' Surface Water Application

Dear Karl:

I believe our meeting last Thursday was a constructive start to resolving the public interest issues the Friends of Mount Hood have raised regarding water supply issues associated with the expansion of Mount Hood Meadows. As we develop further information regarding water supply and availability, we intend to continue providing this data to you.

As you will see from the enclosed letter, however, I believe the proposition that we are already in a formal contested case proceeding is outrageous and has the potential to disrupt further negotiations. If, after reviewing my letter to Mr. Young you agree, I would appreciate your confirming this with him.

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Mr. William Young
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RICHARD M. WHITMAN

JUL 23 1991
WATER RESOURCES DIVISION
10TH FLOOR, 1101 PENNSYLVANIA AVE. N.W.
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

July 22, 1991

Mr. William Young, Director
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Pending Water Right Applications for Mount Hood
Meadows

Dear Mr. Young and Ms. Mize:

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One issue arose, however, which I find very disturbing. Apparently, Mr. Anuta and I have different understanding of the nature of the administrative process Mount Hood Meadows is now involved in before the Water Resources Department. It has been my understanding since I began working on this project that Mount Hood Meadows surface water application (No. 69976), that the stage we are now in with this application is one of informal negotiation as described in OAR 690-11-080(2)(d), and that this application would not enter a formal contested case status until and unless there was a determination by the Water Resources Commission that a significant public interest issue may be present. This understanding was based on that same administrative rule, and was specifically discussed and verified to me and Mr. Simon in our meeting with you and Steve Brown on March 13, 1991.

At our meeting last Thursday, Mr. Anuta relayed that it was his understanding that Mount Hood Meadows surface water right application is in contested case status, while the groundwater and reservoir applications are not. This interpretation is completely untenable, both in policy and legal terms.

The two appropriation permit applications that Mount Hood Meadows has filed are inextricably linked. The whole purpose of filing a groundwater application is to make it

Mr. William Young
July 22, 1991
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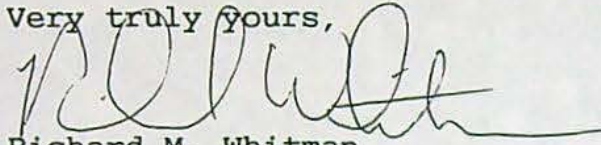
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July 22, 1991
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Mr. Stephen Brown (by separate cover)
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RMW\MTHOOD\YOUNG.722

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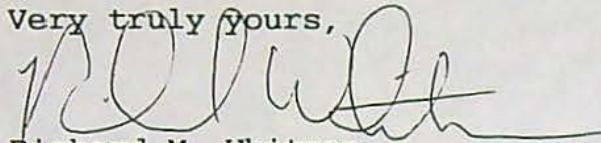
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Mr. William Young
July 22, 1991
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Richard M. Whitman

cc. Mr. Clay Simon
Mr. Karl Anuta
Ms. Weisha Mize (by separate cover)
Mr. Stephen Brown (by separate cover)
Mr. Steve Applegate (by separate cover)
Mr. Stephen T. Janik

RMW\MTHOOD\YOUNG.722

July 16, 1991

Thomas Hachtel
Crystal Springs Water District
PO Box 186
Odell, Oregon 97044

WATER
RESOURCES
DEPARTMENT

RE: Protest against Application 69976, Mt. Hood Meadows

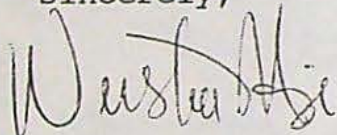
Dear Mr. Hachtel:

Two years ago, you filed a protest against the above application (copy enclosed). The Department acknowledged receipt of your protest but asked that you provide additional information on your protest (copy enclosed).

Please indicate no later than July 26 whether the District wishes to proceed with the protest, including appropriate information and response as requested in our letter of September 14, 1989.

Thank you for your attention to this matter.

Sincerely,



Weisha Mize
Hearings Referee

encl.

cc: Karl Anuta
Richard Whitman
Greg Robart



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX 378-8130

July 15, 1991

Richard Whitman
BALL, JANIK & NOVACK
One Main Place
101 SW Main, Suite 1100
Portland, OR 97204-3274

Karl Anuta
JOLLES, SOKOL & BERNSTEIN
Attorneys at Law
721 SW Oak St.
Portland, OR 97205-3791

WATER
RESOURCES
DEPARTMENT

RE: Protested Application 69976, Mt. Hood Meadows

Gentlemen:

I am in receipt of your letters regarding discussions and information sharing. I am pleased to hear of this.

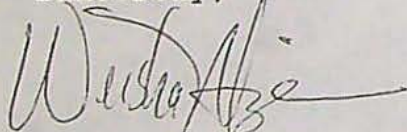
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I would remind you that, to the extent possible and appropriate, ODFW and CSWD should be involved in these discussions. Department staff is available to provide technical input and assistance if you so request.

The parties should provide me with a progress update around the 16th of August.

Thank you for your efforts.

Sincerely,



Weisha Mize
Hearings Referee

cc: William H. Young, Director
Steve Brown, Water Rights
Greg Robart, ODFW
Thomas A. Hachtel, CSWD



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Salem, OR 97310
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July 15, 1991

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One Main Place
101 SW Main, Suite 1100
Portland, OR 97204-3274

Karl Anuta
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WATER
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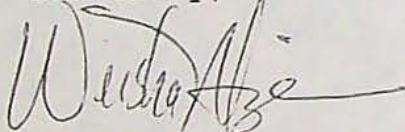
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ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
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BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS*
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

July 12, 1991

RECEIVED

JUL 15 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Weisha Mize
Water Resources Dept
3850 Portland Road NE
Salem, OR 97303

Re: Discovery requests
Protested rights 69976

Dear Hearings Officer Mize:

I was recently contacted by the applicant's attorney, Richard Whitman. He indicates that they are now willing to get together with Friends of Mt. Hood and provide substantive information along the lines of that which we asked for in our earlier letters and in our recent request for a subpoena. Consequently I would ask you to suspend any action on Friends of Mt. Hood's petition for issuance of a subpoena.

If the discussions with Mt. Hood Meadows do not prove fruitful, I may need to renew the request, but at this time we need no further action on that issue. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA:lh

cc: Richard Whitman
Clients

MT. HOOD IRRIGATION DISTRICT
6790 Highway 35 Mt. Hood, Oregon 97041
(503) 352-7620

Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RECEIVED
JUL 10 1991
WATER RESOURCES DEPT.
SALEM, OREGON

July 8, 1991

RE: Permit applications for Surface #69976
Mt. Hood Meadows Ground #G12550

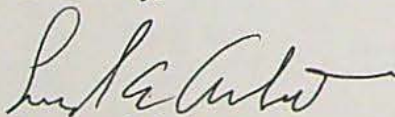
Dear Water Resources Department:

This is to register our strong opposition to granting Mt. Hood Meadows the above permits on the East Fork of the Hood River, as well as an underground (aquifer) permit. The objections are as follows:

- (1). Mt. Hood Meadows is not a municipality nor a quasi municipality.
- (2). We have vigorous objections to any taking of water from the East Fork. According to your department, the East Fork is already overappropriated. We feel that the amount of water Mt. Hood Meadows would use, coupled with their past history of less than diligent care of water in their stewardship, would harm downstream users, both in quantity and quality. The Mt. Hood Irrigation District has prior rights but is not assured that these would be honored by Mt. Hood Meadows.
- (3). We have been diligently working, for the past several years, to conserve water, thus lowering irrigation impact on instream water. Mt. Hood Meadow's use of East Fork water would significantly diminish instream resources which are already, by our estimates, below the figure arrived at (100CFS) during the hearings of two years ago.
- (4). We do not believe that anyone has knowledge or any studies have been made as to the total source(s) of the East Fork. It is our informed opinion that the underground aquifers loosely cited in permit G12550 are indeed part of the source of the East Fork. To tap and probably drain these aquifers would, we believe, lessen the flow of the East Fork, infringing on our prior rights and substantially impacting instream water.
- (5). We do not feel that the issuance of such rights is in the public interest.

Please keep us informed about any hearings, discussions, papers, etc. on this subject; we wish to be a party to these.

Sincerely,



Leonard Aubert
Chairman

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
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RICHARD M. WHITMAN

July 22, 1991

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JUL 23 1991
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TELEPHONE (202) 638-3307
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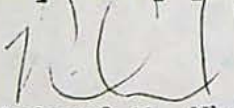
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MT. HOOD IRRIGATION DISTRICT
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Water Resources Department
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WATER RESOURCES DEPT.
SALEM, OREGON

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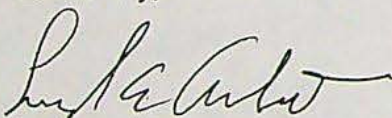
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This is to register our strong opposition to granting Mt. Hood Meadows the above permits on the East Fork of the Hood River, as well as an underground (aquifer) permit. The objections are as follows:

- (1). Mt. Hood Meadows is not a municipality nor a quasi municipality.
- (2). We have vigorous objections to any taking of water from the East Fork. According to your department, the East Fork is already overappropriated. We feel that the amount of water Mt. Hood Meadows would use, coupled with their past history of less than diligent care of water in their stewardship, would harm downstream users, both in quantity and quality. The Mt. Hood Irrigation District has prior rights but is not assured that these would be honored by Mt. Hood Meadows.
- (3). We have been diligently working, for the past several years, to conserve water, thus lowering irrigation impact on instream water. Mt. Hood Meadow's use of East Fork water would significantly diminish instream resources which are already, by our estimates, below the figure arrived at (100CFS) during the hearings of two years ago.
- (4). We do not believe that anyone has knowledge or any studies have been made as to the total source(s) of the East Fork. It is our informed opinion that the underground aquifers loosely cited in permit G12550 are indeed part of the source of the East Fork. To tap and probably drain these aquifers would, we believe, lessen the flow of the East Fork, infringing on our prior rights and substantially impacting instream water.
- (5). We do not feel that the issuance of such rights is in the public interest.

Please keep us informed about any hearings, discussions, papers, etc. on this subject; we wish to be a party to these.

Sincerely,



Leonard Aubert
Chairman

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS*
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

W. Young
D. Borden
Att. Appellate

TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

June 28, 1991

RECEIVED

JUL 01 1991

WATER RESOURCES DEPT
SALEM, OREGON

Bill Young, Director
Water Resources Dept.
3850 Portland Rd. N.E.
Salem, OR 97303

Re: Public Interest Concerns on
Applications R71657 and G12550

Dear Mr. Young:

I represent Friends Of Mt. Hood, a group of concerned citizens and organizations from around Oregon who track development and proposed changes on Mt. Hood. We have recently learned that, in addition to a pending surface water right application (#69976), Mt. Hood Meadows Ski Area has filed applications for reservoirs and ground water rights on the headwaters of the East Fork of the Hood River.

Friends Of Mt. Hood feel that issuance of these rights would not be in a public interest. The exact nature of the aquifer and the hydrology of the area of the headwaters of the East Fork of the Hood River is apparently unknown. What is known is that this aquifer forms a series of very sensitive, very unique, high alpine wetland meadows. Additional withdrawals from surface or ground water could jeopardize these meadows, as well as the wildlife, fish and aquatic resources that rely on them. In addition, further withdrawals could harm downstream water quality and quantity.

Moreover, there is an instream water right on the East Fork of the Hood River (No. 59677). It is already not being met during several months of the year, according to the Watermaster. Removing upstream water would alter the natural flow regime. ODF&W has already expressed significant concern and opposition to the Mt. Hood Meadows surface right. I suspect that they will be equally concerned about additional ground water withdrawals. There are also downstream irrigation and water districts that may be threatened or severely harmed by changes in flow regime, in water quantity or in water quality.

The proposal to construct reservoirs is equally worrisome. It is unclear to Friends of Mt. Hood whether Mt. Hood Meadows is trying to obtain a permit to legitimize existing illegal reservoirs or whether this will be additional construction. If

Bill Young
June 28, 1991
Page 2

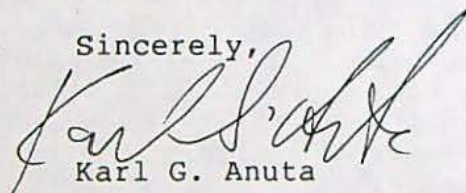
so, it could jeopardize the high alpine wetland meadows in this area. Any change in flow of water to the wetland meadows risks dramatic impact on those wetlands. Of course, construction of reservoirs will also create siltation and thus, raise downstream fishery and irrigation use.

Friends Of Mt. Hood opposes the issuance of both the reservoir and the ground water rights. We do not think the issuance of any of these rights is in the public interest. We also think it will harm downstream users, that it will be a threat to fish and wildlife habitat, that it may harm the local economy and that such a use is not appropriate on a river that is already over appropriated. We request a public interest review pursuant to OAR 690-11-080(2)(b)(D).

We look forward to providing additional information of these concerns. We have repeatedly requested that the applicant provide us with information on the hydrology area. To date, the applicant has refused to do so.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Karl G. Anuta

KGA/jf

cc: Janet Tobkin, FOMH
Kate/Jack Mills, FOMH
Kate McCarthy, FOMH
Rich Holoch, FOMH
Tom Hachtel, Crystal Springs Water District
Clarence Neville, East Fork Irrigation District
Greg Robart, ODF&W
Karen Russell, Waterwatch
Jim Myron, Oregon Trout
Jim Weber, CRITFC
Richard Whitman, Meadows Attorney

RECEIVED

JUL 01 1991

WATER RESOURCES DEPT.
SALEM, OREGON

RICHARD M. WHITMAN

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058

10TH FLOOR, 1101 PENNSYLVANIA AVE. N.W.
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

June 27, 1991

BY TELECOPIER

Ms. Weisha Mize, Hearings
Referee
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

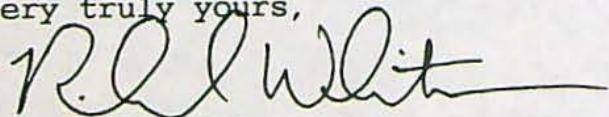
Re: Mt. Hood Meadows (Application No. 69976)

Dear Weisha:

I am writing to let you know that I have scheduled a meeting with Mr. Karl Anuta to discuss and clarify his concerns regarding the above-referenced application. Now that the Forest Service has issued its ROD we agree that it is time to move this matter forward. Mount Hood Meadows intends to make every reasonable effort to address Mr. Anuta's concerns. In this regard, some informal discussions have already taken place between Mr. Anuta and representatives of Mount Hood Meadows. While we had hoped to meet with Mr. Anuta earlier, his schedule is such that the meeting will not be held until July 18, 1991.

Please let me know if you have any additional questions or concerns regarding Mount Hood Meadows' water right application. We look forward to attempting to resolve any public concerns in a cooperative manner.

Very truly yours,



Richard M. Whitman

Ms. Weisha Mize
June 27, 1991
Page 2

P.S. Thank you for copying me on your June 17, 1991 letter to Mr. Anuta regarding the Department's process for review of water right applications.

cc: Mr. Clay Simon, Mount Hood Meadows
Mr. Karl Anuta, Friends of Mt. Hood
Mr. Thomas Hachtel, CSWD
Mr. William Young, Director, OWRD
✓ Mr. Steve Brown, OWRD
Mr. Larry Toll, Watermaster, District 3
Mr. Gregory Robart, ODF&W
Mr. Stephen Janik, BJN

RHW\MEADOWS\MIZE.627

RECEIVED

JUL 01 1991

WATER RESOURCES DEPT.
SALEM, OREGON

RICHARD M. WHITMAN

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
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10th FLOOR, 1101 PENNSYLVANIA AVE. N.W.
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

WY Young
JLB Borden
S Applegate

June 27, 1991

BY TELECOPIER

Ms. Weisha Mize, Hearings
Referee
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

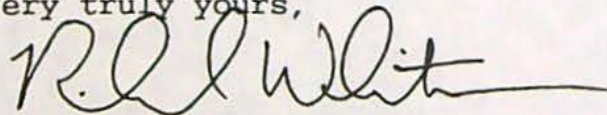
Re: Mt. Hood Meadows (Application No. 69976)

Dear Weisha:

I am writing to let you know that I have scheduled a meeting with Mr. Karl Anuta to discuss and clarify his concerns regarding the above-referenced application. Now that the Forest Service has issued its ROD we agree that it is time to move this matter forward. Mount Hood Meadows intends to make every reasonable effort to address Mr. Anuta's concerns. In this regard, some informal discussions have already taken place between Mr. Anuta and representatives of Mount Hood Meadows. While we had hoped to meet with Mr. Anuta earlier, his schedule is such that the meeting will not be held until July 18, 1991.

Please let me know if you have any additional questions or concerns regarding Mount Hood Meadows' water right application. We look forward to attempting to resolve any public concerns in a cooperative manner.

Very truly yours,



Richard M. Whitman

Ms. Weisha Mize
June 27, 1991
Page 2

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cc: Mr. Clay Simon, Mount Hood Meadows
Mr. Karl Anuta, Friends of Mt. Hood
Mr. Thomas Hachtel, CSWD
✓ Mr. William Young, Director, OWRD
Mr. Steve Brown, OWRD
Mr. Larry Toll, Watermaster, District 3
Mr. Gregory Robart, ODF&W
Mr. Stephen Janik, BJN

RMW\MEADOWS\MIZE.627

June 20, 1991

Richard Whitman
BALL, JANI & NOVACK
One Main Place
101 SW Main, Suite 1100
Portland, OR 97204-3274

WATER
RESOURCES
DEPARTMENT

RE: Protested Application 69976, Mt. Hood Meadows

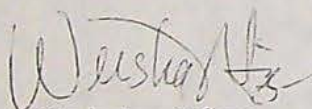
Dear Richard:

I spoke with the Director on Tuesday, June 18 about your meeting with Mr. Young and Steve Brown. I told him it was your understanding that this matter was not in contested case status and that it would be going to the Commission in October.

Mr. Young does not recall that there were any discussions on that particular issue, but was also not aware, until our conversation, that this application had been protested. If anything was said about contested case status by Mr. Young, it would have been based on his not knowing that protests had been filed in 1989 by Friends of Mt. Hood, Crystal Springs Water District and ODFW.

We certainly apologize for any confusion that may have resulted from a lack of communication within the Department. As I indicated in our telephone conversation on June 17, and in my letter of that date, this matter is in contested case status and should proceed accordingly.

Sincerely,



Weisha Mize
Hearings Referee

cc: William H. Young
Steve Brown
Becky Kreag
Steve Applegate



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX 378-8130

June 17, 1991

Richard Whitman
BALL, JANIK & NOVACK
One Main Place, Suite 1100
101 SW Main
Portland, OR 97204-3274

WATER
RESOURCES
DEPARTMENT

RE: Protested Application 69976

Dear Mr. Whitman:

You last wrote me in November, 1990 to say that once the FEIS and ROD were issued by the Forest Service, and in the event the ROD allowed expanded activities at Mt. Hood Meadows, you intended to enter into negotiations with Friends of Mt. Hood, Crystal Springs Water District (CSWD) and ODFW to determine if their concerns could be satisfactorily resolved.

As you know, Karl Anuta has been copying me with most of his correspondence to you on this matter. It appears that Friends of Mt. Hood are becoming increasingly frustrated with what they perceive as a lack of cooperation and communication in this matter. I note that I have not received any indication that any negotiations are taking place between the parties, either with or without the assistance of the Department, although the ROD was issued on May 10.

It was recently brought to my attention by water rights section staff that Application 69976 has been amended as follows: 1) Mt. Hood Meadows has established a subsidiary corporation, Meadows Water Co., which has been substituted for the original applicant in order to meet the definition of quasi-municipal use; and 2) the quantity of water requested in the amended application is for .48 cfs (215.4 gpm), down from 1.10 cfs (495 gpm). Any negotiations and the hearing, if settlement is not reached, will concern the application as amended.

In your transmittal letter for the amended application, you stated that an application for groundwater was being filed and that groundwater would be used to reduce the amount of water diverted from the 2 springs during low flow periods. You also indicated that you anticipated providing the Department with information on projected water availability and demand by June 10, although I did not find this information in the file. Please make sure that copies of this information are also sent to the parties, and to me for the file, when you send them to the Department.

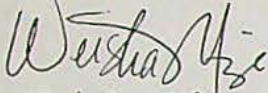


3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX 378-8130

I am at this point prepared to set the hearing for late August or early September. If Mt. Hood Meadows is, in fact, interested in participating in settlement negotiations with Friends of Mt. Hood, CSWD and ODFW, I encourage you to take whatever actions are necessary to bring the parties together. Department staff will provide whatever assistance they can.

Please let me know no later than June 21 what Mt. Hood Meadows intends to do regarding negotiations on amended application 69976.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Weisha Mize', with a stylized flourish at the end.

Weisha Mize
Hearings Referee

cc: Karl Anuta, FMH
Thomas Hachtel, CSWD
Greg Robart, ODFW
Steve Brown, WRD
Larry Toll, Watermaster, District 3

Permit mailing list, File S-69976

Send a copy of the permit to:

Karen Russell, Esq.
WaterWatch of Oregon
213 S.W. Ash, Suite 208
Portland OR 97204

Karl G. Anuta, Esq.
Sokol & Associates, P.C.
735 S.W. First Ave.
Portland OR 97204

Bill Cook, Esq.
Oregon Dept. of Justice
1515 S.W. Fifth, Suite 410
Portland OR 97201

Stephanie Burchfield
ODFW
2501 S.W. First Street
P.O. Box 59
Portland OR 97207

Howard Arnett, Esq.
Karnopp, Petersen *et al.*
1201 N.W. Wall Street, Suite 300
Bend OR 97701-1957

Richard Allan, Esq.
Ball, Janik & Novack
One Main Place
101 S.W. Main Street, Suite 1100
Portland OR 97204-3274

Bob Duddles
Crystal Springs Water District
P.O. Box 186
Odell OR 97044

Mailing List for FO Copies

Application# S-69976

Mailing List Printed December 8, 1999

Original mailed to(when permit issued, include copy of permit map):

Applicant: MEADOWS WATER COMPANY, PO BOX 470, MT. HOOD, OREGON 97041

For FO w/Permit - Copies sent to:

1. WRD - File # December 8, 1999
2. WRD - Ken Stahr
3. WRD - Data Center
4. WRD - NWR
5. WRD - Renee Moulon

Copies Mailed
By: <u>CEL</u>
(SUPPORT STAFF)
on: <u>12/23/99</u>
(DATE)

For FO w/ Permit - FO and Map Copies sent to (Remember to reduce copy margins):

6. WRD - Watermaster District #: 3
7. WRD - Regional Manager: NCR

COPIES TO Other Interested Persons

8. Richard Allen, Ball, Janik, & Novack, 1 Main Place, 101 SW Main St, Suite 1100, Portland, OR 97204-3274

CASEWORKER: RWK

*Data
center*

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-69976

Final Order

Application History

On June 21, 1989, MEADOWS WATER COMPANY submitted an application to the Department for a water use permit. The Department issued a permit on April 14, 1998. On June 9, 1998, Meadows Water Company submitted a petition for reconsideration of the permits.

The Department's continuing evaluation reveals that the original permit, 53259, requires the modifications below to accurately describe the request made in application S-69976 and within the intent of what was to be allowed under the original permit.

The permittee is Meadows Water Company.

Maximum rate/volume allowed: live flow - 0.27 cubic foot per second (cfs) total from one or both of the unnamed springs, further limited to not more than 0.055 cfs for erosion control; stored water - 2.48 acre-feet (af) ~~per year~~ from stored water only, being 1.54 af from an existing reservoir (to be enlarged) and 0.94 af from a proposed reservoir, further limited to a maximum cumulative total of live flow and stored water of 166.0 af per year.

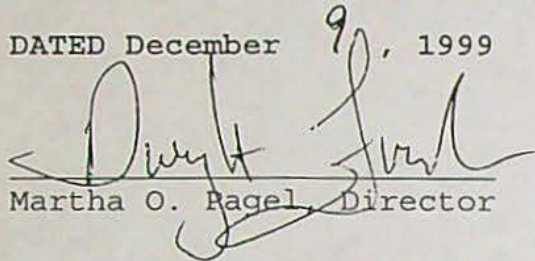
Date of priority: June 29, 1989

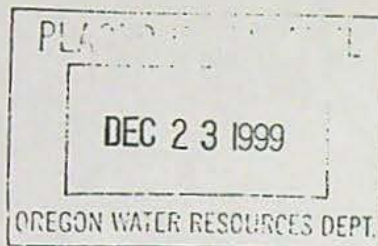
This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of this order must be filed within the 60 day time period specified by ORS 183.484(2). This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law.

Order

Application S-69976 therefore is approved as modified above, and Permit Number 53637 is issued as limited by the conditions contained therein.

DATED December 9, 1999


Martha O. Ragel, Director



This document was prepared by Russell W. Klassen. If you have any questions about any of the statements contained in this document he is most likely the best person to answer your questions. You can reach him toll free within Oregon at 1-800-624-3199 extension 266. Outside of Oregon you can dial 1-503-378-8455.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499.

Instructions for completing this report are on the last page of this form.

START CARD # 111462

Temperature of water 44 Depth Artesian Flow Found _____
 Was a water analysis done? ☐ Yes By whom _____
 Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____
 Depth of strata: _____

Signed Steve N. Stodick WWC Number 688 Date 10-22-9



MT HOOD MEADOWS OREGON LTD
HOOD RIVER COUNTY T3S R9E SEC.3 SW 1/4 SW 1/4 TAX LOT#101
WELL LOG

36728 S. Kropf Rd., Molalla, OR 97038 • Phone: (503) 829-2526 FAX (503) 829-7514

<u>MATERIAL</u>	<u>FROM</u>	<u>TO</u>
ash tan soft loose	0	8
boulder reddish brown	8	13
ash, sand, cinders, gravel angular & rubble grey-red-brown	13	28
boulder grey hard	28	33
boulders red brown & rubble	33	41
boulder grey hard	41	47
boulders red brown	52	61
boulders red	61	72
cinders red with boulders & debris	72	78
boulder red	78	80
cinders & gravel with small boulders red	80	89
sand & gravel angular coarse texture with boulders small	89	131
boulders grey hard	131	142
sand & gravel angular coarse texture with boulders small	142	156
boulders grey hard	156	162
basalt grey hard coarse texture heavy mineral deposits with intermittent fracturing	162	271
basalt grey soft very heavy mineral deposits	271	277
basalt grey soft pumicy	277	301
basalt layered hard & soft mutli colored brown & grey	301	317
basalt multi colored multi textured soft	317	361
basalt multi colored multi textured soft with finer matrix	361	387
basalt multi colored multi textured soft	387	447

RECEIVED

OCT 30 1998

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

March 18, 1998

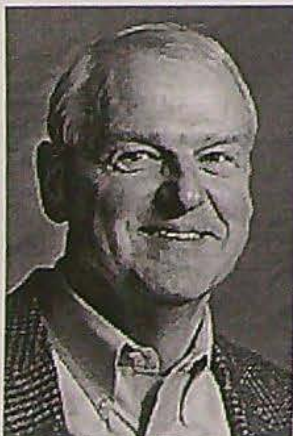
TO: Dwight French

CC:

FROM: D Baer

SUBJECT: Applications G-12550, S-69976 and R-71657

Permits have been prepared as you requested. See attached.



March 18, 1998

MEMORANDUM

TO: Dwight French
FROM: Kimberly Grigsby
SUBJECT: MT. HOOD MEADOWS FINAL ORDER CONDITIONS
C: Doug Baer, Jake Szramek

Yesterday, I gave you the attached memo describing proposed conditions for the Mt. Hood Meadows reservoir permit. However, Jake has pointed out that my suggested condition 4 is not logical for a reservoir permit. After recalling our conversation last week, I realize the condition should not be included in the reservoir permit and suggest you disregard it.

MEMORANDUM

TO: Dwight French

FROM: Kimberly Grigsby

SUBJECT: MT. HOOD MEADOWS FINAL ORDER CONDITIONS

C: Doug Baer, Jake Szramek

Sorry for the delay in getting these conditions to you. I appreciate your patience and the time you spent discussing possible solutions with me. As we discussed, Meadow's attorney informed me that they wish to retain the option to store water from the well in the reservoirs. Consequently, some groundwater conditions must be imposed on storage of groundwater.

I suggest the changes and conditions below for inclusion in the reservoir permit (R-12248). These suggestions reflect the issues we discussed last week. I should remind you that we both noted some changes which staff need to make to the permits prior to issuance.

- Add location of the well (from G13241)
- Add location of the springs (?)
- Add the following special conditions:
 1. Storage and use of water from the well under this permit is subject to the conditions and limitations in permit G13241.
 2. This permit does not allow for more than 0.11 cfs to be appropriated from the well at any time.
 3. The Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
 4. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.
 5. The permittee shall construct and maintain a measuring device to measure and record the amount of groundwater diverted to the reservoir.

I would strongly recommend that Steve Sanders review the reservoir permit before you issue it since he is far more familiar with the issues associated with the Mt. Hood Meadows case than I am.

March 17, 1998

MEMORANDUM

TO: Dwight French

FROM: Kimberly Grigsby 

SUBJECT: MT. HOOD MEADOWS FINAL ORDER CONDITIONS

C: Doug Baer, Jake Szramek

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STATE OF OREGON WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

September 25, 1997

TO: Dwight French
CC: FILES
FROM: D Baer

SUBJECT: Approval of applications R-71657 and S-69976

On August 28 1997 an order relating to these files was issued by the commission. It stated, "NOW, THEREFORE, it is ORDERED that Application 69976 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between November 1 and July 31 of up to 0.27 cfs *from two unnamed springs*, tributary to the East Fork Hood River, subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application."

Jake and I have developed the attached permits, which we believe to be technically correct. Please note however, that the SW permit varies from the order in several ways, including:

- ▶ *Stored water in two reservoirs has been added as a source.*
- ▶ *A maximum volume and a season have been added for use of stored water.*
- ▶ *All references to "Certificate 59677" changed to "Certificate 68457."*

Since the order contained no specific conditions for R-71657, that permit only includes standard, "boilerplate" conditions.

Please review the permits to ensure they correctly represent the department's intent.



STATE OF OREGON WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

October 20, 1997

TO: Jake and Dwight
CC: FILES
FROM: D Baer

SUBJECT: Approval of applications G-12550, R-71657 and S-69976

On August 28 1997 an order was issued by the commission requesting permits be issued on these applications.

Last month I prepared permits for R-71657 and S-69976 and submitted them to staff for review. At the same time, I requested permit recording fees for G-12550 from the applicant. The required fees have been paid and a permit has been prepared (see attached.) Please note that the GW permit varies from the order in that all references to "Certificate 59677" have been changed to "Certificate 68457."

The permits for R-71657 and S-69976 have been revised as needed to incorporate staff comments and to reflect an October issue date. The permits should be issued after October 27, 1997 which is the deadline for appealing the order.

Please note that two versions of the RES permit have been prepared. This is in response to Kim's concern that allowing storage of GW under the RES permit would create a loophole which would allow the use of GW without being subject to the conditions listed in the GW permit. (See condition G17 which threatens to regulate the well as SW). The concern being that once the GW is stored in the ponds, it is then taken out under the SW permit for which a separate set of conditions apply. Kim's suggested fix was to remove GW as a source on the RES permit. This has been done on the RES permit page marked "Option 1." Jake indicated that due to the meter requirements for both surface and groundwater, the source of water in



the reservoirs could be determined if that information was needed for regulation or enforcement action. Consequently, GW storage could be permitted as described on the RES permit page marked "Option 2." Please select the desired page and discard the unwanted page.

Please review all the permits attached to ensure they correctly represent the department's intent.

that even less water was required than had been requested in amended application. Testimony was thus developed with that focus. On the other hand, the opponents in some instances developed their analyses and testimony on the full amounts of water requested in the original, not the amended, applications, and assumed year-round use at the full amount with 100% consumption. Recently-taken measurements and the Dog River were used to develop predicted flows for water availability, rather than longer term measurements and a reliable estimate of East Fork contributions to mainstem flows as were used by the Department and MWC. In addition, the opponents' testimony focused on what the Commission's rules and policies should require, rather than what is required. While the opponents' evidence was credible, as far as it went, the reliability of much of opponents' testimony was necessarily reduced because of the differences in base data and focus.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that Application 69976 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between November 1 and July 31 of up to 0.27 cfs from two unnamed springs, tributary to the East Fork Hood River, subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application.

It is further ORDERED that Reservoir Application R71657 be approved, subject to any conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application.

It is further ORDERED that Application G12250 in the name of Meadows Water Company for quasi-municipal use should be approved for diversion and use each year between August 1 and October 31 of up to 0.11 cfs (50 gpm), subject to the conditions set out below and to any other conditions deemed by the Department to be necessary and appropriate, which conditions shall be included in a permit issued on this application. SB 612550

It is further ORDERED that the permit issued on application 69976 shall contain the following conditions:

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 59677, and no other preferences accorded municipal rights are applicable to this permit. superseded by 68457

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

It is further ORDERED that the permit issued on application ⁵ G12250 shall contain the following conditions:

G1 The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon and shall further be constructed so as to appropriate water from a confined aquifer below the basalt encountered in the geothermal well beginning at 289 feet below land surface. The works shall be equipped with a usable access port and may also include an air line and pressure gage adequate to determine water level elevation in the well at all times.

G2 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

G3 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

G4 The Director shall require the permittee to keep and maintain a record of the rate and duty of water diverted and shall require the permittee to report water use at least annually on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

G5 The permittee shall conduct or cause to be conducted static water level measurements in all water-producing zones encountered during drilling. In addition, one pump test shall be conducted within one week following completion of the well, and a second pump test shall be conducted no earlier than three months and no later than four months after completion of the well. The pump tests will be conducted to determine aquifer properties, presence of flow boundaries in the aquifer and well recovery characteristics. The tests shall be designed in consultation with Department staff. The results of the pump tests and static water level measurements shall be submitted to the Department no later than one month after the last pumping test and static water level measurements are conducted.

G6 The use of water for erosion control allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 59677, and no other preferences accorded municipal rights are applicable to this permit.

G7 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

G8 A maximum of 0.055 cfs may be used under this permit for erosion control.

G9 From August 1 through October 31 for any year after the initial use of groundwater under this permit, the permittee shall discharge effluent from the waste water treatment plant beginning not earlier than 5:00 a.m. and continuing at a rate consistent with the NPDES permit, but not to exceed

0.11 cfs, until all effluent has been discharged, provided, however, that the permittee shall not be required to discharge effluent that does not meet the standards of the NPDES permit.

G10 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

G11 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

G12 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

G13 Any use which is to be supplied water under this permit shall use the best available water-saving devices.

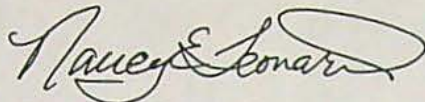
G14 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

G15 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

G16 At the request of the Department, the permittee shall obtain approval from the Department for a monitoring program. The permittee shall retain the services of a groundwater geologist licensed in Oregon and cause the geologist to submit a plan for monitoring groundwater and surface water to the Department for approval. The plan shall provide for a long-term monitoring program which shall be conducted in a manner that will assist the Department in detecting any interference with surface water.

G17 In the event the Water Resources Department determines that use from the well for erosion control interferes with a senior surface water right, use from the well shall be regulated as surface water. Regulation may be initiated at any time and in any manner in order to assure protection of senior surface water rights, provided that prior to controlling the use of the well, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner.

Issued and Placed in the U.S. Mail this 28th day of AUGUST, 1997.



Nancy E. Leonard
Chair, Oregon Water Resources Commission

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

March 18, 1998

MEMORANDUM

TO: Dwight French
FROM: Kimberly Grigsby
SUBJECT: MT. HOOD MEADOWS FINAL ORDER CONDITIONS
C: Doug Baer, Jake Szramek

Yesterday, I gave you the attached memo describing proposed conditions for the Mt. Hood Meadows reservoir permit. However, Jake has pointed out that my suggested condition 4 is not logical for a reservoir permit. After recalling our conversation last week, I realize the condition should not be included in the reservoir permit and suggest you disregard it.

MEMORANDUM

TO: Dwight French

FROM: Kimberly Grigsby

SUBJECT: MT. HOOD MEADOWS FINAL ORDER CONDITIONS

C: Doug Baer, Jake Szramek

Sorry for the delay in getting these conditions to you. I appreciate your patience and the time you spent discussing possible solutions with me. As we discussed, Meadow's attorney informed me that they wish to retain the option to store water from the well in the reservoirs. Consequently, some groundwater conditions must be imposed on storage of groundwater.

I suggest the changes and conditions below for inclusion in the reservoir permit (R-12248). These suggestions reflect the issues we discussed last week. I should remind you that we both noted some changes which staff need to make to the permits prior to issuance.

- ✓ • Add location of the well (from G13241)
- ✓ • Add location of the springs (?)
- Add the following special conditions:
 - ✓ 1. Storage and use of water from the well under this permit is subject to the conditions and limitations in permit G13241.
 - ✓ 2. This permit does not allow for more than 0.11 cfs to be appropriated from the well at any time.
 - ✓ 3. The Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
 - ✗ 4. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.
 - ✓ 5. The permittee shall construct and maintain a measuring device to measure and record the amount of groundwater diverted to the reservoir.

J I would strongly recommend that Steve Sanders review the reservoir permit before you issue it since he is far more familiar with the issues associated with the Mt. Hood Meadows case than I am.

STATE OF OREGON

COUNTY OF HOOD RIVER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MT. HOOD MEADOWS, OREGON, LTD
PO BOX 470
MT. HOOD, OREGON 97041

(503)337-2222

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-69976

SOURCE OF WATER: TWO UNNAMED RESERVOIRS TO BE CONSTRUCTED OR ENLARGED UNDER APPLICATION R-71657, PERMIT R-12248, AND TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE/VOLUME ALLOWED: **LIVE FLOW** - 0.27 CUBIC FOOT PER SECOND (CFS) TOTAL FROM ONE OR BOTH OF THE UNNAMED SPRINGS, FURTHER LIMITED TO NOT MORE THAN 0.055 CFS FOR EROSION CONTROL; **STORED WATER** - 2.48 ACRE- FEET (AF) PER YEAR FROM STORED WATER ONLY, BEING 1.54 AF FROM AN EXISTING RESERVOIR (TO BE ENLARGED) AND 0.94 AF FROM A PROPOSED RESERVOIR

PERIOD OF ALLOWED USE: **LIVE FLOW** - NOVEMBER 1 THROUGH JULY 31; **STORED WATER** - YEAR ROUND

DATE OF PRIORITY: June 21, 1989

POINT OF DIVERSION LOCATION: SE 1/4 NE 1/4, SECTION 4, T3S, R9E, W.M.; 2730 FEET NORTH & 1000 FEET WEST; 2790 FEET NORTH & 990 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 28
NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4

10/20/89
Draft

SE 1/4 NW 1/4
 NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 33

SW 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4
 SE 1/4 NW 1/4
 NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 34

SW 1/4 SW 1/4

SECTION 35

TOWNSHIP 2 SOUTH, RANGE 9 EAST, W.M.

NW 1/4 NW 1/4
 SW 1/4 NW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4

SECTION 2

NE 1/4 NE 1/4
 NW 1/4 NE 1/4
 SW 1/4 NE 1/4
 SE 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4
 SE 1/4 NW 1/4
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 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 3

NE 1/4 NE 1/4

NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
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NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 4

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 5

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4

SECTION 8

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 9

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4

NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 10

NE 1/4 NE 1/4
 NW 1/4 NE 1/4
 SW 1/4 NE 1/4
 SE 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4
 SE 1/4 NW 1/4
 NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 11

NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4

SECTION 14

NE 1/4 NE 1/4
 SE 1/4 NE 1/4

SECTION 15

NE 1/4 NE 1/4
 NW 1/4 NE 1/4
 SW 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SE 1/4 NW 1/4

SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superceded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a

private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance. Complete application of the water to the use shall be made on or before October 1, 2001.

Issued October , 1997


Martha O. Pagel, Director
Water Resources Department

Application S-69976 Water Resources Department
Basin 04 Volume 1 EAST FK HOOD R MISC
ALJ

PERMIT
Distr 

RECEIVED

OCT 15 1999

WATER RESOURCES DEPT.
SALEM, OREGON

REQUEST FOR ASSIGNMENT

I, (permit holder, (applicant)) Meadows Water Company
P.O. Box 470 Mt. Hood OR 97041 (503) 337-2222
(mailing address) (city) (state) (zip) (phone)

CHECK ONE

[x] - hereby assign all my interest in and to application/permit;
[] - hereby assign all my interest in and to a portion of application/permit (include a map showing portion of application assigned);
[] - hereby assign a portion of my interest in and to the entire application/permit;

R-71657 S-69976
Application # G-12550, Permit # R12758 53637 ~~WA~~ G13388;
OR GR Statement # _____, GR Certificate of Registration # _____
as filed in the office of the Water Resources Director, to:

Meadows Utilities LLC

(name of new owner)

P.O. Box 470 Mt. Hood OR 97041 (503) 337-2222
(address) (city) (state) (zip) (phone)

(Note: If there are other owners of the property described in this Application, Permit of Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

I hereby certify that I have notified all other owners of the property described in this Application, Permit or Certificate of Registration of this request for assignment.

Witness my hand this 14th day of October, 19 99
applicant/permit holder Richard H. Allan
applicant/permit holder Richard H. Allan, Attorney for Applicant

DO NOT WRITE IN THIS BOX

STATE OF OREGON,)
County of Marion.) ss
I certify that the within was
received by me on the 15th day of
Oct, 19 99 at 8 o'clock
4 m., and was recorded in the
Miscellaneous Records, Vol. 8
Page 588
Water Resources Director

The completed assignment must be submitted to the Water Resources Department together with a recording fee of \$25. Additional pages will cost \$5 per page.

OK
BSM

WATER RESOURCES DEPARTMENT
158 12TH STREET NE
SALEM, OREGON 97310-0210

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS*
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

June 14, 1991

RECEIVED

JUN 17 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Weisha Mize
Water Resources Dept.
3850 Portland Rd. N.E.
Salem, OR 97303

Re: Protested Application No. 69976

Dear Ms. Mize:

It is my understanding that the applicant in the above referenced matter has now filed an amended application claiming to be a water company entitled to quasi-municipal use. Regardless of how often the names change, the effect of the proposed use on down stream right holders and on the public interest uses of the East Fork of the Hood River will be the same. Friends of Mt. Hood continue to vigorously protest this matter. Since we have already filed a formal protest, it is my understanding that we do not need to file an additional protest on the amended application. If I am incorrect, please so advise.

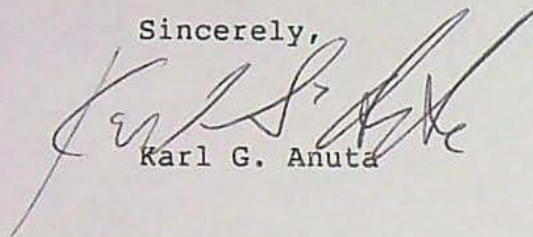
As you know, despite repeated efforts, I have had absolutely no success in obtaining discovery materials from the applicant on this matter. Consequently, I have no choice but to pursue formal discovery. Enclosed is a petition for issuance of a subpoena under the provisions of ORS 185.425. Pursuant to OAR 690-78-030(1)(d), the hearings officer has authority to issue this subpoena.

I tried very hard to avoid a discovery dispute in this matter. See letters of 11/3/89, 1/15/91, 2/27/91 and 3/29/91 (attached). However, I cannot fairly represent my clients unless the party with the burden of proof, the applicant, provides documentation of potential effects, their current use, and other material facts that only they are in a position to know.

Weisha Mize
June 14, 1991
Page 2

I had also hoped for an opportunity to negotiate in this matter. It does not appear that the applicant is willing to do so. Thus, I enclose a return envelope for the issued subpoena. I will see that it is served on the Meadows' attorney. We look forward to participating in the contested case.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', is written over the typed name. The signature is fluid and cursive.

Karl G. Anuta

KGA/jf

Enclosure

cc: Clients
Richard Whitman, Meadows' attorney
Bill Young, WRD Director

RECEIVED

JUN 17 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION

STATE OF OREGON

IN RE: PROTESTED) PETITION FOR ISSUANCE
APPLICATION NO. 69976) OF SUBPOENA DUCES TECUM
_____)

Pursuant to ORS 183.425(1), Friends of Mt. Hood (FOMH) requests issuance of a Subpoena Duces Tecum in order to obtain discovery in the above referenced matter. The witness to be deposed is:

Mr. Clay Simons
General Manager
Mt. Hood Meadows

This witness's address is:

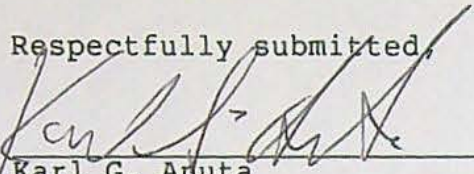
Mr. Clay Simons
c/o Ball, Janik & Novack
Suite 1100
101 S.W. Main St.
Portland, OR 97204

The issues to be covered at deposition include: (1) the hydrology of the proposed area of withdrawal; (2) the specific amount of water proposed to be used for fire suppression, domestic consumption, irrigation, commercial use, and other listed proposed uses; (3) the specific amount of water currently used for each of those same uses; (4) possible effects of proposed use on instream water right #59677; and (5) potential environmental consequences of increased withdrawal from surface and/or ground water.

Each of these issues is material to the protest. Without the requested information, the parties will not be able to provide appropriate evidence or cross examine relevant

1 witnesses. Consequently, FOMH requests issuance of the
2 subpoena.

3 Respectfully submitted,

4 
5 Karl G. Anuta
6 Attorney for Friends of Mt. Hood

RECEIVED

JUN 17 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION

STATE OF OREGON

IN RE: PROTESTED) SUBPOENA DUCES TECUM
APPLICATION NO. 69976)
_____)

TO: Clay Simon and his attorney, Richard Whitman, c/o
Ball, Janik & Novack, Suite 1100, 101 S.W. Main St.,
Portland, OR 97204

YOU ARE HEREBY REQUIRED to appear in the offices of Karl
G. Anuta of JOLLES, SOKOL & BERNSTEIN, 721 SW Oak St.,
Portland, Oregon, on 15th day of July, 1991, at 9:00 a.m., to
testify as a witness in the above entitled cause and to remain
until the testimony is closed unless you are sooner discharged.

You are commanded to bring with you:

NO. 1: Hydrological data showing the aquifer for the
same existing springs and any other data on what other sources
that aquifer supplies.

NO. 2: Information on how the applicant proposes to
deal with the increased sedimentation, sewage effluent and
waste water effluent.

NO. 3: Document discussing, in any way, how much
water will be used for each of the requested uses including:
fire suppressant, sewage treatment, domestic consumption, etc.

NO. 4: Information on how the applicant expects to
resolve concerns that the East fork of the Hood River is
already over appropriated and that an existing instream water
right is sometimes not met.

NO. 5: Any water availability data on the East Fork
of the Hood River.

NO. 6: Any specific studies that have been done on
the environmental consequences and effects of withdrawing this
water from the headwaters of the East Fork.

NO. 7: Information on where Meadows currently gets
its water, how much is used and for what purposes.

DATED: June 14, 1991 Issued by:

Weisha Mize
Hearings Officer

1 =====
2 I hereby certify that the foregoing is a complete and
3 exact copy of the original subpoena in the above entitled cause
4 as the same appears in my hands for service.

5 _____
6 Karl G. Anuta
7 Attorney for Friends of Mt. Hood
8 =====

9
10 Witness Fee . . . \$30.00
11 Mileage
12 Total \$ _____

13 STATE OF OREGON)
14) ss.
15 COUNTY OF MULTNOMAH)

16 I hereby certify that I served the subpoena duces tecum on
17 the _____ day of June, 1991, on the within named Clay Simon or
18 his attorney Richard Whitman by delivering to them a copy
19 thereof personally and given or offering to them at the same
20 time the fees and mileage to which they are entitled for travel
21 to and from the place designated in said subpoena and one day's
22 attendance; that I am a competent person over the age of 18
23 years.
24
25
26 _____

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS*
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

RECEIVED

JUN 17 1991

TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

**WATER RESOURCES DEPT.
SALEM, OREGON**

June 14, 1991

Richard Whitman
BALL, JANIK & NOVACK
1100 One Main Place
101 S.W. Main St.
Portland, OR 97204

Re: Meadows Protested Application No. 69976

Dear Richard:

Despite my 11/3/89, 1/15/91, 2/27/91 and 3/29/91 letters, I have not even received a phone call from you, much less the requested documentation. Consequently, I have no alternative but to take a more formalistic approach. Enclosed is a copy of a Petition for a Subpoena Duces Tecum.

It is my understanding that Mt. Hood Meadows is proposing to conduct summer activities that will enhance the growth of the area, including construction of several new lifts (#15 and Super Express), as well as roads and other activities. Until Meadows has a water right that will allow enhanced growth, I do not think this is appropriate. Under the circumstances, it is critical that my clients be aware of the data upon which Mt. Hood Meadows apparently relies to demonstrate the appropriateness of a water right.

Since you have now filed an application for "quasi-municipal" use, I broadened the nature of my original request to cover those issues. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA/jf

Enclosure

cc: Clients
Weisha Mize, Hearings Officer

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



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OF COUNSEL
ROBERT A. SACKS

November 3, 1989

RECEIVED

JUN 17 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Richard Glick
RAGEN, TREMAINE, KRIEGER, SCHMEER & NEILL
1300 SW 5th Ave., Suite 2300
Portland, OR 97201

Re: Mt. Meadows Water Right Application
Protested Application No. 69976

Dear Rick:

As you know, I represent the Friends of Mt. Hood in a protest filed against the most recent Mt. Hood Meadows water right application. The hearings referee has directed us to "negotiate." I would appreciate the opportunity to get together with you, and perhaps your clients, and discuss your position on this appropriation.

Since your clients seem to have control of the vast majority of the information, I would like to have some additional info that might help resolve the Friends of Mt. Hood's concerns. Please provide me with the following:

1. The hydrological data showing the aquifer which the two springs draw from and what other sources that aquifer supplies;
2. Information on how the applicant proposes to deal with the increased sedimentation, sewage effluent and waste water effluent that is mentioned in the DEIS;
3. Information on how much water will be used for fire suppressant, sewage treatment and domestic consumption;
4. Information on how Meadows proposes to deal with the fact that the East Fork of the Hood River is already over appropriated so that the minimum stream flow water right dated 11/3/83 (measured at the mouth of the East Fork) are sometimes not being met.
5. Any up-to-date flow data on the East Fork of the Hood River which your client has.

FILE COPY

Mr. Richard Glick

Re: Mt. Hood Meadows Application No. 69976

November 3, 1989

Page 2

6. Any specific studies that have been done on the effects of withdrawing this significant amount of water from the headwaters of the East Fork.
7. Information on where Meadows currently gets its water, how much is used, and for what purposes. I am unable to locate a current appropriation permit at or near the Meadows site. In light of the prohibitions in ORS 537.130(2) and 537.990, I assume that Meadows is not illegally diverting water for current use of any sort. Are they trucking it in, or what?

I look forward to hearing from you.

Sincerely,

Karl G. Anuta

KGA:pl

cc: Kate McCarthy
Tom Hachtel

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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BERNARD JOLLES
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EVELYN CONROY SPARKS*
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

January 15, 1991

Richard M. Whitman, Esq.
Ball, Janik & Novack
101 S.W. Main Street
Suite 1100 - One Main Place
Portland, OR 97204-3274

Re: Mt. Hood Meadows Application #69976

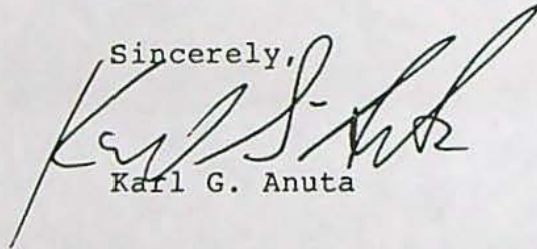
Dear Mr. Whitman:

As you know, the Mt. Hood Meadows FEIS has now been issued. As you also know, I represent the Friends of Mt. Hood in opposing the massive overnight expansion suggested for the Mt. Hood Meadows area.

I enclose a copy of a 11/3/89 letter to Mt. Hood Meadows' former attorney. I requested a number of pieces of information to assist in the process of resolving, if possible, our concerns about the Mt. Hood Meadows water right application. Your client has now had this request pending for well over one year. Thus, I am sure there will be no problem producing this material. I look forward to receiving the requested information in the near future.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Karl G. Anuta

KGA/jf

Enclosure

c: Rich Holoch, Defenders of Wildlife w/enc.
Weisha Mize, Oregon Water Resources Dept. w/enc.
Janet Tobkin, Friends of Mt. Hood w/enc.
Kate McCarthy, Friends of Mt. Hood w/enc.
Bob Doppelt, Oregon Rivers Council w/enc.
Kim Russell, WaterWatch of Oregon w/enc.
Tom Hachtel, Crystal Springs Water District w/enc.
Mike McCarthy, Hood River Residence Committee w/enc.
Greg Robart, Oregon Dept. of Fish and Wildlife w/enc.
Clarence Neville, East Fork Irrigation District w/enc.

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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PORTLAND, OREGON 97205-3791



BERNARD JOLLES
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* ALSO MEMBER OF
WASHINGTON STATE BAR

February 27, 1991

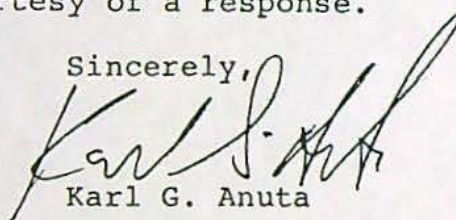
Richard Whitman, Esq.
Ball, Janik & Novack
101 S.W. Main Street
Suite 1100 - One Main Place
Portland, OR 97204-3274

Re: Mt. Hood Meadows Application #69976

Dear Mr. Whitman:

Enclosed is a copy of my 1/15/91 letter with attachments.
I would appreciate the courtesy of a response.

Sincerely,



Karl G. Anuta

KGA/jf

Enclosure

c: Rich Holoch, Defenders of Wildlife
Weisha Mize, Oregon Water Resources Dept.
Janet Tobkin, Friends of Mt. Hood
Kate McCarthy, Friends of Mt. Hood
Bob Doppelt, Oregon Rivers Council
Kim Russell, WaterWatch of Oregon
Tom Hachtel, Crystal Springs Water District
Mike McCarthy, Hood River Residence Committee
Greg Robart, Oregon Dept. of Fish and Wildlife
Clarence Neville, East Fork Irrigation District

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
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KARL G. ANUTA

March 29, 1991

* ALSO MEMBER OF
WASHINGTON STATE BAR

Richard Whitman, Esq.
Ball, Janik & Novack
101 S.W. Main St.
Suite 1100 - One Main Place
Portland, OR 97204-3274

Re: Meadows Application No. 69976

Dear Mr. Whitman:

Enclosed are copies of my 2/27/91, 1/15/91 and 11/3/89 letters to you or your client's prior attorney. To date I have yet to see a single document or a shred of information.

I understand from talking with the Water Resources Dept. that Meadows will be filing an amended water right application. Since the physical facts of the locale have not changed, I believe all of the data that I requested on 11/3/89 is still relevant.

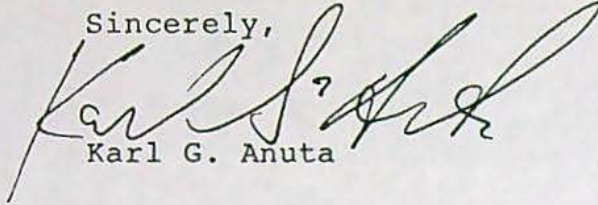
As you know, we have been repeatedly directed by the WRD to try to negotiate/resolve this matter. Without the requested information, I do not think either side will be able to comply with the WRD directives. I will not allow Friends of Mt. Hood to participate in any negotiations where Mt. Hood Meadows is withholding factual information that should be available to the public.

Frankly, I don't understand what the delay is. I also don't understand why you and your client refuse to respond. Friends of Mt. Hood is not going to "go away". Burying one's proverbial head in the sand will not resolve the issues here. Let's be up front and act like adults about this matter and try to actually address the issues.

Richard Whitman
March 29, 1991
Page 2

I look forward to either hearing from you finally or to the withdrawal of your application for lack of diligent efforts to comply with WRD directives.

Sincerely,



Karl G. Anuta

KGA/jf

Enclosures

c: Kate McCarthy, FOMH
Janet Tobkin, FOMH
Jack and Kate Mills, FOMH
Weisha Mize, WRD Hearings Officer

MEMORANDUM

TO: Weisha Mize

DATE: June 14, 1991

FROM: STEVE BROWN
Senior Water Rights Examiner

RE: APPLICATIONS 49732, 69976, G-12550 and R-71657
Mt. Hood Meadows - Meadows Water Co.

The applicant has amended application 69976 and submitted additional applications for permit for the resort at Mt. Hood.

The applications for permit are currently not in proper form nor draft permits agreed to.

I am under the impression that quasi-municipal use enjoys all the statutory preferences of a municipal user except the what is given a municipality under ORS 537.190(2), 537.230(1), or 537.410 (2).

I would recommend that you consider addressing all the applications that have letters of concern for the development at one time.

0144



JOLLES, SOKOL & BERNSTEIN, P.C.

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* ALSO MEMBER OF
WASHINGTON STATE BAR

June 14, 1991

Steve Brown
Applications and Permit Division
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

RECEIVED
JUN 17 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Re: Reservoir Application No. R-71657
Ground Water Application No. G-12550

Dear Mr. Brown:

I recently received material indicating that Mt. Hood Meadows ski area has filed for the above referenced water permits. Friends of Mt. Hood vigorously objects to these permits. We have already protested a previously filed surface water right. See Protest on file in application no. 69976.

Please advise whether a separate protest and protest fee is necessary for this new filing. I note that it appears from the Department's records that no new filing fees were charged to the applicant. Thus, I would assume no new protest fees will be charged to the protestants.

I look forward to hearing from you.

Sincerely,

Karl G. Anuta

KGA/jf

cc: Clients
Richard Whitman, Meadows' Attorney

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
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* ALSO MEMBER OF
WASHINGTON STATE BAR

Borden
cc: Young

TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

June 12, 1991

RECEIVED

JUN 13 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Bill Young, Director
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97310

Re: Applications No. 69976 and 49732

Dear Bill:

Enclosed are copies of my 3/29/91 and 5/22/91 letters to Steve Brown requesting information on the Mt. Hood Meadows' Water Right Applications No. 69976 and 49732. To date, I have not heard anything. This concerns me greatly since the record of decision from the Forest Service is now out and has been for some time. Both the Forest Service and the applicant are apparently proceeding on the assumption that there will be no problem getting a water right. My clients do not share this assumption! We are convinced that issuance of the requested rights would violate the public trust doctrine, would harm existing users, and would otherwise not be in the public interest.

I would appreciate it if the Department would locate the information requested. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Rich Holoch
Steve Brown

RECEIVED

JUN 13 1991

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



March 29, 1991

WATER RESOURCES DEPT.
SALEM, OREGON

TELEPHONE
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BERNARD JOLLES
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MICHAEL T. GARONE
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KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

*Prior to
receipt of
new appl'n*

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

Re: Mt. Hood Meadows Water Rights Applications

Dear Steve:

This confirms our phone conversation on 3/27/91. Thank you for taking the time to chat with me. I understand that you and the WRD Director already met with Clay Simon and his attorney several weeks ago.

Apparently Mt. Hood Meadows will be submitting an amended application, clarifying what amount of water they want and what they want to use that water for. Thereafter, you will distribute that to the interested parties. After we have had a chance to review the application and any additional appropriate documentation, WRD will try to help the parties reach some negotiated resolution. If resolution is not reached, a contested case hearing on the application will be recommended. If my understanding of the situation is not correct, please let me know.

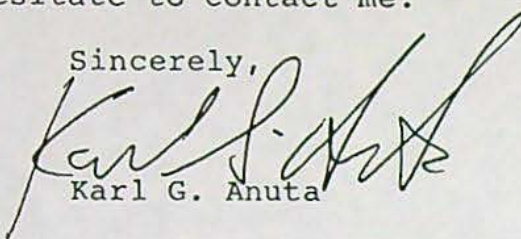
I would appreciate it if you could send me any correspondence or documentation on the older file (Meadows application #49732) about the current priority date. This application was originally filed in 1971. It was later given a 1978 priority date. In December of 1989, the WRD told Meadows that it would reject the application unless something was done immediately. Nothing was done. It is my understanding from our conversation that the priority date for this application is now January of 1990. I would appreciate copies of any documents clarifying how it got a new date, why it hasn't been rejected, etc.

I believe we both agree that water quality is a public interest issue. My understanding is that when this concern comes up, WRD will ask DEQ to assist and provide input. As I indicated, if there is anything I can do to assist you in obtaining DEQ's help, I would be happy to do so.

Steve Brown
March 29, 1991
Page 2

I look forward to working with you and to receiving the requested documents on application #49732. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', written over the typed name.

Karl G. Anuta

KGA/jf

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Richard Whitman, Esq.
Bill Young, WRD Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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WASHINGTON STATE BAR

May 22, 1991

RECEIVED

JUN 13 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

Re: Mt. Hood Meadows Water Rights Application

Dear Steve:

Enclosed is a copy of my March 29, 1991 letter. To date, I have not heard from you regarding (1) an amended application by Mt. Hood Meadows, or (2) any correspondence or other documentation that the priority date of application no. 49732 has been changed to 1990. Please let me know if there is a problem providing any of the requested information.

I look forward to hearing from you.

Sincerely,

Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Bill Young, WRD Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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WASHINGTON STATE BAR

June 12, 1991

RECEIVED

JUN 13 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Larry Toll
Watermaster - District 3
Water Resources Dept.
400 E. 5th
Annex A, Room 205
The Dalles, OR 97058

Re: Potential Illegal Water Use
Certificate No. 48445
Permit No. 38081

Dear Mr. Toll:

As you will recall, I represent the Friends of Mt. Hood. I have previously written you about the above referenced water right. In reviewing the file on this matter, I am concerned that Mt. Hood Meadows continues to illegally use waters of the State of Oregon.

As you will recall, on 11/7/89 you specifically advised Mt. Hood Meadows that they were not entitled to irrigate ski slopes or other areas with their existing water right. A copy of your letter is attached. However, a 1/11/90 Meadows memo appears to indicate that they are continuing to irrigate at a number of sites.

As you know, in the next month or so the snow will clear from the Mt. Hood Meadows ski area. I am very concerned that there will again be an illegal use of water for irrigation purposes. This would be contrary to Mt. Hood Meadows' water right. There are numerous senior water right holders in the lower Hood River Valley who would object to this use.

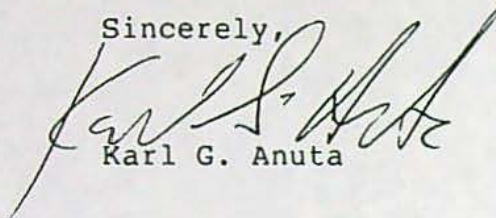
In addition, as you will recall, there is an instream water right (#59677) on the East Fork of the Hood River. Previous communications from you to the Department indicate that this right is already not being met at certain times of the year.

Please readvise Mt. Hood Meadows of the parameters of their existing right and please keep a sharp eye on them to be certain that illegal use does not occur. If illegal use does occur, Friends of Mt. Hood and others may well be requesting restitution from the applicant for any such use, as well as for past illegal use.

Larry Toll
June 12, 1991
Page 2

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', is written over the word 'Sincerely,'.

Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin, Friends of Mt. Hood
Kate McCarthy, Friends of Mt. Hood
Rich Holoch, Friends of Mt. Hood
Jack/Kate Mills, Friends of Mt. Hood
Richard Whitman, Meadows attorney
✓ William Young, Director WRD
Karen Russell, Waterwatch
Jim Myron, Oregon Trout
Dave Moskowitz, NW Steelheaders
Tom Hatchel, Crystal Springs Water District
Clarence Neville, East Fork Irrigation District



Water Resources Department

400 EAST 5th, ANNEX A - ROOM 205, THE DALLES, OREGON 97058 PHONE 296-5494

November 7, 1989

Clay Simon
Mt. Hood Meadows Ski Resort
P.O. Box 47
Mt. Hood, OR 97041

Clay,

You and I discussed earlier whether or not irrigation was an accepted use under the existing water right for Mt. Hood Meadows Ski Facility. I have had a research of Mt. Hood Meadows Water Right Permit 38081 made by the Water Resource Department in Salem on that question. The answer is no.

Information in Water Right Application 50037 from Mt. Hood Meadows Development Corporation indicates the proposed ski facility uses were to include use within the lodge, maintenance building, sewage treatment plant and ski patrol building. Water Right Permit 38081 was issued for ski facility and fire suppression based on the application request.

A final inspection was made by a Water Resources Department field engineer so a certificate of water right could be issued. That report indicated that the water, besides for fire suppression, was used for potable water in the lodge, ski patrol building and shop building. Certificate of Water Right 48445 was issued for ski facility and fire suppression.

From this I conclude that there was no intent listed in the original application for use of water for irrigation purposes. That when the final certificate of water right was issued the intention of the department to issue a right only for ski facility use plus fire suppression was based on the original request and uses found in the field inspection.

At the time the application was received, the practice was that the use of water for irrigation purposes required a separate listing in the area showing the uses and there was a separate set of fees based on acreage for irrigation. This is still the practice of the department today.

It is my suggestion that Mt. Hood Meadows inquire to the Water Resources Department about an amendment to the pending application for water rights to include irrigation.

If I can answer any questions, please contact me.

Sincerely,

Larry Toll
Watermaster-District 3

MEMO TO: Clay Simon

DATE: 1/11/90

FROM: Bruce W. Barker

COPY TO:

SUBJECT: Irrigation Sites

The following is a summation of the specific locations at which we divert water from our local streams for the purposes of irrigation.

Area 1: In the vicinity of the Shooting Star chairlift; R 9 East, T 3 South, Sec. 3 from the unnamed tributary of Clark Creek paralleling Shooting Star lift top to bottom. Water is diverted in three of four areas along this stream to irrigate adjacent ski runs.

Area 2: R 9 East, T 3 South, Sec. 3 & 4; Unnamed tributary to the East fork of the Hood River which lies between the current Express and Yellow lifts. This stream runs through the middle of Middle Fork ski run and adjacent to the North Canyon ski run. Water is diverted at the upper reaches of this stream in the vicinity of In-Between and on the lower reaches of this stream around the Erik's Corner.

Area 3: R 9 East, T 3 South, Sec. 4; This area consists of two unnamed forks of the East fork of the Hood River. One fork runs on one side of the South Canyon ski run, one fork runs on the north side of the South Canyon ski run. Water is diverted from both streams to irrigate the South Canyon area and some is used to irrigate the lower reaches of Ridge Run ski trail.

Area 4: R 9 East, T 3 South, Sec.4; This stream is the upper fork of Mitchell Creek, south of the Red lift. Water is diverted for irrigation for the Mitchell Creek Blvd. ski run to the south and the Fireweed, Nastar ski runs to the north.

Area 5: R 9 East, T 3 South, Sec.9; This stream is unnamed fork of White River which runs approximately north south through the center of Section 9. This stream lies within the recommended construction site for the White River lift. It will be used in a number of as yet undetermined locations to divert water for irrigation on new trails which will be constructed for the White River lift.

Area 6: R 9 East, T 3 South, Sec.11; This is an unnamed branch of Meadows Creek running parallel to the HRM skiway. Lower part of this stream is used to collect water for irrigation on the lower part of the skiway.

All base area irrigation is from our domestic water supply.

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS *
KARL G. ANUTA

* ALSO MEMBER OF
WASHINGTON STATE BAR

RECEIVED

JUN 13 1991

TELEPHONE (503) 228-6474
FACSIMILE (503) 228-0836
WATER RESOURCES DEPT.
SALEM, OREGON

June 12, 1991

Bill Young, Director
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97310

Re: Applications No. 69976 and 49732

Dear Bill:

Enclosed are copies of my 3/29/91 and 5/22/91 letters to Steve Brown requesting information on the Mt. Hood Meadows' Water Right Applications No. 69976 and 49732. To date, I have not heard anything. This concerns me greatly since the record of decision from the Forest Service is now out and has been for some time. Both the Forest Service and the applicant are apparently proceeding on the assumption that there will be no problem getting a water right. My clients do not share this assumption! We are convinced that issuance of the requested rights would violate the public trust doctrine, would harm existing users, and would otherwise not be in the public interest.

I would appreciate it if the Department would locate the information requested. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Rich Holoch
✓ Steve Brown

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



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BERNARD JOLLES
LARRY N. SOKOL
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MICHAEL T. GARONE
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KARL G. ANUTA

March 29, 1991

* ALSO MEMBER OF
WASHINGTON STATE BAR

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

Re: Mt. Hood Meadows Water Rights Applications

Dear Steve:

This confirms our phone conversation on 3/27/91. Thank you for taking the time to chat with me. I understand that you and the WRD Director already met with Clay Simon and his attorney several weeks ago.

Apparently Mt. Hood Meadows will be submitting an amended application, clarifying what amount of water they want and what they want to use that water for. Thereafter, you will distribute that to the interested parties. After we have had a chance to review the application and any additional appropriate documentation, WRD will try to help the parties reach some negotiated resolution. If resolution is not reached, a contested case hearing on the application will be recommended. If my understanding of the situation is not correct, please let me know.

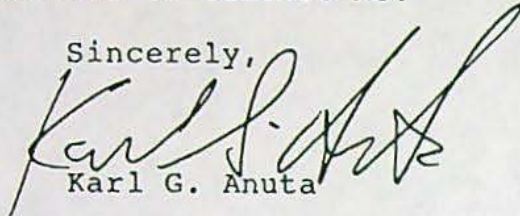
I would appreciate it if you could send me any correspondence or documentation on the older file (Meadows application #49732) about the current priority date. This application was originally filed in 1971. It was later given a 1978 priority date. In December of 1989, the WRD told Meadows that it would reject the application unless something was done immediately. Nothing was done. It is my understanding from our conversation that the priority date for this application is now January of 1990. I would appreciate copies of any documents clarifying how it got a new date, why it hasn't been rejected, etc.

I believe we both agree that water quality is a public interest issue. My understanding is that when this concern comes up, WRD will ask DEQ to assist and provide input. As I indicated, if there is anything I can do to assist you in obtaining DEQ's help, I would be happy to do so.

Steve Brown
March 29, 1991
Page 2

I look forward to working with you and to receiving the requested documents on application #49732. If you have any questions, please do not hesitate to contact me.

Sincerely,



Karl G. Anuta

KGA/jf

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Richard Whitman, Esq.
Bill Young, WRD Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
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FACSIMILE
(503) 228-0836

* ALSO MEMBER OF
WASHINGTON STATE BAR

May 22, 1991

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

Re: Mt. Hood Meadows Water Rights Application

Dear Steve:

Enclosed is a copy of my March 29, 1991 letter. To date, I have not heard from you regarding (1) an amended application by Mt. Hood Meadows, or (2) any correspondence or other documentation that the priority date of application no. 49732 has been changed to 1990. Please let me know if there is a problem providing any of the requested information.

I look forward to hearing from you.

Sincerely,

Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Bill Young, WRD Director

Application No. 69976 (1st Amendment)

RECEIVED

MAY 24 1991

State of Oregon
WATER RESOURCES DEPARTMENT

WATER RESOURCES DEPT
SALEM, OREGON

Application for a Permit to Appropriate Surface Water

Applicant(s) Meadows Water Company, an Oregon Corporation
(Please print or type - use dark ink)

Mailing Address: P.O. Box 470
Mt. Hood Oregon 97041 (503) 337-2222
City State Zip Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: No Change
a tributary of _____

2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 0.48 cubic feet per second, OR 215.4 gallons per minute. If water is to be used from more than one source, give the quantity of water from each: _____

3. **INTENDED USE(s) OF WATER:** Quasi-municipal (see REMARKS for detail).

If for more than one use, give the quantity of water from each source for each use; _____

If for DOMESTIC use, state the number of households to be supplied; _____

If for MUNICIPAL OR QUASI-MUNICIPAL use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)

Existing: 1) population - 8,600 (day use); 2) area served - 3,136 ac.

Projected: 1) population - 15,000 (day use); 2) area served - 3,932 ac.

500 (resident)
If for MINING use, state the nature (gold, silver, etc.) of the mines to be served; _____

If for IRRIGATION, or other land area use, state the TOTAL number of acres to be developed under each use;

Irrigation _____
Other (describe) _____

4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).

No Change.

5. **PROJECT SCHEDULE:** (List month and year) No Change for Spring 2790N, 990W.

Proposed date construction work will begin Spring 2730N, 1000W -- 10/93

Proposed date construction work will be completed Spring 2730N, 1000W -- 10/94

Proposed date water use will be completed Spring 2730N, 1000W -- 10/2002

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

 Applicant CWRE X Other (Identify in REMARKS section)

- b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

 Applicant CWRE X Other (Identify in REMARKS section)

7. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? No. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

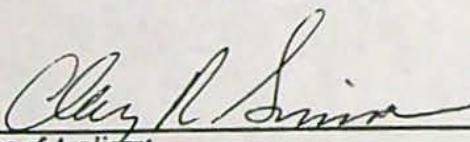
REMARKS: 1) Quasi-municipal use: delivery and use of water through the water supply system of a corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to a municipal water supply system.

These uses include, but are not limited to, uses of water for domestic, irrigation of lawns and gardens, commercial, industrial, fire protection, irrigation and other uses in park and recreation facilities, street washing, and resort facility uses, but do not include generation of hydroelectric power.

2) All correspondence regarding this application should be directed to: Richard M. Whitman; Ball, Janik & Novack; Suite 1100; 101 S.W. Main Street; Portland, OR 97204; Telephone (503)228-2525.

3) All lands involved are under the ownership of the U.S. government. USDA Forest Service, Mt. Hood National Forest, 2955 N.W. Division Street; Gresham, OR 97030.

NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.


Signature of Applicant

5/22/91
Date

Signature of Co-Applicant, if any

Date

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

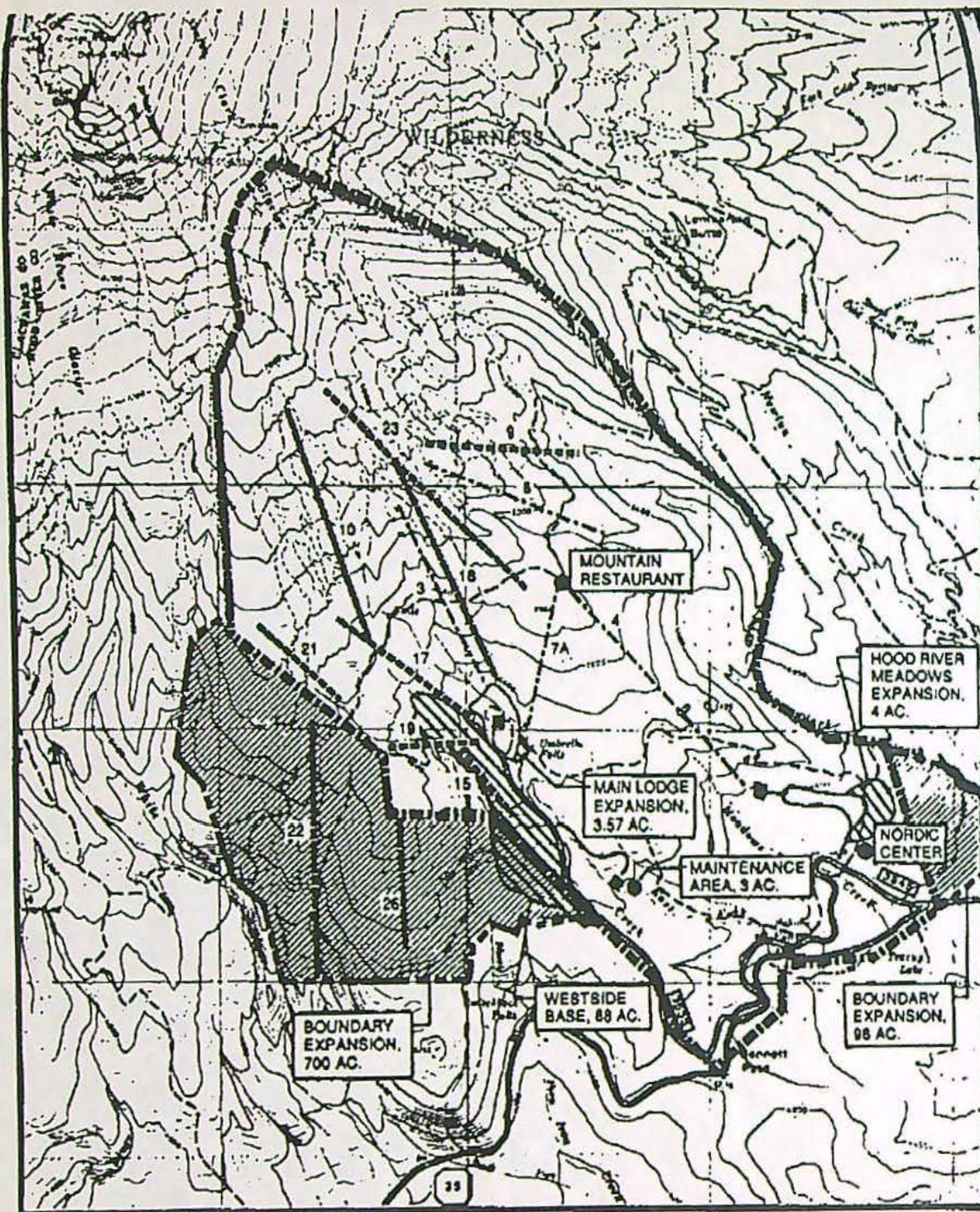
Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at _____,
Oregon, on the _____ day of _____, 19____, at _____ o'clock, ____ M.

APPLICATION NO: _____

PERMIT NO: _____



LEGEND

Base Areas

- Existing
- Proposed

Other Facilities

- Existing
- Proposed

Permit Boundary

- Existing
- Proposed

Boundaries and facility locations are approximate

Lifts

- Existing
- Proposed

Access

- State Highway
- Access Road
- Trails

FIG. II-5
ALTERNATIVE P
USFS PREFERRED ALTERNATIVE
MT. HOOD MEADOWS SKI AREA
MASTER PLAN EIS
 COGAN SHARPE COGAN
 October 1990

SCALE 1:24,000



RECEIVED

MAY 24 1991

WATER RESOURCES DEPT.
SALEM, OREGON

RICHARD M. WHITMAN

BALL, JANIK & NOVACK

ATTORNEYS AT LAW

ONE MAIN PLACE

101 S.W. MAIN STREET, SUITE 1100

PORTLAND, OREGON 97204-3274

TELEPHONE (503) 228-2525

TELECOPY (503) 295-1058

9TH FLOOR, 601 PENNSYLVANIA AVE. N.W.

WASHINGTON, D. C. 20004

TELEPHONE (202) 638-3307

TELECOPY (202) 783-6947

May 23, 1991

BY HAND DELIVERY

Mr. William Young, Director
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Enclosed Ground Water Application and Amendment to
Surface Water Application No. 69976

Dear Mr. Young:

I am enclosing two documents, one an amendment to the existing Surface Water Right Application No. 69976 by Mt. Hood Meadows, Ltd., the other a new Ground Water Right Application. These applications are being made by Meadows Water Company, an Oregon Corporation formed for the purpose of operating a water supply system for those uses usual and ordinary to a municipal water supply system.

You will note that the quantity of water requested for the Mt. Hood Meadows expansion project has been significantly reduced. This is largely a result of the U.S. Forest Service's decision to reduce the number of overnight units allowed at the facility, it also stems from additional work we have done on both water availability and water demand projections.

Application No. 69976 is being amended to provide for quasi-municipal use based on the advice of you and your staff that this use category more clearly reflects the actual intended beneficial use of water. The applicant for Application No. 69976 is changed to reflect the requirements of your agency's rule for quasi-municipal use. Based on our meeting and subsequent conversations with your staff, it is our understanding that all of the expected uses at Mt. Hood Meadows, including commercial, domestic, group domestic, fire suppression, irrigation of lawns, and establishment of vegetation on ski slopes (as per U.S. Forest Service requirements) are included under the definition of quasi-municipal use. It is also our understanding that Application No. 69976 will retain the same tentative priority date, and that the application is not subject to the instream right on the East Fork of the Hood River.

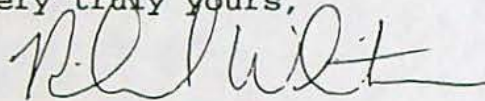
Mr. William Young
May 23, 1991
Page 2

The other significant change reflected in these filings is that we now intend to develop a supplemental ground water source, to be used to reduce the amount of diversion from the proposed surface water source during low flow periods of the year. We expect that this arrangement will significantly reduce, or eliminate concerns regarding the impacts of this project on the East Fork of the Hood River.

We are currently finalizing our work on projected water availability and demand for this development. We expect to file this information with the Department by June 10, 1991.

If you have any questions or concerns regarding these filings please feel free to call me. I appreciate the time and thought you and your staff spent working with us to develop this project in a manner that is an environmentally sensitive as possible.

Very truly yours,



Richard M. Whitman

P.S. Original copies of the maps for these filings are being sent under separate cover by Century West.

cc. Mr. Clay Simon
✓ Mr. Stephen Brown (by separate cover)
Mr. Stephen T. Janik

RECEIVED

MAY 23 1991

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 228-2525
TELECOPY (503) 295-1058

WATER RESOURCES DEPT.
9TH & OREGON ST. N.E.
SALEM, OREGON
WASHINGTON, D. C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-6947

RICHARD M. WHITMAN

May 23, 1991

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Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

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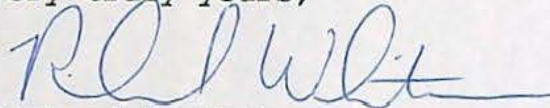
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May 23, 1991
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Very truly yours,

A handwritten signature in blue ink, appearing to read "R. M. Whitman", with a long horizontal flourish extending to the right.

Richard M. Whitman

P.S. Original copies of the maps for these filings are being sent under separate cover by Century West.

cc. Mr. Clay Simon
Mr. Stephen Brown (by separate cover)
Mr. Stephen T. Janik

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



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* ALSO MEMBER OF
WASHINGTON STATE BAR

May 22, 1991

RECEIVED

MAY 23 1991

WATER RESOURCES DEPT
SALEM, OREGON

TELEPHONE
(503) 228-6474

FACSIMILE
(503) 228-0836

S. Applegate

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

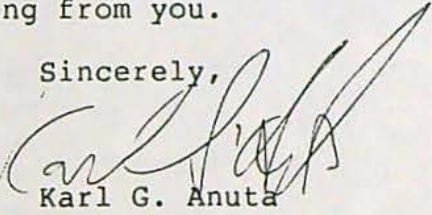
Re: Mt. Hood Meadows Water Rights Application

Dear Steve:

Enclosed is a copy of my March 29, 1991 letter. To date, I have not heard from you regarding (1) an amended application by Mt. Hood Meadows, or (2) any correspondence or other documentation that the priority date of application no. 49732 has been changed to 1990. Please let me know if there is a problem providing any of the requested information.

I look forward to hearing from you.

Sincerely,


Karl G. Anuta

KGA/jf

Enclosure

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
✓ Bill Young, WRD Director

RECEIVED

MAY 23 1991

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



March 29, 1991

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SALEM, OREGON

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* ALSO MEMBER OF
WASHINGTON STATE BAR

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

Re: Mt. Hood Meadows Water Rights Applications

Dear Steve:

This confirms our phone conversation on 3/27/91. Thank you for taking the time to chat with me. I understand that you and the WRD Director already met with Clay Simon and his attorney several weeks ago.

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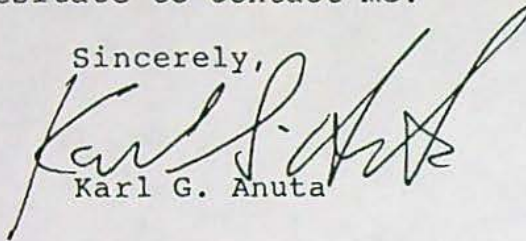
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I believe we both agree that water quality is a public interest issue. My understanding is that when this concern comes up, WRD will ask DEQ to assist and provide input. As I indicated, if there is anything I can do to assist you in obtaining DEQ's help, I would be happy to do so.

Steve Brown
March 29, 1991
Page 2

I look forward to working with you and to receiving the requested documents on application #49732. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', with a stylized, flowing script.

Karl G. Anuta

KGA/jf

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Richard Whitman, Esq.
Bill Young, WRD Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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May 22, 1991

RECEIVED

MAY 23 1991

**WATER RESOURCES DEPT.
SALEM, OREGON**

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

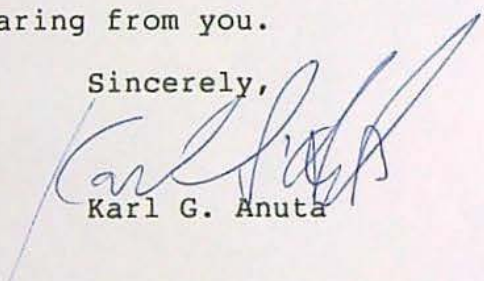
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Enclosure

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MAY 23 1991

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PORTLAND, OREGON 97205-3791



March 29, 1991

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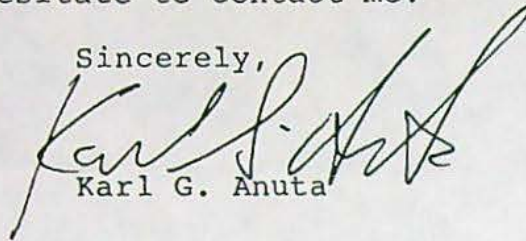
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March 29, 1991
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Karl G. Anuta

KGA/jf

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Richard Whitman, Esq.
Bill Young, WRD Director

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



March 29, 1991

BERNARD JOLLES
LARRY N. SOKOL
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APR 01 1991

WATER RESOURCES DEPT
SALEM, OREGON

Steve Brown
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97303

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Dear Steve:

This confirms our phone conversation on 3/27/91. Thank you for taking the time to chat with me. I understand that you and the WRD Director already met with Clay Simon and his attorney several weeks ago.

Apparently Mt. Hood Meadows will be submitting an amended application, clarifying what amount of water they want and what they want to use that water for. Thereafter, you will distribute that to the interested parties. After we have had a chance to review the application and any additional appropriate documentation, WRD will try to help the parties reach some negotiated resolution. If resolution is not reached, a contested case hearing on the application will be recommended. If my understanding of the situation is not correct, please let me know.

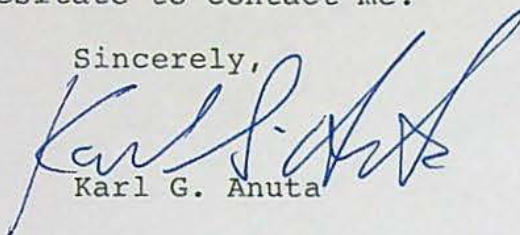
I would appreciate it if you could send me any correspondence or documentation on the older file (Meadows application #49732) about the current priority date. This application was originally filed in 1971. It was later given a 1978 priority date. In December of 1989, the WRD told Meadows that it would reject the application unless something was done immediately. Nothing was done. It is my understanding from our conversation that the priority date for this application is now January of 1990. I would appreciate copies of any documents clarifying how it got a new date, why it hasn't been rejected, etc.

I believe we both agree that water quality is a public interest issue. My understanding is that when this concern comes up, WRD will ask DEQ to assist and provide input. As I indicated, if there is anything I can do to assist you in obtaining DEQ's help, I would be happy to do so.

Steve Brown
March 29, 1991
Page 2

I look forward to working with you and to receiving the requested documents on application #49732. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl G. Anuta', with a stylized flourish at the end.

Karl G. Anuta

KGA/jf

cc: Janet Tobkin
Kate McCarthy
Jack and Kate Mills
Richard Whitman, Esq.
Bill Young, WRD Director

S. Applegate / T. Paul / Reed Mudgett /
SW

RECEIVED

Barry Norris (SNF/1055)
JAN 29 1991



WATER RESOURCES DEPT.
SALEM, OREGON

Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd., Portland, Oregon 97219
(503) 244-1181 ext.707

Bill Young,
495
Martha Page

~~Co. Borden~~
~~Zreag~~

January 11, 1991

file
69976

JAN 16 8 43 AM '91
DIVISION OF
STATE LANDS

Pam Wiley, Chair
Natural Resources Study Group
Governor-Elect Roberts Transition Team
155 Cottage Street, NE
Salem, OR 97310

Dear Ms. Wiley:

The Northwest Environmental Defense Center (NEDC) is a nonprofit, public interest conservation organization which has been involved in environmental interests in the Pacific Northwest for over 20 years. On behalf of NEDC, I am writing to express our support for Governor-Elect Roberts' efforts to "sound out the community" on natural resource issues.

NEDC has traditionally focused heavily on protecting and enhancing the region's clean water resource. This involves both water quality and water quantity. It highlights what seems to be an unhappy and unwilling relationship between two state agencies, the Department of Environmental Quality (DEQ) and the Water Resources Department (WRD).

Water quality must be protected in Oregon in order to provide for fish, wildlife habitat, domestic use, recreation and even for future industrial users. Of all people, industry needs and demands clean water. Unfortunately, the supply of clean water is limited. WRD seems to be unaware of this fact. DEQ is painfully aware of it. To protect what we have, DEQ must have the unqualified support of the Governor and the legislature.

We urge the Governor to insist that DEQ receive adequate funding to complete the Total Maximum Daily pollutant Loadings (TMDL) process on Oregon's already polluted waterways. DEQ must also receive adequate funding so that it may effectively operate its water quality certification program mandated by Section 401 of the federal Clean Water Act.

Finally, in order to successfully accomplish both of these tasks, DEQ must have adequate funding to monitor and enforce all applicable state and federal laws. If the state does not support DEQ, NEDC and other conservation groups can and will invoke the power of strong federal environmental legislation to force Oregon to do later what it should be doing now. In short, albeit it cliché, an ounce of prevention is worth a pound of cure to both the citizens and the state.

To reprise a theme that was evident at each of the "listening sessions" in Portland on December 18/19, 1990, Oregon can and should carry out its water quality and quantity strategic planning on a "river basin" basis. The state has already been divided into basins that could effectively be used as the mode for management. Such management would also perhaps return some amount of control to the local individuals in the area being managed.

As you know, and as any good policymaker knows, water quality and water quantity are inextricably linked. We should be managing, protecting and enhancing them on a basin-wide level, rather than on a piecemeal basis. The latter has been proven to be ineffective; the former remains to be tested, but certainly offers more advantages than anything we currently have.

NEDC intends to remain involved in water quality and water quantity planning and management throughout the region. We hope that Governor-Elect Roberts will take a farsighted approach to water issues during her tenure. We must all look ahead to the demands on water quality and quantity that will be coming in the future: from California/Nevada; from increasing fish and wildlife needs and recreational uses; to remedy current overconsumption and agricultural pollution that remains essentially unaddressed by WRD and DEQ; and to water needs associated with preventing the continued degradation of the state's all important wetlands.

Finally, NEDC urges Governor-Elect Roberts to take whatever actions are within her powers to put an end to the Salt Caves Dam proposal by the City of Klamath Falls and the overnight housing expansion proposal high on the slopes of Mt. Hood, by the Mt. Hood Meadows Development Corporation. Governor-Elect Roberts can and should put a silver stake through the heart of the Salt Caves Dam proposal by ensuring that DEQ denies a Section 401 Clean Water Act certification to the proposal. Governor-Elect Roberts can nail the lid on the coffin, and put to rest this incredibly destructive use of state agency and public resources, by nominating the Salt Caves

January 11, 1991

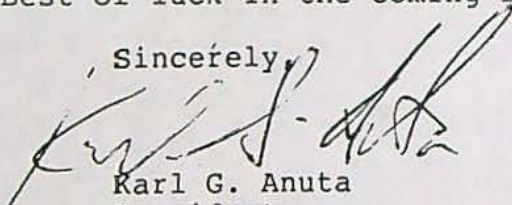
stretch of the Klamath River for designation as a federal Wild and Scenic River to the United States Secretary of Interior.

Governor-Elect Roberts should also urge the United States Forest Service to deny permission to Mt. Hood Meadows to build a mammoth destination resort high on the sensitive alpine slopes of Mt. Hood. Development of private housing for private profit on Oregon citizens' public lands in a fragile alpine and sub-alpine area is unwise. Furthermore, opportunities are already present for more centralized and regional recreational development.

Oregon should preserve its role in land management by encouraging the Forest Service to let the local counties plan and develop recreation, taking into account environmental concerns, transportation, employee housing, local support services and forest-wide recreational opportunities. Because the Mt. Hood Forest supervisor is accepting public comment on the Meadows proposal starting on January 15, 1991, Governor-Elect Roberts has a unique opportunity to provide substantive detailed feedback to the United States Forest Service on the Mt. Hood Meadows project.

We hope these concerns are of assistance. Again, thanks for the listening ear. Best of luck in the coming four years.

Sincerely,



Karl G. Anuta
President

David Moskowitz
Project Coordinator

KGA:pl

cc: NEDC Office
Kate McCarthy, Friends of Mt. Hood
Karen Russell, WaterWatch
Neil Kagan, 1000 Friends
Liz Frenkel, The Sierra Club
Bill Bakke, Oregon Trout
Jim Garvey, Save Our Klamath River
David Paul, NEDC
Bob Doppelt, Oregon Rivers Council
Andy Kerr, Oregon Natural Resources Council

BALL, JANIK & NOVACK

ATTORNEYS AT LAW

ONE MAIN PLACE

101 S.W. MAIN STREET, SUITE 1100

PORTLAND, OREGON 97204-3274

TELEPHONE (503) 228-2525

TELECOPY (503) 295-1058

9TH FLOOR, 601 PENNSYLVANIA AVE. N.W.

WASHINGTON, D.C. 20004

TELEPHONE (202) 638-3307

TELECOPY (202) 783-5947

RICHARD M. WHITMAN

November 19, 1990

BY TELECOPIER

Ms. Waisha Mize, Hearings Referee
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Mt. Hood Meadows (Application No. 69976)

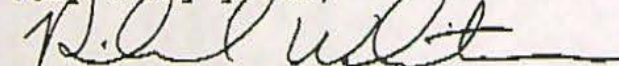
Dear Ms. Mize:

I am writing in response to your request for an update on Mount Hood Meadows' intent regarding the above-referenced application. Although we expected the U.S. Forest Service to have issued its Final Environmental Impact Statement (FEIS) by mid-October, this has not yet occurred. The latest word from USFS staff is that the FEIS will be issued in December, and the Record of Decision (ROD) in January, 1991. As we have indicated before, it makes little sense to enter into negotiations regarding this permit application until the scope of the activities (if any) permitted by the Forest Service is known.

In the event that the ROD allows expanded activities at Mount Hood Meadows, we do intend to pursue the issuance of a water rights permit for the project. Assuming that the ROD is issued in January, we expect to enter into negotiations with any party(ies) that have requested a public interest review shortly thereafter to determine if the concerns raised can be addressed.

Please feel free to contact me if you have any questions, or need any additional information, regarding the Mt. Hood Meadows water rights application.

Very truly yours,



Richard M. Whitman

RMW:kc

cc: Mr. Clay Simon
Mr. Stephen T. Janik
Mr. Karl Anuta, Friends of Mt. Hood
Mr. Gregory Robart, ODF&W
Mr. Jake Szramek, OWRD



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 3783066

November 5, 1990

Richard Whitman
Ball, Janik & Novack
One Main Place
101 SW Main St., Suite 1100
Portland, OR 97204-3274

RE: Mt. Hood Meadows Protested Application 69976

Dear Mr. Whitman:

You indicated in your letter of September 14 that the USFS expected to release the FEIS in mid-October, and that the ROD would follow shortly thereafter. Not having heard anything further from you re different dates, I assume that those documents have now been published.

Please indicate, no later than November 19, the applicant's intent on this application after review of the FEIS and ROD. Thank you for your prompt response.

Sincerely,

Weisha Mize
Hearings Referee

cc: Karl Anuta, Friends of Mt. Hood
Greg Robart, ODFW
Jake Szramek, WRD

BALL, JANIK & NOVACK
ATTORNEYS AT LAW
ONE MAIN PLACE
101 S.W. MAIN STREET, SUITE 1100
PORTLAND, OREGON 97204-3274
TELEPHONE (503) 226-2525
TELECOPY (503) 295-1058

9TH FLOOR, 601 PENNSYLVANIA AVE. N.W.
WASHINGTON, D.C. 20004
TELEPHONE (202) 638-3307
TELECOPY (202) 783-8947

RICHARD M. WHITMAN

September 14, 1990

BY TELECOPIER

Ms. Weisha Mize, Hearings
Referee
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Mt. Hood Meadows (Protested Application No. 69976)

Dear Ms. Mize:

I am writing to provide you with a report on the status of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) by the U.S. Forest Service for the Mt. Hood Meadows project. As you know, the FEIS and ROD will determine the extent of activities that Mt. Hood Meadows is allowed to undertake in this project. Thus, any negotiations or further proceedings regarding Mt. Hood Meadows' water rights application have been put on hold until the Forest Service releases its decision.

According to our most recent communications with the U.S. Forest Service, the FEIS will be released in mid-October of this year. It appears that the Forest Service has completed most of the work on the FEIS and that this projected completion date is relatively secure. However, the Forest Service has indicated to us that the ROD, which will define the scope of the project allowed, may not be issued at the same time as the FEIS. While we expect the ROD to be issued shortly after the FEIS, at this time we have not been given a specific projected date by the Forest Service. In the event we receive any additional communication from the Forest Service regarding the dates for the FEIS or the ROD, I will let you know.

In addition, you should note that Mt. Hood Meadows is no longer represented by the law firm of Davis, Wright, Tremaine in this matter. Mt. Hood Meadows' new counsel for this matter (WRD Application No. 69976) is the law firm of Ball, Janik & Novack at the address indicated above. Counsel of record for this matter are Stephen T. Janik and Richard M. Whitman. All

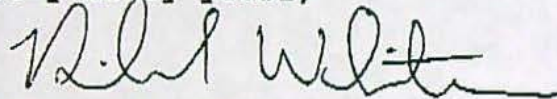
BALL, JANIK & NOVACK

Ms. Weisha Mize
September 14, 1990
Page 2

future communications regarding this matter should be addressed either to myself or to Mr. Janik.

Please feel free to contact me if you have any questions, or need any additional information, regarding the Mt. Hood Meadows water rights application.

Very truly yours,

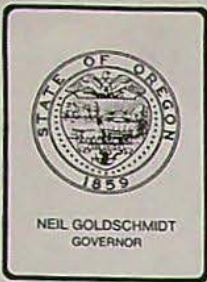


Richard M. Whitman

RMW:jvg

cc: Mr. Clay Simon
Mr. Sam Anderson
Mr. Stephen T. Janik
Mr. Karl Anuta, Friends of Mt. Hood
Mr. Gregory Robart, ODF&W
Mr. Jake Szramek, OWRD
Mr. Thomas Hachtel, Crystal Springs Water District
Mr. Richard Glick, Davis, Wright, Tremaine

RMW\JVG\RMW\MEADOWS\MIZE.814



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

September 6, 1990

Richard Glick
Davis, Wright, Tremaine
2300 First Interstate Tower
1300 SW 5th Ave.
Portland, OR 97201-5682

RE: Protested Application 69976, Mt. Hood Meadows

Dear Mr. Glick:

By letter of May 4, 1990, you indicated that you would be providing a status report regarding the USFS FEIS and your client's interest, based on the FEIS, in pursuing this application.

I look forward to receipt of this report within the week of the 10th. Thank you for your prompt response.

Sincerely,

Weisha Mize
Hearings Referee

cc: Karl Anuta, for Friends of Mt. Hood
Gregory Robart, ODFW
Jake Szramek, OWRD
Thomas Hachtel, for Crystal Springs Water District

Applegate

DAVIS WRIGHT TREMAINE

LAW OFFICES

2300 FIRST INTERSTATE TOWER • 1300 SW FIFTH AVENUE • PORTLAND, OR 97201-5682
(503) 241-2300

MAY 8 1990

RICHARD M. GLICK

WATER RESOURCES DEPT.
SALEM OREGON

May 4, 1990

Weisha Mize, Hearings Referee
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Mt. Hood Meadows (Application 69976)
Our File No. 67145-002

Dear Ms. Mize:

This is in reply to your letter of April 20, 1990 asking for a status report on the subject application. As discussed in our telephone conversation today, the situation has not changed since our last communication.

Mt. Hood Meadows is awaiting completion by the U.S. Forest Service of its final environmental impact statement. The FEIS is currently projected to be ready late this summer. Since the parameters of the applicant's project depend entirely on the results of the FEIS, there is no reason to proceed to hearings until the FEIS is released.

We will provide a status report no later than September 1, 1990. Until then, if you have any questions, please do not hesitate to call.

Thank you for your consideration.

Very truly yours,

DAVIS WRIGHT TREMAINE



Richard M. Glick

RMG:nad
cc: Karl Anuta
Clay Simon
H:\6\67145\002\MIZE01E.LTR



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

April 30, 1990

Karl Anuta
Sokol & Bernstein, P.C.
721 SW Oak St.
Portland, OR 97205-3791

RE: Protested Application 69976

Dear Mr. Anuta:

I am in receipt of your letter of April 25 regarding your interest in proceeding to public interest contested case hearing and suggesting, alternatively, the dismissal of the above application.

The applicant's interest in waiting until the Forest Service issues a FEIS is understandable and acceptable to the Hearings Section, as is waiting for the determination on the Wild and Scenic Designation. The information provided by those two studies should be considered in any hearing on this application. As such, I am not inclined to move ahead with scheduling this matter for hearing.

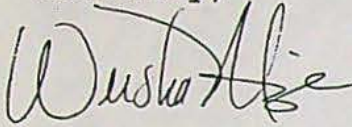
As to your suggestion that the application be dismissed, unless the application has been returned to the applicant for completion with instructions to return it within a certain period of time, it will not simply be rejected out of hand.

However, the requests for suspension of further processing of this application pending action by the Forest Service appear at this point to be reasonable and acceptable to the Applications and Permits Section. You should not anticipate such a rejection in the near future.

In the event that the matter does go to hearing following issuance of the FEIS and the Wild and Scenic determination, those issues would certainly be expected to be discussed and briefed in detail for the record.

Until then, however, the Hearings Section will continue to suspend further action on this application pending an indication by the applicant of its desire to move forward to hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Weisha Mize', written in dark ink.

Weisha Mize
Hearings Referee

cc: Rick Glick
ODFW, attn Greg Robart
Crystal Springs Water District, c/o Thomas Hachtel

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
EVELYN CONROY SPARKS
KARL G. ANUTA

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

April 25, 1990

RECEIVED

APR 26 1990

WATER RESOURCES DEPT.
SALEM, OREGON

Weisha Mize
Hearings Referee
Water Resources Dept.
3850 Portland Road NE
Salem, OR 97310

Re: Protested Application 69976

Dear Weisha:

I just received a copy of your 4/20/90 letter to Mr. Glick regarding the Mt. Hood Meadows water right application. There have been no negotiations of any sort. I understand from Mr. Glick that his clients have no interest in negotiating until the Forest Service issues a Final Environmental Impact Statement (FEIS) outlining the approved form of expansion. While I understand this reluctance to proceed, Friends of Mt. Hood remain willing and eager to proceed with a public interest hearing on this application.

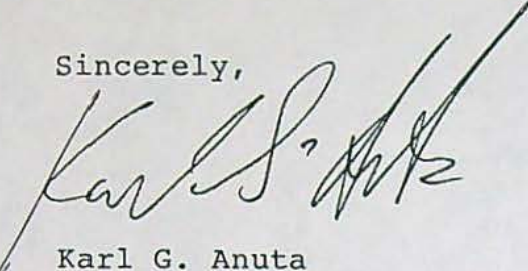
I think it is inappropriate to simply leave this matter "hanging" while we wait for the Forest Service. The FEIS involved was initially due in February. We are now being told it is due in "late summer". I have seen internal documents which suggest that it will not be out until late September or October. If Mr. Glick's clients are not willing to proceed, I suggest that the application be dismissed. Meadows can always refile.

In case the Department is not aware of it, the Forest Service is currently studying the East Fork for possible designation under the Federal Wild & Scenic Rivers Act. The East Fork has already been found eligible for such designation. I am sure that the information gathered in that process will be exceptionally useful to the Department in making the public interest determination. I understand that the final Wild & Scenic determination will be issued late this summer, but that the data on the resource has already been gathered.

Weisha Mize
April 25, 1990
Page 2

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Karl G. Anuta', with a long, sweeping horizontal stroke extending to the right.

Karl G. Anuta

KGA:jf

cc: Richard Glick, Esq.
Bob Doppelt, Oregon Rivers Council
Audrey Simmons, WaterWatch of Oregon
Kate McCarthy, Friends of Mt. Hood
Janet Tobkin, Friends of Mt. Hood
Tom Hachtel, Crystal Springs Water District
Clarence Neville, East Fork Irrigation District
Greg Robart, ODFW
David Mann, Northwest Environmental Defense Center



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

April 20, 1990

Rick Glick
Davis Wright Tremaine
2300 First Interstate Tower
1300 SW Fifth Ave.
Portland, OR 97201

RE: Protested Application 69976

Dear Mr. Glick:

It has been some time since there has been activity on the above-referenced application. As you know, protests have been filed by Crystal Springs Water District and Friends of Mt. Hood. East Fork Irrigation District submitted a letter alleging that any diversion above the EFID diversion adversely affects its water rights and permits, but they have not formally filed a protest.

ODFW has also filed a letter recommending that, in the absence of flow information for the East Fork, the permit not be issued until a program to ensure minimum streamflow is in place in order to protect the East Fork's fish resources. There is an instream water right as a result of conversion of the minimum flows, which range between 100 and 150 cfs, depending on the month involved. The instream water right has a priority date of 11/3/83.

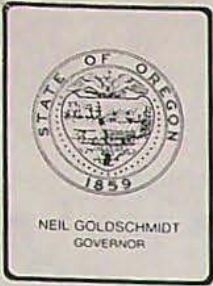
It was thought that the applicant and protestants were involved in negotiations, but this is unclear and there is no information to that effect in the file.

Please inform me, prior to May 4, 1990, of the status of any negotiations and of the application from the applicant's perspective, and whether your client is prepared for the matter to be scheduled for a public interest contested case hearing.

Sincerely,

Weisha Mize
Hearings Referee

cc: ODFW
Crystal Springs Water District, c/o Thomas Hachtel
Friend of Mt. Hood, c/o Karl Anuta



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

January 19, 1990

TO: Jake Szramek/Steve Brown/Steve Applegate

FROM: Weisha

SUBJECT: App. 69976

By letter of Dec. 11, Karl Anuta was provided with a staff report for the minimum streamflow on E. Fork Hood River dated Feb. 15, 1984, and a streamflow analysis for E. Fork Hood River "as found in Table 1". I didn't find a copy of that in the file. Would you please send me a copy of these two things for the protest file? Thanks.

I'm planning on writing Glick, Anuta and Crystal Springs in the near future to get status updates on the applicant's intent to proceed and the protestants' responses to my inquiries made by letters of August and September of last year. Doesn't look like anyone is in a big hurry but if I don't have any activity on a file for a couple of months, I get nervous. I'll make sure you get copies of any letters sent or received.

Lastly, I told Anuta in August that the ODFW had not responded at that time to our inquiry about any concerns they may have regarding this application (he was raising fish and wildlife concerns in the protest). As of today, it still looks like they haven't responded. Do we need to poke them a bit?

DAVIS WRIGHT TREMAINE

LAW OFFICES

2300 FIRST INTERSTATE TOWER • 1300 SW FIFTH AVENUE • PORTLAND, OR 97201
(503) 241-2300

RECEIVED

JAN 19 1990

WATER RESOURCES DEPT.
SALEM, OREGON

RICHARD M. GLICK

January 18, 1990

Mr. Stephen C. Brown
Water Resources Department
3850 Portland Road, N.E.
Salem, OR 97310

Re: Firm Name Change
Reference No. 49732 and 69976

Dear Stephen:

Please be advised that effective January 1, 1990, the law firms of Davis Wright & Jones and Ragen, Tremaine, Krieger, Schmeer & Neill have merged. The name of the new firm is:

DAVIS WRIGHT TREMAINE

The address and telephone number remains the same:

2300 First Interstate Tower
1300 S.W. Fifth Avenue
Portland, OR 97201
Telephone (503) 241-2300

Very truly yours,

DAVIS WRIGHT TREMAINE



Richard M. Glick

RMG:tlt

F:\6\67145002\Brown1.ltr

FAX: (503) 778-5299 • TELEX 185224

ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • LOS ANGELES, CALIFORNIA
RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D.C.

DAVIS WRIGHT TREMAINE

LAW OFFICES

2300 FIRST INTERSTATE TOWER • 1300 SW FIFTH AVENUE • PORTLAND, OR 97201
(503) 241-2300

RICHARD M. GLICK

January 18, 1990

RECEIVED

JAN 19 1990

WATER RESOURCES DEPT
SALEM, OREGON

Mr. Steve Applegate
Manager of the Permit
Application Section
Water Resources Division
3850 Portland Road, NE
Salem, OR 97310

Re: Mt. Hood Meadows (Application 49732)
Our File No. 67145-002

Dear Mr. Applegate:

This is to follow up on the meeting held in your offices on January 12, 1990, between you, Steve Brown, Clay Simon and myself. One of the purposes of the meeting was to discuss reinstatement of Application 49732, which was dismissed by Mr. Brown's letter dated December 19, 1989.

We respectfully request reinstatement of Application 49732. As discussed below, the failure of Mt. Hood Meadows ("Meadows") to complete the application, which led to its dismissal, is due to the uncertainty which presently clouds Meadows' plans to expand its ski resort on Mt. Hood. Since no water right holder or other member of the public is injured by the pendency of the application, we ask the Water Resources Department's ("the Department") continued indulgence.

On October 13, 1978, Meadows filed the application to appropriate the waters of Crystal Springs Creek, a tributary of East Fork Hood River, for purposes of supporting overnight housing development on private lands to serve the Meadows ski facilities. Meadows also has pending Application 69976 (filed June 21, 1989) to appropriate water from two unnamed springs, tributary to the East Fork, for similar purposes but within the Mt. Hood National Forest.

During the local zoning hearing, some of the public strongly suggested that the development should occur adjacent to

FAX: (503) 778-5299 • TELEX 185224

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RICHLAND, WASHINGTON • SEATTLE, WASHINGTON • WASHINGTON, D.C.

Mr. Steve Applegate
January 15, 1990
Page 2

the ski area. For this and other reasons, Meadows withdrew from the zoning process and began planning for the ski area development as an alternative. However, this plan requires permission of the U.S. Forest Service. A decision whether to allow the development is subject to various Forest Service internal review requirements. Meadows' ski area proposal is now undergoing environmental impact analysis for both the ski area specifically and the National Forest Plan generally.

The Forest Service's job is complicated by a call by certain members of the public to designate as a federal Wild and Scenic River the reach of the East Fork Hood River that flows through the Meadows project. A Forest Service study team has determined the river is "eligible", although no decision has yet been made whether the river is "suitable", for designation under the Wild and Scenic Rivers Act.

We understand that the Forest Service will complete its analyses by mid-summer. Meadows has control over neither the timing nor the substance of the Forest Service's decision to permit the planned facilities. Because of this uncertainty, Meadows is not yet able to commit to putting the water to full beneficial use under Application 49732 or 69976. However, we believe the uncertainty can be resolved within about six months and Meadows will then firm up its applications.

In his letter of October 19, 1989, Mr. Brown returned Application 49732 to Meadows for:

"... completion by providing satisfactory proof of your ability to finance and construct the proposed project or of the your intention in good faith to construct it with due diligence."

The letter indicates that the priority under the application would be retained if the additional information is received by December 18, 1989.

For the reasons stated above, we are unable to declare Meadows' intentions to proceed to construction with due diligence at this time. On the other hand, the private lands development may prove to be an integral part of Meadows' ultimate project and we do not wish to abandon Application 49732. The necessity for and uncertainty surrounding the Forest Service process was not anticipated at the time Application 49732 was filed. In other words, Meadows finds itself in a situation not entirely of its own making.

Mr. Steve Applegate
January 15, 1990
Page 3

Dealing with these changed circumstances has become a preoccupation for Meadows' staff. The additional activity, coupled with the end of year holiday season, diverted Meadows to the point that the December 18 deadline fell through the cracks. Since Application 49732 has remained on the books since 1978, an additional six months or so should have no substantive impact on the public interest.

At our January 12 meeting, we left the original Application 49732 with you. We trust that this letter provides sufficient basis for you to retain it for the time being. If there is any further information you require, please do not hesitate to ask.

As we discussed, we look forward to continuing discussions prior to your recommendation to the Director. Thank you for your courtesy and cooperation.

Very truly yours,

DAVIS WRIGHT TREMAINE

Richard M. Glick

cc: Stephen C. Brown
Clay Simon

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JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
MICHAEL T. GARONE
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KARL G. ANUTA

TELEPHONE
(503) 228-6474
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(503) 228-0836

OF COUNSEL
ROBERT A. SACKS

January 15, 1990

Mr. Jake Szramek
Water Resources
3850 Portland Road N.E.
Salem, OR 97310

RECEIVED

JAN 1 1990

Re: Information on Mt. Hood Meadows

Dear Jake:

Enclosed is a copy of my recent letter to Larry Toll. I would like copies of the field engineer report referenced in your October 19, 1989 memo as well as anything else in the Mt. Hood Meadows' file, particularly other field engineer reports. I am quite interested in when was the last time someone did a field inspection on Mt. Hood Meadows water use.

If there is any problem, please call me. Otherwise, I'll look forward to seeing the material in the near future.

Sincerely,

Karl G. Anuta

KGA:lmh

Enclosure

cc: Janet Tobkin
Kate McCarthy
Tom Hachtel
Clarence Neville

Greenleaf Bond
25% COTTON FIBER

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

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KARL G. ANUTA

January 5, 1990

RECEIVED
JAN 16 1990
WATER RESOURCES
SALEM, OREGON

Mr. Larry Toll
Watermaster, District 3
Water Resources Department
400 East Fifth, Annex A, Room 205
The Dalles, OR 97058

Re: Mt. Hood Meadows Ski Resort Water Use/Rights

Dear Mr. Toll:

I represent the Friends of Mt. Hood. I recently received a copy of your December 7, 1989 letter to Clay Simon regarding irrigation water use at Mt. Hood Meadows Ski Resort. As you may know, Friends of Mt. Hood has filed a protest of Mt. Hood Meadow's most recent (June 1989) water right application (#69976).

Pursuant to the Oregon Public Records Act, please provide me with a complete copy of your file regarding Mt. Hood Meadows. I am interested in any correspondence or documentation, including field engineer inspection reports referred to in the recent correspondence, which relates to Application #50037, Certificate #48445, Permit #38081 and Application #49732 or any other correspondence with Meadows.

Friends of Mt. Hood is a non-profit Oregon corporation. Friends of Mt. Hood has no financial interest in the requested information. We believe this information will significantly increase the public's knowledge and awareness about water use on Mt. Hood. It will also assist the public in understanding the water rights permitting and enforcement allocation process. Pursuant to the Public Records Act, I request a fee waiver for any copying or reproduction costs.

If you have any questions, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

Karl G. Anuta

KGA:lmh
cc: Janet Tobkin
Kate McCarthy
Tom Hachtel
Clarence Neville



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

December 11, 1989

Karl G. Anuta
Jolles, Sokol and Bernstein, P.C.
721 Southwest Oak Street
Portland, Oregon 97205-3791

Re: Application 69976

Dear Mr. Anuta:

The following information as requested in your letters from November 6, 1989, and November 17, 1989, is enclosed:

1. Staff report for the minimum streamflow dated on East Fork Hood River February 15, 1984
2. Streamflow analysis for East Fork Hood River as found in Table 1
3. Copy of Instream Water Right Certificate 59677
4. Copy of Certificate 48445
5. Memo to Watermaster about Certificate 48445
6. Letter from Watermaster about Certificate 48445 to Mt Hood Meadows Ski Resort

This material should answer the questions as identified in your letters. If you have any further questions, please call.

Sincerely,

Jake Szramek
Applications and Permits

cc: Richard Glick, Attorney for Applicant

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



BERNARD JOLLES
LARRY N. SOKOL
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KARL G. ANUTA

TELEPHONE
(503) 228-6474
FACSIMILE
(503) 228-0836

OF COUNSEL
ROBERT A. SACKS

November 17, 1989

RECEIVED

NOV 21 1989

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Steven C. Brown
Water Rights Specialist
Applications/Permits Section
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97310

Re: Protested Application No. 69976

Dear Steve:

I recently requested some information on the above-referenced application. As you will recall, I represent the Friends of Mt. Hood. In reviewing the data in my office I cannot locate Mt. Hood Meadows' current on-site water right yet I know that Meadows uses a considerable amount of water for domestic consumption, fire suppression and sewerage dilution. Having been up there in the summer, it appears to me that they may be extracting water from one of the springs that they now wish to obtain a permit for. Alternatively, they may be pumping from Groundwater. I do not have a groundwater permit listing. Does Meadows have a groundwater right/permit?

My reading of ORS 537.130(2) and ORS 537.990 indicates that an unauthorized appropriation opens an individual or corporation to significant liability. It also, of course, completely conflicts with Water Resources authority and control over water appropriation in this state.

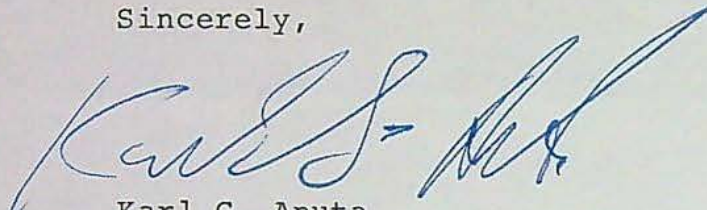
I would appreciate if you could provide me with any information you have regarding where Mt. Hood Meadows currently gets it's water. The only two permit requests that I can locate are the Protested Application listed above and Application No. 49732 which is many miles down the Hood River Valley on a separate (but perhaps hydrologically connected) tributary of the east fork of the Hood River.

Mr. Steven C. Brown
November 17, 1989
Page 2

Perhaps I am mistaken but it strongly appears that there is an unauthorized, illegal, and intentional misappropriation of water occurring on Mt. Hood.

I look forward to any information you can provide.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl G. Anuta', with a stylized flourish at the end.

Karl G. Anuta

KGA:lmh

cc: Steve Applegate, Permit Section, Water Resources Dept.
Kate McCarthy, Friends of Mt. Hood
Janet Tobkin, Friends of Mt. Hood

RECEIVED

JOLLES, SOKOL & BERNSTEIN, P.C.

NOV 07 1989

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



WATER RESOURCES DEPT.
SALEM, OREGON
TELEPHONE
(503) 228-6474
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OF COUNSEL
ROBERT A. SACKS

BERNARD JOLLES
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MICHAEL T. GARONE
EVELYN CONROY SPARKS
KARL G. ANUTA

November 6, 1989

Mr. Stephen C. Brown
Water Rights Specialist
Applications/Permits Section
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97310

Re: Protested Application No. 69976

Dear Steve:

I represent the Friends of Mt. Hood. You have previously corresponded with Joe Di Bartolomeo of my office. I recently ran across some references to a 1984 "Estimated Stream Flow" study done on the East Fork of the Hood River. Would you please provide me with a copy of that document, as well as any back-up data that exists.

I also need to know instream water right conversion date for the minimum stream flow dated 11/3/83 on the East Fork. In addition, the application mentions an intended on-site survey to specifically locate the diversion points. Was such a survey ever done? Is there a report or any documentation? Have any staff reports on any issue been done? I would like copies of all of these.

Finally, I would appreciate if you could check through the file and see if there have been protests, or other documents (outside of the application, the protest by Friends of Mt. Hood, and the protest by the Crystal Springs Water District) which have been filed. If so, please send me copies.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA:pl



Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

RECEIVED

DEC 01 1989

WATER RESOURCES DEPT.
SALEM, OREGON

November 29, 1989

Jake Szramek
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Dear Jake:

Re: Water Right 49732 and 69976, Mt. Hood Meadows, East Fork Hood River, 4.1 cfs.

The East Fork of the Hood River supports wild and stocked trout, steelhead, coho and Chinook salmon.

Our Columbia District Fish Biologist, Jim Newton, has observed summertime flows at the mouth of the East Fork which seem to be less than the prescribed minimum flows. WRD flow data for the East Fork, Hood River is scant. (Szramek, personal communication).

In view of the fish resource supported by the East Fork, the Oregon Department of Fish and Wildlife (ODFW) is concerned about the prospect of additional appropriation of East Fork Hood River water. In the absence of flow information for the East Fork, ODFW recommends not issuing this permit until a program to ensure minimum streamflow is in place.

Thank you for the opportunity to comment.

Sincerely,

Gregory P. Robart
Staff Biologist
Aquatic Habitat Program
Habitat Conservation Division

gpr



Water Resources Department

400 EAST 5th, ANNEX A - ROOM 205, THE DALLES, OREGON 97058 PHONE 296-5494

November 7, 1989

Clay Simon
Mt. Hood Meadows Ski Resort
P.O. Box 47
Mt. Hood, OR 97041

Clay,

You and I discussed earlier whether or not irrigation was an accepted use under the existing water right for Mt. Hood Meadows Ski Facility. I have had a research of Mt. Hood Meadows Water Right Permit 38081 made by the Water Resource Department in Salem on that question. The answer is no.

Information in Water Right Application 50037 from Mt. Hood Meadows Development Corporation indicates the proposed ski facility uses were to include use within the lodge, maintenance building, sewage treatment plant and ski patrol building. Water Right Permit 38081 was issued for ski facility and fire suppression based on the application request.

A final inspection was made by a Water Resources Department field engineer so a certificate of water right could be issued. That report indicated that the water, besides for fire suppression, was used for potable water in the lodge, ski patrol building and shop building. Certificate of Water Right 48445 was issued for ski facility and fire suppression.

From this I conclude that there was no intent listed in the original application for use of water for irrigation purposes. That when the final certificate of water right was issued the intention of the department to issue a right only for ski facility use plus fire suppression was based on the original request and uses found in the field inspection.

At the time the application was received, the practice was that the use of water for irrigation purposes required a separate listing in the area showing the uses and there was a separate set of fees based on acreage for irrigation. This is still the practice of the department today.

It is my suggestion that Mt. Hood Meadows inquire to the Water Resources Department about an amendment to the pending application for water rights to include irrigation.

If I can answer any questions, please contact me.

Sincerely,

Larry Toll
Watermaster-District 3



Water Resources Department

400 EAST 5th, ANNEX A - ROOM 205, THE DALLES, OREGON 97058 PHONE 296-5494

November 7, 1989

Clay Simon
Mt. Hood Meadows Ski Resort
P.O. Box 47
Mt. Hood, OR 97041

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It is my suggestion that Mt. Hood Meadows inquire to the Water Resources Department about an amendment to the pending application for water rights to include irrigation.

If I can answer any questions, please contact me.

Sincerely,

Larry Toll
Watermaster-District 3

October 19, 1989

Memorandum

To: Larry Toll
From: Jake Szramek
Subject: Definition of ski facility based on Application 50037

Staff reviewed the Mt. Hood Meadows Development Corporation Certificate 48445 for a ski facility. According to the information in the application folder, Permit 38081 and Certificate 48445, the right was issued for use in a ski facility and for fire suppression.

According to information in Application 50037, ski facility uses were to include use within the lodge, maintenance building, sewage treatment plant and ski patrol building. Our field engineers report made in connection with Permit 38081 advised that water use was for potable water in the lodge, ski patrol building and shop building. Also, his report advised that water was used in the lodge for a wet sprinkler system. The water right as now evidenced by Certificate 48445 is appurtenant to and limited to the ski facilities where the use of water was perfected and for those uses perfected under the terms of the permit.

Staff would conclude that water use for a ski facility could only be used for maintenance, sanitary facilities and human consumption at the lodge and surrounding buildings which would come under a commercial classification.

OAR 690-11-010 (3) defines commercial use as the use of water at a place where commodities or services are bought or sold, such as a gas station, restaurant, motel, etc.

There is no information in our records that would indicate that water use for the ski facility was for irrigation. Past and current application practices suggest that water use for plant growth requires a right for irrigation.

*Sent to Larry Toll
see folder of Nov 7, 1989*

378-3066

js

September 19, 1989

RECEIVED

SEP 22 1989

WATER RESOURCES DEPT.
SALEM, OREGON

To: Jake Szramek
Water Resource Department

From: East Fork Irrigation District

The Management and Board of Directors of East Fork Irrigation District are of the opinion that any water diversion from the East Fork of the Hood River above E.F.I.D. diversion point does adversely effect our water rights and permits.

The adverse affect is dependent on several variables. Beneficial use for fruit and pasture production changes with the humidity, temperature, wind and the rainfall during the growing season.

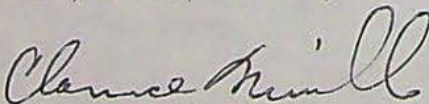
Daily river flow in the East Fork of the Hood River is dependent on the changing condition at the glaciers. Temperature and wind changes cause river fluctuations.

The above short term variables are all affected by conditions such as seasonal snow pack, soil water content, and average temperature.

Because of the unique conditions of the glacier stream we are not able to balance our water needs with water availability accurately. History in the district has shown that water shortages at a given time are not that exceptional. I have included pictures showing the water level below the dam at times when the E.F.I.D. was diverting all of the water possible with this type dam.

During a low water year in the East Fork, our priority dates would put E.F.I.D. in the position of requesting the cut back of several rights and permits. As this causes poor public relations, any future water filings on the East Fork of the Hood River is of utmost concern to East Fork Irrigation District.

Very Truly Yours,


Clarence Neville,



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3671

September 14, 1989

Thomas Hachtel
Crystal Springs Water District
PO Box 186
Odell, Oregon 97044

Re: Protest of Application 69976, Mt. Hood Meadows

Dear Mr. Hachtel:

We are in receipt of the protest filed by Crystal Springs Water District (CSWD) against approval of the above pending application. I enclose our receipt 58890 acknowledging payment of the \$25.00 protest filing fee. Although your protest focuses on impacts to CSWD's water rights, the statement in Exhibit A seems to outline a broader public interest concern.

The Hood Basin map shows no surface hydrological connection between Crystal Springs and the unnamed springs involved in application 69966, which are some 10 miles distant from Crystal Springs, other than that they all flow into the East Fork Hood River. In the event of water shortage under the scenario outlined in your protest, the most junior users would be cut off first. Since CSWD's water rights have earlier priority dates and no apparent hydrological connection to the unnamed springs, it may be difficult to establish harm to existing water rights. If you wish to proceed on this ground, please provide some further information to show how water use from the Mount Hood Meadows springs would reduce flow to Crystal Spring.

The other issues you have raised are legitimate public interest concerns. These appear to include water availability vis-a-vis the minimum stream flow, the potential for CSWD's expansion under its permits, and whether the application is for the best and highest use of the East Fork Hood River.

Protests alleging the possibility of a significant adverse affect on a substantial public interest are also permissible, but the Department prefers to first determine whether there is an opportunity for informal negotiations between the applicant and protestants. The purpose of the negotiations is to determine whether acceptable modifications or conditions could be agreed to and incorporated into a permit. Successful negotiations would also avoid taking the matter to the contested case stage.

Thomas Hachtel
September 14, 1989
Page Two

A public interest protest has been filed by the Friends of Mount Hood. We are encouraging them to negotiate with the applicant, and are holding the application without further action for a reasonable period of time to allow this. If it is CSWD's intent to proceed on a public interest protest, I would encourage CSWD to participate in any negotiations.

It is unclear why you believe the Mt. Hood water right will limit CSWD's growth potential. CSWD has, in addition to a 1 cfs certificate, 2 permits for a total of 6.1 cfs for use out of Crystal Spring. If fully developed, they would provide water for an additional 18,000 users at 500 gallons per day per user (high summer use), or 60,000 users at 150 gpd. It appears that your total rights are more than adequate to meet the future needs described in your protest, so you need to make clear why CSWD would have a need for additional sources beyond existing rights.

Your protest highlights the importance of estimating as closely as possible, water availability with regard to both the minimum streamflow and potential water use under existing. However, you may wish to provide information supporting the need to protect the minimum streamflow levels and describing unacceptable impacts.

CSWD had indicated that historical information on water availability, use and minimum streamflows should be gathered and analyzed. The Department has limited and very old water availability data. No such data exists on the East Fork Hood River above the East Fork Irrigation District diversion after 1922. Data on the East Fork near Mt. Hood is all prior to 1914, and on the East Fork near Dee prior to 1917. The gaging stations were removed on that river at those times. There have been no other gaging stations on the East Fork of the Hood River.

The minimum streamflows set in the E. Fork Hood River vary from 150 cfs in Oct. - Dec., 100 cfs Jan. - March, 150 cfs April - June, and 100 cfs July - Sept., as measured at the mouth of the East Fork. The priority date is November 3, 1983. The minimum streamflow has been converted this year to an instream water right, and is treated as any other water right in terms of priority dates. It does not have priority over the CSWD water rights, but would have priority over the Mt. Hood application.

In 1984, the Department prepared an estimate of streamflow and water use in East Fork. The analysis showed that from in June through October, the minimum flow frequency will not be met. (see enclosed Table). These findings were based on estimated flows, rights of record in 1984, and estimated consumption. As you can see, the irrigation rights account for a very large portion of existing rights

Thomas Hachtel
September 14, 1989
Page Three

and estimated consumptive use, whereas domestic supply is a very small percentage. Combined domestic rights account for the entire 7 cfs estimated consumption in the non-irrigation season.

To reiterate, if your concern regarding the proposed expansion of the Mt. Hood Meadows complex is based in matters other than actual harm to your existing permits and certificate from Crystal Springs, you may base the protest on public interest concerns. I am enclosing our rules on public interest. Pay particular attention to the definitions and read them in conjunction with 690-11-080 to see if your concerns about this application would more appropriately fit here.

Please contact Steve Applegate in our Application and Permits Section if you believe your concerns can be negotiated by conditions or limitations placed in the permit. I look forward to receiving the information requested from you.

Sincerely,

Weisha Mize

Weisha Mize
Hearings Referee

WM:hm

cc: Karl Anuta, Attorney for Friends of Mt. Hood
Richard Glick, Attorney for Applicant
Resource Management Administrator, OWRD
Applications and Permits Section, OWRD

Enclosures

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
East Fk. Hood River Requested Minimum Flow	150	150	150	100	100	100	150	150	150	100	100	100
Est. Average Flows	150	320	550	600	540	430	400	410	290	180	120	120
Water Rights ⁽¹⁾	14.0	14.0	14.0	14.0	14.0	14.0	171.5	171.5	171.5	171.5	171.5	171.5
Est. Consumption	7	7	7	7	7	7	46	83	133	154	147	103
% Exceedance at Mouth	48	98	99	99	99	99	98	95	52	5	1	1
Recommended Minimum Flows	150	150	150	100	100	100	150	150	150	100	100	100
Annual Average Yield Water Rights ⁽²⁾				250,000 acre-feet								
Requested Minimum Flows				47,000 acre feet								
				90,500 acre-feet								

4325C



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

August 31, 1989

Karl Anuta
Jolles, Sokol & Bernstein, P.C.
721 SW Oak St.
Portland, OR 97205-3791

RE: Protested Application No. 69976

Dear Karl:

Enclosed please find our receipt #58776 confirming payment of the \$25.00 protest filing fee. We find the only cognizable ground in Friends of Mt. Hood's (FMH) protest to be the fish and wildlife issue. The ODFW has been notified of Application 69976 but has not yet provided comments or response to the Department which would indicate any fish and wildlife concerns that agency may have regarding this application. We further consider this protest to be a formal 2(e) petition and will hold it in abeyance pending ODFW response and possible negotiation (see below). We note that no other protests or 2(e) petitions have been filed as of this date.

Regarding your question on public interest review: this is done first in staff's initial review of an application prior to a recommendation for action being made to the Director or WRC. The rules separate the raising of public interest questions into what we call the informal and the formal 2(e) processes.

If, during staff's review, a member of the public or an agency raises an area of potential public interest concern, and staff finds that the issue is one of substantial public interest, the most common course of action has been to encourage negotiation between the applicant, the individual or group raising the concern, and other interested folks. Staff is available to respond to questions, provide direction, etc., but the players are encouraged to take the lead.

If the concerns are not resolved through negotiation, the Director refers the matter to the WRC with a recommendation to hold a public interest contested case hearing. However, it is possible that even if the concerns aren't resolved, the staff will determine, based on input from a non-negotiating individual or group, such as ODFW, that the concerns can be addressed through conditions within the permit and will suggest recommending approval. This latter does not often occur; usually, the matter is taken to the Commission through a staff report and the interested individuals have the opportunity to appear before the Commission and express their views.

It is following a determination by the Director that no substantial public interest issue exists, or that the issues raised were not resolved in negotiations, that formal 2(e) petitions/protests are filed. This can lead to the directive that further negotiations be conducted. If there is still no resolution, the matter goes back to the WRC. Although there is no requirement that the WRC do so, this has generally led to direction by the WRC to take the matter to contested case hearing.

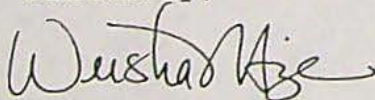
In the event that the applicant, FMH and possibly ODFW engage in negotiations which are successful and which would allow issuance of the permit with appropriate conditions, we would expect FMH to withdraw this 2(e) petition/protest. Your \$25 filing fee would be refunded. In the event that such negotiations take place and are unsuccessful, this filing will be treated as a 2(e) petition. We would expect that any amendments needed to bring it into compliance with the requirements of OAR 690-01-010 and -015 would be done at that time.

Regarding the public interest policy review under 690-01-002, that is a matter which must be brought to the Commission for their consideration. The decision to hold such a review is, as you know, discretionary rather than mandatory. The rule assumes that (1) the Commission has determined that the proposed use of water represented by application 69976 may be prejudicial to the general public interest as reflected in 536.310, and (2) a contested case is going to be held, neither of which is the case here as yet.

Moreover, the purpose of the public interest policy review is to determine whether applicable sections of the basin program adequately sustain the public interest in the waters sought for use, and whether to initiate rulemaking to modify the basin program if it does not adequately sustain the public interest. The protest/petition filed by FMH contains nothing in reference to the Hood Basin Program or the inadequacy thereof. The Department and Commission will need something of substance from FMH to properly consider this request.

I hope this answers your question.

Sincerely,



Weisha Mize
Hearings Referee

encl.

JOLLES, SOKOL & BERNSTEIN, P.C.

BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
ROBERT A. SACKS
MICHAEL T. GARONE
EVELYN CONROY SPARKS
KARL G. ANUTA

ATTORNEYS AT LAW
721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



TELEPHONE
(503) 228-6474

August 16, 1989

RECEIVED

AUG 17 1989

WATER RESOURCES DEPT.
SALEM, OREGON

Ms. Weisha Mize
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97303

Re: Protested Application No. 69976

Dear Weisha:

Enclosed is the \$25 water right protest fee.

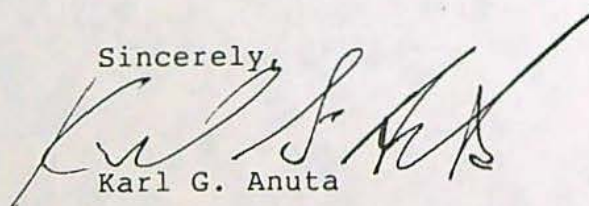
Friends of Mt. Hood was intending only to assert a general concern for the effect on senior water rights. The East Fork Irrigation District and other water right holders on the East Fork of the Hood River will be filing their own protests, containing specific certificate numbers and location information.

In case the protest filed by Friends of Mt. Hood was not clear, we are also requesting a public policy review, pursuant to OAR 690-01-002. I expect that this public policy review will be in a separate process from the contested case hearing on the protested application. Please advise me how the public policy review will be conducted.

I will furnish a verification of representation as soon as I receive it.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Karl G. Anuta

KGA:pl

cc: Janet Tobkin
Kate McCarthy

378-3739

STATE OF OREGON
WATER RESOURCES DEPARTMENT
 Mill Creek Office Park • 555 13th. Street N.E.
 Salem, Oregon 97310

RECEIVED FROM Friends of Mt Hood Application ☒ Permit ☐ Transfer ☐ 6997k
 TOTAL REC'D. \$ 25.00 ☐ CASH ☒ CHECK ☐ MONEY ORDER
 By Jules, Schol & Bernstein, PC - Kase Anuta

EXAMINATION FEES:

RECORDING FEES:

Surface Water \$ _____ \$ _____
 Ground Water \$ _____ \$ _____
 Transfer \$ _____ \$ _____

MISCELLANEOUS FEES:

Copying ☐
 Certification ☐
 Misc. Recording ☐ \$ 25.00
 Protest ☒
 Extension of time ☐

ADJUDICATION FEE \$ _____

POWER LICENSE FEE \$ _____

HYDROELECTRIC LICENSE FEE . \$ _____

EXAM FEE \$ _____

WATER WELL CONSTRUCTOR

Exam Fee ☐ License Fee ☐ \$ _____

LANDOWNER'S WATER WELL PERMIT FEE \$ _____

ALL OTHER: \$ _____

SUSPENSE TOTAL \$ 25.00

BASIN MAPS \$ _____

QUADRANGLE ACCOUNT \$ _____

RECEIPT NO.

58776 Dated 8/10/89 By W. Oyle



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

August 4, 1989

Crystal Springs Water District
P.O. Box 186
Odell, Oregon 97044
Attn: Tom Hachtel, Superintendent

REFERENCE: File 69976

Pursuant to your letter dated July 31, 1989, regarding the Application 69976 filed by Mt. Hood Meadows, Oregon Ltd. I am enclosing forms and information relative to filing of a protest against the approval of an application for a permit for the use of water.

Briefly, you should make two identical copies of the protest. The protest should state the name and mailing address of the protestant, advise how the proposed use by the pending Application 69976 will be prejudicial to public interest and/or identify the protestant's water rights, state how the protestant's water right will be affected by the use proposed by the pending Application 69976 and what you think should be done about the matter.

Both copies of the protest will need to be signed. Mail one copy of the protest to Mt. Hood Meadows, and complete a sworn statement before a Notary Public stating that you have mailed the copy to Mt. Hood Meadows.

Mail one copy of the protest with the \$25 filing fee to this office together with the statement regarding the mailing to Mt. Hood Meadows.

Action towards issuance of a permit approving Application 69976 will be held for thirty days from the date of this letter to allow you time to review the matter and perhaps file a protest.

Sincerely,

STEPHEN C. BROWN
Water Rights Specialist

Enclosures

CRYSTAL SPRINGS WATER DISTRICT
DOMESTIC WATER SYSTEM

RECEIVED

JULY 31, 1989

AUG - 2 1989

WATER RESOURCES DEPT.
SALEM, OREGON

STEVE APPEGATE
OREGON STATE WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM OR 97310

RE: PERMIT # 69976 APPLICATION TO APPROPRIATE SURFACE WATER/MT HOOD MEADOWS

MR APPEGATE:

THE CRYSTAL SPRINGS WATER DISTRICT BOARD OF COMMISSIONERS INTENDS TO FILE A PROTEST TO THE APPROVAL OF THE ABOVE CITED PERMIT APPLICATION. PLEASE SEND INFORMATION REGARDING THE PROCESS AND PROCEDURES NECESSARY TO FILE A PROTEST TO AN APPLICATION FOR WATER RIGHTS.

THE BOARD ALSO REQUESTS NOTIFICATION OF ANY ACTION CONCERNING THIS APPLICATION

THANK YOU,

Tom Hachtel

TOM HACHTEL, SUPERINTENDENT

CRYSTAL SPRINGS WATER DISTRICT
PO BOX 186
ODELL OR 97044

ca



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

August 2, 1989

Karl Anuta
721 SW Oak
Portland OR 97205-3791

RE: Protested Application 69976

Dear Karl:

We are in receipt of the protest by Friends of Mount Hood against the above-referenced application. We are unable to file your protest at this time. All protests must be accompanied by a \$25.00 filing fee, payable to Water Resources Department.

Once this fee is received, your protest can be filed. The application will then be held for a reasonable period of time to allow the parties to attempt to reach resolution of the issues without going to contested case hearing. In the event agreement cannot be reached, a hearing will be scheduled on the applicant's request.

As this protest is based on alleged harm to the public interest, the protestant has the burden of producing evidence to support the allegations of harm. Many of the specific concerns you give appear uncertain, in particular the hydrologic connection between the springs and either the East Fork Hood River or the White River. Our maps show that there is no connection with the White River. I would expect the protestants to be able to demonstrate a definite connection and impacts on the East Fork.

Protestants reference the USFS as the managing agency for this area. I would suggest that it would be advisable to include both the agencies in discussion with the applicant.

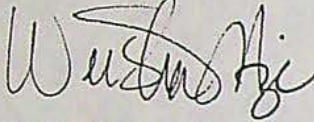
Regarding the assertion of harm to senior appropriators, please clarify whether some of your members hold water rights and if so, provide certificate numbers and location information, or whether your assertion goes generally to the economy of the area as represented by senior uses versus the economy represented by applicant's use.

Protested Application 69976
August 2, 1989
Page 2

Finally, please refer to Div. 2 of our rules and the AG's model rule OAR 137-03-008 regarding representation of associations in contested case hearings.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Weisha Mize'.

Weisha Mize
Hearings Referee

P R O O F O F S E R V I C E

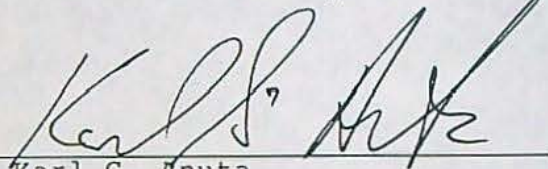
STATE OF OREGON)
 : SS.
County of Multnomah)

I, KARL G. ANUTA, being first duly sworn, depose and say that on the date of July 25, 1989, I did mail a copy of the attached protest to the applicant by regular mail by placing it in an envelope addressed to:

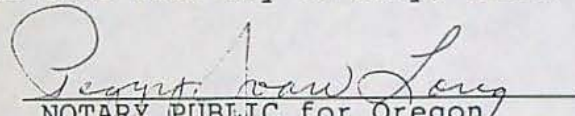
Mt. Hood Meadows Oregon, Ltd.
P. O. Box 470
Mt. Hood, OR 97401

and depositing it in the United States Mail with sufficient postage prepaid thereon.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July, 1989.


Karl G. Anuta

SUBSCRIBED AND SWORN TO BEFORE ME this 25th day of July, 1989.


NOTARY PUBLIC for Oregon
My commission expires: 2/6/92.

JOLLES, SOKOL & BERNSTEIN, P.C.

ATTORNEYS AT LAW

721 SOUTHWEST OAK STREET
PORTLAND, OREGON 97205-3791



TELEPHONE
(503) 228-6474

BERNARD JOLLES
LARRY N. SOKOL
HARLAN BERNSTEIN
ROBERT A. SACKS
MICHAEL T. GARONE
EVELYN CONROY SPARKS
KARL G. ANUTA

July 25, 1989

Handwritten: 1000

AUG - 1 1989

WATER RESOURCES DEPT.

Ms. Weisha Mize
Water Resources Department
3850 Portland Rd., NE
Salem, OR 97303

Re: Water Right Application Protest

Dear Weisha:

Enclosed is a protest on water right application No. 69976. This is the application by Mt. Hood Meadows for water appropriation up on Mt. Hood. I was unsure where to direct the protest, so I thought you could probably speed it to the appropriate place.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Karl G. Anuta

KGA:pl

Enclosure

cc w/enc: Janet Tobkin

RECEIVED

AUG - 1 1989

P R O T E S T

WATER RESOURCES DEPT.

Friends of Mt. Hood
2637 SW Water St.
Portland, OR 97201

Hereby protests the possible approval of pending application
69976.

Application # 69976 was made in the name of Mt. Hood Meadows, Oregon, Ltd. and pertains to a water diversion from two unnamed springs which are part of the headwaters of the East Fork of the Hood River. A copy of the map from the application, identifying the location of the springs, is attached to this Protest.

This Protest is made pursuant to ORS 537.170 and based on the prejudicial harm to the public interest which will occur if this water right is granted. The applicant proposes to divert a total of 1.1 cubic feet of water per second (cfs). Two different springs will provide this water. This amounts to well over 618,000 gallons per day. The source of the proposed diversion are springs which may form the headwaters of the East Fork of the Hood River.

The East Fork of the Hood River is a Class I and Class II stream. See, Draft Environmental Impact Statement for Mt. Hood Meadows Ski Area, issued by the U. S. Forest Service, Mt. Hood National Forest, ("DEIS"), p. III-17. The Class I and II identifications signify the river's importance for domestic water supply, fisheries and instream flow for other streams. Since the East Fork contains no known natural sediment traps, a diversion of this magnitude may significantly reduce the flow and increase the turbidity. DEIS IV-29. Such a drastic alteration will severely threaten downstream anadromous fish habitat. Id. Moreover, such extreme flow reduction will threaten important downstream irrigation rights. These irrigation rights are the foundation of the agricultural based economy of the Hood River Valley.

In addition, the springs from which diversion is proposed are probably hydrologically connected to the White River.^{1/} In 1988 the Oregon Omnibus Wild and Scenic Rivers Act, Public Law No. 100-557, amended the National Wild and Scenic Rivers Act and designated the White River as a "RECREATIONAL RIVER." This

1/ The hydrology of this area is not well known. DEIS IV-29. Thus, it is not clear what other rivers or water users would also be affected by this proposal.

Wild and Scenic designation obligates the managing agency, the United States Forest Service, to protect and enhance the values for which the river was preserved. 16 USC § 1281(a). The Act requires the Forest Service to prepare a plan for administration of the river according to its classification. 16 USC § 1274(b). Presently no such plan exists. Until such a plan exists, water and other resource allocation decisions should not be made on the designated river. See, e.g., Wilderness Society v. Tyrrel, 701 F Supp 1473, 1483 (ED Cal 1988).

Granting a permit to divert such a significant volume of water may well reduce the flow of the White River. This could damage or destroy the recreation values for which the river was designated and interfere with the as yet unwritten management plan. Thus, the applicants' proposed diversion may violate the provisions and policies of the Wild and Scenic Rivers Act, causing further prejudicial damage to the public interest.

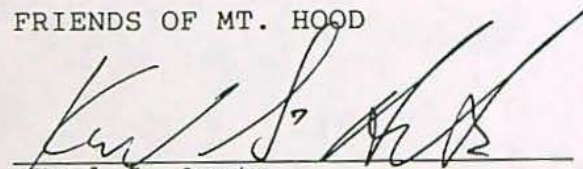
Due to: (1) the threat to senior irrigation rights; (2) the threat to local economy; (3) the threat to downstream fish and wildlife and their habitat; and (4) the potential threat to the recently designated Wild and Scenic White River; Friends of Mt. Hood requests that the Water Resources Division deny permit application 69976. Alternatively, Friends of Mt. Hood request a full public hearing and a comprehensive staff report examining the effects of such a diversion, if approved.

We look forward to presenting testimony and evidence in an administrative hearing before the Water Resources Director in support of the statements made in this Protest.

A proof of service on the applicant is attached.

DATED and SIGNED this 25th day of July, 1989.

FRIENDS OF MT. HOOD



Karl G. Anuta

EXHIBIT "B"

PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF OREGON.

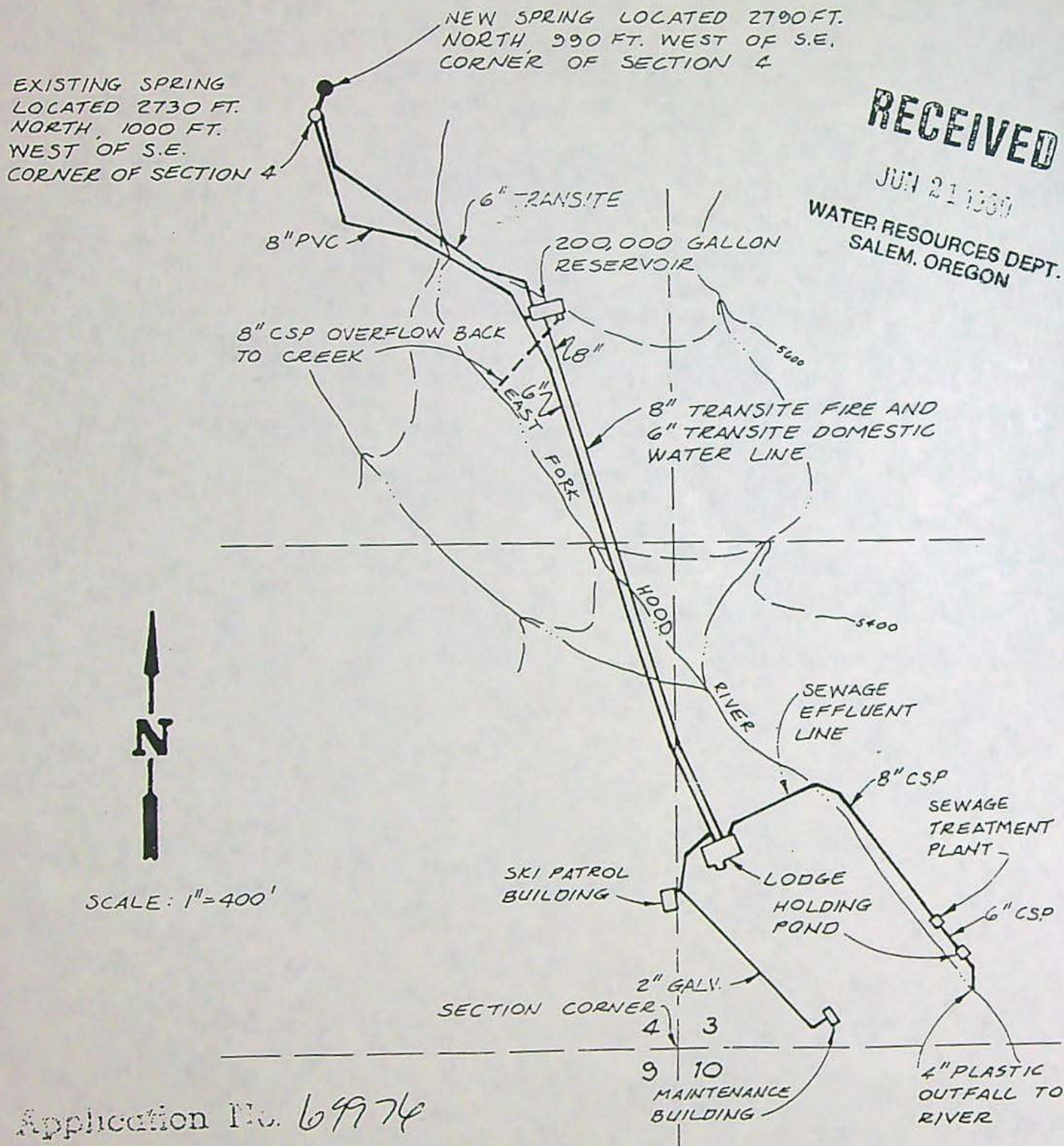
LOCATED WITHIN T35, R9E, W.M.
HOOD RIVER COUNTY, OREGON

MT. HOOD MEADOWS
OREGON LTD.
MT. HOOD, OREGON

RECEIVED

JUN 21 1990

WATER RESOURCES DEPT.
SALEM, OREGON



Application No. 69974
Permit No.

CRYSTAL SPRINGS WATER DISTRICT
DOMESTIC WATER SYSTEM

RECEIVED

PROTEST

SEP - 1 1989

WATER RESOURCES DEPT.
SALEM, OREGON

THE CRYSTAL SPRINGS WATER DISTRICT

PO BOX 186

ODELL OREGON 97044

DOES HEREBY PROTEST THE APPROVAL OF PENDING APPLICATION NUMBERED 69976 IN THE NAME OF MT HOOD MEADOWS, OREGON LTD PERTAINING TO THE USE OF WATER FROM THE EAST FORK OF THE HOOD RIVER.

CRYSTAL SPRINGS WATER RIGHTS WHICH WOULD BE ADVERSELY AFFECTED BY THE PROPOSED USE OF WATER ARE PERMIT# 29377 (5/1/64) AND PERMIT# 34196 (8/25/69).

CRYSTAL SPRINGS WATER RIGHTS WOULD BE ADVERSELY AFFECTED AS SPECIFIED IN EXHIBIT "A" AS ATTACHED.

THEREFORE, THE CRYSTAL SPRINGS WATER DISTRICT REQUESTS THE WATER RESOURCES DIRECTOR TO DENY THE MT HOOD MEADOWS, OREGON LTD APPLICATION # 69976 FOR RIGHTS TO WATERS OF THE EAST FORK OF THE HOOD RIVER.

THE DISTRICT RECOGNIZES THAT IT MIGHT BE NECESSARY TO PRESENT TESTIMONY AND EVIDENCE IN AN ADMINISTRATIVE HEARING BEFORE THE WATER RESOURCES DIRECTOR, IN SUPPORT OF THE ALLEGATIONS MADE IN THIS PROTEST.

PROOF OF SERVICE OF A COPY OF THIS PROTEST ON THE APPLICANT IS ATTACHED.

DATED AND SIGNED THIS 31ST DAY OF August, 1989

Gary L. Willis
Thomas A. Hachtel

STATE OF OREGON } ss.
County of Hood River }

The foregoing instrument was acknowledged before me this 31ST day of August, 1989 by GARY L. WILLIS & THOMAS A. HACHTEL

Shirley A. Cree
NOTARY PUBLIC

11/5/89
COMMISSION EXPIRES

CRYSTAL SPRINGS WATER DISTRICT
DOMESTIC WATER SYSTEM

RECEIVED

SEP - 1 1989

EXHIBIT "A"

WATER RESOURCES DEPT.
SALEM, OREGON

THE MANAGEMENT AND BOARD OF DIRECTORS OF CRYSTAL SPRINGS WATER DISTRICT ARE OPPOSED TO THE WATER RIGHTS APPLICATION OF MT. HOOD MEADOWS. THE APPROPRIATION OF WATER IN THE EAST FORK DRAINAGE OF THE HOOD RIVER IS A COMPLEX ISSUE AND IS THEREFORE A CONCERN TO THOSE WHO RELY ON THIS WATER FOR THEIR POTABLE SUPPLY, IRRIGATION, OR RECREATIONAL USE. WATER SUPPLY AND DEMAND FLUCTUATE SEASONALLY, AS WELL AS MINUTE BY MINUTE. IN MEETING THE VARIOUS NEEDS IN A FREE FLOWING SITUATION, CONSIDERATION MUST BE GIVEN TO PEAK DEMAND IN RELATION TO THE LOWEST AVAILABILITY OF THE RESOURCE AS THEY OFTEN COINCIDE. AVAILABLE RESOURCES MUST SUPPLY A MINIMUM STREAM FLOW TO PROVIDE FISH AND WILDLIFE HABITAT, AS WELL AS REQUIREMENTS FOR HOUSEHOLD, INDUSTRIAL, COMMERCIAL AND AGRICULTURAL USES.

CRYSTAL SPRINGS WATER DISTRICT SERVES DOMESTIC WATER TO MORE THAN FORTY SQUARE MILES OF RESIDENTIAL AND AGRICULTURAL AREA. WE SERVE ABOUT 2000 FAMILIES (NOT INCLUDING AGRICULTURAL LABOR CABINS) THROUGH 1660 SERVICE CONNECTIONS. THE DISTRICT WATER RIGHT IS ON CRYSTAL SPRING OF 7.1 CUBIC FOOT/SECOND IS EQUAL TO OR MORE THAN THE TOTAL OUTPUT. DEMAND HAS NEVER EXCEEDED SUPPLY THUS FAR, BUT WATER REQUIREMENTS MAY INCREASE IN THE FUTURE FOR THE FOLLOWING REASONS:

1. SEVERAL LARGE AREAS WITHIN THE DISTRICT CURRENTLY HAVE NO WATER SERVICE
2. SEVERAL HOMES IN THE UPPER VALLEY ARE INADEQUATELY SERVED USING IRRIGATION WATER FOR DOMESTIC USE
3. DISTRICT BOUNDARIES MAY BE ADJUSTED TO INCLUDE ADDITIONAL AREAS AS DEVELOPMENT NECESSITATES
4. RECENTLY ENACTED FEDERAL AND STATE RULES REQUIRE ADDITIONAL TESTS AND TREATMENT OF WATER SUPPLIES. THESE RULES EVENTUALLY WILL REQUIRE ALL POTABLE WATER SYSTEMS TO INSTALL TREATMENT FACILITIES. DUE TO THE HIGH COST OF CONSTRUCTION AND OPERATION OF THESE FACILITIES, THE SMALL SYSTEMS IN ODELL AND PARKDALE MAY BE UNABLE TO COMPLY AND SUBSEQUENTLY MAY BE ABSORBED INTO THE CRYSTAL SPRINGS SYSTEM. PARKDALE WATER CURRENTLY SERVES ABOUT 175 SERVICE CONNECTIONS AND ODELL/DAVIS WATER COMPANY SERVES ABOUT 135 SERVICE CONNECTIONS.
5. THE RATE OF GROWTH HAS INCREASED SIGNIFICANTLY FROM 12 REQUESTS FOR SERVICE CONNECTION IN FY82-83 TO 38 NEW SERVICES IN FY88-89.

CRYSTAL SPRINGS WATER DISTRICT IS CURRENTLY INVESTIGATING THE POTENTIAL FOR DEVELOPMENT OF OTHER SPRINGS IN THE EAST FORK BASIN TO PROVIDE FOR FUTURE NEEDS AND IS PREPARING TO FILE ON AN UNNAMED SPRING LOCATED NEAR CRYSTAL SPRING.

WE HAVE OBSERVED IN "DRY SEASONS" SUCH AS 1977 AND 1987 A SIGNIFICANT DECREASE IN AVAILABLE WATER AT CRYSTAL SPRING AND OTHER SPRINGS AND STREAMS IN THE EAST FORK BASIN. THE PROPOSED MT. HOOD MEADOWS WATER USE UPSTREAM WOULD REDUCE SUPPLIES TO THOSE WHO HAVE PREVIOUSLY ESTABLISHED RIGHTS. THE EAST FORK IRRIGATION DISTRICT HAS A WATER RIGHT DATE THAT PRECEDES THE WATER RIGHTS OF THE CRYSTAL SPRINGS WATER DISTRICT. IF INSTREAM FLOW AT THEIR POINT OF DIVERSION BECAME INSUFFICIENT, WE WOULD EXPECT THEM TO CAUSE THOSE OF US WITH

CRYSTAL SPRINGS WATER DISTRICT
DOMESTIC WATER SYSTEM

EXHIBIT "A" (PAGE 2)

JUNIOR RIGHTS TO MODIFY OR CURTAIL WATER USE. THIS WOULD CREATE A HARDSHIP FOR CRYSTAL SPRINGS WATER DISTRICT AND ITS CONSUMERS. THIS REQUEST FOR ADDITIONAL WATER RIGHTS WILL CREATE COMPETITION BETWEEN CRYSTAL SPRINGS WATER DISTRICT, EAST FORK IRRIGATION DISTRICT, MT. HOOD MEADOWS AND OTHER INTERESTS, FOR USE OF WATER THAT WILL AT TIMES BE INSUFFICIENT TO MEET EVERYONE'S NEEDS.

HISTORICAL DATA ON WATER AVAILABILITY, APPROPRIATION AND MINIMUM STREAM FLOW NEEDS TO BE GATHERED AND ANALYZED. THE RIGHTS OF THOSE WHO NOW ENJOY USE OF THE EAST FORK SHOULD NOT BE JEOPARDIZED BY DEVELOPMENT BEYOND THE RESOURCE CAPACITY.

RECEIVED

SEP - 1 1989

WATER RESOURCES DEPT.
SALEM, OREGON

P R O O F O F S E R V I C E

I, Thomas A. HACHTEL, being first duly sworn,
depose and say that on the date of August 31, 1989, I did
mail a copy of the attached protest to the applicant by regular mail
by placing it in an envelope addressed to:

— MT HOOD MEADOWS, OREGON LTD —
PO BOX 470
— MT HOOD OR 97041 —

(city) (state) (zip)

and depositing it in the United States Mail with sufficient postage
prepaid thereon.

In Witness Whereof, I have hereunto set my hand this 31 day
of August, 1989.

Thomas A. Hachtel
(signature)

Subscribed and sworn to before me this 31st day of August
1989.

(Notarial Seal)

Shirley A. Cree
Notary Public for Oregon
My commission expires 11/5/89



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

July 31, 1989

Mt. Hood Meadows, Oregon Ltd.
PO Box 470
Mt. Hood, Oregon 97041

REFERENCE: File 69976

We received your application on June 21, 1989, describing the proposed use of 1.10 cubic feet per second of water from two unnamed springs for fire suppression and recreational resort. Supporting data and fees in the amount of \$385 were also received. Our Receipt 58338 is enclosed. The application has been assigned file number 69976, and will be reviewed in detail as time allows.

Applications which are received in proper form with required maps, supporting data and fees can be considered for approval by issuance of permits following a mandatory 30-day waiting period and after public interest matters are resolved.

Applications which require additional information will be returned for correction and/or completion. In those cases, the process will, of course, be delayed further. If you feel that a delay in the processing of your application will cause a hardship, please advise.

If the application is approved, the project described in the application will be subject to the Water Resources Commission's Basin Program statements, instream flow requirements, and demands of prior rights.

Sincerely,

STEPHEN C. BROWN
Water Rights Specialist
Applications/Permit Section

Enclosure

cc: Rick Glick, Attorney

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

MEMORANDUM OF PERSONAL OR TELEPHONE CONTACT

TO: File 69976

DATE: July 20, 1989

FROM: Wayne J. Overcash

SUBJECT: _____ NAME: _____

Rick Glick, Attorney called today inquiring about the
status of Application 69976. Mr. Glick mentioned that
he has been retained by Mt. Hood Meadows, Oregon
Ltd and requested that we send him copies of all
future correspondence from this office regarding the
application.

Send C.C. to: Rick Glick, Attorney

1300 SW 5th Ave - Suite 2300

Portland, OR 97201

PARKER, BOWE, BLAKELY & PHILLIPS, P.C.

ATTORNEYS AT LAW

216 CASCADE STREET

HOOD RIVER, OREGON 97031

VAWTER PARKER (1908-1986)

LARRY S. BOWE

LARRY H. BLAKELY

DEBORAH PHILLIPS*

*MEMBER OREGON AND
WASHINGTON BARS

July 5, 1989

P.O. BOX 497
AREA CODE 503
TELEPHONE 386-5297

OF COUNSEL
KENNETH M. ABRAHAM

RECEIVED

JUL -6 1989

Water Resource Department
Attention: Steve Brown
3850 Portland Road N.E.
Salem, OR 97310

WATER RESOURCES DEPT.
SALEM, OREGON

Re: Mt. Hood Meadows Limited
Application No. 69976

Dear Mr. Brown:

Please send me a copy of the application for the above-mentioned matter. I have enclosed \$3.00 per your request.

If you have any questions, please feel free to call me.

Very truly yours,

PARKER, BOWE, BLAKELY & PHILLIPS, P.C.

Bertha M Hyskell

Bertha M. Hyskell
For Larry S. Bowe

BMH

Enclosure

*Receipt
#58486*

*sent copies of
pages 1, 23 &
one map
7/7/89
JEP*

CENTURY WEST ENGINEERING

RECEIVED

Application No. 69974

JUN 21 1989

Permit No.

June 21, 1989

WATER RESOURCES DEPT
SALEM, OREGON

Water Rights Division
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

RE: Application for Additional Water Right--Mt. Hood Meadows

Dear Sir/Madam:

On behalf of our client, Mt. Hood Meadows, Oregon, Ltd., the attached application is submitted for your review and approval. The application package includes:

A completed Form 690-1-0-1-77, "Application for Permit to Appropriate Surface Water."

A statement concerning ownership of properties involved (Exhibit A).

A map showing the location of the points of diversion and water use (Exhibit B).

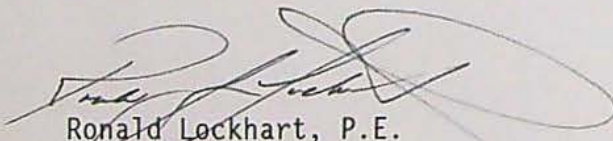
A copy of the original certificate of water right issued for one of the diversion points.

A check for \$385.00 to cover the examination and recording fee.

If you require any additional information, please do not hesitate to contact me. Your assistance in expediting the processing of this application is greatly appreciated.

Sincerely,

CENTURY WEST ENGINEERING CORPORATION



Ronald Lockhart, P.E.

RL:bjs

Attachment

MAP TO ACCOMPANY APPLICATION FOR
PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF OREGON.

LOCATED WITHIN T35, 29E, W.M.
HOOD RIVER COUNTY, OREGON

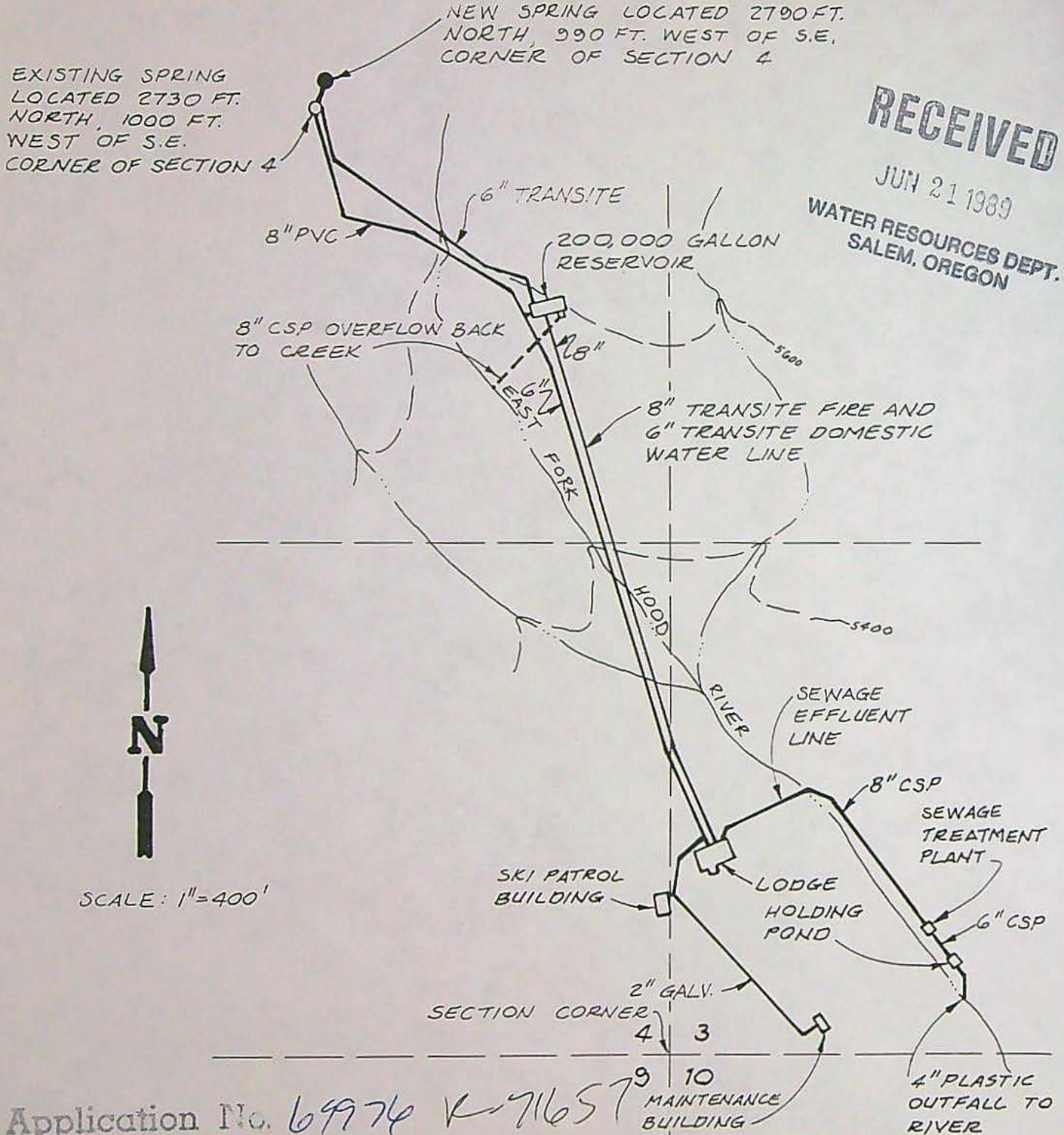
MT. HOOD MEADOWS
OREGON LTD.
MT. HOOD, OREGON

EXHIBIT "B"

RECEIVED

JUN 21 1989

WATER RESOURCES DEPT.
SALEM, OREGON



Application No. 69974 R-71657

Permit No. ~~53637~~ ✓

53637

~~R-12758~~
R-12758

MT. HOOD MEADOWS DEVELOPMENT CORPORATION

RECEIVED

JUN 21 1989

WATER RESOURCES DEPT.
SALEM, OREGON

TO WHOM IT MAY CONCERN:

The spring (water source) and all points of diversion for our requested water rights are on U. S. Forest Service permit land under lease to Mt. Hood Meadows Development Corporation.

MT. HOOD MEADOWS
DEVELOPMENT CORPORATION
POST OFFICE BOX 47
MT. HOOD, OREGON 97041
AREA CODE 503 - 337-2222



CLAY R. SIMON
GENERAL MANAGER

MT. HOOD MEADOWS SKI RESORT
P.O. Box 47
Mt. Hood, Oregon 97041
(503) 337-2222
(503) 224-1434

MT. HOOD MEADOWS DEVELOPMENT CORP.

Clay R. Simon
Clay R. Simon
Vice President

Application No. 69976
Permit No.

PRELIMINARY
SUBJECT TO REVISION

STATE OF OREGON

COUNTY OF HOOD RIVER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MT. HOOD MEADOWS, OREGON, LTD
PO BOX 470
MT. HOOD, OREGON 97041

(503)337-2222

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-69976

SOURCE OF WATER: TWO UNNAMED RESERVOIRS TO BE CONSTRUCTED OR ENLARGED UNDER APPLICATION R-71657, PERMIT R-12248, AND TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE/VOLUME ALLOWED: **LIVE FLOW** - 0.27 CUBIC FOOT PER SECOND (CFS) TOTAL FROM ONE OR BOTH OF THE UNNAMED SPRINGS, FURTHER LIMITED TO NOT MORE THAN 0.055 CFS FOR EROSION CONTROL; **STORED WATER** - 2.48 ACRE- FEET (AF) PER YEAR FROM STORED WATER ONLY, BEING 1.54 AF FROM AN EXISTING RESERVOIR (TO BE ENLARGED) AND 0.94 AF FROM A PROPOSED RESERVOIR. *FURTHER LIMITED TO A MAXIMUM OF LIVE FC & STORED WATER OF 414 AF*

PERIOD OF ALLOWED USE: **LIVE FLOW** - NOVEMBER 1 THROUGH JULY 31; **STORED WATER** - YEAR ROUND

DATE OF PRIORITY: June 21, 1989

POINT OF DIVERSION LOCATION: SE 1/4 NE 1/4, SECTION 4, T3S, R9E, W.M.; 2730 FEET NORTH & 1000 FEET WEST; 2790 FEET NORTH & 990 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 28
NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 33

SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 34

SW 1/4 SW 1/4

SECTION 35

TOWNSHIP 2 SOUTH, RANGE 9 EAST, W.M.

NW 1/4 NW 1/4
SW 1/4 NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4

SECTION 2

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 3

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 4

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 5

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4

SECTION 8

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 9

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 10

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4

SW 1/4 NW 1/4
 SE 1/4 NW 1/4
 NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 11

NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4

SECTION 14

NE 1/4 NE 1/4
 SE 1/4 NE 1/4

SECTION 15

NE 1/4 NE 1/4
 NW 1/4 NE 1/4
 SW 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SE 1/4 NW 1/4

SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters

used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

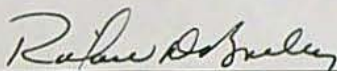
Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2002. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued April 14, 1998



Martha O. Pagel, Director
Water Resources Department

STATE OF OREGON

COUNTY OF HOOD RIVER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MEADOWS WATER COMPANY
PO BOX 470
MT. HOOD, OREGON 97041

(503) 337-2222

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-69976

SOURCE OF WATER: TWO UNNAMED RESERVOIRS TO BE CONSTRUCTED OR ENLARGED UNDER APPLICATION R-71657, PERMIT R-12758, AND TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE/VOLUME ALLOWED: *LIVE FLOW* - 0.27 CUBIC FOOT PER SECOND (CFS) TOTAL FROM ONE OR BOTH OF THE UNNAMED SPRINGS, FURTHER LIMITED TO NOT MORE THAN 0.055 CFS FOR EROSION CONTROL; *STORED WATER* - 2.48 ACRE- FEET (AF) FROM STORED WATER ONLY, BEING 1.54 AF FROM AN EXISTING RESERVOIR (TO BE ENLARGED) AND 0.94 AF FROM A PROPOSED RESERVOIR, FURTHER LIMITED TO A MAXIMUM CUMULATIVE TOTAL OF LIVE FLOW AND STORED WATER OF 166.0 AF PER YEAR.

PERIOD OF ALLOWED USE: *LIVE FLOW* - NOVEMBER 1 THROUGH JULY 31; *STORED WATER* - YEAR ROUND

DATE OF PRIORITY: JUNE 29, 1989

POINT OF DIVERSION LOCATION: SE 1/4 NE 1/4, SECTION 4, T3S, R9E, W.M.; 2730 FEET NORTH & 1000 FEET WEST; 2790 FEET NORTH & 990 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4

Application S-69976

Water Resources Department

PERMIT 53637

SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 28

ALL
SECTION 33

SW 1/4 NE 1/4
NW 1/4
SW 1/4
SE 1/4
SECTION 34

SW 1/4 SW 1/4
SECTION 35
TOWNSHIP 2 SOUTH, RANGE 9 EAST, W.M.

NW 1/4 NW 1/4
SW 1/4 NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SECTION 2

ALL
SECTION 3

ALL
SECTION 4

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 5

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SECTION 8

ALL
SECTION 9

NE 1/4
NW 1/4

NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4
SECTION 10

ALL
SECTION 11

NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SECTION 14

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 15

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4
SECTION 10

ALL
SECTION 11

NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SECTION 14

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 15

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

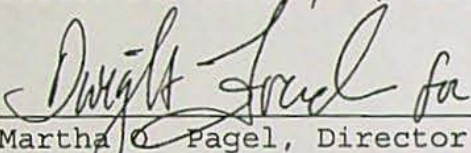
The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued to correctly describe the name of the permittee, the priority date, and the amount stored water that is allowed. Permit

53259, dated April 14, 1998 is superseded by this instrument and is of no further force or effect.

Actual construction work shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued December 9, 1999


Martha C. Pagel, Director
Water Resources Department

STATE OF OREGON

COUNTY OF HOOD RIVER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MT. HOOD MEADOWS, OREGON, LTD
PO BOX 470
MT. HOOD, OREGON 97041

(503)337-2222

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-12550

SOURCE OF WATER: A WELL WITHIN THE EAST FORK HOOD RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE: 0.11 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO NOT MORE THAN 0.055 CFS FOR EROSION CONTROL

PERIOD OF USE: AUGUST 1 THROUGH OCTOBER 31

DATE OF PRIORITY: May 23, 1991

POINT OF DIVERSION LOCATION: SW 1/4 SW 1/4, SECTION 3, T3S, R9E, W.M.;
850 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 3

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 28

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 33

Application G-12550

Water Resources Department

PERMIT G-13388

SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 34

SW 1/4 SW 1/4

SECTION 35

TOWNSHIP 2 SOUTH, RANGE 9 EAST, W.M.

NW 1/4 NW 1/4
SW 1/4 NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4

SECTION 2

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 3

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4

SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 4

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 5

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4

SECTION 8

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 9

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 10

NE 1/4 NE 1/4
NW 1/4 NE 1/4

SW 1/4 NE 1/4
 SE 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4
 SE 1/4 NW 1/4
 NE 1/4 SW 1/4
 NW 1/4 SW 1/4
 SW 1/4 SW 1/4
 SE 1/4 SW 1/4
 NE 1/4 SE 1/4
 NW 1/4 SE 1/4
 SW 1/4 SE 1/4
 SE 1/4 SE 1/4

SECTION 11

NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SW 1/4 NW 1/4

SECTION 14

NE 1/4 NE 1/4
 SE 1/4 NE 1/4

SECTION 15

NE 1/4 NE 1/4
 NW 1/4 NE 1/4
 SW 1/4 NE 1/4
 NE 1/4 NW 1/4
 NW 1/4 NW 1/4
 SE 1/4 NW 1/4

SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

ok per well log
 G1 The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon and shall further be constructed so as to appropriate water from a confined aquifer below the basalt encountered in the geothermal well beginning at 289 feet below land surface. The works shall be equipped with a usable access port and may also include an air line and pressure gage adequate to determine water level elevation in the well at all times.

G2 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

G3 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Application G-12550 Water Resources Department

PERMIT G-13388

OK no
 water used
 as of
 5-20-03

G4 The Director shall require the permittee to keep and maintain a record of the rate and duty of water diverted and shall require the permittee to report water use at least annually on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

G5 The permittee shall conduct or cause to be conducted static water level measurements in all water-producing zones encountered during drilling. In addition, one pump test shall be conducted within one week following completion of the well, and a second pump test shall be conducted no earlier than three months and no later than four months after completion of the well. The pump tests will be conducted to determine aquifer properties, presence of flow boundaries in the aquifer and well recovery characteristics. The tests shall be designed in consultation with Department staff. The results of the pump tests and static water level measurements shall be submitted to the Department no later than one month after the last pumping test and static water level measurements are conducted.

G6 The use of water for erosion control allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

G7 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

G8 A maximum of 0.055 cfs may be used under this permit for erosion control.

G9 From August 1 through October 31 for any year after the initial use of groundwater under this permit, the permittee shall discharge effluent from the waste water treatment plant beginning not earlier than 5:00 a.m. and continuing at a rate consistent with the NPDES permit, but not to exceed 0.11 cfs, until all effluent has been discharged, provided, however, that the permittee shall not be required to discharge effluent that does not meet the standards of the NPDES permit.

G10 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage

OK
1-20-99
Aquifer Test
Analysis Report

treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

G11 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and OREGON DEPARTMENT OF FISH AND WILDLIFE that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

G12 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

G13 Any use which is to be supplied water under this permit shall use the best available water-saving devices.

G14 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

G15 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

G16 At the request of the Department, the permittee shall obtain approval from the Department for a monitoring program. The permittee shall retain the services of a groundwater geologist licensed in Oregon and cause the geologist to submit a plan for monitoring groundwater and surface water to the Department for approval. The plan shall provide for a long-term monitoring program which shall be conducted in a manner that will assist the Department in detecting any interference with surface water.

G17 In the event the Water Resources Department determines that use from the well for erosion control interferes with a senior surface water

OK
Donna Miller's
1-26-99
letter

right, use from the well shall be regulated as surface water. Regulation may be initiated at any time and in any manner in order to assure protection of senior surface water rights, provided that prior to controlling the use of the well, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

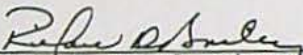
By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2002. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued April, 15, 1998


Martha O. Pagel, Director
Water Resources Department

Application G-12550 Water Resources Department
Basin 04 Volume 1 EAST FK HOOD R MISC
ALJ MGMT.CODE

PERMIT G-13388
District 3

STATE OF OREGON

COUNTY OF HOOD RIVER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MEADOWS WATER COMPANY
PO BOX 470
MT. HOOD, OREGON 97041

(503) 337-2222

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-69976

SOURCE OF WATER: TWO UNNAMED RESERVOIRS TO BE CONSTRUCTED OR ENLARGED UNDER APPLICATION R-71657, PERMIT R-12758, AND TWO UNNAMED SPRINGS, TRIBUTARIES OF EAST FORK HOOD RIVER

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE/VOLUME ALLOWED: *LIVE FLOW* - 0.27 CUBIC FOOT PER SECOND (CFS) TOTAL FROM ONE OR BOTH OF THE UNNAMED SPRINGS, FURTHER LIMITED TO NOT MORE THAN 0.055 CFS FOR EROSION CONTROL; *STORED WATER* - 2.48 ACRE- FEET (AF) FROM STORED WATER ONLY, BEING 1.54 AF FROM AN EXISTING RESERVOIR (TO BE ENLARGED) AND 0.94 AF FROM A PROPOSED RESERVOIR, FURTHER LIMITED TO A MAXIMUM CUMULATIVE TOTAL OF LIVE FLOW AND STORED WATER OF 166.0 AF PER YEAR.

PERIOD OF ALLOWED USE: *LIVE FLOW* - NOVEMBER 1 THROUGH JULY 31; *STORED WATER* - YEAR ROUND

DATE OF PRIORITY: JUNE 29, 1989

POINT OF DIVERSION LOCATION: SE 1/4 NE 1/4, SECTION 4, T3S, R9E, W.M.; 2730 FEET NORTH & 1000 FEET WEST; 2790 FEET NORTH & 990 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 4

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4

Application S-69976

Water Resources Department

PERMIT 53637

SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 28

ALL
SECTION 33

SW 1/4 NE 1/4
NW 1/4
SW 1/4
SE 1/4
SECTION 34

SW 1/4 SW 1/4
SECTION 35
TOWNSHIP 2 SOUTH, RANGE 9 EAST, W.M.

NW 1/4 NW 1/4
SW 1/4 NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SECTION 2

ALL
SECTION 3

ALL
SECTION 4

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 5

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SECTION 8

ALL
SECTION 9

NE 1/4
NW 1/4

NE 1/4 SW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4
SECTION 10

ALL
SECTION 11

NE 1/4 NW 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SECTION 14

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 15

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 16

TOWNSHIP 3 SOUTH, RANGE 9 EAST, W.M.

SPECIAL CONDITIONS

S1 The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows. The use of water under this permit shall not have priority over instream water right Certificate 68457 (which superseded Certificate 59677), and no other preferences accorded municipal rights are applicable to this permit.

S2 A maximum of 0.055 cfs may be used under this permit for erosion control.

S3 The permittee shall comply with all applicable DEQ and EQC statutes, rules, policies and permits in the use of water under this permit. If the permittee's waste water discharge permit issued by the DEQ is amended or revoked, the Department may review and modify this permit to reflect changes in the DEQ permit. No changes shall be required in this water right permit unless consistent with the findings, conclusions and opinion granting this permit.

S4 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall operate the sewage treatment plant at Mt. Hood Meadows ski facility to provide more continuous effluent releases and reduce the effect of batch processing.

S5 Consistent with DEQ permit requirements and subject to its approval, monitoring and regulation, the permittee shall continue to operate the sewage treatment plant so as to maintain a minimum 90% return of waters used in the facilities which are tied to the sewage treatment plant. The permittee shall maintain a recording flow meter with totalizer to measure effluent discharge from the waste water treatment plant, shall retain the records for not less than two years, and shall make such records available to the watermaster on request in a format adequate to address compliance with applicable conditions of this permit.

S6 The permittee shall obtain any necessary authorization, easement or special use permit and shall, under the supervision of the watermaster, purchase, install, operate and maintain to the watermaster's satisfaction, a recording device or devices at location(s) to be determined by the Department in consultation with the permittee and ODFW that enables measurement of and regulation to protect the instream water right on the East Fork Hood River. The installation shall be completed prior to use of water under this permit. The device or devices shall be operated from June 1 through October 31, unless the watermaster requests earlier or later operation after determining that operation will not result in undue risk to the facility. The permittee's obligation to pay for the operation and maintenance of the device or devices may be reduced to the extent of any contribution the Department may require in the future as a condition of any permit junior to this permit.

S7 This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end. Any use which is to be supplied water under this permit shall use the best available water-saving devices.

S8 Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device above the first diversion on the transmission line as approved by the Director. The permittee shall maintain the meter or other approved measuring device in good working order.

S9 The permittee shall allow the watermaster access to the meter or measuring device. If the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

S10 The Director shall require the permittee to keep and maintain a record of the rate and duty of water used and shall require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report at least annually general water use information, the periods of water use and the place and nature of use of water under this permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

S11 The permittee's municipal water management and conservation plan must be approved by the Department prior to permittee's first diversion of water under this permit. The permittee shall comply with Commission rules found at OAR Ch. 690 Div. 86.

S12 Any impacts to wetlands providing water-related recreational opportunities or flows to water-dependent resources which result from the use of water as herein allowed shall be avoided or mitigated pursuant to the terms of the FEIS, ROD and special use permit issued by the USFS.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

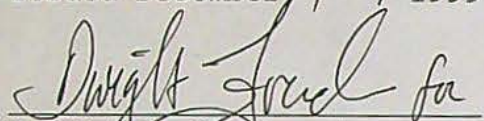
The Commission finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued to correctly describe the name of the permittee, the priority date, and the amount stored water that is allowed. Permit

53259, dated April 14, 1998 is superseded by this instrument and is of no further force or effect.

Actual construction work shall begin within one year from permit issuance. Complete application of water to the use shall be made on or before October 1, 2004. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued December 9, 1999


Martha O. Pagel, Director
Water Resources Department

July 27, 1991

Thomas Hachtel
Crystal Springs Water District
PO Box 186
Odell, OR 97044

WATER
RESOURCES
DEPARTMENT

RE: Protested Application G12211

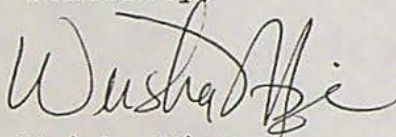
Dear Mr. Hachtel:

I am in receipt of the facsimile transmission dated July 26, 1991 regarding the CSWD protest in this matter. Copies have been forwarded to Mt. Hood Meadows c/o Richard Whitman, Karl Anuta for Friends of Mt. Hood, Jill Zarnowitz for ODFW and Penny Harrison, Department of Justice, representing ODFW. In future, please send copies of any correspondence to these individuals.

Regarding your statement about expenditure of CSWD funds to develop information, you should understand that it is the responsibility of the party asserting a certain proposition to provide information and evidence in support of that proposition. For example, in the contested case hearing process, if you assert that the application should not be approved because it will have unacceptable impacts on the minimum streamflow levels, you must provide information sufficient to support that allegation and to enable a determination to be made thereon.

Thank you for the information regarding the recently completed Crystal Springs Water District Water System Analysis. You may wish to submit a copy of this report to be included in the application file.

Sincerely,



Weisha Mize
Hearings Referee

cc: Richard Whitman
Karl Anuta
Jill Zarnowitz
Penny Harrison



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130