



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

Water Right Application Number: IS 70829

**Proposed Final Order**

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

**Application History**

On 10/26/90, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: WOOD R tributary to UPPER KLAMATH L

County: Klamath

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
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

To be maintained in:

WOOD RIVER FROM WOOD RIVER SPRING AT RIVER MILE 17.0 (NE1/4, SECTION 3, TOWNSHIP 33S, RANGE 7.50E WM); TO THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 25, TOWNSHIP 34S, RANGE 7.50E WM)

The Department mailed the applicant notice of its Initial Review on January 23, 1996. Public notice of the application was provide in the Department's weekly public notice on February 6, 1996. Comments were received for 30 days.

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Klamath Basin, Oregon, and Their Water Requirements; April, 1970.
- (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 within or 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
347.0	335.0	336.0	376.0	439.0	471.0	442.0	398.0	383.0	390.0	365.0	362.0

### 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.

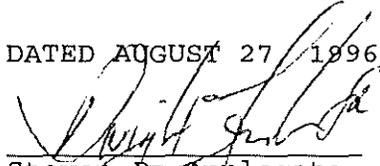
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

### Recommendation

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

DATED AUGUST 27 1996



Steven P. Applegate  
 Administrator  
 Water Rights and Adjudications Division

### Protest Rights

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

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

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

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

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

DRAFT  
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

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

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

Source: WOOD R tributary to UPPER KLAMATH L

County: Klamath

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

To be maintained in:

WOOD RIVER FROM WOOD RIVER SPRING AT RIVER MILE 17.0  
(NE1/4, SECTION 3, TOWNSHIP 33S, RANGE 7.50E WM); TO  
THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 25, TOWNSHIP  
34S, RANGE 7.50E WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 10/26/90.

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
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

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 70829

INTEROFFICE MEMORANDUM  
Water Rights Section

~~TOP SECRET BANNEX~~

FROM: Dwight French, x268 *DF*

DATE: March 26, 1997

RE: Water Availability for ISWR applications/files

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

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

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

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

cc: Mike Mattick

*All Protested ISWR Files*

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

2  
 OK 71556 A  
 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  
12  
12

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

6  
 Checked out to Dwight  
 69949 A  
 69949 S  
 69951 S  
 69951 A  
 69958 S  
 69958 A  
 69958 S  
 69959 S

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

Basin                      App Num

6

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

Total for Basin 6 :        38

9

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

**Instream Applications with Protests**  
**4/2/97**

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

Instream Applications with Protests

4/2/97

Basin	App Num
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14

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

**Instream Applications with Protests**  
**4/2/97**

Basin	App Num	
<b>14</b>		
	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
<b>Total for Basin 14 :</b>	<b>46</b>	
<b>15</b>		
	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
<b>Total for Basin 15 :</b>	<b>8</b>	
<b>16</b>		
	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
<b>Total for Basin 16 :</b>	<b>12</b>	
<b>17</b>		
	70228	A OREGON DEPARTMENT OF FISH & WILDLIFE

**Instream Applications with Protests**

4/2/97

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

**Total for Basin 17 : 15**

**173**

Bailey; IWR PFO Comments; Klamath and Lake Basins

Page 3

October 4, 1996

The source name should be: LINK RIVER TRIB TO KLAMATH R.

6) 70814

The county should be: Klamath.

7) 70829

The source name should be: WOOD R tributary to AGENCY LK

8) 70817

The source name should be: PARADISE CR TRIB SYCAN R.

9) 70818

The source name and reach description are incorrect. The source name should be: SPRING CR tributary to WILLIAMSON R.

The reach description should be:

SPRING CREEK FROM SPRING CREEK SPRINGS AT RIVER MILE 3.0 (SENW, SECTION 33, TOWNSHIP 33S, RANGE 7E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE, SECTION 9, TOWNSHIP 34S, RANGE 7E WM)

The requested flow regime is incorrect, apparently from the also incorrect source. The correct requested flows are:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<u>300</u>											

Accordingly, the proposed flows would change to:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>298</u>	<u>270</u>	<u>277</u>	<u>296</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>

10) 70820

The county should be: Klamath.

11) 70830

The source name should be: SEVEMILE CR TRIB AGENCY LK.

STATE OF OREGON  
**WATER RESOURCES DEPARTMENT**

RECEIPT # **7500**

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

INVOICE # \_\_\_\_\_

RECEIVED FROM: <u>Richard Farrels</u>	APPLICATION
BY: _____	PERMIT
	TRANSFER

CASH:  CHECK: # 96-2030 OTHER: (IDENTIFY)  TOTAL REC'D \$400.00

**0417 WRD MISC CASH ACCT**

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

**REDUCTION OF EXPENSE**

\_\_\_\_\_ CASH ACCT. \$

**0427 WRD OPERATING ACCT**

0407	MISCELLANEOUS		
0410	COPY & TAPE FEES	<u>IS 70829</u>	\$
0408	RESEARCH FEES	<u>IS 70807</u>	\$
TC165	MISC REVENUE: (IDENTIFY) _____		\$
	DEPOSIT LIAB. (IDENTIFY) _____		\$
<b>WATER RIGHTS:</b>			
0201	SURFACE WATER	EXAM FEE	RECORD FEE
0203	GROUND WATER	\$	0202 \$
0205	TRANSFER	\$	0204 \$
		\$	0206 \$
<b>WELL CONSTRUCTION</b>			
0218	WELL DRILL CONSTRUCTOR	EXAM FEE	LICENSE FEE
	LANDOWNER'S PERMIT	\$	0219 \$
			0220 \$
<u>0223</u>	OTHER (IDENTIFY) <u>Protest PCA 72235</u>		<u>\$400.00</u>

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

RECEIPT # **7500** DATED: 10-11-96 BY: C. Rich

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

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON  
WATER RIGHTS DIVISION

In The Matter Of Surface Water Application )  
IS 70829 in the Name of Oregon Department ) PROTEST TO  
of Fish and Wildlife for Water Use, ) PROPOSED FINAL  
Klamath County ) ORDER

Protestant Owens and Hawkins, a Partnership, hereby in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS 70829.

I. INTRODUCTION

Protestant's address for purposes of this Protest is P.O. Box 426, Fort Klamath, Oregon, 97626; phone number for purposes of this application is (541) 381-2211 or (541) 882-4436. Protestant receives diverts water for irrigation from the Wood River, pursuant to state law.

Protestant asserts that the Proposed Final Order by the Water Resources Department ("WRD" or "Department") is defective and in error and that there are elements of the water right as approved that will impair or be detrimental to the public interest, based on the facts and issues set forth below.

II. PROPOSED ORDER DETRIMENTAL TO PROTESTANTS

If flow rates of the amounts proposed were required, then the ability of the Protestant to receive and divert water to support irrigation could be interfered with.

III. PROPOSED ORDER IS IN CONFLICT WITH THE KLAMATH RIVER COMPACT

The Proposed Order fails to recognize the provisions of the Klamath River Basin Compact (Compact). ORS 542.620. The Compact was enacted by the states of Oregon and California and approved by the Unites States. Compact terms apply directly to the waters in question, as Compact jurisdiction includes the waters in the Proposed Order. See official map of the Upper Klamath River Basin approved on September 6, 1956, by the commissions negotiating the Compact and filed with the Secretaries of the states of Oregon and California and the General Services Administration of the United States, and incorporated into the Compact. ORS 542.620, Art. II. B. The terms of the Compact include priorities for the appropriation of water which the Proposed Order fails to enumerate or recognize. ORS 542.620, Art. III. B. and C. Compact priorities place domestic and irrigation uses ahead of the proposed use of fish and wildlife. Any final order for the proposed use must recognize that such proposed right is inferior to present and future rights for domestic and irrigation purposes, as well as other provisions of the Compact.

#### IV. PROPOSED FLOW RATES ARE IN EXCESS OF MINIMUM QUANTITY NECESSARY

The instream water right flow rates proposed are excessive and unnecessary for the use applied for. The flow rates proposed are higher than the minimum quantity necessary for the public use of the instream water right, and are, therefore, contrary to the definition of "In-stream flow" of ORS 537.332(2) and OAR 690-77-010 (14). Water use of the instream right, if approved, would adversely affect the Protestant and other potential water users from the stream by appropriating excess quantities of water and preventing any other new appropriations of water.

#### V. INADEQUATE TECHNICAL DATA OR INFORMATION SUBMITTED BY ODFW

The above referred to application, as submitted by the Oregon Department of Fish & Wildlife to the Water Resources Department, failed to include sufficient technical data or information to support the flow rates requested by said agency, as 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). The only information submitted in support of the application is a flow rate conclusion included in an appendix in the Basin Investigation or Environmental Investigation for the river basin; no "technical data" nor any of the factual data used to arrive at the flow rate conclusions was submitted with the application.

No analysis of supporting data, or the lack thereof, appears in the WRD file for this application. The Proposed Final Order is defective in that the WRD did not evaluate whether the level of instream flow requested was "based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (OAR 690-77-020 (3)).

Apparently the flow levels applied for are based on an appendix in the Basin Investigation or Environmental Investigation for recommended flows. It is impossible to tell, however, what factual data said recommendation was based on. No data has been submitted to support the flows requested and the application should therefore be rejected.

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation and Environmental Investigation has apparently been lost or misplaced. No other supporting data or "technical data" was submitted by the applicant as required by OAR 690-77-020 (4)(g). Since no technical data was included with ODFW's application, the application should be returned to the applicant for curing of defects or resubmittal.

#### VI. WRD FAILED TO ANALYZE FLOW NEEDS

The flow levels approved by the Proposed Final Order are not based on any analysis of the need for the flows requested. ORS 537.332(2) sets out the definition of "in-stream flow" which the Department is supposed to follow when determining instream water rights: the "minimum quantity of water necessary to support the public use requested by an agency." The Proposed Final Order does not address the minimum quantity of water or flow levels necessary to support the uses applied for. A review of the WRD file shows that no such analysis has occurred. The only review undertaken by the WRD was a check to see if the requested flows are less than the average estimate natural flow ("EANF"; OAR 690-77-015 (4)).

#### VII. OREGON METHOD IS INHERENTLY FLAWED

The methodology used for this application, the "Oregon Method", is inherently flawed in that it is based on a methodology that has been superseded and is not reliable, and is based on outdated or insufficient information (testimony is cited by Al Mirati of the Oregon Department of Fish and Wildlife regarding the "Oregon Method", to the Oregon Water Resources Commission, on December 6, 1990). The determinations made from the Oregon Method are not reliable and should therefore be rejected by the WRD or the Commission as the final authority in determining the level of instream flows necessary to protect the public use (ORS 537.343 (2)).

#### VIII. OREGON METHOD IS INHERENTLY FLAWED - WRD SHOULD REJECT APPLICATION

One of the requirements of the Department's application review is contained in OAR 690-77-020 (3): "...all applications for instream water rights shall be based on the methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (See also part V. above ). This requirement does not mean that the Department can simply accept ODFW's assertion that the "Oregon Method" is the basis for the requested flows. The Department must actively review the application to see if the Oregon Method and ODFW's instream rules are being followed. Where applicable, ODFW must also submit supporting data to show that the standards and criteria contained in their rules have been followed.

The actual measurements used by ODFW to set requested flow levels are totally inadequate to validate those amounts; these measurements were made by ODFW's predecessor, the Oregon State Game Commission, as shown in the Appendices to the Basin Investigations and the Environmental Investigations. Actual measurements of streamflow were not made at times when key life stages occurred and, in fact, the severe limitations of the data available show that they are inadequate to validate the requested flows: "Actual measurement of streamflow made at or near recommended instream flow requirements and made at times when key life stages occur are important to validate the methodology used, and to validate

that the recommended instream flow requirements provide desirable habitat conditions." Instream Flow Methodologies. Louis C. Fredd, Oregon Department of Fish and Wildlife (1989), page 12.

#### IX. 'EANF' CALCULATIONS ARE DEFECTIVE OR INCOMPLETE

There are no calculations for information in the WRD file to show what "ratios" were used or how adjustments were made to any gauged flows to determine the 50% exceedance flows, and there is also no information in the technical review to show the type of statistics used (see "Methods for Determining Streamflows and Water Availability in Oregon", Robison, P22 and 23) The EANF calculations are defective resulting in high EANF levels and thus allowing excessive recommended flows by the WRD.

#### CONCLUSION

This protest is filed in accordance with OAR 690-77-043. The issues raised should be considered as part of a contested case hearing. The WRD's Proposed Final Order is inadequate and defective and has failed to follow applicable rules. A thorough review of the Application is necessary to determine the minimum quantity of water necessary to support the public uses applied for.

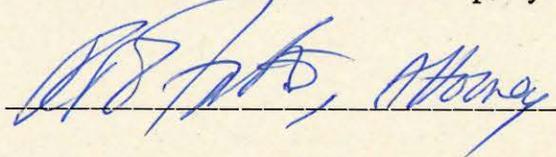
The Proposed Final Order fails to consider and note the superiority of priorities as enumerated in the Klamath River Compact, and other provisions contained therein.

For the reasons set forth above, the Protestant asserts that the application is defective and should be returned to the applicants. The flow levels requested are excessive and are not necessary to support the public uses proposed. Flow levels set at the rates proposed will interfere with future maximum economic development of the waters of the State of Oregon. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved. (ORS 537.170 (8)(e)). If approved, an exception for stockwater use should be added as a condition of the right.

Based on the points discussed above, the Proposed Final Order should deny the application for a permit or modify the Proposed Final Order accordingly

Respectfully submitted this 10<sup>th</sup> day of October, 1996.

Owens & Hawkins, a Partnership, by:

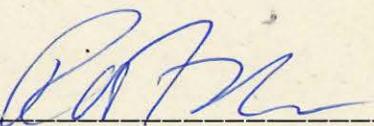
  
\_\_\_\_\_, Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> 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 Klamath Falls, Oregon addressed as set forth below:

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

By: \_\_\_\_\_

  
For Protestants

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

RECEIPT # **7540**

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

INVOICE # \_\_\_\_\_

RECEIVED FROM: <u>Water Watch</u>	APPLICATION
BY: _____	PERMIT
	TRANSFER

CASH:  CHECK: # 2412 OTHER: (ID) **RECEIVED OVER THE COUNTER** TOTAL REC'D \$ 750.

**0417 WRD MISC CASH ACCT**

ADJUDICATIONS	FOR DEPOSIT ONLY TO ACCT. OF STATE TREASURER-STATE OF ORE.	\$
PUBLICATIONS / MAPS	WATER RESOURCES DEPARTMENT	\$
OTHER: (IDENTIFY)	69000-00-40-1	\$
OTHER: (IDENTIFY)		\$

**REDUCTION OF EXPENSE**

PCA AND OBJECT CLASS	CASH ACCT.	\$
	VOUCHER #	

**0427 WRD OPERATING ACCT**

0407 MISCELLANEOUS	70815-16, 70799, 70800, 70804, 70808,	\$
0410 COPY & TAPE FEES	70809, 70807, 70810,	\$
0410 RESEARCH FEES	70819, 70829, 70830,	\$
0408 MISC REVENUE: (IDENTIFY)	70831	\$
TC165 DEPOSIT LIAB. (IDENTIFY)		\$
<b>WATER RIGHTS:</b>		
0201 SURFACE WATER	EXAM FEE	RECORD FEE
0203 GROUND WATER	\$	0202 \$
0205 TRANSFER	\$	0204 \$
<b>WELL CONSTRUCTION</b>		
0218 WELL DRILL CONSTRUCTOR	EXAM FEE	LICENSE FEE
LANDOWNER'S PERMIT	\$	0219 \$
		0220 \$

0234 OTHER (IDENTIFY) Request for Startling \$250.

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

RECEIPT # **7540** DATED: 10-11-96 BY: D. Bushnell  
Distribution-White Copy-Customer, Yellow Copy-Fiscal, Blue Copy-File, Buff Copy-Fiscal

# Water Watch

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

Delivered via messenger

October 11, 1996

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

**RE: Request for Standing, Instream Water Rights, Klamath River Basin**

70804 Sprague  
70815 NF Sprague  
70816 NF Sprague  
70799 SF Sprague  
70800 SF Sprague  
70801 SF Sprague  
70802 SF Sprague  
70808 Deming trib. to Sprague  
70809 Fishhole Creek to Sprague  
70807 Wood River  
70810 Wood River  
70819 Annie Creek trib. to Wood  
70829 Wood River  
70830 Sevenmile Creek  
70831 Annie Creek trib. to Wood

RECEIVED

OCT 11 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Dear Water Rights Section:

Pursuant to ORS 537.153(5) and OAR 690-310-160(3) WaterWatch and Oregon Trout file this Request for Standing along with the required fee of \$50 per application for applications 70804, 70815, 70816, 70799, 70800, 70801, 70802, 70808, 70809, 70807, 70810, 70819, 70829, 70830, and 70831.

Elements for Request for Standing as required by OAR 690-310-160(3)

**a. Name, address, telephone number of requester**

WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
(503) 295-4039  
contacts: Kimberley Priestley, Karen Russell

Oregon Trout  
117 NW Front  
Portland, OR 97204  
(503) 222-9091  
contact: Jim Myron

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**b. Statement of support of the Proposed Final Order**

WaterWatch and Oregon Trout support the proposed issuance of these instream water rights.

**c. How WaterWatch and Oregon Trout would be harmed if the Proposed Final Orders are modified**

WaterWatch of Oregon is a nonprofit organization dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation, biological diversity, ecological values, public health and a sound economy. Oregon Trout is a nonprofit organization dedicated to promoting and restoring wild native fish habitat.

In requesting standing for the aforementioned instream water right applications, WaterWatch and Oregon Trout are representing the general public interest in the water resources and associated fish and wildlife resources of this state, as well as the specific interest of WaterWatch and Oregon Trout members. WaterWatch and Oregon have members throughout the Pacific Northwest, including the Klamath River basin specifically, who use and enjoy the watershed. All of WaterWatch's and Oregon Trout's members, board members and staff benefit from knowing that such a resource exists even if they have not visited the watershed.

If the PFOs are modified to either deny the applications, decrease the flows proposed, or otherwise alter the rights to the detriment of the resource, WaterWatch's and Oregon Trout's interest would be harmed because denial and/or lower flows pose a risk to the fish species they are intended to benefit, including the federally and state listed Lost River and Short Nosed Suckers. It would also impair a number of other public interest values including, but not limited to, wildlife, scenic waterway values and water quality.

1. If the PFOs are modified to either decrease proposed flows and/or deny the applications, WaterWatch's interests will be harmed because flows vital to the survival of aquatic species, including endangered sucker fish, will be compromised.

ODFW has requested these flows to provide for the minimum amount necessary for the survival of endangered lost river and shortnosed suckers (federal and state listings), state sensitive redband trout, as well as rainbow trout. WaterWatch supports the flows requested by ODFW. If the Department modifies the PFOs to either deny the applications or propose flows lower than those requested by ODFW, the survival of all of these species will be jeopardized.

This is not only a violation of the public interest but could result in a violation of the state and federal Endangered Species Acts. Under the state act the Department is required to consult with ODFW to ensure that any action taken by the Department is consistent with ODFW programs to conserve the species, or, if no plan is in place, that the action will not "reduce the likelihood of the survival or recovery" of the state listed species. ORS 496.182(2). The flows requested by ODFW are in the amounts ODFW has determined are necessary for the survival of these fish. To comply with the intention and mandates of the State Endangered Species Act, the Department should issue the instream water rights at the amounts requested.

Under the federal Act, there is a prohibition against "taking" of endangered species. 16 USCA § 1538(a)(1)(B). Issuing the instream water rights at the amounts requested by ODFW is obviously within the Department's authority. To do such is consistent with the intent and mandates of the Federal ESA. To the contrary, to deny or lower the instream water rights could result in a taking of the endangered suckers, for it would deny these fish the flows determined by ODFW as necessary for survival.

Again, if the Department modifies the PFOs to either deny the applications or propose flows lower than those requested by ODFW, the survival of all of these species will be jeopardized and WaterWatch's and Oregon Trout's interests, including ensuring the viability of these fish, will be impaired.

2. If the PFOs are modified, WaterWatch's and Oregon Trout's interests will be harmed because we will have been precluded from fully evaluating the actions of the Department. Thus, WaterWatch and Oregon Trout, by filing this standing statement, reserve the right to raise the following concerns in any contested case hearing or judicial review if any PFO is modified:

**a. The condition of use proposed in the PFO exempting human consumption and livestock use will impair WaterWatch's and Oregon Trout's interest in ensuring that the purposes of the instream water rights are fulfilled.**

The PFOs contain a condition that subordinates the instream water right to human consumption and livestock uses in perpetuity. Individual exceptions will directly lessen the amount of water available instream to satisfy the purposes of the instream water right. Since the flows represented by the instream water right are those ODFW has determined are needed for fish, even the slightest diminishment of these flows will have adverse effects on the fishery resource. Moreover, the cumulative effects that will result from this exception could eventually lead to the total negation of the instream water right.

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

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

ORS 536.310(12)(emphasis added).

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

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

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

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

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

water right act. Thus, this type of conditioning is not allowed under the Instream Water Right Act.

Moreover, this proposed condition is contrary to the public interest in protecting the resource. The Commission's statewide policies recognize the importance of maintaining streamflows and place high priority on protecting streamflows. OAR 690-410-030(1). This policy directs the state to take action to restore flows in critical areas such as this system. Id. The public uses of the Illinois river system have been impaired. Adoption of this instream water rights without conditions is just one small step towards restoring this system.

Furthermore, this open-ended exception cannot be attached given the mandates of the state Scenic Waterway Act and the Federal Wild and Scenic Rivers Act. Both the state and federal scenic designations carry with them reserved rights that must be protected against impairment or substantial interference. *See Section I.c. above.* No diminishment of these flows are allowed from surface rights unless the new uses meet a very narrow exception under the state Scenic Waterway Act.<sup>3</sup> The federal Wild and Scenic Rivers Act mandates even greater protections by defining impairment as any reduction in streamflows beyond the flows needed to preserve the "free-flowing condition" of designated rivers for their "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values." 16 USC § 1271.

The open-ended exception for human consumption and livestock proposed by the Department would result in impairment of the state and federal scenic designations and the reserved rights that flow from these designations and therefore is contrary to the mandates of these acts and cannot be attached to this permit. The state Scenic Waterway Act does not allow for diversions of water in or above the designated reach unless there is a finding of necessity and the use meets the extremely limited exceptions in the Act. The state Scenic Waterway Act allows for exceptions for human consumption and livestock only "upon a finding of necessity" for and only if a number of findings are made by the Department, including but not limited to, findings that the applicant cannot reasonably obtain water from any other source; that, if for human consumption, denial of the water right would result in loss of reasonable expectations for use of property; and, if for livestock use, the applicant has excluded livestock from the stream and its adjacent riparian zone. ORS 390.835(5). Moreover, exceptions cannot be in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, except in rare instances. ORS 390.835(7). Thus, if the Department were to allow an exception for human consumption and livestock use, then this exception must abide by the mandates of the Scenic Waterway Act.<sup>4</sup>

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<sup>3</sup> The exception allowed under the Scenic Waterway Act is only allowed upon a finding that such diversion is necessary to uses designated in ORS 536.310(12) and in a manner consistent with the policies set forth in the Instream Water Right Act. Both aspects of this must be met. ORS 390.835(1). Thus, even though human consumption and livestock are given preference over all other uses in ORS 536.310, these uses cannot be allowed unless the free flowing character of the scenic waterway is maintained in quantities necessary for recreation, fish and wildlife uses.

<sup>4</sup> In cases of instream water rights not in or above scenic waterways, the Department should, at the very least, put a cap on the amount that can be exempted for human consumption or livestock for any single stream. Without such a cap, instream water rights will be undercut bit

b. The flows proposed in the PFO that are less than those requested by ODFW will impair WaterWatch's and Oregon Trout's interest in ensuring that flows for optimizing habitat are protected.

For some of these applications, ODFW's requested flows exceed the Department's estimated average natural flow for some months. For these months, the Department has proposed to limit the flows requested by ODFW to the estimated average natural flow.

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

The flows requested by ODFW are necessary for the requested beneficial use of water - fish life. These flows are needed for migration, spawning, egg incubation, fry emergence and juvenile rearing and for fish passage and habitat maintenance. Given that ODFW's flow requests are to provide for the various lifecycles of fish which are already on the brink of extinction, periodic flows are necessary for fulfillment of the purpose of this instream water right. There should be no reduction in the requested flows. The Department's rules specifically state "an example of such an exception would be high flow events that allow for fish passage or migration over obstacles." OAR 690-77-015(4). This is exactly the type of event ODFW's instream water right application includes. In sum, the agency has the information to find that the higher flows are significant. The instream water rights should be granted at the amounts requested by ODFW.

For the months that ODFW's flow requests were higher than the estimated average natural flow, the Department limited the instream water right because "water is not available for the proposed use." This limitation, and the reasoning behind it, is a clear indication that this system cannot sustain any further water withdrawals. Given this, no further appropriations can take place in this system during the months where the instream water right is limited. The Department should ensure that this basin is closed to any further allocation in order to ensure against any further overallocation of the resource. The Department should either institute closure of the basin classification or withdrawal of the resource from further appropriation.

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by bit until there are insufficient flows left to fulfill the senior instream water rights. Instream water rights are legally protected rights. To allow such a diminution of such a vested water right at some point in the future is inconsistent with the underlying premise of the prior appropriation doctrine--first in time, first in right.

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

Moreover, in cases where streamflows are not being met, the Department should take steps to ensure metering and reporting of all water uses through designations of serious water management areas.

**c. The measurement and reporting condition proposed in the PFO will impair the WaterWatch's and Oregon Trout's interest in ensuring that the instream water right is fulfilled throughout the reach.**

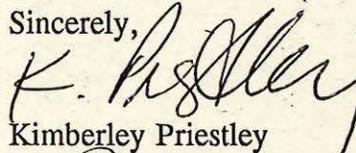
The Department has proposed a condition of use mandating measurement at the lower end of the stream reach to protect necessary flows throughout the reach. To ensure that flows are being protected throughout the reach, measurement must take place at both the upper and lower ends of the stream reach.

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

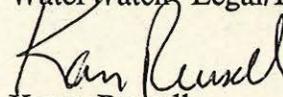
Conclusion

The proposed instream water rights will protect flows needed for fish life, including endangered suckers. Adoption of these and other instream flows is critical to the health of Oregon's watersheds and must be a high priority for Oregon if the state is to develop solutions to the resource crises that threatens to destroy the livability of Oregon. Instream water rights not only help to achieve a more equitable allocation of water between instream and out of stream uses, they also establish management objectives for Oregon's rivers.

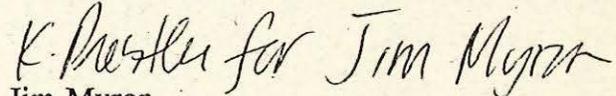
Sincerely,



Kimberley Priestley  
WaterWatch--Legal/Policy Analyst



Karen Russell  
WaterWatch--Assistant Director



Jim Myron  
Oregon Trout--Conservation Director

RECEIVED  
OCT 11 1996  
WATER RESOURCES DEPT.  
SALEM, OREGON

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **7292**

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

INVOICE # \_\_\_\_\_

**70812, 70829**

RECEIVED FROM: Fort Klamath Critical  
BY: Habitat Landowners

APPLICATION	<u>IS 70813</u>
PERMIT	
TRANSFER	

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

TOTAL REC'D \$ 450<sup>00</sup>

**0417 WRD MISC CASH ACCT**

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

**RECEIVED  
OVER THE COUNTER**

**REDUCTION OF EXPENSE**

CASH ACCT. \$ \_\_\_\_\_  
VOUCHER # \_\_\_\_\_

**0427 WRD OPERATING ACCT**

0407	MISCELLANEOUS	<u>IS 70831, 70807, 70798</u>	\$
0410	COPY & TAPE FEES	<u>70810, 70830, 70819</u>	\$
0408	RESEARCH FEES		\$
0408	MISC REVENUE: (IDENTIFY)		\$
TC165	DEPOSIT LIAB. (IDENTIFY)		\$

**WATER RIGHTS:**

0201	SURFACE WATER	EXAM FEE	0202	RECORD FEE
0203	GROUND WATER	\$	0204	\$
0205	TRANSFER	\$	0206	\$

**WELL CONSTRUCTION**

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

0234 OTHER (IDENTIFY) PCA 77235 Request for Standing

\$ 450<sup>00</sup>

**0437 WELL CONST. START FEE**

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

**0539 LOTTERY PROCEEDS**

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

**0467 HYDRO ACTIVITY**

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

RECEIPT # **7292**

DATED: 10-8-96

BY: J. Lopez

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

# REQUEST FOR STANDING

RECEIVED

OCT 8 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

Application Number IS 70829

Applicant's Name ODFW

Name, address and telephone number of the party requesting standing:

Fort Klamath Critical Habitat Landowners  
Name

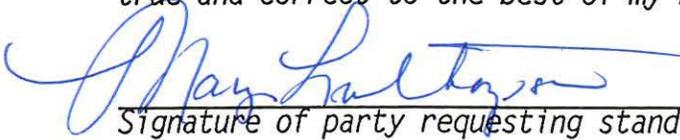
P.O. Box 503  
Address

Ft Klamath, OR 97626  
City State Zip Code

(541) 381-2235  
Telephone Number

I have included and submit with this Request, all reasonably ascertainable issues and all reasonably available arguments supporting my position.

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

  
Signature of party requesting standing

10/8/96  
Date

### Instructions:

Any person may request standing for purposes of later participation in any contested case proceeding on the proposed final order. The fee required at the time of submitting this request is \$50.00. You will be notified if a contested case hearing is scheduled. In order to be a party in the contested case proceeding, an additional fee of \$150.00 would need to be submitted at that time. This Request must be submitted to the Water Resources Department, 158 12th Street NE, Salem, Oregon 97310, prior to the close of the period for receiving protests. Failure to raise a reasonably ascertainable issue in this Request or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to any issue precludes judicial review based on that issue.

Water Resources Department Staff Use only	
Fees	Receipt Number
Entered into data base	Staff Reviewer
Received within filing period	Date

25

FORT KLAMATH CRITICAL HABITAT LANDOWNERS  
P.O. BOX 503  
FORT KLAMATH, OREGON 97626

October 8, 1996

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

Dear Sirs:

We, the undersigned Fort Klamath Critical Habitat Landowners (FKCHL) hereby 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 of the following instream water right applications:

<u>Stream</u>	<u>Application Number</u>
Annie Creek	IS 70831
Crooked Creek	IS 70807
Cherry Creek	IS 70798
Fort Creek	IS 70810
Sevenmile Creek	IS 70830
Sun Creek	IS 70819
Upper Klamath Lake	IS 70813
Klamath River	IS 70812
Wood River	IS 70829

In accordance with the requirements of OAR 690-310-160(3)(a-e) we submit the following:

- (a) Mary Lou Thompson  
Fort Klamath Critical Habitat Landowners  
P.O. Box 503  
Fort Klamath, OR 97626  
(541)381-2235
- (b) Fort Klamath Critical Habitat Landowners  
P.O. Box 503  
Fort Klamath, OR 97626  
(541)381-2235
- (c) The Fort Klamath Critical Habitat Landowners supports the proposed final order as issued.
- (d) As landowners in the areas where instream water rights have been requested, we would be harmed if the conditions or parameters set out in the proposed final orders are modified. It is our position that there is not currently any

excess water for appropriation. Therefore, any increases in the amount of appropriation could be detrimental. In addition, OAR 690-77-015 (2) establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses. There is not a clear plan as to how this objective is to be met, and each stream will be different. Any modifications to the proposed final orders could be detrimental to our interests.

(e) Enclosed is a \$50 fee for each instream water right application listed on this request for standing in accordance with ORS 536.050 (1)(p).

Thank you for your attention to our request.

<u>Tulane Farms</u> 32200 Modoc Pt Rd. Chiloquin OR	<u>Harris &amp; Wood Ranches</u> Ft. Klamath, OR R. Schubert
<u>McAuliffe Ranches</u> Box 555 Ft. Klamath J.P. McAuliffe	<u>Margie Kizer</u>
<u>Joe McAuliffe Co</u> by Andrew & Susan McAuliffe Andrew & Susan McAuliffe	<u>M.J. Laird</u> Wm. L. Brader 5305 Walton Dr. Klamath Falls, OR 97603
<u>Jeffrey H. Norton</u> P.O. Box 571 Ft. Klamath Mathis Ranches	<u>Clay Charley</u> 553 Glass Ln. White City OR 97502 Charley Livestock Co. Paul & Beverly Lipford 27431 Kelly Pt. Rd. Klamath Falls, OR 97601
<u>Double K Ranch</u> Klamath & Jettie MD 1696 COVE POINT RD 97601 KLAMATH FALLS OR	<u>Edna L. Kerns</u> PO Box 482 Ft. Klamath Or 97626
<u>Lee &amp; Edwin Tomzaker</u> P.O. Box 528 Ft. Klamath, OR	
<u>Dorothy Nicholson</u> Box 458 Fort Klamath, Or. 97626	

Roger Nielson  
Box 458  
Fort Klamath, OR

Anita Nicholson  
PO Box 465  
Fort Klamath Or 97626

Elaine Nicholson  
Box 455  
Ft. Klamath Ore

Jack Owens Ranch  
John D Owens  
D.B. 557  
Fort Klamath Or.

Juliana Farns  
109 Mary St Monaca, Office Bldg.  
32200 Modoc St Kel  
Chiloquin OR 97624

BAIK F. DENNY RICKARDS  
Neil & Jacquie Rickards  
27431 Rocky Pt. Rd.  
Klamath Falls, 97601

Dorothy Nicholson  
P.O. 458  
Fort Klamath, Or. 97626

Elaine H. Kerns  
PO Box 482  
Ft Klamath Or 97626

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

RECEIPT # **7499**

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

INVOICE # \_\_\_\_\_

RECEIVED FROM: Richard Fardo  
BY: \_\_\_\_\_

APPLICATION	
PERMIT	
TRANSFER	

CASH:  CHECK: #  96-7030 OTHER: (IDENTIFY)

TOTAL REC'D \$ 400.00

**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		
0410 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY)		\$
TC165 DEPOSIT LIAB. (IDENTIFY)		\$

*IS 70829  
IS 70830*

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

0223 OTHER (IDENTIFY) *Protest PCA 72235 \$400.00*

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

RECEIPT # **7499**

DATED: 10-11-96 BY: Ric

TEL (541)882-4436

**RICHARD FAIRCLO**  
ATTORNEY AT LAW  
280 MAIN STREET  
KLAMATH FALLS, OR 97601

FAX (541) 882-4437

October 10, 1996

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

Re: Protestant Meadows Drainage District

Please find enclosed check in the amount of \$400 for two protests to proposed orders Nos: IS 70829; IS 70830. You will note that we are asking for a contested case hearing. Thank you for your consideration.

Very truly yours,



Richard Fairclo

RF:la  
Enclosures

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OCT 11 1996

WATER RESOURCES DEPT.  
SALEM, OREGON



BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON  
WATER RIGHTS DIVISION

In The Matter Of Surface Water Application )  
IS 70829 in the Name of Oregon Department ) PROTEST TO  
of Fish and Wildlife for Water Use, ) PROPOSED FINAL  
Klamath County ) ORDER

Protestant Meadows Drainage District, a drainage district formed according to the laws of the state of Oregon, hereby in accordance with ORS 537.153 (6) and OAR 690-77-043, submits the following Protest to Proposed Final Order for Application IS 70829.

I. INTRODUCTION

Protestant's address for purposes of this Protest is P.O. Box 426, Fort Klamath, Oregon, 97626; phone number for purposes of this application is (541) 381-2211 or (541) 882-4436. Protestant's landowners are provided water for irrigation from the Wood River, pursuant to state law.

Protestant asserts that the Proposed Final Order by the Water Resources Department ("WRD" or "Department") is defective and in error and that there are elements of the water right as approved that will impair or be detrimental to the public interest, based on the facts and issues set forth below.

II. PROPOSED ORDER DETRIMENTAL TO PROTESTANTS

If flow rates of the amounts proposed were required, then the ability of the Protestant to receive and divert water to support irrigation could be interfered with.

III. PROPOSED ORDER IS IN CONFLICT WITH THE KLAMATH RIVER COMPACT

The Proposed Order fails to recognize the provisions of the Klamath River Basin Compact (Compact). ORS 542.620. The Compact was enacted by the states of Oregon and California and approved by the United States. Compact terms apply directly to the waters in question, as Compact jurisdiction includes the waters in the Proposed Order. See official map of the Upper Klamath River Basin approved on September 6, 1956, by the commissions negotiating the Compact and filed with the Secretaries of the states of Oregon and California and the General Services Administration of the United States, and incorporated into the Compact. ORS 542.620, Art. II. B. The terms of the Compact include priorities for the appropriation of water which the Proposed Order fails to enumerate or recognize. ORS 542.620, Art. III. B. and C. Compact priorities place domestic and irrigation uses ahead of the proposed use of fish and wildlife. Any final order for the proposed use must recognize that such proposed right is inferior to present and future rights for domestic and irrigation purposes, as well as other provisions of the Compact.

Protest P. 1.

OCT 1 1996

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WATER RESOURCES DEPT.  
SALEM, OREGON

#### IV. PROPOSED FLOW RATES ARE IN EXCESS OF MINIMUM QUANTITY NECESSARY

The instream water right flow rates proposed are excessive and unnecessary for the use applied for. The flow rates proposed are higher than the minimum quantity necessary for the public use of the instream water right, and are, therefore, contrary to the definition of "In-stream flow" of ORS 537.332(2) and OAR 690-77-010 (14). Water use of the instream right, if approved, would adversely affect the Protestant and other potential water users from the stream by appropriating excess quantities of water and preventing any other new appropriations of water.

#### V. INADEQUATE TECHNICAL DATA OR INFORMATION SUBMITTED BY ODFW

The above referred to application, as submitted by the Oregon Department of Fish & Wildlife to the Water Resources Department, failed to include sufficient technical data or information to support the flow rates requested by said agency, as 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). The only information submitted in support of the application is a flow rate conclusion included in an appendix in the Basin Investigation or Environmental Investigation for the river basin; no "technical data" nor any of the factual data used to arrive at the flow rate conclusions was submitted with the application.

No analysis of supporting data, or the lack thereof, appears in the WRD file for this application. The Proposed Final Order is defective in that the WRD did not evaluate whether the level of instream flow requested was "based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (OAR 690-77-020 (3)).

Apparently the flow levels applied for are based on an appendix in the Basin Investigation or Environmental Investigation for recommended flows. It is impossible to tell, however, what factual data said recommendation was based on. No data has been submitted to support the flows requested and the application should therefore be rejected.

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation and Environmental Investigation has apparently been lost or misplaced. No other supporting data or "technical data" was submitted by the applicant as required by OAR 690-77-020 (4)(g). Since no technical data was included with ODFW's application, the application should be returned to the applicant for curing of defects or resubmittal.

## VI. WRD FAILED TO ANALYZE FLOW NEEDS

The flow levels approved by the Proposed Final Order are not based on any analysis of the need for the flows requested. ORS 537.332(2) sets out the definition of "in-stream flow" which the Department is supposed to follow when determining instream water rights: the "minimum quantity of water necessary to support the public use requested by an agency." The Proposed Final Order does not address the minimum quantity of water or flow levels necessary to support the uses applied for. A review of the WRD file shows that no such analysis has occurred. The only review undertaken by the WRD was a check to see if the requested flows are less than the average estimate natural flow ("EANF"; OAR 690-77-015 (4)).

## VII. OREGON METHOD IS INHERENTLY FLAWED

The methodology used for this application, the "Oregon Method", is inherently flawed in that it is based on a methodology that has been superseded and is not reliable, and is based on outdated or insufficient information (testimony is cited by Al Mirati of the Oregon Department of Fish and Wildlife regarding the "Oregon Method", to the Oregon Water Resources Commission, on December 6, 1990). The determinations made from the Oregon Method are not reliable and should therefore be rejected by the WRD or the Commission as the final authority in determining the level of instream flows necessary to protect the public use (ORS 537.343 (2)).

## VIII. OREGON METHOD IS INHERENTLY FLAWED - WRD SHOULD REJECT APPLICATION

One of the requirements of the Department's application review is contained in OAR 690-77-020 (3): "...all applications for instream water rights shall be based on the methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications." (See also part V. above ). This requirement does not mean that the Department can simply accept ODFW's assertion that the "Oregon Method" is the basis for the requested flows. The Department must actively review the application to see if the Oregon Method and ODFW's instream rules are being followed. Where applicable, ODFW must also submit supporting data to show that the standards and criteria contained in their rules have been followed.

The actual measurements used by ODFW to set requested flow levels are totally inadequate to validate those amounts; these measurements were made by ODFW's predecessor, the Oregon State Game Commission, as shown in the Appendices to the Basin Investigations and the Environmental Investigations. Actual measurements of streamflow were not made at times when key life stages occurred and, in fact, the severe limitations of the data available show that they are inadequate to validate the requested flows: "Actual measurement of streamflow made at or near recommended instream flow requirements and made at times when

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OCT 1996

key life stages occur are important to validate the methodology used, and to validate that the recommended instream flow requirements provide desirable habitat conditions." Instream Flow Methodologies. Louis C. Fredd, Oregon Department of Fish and Wildlife (1989), page 12.

IX. 'EANF' CALCULATIONS ARE DEFECTIVE OR INCOMPLETE

There are no calculations for information in the WRD file to show what "ratios" were used or how adjustments were made to any gauged flows to determine the 50% exceedance flows, and there is also no information in the technical review to show the type of statistics used (see "Methods for Determining Streamflows and Water Availability in Oregon", Robison, P22 and 23) The EANF calculations are defective resulting in high EANF levels and thus allowing excessive recommended flows by the WRD.

CONCLUSION

This protest is filed in accordance with OAR 690-77-043. The issues raised should be considered as part of a contested case hearing. The WRD's Proposed Final Order is inadequate and defective and has failed to follow applicable rules. A thorough review of the Application is necessary to determine the minimum quantity of water necessary to support the public uses applied for.

The Proposed Final Order fails to consider and note the superiority of priorities as enumerated in the Klamath River Compact, and other provisions contained therein.

For the reasons set forth above, the Protestant asserts that the application is defective and should be returned to the applicants. The flow levels requested are excessive and are not necessary to support the public uses proposed. Flow levels set at the rates proposed will interfere with future maximum economic development of the waters of the State of Oregon. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved. (ORS 537.170 (8)(e)). If approved, an exception for stockwater use should be added as a condition of the right.

Based on the points discussed above, the Proposed Final Order should deny the application for a permit or modify the Proposed Final Order accordingly

Respectfully submitted this 10<sup>th</sup> day of October 1996.

MEADOWS DRAINAGE DISTRICT, by:

Rio Ph, attorney

Protest P. 4.

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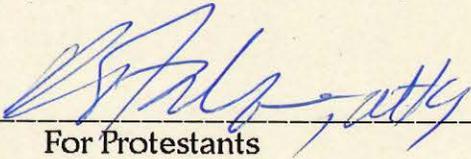
OCT 1996

WATER RESOURCES DEPT.  
SALEM, OREGON

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> 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 Klamath Falls, Oregon addressed as set forth below:

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

By:   
For Protestants

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

✓ CC: FILE # IS 70829

✓ WATERMASTER # DEL SPARKS

✓ REGIONAL MANAGER: ~~BOB MAIN~~

✓ ODF&W - County: Klamath

✓ 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

January 23, 1996

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

Reference: Instream water rights in the Klamath Basin,  
Files 70798, 70801 - 70807, 70810 - 70812, 70816,  
70818, 70821 - 70829

Dear Oregon Department of Fish and Wildlife:

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

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under ORS 542.620, the Klamath River Basin Compact;

1. Application 70798

Priority date: 10/26/90

CHERRY CR tributary to FOURMILE CR

CHERRY CREEK FROM THE HEADWATERS AT RIVER MILE 0.0  
(TOWNSHIP 34S, RANGE 5E WM); TO THE MOUTH AT RIVER  
MILE 0.0 (NWSW, SECTION 13, TOWNSHIP 34S, RANGE 6E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.0	10.0	15.0	15.0	15.0	10.0	5.0	3.0	3.0	15.0	10.0	10.0



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

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
27.9	34.2	28.9	33.4	49.5	28.2	12.5	10.0	9.3	10.1	13.9	21.9

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.0	10.0	15.0	15.0	15.0	10.0	5.0	3.0	3.0	10.1	10.0	10.0

**2. Application 70801**

**Priority date: 10/26/90**

S FK SPRAGUE R tributary to SPRAGUE R

SOUTH FORK SPRAGUE RIVER FROM WHITWORTH CREEK AT RIVER MILE 21.6 (NWSW, SECTION 10, TOWNSHIP 37S, RANGE 16E WM); TO ISH TISH CREEK AT RIVER MILE 12.2 (NESW, SECTION 9, TOWNSHIP 37S, RANGE 15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
45.0	45.0	45.0	45.0	45.0	30.0	15.0	15.0	15.0	15.0	45.0	45.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	47.5	67.8	103.0	125.0	69.8	33.4	23.9	26.7	31.0	32.3	34.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	45.05	45.0	45.0	45.0	30.0	15.0	15.0	15.0	15.0	32.3	34.7

**3. Application 70802**

**Priority date: 10/26/90**

S FK SPRAGUE R tributary to SPRAGUE R

SOUTH FORK SPRAGUE RIVER FROM ISH TISH CREEK AT RIVER MILE 12.2 (NESW, SECTION 9, TOWNSHIP 37S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103.0	136.0	194.0	296.0	357.0	200.0	95.5	68.3	76.3	88.6	92.3	99.3

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

4. Application 70803

Priority date: 10/26/90

SPENCER CR tributary to KLAMATH R

SPENCER CREEK FROM TUNNEL CREEK AT RIVER MILE 12.0 (NWSW, SECTION 18, TOWNSHIP 38S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 29, TOWNSHIP 39S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
16.0	16.0	20.0	20.0	20.0	20.0	20.0	12.0	12.0	12.0	12.0	16.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
23.8	30.5	43.4	60.5	57.3	35.5	20.6	15.8	17.2	19.9	21.0	23.4

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
16.0	16.0	20.0	20.0	20.0	20.0	20.0	12.0	12.0	12.0	12.0	16.0

5. Application 70804

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM SOUTH FORK SPRAGUE RIVER AT RIVER MILE 84.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E WM); TO THE SYCAN RIVER AT RIVER MILE 70.5 (SWSW SECTION 10, TOWNSHIP 36S, RANGE 12E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100.0	100.0	100.0	100.0	100.0	80.0	60.0	60.0	60.0	60.0	100.0	100.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
201.0	266.0	375.0	564.0	675.0	382.0	184.0	131.0	147.0	172.0	179.0	194.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100.0	100.0	100.0	100.0	100.0	80.0	60.0	60.0	60.0	60.0	100.0	100.0

## 6. Application 70805

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM SYCAN RIVER AT RIVER MILE 70.5 (SWSW, SECTION 10, TOWNSHIP 36S, RANGE 12E WM); TO ROAD CROSSING AT LONE PINE AT RIVER MILE 32.9 (NWSW, SECTION 11, TOWNSHIP 35S, RANGE 9E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
120.0	120.0	120.0	120.0	120.0	100.0	80.0	80.0	80.0	80.0	120.0	120.0

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
316.0	437.0	672.0	1040.0	1030.0	569.0	275.0	194.0	215.0	258.0	278.0	307.0

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
120.0	120.0	120.0	120.0	120.0	100.0	80.0	80.0	80.0	80.0	120.0	120.0

## 7. Application 70806

Priority date: 10/26/90

SPRAGUE R tributary to WILLIAMSON R

SPRAGUE RIVER FROM ROAD CROSSING AT LONE PINE AT RIVER MILE 32.9 (NWSW, SECTION 11, TOWNSHIP 35S, RANGE 9E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 3 TOWNSHIP 35S, RANGE 7E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
150.0	150.0	150.0	150.0	150.0	120.0	100.0	100.0	100.0	100.0	150.0	150.0

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
417.0	547.0	798.0	1160.0	1120.0	660.0	347.0	260.0	287.0	343.0	366.0	411.0

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
150.0	150.0	150.0	150.0	150.0	120.0	100.0	100.0	100.0	100.0	150.0	150.0

## 8. Application 70807

Priority date: 10/26/90

CROOKED CR tributary to WOOD R

CROOKED CREEK FROM HATCHERY SPRINGS (SESW, SECTION 1,  
TOWNSHIP 34S, RANGE 7.50E WM); TO THE MOUTH AT RIVER  
MILE 0.0 (SECTION 13, TOWNSHIP 34S, RANGE 7.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15.0	15.0	25.0	25.0	15.0	15.0	15.0	15.0	15.0	25.0	15.0	15.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
84.7	85.0	93.0	93.2	83.1	82.5	77.2	79.5	80.1	92.4	90.4	89.6

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15.0	15.0	25.0	25.0	15.0	15.0	15.0	15.0	15.0	25.0	15.0	15.0

## 9. Application 70810

Priority date: 10/26/90

FORT CR tributary to WOOD R

FORT CREEK FROM THE HEADWATERS (SPRINGS) AT RIVER MILE  
3.5 (NWNE, SECTION 23, TOWNSHIP 33S, RANGE 7.50E WM); TO  
THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 34,  
TOWNSHIP 33S, RANGE 7.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	20.0	30.0	30.0	30.0	20.0	20.0	20.0	20.0	30.0	20.0	20.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
83.2	82.2	82.4	84.3	85.0	85.6	85.2	86.1	86.4	85.2	83.9	82.9

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	20.0	30.0	30.0	30.0	20.0	20.0	20.0	20.0	30.0	20.0	20.0



## 12. Application 70816

Priority date: 10/26/90

N FK SPRAGUE R tributary to SPRAGUE R

NORTH FORK SPRAGUE RIVER FROM SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
82.1	108.0	154.0	236.0	284.0	159.0	76.1	54.4	60.8	70.6	73.5	79.1

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

## 13. Application 70818

Priority date: 10/26/90

N FK SPRAGUE R tributary to SPRAGUE R

NORTH FORK SPRAGUE RIVER FROM SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 24, TOWNSHIP 36S, RANGE 13E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
308.0	350.0	308.0	317.0	298.0	270.0	277.0	296.0	300.0	315.0	342.0	329.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	20.0	15.0	15.0	50.0	50.0	50.0

## 14. Application 70821

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM PARADISE CREEK AT RIVER MILE 58.2 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM); TO AN UNNAMED TRIBUTARY AT RIVER MILE 36.8 (SWNE, SECTION 10, TOWNSHIP 33S, RANGE 13E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	15.0	15.0	20.0	20.0	20.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0
2nd½	15.0	15.0	20.0	20.0	10.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0

b. The estimated average natural flow:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	41.4	68.4	135.0	239.0	202.0	85.5	38.6	27.9	27.6	30.5	40.2	44.1

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	15.0	15.0	20.0	20.0	20.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0
2nd½	15.0	15.0	20.0	20.0	10.0	15.0	10.0	5.0	5.0	20.0	15.0	15.0

## 15. Application 70822

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM AN UNNAMED TRIBUTARY AT RIVER MILE 36.8 (SWNE, SECTION 10, TOWNSHIP 33S, RANGE 13E WM); TO TORRENT SPRING CREEK AT RIVER MILE 23.0 (SENW, SECTION 33, TOWNSHIP 33S, RANGE 12E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	35.0	35.0	35.0	35.0	35.0	30.0	20.0	15.0	15.0	15.0	35.0	35.0

b. The estimated average natural flow:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	43.2	74.2	164.0	326.0	252.0	99.3	43.3	30.7	29.7	32.4	43.2	46.5

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	35.0	35.0	35.0	35.0	35.0	30.0	20.0	15.0	15.0	15.0	35.0	35.0

16. Application 70823

Priority date: 10/26/90

SYCAN R tributary to SPRAGUE R

SYCAN RIVER FROM TORRENT SPRING CREEK AT RIVER MILE 23.0 (SENW, SECTION 33, TOWNSHIP 33S, RANGE 12E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWSW, SECTION 10, TOWNSHIP 36S, RANGE 12E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
50.0	50.0	50.0	50.0	50.0	40.0	30.0	20.0	20.0	20.0	50.0	50.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
45.2	79.1	185.0	386.0	287.0	110.0	47.1	33.0	31.6	34.3	45.8	48.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
45.2	50.0	50.0	50.0	50.0	40.0	30.0	20.0	20.0	20.0	45.8	48.7

17. Application 70824

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM HAED OR RIVER SPRING AT RIVER MILE 85.5 (SE1/4, SECTION 4, TOWNSHIP 33S, RANGE 11E WM); TO ROCKY FORD AT RIVER MILE 69.5 (SWSW, SECTION 7, TOWNSHIP 31S, RANGE 11E WM)

a. The amount of water requested for instream use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0
2nd½	40.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
61.0	64.3	70.1	80.5	78.7	73.2	58.8	48.6	54.7	59.8	61.0	62.8

c. Allowable water use

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	30.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0
2nd½	40.0	40.0	50.0	50.0	50.0	40.0	30.0	30.0	30.0	50.0	30.0	30.0

18. Application 70825

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM USGS GAGE 11493500 AT RIVER MILE 27.0 (NWSW, SECTION 1, TOWNSHIP 33S, RANGE 7E WM); TO SPRING CREEK AT RIVER MILE 16.5 (SENE, SECTION 9, TOWNSHIP 34S, RANGE 7E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60.0	60.0	60.0	60.0	60.0	40.0	25.0	25.0	20.0	20.0	60.0	60.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
228.0	339.0	468.0	501.0	332.0	216.0	100.0	55.6	53.7	42.3	128.0	244.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60.0	60.0	60.0	60.0	60.0	40.0	25.0	25.0	20.0	20.0	60.0	60.0

19. Application 70826

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM SPRAGUE RIVER AT RIVER MILE 11.0 (NWNW, SECTION 3, TOWNSHIP 35S, RANGE 7E WM); TO THE MOUTH AT RIVER MILE 0.0 (NESE, SECTION 11, TOWNSHIP 36S, RANGE 7.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	300.0	300.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
963.0	1250.0	1590.0	1990.0	1760.0	1160.0	731.0	616.0	646.0	708.0	844.0	993.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	300.0	300.0

## 20. Application 70827

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM SPRING CREEK AT RIVER MILE 16.5  
(SENE, SECTION 9, TOWNSHIP 34S, RANGE 7E WM); TO SPRAGUE  
RIVER AT RIVER MILE 11.0 (NWNW, SECTION 3, TOWNSHIP 35S,  
RANGE 7E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	200.0	200.0	300.0	300.0

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
540.0	693.0	782.0	823.0	633.0	490.0	380.0	353.0	356.0	360.0	473.0	576.0

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
300.0	300.0	300.0	250.0	200.0	200.0	200.0	200.0	200.0	200.0	300.0	300.0

## 21. Application 70828

Priority date: 10/26/90

WILLIAMSON R tributary to UPPER KLAMATH L

WILLIAMSON RIVER FROM ROCKY FORD AT RIVER MILE 69.5  
(SWSW, SECTION 7, TOWNSHIP 31S, RANGE 11E WM); TO USGS  
GAGE 11493500 AT RIVER MILE 27.0 (NWSW, SECTION 1,  
TOWNSHIP 33S, RANGE 7E WM)

## a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	30.0	40.0	40.0	40.0	30.0	20.0	20.0	15.0	15.0	15.0	15.0

## b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
210.0	319.0	447.0	480.0	313.0	198.0	85.0	41.8	39.0	25.6	112.0	226.0

## c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
20.0	30.0	40.0	40.0	40.0	30.0	20.0	20.0	15.0	15.0	15.0	15.0

22. Application 70829

Priority date: 10/26/90

WOOD R tributary to UPPER KLAMATH L

WOOD RIVER FROM WOOD RIVER SPRING AT RIVER MILE 17.0  
(NE1/4, SECTION 3, TOWNSHIP 33S, RANGE 7.50E WM); TO  
THE MOUTH AT RIVER MILE 0.0 (NE1/4, SECTION 25, TOWNSHIP  
34S, RANGE 7.50E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
347.0	335.0	336.0	376.0	439.0	471.0	442.0	398.0	383.0	390.0	365.0	362.0

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	80.0	80.0

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

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

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **February 6, 1996**. For your convenience you may use the enclosed "STOP PROCESSING" form.

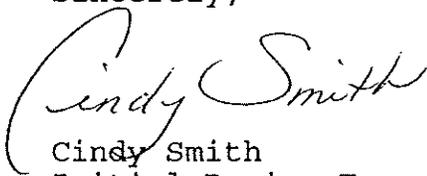
To Proceed With Your Application:

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

If you have any questions:

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

Sincerely,



Cindy Smith  
Initial Review Team

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

# WaterWatch

O F O R E G O N

December 3, 1990

Mike Mattick  
Water Resources Department  
3850 Portland Road NE  
Salem, Oregon 97310

Re: ODFW application for Instream Water Right, Klamath, Wood  
River, Permit number 70829.

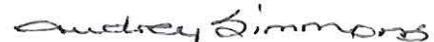
Dear Mr. Mattick,

We write in support of the Oregon Department of Fish and Wildlife's request for the above referenced Instream Water Right. Establishment of an Instream Water Right for maintenance of fish life in this river is needed to ensure protection of this public use.

Please notify us of any protest, petition, or request for review received on this water right application. If we do not hear from the Department prior to action on this permit we will assume nothing has been received by the Department.

Thank you for consideration of this letter. Call if you have any questions.

Sincerely,



Audrey Simmons  
President

IWR Application # 70829 Certificate # \_\_\_\_\_

STATE OF OREGON

WATER RESOURCES DEPARTMENT

Application for Instream Water Right  
by a State Agency

RECEIVED

OCT 26 1990

WATER RESOURCES DEPARTMENT  
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 Wood River, a tributary of Agency Lake.
2. The public uses this instream water right is based upon include providing required stream flows for rainbow and brown trout for migration, spawning, egg incubation, fry emergence, and juvenile and adult rearing.
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 and adult rearing.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	80	80	80	80	60	60	60	60	60	80	80

4. The reach of the stream identified for an instream water right is from (upstream end) Wood River Spring, river mile 17, within the NE quarter of Section 3, Township 33S, Range 7½E W.M., in Klamath County...

Downstream to the mouth, river mile 0, within the NE quarter of Section 25, Township 34S, Range 7½E W.M., in Klamath 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: October 4, 1990
ODFW (Fish, Wldlf, and Habitat)	Date: October 4, 1990
Parks and Recreation Division	Date: October 4, 1990

IWR Application # 70829 Certificate # \_\_\_\_\_

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

Use USGS gage #11504000. 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 and implementing a monitoring program.

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

10. Remarks: The requested flows are the minimum required to maintain fish populations at their current levels. No provision is made at these flows for population restoration or enhancement.

An important holding, spawning, and rearing area for wild Klamath rainbow and brown trout.

**THIS APPLICATION MUST BE ACCOMPANIED BY A BASIN MAP WITH THE APPLICABLE LAKE OR STREAM REACH IDENTIFIED.**

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: 10/23/90

Signed: Nancy M. MacHugh

Oregon Department of Fish and  
Wildlife

Assistant Director  
Habitat Conservation Div.

File: WOOD1.APP

IWR Application # 70829 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\_\_\_\_.

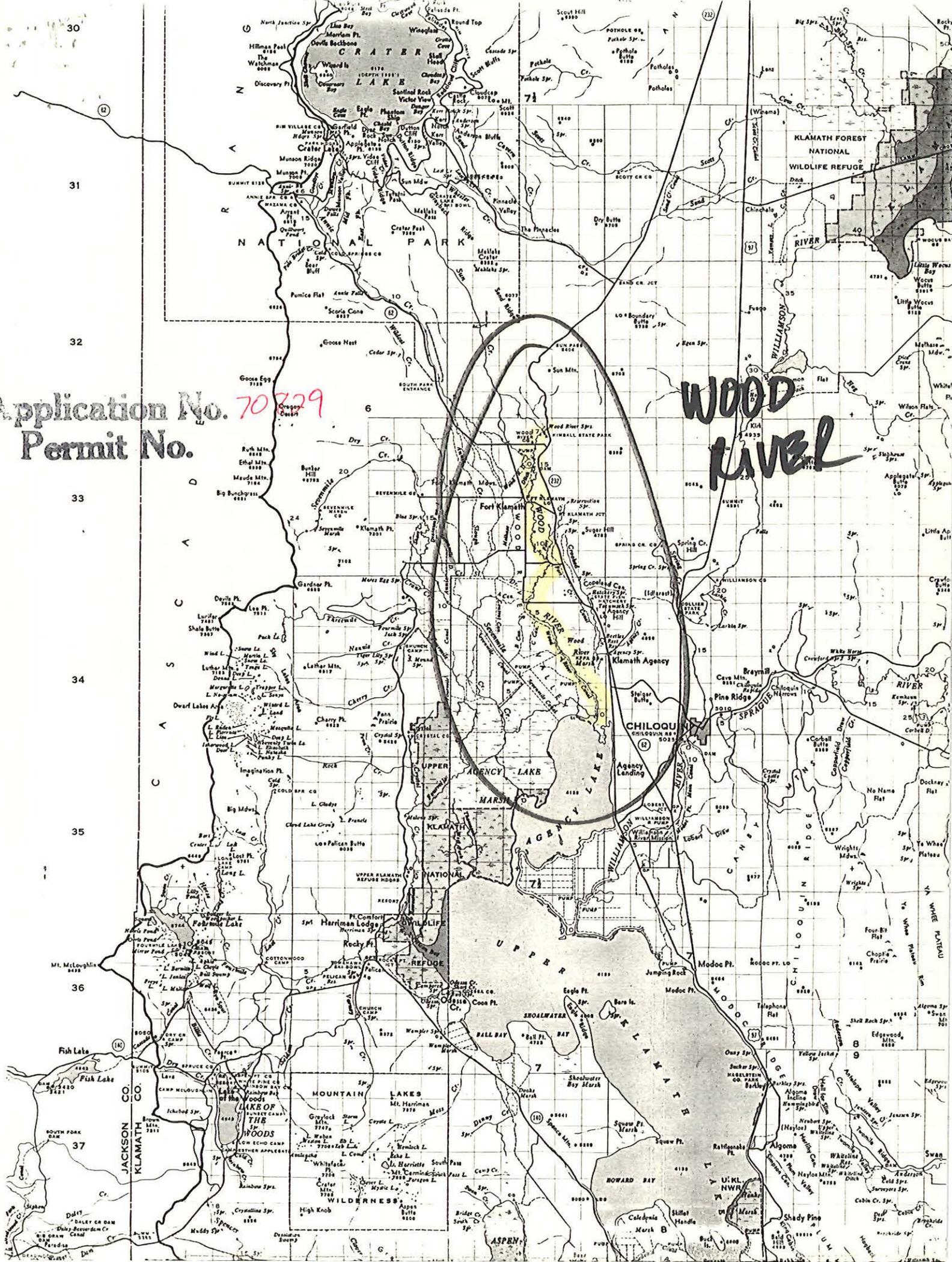
\_\_\_\_\_  
\_\_\_\_\_

This document was first received at the Water Resources Department in Salem, Oregon, on the 26<sup>th</sup> day of October, 1990, at 8 o'clock A.M.

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

Application No. 70729  
Permit No.

WOOD RIVER



APPLICATION PROCESSING OUTLINE

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

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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 \_\_\_\_\_ v/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 consent-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.Q. received \_\_\_\_\_

\_\_\_\_\_ Publish application information in weekly public notice.

\_\_\_\_\_ Notify other owners of development

\_\_\_\_\_ PROTESTED

\_\_\_\_\_ filed \_\_\_\_\_

\_\_\_\_\_ resolved \_\_\_\_\_

OCT 26 1990

Application No. <sup>JWR</sup> 70829

Permit No. ....

Name ..... Oregon Dept Fish & Wildlife .....

Address .... PO Box 59 Portland OR 97207 .....

Assigned .....

Address .....

Beginning construction .....

Completion of construction .....

Extended to .....

Complete application of water .....

Extended to .....