

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

Water Right Application Number: IS 70830

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: SEVENMILE CR TRIB 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	D	E	C
15	15	15	15	15	12	10	10	8	15	15			15

To be maintained in:

SEVENMILE CREEK FROM DRY CREEK AT RIVER MILE 17.9 (NWSW, SECTION 11, TOWNSHIP 33S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 9, TOWNSHIP 35S, RANGE 7.50E WM)

The Department mailed the applicant notice of its Initial Review on April 29, 1996. Public notice of the application was provide in the Department's weekly public notice on May 13, 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
90.3	93	97.3	102	106	105	71.1	59.9	64	73.2	88.7	90.5

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.

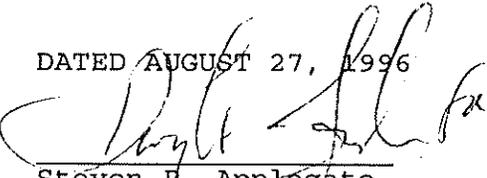
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

JAN 15	FEB 15	MAR 15	APR 15	MAY 15	JUN 12	JUL 10	AUG 10	SEP 8	OCT 15	NOV 15	DEC 15
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Recommendation

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

DATED AUGUST 27, 1996


Steven F. 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: SEVENMILE CR TRIB UPPER KLAMATH L

County: Klamath

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

To be maintained in:

SEVENMILE CREEK FROM DRY CREEK AT RIVER MILE 17.9 (NWSW, SECTION 11, TOWNSHIP 33S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 9, TOWNSHIP 35S, 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
15	15	15	15	15	12	10	10	8	15	15	15

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 70830

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: Robert Fauds
 BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: CHECK: # 967 230 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 400.00

0417 WRD MISC CASH ACCT

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

REDUCTION OF EXPENSE

CASH ACCT.	\$
VOUCHER #	

0427 WRD OPERATING ACCT

0407	MISCELLANEOUS		
	COPY & TAPE FEES	<u>IS 70829</u>	\$
0410	RESEARCH FEES	<u>IS 70830</u>	\$
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 \$
<u>0223</u>	OTHER (IDENTIFY) <u>Protect PCA 7223 7400.00</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 # **7499**

DATED: 10-11-96 BY: P. Ric

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 70830 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 70830.

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 Sevenmile Creek, 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.

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Protest P. 1.

OCT 11 1996

WATER RESOURCES DEPT.
SALMON, 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.

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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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WATER RESOURCES DEPT.
SALEM, OREGON

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 10th day of October, 1996.

MEADOWS DRAINAGE DISTRICT, by:

Robert J. Strong

Protest P. 4.

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OCT 1 1996

WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF SERVICE

I hereby certify that on the 10th 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: [Signature]
For Protestants

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OCT 1 1996

WATER RESOURCES DEPT.
SALEM, OREGON

INTEROFFICE MEMORANDUM
Water Rights Section

~~TO: [REDACTED]~~

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

6

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

Total for Basin 6 : 38

9

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

Instream Applications with Protests

4/2/97

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

Instream Applications with Protests

4/2/97

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

Instream Applications with Protests

4/2/97

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

Total for Basin 17 : 15

173

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.

Bailey; IWR PFO Comments; Klamath and Lake Basins

Page 5

October 4, 1996

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

However, requested flows do exceed EANF estimates during all months, as reported in the PFO. ODFW has reviewed WRD estimates of available flows at the 80% exceedence level also, and found that requested flows also exceed the 80% available flows during most months and are so close in other months that it is likely that at the 50% exceedence level, would exceed the requested flows. If this is true, then flows ARE available to meet the proposed use and the correct finding should be that the statutory presumption HAS been established.

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

**17) Presumption Finding, EANF Exceeds Requested and No Unappropriated Analysis:
70813, 70830, 70831**

The PFOs for these applications contain a finding that the necessary statutory presumption of being in the public interest has not been made due to lack of available flow in some months. However, the EANF exceeds the Requested flows in all months and there are no other “unappropriated, available” flow data presented. As ODFW understands it, this is because there are no other unappropriated flow data that have been developed for this reach, primarily because there is little or no other use. Therefore, in the absence of any positive information or finding to the contrary, ODFW believes the finding should be that flows are available to meet the request during all months and that the presumption has been established. ODFW requests that the Final Order be written to reflect this modified finding.

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **7292**

158 12TH ST. N.E.
SALEM, OR 97310-0210
376-8455 / 378-8130 (FAX)

INVOICE # 70812, 70829

RECEIVED FROM: Fort Klamath Critical
BY: Habitat Landowners

APPLICATION: IS 70813
PERMIT
TRANSFER

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

TOTAL REC'D \$ 450.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS \$
PUBLICATIONS / MAPS \$
OTHER: (IDENTIFY) RECEIVED OVER THE COUNTER \$
OTHER: (IDENTIFY) \$

REDUCTION OF EXPENSE

CASH ACCT. \$
VOUCHER #

0427 WRD OPERATING ACCT

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

WATER RIGHTS:		EXAM FEE	RECORD FEE
0201	SURFACE WATER	\$	0202 \$
0203	GROUND WATER	\$	0204 \$
0205	TRANSFER	\$	0206 \$
WELL CONSTRUCTION		EXAM FEE	LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	\$	0219 \$
	LANDOWNER'S PERMIT <u>PCA 77235</u>		0220 \$
<u>0234</u>	OTHER (IDENTIFY) <u>Request for Standing</u>		\$ <u>450.00</u>

0437 WELL CONST. START FEE

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

CARD #
CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS \$

0467 HYDRO ACTIVITY

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

RECEIPT # **7292**

DATED: 10-8-96 BY: J. L. ...

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 70830

Applicant's Name ODFW

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

Fort Klamath Critical Habitat Landowners
Name

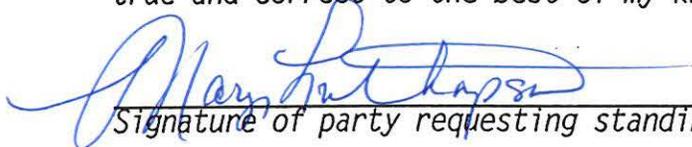
P.O. Box 503
Address

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

80

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	IS70831
Crooked Creek	IS70807
Cherry Creek	IS70798
Fort Creek	IS70810
Sevenmile Creek	IS70830
Sun Creek	IS70819
Upper Klamath Lake	IS70813
Klamath River	IS70812
Wood River	IS70829

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 Ore	<u>Harris & Wood Ranches</u> Ft. Klamath, OR K. Sue Hunsaker
<u>McAuliffe Ranches</u> Box 555 Ft. Klamath J. P. McAuliffe	<u>Maryne Kizer</u>
<u>Joe McAuliffe Co</u> by Andrew & Sus on the bluff Andrew & Sus on the bluff	<u>M.D. Laird Benforth</u> Wm. L. Breder 5305 Walton Dr. Klamath Falls, OR. 97603
<u>Jeff H. Mathis</u> P.O. Box 571 Ft. Klamath Mathis Ranches	<u>Clay Charley</u> 553 Glass Ln. White City OR 97502 Charley Livestock Co. Neil & Beverly Lipfolds 21431 Rocky Pt Rd. Klamath Falls, OR 97601
<u>Double K Ranch</u> Klamath & Jutte MD 1696 COVE POINT RD KLAMATH FALLS ORE 97601	<u>Eleani H. Kerns</u> PO Box 482 Ft. Klamath Or 97626
<u>Lee & Edwin Hunsaker</u> P.O. Box 528 Ft. Klamath, OR	
<u>Dorothy Nicholson</u> Box 458 Fort Klamath, Or. 97626	

Roger Anderson
Box 455
Fort Klamath, OR

Anita Nicholson
PO Box 465
Fort Klamath Or 97626

Blaine Gibson
Box 455
Ft. Klamath Oreg

John Owens Romack
John D Owens
Box 557
Fort Klamath Or

Juliana Farnas
109 Mary Ann Mopson, Office Bldg.
32200 Modoc St Rd
Chiloquin OR 97624

PAUL & DENNY RICKARDS
Paul & Denny Rickards
27431 Rocky Pt. Rd.
Klamath Falls, 97601

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

Elaine G. Kerns
PO Box 482
Ft Klamath Or 97626

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: Water Watch APPLICATION _____
 BY: _____ PERMIT _____
 TRANSFER _____

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

0417 WRD MISC CASH ACCT

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

REDUCTION OF EXPENSE

PCA AND OBJECT CLASS _____ CASH ACCT. _____
 VOUCHER # _____

0427 WRD OPERATING ACCT

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

0234 OTHER (IDENTIFY) Request for Startling \$750.

0437 WELL CONST. START FEE

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

0539 LOTTERY PROCEEDS

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

0467 HYDRO ACTIVITY

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

RECEIPT # **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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WATER RESOURCES DEPT.
SALEM, OREGON

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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OCT 11 1996
WATER RESOURCES DEPT.
SALEM, OREGON

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

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

ORS 536.310(12)(emphasis added).

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

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

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

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

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

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.³ 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.⁴

³ 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.

⁴ 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.

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.

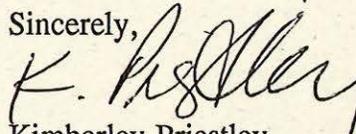
The Department has proposed a condition of use mandating measurement at the lower end of the stream reach to protect necessary flows throughout the reach. To ensure that flows are being protected throughout the reach, measurement must take place at both the upper and lower ends of the stream reach.

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.

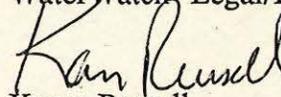
Conclusion

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.

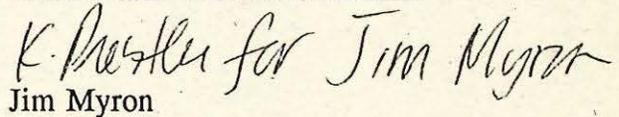
Sincerely,



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

April 29, 1996

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

WATER
RESOURCES
DEPARTMENT

Reference: Instream water rights in the Klamath Basin,
Files 70094, 70799, 70800, 70808, 70809, 70813-
70815, 70817, 70819, 70820, 70830-70832

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 Compact;

1. Application 70094 **Priority date: 10/13/89**
JOINT APPLICATION FROM ODFW AND OREGON PARKS AND RECREATION DEPT.
KLAMATH R TRIB PACIFIC OCEAN
KLAMATH COUNTY

KLAMATH R FM THE CONFLUENCE OF JC BOYLE POWERHOUSE TAILRACE &
THE NATURAL CHANNEL AT R.M. 220.4 (NWNW, S 13, T40S, R6E WM);
TO THE OREGON/CALIFORNIA BORDER R.M. 209.3 (NWNE, S13, T41S, R5E WM)

a. The amount of water requested for instream use:

Recreation

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500	1500

Fish life and fish habitat

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
550	550	550	550	550	550	550	550	550	550	550	550

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2170	2290	2840	3390	3230	2780	1900	1330	1160	1260	1500	1800



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

c. Allowable water use

Recreation

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1500	1500	1500	1500	1500	1500	1500	1330	1160	1260	1500	1500

Fish life and fish habitat

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
550	550	550	550	550	550	550	550	550	550	550	550

2. Application 70799

Priority date: 10/26/90

S FK SPRAGUE R TRIB SPRAGUE R
LAKE COUNTY

SOUTH FORK SPRAGUE RIVER FROM CAMP CREEK AT RIVER MILE 28.7 (SESW, SECTION 14, TOWNSHIP 36S, RANGE 16E WM); CREEK RIVER MILE 21.6 (NWSW, SECTION 10, TOWNSHIP 37S, RANGE 16E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
40	40	40	40	40	20	10	10	10	40	40	40

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.9	12.9	17.6	54.4	92	37.1	9.61	6.58	7.68	9.72	11.5	12.5

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.9	12.9	17.6	40	40	20	9.61	6.58	7.68	9.72	11.5	12.5

3. Application 70800

Priority date: 10/26/90

S FK SPRAGUE R TRIB SPRAGUE R
LAKE COUNTY

SOUTH FORK SPRAGUE RIVER FROM THE HEADWATERS AT RIVER MILE 32.0 (NENE, SECTION 2, TOWNSHIP 36S, RANGE 16E WM); TO CAMP CREEK AT RIVER MILE 28.7 (SESW, SECTION 14, TOWNSHIP 36S, RANGE 16E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6	6	10	10	10	7	4	4	4	10	6	6

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.52	3.66	4.91	15.7	29.3	12.3	3.22	2.16	2.51	3.11	3.58	3.78

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.52	3.66	4.91	10	10	7	3.22	2.16	2.51	3.11	3.58	3.78

4. Application 70808

Priority date: 10/26/90

DEMING CR TRIB S FK SPRAGUE R
 KLAMATH COUNTY

DEMING CREEK FROM THE HEADWATERS (SECTION 1, TOWNSHIP 36S, RANGE 15E WM); TO ROCKY FLAT CREEK (DRAINING CAMPBELL RESERVOIR) (SENW, SECTION 24, TOWNSHIP 36S, RANGE 14E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	5	1	1	5	10	10	10

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.72	10.1	18	66.4	75.2	18.4	3.18	2.34	2.89	4.05	5.92	7.48

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7.72	10	10	10	10	5	1	1	2.89	4.05	5.92	7.48

5. Application 70809

Priority date: 10/26/90

FISHHOLE CR TRIB S FK SPRAGUE R
 KLAMATH COUNTY

FISHHOLE CREEK FROM BRIGGS SPRINGS (NENW, SECTION 35, TOWNSHIP 38S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWSE, SECTION 27, TOWNSHIP 36S, RANGE 14E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	7	4	4	4	10	6	6

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
11.5	25.6	48.2	55.1	33.3	23.5	10.9	5.02	4.81	5.43	5.35	8.08

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	10	10	10	10	7	4	4	4	5.43	5.35	6

6. Application 70813**Priority date: 10/26/90**UPPER KLAMATH L TRIB KLAMATH R
KLAMATH COUNTY

LINK RIVER FROM LINK RIVER DAM (SECTION 30, TOWNSHIP 38S, RANGE 9E WM); TO LAKE EWAUNA AT RIVER MILE 0.0 (SECTION 32, TOWNSHIP 38S, RANGE 9E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60	60	80	80	80	30	20	40	30	30	30	50

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2120	2210	2680	3210	3120	2740	1880	1310	1140	1240	1470	1760

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
60	60	80	80	80	30	20	40	30	30	30	50

7. Application 70814**Priority date: 10/26/90**LONG CR TRIB SYCAN R
KLAMATH COUNTY

LONG CREEK FROM UNNAMED TRIBUTARY (SW1/4, SECTION 1, TOWNSHIP 33S, RANGE 15E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE, SECTION 36, TOWNSHIP 32S, RANGE 14E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	6	3	3

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	4.83	8.5	28.5	58.4	21.1	3.83	2.28	2.45	2.89	3.59	4.22

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	2.89	3	3

8. Application 70815

Priority date: 10/26/90

N FK SPRAGUE R TRIB SPRAGUE R
LAKE COUNTY

NORTH FORK SPRAGUE RIVER FROM HEAD OF RIVER SPRING AT RIVER MILE 34.0 (SWSW, SECTION 15, TOWNSHIP 35S, RANGE 16E WM) TO SHEEPY CREEK AT RIVER MILE 17.5 (SENW, SECTION 15, TOWNSHIP 35S, RANGE 15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
71.2	62.7	52.5	97.8	199	143	79	66.2	76.8	88.9	86.3	79.2

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
30	30	30	30	30	20	10	10	10	30	30	30

9. Application 70817

Priority date: 10/26/90

PARADISE CR TRIB SKULL CR
KLAMATH COUNTY

PARADISE CREEK FROM HEADWATER SPRINGS (NENE, SECTION 21, TOWNSHIP 34S, RANGE 15E WM(; TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	6	3	3

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.15	3.82	6.91	24.3	49.2	17	2.94	1.75	1.89	2.23	2.81	3.32

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	6	6	6	3	1	1	1	2.23	2.81	3

10. Application 70819

Priority date: 10/26/90

SUN CR TRIB ANNIE CR
 KLAMATH COUNTY

SUN CREEK FROM CRATER LAKE NATIONAL PARK BOUNDARY (SENW, SECTION 17, TOWNSHIP 32S, RANGE 7.50E WM); TO THE MOUTH AT RIVER MILE 0.0 (SECTION 4, 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
10	10	10	10	10	10	8	8	8/15	15	15/10	10

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.3	9.49	9.86	14.9	26.6	32.8	27	16.9	13.4	16	12.7	13.8

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	9.49	9.86	10	10	10	8	8	8/13.4	15	12.7/10	10

11. Application 70820

Priority date: 10/26/90

SYCAN R TRIB SPRAGUE R
 LAKE COUNTY

SYCAN RIVER FROM SOUTH FORK SYCAN RIVER AT RIVER MILE 68.2 (SECTION 35, TOWNSHIP 33S, RANGE 16E WM); TO PARADISE CREEK AT RIVER MILE 58.2 (SWNE, SECTION 22, TOWNSHIP 33S, RANGE 15E WM)

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	20	20	20	15	12	10	10	20	15	15

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.5	12	18.2	50.9	116	54.8	13	7.42	7.95	8.99	10.2	11.3

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10.5	12	18.2	20	20	15	12	7.42	7.95	8.99	10.2	11.3

12. Application 70830

Priority date: 10/26/90

SEVENMILE CR TRIB UPPER KLAMATH L
 KLAMATH COUNTY

SEVENMILE CREEK FROM DRY CREEK AT RIVER MILE 17.9 (NWSW, SECTION 11, TOWNSHIP 33S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNE, SECTION 9, TOWNSHIP 35S, 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	15	15	15	15	12	10	10	8	15	15	15

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
90.3	93	97.3	102	106	105	71.1	59.9	64	73.2	88.7	90.5

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
15	15	15	15	15	12	10	10	8	15	15	15

13. Application 70831

Priority date: 10/26/90

ANNIE CR TRIB WOOD R
 KLAMATH COUNTY

ANNIE CREEK FROM EAST FORK ANNIE CREEK AT RIVER MILE 13.0 (SECTION 18, TOWNSHIP 31S, RANGE 6E WM); TO THE MOUTH AT RIVER MILE 0.0 (SESW, SECTION 10, 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
40	40	40	40	40	30	20	20	20	40	40	40

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
44.4	41.1	42.7	64.3	115	142	117	73	57.9	69.4	54.8	59.7

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
40	40	40	40	40	30	20	20	20	40	40	40

14. Application 70832

Priority date: 10/26/90

BROWNSWORTH CR TRIB S FK SPRAGUE R
 KLAMATH COUNTY

BROWNSWORTH CREEK FROM HAMMOND CREEK AT RIVER MILE 3.0 (NWNE, SECTION 31, TOWNSHIP 36S, RANGE 16E WM); TO THE MOUTH AT RIVER MILE 0.0 (SEW, SECTION 2, 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
10	10	10	10	10	6	3	1	1	3	10	10

b. The estimated average natural flow:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.36	9.64	14.2	45.1	66.5	23.2	5.39	3.81	4.52	5.91	7.46	8.55

c. Allowable water use

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.36	9.64	10	10	10	6	3	1	1	3	7.46	8.55

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

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

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **May 13, 1996**. For your convenience you may use the enclosed "STOP PROCESSING" form.

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 70830

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

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, Sevenmile
Creek, Permit number 70830.

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 creek 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 # 70830 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIVED

Application for Instream Water Right
by a State Agency

OCT 26 1990

There is no fee required for this application.

WATER RESOURCES DEPARTMENT
SALEM, OREGON

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

1. The name of the stream of the proposed instream water right is Sevenmile Creek, a tributary of Agency Lake.
2. The public uses this instream water right is based upon include providing required stream flows for rainbow, brown, and brook 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
15	15	15	15	15	12	10	10	8	15	15	15

4. The reach of the stream identified for an instream water right is from (upstream end) Dry Creek, river mile 17.9, within the NW quarter of the SW quarter of Section 11, Township 33S, Range 6E W.M., in Klamath County...

Downstream to the mouth, river mile 0, within the SW quarter of the NE quarter of Section 9, Township 35S, 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 # 70830 Certificate # _____

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

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

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

Local ODFW personnel will assist the watermaster in establishing 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.

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: 7MILE1.APP

IWR Application # 70830 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

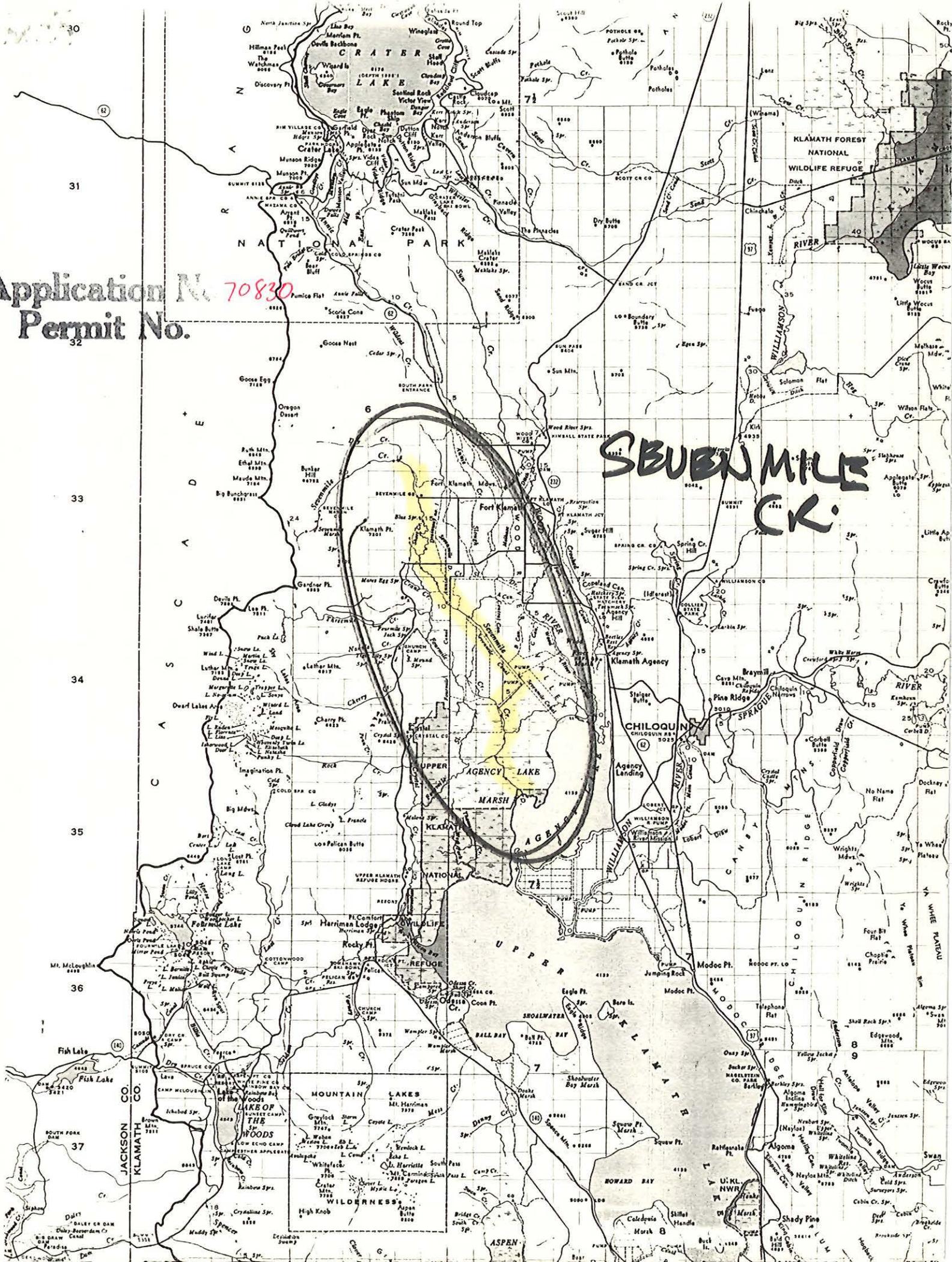
_____, 19____.

Date: _____, 19____.

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

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

Application No. 70830
Permit No.



**SEVEN MILE
CR.**

JACKSON
KLAMATH
CO. CO.

MOUNTAIN
LAKES
WILDERNESS

CHILOQUIN

UPPER
AGENCY LAKE
MARSH

KLAMATH FOREST
NATIONAL
WILDLIFE REFUGE

RIVER

AGENCY AGENCY

AGENCY LANDING

UPPER KLAMATH NATIONAL WILDLIFE REFUGE

APPLICATION PROCESSING OUTLINE

Basin: _____
 Sub-basin: _____
 Fees paid: _____ Examination fees: _____
 Recording fees: _____
 Totals: _____

Application No. 70830
 Permit No. _____

RATE AND DUTY _____ for irrigation

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

yes	no	
_____	_____	Name and mailing address of the applicant.
_____	_____	Source of the water.
_____	_____	Quantity of water to be appropriated.
_____	_____	Location of point of diversion to 1/4 1/4 Section.
_____	_____	Nature and place of use.
_____	_____	Name and mailing address of all legal owners of the properties involved.
_____	_____	Signature of the applicant
<input checked="" type="checkbox"/>	_____	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 Districts:

_____ 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 program
 _____ requests for larger rate or duty than allowed
 _____ ground water recharge project
 _____ other substantial public interest issues

_____ requests for review by an agency or person

_____ Watermaster consent form sent with copy of draft permit application and map

_____ Watermaster consents received _____

_____ Hydrographic section consents requested _____

_____ Hydrographic section consents received _____

O.D.F.W. sent copy of application and map (except groundwater) requesting consent _____

_____ O.D.F.W. consents received _____

_____ Report from D.E.G. received _____

Publish application information in weekly public notice.

_____ Notify other owners of development

_____ PROTESTED

_____ filed _____
 resolved _____

OCT 26 1990

Application No. ^{TWR} 70830

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