

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **7352**

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

INVOICE # _____

COPY

RECEIVED FROM: Ronald L. Yockim APPLICATION _____
 BY: _____ PERMIT _____
 TRANSFER _____

CASH: CHECK: # 2412 OTHER: (IDENTIFY) TOTAL REC'D \$ 3,800.7

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>	
WATER RIGHTS:		EXAM FEE	RECORD FEE
0201 SURFACE WATER		\$ _____	0202 \$ _____
0203 GROUND WATER		\$ _____	0204 \$ _____
0205 TRANSFER		\$ _____	0206 \$ _____
WELL CONSTRUCTION		EXAM FEE	LICENSE FEE
0218 WELL DRILL CONSTRUCTOR		\$ _____	0219 \$ _____
LANDOWNER'S PERMIT			0220 \$ _____
0223 OTHER (IDENTIFY) <u>Protest</u>			<u>\$3,800.7</u> - PCA 77235

0437 WELL CONST. START FEE	
0211 WELL CONST START FEE	\$ _____
0210 MONITORING WELLS	\$ _____
OTHER (IDENTIFY) _____	
	CARD # _____
	CARD # _____

0539 LOTTERY PROCEEDS	
1302 LOTTERY PROCEEDS	\$ _____

0467 HYDRO ACTIVITY		LIC NUMBER
0233 POWER LICENSE FEE (FW/WRD)		\$ _____
0231 HYDRO LICENSE FEE (FW/WRD)		\$ _____
HRDRO APPLICATION		\$ _____

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

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OCT - 9 1996

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON
WATER RIGHTS DIVISION

In the Matter of Instream Water Right)
Application IS 71472, Silvies River,)
Grant County)
Oregon Department of Fish & Wildlife)
Applicant.)
Grant County,)
Protestant.)
_____)

PROTEST TO
PROPOSED FINAL
ORDER

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 71472, Silvies River, 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

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Silvies River that are in the public interest and are also identified in the Malheur Lake 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.

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

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.

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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)

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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

"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

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

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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

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Page 8 - PROTEST TO PROPOSED FINAL ORDER

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. Due to the lack of technical data on the natural flows, we are unable to determine whether the allocation allows 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. Due to the lack of technical data on the natural and available flows we are unable to determine whether any water is available for the public purposes covered in ORS 537.022 (wetland enhancement, stream restoration, off-channel reservoirs, livestock and wildlife watering, storm 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

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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. Due to the lack of technical data on the natural flows and available water we are unable to determine whether the Proposed Final Order is in the public interest relative to 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:

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

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OCT - 9 1996

WATER RESOURCES DEPT.
SALEM, OREGON

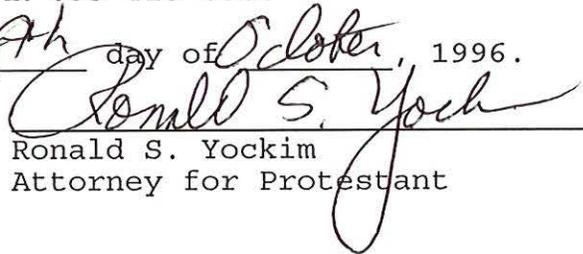
- described in ORS 537.040, ORS 537.143, and ORS 537.022;
- b. limiting the amount of instream flows to less than the natural flow of the stream in a manner that balances the public uses and allows for the activities covered by ORS 537.022, ORS 537.040, ORS 537.143, and ORS 537.170(8);

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 Lake Basin Program plan;
3. Grant County Comprehensive Plan;
4. OAR 635-100-130; OAR 635-415-030.

Respectfully submitted this 9th day of October, 1996.



Ronald S. Yockim
Attorney for Protestant

Bailey; IWR PFO Comments; X Basin

Page 3

October 3, 1996

8) 71457

In the reach description the phrase "AT RIVER MILE 0.0" should be deleted.

9) 71475

Proposed flow for the month of May should be 2.39 cfs

10) 71814

Monthly flows of 2 cfs and a lake level of 4081 feet above mean sea level are requested in the application. The PFO discusses both but only proposes the 4081 foot lake level. The PFO states that the proposed use does not fully appropriate the source and that the full amount of water requested (2 cfs) may not be available during some months, which is the basis for not establishing the statutory "presumption", but not a basis for not issuing the monthly flows as requested or at the EANF level. ODFW believes the requested monthly flows are necessary to ensure the lake level is maintained and requests that these flows, or some other amount not exceeding EANF be included in the final order/certificate. If the WRD needs more time to develop EANF flows for this application, we can waive the requirement of having the certificate issued by October 31, 1996.

11) 71454, 71457, 71470, 71472: **Presumption Findings**

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

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

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

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

COPY

STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIPT # **7247**

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

INVOICE # **IS 71471, 71472, 71452**
70023, 70028

RECEIVED FROM: Ronald S. Yockim
BY: _____

APPLICATION #	IS 71470
PERMIT	
TRANSFER	

CASH: CHECK: # **24-12** OTHER: (IDENTIFY)

TOTAL REC'D \$ **1100⁰⁰**

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 **IS 71474, 71466, 71469,**

0407 MISCELLANEOUS	70020, 70024, 70029, 71475,	\$
0410 COPY & TAPE FEES	71457, 71473, 70021,	\$
0410 RESEARCH FEES	70026, 71460, 71459	\$
0408 MISC REVENUE: (IDENTIFY)		\$
TC165 DEPOSIT LIAB. (IDENTIFY)		\$
0201 WATER RIGHTS: 72023	EXAM FEE	RECORD FEE
0201 SURFACE WATER 70022	\$	0202 \$
0203 GROUND WATER	\$	0204 \$
0205 TRANSFER 70027	\$	0206 \$
0218 WELL CONSTRUCTION	EXAM FEE	LICENSE FEE
0218 WELL DRILL CONSTRUCTOR	\$	0219 \$
LANDOWNER'S PERMIT PCA 77235		0220 \$
0223 OTHER (IDENTIFY) ProTest		\$1100⁰⁰

0437 WELL CONST. START FEE

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

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS	\$
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0467 HYDRO ACTIVITY

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

RECEIPT # **7247**

DATED: **10-7-86** BY: J. Gross

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

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OCT - 7 1996

WATER RESOURCES DEPT.
SALEM, OREGON

RONALD S. YOCKIM
Attorney at Law

548 S.E. Jackson
Suite #7
P.O. Box 2456
Roseburg, Oregon 97470

(541) 957-5900
FAX (541) 957-5923

October 2, 1996

Martha Pagel
Water Resources Department
Commerce Building
158 12th Street NE
Salem, Oregon 97310-0210

Re: Instream Water Rights
Our File No.

Dear Ms. Pagel:

On behalf of the Harney County Court, we request standing for the purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order in the following instream water rights:

IS 71470	IS 71474	IS 71475	IS 71460
IS 71471	IS 71466	IS 71457	IS 71459
IS 71472	IS 71469	IS 71473	IS 72023
IS 71452	IS 70020	IS 70021	IS 70022
IS 70023	IS 70024	IS 70026	IS 70027
IS 70028	IS 70029		

This request is made pursuant to ORS 537.153(5) and is accompanied by our check in the amount of \$1,100 (\$50 x 22 = \$1,100).

Please add our name as a party to any written materials relative to this matter.

Sincerely,



Ronald S. Yockim

RSY/bg

Enclosure

cc. Harney County Court
Michael Mattick
ODF&W

INTEROFFICE MEMORANDUM
Water Rights Section

~~TO: Rick Bentley~~

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
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2
 OK 71556 A
 Total for Basin 2 : 1

OREGON DEPARTMENT OF FISH & WILDLIFE

8
9
18

4
 OK 71793 W
 OK 71798 W
 72076 W
 72077 W
 72078 W
 72079 W
 72080 W
 72081 W
 Total for Basin 4 : 8

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

74
2
1
3
9
19
2

5
 OK 70353 A
 70354 A
 OK 70357 A
 70358 S
 70358 S
 70358 A
 OK 70605 A
 70606 S
 70606 A
 70612 A
 70695 A
 70695 A
 73199 A
 Total for Basin 5 : 13

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

12
12

6
 69949 A
 69949 S
 69951 S
 69951 A
 69958 S
 69958 A
 69958 S
 69959 S
 Total for Basin 6 : 13

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

Checked out to Dwight

Instream Applications with Protests

4/2/97

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

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

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Stream Applications with Protests
4/2/97

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
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	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
-------	---------

14

70824	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70826	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70829	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70830	S	OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 14 : 46

15

70982	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70993	A	OREGON DEPARTMENT OF FISH & WILDLIFE
70998	W	OREGON DEPARTMENT OF FISH & WILDLIFE
71008	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71201	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71614	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71622	A	OREGON DEPARTMENT OF FISH & WILDLIFE
72843	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 15 : 8

16

71172	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71173	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71174	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71181	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71182	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71183	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71184	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71185	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71190	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71192	A	OREGON DEPARTMENT OF FISH & WILDLIFE
71193	A	OREGON DEPARTMENT OF FISH & WILDLIFE
73350	A	OREGON DEPARTMENT OF FISH & WILDLIFE

Total for Basin 16 : 12

17

70228	A	OREGON DEPARTMENT OF FISH & WILDLIFE
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Instream Applications with Protests

4/2/97

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

Total for Basin 17 : 15

173

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 71472

WATERMASTER # BILL BEAL

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

PFO AND FO NOTIFICATION LIST FOR FILE NUMBER:

IS-71472 BASIN #12

A D WILLIAMS	, PO BOX 903	, BURNS	, OR, 97720
ALAN BOSSUOT	, 153 S BROADWAY	, BURNS	, OR, 97720
ARTHUR H WITTRICK	, STAR RT 1 BOX 69 R	, BURNS	, OR, 97720
BETTY OTLEY	, HC 71 BOX 121	, BURNS	, OR, 97720
BILL & LORI PEILA	, PO BOX 723	, HINES	, OR, 97738
BOB JOHNSON	, HC 74 BOX 110	, RILEY	, OR, 97758
CHARLES LYNDE	, 1264 SENECA DRIVE	, BURNS	, OR, 97720
DARYL EGGLESTON	, PO BOX 648	, BURNS	, OR, 97720
DORLAND RAY	, PO BOX 269	, BURNS	, OR, 97720
GARY TAYLOR	, PO BOX 43	, RILEY	, OR, 97758
J F WITZEL	, PO BOX 286	, BURNS	, OR, 97720
JEAN SCRIVNER	, PO BOX 207	, BURNS	, OR, 97720
JOHN PEILA JR	, BOX 537	, HINES	, OR, 97720
KENNETH BRINKLEY	, HCR 30 BOX 11	, BURNS	, OR, 97720
MARK DOVERSPIKE	, STAR RT 1 BOX 132	, BURNS	, OR, 97720
MARTIN A URIZAR	, STGAR RT BOX 152 HWY 78	, BURNS	, OR, 97720
MIKE & SALLIE PEILA	, BOX 537	, HINES	, OR, 97738
MIKE MORGAN	, HC 73 13683 HWY 20	, BURNS	, OR, 97720
OREGON DEPT OF FISH AND WI	, PO BOX 59	, PORTLAND	, OR, 97207
PAT CULP	, HC 71 BOX 136	, BURNS	, OR, 97720
PAUL STAFFORD	, PO BOX 411	, BURNS	, OR, 97720
RICHARD COWAN	, HC 74 BOX 100	, RILEY	, OR, 97758
RONALD WHITING	, PO BOX 1025	, BURNS	, OR, 97720
SAM GUNDERSON	, HC 71 BOX 102	, BURNS	, OR, 97720
THOMAS & KATHERINE WENDEL	, 426 E RIVERSIDE ROAD	, BURNS	, OR, 97720
WHITE HEREFORD RANCH INC	, HC 71 12 TURNOUT ROAD	, BURNS	, OR, 97720
WILLIAM SPRINGSTON	, HC 71 BOX 64A	, BURNS	, OR, 97720

For some with long names or addresses, the complete name and address are located in the file. Those who receive the Departments weekly public notice do not receive additional notice.

*Bill Beal
dist #10
9-13-96*

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

Water Right Application Number: IS 71472

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: SILVIES R tributary to W FK SILVIES 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
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0
	6.0					10.0	7.0	5.0	5.0	4.0	4.0	6.0

To be maintained in:

More Realistic by Personal Knowledge
SILVIES RIVER FROM WIKIUP CREEK AT RIVER MILE 103.5 (NWNW, SECTION 22, TOWNSHIP 16S, RANGE 29E WM); TO TROUT CREEK AT RIVER MILE 56.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E WM)

The Department mailed the applicant notice of its Initial Review on December 11, 1995. Public notice of the application was provide in the Department's weekly public notice on December 26, 1995. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Malheur Lake Basin, Oregon, and Their Water Requirements; March, 1968.
- (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
38.4	58.3	127.0	393.0	320.0	154.0	41.2	21.6	21.5	20.3	26.1	30.7

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.

RECEIVED
SEP 16 1996
WATER RESOURCES DEPT.
SALEM, OREGON

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

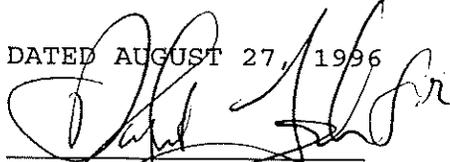
- human or livestock consumption.
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

Recommendation

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

DATED AUGUST 27, 1996


 Steven E. 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.

RECEIVED

SEP 16 1996

WATER RESOURCES DEPT.
SALEM, OREGON

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: SILVIES R tributary to W FK SILVIES R

County: Grant

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

To be maintained in:

SILVIES RIVER FROM WIKIUP CREEK AT RIVER MILE 103.5 (NWNW, SECTION 22, TOWNSHIP 16S, RANGE 29E WM); TO TROUT CREEK AT RIVER MILE 56.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E 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
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

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

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 71472

Bailey; IWR PFO Comments; Owhee, Malheur and Malheur Lake Basins

Page 3

October 4, 1996

8) 71457

In the reach description the phrase "AT RIVER MILE 0.0" should be deleted.

9) 71475

Proposed flow for the month of May should be 2.39 cfs

10) 71814

Monthly flows of 2 cfs and a lake level of 4081 feet above mean sea level are requested in the application. The PFO discusses both but only proposes the 4081 foot lake level. The PFO states that the proposed use does not fully appropriate the source and that the full amount of water requested (2 cfs) may not be available during some months, which is the basis for not establishing the statutory "presumption", but not a basis for not issuing the monthly flows as requested or at the EANF level. ODFW believes the requested monthly flows are necessary to ensure the lake level is maintained and requests that these flows, or some other amount not exceeding EANF be included in the final order/certificate. If the WRD needs more time to develop EANF flows for this application, we can waive the requirement of having the certificate issued by October 31, 1996.

11) **Presumption Findings: 71454, 71457, 71470, 71472**

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

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

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

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

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

Water Right Application Number: IS 71472

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: SILVIES R tributary to W FK SILVIES 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
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

To be maintained in:

SILVIES RIVER FROM WIKIUP CREEK AT RIVER MILE 103.5 (NWNW, SECTION 22, TOWNSHIP 16S, RANGE 29E WM); TO TROUT CREEK AT RIVER MILE 56.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E WM)

The Department mailed the applicant notice of its Initial Review on December 11, 1995. Public notice of the application was provide in the Department's weekly public notice on December 26, 1995. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Malheur Lake Basin, Oregon, and Their Water Requirements; March, 1968.
- (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
38.4	58.3	127.0	393.0	320.0	154.0	41.2	21.6	21.5	20.3	26.1	30.7

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

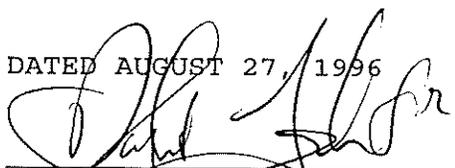
- human or livestock consumption.
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st%	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd%	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

Recommendation

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

DATED AUGUST 27, 1996


 Steven E. 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: SILVIES R tributary to W FK SILVIES R

County: Grant

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

To be maintained in:

SILVIES RIVER FROM WIKIUP CREEK AT RIVER MILE 103.5 (NWNW, SECTION 22, TOWNSHIP 16S, RANGE 29E WM); TO TROUT CREEK AT RIVER MILE 56.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E 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
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

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

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 71472

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.

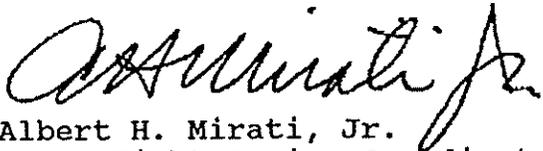
Application # 71280

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,



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

Richard J. Cowan

Suntex Ranch
HC 74 Box 100
Riley, Oregon 97758
April 26, 1991

Phone
(503) 493-2457

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Oregon Water Resources
3850 Portland Road N.E.
Salem, Oregon 97310

Attention: Mike Mattick

Gentlemen:

I have lived in this locality on Suntex Ranch 30 years and have observed Silver Creek in its several seasonal stages, as well as having observed the effects of climatic change--from wet years to dry years.

In the spring flights of geese, ducks, cranes, swans, and other waterfowl arrive to take advantage of the flooded meadows. It is usual for ducks, kildeer, even herons and others to nest here.

Hay for winter feed and grass for pasture depend on water from Silver Creek. Ground water is recharged through this system and this is vital to the continuous use of these meadows.

There are, however, very few years when Silver Creek flows for twelve months. In an average year we can expect it to be dry in summer. During drought conditions there is no instream flow in a large section of downstream Silver Creek, while upstream flow is greatly reduced and will dry up earlier than average.

I believe there should be no changes in the water rights of Silver Creek without a thorough and indepth study over a period of years. Hasty and ill-advised decisions can create havoc and take years to remedy.

Very truly yours,

Helen Cowan

Mrs. Richard J. Cowan

Water Rights certificate number 14039

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71471
Water Rights Applications)
Filed by the Oregon Department) of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Suntex Ranch, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Suntex Ranch represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In addition, the methodology used to determine the flow rates ("Oregon

Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Suntex Ranch request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic

or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Helen Cowan Certificate #14039

Helen Cowan
Suntex Ranch
Riley, Oregon 97758

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Helen Cowan

APR 29 1991

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71471, 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Hotchkiss Company Inc., to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said company represent as follows:

(1) Hotchkiss Company Inc. represent a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said company within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This company requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

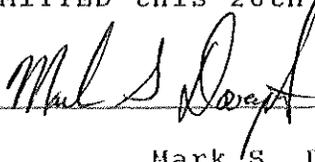
If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Hotchkiss Company Inc. request that they be a party to a contested case hearing to be conducted to review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: _____



Mark S. Doverspike, President
Hotchkiss Company Inc.
Star Rt 1 Box 132
Burns, Oregon 97720

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____



RECEIVED

MAY 15 1991
WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472, 71474
Water Rights Applications)
Filed by the Oregon Department) of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Blue Mountain Cattle Ranch the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Billy Doley represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

4

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Betty O'Leary request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights

1

until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 13th day of May, 1991

By: Betty Otley
Name Betty Otley
Address Hc 71 Box 121
Burns, Ore. 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 13th day of May 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: Betty O. Kelley

RECEIVED
MAY 19 1971
MAY 19 1971
MAY 19 1971

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71471
Water Rights Applications)
Filed by the Oregon Department))
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Quarter Moon Cattle Company, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Quarter Moon Cattle Company represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

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addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

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(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Quarter Moon Cattle Company request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: _____

A handwritten signature in cursive script, appearing to read "G Taylor", written over a horizontal line.

Gary Taylor
Quarter Moon Cattle Company
PO Box 43
Riley, Oregon 97758

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

DMCC


RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71471
Water Rights Applications)
Filed by the Oregon Department) of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Bob Johnson, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Bob Johnson represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

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(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Bob Johnson request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic

or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Bob Johnson

Bob Johnson
HC 74 Box 110
Riley, Oregon 97758

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: Bob Johnson

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APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department) of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Culp Cattle Company, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Culp Cattle Company represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Culp Cattle Company request that they be a party to a contested case hearing to be conducted to review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: _____

A handwritten signature in cursive script that reads "Pat Culp". The signature is written over a horizontal line that extends across the page.

Pat Culp
Culp Cattle Company
HC 71 Box 136
Burns, Oregon 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Culp Lattle Co
By Pat Culp

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APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Kenneth S. Brintley to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Kenneth S. Brintley represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, *Kenneth S. Brinkley* request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By Kenneth L. Brinkley
Name Kenneth L. Brinkley
Address Box 30 Box 11
BURNS, ORE.
97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed:

Kenneth L. Brintley

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APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, J. F. Witzel, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) J. F. Witzel represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately, and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

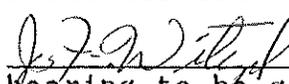
(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

 Based on the above set forth considerations, request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: J.F. Witzel
Name J.F. WITZEL
Address P.O. BOX 286
BURNS, ORE. 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

J. F. Wetzel

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APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, William L. Springston to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) William L. Springstone represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, William L. Springston request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By:

William L. Springston

Name William L. Springston

Address HC 71 Box 64-A

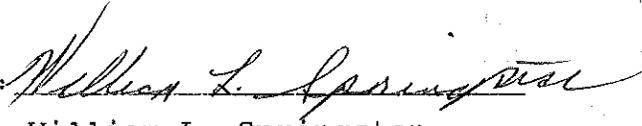
Burns, OR 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed:


William L. Springston
HC. 71 Box 64-A
Burns, OR 97720

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APR 29 1991

WATER RESOURCES DIVISION
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Daryl Eggleston to request the Water Resources Commission for a review and contested case hearing on the above sets forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Daryl Eggleston represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately, and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

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(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Daryl Eggleston request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: David Eggleston
Name By Barbara J Eggleston
Address P.O. Box 698
Burns, Or. 97720 *It is in fact*

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Henry Eagleston
by *Barbara Eagleston*
Att. in fact

RECEIVED
APR 29 1991
WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Charles L. Lynde to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Charles L. Lynde represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately, and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, *Charles L. Lynde* request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Charles L Lynde

Name Charles L Lynde
Address 1264 Seneca Dr
Burns Ore 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Charles Lynch

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Dorland Kay to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1). Dorland Kay represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

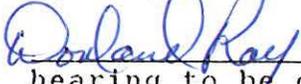
(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations,  request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

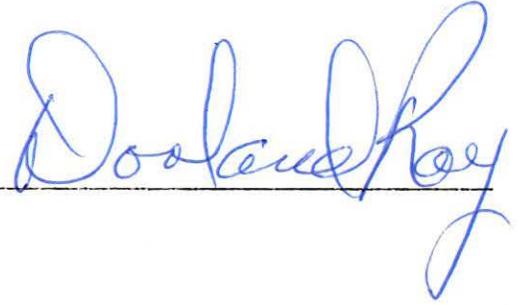
By: *Dorland Ray*
Name *DORLAND RAY*
Address *PO Box 369*
BURNS, OREGON
97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

A handwritten signature in blue ink, appearing to read "Doolan Key", is written over a horizontal line. The signature is stylized and cursive.

RECEIVED

APR 29 1991

WATER RESOURCES DIVISION
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Art Wilhoop, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Art Wilhoop represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations,

Art Williams request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Arthur H. Wittrock

Name ARTHUR H. WITTRICK
Address STAR RT. 1 BOX 69R
BURNS, OREGON 97720

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Urizer Cattle Company Inc. to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Martin A. Urizer represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Martin A. Uvizar request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Urizar Cattle Co. Inc. By Secretary

Name Martin A Urizar

Address St. Rt. 2 Box 952 Hwy 78

Burns, OR
97726

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Whiting and Son, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) ^{Ronald Whiting of} Whiting + Son represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

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(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Whiting and son request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Ronald Whiting

Name Whiting and son
Address P.O. Box 1025
Burns, OR
97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: Ronald W. Tutling

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Paul L. Stafford, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) PAUL L. STAFFORD represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

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Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

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addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately, and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Paul L. Stafford request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Paul h. Stafford

Name PAUL h. STAFFORD
Address P.O. Box 411
BURNS
OREGON 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed:

Paul L. Stafford

for Stafford Ranch
P.O. Box 411
Burns, Oregon

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream)
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

Application Nos. 71472

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

REQUEST FOR REVIEW

Comes now, A. A. Williams, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) A. A. Williams represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, _____ request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By:

C. A. Williams

Name

C. A. Williams

Address

Box 903 LY Ranch

Burns Ore.

97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

A. R. Williams

RECEIVED

APR 29 1991

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department) of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, White Hereford Ranch, Inc to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) White Hereford Ranch Inc represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations,
White Hereford Ranch Inc requests that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Dani White, President

Name White Hereford Ranch Inc
Address HC 71-12 Turnout Rd
Burns, OR 97720

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream...) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, SAM + ARVICE GUNDERSON to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) SAM + ARVICE GUNDERSON represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9). The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations,
SAM & ARNICE GUNDERSON request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Sam Gunderson : Arlice Gunderson

Name _____
Address _____

SAM & ARLICE GUNDERSON
HC 71 BOX 102
BURNS, OR 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Sam Gunderson

Alice Gunderson

SAM & ARLICE GUNDERSON
HC 71 BOX 192
BURNS, OR 97720

APR 29 1991
WATER RESOURCES COMMISSION
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Triangle Eleven Corp., to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Peila Ranch represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In addition, the methodology used to determine the flow rates ("Oregon

Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Peila Ranch request that they be a party to a contested case hearing to be conducted to review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic

or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Mike Peila Sallie Peila
or John McCall

Mike and Sallie Peila
Triangle Eleven Corp.
Box 537
Hines, OR 97738

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97201

Signed: Mike Peila Sallie Peila
or Jim M. Peila III

Mike and Sallie Peila
Triangle Eleven Corp.
PO Box 537
Hines, OR 97738

RECEIVED

APR 29 1991

WATER RESOURCES DE
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Peila Ranch, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) Peila Ranch represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In addition, the methodology used to determine the flow rates ("Oregon

Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Peila Ranch request that they be a party to a contested case hearing to be conducted to review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic

or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: John W. (Jack) Peila, Jr.

Jack Peila
Peila Ranch
Box 806
Burns, Oregon 97720

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97201

Signed: John M. Gade Peila Jr.

John M. Peila, Jr.

Peila Ranch,

Box 537

Hines, OR 97720

RECEIVED

APR 29 1970

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, ALAN L. BOSSUOT, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) ALAN L. BOSSUOT represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Alan L. Bassuet request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

1875 water Rights on 80 acres

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: x

Alan L. Bossuot

Name ALAN L. BOSSUOT

Address 153 S Broadway

BURNS OR. 97720

573-2934 or 573-2453

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

Alan L. Bassett

RECEIVED

APR 29 1991

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, MIKE MORGAN, to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) MIKE MORGAN represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

(3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

(4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

(5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In

addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a guage station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

(6) The methodology used to set the flow levels ("Oregon Method") is not applicable to some of the involved streams due to the limitations of said methodology.

(7) The standard used to set flow rates appears to be based on optimum production levels and/or optimum benefits, rather than the minimum quantities necessary to support fish and wildlife populations.

(8) The instream water rights applied for will be prejudicial to the public interest due to the excessive flow rates requested and the appropriation of all remaining available waters.

(9) The use applied for in every stream is to provide for migration, spawning, egg incubation, fry emergence, and/or juvenile and adult rearing for specified species of fish whereas, in fact, such use as to all the species named in the various applications and as to all such fish activity does not exist within all such streams. There is no allegation that such use exists within the subject streams, and there is no statutory or reasonable justification to apply for the protection of a use that does not exist.

(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, MORGAN request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Mike Morgan

Name MIKE MORGAN

Address HC 73-13683 Hwy 20
BURNS, OR 97720

RECEIVED

APR 29 1991

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, Bar Open AL Corp. to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

- (1) Pella Ranch represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.
- (2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

Flood irrigation recharges the water table. Over 90 percent of residential water in Harney County comes from wells. This includes the cities of Burns and Hines. Instream water rights would not allow the water tables to be recharged.

- (3) The proposed instream water rights will impede the orderly economic development of the waters involved for multiple purposes since said rights will appropriate all remaining available waters in the streams named, and prevent any further appropriations by other water users. Any other potential uses of the water resource are foreclosed by the excessive amounts applied for and the applications will jeopardize and have a significant adverse affect on the use of water for the broadest range of public good.

- (4) The applications list flow levels which exceed the estimated average natural flow of the involved streams. The method used of setting flow levels ("Oregon Method") does not adjust for seasonally natural flow deficiencies.

- (5) The proposed instream water rights are based on inadequate factual data to support the flow levels requested. In addition, the methodology used to determine the flow rates ("Oregon

Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntex School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

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(10) Granting the applications as filed prevents permits for the development of off-stream watering facilities for stockwater purposes, and interferes with alternatives for stockwatering as part of riparian area management.

If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Based on the above set forth considerations, Peila Ranch request that they be a party to a contested case hearing to be conducted to review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife subject to existing water rights, with a condition to exempt the use of water for domestic

or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 25th day of April, 1991

By: William Peila & Lori K. Peila

Bill and Lori Peila
Bar Open AL Corp.
Box 723
Hines, OR 97738

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97201

Signed: *William S. Peila & Lori K. Peila*

Bill and Lori Peila
Bar Open AL Corp.
PO Box 723
Hines, OR 97738

RECEIVED

APR 29 1931

WATER RESOURCES DEPT.
SALEM, OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, *James Scowen* to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) *James Scowen* represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

(2) The instream water rights applied for will be wasteful, uneconomic, impractical and unreasonable in that the flow rates applied for request a higher quantity of flow than is necessary to support the fish and wildlife populations involved. The flow rates, timing and location of the instream water rights applied for are wasteful and unreasonable and do not serve a public use.

The instream water rights would eliminate many flood irrigated meadows which provide habitat for the waterfowl that fly over the Pacific Flyway and eliminate habitat for the wildlife that presently live in the meadows and surrounding areas.

In the summer when streamflows decrease and the water temperature warms some of the water used to flood irrigate leaves the soil and returns to the stream. This provides cooler temperatures for fish habitat.

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addition, the methodology used to determine the flow rates ("Oregon Method") is inherently flawed and said methodology was applied inaccurately and contrary to its own criteria and recommendations to set the proposed flow rates.

Many of these creeks run dry during the summer on an average year. This ranch requests before any of these instream flows be set that five years of data be accumulated showing the actual flow of these creeks and rivers. For example, a gauge station on Claw Creek shows that the creek has been dry for the last three years during late spring to late fall. Silver Creek has not passed the Suntext School for the past two years. Trout Creek has not emptied into the Silvies for the last three years. Also records on the Silvies River for the past three years show river levels below the minimums for July through October.

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If these instream flows are approved as applied for they will have a significant impact on many of our ranch decreasing and/or eliminating hay production and livestock watering. With these decreases the economic viability of this family owned operation is in question. These operations are the main support for the local tax base for this county, which would result in less income to support all tax based services such as our hospital, schools, and roads.

Tom Scirella
Based on the above set forth considerations, request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: Paul Crowder
Name Paul Crowder
Address P.O. Box 207
Curry, Ore 97520

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

Signed: _____

A handwritten signature in cursive script, appearing to read "Paul Brown", is written over a horizontal line. The signature is fluid and extends above and below the line.

RECEIVED
APR 30 1991
WATER RESOURCES DEPT.
SALEM OREGON

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In The Matter of Instream) Application Nos. 71472
Water Rights Applications)
Filed by the Oregon Department)
of Fish and Wildlife)

REQUEST FOR REVIEW

Comes now, THOMAS H. & KATHARINE UENDEL UENDEL to request the Water Resources Commission for a review and contested case hearing on the above set forth applications filed by the Oregon Department of Fish and Wildlife for instream water rights, pursuant to OAR 690-77-030. Said ranch represent as follows:

(1) T. & K. UENDEL represents a member of the public within Harney County who is a water user and/or who may apply to appropriate water in the future, and that said ranch within Harney County would be adversely affected by the granting of the subject applications.

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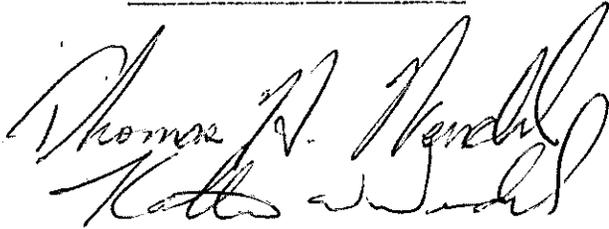
Based on the above set forth considerations,
T. & K. WENDEL request that they be a party to a contested case hearing to be conducted review the applications filed by the Oregon Department of Fish and Wildlife. Due to the objections raised to said applications, the instream-water rights should be rejected and the ODFW ordered to halt any further applications for instream water rights until such time as the applications are supported by adequate factual data and proper utilization of acceptable scientific methodology. In the alternative, said instream water rights should be reduced to minimum flow rates reasonably necessary to support fish and wildlife

subject to existing water rights, with a condition to exempt the use of water for domestic or human consumption and livestock uses.

RESPECTFULLY SUBMITTED this 26th day of April, 1991

By: THOMAS H. & KATHERINE W. LUENDEL

Name _____
Address 426 E. RIVERSIDE DR.
BURNS, OR. 97720

 4/27/91

Certificate of Mailing

This is to certify that the above and foregoing was duly served upon the Oregon Department of Fish and Wildlife at their address, by regular mail, postage-prepaid, this 26th day of April, 1991, as follows, to-wit:

Oregon Department of Fish Wildlife
2501 SW First Ave.
Portland, Oregon 97207

4/27/91

Signed:



December 11, 1995

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

Reference: Instream water rights in the Malheur Lake Basin,
Files 71467, 71470, 71471, 71472, 71474, 71475

Dear Oregon Department of Fish and Wildlife:

This document, called and "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 512, the Malheur Lake Basin Program;

1. Application 71467

BEAR CR tributary to SILVIES R

BEAR CREEK FROM ANTELOPE CREEK AT RIVER MILE 7.4 (SWNE, SECTION 28, TOWNSHIP 16S, RANGE 32E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE, SECTION 34, TOWNSHIP 16S, RANGE 31E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	12.0	12.0	12.0	12.0	6.0	6.0	6.0	6.0	6.0	6.0
2nd½	6.0	9.0	12.0	12.0	12.0	9.0	6.0	6.0	6.0	6.0	6.0	6.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.3	15.7	34.2	106.0	86.2	41.5	11.2	5.82	5.52	5.47	7.03	8.27

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	12.0	12.0	12.0	12.0	6.0	5.82	5.52	5.47	6.0	6.0
2nd½	6.0	9.0	12.0	12.0	12.0	9.0	6.0	5.82	5.52	5.47	6.0	6.0



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

Rick Kruger
Oregon Department of Fish and Wildlife
December 11, 1995
Page three

4. Application 71471

SILVIES R tributary to W FK SILVIES R

SILVIES RIVER FROM WIKIUP CREEK AT RIVER MILE 103.5 (NWNW, SECTION 22, TOWNSHIP 16S, RANGE 29E WM); TO TROUT CREEK AT RIVER MILE 56.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
38.4	58.3	127.0	393.0	320.0	154.0	41.2	21.6	21.5	20.3	26.1	30.7

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	10.0	10.0	15.0	15.0	15.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	12.0	15.0	15.0	15.0	12.0	10.0	10.0	10.0	10.0	10.0	10.0

5. Application 71474

TROUT CR tributary to SILVIES R

TROUT CREEK FROM NORTH FORK (NENE, SECTION 6, TOWNSHIP 20S, RANGE 32E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 13, TOWNSHIP 19S, RANGE 31E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	2.0	2.0	4.0	4.0	4.0	4.0	2.0	2.0	2.0	2.0	2.0	2.0
2nd½	2.0	2.0	4.0	4.0	4.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0.82	5.76	22.0	27.5	5.12	2.65	0.64	0.37	0.37	0.27	0.27	0.64

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	0.82	2.0	4.0	4.0	4.0	2.65	0.64	0.37	0.37	0.27	0.27	0.64
2nd½	0.82	2.0	4.0	4.0	4.0	2	0.64	0.37	0.37	0.27	0.27	0.64

Rick Kruger
 Oregon Department of Fish and Wildlife
 December 11, 1995
 Page four

6. Application 71475

NICOLL CR tributary to SILVER CR

NICOLL CREEK FROM JACKS CREEK (SW1/4, SECTION 32, TOWNSHIP 21S, RANGE 25E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWSW, SECTION 12, TOWNSHIP 22S, RANGE 25E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	1.0	1.0	3.0	3.0	3.0	3.0	1.0	1.0	1.0	1.0	1.0	1.0
2nd½	1.0	2.0	3.0	3.0	3.0	2.0	1.0	1.0	1.0	1.0	1.0	1.0

b. The amount of water available in the appropriate reach is at a %50 exceedence level is:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0.38	2.69	10.3	12.9	2.39	1.24	0.3	0.17	0.17	0.13	0.13	0.3

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	0.38	1.0	3.0	3.0	2.0	1.24	0.3	0.17	0.17	0.13	0.13	0.3
2nd½	0.38	2.0	3.0	3.0	2.0	1.24	0.3	0.17	0.17	0.13	0.13	0.3

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 any application. To accomplish this you must notify the Department in writing by December 26, 1995. For your convenience you may use the enclosed "STOP PROCESSING" form.

Rick Kruger
Oregon Department of Fish and Wildlife
December 11, 1995
Page five

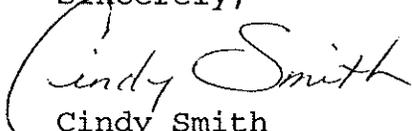
To Proceed With Your Application:

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

January 3, 1992

Ronald S. Yockim
Cegavske, Johnston & Associates, P.C.
PO Box 218
Roseburg, Oregon 97407

Re: Instream water right applications 70304, 70306, 70307, 70349
through 70352, 70588, 71454, 71463, 71464, 71467, 71468,
71472.

Dear Mr. Yockim,

This letter is to verify receipt of your requests, on behalf of Grant County to enter into discussions regarding the referenced instream water rights applications. We will contact you when we have completed a natural flow analysis of the remaining streams and are prepared to discuss this information and the other issues raised in your October 14, 1991 correspondence.

Enclosed is a brief discussion on the instream water right program. I hope this is informative.

Sincerely,



MICHAEL J. MATTICK
Water Rights Specialist

MJM:

cc: Grant County Court



IWR Application # 71472 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIVED

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

MAR 28 1991

WATER RESOURCES DEPT.
SALEM, OREGON

There is no fee required for this application.

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

1. The name of the stream of the proposed instream water right is Silvies River, a tributary of Malheur Lake.
2. The public use this instream water right is based on is providing required stream flows for redband 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
10	10/	15	15	15	15/	10	10	10	10	10	10
	12				12						

4. The reach of the stream identified for an instream water right is from (upstream end) Wikiup Creek, river mile 103.5, within the NW quarter of the NW quarter of Section 22, Township 16S, Range 29E W.M., in Grant County...

Downstream to Trout Creek, river mile 56, within the NW quarter of the NW quarter of Section 13, Township 19S, Range 31E W.M., in Harney 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 8, 1991
ODFW (Fish, Wldlf, and Habitat)	Date: March 8, 1991
Parks and Recreation Division	Date: March 8, 1991

IWR Application # 71472 Certificate # _____

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

Establish a gaging structure at or near the lower limit of the reach.

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

Local ODFW personnel will assist the watermaster in establishing 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: 3/25/91

Signed: Nancy M. MacHugh

Oregon Department of Fish and Wildlife

Assistant Director
Habitat Conservation Div.

File: SILVIES1.APP

RECEIVED

MAR 28 1991

WATER RESOURCES DEPT.
SALEM, OREGON

IWR Application # _____ 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

RECEIVED

MAR 26 1991

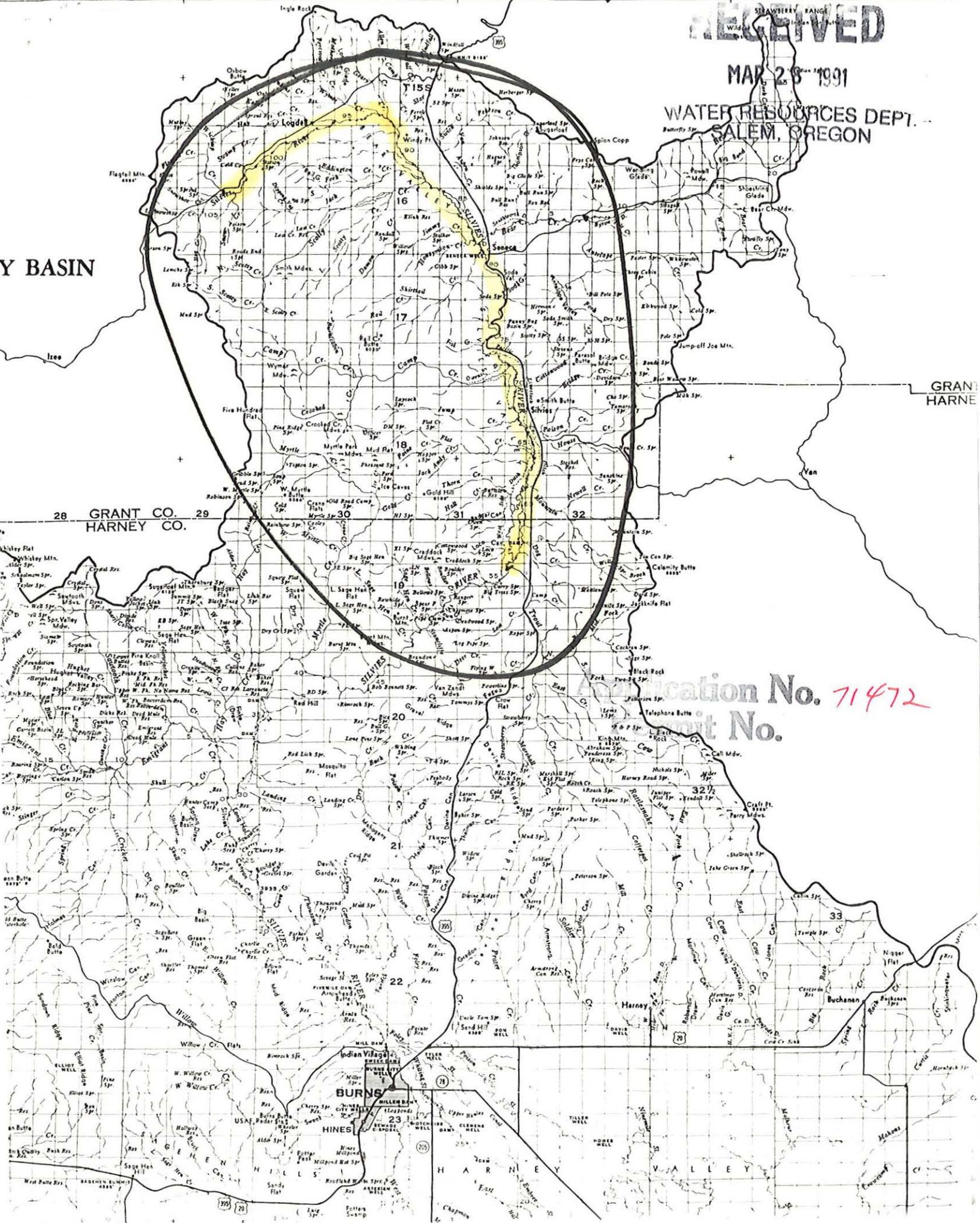
WATER RESOURCES DEPT. SALEM, OREGON

Y BASIN

GRANT HARNEY

28 GRANT CO. 29 HARNEY CO.

Application No. 71472
Permit No.



APPLICATION PROCESSING OUTLINE

Basin: _____

Sub-basin: _____

Fees paid: Examination fee: _____

Recording fees: _____

Total: _____

Application No. ^{IWK} 71472
 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 Waterway: _____
 on _____ up-stream _____ w/in 1/4 mile

 Notify Parks and Recreation Department
 Out-of-basin diversion

 Need to route to Geology Section due to:
 ---- well within one mile of a stream
 ---- well within restricted surface water area
 ---- wells with request for greater than 5 cfs
 ---- well is for heating &/or cooling
 ---- well constructed by land owner
 ---- well is artesian
 ---- artificial ground water recharge project
 ---- ground water area under study

 Within Irrigation District: _____
 ---- Notify _____ Need excerpt from District

 Legal description of property
 Ownership statement

 Other parties to Notify: _____
 Water Resources Commission review if:

 ---- Request for greater than 5 cfs
 ---- Dam height greater than 10 feet
 ---- Storage of more than 9.2 acre-feet
 ---- Out-of-basin diversion
 ---- within or above a scenic waterway
 ---- conditional uses under basin programs
 ---- 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 comment form sent with copy of *draft permit*
~~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.O. received _____

 Publish application information in weekly public notice.

 Notify other owners of development

 PROTESTED
 filed _____
 resolved _____

X

Jwk
71472

Application No.

Permit No.

3/28/91

Name ODFW

Address PO BOX 59, PORTLAND OR 97207

Assigned

Address

Beginning construction

Completion of construction

Extended to

Complete application of water

Extended to