

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications)	
71172, 71173, 71174, 71181, 71182)	SETTLEMENT AGREEMENT
71183, 71184, 71185, 71190, 71192, and)	APPLICATIONS 71172, 71173
73350 in the Name of the Oregon)	71174, 71181, 71182, 71183,
Department of Fish & Wildlife)	71184, 71185 71190, 71192,
<i>Applicant</i>)	AND 73350
)	
Douglas County)	
<i>Protestant</i>)	

Background

This agreement between the Oregon Water Resources Department ("OWRD"), the Oregon Department of Fish and Wildlife ("ODFW") and Douglas County is unique to the circumstances of this settlement and the terms, conditions and requirements of this agreement do not apply to any other instream water right applications, protests to instream water right applications or processes regarding the approval of instream water rights.

ODFW enters into this agreement for two purposes:

- (a) To protect flows in the Umpqua River basin for fish through certifying ODFW's instream water right applications, and
- (b) To restore flows and passage in Rock Creek, which is an important spawning and rearing stream in the North Umpqua River basin for winter steelhead, cutthroat trout and coho and spring Chinook salmon. Flows and passage will be restored by reducing the Rock Creek Hatchery's dependence on Rock Creek water by using North Umpqua water during critical low flow periods in Rock Creek. Restoring Rock Creek will enhance wild winter steelhead, cutthroat trout, coho and spring Chinook salmon populations in the North Umpqua River.

This settlement agreement is based on the following unique circumstances:

- (a) ODFW has seven (7) cubic foot per second ("cfs") of water available from its hatchery water right certificate C 54607 which can be transferred instream to the North Umpqua River.
- (b) Douglas County can mitigate for the seven (7) cfs described in paragraph eight (8) below by providing the means for the Rock Creek Hatchery to forego using Rock Creek water during critical low flows in Rock Creek. This

agreement will allow ODFW to withdraw more water from the North Umpqua River for the Rock Creek Hatchery during low flow periods in Rock Creek.

- (c) The Rock Creek Hatchery returns the water it withdraws to Rock Creek, which then flows into the North Umpqua River within three-hundred (300) yards downstream of the point of diversion.
- (d) This agreement will allow restoration of flows that currently are not available in portions of Rock Creek.
- (e) This agreement provides adequate mitigation for impacts to the instream water rights IS 71174 and IS 73350 in the North Umpqua River.

Stipulations

The OWRD, ODFW and Douglas County hereby stipulate and agree as follows.

- I. IS 71172: On January 10, 1991, ODFW submitted its application 71172 on the North Umpqua, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its Proposed Final Order ("PFO") recommending approval of the application for the following amount of water in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
680	680	680	680	680	680	680	680	680	680	680	680

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71172.

- II. IS 71173: On January 10, 1991, ODFW submitted its application 71173 on the North Umpqua River, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1020	1020	1020	1020	1020	1020	1020	950	940	1020	1020	1020

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71172.

- III. IS 71174: On January 10, 1991, ODFW submitted its application 71174 on the North Umpqua River, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1350	1350	1350	1350	1350	1350	1290	996	982	1190	1350	1350

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71174.

- IV. IS 71181: On January 10, 1991, ODFW submitted its application 71181 on Calapooya Creek, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
70	70	70	70	50	30	20	18.6	17.5	29	70	70

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71181.

- V. 71182: On January 10, 1991, ODFW submitted application 71182 on Deer Creek, tributary to the South Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
85	85	85	58.7	24	10.3	4.5	2.72	2.90	4.8	19.9	85

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71182.

- VI. IS 71183: On January 10, 1991, ODFW submitted application 71183 on Elk Creek, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0	0	0	0	0	0	22.5	10.8	13.6	23.5	0	0

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71183.

- VII. IS 71184: On January 10, 1991, ODFW submitted application 71184 on the Little River, tributary to the North Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
255	255	255	255	150	100	51.8	30.2	27.3	42.6	255	255

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71184.

VIII. IS 71185: On January 10, 1991, ODFW submitted application 71185 on the Little River, tributary to the North Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	102	102	102	60	40	32.6	18.8	17.4	27.5	102	102

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71185.

IX. IS 71190: On January 10, 1991, ODFW submitted application 71190 on the South Fork of Deer Creek, tributary to Deer Creek. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
42	42	42	28.1	11.8	4.43	1.86	1.1	1.27	2.2	9.5	42

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71190.

X. IS 71192: On January 10, 1991, ODFW submitted application 71192 on the South Umpqua River, tributary to the Umpqua River. On August 20, 1996, the OWRD issued its PFO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
425	425	425	425	250	168	154	82.5	72.9	110	425	425

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 71192.

XI. IS 73350: On April 12, 1993, ODFW submitted application 73350 on the Umpqua River. On August 20, 1996, the OWRD issued its PRO recommending approval of the application for the following amount of water in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1700	1700	1700	1700	1700	1700	1000	1000	1000	1560	1700	1700

On October 3, 1996, Douglas County timely filed a protest to the PFO for application IS 73350.

XII. As of the January, 2004, OWRD's water availability model, run at a 50% exceedence level, indicates that even after instream water rights IS 71181, IS 71182, IS 71183, IS 71190, and IS 71192, are subtracted, water is available at a 50% exceedence level as follows:

IS 71181 Calapooya Cr > Umpqua R above Oldham Cr.: November through March

IS 71182 Deer Creek > S Umpqua R at mouth: December through March
IS 71183 Elk Creek > Umpqua R at mouth: November through March
IS 71190 Deer Creek > S Umpqua at mouth: December through March
IS 71192 S Umpqua R > Umpqua R above Cow Cr.: November through March.

- XIII. The parties stipulate and agree as to the importance of Rock Creek restoration efforts to fish management.
- XIV. The OWRD, ODFW, and Douglas County agree that the concerns Douglas County raised in its protests to the PFO for the applications described in paragraphs I through XI above are resolved solely on the following terms.

Agreement

1. The parties of this Settlement Agreement waive the opportunity to file requests for reconsideration or exceptions to the Final Orders issuing from this Agreement and any right to judicial review of this Agreement and these Final Orders.
2. Each party to this Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of this Agreement.
3. Douglas County agrees to withdraw with prejudice its requests for contested case hearing and protests to applications IS 71172, IS 71173, IS 71774, IS 71181, IS 71182, IS 71183, IS 71184, IS 71185, IS 71190, IS 71192 and IS 73350.
4. ODFW and OWRD agree to the following condition on the certificates that issue for applications IS 71181, IS 71182, IS 71183, IS 71190, and IS 71192, respectively:

Certificate 71181 (Calapooya Cr. > Umpqua R above Oldham Cr.): As of January 2004, water is available for further appropriation at a 50% exceedence level November through March.

Certificate 71182 (Deer Cr. > S. Umpqua R at mouth): As of January 2004, water is available for further appropriation at a 50% exceedence level December through March.


Certificate 71183 (Elk Cr. > Umpqua R at mouth): As of January 2004, water is available for further appropriation at a 50% exceedence level November through March.

Certificate 71190 (Deer Cr. > S. Umpqua R at mouth): As of January 2004, water is available for further appropriation at a 50% exceedence level December through March.

Certificate 71192 (S. Umpqua R > Umpqua R at mouth): As of January 2004, water is available for further appropriation at a 50% exceedence level November through March.

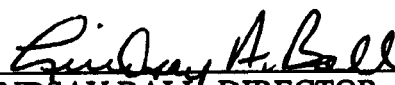
5. **When this Settlement Agreement has been signed by all of the parties OWRD will issue certificates for IS 71172, IS 71173, IS 71181, IS 71182, IS 71183, IS 71184, IS 71185, IS 71190, and IS 71192.**
6. **Immediately upon successful completion of the transfer described in paragraph seven (7) below, Douglas County will provide ODFW with seventy-five thousand dollars (\$75,000.00) to be used exclusively for purchasing and installing a pump for ODFW's Rock Creek Hatchery.**
7. **ODFW will immediately begin the process of transferring seven (7) cfs from its certificate C 54607 in stream into the North Umpqua River. Douglas County, ODFW, and OWRD agree to support the transfer of seven (7) cfs from certificate C 54607 to in-stream use in the North Umpqua River.**
8. **When ODFW has successfully completed the transfer described in paragraph seven (7) above, ODFW and OWRD agree to the issuance of certificates for applications IS 71174 and IS 73350 with the following conditions in addition to the conditions described in the PFO for these applications:

For purposes of water regulation only, the instream rights IS 71174 and IS 73350 shall not have priority over the following uses of water with a priority date later than 1990: a combined total between IS 71174 and IS 73350 of up to 4.0 cfs of water for human consumption, domestic, or domestic expanded uses; a combined total between IS 71174 and IS 73350 of up to 1.5 cfs of water for industrial or commercial use; and a combined total between IS 71174 and IS 73350 of up to 1.5 cfs for irrigation or agricultural use. This provision means that up to a total of 7 cfs will be available to holders of water rights that are junior to IS 71174 and IS 73350 when water is used for the purposes stated. This does not mean that each applicant may use up to 7 cfs, or that 7 cfs will be available from each instream water right.**
9. **OWRD and ODFW agree to enter into a Memorandum of Understanding that will provide the process whereby OWRD will process applications for industrial, commercial, irrigation or agricultural uses from the stream reaches described in applications IS 71174 and IS 73350.**
10. **The parties to this Agreement stipulate and agree that the circumstances allowing implementation of this Agreement are unique and do not establish either legal or policy precedent.**



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