



Oregon Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem OR 97301-1266  
 503-986-0900  
 www.oregon.gov/owrd

# Application for Instream Water Right Certificate

**E-RECEIVED**  
 7/10/2024  
 OWRD

## SECTION 1: ORGANIZATION INFORMATION AND SIGNATURE

### Organization Information

NAME OREGON DEPT. OF FISH AND WILDLIFE		PHONE 503-947-6000	FAX 503-947-6202
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302	E-MAIL *

**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME SPENCER SAWASKE / OREGON DEPT. OF FISH AND WILDLIFE		PHONE 971-375-7440	FAX
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302	E-MAIL * SPENCER.R.SAWASKE@ODFW.OREGON.GOV

\* By providing an e-mail address, consent is given to receive all correspondence from the Department electronically. (Note that paper copies of the Final Order documents will also be mailed.)

 _____ Applicant Signature	Spencer Sawaske, Acting Water Program Manager _____ Print Name and Title	07/09/24 _____ Date
Applicant Signature	Print Name and Title	Date

## SECTION 2: NOTIFICATION TO DEQ, ODFW, AND PARKS

Please indicate the date you notified other state agencies of your intent to file an instream water right application.

Oregon Department of Environmental Quality was notified on: 2/26/24

Oregon Department of Fish and Wildlife was notified on: na

Oregon Parks and Recreation Department was notified on: 2/26/24

## SECTION 3: NOTIFICATION TO AFFECTED LOCAL GOVERNMENTS

Please provide copies of letters of your intent to file an instream water right application to each affected local government within whose jurisdiction the instream use is proposed. Affected local government means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land-use planning functions under [ORS 197.190](#).

**SECTION 4: SOURCE AND REACH**

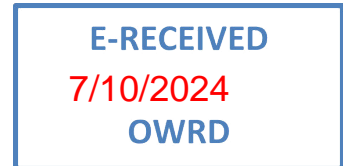
Stream or lake name: Milk Creek

Tributary to: Molalla River

If the source is a stream, indicate the reach delineated by river mile (the upstream point to the downstream point) of the proposed instream water right: Milk Creek, tributary to Molalla River, beginning at river mile 17 (SENW, S6, T5S, R3E, WM) in Clackamas County (45.165517, -122.489806) and continuing downstream to the mouth river mile 0.0 (SWNW, S11, T4S, R1E, WM) in Clackamas County (45.238466, -122.658273).

If the source is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume and page, or decree name). \_\_\_\_\_

If the source is stored water and you do not, or will not, own the reservoir(s), please enclose a copy of your written agreement with the owner of the reservoir to release flows identified in this application.



**SECTION 5: PUBLIC USES AND AMOUNTS**

ODFW Administrative Rule 635-400-0015(7) & (8) require ODFW to request flows that meet the following standard:

(7) An instream flow requirement shall be specified as a quantity of water or water surface elevation as determined by the methodologies in this section and dependent upon other habitat factors, fish or wildlife species plans, basin or subbasin plans, management objectives or other commission policies for the waterway.

(8)(a) The instream flow requirement for any specified period shall be no less than the highest instream flow or water surface elevation required by any of the fish or wildlife species of management interest during that period

The public uses to be served by the requested instream water right are: For the conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat.

The monthly (or half-monthly) flows in cubic feet-per-second (CFS) or acre-feet (AF) or by lake elevation (LE) necessary to support the public uses are:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
85	85	85	85	85	60/45	40/30	20	20	20/40	85	85	<input checked="" type="checkbox"/> CFS <input type="checkbox"/> AF <input type="checkbox"/> LE

If this is a multi-agency request, please indicate the monthly (or half-monthly) flows in cubic feet-per-second (cfs) or acre-feet (af) or by lake elevation (le) that are necessary to support the public uses for each category of public use.

USE	J	F	M	A	M	J	J	A	S	O	N	D	
													<input type="checkbox"/> CFS <input type="checkbox"/> AF <input type="checkbox"/> LE

## SECTION 6: DATA, METHODS, AND COMPLIANCE

Please describe the technical data and methods used to determine the requested amounts.

The technical data reported in the Lower and Middle Willamette Basin Investigation Reports (BIRs; see *Fish and Wildlife Resources of the Lower Willamette Basin, Oregon, and their Water Requirements* and *Fish and Wildlife Resources of the Middle Willamette Basin, Oregon, and their Water Requirements*) were used to develop the streamflow recommendations for aquatic species as outlined in this application. In general, the Oregon Method utilized in the BIRs is a habitat-based method that determines the quantity of habitat available for different species and life stages at different streamflow rates. It requires repeated measurements of hydraulic conditions at variable flow conditions. Specific life stages of focus include spawning, adult migration, and juvenile rearing. Methods for assessing streamflow needs for spawning, rearing, and passage were described by Thompson (1972) as follows:

- Spawning and incubation flows were based on transect measurements with species-specific depth, velocity, and substrate criteria. Repeated measurements over a range of flows were used to develop a relationship of total spawning area vs. discharge.
- Rearing flows were based on repeated measurements, over a range of flows, of the following parameters: adequate depth over key riffles, riffle-pool ratio (i.e., sufficient connectivity between pools), average riffle and pool depths and velocities, and availability of instream cover.
- Passage flows were based on repeated depth measurements at transects across the shallowest riffles judged most likely to impede upstream migration of adult salmonids. Passage criteria were based on the percentage of adequate depth along the transects as a function of discharge.

Streamflow recommendations of the BIRs are specifically designed to meet the seasonal biological requirements of the basin's fish. These BIR flow recommendations were compared to estimates of naturally occurring streamflows (i.e., flows in the absence of upstream consumptive use) and reviewed by ODFW district fish biologists to refine the BIR's monthly or half-monthly targets, yielding the recommendations in this instream water right application.

Please explain how you have complied with the requirements contained in your Department's own administrative rules for instream water rights, including application of the required methods to determine the requested flows.

### **OAR 635-400-0015 Determination of Instream Flow Measurement Methodologies**

ODFW followed all procedures laid out in the agency's rules - Determination of Instream Flow Measurement Methodologies. Specifically, the Basin Investigation Report (BIR) flows for this instream flow recommendation were based on the Oregon Method (Thompson, 1972), an approved method for determining an instream flow requirement. The BIR identifies fish and wildlife resources of the basin, their distribution, limiting factors, harvest, and water requirements. Streamflow recommendations of the BIR are specifically designed to meet the seasonal biological requirements of the basin's fish.

### **OAR 635-400-0020- Standards for Selection of Streams or Stream Reaches for Instream Water Right Applications**

Consistent with our rules, ODFW used the following resources and standards to prioritize waterways for instream water right applications: 1) basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies; 2) the presence of fish and wildlife species that are considered endangered, threatened, sensitive or otherwise important; 3) the need to conserve, maintain or enhance fish or wildlife

habitats or functions, including but not limited to, passage, spawning, incubation, rearing, and wintering habitats that maintain or improve the species.

**OAR 635-400-0025- Responsibilities to WRD**

ODFW will coordinate with OWRD for instream water rights monitoring as necessary for priority reaches. Specifically, ODFW will coordinate with OWRD to develop monitoring plans for instream water rights, revise or create a Memorandum of Understanding between the ODFW and OWRD to include issues related to instream water rights, such as measuring, monitoring and enforcement of instream water rights.

**OAR 635-400-0030- Internal Process for Instream Water Right Application**

Instream water rights application initiation, consultation, review, processing, submittal, and record keeping was consistent with ODFW rules. Specifically, the application was initiated and processed by the proper ODFW staff, and ODFW shall also abide by the review requirements and make any required corrections requested by OWRD.

**References:**

Hutchison, J., & Aney, W. (1964). The fish and wildlife resources of the Lower Willamette Basin, Oregon, and their water use requirements: A report with recommendations to the Oregon State Water Resources Board. Oregon State Game Commission.

Oregon State Game Commission. (1963). The fish and wildlife resources of the Middle Willamette Basin, Oregon, and their water use requirements.

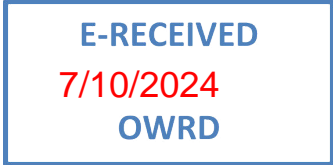
Thompson, K.E., 1972. Determining stream flows for fish life. Pages 31-50 plus appendices in Proceedings of the Instream Flow Requirement Workshop, March 15-16, 1972, Portland, Oregon. Pacific Northwest River Basins Commission.

**SECTION 7: REMARKS**

Use this space to clarify any information you have provided in the application. Copies of letters to local governments and the Basin Investigation Reports are not attached to each application individually; rather, they are provided separately (hard copy and electronically).

**SECTION 8: MAP**

- Please provide a basin map that identifies the reach of the stream or the lake.
- Attached at end of the application.



**YOU ARE ENCOURAGED TO PROVIDE THIS INFORMATION:**

A means and location for measuring the instream water right: Please see section 6

The strategy and responsibility for monitoring flows for the instream right: Please see section 6

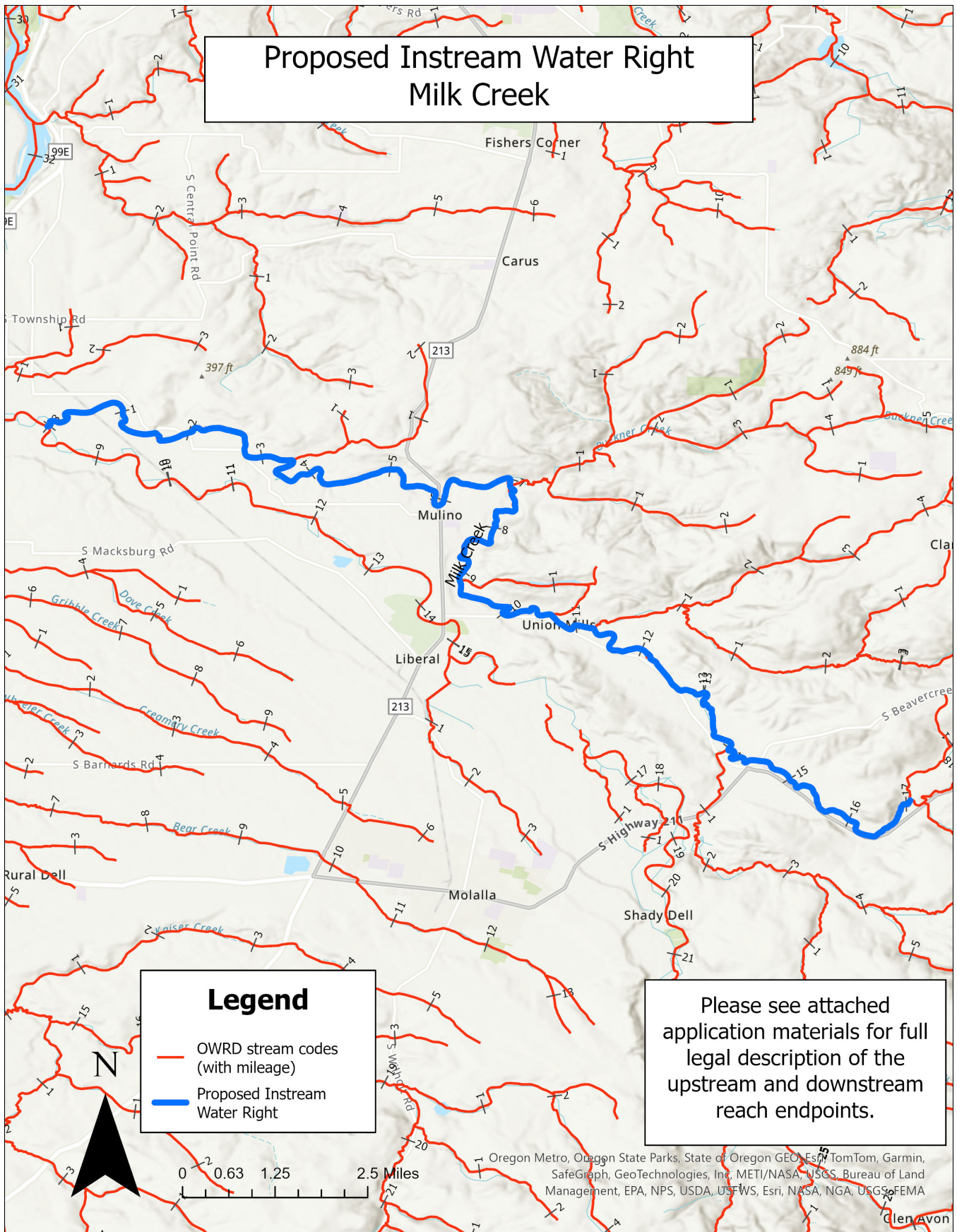
Any provisions needed for managing the water right to protect the public uses: Please see section 6

**WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):**

- SECTION 1: \_\_\_\_\_
- SECTION 2: \_\_\_\_\_
- SECTION 3: \_\_\_\_\_
- SECTION 4: \_\_\_\_\_
- SECTION 5: \_\_\_\_\_
- SECTION 6: \_\_\_\_\_
- SECTION 7: \_\_\_\_\_
- SECTION 8: \_\_\_\_\_
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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# Proposed Instream Water Right Milk Creek



**Legend**

- OWRD stream codes (with mileage)
- Proposed Instream Water Right

Please see attached application materials for full legal description of the upstream and downstream reach endpoints.

Oregon Metro, Oregon State Parks, State of Oregon GEO, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, USFWS, Esri, NASA, NGA, USGS, FEMA

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