

FILE#: S 73451

U.S. BUREAU OF RECLAMATION
1150 N CURTIS RD
BOISE, ID 83706-1234

Application No. 73451
Permit No. 51676
Certificate No. 76086

Dup card

FEES PAID		
Date	Amount	Receipt No.
<i>ON PURCHASE ORDER - \$150.50</i>		
<i>8/31/93</i>	<i>200.⁰⁰</i>	<i>104112</i>
<i>Recording 9-20-93</i>	<i>5,050.⁰⁰</i>	<i>104762</i>
	Cert. Fee	
FEES REFUNDED		
Date	Amount	Check No.

Stream Index, Page No. _____

POD: T2N R32E Sec 34 SE 1/4

Date filed _____
Priority _____
Action suspended until *OK Oct 31 1995*
Return to applicant _____
Date of approval *JUL 11 1995*

CONSTRUCTION

Date for beginning *JUL 11 1996*
Date for completion *OCT 1 1997*
Extended to _____
Date for application of water *OCT 1 1998*
Extended to _____

PROSECUTION OF WORK

Form "A" filed *7/24/94*
Form "B" filed _____
Form "C" filed _____

FINAL PROOF

Blank mailed *JAN 11 1999*
Proof received _____
Date Certificate issued *APR 19 1999*

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

See T-7006 (mylar maps in T-7006)
118 sent 8/19/94

Dash

Form A (690-9-77)

Application No. 73451

NOTICE OF BEGINNING OF CONSTRUCTION

I, _____, the holder of Permit No. 51676 to appropriate the public waters of the state of Oregon, began the actual construction of the works described therein on the 1st day of August, 1995

Remarks: Constructed necessary delivery facilities

The appropriator must state the manner of beginning of construction, the amount of work completed and the type of equipment acquired for the water system up to the date of this statement, and any additional information which shows a substantial beginning of construction as authorized by your permit.

IN WITNESS WHEREOF, I have hereunto set my hand this 19 day of JULY, 1996

Michael Beatty for PATI LLEWELLYN

(Signature of Applicant)

1150 N Curtis Road, Boise ID

(Address)

OK/PCM



United States Department of the Interior



BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

IN REPLY REFER TO:

PN-3323
WTR-4.00

AUG 31 2012

Mr. Robert Levy
Cunningham Sheep Company
P.O. Box 1186
Pendleton, OR 97801

RECEIVED BY OWRD

SEP 04 2012

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

SALEM, OR

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Dear Mr. Levy and Ms. Bellis:

This letter is in regard to water stored in accordance with Contract No. 14-06-100-1421 between Cunningham Sheep Company and the United States, dated March 10, 1958.

Enclosed for your records is a copy of the letter agreement signed on behalf of the Bureau of Reclamation, Cunningham Sheep Company, and The Freshwater Trust, in which up to 250 acre-feet of the McKay Reservoir water stored in accordance with Contract No. 14-06-100-1421 is approved to be leased by The Freshwater Trust for the 2012 irrigation season for instream fishery enhancement use.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

Sincerely,

Ryan M. Patterson
Program Manager
Repayment and Acreage Limitation

Enclosure

cc: Mr. Tony Justus, Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801
(w/copy of encl to each)

Water Rights Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

IN REPLY REFER TO:

PN-3323
WTR-4.00

JUL - 6 2012

Mr. Robert Levy
Cunningham Sheep Company
P.O. Box 1186
Pendleton, OR 97801

RECEIVED BY OWRD

SEP 04 2012

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

SALEM, OR

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Dear Mr. Levy and Ms. Bellis:

Pursuant to The Freshwater Trust's request, up to 250 acre-feet of McKay Reservoir (McKay) water stored in accordance with Contract No. 14-06-100-1421 between Cunningham Sheep Company and the United States (dated March 10, 1958, as may have been amended and supplemented), is hereby approved to be leased by The Freshwater Trust for the 2012 irrigation season for instream fishery enhancement use pursuant to the Act of February 25, 1920 (41 Stat. 451), provided that:

1. The lease and instream fishery enhancement use of up to 250 acre-feet of water stored to the account of Contract No. 14-06-100-1421 will be used for the 2012 irrigation season in accordance with McKay water rights held by Reclamation for purposes of supplemental irrigation and fishery enhancement under Certificates 76087 and 76086 issued by the Oregon Water Resources Department.
T 7006 73451
2. For the 2012 irrigation season, Cunningham Sheep Company agrees not to irrigate any land with up to 250 acre-feet of its contract entitlement described in Contract No. 14-06-100-1421.
3. The United States will continue to send the annual contract billings to Cunningham Sheep Company.
4. No provision of this approval will be construed to set a precedent for any future requests.

Ms. Natasha Bellis has agreed to obtain concurrence of both parties to this document by having an authorized representative of each party sign and date the same original of this letter, and returning it to this office (Attn: PN-3323). Once signed on behalf of Cunningham Sheep Company and The Freshwater Trust, and returned to this office, a copy will be provided to each party and to appropriate state and Federal offices.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

Sincerely,

Lorri J. Lee
Lorri J. Lee
Regional Director

Concur:

[Signature]
Authorized Representative of ~~F~~unningham Sheep Co.

8/7/2012
Date

[Signature]
Authorized Representative of The Freshwater Trust

7/31/12
Date

cc: Mr. Tony Justus
Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

RECEIVED

JUL 07 2011

WATER RESOURCES DEPT
SALEM, OREGON

IN REPLY REFER TO:

PN-3323

WTR-4.00

MAY 27 2011

Mr. Mike Thompson
Wyland Ranches, Inc.
72006 Highway 395 S.
Pendleton, OR 97801

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Dear Mr. Thompson and Ms. Bellis:

This is in response to The Freshwater Trust's request for the Bureau of Reclamation to approve its proposed lease of 100 acre-feet of McKay Reservoir (McKay) water stored in accordance with Contract No. 3-07-10-W0958 between Wyland Ranches, Inc., and the United States (dated May 7, 1993, as may have been amended and supplemented), for no more than 2 consecutive years for instream fishery enhancement use.

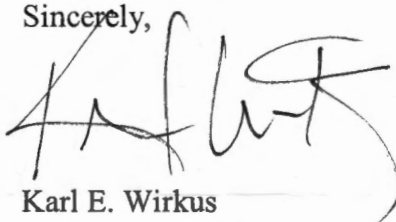
Upon successful completion of public notification and participation requirements of Reclamation Law, Reclamation can approve the requested lease pursuant to the Act of February 25, 1920 (41 Stat. 451), provided that:

1. The lease and instream fishery enhancement use of 100 acre-feet of water stored to the account of Contract No. 3-07-10-W0958 will be used for no more than 2 consecutive years, and will be used in accordance with McKay water rights held by Reclamation for purposes of supplemental irrigation and fishery enhancement under Certificates 76087 and 76086 issued by the Oregon Water Resources Department.
2. For any irrigation season in which McKay water is leased, Wyland Ranches, Inc., agrees not to irrigate any land with 100 acre-feet of its contract entitlement described in Contract No. 3-07-10-W0958.
3. The United States will continue to send the annual contract billings to Wyland Ranches, Inc.
4. No provision of this approval will be construed to set a precedent for any future requests.

Ms. Natasha Bellis has agreed to obtain concurrence of both parties to this document by having an authorized representative of each party sign and date the same original of this letter, and returning it to this office (Attn: PN-3323) for Reclamation's approval. Once signed on behalf of the United States, copies would be provided to each party and to appropriate state and Federal offices.

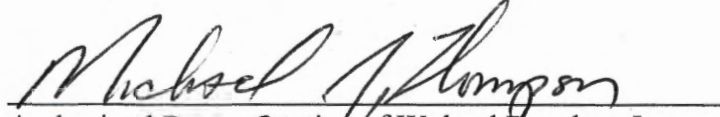
If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

Sincerely,




Karl E. Wirkus
Regional Director

Concur:


Authorized Representative of Wyland Ranches, Inc.

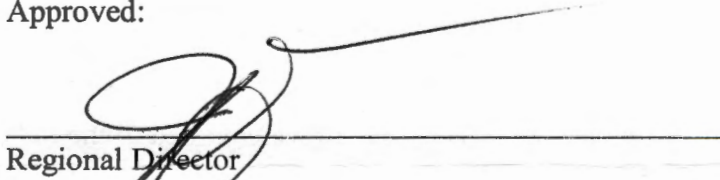
6-4-11
Date


Authorized Representative of The Freshwater Trust

6/20/11
Date

Approved:

ACTING


Regional Director

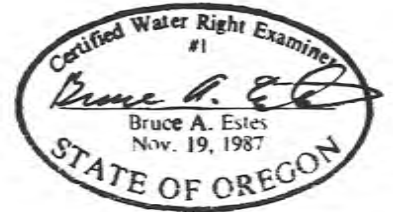
7/5/11
Date

cc: Mr. Tony Justus
Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801

RECEIVED

SEP 18 1998

WATER RESOURCES DEPT.
SALEM, OREGON

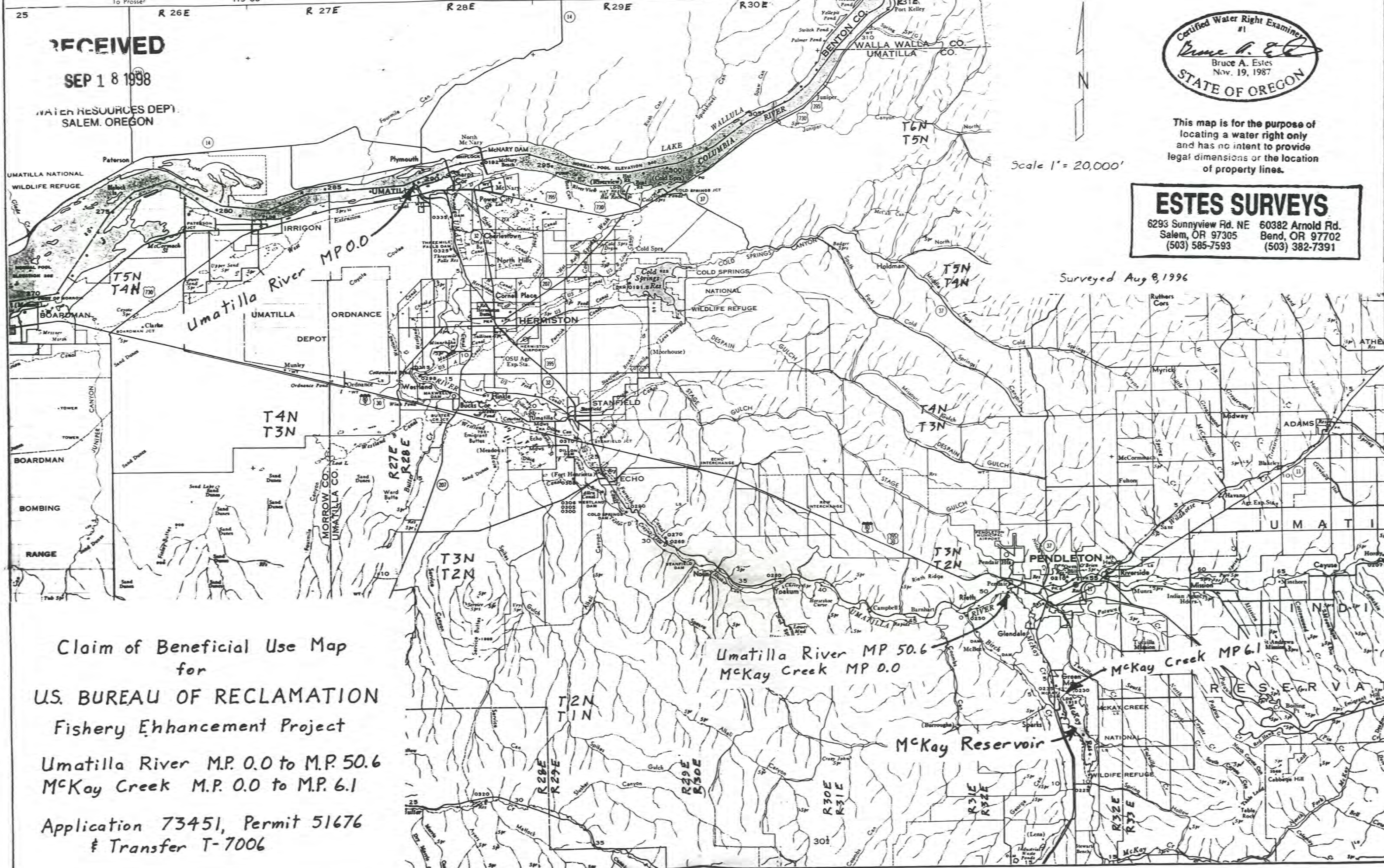


This map is for the purpose of locating a water right only and has no intent to provide legal dimensions or the location of property lines.

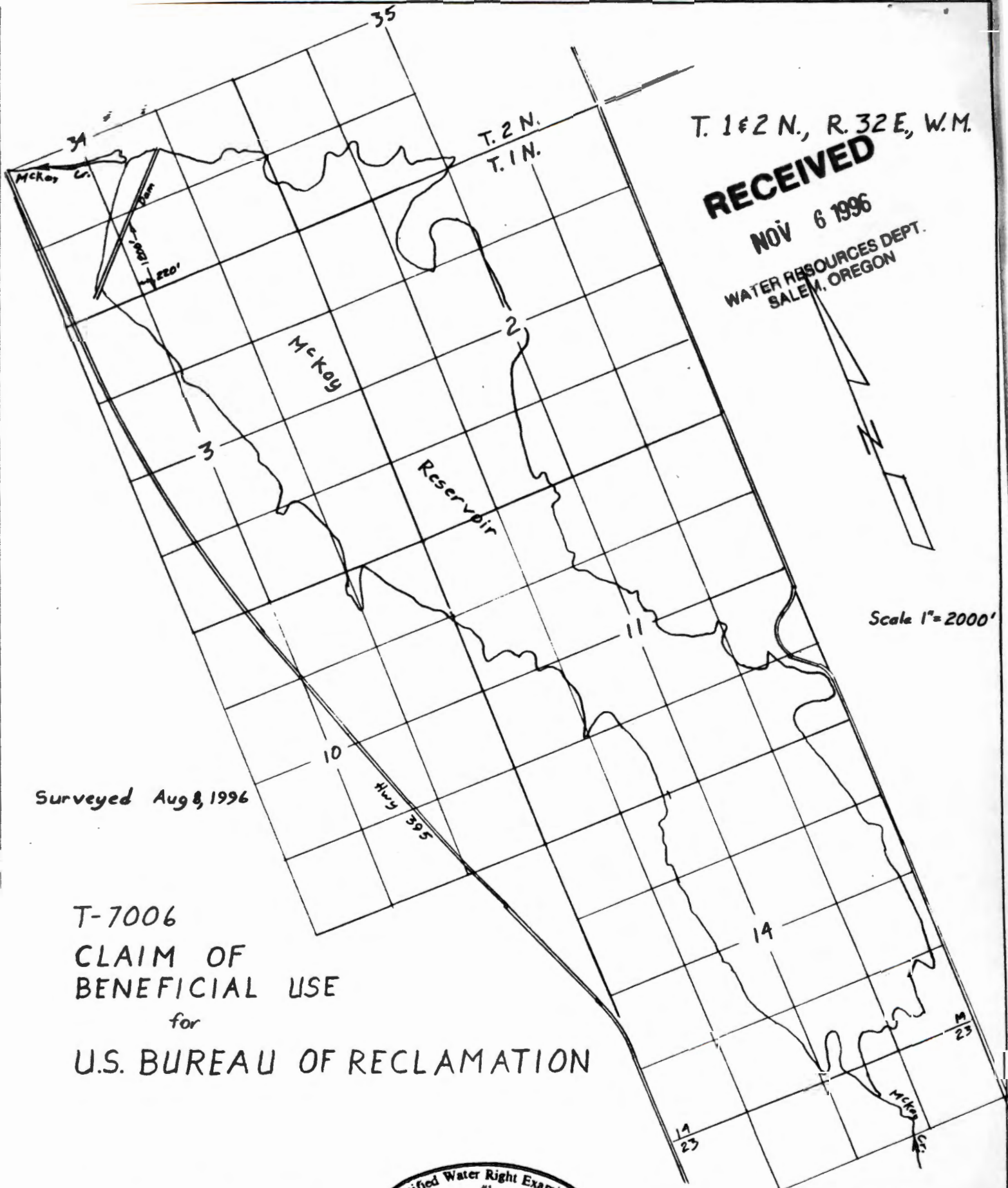
ESTES SURVEYS
6293 Sunnyview Rd. NE Salem, OR 97305 (503) 585-7593
60382 Arnold Rd. Bend, OR 97702 (503) 382-7391

Scale 1" = 20,000'

Surveyed Aug 8, 1996



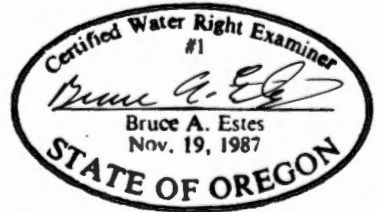
Claim of Beneficial Use Map
for
U.S. BUREAU OF RECLAMATION
Fishery Enhancement Project
Umatilla River M.P. 0.0 to M.P. 50.6
McKay Creek M.P. 0.0 to M.P. 6.1
Application 73451, Permit 51676
& Transfer T-7006



Surveyed Aug 8, 1996

T-7006
 CLAIM OF
 BENEFICIAL USE
 for
 U.S. BUREAU OF RECLAMATION

This map is for the purpose of locating a water right only and has no intent to provide legal dimensions or the location of property lines.



ESTES SURVEYS
 6293 Sunnyview Rd. NE Salem, OR 97305 (503) 585-7593
 60382 Arnold Rd. Bend, OR 97702 (503) 382-7391

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

U.S. BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

confirms the right to use the waters of McKAY RESERVOIR CONSTRUCTED UNDER PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY ENHANCEMENT.

This right was perfected under Permit 51676. The date of priority is JUNE 18, 1993. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 12,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SW 1/4 SE 1/4, SECTION 34, TOWNSHIP 2 NORTH, RANGE 32 EAST, W.M.; 1200
FEET NORTH AND 220 FEET EAST FROM THE SOUTH 1/4 CORNER, SECTION 34.

The Bureau of Reclamation (or owner/operator of the reservoir) shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

UMATILLA RIVER FROM THE MOUTH OF McKAY CREEK, (SE 1/4 NW 1/4,
SECTION 8, T 2 N, R 32 E, W.M.) TO THE MOUTH OF THE UMATILLA RIVER,
(NW 1/4 NE 1/4, SECTION 18, T 5 N, R 28 E, W.M.) AND McKAY CREEK FROM
McKAY DAM (NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.) TO THE MOUTH
OF McKAY CREEK.

Measurement, recording and reporting conditions:

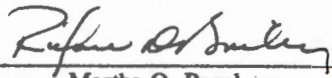
- A. The water user shall install a meter or other suitable measuring device as approved by the Director. The water user shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the right.
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Failure to comply with any of the provisions of this right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

The right to the use of the water for the above purpose is restricted to beneficial use without waste on the lands or place of use described. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WITNESS the signature of the Water Resources Director, affixed APRIL 19, 1999.



Martha O. Pagel

Recorded in State Record of Water Right Certificates numbered 76086.

Number of boxes of paper ordered, by year and type:

144 boxes of 30% recycled 8.5x11 paper in 2017

122 boxes of 100% recycled 8.5x11 paper in 2018

X boxes of X recycled 8.5x11 paper in 2019

X boxes of X recycled 8.5x11 paper in 2020

X boxes of X recycled 8.5x11 paper in 2021

STATE OF OREGON
COUNTY OF UMATILLA
PROPOSED CERTIFICATE OF WATER RIGHT

ad
Final
3/12/99
[Signature]

THIS CERTIFICATE ISSUED TO

U.S. BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

confirms the right to use the waters of MCKAY RESERVOIR CONSTRUCTED UNDER PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY ENHANCEMENT.

This right was perfected under Permit 51676. The date of priority is JUNE 18, 1993. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 12,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SW 1/4 SE 1/4, SECTION 34, TOWNSHIP 2 NORTH, RANGE 32 EAST, W.M.;
1200 FEET NORTH AND 220 FEET EAST FROM THE SOUTH 1/4 CORNER,
SECTION 34.

The Bureau of Reclamation (or owner/operator of the reservoir) shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

UMATILLA RIVER FROM THE MOUTH OF MCKAY CREEK, (SE 1/4 NW 1/4, SECTION 8, T 2 N, R 32 E, W.M.) TO THE MOUTH OF THE UMATILLA RIVER, (NW 1/4 NE 1/4, SECTION 18, T 5 N, R 28 E, W.M.) AND MCKAY CREEK FROM MCKAY DAM (NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.) TO THE MOUTH OF MCKAY CREEK.

Measurement, recording and reporting conditions:

- A. The water user shall install a meter or other suitable measuring device as approved by the Director. The water user shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the permit. *right*
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Failure to comply with any of the provisions of this ^{right}~~permit~~ may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

The right to the use of the water for the above purpose is restricted to beneficial use without waste on the lands or place of use described. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

73451.SB ~~Q~~

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

208-378-5322

to use the waters of MCKAY RESERVOIR CONSTRUCTED UNDER PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY ENHANCEMENT.

This permit is issued approving Application 73451. The date of priority is JUNE 21, 1993. The use is limited to not more than 12,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source.

The Bureau shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.; 1260 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 34.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

Umatilla River from the mouth of McKay Creek, (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the mouth of the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 5 N, R 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Actual construction work shall begin on or before July 11, 1996, and shall be completed on or before October 1, 1997. Complete application of the water to the use shall be made on or before October 1, 1998.

PAGE TWO

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director of the Water Resources Department has found that the proposed use of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Issued this date July 11, 1995.



Water Resources Department
Martha O. Pagel
Director

Application 73451
Basin 7

Water Resources Department
Volume 4 McKay Creek & Misc

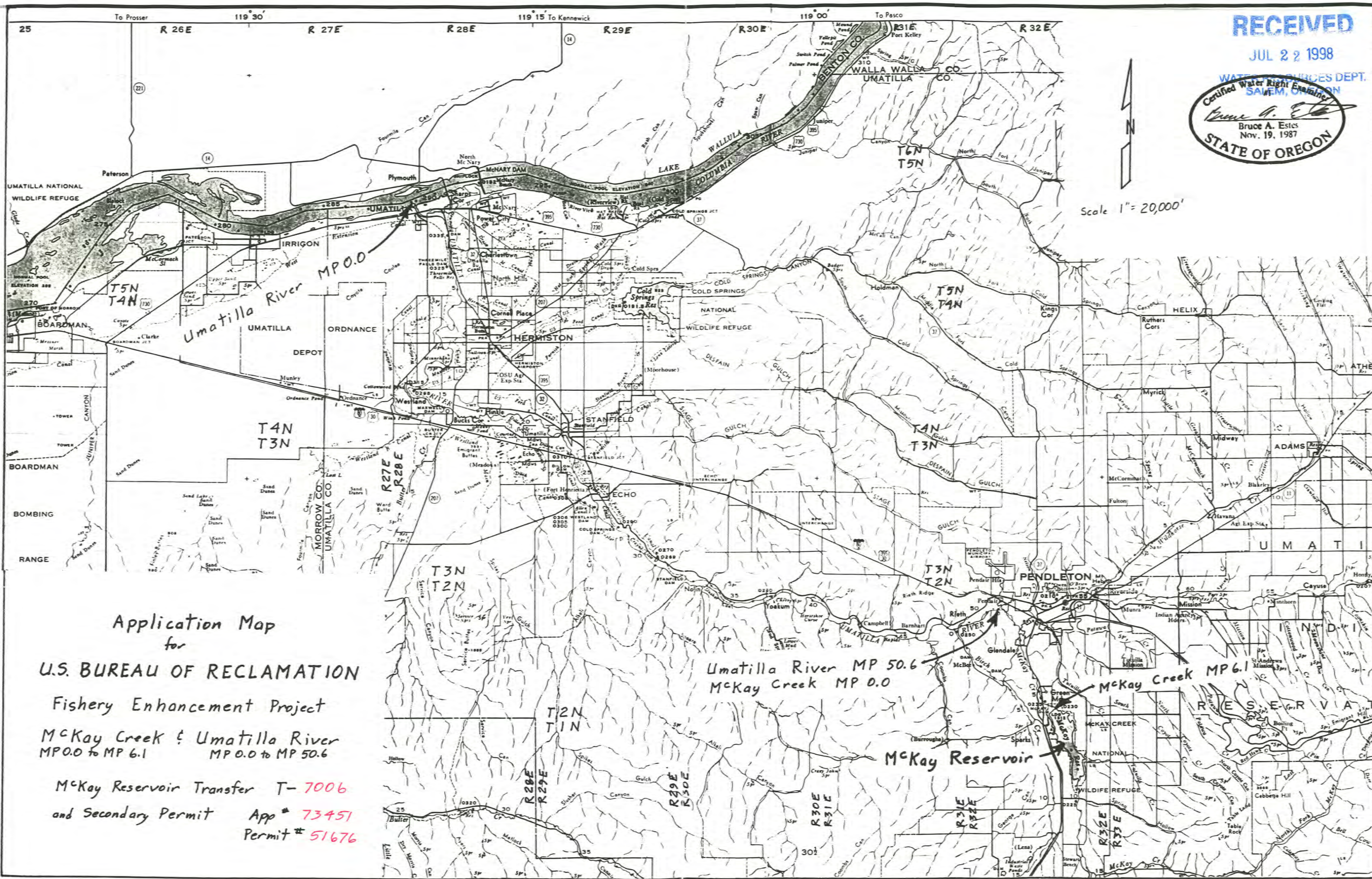
PERMIT 51676
District 5

RECEIVED

JUL 22 1998

WATER RESOURCES DEPT.
SALEM, OREGON
Certified Water Right Examiner
Bruce A. Estes
Bruce A. Estes
Nov. 19, 1987
STATE OF OREGON

Scale 1" = 20,000'



Application Map
for
U.S. BUREAU OF RECLAMATION
Fishery Enhancement Project
McKay Creek & Umatilla River
MPO.0 to MP 6.1 MP 0.0 to MP 50.6
McKay Reservoir Transfer T-7006
and Secondary Permit App # 73451
Permit # 51676

Umatilla River MP 50.6
McKay Creek MP 0.0

McKay Reservoir

McKay Creek MP 6.1



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

IN REPLY
REFER TO:

PN-3110
WTR-1.10

SEP 17 1998

RECEIVED

SEP 21 1998

**WATER RESOURCES DEPT.
SALEM, OREGON**

Oregon Water Resources Department
Permit/Final Proof Processing
158 12th Street, NE
Salem OR 97310-0210

Subject: Claim of Beneficial Use and Site Report Application #73451, Permit #51676, McKay Reservoir, Umatilla Project.

Dear Sir:

Enclosed is a Claim of Beneficial Use and Site Report for permit #51676. The permit is for the use of water limited to not more than 12,000 acre-feet stored water only each year from McKay Reservoir for instream fisheries enhancement. If you are in need of further clarification please contact Ruth Page (208) 378-5382.

Sincerely,

Rich Rigby
Program Manager,
Water Rights and Acquisition

Enclosure



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

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

October 30, 1998

U.S. BUREAU OF RECLAMATION
1150 N CURTIS ROAD
BOISE, ID 83706-1234

REFERENCE: File 73451

This will acknowledge that your claim of beneficial use and map in the name of U.S. BUREAU OF RECLAMATION were received on SEPTEMBER 21, 1998. Your CWRE turned in the original final proof map on SEPTEMBER 18, 1998. These will be reviewed in the future to insure they are complete and correct.

If you have any questions please contact me at (503) 378-8455, extension 263, or dial toll free (within Oregon only) at 1-800-624-3199, extension 263.

Sincerely,

STEVE BROWN
Program Analyst
Certificate Section

SCB:tcb

cc: BRUCE ESTES, CWRE #1



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

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

July 23, 1998

Bruce Estes, PLS, CWRE
P.O. Box 17519
Salem, OR 97305

Reference: File S-73451 - U.S. Bureau of Reclamation

Dear Mr. Estes:

Thank you for your letter requesting a deviation of our map scale requirements. The department will accept a map as you have proposed.

Sincerely,

Steve Brown
Program Analyst

**ESTES
SURVEYS**SURVEYS
CONSULTING**LAND & WATER RIGHTS**

Bruce A. Estes, PLS, CWRE

60382 Arnold Rd.
Bend, OR 97702
(503) 382-7391*PO Box 17519*
6293 Sunnyview Rd. NE
Salem, OR 97305
(503) 585-7593
FAX 585-7593

July 19, 1998

RECEIVED

JUL 22 1998

WATER RESOURCES DEPT.
SALEM, OREGON

Donald E. Knauer, Senior Water Right Specialist
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Dear Don:

Re: S-73451

The Claim of Beneficial Use map for the instream fishery enhancement under the USBR permit 51676 does not lend itself to 1" = 1320' scale. The department has approved 1" = 2000' final proof scales before for large projects but even that would be a very unwieldy size to draft and store. Actually it would be difficult for people to understand. It would take eight 7.5 minute quad maps to layout a 1" = 2000' map of the stream reach.

I wrestled with this problem for the application map and came up with 1" = 20,000' which allows the project to be shown on 11" x 17" paper. That is very small scale but is actually easier to understand the benefited reach of the two streams. There is a benefit to the WRD and the Bureau for this scale which allows the map to be left in the file folder instead of a storage tube. Please review the copy of the application map, enclosed, and let me know if the scale is OK.

Thanks for your consideration. Give me a call if you have a better solution.

Sincerely,



Bruce A. Estes, PLS, CWRE

cc Ruth Paige, USBR



United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

IN REPLY
REFER TO:

PN-3902
WTR-1.00

JUL 19 1996

RECEIVED

JUL 24 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Steve Applegate
Oregon Water Resources Department
158 12th Street, NE.
Salem OR 97310-0210

Subject: "Form A" Notice of Beginning of Construction, Permit 51676,
Application 73451, Umatilla Basin Project, Oregon (Water
Rights)

Dear Mr. Applegate:

Enclosed is completed "Form A" Notice for the subject permit. The permit is for use of waters from McKay Reservoir for instream fishery enhancement. If you have any questions, please contact Phillip E. Graf, PN-3902 at 208-378-5322 or 208-378-5305 Fax.

Sincerely,

Patti Llewellyn
Program Manager
Lands and Recreation

Enclosure

cc: See attached:

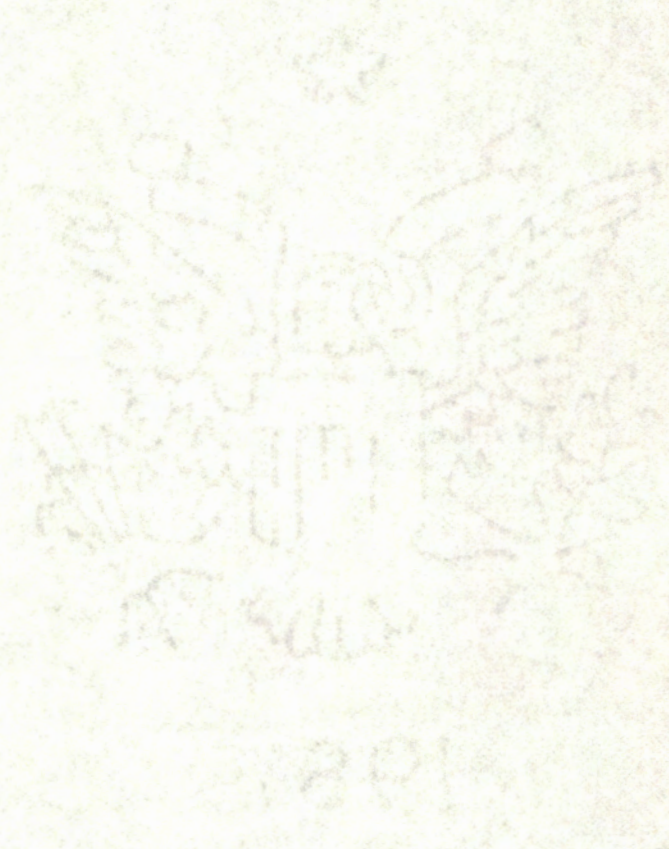
cc: Tony Justus
Oregon Water Resources Department
3920 Westgate
Pendleton OR 97801

Bruce Estes
CWRE
6293 Sunnyview Road, NE.
Salem OR 97305

RECEIVED

JUL 24 1996

WATER RESOURCES DEPT.
SALEM, OREGON



JUL 24 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Form C (690-9-77)

IMPORTANT—This form is a notice to the Water Resources Director that permittee is ready to make final proof to the extent to which the water has actually been applied to the intended use under the terms of the permit. Permittee is cautioned that Certificate of Water Right will be issued based on the extent of the quantity and use as determined by the final proof inspection and survey which will be made in response to the filing of this Form C.

NOTE: In the case of an irrigation permit, this Form C should not be mailed to the Water Resources Department until all of the land described in the permit, which it is intended to irrigate under this permit at any time, has actually been irrigated.

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when all of the water has been applied.

Application No.

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

I,, the holder of Permit No.

to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in accordance with the terms of said permit, on the day of, 19.....

Remarks:

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 19.....

(Signature of Applicant)

(Address)

Form B (690-9-77)

Application No.

NOTICE OF COMPLETION OF CONSTRUCTION

I,, the holder of Permit No.

to appropriate the public waters of the state of Oregon, completed the construction of the works described therein on the day of, 19.....

Remarks:

If the works have less capacity than described in the permit, or you have definitely abandoned part of the proposed development, you should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 19.....

(Signature of Applicant)

(Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is completed.

LAND & WATER RIGHTS

Bruce A. Estes, PLS, CWRE

60382 Arnold Rd.
Bend, OR 97702
(503) 382-73916293 Sunnyview Rd. NE
Salem, OR 97305
(503) 585-7593
FAX 585-7593SEP 21 1998
WATER RESOURCES DEPT.
SALEM, OREGON**CLAIM OF BENEFICIAL USE AND SITE REPORT**Application 73451, Permit 51676
in the name of
U.S. BUREAU OF RECLAMATION

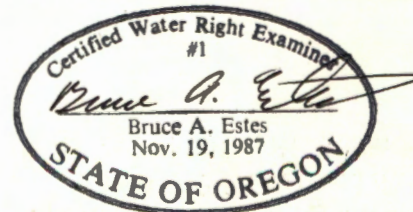
INFORMATION: Discussed the project with Loren Kjeldjard and Ed Farin.

SOURCE: McKay Reservoir.

DIVERSION POINT: The center of the dam is in SW 1/4 SE 1/4 of Section 34, T 2 N, R 32 E,
W.M.; 1200' North and 220' East from the S 1/4 corner of section 34.

USE: Instream Fishery Enhancement for McKay Creek from the dam to the Umatilla River and the Umatilla River from the mouth of McKay Creek to the Columbia River. Requests are made to Ed Farin, Umatilla River Coordinator, for releases to satisfy the minimum flows on the Umatilla River for fish flows. The maximum rate for instream fishery use is 300 cfs. The reservoir and streams are capable of much higher flows. Releases from McKay Reservoir in excess of those called for under the phase II exchange program are charged to the storage dedicated to use under this permit. Transfer T-7006 entered the same date this permit was issued provided for the use of storage from McKay Reservoir for Supplemental Irrigation and Instream Fishery Enhancement Releases. An allocation of 12,000 acre ft was provided for this permit. Releases were made for fish use in 1996, 1997 and 1998. The 1997 release under this permit amounted to 4065 acre feet and 6000 ac ft have been delivered so far this year.

An inspection of the dam and streams involved under the terms of permit 51676 was made by me on August 8, 1996, with follow up information obtained September 4, 1998 and the facts contained in this report and accompanying map are correct to the best of my knowledge.



I, Richard M. Rife, agree to the findings of the CWRE and submit this site report and map as the Bureau's Claim of Beneficial Use of the water as provided under the terms and conditions of permit 51676 and hereby request a water right certificate be issued.

Program Manager, Water Rights and Acquisition
title

Public Interest Review

File No. 73451

I. Findings relating to OAR 690-11-195(2):

✓ The proposed water use is NOT prohibited by statute or scenic waterway criteria.

Comments:

✓ The proposed water use IS a classified use under the applicable basin program (OAR 690-_____)OR an application for the use HAS BEEN filed under ORS 536.295 and OAR Chapter 690, Division 82;

Comments:

✓ The proposed water use IS consistent with conditions previously imposed by the Commission on appropriations from the same source;

Comments:

✓ The proposed water use will NOT conflict with existing water rights;

Comments:

✓ Water IS available from the source to support the proposed water use.

Comments:

II. Findings relating to OAR 690-11-195(3):

✓ Population growth demands for domestic and municipal uses:

Finding: Nothing in the record developed for this application establishes the proposed water use would interfere with future demands for domestic and municipal uses as estimated by current rates of population growth in the area.

✓ Economic development for agriculture, navigation, manufacturing, industry, power generation, commercial fishing, forestry and mining:

Finding: Nothing in the record developed for this application establishes the proposed water use would appropriate water otherwise needed for economic development for agriculture, navigation, manufacturing, industry, power generation, commercial fishing, forestry and mining.

✓ Health and safety requirements for sanitation, drainage, flood control, and fire protection:

Finding: Nothing in the record developed for this application establishes the proposed water use would appropriate water otherwise needed for health and safety requirements for sanitation, drainage, flood control, and fire protection.

✓ Public values and uses for recreation, pollution abatement, fish and wildlife resources, and scenic waterway protection:

Finding: The water availability determination made for this application reflects public value needs listed above as incorporated in instream water rights applications and certificates and scenic waterway flow data.

Public Interest Review

File No. 73451

III. Findings relating to OAR 690-11-195(4):

✓ Existing claims to water from the same source:

Finding: The proposed water use has been analyzed in light of other needs from the same source. Exercise of any permit issued for the proposed use would not interfere with existing uses. The water availability determination made for this application takes into account water needed for pending applications proposed for approval from the same source.

✓ Land use goals, comprehensive plans, or other land use matters:

Finding: The application is compatible with the comprehensive plan of the affected local government, as evidenced by the required land use information form (or receipt). No other land use matters have been raised by citizens, local governments, or state agencies.

✓ Identified environmental concerns:

Finding: No general environmental concerns relating to the exercise of the proposed permit have been identified in the review of agency records or by others.

✓ Character and extent of other natural resources which are present in the water source basin:

Finding: No other natural resources in the water source basin will be adversely effected according to the agency records.

✓ Riparian and aquatic fauna and flora characteristics:

Finding: No riparian and aquatic fauna and flora characteristics in the water source basin will be adversely effected in review of agency records or by others.

✓ Recreational use and potential of the water source and its basin area:

Finding: Nothing in the records indicate the proposed use will interfere recreational use and potential use within the basin.

✓ Agricultural potential of the area:

Finding: The proposed use(s) will not adversely affect agricultural potential of the area according to the records of the agency.

✓ Designated historic, cultural, or natural resource protection areas:

Finding: Nothing in the records indicate the proposed use will interfere with designated historic, cultural or natural resource protection areas.

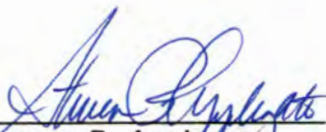
Public Interest Review

File No. 73451

IV. Public Interest Determination Summary

Based on the record in the application file and the analysis of the Department as presented to the Commission in the findings displayed above, the following public interest factors have been duly considered:

- ✓ 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.
- ✓ The maximum economic development of the waters involved.
- ✓ The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.
- ✓ The amount of waters available for appropriation for beneficial use.
- ✓ The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.
- ✓ All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.
- ✓ The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.525.


Steven P. Applegate
Administrator
Water Rights and Adjudications Division

7/11/95
Date



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107

Salem, OR 97304-3821

(503) 363-0121

FAX (503) 371-4926

FAX TRANSMITTAL

June 23, 1995

John Keys, Director
Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

Antone Minthorn
Chairman, Tribal Water Committee
PO Box 638
Pendleton, OR 97801

Steve Applegate
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

RE: FILES T-7006 AND 73451 - U. S. BUREAU OF RECLAMATION

On June 23, 1995, the Oregon Water Resources Congress Board withdrew their objections to the referenced permits as conditioned by the accompanying letter.

A handwritten signature in cursive script that reads "Jan Boettcher/mk".

Jan Boettcher
Executive Director

Att.



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107 ■ Salem, OR 97301-3821 ■ (503) 363-0121 ■ FAX (503) 371-4926

June 23, 1995

Oregon Water Resources Department
Water Rights Division
Commerce Building
158 12th NE
Salem, OR 97310-0210

RE: Files T-7006 and 73451 - U.S. Bureau of Reclamation

The Oregon Water Resources Congress withdraws its protest of T-7006 and its objective to Application S-73451 with the following understandings and conditions:

1. The Bureau's solicitor, Jack Hockberger, has stated orally that it is the Bureau's position that the Reclamation Authorization Act of 1975, in its reauthorization of the McKay Dam and Reservoir, authorizes the use of stored water in McKay Reservoir for downstream fisheries enhancement purposes. We understand the Act to authorize the storage of water for fish and wildlife, but we do not accept the Bureau's interpretation that the same Act authorizes the secondary release of water for these purposes. We will defer to the solicitor's office's interpretation at this time, but do not waive our right to challenge the Bureau's statutory authority for instream releases in the future..

2. The Bureau is authorized under Oregon law to hold a water right for fisheries enhancement purposes. It is not authorized to hold or apply for an instream water right under Oregon's instream water right law. The right which the Bureau is authorized to apply for and hold must be processed as all other surface water rights under the department's Division 11 rules. It is subject to a determination of water availability under those rules as well as all other tests and conditions. Once a permit is issued, it must be developed according to law and must be proven up as with other permits. It is also subject to cancellation for nonuse.

As a condition to the removal of our objections, we require that the department provide all parties to these proceedings with a detailed explanation of its water availability determination to satisfy the Division 11 findings requirement.

3. The Bureau's transfer application is subject to a no injury determination by the department. While OWRC believes that the transfer can not be made without

injury to existing water rights, we believe that this issue is better pursued by the potentially injured parties themselves.

As a condition to the removal of our protests, we require that the department provide all parties to these proceedings with a no injury determination together with a detailed explanation of how it has arrived at such determination. If, on the other hand, the department has determined there will be injury to existing water rights, then we require that this be acknowledged by the department together with an explanation how the department plans to mitigate against such injury.

We realize that time is of the essence in this matter. We would be willing to withdraw our protests without prior receipt of the information requested in items 2 and 3 above upon the representation of the department that it will provide the information we have demanded above.

4. We do not accept the department's explanation that neither the affected districts nor the affected landowners need join in the Bureau's application to transfer the storage uses in McKay Reservoir. We believe that the spirit of the rules, if not the literal language of them, requires that at the very least the districts as the representatives of their water users sign off on the transfer. We do not chose to litigate the interpretation of the rules at this time in a contested case hearing; rather we will accept the fact if the districts have an interim agreement or agreements with the Bureau, that such agreements are tantamount to the districts' approval of the transfer request.

5. Our withdrawal of our protests is contingent upon all pending Bureau requests for permits from McKay being resolved at the same time and being issued. All objections therefore must be concurrently resolved or removed by all parties to any permit from McKay storage. Specifically, the Bureau permit applications for Marion Jack, for Westland/Teel, and for Stanfield must be approved simultaneously with the approval of the above applications.

Sincerely,

Jan Boettcher, ml

**Jan Boettcher
Kip Lombard**

Information Record

Name	TO: WATER RES. DEPT.	Subject	SALEM
Organization	1) STEVE APPLEGATE	Phone - Bus	FAX 378-6203
Address	2) MIKE LADD	Home	FAX 278-0287
		Fax	PENDLETON
From		Delegated/Routed To	
		Due/Response Date	

Sequence Follow Up & Dates Needed Subject/ Said Response/They Said

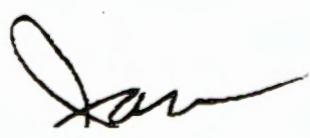
OWRC BOARD ADOPTED MOTION TO WITHDRAW OBJECTIONS UNDER CONDITIONS DESCRIBED IN FOLLOWING LETTER. IF THE CONDITIONS CANNOT BE MET, WE ARE NOT AUTHORIZED TO WITHDRAW AS APPROVED TODAY BY OUR BOARD.

I WILL BE BACK IN SALEM LATE TODAY.

363-0124
JAN BOETTCHER

OR, IN THE INTERIM, CONTACT
RIP LOMBARD 482-8491

OR CALL ME IN ONTARIO BEFORE 10:15 YOUR TIME
503-889-8621 x108



Post-It® Fax Note	7671	Date	6-23	# of pages	4
To	CAROL NUNN; SINGH	From	Mike Ladd		
Co./Dept.	OWRD; BOR	Co.	OWRD		
Phone #		Phone #	278-5454		
Fax #		Fax #			

1 OF 3



November 26, 1996

Laura A. Schroeder
Schroeder Law Offices
P.O. Box 1392
Hermiston, OR 97838

RE: Transfer 7006 and File 73451

Dear Laura:

Thank you for your letter of October 11, 1996. I apologize for the delay in responding.

We have investigated your suggestion that water released from McKay Reservoir for fish and wildlife purposes is illegal. I am enclosing a portion of the Reclamation Authorization Act adopted in 1975. Title III of the Act reauthorized the project to specifically include the use of water for fish and wildlife. Therefore, both transfer 7006 and water right file 73451 authorize uses which are allowed.

We will not be proposing cancellation of either the transfer or water right permit. Please contact either Tom Paul or myself if there are other reasons for which you feel that either the transfer or permit are inappropriate.

Sincerely,



Richard D. Bailey,
Administrator
Water Rights Division

RDB/dpc
enclosure
cc: Tom Paul
Files



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

Mar. 11

RECLAMATION AUTHORIZATION ACT

P.L. 94-228

SEC. 203. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the works authorized herein shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

Interest rate.

SEC. 204. There is hereby authorized to be appropriated for construction of works authorized by this title the sum of \$4,000,000 (January 1975 price levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

TITLE III

MCKAY DAM AND RESERVOIR, OREGON

SEC. 301. McKay Dam and Reservoir, Umatilla project, Oregon, is hereby reauthorized for the purposes of irrigation, flood control, fish and wildlife, recreation, and safety of dams, and the costs thereof shall be reallocated among these purposes by the Secretary of the Interior (hereinafter referred to as the "Secretary"), in a manner consistent with the provisions of this title.

43 USC
616ww.

SEC. 302. The Secretary is authorized to perform modifications to the spillway structure at McKay Dam as he determines to be reasonably required for safety of the dam from failure due to overtopping by potential flood inflows to the reservoir.

43 USC
616ww-1.

SEC. 303. Not to exceed six thousand acre-feet of storage capacity in McKay Reservoir shall be allocated for the primary purpose of retaining and regulating flood flows.

43 USC
616ww-2.

SEC. 304. Costs incurred in the modification of McKay Dam to insure its safety from failure shall be nonreimbursable and nonreturnable. All other costs of McKay Dam and Reservoir, heretofore or hereinafter incurred, shall be allocated among the authorized purposes served by the dam and reservoir in accordance with standard cost allocation procedures, and the joint costs allocated to flood control, recreation, and fish and wildlife shall be nonreimbursable.

43 USC
616ww-3.

SEC. 305. The Secretary is authorized to enter into amendatory repayment contracts with the Stanfield and Westland Irrigation Districts, or other water users, if appropriate, to secure the return of reimbursable irrigation construction and operation and maintenance costs arising from the modification and reallocation of McKay Dam and Reservoir.

43 USC
616ww-4.

SEC. 306. There is hereby authorized to be appropriated for modification of McKay Dam the sum of \$1,300,000 (based on July 1975 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved, and, in addition thereto sums as may be required for operation and maintenance of McKay Dam and Reservoir.

43 USC
616ww-5.

6/26/95 @ WLD

74282 - Marion Jack

- Objection Letter from DEQ
(expect to be withdrawn) ★

73451 ‡

? T-7006 - USBR

- Tucker protest w/drawn, subj. to
74282 permits by 7/10

- OWRC. -

Protest withdrawn w/ conditions

2. W.A. in TR - Send letter to OWRC

3. No Inj. determ. in order

5. Issue All together ★

3. 72361 - SID (3600 ac)

- WW obj. to T.R. Y94

- Underlying primary rights undecided

- Not expecting water this yr. - only interim contract (230 ac)

☐ ★ - Need to set up
time schedule for
agreements by 6/96.

4. 74318 - Westland/Teel

- Standing objections from WaterWatch & ODFW ★

- Land ownership - names/addresses Grail will check this

- Map w/ more detail in area. ↘

WLD - note

DRAFT

June 29, 1995

Jan Boettcher, Executive Director
Oregon Water Resources Congress
727 Center Street NE, Suite 107
Salem, OR 97301-3821

Reference: Files T-7006 and 73451

Dear Ms. Boettcher:

This letter is intended to describe the Water Resources Department's position in response to your letter dated June 23, 1995.

The U.S. Bureau of Reclamation (Bureau) can in fact hold an appropriative right under ORS 537.130 through 537.330. Nothing would prevent anyone from requesting a secondary permit for use of stored water for instream purposes, provided the water is stored under the primary reservoir right for the use.

McKay Reservoir, constructed under permit R-584, is owned and operated by the Bureau. The reservoir stores water for supplemental irrigation purposes under Certificate of Water Right No. 68258. Transfer Application No. T-7006 and Application for Permit No. 73451, if approved, will allow for change in character of storage and release of the stored water for fish enhancement purposes. Staff's memo of no injury test for granting approval of the transfer is attached.

The Bureau can make a variety of contract arrangements with water users. As owner of the reservoir, the Bureau may enter into or modify their particular agreements or contracts. This is a matter of contacts between parties in which the Water Resources Department has no authority. Nothing would prevent the Bureau from utilizing uncommitted storage for instream purposes. In the event the parties wish to stipulate in an agreement to modify their contracts, the Department would recognize and enforce the stipulation, provided of course the agreement is consistent with State Law.

Realizing there are different views pertaining to allocation of the entire storage capacity of McKay Reservoir, hopefully we can resolve the ongoing issues pertaining to the use of water to enhance streamflows for fish life purposes.

Sincerely,

Steve Applegate
Administrator
Water Right/Adjudication Division



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107

Salem, OR 97301-3821

(503) 363-0121

FAX (503) 371-4926

July 10, 1995

Oregon Water Resources Department
Water Rights Division
Commerce Building
158 12th Street NE
Salem, OR 97310-0210

RE: Files T-7006 and 73451 - U.S. Bureau of Reclamation

We acknowledge receipt of the Department's letter in response to our letter of June 23, 1995, indicating and explaining the Department's findings in these matters that water is available for the purpose applied for and that the transfer requested may be made without injury to other water rights holders.

While we do not agree with all of the Department's findings, we do not choose to contest them at this time and in these cases. For purposes of our letter of June 23, we consider these conditions satisfied.

We further understand that the principal participants to the BOR/Stanfield Irrigation District application, #S-72361, including the district's board of directors, have agreed to negotiate in good faith toward the issuance of a permit beginning the 1996 irrigation season. Consequently, we withdraw the condition that this permit be issued concurrently with all other permits.

We now withdraw all of our objections to the above files.

Sincerely,

A handwritten signature in cursive script that reads "Jan Boettcher" with a small "mb" monogram at the end.

Jan Boettcher
Executive Director

cc: Gail Achterman
Steve Bloom, Kottkamp & O'Rourke
Bureau of Reclamation
Bill Caldwell
Mike Ladd
Tom Myrum

STOEL RIVES BOLEY JONES & GREY

M E M O R A N D U M

July 6, 1995

TO: Jan Boettcher, Oregon Water Resources Congress and
Steve Applegate, Oregon Water Resources Department
cc: Kip Lombard, Steve Bloom and Tom Myrum

FROM: Gail L. Achterman *Gal*

RE: OWRC Conditional Withdrawal of Objections

The Oregon Water Resources Congress ("OWRC") conditionally withdrew its objections to Transfer 7006 and Application 73451 on June 23, 1995. Waterwatch has now conditionally withdrawn its objections to Application S 74318. The Westland Irrigation District Board of Directors has accepted the permit conditions negotiated with Waterwatch. For your information Jan, I have attached copies of the draft permits and transfer order prepared by the Department.

Westland Irrigation District is anxious to get permit 74318 issued so that it can deliver water to affected landowners. It is our understanding that the Water Resources Department is preparing a letter to OWRC responding to the conditions stated in OWRC's letter of June 23, 1995. This letter will address the following points as we understand it: (1) the water availability determination for Application 73451; (2) the no injury determination for Transfer 7006; and (3) a commitment to make a decision on the out of boundary lands permit for the Stanfield Irrigation District before the 1996 irrigation season. Westland would greatly appreciate it if this letter could be sent to OWRC today.

When OWRC receives the letter from WRD what further steps, if any, will be taken before WRD issues the permits and the transfer order? Westland farmers need water as soon as possible and the Bureau of Reclamation has signed the interim contract authorizing service to the out of boundary lands.

July 10, 1995

VIA FAX AND REGULAR MAIL

Jan Boettcher, Executive Director
Oregon Water Resources Congress
727 Center Street NE, Suite 107
Salem, OR 97301-3821

WATER
RESOURCES
DEPARTMENT

Reference: Files T-7006 and 73451

Dear Ms. Boettcher:

This letter is intended to describe the Water Resources Department's position in response to your letter dated June 23, 1995.

The U.S. Bureau of Reclamation (Bureau) can in fact hold an appropriative right under ORS 537.130 through 537.330. Nothing in the law would prevent anyone from requesting a secondary permit for use of stored water for instream uses, provided the water is stored under the primary reservoir right for that use.

McKay Reservoir, constructed under permit R-584, is owned and operated by the Bureau. The reservoir stores water for supplemental irrigation purposes under Certificate of Water Right No. 68258. Transfer Application No. T-7006 and Application for Permit No. 73451, if both are approved, would allow for change in character of storage and release of the stored water for fish enhancement purposes. Staff's memo describing the Department's injury finding for granting approval of the transfer is attached.

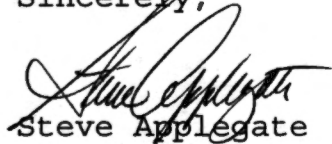
The simple summation of all issued water rights for use of McKay Reservoir water exceed the storage capacity. However, year-end storage figures in McKay over the past 15 years have averaged 12,373 acre-feet. The 60-year average carryover is 11,689 af. This data alone would demonstrate that water is available for a new secondary use. In addition, the Commission's policy on water allocation encourages allocation to "a broad range of beneficial uses," and exempts "legally stored water" from a determination of over-appropriation. We also understand that the Bureau contracts provide for a proportional sharing of the available stored water. In short, we conclude that water is available for additional uses.



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

I trust that this letter and the attached memo adequately address the concerns expressed in your letter of June 23. If further clarification is needed, please contact me.

Sincerely,



Steve Applegate
Administrator
Water Right/Adjudication Division

Enclosure

cc: Gail Achterman ✓
Reed Benson ✓
Bureau of Reclamation ✓
Becky Hiers, CTUIR ✓
Steve Sanders ✓
Martha Pagel ✓
Mike Ladd

July 10, 1995

TO: Martha Pagel, Director
FROM: Larry Nunn *LN* Transfer Specialist
SUBJECT: Transfer 7006, McKay Reservoir

This transfer requests to change the purpose of storage for the right perfected under Permit R-546 FROM supplemental irrigation TO supplemental irrigation OR instream fishery enhancement releases.

The reservoir is located on federal land, was built and is owned by the federal government, through the Bureau of Reclamation (BOR). BOR has issued contracts for delivery of the stored water to various individuals and irrigation districts. There are existing secondary permits for use of the stored water for supplemental irrigation.

The question was raised whether the contract water users need to give "permission" for the transfer. The answer is no. Under state water law, the land and appurtenant storage water right belong only to the BOR. However, any person may protest approval of the transfer application on the basis of injury to existing water rights.

In order for injury to occur to other water rights, approval of the transfer application would have to cause existing users of McKay storage to receive less water than they are legally entitled to. The approval of this transfer only adds a purpose for which water can be stored in the first place. This action has no impact on existing or future secondary water rights from the reservoir. Any new secondary permits require a contract with the reservoir owner.

In this case, none of the contract users of McKay water protested. Protests were filed by OWRC and Marion-Jack Improvement District, and subsequently withdrawn. Letters of concern, dealing with public interest issues not germane to the transfer process, were received from individuals and Grange members. Notice was published in the local newspaper, and no other comments were received. The Watermaster said the change can be made without injury. The transfer should be approved.



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107

Salem, OR 97301-3821

(503) 363-0121

FAX (503) 371-4926

July 10, 1995

Oregon Water Resources Department
Water Rights Division
Commerce Building
158 12th Street NE
Salem, OR 97310-0210

RE: Files T-7006 and 73451 - U.S. Bureau of Reclamation

We acknowledge receipt of the Department's letter in response to our letter of June 23, 1995, indicating and explaining the Department's findings in these matters that water is available for the purpose applied for and that the transfer requested may be made without injury to other water rights holders.

While we do not agree with all of the Department's findings, we do not choose to contest them at this time and in these cases. For purposes of our letter of June 23, we consider these conditions satisfied.

We further understand that the principal participants to the BOR/Stanfield Irrigation District application, #S-72361, including the district's board of directors, have agreed to negotiate in good faith toward the issuance of a permit beginning the 1996 irrigation season. Consequently, we withdraw the condition that this permit be issued concurrently with all other permits.

We now withdraw all of our objections to the above files.

Sincerely,

Jan Boettcher
Jan Boettcher

Executive Director

cc: Gail Achterman
Steve Bloom, Kottkamp & O'Rourke
Bureau of Reclamation
Bill Caldwell
Mike Ladd
Tom Myrum

Memorandum

Date: July 7, 1995

WATER
RESOURCES
DEPARTMENT

To:

FAX NO.

Reed Benson, WaterWatch

503-295-2791

Walt Fite, USBR

509-454-5611

Gail Achterman, Stoel Rives

503-220-2480

From: Steve Brown, Fax No. 503-378-6203

Changes to the permit conditions were made in response to my earlier fax of draft permits for Applications 74318 and 73451.

The changes made in 74318 (Westland) were based upon Mr. Benson's letter of July 5, 1995. A change in Application 73451 was requested, by Mike Ladd, to allow for notification to the Watermaster that water would be released.

Please confirm your position to the current language of the draft permits for Applications 74318 and 73451 included in this fax.

A response confirming agreement, at the earliest Monday morning, July 10, 1995, will allow the Department to consider action to approve Applications 74318, 73451 and Transfer No. 7006.

Please feel free to contact me if you have questions and I will be happy to address any concerns you may have.



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

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

208-378-5322

to use the waters of MCKAY RESERVOIR, a tributary of UMATILLA RIVER, for SUPPLEMENTAL IRRIGATION OF 8800.4 ACRES.

This permit is issued approving Application 74318. The date of priority is JULY 25, 1994. The use is limited to not more than 7215.0 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source. USE OF STORED WATER UNDER THIS PERMIT SHALL NOT EXCEED 4.5 ACRE-FEET PER ACRE OF LAND IRRIGATED.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.; 1260 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 34.

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 4.5 acre-feet for each acre irrigated during the irrigation season of each year. Use of water under this permit is limited to that period when necessary for beneficial use in conjunction with the irrigation of their respective lands.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

NW 1/4 SW 1/4	13.8	ACRES	NW 1/4 NW 1/4	33.8	ACRES
SECTION 3			SW 1/4 NW 1/4	35.9	ACRES
SW 1/4 NW 1/4	37.0	ACRES	SE 1/4 NW 1/4	31.1	ACRES
SE 1/4 NW 1/4	37.0	ACRES	NE 1/4 SW 1/4	28.0	ACRES
NE 1/4 SW 1/4	29.1	ACRES	NW 1/4 SW 1/4	29.8	ACRES
NW 1/4 SW 1/4	28.0	ACRES	SW 1/4 SW 1/4	35.9	ACRES
SW 1/4 SW 1/4	38.0	ACRES	SE 1/4 SW 1/4	31.6	ACRES
SE 1/4 SW 1/4	1.2	ACRES	NE 1/4 SE 1/4	31.1	ACRES
NE 1/4 SE 1/4	29.8	ACRES	NW 1/4 SE 1/4	33.4	ACRES
NW 1/4 SE 1/4	35.1	ACRES	SW 1/4 SE 1/4	35.3	ACRES
SW 1/4 SE 1/4	35.3	ACRES	SE 1/4 SE 1/4	30.6	ACRES
SE 1/4 SE 1/4	29.5	ACRES	SECTION 9		
SECTION 4			NE 1/4 NE 1/4	32.5	ACRES
NE 1/4 NE 1/4	21.7	ACRES	NW 1/4 NE 1/4	32.5	ACRES
NW 1/4 NE 1/4	35.0	ACRES	SW 1/4 NE 1/4	32.5	ACRES
SE 1/4 NE 1/4	8.5	ACRES	SE 1/4 NE 1/4	32.5	ACRES
NE 1/4 SE 1/4	21.6	ACRES	NE 1/4 NW 1/4	28.3	ACRES
SECTION 7			NW 1/4 NW 1/4	33.9	ACRES
SW 1/4 NW 1/4	14.9	ACRES	SW 1/4 NW 1/4	34.4	ACRES
NW 1/4 SW 1/4	32.4	ACRES	SE 1/4 NW 1/4	28.8	ACRES
SW 1/4 SE 1/4	23.0	ACRES	NE 1/4 SW 1/4	31.9	ACRES
SECTION 8			NW 1/4 SW 1/4	32.5	ACRES
NE 1/4 NE 1/4	31.0	ACRES	SW 1/4 SW 1/4	32.4	ACRES
NW 1/4 NE 1/4	34.1	ACRES	SE 1/4 SW 1/4	31.9	ACRES
SW 1/4 NE 1/4	35.2	ACRES	NE 1/4 SE 1/4	1.4	ACRES
SE 1/4 NE 1/4	29.5	ACRES	NW 1/4 SE 1/4	39.6	ACRES
NE 1/4 NW 1/4	30.7	ACRES	SW 1/4 SE 1/4	4.4	ACRES
			SECTION 10		

DRAFT

SW 1/4 SE 1/4 29.5 ACRES
SE 1/4 SE 1/4 31.0 ACRES

SECTION 13

NW 1/4 NE 1/4 38.0 ACRES
SW 1/4 NE 1/4 38.0 ACRES
NE 1/4 NW 1/4 31.3 ACRES
NW 1/4 NW 1/4 31.3 ACRES
SW 1/4 NW 1/4 31.2 ACRES
SE 1/4 NW 1/4 31.2 ACRES
NE 1/4 SW 1/4 31.2 ACRES
NW 1/4 SW 1/4 31.4 ACRES
SW 1/4 SW 1/4 31.2 ACRES
SE 1/4 SW 1/4 31.2 ACRES

SECTION 15

NE 1/4 NE 1/4 30.2 ACRES
NW 1/4 NE 1/4 32.0 ACRES
SW 1/4 NE 1/4 31.4 ACRES
SE 1/4 NE 1/4 31.4 ACRES
NE 1/4 NW 1/4 29.8 ACRES
NW 1/4 NW 1/4 32.2 ACRES
SW 1/4 NW 1/4 33.5 ACRES
SE 1/4 NW 1/4 29.5 ACRES
NE 1/4 SW 1/4 29.6 ACRES
NW 1/4 SW 1/4 32.2 ACRES
SW 1/4 SW 1/4 34.2 ACRES
SE 1/4 SW 1/4 29.0 ACRES
NE 1/4 SE 1/4 31.2 ACRES
NW 1/4 SE 1/4 31.2 ACRES
SW 1/4 SE 1/4 31.5 ACRES
SE 1/4 SE 1/4 31.2 ACRES

SECTION 16

NE 1/4 NE 1/4 29.0 ACRES
NW 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 21.0 ACRES
SE 1/4 NE 1/4 25.0 ACRES
NE 1/4 SW 1/4 10.1 ACRES
SE 1/4 SW 1/4 5.8 ACRES
NE 1/4 SE 1/4 34.6 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 35.9 ACRES
SE 1/4 SE 1/4 24.5 ACRES

SECTION 17

NE 1/4 NE 1/4 31.4 ACRES
NW 1/4 NE 1/4 34.3 ACRES
SW 1/4 NE 1/4 31.4 ACRES
SE 1/4 NE 1/4 31.0 ACRES
NE 1/4 NW 1/4 31.4 ACRES
NW 1/4 NW 1/4 31.5 ACRES
SW 1/4 NW 1/4 32.6 ACRES
SE 1/4 NW 1/4 31.4 ACRES
NE 1/4 SW 1/4 31.3 ACRES
NW 1/4 SW 1/4 31.2 ACRES
SW 1/4 SW 1/4 31.2 ACRES
SE 1/4 SW 1/4 31.3 ACRES
NE 1/4 SE 1/4 31.3 ACRES
NW 1/4 SE 1/4 31.2 ACRES
SW 1/4 SE 1/4 31.3 ACRES
SE 1/4 SE 1/4 31.3 ACRES

SECTION 21

NE 1/4 NE 1/4 32.5 ACRES
NW 1/4 NE 1/4 32.5 ACRES
SW 1/4 NE 1/4 32.5 ACRES
SE 1/4 NE 1/4 32.5 ACRES
NE 1/4 NW 1/4 31.2 ACRES
NW 1/4 NW 1/4 31.5 ACRES
SW 1/4 NW 1/4 31.5 ACRES
SE 1/4 NW 1/4 31.2 ACRES

SECTION 22

SW 1/4 NW 1/4 35.1 ACRES
SE 1/4 NW 1/4 21.4 ACRES
NE 1/4 SW 1/4 26.5 ACRES
NW 1/4 SW 1/4 27.6 ACRES
SW 1/4 SW 1/4 38.3 ACRES
SE 1/4 SW 1/4 38.8 ACRES
NE 1/4 SE 1/4 27.6 ACRES
NW 1/4 SE 1/4 32.5 ACRES
SW 1/4 SE 1/4 26.4 ACRES
SE 1/4 SE 1/4 26.2 ACRES

SECTION 23

NE 1/4 NE 1/4 30.0 ACRES
NW 1/4 NE 1/4 30.4 ACRES
SW 1/4 NE 1/4 38.4 ACRES
SE 1/4 NE 1/4 32.4 ACRES
NE 1/4 NW 1/4 32.0 ACRES
NW 1/4 NW 1/4 30.4 ACRES
SW 1/4 NW 1/4 34.0 ACRES
SE 1/4 NW 1/4 38.4 ACRES
NE 1/4 SW 1/4 36.5 ACRES
NW 1/4 SW 1/4 29.3 ACRES
SW 1/4 SW 1/4 32.8 ACRES
SE 1/4 SW 1/4 40.0 ACRES
NE 1/4 SE 1/4 30.1 ACRES
NW 1/4 SE 1/4 35.4 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 25

NE 1/4 NE 1/4 30.4 ACRES
NW 1/4 NE 1/4 35.7 ACRES
SW 1/4 NE 1/4 35.2 ACRES
SE 1/4 NE 1/4 28.4 ACRES
NE 1/4 NW 1/4 23.1 ACRES
NW 1/4 NW 1/4 30.2 ACRES
SW 1/4 NW 1/4 39.1 ACRES
SE 1/4 NW 1/4 38.7 ACRES
NE 1/4 SW 1/4 21.3 ACRES
NW 1/4 SW 1/4 24.7 ACRES
SW 1/4 SW 1/4 0.2 ACRES
SE 1/4 SW 1/4 26.3 ACRES
NE 1/4 SE 1/4 30.0 ACRES
NW 1/4 SE 1/4 29.8 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 26

NE 1/4 NE 1/4 38.0 ACRES
NW 1/4 NE 1/4 27.6 ACRES
SW 1/4 NE 1/4 37.7 ACRES
SE 1/4 NE 1/4 22.4 ACRES
NE 1/4 NW 1/4 30.6 ACRES
NW 1/4 NW 1/4 30.6 ACRES
SW 1/4 NW 1/4 30.6 ACRES
SE 1/4 NW 1/4 30.6 ACRES
NE 1/4 SW 1/4 33.5 ACRES
NW 1/4 SW 1/4 31.1 ACRES
SW 1/4 SW 1/4 35.3 ACRES
SE 1/4 SW 1/4 28.2 ACRES
NE 1/4 SE 1/4 37.4 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 17.6 ACRES
SE 1/4 SE 1/4 13.0 ACRES

SECTION 27

NE 1/4 NE 1/4 30.6 ACRES
 NW 1/4 NE 1/4 30.6 ACRES
 SW 1/4 NE 1/4 31.6 ACRES
 SE 1/4 NE 1/4 31.6 ACRES
 NE 1/4 NW 1/4 30.7 ACRES
 NW 1/4 NW 1/4 30.7 ACRES
 SW 1/4 NW 1/4 30.7 ACRES
 SE 1/4 NW 1/4 30.7 ACRES
 NE 1/4 SW 1/4 30.5 ACRES
 NW 1/4 SW 1/4 30.2 ACRES
 SW 1/4 SW 1/4 34.3 ACRES
 SE 1/4 SW 1/4 34.5 ACRES
 NE 1/4 SE 1/4 27.2 ACRES
 NW 1/4 SE 1/4 28.0 ACRES
 SW 1/4 SE 1/4 31.2 ACRES
 SE 1/4 SE 1/4 30.9 ACRES

SECTION 28

NE 1/4 NE 1/4 31.8 ACRES
 NW 1/4 NE 1/4 31.0 ACRES
 SW 1/4 NE 1/4 30.6 ACRES
 SE 1/4 NE 1/4 31.3 ACRES
 NE 1/4 NW 1/4 29.4 ACRES
 NW 1/4 NW 1/4 33.1 ACRES
 SW 1/4 NW 1/4 33.1 ACRES
 SE 1/4 NW 1/4 29.4 ACRES

SECTION 29

NE 1/4 NE 1/4 31.0 ACRES
 NW 1/4 NE 1/4 40.0 ACRES
 SW 1/4 NE 1/4 36.4 ACRES
 SE 1/4 NE 1/4 34.4 ACRES
 NE 1/4 NW 1/4 31.6 ACRES
 NW 1/4 NW 1/4 31.2 ACRES
 SW 1/4 NW 1/4 32.8 ACRES
 SE 1/4 NW 1/4 38.1 ACRES
 NE 1/4 SW 1/4 39.8 ACRES
 NW 1/4 SW 1/4 29.0 ACRES
 SW 1/4 SW 1/4 30.2 ACRES
 SE 1/4 SW 1/4 31.6 ACRES

SECTION 35

NE 1/4 NE 1/4 30.3 ACRES
 NW 1/4 NE 1/4 39.3 ACRES
 SW 1/4 NE 1/4 38.0 ACRES
 SE 1/4 NE 1/4 31.2 ACRES
 NE 1/4 NW 1/4 40.0 ACRES
 NW 1/4 NW 1/4 29.2 ACRES
 SW 1/4 NW 1/4 32.4 ACRES
 SE 1/4 NW 1/4 38.0 ACRES
 NE 1/4 SW 1/4 12.5 ACRES
 NE 1/4 SE 1/4 28.8 ACRES
 NW 1/4 SE 1/4 38.0 ACRES
 SW 1/4 SE 1/4 28.6 ACRES
 SE 1/4 SE 1/4 40.0 ACRES

SECTION 36

TOWNSHIP 3 NORTH, RANGE 28 EAST,
 WM

SW 1/4 SW 1/4 7.0 ACRES

SECTION 16

NW 1/4 SW 1/4 26.5 ACRES
 SW 1/4 SW 1/4 26.2 ACRES
 SW 1/4 SE 1/4 36.7 ACRES
 SE 1/4 SE 1/4 18.5 ACRES

SECTION 17

NE 1/4 SE 1/4 23.2 ACRES
 SE 1/4 SE 1/4 23.1 ACRES

SECTION 18

NE 1/4 NE 1/4 5.6 ACRES
 SW 1/4 NE 1/4 30.4 ACRES
 SE 1/4 NE 1/4 37.0 ACRES
 SW 1/4 NW 1/4 6.5 ACRES
 SE 1/4 NW 1/4 19.7 ACRES
 NE 1/4 SW 1/4 39.8 ACRES
 NW 1/4 SW 1/4 50.8 ACRES
 SW 1/4 SW 1/4 37.2 ACRES
 SE 1/4 SW 1/4 21.4 ACRES
 NE 1/4 SE 1/4 38.1 ACRES
 NW 1/4 SE 1/4 40.0 ACRES
 SW 1/4 SE 1/4 37.7 ACRES
 SE 1/4 SE 1/4 35.6 ACRES

SECTION 19

NE 1/4 NE 1/4 38.1 ACRES
 NW 1/4 NE 1/4 39.8 ACRES
 SW 1/4 NE 1/4 40.0 ACRES
 SW 1/4 NE 1/4 40.0 ACRES
 NE 1/4 SW 1/4 31.6 ACRES
 NW 1/4 SW 1/4 35.0 ACRES
 SW 1/4 SW 1/4 39.8 ACRES
 SE 1/4 SW 1/4 40.0 ACRES
 NE 1/4 SE 1/4 40.0 ACRES
 NW 1/4 SE 1/4 36.7 ACRES
 SW 1/4 SE 1/4 25.9 ACRES
 SE 1/4 SE 1/4 37.6 ACRES

SECTION 20

NE 1/4 NW 1/4 13.1 ACRES
 NW 1/4 NW 1/4 40.0 ACRES
 SW 1/4 NW 1/4 39.8 ACRES
 SE 1/4 NW 1/4 10.2 ACRES
 NE 1/4 SW 1/4 12.0 ACRES
 NW 1/4 SW 1/4 39.3 ACRES
 SW 1/4 SW 1/4 38.8 ACRES
 SE 1/4 SW 1/4 6.4 ACRES

SECTION 21

NE 1/4 NW 1/4 2.1 ACRES
 NW 1/4 NW 1/4 22.6 ACRES
 SW 1/4 NW 1/4 4.8 ACRES

SECTION 28

NE 1/4 NE 1/4 39.7 ACRES
 NW 1/4 NE 1/4 34.0 ACRES
 SW 1/4 NE 1/4 29.1 ACRES
 SE 1/4 NE 1/4 36.7 ACRES
 NE 1/4 NW 1/4 39.7 ACRES
 NW 1/4 NW 1/4 38.9 ACRES
 SW 1/4 NW 1/4 39.6 ACRES
 SE 1/4 NW 1/4 33.6 ACRES
 NE 1/4 SW 1/4 32.6 ACRES
 NW 1/4 SW 1/4 38.9 ACRES
 SW 1/4 SW 1/4 40.0 ACRES
 SE 1/4 SW 1/4 31.2 ACRES

SECTION 29

NE 1/4 NE 1/4 38.6 ACRES
 NW 1/4 NE 1/4 34.0 ACRES
 SW 1/4 NE 1/4 33.2 ACRES
 SE 1/4 NE 1/4 39.2 ACRES
 NE 1/4 NW 1/4 38.0 ACRES
 NW 1/4 NW 1/4 53.7 ACRES
 SW 1/4 NW 1/4 44.8 ACRES
 SE 1/4 NW 1/4 29.6 ACRES
 NE 1/4 SE 1/4 37.2 ACRES
 NW 1/4 SE 1/4 31.8 ACRES
 SW 1/4 SE 1/4 31.2 ACRES
 SE 1/4 SE 1/4 40.0 ACRES

SECTION 30

TOWNSHIP 3 NORTH, RANGE 29
 EAST, WM

DRAFT

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The use of water under this permit is subject to the terms and conditions of Contract No. 5-07-10-W1077 or a satisfactory replacement between the Bureau of Reclamation and Westland Irrigation District, a copy of which is on file in the records of the Water Resources Department.

Use of McKay Reservoir water for irrigation on the lands listed in this permit and the lands within the federally recognized boundaries of Westland Irrigation District, not including water delivered under contracts with individual landowners or ditch companies whose lands lie within the district boundaries for water from McKay Reservoir, shall not exceed 26,568 acre-feet annually during the life of this permit. If this limit is reached in any year, water may not be delivered under this permit for the remainder of that year.

Water use under this permit may commence only after final state approval of a transfer T7006 and permit application 73451. This permit shall terminate immediately if Westland Irrigation District ceases to make 10 percent of its contracted and reserved stored water in McKay Reservoir, up to 2950 acre feet, available for fishery enhancement, or if Westland or Teel Irrigation District challenges fishery enhancement releases from McKay Reservoir.

This permit shall terminate 60 days after the U. S. Interior Department makes a final decision on the Westland Irrigation District's request for approval to expand its boundaries, but in no event later than October 31, 1997. The Director may extend this permit for up to one year if the Bureau of Reclamation files a new permit application for lands covered by this permit and included in the boundary of the Westland Irrigation District to allow time for the new application to be reviewed. This permit shall be extended only for lands covered by the new permit application.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

Actual construction work shall begin on or before July , 1996, and shall be completed on or before October 31, 1997. Complete application of the water to the use shall be made on or before October 31, 1997.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

(releases) per with call hand Bureau.

DRAFT

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director of the Water Resources Department has found that the proposed use of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Issued this date June , 1995.

Water Resources Department
Martha O. Pagel
Director

Application 74318
Basin 7

Water Resources Department
Volume 4 McKay Creek & Misc

PERMIT
District 5

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DRAFT

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

208-378-5322

to use the waters of MCKAY RESERVOIR CONSTRUCTED UNDER PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY ENHANCEMENT.

This permit is issued approving Application 73451. The date of priority is JUNE 21, 1993. The use is limited to not more than 12,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source.

The Bureau shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.; 1260 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 34.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

Umatilla River from the mouth of McKay Creek, (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the mouth of the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 5 N, R 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Actual construction work shall begin on or before July , 1996, and shall be completed on or before October 1, 1997. Complete application of the water to the use shall be made on or before October 1, 1998.

PAGE TWO

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director of the Water Resources Department has found that the proposed use of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Issued this date July , 1995.

Water Resources Department
Martha O. Pagel
Director

DRAFT

Application 73451
Basin 7

Water Resources Department
Volume 4 McKay Creek & Misc

PERMIT
District 5

Memorandum

Date: July 7, 1995

WATER
RESOURCES
DEPARTMENT

To:

FAX NO.

Reed Benson, WaterWatch

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Walt Fite, USBR

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Please confirm your position to the current language of the draft permits for Applications 74318 and 73451 included in this fax.

A response confirming agreement, at the earliest Monday morning, July 10, 1995, will allow the Department to consider action to approve Applications 74318, 73451 and Transfer No. 7006.

Please feel free to contact me if you have questions and I will be happy to address any concerns you may have.



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The Bureau shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.; 1260 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 34.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

Umatilla River from the mouth of McKay Creek, (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the mouth of the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 5 N, R 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Actual construction work shall begin on or before July , 1996, and shall be completed on or before October 1, 1997. Complete application of the water to the use shall be made on or before October 1, 1998.

PAGE TWO

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director of the Water Resources Department has found that the proposed use of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Issued this date July , 1995.

DRAFT

Water Resources Department
Martha O. Pagel
Director

Application 73451
Basin 7

Water Resources Department
Volume 4 McKay Creek & Misc

PERMIT
District 5

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

DRAFT

208-378-5322

to use the waters of MCKAY RESERVOIR, a tributary of UMATILLA RIVER, for SUPPLEMENTAL IRRIGATION OF 8800.4 ACRES.

This permit is issued approving Application 74318. The date of priority is JULY 25, 1994. The use is limited to not more than 7215.0 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source. USE OF STORED WATER UNDER THIS PERMIT SHALL NOT EXCEED 4.5 ACRE-FEET PER ACRE OF LAND IRRIGATED.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.; 1260 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 34.

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 4.5 acre-feet for each acre irrigated during the irrigation season of each year. Use of water under this permit is limited to that period when necessary for beneficial use in conjunction with the irrigation of their respective lands.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

NW 1/4 SW 1/4 13.8 ACRES	NW 1/4 NW 1/4 33.8 ACRES
SECTION 3	SW 1/4 NW 1/4 35.9 ACRES
SW 1/4 NW 1/4 37.0 ACRES	SE 1/4 NW 1/4 31.1 ACRES
SE 1/4 NW 1/4 37.0 ACRES	NE 1/4 SW 1/4 28.0 ACRES
NE 1/4 SW 1/4 29.1 ACRES	NW 1/4 SW 1/4 29.8 ACRES
NW 1/4 SW 1/4 28.0 ACRES	SW 1/4 SW 1/4 35.9 ACRES
SW 1/4 SW 1/4 38.0 ACRES	SE 1/4 SW 1/4 31.6 ACRES
SE 1/4 SW 1/4 1.2 ACRES	NE 1/4 SE 1/4 31.1 ACRES
NE 1/4 SE 1/4 29.8 ACRES	NW 1/4 SE 1/4 33.4 ACRES
NW 1/4 SE 1/4 35.1 ACRES	SW 1/4 SE 1/4 35.3 ACRES
SW 1/4 SE 1/4 35.3 ACRES	SE 1/4 SE 1/4 30.6 ACRES
SE 1/4 SE 1/4 29.5 ACRES	SECTION 9
SECTION 4	NE 1/4 NE 1/4 32.5 ACRES
NE 1/4 NE 1/4 21.7 ACRES	NW 1/4 NE 1/4 32.5 ACRES
NW 1/4 NE 1/4 35.0 ACRES	SW 1/4 NE 1/4 32.5 ACRES
SE 1/4 NE 1/4 8.5 ACRES	SE 1/4 NE 1/4 32.5 ACRES
NE 1/4 SE 1/4 21.6 ACRES	NE 1/4 NW 1/4 28.3 ACRES
SECTION 7	NW 1/4 NW 1/4 33.9 ACRES
SW 1/4 NW 1/4 14.9 ACRES	SW 1/4 NW 1/4 34.4 ACRES
NW 1/4 SW 1/4 32.4 ACRES	SE 1/4 NW 1/4 28.8 ACRES
SW 1/4 SE 1/4 23.0 ACRES	NE 1/4 SW 1/4 31.9 ACRES
SECTION 8	NW 1/4 SW 1/4 32.5 ACRES
NE 1/4 NE 1/4 31.0 ACRES	SW 1/4 SW 1/4 32.4 ACRES
NW 1/4 NE 1/4 34.1 ACRES	SE 1/4 SW 1/4 31.9 ACRES
SW 1/4 NE 1/4 35.2 ACRES	NE 1/4 SE 1/4 1.4 ACRES
SE 1/4 NE 1/4 29.5 ACRES	NW 1/4 SE 1/4 39.6 ACRES
NE 1/4 NW 1/4 30.7 ACRES	SW 1/4 SE 1/4 4.4 ACRES
	SECTION 10

DRAFT

SW 1/4 SE 1/4 29.5 ACRES
SE 1/4 SE 1/4 31.0 ACRES

SECTION 13

NW 1/4 NE 1/4 38.0 ACRES
SW 1/4 NE 1/4 38.0 ACRES
NE 1/4 NW 1/4 31.3 ACRES
NW 1/4 NW 1/4 31.3 ACRES
SW 1/4 NW 1/4 31.2 ACRES
SE 1/4 NW 1/4 31.2 ACRES
NE 1/4 SW 1/4 31.2 ACRES
NW 1/4 SW 1/4 31.4 ACRES
SW 1/4 SW 1/4 31.2 ACRES
SE 1/4 SW 1/4 31.2 ACRES

SECTION 15

NE 1/4 NE 1/4 30.2 ACRES
NW 1/4 NE 1/4 32.0 ACRES
SW 1/4 NE 1/4 31.4 ACRES
SE 1/4 NE 1/4 31.4 ACRES
NE 1/4 NW 1/4 29.8 ACRES
NW 1/4 NW 1/4 32.2 ACRES
SW 1/4 NW 1/4 33.5 ACRES
SE 1/4 NW 1/4 29.5 ACRES
NE 1/4 SW 1/4 29.6 ACRES
NW 1/4 SW 1/4 32.2 ACRES
SW 1/4 SW 1/4 34.2 ACRES
SE 1/4 SW 1/4 29.0 ACRES
NE 1/4 SE 1/4 31.2 ACRES
NW 1/4 SE 1/4 31.2 ACRES
SW 1/4 SE 1/4 31.5 ACRES
SE 1/4 SE 1/4 31.2 ACRES

SECTION 16

NE 1/4 NE 1/4 29.0 ACRES
NW 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 21.0 ACRES
SE 1/4 NE 1/4 25.0 ACRES
NE 1/4 SW 1/4 10.1 ACRES
SE 1/4 SW 1/4 5.8 ACRES
NE 1/4 SE 1/4 34.6 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 35.9 ACRES
SE 1/4 SE 1/4 24.5 ACRES

SECTION 17

NE 1/4 NE 1/4 31.4 ACRES
NW 1/4 NE 1/4 34.3 ACRES
SW 1/4 NE 1/4 31.4 ACRES
SE 1/4 NE 1/4 31.0 ACRES
NE 1/4 NW 1/4 31.4 ACRES
NW 1/4 NW 1/4 31.5 ACRES
SW 1/4 NW 1/4 32.6 ACRES
SE 1/4 NW 1/4 31.4 ACRES
NE 1/4 SW 1/4 31.3 ACRES
NW 1/4 SW 1/4 31.2 ACRES
SW 1/4 SW 1/4 31.2 ACRES
SE 1/4 SW 1/4 31.3 ACRES
NE 1/4 SE 1/4 31.3 ACRES
NW 1/4 SE 1/4 31.2 ACRES
SW 1/4 SE 1/4 31.3 ACRES
SE 1/4 SE 1/4 31.3 ACRES

SECTION 21

NE 1/4 NE 1/4 32.5 ACRES
NW 1/4 NE 1/4 32.5 ACRES
SW 1/4 NE 1/4 32.5 ACRES
SE 1/4 NE 1/4 32.5 ACRES
NE 1/4 NW 1/4 31.2 ACRES
NW 1/4 NW 1/4 31.5 ACRES
SW 1/4 NW 1/4 31.5 ACRES
SE 1/4 NW 1/4 31.2 ACRES

SECTION 22

SW 1/4 NW 1/4 35.1 ACRES
SE 1/4 NW 1/4 21.4 ACRES
NE 1/4 SW 1/4 26.5 ACRES
NW 1/4 SW 1/4 27.6 ACRES
SW 1/4 SW 1/4 38.3 ACRES
SE 1/4 SW 1/4 38.8 ACRES
NE 1/4 SE 1/4 27.6 ACRES
NW 1/4 SE 1/4 32.5 ACRES
SW 1/4 SE 1/4 26.4 ACRES
SE 1/4 SE 1/4 26.2 ACRES

SECTION 23

NE 1/4 NE 1/4 30.0 ACRES
NW 1/4 NE 1/4 30.4 ACRES
SW 1/4 NE 1/4 38.4 ACRES
SE 1/4 NE 1/4 32.4 ACRES
NE 1/4 NW 1/4 32.0 ACRES
NW 1/4 NW 1/4 30.4 ACRES
SW 1/4 NW 1/4 34.0 ACRES
SE 1/4 NW 1/4 38.4 ACRES
NE 1/4 SW 1/4 36.5 ACRES
NW 1/4 SW 1/4 29.3 ACRES
SW 1/4 SW 1/4 32.8 ACRES
SE 1/4 SW 1/4 40.0 ACRES
NE 1/4 SE 1/4 30.1 ACRES
NW 1/4 SE 1/4 35.4 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 25

NE 1/4 NE 1/4 30.4 ACRES
NW 1/4 NE 1/4 35.7 ACRES
SW 1/4 NE 1/4 35.2 ACRES
SE 1/4 NE 1/4 28.4 ACRES
NE 1/4 NW 1/4 23.1 ACRES
NW 1/4 NW 1/4 30.2 ACRES
SW 1/4 NW 1/4 39.1 ACRES
SE 1/4 NW 1/4 38.7 ACRES
NE 1/4 SW 1/4 21.3 ACRES
NW 1/4 SW 1/4 24.7 ACRES
SW 1/4 SW 1/4 0.2 ACRES
SE 1/4 SW 1/4 26.3 ACRES
NE 1/4 SE 1/4 30.0 ACRES
NW 1/4 SE 1/4 29.8 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 26

NE 1/4 NE 1/4 38.0 ACRES
NW 1/4 NE 1/4 27.6 ACRES
SW 1/4 NE 1/4 37.7 ACRES
SE 1/4 NE 1/4 22.4 ACRES
NE 1/4 NW 1/4 30.6 ACRES
NW 1/4 NW 1/4 30.6 ACRES
SW 1/4 NW 1/4 30.6 ACRES
SE 1/4 NW 1/4 30.6 ACRES
NE 1/4 SW 1/4 33.5 ACRES
NW 1/4 SW 1/4 31.1 ACRES
SW 1/4 SW 1/4 35.3 ACRES
SE 1/4 SW 1/4 28.2 ACRES
NE 1/4 SE 1/4 37.4 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 17.6 ACRES
SE 1/4 SE 1/4 13.0 ACRES

SECTION 27

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NE 1/4 NE 1/4 30.6 ACRES
NW 1/4 NE 1/4 30.6 ACRES
SW 1/4 NE 1/4 31.6 ACRES
SE 1/4 NE 1/4 31.6 ACRES
NE 1/4 NW 1/4 30.7 ACRES
NW 1/4 NW 1/4 30.7 ACRES
SW 1/4 NW 1/4 30.7 ACRES
SE 1/4 NW 1/4 30.7 ACRES
NE 1/4 SW 1/4 30.5 ACRES
NW 1/4 SW 1/4 30.2 ACRES
SW 1/4 SW 1/4 34.3 ACRES
SE 1/4 SW 1/4 34.5 ACRES
NE 1/4 SE 1/4 27.2 ACRES
NW 1/4 SE 1/4 28.0 ACRES
SW 1/4 SE 1/4 31.2 ACRES
SE 1/4 SE 1/4 30.9 ACRES

SECTION 28

NE 1/4 NE 1/4 31.8 ACRES
NW 1/4 NE 1/4 31.0 ACRES
SW 1/4 NE 1/4 30.6 ACRES
SE 1/4 NE 1/4 31.3 ACRES
NE 1/4 NW 1/4 29.4 ACRES
NW 1/4 NW 1/4 33.1 ACRES
SW 1/4 NW 1/4 33.1 ACRES
SE 1/4 NW 1/4 29.4 ACRES

SECTION 29

NE 1/4 NE 1/4 31.0 ACRES
NW 1/4 NE 1/4 40.0 ACRES
SW 1/4 NE 1/4 36.4 ACRES
SE 1/4 NE 1/4 34.4 ACRES
NE 1/4 NW 1/4 31.6 ACRES
NW 1/4 NW 1/4 31.2 ACRES
SW 1/4 NW 1/4 32.8 ACRES
SE 1/4 NW 1/4 38.1 ACRES
NE 1/4 SW 1/4 39.8 ACRES
NW 1/4 SW 1/4 29.0 ACRES
SW 1/4 SW 1/4 30.2 ACRES
SE 1/4 SW 1/4 31.6 ACRES

SECTION 35

NE 1/4 NE 1/4 30.3 ACRES
NW 1/4 NE 1/4 39.3 ACRES
SW 1/4 NE 1/4 38.0 ACRES
SE 1/4 NE 1/4 31.2 ACRES
NE 1/4 NW 1/4 40.0 ACRES
NW 1/4 NW 1/4 29.2 ACRES
SW 1/4 NW 1/4 32.4 ACRES
SE 1/4 NW 1/4 38.0 ACRES
NE 1/4 SW 1/4 12.5 ACRES
NE 1/4 SE 1/4 28.8 ACRES
NW 1/4 SE 1/4 38.0 ACRES
SW 1/4 SE 1/4 28.6 ACRES
SE 1/4 SE 1/4 40.0 ACRES

SECTION 36

TOWNSHIP 3 NORTH, RANGE 28 EAST,
WM

SW 1/4 SW 1/4 7.0 ACRES

SECTION 16

NW 1/4 SW 1/4 26.5 ACRES
SW 1/4 SW 1/4 26.2 ACRES
SW 1/4 SE 1/4 36.7 ACRES
SE 1/4 SE 1/4 18.5 ACRES

SECTION 17

NE 1/4 SE 1/4 23.2 ACRES
SE 1/4 SE 1/4 23.1 ACRES

SECTION 18

NE 1/4 NE 1/4 5.6 ACRES
SW 1/4 NE 1/4 30.4 ACRES
SE 1/4 NE 1/4 37.0 ACRES
SW 1/4 NW 1/4 6.5 ACRES
SE 1/4 NW 1/4 19.7 ACRES
NE 1/4 SW 1/4 39.8 ACRES
NW 1/4 SW 1/4 50.8 ACRES
SW 1/4 SW 1/4 37.2 ACRES
SE 1/4 SW 1/4 21.4 ACRES
NE 1/4 SE 1/4 38.1 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 37.7 ACRES
SE 1/4 SE 1/4 35.6 ACRES

SECTION 19

NE 1/4 NE 1/4 38.1 ACRES
NW 1/4 NE 1/4 39.8 ACRES
SW 1/4 NE 1/4 40.0 ACRES
SW 1/4 NE 1/4 40.0 ACRES
NE 1/4 SW 1/4 31.6 ACRES
NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 39.8 ACRES
SE 1/4 SW 1/4 40.0 ACRES
NE 1/4 SE 1/4 40.0 ACRES
NW 1/4 SE 1/4 36.7 ACRES
SW 1/4 SE 1/4 25.9 ACRES
SE 1/4 SE 1/4 37.6 ACRES

SECTION 20

NE 1/4 NW 1/4 13.1 ACRES
NW 1/4 NW 1/4 40.0 ACRES
SW 1/4 NW 1/4 39.8 ACRES
SE 1/4 NW 1/4 10.2 ACRES
NE 1/4 SW 1/4 12.0 ACRES
NW 1/4 SW 1/4 39.3 ACRES
SW 1/4 SW 1/4 38.8 ACRES
SE 1/4 SW 1/4 6.4 ACRES

SECTION 21

NE 1/4 NW 1/4 2.1 ACRES
NW 1/4 NW 1/4 22.6 ACRES
SW 1/4 NW 1/4 4.8 ACRES

SECTION 28

NE 1/4 NE 1/4 39.7 ACRES
NW 1/4 NE 1/4 34.0 ACRES
SW 1/4 NE 1/4 29.1 ACRES
SE 1/4 NE 1/4 36.7 ACRES
NE 1/4 NW 1/4 39.7 ACRES
NW 1/4 NW 1/4 38.9 ACRES
SW 1/4 NW 1/4 39.6 ACRES
SE 1/4 NW 1/4 33.6 ACRES
NE 1/4 SW 1/4 32.6 ACRES
NW 1/4 SW 1/4 38.9 ACRES
SW 1/4 SW 1/4 40.0 ACRES
SE 1/4 SW 1/4 31.2 ACRES

SECTION 29

NE 1/4 NE 1/4 38.6 ACRES
NW 1/4 NE 1/4 34.0 ACRES
SW 1/4 NE 1/4 33.2 ACRES
SE 1/4 NE 1/4 39.2 ACRES
NE 1/4 NW 1/4 38.0 ACRES
NW 1/4 NW 1/4 53.7 ACRES
SW 1/4 NW 1/4 44.8 ACRES
SE 1/4 NW 1/4 29.6 ACRES
NE 1/4 SE 1/4 37.2 ACRES
NW 1/4 SE 1/4 31.8 ACRES
SW 1/4 SE 1/4 31.2 ACRES
SE 1/4 SE 1/4 40.0 ACRES

SECTION 30

TOWNSHIP 3 NORTH, RANGE 29
EAST, WM

DRAFT

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The use of water under this permit is subject to the terms and conditions of Contract No. 5-07-10-W1077 or a satisfactory replacement between the Bureau of Reclamation and Westland Irrigation District, a copy of which is on file in the records of the Water Resources Department.

Use of McKay Reservoir water for irrigation on the lands listed in this permit and the lands within the federally recognized boundaries of Westland Irrigation District, not including water delivered under contracts with individual landowners or ditch companies whose lands lie within the district boundaries for water from McKay Reservoir, shall not exceed 26,568 acre-feet annually during the life of this permit. If this limit is reached in any year, water may not be delivered under this permit for the remainder of that year.

Water use under this permit may commence only after final state approval of a transfer T7006 and permit application 73451. This permit shall terminate immediately if Westland Irrigation District ceases to make 10 percent of its contracted and reserved stored water in McKay Reservoir, up to 2950 acre feet, available for fishery enhancement, or if Westland or Teel Irrigation District challenges fishery enhancement releases from McKay Reservoir.

This permit shall terminate 60 days after the U. S. Interior Department makes a final decision on the Westland Irrigation District's request for approval to expand its boundaries, but in no event later than October 31, 1997. The Director may extend this permit for up to one year if the Bureau of Reclamation files a new permit application for lands covered by this permit and included in the boundary of the Westland Irrigation District to allow time for the new application to be reviewed. This permit shall be extended only for lands covered by the new permit application.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

Actual construction work shall begin on or before July , 1996, and shall be completed on or before October 31, 1997. Complete application of the water to the use shall be made on or before October 31, 1997.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director of the Water Resources Department has found that the proposed use of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Issued this date June , 1995.

DRAFT

Water Resources Department
Martha O. Pagel
Director

Application 74318
Basin 7

Water Resources Department
Volume 4 McKay Creek & Misc

PERMIT
District 5

August 13, 1993

Mr. Phil Graf
Regional Water Rights Officer
U.S. Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

WATER
RESOURCES
DEPARTMENT

Reference: Number 73451

Dear Mr. Graf:

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 Water Use Permit(s). 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 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. 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.



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 690-11-195) 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 October 15, 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

Report Date: August 13, 1993

OREGON WATER RESOURCES DEPARTMENT

SATISFACTORY REPORT OF TECHNICAL REVIEW
FOR WATER USE PERMIT(S)

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, BY 5 P.M. ON OR BEFORE October 15, 1993.

1. APPLICATION FILE NUMBER - S 73451

2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:

U. S. Bureau of Reclamation
1150 N. Curtis Road
Boise, ID 83706-1234

Umatilla County 208-378-5322

Date application received for filing and/or tentative date of priority: 6/21/1993

SOURCE: McKay Reservoir constructed under permit R-584, tributary to Umatilla River.

Purpose and/or use: instream fishery enhancement

Flow: 12,000 ACRE-FEET STORED WATER ONLY.

Point of Diversion Location: NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM.

Place of use:

Umatilla River from the mouth of McKay Creek, (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the mouth of the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 5 N, R 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 80% of the time during each monthly period.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There are existing rights from this point of diversion.

There are existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Water in the amount of 12,000 ACRE-FEET is likely available for the normal period of use. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

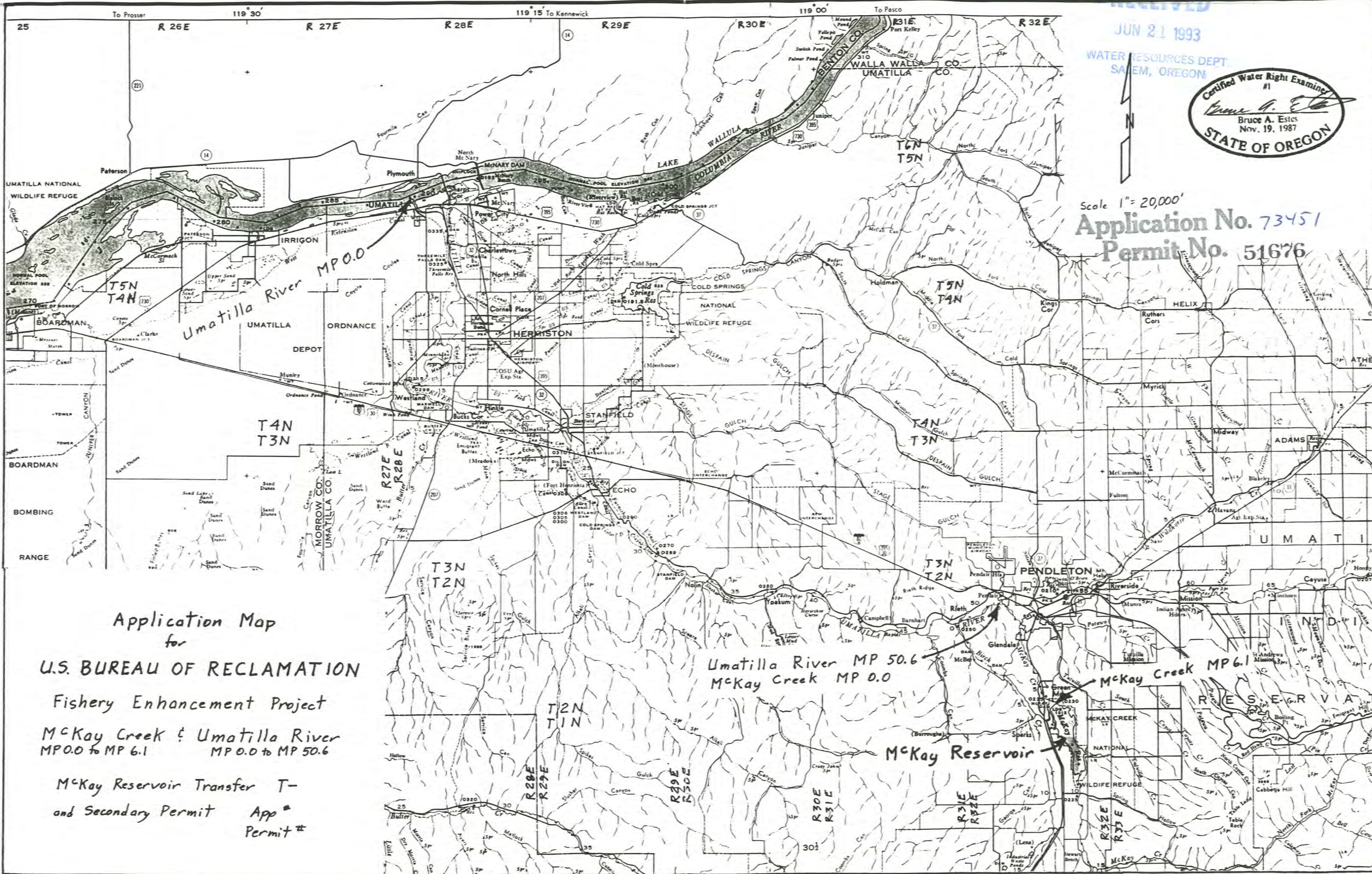
PROPOSED PERMIT CONDITIONS

Application: 73451

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

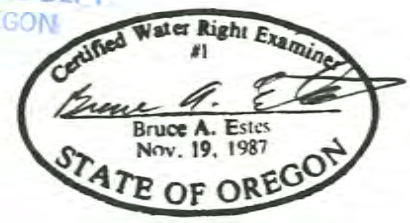
1. Use of water under this permit is subject to all prior rights.
2. Period of allowed use: year round
3. Volume of use: 12,000 acre-feet stored water only.
4. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
5. Secondary releases authorized under this permit will be scheduled as needed for fisher benefits. Releases to be made in a manner to enhance fishery in Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. The permittee shall notify the watermaster two full working days prior to releasing flows for fish purposes.

6. Water use development requirements:
 - A) Begin construction by (one year from issuance of permit).
 - B) Complete construction by October 1, 1995.
 - C) Completely apply the water to beneficial use by October 1, 1996.
7. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.
8. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
9. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
10. In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.



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JUN 21 1993

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SALEM, OREGON



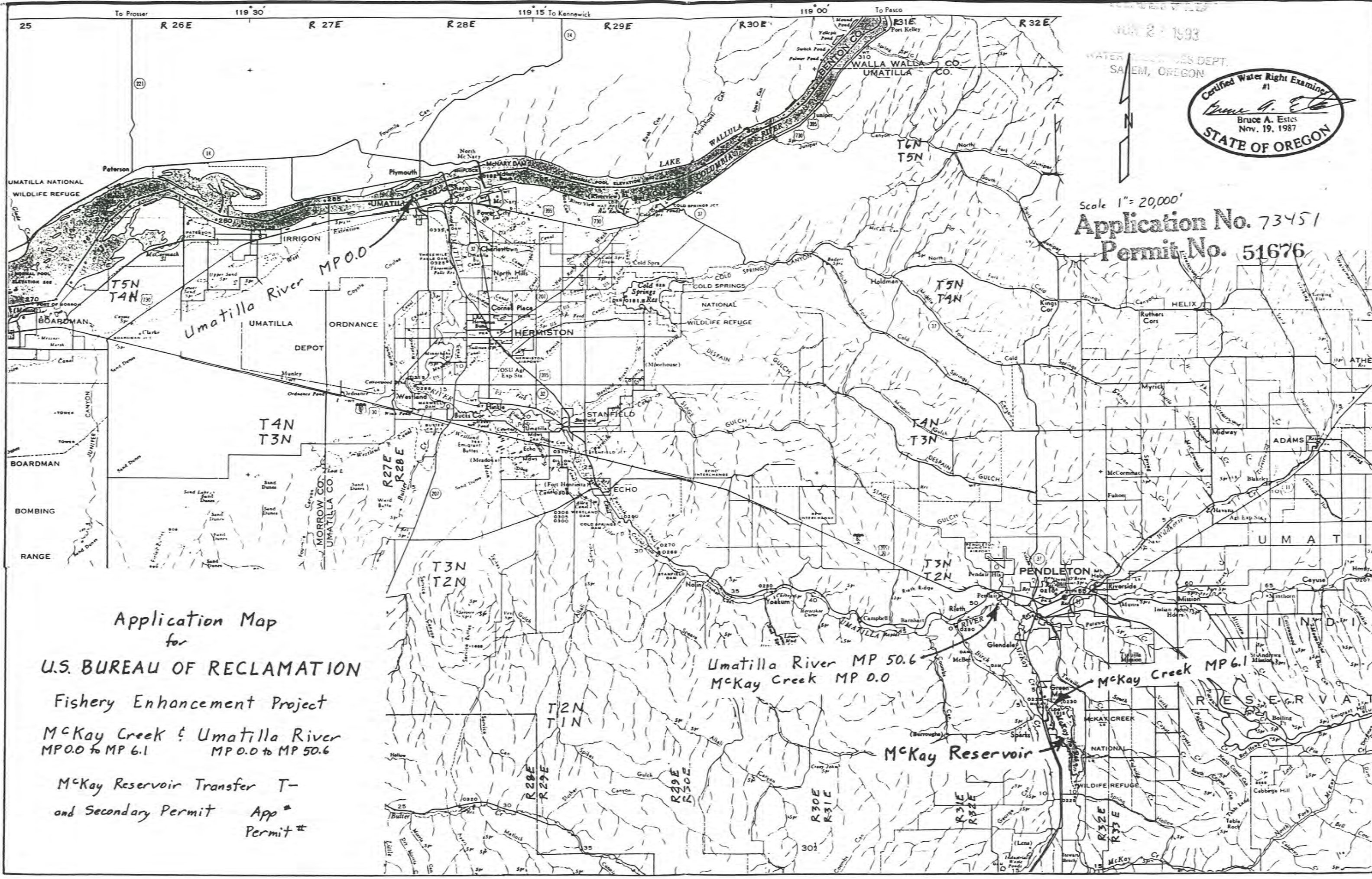
Scale 1" = 20,000'
Application No. 73451
Permit No. 51676

Application Map
for
U.S. BUREAU OF RECLAMATION
Fishery Enhancement Project
McKay Creek & Umatilla River
MPO.0 to MP 6.1
MP 0.0 to MP 50.6
McKay Reservoir Transfer T-
and Secondary Permit App #
Permit #

Umatilla River MP 50.6
McKay Creek MP 0.0

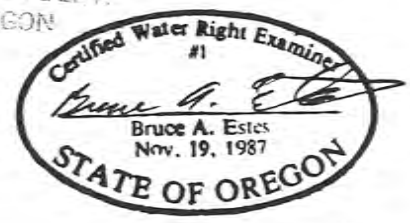
McKay Reservoir
McKay Creek MP 6.1

RESERVOIR



1993

WATER RESOURCES DEPT.
SALEM, OREGON



Scale 1" = 20,000'
Application No. 73451
Permit No. 51676

Application Map
for
U.S. BUREAU OF RECLAMATION
Fishery Enhancement Project
McKay Creek & Umatilla River
MP 0.0 to MP 6.1 MP 0.0 to MP 50.6
McKay Reservoir Transfer T-
and Secondary Permit App #
Permit #

Umatilla River MP 50.6
McKay Creek MP 0.0

McKay Reservoir
McKay Creek MP 6.1

RESERVOIR

November 26, 1996

Laura A. Schroeder
Schroeder Law Offices
P.O. Box 1392
Hermiston, OR 97838

RE: Transfer 7006 and File 73451

Dear Laura:

Thank you for your letter of October 11, 1996. I apologize for the delay in responding.

We have investigated your suggestion that water released from McKay Reservoir for fish and wildlife purposes is illegal. I am enclosing a portion of the Reclamation Authorization Act adopted in 1975. Title III of the Act reauthorized the project to specifically include the use of water for fish and wildlife. Therefore, both transfer 7006 and water right file 73451 authorize uses which are allowed.

We will not be proposing cancellation of either the transfer or water right permit. Please contact either Tom Paul or myself if there are other reasons for which you feel that either the transfer or permit are inappropriate.

Sincerely,



Richard D. Bailey,
Administrator
Water Rights Division

RDB/dpc
enclosure
cc: Tom Paul
Files



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

SEC. 203. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the works authorized herein shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

Interest rate.

SEC. 204. There is hereby authorized to be appropriated for construction of works authorized by this title the sum of \$4,000,000 (January 1975 price levels) plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

TITLE III

McKAY DAM AND RESERVOIR, OREGON

SEC. 301. McKay Dam and Reservoir, Umatilla project, Oregon, is hereby reauthorized for the purposes of irrigation, flood control, fish and wildlife, recreation, and safety of dams, and the costs thereof shall be reallocated among these purposes by the Secretary of the Interior (hereinafter referred to as the "Secretary"), in a manner consistent with the provisions of this title.

43 USC
616ww

SEC. 302. The Secretary is authorized to perform modifications to the spillway structure at McKay Dam as he determines to be reasonably required for safety of the dam from failure due to overtopping by potential flood inflows to the reservoir.

43 USC
616ww-1

SEC. 303. Not to exceed six thousand acre-feet of storage capacity in McKay Reservoir shall be allocated for the primary purpose of retaining and regulating flood flows.

43 USC
616ww-2

SEC. 304. Costs incurred in the modification of McKay Dam to insure its safety from failure shall be nonreimbursable and nonreturnable. All other costs of McKay Dam and Reservoir, heretofore or hereinafter incurred, shall be allocated among the authorized purposes served by the dam and reservoir in accordance with standard cost allocation procedures, and the joint costs allocated to flood control, recreation, and fish and wildlife shall be nonreimbursable.

43 USC
616ww-3

SEC. 305. The Secretary is authorized to enter into amendatory repayment contracts with the Stanfield and Westland Irrigation Districts, or other water users, if appropriate, to secure the return of reimbursable irrigation construction and operation and maintenance costs arising from the modification and reallocation of McKay Dam and Reservoir.

43 USC
616ww-4

SEC. 306. There is hereby authorized to be appropriated for modification of McKay Dam the sum of \$1,300,000 (based on July 1975 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved, and, in addition thereto sums as may be required for operation and maintenance of McKay Dam and Reservoir.

43 USC
616ww-5

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OCT 18 1996

ATER RESOURCES DEPT.
SALEM, OREGON



**SCHROEDER
LAW OFFICES**

413

73451

3355 N.E. DAVIS
PORTLAND, OR 97232
TELEPHONE (503) 232-7110
FAX (503) 238-4076

P.O. BOX 1392
115 W. HERMISTON AVE.
SUITE 140
HERMISTON, OR 97838
TELEPHONE (541) 564-9290
FAX (541) 564-0158

October 11, 1996

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

Re: Special Order Volume 49, Page 206 (McKay storage)
Permit 51676 (McKay use)

Dear Director:

Pursuant to the referenced order, the US Bureau of Reclamation had to complete the change ordered at Volume 49, Page 206 on or before October 1, 1996. In addition the US Bureau of Reclamation had to begin construction on Permit 51676 by October 1, 1996. These orders should be canceled for the following reasons:

The US Bureau of Reclamation has not succeeded in obtaining the federal legislation it needs to accomplish the change provided in Special Order Volume 49, Page 206 within the time allowed. Federal authorizing legislation for McKay Reservoir is limited to supplemental irrigation and does not include an authorized use for "in stream fishery enhancement releases" as confirmed by federal attorney general opinion.

Under the Permit 51676, the US Bureau of Reclamation is releasing the storage waters for in stream uses without providing a contract for the in stream water use. Given the Department's policy to require contracts in addition to water permits for release from McKay storage, we would expect the Department to immediately undertake to cancel the referenced order and to further take enforcement action against the US Bureau of Reclamation for its continued unauthorized use.

Please provide a response to the undersigned at my Hermiston address. If you would require an Affidavit from me to begin the cancellation proceedings, I would be happy to provide it.

Yours truly,

Laura A. Schroeder

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OCT 18 1996

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A CHANGE IN CHARACTER OF USE

Pursuant to ORS 540.510 to 540.530, after notice was given and objections having been resolved, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 7006 submitted by

UNITED STATES OF AMERICA
acting through the REGIONAL DIRECTOR
PACIFIC NORTHWEST REGION, BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234.

The right to be modified, as evidenced by Certificate 68258, was perfected under Permit R-584 with a date of priority of SEPTEMBER 9, 1920. The right allows the storage of water from MCKAY CREEK, a tributary of the UMATILLA RIVER, for SUPPLEMENTAL IRRIGATION. This right is limited to 73,840 ACRE FEET, if available at the authorized point of diversion, MCKAY DAM, or its equivalent in case of rotation, measured at the point of diversion from the source.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The reservoir is located as follows:

W~~X~~
NW~~X~~ SE~~X~~
SECTION 2

E~~X~~
NE~~X~~ NW~~X~~
SECTION 3

NE~~X~~
SECTION 10

SW~~X~~ NE~~X~~
NW~~X~~
S~~X~~
SECTION 11

E~~X~~ NW~~X~~
E~~X~~ SW~~X~~
E~~X~~
SECTION 14

N~~X~~
SECTION 23
TOWNSHIP 1 NORTH, RANGE 32 EAST,
W.M.

SE~~X~~ SW~~X~~
SE~~X~~
SECTION 34

SW~~X~~
SW~~X~~ SE~~X~~
SECTION 35
TOWNSHIP 2 NORTH, RANGE 32 EAST,
W.M.

The right to store and use the water for the above purpose is restricted to beneficial use on the lands or place of use described.


The applicant proposes to change the character of use from storage for supplemental irrigation to storage for SUPPLEMENTAL IRRIGATION OR INSTREAM FISHERY ENHANCEMENT RELEASES.

THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITION IS MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 1996.

Certificate 68258 is canceled. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources Director,
affixed July 11, 1995.

for 
Martha O. Pagel, Director

JUL 19 1995

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC

THIS PERMIT IS HEREBY ISSUED TO

UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

208-378-5322

to use the waters of MCKAY RESERVOIR CONSTRUCTED PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY.

This permit is issued approving Application 73451 of priority is JUNE 21, 1993. The use is limited to not more than 1,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent; of rotation, measured at the point of diversion from the source.

The Bureau shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The point of diversion is located as follows:

NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W. 3650 FEET SOUTH AND 3650 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 8.

The use shall conform to such reasonable rotation as may be ordered by the proper state officer.

A description of the proposed place of use and permit is as follows:

Umatilla River from the mouth of McKay (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4 Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order and shall keep a complete record of the amount of water used each month and shall submit a report which includes the water use measurements to the Department annually or more frequently as may be required by the Director. The Director may require the permittee to report general information, including the place and nature of use under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, the meter or measuring device is located within a structure, the watermaster shall request access upon reasonable notice.

Actual construction work shall begin on or before July 1, 1996, and shall be completed on or before October 1, 1997. An application of the water to the use shall be made on or before July 1, 1998.

PAGE TWO

Failure to comply with any of the provisions of this permit may result in action, but not limited to, restrictions on the use, civil penalties or revocation of the permit.

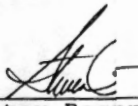
This permit is intended to ensure the beneficial use of water without waste. The water user is advised that new regulations may require the use of best management practices or conservation practices to achieve this end.

By law, the use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use permitted herein may be made only at times when sufficient water is available to satisfy all prior rights, including the right to maintain instream flows.

The Director of the Water Resources Department has found that the proposed user described by this permit, as conditioned, will not be detrimental to the public interest.

Issued this July 11, 1995.


Water Resources Department
Martha O.
Director

Application Water Resources Department
Basin 7 Volume 4 McKay Creek & Misc

PERMIT 51676
District 5

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BUREAU OF RECLAMATION
U.S.A., PACIFIC NW REGION
BOX 043-550, WEST FORT STREET
BOISE, IDAHO 83724-0043

208-334-1165

to use the waters of COLUMBIA RIVER, a tributary of PACIFIC OCEAN, for UMATILLA RIVER INSTREAM FLOW ENHANCEMENT THROUGH AN EXCHANGE WITH IRRIGATION WATER FROM THE UMATILLA RIVER. Such use is to implement the Bureau of Reclamation's Umatilla Basin Project, Phase II, authorized by Congress as P.L. 100-557, Sections 201 through 213, and shall be consistent with said legislation.

This permit is issued approving Application 71293. The date of priority is FEBRUARY 14, 1991. The use is limited to not more than 240.0 CUBIC FEET PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

COLUMBIA RIVER PUMP SITE - SE 1/4 SE 1/4, SECTION 12, T 5 N, R 29 E, W.M.

Divert water at the Columbia River Pump Site, convey and release the waters in Cold Springs Reservoir for use in the Hermiston Irrigation District; convey and release the waters into the Stanfield Irrigation District system.

The applicant shall install, operate and maintain fish screening devices to the specifications of the National Marine Fisheries Service prior to the diversion of water for beneficial use.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The place of use and benefitted stream reach is for flows to be maintained in the Umatilla River from the Furnish Canal diversion at approximately River Mile 32.3 in the SW 1/4 Section 31, T 3 N, R 30 E, W.M. to its confluence with the Columbia River, located in the SE 1/4 SE 1/4, Section 18, T 5 N, R 28 E, W.M. The reaches of McKay Creek and the Umatilla River from McKay Reservoir to the Furnish Canal diversion are benefitted to the extent that exchange storage releases are protected from diversion by all appropriators throughout the reach.

Actual construction work shall begin on or before April 21, 1993, and shall be completed on or before October 1, 1996. Complete application of the water to the use shall be made on or before October 1, 1996.

Phase II project completion will be dependent upon further appropriations for funding from Congress, and thus may require extensions of the time limits imposed above. Requests for such extensions will be evaluated subject to the requirements of ORS 537.230.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

For Hermiston Irrigation District, the total quantity diverted from the Columbia River for exchange together with diversions of direct flow from the Umatilla River during a complete year shall be no greater than the limits of their Oregon water rights.

For Stanfield Irrigation District, the total quantity diverted from the Columbia River during a complete year, together with diversions from direct flow from the Umatilla River shall be equal to its legal historical average supply of Umatilla River and McKay Reservoir water. This amount shall not be greater than 34,700 acre-feet and shall be consistent with the legal limits of State of Oregon water rights.

To the extent permitted by federal law, the permittee shall comply with the requirements of the Oregon Conservation Plan for the Umatilla River Basin as it is developed; and, to the extent that said plan prescribes compliance schedules to achieve conservation standards, the permittee shall comply with said schedules.

The right to use water under this permit is contingent upon the establishment and continued operation of a system to monitor and regulate all project related water supplies, as prescribed in Section 203 of P.L. 100-557.

The final certification of this water right shall be reviewed by the Water Resources Commission. The public shall at that time have the right to provide factual information about water use under the permit to the Water Resources Commission.

The Water Resources Commission reviewed and approved this proposal on March 13, 1992.

Issued this date, April 21, 1992.

Water Resources Department
William H. Young
Director

SEE ALSO T-6621E
Vol 46, pg 197-201

BEFORE THE WATER RESOURCES
DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF AN APPLICATION IN THE)
NAME OF U.S. BUREAU OF RECLAMATION FOR) ORDER APPROVING
APPROVAL OF AN EXCHANGE OF WATER) TRANSFER 6621E

On October 9, 1991, an application for transfer was filed in the office of the Water Resources Director by the Regional Director, Pacific Northwest Region, United States of America, Bureau of Reclamation for approval of an exchange of water, pursuant to the provisions of ORS 540.533 through 540.543. Such use is to implement the Bureau of Reclamation's Umatilla Basin Project, Phase II, authorized by Congress as P.L. 100-557, Sections 201 through 213, and shall be consistent with said legislation.

On February 14, 1991, Application 71293 was filed in the name of the U.S. Bureau of Reclamation (USBOR), proposing the use of 240.0 cubic feet per second of water from the Columbia River for Umatilla River instream flow enhancement through an exchange with irrigation water from the Umatilla River.

The place of use and benefitted stream reach is for flows to be maintained in the Umatilla River from the Furnish Canal diversion at approximately River Mile 32.3 in the SW 1/4 Section 31, T 3 N, R 30 E, W.M. to its confluence with the Columbia River, located within SE 1/4 SE 1/4, Section 18, T 5 N, R 28 E, W.M. The reaches of McKay Creek and the Umatilla River from McKay Reservoir to the Furnish Canal diversion are benefitted to the extent that exchange storage releases are protected from diversion by all appropriators throughout the reach.

The point of diversion is located as follows:

COLUMBIA RIVER PUMP SITE - SE 1/4 SE 1/4, SECTION 12, T 5 N, R 29 E, W.M.

The applicant proposes the exchange of waters because it cannot economically convey Columbia River water to the points of use in the Umatilla River and water from the Columbia River is not biologically suited for anadromous fish in the Umatilla River. Waters subject to diversion under rights described by the decrees and permits, which proof of beneficial use has been approved by the director are listed below, would remain in McKay Creek and Umatilla River and be replaced by waters pumped from the Columbia River under Application 71293, Permit 51439.

The water exchange will take place between the USBOR and users of diversions and water rights as follows:

HERMISTON IRRIGATION DISTRICT

Maxwell Canal - SW 1/4, Section 28, T 4 N, R 28 E, W.M.

A right to the water from the Umatilla River for irrigation with a priority of November 14, 1894, tabulated under the name of United States of America recorded in Volume 3, Page 242, Decree of the Circuit Court for Umatilla County dated September 9, 1916.

A right to the water from the Umatilla River for irrigation with a priority of February 25, 1904, tabulated under the name of United States of America recorded in Volume 3, Page 242, Decree of the Circuit Court for Umatilla County dated September 9, 1916.

Feed Canal - SW 1/4, Section 22, T 3 N, R 29 E, W.M.

A right to the water from the Umatilla River for irrigation with a priority of September 6, 1905, tabulated under the name of United States of America recorded in Volume 3, Page 242 through 245, Decree of the Circuit Court for Umatilla County dated September 9, 1916.

STANFIELD IRRIGATION DISTRICT

Furnish Canal - SW 1/4, Section 31, T 3 N, R 30 E, W.M.

A right to the water from the Umatilla River for irrigation with a priority of March 8, 1905, tabulated under the name of Furnish Ditch Company recorded in Volume 3, Page 233, Decree of the Circuit Court for Umatilla County dated September 9, 1916.

A right to the water from the Umatilla River for irrigation with a priority of March 8, 1905, tabulated under the name of Stanfield Irrigation District recorded in Volume 15, Page 433, Supplemental Findings of Fact and Order of Determination of the State Engineer of the State of Oregon dated December 15, 1953.

Permit 41015, which proof of beneficial use has been approved by the director, to the water from the Umatilla River for irrigation with a priority of June 23, 1965.

McKay Reservoir - S 1/2, Section 34, T 2 N, R 32 E, W.M.

Permit R-584, which proof of beneficial use has been approved by the director, for the storage of water from McKay Creek for supplemental irrigation with a priority of September 9, 1920.

Permit 7400, which proof of beneficial use has been approved by the director, for the use of stored water from McKay Reservoir for supplemental irrigation with a priority of July 1, 1924.

Any additional water rights that may be granted to Bureau of Reclamation for supplemental Stanfield Irrigation District irrigation from McKay reservoir.

Notice of the application for Transfer 6621E pursuant to ORS 540.535, was published in the Hermiston Herald, a newspaper having general circulation in the area in which the water users involved in the exchange are located, for a period of three consecutive weeks in the issues of March 17, 24, and 31, 1992.

The Water Resources Commission reviewed and approved this application on March 13, 1992.

It appearing that the proposed exchange of waters may be made without injury to existing rights, the application should be approved.

NOW THEREFORE, it is hereby ORDERED that the proposed exchange of waters is approved, subject to the conditions herein, and as follows:

Such use is to implement the Bureau of Reclamation's Umatilla Basin Project, Phase II, authorized by Congress as P.L. 100-557, Sections 201 through 213, and shall be consistent with said legislation.

The total amounts of water that can be diverted from the Columbia River as described above shall not exceed 240.0 cfs and shall reduce the appropriations under existing rights from the Umatilla River and McKay Reservoir in accordance with the following:

For Hermiston Irrigation District, the total quantity diverted from the Columbia River for exchange, together with diversions of direct flow from the Umatilla River during a complete year shall be no greater than the limits of their water rights. To operate the exchange, Hermiston Irrigation District will divert from the mainstem Umatilla River only those flows in excess of the flows needed for fish. These flows will be as determined by Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation. Columbia River water would be pumped into Cold Springs Reservoir to replace foregone diversions.

For Stanfield Irrigation District, the total quantity diverted from the Columbia River during a complete year, together with diversions from direct flow from the Umatilla River shall be the lesser of 34,700 acre-feet or the legal limits of State of Oregon water rights.

To operate the exchange, Stanfield Irrigation District will forego its 38% share of storage in McKay Reservoir and divert from the mainstem Umatilla River only those flows in excess of the flows needed for fish. These flow needs will be determined by Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation.

The construction work shall be completed and the exchange of waters made on or before October 1, 1997.

Phase II project completion will be dependent upon further appropriations for funding from Congress, and thus may require extensions of the time limits imposed above. Requests for such extensions will be evaluated subject to the requirements of ORS 540.537.

In order to achieve effective water management for the exchange project and to allow the Watermaster the ability to regulate the amount of water being diverted from the Columbia River and to shepherd and monitor the exchange and maintain the water in stream, telemetric measuring devices connected with the BOR's HYDROMET system and other suitable gaging stations and water measuring devices shall be put into operation, to the satisfaction of the watermaster, prior to any diversion of water under the exchange at the following locations:

HYDROMET gaging stations identified in the FEIS and required:

1. Westland Canal Nr. Echo
2. Furnish Canal Nr. Echo
3. Feed Canal Nr. Echo
4. West Extension I.D. Canal Nr. Umatilla
5. Maxwell Canal Nr. Hermiston (if diversion continues)
6. Inflow pumped into Cold Springs Reservoir from Columbia
7. Inflow pumped into Stanfield I.D. system from Columbia
8. West Extension Exchange pumps
9. Cold Springs Reservoir elevation
10. McKay Reservoir elevation
11. Umatilla River at Pendleton
12. Umatilla River at Yoakum
13. Umatilla River above Feed Canal Nr. Echo
14. Umatilla River at Umatilla

Gaging stations, currently with HYDROMET capabilities, with continuing operation required:

1. McKay Creek at Pendleton (reservoir outflow)
2. McKay Creek Nr. Pilot Rock (reservoir inflow)

Gaging stations, to be installed with HYDROMET capabilities:

1. Dillon Canal Nr. Echo
2. Allen Canal Nr. Echo
3. "A" line canal at Cold Springs Reservoir
4. Umatilla River at Umatilla Meadows Nr. Stanfield
5. Umatilla River Nr. Cottonwood Bend
6. Birch Creek Nr. Rieth

Pump station that may need HYDROMET capabilities:

1. Brown/Prior pumping station #1

After consultation with the Oversight Committee, the watermaster may add, change, or eliminate gaging stations or water measuring devices as needed to properly administer the exchange.

In addition to the gaging stations required to record flows within the Umatilla River system, the diversion from the Columbia River shall be metered to monitor the exchange of water.

Prior to the exchange of water or adjustments on the exchange of water allowed under this order the Bureau of Reclamation shall get approval from the watermaster, and provide reasonable notice to irrigation districts, ditch companies, and other parties that may be impacted. An emergency procedure will be developed by the Watermaster, BOR, and the Oversight Committee.

The applicant is authorized to divert up to 240 cfs of water at the Columbia River Pump Site, convey and release the waters in Cold Springs Reservoir for use in the Hermiston Irrigation District, and to release the waters into the Stanfield Irrigation District system.

The exchange is for Umatilla River water with priority dates of 1894, 1904, 1905 and 1965, and for water releases from storage in McKay Reservoir under Bureau of Reclamation contracts and Oregon water rights. The exchange shall not occur until such time as the water rights from the Umatilla River and McKay Reservoir are perfected.

The amount of water under this exchange to be left in the Umatilla River from foregone diversions and McKay storage shall be determined by the Oregon Department of Fish and Wildlife (ODFW) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The natural flows left in the Umatilla River for fish flows under the exchange shall retain the priority date and rate and duty limitations of the water rights involved in the exchange and shall be protected from appropriation by all other users. The water released from McKay Reservoir for fish flows under this exchange shall be protected by the Watermaster from appropriation by all other users at any time during the year when ODFW and CTUIR determine that flows are needed for fish purposes.

The "oversight committee" established in the FEIS shall be open to interested parties and shall assist in the following:

1. Developing operational objectives used in determining the actual operation plan for exchange of pumped and storage release waters.

2. Developing and implementing an operational model.
3. Analyzing and advising BOR of potential impacts to the project of proposed district boundary expansions or other proposed changes.
4. Identifying and securing the resources necessary for monitoring and regulating all project-related supplies and operations, including reporting and staffing requirements.
5. Other duties as is appropriate.

Upon receipt of proof satisfactory to the Water Resources Commission that water has been used under the exchange for the purpose of and within the limitations of Permit 51439 and this order, the Water Resources Commission shall issue a confirming Certificate of Water Right.

Dated at Salem, Oregon, this 21st day of April, 1992.

William H. Young
Director
Water Resources Department



IN REPLY
REFER TO:

PN-3110
WTR-1.10

United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

RECEIVED

SEP 18 1997

WATER RESOURCES DEPT.
SALEM, OREGON

SEP 15 1997

Mr. Larry Nunn
Oregon Water Resources Department
158 12th Street NE
Salem OR 97310-0210

Subject: "Form B" Notice of Completion of Construction, Permit 51676, Application 73451,
Umatilla Basin Project, Oregon (Water Rights)

Dear Mr. Nunn

Enclosed is completed "Form B" Notice for the subject permit. The permit is for use of waters from McKay Reservoir for instream fishery enhancement. If you have any question, please contact Phillip E. Graf, PN-3110 at 208-378-5322 or 208-378-5305 Fax.

Sincerely,

Richard M. Rigby
Program Manager
Water Rights and Aquisitions

Enclosure

cc: Tony Justus
Oregon Water Resources Department
3920 Westgate
Pendleton OR 97801
(w/encl. to ea.)

Bruce Estes
CWRE
6293 Sunnyview Road, NE
Salem OR 97305

SEP 18 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Form C (690-9-77)

IMPORTANT—This form is a notice to the Water Resources Director that permittee is ready to make final proof to the extent to which the water has actually been applied to the intended use under the terms of the permit. Permittee is cautioned that Certificate of Water Right will be issued based on the extent of the quantity and use as determined by the final proof inspection and survey which will be made in response to the filing of this Form C.

NOTE: In the case of an irrigation permit, this Form C should not be mailed to the Water Resources Department until all of the land described in the permit, which it is intended to irrigate under this permit at any time, has actually been irrigated.

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when all of the water has been applied.

Application No.

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

I,, the holder of Permit No.

to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in accordance with the terms of said permit, on the day of, 19.....

Remarks:

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 19.....

(Signature of Applicant)

(Address)

Form B (690-9-77)

Application No. 73451

NOTICE OF COMPLETION OF CONSTRUCTION

I, Richard M. Rigby, the holder of Permit No. 51676

to appropriate the public waters of the state of Oregon, completed the construction of the works described therein on the 1st day of August, 1997.

Remarks: completed construction of necessary delivery facilities
If the works have less capacity than described in the permit, or you have definitely abandoned part of the proposed develop-

ment, you should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this 15 day of September, 1997.

Richard M. Rigby
(Signature of Applicant)

1150 N. Curtis Road, Boise ID 83706
(Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is completed.

Form A (690-9-77)

Application No.

NOTICE OF BEGINNING OF CONSTRUCTION

I,, the holder of Permit No.

to appropriate the public waters of the state of Oregon, began the actual construction of the works described therein on the day of, 19.....

Remarks:

The appropriator must state the manner of beginning of construction, the amount of work completed and the type of equipment acquired for the water system up to the date of this statement, and any additional information which shows a substantial beginning of construction as authorized by your permit.

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 19.....

(Signature of Applicant)

(Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is begun.

Application No. _____

73451



State of Oregon

WATER RESOURCES DEPARTMENT

Application for a Permit to Appropriate Surface Water

Applicant(s) United States of America, acting through the Regional Director,
Pacific Northwest Region, Bureau of Reclamation

(Please print or type - use dark ink)

Mailing Address: 1150 North Curtis Road
Boise, Idaho 83706-1234 208-378-5322
City State Zip Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: McKay Reservoir,
a tributary of Umatilla River

2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: 12,000 acre-feet
~~XXXXXX~~ **OR** 12,000 cubic feet per
gallons per minute. If water is to be used from more than one source,
give the quantity of water from each: 12,000 acre-feet of stored water only

3. **INTENDED USE(s) OF WATER:** To use stored water for instream
fishery enhancement releases

If for more than one use, give the quantity of water from each source for each use; _____

If for **DOMESTIC** use, state the number of households to be supplied; N/A

If for **MUNICIPAL OR QUASI-MUNICIPAL** use, state the present population to be served,
and an estimate of the future requirements; (List population projections, water needs, anticipated areas
to be provided water.)
N/A

If for **MINING** use, state the nature (gold, silver, etc.) of the mines to be served; N/A

If for **IRRIGATION**, or other land area use, state the **TOTAL** number of acres to be developed
under each use;

Irrigation N/A

Other (describe) instream fishery enhancement releases

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19__.

WITNESS my hand this _____ day of _____, 19__.

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at SALEM, Oregon, on the 18TH day of JUNE, 1993, at 12:30 o'clock, P M.

APPLICATION NO: 73451

PERMIT NO: _____

RECEIVED

JUN 21 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Remarks (attached to Application for a Permit to Appropriately Surface Water where the source of the water is McKay Reservoir):

The proposed site of diversion, McKay Dam outlet works, is owned by the United States. The place of use is beneath the high water maker of McKay Creek and the Umatilla River below McKay Dam.

The Bureau of Reclamation desires the operational flexibility to release as needed some McKay reservoir stored waters for downstream flow enhancement purposes pending completion of the Umatilla Basin Project. Oregon State Water Resources Department rules reportedly do not permit temporary changes in place or purpose of use; consequently, as a matter of comity, the Bureau of Reclamation has prepared these applications in a manner intended to assure, to the maximum feasible extent, consistency between ongoing Federal project operations and Oregon practices and procedures. Neither this application nor any permit issued pursuant to this application should be construed, however, to represent an irreversible or irretrievable commitment of the subject waters under any applicable Federal law. The Bureau of Reclamation expressly reserves the right to amend this application and to apply in the future for other water right changes involving these or other waters in order to provide for effective multi-purpose Federal project operations in the public interest.

Secondary releases authorized under permit will be scheduled as needed for fishery benefits. Releases to be made in a manner to enhance fishery in McKay Creek and Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. Prior to fishery targeted releases the Watermaster will be notified to enable protection of the releases from adverse diversion.

Releases to benefit the Umatilla River from the mouth of McKay Creek, mile post 50.6, (SE1/4NW1/4, Section 8, T. 2 N., R. 32 E., W.M.) to the mouth of the Umatilla River, mile post 0.0, (NW1/4NE1/4, Section 18, T. 5 N., R. 28 E., W.M.) and McKay Creek from McKay Dam, mile post 6.1, (NW1/4SE1/4, Section 34, T. 2N., R. 32 E., W.M.) to mouth of McKay Creek, mile post 0.0.

Application No. 73451
Permit No.

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To STEVE BROWN	From PHIL GRAF	
Co.	Co.	
Dept.	Phone # 208-378-5322	
Fax #	Fax # 378-5305	

AUGUST 2, 1993, FAX 503-378-8130

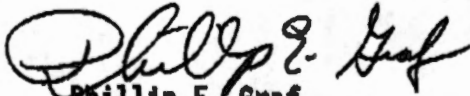
Steve Brown
OWRD

Steve, please substitute this entire paragraph for our third paragraph in our remarks which accompanied Application 73451.

Mike Ladd tells me this refers to Condition Number 5 of the proposed permit conditions relating to Application 73451.

Secondary releases authorized under permit will be scheduled as needed for fishery benefits. Releases to be made in a manner to enhance fishery in the Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. The Watermaster will approve and, to the extent of available resources, protect releases for fish purposes provided that the Watermaster receives adequate notice of such planned releases two full regular working days in advance, or sooner by Watermaster approval, in order to verify entitlements and mobilize personnel.]

An official letter will follow through normal channels.



Phillip E. Graf
Regional Water Rights Officer
U. S. Bureau of Reclamation

STOEL RIVES BOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455
Writer's Direct Dial Number
(503) 294-9207

May 6, 1994

COPY

RECEIVED

MAY 19 1994

WATER RESOURCES DEPT.
SALEM, OREGON

VIA FACSIMILE AND U.S. MAIL

Mr. Reed Marbut
Administrator
Water Resources/Adjudication Section
Oregon Water Resources Department
The Commerce Building
158 12th Street NE
Salem, OR 97310

Re: Stanfield and Westland Irrigation Districts; Request for
Withdrawal of Objections to Application No. 73451

Dear Reed:

On February 8, 1994, we submitted a letter to you on behalf of Stanfield Irrigation District and Westland Irrigation District requesting withdrawal of protests filed on the United States Bureau of Reclamation Transfer Application No. T-7006. In that letter, we indicated that the Districts also had decided to withdraw their objections to the Bureau's application no. 73451 for a new permit to use water released from McKay Reservoir for instream flows.

In our February 8 letter, we indicated that no formal request for withdrawal was necessary for the October 15 objections because objections are not subject to contested case rules. This statement has apparently generated some confusion as to whether the objections are still pending before the Department. The purpose of this letter is to notify you of the Districts' request that the Department not take further action on the objections and to consider the objections to be withdrawn. This has been the Districts' intent all along.

Please call me if you have any questions about this letter.

Very truly yours,


William H. Holmes

WHH:mjm

cc: Ms. Becky Heirs
Mr. Walt Fite
Mr. Reed Benson
Mr. Thomas G. Myrum

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL



100 Justice Building
1162 Court Street NE
Salem, Oregon 97310
FAX: (503) 378-3802
TDD: (503) 378-5938
Telephone: (503) 378-6986

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: May 11, 1994

TO: Reed Marbut, Administrator
Water Rights Division
Water Resources Department

FROM: Stephen E.A. Sanders *Steve*
Assistant Attorney General
Natural Resources Section

SUBJECT: BOR and the Umatilla Basin Project
DOJ File No. 690-303-NR005-93

You have asked whether the Bureau of Reclamation (BOR) must comply with state water law in the administration of water rights that have been granted for the use of water in the Umatilla Basin Project. I understand this project includes the right to store water in the McKay and Cold Springs reservoirs and the right to irrigate lands in the Westland, Stanfield, Hermiston and West Extension Irrigation Districts. Further, I understand that a dispute has developed between the irrigation districts and the BOR about use of water outside the districts' boundaries. Lastly, I understand the Umatilla Tribes' interest in providing water for their hatchery fish program and the BOR's new goal to provide water for environmental enhancement are elements of the this dispute.

It has been suggested that the districts could "quit claim" or "assign" their water rights to the BOR, which could in turn unilaterally reallocate that water to instream flows. I conclude that there is no "quit claim" process for water rights, and that "assignment" of these water rights to the BOR could not serve as a legal mechanism to accomplish the stated goals. There are legal mechanisms to transfer water rights from one use to another pursuant to state law; until those mechanisms have been complied with, no reallocation of water is permitted, including water currently allocated and used within the BOR project.

The BOR operates under the authority of the federal Reclamation Act. Section 8 of that Act provides that

Nothing in the Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to

Reed Marbut
Page 2
May 11, 1994

the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws * * *.

32 Stat 390, § 8.

The water rights in question have been acquired pursuant to Oregon law. Any possible ambiguity about whether transfers of water rights to other uses is also subject to state law was resolved in United States v. Alpine Land & Reservoir Co., 697 F2d 851, 858 (9th Cir 1983). The court held that "the conspicuous absence [in federal reclamation law] of transfer procedures, taken in conjunction with the clear general deference to state water law, impels the conclusion that Congress intended transfers to be subject to state water law."

Under state water law, there is no mechanism that would allow a "quit claim" of a water right, per se. Of course, a landowner could "quit claim" title to the property to which a water right was appurtenant to the BOR. That would have the effect of "quit claiming" the water right, but would not allow the use of the water on a place different, or for a purpose different than specified in the right.

Similarly, water right holders may "assign" their water right permits to the BOR pursuant to ORS 537.220, but that would only have the effect of changing the party to whom the department would be required to send official notices regarding when and under what circumstances the appropriation was required to be perfected. See Green v. Wheeler, 254 Or 424 (1969). No change of use or place of use can be accomplished by assignment of a permit.

Determining the legal or equitable ownership of a water right is neither easy nor necessarily helpful. Merely because one "owns" a water right does not allow that person to transfer the right to other uses without compliance with state law. Within an irrigation district, the owner could be either the person to whose land the water right is appurtenant or the district. The answer likely depends on the contractual arrangement between the landowners and the district. See, e.g., In Re Water Rights of Willow Creek, 119 Or 155, 188, ff (1925). Although the BOR is often listed on the certificate or permit as the owner of the right, the BOR has no ownership interest in either the water or the water right. Under the Reclamation Act, the appropriation of the water was made for the land owners not the BOR. Nebraska v. Wyoming, 325 US 589, 614, 89 LEd 1815, 1829 (1945). The BOR may own storage water rights where they own the storage facility. Id.

In any case, the ownership of the right is not legally dispositive for purposes of transfer of the right from irrigation to some other use such as instream flow. Regardless of ownership of the right, the department is not allowed to transfer a right without the

Reed Marbut
Page 3
May 11, 1994

permission of the deeded owner of the property to which the water right is appurtenant.
OAR 690-15-060(11).

Thus, the BOR cannot unilaterally (nor even with the consent of the districts or Tribes) reallocate water to other uses without compliance with state law. This is not to say, however, that compliance with state transfer law would allow the districts to ignore contractual arrangements they have made with the BOR.

SEA:sea:tmt/SEA0014.MEM

Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in Addition to Classified Uses

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.100. The Water Resources Department will use this and other information to evaluate the water use application. **DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.**

RECEIVED

JUN 18 1993

**WATER RESOURCES DEPT
SALEM, OREGON**

Applicant's Name: US Bureau of Reclamation
Address: 1150 Al. County Rd.
City: Beize State: ID Zip: 83706 - Day Phone: (208) 378-5322
1234

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.s	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
<u>SEA Sec 34, TRN, EBBELM.</u>	<u>R322</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>ECU Enclosure town site</u>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

River mile 0 - 50.5 on Umatilla River & River mile 0 - 6.1 on MCKay Cr.
Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used.

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

For Local Government Use Only

Local planning officials are to complete the remainder of this form. If it cannot be completed while the applicant waits, sign and detach the receipt as instructed below. You will receive notice when the applicant's water right request is filed with the Water Resources Department (WRD). You will have 30 days from the notice date to return this completed land use form to WRD. If no land use information is received from you within that period, WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.011. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note:** Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily

**Application No. 73451
Permit No.**

Receipt for Request for Land Use Information

(over)

WRD Applicant Name: _____

This receipt must be signed by a local government representative and returned to the applicant for inclusion in the WRD application IF the local government cannot provide the above requested land use information while the applicant waits.

City or County: _____

Staff Contact: _____ Phone: _____

Signature: _____ Date of Information Request: _____

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JUN 18 1993

**WATER RESOURCES DEPT
SALEM, OREGON**

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: Tamara Mabbett
Title: Senior Planner, Civil Admin

Date: 5-28-93
Phone: 336-7111

Signature: Tamara Mabbett

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Additional Comments:

Lined area for additional comments.

Planning Official Initials: T.M.

Description of Water Use

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: US Bureau of Reclamation
Address: 1150 N. Curtis Rd.
Bene, ID, 83706-1234
Phone: (208) 378-5322

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

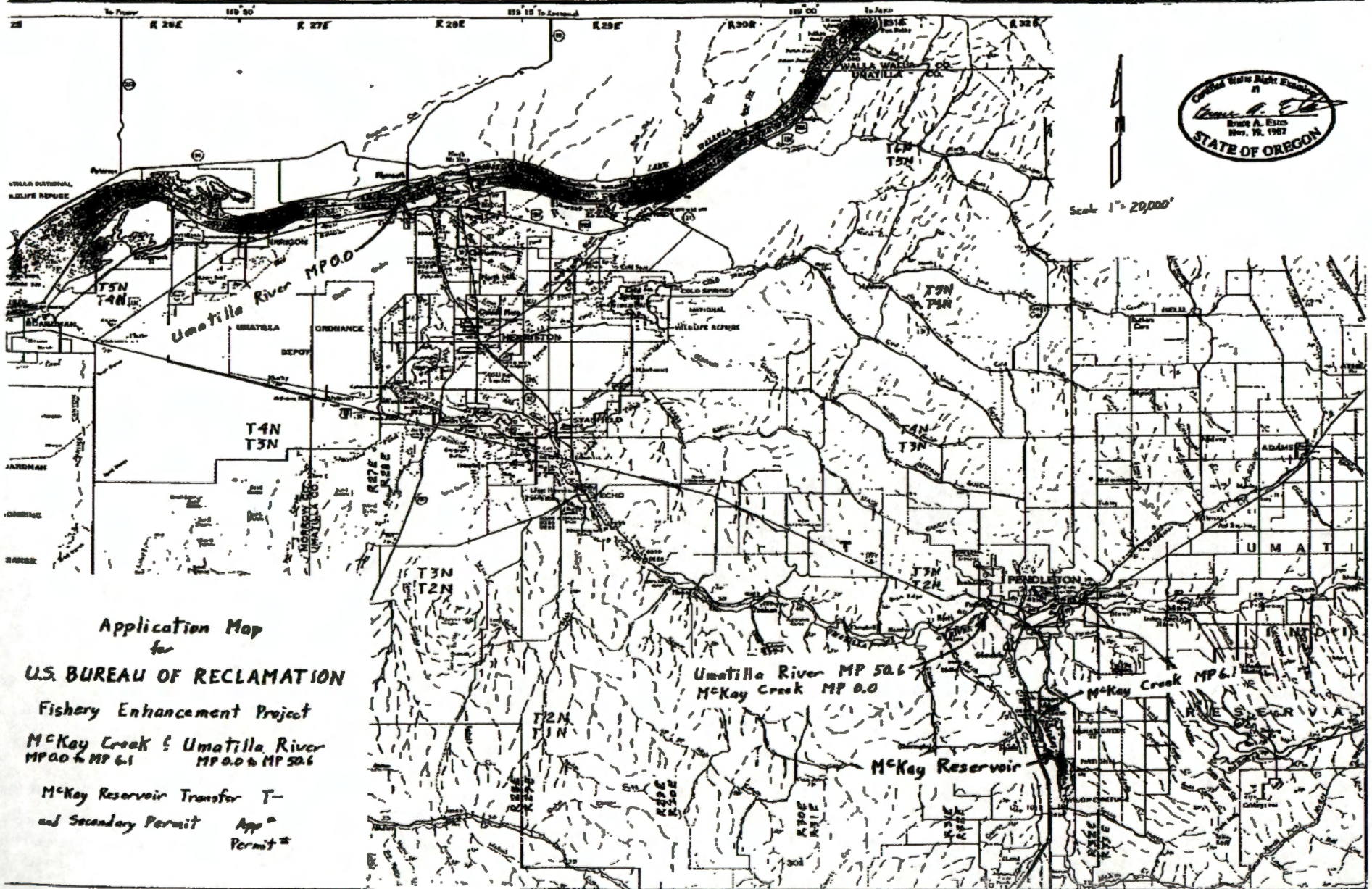
- Irrigation (crop type, golf course, nursery or greenhouse): _____
- Livestock (type of livestock, feedlot, slaughterhouse): _____
- Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- Institutional (i.e., school, library, etc.): _____
- Mining (aggregate, metal, open pit, placer, etc.): _____
- Recreation (park, campsite, pond, etc.): _____
- Fish and Wildlife (pond, hatchery, etc.) Stream flow fishery enhancement
- Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- Other (Name and list key characteristics): _____

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>M^oK^g Res</u>	_____ Cubic feet per second. _____ Gallons per minute. <u>12000</u> Acre-Feet
<input type="checkbox"/> Reservoir or pond	
<input type="checkbox"/> Ground Water	

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JUN 18 1993
WATER RESOURCES DEPT
SALEM, OREGON

Application No. 73451
Permit No.

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JUN 18 1993
WATER RESOURCES DEPT
SALEM, OREGON



Scale 1" = 20,000'

Application Map
for
U.S. BUREAU OF RECLAMATION
Fishery Enhancement Project
McKay Creek & Umatilla River
MP 0.0 & MP 6.1 MP 0.0 & MP 50.6
McKay Reservoir Transfer T-
and Secondary Permit App^o
Permit^o

Application No. 73451
 Permit No. 51376

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JUN 18 1993

WATER RESOURCES DEPT
 SALEM, OREGON

7-711 (7-85) Bureau of Reclamation	ORDER FOR SUPPLIES OR SERVICES UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION	PAGE 1 OF 2 PAGES
---------------------------------------	--	-------------------

1. ORDER NO. (8-17) 1425-S-PA-10-11570	2. CONTRACT NO. (if any)	3. DATE OF ORDER 05/03/93	IMPORTANT-Mark all packages and papers with contract and/or order numbers.
---	--------------------------	------------------------------	---

4. ISSUING OFFICE (Address correspondence to) U.S. BUREAU OF RECLAMATION 1150 NORTH CURTIS ROAD BOISE, ID 83706-1234	CODE (1-2)	PN 800	5. SHIP TO: (Consignee and address, ZIP Code) BUREAU OF RECLAMATION-R.O. 3-PA-10-11570 - 1150 NORTH CURTIS ROAD BOISE ID 83706-1234	WHSE NO.
---	------------	--------	---	----------

BUYER: B. YOUNG TELE. NO. (No collect calls) (208)378-5103	SHIP VIA:	7. REQUISITIONING OFFICE P. GRAF	8. REQUISITION/REFERENCE NO. 420-247-93
--	-----------	-------------------------------------	--

6. TO: CONTRACTOR (Name, address and ZIP Code) OREGON DEPARTMENT OF WATER RESOURCES 3850 PORTLAND ROAD, NE SALEM, OR 97310	CODE (3-7)	9(A). CHECK IF BUSINESS IS: <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL DISADVANTAGED <input type="checkbox"/> WOMEN-OWNED	10. TYPE OF ORDER <input checked="" type="checkbox"/> A. PURCHASE - Reference your _____ Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. This purchase is negotiated under authority of: 41 U.S.C. 253(g). <input type="checkbox"/> B. DELIVERY - This delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.
---	------------	---	--

11. MAIL INVOICES TO: U.S. BUREAU OF RECLAMATION ATTENTION: CODE 920 1150 NORTH CURTIS ROAD BOISE, ID 83706-1234 (208)378-5103 TAX EXEMPT NO . 98-03578	12. DISCOUNT TERMS NET	13. DELIVER TO F.O.B. POINT DESTINATION	14. ON OR BEFORE (Date) 05/03/93	15. PLACE OF INSP. DESTINATION	16. GOVERNMENT B/L NO.
--	---------------------------	--	-------------------------------------	-----------------------------------	------------------------

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY ACCEPTED	20. QUANTITY ORDERED	21. UNIT	22. UNIT PRICE	23. AMOUNT
1.	Filing Fee for Application for Transfer of Water Rights Requisition #: 420-247-93		1	EA	50.00	50.00
2.	Examination Fee for Application for Transfer of Water Right Requisition #: 420-247-93		1	EA	100.00	100.00
3.	Publication of Notice and Recording Fee for Application for Transfer of Water Right Requisition #: 420-247-93		1	EA	120.00	120.00

24. UNITED STATES OF AMERICA BY (SIGNATURE) <i>Becky Young</i>	25. NAME (TYPED) BECKY YOUNG TITLE: CONTRACTING OFFICER	26(A). TOTAL (Cont. pages) \$ 5250.00	26(B). GRAND TOTAL \$ 5520.00
---	---	---------------------------------------	-------------------------------

27. Vendor contact: LARRY NUNN Quantity in the "Quantity Accepted" column has been <input type="checkbox"/> Inspected <input type="checkbox"/> accepted <input type="checkbox"/> received by me and conforms to the contract, except as noted. Items listed on the reverse have been accepted (although non-conforming) or rejected for the reasons indicated.	Vendor Phone No: PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/>	28. SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	29. DATE RECEIVED
--	---	---	-------------------

TRANS CODE	GRP	FUND	PROJ	AUTH NO.	MAIN ACCT	SUB ACCT	CL	SW	COST CENTER	OBJECT CODE	DESCRIPTION	FBC GRP	METH	L	F	S	C	A	T
18-20	21-22	23-25	26-29	30-33	34-36	37-38	39	40	41-47	48-51	52-71	72-73	74-75	76	77	78	79	80	
02A	01	210	0030	1140	100	30	0	0	1050400	255R	FEEES		270.00						
02A	02	210	0030	1140	100	30	0	0	1050400	255R	EXAMINATION FEE		200.00						
02A	03	210	0030	1140	100	30	0	0	1050400	255R	WATER RIGHT FEES		5050.00						
02A	04																		
02A	05																		

Application No. 73451 Permit No.

RECEIVED

JUN 18 1993

7-711A (4-84)
Bureau of Reclamation

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

WATER RESOURCES DEPT
SALEM, OREGON

ORDER FOR SUPPLIES OF SERVICES SCHEDULE - CONTINUATION

PAGE NO.

2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER
05/03/93

CONTRACT NO. (if any)

1425

ORDER NO.

3 PA 10 11570

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
4.	Examination fee for new instream flow, secondary Application for a Permit to Appropriate Surface Water Requisition #: 420-248-93	1	FEE	200.00	200.00	
5.	Recording fee for Application for Permit to Appropriate Surface Water Rights Requisition #: 420-253-93	1	EA	5050.00	5050.00	

TOTAL CARRIED FORWARD TO FIRST PAGE (ITEM 17(4))

5250.00

FAX TRANSMISSION -- FAX -- FAX -- FAX -- FAX -- FAX TRANSMISSION

TO: Reed Marbutt

FROM: Tom Myrum

DATE: 4-18-94

RE: _____

UMATILLA BASIN IRRIGATION DISTRICTS

UMATILLA BASIN IRRIGATION DISTRICTS

NOTES:

FYI:

What is OWRD's position
on the proposal as stated by
John Keys?

Tom



IN REPLY
REFER TO:
PN-115
RES-3.10

United States Department of the Interior



BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

APR 15 1994

Mr. Don Sampson, Chairman
Confederated Tribes of the Umatilla Reservation
PO Box 638
Pendleton OR 97801

Mr. Thomas G. Myrum
Umatilla Basin Irrigation Districts' Coordinator
PO Box 1260
Hermiston OR 97838

Dear Messrs. Sampson and Myrum:

I'm greatly concerned about the time it is taking the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the Westland (WID), Stanfield (SID), Hermiston (HID), and West Extension Irrigation (WEID) Districts to reach agreement on McKay Reservoir and Umatilla River operations to supply sufficient fish migration flows to alleviate concerns about 1994 delivery of water to 17,565 acres of out-of-boundary lands identified in the November 4, 1993 Notice of Scoping Meetings on the Districts' boundary expansion request.

Reclamation feels that there is a general agreement between CTUIR and the Districts over how McKay Reservoir and the Umatilla River should be operated for fish migration flows during 1994. We further believe that WaterWatch agrees with the proposed approach.

It is Reclamation's understanding that the discussions between CTUIR and the Districts have resulted in conceptual agreement on 1994 McKay Reservoir operations which would result in the same 1994 water year fill priority for contracted and uncontracted space. This would cause any shortages in filling to be shared proportionately between contracted and uncontracted space. The proposal, as we understand it, is to set aside for fish migration flows 2,583 acre-feet of contracted and reserved space provided by SID, 2,952 acre-feet of contracted and reserved space provided by WID, and 6,488 acre-feet of reserved space. In the past, Reclamation has accounted for McKay Reservoir releases so that the residual space took shortages first. The advantage of the proposed equal priority system is that the approximately 12,000 acre-feet of fish set aside water would be as firm as agriculture water and, in all but years where the reservoir filled, result in more water for fish migration flows than in the past.

It is also our understanding that there is conceptual agreement that the 1994 Umatilla River operations should allow a 1,600 acre-foot block of HID Feed Canal diversions to be foregone, subject to terms still to be negotiated. CTUIR would make a call on the water as needed for fish migration.

Also, WEID would agree to take water through the Phase I pumping plant in July, August, and September if data supports an increase in target flows below Three Mile Dam. It is our understanding that CTUIR has data to support the new target flows and is willing, along with Reclamation, to initiate discussions with Bonneville Power Administration to supply pumping energy under Public Law 100-557.

Reclamation feels the proposed 1994 McKay Reservoir and Umatilla River operations supply significant water for the benefit of fish migration and meet the two objectives stated at the top of page 2 in the CTUIR, March 2, 1994 Water Spreading Policy.

Reclamation's understanding is that the difficulty in reaching agreement is because there remain differences of opinion over whether government "custody" of water delivered to out-of-boundary lands is appropriate and, if it is, should it be permanent or limited to the period preceding completion of the NEPA (National Environmental Policy Act) process on the Districts' boundary expansion request. We understand a second disagreement to be over whether or not the Districts must unconditionally bind themselves to complete the NEPA process and abide by the decision rendered by Reclamation.

The delivery of Federal project water to lands not included in a District boundary is not authorized by the District contracts. Reclamation is convinced that it is appropriate for the Districts to assign custody to Reclamation for all Federal project water that is delivered to out-of-boundary lands for the period from now until completion of the NEPA process on the boundary expansion request and issuance of a Record of Decision (ROD) by the Regional Director. In return, Reclamation would first deliver fish migration flows from the water held in custody by operating McKay Reservoir and monitoring the Feed Canal diversion in accordance with an agreement substantially as described above. Second, Reclamation would allow the remaining water held in custody to be made available to the Districts to be used by them to serve lands within the Districts and, as long as the Districts continue to participate in the NEPA process, serve out-of-boundary lands for 1994. We feel that if the NEPA process is not completed and an ROD issued before the 1995 irrigation season, operations of McKay Reservoir and Umatilla River should be substantially as in 1994, unless compelling data supports otherwise. If the Districts decide, for any reason, not to complete the NEPA process on the boundary expansion request, delivery of any Federal project water to out-of-boundary lands must stop immediately.

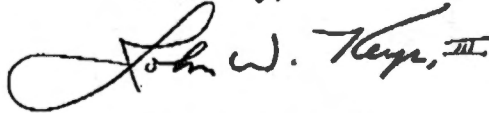
Reclamation believes that the assignment of Federal project water delivered to out-of-boundary lands by the Districts for the period from now until completion of the NEPA process on the boundary expansion request and issuance of an ROD by the Regional Director is consistent with numbered paragraphs 1 and 2 on page 2 of the CTUIR March 2, 1994 Water Spreading Policy.

Time has arrived for Reclamation to make decisions on 1994 delivery of Federal project water to out-of-boundary lands. We prefer to make those decisions in

3

concert with an agreement reached between CTUIR and the Districts that has the support of WaterWatch; however, if agreement cannot be reached, we anticipate having to begin unilateral decisionmaking by May 2, 1994.

Sincerely,



John W. Keys, III
Regional Director

cc: Commissioner, Bureau of Reclamation, Washington DC
Attention: W-1000 (Daniel P. Beard)

Mr. Bob Reuter, Chairman
Westland Irrigation District
PO Box 416
Stanfield OR 97875-0416

Mr. Orland Rudd, Chairman
Stanfield Irrigation District
PO Box 416
Stanfield OR 97875-0416

Mr. Jerald Rea, Chairman
West Extension Irrigation District
PO box 465
Irrigon OR 97844-0465

Mr. Joseph Pitzer, President
Hermiston Irrigation District
PO Box 208
Hermiston OR 97838-0208

Mr. Reed Benson
Umatilla Basin Project coordinator
WaterWatch of Oregon
921 SW Morrison Ste 438
Portland OR 97205

Rebecca H. Hiers
UBP Policy Analyst
Confederated Tribes of the Umatilla Reservation
PO Box 638
Pendleton OR 97801

RECEIVED

FEB 22 1994

WATER RESOURCES DEPT
SALEM, OREGON

INTEROFFICE MEMO

WATER RESOURCES DEPARTMENT NORTH CENTRAL REGION

TO: REED MARBUT

DATE: February 17, 1994

FROM: MIKE LADD *ml.*

SUBJECT: ~~INSTREAM~~ APPLICATION # 73451

You and I had recently talked about how WRD should issue the permit for this application out of McKay. At this time I would recommend not issuing the permit as the CTUIR and Irrigation Districts are negotiating which out of district lands may receive interim water for irrigation and how much water the Districts will allocate to instream flows.

I talked this over with Phil Graf of the BOR and he agrees with this position. Phil, by copy of this memo let me know if you **do** not agree with this.

Phil or I will keep in touch to let you know how negotiations are proceeding.

On another related issue, (assuming no objections to a technical review) how fast will your shop be able to turn around a secondary application for use of McKay Storage filed by the BOR for Westland Irrigation District.

cc: Phil Graf
Steve Applegate
Tony Justus
Larry Toll



Note to Local Governments

The person presenting the attached request for land use information is applying for a water right. The Water Resources Department requires its applicants to obtain land use information in order to meet its obligation to be compatible with comprehensive plans. The Department will not accept applications which do not include this completed land use information form or the receipt stub on the bottom of the attached form.

You have 60 days to fill out and return this form to the applicant or the Department. Otherwise the Department may proceed with processing the water right application without your input.

Besides land use information, there are many other submittal requirements for a water right application. If the applicant meets all these and pays a fee, the application is officially accepted. The Department is required to give public notice of all officially accepted applications.

Your county or city will receive a copy of this public notice. You will have 30 days to notify the Department of any concern, including conflicts between the proposed water use and your comprehensive plan. If you do not respond to the notice, the Department may presume that issuing the water right is compatible with your comprehensive plan.

Local governments are encouraged to take advantage of the 30 day notice period and use the 60 day land use information period, if needed, to gather documentation should there be a compatibility concern.

If you have any questions, please phone Roberta Jortner or Rick Bastasch at 378 - 3671.

Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in Addition to Classified Uses

RECEIVED

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. **DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.**

FEB 11 1994
WATER RESOURCES DEPT.
SALEM, OREGON

Applicant's Name: U.S. Bureau of Reclamation
 Address: 1150 N. Curtis Rd.
 City: Boise State: OR Zip: 83706 - Day Phone: 208-378-5322
1234 Phil Groat

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
<u>See attached list of Plan/Zone Designations</u>				

Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used. Umatilla → Stanfield (Urban Growth Area), Echo (Urban Growth Area)
 The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

For Local Government Use Only

Local government planning officials are to complete the remainder of this form. If this form can not be completed while the applicant waits, please sign and detach the receipt as instructed below. Please mail the completed form directly to the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

- Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.011.1, 3.051.1 (Umatilla Co) Go to section b) on reverse side. Section 3.20 of Stanfield Zoning Ordinance.
- Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)**

* See comments on back of form

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily

(over)

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: Bob Perry
Title: Senior Planner

Date: 1-11-94
Phone: 276-7111, Ext 251

Signature: Bob Perry

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet. For additional information call Roberta Jortner or Rick Bastasch at 378-3671.

Additional Comments:

There is an R-3 (Multi-Family) Zone along both sides of the County Road leading into Echo in Section 9, Township 3N, Range 29E. This zone is a city zone applied in Echo's Urban Growth Boundary. The R-3 zone does not mention farm uses as being allowed. It is this planner's assumption that existing agricultural uses would be classified as pre-existing, non-conforming and could be maintained or continued. It is uncertain, however, if new agricultural uses would be allowed in the R-3 zoned area. This area is on parts of TL 2900, 3200, 3300 on Assessor's Map 3N 29.

Planning Department approval of land use compatibility is based on water used for agriculture and a letter from Bruce Estes dated December 13, 1993. Post script says there is a letter of agreement between Oregon Water Resources Department, Confederated Tribes of the Umatilla Indian Reservation and U.S. Bureau of Reclamation that these areas will be included in the state final proof survey as supplemental water rights. (See attached copy of letter)

Description of Water Use

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

RECEIVED

FEB 11 1994

WATER RESOURCES DEPT.
SALEM, OREGON

Applicant Name: US Bureau of Reclamation
 Address: 1150 N. Curtis Rd.
Boise, ID 83706-1234
 Phone: 208-378-5322 (Phil Graf)

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- Irrigation (crop type, golf course, nursery or greenhouse): Primary & supplemental irrigation of 3798⁵⁹ acres
- Livestock (type of livestock, feedlot, slaughterhouse): _____
- Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- Institutional (i.e., school, library, etc.): _____
- Mining (aggregate, metal, open pit, placer, etc.): _____
- Recreation (park, campsite, pond, etc.): _____
- Fish and Wildlife (pond, hatchery, etc.): _____
- Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- Other (Name and list key characteristics): _____

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input type="checkbox"/> Surface Water Name sources: _____ _____ _____	_____ Cubic feet per second. _____ Gallons per minute. _____ Acre-Feet <u>Stored water only</u>
<input checked="" type="checkbox"/> Reservoir or pond <u>McKay Res.</u> <input type="checkbox"/> Ground Water	

STOEL RIVES BOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455

Writer's Direct Dial Number

(503) 294-9123

February 8, 1994

CC: Ed G. / Larry
Files - 73451 TO.
RECEIVED 7086

FEB 10 1994

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Reed Marbut, Administrator
Water Rights/Adjudication Section
Oregon Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Stanfield and Westland Irrigation Districts;
Notice of Withdrawal of Protests to Bureau of
Reclamation Applications

Dear Reed:

On August 17, 1993, we submitted a letter on behalf of Stanfield Irrigation District and Westland Irrigation District concerning the United States Bureau of Reclamation transfer application (T-7006) seeking to add fishery enhancement as a designated use for water stored in McKay Reservoir under Certificate no. 68258. The letter also expressed concerns with the Bureau's application (73451) for a new permit to use water released from McKay Reservoir for instream flows. The letter stated that if the transfer order and permit sought by the Bureau did not contain certain conditions, the Department should consider the letter to be a "protest" as to permit and transfer approval issuance.

On October 15, 1993, we submitted a second letter stating the Districts' objections to assumptions and statements made in the Department's technical review report for application no. 73451, the Bureau's instream flow application. The Department has not yet responded formally to the October 15 objections.

Since submitting these letters, the Districts have worked with the Department, the Bureau and the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") to craft transfer and permit conditions that satisfy each party's interests as well as the memoranda of agreement from the 1992 negotiations. As you know from our discussions, fitting such conditions within the framework of the Oregon water rules has proven to be a complicated task. Nonetheless, we are confident that legally-sound conditions can be put in place that satisfy the interests of all parties.

While the Districts have invested substantial time and effort toward resolving this matter, the Districts now recognize that continuation of their protest and

PDX1-98387.1 21570 0001

PORTLAND,
OREGON

SEATTLE,
WASHINGTON

BELLEVUE,
WASHINGTON

VANCOUVER,
WASHINGTON

BOISE,
IDAHO

SALT LAKE CITY,
UTAH

WASHINGTON,
DISTRICT OF COLUMBIA

RECEIVED

FEB 10 1994

WATER RESOURCES DEPT.
SALEM, OREGON


Mr. Reed Marbut
February 8, 1994
Page 2

objections is proving detrimental to their relations with the CTUIR. Therefore, last Friday, February 4, 1994, the Districts voted to withdraw the protests and objections. You received a telephone call and letter from Steve Bloom to that effect.

You indicated to Steve that before the withdrawal will be official, the Districts should file a formal notice of withdrawal. Accordingly, pursuant to the Oregon rules governing contested case procedures (OAR 690-02-080), the Districts now withdraw the protests that they filed on August 17, 1994 and request that the Department dismiss this matter without prejudice. No formal request for withdrawal is necessary for the objections in the October 15, 1993 letter because technical report objections are not subject to contested case rules.

If you have any questions about this letter, please call me.

Very truly yours,


Gail L. Achterman

cc: Mr. Rick George
Mr. Walt Fite
Mr. Tony G. Justus
Mr. Stephen M. Bloom
Mr. Thomas G. Myrum

August 27, 1993

Gail Achterman, Esq.
Stoel, Rives, et al
900 SW Fifth Ave., # 2300
Portland, OR 97204

Dear Ms. Achterman:

We have received your comments to Application File Number 73451. Those comments have become part of the Application File and will be considered within the context of our final public interest review.

We are sending you a copy of the Technical Review Report and its accompanying cover letter which was sent August 13, 1993. We are also enclosing a copy of the rules regarding objections. The comments you have already submitted will not be evaluated as objections.

If, after reviewing the Report, you would like to submit objections, please submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993.

If an objection is denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objection. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions, please call me.

Sincerely,

Laurie Beth English

Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosure



T-7006 75451
STOEL RIVES BOLEY
JONES & GREY

Hand-delivered
8-17-93

Darlene
Castro

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455

Writer's Direct Dial Number

(503) 294-9123

August 17, 1993

HAND DELIVERED

Mr. Reed Marbut, Administrator
Water Right/Adjudication Division
Oregon Water Resources Department
850 Portland Road, N. E.
Salem, Oregon 97310

Re: Bureau of Reclamation Applications
for McKay Water for Fishery Enhancement

Dear Reed:

Our office represents the Stanfield Irrigation District and the Westland Irrigation District and their members (the "Districts") with regard to the Bureau of Reclamation's (the "Bureau's") recently filed application for permit to appropriate McKay water for instream fishery enhancement releases filed June 17, 1993 and the Bureau's application for transfer (Transfer No. 7006) to add instream fishery enhancement as an additional use of storage in McKay Reservoir. The Districts and their members are the current users of the existing storage under Water Right Certificate 68258.

We understand that in a meeting with Bill Porfily and Steve Bloom on July 7, 1993 you indicated that the Bureau's application may be moved out of the application backlog because of a potential urgency this fall with regard to providing water for the fish in the Umatilla River. We are anxious to work with you and other interested parties to assure that fish flow needs are met consistent with state water law and prior agreements between the parties.

Our clients, Stanfield and Westland Irrigation Districts, support the interim protection of fish through the use of a portion of the Districts' existing McKay water rights. The Districts recognize that the water for fish is not

PDX1-69085.1 21570 0001

PORTLAND,
OREGON

SEATTLE,
WASHINGTON

BELLEVUE,
WASHINGTON

VANCOUVER,
WASHINGTON

BOISE,
IDAHO

SALT LAKE CITY,
UTAH

WASHINGTON,
DISTRICT OF COLUMBIA

Mr. Reed Marbut
August 17, 1993
Page 2

protected by a formal water right today although the Districts have agreed to make such water available on an interim basis. A formal permit for fish flows is needed if water is to be used legally for this purpose.

The Districts are concerned, however, that the permit and transfer applications are not made expressly for only the interim period before completion of the Umatilla Basin Project. The Memoranda of Agreement ("MOAs") entered into by the negotiating parties on the Bureau's exchange application for the Umatilla Basin Project speak in terms of the allocation of water for fish on a temporary basis during the interim period until the Umatilla Basin exchange goes into effect. We understand that the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") do not want or expect to allocate McKay water for fish under the Bureau's recently filed applications beyond the interim period. The Bureau itself notes in its permit application and in correspondence dated July 2, 1993 regarding its transfer application that it only seeks instream flow augmentation "pending completion of the Umatilla Basin Project" or "during the interim period before Umatilla Basin Project exchange facilities go into full operation."

If the water permit and transfer order have conditions attached to them specifically limiting the allocation of water to fish on a temporary basis for the interim period before Umatilla Basin project exchange facilities go into full operation and are otherwise in accordance with state law, then the Districts have no objection to the issuance of either the permit or the proposed transfer order. Without such conditional language limiting the water to a use on a temporary interim basis, the Districts believe that they would be irreparably injured by the proposed transfer since they could permanently lose rights to McKay storage. Such an unconditioned permit and transfer order would be inconsistent with their negotiations pursuant to the MOAs between the Bureau, the Water Resources Department, CTUIR, and the other negotiating parties, the Stanfield Exchange Agreement¹, and federal and state law. Any permanent

¹ It has always been the understanding of all parties to the exchange and this understanding is memorialized in the Exchange Agreement between Stanfield Irrigation District and the Bureau, that if the exchange ever broke down either for
(continued...)

Mr. Reed Marbut
August 17, 1993
Page 3

reallocation of McKay water to instream flows for fish conflicts with the Districts' existing water rights and would result in a net loss of water available to downstream users contrary to OAR 690.15.050. This would be an injury not only to the Districts, but also to the general public because of its long term impact on irrigated agriculture in the Umatilla Basin.

Please consider this letter to be the consent of the Districts to the transfer under OAR 690-15-060(ii) if the transfer order is expressly conditioned to authorize the change of use only during the interim period and is otherwise in accordance with state law. If the order is not so conditioned, then please consider this to be a protest from both Districts to the issuance of the permit and transfer order. In addition, if the order is not conditioned, we believe the Bureau is required to obtain notarized statements from the deeded owners of all land on which the stored water is utilized currently before the transfer can be approved. See OAR 690-15-060(ii).

Finally, we would like to encourage the Water Resources Department to coordinate processing of the Bureau's applications for a transfer and a new permit for fishery enhancement with its review and processing of the Bureau's applications for water delivery outside Stanfield and Westland district boundaries during the interim period. Continued deliveries to these lands were contemplated by the MOAs as part of the overall agreement between the negotiating parties.

We look forward to hearing from you with regard to the issues raised in this letter. Please provide us with copies of any other correspondence or comments on these applications. We plan to submit additional comments on the technical report prepared on permit application 73451, dated August 13, 1993, but we would appreciate it if you could advise us in writing before the close of the technical report comment period whether the permit and the transfer order will be conditioned to make them effective only during the interim

¹(...continued)

legal, physical or any other reason, that the Stanfield Irrigation District would always have its McKay irrigation rights in place. We believe this understanding is consistent with Oregon law and the federal legislation on the Umatilla Basin Project Exchange.

Mr. Reed Marbut
August 17, 1993
Page 4

period before project exchange facilities are fully operational. Thank you for your consideration.

Sincerely,



Gail L. Achterman

cc: Mr. John W. Keys III
Regional Director
Bureau of Reclamation
Pacific Northwest Region
1150 Curtis Road
Boise, Idaho 83706-1234

Mr. Rich Rigby
Bureau of Reclamation
Pacific Northwest Region
1150 Curtis Road
Boise, Idaho 83706-1234

Ms. Becky Hiers
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

Elwood Patawa
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

Mr. Frank Gunner
Bureau of Reclamation
P.O. Box 1749
Yakima, Washington 98907

Mr. Rick George
Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801

Mr. Reed Marbut
August 17, 1993
Page 5

Mr. Jim Phelps
Oregon Department of Fish & Wildlife
Route 1, Box 18
Pendleton, Oregon 97801

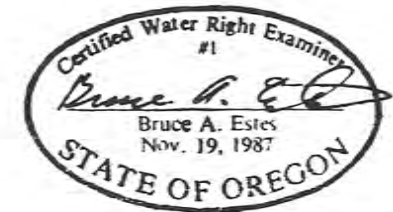
Mr. Bill Porfily, Manager
Stanfield Irrigation District
Westland Irrigation District
P.O. Box 416
Stanfield, Oregon 97875

Ann Perrault
Waterwatch of Oregon
474 Willamette #304
Eugene, Oregon 97401

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SEP 18 1998

WATER RESOURCES DEPT.
SALEM, OREGON

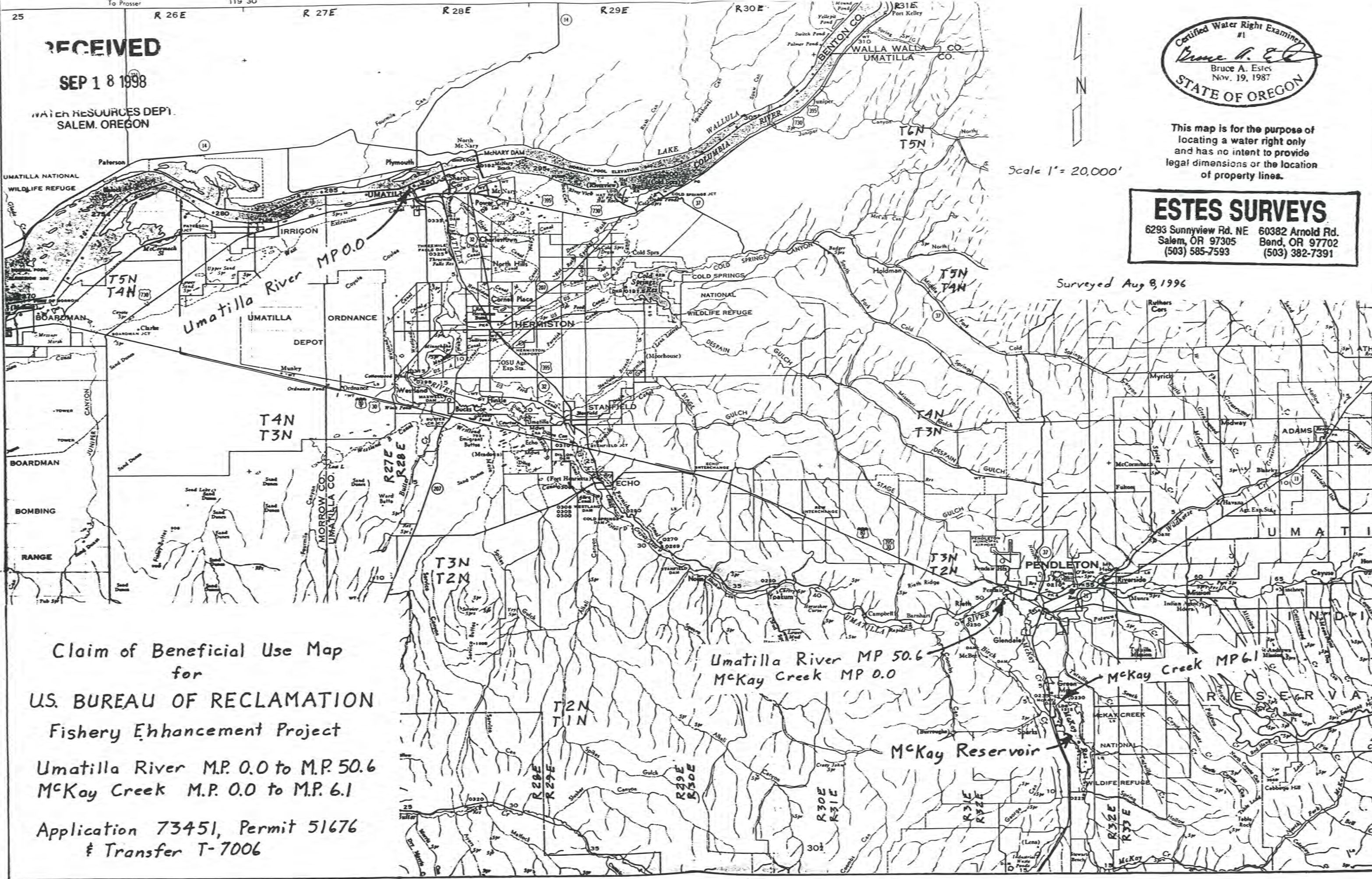


This map is for the purpose of locating a water right only and has no intent to provide legal dimensions or the location of property lines.

Scale 1" = 20,000'

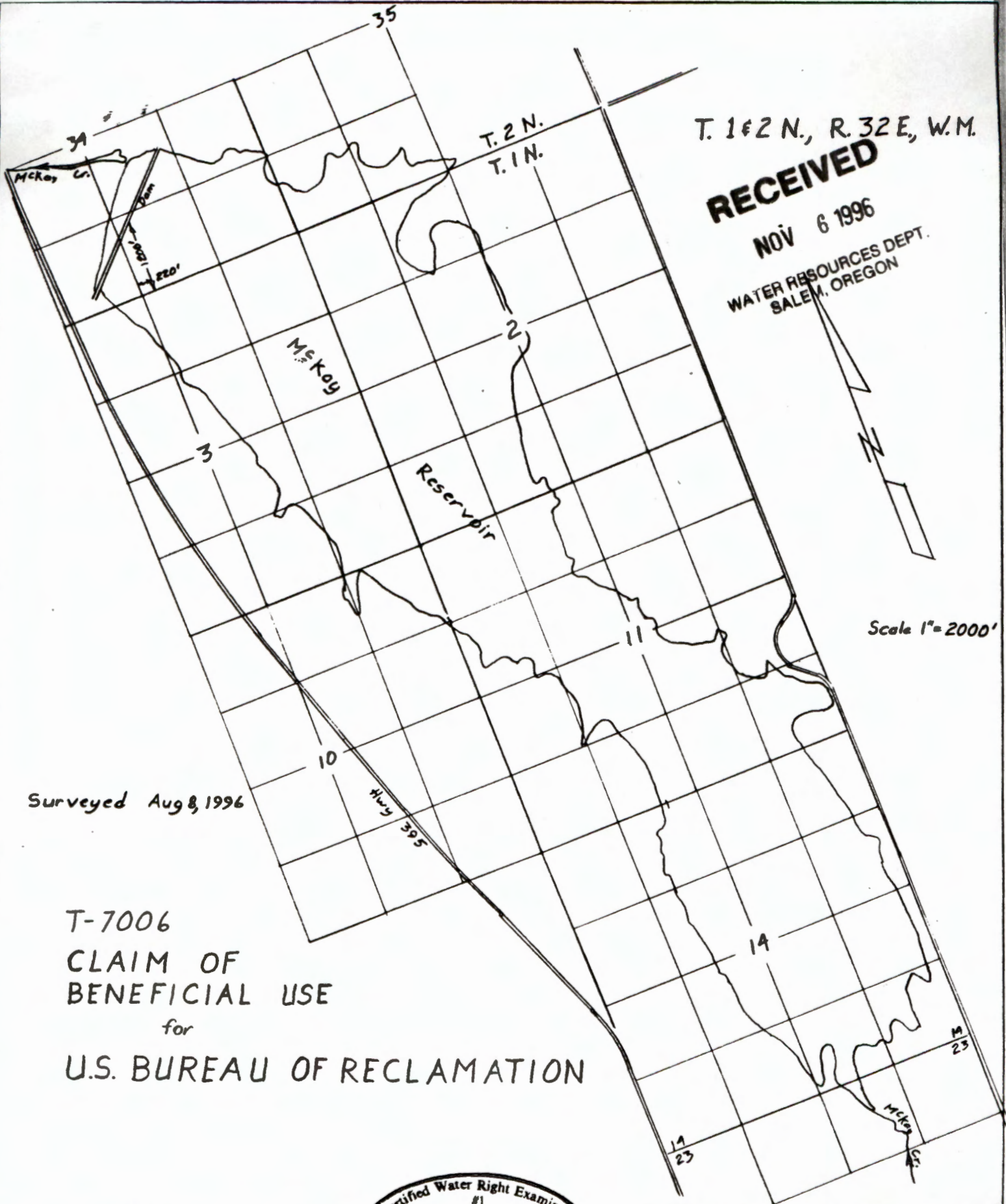
ESTES SURVEYS
 6293 Sunnyview Rd. NE Salem, OR 97305 (503) 585-7593
 60382 Arnold Rd. Bend, OR 97702 (503) 382-7391

Surveyed Aug 8, 1996



Claim of Beneficial Use Map
 for
 U.S. BUREAU OF RECLAMATION
 Fishery Enhancement Project
 Umatilla River M.P. 0.0 to M.P. 50.6
 McKay Creek M.P. 0.0 to M.P. 6.1
 Application 73451, Permit 51676
 & Transfer T-7006

Umatilla River MP 50.6
 McKay Creek MP 0.0
 McKay Reservoir



T. 1 & 2 N., R. 32 E., W.M.

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NOV 6 1996

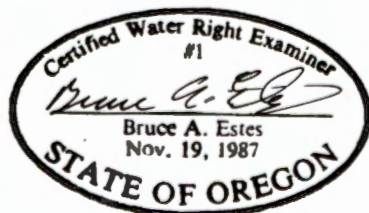
WATER RESOURCES DEPT.
SALEM, OREGON

Scale 1" = 2000'

Surveyed Aug 8, 1996

T-7006
CLAIM OF
BENEFICIAL USE
for
U.S. BUREAU OF RECLAMATION

This map is for the purpose of locating a water right only and has no intent to provide legal dimensions or the location of property lines.



ESTES SURVEYS
6293 Sunnyview Rd. NE Salem, OR 97305 (503) 585-7593
60382 Arnold Rd. Bend, OR 97702 (503) 382-7391

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

*ok final
with two
corrections
7/9/99
SB*

THIS CERTIFICATE ISSUED TO

U.S. BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, IDAHO 83706-1234

confirms the right to use the waters of McKAY RESERVOIR CONSTRUCTED UNDER PERMIT R-584, a tributary of UMATILLA RIVER, for INSTREAM FISHERY ENHANCEMENT.

This right was perfected under Permit 51676. The date of priority is JUNE 18, 1993. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 12,000 ACRE-FEET STORED WATER ONLY EACH YEAR, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SW 1/4 SE 1/4, SECTION 34, TOWNSHIP 2 NORTH, RANGE 32 EAST, W.M.; 1200 FEET NORTH AND 220 FEET EAST FROM THE SOUTH 1/4 CORNER, SECTION 34.

The Bureau of Reclamation (or owner/operator of the reservoir) shall notify the watermaster 48 hours in advance of the release of the water, or lesser time as approved by the watermaster, prior to the use of water under this right.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use to which this right is appurtenant is as follows:

UMATILLA RIVER FROM THE MOUTH OF McKAY CREEK, (SE 1/4 NW 1/4, SECTION 8, T 2 N, R 32 E, W.M.) TO THE MOUTH OF THE UMATILLA RIVER, (NW 1/4 NE 1/4, SECTION 18, T 5 N, R 28 E, W.M.) AND McKAY CREEK FROM McKAY DAM (NW 1/4 SE 1/4, SECTION 34, T 2 N, R 32 E, W.M.) TO THE MOUTH OF McKAY CREEK.

Measurement, recording and reporting conditions:

- A. The water user shall install a meter or other suitable measuring device as approved by the Director. The water user shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the ~~permit~~ *right*.
- B. The water user shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

Failure to comply with any of the provisions of this ~~permit~~^{right} may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

The right to the use of the water for the above purpose is restricted to beneficial use without waste on the lands or place of use described. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

WITNESS the signature of the Water Resources Director, affixed APRIL 13, 1999.

Martha O. Pagel

Recorded in State Record of Water Right Certificates numbered XXX.

MAR 14 1991

Submitted 2-8-91
Gave receipt for Land Use Info.

Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in Addition to Classified Uses

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. **DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.**

UNITED STATES OF AMERICA, ACTING THROUGH THE REGIONAL

Applicant's Name: BUREAU OF DIRECTOR, PN REGION, BUREAU OF RECLAMATION
Address: Box 043-550 West Fort St.
City: Boise State: ID Zip: 83724 Day Phone: 334-1165

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
	<u>SEE ATTACHED MAP</u>			
	<u>SEE UMATILLA BASIN PROJECT DES & FES</u>			

Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used. UMATILLA COUNTY

The following section must be completed by a planning official from **each** county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

For Local Government Use Only

Local government planning officials are to complete the remainder of this form. If this form can not be completed while the applicant waits, please sign and detach the receipt as instructed below. Please mail the completed form directly to the Water Resources Department (3850 Portland Rd. NE, Salem, OR, 97310) within 60 days of the date of receipt as shown below. If the form is not completed within 60 days, the Department may take action to approve the water use.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____ . Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note:** Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily
<u>See comments on reverse side.</u>				

Application No.
Permit No.

RECEIVED

JUN 18 1993

RECEIVED

JUN 17 1993

WATER RESOURCES DEPT
SALEM, OREGON

WATER RESOURCES DEPT
SALEM, OREGON

Application No. 73451

State of Oregon
WATER RESOURCES DEPARTMENT

Application for a Permit to Appropriate Surface Water

Applicant(s) United States of America, acting through the Regional Director,
Pacific Northwest Region, Bureau of Reclamation

Mailing Address: 1150 North Curtis Road
Boise, Idaho 83706-1234 208-378-5322
City State Zip Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. SOURCE OF WATER for the proposed use: McKay Reservoir,
a tributary of Umatilla River
2. TOTAL AMOUNT OF WATER to be applied to beneficial use: 12,000 acre-feet
~~year~~ OR 12,000 gallons per minute. If water is to be used from more than one source,
give the quantity of water from each: 12,000 acre-feet of stored water only

3. INTENDED USE(s) OF WATER: To use stored water for instream
fishery enhancement releases

If for more than one use, give the quantity of water from each source for each use: _____

If for DOMESTIC use, state the number of households to be supplied: N/A

If for MUNICIPAL OR QUASI-MUNICIPAL use, state the present population to be served,
and an estimate of the future requirements; (List population projections, water needs, anticipated areas
to be provided water.)

N/A

If for MINING use, state the nature (gold, silver, etc.) of the mines to be served: N/A

If for IRRIGATION, or other land area use, state the TOTAL number of acres to be developed
under each use:

Irrigation N/A
Other (describe) instream fishery enhancement releases

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4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** *Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).*

Water released at McKay Dam outlet works through jet flow valve into McKay Creek to flow to the mouth of the Umatilla River.

5. **PROJECT SCHEDULE:** *(List month and year)*

Proposed date construction work will begin Completed

Proposed date construction work will be completed Completed

Proposed date water use will be completed December 1, 1994

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

To be provided under a separate cover.

6. a) *In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):*

 Applicant X CWRE Other (Identify in REMARKS section)

b) *In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):*

 X Applicant CWRE Other (Identify in REMARKS section)

7. *Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? No. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.*

RECEIVED

JUN 18 1993

WATER RESOURCES DEPT
SALEM, OREGON

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

WITNESS my hand this _____ day of _____, 19____.

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at SALEM, Oregon, on the 18TH day of JUNE, 1993, at 12:01 o'clock, P M.

APPLICATION NO: 73451

PERMIT NO: _____

A:APPFORM 9/89

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JUN 18 1993

WATER RESOURCES DEPT
SALEM, OREGON

Remarks (attached to Application for a Permit to Appropriate Surface Water where the source of the water is McKay Reservoir):

The proposed site of diversion, McKay Dam outlet works, is owned by the United States. The place of use is beneath the high water maker of McKay Creek and the Umatilla River below McKay Dam.

The Bureau of Reclamation desires the operational flexibility to release as needed some McKay reservoir stored waters for downstream flow enhancement purposes pending completion of the Umatilla Basin Project. Oregon State Water Resources Department rules reportedly do not permit temporary changes in place or purpose of use; consequently, as a matter of comity, the Bureau of Reclamation has prepared these applications in a manner intended to assure, to the maximum feasible extent, consistency between ongoing Federal project operations and Oregon practices and procedures. Neither this application nor any permit issued pursuant to this application should be construed, however, to represent an irreversible or irretrievable commitment of the subject waters under any applicable Federal law. The Bureau of Reclamation expressly reserves the right to amend this application and to apply in the future for other water right changes involving these or other waters in order to provide for effective multi-purpose Federal project operations in the public interest.

Secondary releases authorized under permit will be scheduled as needed for fishery benefits. Releases to be made in a manner to enhance fishery in McKay Creek and Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. Prior to fishery targeted releases the Watermaster will be notified to enable protection of the releases from adverse diversion.

Releases to benefit the Umatilla River from the mouth of McKay Creek, mile post 50.6, (SE1/4NW1/4, Section 8, T. 2 N., R. 32 E., W.M.) to the mouth of the Umatilla River, mile post 0.0, (NW1/4NE1/4, Section 18, T. 5 N., R. 28 E., W.M.) and McKay Creek from McKay Dam, mile post 6.1, (NW1/4SE1/4, Section 34, T. 2N., R. 32 E., W.M.) to mouth of McKay Creek, mile post 0.0.

Application No. 73451
Permit No.

RECEIVED

MAY 16 1994

WATER RESOURCES DEPT.
SALEM, OREGON

Oregon

WATER
RESOURCES
DEPARTMENT

VIA FACSIMILE AND U.S. MAIL

Becky Hiers
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Watermaster

Dear Becky:

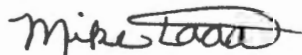
Attached, is a copy of a letter sent to Reed Marbut and written on behalf of Stanfield and Westland Irrigation Districts. The letter request that the Department not take further action on the objection to application No. 73451 and to consider the objection to be withdrawn.

The Department is no longer considering this as an objection to Application No. 73451.

In the future, if you would like the Department to respond to a request by you, please call, or send us a letter. You neglected to send us a copy of the letter concerning this issue.

If you have any questions, or need further information, please call me.

Sincerely,



Michael F. Ladd
Regional Manager

Att: William Holmes May 6, 1994 letter

cc: ✓ Reed Marbut
Steve Applegate
Walt Fite
Reed Benson
Thomas G. Myrum
Jim Esget
Al Mirati



PH. 503-276-7111
3920 Westgate
Pendleton, OR 97801

WILLIAMS DOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2450
Cable Laxport
Telex 703455
Writer's Direct Dial Number
(503) 294-9207

May 6, 1994

VIA FACSIMILE AND U.S. MAIL

Mr. Reed Marbut
Administrator
Water Resources/Adjudication Section
Oregon Water Resources Department
The Commerce Building
158 12th Street NE
Salem, OR 97310

Re: Stanfield and Westland Irrigation Districts; Request for
Withdrawal of Objections to Application No. 73451

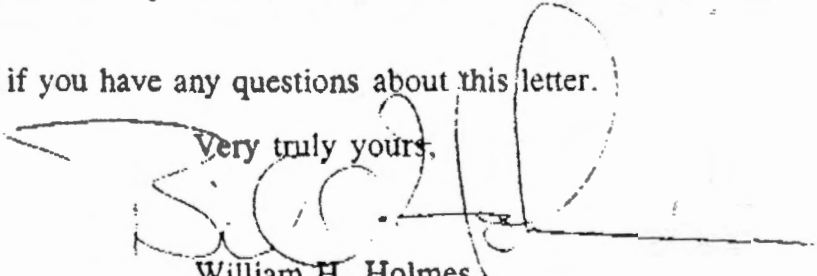
Dear Reed:

On February 8, 1994, we submitted a letter to you on behalf of Stanfield Irrigation District and Westland Irrigation District requesting withdrawal of protests filed on the United States Bureau of Reclamation Transfer Application No. T-7006. In that letter, we indicated that the Districts also had decided to withdraw their objections to the Bureau's application no. 73451 for a new permit to use water released from McKay Reservoir for instream flows.

In our February 8 letter, we indicated that no formal request for withdrawal was necessary for the October 15 objections because objections are not subject to contested case rules. This statement has apparently generated some confusion as to whether the objections are still pending before the Department. The purpose of this letter is to notify you of the Districts' request that the Department not take further action on the objections and to consider the objections to be withdrawn. This has been the Districts' intent all along.

Please call me if you have any questions about this letter.

Very truly yours,


William H. Holmes

WHH:mjm

cc: Ms. Becky Heirs
Mr. Walt Fite
Mr. Reed Benson
Mr. Thomas G. Myrum



OREGON
WATER
RESOURCES
CONGRESS

73451

CC: Larry

727 Center St. NE, Suite 107 ■ Salem, OR 97301-3821 ■ (503) 363-0121 ■ FAX (503) 371-4926

FAX TRANSMISSION COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME AND TITLE: REED MARBUT

COMPANY: WRD

FROM: JAN

RE: _____

DATE: 5/20 TIME: 9:34

NUMBER OF PAGES INCLUDING COVER SHEET: 3

COMMENTS: _____

We are transmitting from a PANAFAX PX 350

If you do not receive all of the described material, please call:

BUSINESS PHONE (503) 363-0121

FAX (503) 371-4926

SENDER'S NAME: _____

OWRC - 08-93



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107 ■ Salem, OR 97301-3821 ■ (503) 363-0121 ■ FAX (503) 371-4926

May 19, 1994

Tom Myrum
Umatilla Basin I.D. Coordinator
P. O. Box 1260
Hermiston, OR 97838

**RE: APPLICATION #73451
SECONDARY PERMIT FROM MC KAY RESERVOIR**

In the two actions filed with the Water Resources Department, we are party to only one application, the secondary permit, Application #73451 of August 13, 1993, for storage from McKay Reservoir for fish life. We are not a party to Transfer Application #7006, filed August 16, 1993, adding fish enhancement water use to the certificated uses for McKay Reservoir water.

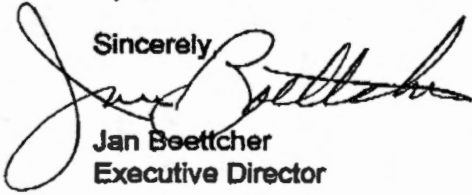
We objected to Application #73451 based on the policy question of a "permanent" reallocation of water, versus a "temporary" use which would accommodate the parties during the period that the Umatilla Basin Project was under construction, prior to the additional water anticipated being made available to all the users in the system (tribal, district, etc.) through the exchange which will result from the project's construction. We concur that the temporary use should be made available for fishery purposes as we understand you, the Umatilla districts, have negotiated, on a time-certain or temporary arrangement that would have the net effect of providing water for instream purposes until the NEPA process and the project were complete and resulted in the ability to develop a more permanent understanding among the parties.

However, the original application still allows "permanent" reallocation of the water, in opposition to what we understood was to occur as the result of negotiations between the Tribes and the districts to allocate the use on a time-defined term during the construction period. If the application has been amended to reflect the time-certain period during project construction, then, upon receipt of the amended language we could likely remove our objection.

If no amendment has been made to make the action other than permanent, then we have a major policy question before us with both statewide and westwide implications as to allocation and protection of existing water rights. In that case, we would need to bring the issue to the full board of the Oregon Water Resources Congress, discuss the policy implications, and then make a determination. This would necessitate the Umatilla districts bringing a proposal to our May 24 board meeting so that the board could consider your request and discuss with you the policy implications which go beyond the Umatilla Basin and beyond the water spreading issue. As you know,

OWRC stands by to assist you in any way that can be accomplished while not injuring other districts and water users during that course of action.

Sincerely



**Jan Beettcher
Executive Director**

**cc: Hermiston Irrigation District
Stanfield Irrigation District
Teel Irrigation District
West Extension Irrigation District
Westland Irrigation District
Senator Mark Hatfield
Bureau of Reclamation, Regional Director John Keys
Senator Gordon Smith
Representative Chuck Norris
Water Resources Department, Reed Marbut**

STOEL RIVES BOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455

Writer's Direct Dial Number
(503) 294-9201

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MAY - 9 1994

WATER RESOURCES DEPT.
SALEM, OREGON

May 6, 1994

VIA FACSIMILE AND U.S. MAIL

Mr. Reed Marbut
Administrator
Water Resources/Adjudication Section
Oregon Water Resources Department
The Commerce Building
158 12th Street NE
Salem, OR 97310

Re: Stanfield and Westland Irrigation Districts; Request for
Withdrawal of Objections to Application No. 73451

Dear Reed:

On February 8, 1994, we submitted a letter to you on behalf of Stanfield Irrigation District and Westland Irrigation District requesting withdrawal of protests filed on the United States Bureau of Reclamation Transfer Application No. T-7006. In that letter, we indicated that the Districts also had decided to withdraw their objections to the Bureau's application no. 73451 for a new permit to use water released from McKay Reservoir for instream flows.

In our February 8 letter, we indicated that no formal request for withdrawal was necessary for the October 15 objections because objections are not subject to contested case rules. This statement has apparently generated some confusion as to whether the objections are still pending before the Department. The purpose of this letter is to notify you of the Districts' request that the Department not take further action on the objections and to consider the objections to be withdrawn. This has been the Districts' intent all along.

Please call me if you have any questions about this letter.

Very truly yours,


William H. Holmes

WHH:mjm

cc: Ms. Becky Heirs
Mr. Walt Fite
Mr. Reed Benson
Mr. Thomas G. Myrum

STOEL RIVES BOLEY
JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

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Telex 703455

Writer's Direct Dial Number

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OCT 18 1993

WATER RESOURCES DEPT.
SALEM, OREGON

(503) 294-9123

October 15, 1993

**VIA FACSIMILE
AND U.S. MAIL**

Mr. Stephen C. Brown, Manager
Water Rights Section
Oregon Water Resources Department
3850 Portland Road, Northeast
Salem, OR 97310

Re: Objections to Technical Review; Application No. 713451

Dear Steve:

As you may know, we represent several irrigation districts in the Umatilla River Basin. Stanfield Irrigation District ("SID") and Westland Irrigation Districts ("WID", collectively the "Districts") asked us to prepare and submit comments on their behalf concerning the Water Resources Department ("WRD") technical review for application No. S 73451. This application involves the Bureau of Reclamation (the "Bureau") proposal to appropriate water stored in McKay Reservoir for instream fishery enhancement.

Both SID and WID receive water from McKay Reservoir pursuant to water delivery contracts with the Bureau. SID and WID believe that the proposed reallocation may interfere with their contractual rights to continue to receive water. While the Districts continue to work with the Bureau and other interested parties in the Umatilla Basin to address their concerns, the Districts submit these objections to preserve their existing rights to water stored in McKay Reservoir.

The Districts believe that sufficient water exists in the Umatilla Basin to meet instream fishery needs while at the same time protecting the Basin's reliance on irrigated agriculture as an integral part of its economic base. The Districts submit, however, that the Bureau's application and the conditions

PDX1-78815.1 21570 0002

PORTLAND,
OREGON

SEATTLE,
WASHINGTON

BELLEVUE,
WASHINGTON

VANCOUVER,
WASHINGTON

BOISE,
IDAHO

SALT LAKE CITY,
UTAH

WASHINGTON,
DISTRICT OF COLUMBIA

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OCT 18 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Stephen C. Brown
October 15, 1993
Page 2

described in WRD's technical review create unnecessary inflexibility. For that reason, the Districts submit these comments as formal objections to the technical review pursuant to OAR 690-11-170(1).

In submitting these comments, the Districts wish to make clear that they do not oppose the use of McKay water on an interim basis for fish flows until Phase II construction is complete. McKay water has been used in the past for this purpose when the Districts have voluntarily left water in the river during critical fish passage periods. The Districts also submit that mechanisms exist under Oregon law to allow temporary use of McKay water for this purpose. Such reasonable interim alternatives pending completion of Phase II make the Bureau's proposed use unnecessary.

BACKGROUND

The Umatilla Basin is a microcosm of water rights issues in Oregon and the West. No water allocation issue can be considered in isolation without some consideration as to how it fits within the larger framework of water use and distribution in the Basin. For that reason, some background is necessary to set the stage for the specific objections that the Districts submit.

Congress authorized the construction of McKay Reservoir as part of the Umatilla Project. The Bureau completed construction of the project in 1927 and began water storage and delivery that same year. According to an April 1975 report prepared by the Bureau, McKay Dam and Reservoir were constructed for the single purpose of irrigation.

The Bureau holds two water rights under Oregon law that control the Bureau's right to store and redistribute water. Permit R-584, (which WRD recently perfected in certificate 68258) authorizes the Bureau to store 75,000 acre feet of water in McKay Reservoir with a priority date of September 9, 1920. Permit 7400 authorizes the Bureau to deliver up to 73,250 acre feet of McKay water for supplemental irrigation use. The Bureau has not yet perfected permit 7400.

Since completion of the project, the Bureau has delivered water to SID pursuant to water delivery contracts. The Bureau also delivers water to other water users pursuant to other water delivery contracts. In 1949, Congress authorized the Bureau to renegotiate the contract payment terms, which the Bureau did. The 1949 contracts with SID and WID remain in effect today.

OCT 18 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Stephen C. Brown
October 15, 1993
Page 3

Pursuant to the terms of the 1949 contracts, the Bureau must deliver 30 percent of the water stored in McKay to WID and 30 percent to SID. The contracts also require the Bureau to reserve 25 percent of the reservoir storage space pending determination of the terms and conditions under which water would be made available permanently. This "reserved water" has been delivered to SID and WID each year. The Bureau also has delivered "residual water" to the Districts each year. Residual water consists of "temporarily available" water this is to be delivered to WID and SID upon payment in advance of specified rates.

The lower Umatilla River provides a migration corridor for anadromous fish to reach their spawning grounds in upper basin tributaries. In 1988 Congress authorized construction of facilities to use Columbia River water to replace water historically diverted from the Umatilla River for irrigation. Congress designed Public Law 100-557 to ensure adequate flows for Umatilla River fish migration while at the same time preserving irrigated agriculture in the Basin. Phase II of the project involves the construction of pumping and transportation facilities necessary to deliver the exchanged water.

The water exchanges contemplated by the Umatilla Basin Project Act required the Bureau to seek new and modified water rights. On February 14, 1991, the Bureau filed application 71293 seeking to divert 240 cfs from the Columbia River to be exchanged with water that otherwise would be diverted from McKay Creek and the Umatilla River. On October 9, 1991, the Bureau filed transfer application T-6621E seeking approval for the exchange of water requested under application 71293. Once Phase II of the Umatilla Project is complete, McKay Creek and Umatilla River water will then be left instream to provide improved anadromous fish passage.

Several public interest groups protested the Bureau's applications on the grounds that some existing Umatilla River diversions subject to the exchange may be occurring without compliance with Oregon water law. A number of parties, including SID, resolved the dispute through mediation. The mediation resulted in several memoranda of agreement ("MOA") and proposed terms and conditions to be included in WRD's approval of the Bureau's applications. WRD since issued Permit 51439 to approve the Columbia River diversion and T-6621E to approve the exchange. The Bureau also has begun construction of the physical facilities necessary to effectuate the exchange; however, construction is not yet complete.

On June 21, 1993, the Bureau filed an application seeking to "use stored water for instream fishery enhancement releases." Application S 73451

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OCT 18 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Stephen C. Brown
October 15, 1993
Page 4

purports to seek approval of a new water right to use water released from McKay Reservoir.

OBJECTIONS

Pursuant to OAR 690-11-170, the Districts object to the technical review for the following reasons:

A. The Technical Review Erroneously Concludes that Water is Available to Satisfy the Proposed Use.

Under Oregon water law, releases from storage must occur pursuant to a secondary water right in order for such releases to be dedicated to a specific use. The Bureau currently appropriates water stored in McKay Reservoir pursuant to permit 7400. Permit 7400 authorizes releases of 73,250 acre feet of stored water for supplemental irrigation use. This appropriation represents virtually the entire volume of water stored pursuant to certificate 68258.

Despite the existence of water appropriated from storage pursuant to permit 7400, the Bureau proposes to appropriate an additional 12,000 acre feet from storage. Because the Bureau does not (and probably cannot legally) seek to reduce its permit 7400 rights, the proposed use will result in the Bureau having rights to appropriate 85,250 acre feet from a reservoir where it has rights to store only 73,840 acre feet. The proposed use, therefore, seeks to appropriate unavailable water.

Because water is not available for the Bureau's proposed use, the technical report fails to identify defects in the application and the supporting data. Instead, the technical report reaches the erroneous conclusion that 12,000 acre feet of water is available. Because virtually all water legally stored in McKay Reservoir is appropriated under permit 7400, the proposed use cannot be allowed under the Oregon water rules. The technical review report's water availability analysis is procedurally deficient for failing to identify this flaw.

B. The Technical Report is Deficient for Failing to Require a Rate of Use for the Proposed Use.

The Bureau requests 12,000 acre feet for the proposed use, but does not identify a rate at which the use will be exercised. The technical report also does not specify a rate of flow as a proposed permit condition.

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WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Stephen C. Brown
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Absent a specified rate of flow, downstream users will not know whether or not water must remain instream for fish passage, especially since the proposed use does not identify a season of use. This will make administration of released water virtually impossible. Absent parameters defining how releases will be administered, both the application and the technical report are deficient.

C. The Proposed Change is Inconsistent with Transfer Order No. 6621E.

T-6621E contemplates that water historically diverted pursuant to several water rights held by Hermiston Irrigation District, SID and the Bureau, including permit 7400, would be replaced with Columbia River water. Until Columbia River water is available, however, the conditions necessary to activate T-6621E do not exist.

The Bureau's proposed use seeks to circumvent T-6621E by seeking immediate authorization to appropriate water for instream fishery needs. This proposal violates the spirit of negotiations that led to the approval of T-6621E, as well as the MOAs that authorize the Bureau to reallocate McKay Reservoir under specific terms and conditions. The Districts do not object to adding fish flows to permit 7400 and do not object to interim fish flows. The proposed use, however, goes far beyond what the Districts have agreed to and what the MOAs and T-6621E authorize the Bureau to seek. Indeed, approval of the proposed use may act to invalidate T-6621E by undercutting the foundation on which it is based.

D. The Proposed Use is not Authorized by Law.

McKay Reservoir is a federal project and may only be operated for such purposes as designated by Congress in the project's authorizing legislation. The authorization legislation states that the project may store water for irrigation. Congress later added flood control as an authorized purpose when it authorized spillway improvements in the mid 1970s. The project also may provide incidental benefits to fish and wildlife. Such incidental benefits, however, must occur in a way that do not conflict with the project's primary purposes.

The Districts recognize that others do not necessarily agree with this interpretation and instead take the position that the Umatilla Project itself reauthorized McKay Reservoir. This position is far from clear from the authorizing legislation and is one the Districts do not agree with.

Prior to the completion of the Phase II construction, the proposed use will benefit fish and wildlife only. It will provide no irrigation or flood control

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SALEM, OREGON

Mr. Stephen C. Brown
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benefit. Without irrigation or flood control benefits, however, fish and wildlife use are not authorized. Without a Congressional change to the authorizing legislation, the Bureau lacks authority to store water for additional purposes. The proposed use, therefore will impair the public interest as articulated by Congress and as forbidden by ORS 537.170 and OAR 690-11-195.

Notwithstanding the fundamental problem with the proposed use, the technical review report fails to provide any analysis as to whether the Bureau is authorized to apply water to the proposed use. This lack of analysis is a procedural flaw that renders the technical review report deficient under OAR 690-11-160(1)(b) (requiring assessment of whether the proposed use is restricted or prohibited by statute).

E. The Proposed Use Does Not Protect all Vested and Inchoate Rights to Water.

The proposed use will delay water releases of up to one-tenth of the water historically released for irrigation use. This water is relied upon not only by contract users, but also by those users who depend upon return flows. The technical review report, however, provides no analysis as to how potential changes to the storage release regime will affect users that depend upon return flows. This lack of analysis violates the procedural requirements set out in OAR 690-11-160(1)(e) (requiring analysis of potential conflict with existing water rights). The proposed use also may violate the substantive prohibition on such conflicts and, therefore, impair and be detrimental to the public interest.

F. The Proposed Change Requires Compliance with the National Environmental Policy Act.

The Bureau's proposal to reallocate stored water involves a federal action. The Bureau did not consider this action as part of the Umatilla Project Basin review and, therefore, the National Environmental Policy Act ("NEPA") requires that the Bureau assess the environmental impacts of its proposal.

G. No Basis Exists for the 12,000 Acre Foot Figure.

The Stanfield MOA provides that the Districts would reach agreement with the CTUIR on a quantity of water necessary to protect fish. Such agreement never was reached. Nonetheless, the Bureau appears to unilaterally assigned ten percent of the McKay stored water to fish flows and on this basis request that

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WATER RESOURCES DEPT.
SALEM, OREGON

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12,000 acre feet be reallocated. Without some discussion as to how this water will be used, the Bureau's request is arbitrary and should not be granted.

H. The Water Already is Under Contract to the Districts.

The Districts have paid for and taken residual water in all years in which water was determined to be "temporarily available" under the contracts that WID and SID have with the Bureau. The contracts do not give the Bureau the authority to allocate "temporarily available" water to fish flows. Rather, the Bureau must make such residual water available to the Districts.

In addition, the Districts have the right to receive reserved water. The contracts do not allow the Bureau to allocate reserved water for fish flows or to allocate reserved water to parties other than irrigation districts and landowners.

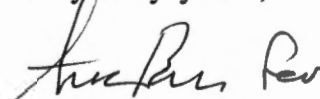
Residual water and reserved water are, therefore, not available for the Bureau's use. The technical report failed to consider the fact that McKay Reservoir water is already contractually committed to the Districts and thus unavailable for appropriation under application No. S 73451.

SUMMARY

In summary, the Districts submit that the technical review report is deficient for not identifying a number of fundamental flaws that exist with the Bureau's proposed use. The Districts are prepared to work with WRD to identify alternative solutions to provide interim fish flows until Phase II is completed. However, the Bureau's proposed use is not the solution to fish flow issues and is not permissible under Oregon law.

Please call me if you have questions about this letter.

Very truly yours,


Gail L. Achterman

cc: Mr. Walt Fite
Ms. Becky Hiers
Mr. Bill Porfily
Mr. Stephen Bloom
Ms. Laura Schroeder

August 20, 1993

TO: Reed Marbut, Administrator
FROM: Larry Nunn, Transfer Specialist
SUBJECT: Comments on BOR/McKay Transfer 7006

1. We received letters from the Oregon State Grange and 5 individual granges (Sunset, Washington-Yamhill County Pamona, Leedy, Beaverton, and Dixie Mtn.) In essence, they all requested a hearing on the matter.

Beaverton Grange raised the additional issues that the reservoir is only for irrigation and flood control, needs NEPA review, reservoir is 100% allocated and will deprive irrigators of water, and is confiscation of the storage.

I suggest a letter from me thanking them for their comments, explaining that there is no public interest involvement in the water right transfer process, and explaining that for transfers we may only consider injury to existing water rights. I will also mention that their comments will be considered as comments in the permit application process.

2. We received a request from Teel Irrigation District, through their attorney Laura Schroeder, for copies of all correspondence and filings. I will have copies sent.

3. We received a letter from Gail Achterman, representing Stanfield and Westland Irrigation Districts. Stanfield and Westland support the idea of an interim transfer for fish water. However they are concerned that the transfer is not an interim measure. According to the letter, the MOA's currently in place call for temporary use of stored water for fish, until the exchange is in place.

Stanfield and Westland ID's request that the transfer be conditioned to make this only a temporary transfer, valid only until the exchange is fully operational. If the conditions are added, they approve of the transfer.

If the conditions are not added, they want to protest the transfer. They would protest claiming that we should not approved the transfer because it would reduce the water available to downstream users (690-15-050).

Reed Marbut

Page 2

SUBJECT: Comments on BOR/McKay Transfer 7006
August 20, 1993

If the order is not conditioned, they also believe that notarized statements are required from all deeded owners of land on which stored water is used ((690-15-060)(11)). In this instance, I believe she is wrong. This provision only applies if the landowner does not make the application. In the case of this transfer, the BOR owns both the land and the reservoir. Additional statements from water users are not needed.

Stanfield and Westland, through their attorney, request copies of any other correspondence or comments. They also request written notice if the requested conditions will be approved.

4. The Oregon Dairy Farmers Association requests a hearing because it could have a financial impact.

COPY
RECEIVED

AUG 16 1993

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

WATER RESOURCES DEPT.
SALEM, OREGON FAX: 503/938-6112
PHONE: 503/938-3377

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

12/6/93
Reed
How come
we've never seen
this letter?
another protest
to T-7000

August 13, 1993

MARTHA PEGEL, DIRECTOR
REED MARBUT
WATER RESOURCES DEPARTMENT
3850 PORTLAND RD NE
SALEM OR 97310

RE: Bureau of Reclamation Transfer
NO. T-7006

Dear Friends:

I represent Marion Jack Improvement District, and a number of water users located immediately below McKay Reservoir in Umatilla County, Oregon. Enclosed with this letter is a Protest to the Bureau of Reclamation Application to Transfer a use of water from irrigation to instream fish enhancement. I am also enclosing a check in the amount of \$25 to cover the protest fee.

My clients only learned of this proposed transfer through the public notice published in the East Oregonian newspaper. We have filed this protest to protect our rights in connection with this matter. We are willing to explore with all interested parties whether a mutually acceptable resolution of this matter can be reached.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker
Sam Tucker

ST:cl
Enclosure

c: Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

Marion Jack Improvement District
Marion Jack Irrigation Company
Keith Blanchard
Dan Kinsley
Judy Kennedy

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AUG 16 1993

**PROTEST AGAINST BUREAU OF RECLAMATION
APPLICATION TO TRANSFER
MCKAY RESERVOIR WATER
APPLICATION T-7006**

**WATER RESOURCES DEPT.
SALEM, OREGON**

We, Marion Jack Improvement District, Marion Jack Irrigation Company and its successors and Keith Blanchard, Judy Kennedy, and Dan Kinsley (Landowners) individually, through their attorney, Sam Tucker, 105 N. Main, Milton-Freewater, Oregon 97862, Phone: 503-938-3377, do hereby protest the approval of pending application numbered T-7006 in the name of the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation (Bureau), pertaining to use of water from McKay Reservoir, McKay Creek, Tributary of Umatilla River.

Facts and legal issues relevant to this protest, and showing that protestors and the public interest would be adversely affected by granting this transfer, include the following:

1. Marion Jack Irrigation Company holds Water Right Certificate 55836, and Keith Blanchard, Judy Kennedy, Dan Kinsley and others presently own the land benefited by said water right certificate. Bureau of Reclamation presently holds Water Right Certificate 68258 entitling it to store water from McKay Creek for irrigation and apply said water to lands within the Marion Jack Improvement District including the lands of Landowners.
2. Bureau has contractually agreed with Marion Jack Improvement District and Landowners to supply excess stored water to Landowners and others within the boundaries of Marion Jack Improvement District. Bureau honored said contractual commitments in part by granting water contracts until recently when the Bureau refused to grant any further water contracts and reserved water for a use not permitted under its certificate. The granting of this transfer would interfere with Marion Jack Improvement District and Landowners contractual right to receive the stored water for irrigation.
3. Bureau has contractually agreed with Marion Jack Irrigation Company on January 30, 1924 to provide certain waters from the reservoir to Marion Jack Irrigation Company for irrigation. The Landowners and others are the present beneficiaries of the contract between Bureau and Marion Jack Irrigation Company.

Bureau's use of uncontracted water within the reservoir for uses other than irrigation will violate the contractual rights of Marion Jack Irrigation Company and the Landowners as its successors unless said contract is honored and given priority over the proposed change in use.

4. McKay Reservoir was constructed and totally dedicated to irrigation purposes and flood control, and was designed and built to benefit agriculture and irrigation primarily, with benefits including fish enhancement to be secondary. Any change in the use of the reservoir from that permitted in the existing Bureau of Reclamation Certificate would result in adverse environmental and economic impact to areas including wetlands and farmlands which have been irrigated from the reservoir.
5. The proposed transfer, if granted, would not comply with Federal laws and regulations protecting the public interest and the environment including, but not limited to, National Environmental Policy Act, and laws and regulations controlling farmlands and wetlands.
6. The proposed transfer, if granted, would not comply with State and local laws and regulations including: (1) ORS 540.505 et seq. concerning the conditions under which a change of use can be allowed, (2) ORS 537.110 et seq. concerning when water rights permits are required and can be issued, and (3) Water Resources Department Administrative Rules including Division 11 rules of Chapter 640 of Oregon Administrative Rules and including the requirements and standards for a public interest review.

The protestors request as relief or action that the proposed transfer of use from irrigation to instream fishery enhancement be denied or be modified in such a way as to protect protestors and the public interest.

We understand that if this protest is not resolved informally, it may be necessary to present testimony in evidence in an administrative contested case hearing before the Water Resources Department in support of the allegations made in this protest. In event this matter goes to a hearing, we intend to be represented by attorney, Sam Tucker, 105 N. Main, Milton-Freewater, Oregon, or such other attorney as we may determine appropriate.

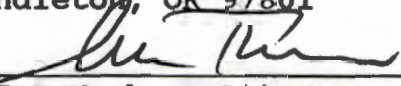
Proof of Service of a copy of the Protest on the applicant is attached.

Dated this 13 day of August, 1993.

MARION JACK IMPROVEMENT DISTRICT
MARION JACK IRRIGATION COMPANY
KEITH BLANCHARD
4217 SW Lake Drive
Pendleton, OR 97801

JUDY KENNEDY
4440 SW Lake Drive
Pendleton, OR 97801

DAN KINSLEY
4116 SW Lake Drive
Pendleton, OR 97801

By 
Sam Tucker, Attorney
105 N. Main
Milton-Freewater, OR 97862
503-938-3377

PROOF OF SERVICE

I, Sam Tucker, being first duly sworn, depose and say that on the 13th day of August, 1993, I did mail a copy of the attached protest to the applicant by regular mail by placing it in an envelope addressed to:

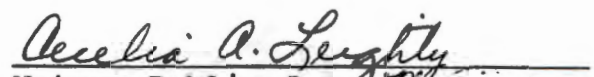
United States of America
Regional Director
Pacific NW Region
Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

and depositing it in the United States Mail with sufficient postage prepaid thereon.

In Witness Whereof, I have hereunto set my hand this 13 day of August, 1993.



SUBSCRIBED AND SWORN to before me this 13th day of August, 1993.


Notary Public for Oregon
My Commissions Expires 8/30/96



LOMBARD, KNUDSEN & HOLTEY

ATTORNEYS AT LAW

622 SISKIYOU BLVD.
POST OFFICE BOX 1090
ASHLAND, OREGON 97520-0061
TELEPHONE (503) 482-8491
FAX (503) 488-3239

MEDFORD OFFICE

925 WEST 8TH ST.
MEDFORD, OR 97501
TELEPHONE (503) 773-8244
FAX (503) 773-1079

BEN "KIP" LOMBARD, JR.
KURT H. KNUDSEN
JUD HOLTEY*

*Also Admitted To Practice In California

FAX TRANSMISSION COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME & TITLE STEVE BROWN, WATER RIGHTS PERMIT SECTION

COMPANY/DEPARTMENT OREGON WATER RESOURCES DEPT.

FROM: KIP LOMBARD

RE: PROTEST OF APPL. 73451 AND T7006

NUMBER OF PAGES (Including Cover Sheet) 6

HARD COPY TO FOLLOW: X Yes No

We are transmitting from a CANON FAX 225.

If you do not receive all of the described material, please telephone immediately to:

Business Phone: (503)482-8491
FAX Phone: (503)488-3239
Sender's Name : Penny

CONFIDENTIALITY NOTICE

This telecopier transmission (and/or documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

COMMENTS:

PROTEST AGAINST
WATER USE APPLICATION

(We) OREGON WATER RESOURCES CONGRESS
NAME(S)

727 Center St. NE, Suite 107
MAILING ADDRESS

Salem, OR, 97301-3821, (503)363-0121
CITY STATE ZIP TELEPHONE

do hereby protest the approval of pending application # 73451 and Water Right Transfer T 7006 made in the name(s) of U.S. BUREAU OF RECLAMATION

for use of water from McKay Creek - McKay Reservoir
NAME OF WATER SOURCE

The proposed use is for instream fishery enhancement

and the intended place of use is McKay Creek below McKay Dam to the
(DESCRIBE BY ACREAGE, TAX LOT, ETC

mouth of the Umatilla River, Section , Township ,
AS ACCURATELY AS POSSIBLE)

Range , County, Oregon.

My (our) water rights are: permit # NA Certificate # NA

A copy of the pertinent tax plat map obtained from the NA County Assessor's Office is attached. The location of the proposed use and point of diversion, and my/our property and point of diversion have been marked on the map.

COMPLETE EITHER A/ OR B/, OR BOTH:

A/ My (Our) water rights would be adversely affected by the proposed use in the following way(s):
NA

Provide as much detail as possible - feel free to attach additional paper. Remember that you will need to produce testimony and evidence to support your allegations in the event of a contested case hearing.

B/ Cross out any phrases not applicable to your protest.

/ We / do not have any water rights, ~~_____~~
~~_____~~. However, / We believe that the proposed use would have a significant adverse effect on the public interest in the following way(s): See Attached Statement

(You should provide a clear explanation of how the proposed use would have substantial adverse effect(s) on the public interest) Remember that you will need to produce testimony and evidence to support your allegations in the event of a contested case hearing.

/ We / have not (circle one) attempted to resolve this matter through discussion with the applicant. I / We have proposed the following alternatives or conditions which, in my / our opinion, would resolve my / our concern(s): None offered at this time

/ We understand that if this protest is not resolved informally, it may be necessary to present testimony and evidence in an administrative contested case hearing before the Water Resources Department in support of the allegations made in this protest.

In the event this matter goes to hearing, / We do / ~~_____~~ (circle one) intend to have an attorney represent me / us. The attorney's name and address is Ben Lombard, Jr. LOMBARD, KNUDSEN & HOLTEY, 622 Siskiyou Blvd., P.O. Box 1090, Ashland, OR 97520

Proof of Service of a copy of this protest on the applicant is attached.

The statutory \$25.00 protest filing fee accompanies this protest.

Dated and Signed this 15 day of October, 19 93.

OREGON WATER RESOURCES CONGRESS
BY: *Ben Lombard, Jr.*
Signature

Signature



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107

Salem, OR 97301-3821

(503) 363-0121

FAX (503) 371-4926

**STATEMENT OF THE OREGON WATER RESOURCES CONGRESS IN SUPPORT OF
PROTEST AGAINST WATER USE APPLICATION #73451 AND TRANSFER #T7006**

OCTOBER 15, 1993

The OREGON WATER RESOURCES CONGRESS (OWRC) is a membership organization made up predominantly of irrigation districts formed under ORS chapter 545 and similar entities which provide water for irrigated agriculture. Included among its members are the districts most directly affected by the pending applications, the Stanfield and Westland Irrigation Districts. A large number of its members have contracts with the U.S. Bureau of Reclamation for the supply of water from Bureau project facilities and Bureau licensed and certificated or permitted reservoirs. OWRC represents a significant public interest in its members and their water users. The above water use application and water right transfer application present a significant threat to this public interest and to individual irrigators who are patrons of members of the organization.

1) The proposed transfer may impair the water rights of many member district patrons. By reallocating a portion of the stored water presently authorized and allocated for irrigation, with the same priority date for all uses thus authorized, the net effect may be to result in a net loss of water available to downstream irrigation district users, contrary to OAR 690-15-050. In times of water shortages, the net result definitely will be to the detriment of the downstream consumptive users as the instream flows will be entitled to demand their share of the reduced allocation be left in the stream.

2) The Bureau, like the irrigation districts, holds its water rights in the capacity of a trustee for the water users. OAR 690-15-020 requires an "organized water distribution entity" obtain a notarized statement from the "owner" (which we take to mean the landowners as well as the districts in this case) of the right authorizing the proposed change. To the best of our knowledge, this has not been done by the Bureau.

3) The granting of the permit application would have the same potential for impairing the existing water rights of member district patrons as described in paragraph 1 above.

4) The proposed water use in the permit application would

Page 1 - OWRC STATEMENT

impair and be detrimental to the public interest in that

- a) It would conflict with existing water rights.
- b) It does not take into account the primary goals for economic development for agriculture and industry in the area, as evidenced by the local comprehensive plans.
- c) The proposed use does not adequately address the local land use goals, comprehensive plans, or other land use matters, including, but not limited to current, planned, or reasonably anticipated uses for the lands of the area and the agricultural potential of the area, all as required by OAR 690-11-195.

PROOF OF SERVICE

I, BEN LOMBARD, JR., being first duly sworn, depose and say that on October 15, 1993, I did mail a copy of the attached protest against application number 73451 and/ ^{Water Right Transfer T 7006} to the applicant by regular mail by placing a copy of the protest in an envelope addressed to:

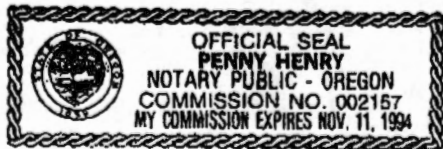
U.S. BUREAU OF RECLAMATION
ATTN: PHIL GRAF, REGIONAL WATER RIGHTS OFFICER
(applicant) / (applicant's attorney)
1150 North Curtis Road
(address)
Boise ID 83706-1234
(city) (State) (zip)

and depositing it in the United States mail with sufficient postage prepaid thereon.

10/15/93
(date)

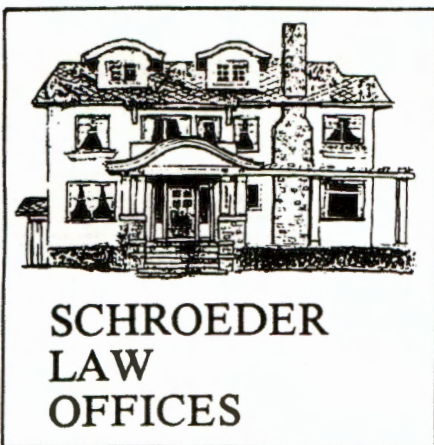
Ben Lombard Jr
(signature)

Subscribed to and sworn before me this 15 day of October, 1993.



Penny Henry
Notary Public for Oregon

My commission expires 11/11/94



Laura A. Schroeder

Admitted in Oregon, Idaho & Nevada

*Hand-delivered:
8-17-93*

*Darlene
Castle*

3355 NE Davis
Portland, Oregon 97232
(503) 232-7110
(503) 238-4076 (FAX)

August 17, 1993

Reed Marbut
Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

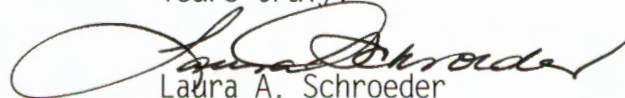
re: Transfer Application #7006 and Application #73451

Dear Reed:

My client, the Teel Irrigation District, is interested in receiving and reviewing all correspondence and filings related to the above referenced applications. Please copy to my address.

As an interested party, we would request participation in any public interest process pursuant to these applications. In addition, we will address to you any concerns about Application #73451 after we have had an opportunity to assess the technical review.

Yours truly,


Laura A. Schroeder

cc. clients

WaterWatch

O F O R E G O N

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OCT 07 1993

WATER RESOURCES DEPT.
SALEM, OREGON

September 30, 1993

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

Re: Technical Report for 73451, Bureau of Reclamation, Instream
Fishery Enhancement, McKay Reservoir, Umatilla River

Dear Reed,

WaterWatch strongly supports this proposed use. It is essential for the ecological health of the Umatilla River and is an important implementation of the agreements that were signed in the negotiations on Phase Two of the Umatilla Basin Project.

By this letter we request notification and copies of any objections, comments, and other materials that are filed relating to this application and to this technical report, and copies of the Department's response to any of these materials. We request an opportunity to review any changes or additions to the conditions proposed in this technical report and to file a formal protest and participate in any negotiations if any of the conditions are altered or deleted or new conditions are added.

Sincerely,



Karen Russell
Assistant Director

OREGON WATER RESOURCES DEPARTMENT
WATER RIGHTS/ADJUDICATION DIVISION

INTEROFFICE MEMORANDUM

TO: Steve

FROM: Darlene Castle

DATE: October 19, 1993

SUBJECT: 73451 & T-7006

OWRC sent in a protest to T-7006 and 73451 and enclosed \$50.00.

The objection deadline for 73451 was October 15; therefore, OWRC's "protest" for this file should be an objection.

Reed would like you to do a letter to OWRC explaining the objection/protest periods and the difference regarding transfer and other applications. He would also like you to refund the \$25.00 to OWRC.

He would like this letter to go out today.

File 73451



GENERAL COUNCIL
and
BOARD OF TRUSTEES

Water Committee

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

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WATER RESOURCES DEPT.
SALEM, OREGON

P.O. Box 638

PENDLETON, OREGON 97801

Area code 503 Phone 276-3165 FAX 276-3095

October 15, 1993

Mr. Reed Marbut
Water Rights/Adjudication
Oregon Water Resources Dept.
3850 Portland Road, NE
Salem, OR 97310

VIA FAX

Re: Transfer Application T-7006 and Application File # 73451

Dear Mr. Marbut,

In the Treaty of 1855, the Confederated Tribes of the Umatilla Indian Reservation reserved sufficient instream flows in the Umatilla River to maintain our fishery. This water right is not currently being enforced because it has not yet been adjudicated. Because of the potentially large impacts of our treaty reserved water right on other Umatilla River water users, we have been working with the State, the federal government and the local irrigators to create solutions to this conflict.

The federal government has a Trust Responsibility to this Tribe to protect our trust assets, such as water and fish. Over the last decade, the Tribes, the State and the federal government have worked together cooperatively to restore the salmon runs to the Umatilla River. Pursuant to its Trust Responsibility, the Bureau of Reclamation applied for transfer T-7006 and a new water right, Application File Number 73451, to store and release water from McKay Reservoir for fishery enhancement in the Umatilla River.

The need for these water rights was discussed at length during the 1991-1992 negotiations over the Phase II water rights for the Umatilla Basin Project. The irrigation districts raised the point that McKay Reservoir did not have storage and release water rights which included the use of fish flow augmentation. A critical element of the consensus agreement reached in the negotiations was that all parties would support the acquisition of these water rights:

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WATER RESOURCES DEPT
SALEM, OREGON

"Each of the parties to this agreement shall support and cooperate in the protection of releases of water from McKay Reservoir for instream flow use for fish purposes including, but not limited to, supporting any changes under federal and state law which may be necessary to ensure protection of this water for this use."

This language is Section 4 of the Memorandum of Agreement - Hermiston Irrigation District and is Section 6 of the Memorandum of Agreement - Stanfield Irrigation District. Almost identical language is also included in the Memorandum of Agreement reached last winter between this Tribe and the Westland Irrigation District and the Teel Irrigation District.

We support both applications as they are written. We are aware, however, of several protests and requests to modify the existing language. Because these water rights were applied for to address our treaty reserved water rights, we are an interested party. Therefore, we request an opportunity to participate in any negotiations or proceedings relating to approval of Transfer Application T-7006 and Application # 73451 and its technical report. In addition, we would like to request the opportunity to review any changes or additions to the transfer application or to the conditions proposed in the technical report. If changes are made to either application, we would like to request the opportunity to file a formal protest if necessary.

We would appreciate it if you would send us copies of any and all objections, comments and other materials that are filed relating to Transfer Application T-7006 and Application File Number 73451 and its Technical Review Report, as well as copies of the Department's response to any of these materials. Please send that information to:

Becky Hiers
Dept. of Natural Resources
Confederated Tribes of the Umatilla
Indian Reservation
P.O. Box 638
Pendleton, OR 97801
FAX: (503) 276-3317

Thank you for your assistance on this matter. I hope that we can complete this process in the cooperative spirit we have all enjoyed in the past.

Sincerely,



Antone Minthorn
Chairman, Tribal Water Committee

October 26, 1993

Oregon Water Resources Congress
727 Center Street NE, Suite 107
Salem, OR 97301-3821

Reference: Files T-7006 and 73451 - U.S. Bureau of Reclamation

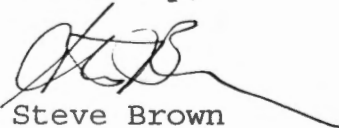
We have received your Protest against the approval of transfer application T-7006 and application for permit number 73451.

The protest was filed and accepted against the approval of Transfer T-7006. The protest, faxed and received by the Department on October 15, 1993, will be considered as an objection to the technical review of Application 73451.

If your objections to our technical review of Application 73451 are denied, you will be notified of the denial and allowed an opportunity to protest the denial of the objections. The non-acceptance of your protest against Application 73451 does in no way relinquish your opportunity to submit a protest at a later date under the process outlined in the current rules. A check refunding the \$25 protest fee will be forwarded as soon as one is prepared.

Please feel free to contact me if you have any questions and I will be happy to address any concerns you may have.

Sincerely,



Steve Brown
Manager
Water Rights Division

cc: attached service list

enclosures

1102



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

Mr. Phil Graf
U.S. Bureau of Reclamation
1150 N Curtis Road
Boise, ID 83707-1234

Stanfield Irrigation District
P.O. Box 416
Stanfield, OR 97875-0416

Westland Irrigation District
P.O. Box 416
Stanfield, OR 97875-0416

Mr. Stephen M. Bloom
P.O. Box 490
Pendleton, OR 97801-0490

Ms. Laura A. Schroeder
3355 NE Davis
Portland, OR 97232-3244

Confederated Tribes of the
Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

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

Bonneville Power Administration
Attention: Mr. Jay Marcotte - PJW
P.O. Box 3621
Portland, OR 97208-3621

WaterWatch of Oregon
921 SW Morrison, Suite #34
Portland, OR 97205

Ms. Gail L. Achterman
Stoel Rives Boley Jones & Grey
900 SW Fifth Avenue, Suite 2300
Portland, OR 97204-1268

Mr. Ben Lombard, Jr.
Lombard, Knudsen & Holtey
P.O. Box 1090
Ashland, OR 97520-0051

Mr. Sam Tucker
Monahan, Grove & Tucker
105 North Main
Milton-Freewater, OR 97862

Mr. Mike Ladd, Region Manager
Water Resources Department
3920 Westgate
Pendleton, OR 97801

August 27, 1993

David Moon, Esq.
PO Box 82
Eugene, OR 97440

Dear Mr. Moon:

We are sending you a copy of the Technical Review Report on Application File Number 73451. Your request for a copy of the Report was inadvertently overlooked. Please accept our apologies.

Please have any objections to us by the 60-day deadline specified in the Report and accompanying cover letter. If it is not possible for you to meet the 5:00 p.m., October 15, 1993, deadline, please contact me ahead of time.

Sincerely,

Laurie Beth English

Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosure



RECEIVED

JUN 29 1993

COMMENT FORM

WATER RESOURCES DEPT.
SALEM OREGON

Please list below the Application Number of the water use application(s) that are of interest to you. When the technical is completed a report of the technical review of these applications will be delivered to you.

Application #s 73451, _____, _____, _____, _____

Send to: DAVID C. MOON
P.O. Box 82
Eugene, OR 97440

6/28/93

Please include specific comments or concerns. Use additional sheets if necessary.

Return to:
Oregon Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

This Comment corresponds to the JUN/23/1993 Public Notice.

DEPARTMENT of
NATURAL RESOURCES

Environmental
Planning/
Rights Protection
Program



CONFEDERATED TRIBES
of the

Umatilla Indian Reservation

P.O. Box 638

PENDLETON, OREGON 97801

Area code 503 Phone 276-3449 FAX 276-3317

TELEFAX TRANSMISSION COVERSHEET

Department of Natural Resources
Administration & Environmental Planning-R.P.

DATE: Oct. 15, 1993

TRANSMISSION TO: Reed Marbut

TRANSMISSION FROM: Becky Hiers

NO. OF PAGES (INCLUDING THIS SHEET): 3

NOTES: _____

If transmission is unreadable, please telephone (503)276-3449/3447



GENERAL COUNCIL
and
BOARD OF TRUSTEES

Water Committee

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area code 503 Phone 276-3165 FAX 276-3095

October 15, 1993

Mr. Reed Marbut
Water Rights/Adjudication
Oregon Water Resources Dept.
3850 Portland Road, NE
Salem, OR 97310

VIA FAX

Re: Transfer Application T-7006 and Application File # 73451

Dear Mr. Marbut,

In the Treaty of 1855, the Confederated Tribes of the Umatilla Indian Reservation reserved sufficient instream flows in the Umatilla River to maintain our fishery. This water right is not currently being enforced because it has not yet been adjudicated. Because of the potentially large impacts of our treaty reserved water right on other Umatilla River water users, we have been working with the State, the federal government and the local irrigators to create solutions to this conflict.

The federal government has a Trust Responsibility to this Tribe to protect our trust assets, such as water and fish. Over the last decade, the Tribes, the State and the federal government have worked together cooperatively to restore the salmon runs to the Umatilla River. Pursuant to its Trust Responsibility, the Bureau of Reclamation applied for transfer T-7006 and a new water right, Application File Number 73451, to store and release water from McKay Reservoir for fishery enhancement in the Umatilla River.

The need for these water rights was discussed at length during the 1991-1992 negotiations over the Phase II water rights for the Umatilla Basin Project. The irrigation districts raised the point that McKay Reservoir did not have storage and release water rights which included the use of fish flow augmentation. A critical element of the consensus agreement reached in the negotiations was that all parties would support the acquisition of these water rights:

TREATY JUNE 9, 1855 + CAYUSE, UMATILLA AND WALLA WALLA TRIBES

"Each of the parties to this agreement shall support and cooperate in the protection of releases of water from McKay Reservoir for instream flow use for fish purposes including, but not limited to, supporting any changes under federal and state law which may be necessary to ensure protection of this water for this use."

This language is Section 4 of the Memorandum of Agreement - Hermiston Irrigation District and is Section 6 of the Memorandum of Agreement - Stanfield Irrigation District. Almost identical language is also included in the Memorandum of Agreement reached last winter between this Tribe and the Westland Irrigation District and the Teel Irrigation District.

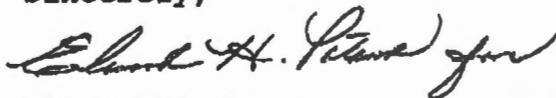
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We would appreciate it if you would send us copies of any and all objections, comments and other materials that are filed relating to Transfer Application T-7006 and Application File Number 73451 and its Technical Review Report, as well as copies of the Department's response to any of these materials. Please send that information to:

Becky Hiers
Dept. of Natural Resources
Confederated Tribes of the Umatilla
Indian Reservation
P.O. Box 638
Pendleton, OR 97801
FAX: (503) 276-3317

Thank you for your assistance on this matter. I hope that we can complete this process in the cooperative spirit we have all enjoyed in the past.

Sincerely,



Antone Minthorn
Chairman, Tribal Water Committee

October 15, 1993

Larry Cauble
Oregon Cattlemen's Association
1041 Worthington Rd.
Eagle Point, OR 97524

REFERENCE: File 73451

Here is a copy of the technical review for this application. As I mentioned, objections to the technical review must have been received by today.

However, by focusing on the technical review, I may have mislead you. The application still must go through a Public Interest Review. That review will take place very shortly. You are most welcome to provide comments to be considered in the the Public Interest Review.

Sincerely,

LARRY H. NUNN
Senior Water Rights Specialist

enclosure



STOEL RIVES BOLEY JONES & GREY
Attorneys at Law
Standard Insurance Center
900 SW Fifth Avenue, Suite 2300
Portland, Oregon 97204-1268

Telephone (503)294-9181
Telecopier (503)220-2480

TO:

STEPHEN C. BROWN, MANAGER
WATER RIGHTS SECTION
OREGON WATER RESOURCES DEPARTMENT
Fax #: 378-8130
Office #: 378-3741

FROM:

GAIL L. ACHTERMAN

Client No.: 21570
Matter No.: 0001Client Name: WESTLAND IRRIGATION DISTRICT
Matter Name: WATER RIGHTS

DATE: October 15, 1993 TIME: 4:04 pm

No. of pages (including this cover): 8

Equipment: Canon Fax L770 (24-hour automatic)

In case of error call _____ at (503)294-9508 or 294-9401

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. If the reader of this message is not the intended recipient or an employee responsible for delivering the facsimile, please do not distribute this facsimile, notify us immediately by telephone, and return this facsimile by mail. Thank you.

COMMENTS:

STOEL RIVES BOLEY JONES & GREY

ATTORNEYS AT LAW
SUITE 2300
STANDARD INSURANCE CENTER
900 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1268

Telephone (503) 224-3380
Telecopier (503) 220-2480
Cable Lawport
Telex 703455

Writer's Direct Dial Number

(503) 294-9123

October 15, 1993

VIA FACSIMILE AND U.S. MAIL

Mr. Stephen C. Brown, Manager
Water Rights Section
Oregon Water Resources Department
3850 Portland Road, Northeast
Salem, OR 97310

Re: Objections to Technical Review: Application No. 713451

Dear Steve:

As you may know, we represent several irrigation districts in the Umatilla River Basin. Stanfield Irrigation District ("SID") and Westland Irrigation Districts ("WID", collectively the "Districts") asked us to prepare and submit comments on their behalf concerning the Water Resources Department ("WRD") technical review for application No. S 73451. This application involves the Bureau of Reclamation (the "Bureau") proposal to appropriate water stored in McKay Reservoir for instream fishery enhancement.

Both SID and WID receive water from McKay Reservoir pursuant to water delivery contracts with the Bureau. SID and WID believe that the proposed reallocation may interfere with their contractual rights to continue to receive water. While the Districts continue to work with the Bureau and other interested parties in the Umatilla Basin to address their concerns, the Districts submit these objections to preserve their existing rights to water stored in McKay Reservoir.

The Districts believe that sufficient water exists in the Umatilla Basin to meet instream fishery needs while at the same time protecting the Basin's reliance on irrigated agriculture as an integral part of its economic base. The Districts submit, however, that the Bureau's application and the conditions

PDX1-78815.1 21570 0002

PORTLAND,
OREGON

SEATTLE,
WASHINGTON

BELLEVUE,
WASHINGTON

VANCOUVER,
WASHINGTON

BOISE,
IDAHO

SALT LAKE CITY,
UTAH

WASHINGTON,
DISTRICT OF COLUMBIA

STOEL RIVES BOLEY
JONES & GREY

Mr. Stephen C. Brown
October 15, 1993
Page 2

described in WRD's technical review create unnecessary inflexibility. For that reason, the Districts submit these comments as formal objections to the technical review pursuant to OAR 690-11-170(1).

In submitting these comments, the Districts wish to make clear that they do not oppose the use of McKay water on an interim basis for fish flows until Phase II construction is complete. McKay water has been used in the past for this purpose when the Districts have voluntarily left water in the river during critical fish passage periods. The Districts also submit that mechanisms exist under Oregon law to allow temporary use of McKay water for this purpose. Such reasonable interim alternatives pending completion of Phase II make the Bureau's proposed use unnecessary.

BACKGROUND

The Umatilla Basin is a microcosm of water rights issues in Oregon and the West. No water allocation issue can be considered in isolation without some consideration as to how it fits within the larger framework of water use and distribution in the Basin. For that reason, some background is necessary to set the stage for the specific objections that the Districts submit.

Congress authorized the construction of McKay Reservoir as part of the Umatilla Project. The Bureau completed construction of the project in 1927 and began water storage and delivery that same year. According to an April 1975 report prepared by the Bureau, McKay Dam and Reservoir were constructed for the single purpose of irrigation.

The Bureau holds two water rights under Oregon law that control the Bureau's right to store and redistribute water. Permit R-584, (which WRD recently perfected in certificate 68258) authorizes the Bureau to store 75,000 acre feet of water in McKay Reservoir with a priority date of September 9, 1920. Permit 7400 authorizes the Bureau to deliver up to 73,250 acre feet of McKay water for supplemental irrigation use. The Bureau has not yet perfected permit 7400.

Since completion of the project, the Bureau has delivered water to SID pursuant to water delivery contracts. The Bureau also delivers water to other water users pursuant to other water delivery contracts. In 1949, Congress authorized the Bureau to renegotiate the contract payment terms, which the Bureau did. The 1949 contracts with SID and WID remain in effect today.

STOEL RIVES BOLEY
JONES & GREY

Mr. Stephen C. Brown
October 15, 1993
Page 3

Pursuant to the terms of the 1949 contracts, the Bureau must deliver 30 percent of the water stored in McKay to WID and 30 percent to SID. The contracts also require the Bureau to reserve 25 percent of the reservoir storage space pending determination of the terms and conditions under which water would be made available permanently. This "reserved water" has been delivered to SID and WID each year. The Bureau also has delivered "residual water" to the Districts each year. Residual water consists of "temporarily available" water this is to be delivered to WID and SID upon payment in advance of specified rates.

The lower Umatilla River provides a migration corridor for anadromous fish to reach their spawning grounds in upper basin tributaries. In 1988 Congress authorized construction of facilities to use Columbia River water to replace water historically diverted from the Umatilla River for irrigation. Congress designed Public Law 100-557 to ensure adequate flows for Umatilla River fish migration while at the same time preserving irrigated agriculture in the Basin. Phase II of the project involves the construction of pumping and transportation facilities necessary to deliver the exchanged water.

The water exchanges contemplated by the Umatilla Basin Project Act required the Bureau to seek new and modified water rights. On February 14, 1991, the Bureau filed application 71293 seeking to divert 240 cfs from the Columbia River to be exchanged with water that otherwise would be diverted from McKay Creek and the Umatilla River. On October 9, 1991, the Bureau filed transfer application T-6621E seeking approval for the exchange of water requested under application 71293. Once Phase II of the Umatilla Project is complete, McKay Creek and Umatilla River water will then be left instream to provide improved anadromous fish passage.

Several public interest groups protested the Bureau's applications on the grounds that some existing Umatilla River diversions subject to the exchange may be occurring without compliance with Oregon water law. A number of parties, including SID, resolved the dispute through mediation. The mediation resulted in several memoranda of agreement ("MOA") and proposed terms and conditions to be included in WRD's approval of the Bureau's applications. WRD since issued Permit 51439 to approve the Columbia River diversion and T-6621E to approve the exchange. The Bureau also has begun construction of the physical facilities necessary to effectuate the exchange; however, construction is not yet complete.

On June 21, 1993, the Bureau filed an application seeking to "use stored water for instream fishery enhancement releases." Application S 73451

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JONES & GREY

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Page 4

purports to seek approval of a new water right to use water released from McKay Reservoir.

OBJECTIONS

Pursuant to OAR 690-11-170, the Districts object to the technical review for the following reasons:

A. The Technical Review Erroneously Concludes that Water is Available to Satisfy the Proposed Use.

Under Oregon water law, releases from storage must occur pursuant to a secondary water right in order for such releases to be dedicated to a specific use. The Bureau currently appropriates water stored in McKay Reservoir pursuant to permit 7400. Permit 7400 authorizes releases of 73,250 acre feet of stored water for supplemental irrigation use. This appropriation represents virtually the entire volume of water stored pursuant to certificate 68258.

Despite the existence of water appropriated from storage pursuant to permit 7400, the Bureau proposes to appropriate an additional 12,000 acre feet from storage. Because the Bureau does not (and probably cannot legally) seek to reduce its permit 7400 rights, the proposed use will result in the Bureau having rights to appropriate 85,250 acre feet from a reservoir where it has rights to store only 73,840 acre feet. The proposed use, therefore, seeks to appropriate unavailable water.

Because water is not available for the Bureau's proposed use, the technical report fails to identify defects in the application and the supporting data. Instead, the technical report reaches the erroneous conclusion that 12,000 acre feet of water is available. Because virtually all water legally stored in McKay Reservoir is appropriated under permit 7400, the proposed use cannot be allowed under the Oregon water rules. The technical review report's water availability analysis is procedurally deficient for failing to identify this flaw.

B. The Technical Report is Deficient for Failing to Require a Rate of Use for the Proposed Use.

The Bureau requests 12,000 acre feet for the proposed use, but does not identify a rate at which the use will be exercised. The technical report also does not specify a rate of flow as a proposed permit condition.

STOEL RIVES BOLEY
JONES & GREY

Mr. Stephen C. Brown
October 15, 1993
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Absent a specified rate of flow, downstream users will not know whether or not water must remain instream for fish passage, especially since the proposed use does not identify a season of use. This will make administration of released water virtually impossible. Absent parameters defining how releases will be administered, both the application and the technical report are deficient.

C. The Proposed Change is Inconsistent with Transfer Order No. 6621E.

T-6621E contemplates that water historically diverted pursuant to several water rights held by Hermiston Irrigation District, SID and the Bureau, including permit 7400, would be replaced with Columbia River water. Until Columbia River water is available, however, the conditions necessary to activate T-6621E do not exist.

The Bureau's proposed use seeks to circumvent T-6621E by seeking immediate authorization to appropriate water for instream fishery needs. This proposal violates the spirit of negotiations that led to the approval of T-6621E, as well as the MOAs that authorize the Bureau to reallocate McKay Reservoir under specific terms and conditions. The Districts do not object to adding fish flows to permit 7400 and do not object to interim fish flows. The proposed use, however, goes far beyond what the Districts have agreed to and what the MOAs and T-6621E authorize the Bureau to seek. Indeed, approval of the proposed use may act to invalidate T-6621E by undercutting the foundation on which it is based.

D. The Proposed Use is not Authorized by Law.

McKay Reservoir is a federal project and may only be operated for such purposes as designated by Congress in the project's authorizing legislation. The authorization legislation states that the project may store water for irrigation. Congress later added flood control as an authorized purpose when it authorized spillway improvements in the mid 1970s. The project also may provide incidental benefits to fish and wildlife. Such incidental benefits, however, must occur in a way that do not conflict with the project's primary purposes.

The Districts recognize that others do not necessarily agree with this interpretation and instead take the position that the Umatilla Project itself reauthorized McKay Reservoir. This position is far from clear from the authorizing legislation and is one the Districts do not agree with.

Prior to the completion of the Phase II construction, the proposed use will benefit fish and wildlife only. It will provide no irrigation or flood control

STOEL RIVES BOLEY
JONES & GREY

Mr. Stephen C. Brown
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benefit. Without irrigation or flood control benefits, however, fish and wildlife use are not authorized. Without a Congressional change to the authorizing legislation, the Bureau lacks authority to store water for additional purposes. The proposed use, therefore will impair the public interest as articulated by Congress and as forbidden by ORS 537.170 and OAR 690-11-195.

Notwithstanding the fundamental problem with the proposed use, the technical review report fails to provide any analysis as to whether the Bureau is authorized to apply water to the proposed use. This lack of analysis is a procedural flaw that renders the technical review report deficient under OAR 690-11-160(1)(b) (requiring assessment of whether the proposed use is restricted or prohibited by statute).

E. The Proposed Use Does Not Protect all Vested and Inchoate Rights to Water.

The proposed use will delay water releases of up to one-tenth of the water historically released for irrigation use. This water is relied upon not only by contract users, but also by those users who depend upon return flows. The technical review report, however, provides no analysis as to how potential changes to the storage release regime will affect users that depend upon return flows. This lack of analysis violates the procedural requirements set out in OAR 690-11-160(1)(e) (requiring analysis of potential conflict with existing water rights). The proposed use also may violate the substantive prohibition on such conflicts and, therefore, impair and be detrimental to the public interest.

F. The Proposed Change Requires Compliance with the National Environmental Policy Act.

The Bureau's proposal to reallocate stored water involves a federal action. The Bureau did not consider this action as part of the Umatilla Project Basin review and, therefore, the National Environmental Policy Act ("NEPA") requires that the Bureau assess the environmental impacts of its proposal.

G. No Basis Exists for the 12,000 Acre Foot Figure.

The Stanfield MOA provides that the Districts would reach agreement with the CTUIR on a quantity of water necessary to protect fish. Such agreement never was reached. Nonetheless, the Bureau appears to unilaterally assigned ten percent of the McKay stored water to fish flows and on this basis request that

STOEL RIVES BOLEY
JONES & CREY

Mr. Stephen C. Brown
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Page 7

12,000 acre feet be reallocated. Without some discussion as to how this water will be used, the Bureau's request is arbitrary and should not be granted.

H. The Water Already is Under Contract to the Districts.

The Districts have paid for and taken residual water in all years in which water was determined to be "temporarily available" under the contracts that WID and SID have with the Bureau. The contracts do not give the Bureau the authority to allocate "temporarily available" water to fish flows. Rather, the Bureau must make such residual water available to the Districts.

In addition, the Districts have the right to receive reserved water. The contracts do not allow the Bureau to allocate reserved water for fish flows or to allocate reserved water to parties other than irrigation districts and landowners.

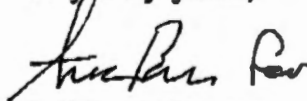
Residual water and reserved water are, therefore, not available for the Bureau's use. The technical report failed to consider the fact that McKay Reservoir water is already contractually committed to the Districts and thus unavailable for appropriation under application No. S 73451.

SUMMARY

In summary, the Districts submit that the technical review report is deficient for not identifying a number of fundamental flaws that exist with the Bureau's proposed use. The Districts are prepared to work with WRD to identify alternative solutions to provide interim fish flows until Phase II is completed. However, the Bureau's proposed use is not the solution to fish flow issues and is not permissible under Oregon law.

Please call me if you have questions about this letter.

Very truly yours,


Gail L. Achterman

cc: Mr. Walt Fite
Ms. Becky Hiers
Mr. Bill Porfily
Mr. Stephen Bloom
Ms. Laura Schroeder

Oregon

WATER
RESOURCES
DEPARTMENT

November 8, 1993

Oregon Water Resources Congress
727 Center Street NE, Suite 107
Salem, OR 97301-3821

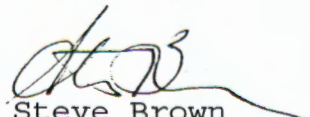
Reference: Files T-7006 and 73451 - U.S. Bureau of Reclamation

I am enclosing voucher no. 000833 refunding the \$25 protest fee submitted with your objection to our technical review of Application 73451.

The non-acceptance of your protest against Application 73451 does in no way relinquish your opportunity to submit a protest at a later date under the process outlined in the current rules.

Please feel free to contact me if you have any questions and I will be happy to address any concerns you may have.

Sincerely,



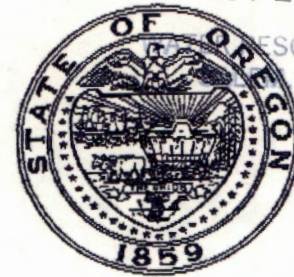
Steve Brown
Manager
Water Rights Division

enclosures

WATER
RESOURCES
DEPARTMENT

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OCT 18 1993



RESOURCES DEPT
OREGON

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

FACSIMILE TRANSMISSION SHEET

DATE: 10/15/93 TIME: 4:40 PAGE 1 OF 8

TO: Jan Boettcher

FAX #:

FROM: WRD 378-8455 x280

COMMENTS:

Jan- This came to our office by mistake - so I am forwarding it to you. I phoned Kip Lombard to let him know - left a message on his answering machine.

Valerie - mail room



**OREGON
WATER
RESOURCES
CONGRESS**

727 Center St. NE, Suite 107 Salem, OR 97301-3821 (503) 363-0121 FAX (503) 371-4926

August 2, 1993

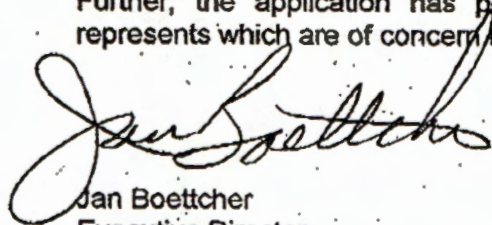
Reed Marbut
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

RE: PERMIT APPLICATION NO. 73451

Dear Reed:

OWRC has concerns with the application referenced, which we will address after we have had the opportunity to assess the technical review when it is available.

We object to some of the terms of the proposed application. After we analyze the technical review, we will provide you with specific comments regarding our objections. The application as proposed does not characterize the negotiations among the parties. Further, the application has policy implications beyond the specific allocation it represents which are of concern to our statewide membership.



Jan Boettcher
Executive Director

*COPY
of Tech Review
mailed to
DWRC
on 8/17/93
CAE*

cc: KIP



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RESOURCES
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AUG - 1993

727 Center St. NE, Suite 107 • Salem, OR 97301-3821 • (503) 363-0121 • FAX (503) 371-4926

FAX TRANSMISSION COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME AND TITLE: REED MARBUT

COMPANY: WRD

FROM: JAN BOETTCHER/OWRC

RE: APPL. # 73451

DATE: 8/2 TIME: 11:26 AM

NUMBER OF PAGES INCLUDING COVER SHEET: 1

COMMENTS: WE OBJECT TO THE
FORM OF 73451 AND REQUEST
A COPY OF THE TECHNICAL
REVIEW. WE WILL ASSERT IN
DETAIL THE NATURE OF OUR
OBJECTIONS AS REQUIRED.

We are transmitting from a SHARP FAX FO-300.

If you do not receive all of the described material, please call:

BUSINESS PHONE (503) 363-0121

FAX (503) 371-4926

SENDER'S NAME: Jan Boettcher

OWRC - 09-92



OREGON
WATER
RESOURCES
CONGRESS

727 Center St. NE, Suite 107

Salem, OR 97301-3821

(503) 363-0121

FAX (503) 371-4926

FAX TRANSMISSION COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME AND TITLE: REED MARBUT

COMPANY: WRD

FROM: OWRC

RE: 73451

DATE: 8/16 TIME: 11:36

NUMBER OF PAGES INCLUDING COVER SHEET: 3

COMMENTS: THIS WAS MAILED BY FIRST CLASS MAIL IN ADDITION TO OUR FAX EARLIER THE SAME DAY.

We are transmitting from a SHARP FAX FO-300.

If you do not receive all of the described material, please call:

BUSINESS PHONE (503) 363-0121

FAX (503) 371-4926

SENDER'S NAME: [Signature]

OWRC - 09-92

RECEIVED

OCT 15 1993

WATER RESOURCES DEPT.
SALEM, OREGON



DEPARTMENT OF
FISH AND
WILDLIFE

October 12, 1993

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

RE: Water Right Application #73451; Report of Technical
Review

ODFW has been a party to discussions leading up to the
subject application and supports same as conditioned.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Mirati, Jr.".

Albert H. Mirati, Jr.
Water Right Review Coordinator

c. WaterWatch of Oregon (public information request)
Stephanie Burchfield
Bailey, Pendleton

FILE: 73451.TEC



2501 SW First Avenue
PO Box 59
Portland, OR 97207
(503) 229-5400
TDD (503) 229-5459

WaterWatch

O F O R E G O N

RECEIVED
OCT - 1 1993
WATER RESOURCES DEPT.
SALEM, OREGON

September 30, 1993

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

Re: Technical Report for 73451, Bureau of Reclamation, Instream
Fishery Enhancement, McKay Reservoir, Umatilla River

Dear Reed,

WaterWatch strongly supports this proposed use. It is essential for the ecological health of the Umatilla River and is an important implementation of the agreements that were signed in the negotiations on Phase Two of the Umatilla Basin Project.

By this letter request notification and copies of any objections, comments, and other materials that are filed relating to this application and to this technical report, and copies of the Department's response to any of these materials. We request an opportunity to review any changes or additions to the conditions proposed in this technical report and to file a formal protest and participate in any negotiations if any of the conditions are altered or deleted or new conditions are added.

Sincerely,



Karen Russell
Assistant Director



IN REPLY
REFER TO:

PN-424

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234



JUN 18 1993

RECEIVED

JUN 21 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Ms. Martha Pagel
Director
Oregon State Water Resources Department
3850 Portland Road NE
Salem OR 97310

Subject: Application for Transfer of Water Right and Application for a Permit to Appropriate Surface Water, McKay Reservoir (Water Right)

Dear Ms. Pagel:

We would appreciate your processing the subject enclosed documents. The required maps, copies of deeds, and the land use information documents are also included as well as a copy of the purchase order for the required fees. The fees will be sent to you upon receipt of an invoice.

The water rights below McKay Dam have not been forfeited. Since 1927, the water has continued to be used to irrigate land, located below McKay Dam.

Under the Application for a Permit to Appropriate Surface Water we propose to use stored water for instream fishery enhancement releases. We would have liked a specific quantity this year, and the right to vary the quantity based on need in subsequent years, if allowed. We have been advised that under your rules there is no provision to make just a temporary change. Therefore, we are applying this year for 12,000 acre feet to be changed. We understand that if we want to change the quantity in subsequent years, an amendment is required.

Please contact Phil Graf directly at (208) 378-5322 or FAX (208) 378-5305, if you have any questions or need additional supporting materials.

Sincerely,

Kenneth R. Pedde

Regional Director

Enclosures

Application No. 73451
Permit No.

Acting

RECEIVED

JUN 21 1993

2

WATER RESOURCES DEPT.
SALEM, OREGON

cc: Oregon Water Resources Department
3920 Westgate
Pendleton OR 97801

Stanfield Irrigation District
PO Box 416
Stanfield OR 97875-0416

Westland Irrigation District
PO Box 416
Stanfield OR 97875-0416

Mr. Stephen M. Bloom
PO Box 490
Pendleton OR 97801-0490

Ms. Laura A. Schroeder
3355 NE. Davis
Portland OR 97232-3244

Confederated Tribes of the
Umatilla Indian Reservation
PO Box 638
Pendleton OR 97801

Oregon Department of Fish and Wildlife
PO Box 59
Portland OR 97207

Bonneville Power Administration
Attention: Jay Marcotte - PJW
PO Box 3621
Portland OR 97208-3621

Water Watch of Oregon
921 SW. Morrison, Suite 534
Portland OR 97205

(ea. w/copy of enclosures)

Land Use Information Form: Permits, Hydroelectric Licenses, Water Uses in Addition to Classified Uses

RECEIVED

JUN 21 1993

WATER RESOURCES DEPT
SALEM, OREGON

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.

Applicant's Name: US Bureau of Reclamation
 Address: 1150 N. Curtis Rd.
 City: Boise State: ID Zip: 83706 - 1234 Day Phone: (208) 378-5322

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within Irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot or Local I.D.#	Plan Designation/Zoning (e.g. Rural Residential/RR-5)	Check All That Apply		
		Water Diverted	Water Conveyed	Water Use
<u>SE 1/4 Sec 34, T2N, R32E, W.M.</u>	<u>R32E</u>	<input checked="" type="checkbox"/>		
	<u>EFU Exclusive Farm Use</u>			

River mile 0 - 50.5 on Umatilla River & River mile 0 - 6.1 on McKay Cr.
 Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used.

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within city limits. In this case, only the city planning agency must complete this form. Please request extra forms as needed.

For Local Government Use Only

Local planning officials are to complete the remainder of this form. If it cannot be completed while the applicant waits, sign and detach the receipt as instructed below. You will receive notice when the applicant's water right request is filed with the Water Resources Department (WRD). You will have 30 days from the notice date to return this completed land use form to WRD. If no land use information is received from you within that period, WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan.

Application No. 73457
Permit No.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.011. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. **Note:** Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus any accompanying findings is sufficient.)

Type of Land Use Approvals Needed (e.g.: plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Please check the box that applies:		
		Already Obtained	Already Denied	Being Pursued Satisfactorily

(over)

Receipt for Request for Land Use Information

WRD Applicant Name: _____

This receipt must be signed by a local government representative and returned to the applicant for inclusion in the WRD application IF the local government cannot provide the above requested land use information while the applicant waits.

City or County: _____

Staff Contact: _____ Phone: _____

Signature: _____ Date of Information Request: _____

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: Taura Mabbott
Title: Senior Planner, Ordin. Adm.

Date: 5-28-93
Phone: 276-7111

Signature: Taura Mabbott

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Additional Comments:

Lined area for additional comments.

Description of Water Use

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: US Bureau of Reclamation
 Address: 1150 N. Curtis Rd.
Beise, ID, 83706-1234
 Phone: (208) 378-5322

RECEIVED
 JUN 21 1993
 WATER RESOURCES DIV.
 SALEM, OREGON

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project

- Irrigation (crop type, golf course, nursery or greenhouse): _____
- Livestock (type of livestock, feedlot, slaughterhouse): _____
- Residential (# units, single or multi-family, # lots if partition or subdivision): _____
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): _____
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): _____
- Institutional (i.e., school, library, etc.): _____
- Mining (aggregate, metal, open pit, placer, etc.): _____
- Recreation (park, campsite, pond, etc.): _____
- Fish and Wildlife (pond, hatchery, etc.) Stream flow fishery enhancement
- Hydropower (dam, reservoir, power generating or transmitting facilities): _____
- Other (Name and list key characteristics): _____

Application No. 73451
Permit No.

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name sources: <u>McKays Res</u> _____ _____	_____ Cubic feet per second. _____ Gallons per minute. <u>12000</u> Acre-Feet
<input type="checkbox"/> Reservoir or pond	
<input type="checkbox"/> Ground Water	

June 21, 1993

U.S. BUREAU OF RECLAMATION
1150 N CURTIS RD
BOISE, ID 837061234

REFERENCE: File(s) S-73451

We have received your application(s) for a water use permit along with your supporting data, documentation, and fees. A receipt is enclosed here unless you were previously issued one. Your application has been assigned the above referenced file number. Please refer to this number whenever you contact us about your application.

Even though your application has been received, filed and assigned an application reference number, no authorization has been granted to develop your water use. The filing of an application does not create a water right. Water may not be used without a water right permit.

After an application has been accepted for filing, public notification of the application is made, followed by the mandatory 30-day comment period. Thereafter, applications can be considered for processing as time allows.

At present the Water Resources Department has a backlog of several thousand applications for water use permits which has delayed our application processing time. Applications are processed in the order in which they are received.

The processing of an application does not guarantee that a water right permit will be issued. Each application must undergo a specialized analysis called a technical review and a public interest review. There is no way to determine at this time whether your particular proposed water use will be recommended for a permit.



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

REFERENCE: File(s) - S-73451

When the report on the technical review is completed and sent to you, a 60-day objection period begins during which you, the applicant, or anyone who has expressed an interest in your proposed water use may communicate to us their disagreement with what we have said in our report on your application. After the 60-day objection period, the Department conducts the public interest review and considers any objections which have been made.

After any objections have been considered, there may follow time to allow parties to resolve conflicts over the proposed water use. In addition, a 30-day protest period may be required. Lastly, it may be necessary to schedule a hearing or send the application to the Water Resources Commission for their review. In most cases no objections are received and the application processing can proceed without further conflict resolution, protest, or hearing.

If your application is recommended for approval and a permit is issued, the use allowed by the permit will be subject to the Basin Program Rules of the Water Resources Commission, instream flow requirements, and the demands of prior right holders, and other conditions to conform the water use to particular standards.

Please contact the Water Rights Section of the Water Resources Department if you have any questions. You may write to us at 3850 Portland Road, Northeast, Salem, Oregon 97310 or you may call 378-3739 in Salem or toll free from within the state 1-800-624-3199.

Sincerely,

Laurie Beth English
By DLB

Laurie Beth English
Water Rights Program Analyst

cc:CWRE

cc: Brown

8/11/93



Transmission

To: Reed Morbut

Location: Salem WRD

FAX: 378-8130

From: Mike Ladd

Location: Grant County Watermaster
P.O. Box 261
Canyon City, Oregon 97820

Phone: (503) 575-0119

FAX: (503) 575-2248

Today's Date: 8-11-93

Number of Pages: 2 (including cover)

Comments: see note

To: Reed Marbut

Here is the language that I believe we agreed upon at our conference call with Phil Graf last week. I did call Phil this morning and he agreed with the language. The sentence bolded is the new language. If you agree, then pass on to Steve so the final technical review can be done quickly and mailed out. There is a draft technical review already done, so making a language change for one sentence should be relatively painless. Thanks for your help. Mike

Secondary releases authorized under permit will be scheduled as needed for fishery benefits. Releases to be made in a manner to enhance fishery in the Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. The permittee shall notify watermaster (2) full working days prior to releasing flows for fish purposes.

He

two

OREGON WATER RESOURCES DEPARTMENT
WATER RIGHTS/ADJUDICATION DIVISION

INTEROFFICE MEMORANDUM

TO: Reed Marbut
Steve Brown

FROM: Darlene Castle

DATE: August 11, 1993

SUBJECT: Bureau of Rec. - S-73451

Phil Graf called about the application fees. He is mailing a P.O. to us in the amount of \$5,050.00. Once that P.O. is received (according to Phil), we need to bill them asap. Phil then okays for payment.

He wanted me to note to you, per their attorney, the following language which will be placed on the P.O.:

"Payment under protest without waiving rights of appeal or conceding the validity of the fee as applied to the U.S."

cc: Karen Cox

August 13, 1993

Mr. Phil Graf
Regional Water Rights Officer
U.S. Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

WATER
RESOURCES
DEPARTMENT

Reference: Number 73451

Dear Mr. Graf:

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 Water Use Permit(s). 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 690-11-160) to conduct this official technical review of each application submitted to the Oregon Water Resources Department for a water use permit. 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.



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 690-11-195) 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 October 15, 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

Report Date: August 13, 1993

OREGON WATER RESOURCES DEPARTMENT

SATISFACTORY REPORT OF TECHNICAL REVIEW
FOR WATER USE PERMIT(S)

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, BY 5 P.M. ON OR BEFORE October 15, 1993.

1. APPLICATION FILE NUMBER - S 73451
2. MINIMUM APPLICATION INFORMATION

Applicant name/address/county/phone:

U. S. Bureau of Reclamation
1150 N. Curtis Road
Boise, ID 83706-1234

Umatilla County 208-378-5322

Date application received for filing and/or tentative date of priority: 6/21/1993

SOURCE: McKay Reservoir constructed under permit R-584, tributary to Umatilla River.

Purpose and/or use: instream fishery enhancement

Flow: 12,000 ACRE-FEET STORED WATER ONLY.

Point of Diversion Location: NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM.

Place of use:

Umatilla River from the mouth of McKay Creek, (SE 1/4 NW 1/4, Section 8, T 2 N, R 32 E, WM) to the mouth of the Umatilla River, (NW 1/4 NE 1/4, Section 18, T 5 N, R 28 E, WM) and McKay Creek from McKay Dam (NW 1/4 SE 1/4, Section 34, T 2 N, R 32 E, WM) to mouth of McKay Creek.

SURFACE WATER AVAILABILITY

Water is likely available in excess of needs for all existing rights 80% of the time during each monthly period.

Water availability tables are available in the application file and may be reviewed in the office of the Water Resources Department in Salem.

CONFLICTS WITH OTHER WATER RIGHTS:

There are existing rights from this point of diversion.

There are existing water rights appurtenant to the lands described in the application.

REPORT CONCLUSIONS:

Water in the amount of **12,000 ACRE-FEET** is likely available for the normal period of use. Therefore, the Director finds that water is available in sufficient amount and during periods which will reasonably support the proposed use.

THE PROPOSED WATER USE, AS CONDITIONED, SATISFIES THE REQUIREMENTS OF THIS TECHNICAL REVIEW.

This Report of Technical Review sets out the Director's technical analysis of the application. In addition to this technical analysis, the Director will evaluate this application to determine whether the proposed water use might impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195. Matters relating to public interest in the proposed water use which are raised in objections will be evaluated following the 60-day objection period.

PROPOSED PERMIT CONDITIONS

Application: 73451

The following conditions will apply to water use under the permit, and will appear in the permit, if issued.

1. Use of water under this permit is subject to all prior rights.
2. Period of allowed use: **year round**
3. Volume of use: **12,000 acre-feet stored water only.**
4. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
5. Secondary releases authorized under this permit will be scheduled as needed for fisher benefits. Releases to be made in a manner to enhance fishery in Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. The permittee shall notify the watermaster two full working days prior to releasing flows for fish purposes.

6. Water use development requirements:
 - A) Begin construction by (one year from issuance of permit).
 - B) Complete construction by October 1, 1995.
 - C) Completely apply the water to beneficial use by October 1, 1996.
7. Failure to comply with any of the provisions of the permit may result in action including, but not limited to, restrictions on the use, penalties, or cancellation of the permit.
8. The permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
9. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
10. In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

August 27, 1993

WATER
RESOURCES
DEPARTMENT

Dale Morris
Oregon State Grange
1125 SE Madison #102
Portland, OR 97214

Dear Mr. Morris:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English
Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

August 27, 1993

WATER
RESOURCES
DEPARTMENT

Harry F., Eliander, Jr.
Beaverton Grange #324
8970 SW Davies Rd.
Beaverton, OR 97005-6836

Dear Mr. Eliander:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English

Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

August 27, 1993

WATER
RESOURCES
DEPARTMENT

Marjorie McElroy
Leedy Grange #339
835 NW Saltzman Road
Portland, OR 97229

Dear Ms. McElroy:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,



Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

August 27, 1993

James Clute
925 Gales Creek Road
Forest Grove, OR 97116-1120

WATER
RESOURCES
DEPARTMENT

Dear Mr. Clute:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English

Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

August 27, 1993

Nils H. Nelsen
5660 SW Texas
Portland, OR 97219

WATER
RESOURCES
DEPARTMENT

Dear Mr. Nelson:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English
Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

August 27, 1993

WATER
RESOURCES
DEPARTMENT

Jim Krahn
ODFA
10505 SW Barbur Blvd.
Portland, OR 97219

Dear Mr. Krahn:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English
Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

(2) If the technical review indicates that water is available on a limited basis, or if the proposed water use can be restricted so as to avoid causing conflict with existing water rights and cause the use to be permitted within the programs or policies of the Commission, the Director shall propose permit conditions to reflect such limits or restrictions.

(3) If the application is for the use of water reserved under OAR Chapter 690, Division 79, the analysis of water availability shall be based upon streamflow and water use at the time of the reservation.

(4) Upon entry of the report of the technical review, an evaluation of the application shall be initiated to determine whether the proposed water use may impair or be detrimental to the public interest pursuant to the procedure set forth in OAR 690-11-185.

(5) The report of the technical review shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. In addition, any person may request a copy of the report of the technical review.

(6) On the basis of the land use information received from local government(s) pursuant to 690-11-020(1)(g), 030(7) and 040(5), the Director shall take action under OAR 690-05-035 (Compatibility with Acknowledged Comprehensive Plans). As described in OAR 690-05-035, such action may include granting a water right permit subject to other Departmental requirements, proposing permit conditions, or rejecting the application. The report of the technical review shall explain the reasons for actions taken or proposed in accordance with OAR 690-05-035.

(7) The report of the technical review shall state the date by which Objection(s) must be received by the Department. See OAR 690-11-170.

{adopted 6-5-92}

Objections

690-11-170

(1) A 60-day objection period shall commence on the day the Department deposits the report of technical review in the mail of the United States Postal Service for delivery to the applicant. Objection(s) shall be received by the Department within said 60-day objection period. If the objector alleges that the Director's technical review is defective, the objection shall set forth facts which support the allegation. If the objector alleges that the proposed water use may impair or be detrimental to the public interest, the objection shall specify the particular public interest standard(s) identified in ORS 537.170 and OAR 690-11-195 that the objector believes would prohibit or restrict the proposed water use. The objector shall also state facts to support the allegation that the proposed water use is not permitted by the specified standards. Objectors are encouraged to indicate if they would be interested in participating in settlement of their concerns through alternative dispute resolution or if the issues raised should be considered as a part of a contested case hearing.

(2) If no objection is received by the Department on or before the date stated in the report of the technical review, the Commission and Director may presume the application is not opposed by any person or entity.

{adopted 6-5-92}

Evaluation of Objections and Filing of Protests

690-11-175

- (1) If objection(s) are filed with the Department within the time limits prescribed in OAR 690-11-170(1), the Director shall transmit copies of such objection(s) to the applicant(s), all objectors and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review. The Director shall assess such objection(s) to determine if the matters raised by the objector(s) demonstrate that the Director's technical review was defective or that the proposed water use may impair or be detrimental to the public interest.
- (2) If the Director determines that the objection(s) contains facts that establish that the Director's technical review was defective or identifies elements of the proposed water use that may impair or be detrimental to the public interest, the Director shall advise the objector(s), applicant and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review that the parties may engage in discussions to attempt to resolve the technical review or public interest issues described in the objection.
- (3) If the parties elect to engage in formal discussions to attempt to resolve the technical review or public interest issues, such discussions shall be conducted as prescribed in OAR 690-11-180.
- (4) If the Director determines that the objection(s) does not contain facts that establish that the Director's technical review was defective or does not identify elements of the proposed water use that may impair or be detrimental to the public interest, the Director shall deny the objection and shall transmit notice of the denial to the applicant and objector(s) by mail.
- (5) The objector(s) shall be allowed 30 days from the date of mailing of the denial to protest the denial of their objection(s). The form and content of the protest along with the filing and service procedure shall be in accordance with the standards set forth in OAR 690-02-030 through 080.
- (6) If a protest(s) is timely filed, the Director shall refer the application, with accompanying objection(s) and protest(s), to the Commission for review.
- (7) If the objection(s) are denied and no protests are filed, the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall review the application to determine if the proposed water use may impair or be detrimental to the public interest pursuant to OAR 690-11-185 and 195.

{adopted 6-5-92}

Alternative Dispute Resolution

690-11-180

- (1) If an objection(s) is timely filed and is not denied, and if the applicant and objector(s) elect to engage in discussions, the applicant and objector(s) shall:
 - (a) Inform the Director within 30 days of receipt of the copies of the objections mailed under OAR 690-11-175(1) of their election to enter into discussions;
 - (b) Notify the Director of the time, date, and location of all discussion sessions not less than 10 days before each session;
 - (c) Agree that the Director or the Director's designee may participate in all discussion sessions to provide counsel, direction, facilitation;

RECEIVED

AUG 18 1993

WATER RESOURCES DEP
SALEM, OREGON

T-7006

73451

Aug, 16, 93

Dear Sir:

As Master of Divis Mt. Orange # 880,
I would like to express my opposition in
drawing down in McKay reservoir. Under
no circumstances would it be right to take
away water from the farms that they deserve and
were counting on.

Sincerely,

Dave J Logan
Master

8/27/93

* No return address

D. Logan
Castro



10505 S.W. Barbur Blvd., Portland, Oregon 97219
(503) 229-5033 FAX (503) 245-7916

RECEIVED
AUG 19 1993
WATER RESOURCES DEPT.
SALEM, OREGON

August 16, 1993

Mr. Reed Marbut, Administrator
Water Right/Adjudication Division
Oregon Water Resource Department
3850 Portland Road NE
Salem, OR 97310

Dear Mr. Marbut:

I am writing to you in protest of transfer 7006 and application 73451 for a permit to store and release McKay Reservoir water for instream fish flow.

We as dairy producers object to this transfer as it could have a tremendous effect on us financially. We believe without question that we deserve the right to a public hearing before granting this transfer permit.

Sincerely,

A handwritten signature in blue ink that reads "Jim Krahn". The signature is written in a cursive, flowing style.

Jim Krahn
Program Manager

JK/ds

To Reed Marbut
Water Rights Division

T-7006
73451

RECEIVED

AUG 17 1993

WATER RESOURCES DEPT.
SALEM, OREGON

Dear Sir

We of Sunset Grange 941 feel that there should be a public Hearing on the McKay Reservoir on the drawdown of Water.

Since the economy and productiv of this area will be hurt by this take over by the Government for fish Enhancement. This enhancement are for a few people and therefore will hurt more than the People in the Area of McKay Reservoir. We feel there should be a public Hearing on this in the Area it affects.

submitted by

Sunset Grange 941
Nils H. Nelson Sr Master

RECEIVED

AUG 17 1993

WATER RESOURCES DEPT. 08-16-93
SALEM, OREGON

T-7006
73451

TO: MR. REED MARBUT ADMINISTRATOR
WATER RIGHTS ADJUDICATION DIVISION
OREGON WATER RESOURCES DEPARTMENT
3850 PORTLAND RD NE
SALEM OR 97310

REG: MCKAY RESERVOIR WATER USE

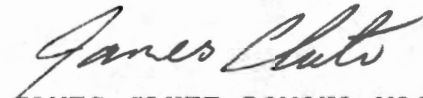
Mr. Marbut:

I could go on and on for a page or more with data, facts and figures.

BUT

The bottom line is that we are requesting A PUBLIC HEARING on the proposed McKay Reservoir in stream fish flow enhancement / draw down.

WASHINGTON-YAMHILL COUNTY POMONA GRANGE



JAMES CLUTE POMONA MASTER

Leedy Grange #339
835 N.W. Saltzman Road
Portland, Oregon 97229

August 16, 1993

T-7006
73451
RECEIVED

AUG 17 1993
WATER RESOURCES DEPT.
SALEM, OREGON

Mr. Reed Mardut
3850 Portland Road N.E.
Salem, Oregon 97310

Dear Mr. Reed Madut,

We the Leedy Grange #339 members request a public hearing for the McKay Reservoir water release.

Sincerely,

Marjorie M. Elroy

Marjorie McElroy
Leedy Grange #339 Sec.
13515 N.W. Germantown Rd.
Portland, Oregon 97231

RECEIVED

AUG 17 1993

WATER RESOURCES DEPT.
SALEM, OREGON

August 14, 1993

T-7006
73451
Beaverton Grange #324
c/o Harry Eliander, Master Pro-tem
8970 SW Davies Rd.
Beaverton, OR 97005-6836

Mr. Reed Marbut, Administrator
Water Right/Adjudication Division
Oregon Water Resources Dept.
3850 Portland Rd., NE
Salem, OR 97310

Dear Sir:

Our Organization represents 45 members in the State of Oregon.

We are protesting Transfer 7006 and application #73451 for a permit to store and release McKay Reservoir water for the stream fish flow enhancement. The reasons include the following:

1. The McKay Reservoir is authorized for irrigation and flood control storage only. The authorizing legislation provides for only incidental benefits to fish and wildlife that can be achieved without interfering with irrigation.
2. The transfer and application for the permit involves Federal action and we believe that NEPA compliance is required, including the completion of an ER with a public hearing.
3. The storage water in McKay Reservoir is presently 100% allocated. If a permit for the storage and release of McKay Reservoir water for fish enhancement is granted, then it is possible that land presently irrigated with stored water will be forced to dryland farm and be non-productive. This will hurt the local and State economy.
4. It is our position that the granting of this transfer and permit will be the confiscation of the storage and the use of water from McKay by the Government. McKay Dam and Reservoir storage is being paid for under contracts between the irrigators, irrigation districts and the Government.

We insist that the Oregon Water Resources Commission set a public hearing for protests to be heard prior to the granting of this transfer permit.

Thank you for your time. Please keep us informed as to the time and place of any and all hearings pertaining to this matter.

Sincerely,

Harry F. Eliander
Harry F. Eliander, Jr.
Master, Pro-tem

Oregon State Grange

1125 S.E. Madison, #102, Portland, OR 97214-3681, 503-236-1118, FAX 503-236-4018

T-7006
73451



Officers

Master
Dale Morris

Overseer
Ben Boswell

Lecturer
Arlene Force

Steward
Don Force

As. Steward
Mark Noah

Lady As. Steward
Susan Noah

Chaplain
Sharon Mahon

Treasurer
John Cameron

Secretary
Gayle Alton

Gatekeeper
Dean High

Ceres
Connie Suing

Pomona
Vickie High

Flora
Louise Holst

Ex. Comm. #1
John Fine

Ex. Comm. #2
Bob Ludi

Ex. Comm. #3
Glenabell Lewis

Mr. Reed Marbus, Administrator
Water Rights/adjudication Division
Oregon Water Resource Department
3850 Portland Road NE
Salem, Oregon 97310

Dear Mr. Marbus:

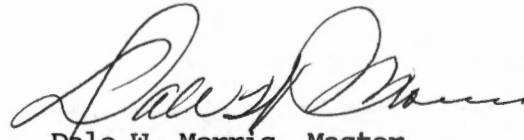
The Oregon State Grange is strongly opposed to transfer 7006 and the permit that would release this water from McKay Reservoir for any other reason than irrigation and flood control.

We hope the contract with the irrigation districts will prevail to protect the irrigators, the right of using the water for what it was intended.

The farmers , if forced to dry farming would severly reduce their way of making a living and would effect the local economy.

We ask that a public hearing on this issue be in place before the permit is granted.

Sincerely,


Dale W. Morris, Master
Oregon State Grange

RECEIVED

AUG 17 1993

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

AUG 19 1993

WATER RESOURCES DEPT.
SALEM, OREGON

COMMENT FORM

Please list below the Application Number of the water use application(s) that are of interest to you. When the technical evaluation is completed a report of the technical review of these applications will be delivered to you.

Application #s 73451 _____

Send to: Water for Life
4035 12th Street Cut Off SE, Suite 4D
Salem, OR 97302

Please include specific comments or concerns. Use additional sheets if necessary.

Return to:
Oregon Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

This Comment corresponds to the ~~8-1-93~~ Public Notice.

2. AMENDMENT/MODIFICATION NO. 002	3. EFFECTIVE DATE 08/12/93	4. REQUISITION/PURCHASE REQ. NO. 420-259-93	5. PROJECT NO. (If applicable)
--------------------------------------	-------------------------------	--	--------------------------------

6. ISSUED BY U.S. BUREAU OF RECLAMATION 1150 NORTH CURTIS ROAD BOISE, ID 83706-1234	CODE PN 800	7. ADMINISTERED BY (If other than Item 6)
--	----------------	---

RECEIVED

AUG 27 1993

WATER RESOURCES DEPT
SALEM, OREGON

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) OREGON DEPARTMENT OF WATER RESOURCES 3850 PORTLAND ROAD, NE SALEM, OR 97310	(v)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED (SEE ITEM 11)
	X	10A. MODIFICATION OF CONTRACT/ORDER NO. 1425-3-PA-10-11570
		10B. DATED (SEE ITEM 13) 05/03/93

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
 210 0030 1140 100 30 0 0 1050400 255R WATER RIGHT FEES 5050.00

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- (v) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The above numbered purchase order is modified to CANCEL modification #1 in its entirety and reinstate item #5 and cost authority #3. These changes will increase the order by \$5050 for a new total of \$5520. Balance of the order remains as stated.

5. Recording fee for Application for Permit to Appropriate Surface Water Rights [continued on next page]	1 EA	5050.00	5050.00
---	------	---------	---------

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) BECKY YOUNG CONTRACTING OFFICER		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Becky Young</u> (Signature of Contracting Officer)	16C. DATE SIGNED 8-20-93
(Signature of person authorized to sign)			

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ORDER FOR SUPPLIES OF SERVICES
SCHEDULE - CONTINUATION

PAGE NO.

2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER 08/12/93	CONTRACT NO. (If any) 1425	ORDER NO. 3 PA 10 11570	MOD 002
---------------------------	-------------------------------	----------------------------	---------

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
6 (Cont'd).	Req #420-253-93					



STATE OF OREGON
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR 97301
(503) 378-3739

INVOICE # 1389

TO: US Bureau of Reclamation

DATE: August 30, 1993

ADDRESS: 1150 North Curtis Rd
Boise, ID 83706-1248

CUSTOMER—PLEASE RETURN YELLOW COPY FOR PROPER CREDIT

Surface Water Rights, Recording Fees

\$5050.00

PO Num. 420-259-93

Total

\$5050.00

Please Remit to:

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

Contact For Questions:

Karen Cox 378-3739

Phone: _____

October 15, 1993

Becky Hiers
Dept. of Natural Resources, CTUIR
P.O. Box 638
Pendleton, OR 97801

REFERENCE: Transfer 7006 and File 73451

Reed Marbut asked me to respond to the Tribe's letter of October 15, 1993.

Enclosed are the comments and protests we have received concerning these files. Also enclosed are our responses.

The Department has not yet responded to the protest of the transfer application. We are still formulating our response.

If you have any questions, please call the Water Rights Section, (503) 378-3739.

Sincerely,

LARRY H. NUNN
Senior Water Rights Specialist

enclosure



COPY CHECK-OFF SHEET FOR TECHNICAL REVIEWS

✓ CC: FILE # 73451

✓ WATERWATCH

✓ ODF&W

✓ WATERMASTER # TONY JUSTUS ; DIST #5

✓ REGIONAL MANAGER - MIKE LAOD

✓ CWRE - BRUCE ESTES

OTHER ADDRESSES: Attached

CASEWORKER



ORIGINAL TO APPLICANT 7/29/93

RECEIVED

MAR 21 1993

2

WATER RESOURCES DEPT.
SALEM, OREGON

cc: ✓ Oregon Water Resources Department
3920 Westgate
Pendleton OR 97801

✓ Stanfield Irrigation District
PO Box 416
Stanfield OR 97875-0416

✓ Westland Irrigation District
PO Box 416
Stanfield OR 97875-0416

✓ Mr. Stephen M. Bloom
PO Box 490
Pendleton OR 97801-0490

✓ Ms. Laura A. Schroeder
3355 NE. Davis
Portland OR 97232-3244

✓ Confederated Tribes of the
Umatilla Indian Reservation
PO Box 638
Pendleton OR 97801

✓ Oregon Department of Fish and Wildlife
PO Box 59
Portland OR 97207

✓ Bonneville Power Administration
Attention: Jay Marcotte - PJW
PO Box 3621
Portland OR 97208-3621

✓ Water Watch of Oregon
921 SW. Morrison, Suite 534
Portland OR 97205

(ea. w/copy of enclosures)

Carl Achterman

August 27, 1993

Water For Life
4035 12th St., SE, #40
Salem, OR 97302

WATER
RESOURCES
DEPARTMENT

Dear Mr. Sir or Madam:

We have received your comments to Application File Number 73451. Those comments have become part of the Application file.

We are sending you copies of the Technical Review Report and its accompanying letter of explanation which were sent to the applicant, commenters, and other interested parties who requested they be sent information on the proposed water use. We are also enclosing a copy of the Oregon Administrative Rules regarding the objection process.

If, after reviewing the Report, you would like to submit official objections and facts to support your objections, please remember that you must submit those by the deadline specified in the Report, no later than 5:00 p.m. on or before October 15, 1993. You must allege that the Technical Review on the Application was defective or that the proposed water use would impair or be detrimental to the public interest.

After the objection period deadline, the Director will evaluate the objections and either accept or deny them. The Director can accept an objection only if it establishes that there was a defect in the Technical Review or the proposed water use is against the public interest.

If the objections are denied, the Oregon Administrative Rules require us to allow 30 days for the objector to protest our denial of the objections. If we receive no protests, then we will complete our public interest review of the Application and the Director will decide whether to issue a permit or recommend rejection of the Application.

If you have any questions about the process, please call me.

Sincerely,

Laurie Beth English

Laurie Beth English
Water Rights Program Analyst

LBE/dpc
Enclosures



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

STATE OF OREGON
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR 97301
(503) 378-3739

INVOICE # 1352

TO:

DATE: 21 Jul-93

ADDRESS:

CUSTOMER—PLEASE RETURN YELLOW COPY FOR PROPER CREDIT

T 7006 AND 73451

5520.00

Please Remit to:

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

Contact For Questions:

Phone: _____

White/Yellow - Customer Copies
Pink - Receptionist Goldenrod - Fiscal
Blue - Retained by Invoice Preparer

STATE OF OREGON
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR 97301
(503) 378-3739

INVOICE # 1352

TO: U.S. BUREAU OF RECLAMATION
ATTN. CODE 920
ADDRESS: 1150 NORTH CURTIS ROAD
BOISE, ID. 83706-1234

DATE: 21 Jul - 93

CUSTOMER—PLEASE RETURN YELLOW COPY FOR PROPER CREDIT

1 WATER RIGHTS FEES
ORDER #1425-3-PA-10-11570
T 7006 AND 73451
MONEY SLIP TO KAREN COX

\$5,520.00

TOTAL \$5,520.00

Please Remit to:
ATTN: FISCAL SECTION

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

Contact For Questions:
KAREN COX

Phone: _____
8-1415 X228

White/Yellow - Customer Copies
Pink - Receptionist Goldenrod - Fiscal
Blue - Retained by Invoice Preparer



IN REPLY
REFER TO:

PN-424

United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

AUG - 4 1993



RECEIVED

AUG - 9 1993

**WATER RESOURCES DEPT.
SALEM, OREGON**

Steve Brown
Senior Water Rights Specialist
Field Operations Division
Oregon Water Resources Department
3850 Portland Road NE
Salem OR 97310

**Subject: Remarks for Application 73451, McKay Reservoir, Umatilla Project,
Oregon (Water Rights)**

Dear Mr. Brown:

This letter is a follow up to the FAX sent on August 2, 1993, regarding a substitution of language. The following is a duplicate of the FAX.

Steve, please substitute this entire paragraph for our third paragraph in our remarks which accompanied Application 73451. Mike Ladd tells me this refers to Condition Number 5 of the proposed permit conditions relating to Application 73451.

Secondary releases authorized under permit will be scheduled as needed for fishery benefits. Releases to be made in a manner to enhance fishery in the Umatilla River downstream of McKay Dam. The Bureau of Reclamation after consultation with the Oregon Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian Reservation will determine the flows needed for fish purposes. The Watermaster will approve and, to the extent of available resources, protect releases for fish purposes provided that the Watermaster receives adequate notice of such planned releases two full regular working days in advance, or sooner by Watermaster approval, in order to verify entitlements and mobilize personnel.

Please contact Phil Graf at (208) 378-5322 or FAX (208) 378-5305, if you have any questions or need any supporting materials.

Sincerely,

ACTING Regional Supervisor of
Water, Power, and Lands

August 10, 1993

WATER
RESOURCES
DEPARTMENT

Mr. Phil Graf
Regional Water Rights Officer
U.S. Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

RE: Application Number S-73451 (Fees)

Dear Mr. Graf:

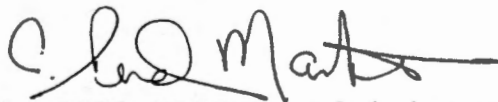
Enclosed are copies of Oregon Revised Statute 536.050 and Oregon Administrative Rule 690-11-020. ORS 536.050 is the statutory schedule for water right fees. You will note the language of the statute requires the Department to collect all water right application fees in advance.

OAR 690-11-020(2) and (3) state that all water right applications must be accompanied by the appropriate examination and recording fees. If an application is received without the appropriate fees (as set forth in ORS 536.050) the application must be returned to the applicant.

All applicants are required to submit an examination fee at the time of filing and recording fees prior to issuance of the water right permit. There is no provision for waiver or reduction of fees.

If you have further questions or comments, please give me a call.

Sincerely,



A. REED MARBUT, Administrator
Water Rights/Adjudication Division

Enclosures

ARM/dpc

cc: Stephen E.A. Sanders
Mike Ladd



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

August 10, 1993

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Regional Water Rights Officer
U.S. Bureau of Reclamation
1150 North Curtis Road
Boise, ID 83706-1234

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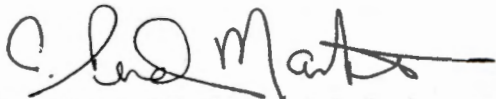
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536.050 Fees. (1) Except as provided in subsection (2) of this section, the following fees shall be collected by the Water Resources Department in advance:

(a) For examining an application for permit to appropriate water:

(A) For power purposes, the fees required under ORS 543.280.

(B) For all other purposes, \$200.

(b) For filing and recording permit to appropriate water:

(A) For irrigation purposes, \$100 for the first 10 acres, or fraction thereof, to be irrigated and \$2 for each acre in excess of 10 acres.

(B) For storage, a minimum fee of \$100 for the first 50 acre-feet and 25 cents for each acre-foot in excess of 50.

(C) For domestic purposes, \$125 for the first second-foot or fraction thereof and \$60 for each additional second-foot.

(D) For any other purpose, including but not limited to municipal, \$100 for the first second-foot or fraction thereof and \$50 for each additional second-foot.

(c) For filing or recording any other water right instrument, \$10 for the first page and \$5 for each additional page.

(d) For copying records in the department, \$2 for the first page and 50 cents for each additional page.

(e) For certifying to copies, documents, records, or maps, \$10 for each certificate.

(f) For blueprint copy of any map or drawing, the actual cost of the work.

(g) For examining an application for approval of a change in point of diversion, or a change in place of use or change in use of water, \$50.

(h) For filing each application to transfer water rights for irrigation from one tract of land to another or to transfer to irrigation use from any other use, a minimum fee of \$30 per receiving owner for the first 10 acres or fraction thereof and \$1 for each acre in excess of 10 acres, such fees to be based upon the number of acres to which the water right is transferred.

(i) For filing each application for change in point of diversion, \$35.

(j) For filing each application for a change in the use or place of use theretofore made of the water where the use is other than irrigation, \$100.

(k) For filing any protest with the department, \$25.

(L) For filing an application for extension of time within which irrigation or other works shall be completed or the right perfected, \$100.

(m) For examining an application for an exchange of water, \$250.

(n) For a limited license under ORS 537.143, the fee established by rule by the Water Resources Commission.

(o) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section.

(2) Notwithstanding the fees established under subsection (1) of this section, the commission may by rule establish examination and permit fees lower than those under subsection (1) of this section for:

(a) The right to appropriate water for a storage project of five acre-feet or less; or

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area. As used in this paragraph, "riparian area" has the meaning given that term in ORS 541.350.

(3) Except as provided in subsection (4) of this section, all moneys received under subsection (1) of this section shall be deposited in the Water Resources Department Operating Account and credited to the Water Resources Department. Such moneys are continuously appropriated to the Water Resources Department to pay the department's expenses in administering and enforcing the provisions of ORS chapters 536 to 543.

(4) All fees received under subparagraph (A) of paragraph (a) of subsection (1) of this section shall be paid to the Water Resources Department Hydroelectric Fund established in ORS 536.015. (Amended by 1961 c.187 §3; 1967 c.36 §1; 1973 c.163 §4; 1975 c.581 §21; 1981 c.627 §1; 1983 c.256 §1; 1985 c.673 §12; 1987 c.815 §8; 1989 c.587 §1; 1989 c.758 §1; 1989 c.933 §4; 1989 c.1000 §6; 1991 c.734 §49a; 1991 c.869 §4)

Minimum Application Requirements

690-11-020

(1) Applications shall be submitted on forms provided or approved by the Department and shall contain the following minimum information:

(a) Name and mailing address of the applicant(s);

(b) Source(s) of the water;

(c) Quantity of water to be appropriated;

(d) A map of the proposed water use prepared by a Certified Water Right Examiner, or such other information as may be necessary to establish the location of the proposed point of diversion and place of use to the nearest quarter-quarter Section, Township and Range;

(e) Nature of the use(s);

(f) Name and mailing address of the legal owner of the property upon which any portion of the proposed development will occur, if other than the applicant. (This requirement may be waived by the Director if the applicant is an agent acting on behalf of multiple users, such as a municipality, irrigation district, group domestic water system or ditch company.);

(g) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR Chapter 690-05-015(7) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning department;

(h) Signature of the applicant(s). (If the applicant is a public agency, corporation or business, the title or authority of the signer shall be indicated.); and

(i) An oath that the information contained in the application is a true and accurate representation of the proposed water use.

(2) Each application shall be accompanied by the appropriate examination fee required by ORS 536.050.

(3) Applicants shall be assessed additional fees for water right permit filing and recording as set forth in ORS 536.050(1)(b).

{ adopted 6-11-87; amended: 6-28-88; 8-3-90; 6-5-92 }

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. 001	3. EFFECTIVE DATE 07/28/93	4. REQUISITION/PURCHASE REQ. NO. 420-253-93	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. BUREAU OF RECLAMATION 1150 NORTH CURTIS ROAD BOISE, ID 83706-1234		7. ADMINISTERED BY (If other than Item 6) PN 800	CODE	

RECEIVED
AUG - 2 1993

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) OREGON DEPARTMENT OF WATER RESOURCES 3850 PORTLAND ROAD, NE SALEM, OR 97310		9A. AMENDMENT OF SOLICITATION NO. WATER RESOURCES (VE) 1 SALEM, OREGON	9B. DATED (SEE ITEM 11)
CODE		FACILITY CODE	10A. MODIFICATION OF CONTRACT/ORDER NO. 1425-3-PA-10-11570
			10B. DATED (SEE ITEM 13) 05/03/93

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

CAN ELLE	WATER RIGHT FEES	0.00
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13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(v) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The above numbered purchase order is modified to cancel item #5 in its entirety. This will decrease the order by \$5050 for a new order total of \$470. Balance of the order remains as stated.

(Change due to recent Supreme Court decision stating United States is exempt from fees which are not specifically for reimbursement of costs.)

CANCELLED Item # 5-Recording fee for Application for Permit to Appropriate
[continued on next page]

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) BECKY YOUNG CONTRACTING OFFICER	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Becky Young</u> (Signature of Contracting Officer)	16C. DATE SIGNED 7-29-93

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ORDER FOR SUPPLIES OF SERVICES
SCHEDULE - CONTINUATION

PAGE NO.
2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER
07/28/93

CONTRACT NO. (If any)

1425

ORDER NO.

3 PA 10 11570

MOD 001

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
(Cont'd).	Surface Water Rights Requisition #: 420-253-93					

TOTAL CARRIED FORWARD TO FIRST PAGE (ITEM 17(H))



T7006

RECEIVED

JUN 18 1993

WATER RESOURCES DEPT
SALEM, OREGON

7-711 (7-88)
Bureau of Reclamation

ORDER FOR SUPPLIES OR SERVICES
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

PAGE OF PAGES
1 2

1. ORDER NO. (8-17) **1425-S-PA-10-11570** 2. CONTRACT NO. (if any) 3. DATE OF ORDER **05/03/93** **IMPORTANT-Mark all packages and papers with contract and/or order numbers.**

4. ISSUING OFFICE (Address correspondence to) **U.S. BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD
BOISE, ID 83706-1234** CODE (1-2) **PN 800** 5. SHIP TO: (Consignee and address, ZIP Code) **BUREAU OF RECLAMATION-R.O.
3-PA-10-11570 -
1150 NORTH CURTIS ROAD
BOISE ID 83706-1234** W/HS# NO. _____

BUYER **B. YOUNG** TELE. NO. (No collect calls) **(208)378-5103** SHIP VIA:

6. TO: CONTRACTOR (Name, address and ZIP Code) **OREGON DEPARTMENT OF WATER RESOURCES
3850 PORTLAND ROAD, NE
SALEM, OR 97310** CODE (3-7) 7. REQUISITIONING OFFICE **P. GRAF** 8. REQUISITION/REFERENCE NO. **420-247-93**

9(A). CHECK IF BUSINESS IS:
 SMALL
 SMALL DISADVANTAGED
 WOMEN-OWNED

10. TYPE OF ORDER
 A. PURCHASE - Reference your _____
 B. DELIVERY - This delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

11. MAIL INVOICES TO:
**U.S. BUREAU OF RECLAMATION
ATTENTION: CODE 920
1150 NORTH CURTIS ROAD
BOISE, ID 83706-1234 (208)378-5103
TAX EXEMPT NO . 98-03578**

9(B). SET-ASIDE STATUS
 SB Over \$10,000
 SB Under \$10,000
 LSA

12. DISCOUNT TERMS **NET** 13. DELIVER TO F.O.B. POINT **DESTINATION** 14. ON OR BEFORE (Date) **05/03/93** 15. PLACE OF INSP. **DESTINATION** 16. GOVERNMENT B/L NO.

17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY ACCEPTED	20. QUANTITY ORDERED	21. UNIT	22. UNIT PRICE	23. AMOUNT
1.	Filing Fee for Application for Transfer of Water Rights Requisition #: 420-247-93		1	EA	50.00	50.00
2.	Examination Fee for Application for Transfer of Water Right Requisition #: 420-247-93		1	EA	100.00	100.00
3.	Publication of Notice and Recording Fee for Application for Transfer of Water Right Requisition #: 420-247-93		1	EA	120.00	120.00

24. UNITED STATES OF AMERICA 25. NAME (TYPED) **BECKY YOUNG** 26(A). TOTAL (Cont. pages) \$ **5250.00**
BY (SIGNATURE) *Becky Young* TITLE: CONTRACTING OFFICER 26(B). GRAND TOTAL \$ **5520.00**

27. Vendor contact: **LARRY NUNN** Vendor Phone No: _____
Quantity in the "Quantity Accepted" column has been
 Inspected accepted received
by me and conforms to the contract, except as noted.
Items listed on the reverse have been accepted (although non-conforming) or rejected for the reasons indicated.

28. SIGNATURE OF AUTHORIZED U.S. GOV'T REP. 29. DATE RECEIVED

TRANS CODE	GRP	FUND	PROJ	AUTH NO.	MAIN ACCT	BLN ACCT	CL	SW	COST CENTER	OBJECT CODE	DESCRIPTION	FBC GRP	METH	L S	F	S T K	C A T		
18-20	21-22	23-25	26-28	30-33	34-36	37-38	39	40	41-47	48-51	52-71	72-73	74-76	78	77	78	79	80	
02A	01	210	0030	1140	100	30	0	0	1050400	255R	FEES		270						
02A	02	210	0030	1140	100	30	0	0	1050400	255R	EXAMINATION FEE		300						
02A	03	210	0030	1140	100	30	0	0	1050400	255R	WATER RIGHT FEES		5050						
02A	04																		
02A	05																		

RECEIVED

JUN 18 1993

WATER RESOURCES DEPT

SALEM, OREGON

T7006
73451

7-711A (4-84)
Bureau of Reclamation

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

PAGE NO.

ORDER FOR SUPPLIES OF SERVICES
SCHEDULE - CONTINUATION

2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER
05/03/93

CONTRACT NO. (If any)

1425

ORDER NO.

3 PA 10 11570

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
4.	Examination fee for new instream flow, secondary Application for a Permit to Appropriate Surface Water Requisition #: 420-248-93	1	FEE	200.00	200.00	
5.	Recording fee for Application for Permit to Appropriate Surface Water Rights Requisition #: 420-253-93	1	EA	5050.00	5050.00	

TOTAL CARRIED FORWARD TO FIRST PAGE (ITEM 17(4))

5250.00

TOWNSHIP 2 N RANGE 32 E W. M.

SECTION 28

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
1	26			6												9136	5996	2572
		24														1964	1540	5100
1	26			6								4		3		9668	7400	7515
12 ⁺	2 ⁺											4		3		16467	12262	13489
																18663	14294	13424
												9 ⁹		4 ⁸		28947	22769	28609
		2 ⁰⁷														V-688	V-621	22898
		3 ⁰														G-2244	G-2066	38728
		2														G-6809	G-6313	51695
																72240	MSFILED	
-FISH-												FISH		FISH	73451			

TOWNSHIP 2 N RANGE 32 E W. M.

Card No. 1

SECTION 33

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
				0.4	5.92											1960	1022	932
				6.5	13											850	396	2626
																850	396	1032
												12		7		16224	12045	12380
								1.6								Trs. Sp. Or. Vol. 7 Page 485		
								1.6								Trs. Sp. Or. Vol. 7 Page 485		
				1 ⁺	9 ²⁸	7										G-2614	G-2426	52676
				6 ²	18 ²²											G-2614	G-2426	52676
				5 ⁰		0 ¹	29 ⁶ 0 ⁵									43008	32132	40940
				5 ²		0 ¹	29 ⁶ 0 ⁵									G-4395	G-4143	41019
																30543	38161	
																G-9244	G8590	65131

TOWNSHIP 2 N RANGE 32 E W. M.

Card #2

SECTION 33

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER	
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ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT. IF OTHER THAN 40 ACRES																			
																3 ⁰	T-5981	(C-5J747)	65131
																F-41 B	(C-1032)	64212	
																73451			

TOWNSHIP 2N RANGE 32E W. M. Card No. 1 SECTION 9

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER		
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
2	23			CANCELED				Spec. Or. V. 38 p. 216								127	2589			
(10)				CANCELED				Spec. Or. V. 38 p. 216								127	2595			
				20	10	3	21	CANCELED				Spec. Or. V. 38 p. 216							127	2593
					5	10													127	2533
											15								127	2504
											25								127	2513
					5	10					15					9668	7400			
CANCELED				Spec. Or. V. 38 p. 216				10 acres in E 1/2 Lot 1 and W 1/2 Lot 2 of Utopian Gardens								127	2546			
CANCELED				Spec. Or. V. 38 p. 216				W 1/2 Block F of Utopian Gardens								127	2601			
9.0																Decree, Vol. 3 Page 217				
IND				IND	IND							IND	IND			T-5816	18754	14412	13674	
																18753	R-750	13675		
Mun	Mun	Mun	Mun	Mun	Mun	Mun	Mun									U-158	U-152	20838		

TOWNSHIP 2N RANGE 32E W. M. Card No. 2 SECTION 9

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			Mun				Mun								Mun	U-629	U-579	20840
			Mun				Mun								Mun	U-755	U-670	23741
																U-455	U-418	20839
																G-1293	G-1160	12
			MUN												MUN	G-2384	G-2202	46094
			MUN												MUN	G-2385	G-2203	46095
			MUN												MUN	G-2386	G-2204	46096
			Municipal												Municipal	G-2463	G-2410	14
			Municipal												Municipal	G-2464	G-2410	14
			Municipal												Municipal	G-2465	G-2410	14
			Municipal												Municipal	G-2466	G-2410	16
			Mun												Mun	G-3443	G-3225	16
																G-7338	G-6773	T-5605
																G-9245	G-8675	60440
																T-5604	(G-23791)	
																T-5605	(G-6773)	

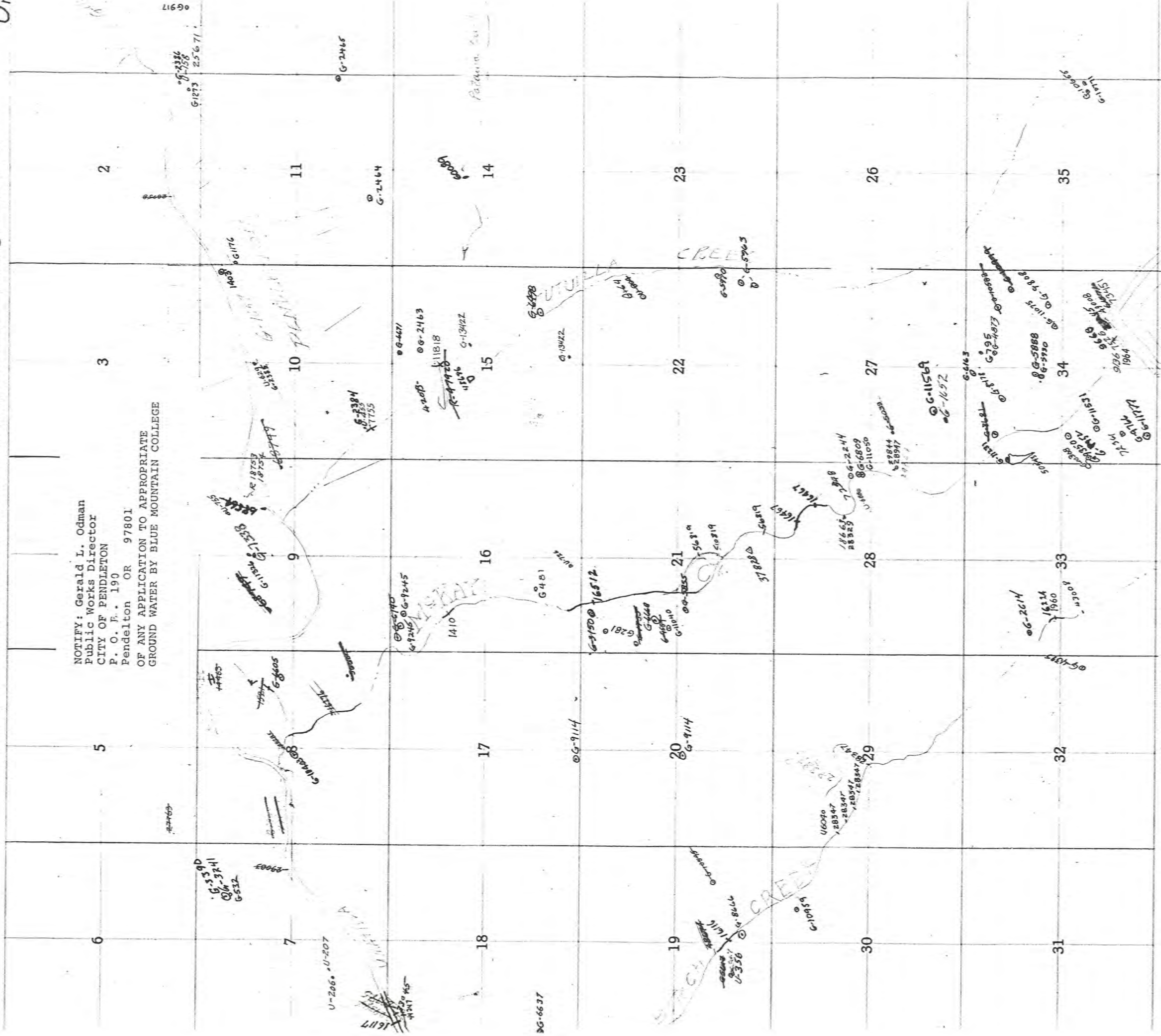
TOWNSHIP 2N RANGE 32E W. M. Card # 3 SECTION 9

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
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ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT. IF OTHER THAN 40 ACRES																		
																G-11326	G-10508	20
																68749		REJECT
																T-5816	(G-13619)	61298
																T-6690	(G-67398)	
																73451		

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Summary of Water Right Filings in Township 2N, Range 32E.

NOTIFY: Gerald L. Odman
Public Works Director
CITY OF PENDLETON
P. O. B. 190
Pendleton OR 97801
OF ANY APPLICATION TO APPROPRIATE
GROUND WATER BY BLUE MOUNTAIN COLLEGE



06919

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G-1274
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G-3241
G-5532

R-18759
R-18754

G-1176

G-2384
X-7155

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G-9246

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TOWNSHIP 2N RANGE 32E W. M. Card #1 SECTION 16

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
				8.5												1410	652	1156
				30	10											127	127	2549
								12.3	36.4	27.8	20.4					127	127	2631
				30	10	12.3	36.4	27.8	20.4							9668	7400	
				8												16512	12309	14384
											5 ²					U-726	U-677	24684
Mun	Mun	Mun	Mun													U-158	U-152	20838
Mun	Mun	Mun	Mun													U-455	U-418	20839
Mun	Mun	Mun	Mun													U-629	U-579	20890
								4 ²			0 ⁷⁶					G-481	G-394	28600
								-Mun-								G-1273	G-1160	29147
																U-755	U-670	23747
																G-2384	G-2202	46094

TOWNSHIP 2N RANGE 32E W. M. Card #2 SECTION 16

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
																G-2385	G-2203	46095
																G-2386	G-2204	46096
																G-2463	G-2410	14
																G-2464	G-2410	14
																G-2465	G-2410	14
																G-2466	G-2410	16
																G-3443	G-3205	
																G-6140	withdrawn	
																G-9245	G-8675	60440
																T-5605	(G-6773)	
																G-11326	G-10508	
																73451		

TOWNSHIP 2N RANGE 32E W. M. SECTION 17

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
																17587		REJECT
																G-5617	G-4922	44556
																48674	35519	44558
																G-9114	G-8483	53553
																G-9114	G-8483	
																T-5604	(G-23791)	
																T-5605	(G-6773)	
																G-11326	G-10508	
																T-5604	(G-9996)	
																F6359	(G-53553)	
																73451		

TOWNSHIP 2 N RANGE 32 E W. M. Card #1 SECTION 34

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
	15	13		40	2		20									1964	1540	53836 7515 CANCELED 2568
															7 4 1		127	
				20	10		20									9668	7400	
	15	13		40	2		20									Superseded by Cert. No. 7515		3702
																Res R-7526	Res R-584	68258
				1207 20	10		20									Superseded by Cert. No. 21696		53330 2560
	172															G-795	G-706	29776
	328															G-795	G-706	29776
																G-1652	G-7518	
	13															G-4873	G-4588	40929
																G-4873	G-4588	
							105									G-5930	G-5637	46098
							32									G-5888	G-5611	45816

TOWNSHIP 2 N RANGE 32 E W. M. Card #2 SECTION 34

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
				32												Supplemental G-6163	G-5846 G-7602	53735
					22		42									50543	38161	55004
																G-7687	68091	CANCELED
				2054												G-8478	G-7969	52821
											23					G-9350	G-8728	53748
																G-9411	G-8745	CANCELED
																G-9808	G-8969	53749
121				237												G-10143	G-9221	61391
				57												G-10268	G-9454	54092
																G-9766	G-9429	65770
																G-10583	G-9484	CANCELED
																G-9952	G-9550	53750
																G-10979		REJECT
																G-11078	G-10230	61884

TOWNSHIP 2 N RANGE 32 E W. M. Card #3 SECTION 34

NE				NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN ON GOVERNMENT PLAT, IF OTHER THAN 40 ACRES																		
							38				22					G-11231	G-10364	63721
				50												F-5777	(F-21696)	
				24												F-5778	(F-21696)	
											06 38					G-11531	G-10652	60748
																G-11777	G-10905	
																G-12209		
																73451		