

IWR 71450

Application No. *IWR* 71450 *WF*
Permit No. _____
Certificate No. _____

N: _____
A: DDFW
BY RANDY FISHER
PO BOX 59
PORTLAND OR 97207

Stream Index, Page No. _____

Grant C. Whippley Co. Lake

FEES PAID		
Date	Amount	Receipt No.
10-9-96	\$200.00	7352
10-14-96	\$200.00	7567
Cert. Fee		
FEES REFUNDED		
Date	Amount	Check No.

Date filed MAR 28 1991

Priority _____

Action suspended until _____

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water _____

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

ASSIGNMENTS				
Date	To Whom	Address	Volume	Page

REMARKS	
<i>R+R</i>	

IWR
Application No. 71450
Permit No.

3/28/91

Name

ODFW

PO BOX 59, PORTLAND OR 97207

Address

Assigned

Address

Beginning construction

Completion of construction

Extended to

Complete application of water

Extended to

RECEIPT # 7567

STATE OF OREGON
WATER RESOURCES DEPARTMENT

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

INVOICE

RECEIVED FROM: Kalpaluricks
BY: _____

APPLICATION
PERMIT
TRANSFER

CASH:
CHECK: # 216-23
OTHER: (IDENTIFY)

0417 WRD MISC CASH ACCT

TOTAL REC'D \$

ADJUDICATIONS
PUBLICATIONS / MAPS

OTHER: (IDENTIFY) \$
OTHER: (IDENTIFY) \$

REDUCTION OF EXPENSE

0427 WRD OPERATING ACCT

PCA AND OBJECT CLASS

CASH ACCT.

VOUCHER # \$

0407 MISCELLANEOUS
0410 COPY & TAPE FEES
0408 RESEARCH FEES
TC165 MISC REVENUE: (IDENTIFY)
DEPOSIT LIAB. (IDENTIFY)

0201 WATER RIGHTS:
0203 SURFACE WATER
0205 GROUND WATER
TRANSFER
0218 WELL CONSTRUCTION
WELL DRILL CONSTRUCTOR
LANDOWNER'S PERMIT

EXAM FEE	
\$	0202
\$	0204
\$	0206
EXAM FEE	
\$	0219
\$	0220

\$
\$
\$
\$

RECORD FEE	
\$	
\$	
\$	
\$	
LICENSE FEE	
\$	
\$	

0437 WELL CONST. START FEE

0211 WELL CONST START FEE
0210 MONITORING WELLS

OTHER (IDENTIFY) \$

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

0467 HYDRO ACTIVITY

0233 POWER LICENSE FEE (FW/WRD)
231 HYDRO LICENSE FEE (FW/WRD)

LIC NUMBER	

HRDRD APPLICATION

7567

DATED: 10/14/04 BY: O. Ridgway

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

Rita M. Edwards,

The Water Rights Services Division of the Oregon Water Resources Department (OWRD) wishes to inform you that a Protest Specialist has been assigned to review a Protest that was filed on behalf of the Rotchy & Jule Barker Grandchildren Trust in October of 1996, against an Oregon Department of Fish and Wildlife Application for an Instream Water Right along Bosonberg Creek, tributary to Lake Creek.

Our review of your Protest is to determine whether the Water Right Process should move towards either Settlement discussions, or a Contested Case Hearing. Towards this end, we would like to request that you send us an updated contact phone number, mailing address, and any additional contact information you consider necessary. We will be in contact with you before any final decision is made by the Department, and will be actively seeking your input as the Protest Review is conducted. You will find a Paid Postage envelope along with this letter for your response.

We look forward to hearing from you and appreciate your time and attention.

Best regards,

Ian Anderson

Protest Specialist

c/o Dwight French

Water Right Services Division Administrator

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

Water Right Application Number: IS 71450

Proposed Final Order

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

Application History

On 3/28/91, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: BOSONBERG CR TRIB [LAKE CR] *change to Malheur R.*

County: Grant

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5	5	5	5	5	5	3	3	3	3/5	5	5

To be maintained in:

BOSONBERG CREEK FROM AN UNNAMED TRIBUTARY (NESW, SECTION 13, TOWNSHIP 16S, RANGE 33.5E WM); TO THE MOUTH AT RIVER MILE 0.0 (SESW, SECTION 35, TOWNSHIP 16S, RANGE 33.5E WM)

The Department mailed the applicant notice of its Initial Review on May 17, 1996. Public notice of the application was provide in the Department's weekly public notice on May 31, 1996. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Malheur River Basin, Oregon, and Their Water Requirements; September, 1967.
- (b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.
- (c) Developing and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids, Alan K. Smith, Transactions of the American Fisheries Society, April 1973.
- (d) Determining Stream Flows for Fish Life, Oregon State Game Commission Report, March 1972.

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

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

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

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

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

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

Findings of Fact

The basin Basin Program allows the proposed use.

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

The source of water is not above a State Scenic Waterway.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.22	2.53	6.44	15.8	7.39	2.62	0.38	0.18	0.17	0.6	0.84	1.1

Conclusions of Law

Under the provisions of ORS 537.153, the Department must

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

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

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

The proposed use will not injure other water rights.

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

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

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

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

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

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

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

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

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

The Department therefore concludes that

- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, will include the following conditions: for purposes of water distribution, this instream right shall not have priority over human or livestock consumption.

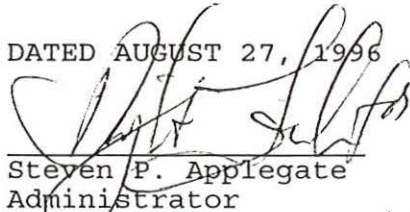
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.22	2.53	5	5	5	2.62	0.38	0.18	0.17	0.6	0.84	1.1

Recommendation

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

DATED AUGUST 27, 1996



Steven P. Applegate
 Administrator
 Water Rights and Adjudications Division

Protest Rights

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

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

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

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

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

DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

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

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

Source: BOSONBERG CR TRIB LAKE CR

County: Grant

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

To be maintained in:

BOSONBERG CREEK FROM AN UNNAMED TRIBUTARY (NESW, SECTION 13, TOWNSHIP 16S, RANGE 33.5E WM); TO THE MOUTH AT RIVER MILE 0.0 (SESW, SECTION 35, TOWNSHIP 16S, RANGE 33.5E WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 3/28/91.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.22	2.53	5	5	5	2.62	0.38	0.18	0.17	0.6	0.84	1.1

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

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

Water Resources Director

Recorded in State Record of Water Right Certificate number _____.

IS 71450

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **7352**

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

INVOICE # _____

RECEIVED FROM: <u>Ronald L. Yockim</u>	APPLICATION
BY: _____	PERMIT
	TRANSFER

CASH: CHECK: # 2412 OTHER: (IDENTIFY)

TOTAL REC'D \$ 3,800.

0417 WRD MISC CASH ACCT

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

REDUCTION OF EXPENSE

CASH ACCT.	\$
PCA AND OBJECT CLASS	VOUCHER #

0427 WRD OPERATING ACCT

0407 MISCELLANEOUS	<u>IS 69949</u>	<u>70640-42</u>	<u>71467-68</u>	\$
0410 COPY & TAPE FEES	<u>69951</u>	<u>70645-46</u>	<u>71472</u>	\$
0410 RESEARCH FEES	<u>69960</u>	<u>70651-55</u>		\$
0408 MISC REVENUE: (IDENTIFY)	<u>69963</u>	<u>71450</u>		\$
TC165 DEPOSIT LIAB. (IDENTIFY)		<u>71455</u>		\$

0201 WATER RIGHTS: SURFACE WATER	EXAM FEE	0202	RECORD FEE
0203 GROUND WATER	\$	0204	\$
0205 TRANSFER	\$	0206	\$
0218 WELL CONSTRUCTION: WELL DRILL CONSTRUCTOR	EXAM FEE	0219	LICENSE FEE
LANDOWNER'S PERMIT	\$	0220	\$

0223 OTHER (IDENTIFY) Protest \$3,800. - PCA77235

0437 WELL CONST. START FEE

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

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
-----------------------	----

0467 HYDRO ACTIVITY

0233 POWER LICENSE FEE (FWWRD)	LIC NUMBER	\$
0231 HYDRO LICENSE FEE (FWWRD)		\$
HRDRO APPLICATION		\$

RECEIPT # **7352**

DATED: 10-9-96

BY: R. Bushnell

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON
WATER RIGHTS DIVISION

In the Matter of Instream Water Right)	
Application IS 71450, Bosenberg Creek,)	
Grant County)	
Oregon Department of Fish & Wildlife)	PROTEST TO
Applicant.)	PROPOSED FINAL
Grant County,)	ORDER
Protestant.)	
_____)	

Protestant, Grant County, a municipal corporation, pursuant to ORS 537.153(6) and OAR 690-77-043, hereby protests the Proposed Final Order for Application IS 71450, Bosenberg Creek, in Grant County.

I.

INTRODUCTION

The protestant's address and telephone number are:

Grant County Court
P.O. Box 220
Canyon City, Oregon 97820
(541) 575-0059

Protestant's attorney in this matter is:

Ronald S. Yockim
Attorney At Law
P.O. Box 2456
548 SE Jackson, Suite 7
Roseburg, Oregon 97470
(541) 957-5900

The protestant's interest in the Proposed Final Order is based upon Grant County having identified irrigation, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation as uses of the

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Bosenberg Creek that are in the public interest and are also identified in the Malheur River Basin Plan as being in the public interest (See OAR 690). It is Grant County's interest to conserve the highest use of the water for all purposes including irrigation, domestic use, municipal water supply, recreation, fish and wildlife, navigation, and road construction, maintenance, and reconstruction.

Protestant represents its own interest as well as the public interest in the filing of this protest. The specific public interest that protestant represents is the use of this water for the highest public benefit, which in this case involves a balancing of public interests including water for irrigation, domestic use, municipal water supply recreation, fish and wildlife, navigation, and road construction, maintenance, and reconstruction. In addition, the applicant represents the public interest in insuring that the Director is following the law as established by the Legislature and as adopted in the Grant County Comprehensive Plan.

Sec 77-0045
572-176(8/1)

Grant County also brings this protest to exercise the agreement with the Water Resources Department wherein it was stipulated that the Water Resources Department would consult with the County prior to proceeding further with the instream applications (See Jan. 3, 1992 Letter OWRD to Ronald S. Yockim)

II.

ISSUES

1. The Proposed Final Order is in error or deficient in the

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

following particulars:

- A. Neither the instream application nor the Water Resources Department's ("Department") file provide sufficient technical data or information to support the flow rates requested. The record not only lacks substantial evidence, it also lacks the information required by OAR 690-77-020 and ORS 537.336.

OAR 690-770-020(3)(g) requires an application to include at a minimum "a description of the technical data and methods used to determine the requested amounts;" (emphasis added).

In this case the file does not contain any "technical data", or any factual data, that supports the proposed instream flows.

- B. In reviewing the documentation in the Water Resources Department's files, we are unable to find any "water availability" analysis.

This is a critical omission in that the "water availability" analysis provides information that is essential for determining the proper public interest balance between out-of-stream and instream needs.

The requirement to conduct the "water availability" analysis for instream water rights is found in OAR 690-77-029(1)(b), wherein it is specified that as part of the initial review of the application, the Department is to determine the extent to which water is available from the proposed source during the times and in the amounts requested.

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

While a specific water availability process is not defined in the instream water right rules (OAR 690-77), we find a number of references that indicate the Department was to examine the water availability by determining the amount of "unappropriated water available."¹ In addition, a requirement to determine the amount of unappropriated water can also be implied from the provisions relative to the ability to set instream flow levels that exceed current unappropriated water available (See OAR 690-77-015(2)).

It is our opinion that these references indicate an intent that the water availability is to be calculated in part by reference to the amount of out-of-stream appropriations.

Further support for the position that "water availability" must include an examination of out-of-stream appropriations is found in the administrative rules relating to out-of-stream appropriations (OAR 690-300). While these rules address the out-of-stream permitting process, they are arguably applicable to the instream rights as well, as a result of Senate Bill 674.

The 1995 Legislature in enacting Senate Bill 674 (§19), added the requirement that the instream water rights are to be processed in accordance with the provisions for obtaining a permit to appropriate water as provided under ORS 537.140 to

¹. "Unappropriated Water Available: means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights." OAR 690-77-010(29)

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

537.250. Among these provisions, is the requirement to determine whether water is available (ORS 537.153(2)).

"In reviewing the application under subsection (1) of this section, the department shall presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basins program . . . or given a preference under ORS 536.310(12), if water is available, . . ."

(emphasis added).

The rules implementing ORS 537.153(2) specify that the term "water is available" is defined as:

(a)(A) The requested source is not over-appropriated under OAR 690-400-100 and 690-410-070 during any period of the proposed use; or . . .

(b) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-010 and 690-410-070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period."

OAR 690-300-010(58) (emphasis added)

Since the instream applications are to be processed in the same manner as out-of-stream applications, we believe they must be accompanied by the "water availability" analysis described in subsection (b) above.

We note that although the Proposed Final Order does contain a reference relative to the "amount of water available", this reference is misleading in that it implies a water availability analysis was performed, when in fact it was not. The "amount of water available" data presented in the

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

"Initial Reviews" is in fact the "Estimated Average Natural Flow."

The "Estimated Average Natural Flow" calculations incorporated into the Proposed Final Order are not only legally insufficient, reliance upon these calculations alone deprives the public of the opportunity to fully consider and comment on the proposed action.

A complete water availability analysis must be conducted and the public afforded an opportunity to review the results. The water availability analysis will provide the public a benchmark upon which to review whether the request is in the public interest and whether it is for the minimum amount necessary as required by Senate Bill 674.

C. The administrative file lacks information as to whether the amount of water requested is in fact the "minimum quantity of water necessary" as required by Senate Bill 674.

In enacting Senate Bill 674, the Legislature modified the instream water right law to limit the amount of water that could be requested for instream flows to the minimum amount necessary.

"In-stream flow means the minimum quantity of water necessary to support the public use requested by an agency."

(ORS 537.332(2)).

Notwithstanding the "minimum quantity" restrictions, we are unable to find in the files any indication that findings

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

have been made as to whether the requested flows are in fact minimums.

This is an essential element of an instream filing and is particularly suspect in this case for the instream applications were filed at a time when the Oregon Department of Fish and Wildlife's ("ODF&W") policy was to seek optimum flows.

We note that the ODF&W administrative rules in place at the time the instream applications were submitted state that it is the policy of the Fish and Wildlife Commission to apply for instream water rights to provide optimum benefits. (OAR 635-400-005). Furthermore, the regulations specify that the instream flow requirement is to be no less than the highest instream flow or water surface elevation required by any of the fish and wildlife species during the specified period (OAR 635-400-015(8)).

While the applications do not state on their face that they seek the optimum or highest flow, both regulations would lead to the presumption that the ODF&W did not apply for the minimum quantity as required by Senate Bill 674. Support for this conclusion is found in the application wherein the amount of flow requested exceeds the "estimated average natural flow" at the 50% exceedence.

In addition, ODF&W regulations also specify that if an instream request is for greater than 70% or less than 30% of the naturally occurring stream flows for any given time period

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

it is to be evaluated for appropriateness in relation to naturally occurring stream flows. The appropriateness review would be essential information to both the Department and the public in considering whether the application is in the public interest. Unfortunately, none of the Department's files contain references as to whether this essential evaluation has in fact occurred.

- D. The Proposed Final Order also fails to disclose whether the various local governments and landowners have been contacted relative to this application.

We note that under the existing regulations, the instream applicants are to provide, as part of the application, a copy of any letters they have issued that notify the affected local government of the intent to file the instream water right application (OAR 690-77-020940(j)). The application did not include letters from ODF&W to the Grant County Court.

In addition, under OAR 690-77-019(1), each application for an instream water right is to comply with ORS 537.140, wherein each application for a water right permit is to include the name and mailing address of any owner of the land upon which the source of the water supply is located. In this case, there has been no statement as to land ownership.

The requirement to notify affected governments and landowners insures the public interest issues are fully analyzed by both the agencies and public. In the absence of

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

these elements, the application is in fact incomplete and should be returned (OAR 690-77-027(1)). Returning the applications will allow the public, county and applicant to resolve a number of the public interest questions raised by the applications.

E. The Proposed Final Order allocates all of the natural flow during the months of January, February, June, July, August, September, October, November, and December to instream purposes. This allocation is detrimental to the public interest since it does not allow any water for other beneficial uses such as road construction, reconstruction and maintenance (ORS 537.040); storage of surface water (ORS 537.143); or otherwise consider a balance of all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attractions or any other beneficial use which may have a special value to the public (ORS 537.170(8)(a)).

F. The Proposed Final Order does not leave any water during the months of January, February, June, July, August, September, October, November, and December for uses covered in ORS 537.022 (wetland enhancement, stream restoration, off-channel reservoirs, livestock and wildlife watering, storm

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

water management, etc.). Since these projects are subject to regulation if any injury to a water right with an earlier priority occurs (ORS 537.032), they will be limited in their effectiveness if the instream water right is granted in a manner that allocates all of the natural flow to instream. These projects are in the public interest and will be detrimentally affected if the Proposed Final Order is not modified.

G. The Proposed Final Order is not in the public interest in that it allocates all of the natural flow during January, February, June, July, August, September, October, November and December to instream values and leaves no water available for the uses described in ORS 537.143, including road construction and maintenance, general construction and forestland or rangeland management. Since these limited license activities are prohibited if they cause injury to any other water right, the granting of all of the natural flow will nullify the ability to exercise the provisions of this statute. The public interest will be detrimentally affected unless the final order is conditioned to exempt these uses from the instream flow.

2. The Proposed Final Order can be modified to correct the alleged errors and deficiencies by issuing the final order with the following:

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

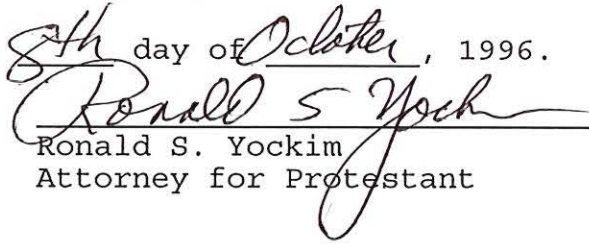
- a. providing that for the purposes of water distribution, this instream right shall not have priority over road construction, reconstruction or maintenance, human consumption, domestic expanded, livestock, and the uses described in ORS 537.040, ORS 537.143, and ORS 537.022;
- b. limiting the amount of instream flows to less than the natural flow of the stream in a manner that balances the public uses and allows for the activities covered by ORS 537.022, ORS 537.040, ORS 537.143, and ORS 537.170(8);

III.
LEGAL AUTHORITIES

The protestant relies upon the following citations for legal authority supporting the protest:

1. ORS 537; ORS 536; ORS 183, ORS 197.180
2. Malheur River Basin Program plan;
3. Grant County Comprehensive Plan;
4. OAR 635-100-130; OAR 635-415-030.

Respectfully submitted this 8th day of October, 1996.



Ronald S. Yockim
Attorney for Protestant

RECEIVED

OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF SERVICE

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

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

Barbara Griffin

RECEIVED
OCT - 9 1996
WATER RESOURCES DEPT.
SALEM, OREGON

April 9, 1997

TO: Application File IS-71450

FROM: Dick Bailey, Administrator Water Rights and Adjudications

RE: Acceptance of Protest

CC: Rick Kruger, ODFW



The protest deadline for Application IS-71450 was Friday, October 11, 1996. On October 10, 1996, the Department received a protest submitted by the Rotchy and Julie Barker Grandchildren Trust. The fees accompanying the protest were received Monday, October 14, 1996.

The Department has determined that the protest shall be accepted.



PERIOD ENDING	GROSS	F.I.C.A.	F. W.H	S. W.H	NET PAY
Rotchford Barker (Oxbow)					OCT 14 1996
FOR: Protest Fee					\$200.00
					NET CHECK
WATER RESOURCES DEPT. ADVANCE					
SALEM, OREGON					
DETACH THIS STUB BEFORE CASHING					

NUMBER 8051

Check 200.00 Mo _____ Cash _____

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

*Date
filed
10/10/96*

*Protest
Adelum*

KILPATRICKS

P.O. Box A
Mt. Vernon, OR 97865
(503)932-4455

Mike Kilpatrick
Rita M. Edwards*

*Also admitted to practice in Washington

Established 1894
Geo. H. Cattnach (1894-1936)
Roy Kilpatrick (1935-1993)
Mike Kilpatrick (1978-)

FACSIMILE TRANSMITTAL COVER PAGE

TO: OREGON WATER RESOURCES DEPARTMENT

FAX NO.: 503-378-6203

FROM: Rita M. Edwards

PAGES (including cover page): 4

DATE: October 10, 1996

TIME: 4:45 p.m.

MESSAGE: Attached is a copy of the protest of the proposed final order in IS 71450. The original and fee are being sent by mail.

NOTICE TO RECIPIENT

The information contained in this facsimile is intended only for the use of the individual or entity named above and may contain attorney privileged or confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please call us immediately (collect calls will be accepted) and return the original message to the address above via the U.S. Postal Service.

KILPATRICKS

P. O. Box A
Mt. Vernon, OR 97865
(541) 932-4455

Mike Kilpatrick
Rita M. Edwards*
*Also admitted to practice in Washington

Established 1894
Geo. H. Cattnach (1894 - 1936)
Roy Kilpatrick (1935 - 1993)
Mike Kilpatrick (1978 -)

October 10, 1996

Water Resources Department
Commerce Building
158 12th St., NE
SALEM OR 97310-0210

RE: APPLICATION IS 71450

Enclosed is the Rotchy & Julie Barker Grandchildren
Trust protest to the Proposed Final Order in this mat-
ter.

Also, enclosed is our check in the amount of \$200.00
for the protest fee.

RITA M. EDWARDS
meg
2033

cc: Rotchy Barker

PROTEST TO PROPOSED FINAL ORDER

Any person may protest the Proposed Final Order. Applicants are not required to pay a fee, but non-applicant protestants must include a \$200 fee as part of their protests. The protest must be submitted to the Water Resources Department; 158 12th St., NE; Salem, OR 97310, and must include the following:

Application No. IS 71450 Applicant's Name OREGON DEPT OF FISH & WILDLIFE

Protestant's Name ROTCHFORD & JULIE BARKER GRANDCHILDRENS TRUST (OXBOW RANCH)

Address P. O. BOX 2080; CODY, WY 82414
KILPATRICKS, P. O. BOX A

City MT. VERNON State OR Zip Code 97865

Describe your interest in the proposed final order. If you claim to represent the public interest, include a precise statement of the public interest that you represent. The final order

affects a stream, Bosenberg Creek, which flows through the Oxbow Ranch, owned by the Rotchford & Julie Barker Grandchildren's Trust. The ranch's interests in this stream include irrigation, domestic, livestock, ground water recharge, fire protection, fish and wildlife, pollution abatement, and recreation.

Describe in detail how the proposed final order will impair or be detrimental to your interest. _____

The protestant's interests would be impaired by a complete destruction and usurpation of any uses of this water.

Describe in detail how the proposed final order is deficient or in error, and how to correct it. _____

The proposed final order oversteps the bounds of state authority and denies the individual landowner's rights. The proposed final order is unsupported by the information required by statutes or administrative rules, including information on water availability, minimum quantity of water necessary, and whether local governments and landowners have been contacted regarding this application.

Cite any legal authority that supports your protest. _____

ORS Chapter 536, 537; Oregon Administrative Rules Chapter 690

I certify that to the best of my knowledge the information I have provided in this protest is accurate, true, and correct.

Protestant's Signature *Julie Barker Rotchford* Date 10/10/96
Kilpatrick's Reviewers

For Applicants only: If you file or another person files a protest and you request a hearing, the Department must hold a contested case hearing.

I am the applicant and I _____

I request a contested case hearing.

I request a contested case hearing.

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

PROOF OF SERVICE

I, RITA M. EDWARDS, being first duly sworn, depose and say that on OCTOBER 10, 1996, I mailed a copy of the attached protest against a proposed final order on application number IS 71450 to the applicant by regular mail. A copy of the protest was placed in an envelope addressed to:

OREGON DEPARTMENT OF FISH & WILDLIFE

Name

ATTN: RICH KRUGER
P. O. BOX 59

Street Address

PORTLAND OR 97207

City

State

Zip Code

and deposited in the United States mail with sufficient postage.

October 10, 1996

Date

Signature

Rita M. Edwards

Subscribed to and sworn before me this 10th day of

October, 1996.



Judy Stacherski
Notary Public for Oregon
My commission expires 9-18-98

RECEIVED

OCT 14 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Established 1894

Geo. H. Cattnach (1894 - 1936)

Roy Kilpatrick (1935 - 1993)

Mike Kilpatrick (1978 -)

KILPATRICKS

P. O. Box A
Mt. Vernon, OR 97865
(541) 932-4455

Mike Kilpatrick
Rita M. Edwards*

*Also admitted to practice in Washington

October 10, 1996

Water Resources Department
Commerce Building
158 12th St., NE
SALEM OR 97310-0210

RE: APPLICATION IS 71450

Enclosed is the Rotchy & Julie Barker Grandchildren
Trust protest to the Proposed Final Order in this mat-
ter.

Also, enclosed is our check in the amount of \$200.00
for the protest fee.



RITA M. EDWARDS
meg
2033

cc: Rotchy Barker

OCT 14 1996

WATER RESOURCES DEPT. SALEM, OREGON

PROTEST TO PROPOSED FINAL ORDER

Any person may protest the Proposed Final Order. Applicants are not required to pay a fee, but non-applicant protestants must include a \$200 fee as part of their protests. The protest must be submitted to the Water Resources Department; 158 12th St., NE; Salem, OR 97310, and must include the following:

Application No. IS 71450 Applicant's Name OREGON DEPT OF FISH & WILDLIFE

Protestant's Name ROTCHFORD & JULIE BARKER GRANDCHILDRENS TRUST (OXBOW RANCH)

Address P. O. BOX 2080; CODY, WY 82414
KILPATRICKS, P. O. BOX A

City MT. VERNON State OR Zip Code 97865

Describe your interest in the proposed final order. If you claim to represent the public interest, include a precise statement of the public interest that you represent. The final order

affects a stream, Bosenberg Creek, which flows through the Oxbow Ranch, owned by the Rotchford & Julie Barker Grandchildren's Trust. The ranch's interests in this stream include irrigation, domestic, livestock, ground water recharge, fire protection, fish and wildlife, pollution abatement, and recreation.

Describe in detail how the proposed final order will impair or be detrimental to your interest.

The protestant's interests would be impaired by a complete destruction and usurpation of any uses of this water.

Describe in detail how the proposed final order is deficient or in error, and how to correct it.

The proposed final order oversteps the bounds of state authority and denies the individual landowner's rights. The proposed final order is unsupported by the information required by statutes or administrative rules, including information on water availability, minimum quantity of water necessary, and whether local governments and landowners have been contacted regarding this application.

Cite any legal authority that supports your protest.

ORS Chapter 536, 537; Oregon Administrative Rules Chapter 690

I certify that to the best of my knowledge the information I have provided in this protest is accurate, true, and correct.

Protestant's Signature *Julie Barker Rotchford* Date 10/10/96
Kilpatrick's Rangers

For Applicants only: If you file or another person files a protest and you request a hearing, the Department must hold a contested case hearing.
I am the applicant, and I
 request a contested case hearing.
 do not request a contested case hearing.

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

RECEIVED

OCT 14 1996

WATER RESOURCES DEPT.
SALEM, OREGON

PROOF OF SERVICE

I, RITA M. EDWARDS, being first duly sworn, depose and say that on OCTOBER 10, 1996, I mailed a copy of the attached protest against a proposed final order on application number IS 71450 to the applicant by regular mail. A copy of the protest was placed in an envelope addressed to:

OREGON DEPARTMENT OF FISH & WILDLIFE

Name

ATTN: RICH KRUGER
P. O. BOX 59

Street Address

PORTLAND OR 97207

City

State

Zip Code

and deposited in the United States mail with sufficient postage.

October 10, 1996

Date

Signature

Rita M. Edwards

Subscribed to and sworn before me this 10th day of

October, 1996.



Judy Stacherski
Notary Public for Oregon

My commission expires 9-18-98

INTEROFFICE MEMORANDUM
Water Rights Section

~~TOP SECRET BATTLE~~

FROM: Dwight French, x268 *DF*

DATE: March 26, 1997

RE: Water Availability for ISWR applications/files

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

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

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

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

cc: Mike Mattick

All Protested ISWR Files

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

2

OK 71556 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 2 : 1

4

OK 71793 W

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 71798 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72076 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72077 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72078 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72079 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72080 W

OREGON DEPARTMENT OF FISH & WILDLIFE

72081 W

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 4 : 8

5

OK 70353 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70354 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70357 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70358 A

OREGON DEPARTMENT OF FISH & WILDLIFE

OK 70605 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 S

OREGON DEPARTMENT OF FISH & WILDLIFE

70606 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70612 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

70695 A

OREGON DEPARTMENT OF FISH & WILDLIFE

73199 A

OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 5 : 13

6

Checked out to Dwight

69949 A

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69949 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69951 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69951 A

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69958 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69958 A

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69958 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

69959 S

OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

8
9
18
74
2
1
3
9
19
2
12
12

Basin App Num

6

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

Total for Basin 6 : 38

9

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

Instream Applications with Protests
4/2/97

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

Instream Applications with Protests
4/2/97

Basin	App Num	
14		
	70094	A OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
DWF	70094	A OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	70094	A OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	70798	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70798	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70799	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70799	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70800	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70800	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70801	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70801	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70802	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70802	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70804	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70804	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70807	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70808	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70808	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70809	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70812	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70813	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70815	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70815	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70816	A OREGON DEPARTMENT OF FISH & WILDLIFE
	70816	S OREGON DEPARTMENT OF FISH & WILDLIFE
	70821	A OREGON DEPARTMENT OF FISH & WILDLIFE

Stream Applications with Protests
4/2/97

Basin	App Num		
14			
	70824	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70826	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 14 :	46		
15			
	70982	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70993	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70998	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	71008	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71201	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71614	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71622	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72843	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 15 :	8		
16			
	71172	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71173	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71174	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71181	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71182	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71183	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71184	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71185	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71190	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71192	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	71193	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	73350	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 16 :	12		
17			
	70228	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Instream Applications with Protests
4/2/97

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

Total for Basin 17 : 15

173

STATE OF OREGON
WATER RESOURCES DEPARTMENT

INTEROFFICE MEMORANDUM

TO: MARIE LICARI, FISCAL

CC: FILE

FROM: ADAM SUSSMAN *Renee Moulton*

The Kilpatrickes

SUBJECT: REQUEST FOR REFUND CHECK

*Rotenford & Julie Baur
P.O. Box 2030
Coey WY 82414
Grandchildren Trust*

PLEASE REFUND \$ 200.00 TO
FILE # 1571450, RECEIPT # 7567. THESE FUNDS ARE
REFUNDED DUE TO :

- APPLICATION REJECTED
- APPLICATION WITHDRAWN
- EXCESS FEES COLLECTED FOR APPLICATION
- FILE CLOSED
- PROTEST FILING FEE
- OTHER: _____

PLEASE INCLUDE THE FOLLOWING MAILING ADDRESS ON THE CHECK:

*77235
0223*



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

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

VIA MAIL

September 5, 2000

Kilpatricks
P.O. Box A
Mt. Vernon
OR 97865

RE: Protest on Proposed Final Order — Instream Water Right Application IS 71450

Dear Kilpatricks:

Pursuant to our letter and final order to the Rotchford & Julie Barker Grandchildren Trust dated August 4, 2000, enclosed is the protest fee remitted by Kilpatricks on behalf of the Trust in the protest of instream application 71450.

Please don't hesitate to call me if you have any questions: 1-800-624-3199 ext. 239.

Sincerely,

Renee Moulun
Protest Coordinator

Cc: Rotchford & Julie Barker Grandchildren Trust



ODFW COMMENTS AND RECOMMENDATIONS
INSTREAM WATER RIGHT PROPOSED FINAL ORDERS

WRD BASIN: Owyhee, Malheur River, Malheur Lake
ODFW FISH DISTRICT: Southeast

Note: unless otherwise specified, all comments/changes apply to both the Proposed Final Order (PFO) and the draft Certificate.

1) 70021

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: **R39E**

2) 70304

The stream reach applied for begins in one County and ends in another. The two counties are, from upper to lower: **Grant/Harney**. If only one county can be listed, ODFW requests that is be the county in which the reach terminates, in this case **Harney**.

3) 70306

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: **R35E**

4) 70307

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: **R35.5E**

5) 70309

The county should be **Baker**.

6) 71450

In the source name, Bosenberg Cr is tributary to the **Malheur River**.

7) 71451

In the reach description, the River Mile for the downstream end of the reach is **RM 18**.

Bailey; IWR PFO Comments; X Basin

Page 2

October 3, 1996

ODFW COMMENTS AND RECOMMENDATIONS
INSTREAM WATER RIGHT PROPOSED FINAL ORDERS

WRD BASIN: Owyhee, Malheur River, Malheur Lake

ODFW FISH DISTRICT: Southeast

Note: unless otherwise specified, all comments/changes apply to both the Proposed Final Order (PFO) and the draft Certificate.

1) 70021

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: R39E

2) 70304

The stream reach applied for begins in one County and ends in another. The two counties are, from upper to lower: Grant/Harney. If only one county can be listed, ODFW requests that is be the county in which the reach terminates, in this case Harney.

3) 70306

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: R35E

4) 70307

The description of the reach of stream in which flows are to be maintained is incorrect. The range number for the beginning of the reach should be: R35.5E

5) 70309

The county should be Baker.

6) 71450

In the source name, Bosenberg Cr is tributary to the Malheur River.

7) 71451

In the reach description, the River Mile for the downstream end of the reach is RM 18.

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 71450

WATERMASTER # LARRY POWERS

REGIONAL MANAGER: KENT SEARLES

ODF&W - County: Grant

DEQ

PARKS

OTHER STATE AGENCY IF NECESSARY:

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

POWER BUILDER UPDATER;

WATER FOR LIFE (TODD HEIDGERKEN)

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

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

CASEWORKER : CINDY SMITH

Water Watch

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

June 17, 1996

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

RECEIVED

JUN 18 1996

**RE: Comments, Malheur River Basin Instream Water Rights
70303, 70305-09, 71450, 71452, 71455, 71462-64**

WATER RESOURCES DEPT.
SALEM, OREGON

Dear Water Rights Section:

WaterWatch of Oregon strongly supports the flows requested in this Oregon Department of Fish and Wildlife instream water right applications for the Malheur River Basin. These flows are essential for survival of a number of fishery resources. However, while we fully support the adoption of these instream water right, we have some concerns with the initial reviews as issued.

a. Exceptions for Human Consumption and Livestock Uses

The Department is proposing the following condition on all instream water rights: "This instream right shall not have priority over human or livestock consumption." This condition subordinates this instream flow requests to human consumption and livestock uses in perpetuity. Individual exceptions will directly lessen the amount of water available instream to satisfy the purposes of the instream water right. Since the flows represented by the instream water right are those ODFW has determined are needed for fish, even the slightest diminishment of these flows will have adverse effects on the fishery resource. Moreover, the cumulative effects that will result from this exception could eventually lead to the total negation of the instream water right.

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

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

ORS 536.310(12)(emphasis added).

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

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

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

Moreover, this proposed conditions is contrary to the public interest in protecting the resource. The Commission's statewide policies recognize the importance of maintaining streamflows and place high priority on protecting streamflows. OAR 690-410-030(1). This policy directs the state to take action to restore flows in critical areas such as this system. Id.

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

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

RECEIVED

JUN 18 1996

WATER RESOURCES DEPT.
SALEM OREGON

The public uses of the Malheur River system has been impaired. Adoption of these instream water rights without conditions is just one small step towards restoring this system.

If the Department is going to attach such a permit condition, the Department should, at the very least, put a cap on the amount that can be exempted for human consumption or livestock for any single stream. Without such a cap, instream water rights will be undercut bit by bit until there are insufficient flows left to fulfill the senior instream water rights. Instream water rights are legally protected rights. To allow such a diminution of such a vested water right at some point in the future is inconsistent with the underlying premise of the prior appropriation doctrine--first in time, first in right.

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

b. The flows proposed are less than those requested by ODFW

For some months of the year, ODFW's requested flows exceed the Department's estimated average natural flow for these months. For these months the Department proposed issuance of flows at the estimated average natural flow.

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

The flows requested by ODFW are necessary for the requested beneficial use of water - fish life. These flows are needed for migration, spawning, egg incubation, fry emergence and juvenile rearing and for fish passage and habitat maintenance. Given that ODFW's flow requests are to provide for the various life cycles of fish which are already on the brink of extinction, periodic flows are necessary for fulfillment of the purpose of this instream water right. There should be no reduction in the requested flows. In sum, the agency has the information to find that the higher flows are significant. The instream water rights should be granted at the amounts requested by ODFW.

c. Measurement and reporting

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

RECEIVED

JUN 18 1996


WATER RESOURCES DEPT.

lower ends of the stream reach.

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

Conclusion

The proposed instream water rights will protect flows needed for fish life in and recreational use of river. These fish populations have statewide and even national significance and streamflows are essential for maintenance of these fish. Adoption of this and other instream flows is critical to the health of Oregon's watersheds and must be a high priority for Oregon if the state is to develop solutions to the resource crises that threatens to destroy the livability of Oregon. Instream water rights not only help to achieve a more equitable allocation of water between instream and out of stream uses, they also establish management objectives for Oregon's rivers.

Sincerely,

Kimberley Priestley
Legal/Policy Analyst

RECEIVED

JUN 18 1996

WATER RESOURCES DEPT.
SALEM, OREGON

May 17, 1996

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

WATER
RESOURCES
DEPARTMENT

Reference: Instream water rights in the Malheur Basin,
Files 70303, 70305-70309, 71450, 71452, 71455,
71462-71464

Dear Oregon Department of Fish and Wildlife:

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

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under OAR 510, the Malheur Basin Program;

1. Application 70303

Priority date: 4/19/90

N FK MALHEUR R TRIB MALHEUR R
BAKER COUNTY

NORTH FORK MALHEUR RIVER AT FOPIAN BRIDGE (FS RD 16) CROSSING,
(SESE, SECTION 15, T15S, R35.5E); TO MOUTH OF CRANE CREEK
(NESE, SECTION 23, T16S, R35E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
35	35	35	35	35	35	30	30	30	30/35	35	35

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15.5	19.7	38.5	81.2	88	50.3	19.7	14.7	15.7	16.5	17.5	16.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15.5	19.7	35	35	35	35	19.7	14.7	15.7	16.5	17.5	16.7



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

2. Application 70305

Priority date: 4/19/90

LITTLE MALHEUR R TRIB N FK MALHEUR R
BAKER COUNTYLITTLE MALHEUR RIVER FROM HEADWATERS (SECTION 30, T14S, R36E);
TO USFS RD 16 CROSSING (NESE, SECTION 25, T15S, R36E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	25	25	25	25	25	15	10	10	10	10	10

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.1	12.1	21.6	44.8	53.9	32.7	13.2	9.95	10.3	11	11.8	10.9

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	12.1	21.6	25	25	25	13.2	9.95	10	10	10	10

3. Application 70306

Priority date: 4/19/90

CRANE CR TRIB N FK MALHEUR R
GRANT COUNTYCRANE CREEK AT MOUTH OF LITTLE CRANE CREEK AT RIVER MILE 1.1
(SENE, SECTION 27, T16S, R36E); TO MOUTH OF CRANE CREEK AT
RIVER MILE 0 (NESE, SECTION 23, T16S, R35E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
25	25	25	25	25	20/15	15	15	15	15/25	25	25

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6.4	10.5	23.8	44.3	33.1	16.6	6.64	4.85	5.37	5.89	6.31	6.50

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6.4	10.5	23.8	25	25	16.6/15	6.64	4.85	5.37	5.89	6.31	6.50

4. Application 70307

Priority date: 4/19/90

LITTLE CRANE CR TRIB CRANE CR
GRANT COUNTY

LITTLE CRANE CREEK FROM HEADWATERS AT RIVER MILE 8.0 (SECTIONS 32 AND 33, T15S, R15.5E); TO MOUTH AT RIVER MILE 0.0 (SENE, SECTION 27, T16S, R35E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	8/4	4	3	3	3/10	10	10

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2.17	3.46	7.98	16	12.7	5.97	2.29	1.64	1.78	1.88	2.10	2.24

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2.17	3.46	7.98	10	10	5.97/4	2.29	1.64	1.78	1.88	2.10	2.24

5. Application 70308

Priority date: 4/19/90

ELK CR TRIB N FK MALHEUR R
BAKER COUNTY

ELK CREEK (INCL BOTH NORTH AND SOUTH FORKS) FM HEADWATERS (SECTIONS 14 AND 23, T15S, R35E); TO MOUTH AT RIVER MILE 0 (SWSW, SECTION 23, T15S, R35.5E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8	8	8	8	8	8	6	5	5	5/8	8	8

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.87	2.66	5.84	13	12.5	5.78	2.14	1.49	1.56	1.6	1.85	1.99

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.87	2.66	5.84	8	8	5.78	2.14	1.49	1.56	1.6	1.85	1.99

6. Application 70309

Priority date: 4/19/90

SWAMP CR TRIB N FK MALHEUR R
BAKER COUNTYSWAMP CREEK FROM HEADWATERS AT RIVER MILE 5.0 (SECTION 2,
T15S, R35E); TO MOUTH OF SWAMP CREEK AT RIVER MILE 0.0
(NWNE, SECTION 10, T15S, R35.5E)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8	8	8	10	10	3	3	3	3	5	5	8

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.53	1.91	3.77	9.09	11.2	5.19	1.86	1.27	1.26	1.24	1.55	1.68

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.53	1.91	3.77	9.09	10	3	1.86	1.27	1.26	1.24	1.55	1.68

7. Application 71450

Priority date: 5/28/91

BOSONBERG CR TRIB LAKE CR
GRANT COUNTYBOSONBERG CREEK FROM AN UNNAMED TRIBUTARY (NESW, SECTION 13,
TOWNSHIP 16S, RANGE 33.5E WM); TO THE MOUTH AT RIVER MILE 0.0
(SESW, SECTION 35, TOWNSHIP 16S, RANGE 33.5E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5	5	5	5	5	5	3	3	3	3/5	5	5

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.22	2.53	6.44	15.8	7.39	2.62	0.38	0.18	0.17	0.6	0.84	1.1

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.22	2.53	5	5	5	2.62	0.38	0.18	0.17	0.6	0.84	1.1

8. Application 71452

Priority date: 5/28/91

CALAMITY CR TRIB WOLF CR
HARNEY COUNTY

CALAMITY CREEK FROM BEAVERDAM CREEK (SENW, SECTION 30, TOWNSHIP 18S, RANGE 33E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWSW, SECTION 29, TOWNSHIP 18S, RANGE 33.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	5	5	5	5	5	3	2/1	1	1	1	1

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
9.34	12.9	20.5	45.4	39.4	20.8	3.38	1.82	1.53	5.55	8.03	8.6

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	5	5	5	5	5	3	1.82/1	1	1	1	1

9. Application 71455

Priority date: 5/28/91

MCCOY CR TRIB LAKE CR
GRANT COUNTY

MCCOY CREEK FROM AN UNNAMED TRIBUTARY (NWSE, SECTION 30, TOWNSHIP 15S, RANGE 34E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 21, TOWNSHIP 16S, RANGE 33.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	4	4	4	4	4	2	1	1	1/4	4	4

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.45	2.58	5.93	16	9.68	3.55	0.49	0.24	0.21	0.71	1.06	1.35

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1.45	2.58	4	4	4	3.55	0.49	0.24	0.21	0.71	1.06	1.35

10. Application 71462

Priority date: 5/28/91

S WILLOW CR TRIB WILLOW CR
MALEHEUR COUNTYSOUTH FORK WILLOW CREEK FROM DUTCH JOHN CREEK AT RIVER MILE 12.6
(NWSE, SECTION 32, TOWNSHIP 15S, RANGE 38E WM); TO THE MOUTH AT
RIVER MILE 0.0 (SWNE, SECTION 21, TOWNSHIP 14S, RANGE 39E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	6	6	6	6	5	4	3	3	3	3	3

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.09	13.9	20.2	25.1	31.7	20.6	6.21	2.44	1.54	1.45	2.34	3.06

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	6	6	6	6	5	4	2.44	1.54	1.45	2.34	3

11. Application 71463

Priority date: 5/28/91

SUMMIT CR TRIB MALHEUR R
GRANT COUNTYSUMMIT CREEK FROM SUMMIT PRAIRIE AT RIVER MILE 11.0 (NWNW,
SECTION 2, TOWNSHIP 16S, RANGE 34E WM); TO THE MOUTH AT RIVER
MILE 0.0 (NE1/4, SECTION 13, TOWNSHIP 17S, RANGE 34E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	15	15	15	15/12	6	6	6	6/15	15	15

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.64	10.7	20.2	55.3	48.1	21.5	3.05	1.55	1.33	4.37	6.42	7.44

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.64	10.7	15	15	15	15/12	3.05	1.55	1.33	4.37	6.42	7.44

12. Application 71464

Priority date: 5/28/91

SUMMIT CR TRIB MALHEUR R
GRANT COUNTY

SUMMIT CREEK FROM RIVER MILE 14.0 (NESW, SECTION 22, TOWNSHIP 15S, RANGE 35E WM); TO SUMMIT PRAIRIE AT RIVER MILE 11.0 (NWNW, SECTION 2, TOWNSHIP 16S, RANGE 34E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8	8	8	8	8	6	4	3	3	3/8	8	8

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.57	5.46	9.27	28.5	31.4	14.4	2	1.01	0.84	2.68	4.04	4.59

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.57	5.46	8	8	8	6	2	1.01	0.84	2.68	4.04	4.59

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

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

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **May 31, 1996**. For your convenience you may use the enclosed "STOP PROCESSING" form.

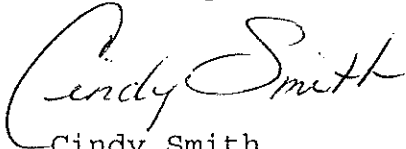
To Proceed With Your Application:

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

If you have any questions:

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

Sincerely,



Cindy Smith
Initial Review Team

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

71450

Oregon

RECEIVED

FEB 17 1994

WATER RESOURCES DEP.
SALEM, OREGON

DEPARTMENT OF
FISH AND
WILDLIFE



February 17, 1994

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

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

General Comments

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

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

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

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

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

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



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

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

Specific Comments

Application # 70948

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

Application # 71241

For the month of December:

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

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

Application # 71258

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

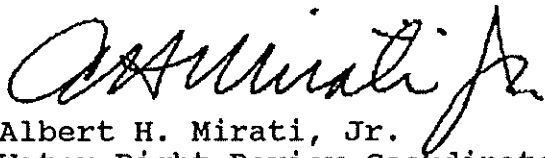
Application # 71280

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

North Coast Basin IWRs
February 17, 1994
Page 3

Thank you for the opportunity to comment.

Sincerely,

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

Albert H. Mirati, Jr.
Water Right Review Coordinator

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

FILE: NCOAST.IWR

KILPATRICKS
Lawyers

Roy Kilpatrick
Mike Kilpatrick

P. O. Box A
Mt. Vernon, Oregon 97865
(503) 932-4455

RECEIVED
MAY 20 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Jody Winkelman
Mary Ellen Groen
Legal Assistants

Katherine J. Eismann
Legal Assistant
since 1946

May 16, 1991

MAILED CERTIFIED MAIL

Water Resources Department
3850 Portland Rd., N.E.
Salem, OR 97310

RE: Instream Water Right Applications
71450, 71455, 71463 and 71464, Oregon
Department of Fish and Wildlife.

Enclosed for filing are Protests against the above
Applications on behalf of Robert W. Stanbro.

ROY KILPATRICK
jw
1908

cc: Randy Fisher, Oregon Department of
Fish & Wildlife
Robert W. Stanbro

NOT Protest
Comments to
application

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have~~ not attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible

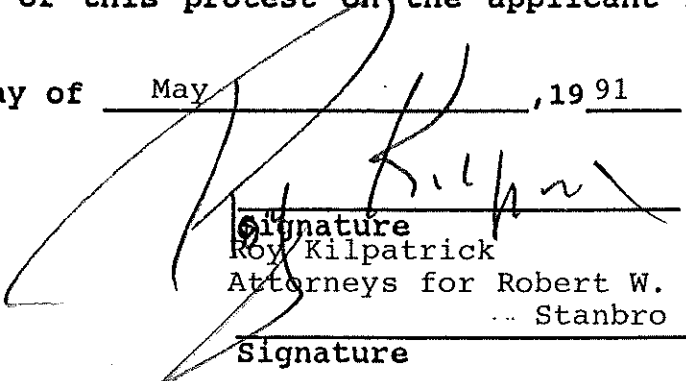
with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatrick's, P.O. Box A,

Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 16th day of May, 1991.

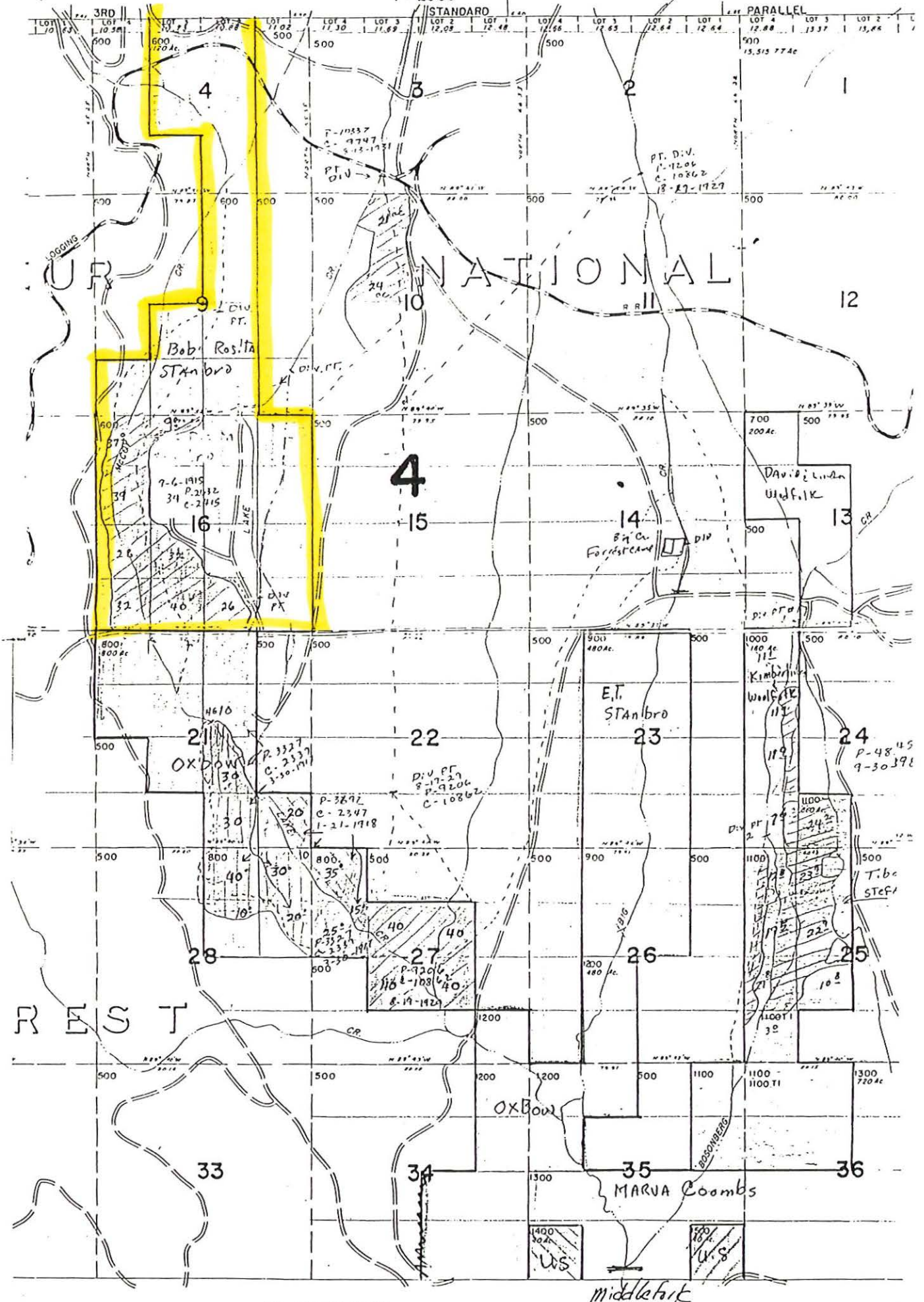

Signature
Roy Kilpatrick
Attorneys for Robert W.
Stanbro

Signature

GRANT COUNTY

1" = 2000'

SEE MAP 15 34



1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

P R O O F O F S E R V I C E

I, Roy Kilpatrick, being first duly sworn,
depose and say that on May 16, 1991, I did
mail a copy of the attached protest against application
number 71464 to the applicant by regular mail by placing
a copy of the protest in an envelope addressed to:

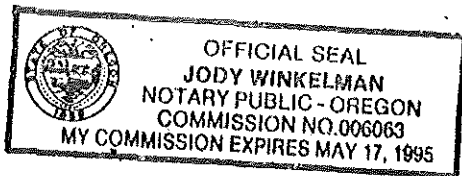
Randy Fisher for Oregon Department of Fish
(applicant / applicant's attorney) & Wildlife
P.O. Box 59
(address)
Portland OR 97207
(city) (State) (zip)

and depositing it in the United States Mail with sufficient
postage prepaid thereon.

May 16, 1991.
(date)

Roy Kilpatrick
(signature)

Subscribed and sworn to before me this 16th day of
May, 1991., ~~1990.~~



Jody Winkelman
Notary Public for Oregon
My commission expires 5/17/95

RECEIVED

MAY 20 1981

WATER RESOURCES DEPT.
SALEM, OREGON

PROTEST AGAINST
WATER USE APPLICATION

I (We) Robert W. Stanbro

name(s)
Route 2, Box 541

mailing address
Prairie City OR 97869 820-3591

city state zip phone

do hereby protest the approval of pending Application # 71450

made in the name(s) of Oregon Department of Fish & Wildlife

for use of water from Bosenberg Creek
name of water source

The proposed use is for aesthetic purposes.

and the intended place of use is See Application
(describe by acreage, tax lot, etc.

as accurately as possible), Section , Township ,

Range , County, Oregon.

Complete either A/ or B/, or both:

A/ My (Our) water rights which would be adversely affected by
the proposed use are: permit # 2632 Certificate # 2415

A copy of the pertinent tax plat map obtained from the Grant
County Assessor's Office is attached. The location of the
proposed use and point of diversion, and my/our property and
point of diversion have been marked on the map.

My (Our) water rights would be adversely affected in the
following way(s): see attached
(provide as much detail as possible--feel free to

attach additional paper)

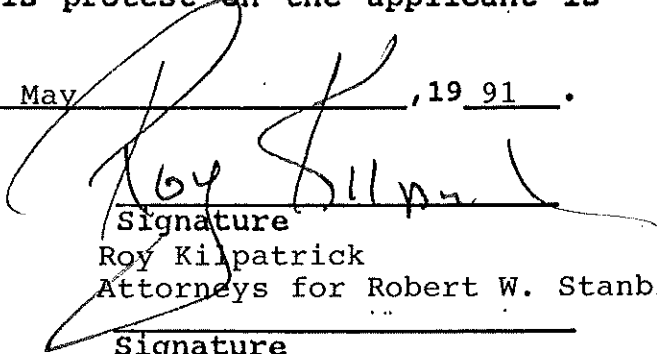
B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible
with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,
Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

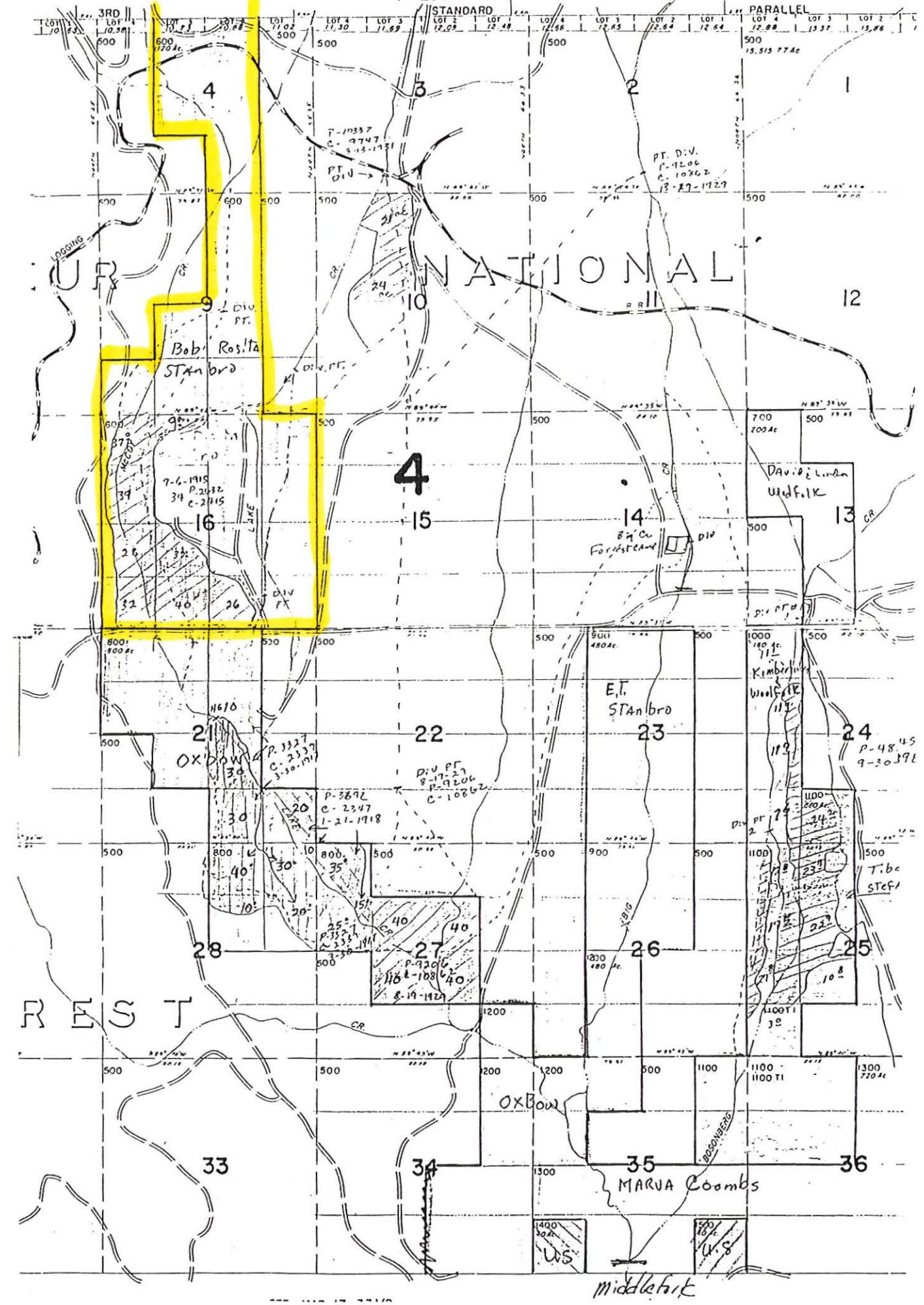
Dated and signed this 16th day of May, 19 91.


Signature

Roy Kilpatrick
Attorneys for Robert W. Stanbro

Signature

1" = 2000'



STANDARD PARALLEL

LOT 10 3RD LOT 9 10.51 600 LOT 8 10.51 600 LOT 7 10.51 600 LOT 6 11.02 500 LOT 5 11.30 500 LOT 4 11.89 500 LOT 3 12.09 500 LOT 2 12.58 500 LOT 1 12.84 500 LOT 4 12.88 500 LOT 3 13.37 500 LOT 2 13.86 500 15.515 774c

4 3 2 1

9 10 11 12

Bob Rosita STAnbro

10 14 13

David & Linda Wolf

16 15 14

E.T. STAnbro

Kimberly Wolf

21 22 23 24

OXBow

27 26 25

28 30 31 32 33 34 35 36

MARVA Coombs

middle fork

Logging

UR

REST

PT. DIV. P-1206 C-10362 13-27-1929

7-19337 C-9747 5-13-1931

7-6-1918 P-2132 C-2115

7-19-27 P-9206 C-10262

P-3327 C-2337 3-30-1917

P-3872 C-2347 1-21-1918

P-3327 C-2337 3-30-1917

P-9206 C-10262 8-19-1929

1400 302 WS

500 18 WS

1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

See 71463
71464
71455

RECEIVED

MAY 16 1991

WATER RESOURCES DEPT
SALEM, OREGON

P R O O F O F S E R V I C E

I, John W Coombs, being first duly sworn, depose and say that on May 14, 1991, I did mail a copy of the attached protest against application number 71450 to the applicant by regular mail by placing a copy of the protest in an envelope addressed to:

Randy Fisher ODFW
(applicant / applicant's attorney)
PO Box 59
(address)
Portland OR 97207
(city) (State) (zip)

and depositing it in the United States Mail with sufficient postage prepaid thereon.

5/14/91
(date)

[Signature]
(signature)

Subscribed and sworn to before me this 14th day of May, 1991.

[Signature]
Notary Public for Oregon
My commission expires 8/23/92

[Signature]
F. BUNCH
NOTARY PUBLIC OREGON
My Commission Expires 8/23/92

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): _____

See Exhibit A

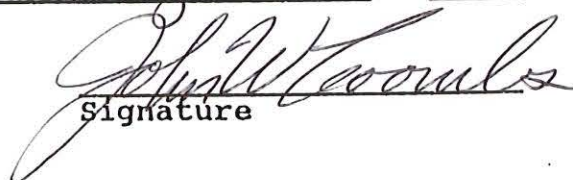
I/we have / have not attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Is that the ODFW withdraw

their application, this infringes on all property owners Civil
Rights.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is _____

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 14 day of May, 1991.


Signature

Signature

Exhibit A

- Dry Up Lands Up / The ground now being irrigated helps keep Fire danger down. Helps keep fire from spreading from one side of forest to the other.
Irrigating on private property uplands create a reservoir effect for water use down stream for agriculture, this helps keep stream flows up for agriculture and fish in the dryer part of the season.
- Fish / Fish have plenty of water to run in, that is not the problem, dams in the river for hydro electric projects and reservoirs made so the fish cannot come and go, this is the problem, not water rights.
- Proof of sensitivity of Redband Trout / Dose the ODFW have any proof the Redband Trout? I have fished in the area all my life and have yet to catch one. The Grant County Court has not informed us that the Redband Trout is an Endangered Species.
- Cost/Taxpayers/ To monitor all the water rights, if this application is passed will cost the taxpayers plenty and fees for hunting and fishing to pay the bill.
If ODFW wants more water for fish they will have to find a way to finance more ponding to let water out a low times, not take water away from agriculture.
- Beauty/ The public would rather see green fields not burned grass in the mid season. Irrigation and fish have always coincided with agriculture in the area, I see no reason why it shouldn't continue.
- History/ This area has been unspoiled by any agency thus far. To let ODFW come in and file water rights would not help the area. Salmon run these rivers and creeks, lets not let government agencies ruin more of our private land rights.

KILPATRICKS
Lawyers

RECEIVED

MAY 20 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Roy Kilpatrick
Mike Kilpatrick

P. O. Box A
Mt. Vernon, Oregon 97865
(503) 932-4455

Jody Winkelman
Mary Ellen Groen
Legal Assistants

Katherine J. Eismann
Legal Assistant
since 1946

May 16, 1991

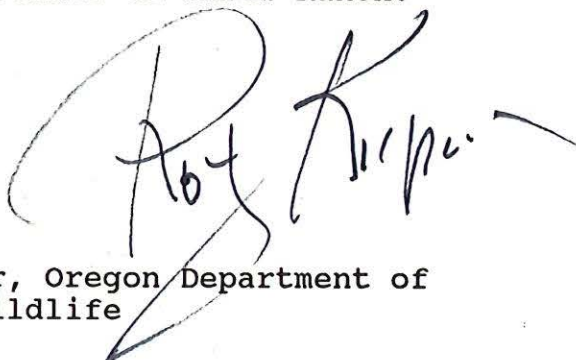
MAILED CERTIFIED MAIL

Water Resources Department
3850 Portland Rd., N.E.
Salem, OR 97310

RE: Instream Water Right Applications
71450, 71455, 71463 and 71464, Oregon
Department of Fish and Wildlife.

Enclosed for filing are Protests against the above
Applications on behalf of Oxbow Ranch.

ROY KILPATRICK
jw
1908



cc: Randy Fisher, Oregon Department of
Fish & Wildlife
Oxbow Ranch

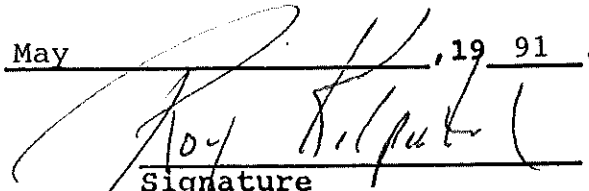
B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible
with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,
Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 16th day of May, 19 91.



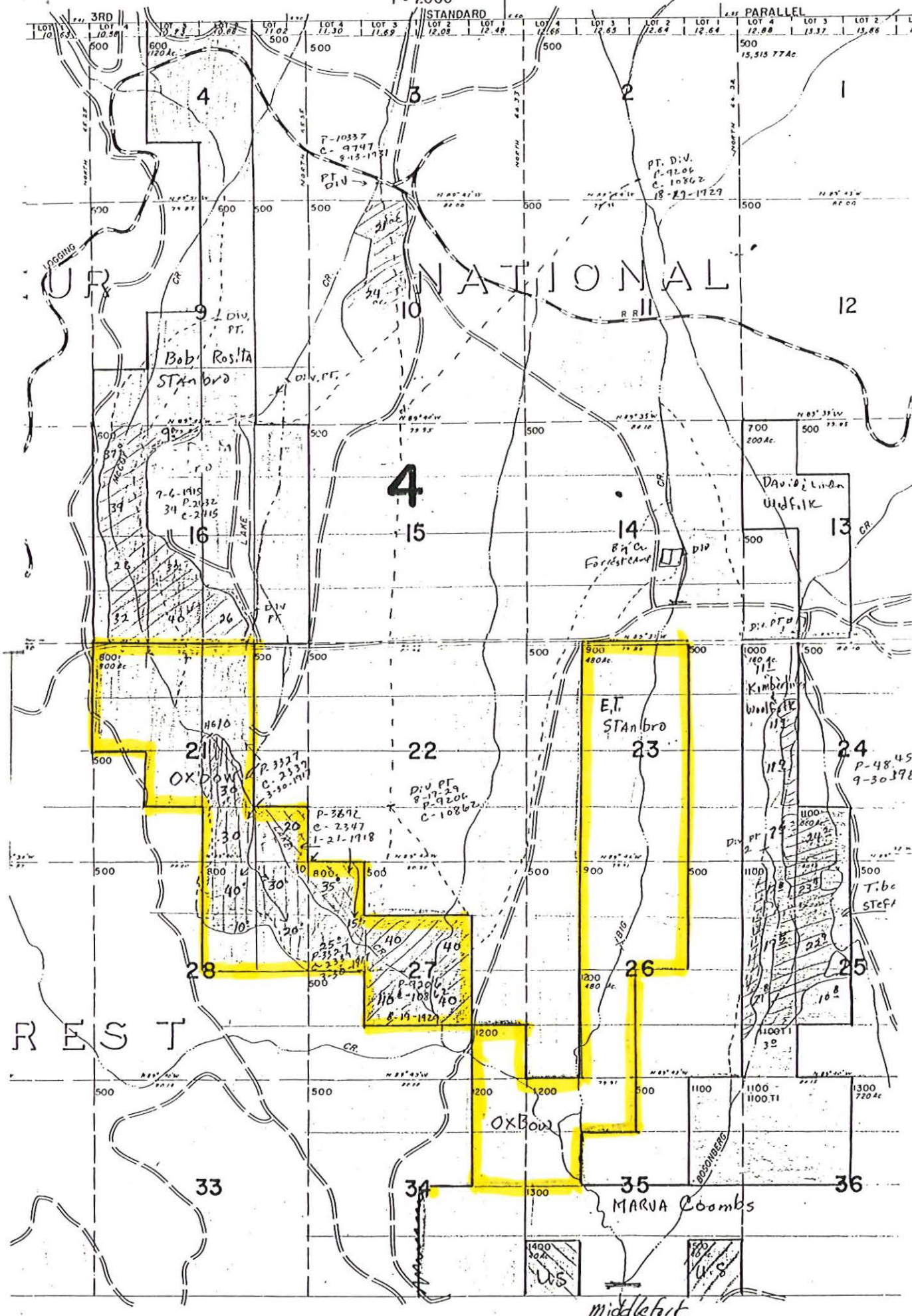
Signature
Roy Kilpatrick
Attorneys for Oxbow Ranch

Signature

GRANT COUNTY

1" = 2000'

SEE MAP 15 34



1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

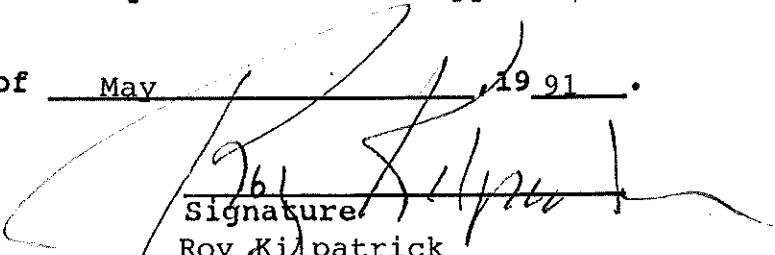
B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible
with no result.

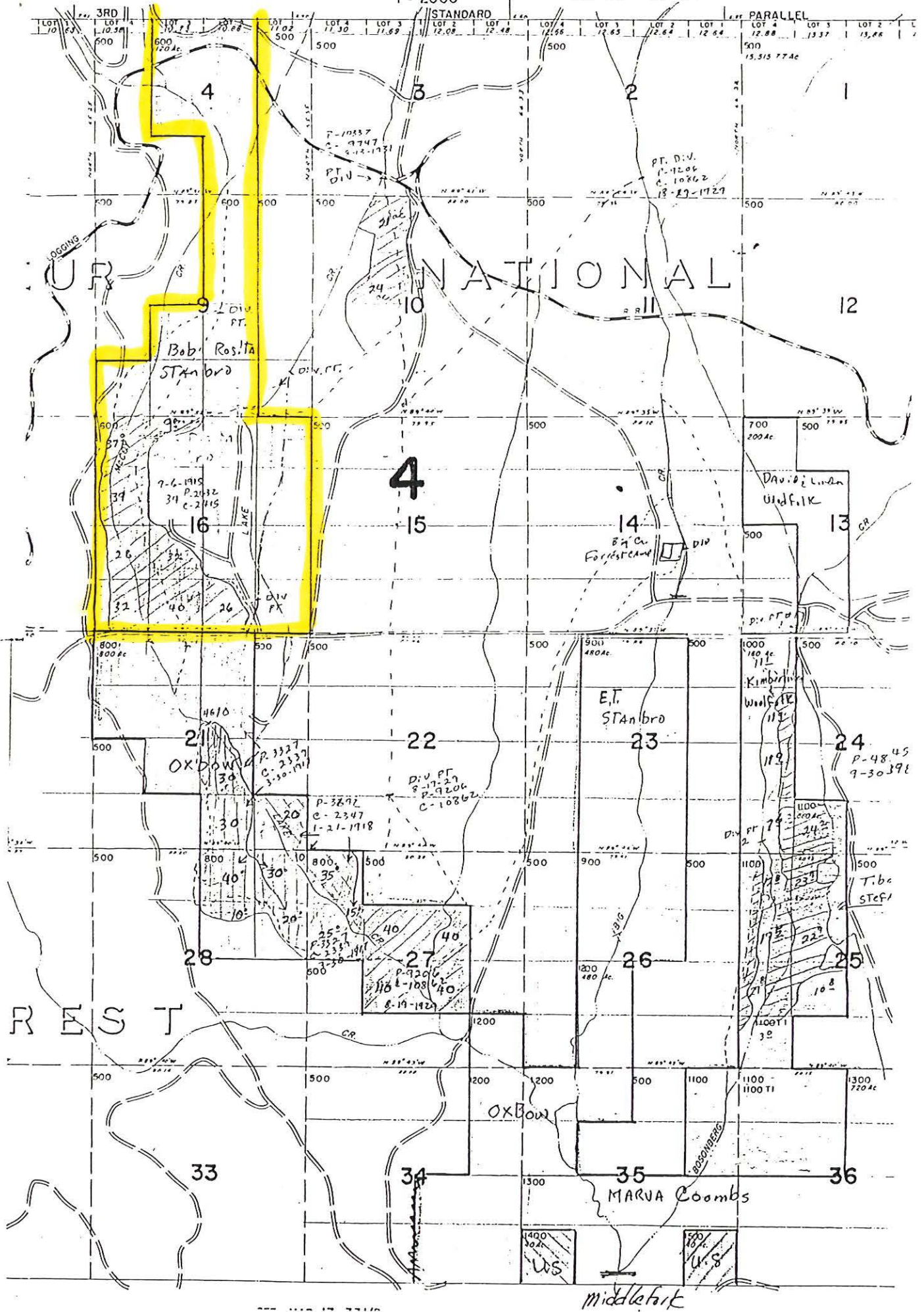
I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,
Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 16th day of May, 1991.


Signature
Roy Kilpatrick
Attorneys for Robert W. Stanbro
Signature

1" = 2000'



1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

P R O O F O F S E R V I C E

I, Roy Kilpatrick, being first duly sworn, depose and say that on May 16, 1991, I did mail a copy of the attached protest against application number 71455 to the applicant by regular mail by placing a copy of the protest in an envelope addressed to:

Randy Fisher for Oregon Department of Fish
(applicant / applicant's attorney) & Wildlife
P.O. Box 59
(address)

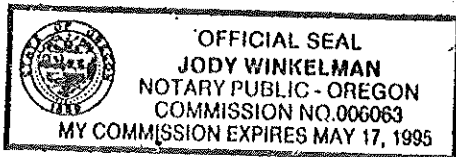
Portland OR 97207
(city) (State) (zip)

and depositing it in the United States Mail with sufficient postage prepaid thereon.

May 16, 1991
(date)

Roy Kilpatrick
(signature)

Subscribed and sworn to before me this 16th day of May, 1991, ~~1990~~.



Jody Winkelman
Notary Public for Oregon

My commission expires 5/17/95

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

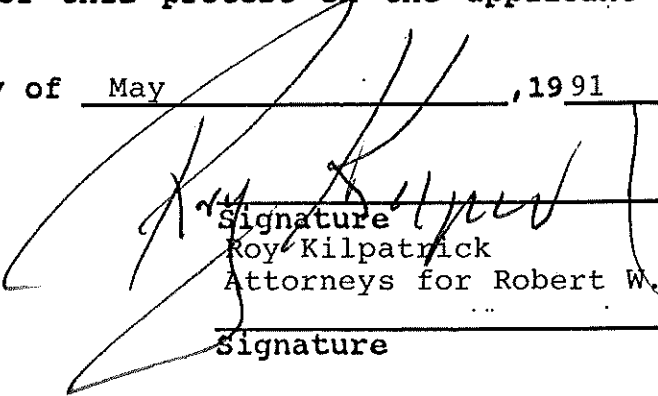
I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,

Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

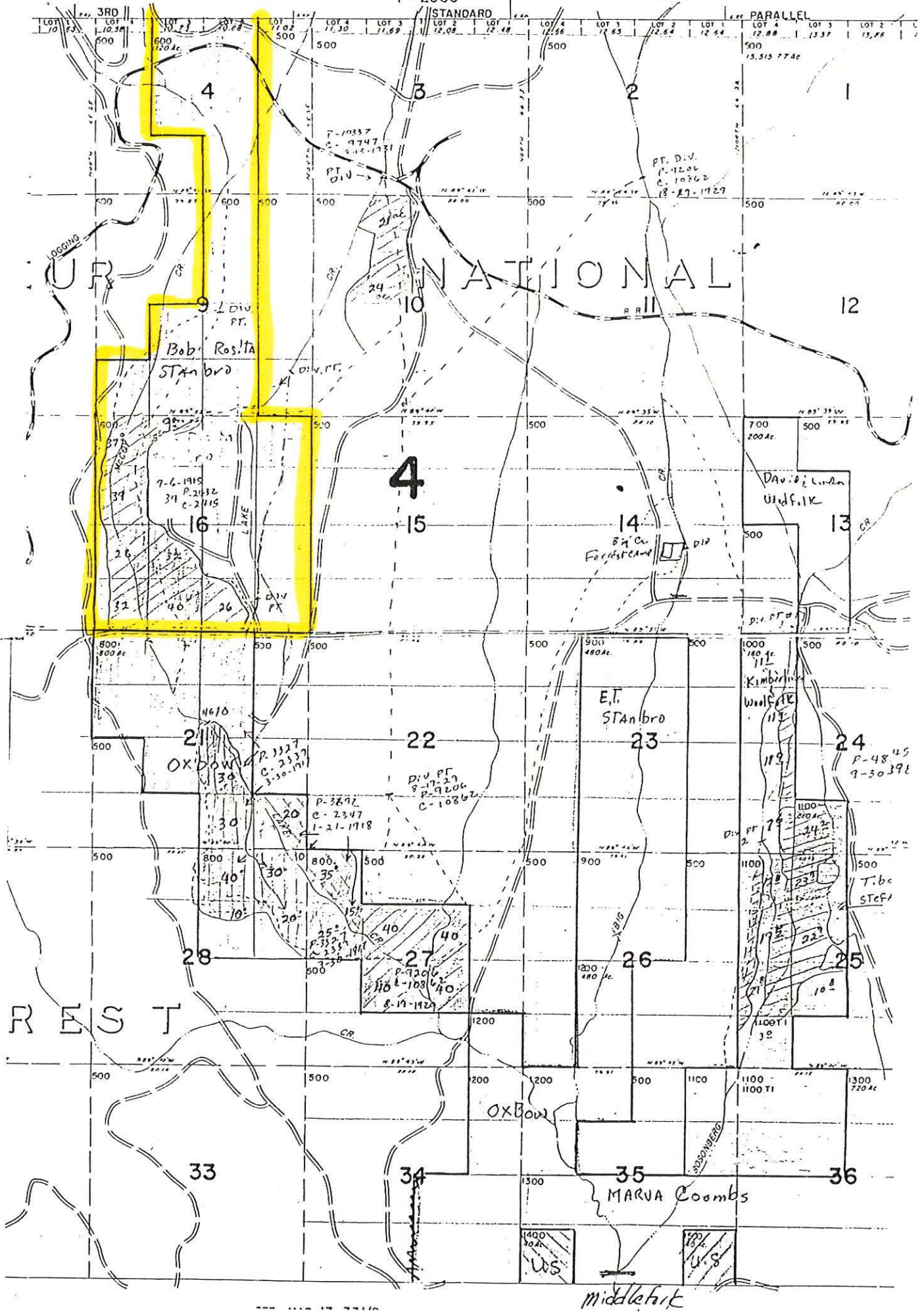
Dated and signed this 16th day of May, 1991.


Signature

Roy Kilpatrick

Attorneys for Robert W. Stanbro

Signature



1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

P R O O F O F S E R V I C E

I, Roy Kilpatrick, being first duly sworn, depose and say that on May 16, 1991, I did mail a copy of the attached protest against application number 71463 to the applicant by regular mail by placing a copy of the protest in an envelope addressed to:

Randy Fisher for Oregon Department of Fish
(applicant / applicant's attorney) & Wildlife

P.O. Box 59
(address)

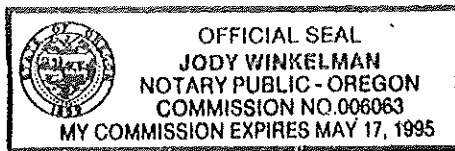
Portland OR 97207
(city) (State) (zip)

and depositing it in the United States Mail with sufficient postage prepaid thereon.

May 16, 1991
(date)

Roy Kilpatrick
(Signature)

Subscribed and sworn to before me this 16th day of May, 1991. ~~1990~~



Jody Winkelman
Notary Public for Oregon

My commission expires 5/17/95

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): It would lower

the water table in Logan Valley - lower the late
season stream flow - the app. is for more
water than flows in Rosenberg Creek.

I/we have / have not attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): _____

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is _____

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 29 day of April, 1991.


Signature

Signature

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible

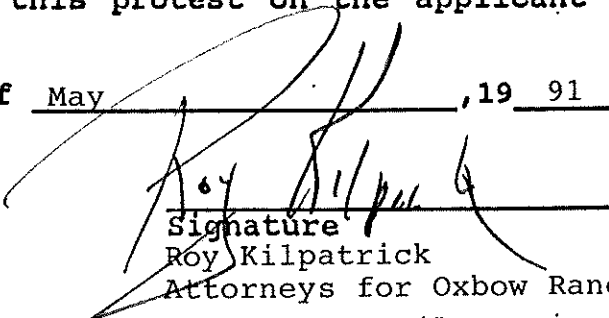
with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,

Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 16th day of May, 19 91.



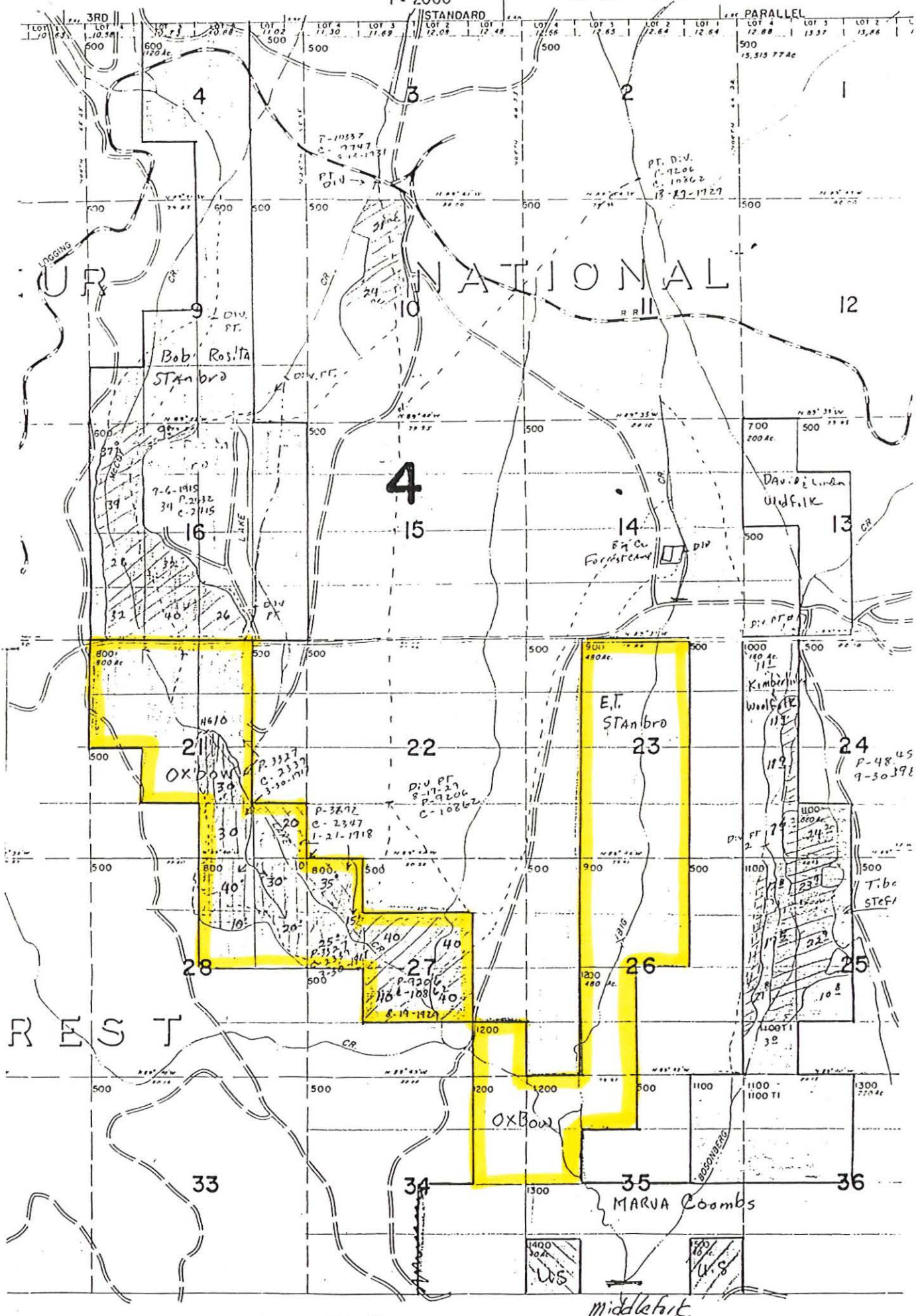
Signature

Roy Kilpatrick

Attorneys for Oxbow Ranch

Signature

1" = 2000'



4
15

14
E.T. STAnbro
Forestland

21
OXBOW

23
E.T. STAnbro

28

26

27

25

33

34

35
MARVA Coombs

36

UR

NATIONAL

REST

middlefort

U.S.

U.S.

Bob Rosita
STAnbro

DAVID & LINDA
WILDFIRE

Kimberly
Woolf

T. br
STEF

7-6-1915
P-2132
C-2115

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

180
U.S.

DIV. PT.

DIV. PT.

DIV.

DIV. PT.

DIV. PT.

P-3327
C-2337
C-30-117

P-3892
C-2347
1-21-1918

P-9206
C-108
8-19-1927

P.T. D.V.
P-7206
C-10862
18-27-1927

P-4845
9-30-1918

1400
300
Ac
U.S.

</

1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / have not attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible
with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,

Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

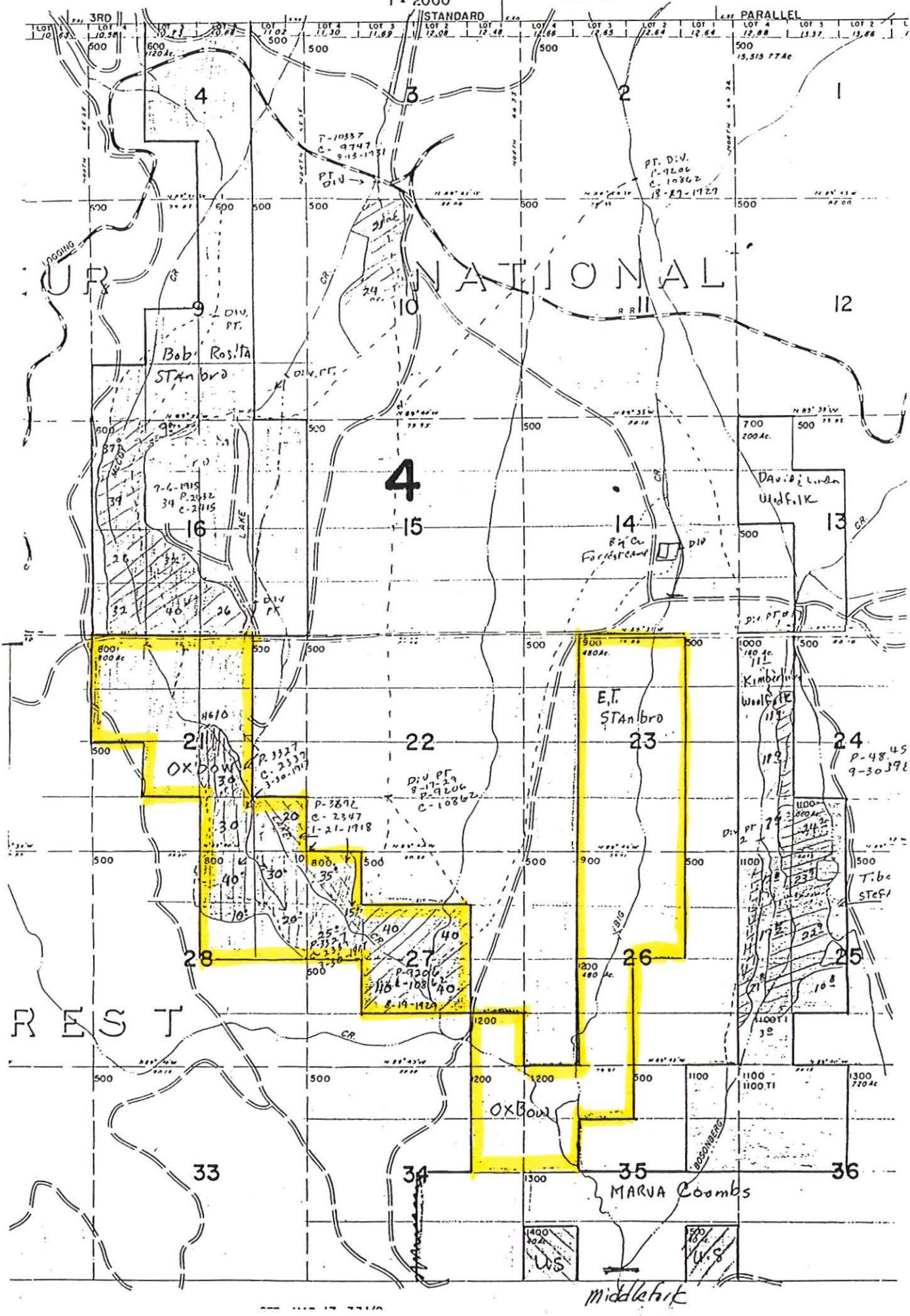
Dated and signed this 16th day of May, 1991.


Signature

Roy Kilpatrick

Attorneys for Oxbow Ranch.

Signature



1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

B/ I (We) do not have any water rights. However, I/we believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): N/A

I/we have / ~~have not~~ attempted to resolve this matter through discussion with the applicant (circle one). I/we have proposed the following alternatives or conditions which, in my/our opinion, would resolve my/our concern(s): Every way possible

with no result.

I / We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department, in support of the allegations made in this protest. In the event this matter goes to hearing, I / we do / do not (circle one) intend to have attorney representation. The attorney's name and address is Kilpatricks, P.O. Box A,

Mt. Vernon, OR 97865. Phone 932-4455.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 16th day of May, 1991.


Signature

Roy Kilpatrick
Attorneys for Oxbow Ranch

Signature

1. The Decree in the Malheur River adjudications provided for separate times, duties of water, periods of use and methods of utilization for the users above the Gorge which include petitioners and those below the Gorge. The applications of Oregon Department of Fish and Wildlife for instream water rights completely ignore the provisions of the Decree and would prevent the method of water utilization established by the Decree from being carried out as provided by the Decree.

As found by the State engineer in his Findings and Determinations of the Relative Rights of the Malheur River and its tributaries, the lands above the Gorge which include petitioners are high mountain meadows which utilize the melting snows of the Strawberry Range and by filling the alluvial soil provide a reservoir for the snow water which is conserved in the gravels underlying the meadows. This makes a reservoir for lower users below the Gorge in late summer. The concept of perpetual instream water rights advocated by the Oregon Department of Fish and Wildlife completely ignores this basic principal and would result in drying up not only petitioner's land, but the land of other users as well and would eliminate the reservoir provided by the Decree for the benefit of lower users.

Under the present system petitioners meadows and those of other land owners provide nesting and breeding grounds for migratory water fowl, particularly Sand Hill Cranes, a premium habitat for Mink, Beaver and Muskrat and summer and fall forage for Deer, Elk, Antelope and Sheep.

The plan of the Oregon Department of Fish and Wildlife would

dry up these meadows and eliminate the wildlife habitat that has existed since before the Oregon Department of Fish and Wildlife.

The volume of water the Oregon Department of Fish and Wildlife seeks for instream rights is far in excess of any normal stream flow and would result in the streams being over appropriated and prevent any further development of meadows. The Oregon Department of Fish and Wildlife claims it is interested in propagating fish. It has done nothing to develop the fishery. The streams have at all times supported abundant native fish which have reproduced and have provided plenty of fish for all comers. The present system has been successful. There is no need for a change.

The mountain meadows of petitioner and the other land owners have provided an effective fire barrier in the recent and repetitive fires in the Malheur National Forest in this area. If these meadows are dried up, the dry grass in the meadows will make a rapid and effective conduit of fire from one island of timber to another and enhance the destruction of the timber resources.

Petitioners and the other irrigators above the Gorge all own lands on which they produce hay for winter use, grass for spring and fall grazing and, rely on the lands in Logan Valley for summer use. Drying up these meadows would drastically limit the total grazing in terms of cows of petitioners and all other irrigators causing them a diminution in the value of their lands and causing a severe economic loss to the community they support.

2. Petitioners interests are separate and distinct from those of the Malheur Basin Water Users Association. While it is petitioners contention that their use and that of their neighbors benefits the Malheur Basin Water Users Association, it is petitioners understanding that Malheur Basin is about to make a deal with the Oregon Department of Fish and Wildlife which would be disastrous to the interest of petitioners. The Oregon Department of Fish and Wildlife's interests are diametrically opposed to petitioners and any other agricultural enterprise.

Petitioners are unaware of any other up stream users who are asking for status as a party, except Robert and Rosita Stanbro whose interests are the same as petitioners.

Petitioners have heretofore filed formal protests in Oregon Department of Fish and Wildlife applications numbered 70325, 70349, 70350, 70351 and 70352, which protests are still pending and unheard.

RECEIVED

MAY 20 1991

WATER RESOURCES DEPT.
SALEM, OREGON

P R O O F O F S E R V I C E

I, Alan S. Jacobs, being first duly sworn,
depose and say that on May 16 16, 1991, I did
mail a copy of the attached protest against application
number 71450 to the applicant by regular mail by placing
a copy of the protest in an envelope addressed to:

Oregon Dept. of Fish and Wildlife
(applicant / applicant's attorney)

P.O. Box 59
(address)

Portland, OR 97207
(city) (State) (zip)

and depositing it in the United States Mail with sufficient
postage prepaid thereon.

5-16-91
(date)

Alan S. Jacobs
(signature)

Subscribed and sworn to before me this 16th day of
May, 1991.

F. Bunch
F. BUNCH
NOTARY PUBLIC OREGON
My Commission Expires 1/23/92

F. Bunch
Notary Public for Oregon
My commission expires 1/23/92

IWR Application # 71450 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIVED

Application for Instream Water Right **MAR 28 1991**
by Oregon Department of Fish and Wildlife

WATER RESOURCES DEPT.

There is no fee required for this application. SALEM, OREGON

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

1. The name of the stream of the proposed instream water right is Bosenberg Creek, a tributary of Malheur River.
2. The public use this instream water right is based on is providing required stream flows for redband and brook trout.
3. The amount of water (in cubic feet per second) needed by month for each category of public use is as follows:

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5	5	5	5	5	5	3	3	3	3/5	5	5

4. The reach of the stream identified for an instream water right is from (upstream end) an unnamed tributary within the NE quarter of the SW quarter of Section 13, Township 16S, Range 33½E W.M., in Grant County...

Downstream to the mouth, river mile 0, within the SE quarter of the SW quarter of Section 35, Township 16S, Range 33½E W.M., in Grant County.

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

Dept. of Environmental Quality	Date: March 7, 1991
ODFW (Fish, Wldlf, and Habitat)	Date: March 7, 1991
Parks and Recreation Division	Date: March 7, 1991

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

Establish a gaging structure at or near the lower limit of

IWR Application # 71450 Certificate # _____

the reach.

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

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

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

- 10. Remarks: Redband trout is listed as "sensitive" (candidate species for listing under the Threatened and Endangered Species Act if population declines from present level) by ODFW. Population maintenance and recovery depend on instream habitat the requested flows will provide.

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

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

Date: 3/26/91

Signed: Nancy M. MacHugh

Oregon Department of Fish and Wildlife

Assistant Director
Habitat Conservation Div.

File: BOSEN.APP

RECEIVED
MAR 28 1991
WATER RESOURCES DEPT.
SALEM, OREGON

IWR Application # 71450 Certificate # _____

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

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

_____, 19__.

Date: _____, 19__.

This document was first received at the Water Resources Department in Salem, Oregon, on the 28th day of March, 1991, at 8:00 o'clock A. M.

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

RECEIVED
MAR 28 1991
WATER RESOURCES DEPT
SALEM, OREGON

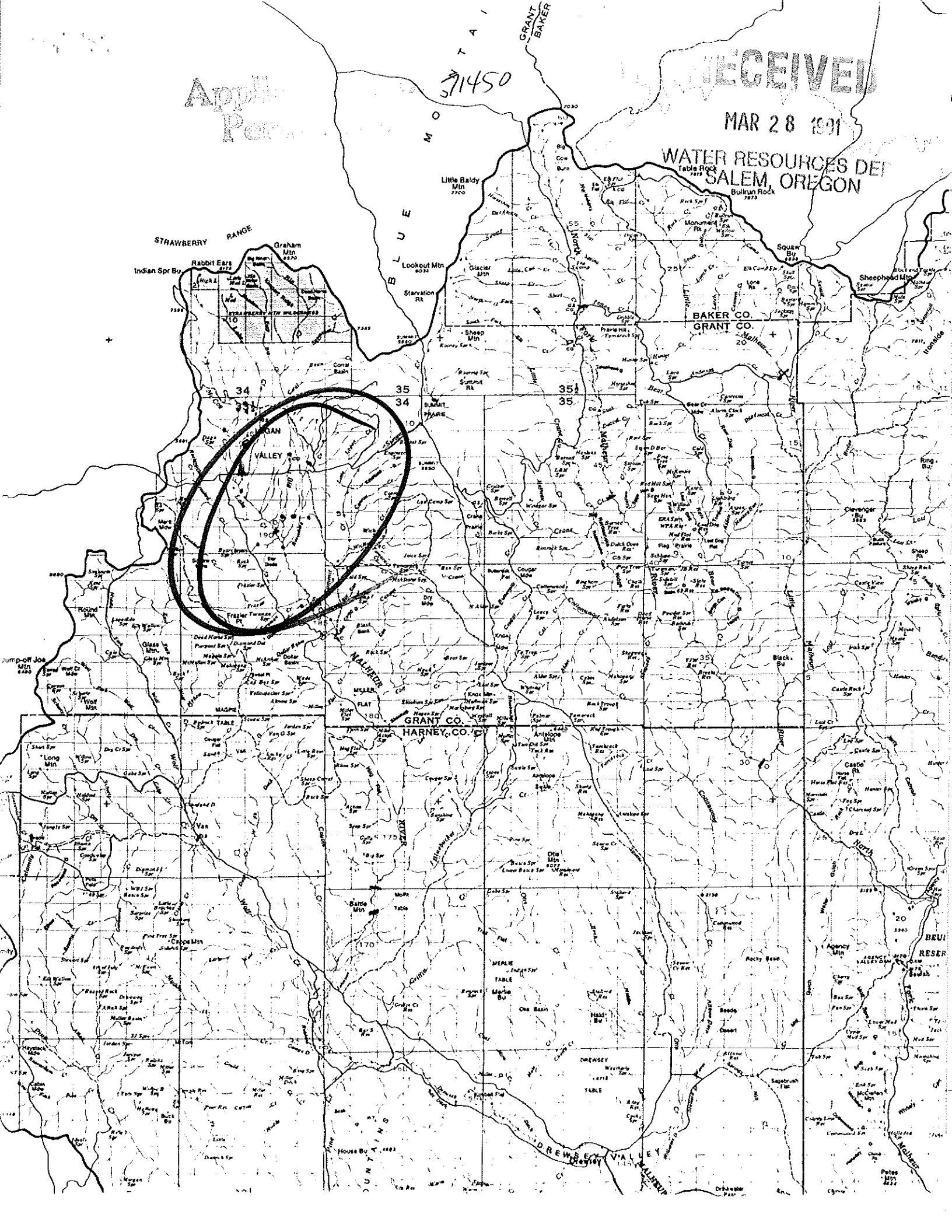
Apple
Per...

71450

RECEIVED

MAR 28 1991

WATER RESOURCES DEPT
SALEM, OREGON



APPLICATION PROCESSING OUTLINE

Basin: _____
 Sub-basin: _____
 Fees paid: Examination fee: _____
 Recording fees: _____
 Total: _____

Application No. ^{IWR} 71450
 Permit No. _____

RATE AND DUTY _____ for irrigation

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

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

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

yes	no	
----	----	Water Resources Commission classification limits or restrictions -- If yes, note: _____
----	----	State Engineer's withdrawals -- If yes, note: _____
----	----	Legislative withdrawals -- If yes, note: _____
----	----	If policy statement is unclear check with Resources Management Division.
----	----	Scenic Watervay: _____
----	----	_____ on _____ up-stream _____ w/in 1/4 mile
----	----	Notify Parks and Recreation Department
----	----	Out-of-basin diversion
----	----	Need to route to Geology Section due to:
----	----	well within one mile of a stream
----	----	well within restricted surface water area
----	----	wells with request for greater than 5 cfs
----	----	well is for heating &/or cooling
----	----	well constructed by land owner
----	----	well is artesian
----	----	artificial ground water recharge project
----	----	ground water area under study
----	----	Within Irrigation District: _____
----	----	Notify _____ Need excerpt from District
----	----	Legal description of property
----	----	Ownership statement
----	----	Other parties to Notify: _____
----	----	Water Resources Commission review if:
----	----	Request for greater than 5 cfs
----	----	Dam height greater than 10 feet
----	----	Storage of more than 9.2 acre-feet
----	----	Out-of-basin diversion
----	----	within or above a scenic watervay
----	----	conditional uses under basin program
----	----	requests for larger rate or duty than allowed
----	----	ground water recharge project
----	----	other substantial public interest issues
----	----	requests for review by an agency or person
----	----	Watermaster consent form sent with copy of <i>draft permit</i>
----	----	application and map
----	----	Watermaster comments received _____
----	----	Hydrographic section comments requested _____
----	----	Hydrographic section comments received _____
----	----	O.D.F.W. sent copy of application and map (except groundwater) requesting comment _____
----	----	O.D.F.W. comments received _____
----	----	Report from D.E.G. received _____
X	----	Publish application information in weekly public notice.
----	----	Notify other owners of development
----	----	PROTESTED
----	----	filed _____
----	----	resolved _____