

Oregon Water Resources Department
Water Rights Division

Instream Water Right Application
Number IS70781

Final Order

Application History

On 10/18/1990, the Department of Fish and Wildlife submitted an application to the Department for an instream water right. The Department issued a Proposed Final Order on MAY 7, 1996. The protest period closed June 21, 1996, and no protest was filed.

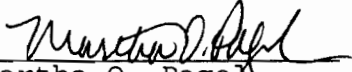
The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification. Condition number three has been changed to read as follows:

For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.

Order

IT IS HEREBY ORDERED that Application IS70781 be approved with above modifications to the Proposed Final Order, as provided in the attached certificate.

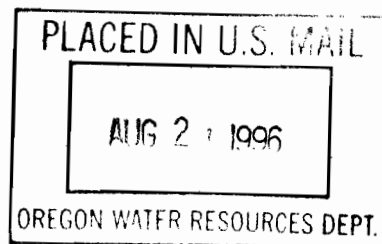
DATED August 20, 1996


Martha O. Page
Director

Hearing and Appeal Rights

Under the provisions of ORS 537.170, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 527.153(6) to the Department within 14 days after this order is issued. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the above modifications to the proposed final order may be addressed.

Under the provisions of ORS 183.484, the applicant or any person having standing may appeal this order by filing a petition for review in the Circuit Court for Marion County or the circuit court for the county in which the applicant resides or has a principal business office. The petition for review must be filed within 60 days after the date this order is served.



STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

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

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

Source: DRIFT CR > PUDDING R

County: MARION

Purpose and/or use: Providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 10/18/1990.

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
1st ½	40.0	40.0	40.0	40.0	30.1	13.6	3.0	2.0	2.0	3.0	20.0	40.0
2nd ½	40.0	40.0	40.0	40.0	30.1	5.0	3.0	2.0	2.0	5.26	40.0	40.0

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

Witness the signature of the Water Resources Director,
affixed AUGUST 20, 1996.


Martha O. Pagel

Recorded in State Record of Water Right Certificate number 72591.

COPY CHECK-OFF SHEET FOR PROPOSED FINAL ORDERS

CC: FILE # IS 70781

WATERMASTER # (DAVE JARRET OR GENE MCGINNIS)

REGIONAL MANAGER: TOM PAUL

ODF&W - County:

DEQ

PARKS

OTHER STATE AGENCY IF NECESSARY:

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

POWER BUILDER UPDATER; 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

IWR Application # 70781 Certificate # _____

STATE OF OREGON

WATER RESOURCES DEPARTMENT

Application for Instream Water Right
by a State Agency

RECEIVED

OCT 18 1990

WATER RESOURCES DEPT
SALEM, OREGON

There is no fee required for this application.

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

- The name of the stream of the proposed instream water right is Drift Creek, a tributary of Pudding River (Molalla River).
- The public uses this instream water right is based upon include providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.
- 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
40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40

- The reach of the stream identified for an instream water right is from (upstream end) E./W. Fks. Drift Creek, river mile ±11, within the SW quarter of the NE quarter of Section 7, Township 8S, Range 1E W.M., in Marion County...

Downstream to the mouth, river mile 0, within the SE quarter of the NW quarter of Section 8, Township 7S, Range 1W W.M., in Marion County.

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

Dept. of Environmental Quality	Date: October 1, 1990
ODFW (Fish, Wldlf, and Habitat)	Date: October 1, 1990
Parks and Recreation Division	Date: October 1, 1990

IWR Application # 70781 Certificate # _____

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

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

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

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

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

10. Remarks: Requested flows are minimum levels required to support stated public uses.

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

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

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

Date: 10/15/90

Signed: J. M. MacHugh

Oregon Department of Fish and
Wildlife

Assistant Director
Habitat Conservation Div.

File: DRIFT1.APP

IWR Application # 70781 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 18th day of October, 1990, at 3 o'clock P M.

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

Application No. 70781
Permit No.

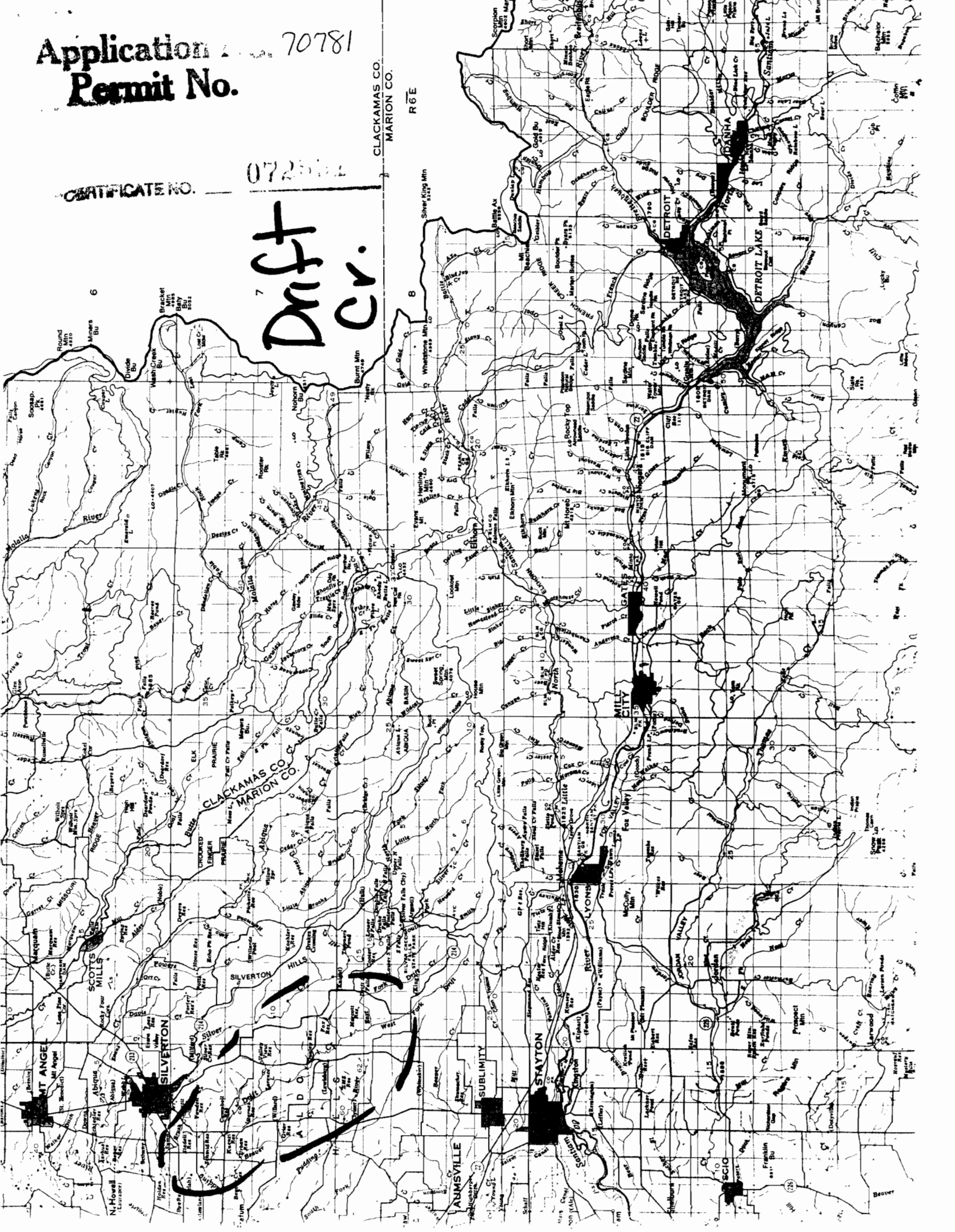
CERTIFICATE NO.

072504

Drift Cr.

CLACKAMAS CO.
MARION CO.

R6E



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

Water Right Application Number: IS 70781

Proposed Final Order

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

Application History

On 10/18/1990 , the Oregon Department of Fish and Wildlife submitted an application to the Department for the following instream water right certificate.

Source:DRIFT CR > PUDDING R

County:MARION

Purpose and/or use: Providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st ½	40.0	40.0	40.0	40.0	40.0	20.0	3.0	2.0	2.0	3.0	20.0	40.0
2nd ½	40.0	40.0	40.0	40.0	40.0	5.0	3.0	2.0	2.0	10.0	40.0	40.0

To be maintained in:

DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

The Department mailed the applicant notice of its Technical Review on September 3, 1993, determining that the requested flows exceeded the estimated average natural flow during some months but that a flows at a reduced amount, with exceptions for human and livestock consumption, are appropriate. The objection period closed November 9, 1993. Objections and comments were received (from M. JOHN YOUNGQUIST, WATER FOR LIFE, WATERWATCH OF OREGON.).

The following supporting data was submitted by the applicant:

- (a) Fish and Wildlife Resources of the Middle Willamette Basin, Oregon, and Their Water Requirements; February 1963, (with revised Appendix I).

- (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 Middle Willamette 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
98.9	88.5	75.4	53.5	30.10	13.6	4.99	2.37	2.44	5.26	43.3	91

Water is NOT available for further appropriation (at a 50 percent exceedance probability) for the period May, June 1-15, August, and October 16-31.

The flows available for further appropriation are shown below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
96.7	86.4	75.4	53.5	29.9	13.2	4.22	1.76	2.14	5.24	42.3	89

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 Middle Willamette 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 May, June 1-15, August, and October 16-31 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

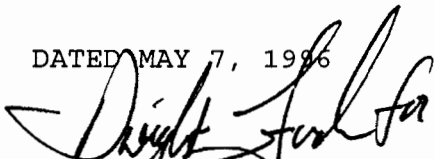
- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, 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
1st $\frac{1}{2}$	40.0	40.0	40.0	40.0	30.1	13.6	3.0	2.0	2.0	3.0	20.0	40.0
2nd $\frac{1}{2}$	40.0	40.0	40.0	40.0	30.1	5.0	3.0	2.0	2.0	5.26	40.0	40.0

Recommendation

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

DATED MAY 7, 1996



Steven P. Applegate
 Administrator
 Water Rights and Adjudications Division

Protest Rights

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

in writing, and must include the following:

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

Your protest must be received in the Water Resources Department no later than June 21, 1996.

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

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

DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

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

Source:DRIFT CR > PUDDING R

County:MARION

Purpose and/or use: Providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is 10/18/1990.

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
1st ½	40.0	40.0	40.0	40.0	30.1	13.6	3.0	2.0	2.0	3.0	20.0	40.0
2nd ½	40.0	40.0	40.0	40.0	30.1	5.0	3.0	2.0	2.0	5.26	40.0	40.0

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.

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 _____.

IS70781

M. JOHN YOUNGQUIST
WATER RESOURCES CONSULTANT

cc: Reed
Mike M

RESEARCH PERMITS/LICENSING
PLANNING PROJECT MANAGEMENT

827 SE MOSHER AVE.
ROSEBURG, OR 97470
PH: (503) 672-5692

November 4, 1993

Martha Pagel, Director
Oregon Water Resources Department
3850 Portland Road, NE
Salem, Oregon 97310

NOV 4 1993
WATER RESOURCES DEPT
SALEM, OREGON

Subject: Application IS 70781
Comments on Technical Review dated September 3, 1993

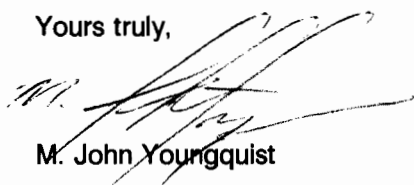
Dear Mrs. Pagel:

In response to the above mentioned technical review, I have the following observations:

1. Drift Creek, tributary of Pudding River, was withdrawn by order of the State Engineer dated August 8, 1951. Reference: OAR 690-502-120 (1) (a) (B) - page 16 of the Willamette Basin Program. Item 3 on page 4 of the Report of Technical Review indicates Drift Creek is not withdrawn from appropriation by order of the State Engineer or legislatively withdrawn by ORS 538. This assumption appears not to be correct.
2. If it the Department's policy to require measuring devices on appropriations exceeding 0.10 cfs and measuring devices and reporting on appropriations exceeding 1.5 cfs, I suggest an instream water right be subject to the same conditions. The "suggestion" for a gaging station on page 4 should be a mandatory condition to receive a certificate of water right.

Please contact me if you have any questions or comments.

Yours truly,



M. John Youngquist

cc: Tucson Myers
Jan Boettcher

February 5, 1994

Al Mirati
ODFW
2501 SW First
PO Box 59
Portland, OR 97207

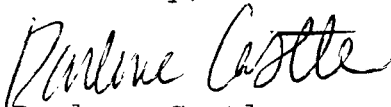
RE: Applications - 70020, 70021, 70026, 70027, 70028, 70029,
70747, 70781, 73293 and 73294

Dear Mr. Mirati:

Regarding your request to Reed Marbut, enclosed are copies of objections received on the above-referenced files.

If you have any questions, please call Reed Marbut or Steve Brown.

Sincerely,



Darlene Castle
Water Rights/Adjudication Assistant

dc
Enclosures

cc: Reed Marbut
Steve Brown
Mike Mattick



WATER RESOURCES DEPARTMENT

INTEROFFICE MEMO

November 2, 1993

To: Steve & Reed

From: Michael

Subject: Instream water right technical reviews already sent out.

Jake tells me you want a lit of IWR TRs sent out.

These are the IWRs which we have sent out TRs on. They are listed the way they appear in O:\SENTAPP\

70020
70021
70026
70027
70028
70029

*has a checkmark
in SE OK by [unclear]*

IS70747
IS70781
IS73293
IS73294

Molalla

Those preceded by IS are in the Molalla sub-basin of the Willamette. The others are in Southeast Oregon (Trout and McDermitt Creeks).

Two commenters were not sent the technical review for 70021 on McDermitt Creek, in its original mailing (the Zimmermans, and the Harney Co. SWCD). When this was discovered, it was sent to them with no explanation. Both of these parties called to ask for more time to object. Both were given until 12/24/93.

The closing of the objection period is Nov. 9 for the last three TRs on this list. For the remainig 6 TRs, the objctation period is over.

M:\MEMO\36

WaterWatch

O F O R E G O N

By FAX and Regular Mail

November 9, 1993

Oregon Water Resources Department
Water Rights Section
3850 Portland Road NE
Salem, Oregon 97310


Re: Technical Reports for [REDACTED] Pudding), 73294 (Molalla), 73293 (Molalla),
Oregon Department of Fish and Wildlife, Instream Fishery Enhancement

Dear Water Rights Section:

WaterWatch strongly supports the instream flow levels requested by ODFW in these instream water right applications. These applications seek protection for instream flows that are essential for the ecological health of the Molalla and Pudding Rivers.

By this letter we request notification and copies of any objections, comments, and other materials that are filed relating to these applications and to these technical reports, and copies of the Department's response to any of these materials. We request an opportunity to review any changes or additions to ODFW's request and to file a formal protest and participate in any negotiations on these applications.

Sincerely,


Karen Russell
Assistant Director

c. Mirati, ODFW

RECEIVED
NOV 16 1993
WATER RESOURCES DEPT.
SALEM, OREGON

WATER FOR LIFE'S OBJECTION TO TECHNICAL REVIEW: APPLICATION #70781
OREGON WATER RESOURCES DEPARTMENT
Submitted November 9, 1993

Water for Life hereby submits the following objection to Application #70781, 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 that 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 applicants have 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 applicants for the curing of defects.

I. TECHNICAL REVIEW IS DEFECTIVE - FAILURE TO ADEQUATELY REVIEW THE APPLICATION

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". 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)).

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 amounts;" (emphasis added).

ODFW's application under 5. states: "The method used to determine the requested amounts was the Oregon Method." No analysis of supporting data, or the lack thereof, appears in the WRD file for Application #70781. A review of the Middle Willamette Basin Investigation (February 1963) reveals that no flow levels for Drift Creek were listed for June through mid-November in Appendix I of "Recommended Minimum Flows for Fish Life" because "Sufficient information is not available to include recommended flows in streams where flow figures are omitted for portions of the year." (Footnote 2, page I-4). Therefore the statement in ODFW's application is erroneous. 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

NOV 16 1993

WATER RESOURCES DEPT
SALEM, OREGON

statute and approved by the administrative rules of the applicant agency." (OAR 690-77-026 (1)(h)).

Apparently the flow levels applied for are based on an replacement Appendix I of Recommended Minimum Flows, a copy of which has been obtained from the applicant. It is impossible to tell, however, the source of the replacement Appendix I, if the replacement appendix is valid, what information it was based on or if it was ever officially adopted by the State Game Commission. No data has been submitted to support the flows listed in the replacement Appendix I and it should therefore be rejected.

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation has apparently been lost or misplaced. There is not any applicable data listed in the Middle Willamette Basin Investigation regarding Drift Creek in Appendix II, "Stream Flows and Temperatures Obtained From Middle Willamette Basin Streams, 1961 and 1962"; therefore it appears that no data was gathered to support any recommended flows for Drift Creek. No other 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. In the specific case of this application for Drift Creek, the data base is non-existent (Appendix II, Middle Willamette Basin Investigation). Clearly there is no information upon which to base Oregon Method determinations. The determinations made from the Oregon Method are not reliable and should therefore be rejected by the WRD or the Commission as the final authority in determining the level of instream flows necessary to protect the public use (ORS 537.343). This unreliability is particularly evident where no flow measurements were made in support of the limited recommendations that are contained in the Middle Willamette Basin Investigation.

D. "EANF" CALCULATIONS ARE DEFECTIVE or INCOMPLETE

There are no calculations or information in the WRD file to show how the "estimated average natural flow" or 50% exceedance flows were determined, 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 may be defective, resulting in high EANF levels and thus allowing excessive recommended flows by the WRD.

The EANF flow for the month of June was shown as 19 cfs, yet the WRD recommended 20 cfs be allowed for the first half of June. Based

NOV 16 1993

WATER RESOURCES DEPT
SALEM, OREGON

on the WRD's EANF finding, the flow recommended and allowed for the first half of June should be reduced to 19 cfs.

II. APPLICATION IS DEFECTIVE AND SHOULD BE REJECTED

Besides the problems set out above, the application fails to abide by another rule applicable to ODFW, 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.

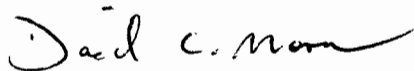
III. CONDITIONS TO INSTREAM WATER RIGHT

The technical review sets forth the "Previous conditions imposed on instream water rights granted for the use of water for the same category of use from this source" on Certificate #59643. The instream water right should include this same condition (OAR 690-77-026 (1)(c)).

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 that 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 will interfere with future maximum economic development of the waters of Drift Creek. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170). If approved, an exception for stockwater use should be added as a condition of the right.



David C. Moon
Attorney for Objector Water for Life

September 3, 1993

Alber H Mirati, Jr.
Instream Water Right Coordinator
Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

Reference: 70781

Dear Mr. Mirati,

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For An Instream Water Right. We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

The enclosed Report of Technical Review is the Department's summary of a specialized analysis of various legal and scientific aspects of your application and proposed water use. We are required by the state of Oregon's administrative rules (in OAR 690-77-026) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for an instream water right. This process was designed to insure that your application receives a fair evaluation and to secure protection of existing water rights and of the public at large.

AS THE RESULT OF OUR TECHNICAL EVALUATION OF YOUR APPLICATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

If you wish to object to any of the analyses contained in the Report, you must submit your objection to the Department in writing within 60 days of the date of mailing of this Report or by the date specified below. Your objection must allege that the technical review is defective and you may also submit evidence which demonstrates that your proposed water use will not impair or be detrimental to the public interest.

Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-77-042) and state facts showing how such standards would be violated.

All evidence and objections must be received by our Salem office **no later than 5:00 p.m. on or before November 9, 1993**, or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,

STEVE BROWN
Manager
Water Rights Division

Enclosures

OREGON WATER RESOURCES DEPARTMENT

REPORT OF TECHNICAL REVIEW

FOR INSTREAM WATER RIGHT APPLICATIONS

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD N.E., SALEM, OREGON 97310, ON OR BEFORE 5 P.M. ON THE NOVEMBER 9, 1993.

Report Date: SEPTEMBER 3

- 1. APPLICATION FILE NUMBER -IS 70781
- 2. APPLICATION INFORMATION

Application name/address/phone:

Alber H Mirati, Jr.
Instream Water Right Coordinator
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:10/18/1990

Source:DRIFT CR > PUDDING R

County:MARION

Purpose and/or use: Providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

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

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1st 1/2	40.0	40.0	40.0	40.0	40.0	20.0	3.0	2.0	2.0	3.0	20.0	40.0
2nd 1/2	40.0	40.0	40.0	40.0	40.0	5.0	3.0	2.0	2.0	10.0	40.0	40.0

To be maintained in:
DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

Description of methods used to determine requested amounts: Oregon Method

The following state agencies notified of the intent to file for the instream water right on:

Dept. of Environmental Quality	Date: October 1, 1990
ODFW (Fish, Wldlf., and Habitat)	Date: October 1, 1990
Parks and Recreation Division	Date: October 1, 1990

Suggested recommendations for:

- Measuring locations or methods;
- Assisting the Water Resources department (WRD) in Measuring and monitoring procedures;
- Managing the water right to protect the public uses ...

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

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

3. TECHNICAL REVIEW

The application and supporting data are complete and free of defects.

The proposed use is not restricted or prohibited by statute.

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

Previous conditions imposed on instream water rights granted for the use of water for the same category of use from this source are:

1. Instream water right certificate 59463 on the Molalla River Exempts Domestic and Livestock uses and waters to be legally stored or legally released from storage.
2. Instream water right certificate 62322 on the Molalla River has no exemptions.

Instream Public uses are classified uses under OAR 690-77-015(8) and the **Willamette** Basin Program (OAR 690-502-120).

LAND USE COMPATIBILITY:

Local Governments have not in the allotted time alleged the proposed instream water right is incompatible with a comprehensive land use plan.

WATER AVAILABILITY:

The following tabulation delineates estimated average natural flow of **surface water** for the months of each year in cubic feet per second at **the mouth**.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
ISWR Request	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40
50% Ex. Flow	156	136	107	84	41	19	8.4	3.4	6.1	17	82	160
Recommended	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40

These flows represent the amount of water likely to be in the stream reach for 50% of all the days in all of the referenced months for the period 1958 to 1987.

CONFLICTS WITH OTHER WATER RIGHTS: NONE

4. PROPOSED CERTIFICATE CONDITIONS

[The following conditions will apply to water use under the certificate and will appear on the face of the certificate.]

1. Flow levels allowed - cubic feet per second

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Recommended	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40

2. The instream water right is to maintain flows in DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

5. REPORT CONCLUSIONS

The proposed water use, as conditioned, passed this technical review.

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WATER FOR LIFE'S OBJECTION TO TECHNICAL REVIEW: APPLICATION #70781
OREGON WATER RESOURCES DEPARTMENT
Submitted November 9, 1993

Water for Life hereby submits the following objection to Application #70781, 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 that 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 applicants have 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 applicants for the curing of defects.

I. TECHNICAL REVIEW IS DEFECTIVE - FAILURE TO ADEQUATELY REVIEW THE APPLICATION

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". 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)).

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 amounts;" (emphasis added).

ODFW's application under 5. states: "The method used to determine the requested amounts was the Oregon Method." No analysis of supporting data, or the lack thereof, appears in the WRD file for Application #70781. A review of the Middle Willamette Basin Investigation (February 1963) reveals that no flow levels for Drift Creek were listed for June through mid-November in Appendix I of "Recommended Minimum Flows for Fish Life" because "Sufficient information is not available to include recommended flows in streams where flow figures are omitted for portions of the year." (Footnote 2, page I-4). Therefore the statement in ODFW's application is erroneous. 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)).

Apparently the flow levels applied for are based on an replacement Appendix I of Recommended Minimum Flows, a copy of which has been obtained from the applicant. It is impossible to tell, however, the source of the replacement Appendix I, if the replacement appendix is valid, what information it was based on or if it was ever officially adopted by the State Game Commission. No data has been submitted to support the flows listed in the replacement Appendix I and it should therefore be rejected.

ODFW does not have specific files for their instream water right applications. The original data supporting the Basin Investigation has apparently been lost or misplaced. There is not any applicable data listed in the Middle Willamette Basin Investigation regarding Drift Creek in Appendix II, "Stream Flows and Temperatures Obtained From Middle Willamette Basin Streams, 1961 and 1962"; therefore it appears that no data was gathered to support any recommended flows for Drift Creek. No other 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. In the specific case of this application for Drift Creek, the data base is non-existent (Appendix II, Middle Willamette Basin Investigation). Clearly there is no information upon which to base Oregon Method determinations. The determinations made from the Oregon Method are not reliable and should therefore be rejected by the WRD or the Commission as the final authority in determining the level of instream flows necessary to protect the public use (ORS 537.343). This unreliability is particularly evident where no flow measurements were made in support of the limited recommendations that are contained in the Middle Willamette Basin Investigation.

D. "EANF" CALCULATIONS ARE DEFECTIVE or INCOMPLETE

There are no calculations or information in the WRD file to show how the "estimated average natural flow" or 50% exceedance flows were determined, 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 may be defective, resulting in high EANF levels and thus allowing excessive recommended flows by the WRD.

The EANF flow for the month of June was shown as 19 cfs, yet the WRD recommended 20 cfs be allowed for the first half of June. Based

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Besides the problems set out above, the application fails to abide by another rule applicable to ODFW, 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.

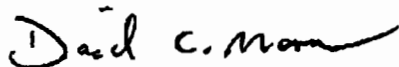
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CONCLUSION

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 that 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 will interfere with future maximum economic development of the waters of Drift Creek. Excessive flow rates for instream water rights represent a wasteful and unreasonable use of the water involved (ORS 537.170). If approved, an exception for stockwater use should be added as a condition of the right.



David C. Moon
Attorney for Objector Water for Life

BEFORE THE STATE ENGINEER OF OREGON

Marion County

IN THE MATTER OF THE ACCEPTANCE)
OF APPLICATIONS FOR PERMITS TO)
APPROPRIATE WATER FROM DRIFT)
CREEK)
-----)

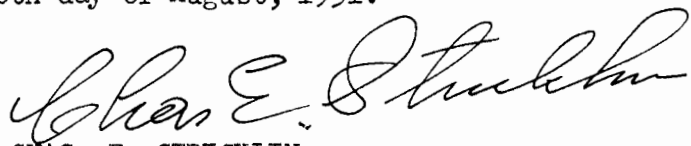
ORDER
TO REJECT CERTAIN
FUTURE APPLICATIONS

This order covers the waters of Drift Creek and its tributaries, which Drift Creek flows northwesterly through the west part of Township 8 South, Range 1 East, W. M., and Township 7 South, Range 1 West, W. M., to its confluence with Pudding River in the north half of Section 8, Township 7 South, Range 1 West, W. M.

Investigations made on August 8, 1951, by a representative of the State Engineer, indicate that there is not sufficient water flowing in the stream in question and its tributaries, during the irrigation season, to satisfy existing rights, and it appears that the approval of any more applications proposing use of the direct flow of Drift Creek and its tributaries would conflict with existing rights.

THEREFORE, IT IS HEREBY ORDERED that no more applications for permits to appropriate water from this stream or its tributaries be accepted, unless the applications are for storage and the appropriation of stored water.

Dated at Salem, Oregon, this 8th day of August, 1951.



CHAS. E. STRICKLIN
State Engineer

September 3, 1993

Alber H Mirati, Jr.
Instream Water Right Coordinator
Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

WATER
RESOURCES
DEPARTMENT

Reference: 70781

Dear Mr. Mirati,

This letter informs you of the current status of your application for a water use permit and accompanies the Satisfactory Report of Technical Review For An Instream Water Right. We apologize for the delay in transmitting this information and Report to you and for any inconvenience the wait may have caused you.

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AS THE RESULT OF OUR TECHNICAL EVALUATION OF YOUR APPLICATION, WE HAVE DETERMINED THAT YOUR APPLICATION SATISFIES THE REQUIREMENTS OF THE TECHNICAL REVIEW.

The Department will now move your application to the next phase of processing. This phase includes a public interest review of your proposed water use. No final action may be taken on your application until the public interest review is completed.

You should also note that the Report of Technical Review describes conditions currently anticipated which may limit the water use proposed in your application.

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Copies of the Report of Technical Review will be distributed to all persons who have filed comments or otherwise expressed an interest in the water use proposed in your application. Interested parties must also submit their objections within the prescribed objection period. Those objections must allege that the technical review is defective and/or that the proposed water use may impair or be detrimental to the public interest.



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

If an objection contains allegations that the technical review is defective, it must be accompanied by facts which support such allegations. If an objection contains allegations that the proposed water use may impair or be detrimental to the public interest, the objection must specify the particular public interest standards which apply as set out in Oregon Revised Statutes (ORS 537.170(5)) and Oregon Administrative Rules (OAR 690-77-042) and state facts showing how such standards would be violated.

All evidence and objections must be received by our Salem office **no later than 5:00 p.m. on or before November 9, 1993**, or the Department may presume there is no opposition to any of the analyses set out in the technical review report. Evidence and objections must be addressed and delivered to: Oregon Water Resources Department, Water Rights Section, 3850 Portland Road, Northeast, Salem, Oregon 97310.

If objections and evidence are submitted on or before the above time and date, the Director of the Water Resources Department will evaluate each issue raised in the objections and either accept or deny them. Objectors are encouraged to indicate whether they would be interested in resolving their concerns through alternative dispute resolution.

If any of the objections are denied, the objector will be allowed thirty days to submit a protest to the denial. The protest must meet the standards set forth in OAR 690-02-030 through 080.

If you have any questions, please feel free to telephone me or any of the Department's Water Rights Section staff. My telephone number is 378-3739, in Salem, or you may call toll free from within the state to 1-800-624-3199.

Sincerely,



STEVE BROWN
Manager
Water Rights Division

Enclosures

OREGON WATER RESOURCES DEPARTMENT
 REPORT OF TECHNICAL REVIEW
 FOR INSTREAM WATER RIGHT APPLICATIONS

OBJECTIONS TO THE PROPOSED WATER USE AS DESCRIBED BELOW MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD N.E., SALEM, OREGON 97310, ON OR BEFORE 5 P.M. ON THE NOVEMBER 9, 1993.

Report Date: SEPTEMBER 3

1. APPLICATION FILE NUMBER -IS 70781

2. APPLICATION INFORMATION

Application name/address/phone:

Alber H Mirati, Jr.
 Instream Water Right Coordinator
 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:10/18/1990

Source:DRIFT CR > PUDDING R

County:MARION

Purpose and/or use: Providing required stream flows for cutthroat trout for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

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2nd 1/2	40.0	40.0	40.0	40.0	40.0	5.0	3.0	2.0	2.0	10.0	40.0	40.0

To be maintained in:
 DRIFT CREEK FROM EAST AND WEST FORKS DRIFT CREEK AT RIVER MILE 11.0 (SWNE, SECTION 7, TOWNSHIP 8S, RANGE 1E WM); TO THE MOUTH AT RIVER MILE 0.0 (SENW, SECTION 8, TOWNSHIP 7S, RANGE 1W WM)

Description of methods used to determine requested amounts: Oregon Method

The following state agencies notified of the intent to file for the instream water right on:

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ODFW (Fish, Wldlf., and Habitat)	Date: October 1, 1990
Parks and Recreation Division	Date: October 1, 1990

Suggested recommendations for:

- Measuring locations or methods;
- Assisting the Water Resources department (WRD) in Measuring and monitoring procedures;
- Managing the water right to protect the public uses ...

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

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

3. TECHNICAL REVIEW

The application and supporting data are complete and free of defects.

The proposed use is not restricted or prohibited by statute.

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

Previous conditions imposed on instream water rights granted for the use of water for the same category of use from this source are:

1. Instream water right certificate 59463 on the Molalla River Exempts Domestic and Livestock uses and waters to be legally stored or legally released from storage.
2. Instream water right certificate 62322 on the Molalla River has no exemptions.

Instream Public uses are classified uses under OAR 690-77-015(8) and the **Willamette** Basin Program (OAR 690-502-120).

LAND USE COMPATIBILITY:

Local Governments have not in the allotted time alleged the proposed instream water right is incompatible with a comprehensive land use plan.

WATER AVAILABILITY:

The following tabulation delineates estimated average natural flow of **surface water** for the months of each year in cubic feet per second at **the mouth**.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
ISWR Request	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40
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Recommended	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40

These flows represent the amount of water likely to be in the stream reach for 50% of all the days in all of the referenced months for the period 1958 to 1987.

CONFLICTS WITH OTHER WATER RIGHTS: NONE

4. PROPOSED CERTIFICATE CONDITIONS

[The following conditions will apply to water use under the certificate and will appear on the face of the certificate.]

1. Flow levels allowed - cubic feet per second

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Recommended	40	40	40	40	40	20/ 5	3	2	2	3/ 10	20/ 40	40

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5. REPORT CONCLUSIONS

The proposed water use, as conditioned, passed this technical review.

T:\IS70781

WaterWatch

O F O R E G O N

RECEIVED
NOV 12 1993
WATER RESOURCES DEPT.
SALEM, OREGON

By FAX and Regular Mail

November 9, 1993

Oregon Water Resources Department
Water Rights Section
3850 Portland Road NE
Salem, Oregon 97310

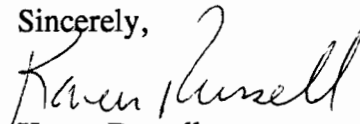
Re: Technical Reports for [REDACTED] (Pudding), 73294 (Molalla), 73293 (Molalla),
Oregon Department of Fish and Wildlife, Instream Fishery Enhancement

Dear Water Rights Section:

WaterWatch strongly supports the instream flow levels requested by ODFW in these instream water right applications. These applications seek protection for instream flows that are essential for the ecological health of the Molalla and Pudding Rivers.

By this letter we request notification and copies of any objections, comments, and other materials that are filed relating to these applications and to these technical reports, and copies of the Department's response to any of these materials. We request an opportunity to review any changes or additions to ODFW's request and to file a formal protest and participate in any negotiations on these applications.

Sincerely,



Karen Russell
Assistant Director

c. Mirati, ODFW

COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

CC: FILE # 10781

WATERWATCH

ODF&W

WATERMASTER # 16

REGIONAL MANAGER - NW

~~CWRE~~ -

OTHER ADDRESSES: WATCH FOR LIFE

CASEWORKER MAIA

ORIGINAL TO APPLICANT 7/29/93

APPLICATION PROCESSING OUTLINE

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

Application No. 70781
 Permit No. _____

RATE AND DUTY _____ for irrigation

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

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

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

yes	no	
_____	_____	Water Resources Commission classification limits or restrictions -- If yes, note:
_____	_____	_____

_____	_____	State Engineer's withdrawals -- If yes, note:
_____	_____	_____

_____	_____	Legislative withdrawals -- If yes, note:
_____	_____	_____

_____	_____	If policy statement is unclear check with Resources Management Division.
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_____	_____	Scenic Waterways: _____
_____	_____	on _____ up-stream _____ v/in 1/4 mile

_____	_____	Notify Parks and Recreation Department
_____	_____	Out-of-basin diversion

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

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

_____	_____	Legal description of property
_____	_____	Ownership statement

_____	_____	Other parties to Notify: _____
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_____	_____	Water Resources Commission review if:
_____	_____	Request for greater than 5 cfs
_____	_____	Bas height greater than 10 feet
_____	_____	Storage of more than 9.2 acre-feet
_____	_____	Out-of-basin diversion
_____	_____	within or above a scenic waterway
_____	_____	conditional uses under basin program
_____	_____	requests for larger rate or duty than allowed
_____	_____	ground water recharge project
_____	_____	other substantial public interest issues
_____	_____	requests for review by an agency or person

X	_____	Watermaster consent form sent with copy of draft permit application and exp.
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_____	_____	Watermaster comments received _____
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_____	_____	Hydrographic section comments requested _____
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X	_____	Hydrographic section comments received _____
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_____	_____	O.D.F.W. sent copy of application and exp(except groundwater) requesting comment _____
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_____	_____	O.D.F.W. comments received _____
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_____	_____	Report from D.E.G. received _____
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X	_____	Publish application information in weekly public notice.
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_____	_____	Notify other owners of development
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_____	_____	PROTESTED
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_____	_____	filed _____
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_____	_____	resolved _____
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