1

Application#: IS [redacted]

Randy Fisher
Oregon Department Fish and Wildlife
PO Box 59
Portland, OR 97207

Application No. 72191
Permit No. _____
Certificate No. 97653

Stream Index, Page No. _____

Date filed 1-29-1992
Priority _____
Action suspended until _____
Return to applicant _____
Date of approval _____

CONSTRUCTION

Date for beginning _____
Date for completion _____
Extended to _____
Date for application of water _____
Extended to _____

PROSECUTION OF WORK

Form "A" filed _____
Form "B" filed _____
Form "C" filed _____

FINAL PROOF

Blank mailed _____
Proof received _____
Date Certificate issued 3-15-2024

FEES PAID

Date	Amount	Receipt No.
7-22	200.00	4561
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

See 72165 + 72174

SMEAD 11 SP98874

Application No. 72191

Permit No. .....

ODFW

PO BOX 59, PORTLAND, OR 97207

Assigned .....

Address .....

Beginning construction .....

Completion of construction .....

Extended to .....

Complete application of water .....

Extended to .....

Form 111

Mailing List for FO Copies

Application IS-72191

Certificate 97653

Copies Mailed
By: KMWE
(SUPPORT STAFF)
On: MAR 15 2024
(DATE)

ORIGINAL SIGNED CERTIFICATE IN VAULT
Original FO, Copy of Certificate, Map, cover letter mailed to:

OREGON DEPARTMENT OF FISH AND WILDLIFE
ATTN: CHANDRA FERRARI
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM OR 97302-1142

Copies mailed to:

Schroeder Law Offices, PC
Laura A. Schroeder, Sarah R. Liljefelt, Nicole K. Vetter
1915 NE Cesar E. Chavez Blvd.
Portland, OR 97212

Baker Valley Irrigation District
3895 10th St.
Baker City, OR 97814

Oregon Department of Justice
Anika Marriott
1162 Court St NE
Salem, OR 97301-4096

Sent via auto email:

1. Applicant – chandra.a.ferrari@odfw.oregon.gov
2. WRD – Watermaster District #8, Marcy Osborn
3. WRD – Jason Spriet, ER

Copies sent to:

1. WRD – File IS-72191
2. WRD – SW Section

Application Specialist: Adam Frederick

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

NOTICE OF CERTIFICATE ISSUANCE

March 15, 2024

OREGON DEPARTMENT OF FISH AND WILDLIFE
ATTN: CHANDRA FERRARI
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM OR 97302-1142

Reference: Application IS-72191 (Certificate 97653)

The enclosed instream certificate confirms the water right established under the terms of the enclosed order issued by this Department. The water right is now appurtenant to the specific place as described by the certificate.

If you have any questions related to the issuance of this certificate, you may contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or by telephone at 971-707-8400.

Sincerely,

Adam Frederick

Adam Frederick
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Final Order
Copy of Certificate
Copy of Map

Cc: File: IS-72191

BEFORE THE
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF WATER RIGHT APPLICATION IS-72191	)	**FINAL ORDER IN CONTESTED CASE**
OREGON DEPARTMENT OF FISH AND WILDLIFE *Applicant/Proponent*	)	OAH Reference No.: 2021-OWRD-00089 Agency Case No.: IS-72191
BAKER VALLEY IRRIGATION DISTRICT *Protestant*	)	

HISTORY OF THE CASE

On May 14, 1996, the Oregon Water Resources Department (OWRD or Department) issued a Proposed Final Order (PFO or Notice), proposing to approve, with conditions, the application filed by Oregon Department of Fish and Wildlife (Applicant or ODFW), seeking instream flows for the migration, spawning, egg incubation, fry emergence, and juvenile rearing needs of rainbow trout. On July 22, 1996, Baker Valley Irrigation District (Protestant or BVID) filed a Protest to the PFO. On September 14, 2021, OWRD referred the matter to the Office of Administrative Hearings (OAH) for further proceedings. The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On February 15, 2023, ALJ Gutman convened a prehearing telephone conference. Assistant Attorney General Anika Marriott represented ODFW. Chandra Ferrari appeared on behalf of ODFW. Attorney Laura Schroeder represented Protestant. Assistant Attorney General Sarah Rowe represented OWRD. On February 17, 2023, ALJ Gutman issued a Scheduling Order that set forth a schedule of proceedings for prehearing matters. On February 22, 2023, the parties submitted a Stipulated Statement of the Issue.

On March 1, 2023, Protestant filed a Motion to Include Issues in Statement of Issues for Contested Case Hearing (Protestant's Motion). On March 1, 2023, ODFW and OWRD filed ODFW and OWRD Joint Motion for ALJ Ruling on Issue Statement (ODFW's and OWRD's Joint Motion). On March 8, 2023, Protestant filed BVID's Response to ODFW's and OWRD's Joint Motion (Protestant's Response). On March 8, 2023, ODFW and OWRD filed ODFW and OWRD Joint Response to Protestant's Motion (ODFW's and OWRD's Joint Response). On March 17, 2023, ALJ Gutman issued a Ruling on Motions, denying Protestant's Motion and granting ODFW's and OWRD's Joint Motion.

On April 28, 2023, Protestant filed a Motion for Summary Determination or in the Alternative Motion for Stay of Contested Case Hearing (Protestant's MSD or Motion for Stay). On May 12, 2023, ODFW and OWRD filed a Joint Response to Protestant's Motion for Summary Determination or in the Alternative Motion for Stay. On May 26, 2023, ALJ Gutman

issued a Ruling denying Protestant's MSD or Motion for Stay.

On May 26, 2023, Protestant filed a Motion to Continue Prehearing Conference. On May 30, 2023, ALJ Gutman denied Protestant's Motion to Continue Prehearing Conference. On May 30, 2023, ALJ Gutman convened a prehearing telephone conference. Ms. Marriott represented Applicant. Ms. Ferrari appeared on behalf of Applicant. Ms. Schroeder represented Protestant. Ms. Rowe represented OWRD. Patricia McCarty appeared on behalf of OWRD. During the prehearing conference, Ms. Schroeder indicated that she needed to visit OWRD's regional office in Baker City to determine if it would accommodate Protestant for the proposed video conference hearing. On her own authority, ALJ Gutman continued the prehearing telephone conference to June 1, 2023.

On June 1, 2023, ALJ Gutman convened a prehearing telephone conference. Ms. Marriott represented Applicant. Ms. Ferrari appeared on behalf of Applicant. Ms. Schroeder represented Protestant. Ms. Rowe represented OWRD. Ms. McCarty appeared on behalf of OWRD. During the prehearing conference, ALJ Gutman scheduled the hearing for June 27 and June 28, 2023. Also during the prehearing conference, Ms. Rowe agreed to accept service of Protestant's subpoenas for OWRD employees. On June 2, 2023, ALJ Gutman issued an Amended Scheduling Order that set forth prehearing matters and the scheduled dates for the contested case hearing.

On June 9, 2023, Protestant served four subpoenas on Ms. Rowe, who denied acceptance of service. On June 9, 2023, Protestant served six subpoenas by sending the subpoenas via U.S. priority mail. On June 13, 2023, ODFW and OWRD filed a Joint Motion to Quash Subpoenas. On June 16, 2023, Protestant filed BVID's Response to Joint Motion to Quash Subpoenas and BVID's Motion to Produce. On June 21, 2023, ODFW and OWRD filed a Joint Response to BVID's Motion to Produce. On June 21, 2023, ALJ Gutman requested and received from Protestant copies of the original and amended subpoenas and attachments issued by Protestant. On June 23, 2023, ALJ Gutman issued Rulings on ODFW's and OWRD's Joint Motion to Quash Subpoenas, and Protestant's Motion to Produce, granting ODFW's and OWRD's Joint Motion to Quash Subpoenas in part and denying it in part, and denying Protestant's Motion to Produce.

On June 27, 2023, Protestant filed the following: Protestant's Motion to Limit Any Expert Testimony by Joseph Lemanski in Ichthyology and if Allowed as Lay Agency Witness to Strike the Written Direct and Rebuttal Testimony of Joseph Lemanski; Protestant's Motion to Limit Any Expert Testimony by Ryan Andrews and if Allowed as Lay Agency Witness to Strike the Written Direct and Rebuttal Testimony of Ryan Andrews; Protestant's Motion to Limit Any Expert Testimony by Spencer Sawaske in Ichthyology and if Allowed as Lay Agency Witness to Strike the Written Direct and Rebuttal Testimony of Spencer Sawaske; Protestant's Motion to Limit Any Expert Testimony by Dwight French and if Allowed as Lay Agency Witness to Strike the Written Direct and Rebuttal Testimony of Dwight French; and Protestant's Motion to Strike the Written Rebuttal Testimony of Marcy Osborn (collectively Protestant's Motions to Limit and/or Strike).

On June 27, 2023, ALJ Gutman convened a video conference hearing via Webex. Ms. Marriott represented Applicant. Ms. Ferrari appeared on behalf of Applicant. Ms. Schroeder

and her associate, Kelsey Seibel, represented Protestant. Ms. Rowe represented OWRD. Ms. McCarty and Will Davidson appeared on behalf of OWRD. At the start of the hearing, ALJ Gutman denied Protestant's Motions to Limit and/or Strike. Dwight French and Ryan Andrews testified on behalf of OWRD.

The video conference hearing continued on June 28, 2023. ALJ Gutman presided. Ms. Marriott represented Applicant. Ms. Ferrari appeared on behalf of Applicant. Ms. Schroeder and Ms. Seibel represented Protestant. Ms. Rowe represented OWRD. Ms. McCarty and Mr. Davidson appeared on behalf of OWRD. Mr. Andrews and Marcy Osborn testified on behalf of OWRD. Joseph Lemanski and Spenser Sawaske testified on behalf of ODFW. Mark Ward, George Chandler, Clay McEnroe, and Jeff Colton testified on behalf of Protestant. At the conclusion of the hearing, ALJ Gutman held the record open until July 21, 2023, to receive corrected exhibits, closing arguments, and reply briefs from the parties.

On June 29, 2023, Protestant filed Corrected Exhibits R34 and R35. On July 7, 2023, OWRD and ODFW filed Joint Corrected Exhibits A1, A10, A28, A32, and A37; the excerpt of Exhibit A12 that was admitted during the hearing; and Exhibits A43 through A47 that were admitted during the hearing.

On July 14, 2023, OWRD and ODFW filed OWRD and ODFW Joint Written Closing Argument. On July 14, 2023, Protestant filed Protestant's Closing Argument, and Protestant's Notice Submitting Transcript of Hearing. On July 21, 2023, OWRD and ODFW filed OWRD and ODFW Joint Response to Protestant's Closing Argument. On July 21, 2023, Protestant filed Protestant's Reply to OWRD and ODFW Joint Closing Argument. ALJ Gutman closed the record on July 21, 2023.

ALJ Gutman issued a Proposed Order on October 17, 2023 recommending that OWRD affirm the PFO issued on May 14, 1996. The Proposed Order stated that any party to the proceeding or OWRD could file exceptions to the Proposed Order no later than 30 days after service of the order.

Protestant timely filed exceptions to the Proposed Order on November 15, 2023. OWRD and ODFW timely filed joint exceptions to the Proposed Order on November 16, 2023. Now, OWRD's Acting Director (Director) considers the exceptions, allows some and declines some, and issues this final order affirming the PFO, approving Water Right Application IS-72191, and issuing the attached Certificate 97653 with conditions.

The "History of the Case," "Stipulated Issue," "Evidentiary Ruling," "Qualifications on the Record," "Findings of Facts," "Conclusion of Law," "Opinion," and "Order" sections of this final order set forth the ALJ's Proposed Order as modified by the Director in response to the exceptions and on the Director's own motion. The "Consideration of Exceptions" and "Director's Amendments to the Proposed Order" sections identify and explain the Director's

modifications of the ALJ's Proposed Order.

STIPULATED ISSUE

Did OWRD properly determine Estimated Average Natural Streamflow (EANF) for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4).

EVIDENTIARY RULINGS[1]

On June 26, 2023, OWRD's and ODFW's Joint Exhibits A2 through A7, A39 and A40 were admitted into evidence without objection. Joint Exhibits A1, A10, A20, A27 through A30, A32, and A37 were admitted into evidence over Protestant's objections regarding qualifications, relevance, hearsay, and speculation. Joint Exhibits A8, A9, A11, A13 through A19, A21 through A26, A31, A33 through A36, A38, A41, and A42 were admitted into evidence over Protestant's objections regarding authenticity, relevance, hearsay, and unduly repetitious. Joint Exhibit A12, pages 31-33 and 106-107 were admitted into evidence over Protestant's objections regarding authenticity, relevance, and hearsay. The remaining pages of Joint Exhibit A12 were excluded from evidence on the basis of relevance. Joint Exhibits A43 through A45 were admitted into evidence over Protestant's objections regarding qualifications.

Protestant's Exhibits R1 through R27, R31 and R32 were admitted into evidence without objection. Following objections from OWRD and ODFW, Exhibits R28 and R30 were excluded on the basis that they were incomplete documents. Exhibit R29 was admitted into evidence over OWRD's and ODFW's objections regarding relevance.

On June 27, 2023, OWRD's and ODFW's Joint Exhibits A46 and A47 were admitted into evidence without objection. Following an objection from OWRD, Protestant's Exhibit R32, which had been previously admitted, was stricken from the record on the basis of accuracy. Protestant's Exhibits R33 through R36 were admitted into evidence without objection.

On June 29, 2023, Protestant's Corrected Exhibits R34 and R35 were admitted into evidence without objection. On July 7, 2023, OWRD's and ODFW's Joint Corrected Exhibits A1, A10, A28, A32, and A37 were admitted into evidence without objection.

QUALIFICATIONS ON THE RECORD

Mr. Andrews was qualified on the record as an expert hydrologist with expertise in OWRD's Water Availability Reporting System (WARS). Mr. Lemanski was qualified on the record as an expert fish biologist with expertise in fish distribution and fish habitat needs of rainbow trout. Mr. Sawaski was qualified on the record as an expert instream scientist and

[1] OWRD's and ODFW's Pleadings P1 through P26 were submitted in the record on June 16, 2023.

hydrologist with expertise in hydrology and instream flow needs for rainbow trout.

FINDINGS OF FACTS

Legislative background

1. In 1987, the Oregon Legislature enacted Senate Bill (SB) 140 (1987); Oregon Laws 1987, chapter 859 (codified at ORS 537.332 through 537.360), creating instream water rights securable by three separate state agencies, including ODFW, for public benefit. The legislation authorized ODFW to apply for instream water rights to secure instream flows necessary for, *inter alia*, the conservation and maintenance of aquatic and fish life, wildlife, and fish and wildlife habitat. (*See* ORS 537.332 and 537.336(1).)

2. In October 1988, the Oregon Water Resources Commission adopted administrative rules for the application, processing, and administration of instream water rights created by SB 140. (*See* OAR Chapter 690, Division 77.)

Instream water rights generally

3. Instream water rights can be applied for by Department of Environmental Quality, Department of Parks and Recreation, and ODFW. When an instream application is received and accepted as complete, OWRD assigns it a tentative priority date. When a certificate is issued, that date becomes the priority date. Instream water rights go straight to certificate, there is no permit. The certificate is issued in the name of OWRD and OWRD holds the right in trust for the state of Oregon. (Ex. A1 at 2.)

4. OWRD's role is to process the application consistent with its statutes and rules. Currently, when an application is filed, OWRD's first major step is to issue an initial review of the application. For applications filed before July 1995, OWRD issued a report of technical review.[2] An initial review and a report of technical review are very similar, and represent OWRD's legal and scientific analysis of the application. (Exs. A1 at 2-3, A3 at 1.)

5. After OWRD issues the initial review or report of technical review, there is a public notice and a public comment period. Before 1996, the terminology used was that individuals could file comments or "objections." (*See e.g.*, Ex. A4 at 12, 18.) OWRD considers the public comments received in drafting the PFO. Before issuing the PFO, OWRD conducts a public interest review. (Ex. A1 at 2; *see* ORS 537.153(2), OAR 690-077-0037(1), (2).)

6. Following issuance of the PFO, OWRD provides public notice and a protest period. If no protest is received, OWRD issues a final order with an instream certificate. If a protest is received, OWRD determines if the case can be settled. If the case cannot be settled, OWRD

[2] In January 1996, the Oregon Water Resources Commission repealed the report of technical review requirement and replaced it with the initial review requirement. (*See* OAR 690-077-0029.)

refers the application for a contested case hearing as the budget allows. (Ex. A1 at 3.)

OWRD's determinations generally

7. OWRD's major determination for an instream water right application is how much water on a month by month, or half month basis, should be in the certificate. OWRD makes that determination by comparing the instream flow amounts requested in the application to the Estimated Average Natural Flow (EANF), or natural streamflow, in the identified stream or reach. (Ex. A1 at 3.)

8. OWRD's technical staff in the surface water section determines EANF and water availability in the stream or reach, and then provides the results to the staff in the water rights section.[3] OWRD then compares EANF to the amount requested in the application and grants the lesser of the two amounts, if appropriate. (Exs. A1 at 3-4, A10 at 2; test. of Andrews.)

9. Following the initial review or technical review of the application, OWRD must determine whether the public interest presumption in ORS 537.153(2) is established for the proposed water use. If the public interest presumption is not established, the Department must then determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8).[4] (*See* ORS 537.153(2), ORS 537.170(8).)

EANF generally

10. EANF is defined as "average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology." (*See* OAR 690-077-0010(10); Ex. A10 at 2.)

11. EANF is meant to represent prehistoric streamflow. EANF is the flow in a stream when there are no consumptive uses and there is no flow regulation by dams or reservoirs. EANF is natural streamflow. (Exs. A10 at 2, 7-8, A11 at 15, A32 at 5; test. of Andrews.)

12. EANF is the upper limit to the amount of instream flow OWRD will propose to approve for a given month or half month when the source of instream flow is natural streamflow.[5] (Ex. A1 at 3.)

13. OWRD's standard representation of EANF as it relates to evaluating instream water right applications is the 50 percent exceedance streamflow, or the streamflow that occurs at least

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[3] Water availability is set forth in more detail later in this order. (*See infra.*)
[4] If the requested flows exceed EANF, OWRD will limit the amounts to the level of EANF in order to find the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170. (Ex. A1 at 4.)
[5] The amount allowed for appropriation of an instream water right shall not exceed the EANF except under certain limited conditions. (*See* OAR 690-077-0015(4); Ex. A10 at 2.)

50 percent of the time. (Exs. A10 at 2, A12 at 106.)

Water availability generally

14. Water availability is the amount of water that can be appropriated for new out-of-stream consumptive uses. Water availability is obtained by subtracting existing reservoir storage, out-of-stream consumptive uses, and instream demands from natural streamflow. (Test. of Andrews; Exs. A10 at 2, A35 at 2.)

15. Water availability and EANF are calculated at the pour points (*i.e.*, mouths) of all water availability basins (WABs) across the state. WABs are pre-defined areas for which estimations of water availability and natural streamflow are produced. (Exs. A10 at 4, A32 at 3, A35 at 2.)

16. In general, the calculation of water availability at one WAB cannot be considered in isolation from other WABs in the same stream system. For water to be available at any given upstream point, it must be available at all points of calculation downstream. (Exs. A11 at 13, A35 at 2.)

17. Water availability is one of the factors considered in determining whether the public interest presumption is established. (*See* ORS 537.153(2).) Water availability is not a factor in determining the amount of an instream water right. (Test. of Andrews; Ex. A10 at 2; *see* OAR 690-077-0015(3).)

The application from ODFW

18. On January 29, 1992, ODFW filed Instream Water Right Application IS 72191 (the application) with OWRD, seeking to protect the minimum instream flows necessary for the maintenance and conservation of rainbow trout lifecycles and habitat in the Powder River, a tributary of the Snake River, in Baker County, Oregon. (Ex. A2 at 1-4.) According to the application, ODFW requested the instream water right be maintained in the Powder River from the Mason Dam at river mile 131.2 to the Thief Valley Reservoir at river mile ±74.0. (*Id.* at 1; *see also* Ex. A5 at 1.)

19. In the application, ODFW requested instream flows for the migration, spawning, egg incubation, fry emergence, and juvenile rearing needs of rainbow trout in the following amounts, measured in cubic feet per second (cfs), by month (or half month):

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st ½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd ½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

(Ex. A2 at 1; *see also* Ex. A5 at 1.) ODFW did not request instream flows for the restoration or enhancement of fish habitat or population. (Ex. A2 at 2.)

20. According to the application, ODFW used the Oregon Method, an acceptable method

adopted by rule by the Oregon Fish and Wildlife Commission, formerly known as the Oregon State Game Commission, for determining instream flow requirements for rainbow trout in the identified reach of the Powder River. (Exs. A2 at 1, A27 at 2-3.)

The Oregon Method

21. The Oregon Method is a procedure for determining flow requirements for different life stages of species, based upon the notion that specific life stages of specific species have a preference for different habitat types as well as hydraulic conditions within those habitat types, meaning the depth and velocity of water. (Ex. A27 at 2-3.)

22. Instream scientists determine the necessary flow needs of fish by comparing hydraulic data to known habitat suitability characteristics according to the Oregon Method. Hydraulic data (*e.g.*, velocity and depth) are collected at specific data collection transects (*i.e.*, channel cross sections) representing different habitat types over a range of flow conditions. Hydraulic conditions over the range of flows observed are then compared to species and life stage specific hydraulic preferences to determine the minimum necessary instream flows. (Ex. A27 at 3.) There are specific habitat and hydraulic requirements for the four key life stages of fish: adult migration, spawning, egg incubation, and juvenile rearing. (Ex. A27 at 3.)

ODFW's instream flow requests

23. ODFW maintains a Fish Habitat Distribution database, which compiles fish observation data and professional opinion-based data from biologists with ODFW and other natural resource agencies, tribes, universities, and non-profit contributors to that database. This database began development in the 1990s and represents a compilation of decades of information on current and historic fish distribution and habitat. This database is updated regularly – meaning approximately on an annual basis, or as new information becomes available. Any entry into the database or revision to the database goes through a validation process, essentially a quality assurance and quality control process for ensuring consistency with the Oregon Fish Habitat Distribution Data Standard. (Ex. A20 at 2.)

24. Rainbow trout are present in the Powder River and utilize the instream reach identified in the application for their life history needs. (Exs. A20 at 2, A21-A26, A27 at 2.)

25. The instream flow amounts requested in the application are based upon the flow needs for the individual life stages of rainbow trout. The requested flows are necessary to ensure the fish are able to move up and down the identified reach, including sufficient flows to allow the fish to migrate past any impediments in the stream channel. The requested flows will ensure sufficient stream depth for food, shelter, substrate, spawning, and egg incubation. The requested flows will also ensure sufficient habitat for the various stages of juvenile rearing in the stream. (Exs. A20 at 3, A27 at 4.) Lower instream flow levels will have a negative impact on the rainbow trout population in the identified reach. (Exs. A20 at 5, A27 at 4.)

26. The requested monthly instream flow amounts are the minimum amounts necessary to maintain the rainbow trout populations at their current levels in the identified reach. (Exs. A3

at 6, A5, A20 at 2, A21-A26, A27 at 4.)

27. ODFW's instream flow requests are based upon values set forth in a report titled, "The Fish and Wildlife Resources of the Powder Basin and Their Water Requirements: A Report with Recommendations to the Oregon State Water Resources Board" (the Powder Basin Report) authored in August 1967 by James Hutchinson and John Fortune of the Oregon State Game Commission. (Exs. A20 at 4, A23, A27 at 3.) The Powder Basin Report is based on field studies conducted in the basin, including in the identified reach, in May through October of 1965 and August 1966, which collected data over a range of flow conditions and periods representative of key life stages for rainbow trout including spawning, egg incubation, rearing, and migration. The hydraulic and habitat distribution field data was compared to habitat suitability data for each life stage according to the Oregon Method to determine the recommended minimum instream flow amounts for resident fish in the Powder River Basin. (Exs. A20 at 4, A23, A27 at 3.)

28. ODFW relied on the recommended minimum instream flows identified in the Powder Basin Report when determining the appropriate amount of instream flow for the maintenance and conservation of rainbow trout present in the identified reach. (Exs. A20 at 4, A23 at 21, A27 at 3.) The recommended minimum instream flows are based on natural streamflow. (Ex. A20 at 4.)

29. ODFW also relied upon three additional reports to support its requested instream flow amounts: 1) "Determining Streamflow for Fish Life" authored in March 1972 by Ken Thompson of the Oregon State Game Commission; 2) "Development and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids" authored in April 1973 by Allan K. Smith of the Oregon State Game Commission; and 3) "Determining Minimum Flow Requirements for Fish" prepared in January 1984 by ODFW. (Exs. A22, A24, A25.)

30. The data collected in the Powder Basin Report remains reliable and accurate. (Ex. A27 at 3.) There has not been any basin-scale change in geomorphology of the stream, nor any substantial change in the depth, velocity, or habitat needs of rainbow trout since the basin studies were conducted that led to the Powder Basin Report. (Exs. A20 at 4, A27 at 3-4.)

The technical review

31. After receiving the application, OWRD determined the application was complete and gave it a tentative priority date of January 29, 1992. OWRD then began a technical review of the application. (Exs. A1 at 2, A3 at 1, 4.)

32. As part of the technical review, OWRD's technical staff in the surface water section, Richard Cooper and Ken Stahr, calculated EANF and water availability[6] in the identified reach.

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[6] The water availability results are set forth later in this final order. (*See infra.*)

The EANF results were as follows:[7]

EANF in the identified reach in cfs

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
163	230	393	740	1100	845	212	146	82.5	76.9	103	122

(Exs. A3 at 5, A10 at 9, A32 at 3.)

33. OWRD's staff in the water rights section then compared the EANF amounts to the requested flow amounts in the application and determined that the monthly requested flows were all below the monthly EANF in the identified reach. (Exs. A1 at 3, A3 at 5-6, A10 at 2.)

34. On November 25, 1994, OWRD issued a Report of Technical Review. (Ex. A3 at 3-6.) In the report, OWRD determined that the application was complete and free of defect, that the proposed use was not prohibited by law, and that the monthly instream flow amounts requested by ODFW did not exceed EANF and were allowable. (*Id.* at 5, 6.) Also in the report, OWRD concluded the following: the proposed water use, as conditioned, passed the technical review; the information contained in the application along with the supporting data submitted by applicant indicated that the flow levels were necessary to protect the public use; the supporting data stated that the recommended flows were necessary to meet the biological requirements for spawning and rearing of salmonids and resident game fish; consideration of habitat type, stream depth and water velocity were considered by the applicant in development of the flow levels; the recommended flow volumes were necessary to ensure appropriate levels of dissolved oxygen, turbidity, pH and temperature; the minimum stream flow recommendations developed from the 1965 and 1966 study were intended to provide suitable environment during appropriate seasons to perpetuate minimum desirable conditions capable of maintaining trout populations; and the recommended minimums were based primarily on the biological requirements of fish present and follow seasonal stream discharge patterns to which the life cycles of salmonids had become adapted. (*Id.* at 6.)

35. Following issuance of the Report of Technical Review, OWRD provided public notice and a public comment period. OWRD received and considered numerous comments on the Report of Technical Review. (Exs. A1 at 2, A3 at 4, A4.)

The public interest review

36. After conducting its technical review of the application, OWRD conducted a public interest review. OWRD first considered whether the public interest presumption set forth in ORS 537.153(2) was established for the proposed water use. As part of that consideration,

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[7] The bases for the EANF calculations are set forth later in this final order. (*See infra.*)

OWRD reviewed water availability in the identified reach as follows:

Water available for appropriation in cfs

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103.3	145.1	225.9	503.9	454.8	-93.1	-242.0	-229.0	-150.5	58.5	61.6	68.6

(Ex. A5 at 2-3; *see* ORS 537.153(2).)

37. Because water was not available for appropriation during the months of June, July, August, and September, OWRD determined that the public interest presumption in ORS 537.153(2) was not established. (Ex. A5 at 3; *see* ORS 537.153(2).) OWRD processed the application without the public interest presumption. (Ex. A5 at 3.)

38. OWRD next considered whether the proposed use would impair or be detrimental to the public interest by considering the factors listed in ORS 537.170(8). Because the requested flow amounts in the application were below the EANF amounts in every month, OWRD determined that the proposed use would not impair or be detrimental to the public interest. (Exs. A1 at 4, A5 at 2-4.)

EANF calculations in general

39. EANF calculations are based on measured streamflow where available (*i.e.*, gaged watersheds) and for ungaged streams, by using statistical models called regional regression equations. (Ex. A10 at 2.)

40. Gaged watersheds refer to watersheds that have (or had) a streamgage that provides information necessary to compute the amount of water flowing in the river or stream, also known as discharge, in terms of cfs. (Ex. A10 at 2.) Gaged watersheds may include a single gage at the mouth of the river or multiple gages on one or many stream reaches with varying lengths and periods of record. Streamgages provide the measured data necessary to calculate natural streamflow.[8] (*Id.*)

41. Not all measured streamflow represents natural streamflow.[9] In most cases, measured streamflow needs to be naturalized to reflect natural streamflow. This is done by adding back known consumptive uses to measured streamflow in order to calculate natural streamflow. Consumptive uses represent water withdrawn from a stream for beneficial use (*e.g.*, irrigation, municipal use, etc.) and is then lost to evaporation or transpiration.[10] (Exs. A10 at 3,

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[8] OWRD maintains a hydrographics database in which it compiles all streamflow measurements from gages throughout the state. (Ex. A11 at 21.)

[9] Most measured streamflow, including what is recorded by streamgages or individual streamflow measurements, is influenced by upstream use. (Ex. A10 at 8.)

[10] Consumptive use from irrigation is obtained from estimates made by the US Geological Survey (USGS) Portland office. (Ex. A11 at 13.) Consumptive use from other uses is based on the associated

A11 at 21, 57, 65.)

42. Gaged data that has been corrected to reflect natural streamflow is then used to develop regional regression equations. (Ex. A10 at 3.)

43. Regional regression equations are statistical models that relate natural streamflow to watershed characteristics, such as physical and climatological properties, that are known to influence hydrological properties (*i.e.*, streamflow). (Ex. A10 at 3.) Regional regression equations are similar to the following, where Q_{NSF} = natural streamflow, X_n = watershed characteristic, and B_n = regression coefficient: $Q_{NSF} = \exp(B_0) X_1^{B1} X_2^{B2} X_3^{B3} \cdots$. (*Id.*) Regression coefficients are generated through calibration of the regression model by relating natural streamflow to watershed characteristics, such that any change in watershed characteristics or streamflow data used in developing the equation would have a resultant change in the regression coefficients and, ultimately, the estimates of natural streamflow produced by the equation. (*Id.*)

44. Values of watershed characteristics are typically derived by Geographical Information Systems (GIS) that summarize information over a delineated area that identifies the boundaries of a watershed. These characteristics are produced and published by agencies such as the USGS, the Oregon Climate Service, and the Natural Resources Conservation Service. Estimates of watershed characteristics are dependent upon the resolution of coverages used to extract and summarize the characteristics. Coverages refer to the data set of spatial and attribute data for geographic features. Resolution refers to the ability to recognize and distinguish features. Finer resolution coverages allow for better distinction of features and improve estimates of characteristics for watersheds. (Ex. A10 at 3-4.)

45. For watersheds where the EANF is unknown, "an estimate of the streamflow can be made by inserting the known characteristics for the watershed into the regression equation and performing the calculations." (Exs. A10 at 4, A13 at 19.) In this manner, regional regression models 'interpolate' between measured streamflow locations to unmeasured locations. (Ex. A10 at 4, A13 at 17.)

46. Correction factors are used to improve natural streamflow estimates from regional regression equations because the sum of streamflows estimated through regional regression equations for contributing areas above a gage should equal the gaged streamflow. (Exs. A10 at 4, A11 at 47.)

47. Regional regression equations are acceptable scientific and hydrological methods for determining natural streamflow. (Test. of Andrews; Ex. A11 at 40.)

OWRD's previous regression equations

48. The earliest iteration of the regional regression equation used by OWRD, the

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water rights. In these cases, consumptive use is obtained by multiplying the maximum diversion rate allowed for the water right by a consumptive use coefficient. (*Id.*)

Robison Method, included four watershed characteristics as predictors of natural streamflow: drainage area, mean annual precipitation, water rights index information, and soils index information. The Robison Method did not correct measured streamflow to natural streamflow before estimating streamflow. The Robison Method used a poor method to estimate consumptive use, resulting in overestimation of consumptive use. (Exs. A10 at 5, A13 at 22, A14 at 2.)

49. In 1992, OWRD began working on the Cooper Method 1 regression equation. The Cooper Method 1 used area, precipitation, elevation, and other watershed characteristics to estimate natural streamflow. The Cooper Method 1 corrected measured streamflow to natural streamflow by adding consumptive uses back to the measured streamflow before estimating streamflow. The Cooper Method 1 used estimates from the USGS for irrigation use, and diversion rates with realistic coefficients for other consumptive uses. (Exs. A10 at 5, A14 at 3.)

50. In the mid-1990s, OWRD began using the Cooper Method 2 regression equation, which included seven watershed characteristics to estimate natural streamflow: area; maximum relief; average slope; mean elevation; mean annual precipitation; mean minimum January temperature; and mean minimum July temperature. The Cooper Method 2 corrected measured streamflow to natural streamflow by adding consumptive uses back to the measured streamflow before estimating streamflow. The Cooper Method 2 used estimates from the USGS for irrigation use, and diversion rates with realistic coefficients for other consumptive uses. (Exs. A10 at 5, 6, A14 at 4, 10.) At the time OWRD calculated EANF for IS-72191, OWRD's model did not include soil permeability as a watershed characteristic. (Exs. A15 at 36, A14 at 10.) Since 2002, the model has used soil permeability as a watershed characteristic. (*See infra* ¶ 56; Ex. A11 at 46.)

Improvements to regression equations and calculations

51. Since the early 1990's, OWRD has worked to improve its water availability calculations. OWRD adopted a common base period of 1958 to 1987 for calculation of exceedance flows. OWRD picked that common base period as the most suitable because it represented the long term average conditions for this century and because it had the most streamflow information available. (Ex. A10 at 5, A11 at 24-25, A13 at 17-18.)

52. OWRD corrected the period of record for all gages, such as short record gages or out-of-phase records, to represent the base period. The correction was based on a linear association of the short record gage with the record of a nearby gage that did coincide with the base period. This correction allowed for the inclusion of data from additional gaging stations through various iterations of the water availability estimates, even if the data was collected post-1987. (Exs. A10 at 5, A11 at 26, A13 at 18.)

53. OWRD further improved estimates of watershed characteristics, recognizing that the accuracy of the estimates was dependent upon the resolution of the coverage used to extract and summarize values of any given watershed. The early iterations were too coarse and stopped at the state line. New coverages were obtained that resulted in better estimations, particularly for smaller watersheds. (Ex. A10 at 5, A11 at 26, A12 at 31-32, A13 at 22-23.) OWRD included a

broader set of watershed characteristics into model development, and performed a statistical analysis to identify the most important watershed characteristics that would optimize the regression equations. OWRD then revised the regional regression equations to include those additional watershed characteristics. (Exs. A10 at 6, A14 at 10, A15 at 33.)

54. OWRD performed a goodness of fit evaluation on the regional regression equations statewide. OWRD compared modeled estimates to known estimates and found the equation that best fit the known data points. OWRD chose an equation that was best able to calculate EANF, fit known values, and compare and minimize error in the regression analysis. (Test. of Andrews; Exs. A11 at 45, A15 at 38.)

55. OWRD developed correction factors based on comparison of modeled and measured streamflows and used this information to ensure that the sum of estimated streamflows matches actual flows. For instance, natural streamflow calculated for a gaged watershed is compared to the natural streamflows estimated through regional regression for the corresponding watershed, which may include one or more WABs. The correction factor is calculated by dividing the actual streamflows by the corresponding sum of streamflows estimated for each WAB through regional regression. The estimated streamflows are then multiplied by the correction factor and the corrected streamflows then sum to match the actual streamflows. (Exs. A10 at 4, A17 at 1-2.) OWRD's correction factors reduce the impact of uncertainties and errors from the regression analysis. (Exs. A11 at 45, 68, A32 at 4.)

56. OWRD's current regional regression equation relies on up to 10 watershed characteristics to predict natural streamflow. Those watershed characteristics include: watershed area; maximum watershed relief; mean watershed slope; mean slope aspect; mean elevation; mean January precipitation; mean July precipitation; mean January maximum temperature; mean July minimum temperature; and soil permeability. (Exs. A10 at 6, A11 at 39, Table 16, 46, Table 20.) OWRD has the ability to estimate 93 watershed characteristics. (Ex. A11 at 44.)

OWRD's water availability reporting system

57. In 1989, the Oregon Legislature directed OWRD to establish a Water Availability Program. The directive had three parts: 1) To set standards for evaluating whether water is available for in-stream and out-of-stream uses; 2) To establish and maintain a Water Availability Database based on these standards; and 3) To use the database to evaluate applications for new uses of surface water. (Ex. A11 at 14.)

58. In July 1992, the Water Resources Commission adopted into rule the standards for determining water availability of surface water. The purposes of those standards were to limit new appropriations of water to situations where the applicant could expect use of water a reasonable amount of time, and to limit situations where the Department would have to regulate water use. (Ex. A11 at 14.)

59. OWRD subsequently created a computer database for tracking water availability in each basin throughout the state, referred to as the Water Availability Reporting System (WARS). Because WABs and EANF are known requirements in evaluating instream water rights

applications, the developers of WARS generated WABs with pour points associated with the downstream ends of reaches with instream water rights applications. WARS became operational in 1993. (Exs. A11 at 68, A32 at 3, A35 at 2.)

60. WARS currently contains water availability calculations for over 2,300 WABs within the state. (Exs. A11 at 13, 119-169, A35 at 2.) The water availability calculations in the database considered all relevant storages, out-of-stream consumptive uses, instream water rights, and scenic waterway flows. (Ex. A11 at 67.)

61. OWRD performed a goodness of fit evaluation on all of the WABs with gages used in the development of WARS. (Test. of Andrews; Ex. A11 at 73-98.)

62. WARS divides the state into two regions: East and West of the Cascades. East of the Cascades is Region 2. (Test. Andrews.)

63. WARS contains OWRD's current regional regression equation to calculate natural streamflow. (Exs. A10 at 9, A32 at 2, A35 at 2-5.)

64. The program in WARS recognizes WABs that have contributing flows based on their location in the basin, as well as the tributary and/or river that they feed into. WARS factors those contributing flows into the natural streamflow calculation. (Test. of Andrews.)

65. Currently, a hydrologist can review an instream water right application in WARS by inserting the location of the reach by basin, watershed ID, or water right on the homepage. (Test. of Andrews; *see* Ex. A33 at 1.) WARS then produces a Water Availability Analysis "Detailed Reports" page, which includes the values for "Natural Stream Flow" by month. (Ex. A34 at 1; test. of Andrews.) The hydrologist can click on other tabs, including the "Complete Water Availability Analysis" to view additional detail on aspects of the water availability calculation, such as a breakdown on the different types of consumptive uses. (Ex. A32 at 2.)

66. WARS does not show the components that go into the regression equation because, among other things, it would be impractical to display all the data used for the watershed characteristics and regression coefficients, as well as the information used to develop correction factors for improving estimates of natural streamflow generated by the regression equation. (Ex. A32 at 1-2.)

OWRD's calculations of EANF for application IS 72191

67. In general, upstream flow values are lower than downstream EANF. (Test. of Andrews; Ex. A32 at 5.)

68. For application IS 72191, OWRD created WAB 72191 to estimate natural streamflow. (Exs. A10 at 6, A11 at 143, A16 at 1, A34 at 1.) OWRD estimated EANF at the downstream end, or pour point, of WAB 72191. (Test. of Andrews; Ex. A32 at 3.)

69. WAB 72191 included all contributing flows (*i.e.*, flows that feed into the identified

reach) from WABs upstream of the downstream end of IS 72191. WARS included the contributing flows in the natural streamflow calculation for IS 72191. (Test. Andrews; Ex. A16.)

70. OWRD calculated EANF for application IS 72191 by using gaged data from Gage ID 13281500 located on the Powder River; by using the Cooper Method 2 regional regression equation for the area of the reach where gaged data was not available; and by using a correction factor that was developed using data from Gage ID 13289500 to correct the streamflows estimated through the regression equation. (Test. of Andrews; Exs. A10 at 6-7, A16 at 1, A18, A38.)

71. OWRD first corrected the gaged data to account for consumptive uses above the gages impacted by consumptive use. (Ex. A10 at 6, A14 at 3-4.) OWRD then used the naturalized flows from gage 13281500 in calculating streamflow. This gaging station measured flow on the Powder River near Haines, Oregon, downstream of what is now Phillips Lake and upstream of Thief Valley Reservoir from 1946 to 1953. (Exs. A10 at 7, A11 at 84, A18, A19, A38.) OWRD then estimated streamflows for the non-gaged area of the reach by using the Cooper Method 2 regression equation. To correct the streamflows estimated through the regression equation, OWRD developed a correction factor using data from gage 13289500. This gaging station measured flow near the mouth of the Powder River near Robinette, Oregon, from October 1928 to September 1932. OWRD then applied the correction factor to the estimated streamflows for the non-gaged area of the reach. After performing the calculations in WARS, OWRD determined that the monthly EANF amounts in the identified reach exceeded the monthly instream flow amounts requested in the application. (Exs. A10 at 7, A11 at 84, A18, A19, A38.)

72. OWRD used watermaster distribution records, Department measurement records, USGS records, and a regional regression equation to develop the natural streamflow estimates for WAB 72191. (Exs. A10 at 7, A11 at 105-107, A14 at 3-4.)

OWRD's current calculations of EANF

73. For comparison purposes, OWRD calculated EANF within the identified reach of the Powder River using the current regression equation in WARS. The results were as follows:

EANF in cfs

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
108	158	308	702	1040	884	271	136	89.7	84.9	99.4	107

(Test. of Andrews; Exs. A10 at 9, A34 at 1.) Had the application been processed using the current regression equation in WARS, OWRD would have approved the application up to the requested flow amounts in the application. (Test. of Andrews; Ex. A10 at 9.)

PFO and Protest

74. On May 14, 1996, OWRD issued its PFO proposing to approve the application with

conditions. (Ex. A5.) In the PFO, OWRD found that the estimated average natural flow for the lower end of the requested reach was as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
163	230	393	740	1100	845	212	146	82.5	76.9	103	122

(*Id.* at 2.) OWRD also found that water was not available for further appropriation (at a 50 percent exceedance probability) for the period June, July, August and September, and that the flows available for further appropriation were, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103.3	145.1	225.9	503.9	454.8	-93.1	-242.0	-229.0	-150.5	58.5	61.6	68.6

(*Id.* at 2-3.) OWRD concluded, in relevant part: The proposed use requested in this application was allowed in the Powder Basin Plan; the proposed use would not injure other water rights; the proposed use complied with rules of the Water Resources Commission; water was not available for the proposed use at the amount requested during June, July, August and September because the unappropriated water available was less than the amounts requested during those months; the presumption set forth in ORS 537.153 had not been established; and the application had been processed without the statutory presumption. (*Id.* at 3.) OWRD also concluded: The proposed use, as limited in the draft certificate, would not result in injury to other water rights; the proposed use, as limited in the draft certificate, would not impair or be detrimental to the public interest as provided in ORS 537.170; the proposed use, as limited in the draft certificate, shall except future use of water for human and livestock consumption; and the flows were to be measured at the lower end of the stream reach to protect necessary flows throughout the reach. (*Id.* at 4.) OWRD further concluded that the stream flows listed below represented the minimum flows necessary to support the public use[:]

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st ½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd ½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

(*Id.*)

75. The PFO contained a Draft Certificate of Water Right with a priority date of January 29, 1992, that limited the approved instream flow amounts in cfs as follows:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st ½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd ½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

(Ex. A5 at 5.) The Draft Certificate of Water Right further conditioned the water right, requiring the flows to be measured at the lower end of the stream reach to protect necessary flows throughout the reach. (*Id.*)

76. The PFO set forth Protest Rights, and indicated that any protest submitted must be in

writing and received by OWRD no later than June 28, 1996. (Ex. A5 at 4, 6.) On June 11, 1996, OWRD extended the Protest deadline to July 26, 1996. (Ex. A6 at 1.)

77. On July 22, 1996, Protestant filed a Protest, asserting that the amount of water that OWRD claimed was in the stream during June, July, August, and September was false. (Ex. A7 at 2.)

Settlement discussions

78. On March 26, 2014, OWRD sent a letter to Protestant, requesting that the parties meet to discuss Protestant's concerns regarding the impact that the proposed instream water right would have on Protestant's water rights. (Ex. A9; P19 at 16, 18, 19.)

79. In 2015, the parties worked towards a "settlement meeting." (P19 at 16, 21, 23.)

80. On September 14, 2021, OWRD referred the matter to the OAH for a contested case hearing because the parties had not reached a settlement. (P1 at 1, P19 at 16, 17, 30.)

Additional information

81. Protestant's water rights are senior to the instream water right at issue in this case. (Test. of Chandler.)

82. Jeff Colton is the manager of Protestant. Mr. Colton provided streamflow measurements from the Salsibury gaging station from 1904 to 1968. The gaged data does not account for consumptive uses above the gage. The gaged data does not reflect natural streamflow and is not comparable to OWRD's EANF calculation. (Exs. R4, A32 at 5-6.)

83. Mr. Colton produced a summary document of the Salsibury gaging station, showing dates when measurements were less than 20 cfs from 1904 to 1967. The gaged data does not account for consumptive uses above the gage. The summary document does not reflect natural streamflow and is not comparable to OWRD's EANF calculation. (Exs. R5, A32 at 6.)

84. Mr. Colton provided streamflow measurements from the Deer Creek and the Powder River Hudspeth Lane gaging stations. The gaged data does not account for consumptive uses above the gages nor tributary inflows below the gages. The gaged data does not reflect natural streamflow and is not comparable to OWRD's EANF calculation. (Exs. R10-R13, A32 at 5-6.)

85. Mr. Colton provided information from a Bureau of Reclamation (BOR) study to show that the Powder River had an annual water shortage from 1971 to 1999 of 134,000 acre-feet.[11] (Ex. R15.) The BOR information states that the natural flow computations were calculated using data from 1971 to 1999, which is not representative of the common base period used by OWRD. (Exs. R15 at 3, A32 at 4.) The BOR information does not indicate which gages were used or how they were used in generating values of average annual flow. (Exs. R15, A32

[11] Protestant provided excerpts from the BOR study. (*See* R15.)

at 4.) The authors of the BOR report admit that "complete information is not available on the numerous water rights in the basin due to transfer and division of rights over years." (Ex. R15 at 2.) Without an accurate accounting of the water rights of record, it is not possible to calculate estimates of consumptive use which are needed to calculate naturalized streamflow. (Ex. A32 at 4.) The values of natural flow developed by the BOR study do not reflect natural streamflow and are not comparable to OWRD's EANF calculation. (Exs. R15, A32 at 4.)

86. Individual observations and/or measurements of streamflow in the identified reach do not reflect natural streamflow, and are not reflective of data over a long period of time. They are not comparable to OWRD's EANF calculation. (Exs. A10 at 7-8, A32 at 5-6.)

87. Anthony Creek is a tributary that flows into the Powder River. Anthony Creek has a contributing flow in June, July, August, and September into the Powder River downstream of BVID's boundary and upstream of the downstream end of IS-72191. (Test. of Andrews; Exs. A18, A46.)

88. Rock Creek is a tributary that flows into the Powder River. Rock Creek has a contributing flow in June, July, August, and September into the Powder River downstream of BVID's boundary and upstream of the downstream end of IS-72191. (Test. of Andrews; Exs. A18, A47.)

89. The North Powder River is a contributing tributary to the Powder River. (Ex. R22 at 112, 120; *see also* Ex. A19.)

CONCLUSION OF LAW

OWRD properly determined EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4).

OPINION

Protestant asserts OWRD erred in issuing the PFO approving Application IS 72191 because OWRD failed to properly determine EANF for June, July, August, and September consistent with ORS 537.343 and OAR 690-077-0015(4). As the proponent of that position, Protestant bears the burden of proving its contention by a preponderance of the evidence. *See* ORS 183.450(2) and (5); *Rencken v. Young*, 300 Or 352, 364-365 (1985) (finding that proponents of a cancellation proceeding had the burden of proving by reliable, probative, and substantial evidence that the water right holder had ceased using the water right in issue for the statutorily prescribed period, citing ORS 183.450(5)); *Gallant v. Board of Medical Examiners*, 159 Or App 175, 183 (1999) (finding that in enacting ORS 183.450(5) the legislature intended to prescribe a standard of proof that corresponded to the preponderance of the evidence standard); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); and *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard). Proof by a preponderance of the evidence means that the fact finder is convinced that the facts asserted are

more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987). The burden of proof encompasses two burdens, the burden of production and the burden of persuasion. *Marvin Wood Products v. Callow*, 171 Or App 175 (2000) (Conceptually, the burden of proof encompasses two distinct burdens: the burden of producing evidence of a particular fact (*i.e.*, the burden of production), and the burden of convincing the trier of fact that the alleged fact is true (*i.e.*, the burden of persuasion)). Accordingly, any party advocating a particular position bears the burdens of production and persuasion as to that position. A party may not rely on an absence of evidence in the record to meet its burden. *May Trucking Co. v. Dept. of Transportation*, 203 Or. App. 564, 572-573, 126 P.3d 695, 700-701 (2006) (rejecting petitioner's contention of an absence of evidence in the record and finding, "It was petitioner's obligation to make sure that there is evidence in the record supporting its position.").

To meet its burden, Protestant must prove – by a preponderance of the evidence – that OWRD did not properly determine EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4). Protestant's burden is an affirmative one requiring evidence to overcome OWRD's conclusions in the PFO. Collateral attacks drawing into question OWRD's methodologies and underlying data, without more, are insufficient to meet Protestant's burden.

Overview of Instream Water Rights

In Oregon, water is a public resource to be allocated by the State for beneficial use. ORS 537.110, ORS 537.120. In the Instream Water Rights Act, set forth in ORS 537.332 – 537.360, the Oregon Legislature declared that "[p]ublic uses are beneficial uses." ORS 537.334(1). The Legislature defined "public use" to include the "[c]onservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values." ORS 537.332(5)(b).

The Legislature charged ODFW, the Department of Environmental Quality (DEQ), and the State Parks and Recreation Department (OPRD) with applying for instream water rights on waters of the state for public uses. ORS 537.336(1), (2), and (3). The Legislature required that any instream water right application from ODFW be for an amount of instream flow that ODFW recommends as "the quantity of water necessary to support those public uses." ORS 537.336(1). For applications filed after October 28, 1989, all applications for instream water rights must be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications. OAR 690-077-0020(3). ODFW approved three methods for determining instream flow requirements for fish and wildlife: the Instream Flow Incremental Methodology; the Oregon Method; and the Forest Service Method. OAR 635-400-0015(6).

The Legislature also charged OWRD with evaluating instream water right applications and issuing certificates, which are then held "in the name of Water Resources Department as trustee for the people of the State of Oregon." ORS 537.341. The Legislature identified the OWRD Director as "the final authority in determining the level of the in-stream flow necessary

to protect the public use." ORS 537.343(2).

Did OWRD properly determine EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4).

ORS 537.343 is titled "Proposed final order; conditions" and provides, in part:

> (1) A proposed final order issued under ORS 537.170(6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:
>
> (a) Approve the in-stream water right for the quantity of water requested;
>
> (b) Approve the requested in-stream water right for a lesser quantity of water; or
>
> (c) Reject the requested in-stream water right.
>
> (2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

ORS 537.153(2) identifies the public interest presumption and reads, in part:

> In reviewing the application under subsection (1) of this section, the department shall presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable 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 complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of the evidence that either:
>
> (a) One or more of the criteria for establishing the presumption are not satisfied; * * *.

ORS 537.170(8) sets forth the factors that must be considered if the public interest

presumption is overcome and provides, in part:

> If the presumption of public interest under ORS 537.153(2) is overcome, then before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering:
>
> (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

OAR 690-077-0015 addresses, among other things, the EANF limitation and provides, in part:

> (1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right.
>
> (2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that 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.
>
> (3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.
>
> (4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow

for fish passage or migration over obstacles.

OAR 690-077-0010 provides applicable definitions and states, in part:

> (10) "Estimated Average Natural Flow" means average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology.
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> * * * * *
>
> (13) "Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency.
>
> * * * * *
>
> (16) "Instream Water Right" as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.
>
> * * * * *
>
> (26) "Public Benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.
>
> (27) "Public Use," as defined in ORS 537.332, includes but is not limited to:
>
> * * * * *
>
> (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values[.]

Protestant contends that OWRD did not properly determine EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4). Protestant's Closing Argument at 6. OWRD and ODFW contend to the contrary. OWRD and ODFW Joint Written Closing Argument at 2-3, 17-18. I agree with OWRD and ODFW.

On January 29, 1992, ODFW filed application IS 72191 with OWRD, seeking to protect the minimum instream flows necessary for the maintenance and conservation of rainbow trout lifecycles and habitat in the Powder River from the Mason Dam at river mile 131.2 to the Thief Valley Reservoir at river mile 74.0. ODFW used the Oregon Method, an acceptable method

adopted by rule by the Oregon Fish and Wildlife Commission, for determining instream flow requirements for rainbow trout in the identified reach of the Powder River. ODFW's instream flow requests were based upon values set forth in the Powder Basin Report.

After receiving the application, OWRD determined the application was complete and gave it a tentative priority date of January 29, 1992. OWRD then began a technical review of the application. As part of its technical review, OWRD calculated EANF in the identified reach. OWRD calculated EANF by using gaged data from Gage ID 13281500 located on the Powder River; by using the Cooper Method 2 regional regression equation for the area of the reach where gaged data was not available; and by using a correction factor that was developed using data from Gage ID 13289500 to correct the streamflows estimated through the regression equation.

OWRD first corrected the gaged data to account for consumptive uses above the gages impacted by consumptive use. OWRD then used the naturalized flows from Gage ID 13281500 in calculating streamflow. This gaging station measured flow on the Powder River near Haines, Oregon, downstream of what is now Phillips Lake and upstream of Thief Valley Reservoir from 1946 to 1953. OWRD then estimated streamflows for the non-gaged area of the reach by using the Cooper Method 2 regression equation. To correct the streamflows estimated through the regression equation, OWRD developed a correction factor using data from Gage ID 13289500. This gaging station measured flow near the mouth of the Powder River near Robinette, Oregon, from October 1928 to September 1932. OWRD then applied the correction factor to the estimated streamflows for the non-gaged area of the reach. OWRD performed the calculations in WARS. As part of its program, WARS included the contributing flows upstream of the downstream end of IS 72191 in the natural streamflow calculation.

OWRD used watermaster distribution records, Department measurement records, USGS records, and a regional regression equation to develop the natural streamflow estimates for IS 72191. Following the calculations, OWRD determined that the monthly EANF amounts in the identified reach exceeded the monthly instream flow amounts requested by ODFW in the application.

OWRD then conducted a public interest review. OWRD first considered whether the public interest presumption set forth in ORS 537.153(2) was established for the proposed water use. As part of that consideration, OWRD reviewed water availability in the identified reach. Because water was not available for appropriation during the months of June, July, August, and September, OWRD determined that the public interest presumption in ORS 537.153(2) was not established. OWRD processed the application without the public interest presumption.

OWRD next considered whether the proposed use would impair or be detrimental to the public interest by considering the factors listed in ORS 537.170(8). Because the requested flow amounts in the application were below the EANF amounts in every month, OWRD determined that the proposed use would not impair or be detrimental to the public interest.

On May 14, 1996, OWRD issued its PFO proposing to approve the application with conditions. OWRD conditioned the instream water right to the flow amounts requested in the

application.

I find, by a preponderance of the evidence, that OWRD properly determined EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4). I also find that OWRD used all available streamflow data as well as a generally accepted hydrologic method for estimating streamflow where no such data was available. I further find that OWRD demonstrated that, as conditioned, the instream water right proposed in the PFO would not impair or be detrimental to the public interest.

Protestant's additional arguments

Protestant first contends that its due process rights were violated as a result of OWRD's delay in scheduling a contested case hearing. Protestant contends its "'opportunity to be heard' occurred at neither a meaningful time nor in a meaningful manner." Protestant cites to a quote in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) in support of its argument. Protestant's Closing Argument at 4-5. OWRD and ODFW contend that "Protestant has not identified any protected liberty or property interest at stake in this proceeding, nor demonstrated why the administrative process provided was insufficient." OWRD and ODFW Joint Response to Protestant's Closing Argument at 4. I agree with OWRD and ODFW.

Under both the 5th and 14th Amendments of the United States Constitution, no person shall be deprived of life, liberty, or property without due process of law. In *Mathews*, Mr. Eldridge did not receive a hearing before his disability benefits were terminated by the Social Security Administration. Mr. Eldridge argued that the lack of a pre-termination hearing was unconstitutional under the Due Process Clause of the Fifth Amendment. The Court, while acknowledging that Mr. Eldridge had a property interest in his disability benefits, held that an evidentiary hearing was not required prior to the termination of Social Security disability benefits. *Mathews*, at 332, 349. In reaching its decision, the Court identified three factors that must be considered in determining the constitutional sufficiency of administrative procedures prior to the initial termination of benefits: 1) the private interest that will be affected by the official action; 2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional safeguards; and 3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Mathews*, at 340, 343, 347.

In the matter at hand, Protestant did not identify any protected liberty or property interest that was at stake in the proceeding. *Accord G.A.S.P. v. Env't Quality Comm'n*, 198 Or App 182, 193 (2005) (rejecting due process arguments where "[p]etitioners simply do not identify a constitutionally protected property or liberty interest that would require us to engage in *Mathews*-like analyses."). Even if Protestant's water rights are considered a property interest, those water rights are not being terminated nor reduced in this proceeding. Moreover, Protestant's water rights are senior to the water right that is at issue in the case – meaning, Protestant will receive its water rights before water will be provided for rainbow trout along the identified reach at issue. Applying the first two factors in *Mathews*, Protestant's water rights will not be affected by this official action; and Protestant will not be deprived of its water rights through the procedures used in this matter. With regards to OWRD's delay in scheduling a

contested case hearing, between the date of the Protest and the date of the referral for hearing, OWRD worked with the parties to see if there was an opportunity for settlement. When the parties did not settle the case, OWRD referred the matter for hearing as its budget allowed, *i.e.*, the agency's fiscal and administrative burden to provide for hearing (the third factor in *Mathews*). Accordingly, I find that Protestant does not have a protected liberty or property interest at stake in this proceeding. I further find that Protestant's due process rights were not violated as a result of OWRD's delay in scheduling a contested case hearing.

Protestant next contends that "OWRD and ODFW were allowed to present their employees as witnesses and qualify them as experts without even an offer of qualifications at the time written direct testimony was due. BVID was given no notice of the witnesses' expertise or qualifications, and was not provided reports typically required of expert witnesses." Protestant's Closing Argument at 5. OWRD and ODFW contend that they did provide Protestant with their experts' qualifications in the written direct testimony. OWRD and ODFW also contend that there is no Administrative Procedures Act (APA) requirement to provide expert reports. OWRD and ODFW Joint Response to Protestant's Closing Argument at 6-7. I agree with OWRD and ODFW.

As set forth in the record, on June 2, 2023, OWRD and ODFW provided Protestant with the written direct testimony of its three experts, 24 days before the hearing. Each witness, in his respective direct testimony, addressed his foundation as an expert, his current and past work, and his specific expertise in the matters at issue in the hearing. *See* Exhibits A10, A20, and A27. Thus, Protestant had notice of OWRD's and ODFW's experts' qualifications well in advance of hearing. Moreover, there is no rule in the APA that requires an agency or party to provide expert reports to the opposing party in a contested case hearing before the Office of Administrative Hearings. *See* OAR 137-003-0501 through 137-003-0700 (Rules for Office of Administrative Hearings). Protestant's arguments are not supported by the record.

Protestant also contends that "[t]he Applicant and OWRD presented witnesses who supported their position, not with first-hand or personal knowledge or experience, but rather with information they stated was read from a case file their agency provided, but which an 'expert' file was not provided to BVID." Protestant's Closing Argument at 5-6.

However, Mr. Andrews, Mr. Lemanski, and Mr. Sawaski were all qualified on the record as experts in their respective fields based upon their respective knowledge, work experience, and expertise in the matters that were at issue in the hearing. Mr. Andrews was qualified as an expert hydrologist with expertise in WARS; Mr. Lemanski was qualified as an expert fish biologist with expertise in fish distribution and the fish habitat needs of rainbow trout; and Mr. Sawaski was qualified as an expert instream scientist and hydrologist with expertise in hydrology and instream flow needs for rainbow trout. Moreover, the testimony provided by each of these three experts was directly related to the issue for hearing, as well as the relevant exhibits that were provided to Protestant in advance of hearing and were admitted into evidence at hearing. In sum, all three experts had sufficient foundation, knowledge, experience, and expertise for their testimony regarding the matters at issue in the hearing. Protestant's argument is unpersuasive.

Protestant next contends that "Use of [a] single EANF for the entire instream water right

is not proper for the location of proposed stream reach." Protestant's Closing Argument at 6. OWRD and ODFW contend that Protestant's argument is a new issue that was not properly raised in the Protest. OWRD and ODFW Joint Response to Protestant's Closing Argument at 12. I agree with OWRD and ODFW.

ORS 537.170(5) provides:

> Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue.

The PFO in this case states that, "the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach." Exhibit A5 at 4. The Draft Certificate of Water Right attached to the PFO also states that, "the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach." *Id.* at 5. Thus, Protestant's assertion that "[u]se of single EANF for the entire instream water right is not proper for the location of proposed stream reach" was a reasonably ascertainable issue from both the PFO and the attached Draft Certificate of Water Right at the time of Protestant's Protest. Protestant did not raise this reasonably ascertainable issue in its Protest. *See* Exhibit A7. Pursuant to ORS 537.170(5), because Protestant did not raise this reasonably ascertainable issue in its Protest, I conclude that Protestant is precluded from raising it now in its closing argument.

Protestant also contends that "To determine the EANF for the entire reach of IS-72191, OWRD relied on multiple EANFs for each distinct WAB, and then requested the instream water right for the entire 57 river miles – i.e., the agency generalized one EANF to the entire area." Protestant's Closing Argument at 7-8. OWRD contends that Protestant's statement is not an accurate summary of OWRD's process for calculating EANF for IS 72191. OWRD and ODFW Joint Response to Protestant's Closing Argument at 14. I agree with OWRD.

As detailed in the record, OWRD created WAB 72191 to estimate natural streamflow for application IS 72191. OWRD estimated EANF at the downstream end, or pour point, of WAB 72191, which is the normal long-used practice for OWRD. *See* Exhibit A11 at 16. WAB 72191 included all contributing flows (*i.e.*, flows that feed into the identified reach) from WABs upstream of the downstream end of IS-72191. WARS factored those contributing flows into the natural streamflow calculation for IS 72191. Testimony of Andrews. Protestant's assertion that OWRD "relied on multiple EANFs for each distinct WAB" misstates OWRD's process for calculating EANF for IS-72191. As such, Protestant's misstatement is unpersuasive.

Protestant next contends that "for a WAB such as 72191, which was specifically created for IS-72191, the watershed characteristics would be different from those of 243 or 30920327, the other two WABs used for this instream water right." Protestant's Closing Argument at 8.

OWRD and ODFW contend that Protestant's statement is not supported by any evidence in the record. OWRD and ODFW Joint Response to Protestant's Closing Argument at 15. I agree with OWRD and ODFW. There is no reliable evidence in the record that supports Protestant's argument. Thus, Protestant's argument is without merit.

Protestant also contends that "there are no other tributaries providing water to the Powder River in late July, August, or September, despite what the WABs and the EANFs derived from those WABs by a computer modeling technique attempted to illustrate." Protestant's Closing Argument at 8. OWRD and ODFW contend that Anthony Creek and Rock Creek are tributaries that provide summer water to the Powder River upstream of the downstream end of IS 72191. OWRD and ODFW Joint Response to Protestant's Closing Argument at 17. I agree with OWRD and ODFW.

As set forth in the record, Anthony Creek and Rock Creek both have water in June, July, August, and September that flows into the Powder River downstream of BVID's boundary and upstream of the downstream end of IS 72191. *See* Exhibits A46 and A47. As such, Protestant's argument is without merit.

Protestant next contends that the "Combined data approach is flawed when measuring [the] Powder River." Protestant's Closing Argument at 9.

However, OWRD's promulgated definition of EANF allows for the use of "watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology," when estimating average natural flow. *See* OAR 690-077-0010(10). As detailed previously, OWRD used gaged data as well as a generally accepted hydrologic method for estimating streamflow where no such data was available, to calculate EANF in compliance with OAR 690-077-0010(10). Testimony of Andrews; *see* OAR 690-077-0010(10). Protestant's argument is therefore unpersuasive.

Protestant also contends that "[t]he EANF determined for June, July, August, and September for this stretch of the Powder River does not represent the prehistoric streamflow of the Powder River." Protestant's Closing Argument at 9. Protestant contends that "prehistoric" streamflow is streamflow "without the influence of human activities." *Id.* Protestant also states "[b]efore human activities, the Powder River was not channelized." *Id.* OWRD and ODFW contend that EANF is a calculation of instream flow without consumptive use, not a calculation that models prehistoric river channel shape. OWRD and ODFW Joint Response to Protestant's Closing Argument at 15. I agree with OWRD and ODFW.

EANF is defined as "average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology." *See* OAR 690-077-0010(10). Thus, EANF is natural streamflow. Meaning, EANF is the flow in the stream when there are no consumptive uses and there is no flow regulation by dams or reservoirs. Testimony of Andrews; Exhibit A10 at 2. OWRD calculates EANF or natural streamflow by adding back known consumptive uses to measured streamflow. Testimony of Andrews; Ex. A10 at 3. Protestant's implication that EANF is a calculation of prehistoric streamflow when the Powder River was not channelized is

not supported by the reliable expert testimony in the record.

Protestant next contends that OWRD's computer "model's conclusions are dubious, being that BVID witnesses, in sharing their personal experiences or historical family accounts, testified that the Powder River did not have channels or any regular flows 'prehistorically.'" Protestant's Closing Argument at 10.

However, Protestant did not present any expert testimony to establish that OWRD's computer model's conclusions were defective in any way, regardless of the testimony from BVID's witnesses. Protestant's argument is unpersuasive and not supported by the reliable expert testimony in the record.

Protestant also contends that "the Powder River is not accommodated by the model's generic and limited 'watershed characteristics' in the Cooper Method 2." Protestant's Closing Argument at 10.

However, Protestant did not present any expert testimony to establish that OWRD's computer model or the Cooper Method 2 regression equation failed to accommodate the Powder River or the identified reach at issue. Moreover, regional regression equations are generally accepted hydrologic methods for estimating natural streamflow. Testimony of Andrews. Protestant's argument is not supported by any reliable evidence in the record.

Protestant next contends that "[h]istorically and today, gravel dominates the Baker Valley basin, including the bed of the Powder River." Protestant's Closing Argument at 10. Protestant contends that "Permeability was not a characteristic considered in the methodology until 2002 and thus was not considered in the modeling for the EANF." *Id.* at 10-11.

However, Protestant did not provide any expert testimony to establish that permeability was required as an additional watershed characteristic in OWRD's regression equation in order for OWRD to properly calculate EANF in the identified reach or that the Cooper Method 2 regional regression equation was defective in its calculations. Moreover, as set forth in the record, for comparison purposes, OWRD calculated EANF within the identified reach using the current regression equation in WARS, which includes permeability as a watershed characteristic. The results established that EANF exceeded the requested flows in the application. Testimony of Andrews; Exhibit A10 at 9. In other words, had the application been processed using the current regression equation in WARS, OWRD would have approved the application up to the requested flow amounts in the application. Testimony of Andrews. Protestant's argument is unpersuasive.

Protestant also contends that "Three additional important characteristics that must be considered for prehistoric flows of the Powder River are channelization (or lack thereof), geomorphology, and permeability – all of which were ignored by OWRD in this instance." Protestant's Closing Argument at 11.

However, Protestant did not provide any expert testimony to establish that channelization, geomorphology, and permeability were required as additional watershed

characteristics in OWRD's regression equation in order for OWRD to properly calculate EANF in the identified reach or that the Cooper Method 2 regional regression equation was defective in its calculations. Protestant's argument is not supported by any reliable evidence in the record.

Protestant next contends that the "Model is unreliable because it has poor goodness of fit." Protestant's Closing Argument at 12. OWRD and ODFW contend that there is no evidence in the record to support Protestant's conclusion. OWRD and ODFW also contend that the two gages used in OWRD's EANF calculations were known data points in the goodness of fit evaluation. OWRD and ODFW Joint Response to Protestant's Closing Argument at 19. I agree with OWRD and ODFW.

As set forth in the record, OWRD performed a goodness of fit evaluation on all of the WABs with gages used in the development of WARS, which included Gage ID 13281500 and Gage ID 13289500, the two gages OWRD used to calculate EANF in IS 72191. Exhibit A11 at 84. As such, the gaged data from Gage ID 13281500 and Gage ID 13289500 support the accuracy of OWRD's EANF calculation for IS 72191. Protestant's argument is unpersuasive.

Protestant also contends that Mr. Colton's testimony that he would have to release 50 cfs at Mason Dam to get 25 cfs to Thief Valley, combined with his firsthand experience of managing flows in the Powder River supports the conclusion that OWRD did not properly determine EANF. Protestant's Closing Argument at 7, Protestant's Reply to OWRD and ODFW Joint Closing Argument at 2-3.

However, Mr. Colton is not an expert hydrologist. I attach greater weight of reliability to Mr. Andrews's testimony as an expert hydrologist. Protestant's argument is unpersuasive.

Protestant finally contends that the streamflow measurements provided by Mr. Colton are actual streamflow in the Powder River. Protestant's Reply to OWRD and ODFW Joint Closing Argument at 1-2.

However, the streamflow measurements provided by Mr. Colton did not account for consumptive uses above the gages nor tributary inflows below the gages. As such, the gaged data provided by Mr. Colton does not reflect natural streamflow and is not comparable to OWRD's EANF calculation. Protestant's argument is unpersuasive.

Conclusion

OWRD established that it properly determined EANF for June, July, August, and September, consistent with ORS 537.343 and OAR 690-077-0015(4). In addition, OWRD demonstrated that, as conditioned, the instream water right proposed in the PFO would not impair or be detrimental to the public interest.

In contrast, Protestant failed to meet its burden of proof in this matter, and its additional arguments detailed previously are not supported by reliable evidence in the record.

Accordingly, the PFO issued by OWRD on May 14, 1996, proposing to approve, with

conditions, Water Right Application IS 72191 for instream flows for the migration, spawning, egg incubation, fry emergence, and juvenile rearing needs of rainbow trout is correct.

CONSIDERATION OF EXCEPTIONS

The Director considers and disposes of OWRD's and ODFW's joint exceptions and Protestant's exceptions to the ALJ's Proposed Order as shown below. The Director may modify a proposed finding of historical fact only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. ORS 183.650(3); OAR 137-003-0665(4). A finding of historical fact is a determination "that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing." ORS 183.650(3); OAR 137-003-0665(4). The Director finds that all changes to the Proposed Order made in response to the exceptions are supported by evidence in the record that meets the highest potentially applicable standard of "clear and convincing." In this section, additions to the text of the Proposed Order are shown in underline, and deletions are shown in ~~strikeout~~. The page numbers referenced in this section refer to this final order, not the Proposed Order.

Exception No. 1: OWRD, ODFW, and Protestant take exception to typographical errors throughout the Proposed Order.

Disposition: The exception is allowed. The language below is amended as shown to correct typographical errors identified in OWRD's and ODFW's joint exceptions, Protestant's exceptions, and errors identified in the proof reading of this final order:

> **Page 1:** On May 14, 1996, the Oregon Water Resources Department (OWRD or Department) issued a Proposed Final Order (PFO or Notice), proposing to approve, with conditions, the application filed by Oregon Department of Fish and Wildlife (Applicant or ODFW), seeking instream flows for the migration, spawning, egg incubation, fry emergence, and juvenile rearing needs of rainbow trout.
>
> On March 8, 2023, Protestant filed BVID's Response to ODFW's and OWRD's Joint Motion (Protestant's Response).
>
> On April 28, 2023, Protestant filed a Motion for Summary Determination or in the Aalternative Motion for Stay of Contested Case Hearing (Protestant's MSD or Motion for Stay).
>
> **Page 2:** Protestant's Motion to Limit Any Expert Testimony by Spencer Sawaske in Ichthyology and if Allowed as Lay Agency Witness to Strike the Written Direct and Rebuttal Testimony of Spencer Swawaske;
>
> **Page 3:** Ms. McCarty and Will~~iam~~ Davidson appeared on behalf of OWRD.
>
> **Page 6:** "OWRD makes that determination by comparing the instream flow

amounts requested in the application to the Estimated Average Natural Flow (EANF), or natural streamflow, in the identified stream or reach. (Ex. A1 at 3.)"

"The amount allowed for appropriation of an instream water right shall not exceed the EANF ~~as defined by OAR 690-077-0015~~. (*See* OAR 690-077-0015(4); Ex. A10 at 2.)"

Pages 8-9: The requested monthly instream flow amounts are the minimum amounts necessary to maintain the rainbow trout populations at their current levels in the identified reach. (Exs. A3 at 6, A5, A20 at 2, A21-A26, A27 at 4.)

Page 12: $Q_{NSF} = \exp(B_0) X_1^{B1} X_2^{B32} X_3^{B3}$

Page 13: OWRD picked that common base period as the most suitable because it represented the long term average conditions for this century and because it had the most streamflow information available. (Ex. A10 at 5, A11 at 24-25, A13 at 17-18.)

New coverages were obtained ~~the~~ that resulted in better estimations, particularly for smaller watersheds. (Ex. A10 at 5, A11 at ~~26~~ 39-46, A12 at 31-32, A13 at 22-23.).

Pages 17-18: The PFO set forth Protest Rights, and indicated that any protest submitted must be in writing and received by OWRD no later than June 28, 1996. (Ex. A5 at 4, 6.) On June 11, 1996, OWRD extended the Protest deadline to July ~~22~~ 26, 1996. (Ex. A6 at 1.)

Page 20: The Legislature defined "public use" to include the "[c]onservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat ~~or~~ and any other ecological values." ORS 537.332(5)(b).

Page 25: Under both the 5th and 14th Amendments of the United States Constitution, no person shall be deprived of life, liberty, or property without due process of law.

Page 26: OWRD and ODFW also contend that there is no Administrative Procedures Act (APA) ~~APA~~ requirement to provide expert reports. OWRD and ODFW Joint Response to Protestant's Closing Argument at 6-7.

Moreover, there is no rule in the ~~Administrative Procedures Act (APA)~~APA that requires an agency or party to provide expert reports to the opposing party in a contested case hearing before the Office of Administrative Hearings. See OAR 137-003-0501 through 137-003-0700 (Rules for Office of Administrative Hearings).

Protestant also contends that "[t]he Applicant and OWRD presented witnesses

who supported their position, not with first-hand or personal knowledge or experience, but rather with information they stated was read from a case file their agency provided, but which an 'expert' file was not provided to ~~BID~~ BVID." Protestant's Closing Argument at 5-6.

Page 27: Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue.

The Draft Certificate of Water Right attached to the PFO also states that, "the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach." *Id.* at 5 4.

Protestant next contends that "for a WAB such as 72191, which was specifically created for IS-72191, the watershed characteristics would be different from those of 243 or 309203327, the other two WABs used for this instream water right." Protestant's Closing Argument at 8.

Exception No. 2: BVID states that "BVID agrees prehistoric is defined as "without the influence of human activities." Protestant's Exceptions to the Proposed Order at 3-4. BVID requests the following change to page 28 of the order: "Protestant contends that "prehistoric" streamflow is streamflow "~~before human activities~~ without the influence of human activities~~, [when] the Powder River was not channelized~~. *Id.*"

Disposition: The exception is allowed. Because BVID's requested change matches the language in Protestant's Closing Argument, the change is well supported. For reference, BVID's Closing Argument states: "BVID agrees with the former definition based on their own testimony of 'without the influence of human activities.'" Protestant's Closing Argument at 9.

BVID's change, however, requires the addition of another sentence which the Director explains here. The two paragraphs of the order that address arguments concerning the term "prehistoric" conclude with the ALJ's finding that "Protestant's implication that EANF is a calculation of prehistoric streamflow when the Powder River was not channelized is not supported by the reliable expert testimony in the record." *Supra* at 28-29. The content of this finding has two parts – whether EANF is a calculation of prehistoric streamflow, and whether EANF is a calculation of when the Powder River was not channelized. For the finding in the order to have context, it is necessary to insert a sentence with BVID's argument on when the Powder River was channelized. Referencing Protestant's Closing Argument, the sentence directly after the sentence that BVID requested in its exception reads: "Before human activities, the Powder River was not channelized." Protestant's Closing Argument at 9. Therefore, BVID's requested quote and the adjacent sentence from BVID's Closing Argument will both be included.

The bottom half of page 28 in the Opinion section is amended as follows:
Protestant contends that "prehistoric" streamflow is streamflow "~~before human~~

~~activities~~ without the influence of human activities~~, [when] the Powder River was not channelized~~. *Id.* Protestant also states "[b]efore human activities, the Powder River was not channelized." *Id.*

Exception No. 3: BVID takes exception to the findings of fact in paragraphs 52 to 55, in the section titled "*Improvements to regression equations and calculations.*" *Supra* at 13-14. BVID also believes the timeline in paragraph 51 is too generalized when it states "Since the early 1990's." BVID asserts the record reflects that the watershed characteristics used in Cooper 2 changed over time with:

- 1996 PFO: latitude, longitude, area, relief, slope, aspect, elevation, precipitation, January temperature, July temperature. Ex. A15 at 36.
- 1997 after the PFO: area, maximum relief, average slope, mean elevation, mean annual precipitation, mean minimum January temperature, and mean minimum July temperature. Ex. A14 at 10.
- 2002 after the protest was filed: area, relief, slope, aspect, elevation, January precipitation, July precipitation, January maximum temperature, July minimum temperature, and soil permeability. Ex. A11 at 46.

Protestant's Exceptions to the Proposed Order at 4-5. BVID states this is an important clarification because "soil permeability is a critical characteristic for OWRD to consider when calculating EANF for the Powder River." Protestant's Exceptions to the Proposed Order at 5. BVID requests paragraph 53 read:

> 53. From 1997 to 2002, OWRD further improved estimates of watershed characteristics, recognizing that the accuracy of the estimates was dependent upon the resolution of the coverage used to extract and summarize values of any given watershed. The early iterations were too coarse and stopped at the state line. New coverages were obtained that resulted in better estimations, particularly for smaller watersheds. (Ex. A10 at 5, A11 at 39-46, A12 at 31-32, A13 at 22-23.) OWRD included a broader set of watershed characteristics into model development, and performed a statistical analysis to identify the most important watershed characteristics that would optimize the regression equations. OWRD then revised the regional regression equations in 1997 and 2002 to include the ~~those~~ additional watershed characteristics, the latter being the first-time OWRD considered soil permeability in its calculation."

Disposition: The Director declines to make the requested changes because the changes are not supported by clear and convincing evidence in the record. A finding that 2002 was the first time OWRD considered soil permeability in its calculation is not supported by the exhibits cited by BVID. Beginning with the 1996 exhibit that BVID cites (Ex. A15), it contains an overview flowchart of Water Availability Methodology by step, and for the Regional Regression Analysis step, there are 15 pages of explanation. (Ex. A15 at 24-39.) The first page of the Regional Regression Analysis explanation is a flowchart specific to the regional regression

analysis, which shows the starting point is:

GIS COVERAGE:
1. PRECIPITATION
2. ELEVATION
3. TEMPERATURE
4. SOILS INDEX
5. WATERSHED BOUNDARIES

(Ex. A15 at 25 (emphasis in original).) The next step after "GIS COVERAGE" is to "ESTIMATE WATERSHED CHARACTERISTICS FOR GAGED WATERSHEDS" and the last step is "REGRESSION COEFFICIENTS." These flowcharts show that in 1996 "soils index" was part of the GIS COVERAGE data, which are an input into the regional regression coefficients. In the regional regression equations, the coefficients are applied to the known watershed characteristics to estimate natural streamflow. (*See supra* ¶¶ 43 – 44; Ex. A11 at 42 (y represents stream flow and x^1, x^2, . . ., x^m represent the *m* watershed characteristics. b^1, b^2, . . ., b^m represent the regression coefficients which define the relationship among variables and are determined from the data.)) To insert BVID's statement that 2002 was the first time OWRD considered soil permeability would be inaccurate.

To at least partially address BVID's request for more detail on the exclusion of soil permeability as a known watershed characteristic for this instream water right review and approval, the Director finds that the record does support an additional finding of fact. The addition will go at the end of the ALJ's discussion of Cooper Method 2 as follows:

> 50. In the mid-1990s, OWRD began using the Cooper Method 2 regression equation, which included seven watershed characteristics to estimate natural streamflow: area; maximum relief; average slope; mean elevation; mean annual precipitation; mean minimum January temperature; and mean minimum July temperature. The Cooper Method 2 corrected measured streamflow to natural streamflow by adding consumptive uses back to the measured streamflow before estimating streamflow. The Cooper Method 2 used estimates from the USGS for irrigation use, and diversion rates with realistic coefficients for other consumptive uses. (Exs. A10 at 5, 6, A14 at 4, 10.) At the time OWRD calculated EANF for IS-72191, OWRD's model did not include soil permeability as a watershed characteristic. (Exs. A15 at 36, A14 at 10.) Since 2002, the model has used soil permeability as a watershed characteristic. (*See infra* ¶ 56; Ex. A11 at 46.)

Exception No. 4: BVID takes exception to reliability findings made by ALJ Gutman. In the paragraph spanning page 27 and 28, the order states "There is no reliable evidence in the record that supports Protestant's argument." *Supra* at 27-28. BVID asserts this statement is incorrect and should be stricken because BVID did provide reliable evidence that the watershed characteristics are different in WAB 72191 than in WAB 243 or WAB 30920327.

Disposition: The Director declines to make this change because BVID has not shown clear and convincing evidence in the record that the watershed characteristics for WAB 72191

would be different than those of 243 or 30920327. BVID cites to Jeff Colton's testimony from hearing, stating "Jeff Colton testified the drainage, or slope and aspect, into the Power River further downstream than BVID's district—such as in WAB 72191—mostly faces east and north so the snow stays on the slope longer and can sustain higher flows later in the summer/year. Test. Hr'g June 28, 2023 at 402, lines 8-13." Protestant's Exceptions to the Proposed Order at 6. Referencing the specific cross examination testimony of Mr. Colton, it states:

> Question from OWRD: Are you aware that Anthony Creek has a summer contributing flow into the Powder River?
>
> Answer from Mr. Colton: My drainage sit -- faces south. This drainage the most of the water comes from that goes below my district all faces east and has north, northwest affect. So the snow gets to stay there longer. I got the worst drains of them all. Mine all face south.

Test. Hr'g June 28, 2023 at 402, lines 5-19. Mr. Colton's testimony responds to a question about a tributary to the Powder River. It does not provide clear and convincing evidence to support BVID's assertion that the watershed characteristics are different in WAB 72191 than in WAB 243 or WAB 30920327.

BVID further asserts that Ryan Andrew's testimony and Exhibit A38 support a finding that the watershed characteristics are different for the three WABs. BVID, however, did not point to specific testimony of Mr. Andrews regarding differences in watershed characteristics between WAB 72191, WAB 243, or WAB 30920327. BVID describes Exhibit A38 as showing the increasing natural streamflow values for downstream WABs, but did not explain how that demonstrates the watershed characteristics are different for the 3 WABs.

Exception No. 5: In the paragraph that spans pages 29 and 30, BVID asks that the following finding be stricken: "Protestant did not provide any expert testimony to establish * * * that the Cooper Method 2 regional regression equation was defective in its calculations." BVID requests the paragraph be replaced with:

> Protestant utilized OWRD's and ODFW's current staff which the ALJ qualified as experts at the hearing and eyewitnesses Mark Ward, Clay McEnroe, and Jeff Colton to present its argument that channelization (or lack thereof), geomorphology, and soil permeability must be considered when calculating the EANF in the Power River Basin. Testimony of Ward, Testimony of McEnroe, Testimony of Colton, Exs. R33 at 1, R35 at 1, R36 at 4. WARS now considers soil permeability in its calculation and this characteristic was added to the Cooper Method 2 in 2002. Ex. A11 at 46. Protestant's argument is supported by reliable evidence in the record.

Protestant's Exceptions to the Proposed Order at 9. BVID's requested change would create inconsistency with the findings, explanation, and quotes in the two paragraphs immediately preceding the paragraph BVID asks to be altered. For example, BVID's language would conflict with the finding that "Protestant did not provide any expert testimony to establish that permeability was required as an additional watershed characteristic in OWRD's regression equation in order for

OWRD to properly calculate EANF in the identified reach or that the Cooper Method 2 regional regression equation was defective in its calculations." *Supra* at 29. This finding is similar, but precedes, the language that BVID takes exception to. The next paragraph contains a full sentence quoting BVID's closing argument. The three paragraphs go together as explanation, reasoning, and conclusion and are based on specific citations to the record. BVID's proposed replacement paragraph would insert a contrary conclusion without any supporting background and reasoning.

Although these three paragraphs are not readily editable, the Director has incorporated the content of one sentence of BVID's requested language, discussed *supra* under Exception No. 3, as an addition to finding of fact No. 50 that:

> At the time OWRD calculated EANF for IS-72191, OWRD's model did not include soil permeability as a watershed characteristic. (Exs. A15 at 36, A14 at 10.) Since 2002, the model has used soil permeability as a watershed characteristic. (*See infra* ¶ 56; Ex. A11 at 46.)

In finding of fact No. 50, the language added varies from BVID's requested language. BVID requested the more general terms "considers soil permeability in its calculation" and the Director has added the more specific terms "used soil permeability as a watershed characteristic." *Supra* ¶ 50.

Exception No. 6: Exception Nos. 1 and 2 stated in OWRD and ODFW Joint Exceptions to Proposed Order are allowed for the reasons stated and based on the evidence cited in OWRD and ODFW Joint Exceptions to Proposed Order. These exceptions were not contested by BVID.

DIRECTOR'S AMENDMENTS TO THE PROPOSED ORDER

Amendment No.1: The History of the Case is updated to reflect issuance of the Proposed Order, the filing and consideration of exceptions, and issuance of this final order.

Amendment No. 2: On page 5, a sentence is added reading: "Before 1996, the terminology used was that individuals could file comments or "objections." (See e.g., Ex. A4 at 12, 18.)" This addition is made to explain why the January 1995 letters received by OWRD on the Technical Review (Exhibit A4), interchangeably use the term "objection" and "comment."

Amendment No. 3: The narrative of footnote 5 is amended to read: "The amount allowed for appropriation of an instream water right shall not exceed the EANF except under certain limited conditions." Under OAR 690-077-0015(4), there are limited conditions under which the amount of water appropriated for an instream water right may exceed EANF.

Amendment No. 4: The Proposed Order proposes that OWRD affirm OWRD's May 14, 1996 PFO proposing to approve Water Right Application IS-72191 with conditions. (Proposed Order at 30.) This final order amends the Proposed Order by affirming OWRD's May 14, 1996 PFO with the following corrections to the description of the insteam water right reach stated in the

PFO and draft certificate (*see* Ex. A05 at 1, 5):

> POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (~~NW~~NE 1/4, SECTION 25~~26~~, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE ~~+74.0~~ ±74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E WM)

The first change corrects the legal description of the location of Mason Dam from the northwest quarter of the northeast quarter, Section 26, Township 10S, Range 38E WM to the northeast quarter of Section 25, Township 10S, Range 38E WM. This change is supported by Exhibit R20, an OWRD water right certificate that describes the location of Mason Dam as "NE ¼, Section 25, T 10 s, R 38 E, W.M.," and by the map included with ODFW's application, Exhibit A2 at 4. The second change corrects the description of the river mile location of Thief Valley Reservoir from "RIVER MILE +74.0" to "RIVER MILE ±74.0" based on the description of the location of Thief Valley Reservoir in ODFW's application. (Ex. A2 at 1.)

Amendment No. 5: The Order section is amended to expressly state the consequences of affirming the Proposed Final Order issued on May 14, 1996.

ORDER

OWRD's PFO issued on May 14, 1996, proposing to approve, with conditions, Water Right Application IS 72191 for instream flows for the migration, spawning, egg incubation, fry emergence, and juvenile rearing needs of rainbow trout is affirmed with the corrections noted in Amendment No. 4 above, and the attached Certificate 97653 is issued with conditions.

Dated in Salem, Oregon on March 15, 2024.

/s/ Katherine Ratcliffe

Katherine Ratcliffe
Water Rights Section Manager
For DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

NOTICE

Under ORS 537.349, ORS 537.173(1), and OAR 690-002-0190(1), any party to this matter may file exceptions to this order with the Oregon Water Resources Commission. Exceptions must be filed within 20 days following the date of service of the order. If the order was mailed, the date of service is the day it was mailed. Parties must file any exceptions by emailing the exceptions to will.d.davidson@.water.oregon.gov.

Appeal of this order is to the Oregon Court of Appeals pursuant to ORS 183.482 and ORS 536.075(2). If no exceptions to this order are filed with the Oregon Water Resources

Commission, petitions for judicial review of this order must be filed with the Court of Appeals within 60 days from the day this order was served. Failure to file exceptions within the 20-day time period or a petition for judicial review within the 60-day time period will waive your right of appeal. An issue that was not raised before the administrative law judge or in exceptions filed with OWRD or the Oregon Water Resources Commission cannot be raised on appeal to the Oregon Court of Appeals. *Innovative Design & Constr., LLC v. Constr. Contractors Bd.*, 278 Or. App. 448,454, 375 P.3d 533, 536 (2016); *Watts v. Oregon State Bd. of Nursing*, 282 Or. App. 705, 386 P.3d 34 (2016).

CERTIFICATE OF SERVICE

I certify that on **March 15, 2024**, I caused the foregoing FINAL ORDER IN CONTESTED CASE to be served by electronic mail and by mailing in a sealed envelope, with first-class postage prepaid, as follows:

BY ELECTRONIC MAIL:

Name	Email Address
Chandra Ferrari Oregon Department of Fish and Wildlife	Chandra.a.ferrari@odfw.oregon.gov
Baker Valley Irrigation District	counsel@water-law.com
Sarah S Rowe	sarah.s.rowe@doj.state.or.us
Laura A Schroeder, Sarah R Liljefelt, Nicole K Vetter	counsel@water-law.com
Tara Lomacz	t.lomacz@water-law.com
Rachel Shahidzadeh	rachels@water-law.com
Anika E Marriott	anika.e.marriott@doj.state.or.us
Denise Ruttan	denise.ruttan@doj.state.or.us

BY U.S. MAIL:

Name	Mailing Address
Chandra Ferrari Oregon Department of Fish and Wildlife	4034 Fairview Industrial Dr. SE Salem, OR 97302
Baker Valley Irrigation District	3895 10th Street Baker City, OR 97814
Anika Marriott Oregon Department of Justice	1162 Court Street NE Salem, OR 97301-4096
Laura A Schroeder, Sarah R Liljefelt, Nicole K Vetter Schroeder Law Offices, PC	1915 NE Cesar E. Chavez Blvd. Portland, OR 97212

/s/ Will Davidson
Will Davidson
Protest Program Coordinator
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER ST NE SUITE A
SALEM OR 97301-1271

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

APPLICATION FILE NUMBER: IS-72191

SOURCE OF WATER: POWDER RIVER, TRIBUTARY TO SNAKE RIVER

PURPOSE: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE, AND JUVENILE REARING OF RAINBOW TROUT.

DATE OF PRIORITY: JANUARY 29, 1992

TO BE MAINTAINED IN: POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NE 1/4, SECTION 25, TOWNSHIP 10S, RANGE 38E, WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE ±74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E, WM)

The right is established under Oregon Revised Statutes 537.341.

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:

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st ½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd ½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

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. 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.

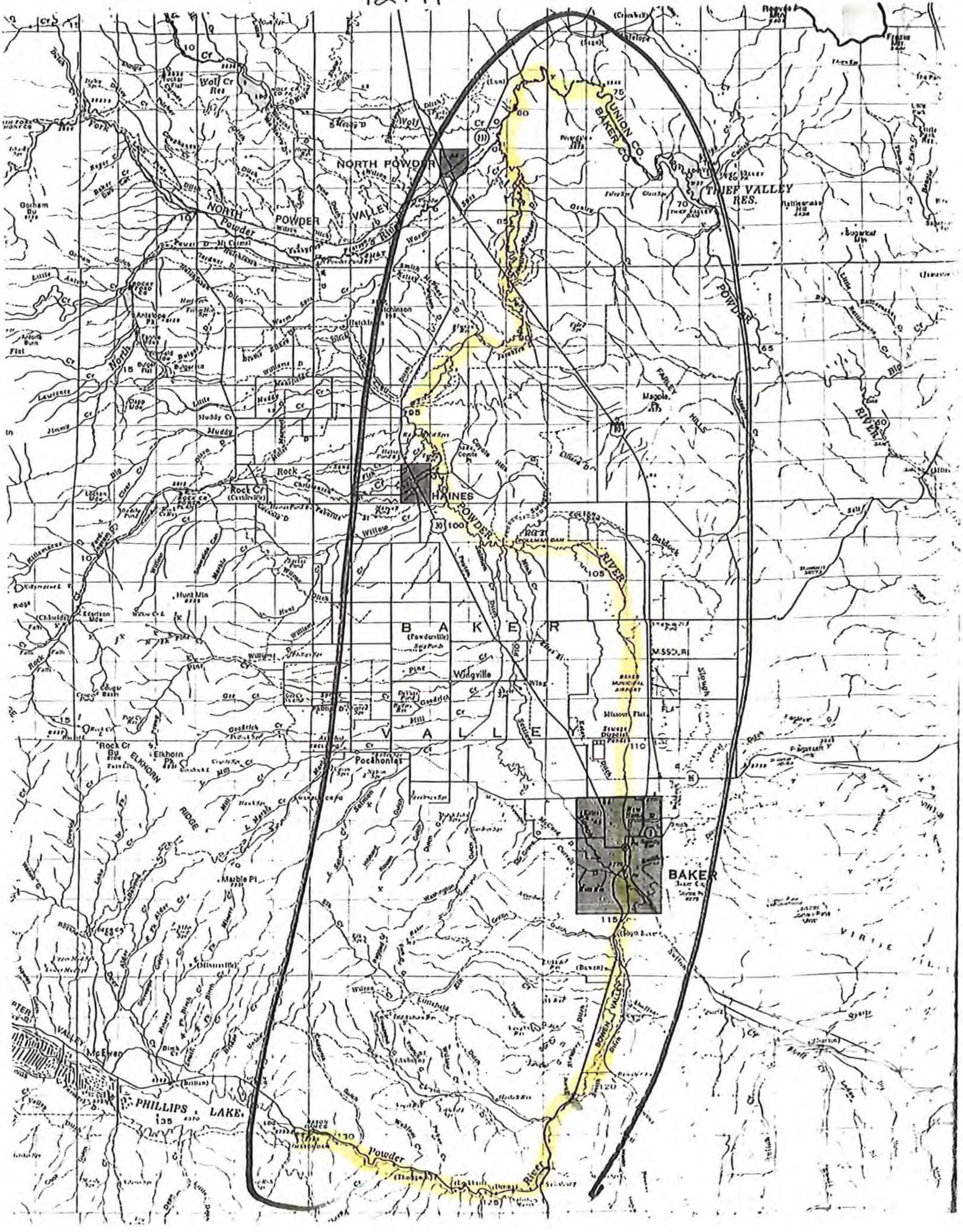
5. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

ISSUED MAR 15 2024

Katherine Ratcliffe

Katherine Ratcliffe
Water Rights Section Manger, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

#12191


NORTH POWDER
NORTH
POWDER
VALLEY
Powder
UNION CO.
BAKER CO.
THIEF VALLEY RES.
POWDER
RIVER
FARLEY HILL
HAINES
POWDER
RIVER
B A K E R
V A L L E Y
Wingville
Pocahontas
MISSOURI FLAT
BAKER
ELKHORN RIDGE
Rock Cr
Elkhorn Pk
Marble Pt
VALLEY
McEwen
PHILLIPS LAKE
Powder
River
BOWEN VALLEY
Wolf Cr Res
Gorham Bu
Hunt Mtn
Magpie Pk
75
70
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130
135

Mailing List for Commentors

Application IS-72191

Copies Mailed
By: KMWF
(SUPPORT STAFF)
On MAR 15 2024
(DATE)

Commentor Letters mailed to:

BAKER COUNTY COMMISSION
1995 THIRD STREET
BAKER CITY OR 97814

CHANDLER HEREFORDS INC.
CHARLES CHANDLER
44874 WHITETAIL LN
BAKER CITY OR 97814

EASTERN OREGON MINING ASSOCIATION
PO BOX 932
BAKER CITY OR 97814

FRED J WARNER
3260 GRANDVIEW DRIVE
BAKER CITY OR 97814

FREEMAN ANGUS RANCH INC.
DAVID B. FREEMAN
36831 SUTTON CREEK RD
BAKER CITY OR 97814

POWDER VALLEY WATER CONTROL DISTRICT
DIRECTOR
PO BOX 189
NORTH POWDER OR 97867

RICHARD CARTWRIGHT
MEG CARTWRIGHT
PO BOX 230
DURKEE OR 97905

SETH B. DENNIS
SUMPTER STAGE
HCR 87, BOX 782
BAKER CITY OR 97814

↓ Cont

WALLOWA-WHITMAN NATIONAL FOREST
FOREST SUPERVISOR
1550 DEWEY AVE STE A
BAKER CITY OR 97814

WARD RANCHES
ALVIN WARD
42154 CHICO RD
BAKER CITY OR 97814

WARNOCK RANCHES, INC.
DAN WARNOCK, JR.
11684 HUCKLEBERRY LOOP
BAKER CITY OR 97814

WATERWATCH OF OREGON
ATTN: KIMBERLEY PRIESTLEY
213 SW ASH ST #208
PORTLAND, OR 97204

Application Specialist: Adam Frederick

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

BAKER COUNTY COMMISSION
1995 THIRD STREET
BAKER CITY OR 97814

Reference: Application IS-72191

Dear Commenter:

In accordance with Oregon Revised Statute 537.170(9) and Oregon Administrative Rule 690-077-0047(5), the Water Resources Department (Department) would like to notify you that the Final Order for Application IS-72191 was issued on March 15, 2024. Our records indicate you submitted written comments related to this application.

If you would like to receive a copy of this Final Order, please review the options below.

Access documents online: The Final Order for this application is available on the Department's website. To access this information, please visit https://apps.wrd.state.or.us/apps/wr/wrinfo/ and use the application number in the subject line of this letter to search for the relevant records. Please note, you will need to expand the "Scanned Documents" section to locate the Final Order.

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Please feel free to contact me at 971-707-8400 or Adam.M.Frederick@water.oregon.gov if you have any questions.

Sincerely,

Adam Frederick

Adam Frederick
Water Rights Application Specialist

CC: File

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
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March 15, 2024

CHANDLER HEREFORDS INC.
CHARLES CHANDLER
44874 WHITETAIL LN
BAKER CITY OR 97814

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March 15, 2024

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PO BOX 932
BAKER CITY OR 97814

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March 15, 2024

FRED J WARNER
3260 GRANDVIEW DRIVE
BAKER CITY OR 97814

Reference: Application IS-72191

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March 15, 2024

FREEMAN ANGUS RANCH INC.
DAVID B. FREEMAN
36831 SUTTON CREEK RD
BAKER CITY OR 97814

Reference: Application IS-72191

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North Mall Office Building
725 Summer St NE, Suite A
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Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

POWDER VALLEY WATER CONTROL DISTRICT
DIRECTOR
PO BOX 189
NORTH POWDER OR 97867

Reference: Application IS-72191

Dear Commenter:

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Sincerely,

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Adam Frederick
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725 Summer St NE, Suite A
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Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

RICHARD CARTWRIGHT
MEG CARTWRIGHT
PO BOX 230
DURKEE OR 97905

Reference: Application IS-72191

Dear Commenter:

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Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

SETH B. DENNIS
SUMPTER STAGE
HCR 87, BOX 782
BAKER CITY OR 97814

Reference: Application IS-72191

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Please feel free to contact me at 971-707-8400 or Adam.M.Frederick@water.oregon.gov if you have any questions.

Sincerely,

Adam Frederick

Adam Frederick
Water Rights Application Specialist

CC: File

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

WALLOWA-WHITMAN NATIONAL FOREST
FOREST SUPERVISOR
1550 DEWEY AVE STE A
BAKER CITY OR 97814

Reference: Application IS-72191

Dear Commenter:

In accordance with Oregon Revised Statute 537.170(9) and Oregon Administrative Rule 690-077-0047(5), the Water Resources Department (Department) would like to notify you that the Final Order for Application IS-72191 was issued on March 15, 2024. Our records indicate you submitted written comments related to this application.

If you would like to receive a copy of this Final Order, please review the options below.

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Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

WARD RANCHES
ALVIN WARD
42154 CHICO RD
BAKER CITY OR 97814

Reference: Application IS-72191

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Sincerely,

Adam Frederick

Adam Frederick
Water Rights Application Specialist

CC: File

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

WARNOCK RANCHES, INC.
DAN WARNOCK, JR.
11684 HUCKLEBERRY LOOP
BAKER CITY OR 97814

Reference: Application IS-72191

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Sincerely,

Adam Frederick

Adam Frederick
Water Rights Application Specialist

CC: File

Oregon
Tina Kotek, Governor

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.oregon.gov/owrd

March 15, 2024

WATERWATCH OF OREGON
ATTN: KIMBERLEY PRIESTLEY
213 SW ASH ST #208
PORTLAND, OR 97204

Reference: Application IS-72191

Dear Commenter:

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Sincerely,

Adam Frederick

Adam Frederick
Water Rights Application Specialist

CC: File

Oregon
John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

March 26, 2014

Jeff
Jim Colton
Baker Valley Irrigation District
3895 10th Street
Baker City, OR 97814

Re: Protest to ODFW Instream Water Right Application S-72191

Dear Mr. Colton:

In 1992 the Oregon Department of Fish and Wildlife filed numerous applications for instream water rights on various streams around Oregon. Your organization protested Application #72191 on the Powder River.

Water Resources is required by statute to determination whether to hold a contested case hearing on protests received on applications. At this time, the Department has determined not to refer your organization's protest to hearing. Before the Department takes further action on this application, we would like the opportunity to meet with your organization to discuss your concerns regarding the impact that this proposed instream water right would have on your organization's water rights.

To refresh your memory I have enclosed copies from WRD application files. I will contact you in March or April to arrange a discussion with you about the Department's decision and how it may affect water right holders on the stream. The number I have for you is ~~(541)~~523-5320. Please advise me if this is not correct.

(541)523-5451 LM 5/1/14

Sincerely,

Patricia McCarty

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Phone: 503-986-0820

INTEROFFICE MEMORANDUM
Water Rights Section

TO: Dick Badley

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

Instream Applications with Protests
4/2/97

Basin	App Num		
2			
	OK 71556	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 2 :	**1**		
4			
	OK 71793	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	OK 71798	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72076	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72077	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72078	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72079	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72080	W	OREGON DEPARTMENT OF FISH & WILDLIFE
	72081	W	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 4 :	**8**		
5			
	OK 70353	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70354	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	OK 70357	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70358	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70358	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70358	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	OK 70605	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70606	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70606	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70612	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70695	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70695	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	73199	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 5 :	**13**		
6			
	69949	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
Checked out for Dwight	69949	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69951	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69951	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69958	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69958	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69958	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69959	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS

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

Basin	App Num		
6			
	69959	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69959	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69961	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69961	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69961	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69963	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69963	S	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
	69963	A	OREGON DEPARTMENT OF FISH & WILDLIFE & PARKS
OK	70251	A	OREGON DEPARTMENT OF FISH & WILDLIFE
OK	70589	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70640	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70640	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70641	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70641	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70642	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70642	S	OREGON DEPARTMENT OF FISH & WILDLIFE
OK	70645	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70645	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70646	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70646	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70651	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70651	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70652	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70652	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70653	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70653	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70654	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70654	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70655	S	OREGON DEPARTMENT OF FISH & WILDLIFE
	70655	A	OREGON DEPARTMENT OF FISH & WILDLIFE
Total for Basin 6 :	38		
9			
	70863	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70864	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	70870	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72163	A	OREGON DEPARTMENT OF FISH & WILDLIFE
	72168	S	OREGON DEPARTMENT OF FISH & WILDLIFE

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			
Dwight Done Right!	70029	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**		

Basin	App Num		
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

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

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			

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

PROOF OF SERVICE

I, Jim Colton of Baker Valley Irrigation District, being first duly sworn, depose and say that on July 17, 1996, I mailed a copy of the attached protest against a proposed final order on application number 72191 to the applicant by regular mail. A copy of the protest was placed in an envelope addressed to:

Water Resources Dept.
Name

158 12th Street NE
Street Address

Salem Oregon 97310-0210
City State Zip Code

and deposited in the United States mail with sufficient postage.

July 26 1996
Date

Jim Colton
Signature

Subscribed to and sworn before me this 26th day of July, 1996.

OFFICIAL SEAL
JULIA WOODS
NOTARY PUBLIC - OREGON
COMMISSION NO. 023168
MY COMMISSION EXPIRES JUNE 19, 1997

Julia Woods
Notary Public for Oregon

My commission expires 6/19/97

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # 4561

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

INVOICE #_____

RECEIVED FROM: Baker Valley Irrigation Dist.
BY: _____

APPLICATION	72191
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # ☐ _____ OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D $ 200.00

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

MISCELLANEOUS

0407	COPY & TAPE FEES		$
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 PCA 71235		0220	$
0223	OTHER (IDENTIFY) PROTEST			200.00

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

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

RECEIPT # 4561 DATED: 7-22-96 BY: Rachel Dees

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

NUMBER 7200

Check 200.00 Mo_____ Cash_____

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

Adams

Baker Valley Irrigation District

Chairman George Chandler
Manager Jim Colton
(503)523-5451

Powder River-Baker County
3895 10th Street

Baker City, Oregon 97814

Mason Dam and
Phillips Reservoir

July 17, 1996

Water Resources Dept.
158 12th Street NE
Salem, Oregon 97310-0210

Dear :Sirs:

The Baker Valley Irrigation District is filing objections to the proposed final order application #IS 72191 on the Powder River from Mason Dam at river mile 131.2 (NWNE, Section 26, Township 10S, Range 38E WM); to Thief Valley Reservoir at river mile +74.0 (Section 17, Township 6S 40E WM).

We are protesting these filings because the amount of water that they claim is in the streams during June, July, August and September appear to be false and do not correspond with the Water Resources of Oregon summary of water availability report put out in 1904. At that time they had only a average mean of 16.2 sec. ft. not 25 that is claimed on this filing for the month of August..

When they filed on these instream water rights applications they took their measurement documentation 20 miles up stream from the Baker Valley and didn't take into consideration canal loss. The amount of water they filed for is not in the stream as they say during these months.

Before Mason dam was built the Fish and Wildlife supported this project because they didn't have any water for fish in the summer months and they stated that with up stream storage with minimum release flows that this would create fish habitat year round. At the present time there is year round fish habitat and we have been working with the Fish and Wildlife to see that this habitat is maintained. At the time of construction of the dam James K. Carr then Under Secretary of the Interior stated that "Reduction in releases below this desired minimum would be allowed proportional to irrigation shortages."

Before the Mason Dam project was built in 1968 Powder River dried up every year as early as June. Farmers at the lower end of Powder River had the first rights from 1863 and up. When they would call for their water through the priority system with the Water Master the water would never get there. We have documentation supporting this issue from ranchers and farmers that lived along the Powder River for 80 some years.

At this time the Baker Valley Irrigation District has completed their HB3111 process which has tied down water rights to their exact place of use and in the process we have canceled about 1000 acres which will be returned back into the Powder River. In doing this the water rights that have suffered from lack of water might be able to irrigate now. We have been working hand in hand with the Fish and Wildlife installing fish screens and fish by passes on the Powder River, and we have a system that works good for everyone and for the fish. The granting of in-stream water rights at these flows could destroy many years of work to establish a working program for the farmers, ranchers, fish, wildlife and sportsmen.

These 1992 priority dates on in-stream water rights are not worth anything and it will not gain any water back in the system because the older water rights that have been limited because of lack of water would receive their water first.

We strongly urge the Water Resources Department to deny these instream water right applications filed on the Powder River Basin because they are based on inadequate and false information presented to the public.

Before the dam was constructed many hearings with much testimony was presented before Congress to obtain this permit. Some of this testimony presented included From the U.S. Dept. of the Interior they stated that "Except in the uppermost headwaters, Powder River is not considered a good fishing stream. Throughout most of its length, the river flows over a rather flat terrain, the stream is usually turbid, and water temperatures are high during low flow periods in the summer." It was also stated that 84% of water floods away in just a few months in the spring and from the stand point of fishery and recreation Powder River's present value is nil. This statement was made by the Powder River Sportsmen's Club. John Hesketh who was the county agent stated to Congress that natural run off water usually ends by early July. Henry Peyron who was one of the first directors of the Irrigation District stated that regardless of water years no water is available during the best growing months of July and August. These statements all show that the construction of Mason Dam was vital to all in this valley and has created a better environment for all species concerned, man, fish and wildlife.

Please take these facts into strong consideration and lets all work to keep our system working for all.

Sincerely,

Jim Colton

Baker Valley Irrigation District
Manager-Jim Colton

Oregon

WATER
RESOURCES
DEPARTMENT

June 11, 1996

To the party addressed

Regarding: Extension of Protest Deadline for specific Instream Water Right Proposed Final Orders.

On May 14, we issued proposed final orders on 16 instream water right applications in the Powder River Basin. The issuance of a proposed final order starts a 45 day protest period. Unfortunately, we did not notify all interested parties of the availability of the proposed final orders until May 28, 1996.

Because we are concerned that this may have disadvantaged interested parties, we are attempting to contact those who may have been notified late and are allowing an additional 45 days (from this letter, until July 26, 1996), for the submittal of protests to the proposed final orders.

Enclosed is a complete list of all instream water right proposed final orders issued on May 14, 1996.

You are receiving this letter because our records indicate that you have some interest in one or more of these applications.

Copies of the final order are available from the Water Resources Department in Salem for a statutorily established fee of $10 each. Copies are also available for review at the watermaster office in Baker City.

Please call if you need additional assistance. Our toll free number is 1-800-624-3199.

Sincerely,

Michael J. Mattick

MICHAEL J. MATTICK
Water Rights Specialist

enclosure
cc: Kent Searles, Vern Church, Rick Kruger, File

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

IS 70863 09 PINE CR tributary to SNAKE R FI BAKER 11/8/1990.

Reach: PINE CREEK FROM FULLER CREEK AT RIVER MILE 27.0 (SESE, SECTION 15, TOWNSHIP 7S, RANGE 45E WM); TO LONG BRANCH AT RIVER MILE 13.5 (NESW, SECTION 7, TOWNSHIP 8S, RANGE 47E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	40.0	40.0	65.0	65.0	65.0	65.0	40.0	40.0	40.0	40.0	40.0	40.0
2nd½	40.0	50.0	65.0	65.0	65.0	50.0	40.0	40.0	40.0	40.0	40.0	40.0

IS 70864 09 PINE CR tributary to SNAKE R FI BAKER 11/ 8/1990.

Reach: PINE CREEK FROM WEST FORK PINE CREEK AT RIVER MILE 34.0 (SWSE, SECTION 16, TOWNSHIP 6S, RANGE 45E WM); TO FULLER CREEK AT RIVER MILE 27.0 (SESE, SECTION 15, TOWNSHIP 7S, RANGE 45E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	20.0	20.0	30.0	30.0	30.0	30.0	20.0	18.6	16.9	16.9	19.9	20.0
2nd½	20.0	25.0	30.0	30.0	30.0	25.0	20.0	18.6	16.9	16.9	19.9	20.0

IS 70870 09 E PINE CR tributary to PINE CR FI BAKER 11/ 8/1990.

Reach: EAST PINE CREEK FROM BEECHER CREEK AT RIVER MILE 10.3 (SE1/4, SECTION 16, TOWNSHIP 7S, RANGE 46E WM); TO THE MOUTH AT RIVER MILE 0.0 (SWNW, SECTION 18, TOWNSHIP 8S, RANGE 47E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	16.0	16.0	16.0	16.0	6.0	6.0	6.0	6.0	6.0	6.0
2nd½	6.0	10.0	16.0	16.0	16.0	10.0	6.0	6.0	6.0	6.0	6.0	6.0

Application	Basin	Source	Use	County	Priority
IS 71684	09	W EAGLE CR tributary to EAGLE CR	FI	WALLOWA	6/ 7/1991.

Reach: WEST EAGLE CREEK FROM EAST FORK AT RIVER MILE 7.0 (NE1/4, SECTION 29, TOWNSHIP 5S, RANGE 43E WM); TO THE MOUTH A RIVER MILE 0.0 (NENW, SECTION 28, TOWNSHIP 6S, RANGE 43E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	10.0	10.0	31.0	40.0	40.0	40.0	15.0	10.0	10.0	10.0	10.0	10.0
2nd½	10.0	23.1	31.0	40.0	40.0	25.0	15.0	10.0	10.0	10.0	10.0	10.0

IS 72160	09	S FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.

Reach: SOUTH FORK BURNT RIVER FROM HEADWATERS AT RIVER MILE 17.0 NW1/4, SECTION 23, TOWNSHIP 14S, RANGE 35.50E WM); T ELK CREEK AT RIVER MILE 11.4 (NW, SECTION 32, T13S, R36E, WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	7.0	7.0	8.94	12.1	15.0	12.5	7.0	7.0	7.0	7.0	7.0	7.0
2nd½	7.0	8.28	8.94	12.1	15.0	12.0	7.0	7.0	7.0	7.0	7.0	7.0

IS 72167	09	BIG CR tributary to POWDER R	FI	BAKER	1/29/1992.

Reach: BIG CREEK FROM LICK CREEK (NE1/4, SECTION 28, TOWNSHIP 6S, RANGE 42E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENE SECTION 20, TOWNSHIP 7S, RANGE 41E)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	3.0	3.0	9.0	9.0	9.0	9.0	3.0	3.0	3.0	3.0	3.0	3.0
2nd½	3.0	5.0	9.0	9.0	9.0	5.0	3.0	3.0	3.0	3.0	3.0	3.0

IS 72170	09	CLEAR CR tributary to PINE CR	FI	BAKER	1/29/1992.

Reach: CLEAR CREEK FROM EAST AND WEST FORKS AT RIVER MILE 17.0 (NWNW, SECTION 18, TOWNSHIP 6S RANGE 46E WM); TO RIVER MIL 10.6 (NW1/4, SECTION 8, TOWNSHIP 7S, RANGE 46E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	15.0	15.0	30.0	30.0	30.0	30.0	15.0	9.93	9.0	9.02	10.6	15.0
2nd½	15.0	23.0	30.0	30.0	30.0	23.0	15.0	9.93	9.0	9.02	10.6	15.0

IS 72172	09	CRACKER CR tributary to POWDER R	FI	BAKER	1/29/1992.

Reach: CRACKER CREEK FROM SARDINE GULCH (NWNE, SECTION 29, TOWNSHIP 8S, RANGE 37E WM); TO THE MOUTH AT RIVER MILE 0. (NW1/4, SECTION 32, TOWNSHIP 9S, RANGE 37E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	9.0	9.0	20.0	20.0	20.0	20.0	12.0	7.45	3.18	2.44	3.31	6.44
2nd½	9.0	11.0	20.0	20.0	20.0	15.0	12.0	7.45	3.18	2.44	3.31	6.44

Application	Basin	Source	Use	County	Priority
IS 72178	09	ELK CR tributary to S FK BURNT R	FI	BAKER	1/29/1992.

Reach: ELK CREEK FROM THE HEADWATERS (TOWNSHIP 13S, RANGE 35½E WM); TO THE MOUTH AT RIVER MILE 0.0 (NW1/4, SECTION 32, TOWNSHIP 13S, RANGE 36E WM)

Allowable use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2.99	3.14	3.39	4.6	7.36	4.75	3.86	3.34	3.23	3.27	3.21	3.14

Application	Basin	Source	Use	County	Priority
IS 72181	09	LITTLE EAGLE CR tributary to EAGLE CR	FI	BAKER	1/29/1992

Reach: LITTLE EAGLE CREEK FROM SPRING CREEK (NESW, SECTION 36, TOWNSHIP 6S, RANGE 44E WM); TO THE MOUTH AT RIVER MILE 0.0 (NWNW, SECTION 7, TOWNSHIP 8S, RANGE 45E WM)

Allowable use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	2.0	2.0	11.0	11.0	11.0	11.0	2.0	2.0	2.0	2.0	2.0	2.0
2nd½	2.0	5.0	11.0	11.0	11.0	5.0	2.0	2.0	2.0	2.0	2.0	2.0

Application	Basin	Source	Use	County	Priority
IS 72183	09	MCCULLY FK tributary to POWDER R	FI	BAKER	1/29/1992.

Reach: MCCULLEY FORK CREEK FROM THE HEADWATERS AT RIVER MILE +9.2 (SE1/4, SECTION 21, TOWNSHIP 8S, RANGE 36E WM); TO THE MOUTH AT RIVER MILE 0.0 (NW1/4, SECTION 32, TOWNSHIP 9S, RANGE 37E WM)

Allowable use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	5.0	5.0	12.2	15.0	15.0	15.0	6.0	4.02	1.72	1.32	1.79	3.48
2nd½	5.0	5.92	12.2	15.0	15.0	10.0	6.0	4.02	1.72	1.32	1.79	3.48

Application	Basin	Source	Use	County	Priority
IS 72185	09	N FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.

Reach: NORTH FORK BURNT RIVER FROM AN UNNAMED TRIBUTARY AT RIVER MILE +28.5 (NENW, SECTION 12, TOWNSHIP 10S, RANGE 35 E WM); TO CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM)

Allowable use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	3.22	5.0	20.0	20.0	20.0	12.1	5.29	2.39	1.67	1.71	2.23	2.7
2nd½	3.22	7.36	20.0	20.0	20.0	12.1	5.0	2.39	1.67	1.71	2.23	2.7

Application	Basin	Source	Use	County	Priority
IS 72186	09	N FK BURNT R tributary to BURNT R	FI	BAKER	1/29/1992.

Reach: NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, T12S, R37E, WM)

Allowable use:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2nd½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

Oregon Water Resources Department

Application	Basin	Source	Use	County	May 14, 19 Priority
IS 72191	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992

Reach: POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NWNE, SECTION 26, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALI RESERVOIR AT RIVER MILE +74.0 (SECTION 17, TOWNSHIP 6S,RANGE 40E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

IS 72192	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992

Reach: POWDER RIVER FROM THIEF VALLEY RESERVOIR AT RIVER MILE 69.5 (NESW, SECTION 26, TOWNSHIP 6S, RANGE 40E WM); TO GOC CREEK AT RIVER MILE 36.5 (NWNW, SECTION 4, TOWNSHIP 9S, RANGE 43E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	50.0	50.0	70.0	70.0	70.0	70.0	50.0	50.0	50.0	50.0	50.0	50.0
2nd½	50.0	60.0	70.0	70.0	70.0	60.0	50.0	50.0	50.0	50.0	50.0	50.0

IS 72193	09	POWDER R tributary to SNAKE R	FI	BAKER	1/29/1992

Reach: POWDER RIVER FROM GOOSE CREEK AT RIVER MILE 36.5 (NWNW, SECTION 4, TOWNSHIP 9S, RANGE 43E WM); TO BROWNL RESERVOIR AT RIVER MILE 10.0 (NE1/4, SECTION 35, TOWNSHIP 9S, RANGE 45E WM)

Allowable use:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	60.0	60.0	80.0	80.0	80.0	80.0	60.0	60.0	60.0	60.0	60.0	60.0
2nd½	60.0	70.0	80.0	80.0	80.0	70.0	60.0	60.0	60.0	60.0	60.0	60.0

Oregon Water Resources Department
Water Rights/Adjudication Section

Water Right Application Number: IS 72191

Proposed Final Order

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

Application History

On 1/29/1992, the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source: POWDER R tributary to SNAKE R

County: BAKER

Purpose: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE AND JUVENILE REARING OF RAINBOW TROUT.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

To be maintained in:

POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NWNE, SECTION 26, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE +74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E WM)

The Department mailed the applicant notice of its Technical Review on November 25, 1994, determining that the requested flows exceeded the estimated average natural flow during some months but that flows at a reduced amount, with exceptions for human and livestock consumption, are appropriate. The objection period closed February 1, 1995. Objections and comments were received (from BAKER COUNTY COURT, BAKER VALLEY IRRIGATION DIST, DAVID B FREEMAN, EASTERN OREGON MINING ASSOCIATION, INEZ CARTWRIGHT, OREGON DEPT OF FISH AND WILDLIFE, POWDER VALLEY WCD, RICHARD CARTWRIGHT, ROGER SMITH, SETH B DENNIS, WARNER BROTHER RANCHES, WARNOCK RANCHES INC, WATER FOR LIFE, WATERWATCH OF OREGON).

The following supporting data was submitted by the applicant:

(a) The Fish and Wildlife Resources of the Powder Basin and Their Water Requirements; August 1967.

(b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.

(c) Developing and Application of Spawning Velocity and Depth Criteria for Oregon Salmonids, Alan K. Smith, Transactions of the American Fisheries Society, April 1973.

(d) Determining Stream Flows for Fish Life, Oregon State Game Commission Report, March 1972.

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

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

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

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

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

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

Findings of Fact

The Powder Basin Program **allows** the proposed use.

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

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

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
163	230	393	740	1100	845	212	146	82.5	76.9	103	122

Water is **NOT** available for further appropriation (at a 50 percent exceedance probability) for the period **June, July, August and September.**

The flows available for further appropriation are shown below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
103.3	145.1	225.9	503.9	454.8	-93.1	-242.0	-229.0	-150.5	58.5	61.6	68.6

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 Powder 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.

While the proposed use meets the other tests, the full amount of water requested is not available during some months of the year.

Water is not available for the proposed use at the amount requested during June, July, August and September because the unappropriated water available is less than the amounts requested during these 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, shall except future use of water for human and livestock consumption.
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the minimum flows necessary to support the public use.

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

Recommendation

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

DATED MAY 14, 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;

DRAFT

STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT
SALEM, OREGON 97310

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

Source: POWDER R tributary to SNAKE R

County: BAKER

Purpose: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE AND JUVENILE REARING OF RAINBOW TROUT.

To be maintained in:

POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NWNE, SECTION 26, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE +74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 1/29/1992.

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

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

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. 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.

- 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.

Your protest must be received in the Water Resources Department no later than June 28, 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.

Witness the signature of the Water Resources Director affixed this 1st day of _____, 19___.

_____
Water Resources Director

Recorded in State Record of Water Right Certificate number _____.

IS72191

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 72191

WATERMASTER # VERN CHURCH

REGIONAL MANAGER: KENT SEARLES

ODF&W - County: BAKER

DEQ

PARKS

OTHER STATE AGENCY IF NECESSARY:

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

POWER BUILDER UPDATER; FRONT COUNTER

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

Regarding Technical Review for Instream Water Right

I have no expertise on most of these streams, however the one I do know something about(The Powder River) has some flaws in your technical thinking. Application #72191 (Mason Dam to Thief Valley) calls for instream flows between 25-40 cfs. Application #72192 (Thief Valley to Goose Creek) for the most part doubles flows to 50-70 cfs. However there is no significant water source available at Thief Valley for the increased flow called for in application # 72192. Thus a 70 cfs water right below Thief Valley is a 70cfs water right above Thief Valley. It's the same river above and below the dam. If 25-40 cfs will sustain fish above why wouldn't those same flows sustain fish below Thief Valley Dam? I'm not familiar with Goose Creek but I would guestion whether that source could provide the additional flow requirw by appliction 72193 over appliction #72191. To recap; you can not increase flows along the river without a source at that point to provide the increase.

Iam very concerned about having an instream water right, or any waterright that has no management as to whether at any specific day or month more water is being used than the fish or crop requires or whether a fish or crop even exists at the place of use. Without management the potential exists for the "wastse" of Oregon's precious water resource. Water law has taked a dim view of "waste" in the past and I feel instream rights must hold to the same scrutiny.

These instream rights are tying up massive quantities of water from future appropreations. These rights could easily stop or severly curtain any future appropreation on some of these streams. For example an instream right with winter flow of twice what is necessary could stop a future storage right which could store water for re lease in summer months when the fish are really despirate for the water. The instream rights need to be managed not just a blind dumping of water down streams.

Noting from the records of the Hydrographic Branch of the US Geological Survey, 1907 was an unusally wet year and 1908 was more average. On Sept. 7, 1908 (avg. yr.), a measurement of 10 cfs was taken at THief Valley

Dam site (pre dam, accesible to salmon). Your technical review allows app. #72191, 25 cfs, to expand to 50 cfs in app. # 72192 at this point and month. Aug. 19, 1907 (wet yr.) the Powder River at Sumpter is only flowing 11 cfs.Your review allows 17.1 cfs for Aug. (app. # 72190). Aug. 21, 1907 (wet yr.) the Powder River at Haines is only flowing 16 cfs (before any dams). Your review allows 25 cfs (app. # 72191). Ifeel the flows you have allowed are in excess to what is avaliable and to what is required. Even the salmon navigated the Powder River at the turn of the century with less water than you are allowing in your technical review. Please do not tie up and "waste" any more of Oregon's precious water than necessary.

I have Major concerns about the increased man hours these instream rights will place on our already under staffed watermasters. In this day of tight state budjets, Isee no funding to offset the cost of these instream right (measuring, policing, water reporting).

How and where and how often will these instream rights be measured?

How will water loss over the length of the stream be delt with?

As a water right holder, will the State provide fish screens to prevent their use of water from encroaching on other users?

Roger W. Smith

Roger W. Smith

Director Powder Valley Water Con. Dist.
Rt. 1 Box 114-A
Haines, Ore 97833

Monthly discharge of Powder River at Salisbury, Oreg., for 1907 and 1908.

OPEN CHANNEL CONDITIONS, 1907.[a]

Gage height.	Discharge.	Gage height.	Discharge.	Gage height.	Discharge.	Gage height.	Discharge.
Feet.	*Sec.-ft.*	*Feet.*	*Sec.-ft.*	*Feet.*	*Sec.-ft.*	*Feet.*	*Sec.-ft.*
1.80	11	2.70	102	3.60	305	4.50	639
1.90	16	2.80	119	3.70	336	4.60	682
2.00	22	2.90	137	3.80	369	4.70	725
2.10	30	3.00	155	3.90	403	4.80	768
2.20	38	3.10	176	4.00	440	4.90	812
2.30	48	3.20	198	4.10	478	5.00	856
2.40	60	3.30	223	4.20	516	5.20	944
2.50	72	3.40	250	4.30	554		
2.60	86	3.50	277	4.40	596		

OPEN CHANNEL CONDITIONS, 1908.[b]

1.00	0.1	1.90	20	2.80	144	3.70	370
1.10	0.4	2.00	27	2.90	165	3.80	400
1.20	0.8	2.10	36	3.00	187	3.90	430
1.30	1.6	2.20	47	3.10	209	4.00	465
1.40	2.6	2.30	59	3.20	232	4.20	535
1.50	4.3	2.40	73	3.30	256	4.40	605
1.60	6.7	2.50	89	3.40	282		
1.70	10	2.60	105	3.50	310		
1.80	14	2.70	124	3.60	340		

ICE CONDITIONS, 1907.[c]

2.30	23	2.70	42	3.10	71	3.50	110
2.40	27	2.80	48	3.20	80	3.60	122
2.50	32	2.90	55	3.30	89	3.70	135
2.60	37	3.00	63	3.40	99		

[a] This table is not applicable for ice or obstructed-channel conditions. It is based on 15 discharge measurements made during 1904–1907, and is fairly well defined for 1907.
[b] This table is not applicable for ice or obstructed-channel conditions. It is based on 1 discharge measurement made during 1908 and the form of previous curves and is not well defined.
[c] This table is applicable only for ice conditions. It is based on 3 discharge measurements made at times of ice obstruction during 1904–1906, and is not well defined.

Monthly discharge of Powder River at Salisbury, Oreg., for 1907 and 1908.

[Drainage area, 275 square miles.]

Month.	Discharge in second-feet.			Run-off.			Accuracy.
	Maximum.	Minimum.	Mean.	Per square mile.	Depth in inches on drainage area.	Total in acre-feet.	
1907.							
January	42	23.0	27.9	0.101	0.12	1,720	C.
February	478	40	185	.673	.70	10,300	C.
March	535	137	243	.884	1.02	14,900	B.
April	878	236	516	1.88	2.10	30,700	B.
May	768	369	529	1.92	2.21	32,500	B.
June	516	102	220	.800	.89	13,100	B.
July	166	34	98.0	.356	.41	6,030	B.
August	54	11	26.2	.095	.11	1,610	B.
September	22	11	15.4	.056	.06	916	B.
October	26	11	18.4	.067	.08	1,130	B.
November	43	14	24.9	.091	.10	1,480	B.
December[a]	54	30	36.8	.134	.15	2,260	C.
The year	878	11	162	.588	7.95	117,000	

[a] Discharge estimated December 22 to 31, 1907, and January 1 to 4, 1908. Discharge applied as for open channel January 5 to 11, and December 13 to 19, 1908.

Monthly discharge of Powder River at Salisbury, Oreg., for 1907 and 1908—Continued.

Month.	Discharge in second-feet.			Run-off.			Accuracy.
	Maximum.	Minimum.	Mean.	Per square mile.	Depth in inches on drainage area.	Total in acre-feet.	
1908.							
January[a]	53	30	40.3	0.147	0.17	2,480	C.
February	89	42	61.8	.225	.24	3,550	C.
March	570	66	202	.735	.85	12,400	B.
April	588	198	404	1.47	1.64	24,000	B.
May	518	176	279	1.01	1.16	17,200	B.
June	310	176	245	.891	.99	14,600	B.
July	176	27	100	.364	.42	6,150	C.
August	42	.1	12.0	.044	.05	738	D.
September	17	.1	5.31	.019	.02	316	D.
October	66	14	36.3	.132	.15	2,230	C.
November	66	12	36.0	.131	.15	2,140	C.
December[a]	42	14	28.5	.104	.12	1,750	C.
The year	588	0.1	121	.440	5.96	87,600	

[a] Discharge estimated December 22 to 31, 1907, and January 1 to 4, 1908. Discharge applied as for open channel January 5 to 11, and December 13 to 19, 1908.

MISCELLANEOUS MEASUREMENTS.

The following miscellaneous discharge measurements were made in Powder River drainage basin, Oregon, in 1907 and 1908:

Miscellaneous measurements in Powder River Drainage Basin, Oregon, in 1907–8.

Date.	Stream.	Tributary to—	Locality.	Discharge.
				Sec.-ft.
August 19, 1907	Powder River	Snake River	Sumpter	11
August 21, 1907	do	do	Haines	16
July 27, 1907	do	do	Above North Fork near North Powder.	110
September 7, 1908	do	do	Sec. 26, T. 6 S., R. 40 E.	[a] 10
August 16, 1907	do	do	Erwin	3.6
July 7, 1907	do	do	Sec. 32, T. 8 S., R. 43 E	295
August 20, 1907	Goodrich Creek	Powder River	Wingville	2.6
Do	Willow Creek	do	Sec. 5, T. 8 S., R. 39 E	3.4
February 11, 1907	Dutch Flat Creek	do	Haines	4.7
August 20, 1907	Rock Creek	do	One-half mile above Rock Creek.	28
Do	Muddy Creek	do	2 miles west of Rock Creek	2
July 27, 1907	North Fork of Powder River.	do	North Powder	25
July 9, 1907	Eagle Creek	do	Newbridge	1,040
Do	Fuller ditch	do	Opposite Newbridge	4.8
Do	Holcomb ditch	do	do	.9
Do	Hostine ditch	do	do	6.7
Do	Moody ditch	do	do	14
Do	Newton Young ditch	do	do	32
Do	Waterbury ditch	do	do	14
August 8, 1907	Basha ditch	do	Miles	26
August 17, 1907	do	do	do	14
August 8, 1907	Lower Powder Ditch and Dam Co.'s ditch.	do	do	7.6
Do	North Side ditch	do	do	9.9

[a] Measurement made at Thief Valley dam site; low water.

GRANDE RONDE RIVER BASIN.

DESCRIPTION.

Grande Ronde River, which drains the eastern slope of the Blue Mountains in Oregon and the northern slopes of the Powder River Mountains (a comparatively high range that runs at right angles to

where it turns abruptly to the southeast and empties into the Snake River in the east central part of Baker County.

The general elevation of the headwaters is 6,000 feet above sea level, while that of the valley is 3,300 feet. Sumpter is 4,415 feet above sea level, and Baker City, 3,586 feet. The only important tributary stream is Eagle Creek, which drains the southern part of the Powder River Mountains and empties into the Powder near its mouth. The total drainage area of Powder River at the mouth is 1,660 square miles; at Baker City it is 341 square miles.

At the headwaters the country is mountainous and heavily forested and the principal industry is mining and lumbering. The valley of the Powder has not been greatly developed, although a number of irrigation ditches are in operation. Any extensive development will involve the construction of storage reservoirs, for which facilities are not lacking.

The mean annual rainfall at Baker City is 15 inches; in the headwater region it is probably twice that amount, the greater part falling during the winter in the form of snow. The determination of stream flow in this area is rendered somewhat difficult during the winter as the streams are icebound for weeks at a time.

The lowest run-off from this basin since records have been kept occurred in 1905; the highest occurred in 1904, but 1907 was a close second.

Only one gaging station has been maintained in this basin—that at Salisbury.

POWDER RIVER AT SALISBURY, OREG.

This station, which was established December 20, 1903, is located 10 miles above Baker City and one-fourth mile below Salisbury, a station on the Sumpter Valley Railroad. It is above all important diversions for the Powder River valley.

The data are of considerable practical value, as the waters are used for mining above the station and for irrigation below. They are also of scientific interest because this drainage area was once quite heavily forested, but has of recent years been logged off.

During the winter months the stream frequently remains frozen for long periods, and although an attempt has been made to develop rating curves for ice conditions, the results have not been very satisfactory.

Discharge measurements of Powder River at Salisbury, Oreg., in 1907 and 1908.

Date.	Hydrographer.	Width.	Area of section.	Gage height.	Discharge.
		Feet.	*Sq. ft.*	*Feet.*	*Sec.-ft.*
1907. April 29	J. E. Oakes	44	86	3.71	326
1908. May 30	H. D. McGlashan	31	56	3.00	187

Daily gage height, in feet, of Powder River at Salisbury, Oreg., for 1907 and 1908.

[R. M. Garrett, observer.]

Day.	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
1907.[a]												
1	2.45	2.7	3.15	3.45	4.25	4.2	3.05	2.35	1.95	1.9	1.95	2.25
2	2.4	2.75	3.1	3.35	4.15	4.05	2.95	2.3	1.9	1.85	1.95	2.25
3	2.35	2.75	3.15	3.35	4.1	3.95	2.95	2.25	1.85	2.0	2.0	2.25
4	2.3	2.65	3.05	3.35	3.95	3.85	3.0	2.2	1.85	2.05	2.0	2.2
5	2.4	3.35	2.9	3.45	4.0	3.7	3.0	2.2	1.8	2.05	1.9	2.15
6	2.4	3.65	3.1	3.6	4.05	3.65	3.05	2.15	1.8	2.0	1.9	2.1
7	2.35	3.45	3.1	4.0	4.05	3.45	2.85	2.1	1.95	1.95	1.85	2.15
8	2.35	3.15	3.1	4.45	4.15	3.15	2.85	2.15	1.95	1.95	1.85	2.15
9	2.4	3.15	3.2	4.3	4.25	3.05	2.85	2.15	1.95	1.95	1.85	2.25
10	2.4	3.15	3.2	4.4	4.35	3.25	2.75	2.15	2.0	1.95	1.85	2.25
11	2.4	3.1	3.15	4.55	4.15	3.5	2.65	2.1	2.0	1.9	1.95	2.25
12	2.3	3.25	3.05	4.85	4.05	3.75	2.75	2.05	1.85	1.9	1.95	2.35
13	2.3	3.15	3.15	5.05	4.2	3.4	2.85	2.05	1.85	1.85	1.95	2.35
14	2.35	3.05	3.05	5.07	4.3	3.05	2.75	2.0	1.9	1.85	2.05	2.25
15	2.35	3.05	3.15	4.95	4.55	3.05	2.7	2.1	1.85	1.8	2.05	2.25
16	2.35	3.15	3.15	4.75	4.45	3.05	2.6	2.05	1.9	1.85	2.05	2.2
17	2.35	3.15	3.1	4.45	4.55	2.95	2.65	2.05	1.85	1.9	2.05	2.15
18	2.45	3.25	3.6	4.25	4.8	2.85	2.75	2.0	1.9	1.85	2.05	2.2
19	2.45	3.5	4.15	4.05	4.75	2.75	2.65	1.95	1.9	1.85	2.05	2.2
20	2.4	3.75	4.25	4.0	4.65	2.7	2.55	1.95	1.9	1.85	2.15	2.2
21	2.35	3.65	4.1	4.05	4.4	2.9	2.55	1.95	1.85	1.9	2.15	2.15
22	2.3	3.55	3.85	4.15	4.05	2.95	2.45	1.9	1.85	1.85	2.15	2.25
23	2.4	3.65	3.8	4.25	3.85	3.05	2.5	1.95	1.9	1.95	2.15	2.35
24	2.4	3.7	3.6	4.35	3.8	2.95	2.45	1.95	1.85	2.0	2.05	2.35
25	2.3	4.1	3.65	4.2	4.05	2.95	2.45	1.95	1.8	1.95	2.05	2.4
26	2.45	3.95	3.55	4.1	4.1	2.95	2.35	1.95	1.8	2.0	2.05	2.4
27	2.55	3.55	3.45	3.95	4.15	2.95	2.3	1.9	1.9	2.0	2.1	2.3
28	2.55	3.25	3.15	3.85	4.25	2.95	2.25	1.85	1.9	2.0	2.2	2.25
29	2.6	.....	3.1	3.95	4.2	2.9	2.2	1.8	1.8	1.95	2.2	2.2
30	2.65	.....	3.1	4.15	4.15	.....	2.2	1.85	1.9	2.0	2.25	2.35
31	2.7	.....	3.25	.....	4.25	.....	2.15	1.85	.....	2.0	.....	2.35
1908.[b]												
1	.....	2.15	2.45	3.05	4.15	3.15	2.75	2.1	1.1	1.9	2.3	2.05
2	.....	2.15	2.5	3.1	4.05	3.2	2.65	2.15	1.2	1.8	2.25	2.1
3	.....	2.25	2.5	3.2	4.0	3.25	2.65	2.1	1.15	1.8	2.25	2.0
4	.....	2.25	2.5	3.25	3.95	3.5	2.55	2.05	1.15	1.9	2.25	2.1
5	2.05	2.3	2.4	3.35	3.85	3.3	2.55	2.0	1.1	2.0	2.35	2.15
6	2.05	2.25	2.35	3.35	3.85	3.15	2.65	2.1	1.15	2.0	2.35	2.15
7	2.05	2.25	4.45	3.4	4.05	3.15	2.65	2.05	1.15	1.9	2.3	2.1
8	2.05	2.3	2.5	3.5	4.15	3.15	2.7	2.0	1.15	1.9	2.15	2.1
9	2.1	2.15	2.4	3.65	3.45	3.15	2.75	1.9	1.2	1.8	2.0	2.15
10	2.05	2.15	2.45	3.7	3.15	3.15	2.85	1.8	1.15	1.9	1.9	2.1
11	2.05	2.2	2.35	3.75	3.15	3.35	2.85	1.75	1.1	2.05	1.85	2.05
12	2.1	2.2	2.5	3.85	3.1	3.25	2.95	1.7	1.0	2.1	1.75	2.1
13	2.1	2.25	2.6	3.9	3.15	3.35	2.95	1.65	1.1	2.15	1.75	2.05
14	2.05	2.25	2.65	4.05	3.15	3.45	2.85	1.6	1.25	2.2	1.75	2.0
15	2.05	2.3	3.2	4.15	3.05	3.4	2.75	1.55	1.35	2.25	1.85	1.95
16	2.15	2.3	4.3	4.25	3.05	3.25	2.65	1.45	1.35	2.15	1.95	1.9
17	2.15	2.35	3.85	4.05	3.05	3.25	2.65	1.45	1.4	2.15	2.05	1.8
18	2.2	2.35	3.8	3.8	3.15	3.4	2.55	1.45	1.55	2.15	2.1	1.8
19	2.25	2.35	3.7	3.95	3.25	3.35	2.45	1.45	1.85	2.25	2.15	1.85
20	2.25	2.4	3.7	4.05	3.15	3.25	2.35	1.35	1.85	2.15	2.15	1.9
21	2.25	2.4	3.7	4.35	3.15	3.3	2.35	1.35	1.85	2.1	2.05	1.9
22	2.15	2.4	3.55	4.25	3.1	3.35	2.35	1.35	1.8	2.1	2.05	1.85
23	2.15	2.4	3.45	4.15	3.05	3.4	2.35	1.3	1.75	2.15	2.1	1.85
24	2.15	2.45	3.5	4.05	3.05	3.3	2.45	1.25	1.7	2.2	2.1	1.95
25	2.2	2.5	3.3	3.85	3.15	3.25	2.45	1.2	1.7	2.15	2.05	1.95
26	2.25	2.5	3.15	3.75	3.15	3.2	2.35	1.2	1.65	2.1	2.05	1.95
27	2.25	2.45	3.1	3.85	3.05	3.15	2.3	1.15	1.65	2.05	2.05	1.95
28	2.25	2.45	3.0	3.9	3.05	3.1	2.2	1.1	1.65	2.15	2.1	2.0
29	2.25	2.35	3.0	4.05	2.95	3.1	2.15	1.1	1.65	2.25	2.1	2.1
30	2.25	.....	2.85	4.15	3.0	2.95	2.1	1.05	1.65	2.35	2.05	2.05
31	2.1	.....	2.9	.....	3.15	.....	2.0	1.0	.....	2.35	.....	2.1

[a] River frozen November 20, 1906, to February 10, 1907, although center of channel was open after January 15. Frozen entirely over on December 25, 1906, to a depth of 4 to 5 inches.

[b] The river was frozen January 5 to 11 and December 13 to 19.

NOTE.—The discharge of the river fluctuates somewhat on account of placer mining upstream.

72183
72172
72190
72191
72192
72193

Oregon Water Resources Dept.
158 12th St. N.E.
Salem, OR 97310

Dear Sirs;

We strongly object to your filing for instream water rights on McCully Fork, Cracker Creek and Powder River in Baker County. No surplus of water exists, above adjudicated rights, from these sources. We have irrigated lands under McEwen Valley ditch out of Powder River, in sections 13, 14, 23 and 24 of Township 10 South, Range 37 E.W. Meridian, since 1946. Our predecessors irrigated these same lands at least 60 years prior to that.

Several times during late summer, since our tenure on these lands, there has been barely enough water in these water courses for stock to drink. In fact we have seen sections of these creeks, upstream from our diversion, completely dry.

For many years, prior to 1955, no game fish lived in powder river downstream from Sumpter Valley, due to dredging activity in the valley. The historical use of these streams for spawning and propagation of anadromous fish on a consistent basis over time does not exist.

We believe the documentation supplied to you by Jim Colton of the Baker Valley Irrigation District, is accurate and should be considered by you to change your decision to file on these instream waters in this area. Thank you.

Dan Warnock, Jr.

Dan Warnock, Jr.

Warnock Ranches, Inc.
Rt. 1 Box 16
Baker City, OR 97814

72190
1/2/3 MM

1-31-95

Oregon Water Resources Dept.
158 12th St. N.E.
Salem, OR 97310

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WATER RESOURCES DEPT.
SALEM, OREGON

As a share holder in the McEwen Valley Irrigation Ditch, Baker County, I write to file an objection to instream water right applications for Powder River water by the Oregon Department of Fish and Wildlife.

I have no doubts that people who wish for environment to be returned to a more natural state are imbued with the purest ideals and motives. To be sure, high ideals and motives are admirable; i.e. upto the point where they collide with, ~~common~~ common sense.

2

Prior to the arrival of Columbus and the multitudes of Europeans that followed, native Americans undoubtedly lived as near "au naturelle" as was possible for humans in the American environment.

How many of them were there? Without the benefit of extensive research into that question, I would venture a guess that they numbered under a million. But for purposes of illustration, let's stretch that to ten million. Even if there were that number of people here at that time, those

who have a romantic vision of returning the American land to a natural ~~environment~~ environment must come to grips with the necessity of deporting or liquidating 90 % of the American population.

The truth is that to support the present population nature must be gently but firmly rerouted from its natural course. A portion of that rerouting ~~drainage~~ involves diverting water from natural stream flow to or onto parched land to improve plant life and increase the survival of animal life.

Hampton Valley is not an exception this need for rerouting. Phillips Reservoir at the lower end of the

valley supports a fairly stable fish population. Owing to the large variation in the natural flow of Powder River over the course of a year, diverting or not diverting it for irrigation has little significant affect on total fish population.

On the other hand diverting Powder River streamflow for irrigation makes a tremendous difference in plant and animal life. Without irrigation the valley would afford summer grazing for about six hundred steers. Under present circumstances with irrigation, it affords summer grazing for about twenty four hundred.

This is a difference in production of about 90,000 pounds of dressed beef for human consumption.

We've heard what is purported to be official assurance that there is no intention of superseding prior water rights. The problem with this is that high minded officials have a tendency to come to believe that since they are acting for the public best interests, those public interests should, in due course of time, come to supersede private interests. Regardless of prior rights.

For all of the reasons stated above I strongly protest the filing for instream rights to Powder River water by the Department of Fish and Wildlife.

(over)

Seth B Dennis

WaterWatch

Rec 2/1/95

Hand Delivered

January 31, 1994

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

Re: Technical Reports for:
70863, 70864, 70870, 71684, 72160, 72161, 72167, 72168, 72169, 72170, 72172, 72178, 72181, 72183, 72185, 72186, 72189, 72190, 72191, 72192 and 72193
ODFW, Instream Applications, Powder River Basin

WaterWatch of Oregon strongly supports the flows requested in the above referenced Oregon Department of Fish and Wildlife applications. The Powder River and its tributaries support a variety of instream uses, including providing habitat for fish. It also drains into the Snake River where the Chinook and Sockeye salmon have been listed under the Federal Endangered Species Act. Streamflows are critical to the survival of these sensitive fish. By this letter WaterWatch requests copies of any objections filed on these applications.

In addition, we file the following objections to the water availability analyses in the technical reports pursuant to OAR 690-77-028:

The Water Availability Analysis is Defective

Instream water rights are a means for the state to achieve equitable allocation of water and Oregon Statutes place a duty on the state to act in a way that will protect instream flows needed for fish populations. OAR 690-77-015(2), ORS 496.430, OAR 690-410-070(2)(h). The agencies administrative rules require the technical reports to contain an evaluation of the estimated average natural flow (ENAF) available from the proposed source. OAR 690-77-026(1)(g). The rules also state that the amount of appropriation for out of stream uses is not a factor in determining the amount protected under the instream water right. OAR 690-77-015(3).

> However, the technical reports state that they contain an:
> "evaluation of the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application . . . The recommended flows take into consideration planned uses and reasonable anticipated future demands for water from the source for agricultural and other uses as required by the standards for public interest review . . ."

Technical reports page 2 (emphasis added). Clearly, this analysis is contrary to the agencies rules because it takes into account out-of-stream uses. These instream water right application requests must be evaluated according to the higher ENAF figures.

The technical reports for 70864, 71684, 72164, 72170, 72172, 72178, 72183, 72185, 72186, and 72190 propose to issue instream water rights for the Department's lower "average flows" rather than those requested for several months of each year. 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. There should be no reduction in the requested flows. ODFW's flow requests are either within the ENAF or are needed to account for high flow events that are needed for fish passage and habitat maintenance pursuant to OAR 690-77-015(4).

The federal and state Endangered Species acts place an additional burden on the Commission. Under the state Act, the Commission is required to consult with the Oregon Department of Fish and Wildlife to ensure that any action taken by the Commission is consistent with ODFW programs to conserve the species or, if no plan is in place, that the act will not "reduce the likelihood of the survival of recovery of the threatened species of endangered species." ORS 496.182(2). The federal Act prohibits the "taking" of endangered species. 16 USCA § 1538(a)(1)(B). Taking is defined in Section (3)(18) includes "harm" as well as killing and capturing. 16 USCA § 1532 (19). The regulatory definition of "harm" includes "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 CFR § 17.3. The failure to protect sufficient instream flows for listed fish clearly causes habitat destruction or modification that can harm the fish. Habitat destruction or modification that harms fish can rise to the level of an unpermitted taking of a species under the Federal Endangered Species Act. See Palilia v. Hawaii Department of Land and Natural Resources, 649 F.Supp. 1070 (D. Hawaii 1986), aff'd, 852 F.2d 1106 (9th Cir. 1988). In Palilia, the Court found that a state agency action that allowed goats to destroy the food source of an endangered bird was a habitat alternation that rose to the level of a take under the Endangered Species Act. Failing to protect streamflows for fish and continuing to issue water rights which taking water from fish is at least as clear a causal connection. ODFW instream flow requests should be granted in full.

The proposed conditions are contrary to the public interest.

The technical reports propose to subordinate these instream flow requests to human consumption or livestock. The technical reports do not provide any support or reasoning behind its proposal. These uses, while they use small amounts of water individually, have cumulative adverse effects on streamflows needed for fish.

As noted above, the state has a duty to protect instream flows needed for public uses of water. Fish need water to survive. The Powder River system supports a variety of fish life including chinook, redband trout and bull trout. Moreover, the system is tributary to the Snake river where populations of Chinook and Sockeye are protected under the Federal Endangered Species Act. Part of the decline of fish populations can be attributed to low flows during summer months which impair fish survival by, among other things, raising water temperatures and decreasing aquatic habitat and trout rearing areas. Low flows in the winter adversely affect fish habitat in a number of ways, including exposing spawning gravel and reducing feeding and rearing areas in the river. In addition, water diversions create problems for fish passage and survival in the basin.

Streamflows are not only critical for fish survival, they help abate water quality problems. The Department of Environmental Quality (DEQ) has designated segments of the Powder River as water quality limited. The river is not able to support the designated beneficial use of water contact. Rivers can not assimilate pollution loadings unless there is sufficient water instream. Thus, streamflow protection is critical to pollution abatement.

These requested flows are necessary to protect severely depressed fish populations which arelisted under the Federal Endangered Species Act. Listing under the state and federal endangered species acts is not only a sign of the health of a particular species but also a warning signal for the health of the human environment.

These proposed conditions are 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 coastal river system have been impaired. Adoption of these instream water rights without conditions is just one small step towards restoring this system.

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. WaterWatch supports the Department's efforts to finally begin to implement an Act that has been "on the books" for the past six years. We look forward to the adoption of these instream water rights.

Sincerely,

Kimberley Priestley
Legal/Policy Analyst

WATER FOR LIFE'S OBJECTION TO TECHNICAL REVIEW: APPLICATION # 72191

Submitted to the Oregon Water Resources Department, January 31, 1995

Water for Life hereby submits the following objection to Application # 72191, an instream water right application filed by the Oregon Department of Fish & Wildlife ("ODFW"). Water for Life asserts that the technical review by the Water Resources Department ("WRD' or "Department") is defective and there are elements of the water right as approved that may impair or be detrimental to the public interest, based on the facts and issues set forth below. The applicant has requested flows that exceed the level of flow necessary to support the uses applied for (ORS 537.336 and OAR 690-77-015 (9)). For the reasons set out herein, the application should be rejected or returned to the applicant for the curing of defects.

A. WRD FAILED TO ANALYZE FLOW NEEDS

The flow levels approved by the technical review are not based on any analysis of the need for the flows requested. ORS 537.336 sets out the statutory standard which the Department is supposed to follow when determining instream water rights; the "quantity of water necessary to support those public uses." Water for Life asserts this standard means the minimum quantity necessary to support the public use. The technical review does not address the 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)). At the very least, the flows approved should not exceed the lesser of EANF or the minimum flow recommended in the Basin Investigations.

B. NO SUPPORTING DATA SUBMITTED FOR REQUESTED FLOW LEVELS

An integral part of the technical review by the WRD is the analysis of the application and supporting data (see OAR 690-77-026 (1)(a)). OAR 690-77-015 also requires an application to include at a minimum "a description of the technical data and methods used to determine the requested amount;" (emphasis added).

No analysis of supporting data, or the lack thereof, appears in the WRD file for the application. The technical review is defective in that the WRD did not evaluate "whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency." (OAR 690-77-026 (1)(h)).

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation has apparently been lost or destroyed. Such information is essential to understand and evaluate the requested flows and assess their accuracy. No supporting data or "technical data" was submitted by the applicant as required by OAR 690-77-020 (4). Since no technical data was included with ODFW's application, the application should be returned to the applicant for curing of defects or resubmittal (OAR 690-77-021 and 022).

C. OREGON METHOD IS INHERENTLY FLAWED - WRD SHOULD REJECT APPLICATION

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 (note testimony of Albert H. Mirati, Jr. on the Oregon Method at the Water Resources Commission, December 6, 1990 meeting).

The Oregon Method was further critiqued in Instream Flow Methodologies, EA Engineering, Science and Technology, Inc. (1986), a publication referenced ODFW's own publication also entitled Instream Flow Methodologies, Louis C. Fredd, Oregon Department of Fish and Wildlife (1989). In that critique at page 10-71, the authors stated:

"The principal limitation is the arbitrariness of the flow criteria. There is no way of knowing if they are necessary or sufficient. The binary velocity and depth criteria are also arbitrary and can result in misleading conclusions. It [Oregon Method] is one of the earliest developments of the concept of depth, velocity, and especially substrate size and dissolved oxygen, but has now been superseded."

The determinations made for 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).

D. OREGON METHOD WAS NOT FOLLOWED TO OBTAIN FLOW LEVELS REQUESTED

One of the requirements of the Department's technical review is contained in OAR 690-77-026 (1)(h): "Evaluating whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency." This requirement does not mean 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. 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 use, 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), p. 12.

E. "EANF" CALCULATIONS ARE DEFECTIVE OR INCOMPLETE

There are no calculations or information in the WRD file to show what ratios or models were used or how adjustments were made 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, p. 22 and 23.) The EANF calculations are defective, resulting in high EANF levels and thus allowing excessive recommended flows by the WRD. The model used to calculate EANF should be reviewed and revised to properly set EANF figures.

F. FISH SPECIES MAY NOT BE PRESENT IN STREAM

The application is defective in that the purpose listed in the application (to provide required stream flows for several different types of fish species) listed fish species that may not be present in the stream. Insufficient information was submitted with the application to determine if the fish species listed in the application are actually present in the stream reach applied for. No supporting data was submitted to show the presence of the listed species as required by ODFW's rules (OAR 635-400-015 (8)(a)).

G. "REPORT CONCLUSIONS" CONTAIN BOILERPLATE LANGUAGE

The "Report Conclusions" of the technical review contain boilerplate language apparently agreed upon by the Department and ODFW, some of which is not applicable to this application. There is no information in the application file to indicate the "conclusions" were actually reached as part of the technical review.

H. "REACH" REQUESTED IS TOO EXTENSIVE

A significant defect in the application and supporting data that the Department failed to consider concerns the reach of the stream allowed under this instream water right. The flow rates allowed would be applicable to the entire reach requested. This reach is far too long for the flow rates allowed, especially in light of the incoming tributaries between the mouth and the upstream end of the reach (see basin maps). The instream right "shall be approved only if the amount, timing and location serve a public use or uses." OAR 690-77-015 (9).

OAR 690-77-015 (6) states that instream rights "shall, insofar as practical, be defined by reaches of the river rather than points on the river."; OAR 690-77-202 (4)(d) requires that the application shall include the stream "reach delineated by river mile." It is neither practical nor reasonable to approve the same flow rates for the entire reach given the length of the reach applied for, the water available in the stream and the additional tributaries that flow into the stream within the reach.

The stream reach is also excessive according to ODFW's own instream rules. OAR 635-400-015 (11) details the requirements for a specific stream reach. A stream reach is limited to a point where "Streamflow diminishes by at least 30%" (OAR 635-400-015 (11)(B)). OAR 635-400-015 (11)(C) also appears to have been violated since the "stream order" (OAR 635-400-010 (19)) changes within the reach requested due to the incoming tributaries.

The flow requests by ODFW are based on the old Basin Investigations. The Basin Investigations lists the location of the recommended flows in the appendix listing the recommended flows. It is clear that the flow recommendations in the Basin Investigation did not extend upstream and the facts cited above further prove that the reach approved should be limited significantly.

I. EXISTING INSTREAM WATER RIGHTS NOT TAKEN INTO ACCOUNT

An instream water right already exists within the reach of the stream at issue in this application. The amount of the existing instream right should be subtracted from any instream right allowed under this application.

OAR 690-77-015 (10) requires that the "combination of instream rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with (4) and (5) above. Subsection (4) of that section deals with the "EANF" determination; the existing rights were also not accounted for in that calculation. See also OAR 690-77-015 (9).

If the existing instream water right is not subtracted from the approved flow levels, the Department should add a condition to the water right as follows: "The instream flow allocated pursuant to this water right is not in addition to any other instream water rights with a senior priority date and is not in addition to a designated minimum perennial stream flow."

J. ODFW'S GAGE RULE NOT FOLLOWED

The application fails to abide by another rule applicable to ODFW's instream applications, OAR 635-400-015 (10)(a). This rule requires ODFW to compare hydrological estimates or gaging data to the amount of water they request for instream flows ("instream flow requirements"). A specific evaluation is set out in subsection (10)(b) regarding appropriate levels for any given time period in relation to the naturally occurring stream flows. ODFW never performed this evaluation for the application.

CONCLUSION

This objection is filed in accordance with OAR 690-77-028. The issues raised should be considered as part of a contested case hearing. The WRD technical review is inadequate and defective and has failed to follow applicable rules. A thorough review of the application is necessary to determine the flow levels necessary to support the public uses applied for.

For the reasons set forth above, the objector asserts the application is defective and should be returned to the applicants. The flow levels requested are excessive and not necessary to support the public uses proposed. Flow levels set at the rates proposed interfere with future maximum economic development. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170). The flow rates approved should be set the minimum quantity necessary to support the public use applied for.

Todd Heidgerken
Executive Director of Water for Life

21 IWR's in Baker County

70863, 64, 70, 71864, 72160, 61, 67, 68, 69, 70, 72, 78, 81, 83, 85, 86, 89, 90, 91, 92, 93

EOMA

Eastern Oregon Mining Association, Inc.
(a nonprofit corporation)

P.O. Box 932 503-523-3285
Baker City, Oregon 97814

COMMENTS RELATING TO INSTREAM WATER RIGHTS FILED BY OREGON DEPARTMENT OF FISH AND WILDLIFE

January 29, 1995

The Eastern Oregon Mining Association is located in Baker County Oregon. Our membership consists of over 300 throughout Oregon, Washington, Idaho, California and Nevada. Many of the miners have claims they are actively working or under exploration in Baker County where the Oregon Department of Fish and Wildlife have filed instream water rights.

We question the validity of the data collection that is being used as a basis for the instream rights. Most of the streams that are being targeted are over appropriated now. The attack on the instream rights will hamper industrial use in the future. In most cases, during placer mining the water is used in a non-consumptive way and the process of mining will release additional water that can be used by down stream users.

The mining association opposes the instream water right grab on the streams throughout the state of Oregon, but in particular the streams located in Baker, Grant and Union Counties. The impact to the small communities of Baker, Unity and Pine Valley where many of these streams are located could have adverse affects on the current and future economic well being; could stop future land development, business and industry that depend on water. Future reductions could make it unfeasible to operate the business that depend on future water usage If these water rights are granted. The state should be looking at ways to construct off stream impoundments to collect water during high spring run off to later put back into the streams during the summer and fall when water is low. Work with the land owners instead of taking future water rights.

We also oppose the fact that Oregon Department of Fish and Wildlife is allowed to file water rights without being assessed the same fees that are charged the public at large.

Respectfully Submitted,

Terry Drever-Gee

Terry Drever-Gee
President, Eastern Oregon Mining Assoc.
Director of Government Affairs, Oregon Independent Miners

Copy:
Representatives Lundquist, Norris, Baum
Senators Walden, G. Smith

72191
72091

FREEMAN ANGUS RANCH INC.
HC 87 BOX 1045 + BAKER CITY, OR 97814
(503) 523-6881

Oregon Water Resources Department
158 12TH ST NE
Salem, Oregon 97310

January 31, 1995

Attn: Michael J. Mattick
Reference Files: 1S72160 - 1S72161 - 1S72168 - 1S72169 - 1S72178
1S72185 - 1S72186 - 1S72190 - 1S72191 - 1S72192 - 1S72193

Dear Sir

I object to the above so called "instream" applications that have been filed upon by our ODF&W. As you know these streams have already been filed on by previous older water rights so called "out-of stream" rights. There isn't any water left to give them.

As you well know the above filings are simply a legal hassle to steal water for the ODF&W for dubious purposes.

Here is a prime example of the State of Oregon working hand-in-hand with different departments of the state to steal water in the name of a new type of water called "instream". Shame on you folks! Why would the ODF&W file on nonexistent water and why would you people grant it? Again shame on you!

We the people are getting tired of paying for all sides of silly proceedings including this very questionable issue.

Check the history of Burnt River and Powder River and the North Powder River. They went dry in the summertime shortly after spring runoff. There was NO "INSTREAM". The farmers and ranchers built reservoirs: Phillips, Unity, Thief Valley to name a few for irrigation. Now we have some year around water. Shame on your department. Quit fooling with us. We are not helpless you know. We are landowner citizens. This is a vicious joke when viewed in its entirety. If the ODF&W needs some water why sneak around? "Instream vs. out-of-stream" give us a break! Fish in the Burnt River ha! Fish in the Powder River ha! Not until after the reservoirs were built. Check your records. Talk to the people!

Upset but still cordial

David B. Freeman

cc Lynn Lundquist
Greg Walden

BAKER COUNTY COURT
1995 Third Street
Baker City, OR 97814
(503)523-8200
Fax: (503)523-8201

COURTHOUSE
BAKER CITY, OREGON
97814

January 26, 1995

Mr. Michael Mattick
Water Rights Specialist
Oregon Water Resources Department
Commerce Building
158 Twelfth Street NE
Salem, OR 97310-0210

RE: Technical Reports for Instream Water Rights
Powder River Application File Nos. 72167, 72172, 72183, 72190, 72191, 72192, 72193

Dear Mr. Mattick:

After reviewing the technical reports for the above named applications, Baker County wishes to register objections to the reports. The objections are organized by their location on the Powder River. They are presented in full in this document to show the interrelationships among the various applications.

Applications 72172 and 72190

These applications cover reaches which were extensively altered by dredge mining. The water pools in different areas, and in the summer, the flows are not consistent. The applications should consider the special circumstances created by the tailings.

Baker County recognizes the value of these areas for recreation and wildlife development. From 1974 to 1994, the County leased much of the land encompassing the reach described in 72190 to the Department of Fish and Wildlife for their management. In 1994, ODFW acknowledged its lack of program funding to continue the contract. The county continues to be committed to the preservation of this unique ecology.

There are no calculations or information in the technical reports to show how the Water Resources Department estimated the average natural flow for the reach described in #72172. The technical report should show how the flows are calculated, as there is no

gage on this reach.[1]

The applicant should supply information on the means and location for measuring the instream water right; the strategy and responsibility for monitoring flows for the instream right and provisions needed to managing the water right to protect the public uses, as requested by OAR 690-77-020, so the County can better examine the benefits of the application in relation to the costs to the public.

Application 72183, 72190, 72191

Baker County echoes the concerns articulated by the Baker Valley Irrigation District regarding these applications. In addition, the County has the following comments:

A 1966 report by the United States Department of the Interior, Bureau of Reclamation, dated 1961 stated:

> Except in the uppermost headwaters, Powder River is not considered a good fishing stream. Throughout most of its length, the river flows over a rather flat terrain, the stream is usually turbid, and water temperatures are high during low-flow periods in the summer. This combination of characteristics deprives the stream from supporting desirable populations of trout; instead, rough species such as squawfish and suckers abound. While brown bullheads occur in the stream, spiny-rayed game species would probably not thrive because of the cold winter and spring seasons.[2]

What circumstances have changed in this reach to encourage the Department of Fish and Wildlife to assume that instream water rights will improve the natural situation?

A Water Resources Report (1966) determined that actual flows in the Powder River are below those estimated average natural flow in the summer months. According to a Department of Agriculture Cooperative Report dated the same year indicated that "Stored water was used to extend the irrigation period in [Burnt River and the Baker Valley] rather than expand acreage under

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[1]Information regarding the number and location of gaging stations is from the Baker County Watermaster's Office.

[2]Baker Project, Upper Division, United States Department of the Interior, Bureau of Reclamation, Boise, Idaho, January 1961, p. 4, Fisheries.

irrigation."[3] A conclusion to be drawn from this and anecdotal information indicates that natural flows during the summer months were intermittent. The instream water rights, if based on estimated natural flows, should reflect this information.

The reach covered by application #72191 covers 52 land miles with many diversions, passing through three cities and two counties. The flow rate allowed would be applicable to the entire reach requested. It is neither practical nor reasonable to approve the same flow rates for the entire reach given the length of the reach applied for, the water available in the stream and the additional tributaries that flow into the stream within the reach. (OAR 690-77-015(6); OAR 635-40-015(11).)

Application 72192

The reach covered by application #72192 covers 23 land miles. As with Application #92191, the flow rate allowed would be applicable to the entire reach requested. Again, it is neither practical nor reasonable to approve the same flow rates for the entire reach given the length of the reach applied for, the water available in the stream and the additional tributaries that flow into the stream within the reach. (OAR 690-77-015(6); OAR 635-40-015(11).)

This application has a gaging station in the beginning and at the end of the described reach. The application or technical report should indicate whether that gaging station will be used to determine the flow calculations.

Application 72193

As with the other applications, anecdotal evidence (attached), indicates that the methodology used to calculate stream flows is not reflective of either natural or altered conditions. This 19-mile reach would require flows which are not covered by natural stream conditions. The technical report should indicate where the measurement for flows will be taken. If possible, an existing gaging station should be used.

SUMMARY:

As a whole, Baker County is concerned about the precedential effect of establishing instream water rights based on theoretical modelling, when the "on the ground" conditions indicate extreme

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[3]USDA Report on Water and Related Land Resources Powder Drainage Basin, Oregon (1966 USDA Cooperative Report), p. 74.

over appropriation. We ask that the optional provisions of OAR 690-77-020(5) be a requirement on applications for in-stream water rights in the county.

We ask to be included as a party to any contested case hearing which may arise out of any and all of these applications.

Sincerely,

For the Baker County Court

Truscott Irby
Commissioner

TI:ALC:a5:\ccourt\burntriv.com
Attachments – See File 72167
cc: G. Walden
L. Lundquist
File

To Michael J. Mattick
OREGON WATER Resources Dept
SALEM, OREGON

RECEIVED
JAN 30 1995
WATER RESOURCES DI
SALEM, OREGON

1-26-95

DEAR Mr. MATTICK

As A property owner + WATER RIGHT holder, I wish to OBJECT to the Technical Review Report FOR THE INSTREAM flow Applications 70863, 70864, 70870 ~~71064~~ 71684, 72160, 72161, 72167, 72170 72172, 72178, 72181, 72183, 72185 72186, 72189, 72190, 72191, 72192, And 72193 By the OREGON Department of Fish and Wildlife. These Applications will pose serious ECONOMICAL HARM to our County.

I OBJECT to the access flows requested which at times are NOT Available.

I OBJECT To their Ability to remove WATER From productive LAND, reducing its value And increasing my TAXES.

Richard Cartwright

RICHARD CARTWRIGHT WEATHERBY BOX 230
DURKEE OREGON
97905

Date: January 12, 1995

To: Water Resources Department
158 12th Street
N.E. Salem, OR 97310

Subject: Objections to 21 instream water right technical review reports from the Powder River Basin generally, with supporting data and information on 72193-72192-72191-72190.

1. Technical Review:

A. If the Fish & Wildlife Dept. is applying their computer technology to all the naturally occurring, unpredictable, and continuously changing fish habitats of the Powder River Basin, then their predictions and reports are poorly drawn. Data would need to be gathered accurately, without bias, for decades and even then nature is very unpredictable.

B. Different species of fish thrive in various habitats. The Powder River Basin is one of the more variable habitat streams in Oregon. It drops from 8000 to 2000 feet, floods with scouring and dries up to only seepage. It's temperatures range from solid ice to 80 degrees F.. It changes from cascading waters to nearly stagnant pools. All in all, while in the Powder River Basin, the stream habitat varies significantly. Common sense reveals that any one species cannot thrive well under all of these conditions including the Oregon Salmonids.

C. The source of water has been administratively withdrawn from appropriation in many areas of the basin. Or by conditioned permits, such as Ref. Transfer 67688, by the Powder Valley Water Control District.

D. An assessment of conditions imposed on other instream rights should also include an assessment of the conditions imposed on prior permits and pending applications.

E. An assessment in respect to other commission administrative rules should include the long-term effects of issuing a water right to a public agency with narrow minded objectives. The OR Dept. of Fish and Wildlife has stated that their only concern is for the fish. The large flow of water they demand is nearly impossible to meet. It will also give a

public agency the ability to halt all future water transfers and uses that foremost utilize the water. Conditions and requirements could be imposed that are unreasonable for the varying situations. Conservation projects would also be limited. In a practical sense, control of the basin's water would become that of the Dept. of Fish and Wildlife, leaving the OR Water Resources Dept., Water Districts, County Government, Ditch Companies, and other water users without say.

F. The methods used to determine stream flows is the greatest flaw in the technical review.

1. The measuring devices in the river only give an obscure idea of the overall river flow. Measuring devices located below stored water areas are basically useless in determining natural flows.
2. Measuring diverted water is also a "hit and miss" method.
3. It must be noted, if we could remove man from the picture, the situation would be changed in the following manner; the riparian area would be much narrower and limited. The only expansion of the riparian area would be that land which is flooded in the spring, if it indeed floods. This nutrient enriched area would only last for a short period of time.
   By diversion, this swelled body of water and the enriched area it leaves behind, would be much larger and last longer. Thus, the diverted water is used over and over again as it flows through drainage areas. Farmers can personally attest to the effects of reducing the surface water by converting from flood to sprinkler irrigation. Springs can dry up, causing up to a 50% reduction in spring flows.

G. Therefore technical data obtained on the level of instream flows is consequently inaccurate. These levels of flows support all the other technical errors we have pointed out. The technical review only considers the interests of the Dept. of Fish and Wildlife without consideration for other water uses.

H. The technical data obtained from local government agencies is unjust because the Water Districts were not involved.

2. The philosophy used in the report conclusions is not technically correct. If it were, then it should apply to all other wildlife and man would have to just disappear! We lose deer, elk, birds, rodents, and all other forms of wildlife to natural changes in habitat succumbed to snow depth, extreme temperature changes, fires, drought, floods, and etc..

A. The flows should be reduced to survival flows. With this in mind, new findings are showing that the native fish can survive temperatures up to 80 degrees F. in stagnant ponds.

B. No instream right should be issued in stream areas where the flows are already supplemented and maintained by stored water.

C. The reports and studies now used are outdated with new technology coming on line and should be considered technically incorrect.

D. Assuming a species of fish was having problems with survival, then two considerations undoubtedly are not being addressed. One being overpopulation of other fish for the food supply. And two, being overfishing by humans.

3. Enclosed are records of the Hydrographic branch of the U.S. Geological Survey. It must be noted that 1907 was an unusually wet year and 1908 was more normal. If a dry year was included to offset the wet year in the survey, then the mean flows would be approximately 70% and minimum flows 50% of the recordings.

Submitted by: Lloyd O Mahr

Powder Valley Water Control Dist.

Baker Valley SWCD

Baker County Water Advisory

Rating tables for Powder River at Salisbury, Oreg., for 1907 and 1908.

OPEN CHANNEL CONDITIONS, 1907.[a]

Gage height.	Discharge.	Gage height.	Discharge.	Gage height.	Discharge.	Gage height.	Discharge.
Feet.	*Sec.-ft.*	*Feet.*	*Sec.-ft.*	*Feet.*	*Sec.-ft.*	*Feet.*	*Sec.-ft.*
1.80	11	2.70	102	3.60	305	4.50	639
1.90	16	2.80	119	3.70	336	4.60	682
2.00	22	2.90	137	3.80	369	4.70	725
2.10	30	3.00	155	3.90	403	4.80	768
2.20	38	3.10	176	4.00	440	4.90	812
2.30	48	3.20	198	4.10	478	5.00	856
2.40	60	3.30	223	4.20	516	5.20	944
2.50	72	3.40	250	4.30	554		
2.60	86	3.50	277	4.40	596		

OPEN CHANNEL CONDITIONS, 1908.[b]

1.00	0.1	1.90	20	2.80	144	3.70	370
1.10	0.4	2.00	27	2.90	165	3.80	400
1.20	0.8	2.10	36	3.00	187	3.90	430
1.30	1.6	2.20	47	3.10	209	4.00	465
1.40	2.6	2.30	59	3.20	232	4.20	535
1.50	4.3	2.40	73	3.30	256	4.40	605
1.60	6.7	2.50	89	3.40	282		
1.70	10	2.60	105	3.50	310		
1.80	14	2.70	124	3.60	340		

ICE CONDITIONS, 1907.[c]

2.30	23	2.70	42	3.10	71	3.50	110
2.40	27	2.80	48	3.20	80	3.60	122
2.50	32	2.90	55	3.30	89	3.70	135
2.60	37	3.00	63	3.40	99		

[a] This table is not applicable for ice or obstructed-channel conditions. It is based on 15 discharge measurements made during 1904–1907, and is fairly well defined for 1907.
[b] This table is not applicable for ice or obstructed-channel conditions. It is based on 1 discharge measurement made during 1908 and the form of previous curves and is not well defined.
[c] This table is applicable only for ice conditions. It is based on 3 discharge measurements made at times of ice obstruction during 1904–1906, and is not well defined.

Monthly discharge of Powder River at Salisbury, Oreg., for 1907 and 1908.

[Drainage area, 275 square miles.]

Month.	Discharge in second-feet.			Run-off.			Accuracy.
	Maximum.	Minimum.	Mean.	Per square mile.	Depth in inches on drainage area.	Total in acre-feet.	
1907.							
January	42	23.0	27.9	0.101	0.12	1,720	C.
February	478	40	185	.673	.70	10,300	C.
March	535	137	243	.884	1.02	14,900	B.
April	878	236	516	1.88	2.10	30,700	B.
May	768	369	529	1.92	2.21	32,500	B.
June	516	102	220	.800	.89	13,100	B.
July	166	34	98.0	.356	.41	6,030	B.
August	54	11	26.2	.095	.11	1,610	B.
September	22	11	15.4	.056	.06	916	B.
October	28	11	18.4	.067	.08	1,130	B.
November	43	14	24.9	.091	.10	1,480	B.
December[a]	54	30	36.8	.134	.15	2,260	C.
The year	878	11	162	.588	7.95	117,000	

[a] Discharge estimated December 22 to 31, 1907, and January 1 to 4, 1908. Discharge applied as for open channel January 5 to 11, and December 13 to 19, 1908.

Monthly discharge of Powder River at Salisbury, Oreg., for 1907 and 1908—Continued.

Month.	Discharge in second-feet.			Run-off.			Accuracy.
	Maximum.	Minimum.	Mean.	Per square mile.	Depth in inches on drainage area.	Total in acre-feet.	
1908.							
January[a]	53	30	40.3	0.147	0.17	2,480	C.
February	89	42	61.8	.225	.24	3,550	C.
March	570	66	202	.735	.85	12,400	B.
April	588	198	404	1.47	1.64	24,000	B.
May	518	176	279	1.01	1.16	17,200	B.
June	310	176	245	.891	.99	14,600	B.
July	176	27	100	.364	.42	6,150	C.
August	42	.1	12.0	.044	.05	738	D.
September	17	.1	5.31	.019	.02	316	D.
October	66	14	36.3	.132	.15	2,230	C.
November	66	12	36.0	.131	.15	2,140	C.
December[a]	42	14	28.5	.104	.12	1,750	C.
The year	588	0.1	121	.440	5.96	87,600	

[a] Discharge estimated December 22 to 31, 1907, and January 1 to 4, 1908. Discharge applied as for open channel January 5 to 11, and December 13 to 19, 1908.

MISCELLANEOUS MEASUREMENTS.

The following miscellaneous discharge measurements were made in Powder River drainage basin, Oregon, in 1907 and 1908:

Miscellaneous measurements in Powder River Drainage Basin, Oregon, in 1907–8.

Date.	Stream.	Tributary to—	Locality.	Discharge.
				Sec.-ft.
August 19, 1907	Powder River	Snake River	Sumpter	11
August 21, 1907	do	do	Haines	16
July 27, 1907	do	do	Above North Fork near North Powder.	110
September 7, 1908	do	do	Sec. 26, T. 6 S., R. 40 E.	[a] 10
August 16, 1907	do	do	Erwin	3.6
July 7, 1907	do	do	Sec. 32, T. 8 S., R. 43 E	295
August 20, 1907	Goodrich Creek	Powder River	Wingville	2.6
Do	Willow Creek	do	Sec. 5, T. 8 S., R. 39 E.	3.4
February 11, 1907	Dutch Flat Creek	do	Haines	4.7
August 20, 1907	Rock Creek	do	One-half mile above Rock Creek.	28
Do	Muddy Creek	do	2 miles west of Rock Creek	2
July 27, 1907	North Fork of Powder River.	do	North Powder	25
July 9, 1907	Eagle Creek	do	Newbridge	1,040
Do	Fuller ditch	do	Opposite Newbridge	4.8
Do	Holcomb ditch	do	do	.9
Do	Hostine ditch	do	do	6.7
Do	Moody ditch	do	do	14
Do	Newton Young ditch	do	do	32
Do	Waterbury ditch	do	do	14
August 8, 1907	Basha ditch	do	Miles	26
August 17, 1907	do	do	do	14
August 8, 1907	Lower Powder Ditch and Dam Co.'s ditch.	do	do	7.6
Do	North Side ditch	do	do	9.9

[a] Measurement made at Thief Valley dam site; low water.

GRANDE RONDE RIVER BASIN.

DESCRIPTION.

Grande Ronde River, which drains the eastern slope of the Blue Mountains in Oregon and the northern slopes of the Powder River Mountains (a comparatively high range that runs at right angles to

where it turns abruptly to the southeast and empties into the Snake River in the east central part of Baker County.

The general elevation of the headwaters is 6,000 feet above sea level, while that of the valley is 3,300 feet. Sumpter is 4,415 feet above sea level, and Baker City, 3,586 feet. The only important tributary stream is Eagle Creek, which drains the southern part of the Powder River Mountains and empties into the Powder near its mouth. The total drainage area of Powder River at the mouth is 1,660 square miles; at Baker City it is 341 square miles.

At the headwaters the country is mountainous and heavily forested and the principal industry is mining and lumbering. The valley of the Powder has not been greatly developed, although a number of irrigation ditches are in operation. Any extensive development will involve the construction of storage reservoirs, for which facilities are not lacking.

The mean annual rainfall at Baker City is 15 inches; in the headwater region it is probably twice that amount, the greater part falling during the winter in the form of snow. The determination of stream flow in this area is rendered somewhat difficult during the winter as the streams are icebound for weeks at a time.

The lowest run-off from this basin since records have been kept occurred in 1905; the highest occurred in 1904, but 1907 was a close second.

Only one gaging station has been maintained in this basin—that at Salisbury.

POWDER RIVER AT SALISBURY, OREG.

This station, which was established December 20, 1903, is located 10 miles above Baker City and one-fourth mile below Salisbury, a station on the Sumpter Valley Railroad. It is above all important diversions for the Powder River valley.

The data are of considerable practical value, as the waters are used for mining above the station and for irrigation below. They are also of scientific interest because this drainage area was once quite heavily forested, but has of recent years been logged off.

During the winter months the stream frequently remains frozen for long periods, and although an attempt has been made to develop rating curves for ice conditions, the results have not been very satisfactory.

Discharge measurements of Powder River at Salisbury, Oreg., in 1907 and 1908.

Date.	Hydrographer.	Width.	Area of section.	Gage height.	Discharge.
1907.		*Feet.*	*Sq. ft.*	*Feet.*	*Sec.-ft.*
April 29	I. E. Oakes	43	86	3.71	326
1908.					
May 30	H. D. McGlashan	41	56	3.00	187

Daily gage height, in feet, of Powder River at Salisbury, Oreg., for 1907 and 1908.

[R. M. Garrett, observer.]

Day.	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
1907.[a]												
1	2.45	2.7	3.15	3.45	4.25	4.2	3.05	2.35	1.95	1.9	1.95	2.25
2	2.4	2.75	3.1	3.35	4.15	4.05	2.95	2.3	1.9	1.85	1.95	2.25
3	2.35	2.75	3.15	3.55	4.1	3.95	2.95	2.25	1.85	2.0	2.0	2.25
4	2.3	2.65	3.05	3.55	3.95	3.85	3.0	2.2	1.85	2.05	2.0	2.2
5	2.4	3.35	2.9	3.45	4.0	3.7	3.0	2.2	1.8	2.05	1.9	2.15
6	2.4	3.65	3.1	3.6	4.05	3.65	3.05	2.15	1.8	2.0	1.9	2.1
7	2.35	3.45	3.1	4.0	4.05	3.45	2.85	2.1	1.95	1.95	1.85	2.15
8	2.35	3.15	3.1	4.45	4.15	3.15	2.85	2.15	1.95	1.95	1.85	2.15
9	2.4	3.15	3.2	4.3	4.25	3.05	2.85	2.15	1.95	1.95	1.85	2.25
10	2.4	3.15	3.2	4.4	4.35	3.25	2.75	2.15	2.0	1.95	1.85	2.25
11	2.4	3.1	3.15	4.55	4.15	3.5	2.65	2.1	2.0	1.9	1.95	2.25
12	2.3	3.25	3.05	4.85	4.05	3.75	2.75	2.05	1.85	1.9	1.95	2.35
13	2.3	3.15	3.15	5.05	4.2	3.4	2.85	2.05	1.85	1.85	1.95	2.35
14	2.35	3.05	3.05	5.05	4.3	3.05	2.75	2.0	1.9	1.85	2.05	2.25
15	2.35	3.05	3.15	4.95	4.55	3.05	2.7	2.1	1.85	1.8	2.05	2.25
16	2.35	3.15	3.15	4.75	4.45	3.05	2.6	2.05	1.9	1.85	2.05	2.2
17	2.35	3.15	3.1	4.45	4.55	2.95	2.65	2.05	1.85	1.9	2.05	2.15
18	2.45	3.25	3.6	4.25	4.8	2.85	2.75	2.0	1.9	1.85	2.05	2.2
19	2.45	3.5	4.15	4.05	4.75	2.75	2.65	1.95	1.9	1.85	2.05	2.2
20	2.4	3.75	4.25	4.0	4.65	2.7	2.53	1.95	1.9	1.85	2.15	2.2
21	2.35	3.65	4.1	4.05	4.4	2.9	2.35	1.95	1.85	1.9	2.15	2.15
22	2.3	3.55	3.85	4.15	4.05	2.95	2.45	1.9	1.85	1.95	2.15	2.25
23	2.4	3.65	3.8	4.25	3.85	3.05	2.5	1.95	1.9	1.95	2.15	2.35
24	2.4	3.7	3.6	4.35	3.8	2.95	2.45	1.95	1.85	2.0	2.05	2.35
25	2.3	4.1	3.65	4.2	4.05	2.95	2.45	1.95	1.8	1.95	2.05	2.4
26	2.45	3.95	3.55	4.1	4.1	2.95	2.35	1.95	1.8	2.0	2.05	2.4
27	2.55	3.55	3.45	3.95	4.15	2.95	2.3	1.9	1.9	2.0	2.1	2.3
28	2.55	3.25	3.15	3.85	4.25	2.95	2.25	1.85	1.9	2.0	2.2	2.25
29	2.6	.....	3.1	3.95	4.2	2.9	2.2	1.8	1.8	1.95	2.2	2.25
30	2.65	.....	3.1	4.15	4.15	.....	2.2	1.85	1.9	2.0	2.25	2.35
31	2.7	.....	3.25	.....	4.25	.....	2.15	1.85	.....	2.0	.....	2.35
1908.[b]												
1	.....	2.15	2.45	3.05	4.15	3.15	2.75	2.1	1.1	1.9	2.3	2.05
2	.....	2.15	2.5	3.1	4.05	3.2	2.65	2.15	1.2	1.8	2.25	2.1
3	.....	2.25	2.5	3.2	4.0	3.25	2.65	2.1	1.15	1.8	2.25	2.0
4	.....	2.25	2.5	3.25	3.95	3.5	2.55	2.05	1.15	1.9	2.25	2.1
5	2.05	2.3	2.4	3.35	3.85	3.3	2.55	2.0	1.1	2.0	2.35	2.15
6	2.05	2.25	2.35	3.35	3.85	3.15	2.65	2.1	1.15	2.0	2.35	2.15
7	2.05	2.25	4.45	3.4	4.05	3.15	2.65	2.05	1.15	1.9	2.3	2.1
8	2.05	2.3	2.5	3.5	4.15	3.15	2.7	2.0	1.15	1.9	2.15	2.1
9	2.1	2.15	2.4	3.65	3.45	3.15	2.75	1.9	1.2	1.8	2.0	2.15
10	2.05	2.15	2.45	3.7	3.15	3.15	2.85	1.8	1.15	1.9	1.9	2.1
11	2.05	2.2	2.55	3.75	3.15	3.35	2.85	1.75	1.1	2.05	1.85	2.05
12	2.1	2.2	2.5	3.85	3.1	3.25	2.95	1.7	1.0	2.1	1.75	2.1
13	2.1	2.25	2.6	3.9	3.15	3.35	2.95	1.65	1.1	2.15	1.75	2.05
14	2.05	2.25	2.65	4.05	3.15	3.45	2.85	1.6	1.25	2.2	1.75	2.0
15	2.05	2.3	2.2	4.15	3.05	3.4	2.75	1.55	1.35	2.25	1.85	1.95
16	2.15	2.3	4.3	4.25	3.05	3.25	2.65	1.45	1.35	2.15	1.95	1.9
17	2.15	2.35	3.85	4.05	3.05	3.25	2.65	1.45	1.4	2.15	2.05	1.8
18	2.2	2.35	3.8	3.8	3.15	3.4	2.55	1.45	1.55	2.15	2.1	1.8
19	2.25	2.35	3.7	3.95	3.25	3.35	2.45	1.45	1.85	2.25	2.15	1.85
20	2.25	2.4	3.7	4.05	3.15	3.25	2.35	1.35	1.85	2.15	2.15	1.9
21	2.25	2.4	3.7	4.35	3.15	3.3	2.35	1.35	1.85	2.1	2.05	1.9
22	2.15	2.4	3.55	4.25	3.1	3.35	2.35	1.35	1.8	2.1	2.05	1.85
23	2.15	2.4	3.45	4.15	3.05	3.4	2.35	1.3	1.75	2.15	2.1	1.85
24	2.15	2.45	3.5	4.05	3.05	3.3	2.45	1.25	1.7	2.2	2.1	1.95
25	2.2	2.5	3.3	3.85	3.15	3.25	2.45	1.2	1.7	2.15	2.05	1.95
26	2.25	2.5	3.15	3.75	3.15	3.2	2.35	1.2	1.65	2.1	2.05	1.95
27	2.25	2.45	3.1	3.85	3.05	3.15	2.3	1.15	1.65	2.05	2.05	1.95
28	2.25	2.45	3.0	3.9	3.05	3.1	2.2	1.1	1.65	2.1	2.1	2.0
29	2.25	2.35	3.0	4.05	2.95	3.1	2.15	1.1	1.65	2.1	2.1	2.1
30	2.25	.....	2.85	4.15	3.0	2.95	2.1	1.05	1.65	2.05	2.05	2.1
31	2.1	.....	2.9	.....	3.15	.....	2.0	1.0	.....	.....	.....	2.1

[a] River frozen November 20, 1906, to February 10, 1907, although center of channel was open after January 15. Frozen entirely over on December 25, 1906, to a depth of 4 to 5 inches.
[b] The river was frozen January 5 to 11 and December 13 to 19.

NOTE.—The discharge of the river fluctuates somewhat on account of placer mining upstream.

RECEIVED
JAN 30 1995
WATER RESOURCES DEPT.
SALEM, OREGON

1-26-1995

Michael J. Mattick:
Ore water Res. Dept.
Salem, Ore.

Dear Sir:

As a property owner, water rights user and tax payer, I am submitting my objection to the technical review report for the instream flow applications: 70863, 70864, 70870, 71684, 72160, 72161, 72167, 72170, 72172, 72178, 72181, 72183, 72185, 72186, 72189, 72190, 72191, 72192, and 72193, by ODFW.

The amount of water requested would have an adverse effect on our economy, and is more water than needed.

Sincerely,
Ira Cartwright
P.O. Box 230
Dallas, OR 97305

Baker Valley Irrigation District

Chairman George Chandler
Manager Jim Colton
(503)523-5451

Powder River-Baker County
3895 10th Street

Baker City, Oregon 97814

Mason Dam and
Phillips Reservoir

December 23, 1994

Water Resources Dept.
158 12th Street NE
Salem, Oregon 97310-0210

Dear :Sirs:

The Baker Valley Irrigation District is filing objections to the proposed instream water rights technical review report on the Powder River streams from Cracker Creek at river mile 144.1 (NW1/4, Section 32, Township 9S, Range 37EWM); to Phillips Lake, application file # 72190. Also we object to application file # 72183 McCully Fk Creek from the headwaters at river mile 9.2 SE Section 21 Township 8S, Range 36 EWM to the mouth at the river mile 0.0 (NW 1/4, Section 32, Township 9S, Range 37EWM) also Powder River from Mason Dam at the river mile 131.2 (NWNE, Section 26, Township 10S, Range 38 EWM); to Thief Valley Reservoir at river mile +74.0 (Section 17, Township 6S, Range 40EWM) application file # 72191.

We are protesting these filings because the amount of water that they claim is in the streams during June, July, August and September appear to be false and do not correspond with the Water Resources of Oregon summary of water availability report put out in 1904. At that time they had only a average mean of 16.2 sec. ft. not 25 and 40 that is claimed on these filings for the month of August. (See Exhibit 1 attached). We are also including a copy of a water application that was filed for in 1955 that the Water Resources Dept. denied to the applicant on the basis of there not being enough water available (Exhibit 8). Now these in-stream rights are being considered for approval and they are asking for much more water than the other applicant who was denied. We do realize that this other application involves a different process but the question of the availability of water is still there.

When they filed on these instream water rights applications they took their measurement documentation 20 miles up stream from the Baker Valley and didn't take into consideration canal loss. The amount of water they filed for is not in the stream as they say during these months.

72191

Before Mason dam was built the Fish and Wildlife supported this project because they didn't have any water for fish in the summer months and they stated that with up stream storage with minimum release flows that this would create fish habitat year round. (See attached Exhibits 2 and 5 for press releases). At the present time there is year round fish habitat and we have been working with the Fish and Wildlife to see that this habitat is maintained. At the time of construction of the dam James K. Carr then Under Secretary of the Interior stated that "Reduction in releases below this desired minimum would be allowed proportional to irrigation shortages."

Before the Mason Dam project was built in 1968 Powder River dried up every year as early as June. Farmers at the lower end of Powder River had the first rights from 1863 and up. When they would call for their water through the priority system with the Water Master the water would never get there. We have documentation supporting this issue from ranchers and farmers that lived along the Powder River for 80 some years. (See Exhibits 4 for letters from long time ranchers in Baker Valley).

At this time the Baker Valley Irrigation District has completed their HB3111 process which has tied down water rights to their exact place of use and in the process we have canceled about 1000 acres which will be returned back into the Powder River. In doing this the water rights that have suffered from lack of water might be able to irrigate now. We have been working hand in hand with the Fish and Wildlife installing fish screens and fish by passes on the Powder River, and we have a system that works good for everyone and for the fish. The granting of in-stream water rights at these flows could destroy many years of work to establish a working program for the farmers, ranchers, fish, wildlife and sportsmen.

These 1992 priority dates on in-stream water rights are not worth anything and it will not gain any water back in the system because the older water rights that have been limited because of lack of water would receive their water first.

We strongly urge the Water Resources Department to deny these instream water right applications filed on the Powder River Basin based on inadequate and false information presented to the public.

Before the dam was constructed many hearings with much testimony was presented before Congress to obtain this permit. Some of this testimony presented included From the U.S. Dept. of the Interior they stated that "Except in the uppermost headwaters, Powder River is not considered a good fishing stream. Throughout most of its length, the river flows over a rather flat terrain, the stream is usually turbid, and water temperatures are high during low flow periods in the summer." It was also stated that 84% of water floods away in just a few months in the spring and from the stand point of fishery and recreation Powder River's present value is nil. This statement was made by the Powder River Sportsmen's Club. (See Exhibit 6 for further statements made by the Sportsmen Club in favor of the Mason Dam project). John Hesketh who was the county agent stated to Congress that natural run off water usually ends by early July. Henry Peyron who was one of the first directors of the Irrigation District stated that regardless of water years no water is available during the best growing months of July and August. These statements all show that the construction of Mason Dam was vital to all in this valley and has created a better environment for all species concerned, man, fish and wildlife. We are including pictures and news articles marked Exhibit 7 to substantiate these facts.

Please take these facts into strong consideration and lets all work to keep our system working for all.

Sincerely,

Jim Colton

Baker Valley Irrigation District
Manager-Jim Colton

Water Resources of Oregon

A summary of all available information relating to the water resources of Oregon is presented in this report.

While our water laws are generally considered as being in advance of those of other states, yet further progress can and must be made. This great resource, which is still largely the property of the public, is lying dormant and unused. It can be said to have value only to the extent to which it can be put to use. Furthermore, the use of water will not diminish the supply for future generations.

The conservation of our water resources means development and use, while, on the other hand, the conservation of coal or other exhaustible fuel or mineral supply means careful and economical use, to the end that a proper share of fuel supplies may be conserved for future generations. Every effort should, therefore, be made to promote the development and use of our water resources, under such franchise limitations as will not leave future generations hampered by any mistakes which we may make.

It is believed that the information presented in this report will be of material assistance in promoting development. It should be of assistance in framing new legislation. It will be of value to settlers in connection with water right adjudications, also to the courts, and especially to the water masters in the distribution of water for the protection of vested rights.

This record, used in conjunction with decrees of the State Water Board, and of the courts, should make it possible to ascertain the amount of surplus or unappropriated waters in many of our streams. It shows the total supply available, and the Water Board records show the amount which has already been put to use.

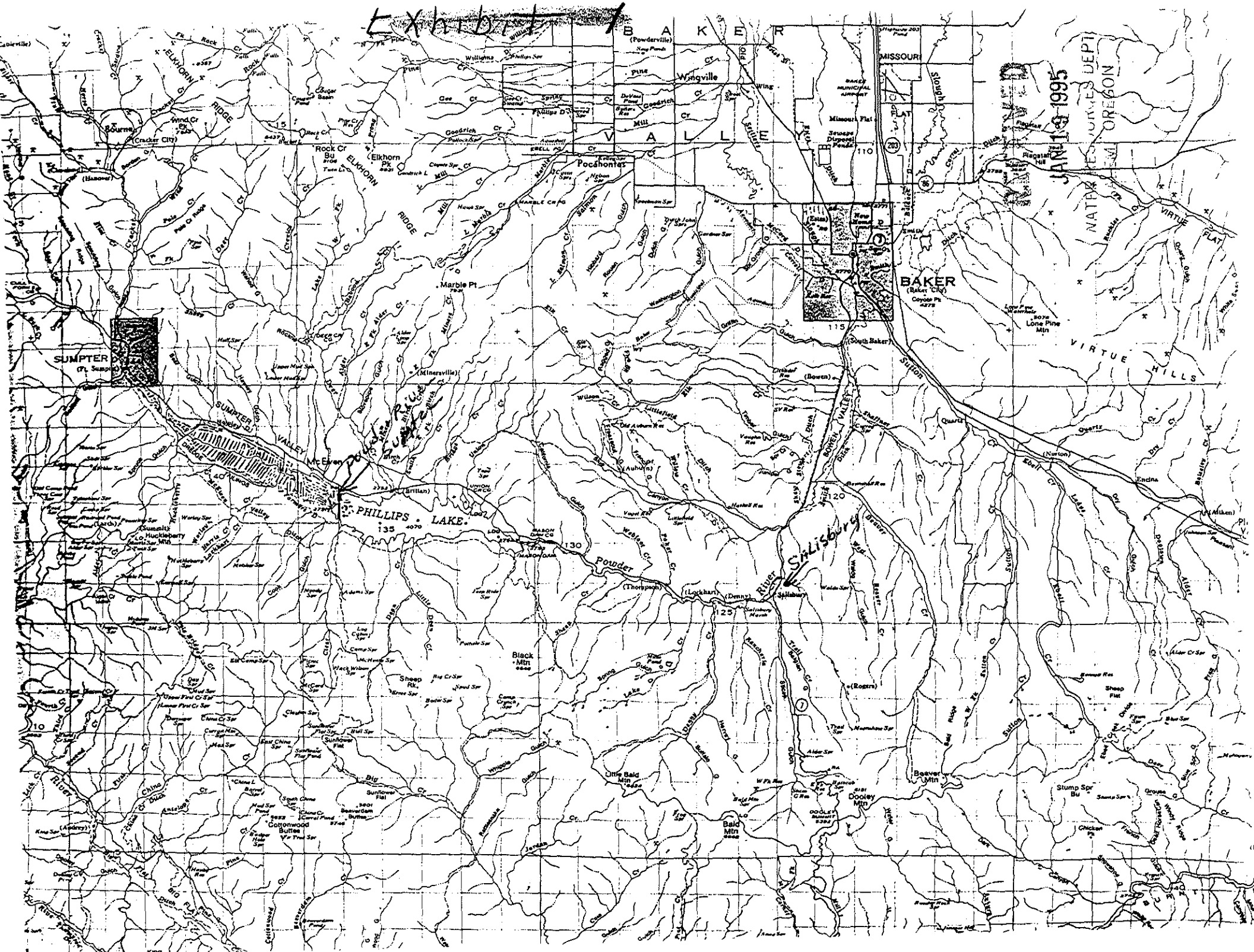
Land titles are based upon a survey and map, showing section, township and range lines. The title is based upon a patent, or grant, from the United States, the original owner. This patent describes the land with reference to the public survey.

Water titles must likewise be based upon a water survey, and grant from the original owner. All water in Oregon has been declared by law to be property of the public. While the State has been somewhat tardy in realizing the value of its water resources and establishing a system of titles to water, yet this has lately been done, and good progress is now being made in bringing order out of chaos in this respect. Water titles will soon be upon as sound legal footing as land titles. Investments can then be made with certainty, and existing rights should come to have added value because of this security

Exhibit C

august 1	28 8/10	1904
2	10	1905
3	11 1/10	1906
4	15 4/10	1907
5	12	1908
6	6. 6/10	1909
7	5 0/10	1910
8	31 2/10	1911
9	27 3/10	1912
10	14 3/10	1913
11	16 6/10	1914
	178.3	
Aver	16 2/10	

Exhibit 1



JAN 18 1995
NATURAL RESOURCES DEPT
STATE OF OREGON

13-2753. Powder River near Sumpter, Oreg.

Location.--Lat 44°40'10", long 118°00'10", in NE¼NE¼ sec.25, T.10 S., R.38 E., on left bank 1,200 ft downstream from Hason Damsite, 1.4 miles upstream from California Gulch, 10.9 miles southwest of Baker, and at mile 123.2.

Drainage area.--170 sq mi at cableway, 0.5 mile downstream.

Records available.--April 1965 to September 1966.

Gage.--Digital water-stage recorder. Datum of gage is 3,898.47 ft above mean sea level (Bureau of Reclamation bench mark). Prior to July 29, 1965, staff gage at datum 1.03 ft higher.

Extremes.--Maximum discharge during year, 387 cfs Apr. 2 (gage height, 3.33 ft); minimum, 0.10 cfs Aug. 20.

1965-66: Maximum discharge observed, 971 cfs Apr. 30, 1965 (gage height, 4.43 ft); minimum, 0.10 cfs Aug. 20, 1966.

Maximum discharge, 1,600 cfs (approximation) Mar. 20, 1910, based on comparison with records for station downstream, near Baker.

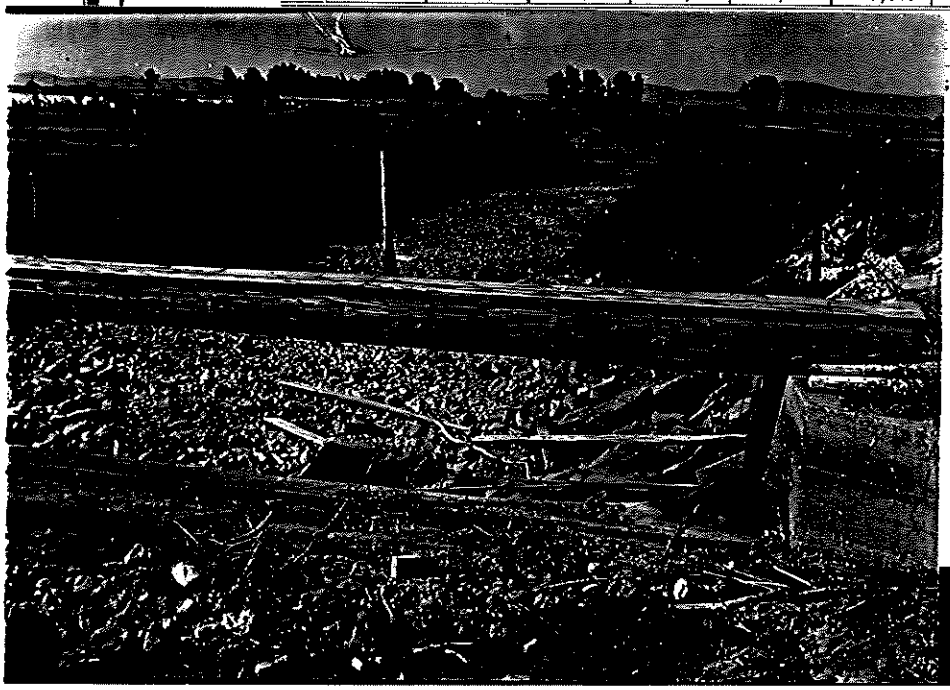
Remarks.--Records good except those for period of ice effect December to February, which are fair. No regulation. Many small diversions for irrigation above station. Records given herein are for measuring site.

Discharge, in cubic feet per second, water year October 1965 to September 1966

Day	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1	17	17	20	22	30	22	328	109	136	30	6.8	5.4
2	16	16	24	30	28	22	368	118	121	44	5.2	5.0
3	16	17	26	38	32	24	303	154	130	39	5.5	5.0
4	16	18	28	44	36	22	255	222	115	36	5.1	4.8
5	17	18	30	50	38	24	243	266	102	33	4.7	4.7
6	17	17	28	55	30	24	266	309	93	30	4.6	4.6
7	17	17	28	65	24	26	303	302	85	27	4.5	1.9
8	17	17	28	60	24	30	309	275	82	27	4.4	1.3
9	16	17	28	50	26	50	323	284	99	26	4.3	1.8
10	16	17	26	44	22	75	324	269	100	25	4.1	2.3
11	14	18	24	40	19	70	293	224	93	23	3.8	2.7
12	13	20	26	40	16	80	245	195	83	21	3.6	3.4
13	12	21	26	38	18	103	203	166	69	23	3.4	3.6
14	12	27	26	38	20	126	184	146	58	24	3.4	5.7
15	14	30	24	36	20	93	191	126	56	21	3.1	5.5
16	16	27	22	30	20	66	203	121	56	19	2.8	4.7
17	16	30	20	24	20	52	213	108	64	17	2.6	4.4
18	17	28	22	20	20	48	188	106	59	15	2.7	4.0
19	18	27	20	18	22	49	161	100	54	13	2.7	3.0
20	17	27	20	18	22	45	147	104	54	12	2.2	2.4
21	17	27	20	22	22	41	136	111	54	12	2.6	2.2
22	18	26	18	24	24	40	123	115	56	11	2.6	1.9
23	17	26	16	26	24	46	114	115	63	11	2.9	1.6
24	17	29	19	24	24	60	107	111	62	11	3.5	1.6
25	17	28	22	28	22	82	115	113	55	11	4.1	1.8
26	18	27	22	28	24	112	124	119	48	9.9	4.0	2.6
27	18	24	24	28	24	149	127	144	43	9.1	4.1	3.4
28	18	22	30	32	22	195	120	148	34	8.1	4.7	2.8
29	18	22	28	36	----------	257	111	151	31	8.0	5.2	2.6
30	18	22	26	36	----------	313	105	161	30	7.6	5.6	2.1
31	17	----------	24	34	----------	345	----------	153	----------	7.3	e5.4	----------
Total	506	681	745	1,078	673	4,691	6,222	5,145	2,195	611.0	124.2	98.8
Mean	16.3	22.7	24.0	34.8	24.0	86.8	207	166	72.8	19.7	e4.01	3.29
Ac-ft	1,000	1,350	1,480	2,140	1,330	5,340	12,340	10,200	4,330	1,210	246	196

41,180

May 6 (2400 P.s.t.) 329 cfs (3.27 ft).



Powder River - month of August 1966.

13-2755. Powder River near Baker, Oreg.

Location.--Lat 44°39'20", long 117°52'30", in NE¼ sec.36, T.10 S., R.39 E., on right bank 700 ft downstream from Stices Gulch, 5½ miles south of Baker, and at mile 116.2.

Drainage area.--219 sq mi.

Records available.--December 1903 to August 1914, July 1926 to September 1966. Monthly discharge only for some periods, published in WSP 1317. Published as "near Baker City" December 1903 to December 1905, and as "at Salisbury" January 1906 to August 1914, October 1928 to September 1951.

Gage.--Digital water-stage recorder and concrete-filled control. Datum of gage is 3,632.31 ft above mean sea level, datum of 1929, supplementary adjustment of 1947. Dec. 20, 1903, to Feb. 29, 1912, staff gage at site 400 ft upstream at different datum. Mar. 1, 1912, to Aug. 1, 1914, and June 16, 1926, to Oct. 15, 1933, staff gage at site 0.4 mile downstream at different datum. Oct. 16, 1933, to Sept. 3, 1965, graphic water-stage recorder at present site and datum.

Average discharge.--49 years (1904-13, 1926-66) 111 cfs (80,360 acre-ft per year).

Extremes.--Maximum discharge during year, 443 cfs Apr. 2 (gage height, 3.33 ft); minimum, 0.50 cfs Sept. 10.

1903-14, 1926-66: Maximum discharge, 1,820 cfs Mar. 20, 1910 (gage height, 7.05 ft, site and datum then in use); no flow Aug. 31, 1909, Sept. 7, 1931.

Remarks.--Records good except those for periods of ice effect in December, which are fair. No regulation. Many small diversions for irrigation above station. At times Auburn ditch diverts water into basin above station.

DISCHARGE, IN CUBIC FEET PER SECOND, WATER YEAR OCTOBER 1965 TO SEPTEMBER 1966

DAY	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.
1	19	18	22	22	32	26	368	109	124	28	5.8	2.4
2	17	19	26	32	30	24	421	113	115	45	5.6	2.4
3	17	18	29	42	36	26	342	132	119	43	4.7	2.0
4	18	20	29	48	40	24	283	186	111	39	4.8	1.8
5	19	20	30	49	39	26	256	274	102	34	4.5	1.8
6	20	21	30	66	39	26	272	342	98	30	4.3	1.8
7	20	20	30	75	32	26	306	340	98	27	4.3	1.7
8	20	21	30	65	24	44	308	306	97	26	4.2	1.0
9	19	21	30	61	28	91	325	316	97	25	4.1	.70
10	19	20	29	47	26	81	328	304	97	25	4.0	.60
11	18	22	28	45	22	76	301	251	97	23	3.6	.90
12	18	22	28	43	20	83	251	219	93	20	3.7	1.2
13	18	25	28	42	22	150	202	189	84	21	3.6	1.4
14	18	29	28	42	22	146	175	167	71	24	3.5	2.3
15	20	33	26	41	22	109	169	150	66	20	3.2	2.6
16	20	30	24	32	22	86	191	146	63	18	2.7	2.4
17	20	33	22	28	22	76	204	124	69	15	2.6	2.2
18	20	32	24	26	22	66	182	117	65	13	2.5	2.2
19	21	29	22	24	24	66	154	109	60	11	1.7	2.2
20	21	29	22	22	24	62	140	109	59	9.4	1.5	2.2
21	20	30	20	24	24	56	132	113	56	8.9	1.5	2.1
22	22	26	19	28	26	56	119	115	57	8.5	1.6	2.0
23	21	29	17	30	28	58	113	109	65	8.3	1.6	1.8
24	20	32	24	28	26	73	106	107	65	8.5	1.5	1.9
25	19	33	22	30	26	97	109	107	59	8.2	1.5	1.9
26	20	30	22	30	29	120	115	109	52	7.8	1.6	2.6
27	20	28	28	30	28	154	120	123	47	7.3	1.8	2.9
28	20	23	32	36	28	204	119	127	37	6.8	1.9	2.7
29	20	24	28	41	------	267	113	127	32	6.4	2.2	2.5
30	20	24	26	41	------	338	107	134	30	6.3	2.5	2.4
31	18	------	24	36	------	394	------	134	------	6.0	2.3	------
TOTAL	602	763	799	1,206	763	3,135	6,333	5,308	2,285	579.4	95.3	58.40
MEAN	19.4	25.4	25.8	38.9	27.3	101	211	171	76.2	18.7	3.07	1.95
AC-FT	1,190	1,510	1,580	2,390	1,510	6,220	12,560	10,530	4,530	1,150	189	116

CALENDAR YEAR	1965	MAX	1,050	MIN	17	MEAN	187	AC-FT	135,700
WATER YEAR	1965-66	MAX	421	MIN	.60	MEAN	60.1	AC-FT	43,480

Peak discharge, (base 340 cfs).--Apr. 2 (0830 P.s.t.) 443 cfs (3.33 ft); May 6 (1300 P.s.t.) 365 cfs (3.04 ft).

COW CREEK NEAR BROGAN, OREGON—STATION No. 1317

Location—In Sec. 24, T. 14 S., R. 41 E., about 300 yards above the mouth of Cow Creek and 12 miles northwest of the town of Brogan, Oregon. Below all tributaries and diversions.

Drainage Area—Not measured.

Monthly Discharge of Cow Creek near Brogan, Oregon, for 1912-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1912					
January	.....	.....	a0.5	30.7	D.
February	1.0	.....	.71	40.8	C.
March	2.8	0.5	1.24	76.2	C.
April	1.0	.5	.63	37.5	C.
May	.7	.3	.40	24.6	C.
June	.4	.2	.26	15.5	C.
July	.3	.1	.15	9.2	C.
August	14.0	.2	.92	56.6	C.
September	.4	.2	.28	16.7	C.
The period	.....	.....	.....	308	
1912-13					
October	0.7	0.4	0.57	35.0	C.
November	.7	.4	.57	33.9	C.
December	.5	.3	.38	23.4	D.
January	.4	.2	.31	19.1	D.
February	.3	.2	.26	14.4	D.
March	5.3	.3	1.68	103	C.
April	1.3	.5	.87	51.8	C.
May	.5	.2	.36	22.1	C.
June	1.4	.2	.41	24.4	C.
July	.8	.2	.30	18.4	C.
August	.3	.2	.25	15.4	C.
September	.4	.3	.32	19.0	C.
The year	5.3	.2	.526	380	
1913-14					
October	0.5	0.4	0.47	28.9	C.
November	.6	.4	.54	32.1	C.
December	.5	.3	.37	22.8	C.
January	.4	.3	.38	23.4	C.
February	.8	.3	.44	24.4	C.
March	11.0	.7	2.69	165	C.
April	.6	.4	.53	31.5	C.
May	.5	.3	.35	21.5	C.
June	.4	.2	.32	19.0	C.
July	.4	.2	.22	13.5	C.
August	.2	.2	.20	12.3	C.
September	.4	.2	.32	19.0	C.
The year	11.0	.2	.57	413	

a Estimated.

POWDER RIVER AT SALISBURY, OREGON—STATION No. 152

Location—In SW¼ Sec. 30, T. 10 S., R. 39 E., at Salisbury station on Sumpter Valley Railroad, 10 miles above Baker.

Drainage—230 square miles.

Monthly Discharge of Powder River at Salisbury, Oregon, for 1904-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1904					
January	.....	.....	a22	1,350	D.
February	299	60	133	7,650	C.
March	537	60	154	9,470	C.
April	1,590	196	843	50,200	C.
May	946	588	663	40,800	B.
June	639	120	398	23,700	B.
July	150	43	85	5,230	B.
August	48	7	28.8	1,770	B.
September	34	2	17.2	1,020	C.
The period	.....	.....	.....	141,000	
1904-05					
October	54	9	29.5	1,810	B.
November	34	22	28	1,670	C.
December	.....	.....	a19	1,170	D.
January	.....	.....	a19	1,170	D.
February	.....	.....	a34	1,890	D.
March	283	86	179	11,000	C.
April	283	130	201	12,000	C.
May	267	150	202	12,400	B.
June	316	66	164	9,760	B.
July	79	9	27	1,660	B.
August	26	4	10	615	B.
September	19	3.5	5.4	321	B.
The year	283	.....	76.5	55,500	
1905-06					
October	30	13	23.1	1,420	B.
November	.....	.....	a10.0	595	D.
December	.....	.....	a8.0	492	D.
January	17	11	14.5	892	D.
February	43	13	23.1	1,280	C.
March	656	30	114	7,010	C.
April	810	283	513	30,500	B.
May	554	172	312	19,200	B.
June	299	102	222	13,200	B.
July	94	16	41.8	2,570	B.
August	26	5	11.1	682	B.
September	13	7	9.2	547	B.
The year	810	.....	108	78,400	
1906-07					
October	19	7	11.6	713	B.
November	54	9	30.5	1,810	C.
December	40	23	31.7	1,950	C.
January	42	23	27.9	1,720	C.
February	478	40	185	10,300	B.
March	535	137	243	14,900	B.
April	878	236	516	30,700	B.
May	768	369	529	32,500	B.
June	516	102	220	13,100	B.
July	166	34	98	6,030	B.
August	54	11	26.2	1,610	B.
September	22	11	15.4	916	B.
The year	878	7	161	116,000	

a Estimated, on account of ice.

Monthly Discharge of Powder River at Salisbury, Oregon—Continued

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1907-08					
October	26	11	18.4	1,130	B.
November	43	14	24.9	1,480	B.
December	54	30	36.8	2,260	C.
January	53	30	40.3	2,480	C.
February	89	42	61.8	3,550	C.
March	570	66	202	12,400	B.
April	588	198	404	24,000	B.
May	518	176	279	17,200	B.
June	310	176	245	14,600	B.
July	176	27	100	6,150	C.
August	42	.1	12	738	D.
September	17	.1	5.31	316	D.
The year	588	.1	119	86,300	
1908-09					
October	66	14	36.3	2,230	C.
November	66	12	36	2,140	C.
December	42	14	28.5	1,750	C.
January	300	8	79	4,860	C.
February	97	41	62.5	3,470	B.
March	361	46	147	9,040	A.
April	286	164	201	12,000	A.
May	514	210	301	18,500	A.
June	630	106	319	19,000	A.
July	65	13	37	2,280	A.
August	23	0	6.66	410	C.
September	5	.1	1.41	84	D.
The year	630	0	105	75,800	
1909-10					
October	33	6.4	17.8	1,090	B.
November	234	13	111	6,600	B.
December	144	5.1	39.6	2,430	D.
January	79	4	17.8	1,090	D.
February	40	14	19.4	1,080	D.
March	1,660	45	671	41,300	C.
April	924	454	658	39,200	C.
May	472	214	333	20,500	B.
June	214	7	83.6	4,970	B.
July	.....	.....	a7.0	430	D.
August	.....	.....	a5.0	307	D.
September	.....	.....	a8.6	512	D.
The year	1,660	.....	164	120,000	
1910-11					
October	51	9	17.3	1,060	B.
November	64	40	52.1	3,100	B.
December	87	30	48.3	2,970	B.
January	51	25	35.0	2,150	B.
February	40	21	26.9	1,490	B.
March	385	30	133	8,180	B.
April	436	201	313	18,600	B.
May	402	176	285	17,500	B.
June	454	228	351	20,900	B.
July	154	11	51.4	3,160	B.
August	14	2	6.5	400	B.
September	7	1	2.5	149	B.
The year	454	1	110	79,700	

a Estimated.

Monthly Discharge of Powder River at Salisbury, Oregon—Continued

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1911-12					
October	71	6	39.9	2,450	B.
November	87	11	47.4	2,820	B.
December	21	7	10.4	640	B.
January	.....	.....	a23.0	1,410	D.
February	147	25	77.3	4,450	D.
March	379	36	117	7,190	B.
April	970	271	522	31,100	B.
May	857	331	630	38,700	B.
June	857	185	515	30,600	B.
July	175	48	78.7	4,840	B.
August	84	15	31.2	1,920	C.
September	34	16	22.5	1,340	C.
The year	970	6	176	127,000	
1912-13					
October	36	19	24.8	1,520	B.
November	43	23	37.3	2,220	B.
December	69	34	48.7	2,990	C.
January	34	21	26.6	1,640	C.
February	50	21	36.4	2,020	C.
March	271	18	98.9	6,080	B.
April	913	260	533	31,700	B.
May	941	260	541	33,300	B.
June	745	163	368	21,900	B.
July	216	34	87.7	5,390	B.
August	46	5	27.3	1,680	C.
September	23	3	6.5	387	C.
The year	941	.3	153	111,000	
1913-14					
October	47	13	30.5	1,880	B.
November	52	18	36.6	2,180	B.
December	.....	.....	a30	1,840	C.
April 5-30	940	270	532	27,400	B.
May	550	281	401	24,700	B.
June	358	92	188	11,200	B.
July	92	23	46.7	2,870	B.

a Estimated.

POWDER RIVER AT BAKER, OREGON—STATION No. 1510

Location—In Sec. 16, T. 9 S., R. 40 E., at the Washington Avenue bridge in Baker.

Drainage Area—Not measured.

Monthly Discharge of Powder River at Baker, Oregon, for 1913-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 7-31	748	325	495	24,500	B.
June	598	146	306	18,200	B.
July	187	11	63.4	3,900	B.
August	27	4	14.3	879	C.
September	5	0	0.90	53.6	D.
The period	.....	.....	.....	47,500	

Note.—Not including sloughs.

Monthly Discharge of Powder River at Baker, Oregon—Continued.

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1914					
April 4-30	705	240	471	25,200	B.
May	470	220	313	19,200	B.
June	262	68	141	8,390	B.
July	64	8	32.6	2,000	B.
The period				54,800	

NOTE.—Not including sloughs.

Total Monthly Discharge of Powder River at Baker, Oregon, for 1913-14.

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 22-31	861	434	660	13,100	B.
June	654	190	360	21,400	B.
July	219	14	78.5	4,830	B.
August	37	5	18.5	1,140	C.
September	5	1	2.7	58.9	D.
The period				40,500	
1914					
April 4-30	769	277	530	28,400	B.
May	574	276	385	23,600	B.
June	329	82	179	10,600	B.
July	78	12.7	38.4	2,350	B.
The period				65,000	

NOTE.—Including flow in Baldock and Old Settlers' Sloughs.

BALDOCK SLOUGH AT BAKER, OREGON—STATION No. 1512

Location—In Sec. 16, T. 9 S., R. 40 E., at the bridge on Clark street, in Baker.

Monthly Discharge of Baldock Slough at Baker, Oregon, for 1913-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 22-31	24	18	21.0	416	C.
June	24	2	10.5	625	C.
The period				1,040	
1914					
May 9-31	22	8.4	16.3	748	B.
June	20	3.7	8.94	532	B.
July	6.6	1.2	3.94	242	B.

OLD SETTLERS' SLOUGH AT BAKER, OREGON—STATION No. 1511

Location—In Sec. 20, T. 9 S., R. 40 E., at the footbridge on Rose Street in Baker.

Monthly Discharge of Old Settlers' Slough at Baker, Oregon, for 1913 and 1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913-14					
May 5-31	93	13	57.7	3,090	A.
June	74	27	42.9	2,550	A.
July	38	3	15.1	928	A.
August	10	1	4.2	258	A.
The period				6,830	
1914					
April (27 days)	95	37	59.5	3,180	A.
May	85	35	59.4	3,650	A.
June	47	9.4	28.6	1,700	A.
July	8	0	1.81	111	A.
The period				8,640	

POWDER RIVER ABOVE THIEF VALLEY, NEAR NORTH POWDER, OREGON—STATION No. 1513

Location—Three miles northeast of North Powder, in NE¼ Sec. 12, T. 6 S., R. 39 E., below all tributaries and return waters from irrigation in the North Powder Valley and above the backwater of the proposed Thief Valley reservoir.

Drainage Area—775 square miles.

Monthly Discharge of Powder River near North Powder, Oregon, for 1913-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 20-31	2,020	640	1,090	25,900	C.
June	2,090	336	1,120	66,600	C.
July	884	39	378	23,200	A.
August	96	27	38.3	2,360	A.
September	32	3	16.6	988	A.
The period				119,000	
1913-14					
October	128	25	79.8	4,910	A.
November	128	104	111	6,600	A.
December	120	83	96.5	5,930	B.
January	180		122	7,500	C.
February	648		258	14,300	C.
March	1,180	601	785	48,300	B.
April	1,240	512	961	57,200	B.
May	1,570	409	674	41,400	B.
June	774	258	512	30,500	B.
July	429	17	115	7,070	A.
August	25	13	16.6	1,020	A.
September	90	21	44.7	2,660	A.
The year	1,570	13	314	227,000	

POWDER RIVER AT THIEF VALLEY, NEAR NORTH POWDER, OREGON—STATION No. 153

Location—In NW¼ Sec. 26, T. 6 S., R. 40 E., at proposed damsite for Thief Valley reservoir, 7 miles east of North Powder and about 8 miles southeast of Telocaset.

Drainage Area—826 square miles.

Monthly Discharge of Powder River near North Powder, Oregon, for 1909-1912

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1909					
March 9-31	317	163	224	10,200	A.
April	356	115	229	13,600	A.
May	544	43	108	6,640	A.
June	1,100	151	549	32,700	A.
July	115	21	48.2	2,960	A.
August	27	12	16.4	1,010	A.
September	29	12	21.4	1,270	A.
The period				68,400	
1909-10					
October	45	19	36.3	2,230	A.
November	398	31	95.7	5,690	C.
March 8-31	2,860	750	1,330	63,300	A.
April	1,340	798	1,060	63,100	A.
May	1,100	239	611	37,600	A.
June	252	10	53.2	3,170	B.
July	9	5.4	6.77	416	C.
August	3.3	.0	.43	27	D.
September	17	.0	8.68	516	C.
1910-11					
October	24	17	21.3	1,310	A.
November	76	24	42.9	2,550	A.
December	115	43	68.3	4,200	C.
January			a70	4,300	
February			a56	2,780	
March		239	374	23,000	D.
April	426	61	163	9,700	A.
May	115	24	62.0	3,810	A.
June	544	37	227	13,500	A.
July	115	5.4	30.9	1,900	B.
August	5.4	1.6	3.65	224	C.
September	9.5	1.6	5.52	328	C.
The year		1.6	93.4	67,600	
1911-12					
October	22	9.5	15.7	965	B.
November	96		a53.1	3,160	B.
December			a30.0	1,840	D.
January			a50.0	3,070	C.
February			a230	13,200	A.
March	514	127	319	19,600	A.
April	606	454	632	37,600	A.
May	864	370	772	47,500	A.
June	1,310	514	1,280	76,200	A.
The period	1,840			203,000	

a Estimated.

PINE CREEK NEAR BAKER, OREGON—STATION No. 1515

Location—In Sec. 26, T. 8 S., R. 38 E., 300 feet above the intake of the Williams ditch and about 10 miles west of Baker.

Drainage Area—7.7 square miles.

Monthly Discharge of Pine Creek near Baker, Oregon, for 1913-1914

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 12-31	203	58	103	4,090	D.
June	168	41	82.6	4,920	C.
July	63	26	50.7	3,120	B.
August	26	5	16.0	984	B.
September	8	3	3.3	196	B.
October 1-13	8	5	6.4	165	B.
The period				13,500	
1914					
April 9-30	41	15	29.5	1,290	B.
May	130	41	75.3	4,630	B.
June	110	31	68.1	4,050	B.
July	55	12	27.8	1,710	B.
The period				11,700	

GOODRICH CREEK NEAR BAKER, OREGON—STATION No. 1518

Location—In Sec. 36, T. 8 S., R. 38 E., at the crossing of the Nelson ditch about 9 miles west of Baker.

Drainage Area—3.1 square miles.

Monthly Discharge of Goodrich Creek near Baker, Oregon, for 1913

Month	Discharge in Second Feet				Run-Off		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1913							
May 19-31	15.8	5.8	11.2	3.61	1.75	289	B.
June	13.9	7.9	10.4	3.36	3.75	619	B.
July	7.9	4.5	6.08	1.96	2.26	374	B.
August	4.7	1.3	3.18	1.03	1.19	196	B.
September	1.2	.5	.81	.261	.29	48.2	B.
October 1-11	.5	.5	.50	.161	.07	10.9	B.
The period						1,540	

BIG CREEK NEAR MEDICAL SPRINGS, OREGON—STATION No. 1525

Location—In Sec. 31, T. 6 S., R. 42 E., at a wagon bridge at Gardner's ranch, 1½ miles above Medical Springs.

Drainage Area—Not measured.

Monthly Discharge of Big Creek near Medical Springs, Oregon, for 1913

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 29-31	55	26	41.3	246	C.
June	23	.0	5.37	320	C.
July	21	.0	4.23	260	C.
August	6.6	.8	2.82	173	C.
September	6.6	.0	2.00	119	C.
October 1-14	14	6.6	10.4	289	C.
The period				1,410	

GOOSE CREEK NEAR KEATING, OREGON—STATION No. 1527

Location—In Sec. 8, T. 8 S., R. 43 E., at Pennoyer's ranch, about 4 miles northeast of Keating.

Drainage Area—Not measured.

Monthly Discharge of Goose Creek near Keating, Oregon, for 1913

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 28-31	16	13	14.0	111	C.
June	28	5.6	10.1	601	C.
July	11	2.6	5.70	350	C.
August	5.9	1.1	3.49	215	C.
September	7.2	1.8	5.03	299	C.
October 1-16	5.6	1.8	4.76	151	C.
The period				1,730	

DALY CREEK, NEAR RICHLAND, OREGON—STATION No. 1526

Location—In Sec. 18, T. 10 S., R. 46 E., just above the intake of the W. P. Davis West Side Ditch, about 5 miles southeast of Richland.

Drainage Area—Not measured.

Monthly Discharge of Daly Creek near Richland, Oregon, for 1913

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 27-31	16.7	15.3	15.7	156	B.
June	15.3	9.5	13.4	797	D.
July	7.4	3.1	4.80	295	D.
August	3.6	2.1	3.49	215	D.
September	4.0	3.6	3.72	221	D.
October	6.7	4.0	5.94	365	D.
The period				2,050	

EAGLE CREEK NEAR BAKER, OREGON—STATION No. 157

Location—In Sec. 21, T. 6 S., R. 43 E., 700 feet below mouth of West Fork of Eagle Creek, 35 miles northeast of Baker.

Drainage Area—About 33 square miles.

Monthly Discharge of Eagle Creek near Baker, Oregon, for 1909-1910

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1909					
May 20-31	665	381	524	12,500	A.
June	949	490	700	41,700	B.
July	580	131	265	16,300	A.
August	124	51	71.3	4,380	A.
September	51	17	32.9	1,960	B.
The period				76,800	
1910					
March	390	57	146	8,980	B.
April	795	175	469	27,900	B.
May	905	440	608	37,400	B.
June	740	208	378	22,500	B.
July	190	a40	105	6,460	B.
The period				103,000	

a Estimated.

GRANDE RONDE RIVER AT HILGARD, OREGON—STATION No. 182

Location—Sec. 32, T. 2 S., R. 37 E., about ½ mile east of Hilgard, just below Five Points Creek at the county highway bridge, about 8 miles above head of Grande Ronde Valley.

Drainage Area—660 square miles.

Monthly Discharge of Grande Ronde River at Hilgard, Oregon, for 1903-1913

Month	Discharge in Second-Feet			Run-Off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1903-04					
November	570	40	170	10,100	B.
December	450	160	192	11,800	B.
January	200	130	168	10,300	C.
February	1,090	240	383	22,000	B.
March	2,260	240	928	57,100	B.
April	4,610	1,520	2,920	174,000	C.
May	2,220	720	1,270	78,100	B.
June	799	194	434	25,800	B.
July 1-16	194	153	189	6,000	B.
The period				395,000	
1904-05					
November 9-30	83	21	35.9	1,570	B.
December	194	14	50.6	3,110	B.
January	272	48	108	6,641	C.
February	485	38	180	10,000	C.
March	620	320	461	28,400	B.
April	1,020	440	597	35,500	B.
May	2,470	398	1,130	69,300	B.
June	485	3	227	13,500	B.
July	148	3	60.6	3,730	C.
August	48	26	44.1	2,710	C.
September	38	18	24.3	1,450	C.
The period				176,000	

MILL CREEK NEAR BAKER, OREGON—STATION No. 1516

Location—In Sec. 1, T. 9 S., R. 38 E., at the crossing of the Nelson ditch, about 9 miles west of Baker.

Drainage Area—4.5 square miles.

Monthly Discharge of Mill Creek near Baker, Oregon, for 1913

Month	Discharge in second-feet				Run-off		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1913							
May 10-18	55	29	39.9	8.87	2.97	712	B.
June 12-30	42	17	27.0	6.00	4.24	1,020	B.
July	21	5.1	12.6	2.80	3.23	775	C.
August	5.1	2.7	4.09	.909	1.05	251	C.
September	2.7	1.1	1.37	.304	.34	81.5	C.
October 1-11	2.7	1.1	1.46	.324	.13	31.9	D.
1914							
April 14-31	20	5	11.9	2.64	1.67	407	C.
May	46	10	32.2	7.16	8.26	1,980	C.
June	42	16	27.9	6.20	6.92	1,660	C.
July	17	3.1	7.34	1.63	1.88	451	C.
August 1-22	3.1	1.3	2.03	.451	.37	89	C.
The period						4,590	

MARBLE CREEK NEAR BAKER, OREGON—STATION No. 1522

Location—In Sec. 6, T. 8 S., R. 39 E., at the crossing of the Nelson ditch, about 8 miles west of Baker.

Drainage Area—2.8 square miles.

Monthly Discharge of Marble Creek near Baker, Oregon, for 1913-1914

Month	Discharge in second-feet				Run-off		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1913							
May 16-31	15.5	7.8	11.8	4.21	2.51	374	C.
June	14.0	6.0	8.95	3.20	3.57	533	B.
July	6.6	2.3	3.98	1.42	1.64	245	B.
August	2.2	.9	1.44	.514	.59	88.5	B.
September	.9	.8	.84	.300	.33	50.0	E.
October 1-12	1.4	.9	1.07	.382	.17	25.5	B.
The period						1,320	
1913-14							
April 7-30	9.3	5.2	6.91	2.47	2.20	329	
May	15	6.0	9.14	3.26	3.76	562	
June	7.4	4.6	5.93	2.12	2.36	353	
July	5.2	3.0	4.15	1.48	1.71	255	
The period						1,500	

SALMON CREEK NEAR BAKER, OREGON—STATION No. 1520

Location—In Sec. 8, T. 9 S., R. 39 E., at the wagon bridge at the Carpenter Stamp Mill about 8 miles west of Baker.

Drainage Area—Not measured.

Monthly Discharge of Salmon Creek near Baker, Oregon, for 1913-1914

Month	Discharge in second-feet			Run-off	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1913					
May 8-31	47	0.9	14.7	700	C.
June	8.8	.7	2.32	138	C.
July	3.4	.1	1.34	82.4	D.
August	.2	.2	.20	12.3	D.
September	.2	.2	.20	11.9	D.
The period				945	
1914					
April 25-30	7	5	6.25	74.4	B.
May	13.2	4.5	8.26	508	B.
June	8.5	2.5	4.22	251	B.
July	2.5	3	1.32	81.2	B.
The period				915	

WILLOW CREEK NEAR HAINES, OREGON—STATION No. 1521

Location—In Sec. 4, T. 8 S., R. 38 E., at the ranch of J. S. Culbertson, about 8 miles west of Haines.

Drainage Area—3.2 square miles.

Monthly Discharge of Willow Creek near Haines, Oregon, for 1913

Month	Discharge in second-feet				Run-off		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1913							
May 15-31	6.7	1.7	3.18	0.994	0.63	107	B.
June	11.1	5.2	7.36	2.30	2.57	438	B.
July	5.2	2.5	3.62	1.13	1.30	223	B.
August	2.5	2.0	2.38	.744	.86	146	B.
September	2.0	1.4	1.93	.603	.67	115	B.
October 1-13	1.7	1.4	1.65	.516	.22	42.5	B.
The period						1,070	

NORTH POWDER RIVER AT GARDNER'S RANCH, NEAR NORTH POWDER, OREGON—STATION No. 154

Location—In Sec. 5, T. 7 S., R. 38 E., at a highway bridge 2 miles above Anthony Creek, 300 feet above the headgates of the Hutchinson ditch and about 9 miles west of North Powder. There are some diversions above the station, but the total diversion is probably less than 10 per cent of the total flow.

Drainage Area—52.5 square miles.

Monthly Discharge of North Powder River at Gardner's Ranch, near North Powder, Oregon, for 1912

MONTH	DISCHARGE IN SECOND-FEET				RUN-OFF		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1912							
May 7-31	605	65	311	5.92	5.50	15,400	B.
June	1,300	228	727	13.8	15.4	43,300	B.
July	144	57	97.3	1.85	2.13	5,980	A.
August	73	12	34.8	.663	.76	2,140	A.
September	57	16	28.0	.533	.59	1,670	A.
October 1-21	19	16	18.6	.354	.28	775	A.
The period						69,300	

NORTH POWDER RIVER AT NORTH POWDER, OREGON —STATION No. 155

Location—In Sec. 22, T. 6 S., R. 39 E., at an abandoned bridge at the residence of I. L. Yankey near the east boundary of the town of North Powder.

Drainage Area—Not measured.

Monthly Discharge of North Powder River at North Powder, Oregon, for 1912-1914

MONTH	DISCHARGE IN SECOND-FEET			RUN-OFF	Accuracy
	Maximum	Minimum	Mean	Total in acre-feet	
1912					
March 19-31	55	22	42.7	1,100	B.
April	153	50	74.4	4,430	B.
May	520	27	180	11,100	B.
June	940	174	543	32,300	B.
July	134	22	53.0	3,260	B.
August	55	17	29.0	1,780	B.
September	22	13	17.6	1,050	B.
October	22	13	16.8	1,030	B.
November	22	17	18.1	1,080	B.
The period				57,100	
1913					
May 20-31	1,100	224	598	14,200	B.
June	940	94	438	26,100	B.
July	210	5.2	66.0	4,060	B.
August	9.4	3.2	5.27	324	B.
September	15	3.2	8.58	511	B.
October 1-14	55	7.8	28.0	778	B.
The period				46,000	
1914					
April 8-30	197	87	141	6,430	B
May	750	76	267	16,400	B.
June	590	9.4	148	8,810	A.
July	13	.1	4.71	290	B.
The period				31,900	

ANTHONY FORK NEAR NORTH POWDER, OREGON — STATION No. 156

Location—In Sec. 20, T. 6 S., R. 38 E., at a highway bridge about 2 miles above the mouth of Anthony Fork and about 9 miles west of North Powder.

Drainage Area—39 square miles.

Monthly Discharge of Anthony Fork near North Powder, Oregon, for 1912

MONTH	DISCHARGE IN SECOND-FEET				RUN-OFF		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1912							
April 27-30	12	8	9.2	0.236	0.35	73.0	C.
May	317	8	160	4.10	4.73	9,840	C.
June	387	73	238	6.10	6.81	14,200	C.
July	93	13	35.0	.897	1.03	2,150	C.
August	23	8	15.3	.392	.45	941	C.
September	13	5	6.6	.169	.19	393	C.
October	5	2	3.4	.087	.10	209	C.
The period						27,800	

WOLF CREEK NEAR NORTH POWDER, OREGON—STATION No. 1524

Location—In Sec. 3, T. 6 S., R. 38 E., at Bauer's ranch, about 6 miles west of North Powder.

Drainage Area—35 square miles.

Monthly Discharge of Wolf Creek near North Powder, Oregon, for 1913-1914

MONTH	DISCHARGE IN SECOND-FEET				RUN-OFF		Accuracy
	Maximum	Minimum	Mean	Per sq. mile	Depth in inches on drainage area	Total in acre-feet	
1913							
May 23-31	192	124	169	4.83	1.62	3,020	B.
June	95	20	38.0	1.09	1.22	2,260	C.
July	26	7	14.0	.400	.46	861	C.
August	8	4	5.5	.157	.18	338	C.
September	6	4	4.1	.117	.13	244	C.
October	10	5	8.0	.229	.26	492	C.
The period						7,220	
1914							
April 9-30	260	79	178	5.09	4.16	7,780	
May	155	28	77.2	2.21	2.55	4,750	
June	38	14	24.8	.709	.79	1,480	
July 1-25	13	5.5	8.45	.241	.22	319	
The period						14,400	

The Record-Cour

In Its Second Half-Century. The Local Newspaper in Baker County.

ORD ESTABLISHED AT HAINES 1901. BAKER, BAKER COUNTY, OREGON, THURSDAY, FEBRUARY 18, 1960 VOL

lman Introduces Mason Dan

Project Legislation to Be onsored by Two Senators

man Al Ullman inform- ord-Courier by wire to- ie has introduced legis- uthorize construction of lley Irrigation project, ision, including Mason eservoir.

man said in his report gislation has been draft- ose that financial assis- e what water users can be furnished from net nues from McNary dam umbia river.

ressing for hearings as ie secretary of interior t bureau submit their congress," Mr. Ullman

oject will have irriga- control, recreation and e benefits.

s Wayne Morse and . Neuberger will spon- nate companion bill.

ional report on the proj- v under review in the reclamation. It calls for high earth-fill dam on r river 18 miles above urnish 100,000 acre-feet

ost is estimated at $6,- th a benefit-to-cost ra- 4 to 1."

formation

alley Irrigation district, Chairman Conrad Allen ors Charles Colton Jr. Ward, participated in s preceding the adop- e irrigation project re- ise in December. The re- tes the 1953 report and provements in the field June 1959.

licated that the project offers supplemental ir- ater prospects to about es of valley lands.

l not affect existing wa- of lands not included in t, the report said. Lands r rights in the district bout 13,990 acres would full supply of water ow the supply is negligi- June.

just as soon as it is approved by the bureau of reclamation of secretary of interior.

The project would be paid for in 50 years. The bill proposes easement of the acreage restriction on pasture-type lands. The benefits are based upon continuing the livestock economy as a major farm business on the bulk of the lands, with intensified cropping on better lands in the area around the city.

Average water charges on full-service lands would be $4.84 per acre per year, including repayment. They would range from a high of $11 on class 1 land to $3.56 on class 4. Supplemental service would range from $6.87 to $2.82.

Sportsmen Back Baker Valley Dam Project Monday

Club Votes Approval; Urge Eagle Creek Logging Be Controlled

Powder River Sportsmen's club added its endorsement to the Mason dam project by voting of its membership Monday evening at the February meeting of the club.

Action on the project came on the report by Gary Hester and President Bob Wickam of the Mason dam committee set up by Wickam several weeks earlier.

After thorough consideration of the report the committee recommended the project and the membership adopted the resolution which will draft a letter to the congress to that effect.

It was understood by the club that the action leaves open the matter of recreation features of the Mason project which are outlined only briefly in the project field plans.

Schedule Cooperation

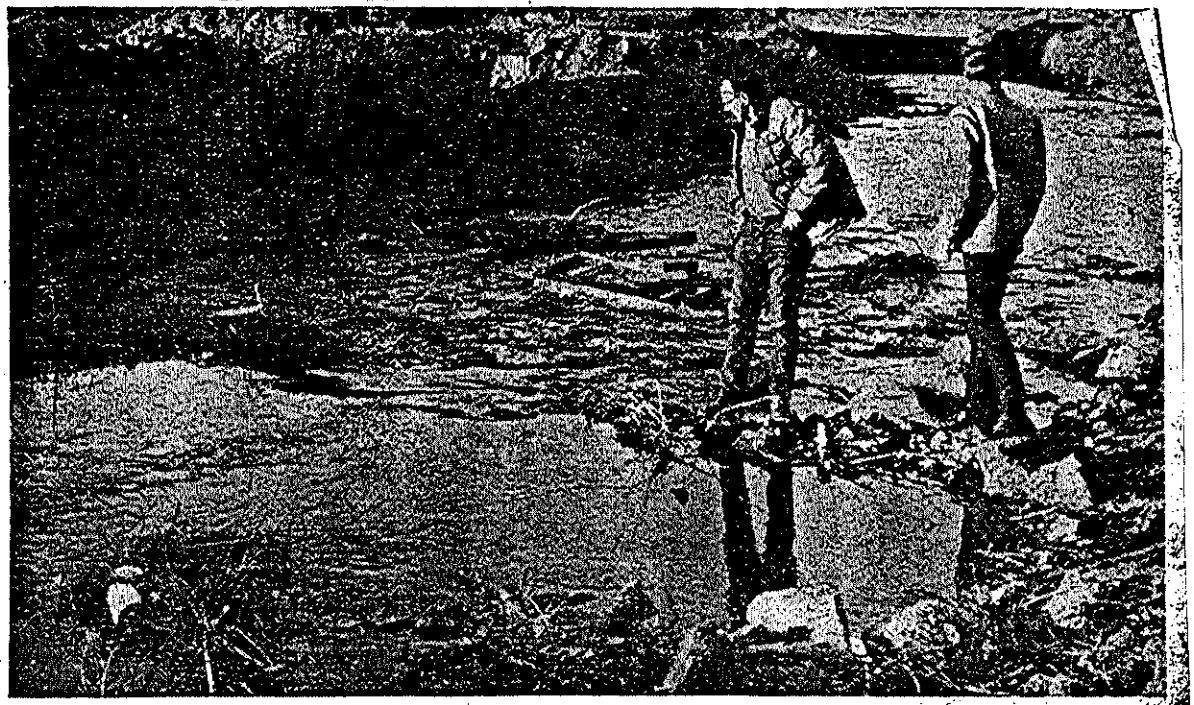
The Sportsmen Monday tentatively set March 20 as the date for a field day under Chairman George Reed to help Eagle Valley sportsmen with a recreation site project and March 27 for a work day at Huntington Rod and Gun club's new clubhouse and boating site. The exchange work party from Huntington will join the Baker club group at Malheur reservoir about April 17, Mr. Reed reported.

The club approved a 4-H club fishing project with Dale Cherry as leader.

Roger Chemard of the forest service outlined a $750,000 proposed project to build a road up the Minam river to the boundary of the primitive area. He outlined the forest management advantages of the road and the timber harvest needed in the area.

Sportsmen questioned him throughout the talk about the effect the modernization would do

Exhibit 6



RIVER CLEANUP — Co-Chairmen Dave Gardner Art Gugler of Powder River Sportsmen's Club special committee inspect debris in Powder River within city, illustrating reason for club's cleanup campaign that will get under way during National Wildlife week. (see story). Increased summer flows due to irrigation releases from Mason dam have enhanced fishery, recreation and esthetic value of river in this valley. Removal of trash, old tires, and debris is expected to improve all these values.

In conjunction with National Wildlife Week March 16-24, Powder River Sportsmen's club principal project will be cleaning Powder River through Baker.

Directors Monday named Dave Gardner and Art Gugler co-hairmen and they set Sat. and Sun. March 22-23 for the work party, volunteers to gather with hip boots at Lew Bros. lot at 9 a.m. the 22nd.

The city is volunteering the truck equipment for the job, the chairmen said. George Reed Trucking is also donating equipment.

The chairmen welcome any assistance for the project.

March 13 1969

terview state emphati
believes in a Nixon
ject of the 1952 cam
dals—and suspect he
be clothed with the sa
peddling that plagued
administration

Review of Bak

Fish and Wildlife and Reclamation Reported in Agreement; District Too

Agreement has been reached and the path has been cleared for forwarding the fish and wildlife service review of the Baker Project report, it was indicated here today by Harold T. Nelson, regional director of the bureau of reclamation and Norman Moore, also of the Boise district office. Representatives of the Baker Valley Irrigation district today indicated approval of the agencies' agreement.

At a lengthy conference this afternoon between representatives of the Baker Valley Irrigation district, Fred Phillips, chairman of the local irrigation committee, and the bureau personnel, including regional counsel Bill Burpee, the bureau reported that the fish and wildlife service has agreed to a compromise minimum flow section in the Mason dam report.

The revised allocation of project benefits that accompanies the flow revision enhances project feasibility in the view of the officials and increased the fish and wildlife service non-reimbursable allocation from a nominal amount under the 1959 project report now before the reclamation commissioner to a new revised figure of $632,000 and reduces the allocation of costs assessed to irrigation from $4,857,000 to a new figure of $4,354,000.

The revision will not affect the repayment schedule but will reduce the reclamation assistance features necessary to complete the reimbursable payout, it was pointed out in the discussion.

Agreement Reached

The fish and wildlife service has asked that 10 csf of water be released from Mason dam during low water months of the storage season. The bureau, as explained by Mr. Nelson, Mr. Moore and by John Mangam, Spokane office official who has been instrumental in much of the local project planning, pointed out that the accommodation of this 400 inches of water on behalf of the fishery would not materially affect irrigation and only in "critical" year periods such as the 1934 year was.

The agencies came to agreement upon the basis that fish and wildlife service agreed to "sharing the the shortage" by asking for less than the 400 inches in such critical years.

Powder River Sportsmen were represented at the discussion and had taken the position that enhancement of the fishery by the construction of Mason dam would far exceed any fishing in the 12 miles of Powder river below the dam and that they would urge fish and wildlife not to risk delaying the project if the issue were not settled.

Director Nelson today said he was confident the settlement

addition to the irrigation features of the project in the resolution which urges "the congress of the United States to enact legislation authorizing the Baker project and appropriating adequate funds for its immediate construction."

Both Coles and Hursh said the project has high priority among pending projects considered.

The Baker project proposes supplemental water for 18,000 acres of valley land from a 100,000 acre-foot reservoir in the lower end of Sumpter Valley about 12 miles above Baker on Powder river. It will have a development period of 10 years, including private rehabilitation of distribution facilities, and a payout period of 50 years.

Exhibit 3

The Record-Cou

In Its Second Half-Century. The Local Newspaper in Baker C

RECORD ESTABLISHED AT HAINES 1901. BAKER, BAKER COUNTY, OREGON, THURSDAY, APRIL 28, 1960

rrigation Group To Coordinate)rainage Studies

Work Not to Be Held Up on Part Of Valley Project

The farmers of the valley and ıe bureau of reclamation, togeth- r with the soil conservation dis- ict and the Baker Valley irriga- on district are agreed that the rainage problem can best be olved by progressive action but ot as a part of the current Bak- r Valley project.

At a meeting presided over by ill Trindle of North Powder, airman of the local soil district nd called by the board of super- isors of the district, the drain- ge problem along the Baldock ough area of the valley was ıoroughly explored.

Both Directors Conrad Allen and lyde Ward of the irriation dis- ict expressed the view that not ıuch can be done on a large scale ıntil we get the water."

John Mangum of Spokane, en- ineer with the Bureau of Recla- ıation office, and Adrian D. Nel- ın, another engineer from the pokane office, were here on in- tation of the local groups to dis- ıss the problem.

Mr. Mangum warned against ıy effort to do a large-scale job removing the "block" in the lley floor just above Haines.

"We are afraid to release the striction at that point for fear lowering the water table until e know more about it," Mangum id in answer to a question from ndowners at the lower end of ıe Valley who have a water prob- m each spring.

He said the current well tests, ıough still incomplete, indicate ıat the valley soil is not permea- le enough to give too great a romise from drainage by pump- g without a well every 160 ac- s.

Baker Project Delay Discusses Fish & Flow

Confidence Expressed Wildlife Service Will Agree to Proposal

Negotiation between the fish and wildlife service and the bureau of reclamation in the department of the interior is delaying administration approval of the Baker Valley irrigation project report, it was indicated here today.

As appraised by Fred Phillips, irrigation committee leader here on behalf of the project, the word today from both Washington and Boise, indicates that the fish and wildlife service made an initial effort to increase the minimum flow in Powder river as encompassed under the project.

Although it has been indicated by Regional Director Harold T. Nelson of the bureau of reclamation at Boise that to increase the minimum flow in Powder river below the proposed Mason dam would jeopardize the economic feasibility of the irrigation project, it may be possible to agree to the approximate 10 cubic feet per second flow as discussed in the report if this is not insisted upon during the extremely dry cycles, he said. Mr. Phillips quoted Mr. Nelson as hopeful something like this could be worked out.

It is indicated in the fish and wildlife service discussion in the project report as submitted for administration approval, that the present minimum flow without the project is zero so that the fish and wildlife people already indicate that the project would be beneficial to the fish resource. Without the project the river fluctuates from zero flow to over 1000 cfs.

The project report indicates that the cost of guaranteeing a 10-cfs minimum flow in all years would possibly be as much as $288,000 during the period of 29 years studied so that neither the 10-cfs minimum nor fish screen were included in the project proposal as submitted in December.

Changes Season

Under the dam project the October-April period would be a minimum flow period whereas under natural flow the Powder river is said by the fish and wildlife service to have a low flow during the summer and this would be helped by the storage project in Sumpter Valley above Mason dam.

Inasmuch as the fish and wildlife service has indicated the project would be an improvement in the river and even when the dam is shut down completely, a minimum of 3 cfs would flow in the river because of normal leakage, it is expected that an agreement can be reached so that the fish agency will not insist on minimum flow being provided in the dry-cycle seasons.

Schedule Eyed

Congressman Al Ullman has informed Mr. Phillips that the report, since it has not yet reached the congress where he has a bill introduced for its authorization, may not get in under the hearing deadline. This deadline is 30 days prior to the July 2 expected adjournment date this year.

A schedule of early approval of the report by the commissioner o reclamation and department of in terior is being continued by the lo cal project boosters and the con gressman, however, with a viev toward stepping up its prospect for the next session.

Report Made Here

Harold Hursh, Huntington, pres ident of Oregon Reclamation con gress, Tuesday night at an irri gation meeting in Baker reporte that he felt the Baker Valley proj ect report is staying "on dea center" in the commissioner's of fice too long.

He felt that increased local sup port is still necessary and sug gested an immediate meeting o the Upper Columbia River Basi Projects committee of Baker coun ty to draft a strong support resol ution.

Mr. Hursh also said he felt th governor's office was also not mov ing on the project, with Salen indicating that not enough actio was being shown here.

He said La Salle Coles, head o the national reclamation associa tion, Prineville, is to be in Wash ington shortly and will confer wit Ullman, Senator Morse and th bureau in an effort to help the lo cal project along.

The Baker project contemplate a reservoir of 100,000 acre-fee capacity just above the gorge a the lower end of Sumpter valley, reservoir over a mile wide at on spot and about five miles long.

It would irrigate about 18,00 acres of land with full water sup ply and would have flood contr and other features.

Sportsmen here are boosting th project because of its great re ervoir recreation benefits, also

Exhibit 2

Fish Commission Tells Sportsmen Salmon Study On

Some work on surveying Powder river as a potential salmon-spawning stream has been done in 1958, Bob Thompson, fish commission man from the new La Grande office, told Powder River Sportsmen here Monday night.

He explained that the office is conducting Northeastern Oregon surveys as part of the whole Columbia and Snake river inventory program. The drainage areas may be the most important in spawning the prized spring chinook and summer steelhead, he said, speaking on a program at which Dean Marriage, commission water resources analyst, led the fish commission group appearing here for the first time.

Commission efforts at propagation are not limited to commercial fishing, Marriage pointed out. He reviews, in his authority, construction, obstructions and planning of structures on major waterways in order to "assure the best possible projects in the way of fish."

Ray Willis, commission research division head, Clackamas, told of current stream survey programs on contract with federal agencies and of anadromous fish behavior, survival and mortality studies.

Thompson said 1958 work covered the Grande Ronde system and some on Eagle creek, including spawning studies.

As an initial conclusion Thompson said Powder river would again support fish "if it had water again" and this he said is largely dependent on construction of a storage reservoir in the Sumpter area.

He suggested 10 or 20 feet might be added to Mason dam plans if such were found feasible to provide water in Powder river to permit reestablishment of fish runs which would also be dependent on redesigning the irrigation works to eliminate impassable obstructions.

(Continued on Page Seven)

SALMON RUNS ARE POSSIBLE

(Continued from Page One)

He explained that temperature studies were important and that in some cases upstream shade and storage is useful in reducing stream water temperatures. Marriage said Brownlee is calculated to reduce Snake river only a half-degree, a higher dam or upstream dams might reduce it more.

Erv Jones, commission public relations man, showed colored movies on the recent Oxbow fish loss and placed the identified loss at 4000 salmon and steelhead with 16,000 passed upstream of an estimated 25,000 run reaching the Oxbow. Passage last year was 15,200, Mr. Marriage said but the escapement over The Dalles this year was twice as large. Only a preliminary check has been run on spawning above Brownlee, Marriage said, but so far "one-

Ward Ranches
1500 H Street
Baker, Oregon 97814

Alvin C. Ward
503-523-2790
Ralph E. Ward
503-523-4528
Mark R. Ward
503-523-7546

December 18, 1994
Baker City, Or

To Whom it may concern,

Because of my living in Baker Valley my entire life I will try to give a true and factual statement as to river flow conditions in Powder River pre-1965.

I have operated a farming and livestock operation with my family since graduation from high school in 1941 when I was 17 years old.

Before Mason Dam was built, Powder River through the city of Baker was literally dry by June 25. I have never saw the flow over approximately 5 C.F.S. at Hughes Lane after July 15. By mid August the river was dry except for a few stagnant pools and a very thin stream of water, probably 2 C.F.S. at this point, In the lower reaches of the river below Chandler Lane the river would be completely dry many years 1955 being a particular year I remember.

There was not even enough water to satisfy cattle requirements from Hughes Lane to Chandler Lane unless only a few head were involved most years. All the fish, mostly suckersin the stagnant pools would die. The river would pickup somewhat with fall rains but would again be dry from freezing during the winter months.

Masen Dam was the best thing that ever happened to the farmers and ranchers in the valley. I had the priviledge of going to Washington D.C. to gain authorization of our project and was on the board of directors twenty one years and being chairman of the board for 12 years..

Sincerely,

Partner

3260 Grandview Drive
Baker City, Oregon 97814
December 21, 1994

Oregon Water Resources Department
158 Twelfth Street N.E.
Salem, Oregon 97310

To Whom It May Concern:

I am objecting to your granting of an instream water right to the Oregon Department of Fish and Wildlife on the Powder River from Mason Dam to Thief Valley Reservoir. The Application File Number is 72191. My qualifications for questioning the report are as follows.

I have spent fifty years actively involved with water and irrigation issues in the Baker Valley. I was on the original Upper Columbia Basin Planning Commission, helped organize and form the Baker Valley Irrigation District, tested ground water depths for the State Water Master, and served on the Baker County Soil and Water Conservation Board.

The ranch that I represent has been in our family since 1864, and I have had the privilege of knowing every generation that has lived there. Never did any of them speak of there being trout in the Powder River. After the Mason Dam was constructed in 1968, a few trout have been seen behind the irrigation dams.

The Sumpter Valley Dredge began operation in 1935. Until it was closed down in the late 1940's, nothing could have survived in the river water. The silt from the dredge completely closed the river channel, and it was the 1950's before a new river was constructed in the middle and lower parts of the valley. This work continued until after the Mason Dam was built.

Because of the silt build-up along the river channel, the only way to irrigate the surrounding land is to dam the river. Water runs both east and west, making the river the highest part of the valley floor.

It is my understanding that the measuring of the stream flow of the Powder River was, and is, at the Salisbury Metering device. I take strong exception to the accuracy of this device. During most years of my lifetime in the Baker Valley, we were unable to get livestock water via the river in August, September, October, and into the winter prior to the construction of the Mason Dam. This land has priority dates of 1865 and 1867.

In summary, the 10 C.F.S. that must be released at Mason Dam is very generous for streamflow. Historic accuracy does not indicate that fish have been in the Baker Valley reaches of this application.

Sincerely,

Fred J. Warner

December 15, 1994
Rt 1 Box 190
Baker City, Oregon 97814

Mr. Jim Colton, Manager
Baker Valley Irrigation District
3895 10th Street
Baker City, Oregon 97814

Dear Jim:

I read somewhere that the Fish And Wildlife people are going to demand 25 to 40 cubic feet per second for in-stream water rights in the Powder river at all times.

Jim, I don't see how they can even consider this when before the irrigation dam was built to store the water, we ran out of stock water usually starting in late June or the first part of July through August or September. There just wasn't any water of any kind and we had one of the earliest water rights around so could have demanded all the water in the stream if it had been available.

We ran our cows, as we do now, right down in the valley all year long. And being a purebred operation, we had to have them scattered in groups of 30 head pastures for breeding, all over our land with water in every pasture. Some years when the water availability was bad, we would take each bunch and drive them down the lane to Salmon creek where it crossed the county road to get to water and then drive them back and get another bunch. It was an all day affair and didn't help the cows or calves either. We had a couple of windmills that helped some.

The way I see it, Fish and Wildlife need to look back on the records of flow and see how bad it was before the dam was built. If it weren't for the storage there wouldn't be any water at that time of year. Really when you stop and think about it and how much advantage the dam is for everyone, how did we get along without it? We now have green re-growth after haying with lush pasture. I can remember fencing hay stacks in the fall and how dry and hard the ground was and how much hard work was involved.

I can remember my Dad saying one year, I don't remember which year, the water never started to run in the river until some time in January of the following year!

Sincerely,

Charles Chandler

Charles Chandler
CHANDLER HEREFORDS INC.

Jan 9-95

To Water Resources Board.

This letter is to tell what I know about the water flow in Powder River back many years before Mason Dam was built.

As far back as I can remember the water was controlled by the local watermaster when the flow began to get scarce for irrigation purposes.

Most years after the snow run off was gone, and everybody was able get at least one good irrigation, but by the 15th of July or most years the irrigation water was gone & some of the time there was a little water for stock water, but I remember many fall we would have to have the watermaster go up above the Sumpter Junction & shut out beaver dams because they would have it all damned off for their own use. And I remember some falls even taking out the beaver dams the water would not make it down this far. The only water that would be in the river then would be in the deep holes which there was not to many in the old river channel.

This is my own recollection of the water situation 55 years ago before the dam was built and also at that time there was no fish in the river as there is today

Eugene Burt Cushens Jr
Baker Valley.

RECEIVED
JAN 19 1995
WATER RESOURCES DEPT
SALEM, OREGON

Statement of Charles B. Colton Page 43

almost without exception the irrigation water is gone by July 1st. leaving almost four months of excellent growing season and inadequate water supply. I have never seen enough irrigated pasture in Baker Valley to provide pasture for the existing livestock population. Not from record the Meadow pastures become so dry during August and September causing high risk of fire endangering the hay we have stacked.

I would like to include the statement of the Powder River Sportsmans Club Page 44

Excerpts from
Congressional Hearing on
Baker Federal Irrigation
project Mar 23 1962

Statement by John Heskett
Baker County agricultural agent

the season of Natural
runoff usually ends by
early July. page 52

To The Water Resources Department.

My experiences on the Powder River in the Baker Valley:

I was born and raised 1/2 mile from the Powder River, where we diverted our water for irrigation. In June and July I remember going up to the diversion dam at Powder River and sealing it off with hay to try to get enough water to irrigate with. Our Ranch was at the lower end of Baker Valley with some of the best water rights, we would have the Water Master go up stream to regulate the water, but with evaporation and Powder River water loss we would not receive our water most of the time.

Back before Mason Dam was built in 1968, I remember riding my motorcycle up and down the bottom of Powder River ,there was no water to be seen in most years after July and August .

The ranchers in this valley realized many years ago they needed to capture the early, out of control water, that caused flooding and didn't do anybody any good. They built Mason Dam and released water for the first time in 1968, WOW! what a difference , we were able to irrigate when the crops needed the water instead of irrigating when the water was available.

Mason Dam now has created wildlife and fish that you would not believe. Living in the Baker Valley all my life I had only seen wild Geese during the spring of the year as they were passing through, and now we have the geese staying year around and hatching out their young..

For the first time I started seeing wildlife that had never been here in the Valley, otters; mink, ducks, fish, aquatic life; deer, elk, muskrats; beaver, eagles, hawks, and more . This was all because of the Mason Dam project providing water year around instead of being gone as early as June or July in some years.

The Mason Dam project has provided every thing the Fish and Wild life has asked for in there instream water right filings. Powder River basin is already doing its job. We feel the Fish and Wild life should be more concerned with other basins. We already have good working conditions. within our Powder River Basin , and it is getting better constantly.

We recommend that you not allow the instream water right filings out of the Powder River Basin from Cracker Creek to Thief Valley Reservoir by the Fish and Wildlife. These filings are uncalled for in this basin.

Jim Colton

Jim Colton

Jan 9-

To Water Resources Board.

This letter is to tell what I know about the water flow in Crooked River back many years. Mason Dam was built.

As far back as I can remember the water was controlled by the watermaster when the flow began to get scarce for irrigation purposes.

Most years after the snow was gone, most everybody was to get at least one good irrigation, by the 15th of July or most years irrigation water was gone & sometimes there was a little water for water, but I remember many times we would have to have the waters go up above the Sumpter Junction & then out Beaver Dam, because it would have it all dammed off for own use. And I remember some years taking out the Beaver Dam water would not make it down here. The only water that would be the years there would be in the creek holes unless there was rain to m

The river [illegible]
holes which there was not to m
the old river channel.
This is my own recolection
water situation 55 years ago bef
Dam was built and also at that
There was no fish life in the riv
there is today

Eugene Brent Pechen
Baker Valley.

Exhibit 8

STATE OF OREGON
STATE ENGINEER
WATER RESOURCES DEPARTMENT
SALEM

REFER TO
FILE NO. _____

February 21, 1955

Mr. Sidney Crisp
Keating
Oregon

Dear Mr. Crisp:

Under the conditions described in your letter of February 14th I think your first procedure to acquire a water right for your nine acres is an application to the Lower Powder River Irrigation District. Marion Hewlett of Keating, Oregon is the secretary.

Because of the present over-appropriation of the water of Powder River, it would seem that the only water available for your appropriation would be that which is stored in the Thief Valley Reservoir. If you are able to acquire a right to some of this stored water, sufficient for irrigation of your lands, this office would be in position to issue you a permit to utilize the water on your lands.

There probably is still another problem which you will have to work out involving the ownership of the canal from which you would take water. As I understand it, all the canals now serving this area are owned by individuals or companies and not by the irrigation district, so you would have to obtain from the owner of the particular canal the right to carry water to your lands.

I hope this answers your questions. If you desire to make application for a permit, after consulting with the irrigation district and the owner of the ditch, we will send you the necessary forms and instructions.

Very truly yours,

Lewis A. Stanley

LEWIS A. STANLEY
State Engineer

LAS:VC

3260 Grandview Drive
Baker City, Oregon 97814
December 21, 1994

Oregon Water Resources Department
158 Twelfth Street N.E.
Salem, Oregon 97310

To Whom It May Concern:

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In summary, the 10 C.F.S. that must be released at Mason Dam is very generous for streamflow. Historic accuracy does not indicate that fish have been in the Baker Valley reaches of this application.

Sincerely,

Fred J. Warner

Fred J. Warner
Warner Brother Ranches
Baker City, Oregon 97814

Oregon

WATER
RESOURCES
DEPARTMENT

November 25, 1994

Oregon Department of Fish and Wildlife
P.O. Box 59
Portland OR 97207

Reference: Files 70863, 70864, 70870, 71684, 72160, 72161, 72167, 72168, 72169, 72170, 72172, 72178, 72181, 72183, 72185, 72186, 72189, 72190, 72191, 72192 and 72193.

Dear Department of Fish and Wildlife:

The Water Resources Department has finished the first step of its analysis of the above referenced applications. Enclosed are copies of this report, which is called the Report of Technical Review.

The technical review is the Department's legal and scientific analysis of the application, including a calculation of the expected availability of water for the proposed use. Step two, is the 60-day public review period.

In the case of your application, the Technical Review was satisfactory, and it concluded that water would be available for this use for the time period described in the proposed certificate conditions of the attached Report.

The Report does not represent any commitment by the Department to ultimately approve your application. Before a certificate may be granted, the Department must complete a public interest review.

In this second step of the review process, state regulations require that other water users and the general public be given an opportunity to object to your proposed water use. You also may object to any of the Department's findings or proposed certificate conditions contained in the technical report. If you wish to object, you must file your objection with the Department in writing by **5 p.m. on or before February 1, 1995.** Interested parties must also submit their objections before the same deadline.

If you have questions, please feel free to telephone me or any of the Department's Water Rights Division staff members. My telephone number is 378-3739 in Salem, or you may call toll-free from within the state to 1-800-624-3199.

Sincerely,

Michael J. Mattick
Water Right Specialist

Enclosures: 21 Technical Reviews

t:\instream\cover.1

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

COPY CHECK-OFF SHEET FOR **INSTREAM TECHNICAL REVIEWS**

OTHER ADDRESSES:

- F. A. I. R.
- FRUIT GROWERS LEAGUE
- HURRICANE CREEK IRRIGATION DITCH CORPORATION, RICHARD A. BOUCHER, SEC./TREAS.
- ILLINOIS VALLEY WATER RIGHT OWNERS ASSOC.
- LAKE COUNTY STOCKGROWERS, ANN TRACY, PRESIDENT
- MORROW COUNTY COMMISSIONER, RAY FRENCH
- MOON, DAVID, ATTORNEY
- OREGON ASSOCIATION OF NURSERYMEN, INC., CLAYTON W. HANNON, EXECUTIVE DIRECTOR
- OREGON ASSOCIATION OF REALTORS, JERRY SCHMIDT, WATER CONSULTANT
- OREGON CATTLEMEN'S ASSOC.
- OREGON HOP GROWERS ASSOC.
- OREGON SHEEP GROWERS ASSOCIATION, INC.
- OREGON WHEAT GROWERS LEAGUE, MACK KERNS
- WALLOWA COUNTY COURT, OFFICE OF THE JUDGE
- WALLOWA COUNTY STOCKGROWERS ASSOC., C/O JEAN STUBBLEFIELD, SECRETARY
- WATER FOR LIFE
- WATER RESOURCES CONGRESS

REVISED: 10/14/94

and 216 other addresses from Cindy's list (203) and other commentors found in Baker County Files.

COPY CHECK-OFF SHEET FOR **INSTREAM TECHNICAL REVIEWS**

CC: FILE # 21 Basin 1 IWRs

✓ WATERWATCH

✓ ODF&W (DEPENDING ON - IF NOT APPLICANT) COUNTY(IES): 3 + 1 2 Fed Agencies

✓ WATERMASTER # 8

✓ REGIONAL MANAGER - E

✓ KEN STAHR

OTHER ADDRESSES: (OVER FOR MORE ADDRESSES)

✓ AGRICULTURE, DEPARTMENT OF, VES GARNER

✓ BOYER, JOHN, JR.

✓ COALITION FOR REPONSIBLE WATER PLANNING

~~COOS COUNTY BOARD OF COMMISSIONERS, GORDON ROSS (COOS RIVER BASIN ONLY)~~

✓ CROOK COUNTY STOCKGROWERS ASSOC., JEFF & RUNINDA MCCORMACK

✓ DEPARTMENT OF ENVIRONMENTAL QUALITY

✓ DOUGLAS COUNTY LIVESTOCK ASSOCIATION

CASEWORKER _____ ORIGINAL TO APPLICANT 10/14/94

Date: November 25, 1994

OREGON WATER RESOURCES DEPARTMENT

SATISFACTORY REPORT OF TECHNICAL REVIEW

FOR AN INSTREAM WATER RIGHT APPLICATION

OBJECTIONS TO THE PROPOSED INSTREAM WATER RIGHT TECHNICAL REVIEW REPORT, AS DESCRIBED BELOW, MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 158 12th St. NE, SALEM, OREGON 97310, ON OR BEFORE 5 PM: February 1, 1995.

1. APPLICATION FILE NUMBER - IS 72191

2. APPLICATION INFORMATION

Application name/address/phone:

Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207
503-229-5400

Date application received for filing and/or tentative date of priority: 1/29/1992

Source: POWDER R tributary to SNAKE R

County: BAKER

Purpose: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE AND JUVENILE REARING OF RAINBOW TROUT.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

To be maintained in:

POWDER RIVER FROM MASON DAM AT RIVER MILE 131.2 (NWNE, SECTION 26, TOWNSHIP 10S, RANGE 38E WM); TO THIEF VALLEY RESERVOIR AT RIVER MILE +74.0 (SECTION 17, TOWNSHIP 6S, RANGE 40E WM)

3. TECHNICAL REVIEW

The application is complete and free of defects.

The proposed use is not restricted or prohibited by statute.

The following supporting data has been submitted by the applicant:

(a) The Fish and Wildlife Resources of the Powder Basin and Their Water Requirements; August 1967.

(b) Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.

(c) Development 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.

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

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

An assessment with respect to other Commission administrative rules, including but not limited to the applicable basin program 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.

The evaluation of the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application is described below. The recommended flows take into consideration planned uses and reasonably anticipated future demands for water from the source for agricultural and other uses as required by the standards for public interest review:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0	
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0	REQUESTED
	163	230	393	740	1100	845	212	146	82.5	76.9	103	122	AVE FLOW
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0	
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0	MIN FLOW

4. REPORT CONCLUSIONS

The proposed water use, as conditioned, passed this technical review. The information contained in the application along with the supporting data submitted by the applicant indicate that the flow levels set out in this report are necessary to protect the public use.

The supporting data states that the recommended flows are necessary to meet the biological requirements for spawning and rearing of salmonids and resident game fish. Consideration of habitat type, stream depth and water velocity were considered by the applicant in development of the flow levels. (*See Determining Minimum Flow Requirements for Fish, ODFW Report January 20, 1984.*) The recommended flow volumes are necessary to ensure appropriate levels of dissolved oxygen, turbidity, pH and temperature.

Minimum stream flow recommendations (ODFW MIN) developed from the 1965 and 1966 study are intended to provide suitable environment during appropriate seasons to perpetuate minimum desirable conditions capable of maintianing trout populations. The recommended minimums are based primarily on the biological requirements of the fish present and follow sesonal stream discharge patterns to which the life cycles of salmonids have become adapted. *(See 1967 report)*

5. PROPOSED CERTIFICATE CONDITIONS

[The following proposed conditions will apply to water use and will appear on the face of the certificate.]

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st½	25.0	25.0	40.0	40.0	40.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0
2nd½	25.0	30.0	40.0	40.0	40.0	30.0	25.0	25.0	25.0	25.0	25.0	25.0

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. This instream right shall not have priority over rights to use water for 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.

72191

Oregon

DEPARTMENT OF
FISH AND
WILDLIFE

RECEIVED
FEB 17 1994
WATER RESOURCES DEPT
SALEM, OREGON

February 17, 1994

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

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

General Comments

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

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

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

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

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

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

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

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

Specific Comments

Application # 70948

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

Application # 71241

For the month of December:

1. The minimum flow level recommended by ODFW in the North Coast basin Environmental Investigation Report is 88 cfs.

2. The reported estimated average natural flow for December here is 131 cfs.

3. WRD is proposing in the Report of Technical Review to allocate 80 cfs.

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

Application # 71258

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

Application # 71280

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

Thank you for the opportunity to comment.

Sincerely,

Albert H. Mirati, Jr.
Water Right Review Coordinator

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

FILE: NCOAST.IWR

72157 → 72157
see ↑

72157

United States Department of Agriculture
Forest Service
Wallowa-Whitman National Forest
P. O. Box 907
Baker City, OR 97814

Reply to: 2540

Date: March 18, 1992

72185
86
87
78
60
61
62
77
69

State of Oregon
Water Resources Department
ATTN: Water Rights Section
3850 Portland Road NE
Salem, OR 97310

Enclosed is a summary of the impacts of 36 new ODFW instream water right applications in the Powder Basin on Forest programs associated with non-reserved acquired lands managed by the Wallowa-Whitman National Forest.

We request that the Department, the Water Resources Commission, and the Department of Fish and Wildlife review this information and discuss it with Tim Bliss, Water Rights Program Coordinator, Wallowa-Whitman NF (503-523-6391) and Mike Lohrey, Regional Water Rights Program Coordinator (503-326-5927), as needed.

The Forest is raising many of the same concerns expressed in a July 29, 1991 letter to you regarding 40 ODFW instream water right applications in the Grande Ronde Basin and adjacent basins. We acknowledge receipt of Michael J. Mattick's January 17, 1992 response to this letter. Even though Mr. Mattick's response to our concerns and requested relief appear to be adequate, we are restating many of our concerns "for the record."

The policy of the Pacific Northwest Region is to support the State's instream water right acquisition program in order to protect stream-dependent flora and fauna. Yet, the Wallowa-Whitman NF also has the obligation to notify the State of potential impacts to other Forest programs and outputs identified in our Forest Plan.

Sincerely,

R. M. RICHMOND
Forest Supervisor

Enclosure

cc: (see next page)

cc: Mike Lohrey, Watershed, Regional Office
District Rangers: Baker RD, Unity RD, La Grande RD, Pine RD

Al Mirati
Oregon Department of Fish and Wildlife
2501 SW First Avenue
Portland, OR 97207

Jim Lauman
Oregon Department of Fish and Wildlife
107 Twentieth Street
La Grande, OR 97850

V. Kent Searles, Regional Manager
Oregon Water Resources Department
Baker County Courthouse
Baker City, OR 97814

WaterWatch
OF OREGON

72191

February 7, 1992

Stephen C. Brown
Senior Water Rights Specialist
Applications and Permits Section
Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

Re: Application for Instream Water Rights #72159 thru 72194
Oregon Department of Fish and Wildlife
Powder River and Burnt River Basins, Baker & Union Co.

The Burnt and Powder River basins in Baker and Union County have been adversely effected by past water management activities. Native fish in these streams are now confined to small tributary streams because of overappropriation of the surface waters and unscreened irrigation diversions.

WaterWatch supports the efforts of the Oregon Department of Fish and Wildlife to obtain instream water rights in these streams in order to provide some level of future protection for the region's valuable fish and wildlife. WaterWatch urges the Oregon Water Resources Department to issue these instream water rights at the earliest opportunity in the amounts requested.

Please inform us of any protests that you may receive to these applications.

Sincerely,

Jim Myron

IWR Application # 72191 Certificate #_____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

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

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 Powder River, a tributary of Snake River.

2. The public use this instream water right is based on is providing required stream flows for rainbow trout.

3. The amount of water (in cubic feet per second) needed by month for each category of public use is as follows:

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
25	25/ 30	40	40	40	40/ 30	25	25	25	25	25	25

4. The reach of the stream identified for an instream water right is from (upstream end) Mason Dam, river mile 131.2, within the NW quarter of the NE quarter of Section 26, Township 10S, Range 38E W.M., in Baker County...

   Downstream to Thief Valley Reservoir, river mile ±74, within Section 17, Township 6S, Range 40E W.M., in Baker 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: January 8, 1992
ODFW (Fish, Wldlf, and Habitat)	Date: January 8, 1992
Parks and Recreation Division	Date: January 8, 1992

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

IWR Application #_____ Certificate #_____

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

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

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

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

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

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: 1/22/92 Signed: Gill E. Zan

Oregon Department of Fish and Wildlife

Assistant Director
Habitat Conservation Div.

File: POWDER3.APP

IWR Application # 72191 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____.

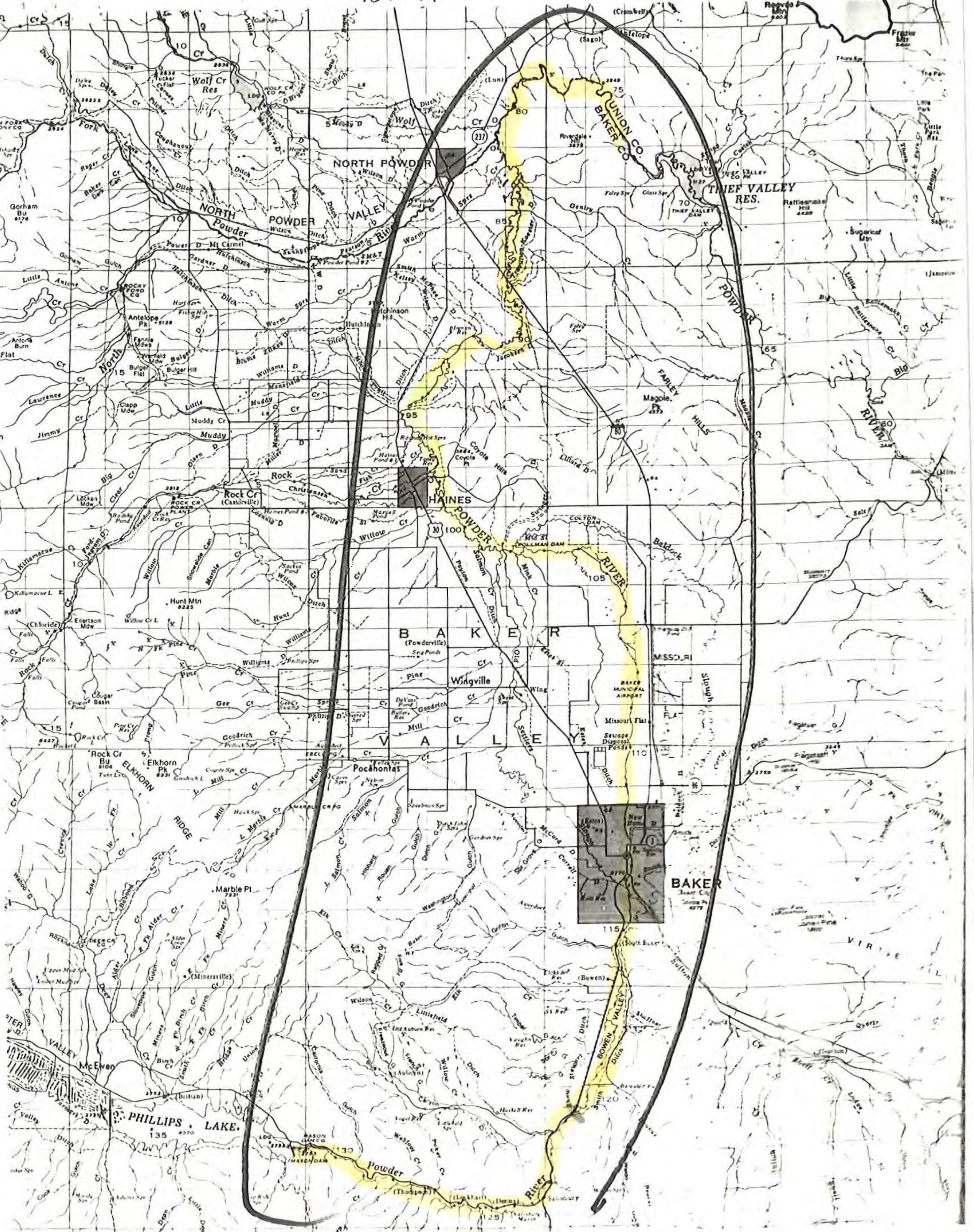
_____

_____

This document was first received at the Water Resources Department in Salem, Oregon, on the 29th day of January, 1992, at 8:00 o'clock A M.

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

72191



NORTH POWDER
NORTH
POWDER
VALLEY
Wolf Cr Res
UNION CO
BAKER CO
THIEF VALLEY RES.
Riverdale
Gorham Bu
Antelope Pk
Hutchinson Hill
Magpie Pk
FARLEY HILLS
POWDER
RIVER
HAINES
Coyote Hills
Rock Cr
Hunt Mtn
B A K E R
(Powderville)
Wingville
MISSOURI
Missouri Flat
Baker Municipal Airport
Sewage Disposal Ponds
V A L L E Y
Pocahontas
Elkhorn Pk
ELKHORN RIDGE
Rock Cr Bu
Marble Pt
BAKER
(Minersville)
(Bowen)
BOWEN VALLEY
McEwen
PHILLIPS LAKE
MASON DAM
Powder
River
(Thompson)
(Crombell)
Antelope
(Sago)
(Lun)
Gentry
Thief Valley Dam
Rattlesnake Hill
Sugarloaf Mtn
Big
Baldock
Slough
Wilson
Salmon
Littlefield
(Britton)

PRIORITY DATE 72191

DATE	INITIALS	MINIMUM REQUIREMENTS TO FILE
		Name and mailing address
		Source of water
		Quantity of water
		Location of project
		Use of water
		Signature of applicant
		Allowable use by policy
		State Engineer withdrawal
		Legislative withdrawal
		Land use approved _____ pending _____

FIELD OPERATIONS

			YES	NO
		Application date stamped per money receipt date		
		Stream Indexed		
		Stream Code _____		
		Scenic Waterway _____		
		Findings:		
		1) Concluded - Scenic-Reg Ack letter		
		2) Under Study - Scenic-Ack letter		
		3) Basin 2 - Willamette-Ack letter		
		Plat Carded and copy made		
		Conflicts (well _____surface_____)		
		Prior ISWR # _____		
		Within Irrigation District _____ (name)		
		Notified		
		District excerpt received		
		Entered in Paradox		
		Prepare six copies of Draft Permit		
		Send one copy to Data Center		

SUPPORT SERVICES

		Stamp contents with application number
		Mail/Provide copies of draft permits to DEQ, ODFW, PARKS, AND WATERMASTER
		Mail ack letter (provided by Data Center) with receipt to applicant, cc to CWRE and file
		Place label on file and card
		If dam is over 10 feet or storage exceeds 9.2 AC-FT, route file to Dam Safety Section
		Notify Irrigation District

FIELD OPERATIONS

			YES	NO
		Ownership Statement		
		Name and address of all owners		
		Other landowners notified		
		Legal Description		
		Need Commission review		
		____ Requests greater than 5.0 cfs		
		____ Dam height greater than 20 feet		
		____ Storage greater than 100 acre-feet		
		____ Out of Basin diversion		
		____ Groundwater recharge project		
		____ Other substantial public interest		
		GW comments received _____ resolved _____		
		ODFW comments received _____ resolved _____		
		DEQ comments received _____ resolved _____		
		Interest Groups _____		
		Water availability received		
		Objections received _____ resolved _____		
		Protest received _____ resolved _____		
		Management Codes		

EXAMINATION FEE: _____
RECORDING FEE: _____
_____
_____
TOTAL: _____
REFUND: _____
DEFICIENT: _____

REMARKS: _____

0639W/10-10-91