

DATE	REMARKS
Home Creek	

IS 84562
on May 15, 2001
Public Notice

NOTICE: A contested case hearing was held for this application. The contested case record consisting of the pleadings, transcript or tapes, and the Administrative Law Judge's record is filed numerically by application number in the file cabinets marked "CONTESTED CASE RECORDS."

Pleadings at ODOT w/ AAG. 12/04



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

December 2, 2015

Curt Melcher, Director
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

Lisa Sumption, Director
Oregon Parks and Recreation Department
725 Summer Street NE Suite C
Salem, OR 97301

Roaring Springs Ranch, Inc.
31437 Hwy 205
Frenchglen, OR 97736

Harney County Government
450 N. Buena Vista
Burns, Oregon 97720

WaterWatch of Oregon, Inc.
213 SW Ash St., Ste. 208
Portland, OR 97204

Oregon Natural Desert Association
50 SW Bond Street, Suite 4,
Bend, OR 97702

The Freshwater Trust (Oregon Trout)
65 SW Yamhill Street, Suite 200
Portland, OR 97204

BLM Oregon
1220 S.W. 3rd Avenue
Portland, OR 97204

Dear Parties to the Home Creek Settlement Agreement:

Your organization is a party to the Home Creek Settlement Agreement which resolved a protest on Oregon Parks and Recreation Department instream application IS-84562. The Agreement was completed in late 2005. The Malheur Lakes Basin Program was amended to require a Progress Report on applications to store reserved waters of Home Creek. The first of the reports is enclosed.

Sincerely,

Dwight French, Administrator
Water Right Services Division

Enc.



Home Creek Settlement Agreement Progress Report under OAR 690-512-0100(8)

OAR 690-512-0100 (8) states: "If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by July 1, 2014, the Department shall provide the Parties involved in the Home Creek Settlement Agreement with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water."

OAR 690-512-0100 was adopted June 18, 2009, and reserves 4,550 AF of unappropriated water in Home Creek and tributaries for multipurpose storage for future economic development, with a priority date of February 25, 2009.

As of July 1, 2014, Oregon Water Resources Department received no applications for multipurpose reservoir permits for the water reserved under the rule. Therefore, OWRD is providing all Parties involved in the Home Creek Settlement Agreement with a progress report. OWRD has no information about whether there is a continuing need for the reservations and the quantity of water reserved remains 4,550 AF.

OWRD will continue to provide a progress report while the Home Creek Settlement Agreement and rules are in effect, unless OWRD receives applications for the multipurpose reservoir permits for the full quantity of water reserved.

Under OAR 690-512-0100 (9) if OWRD has not received applications for multipurpose reservoir permits for the full quantity of water reserved by July 1, 2029, applications for remaining quantities of unallocated water under OAR 690-512-0100 (1) may not be accepted after July 1, 2029, unless this deadline is extended through rulemaking by the Water Resources Commission.

Prepared by: Oregon Water Resources Department
Date: November 25, 2015

MEMORANDUM OF AGREEMENT

Between the Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department,
and the Oregon Water Resources Department

I. Introduction

This Memorandum of Agreement (MOA) implements paragraph B(1) of the December 14, 2005 Settlement Agreement (Settlement) between the Oregon Department of Fish and Wildlife (ODFW), the Oregon Parks and Recreation Department (OPRD), the Oregon Water Resources Department (OWRD), Roaring Springs Ranch, Inc., Harney County Court, WaterWatch of Oregon, Oregon Natural Desert Association, Oregon Trout, and the United States Department of Interior, Bureau of Land Management. ODFW, OPRD, and OWRD are referred to hereafter collectively as "the Parties," and each individually a "Party," to this MOA. The Parties agree to the following:

II. Modification of the Process When Agencies File for Instream Water Rights

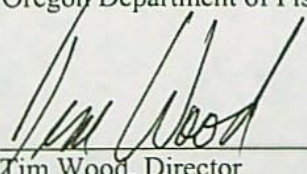
Any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.

III. Other Terms

1. As provided in paragraph B(2) of the Settlement, this MOA will be replaced by any final rule adopted by the Oregon Water Resources Commission related to the written documentation requirement described in item II, above.
2. Each Party represents, warrants, and agrees that the person who executed this MOA on its behalf has the full right and authority to enter into this MOA on behalf of that Party and bind that Party to the terms of this MOA.
3. This MOA may be signed by each Party in separate original documents. Once signed, the separate signed original MOA documents shall constitute a fully executed and effective MOA.

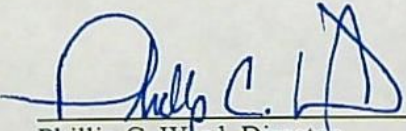
Roy Elicker, Interim Director
Oregon Department of Fish and Wildlife

Date


Tim Wood, Director
Oregon Parks and Recreation Department

Date

1/25/06


Phillip C. Ward, Director
Oregon Water Resources Department

Date

1/25/06

MEMORANDUM OF AGREEMENT

Between the Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department,
and the Oregon Water Resources Department

I. Introduction

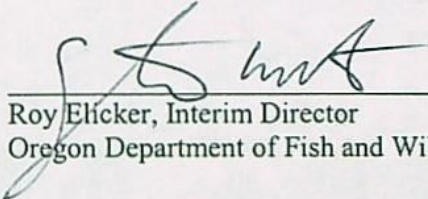
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II. Modification of the Process When Agencies File for Instream Water Rights

Any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.

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3. This MOA may be signed by each Party in separate original documents. Once signed, the separate signed original MOA documents shall constitute a fully executed and effective MOA.

For 

Roy Ellicker, Interim Director
Oregon Department of Fish and Wildlife

2/1/06

Date

Tim Wood, Director
Oregon Parks and Recreation Department

Date

Phillip C. Ward, Director
Oregon Water Resources Department

Date

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications)
 IS 84562 and IS 84563 in the Name of the)
 Oregon Parks and Recreation)
 Department)
Applicant)
)
 Roaring Springs Ranch, Inc.)
Protestant)
)
 Harney County Court)
Protestant)
)
 WaterWatch of Oregon)
Protestant)
)
 Oregon Department of Fish & Wildlife)
Intervenor)
)
 United States Department of Interior)
 Bureau of Land Management)
Intervenor)

SETTLEMENT AGREEMENT

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The Oregon Water Resources Department ("OWRD"), the Oregon Parks and Recreation Department ("OPRD"), Roaring Springs Ranch, Inc., Harney County Court, WaterWatch of Oregon, Oregon Natural Desert Association and Oregon Trout ("WaterWatch"), the Oregon Department of Fish and Wildlife ("ODFW") and United States Department of Interior, Bureau of Land Management ("BLM"), collectively referred to as the "Parties" to this Agreement, enter into this Settlement Agreement ("Agreement") and hereby stipulate and agree as follows.

A. Background of This Agreement**1. Application IS 84562 (Home Creek)**

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

2. Application IS 84563 (Threemile Creek)

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

3. Agreement to settle

- (a) On the basis of numerous settlement discussions, the parties agree that the protests against applications IS 84562 and IS 84563 may be resolved on the following terms.

B. Modification of the process when agencies file for instream water rights

1. OPRD and ODFW will enter into a Memorandum of Agreement ("MOA") with OWRD wherein the three state agencies agree that any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.
2. OWRD will propose the written documentation requirement of the MOA as a rule within 180 days of signing this settlement agreement. Any final rule adopted by Oregon Water Resources Commission will replace the MOA.
3. The parties clarify that any rulemaking described in paragraph B(1) and (2) above will not add any additional substantive requirements to the rules governing OPRD's or ODFW's instream application process, but that the intent is to assure that OWRD receive documentation of the methodology by which quantification of requested flows is calculated or achieved.

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C. Terms of the Agreement for Application IS 84562 (Home Creek)

1. Amendment of reach on Home Creek subject to an instream water right

- (a) OPRD will draft a letter to OWRD amending its application IS 84562 such that the reach for the instream water right is described as follows:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

2. Potential future small storage ponds on private lands on ephemeral streams in the Home Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Home Creek basin for the purposes of maintaining or improving riparian areas on Home Creek, protecting instream flows in Home Creek, or providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84562, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph C(2)(a) above, up to a cumulative total of four-hundred acre feet (400 AF) of water as follows:
- (i) Such small storage ponds will be constructed only on ephemeral streams in the Home Creek Basin;
- (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 400 AF limit described in paragraph C(2)(b) above.

- (d) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) may be constructed either off channel or in channel on ephemeral streams in the Home Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
- (e) Any final order and certificate issuing from application IS 84562 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (f) The parties agree that the condition specified in paragraph C(2)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84562.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

3. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84562 for purposes of water regulation to junior priority date water rights for human consumption as may be subsequently authorized by OWRD on private land not to exceed a cumulative total of up to 0.05 cubic foot per second (0.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84562 shall contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

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- (d) The parties agree that the conditions specified in paragraph C(3)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84562.

4. Large storage facility

- (a) OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree for the purposes of this Agreement to use the OWRD's "precipitation over drainage basin area" methodology described in its Memorandum to Phil Ward from Tom Paul, dated June 6, 2005, incorporated by reference herein (and attached hereto as Attachment A), and stipulate that based on that methodology, four-thousand-five-hundred-fifty acre feet (4550 AF) of water is available for a reservation pursuant to ORS 537.356 (reservation of water for multipurpose storage uses) in the Home Creek basin area as the Home Creek basin is defined by OWRD.
- (b) WaterWatch expressly does not stipulate that 4550 AF of water is available for future storage in the Home Creek basin area. WaterWatch reserves the right to challenge water availability relating to any application for water storage, with the exception of potential future small storage referred to in paragraph C(2)(a) – (f) above. In reserving this right to challenge water availability, WaterWatch acknowledges that the proposed reservation will include a specific finding relating to water availability.
- (c) Harney County Court may file a request for reservation of water for multipurpose storage on Home Creek.
- (d) In addition to the requirements of ORS chapter 537 and applicable rules, OWRD will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:
- (i) The proposed reservoir and any water rights secondary to the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;
 - (ii) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with ODFW and DEQ; and,
 - (iii) Whether minimum bypass flows are required.
- (e) Any final order approving an application for a permit to store water as described paragraph C(4)(d) above shall contain the findings required in paragraph C(4)(d) and also contain conditions setting an appropriate storage season and conditions

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necessary to ensure no injury to senior water rights (including IS 84562) and to protect instream values.

(f) Effective date of reservation rules:

- (i) Any reservation of water requested by Harney County Court shall be effective for twenty (20) years from the date of the final rule granting the reservation, unless the effective date has been extended by further rulemaking of the Water Resources Commission.
- (ii) The expiration of the Home Creek basin reservation rule shall not affect pending applications that have been received and deemed complete and not defective by the OWRD pursuant to ORS 537.150(2), prior to the expiration date of the rules.

(g) Progress Reports

- (i) If the OWRD has not received applications for multipurpose reservoir permits for the full quantity of reserved water in the Home Creek basin within five years of the final rule granting the reservation, the OWRD will provide the parties with a progress report on the development of the reservations. The OWRD will continue to provide progress reports at five-year intervals while the reservation is in effect unless OWRD receives applications for multipurpose reservoir permits for the full quantity of reserved water.
- (h) Roaring Springs Ranch agrees to withdraw its existing applications R 84576 and S 84577 within fifteen (15) days of the effective date of a reservation consistent with the terms of this Agreement, but preserves its right to seek the water (4550 AF of storage for supplemental irrigation of 5700.2 acres) described in R 84576 and S 84577 under the reservation. Roaring Springs Ranch further agrees to put its application on hold pending the outcome of the reservation. If the proposed reservation is not approved by the Water Resources Commission and established by rule, Roaring Springs Ranch shall not be required to withdraw its pending applications R 84576 and S 84577, and OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree that for purposes of this Agreement, the OWRD's determination of water availability shall be in accordance with the June 6, 2005 memorandum from Tom Paul to Phil Ward referenced above in paragraph C(4)(a). WaterWatch does not agree that the June 6, 2005, memorandum referenced in paragraph C(4)(a) is the appropriate water availability analysis and reserves the right to challenge water availability in any further proceedings regarding applications R 84576 and S 84577 to address this issue if the proposed reservation is not approved.
- (i) The parties agree to not object to or to support the establishment of a reservation with the conditions identified in paragraph C(4)(d) – (h).

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D. Terms of Agreement Application IS 84563 (Threemile Creek)

1. Potential future small storage ponds on private lands on ephemeral streams in the Threemile Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Threemile Creek basin for the purposes of maintaining or improving riparian areas on Threemile Creek, protecting instream flows in Threemile Creek, and providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84563, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph D(1)(a) above up to a cumulative limit of ninety-two acre feet (92 AF) of water as follows:
 - (i) Such small storage ponds will be constructed only on ephemeral streams in the Threemile Creek basin;
 - (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraphs D(1)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 92 AF limit described in paragraph D(1)(b) above.
- (d) The parties clarify that the ponds identified in paragraph D(1)(a) – (c) may be constructed either in channel or off channel on ephemeral streams in the Threemile Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
- (e) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized

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by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

- (f) The parties agree that the conditions specified in paragraph D(1)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84563.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

2. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84563 for purposes of water regulation to junior priority date water rights for human consumption as may subsequently be authorized by OWRD not to exceed a cumulative total of up to 0.05 cubic foot per second (.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
- (d) The parties agree that the conditions specified in paragraph D(2)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84563.

E. General Provisions

- 1. In signing this Agreement, the parties preserve any rights authorized by law not expressly waived by this Agreement.

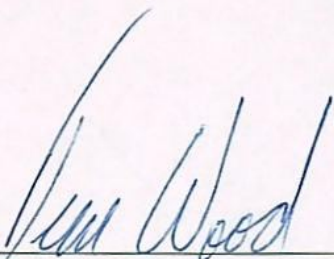
2. The Parties agree that the terms and conditions of this Agreement shall be incorporated into the Final Orders issued by OWRD in connection with IS 84562 and IS 84563, as shown in the attached Draft Final Orders and Draft Certificates (herein attached as Attachment B)
3. Upon issuance by OWRD of Final Orders and Certificates for IS 84562 and IS 84563 that conform to the attached Draft Final Orders and Draft Certificates, the Parties agree that all issues raised in protests filed to applications IS 84562 and IS 84563 are resolved. In addition, the parties expressly waive any right to file exceptions or to seek judicial review of such Final Orders or Certificates referred to in paragraph E(2) above.
4. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations and corporations connected with them.
5. Each party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of the Agreement.
6. The terms, provisions, conditions, and covenants of this Agreement are not severable. If any term, provision, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree to reconvene to renegotiate the terms of this Agreement.
7. This Agreement may be executed in several counterparts and all documents so executed will constitute one Agreement, binding on the parties, notwithstanding that the parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Agreement by facsimile transmission is effective as delivery of an original signed counterpart of this Agreement.
8. The parties agree that this Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes. The parties agree that no offers or compromises made in the course of negotiations shall be construed as admissions against interest and shall not be construed as establishing either legal or policy precedence for any future actions.
9. The parties agree to each bear their own costs and attorney fees.
10. This Agreement is effective as of the date of the last signature hereto.

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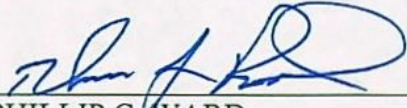
TIM WOOD
Director
Oregon Parks and Recreation Department

11/21/05
DATE

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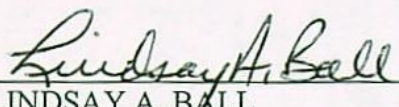
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**WATER RESOURCES DEPT
SALEM, OREGON**


For PHILLIP C. WARD
Director
Oregon Water Resources Department

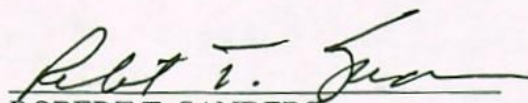
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LINDSAY A. BALL
Director
Oregon Department of Fish & Wildlife

11-17-05
DATE

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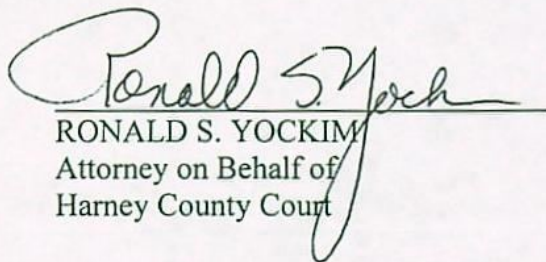
ROBERT T. SANDERS
Roaring Springs Ranch, Inc.

12/14/05
DATE

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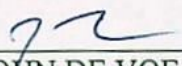
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SALEM, OREGON**


RONALD S. YOCKIM
Attorney on Behalf of
Harney County Court

11-15-05
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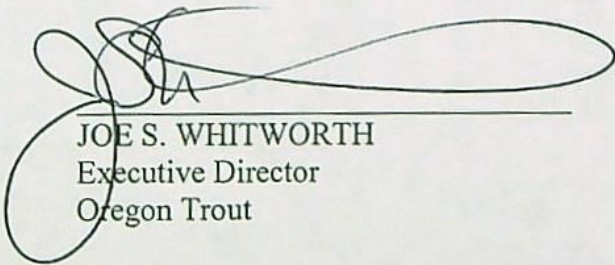
JOHN DE VOE
Executive Director
WaterWatch of Oregon

11/21/05
DATE



BILL MARLETT
Executive Director
Oregon Natural Desert Association

11/23/05
DATE



JOE S. WHITWORTH
Executive Director
Oregon Trout

21 Nov 2005
DATE

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DEC 27 2005
WATER RESOURCES DEPT
SALEM, OREGON

Dana R. Shuford
DANA R. SHUFORD
Burns District Manager
United States Bureau of Land Management

12/2/05
DATE

Barbara Scott Brier
BARBARA SCOTT BRIER
Attorney Advisor
United States Department of Interior

12/5/05
DATE

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**WATER RESOURCES DEPT
SALEM, OREGON**

STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

June 6, 2005

TO: Phil Ward
FROM: Tom Paul
SUBJECT: Home Creek Reservation Request and Available Water

We have been involved in settlement discussions regarding an instream water right and a new storage application in the Home Creek basin. One possibility for settlement is a reservation for future storage. ORS 537.356 allows the Commission to reserve *unappropriated* water for multipurpose storage for future economic development. The Department may process reservation requests for up to the amount of unappropriated water. When processing reservation requests, the Department begins the assessment by looking at the 50 % exceedance flow information generated by the water availability model. This information is usually a conservative estimate of the amount of basin yield that may be available for storage. Use of the water availability model at 50% exceedance for evaluating water reservation requests is not required by rule or statute. Other hydrologic evaluations are often employed to estimate available unappropriated water that may be available for storage.

In the determination of median flow estimates, a base period is chosen and all the average daily flows for a specific date are arranged from high to low. The middle value, or median, is selected as the 50% exceedance flow. Half of the flow values are above the median, and half are below, so it is statistically valid to consider the median flow value as being present or exceeded 50% of the time. An average flow value for the same data set would be the sum of all the values divided by the total number of data used. The average value thereby relates directly to volume or basin yield.

Stream flow can be highly variable, especially east of the Cascades in an area such as Home Creek. When determining water availability for a direct flow appropriation the water availability model is used to determine when and how much live flow is available. The appropriate statistic in this case is an exceedance stream flow because it is a flow rate that exists 50% or 80% of the time. This statistic tells us how often to expect a given rate of stream flow. This same information is normally not an accurate estimate of basin yield, information that would be used to evaluate an application for storage (or reservation for storage). More accurate results would normally be derived using average flow, or estimating average runoff from average precipitation.

In the case of Home Creek, the reservation request is for 4,500 acre feet of water. Using the water availability model and the 50% exceedance flows results in an estimate of 70 acre-feet of water available for storage. It is important to understand that this estimate is based on median flow, a statistic best used in relation to live flow, not basin yield or

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WATER RESOURCES DEPT
SALEM, OREGON

Attachment A 1 of 2 pages
Settlement Agreement
IS 84562 & IS84563

volume. Median flow is the flow that is expected 50% of the time, while average flow relates to volume, or basin yield, and is a more appropriate method for estimating available water for storage.

The department has additional hydrologic data which also can be used to determine the basin yield and the amount of unappropriated water. Staff compared the 50% exceedance flow generated from the water availability model to the volume generated by using average precipitation data. These two different methods produce different results. The 50% exceedance approach results in 70 acre feet of available water, while the average precipitation and resulting runoff method results in potential storage of over 16,000 acre-feet.

The following table calculates unappropriated water using average monthly precipitation and runoff information from National Resource Conservation Service (NRCS).

Home Creek at the mouth # 84562

Ac-ft/in runoff per sq mi
53.3

SCS runoff (in)
14

% runoff
44.20%

Area (sq-mi)
36.66

MONTH	Precipitation inches/month	Equivalent acre/foot per month	Runoff acre/foot per month	Flow @ 50% exceedance in CFS	Instream water right in CFS	Existing water rights in CFS	Equivalent existing water rights in AF	Instream water right equivalent acre foot per month	Potential Runoff Subject to Storage
January	3.67	7171.10	3167.05	3.49	3.49			214.59	2952.46
February	3.71	7249.26	3201.57	7.05	7.00			388.76	2812.81
March	4.51	8812.44	3891.93	17.40	17.00			1045.29	2846.64
April	2.64	5158.50	2278.20	35.60	35.60	71.25	4240.00	2118.35	0
May	2.55	4982.64	2200.54	53.20	53.00	71.25	4380.00	3258.84	0
June	1.77	3458.54	1527.43	31.10	31.00	71.25	4240.00	1844.63	0
July	0.61	1191.93	526.40	8.39	8.00	71.25	4380.00	491.90	0
August	0.93	1817.20	802.55	3.58	3.58	71.25	4380.00	220.13	0
September	1.29	2520.63	1113.21	3.03	3.03	71.25	4240.00	180.30	0
October	2.07	4044.73	1786.32	3.15	3.15			193.69	1592.63
November	4.18	8167.63	3607.15	2.83	2.83			168.40	3438.75
December	3.71	7366.50	3253.34	2.91	2.91			178.93	3074.41
TOTALS	31.64	61941.1	27355.69	171.73	170.59		25860.00	10303.81	16717.70

 -- Irrigation Season (No Water Available)

The table shows that based on average precipitation water in excess of existing water rights, including the instream water right, is available October through March. This will vary year to year based on precipitation occurrences and other hydrologic factors. Based on the average precipitation data there appears to be unappropriated water in the Home Creek basin for the Department to accept and process a reservation request for 4,500 acre feet of water.

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WATER RESOURCES DEPT
SALEM, OREGON

Attachment A 2 of 2 pages
Settlement Agreement
IS 84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
IS 84562 in the Name of the Oregon Parks)
and Recreation Department)
Applicant)

FINAL ORDER INCORPORATING
SETTLEMENT AGREEMENT

Roaring Springs Ranch, Inc.)
Protestant)

Harney County Court)
Protestant)

WaterWatch of Oregon)
Protestant)

Oregon Department of Fish & Wildlife)
Intervenor)

United States Department of Interior)
Bureau of Land Management)
Intervenor)

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WATER RESOURCES DEPT
SALEM, OREGON

On October 17, 2000, Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84562 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

Attachment B 1 of 4 pages
Settlement Agreement
IS84562 & IS84563

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84562 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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**WATER RESOURCES DEPT
SALEM, OREGON**

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.

3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

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**WATER RESOURCES DEPT
SALEM, OREGON**

Recorded in State Record of Water Right Certificate 81723.

Attachment B 3 of 4 pages
Settlement Agreement
IS84562 & IS84563

4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of
____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81723.

File IS84562

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**WATER RESOURCES DEPT
SALEM, OREGON**

Recorded in State Record of Water Right Certificate 81723.
Attachment B 4 of 4 pages
Settlement Agreement
IS84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
IS 84563 in the Name of the Oregon Parks)
and Recreation Department)
Applicant)

FINAL ORDER INCORPORATING
SETTLEMENT AGREEMENT

Roaring Springs Ranch, Inc.)
Protestant)

Harney County Court)
Protestant)

WaterWatch of Oregon)
Protestant)

Oregon Department of Fish & Wildlife)
Intervenor)

United States Department of Interior)
Bureau of Land Management)
Intervenor)

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WATER RESOURCES DEPT
SALEM, OREGON

On October 17, 2000, the Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84563 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

Attachment C 1 of 4 pages
Settlement Agreement
IS84562 & IS84563

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84563 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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**WATER RESOURCES DEPT
SALEM, OREGON**

STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Threemile Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

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WATER RESOURCES DEPT
SALEM, OREGON

To be maintained in:

THREEMILE CREEK FROM THE WEST SECTION LINE OF SECTION 21 (SW 1/4 NW 1/4, SECTION 21, T35S, R32E, W.M.); TO THE BOUNDARY OF THE WILDERNESS AREA BOUNDARY (NW 1/4 NW 1/4, SECTION 25, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands

Recorded in State Record of Water Right Certificate 81724.

Attachment C 3 of 4 pages
Settlement Agreement
IS84562 & IS84563

for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this _____ day of _____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81724.

File IS84563

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**WATER RESOURCES DEPT
SALEM, OREGON**

Recorded in State Record of Water Right Certificate 81724

Attachment C 4 of 4 pages
Settlement Agreement
IS84562 & IS84563

Settlement Agreement for 84562 & 84563 copies sent to following:

On January 10, 2006

Tim Wood
Oregon Parks and Recreation

Phil Ward
Oregon Water Resources

Lindsay A. Ball
Oregon Dept. of Fish and Wildlife

Robert T. Sanders
Roaring Springs Ranch, Inc.

Ronald S. Yockim
Attorney on behalf of
Harney County

John De Voe
WaterWatch of Oregon

Bill Marlett
Oregon Natural Desert Association

Joe S. Whitworth
Oregon Trout

Dana R. Shuford
Burns District Manager
Bureau of Land Management

Barbara Scott Brier
Attorney Advisor
US Dept. Of Interior

Oregon Department of Justice Fax Cover Sheet

GENERAL COUNSEL DIVISION

Natural Resources Section
1162 Court Street NE
Salem, OR 97301-4096
Phone: (503) 947-4500
Fax: (503) 378-3802

Date: February 1, 2006

Subject: Steens Service List

No. Pages (including cover sheet): 2

TO:

NAME	COMPANY	PHONE NO.	FAX NO.
Dwight French	OWRD	(503)	(503) 986-0901
Leona Albin	OWRD	(503)	(503) 986-0901

FROM: Renee M. Moulun

TITLE: Assistant Attorney General

Special Instructions:

Sent copies of signed settlement agreement & final orders to all of those listed on attached Service list

If you do not receive complete fax information or it is not clearly received, please call us immediately.

CONFIDENTIALITY NOTICE

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Steens Service List

Jas J. Adams
Oregon Department of Justice
General Counsel/Natural Resources
1162 Court Street NE
Salem, OR 97301-4098

Darren Brumback
United States Department of Interior,
Bureau of Land Management
Burns District Office
28910 Hwy 20 West
Hines, OR 97738

Rick Kepler, Habitat Program Manager
Oregon Dept. of Fish & Wildlife
Fish Division
3406 Cherry Avenue NE
Salem, OR 97303

Renée Moulun
Oregon Department of Justice
General Counsel/Natural Resources
1162 Court Street NE
Salem, OR 97301-4098

Martha O. Pagel
Schwabe, Williamson & Wyatt, PC
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1211 SW Fifth Avenue
Portland, OR 97204-3795

Stephanie M. Parent
Pacific Environmental Advocacy Center
Northwestern School of Law, Lewis &
Clark College
10015 SW Terwilliger Blvd.
Portland, OR 97219

Karen Russell
WaterWatch of Oregon, Inc.
213 SW Ash, Suite 208
Portland, OR 97204

Barbara Scott-Brier
Office of the Solicitor
U.S. Dept. of Interior
500 NE Multnomah St., Suite 607
Portland, OR 97232

Steven Shipsey
Oregon Department of Justice
General Counsel, Natural Resources
1162 Court Street NE
Salem, OR 97301

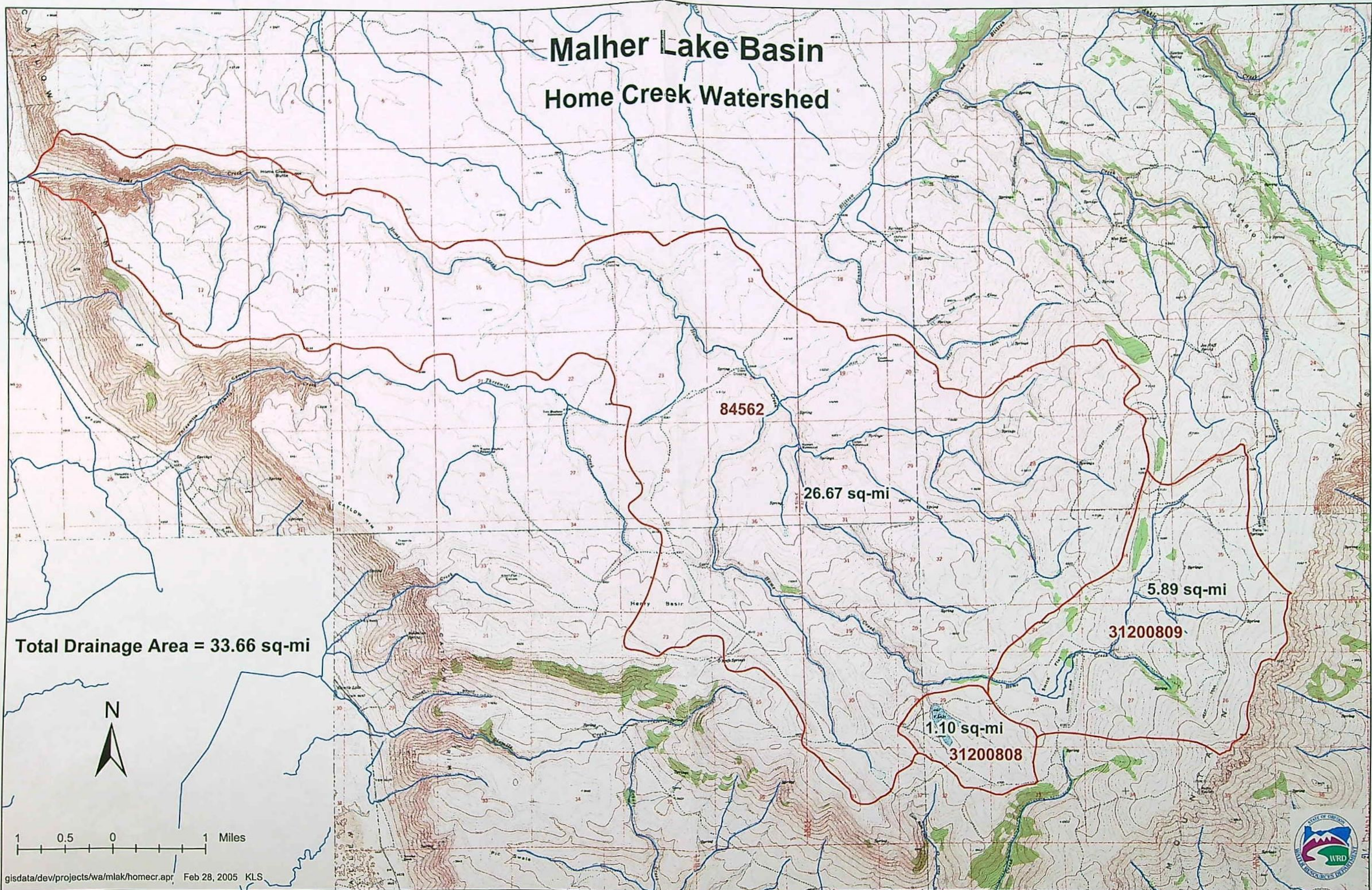
Phillip C. Ward
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97309-4020

Tim Wood, Director
Oregon Parks and Recreation Dept.
725 Summer Street NE, Suite C
Salem, OR 97301

Ronald S. Yockim
Attorney at Law
548 SE Jackson, Suite #7
PO Box 2456
Roseburg, OR 97470

Malher Lake Basin

Home Creek Watershed

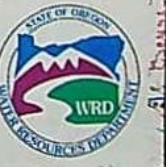


Total Drainage Area = 33.66 sq-mi



1 0.5 0 1 Miles

gisdata/dev/projects/wa/mlak/homecr.apr Feb 28, 2005 KLS



ADDED TO FILE 3.4.5

Route Slip

Date 11/14/05

TO:	Name	Division/Section	Initial	Date
1.	Dwight French		SF	
2.	OWRD			
3.				
4.				
5.				

as requested		investigate	per conversation
approval		justify	prepare reply
comment		necessary action	return with more detail
confer		initial and return	review and circulate
for your information		note and file	signature

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OVER THE COUNTER

FROM: <u>Renee Moulin NR/GCC</u>	Phone No.
----------------------------------	-----------



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: November 10, 2005

TO: Phil Ward, Tom Paul and Dwight French (OWRD)
Tim Wood (OPRD) and Steve Shipsey (DOJ)
Rick Kepler (ODFW) and Shelley McIntyre (DOJ)
Stacy Davies (Roaring Springs Ranch) and Martha Pagel (Schwabe
Williamson & Wyatt)
Steve Grasty (Harney County Court) and Ron Yockim
Karen Russell (WaterWatch) and Stephanie Parent (PEAC)
Darren Brumback (BLM) and Barbara Scott-Brier (U.S. DOI)

FROM: Renee Moulun, Assistant Attorney General
Natural Resources Section

SUBJECT: Final Draft Settlement Agreement & Attachments A & B
In the Matter of Instream Water Right Applications IS 84562 (Home Creek)
and IS 84563 (Threemile Creek)

Greetings:

Enclosed for your signature is a copy of the Settlement Agreement resolving the protests to water right applications IS 84562 and IS 84563. Also enclosed are Attachment A: Memorandum from Tom Paul to Phil Ward dated June 6, 2005, and Attachment B: Draft Final Order Incorporating Settlement Agreement and Draft Certificate for IS 84562 and Draft Final Order Incorporating Settlement Agreement and Draft Certificate for IS 84563.

Please review the enclosed documents and if you have any corrections please advise me and copy all of the parties with the corrections by November 17, 2005. If you have no corrections, please sign the appropriate signature page and return the signed page to me at the Department of Justice at your earliest opportunity. Once I have received all of the signature pages I will compile one original and will forward it to OWRD. Upon receiving the executed Agreement, OWRD will issue the final orders and certificates for applications IS 84562 and IS 84563. OWRD will then mail you a copy of the Agreement as well as copies of the Final Orders and Certificates.

As you are aware, OPRD, ODFW and OWRD will enter into an MOA regarding amendments to OAR Chapter 690 division 77 as specified in the Settlement Agreement Paragraph B. OWRD will propose language contained in the MOA, as provided in Paragraph B(1), as a rule within 180

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November 10, 2005

Page 2

days of signing the settlement agreement, and any rules adopted by the Water Resources Commission will replace the MOA.

On a personal note, I would like to express my sincere appreciation for your hard work, creativity and especially for your patience in resolving the difficult issues associated with these two applications. The Settlement Agreement (I believe) reflects a commendable commitment by all of the parties to find a workable solution.

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WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications)
IS 84562 and IS 84563 in the Name of the)
Oregon Parks and Recreation)
Department)
Applicant)

SETTLEMENT AGREEMENT

Roaring Springs Ranch, Inc.)
Protestant)

Harney County Court)
Protestant)

WaterWatch of Oregon)
Protestant)

Oregon Department of Fish & Wildlife)
Intervenor)

United States Department of Interior)
Bureau of Land Management)
Intervenor)

The Oregon Water Resources Department ("OWRD"), the Oregon Parks and Recreation Department ("OPRD"), Roaring Springs Ranch, Inc., Harney County Court, WaterWatch of Oregon, Oregon Natural Desert Association and Oregon Trout ("WaterWatch"), the Oregon Department of Fish and Wildlife ("ODFW") and United States Department of Interior, Bureau of Land Management ("BLM"), collectively referred to as the "Parties" to this Agreement, enter into this Settlement Agreement ("Agreement") and hereby stipulate and agree as follows.

A. Background of This Agreement

1. Application IS 84562 (Home Creek)

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

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NOV 14 2005

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

2. Application IS 84563 (Threemile Creek)

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

3. Agreement to settle

- (a) On the basis of numerous settlement discussions, the parties agree that the protests against applications IS 84562 and IS 84563 may be resolved on the following terms.

B. Modification of the process when agencies file for instream water rights

1. OPRD and ODFW will enter into a Memorandum of Agreement ("MOA") with OWRD wherein the three state agencies agree that any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.
2. OWRD will propose the written documentation requirement of the MOA as a rule within 180 days of signing this settlement agreement. Any final rule adopted by Oregon Water Resources Commission will replace the MOA.
3. The parties clarify that any rulemaking described in paragraph B(1) and (2) above will not add any additional substantive requirements to the rules governing OPRD's or ODFW's instream application process, but that the intent is to assure that OWRD receive documentation of the methodology by which quantity of requested flows is calculated or achieved.

C. Terms of the Agreement for Application IS 84562 (Home Creek)

1. Amendment of reach on Home Creek subject to an instream water right

- (a) OPRD will draft a letter to OWRD amending its application IS 84562 such that the reach for the instream water right is described as follows:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NW 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

2. Potential future small storage ponds on private lands on ephemeral streams in the Home Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Home Creek basin for the purposes of maintaining or improving riparian areas on Home Creek, protecting instream flows in Home Creek, or providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84562, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph C(2)(a) above, up to a cumulative total of four-hundred acre feet (400 AF) of water as follows:
- (i) Such small storage ponds will be constructed only on ephemeral streams in the Home Creek Basin;
- (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 400 AF limit described in paragraph C(2)(b) above.

- (d) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) may be constructed either off channel or in channel on ephemeral streams in the Home Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
- (e) Any final order and certificate issuing from application IS 84562 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (f) The parties agree that the condition specified in paragraph C(2)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84562.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

3. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84562 for purposes of water regulation to junior priority date water rights for human consumption as may be subsequently authorized by OWRD on private land not to exceed a cumulative total of up to 0.05 cubic foot per second (0.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84562 shall contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

- (d) The parties agree that the conditions specified in paragraph C(3)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84562.

4. Large storage facility

- (a) OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree for the purposes of this Agreement to use the OWRD's "precipitation over drainage basin area" methodology described in its Memorandum to Phil Ward from Tom Paul, dated June 6, 2005, incorporated by reference herein (and attached hereto as Attachment A), and stipulate that based on that methodology, four-thousand-five-hundred-fifty acre feet (4550 AF) of water is available for a reservation pursuant to ORS 537.356 (reservation of water for multipurpose storage uses) in the Home Creek basin area as the Home Creek basin is defined by OWRD.
- (b) WaterWatch expressly does not stipulate that 4550 AF of water is available for future storage in the Home Creek basin area. WaterWatch reserves the right to challenge water availability relating to any application for water storage, with the exception of potential future small storage referred to in paragraph C(2)(a) – (f) above. In reserving this right to challenge water availability, WaterWatch acknowledges that the proposed reservation will include a specific finding relating to water availability.
- (c) Harney County Court may file a request for reservation of water for multipurpose storage on Home Creek.
- (d) In addition to the requirements of ORS chapter 537 and applicable rules, OWRD will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:
- (i) The proposed reservoir and any water rights secondary to the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;
 - (ii) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with ODFW and DEQ; and,
 - (iii) Whether minimum bypass flows are required.
- (e) Any final order approving an application for a permit to store water as described paragraph C(4)(d) above shall contain the findings required in paragraph C(4)(d) and also contain conditions setting an appropriate storage season and conditions.

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necessary to ensure no injury to senior water rights (including IS 84562) and to protect instream values.

(f) Effective date of reservation rules:

- (i) Any reservation of water requested by Harney County Court shall be effective for twenty (20) years from the date of the final rule granting the reservation, unless the effective date has been extended by further rulemaking of the Water Resources Commission.
- (ii) The expiration of the Home Creek basin reservation rule shall not affect pending applications that have been received and deemed complete and not defective by the OWRD pursuant to ORS 537.150(2), prior to the expiration date of the rules.

(g) Progress Reports

- (i) If the OWRD has not received applications for multipurpose reservoir permits for the full quantity of reserved water in the Home Creek basin within five years of the final rule granting the reservation, the OWRD will provide the parties with a progress report on the development of the reservations. The OWRD will continue to provide progress reports at five-year intervals while the reservation is in effect unless OWRD receives applications for multipurpose reservoir permits for the full quantity of reserved water.
- (h) Roaring Springs Ranch agrees to withdraw its existing applications R 84576 and S 84577 within fifteen (15) days of the effective date of a reservation consistent with the terms of this Agreement, but preserves its right to seek the water (4550 AF of storage for supplemental irrigation of 5700.2 acres) described in R 84576 and S 84577 under the reservation. Roaring Springs Ranch further agrees to put its application on hold pending the outcome of the reservation. If the proposed reservation is not approved by the Water Resources Commission and established by rule, Roaring Springs Ranch shall not be required to withdraw its pending applications R 84576 and S 84577, and OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree that for purposes of this Agreement, the OWRD's determination of water availability shall be in accordance with the June 6, 2005 memorandum from Tom Paul to Phil Ward referenced above in paragraph C(4)(a). WaterWatch does not agree that the June 6, 2005, memorandum referenced in paragraph C(4)(a) is the appropriate water availability analysis and reserves the right to challenge water availability in any further proceedings regarding applications R 84576 and S 84577 to address this issue if the proposed reservation is not approved.
- (i) The parties agree to not object to or to support the establishment of a reservation with the conditions identified in paragraph C(4)(d) – (h).

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84576 + 84577
L1548 + 91948

D. Terms of Agreement Application IS 84563 (Threemile Creek)

- 1. Potential future small storage ponds on private lands on ephemeral streams in the Threemile Creek basin**
 - (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Threemile Creek basin for the purposes of maintaining or improving riparian areas on Threemile Creek, protecting instream flows in Threemile Creek, and providing water for livestock and fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
 - (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84563, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph D(1)(a) above up to a cumulative limit of ninety-two acre feet (92 AF) of water as follows:
 - (i) Such small storage ponds will be constructed only on ephemeral streams in the Threemile Creek basin;
 - (ii) No such small storage pond may exceed fifteen acre feet (15AF).
 - (c) The parties clarify that the ponds identified in paragraphs D(1)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 92 AF limit described in paragraph D(1)(b) above.
 - (d) The parties clarify that the ponds identified in paragraph D(1)(a) – (c) may be constructed either in channel or off channel on ephemeral streams in the Threemile Creek basin.
 - (e) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of

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water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

- (f) The parties agree that the conditions specified in paragraph D(1)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84563.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

2. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84563 for purposes of water regulation to junior priority date water rights for human consumption as may subsequently be authorized by OWRD not to exceed a cumulative total of up to 0.05 cubic foot per second (.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
- (d) The parties agree that the conditions specified in paragraph D(2)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84563.

E. General Provisions

- 1. In signing this Agreement, the parties preserve any rights authorized by law not expressly waived by this Agreement.
- 2. The Parties agree that the terms and conditions of this Agreement shall be incorporated into the Final Orders issued by OWRD in connection with IS 84562 and IS 84563, as shown in the attached Draft Final Orders and Draft Certificates (herein attached as Attachment B)

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3. Upon issuance by OWRD of Final Orders and Certificates for IS 84562 and IS 84563 that conform to the attached Draft Final Orders and Draft Certificates, the Parties agree that all issues raised in protests filed to applications IS 84562 and IS 84563 are resolved. In addition, the parties expressly waive any right to file exceptions or to seek judicial review of such Final Orders or Certificates referred to in paragraph E(2) above.
4. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations and corporations connected with them.
5. Each party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of the Agreement.
6. The terms, provisions, conditions, and covenants of this Agreement are not severable. If any term, provision, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree to reconvene to renegotiate the terms of this Agreement.
7. This Agreement may be executed in several counterparts and all documents so executed will constitute one Agreement, binding on the parties, notwithstanding that the parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Agreement by facsimile transmission is effective as delivery of an original signed counterpart of this Agreement.
8. The parties agree that this Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes. The parties agree that no offers or compromises made in the course of negotiations shall be construed as admissions against interest and shall not be construed as establishing either legal or policy precedence for any future actions.
9. The parties agree to each bear their own costs and attorney fees.
10. This Agreement is effective as of the date of the last signature hereto.

/// /// ///

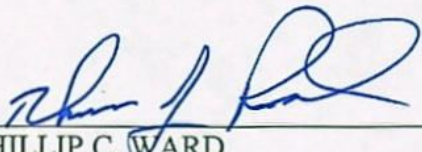
TIM WOOD

Director

Oregon Parks and Recreation Department

DATE

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for 
PHILLIP C. WARD
Director
Oregon Water Resources Department

11/16/2005
DATE

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RICK KEPLER
Habitat Program Manager, Fish Div.
Oregon Department of Fish & Wildlife

DATE

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STACY DAVIES
Roaring Springs Ranch

DATE

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STEVE GRASTY
County Judge
Harney County Court

DATE

DAN NICHOLS
Commissioner
Harney County Court

DATE

JACK DRINKWATER
Commissioner
Harney County Court

DATE

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JOHN DE VOE
Executive Director
WaterWatch of Oregon

DATE

BILL MARLETT
Executive Director
Oregon Natural Desert Association

DATE

JOE S. WHITWORTH
Executive Director
Oregon Trout

DATE

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DANA R. SHUFORD
Burns District Manager
United States Bureau of Land Management

DATE

BARBARA SCOTT BRIER
Attorney Advisor
United States Department of Interior

DATE

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STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

June 6, 2005

TO: Phil Ward
FROM: Tom Paul
SUBJECT: Home Creek Reservation Request and Available Water

We have been involved in settlement discussions regarding an instream water right and a new storage application in the Home Creek basin. One possibility for settlement is a reservation for future storage. ORS 537.356 allows the Commission to reserve *unappropriated* water for multipurpose storage for future economic development. The Department may process reservation requests for up to the amount of unappropriated water. When processing reservation requests, the Department begins the assessment by looking at the 50 % exceedance flow information generated by the water availability model. This information is usually a conservative estimate of the amount of basin yield that may be available for storage. Use of the water availability model at 50% exceedance for evaluating water reservation requests is not required by rule or statute. Other hydrologic evaluations are often employed to estimate available unappropriated water that may be available for storage.

In the determination of median flow estimates, a base period is chosen and all the average daily flows for a specific date are arranged from high to low. The middle value, or median, is selected as the 50% exceedance flow. Half of the flow values are above the median, and half are below, so it is statistically valid to consider the median flow value as being present or exceeded 50% of the time. An average flow value for the same data set would be the sum of all the values divided by the total number of data used. The average value thereby relates directly to volume or basin yield.

Stream flow can be highly variable, especially east of the Cascades in an area such as Home Creek. When determining water availability for a direct flow appropriation the water availability model is used to determine when and how much live flow is available. The appropriate statistic in this case is an exceedance stream flow because it is a flow rate that exists 50% or 80% of the time. This statistic tells us how often to expect a given rate of stream flow. This same information is normally not an accurate estimate of basin yield, information that would be used to evaluate an application for storage (or reservation for storage). More accurate results would normally be derived using average flow, or estimating average runoff from average precipitation.

In the case of Home Creek, the reservation request is for 4,500 acre feet of water. Using the water availability model and the 50% exceedance flows results in an estimate of 70 acre-feet of water available for storage. It is important to understand that this estimate is based on median flow, a statistic best used in relation to live flow, not basin yield or

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Attachment A 1 of 2 pages
Settlement Agreement
IS 84562 & IS84563

volume. Median flow is the flow that is expected 50% of the time, while average flow relates to volume, or basin yield, and is a more appropriate method for estimating available water for storage.

The department has additional hydrologic data which also can be used to determine the basin yield and the amount of unappropriated water. Staff compared the 50% exceedance flow generated from the water availability model to the volume generated by using average precipitation data. These two different methods produce different results. The 50% exceedance approach results in 70 acre feet of available water, while the average precipitation and resulting runoff method results in potential storage of over 16,000 acre-feet.

The following table calculates unappropriated water using average monthly precipitation and runoff information from National Resource Conservation Service (NRCS).

Home Creek at the mouth # 84562

Ac-ft/in runoff per sq mi
53.3

SCS runoff (in)
14

% runoff
44.20%

Area (sq-mi)
36.66

MONTH	Precipitation inches/month	Equivalent acre/foot per month	Runoff acre/foot per month	Flow @ 50% exceedance in CFS	Instream water right in CFS	Existing water rights in CFS	Equivalent existing water rights in AF	Instream water right equivalent acre foot per month	Potential Runoff Subject to Storage
January	3.67	7171.10	3167.05	3.49	3.49			214.59	2952.46
February	3.71	7249.26	3201.57	7.05	7.00			388.76	2812.81
March	4.51	8812.44	3891.93	17.40	17.00			1045.29	2846.64
April	2.64	5158.50	2278.20	35.60	35.60	71.25	4240.00	2118.35	0
May	2.55	4982.64	2200.54	53.20	53.00	71.25	4380.00	3258.84	0
June	1.77	3458.54	1527.43	31.10	31.00	71.25	4240.00	1844.63	0
July	0.61	1191.93	526.40	8.39	8.00	71.25	4380.00	491.90	0
August	0.93	1817.20	802.55	3.58	3.58	71.25	4380.00	220.13	0
September	1.29	2520.63	1113.21	3.03	3.03	71.25	4240.00	180.30	0
October	2.07	4044.73	1786.32	3.15	3.15			193.69	1592.63
November	4.18	8167.63	3607.15	2.83	2.83			168.40	3438.75
December	3.71	7366.50	3253.34	2.91	2.91			178.93	3074.41
TOTALS	31.64	61941.1	27355.69	171.73	170.59		25860.00	10303.81	16717.70

 - Irrigation Season (No Water Available)

The table shows that based on average precipitation water in excess of existing water rights, including the instream water right, is available October through March. This will vary year to year based on precipitation occurrences and other hydrologic factors. Based on the average precipitation data there appears to be unappropriated water in the Home Creek basin for the Department to accept and process a reservation request for 4,500 acre feet of water.

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Settlement Agreement
IS 84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84562 in the Name of the Oregon Parks	)	
and Recreation Department	)	
<i>Applicant</i>	)	FINAL ORDER INCORPORATING
	)	SETTLEMENT AGREEMENT
Roaring Springs Ranch, Inc.	)	
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Intervenor</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Intervenor</i>	)	

On October 17, 2000, Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84562 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

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Attachment B 1 of 8 pages
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authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84562 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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Settlement Agreement
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WATER RESOURCES DEPT
SALEM OREGON

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (NE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Recorded in State Record of Water Right Certificate 81723.

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4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of
____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81723.

File IS84562

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SALEM, OREGON

Recorded in State Record of Water Right Certificate 81723.

Attachment B, 4 of 8 pages
Settlement Agreement
IS 84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84563 in the Name of the Oregon Parks	)	
and Recreation Department	)	
<i>Applicant</i>	)	FINAL ORDER INCORPORATING
	)	SETTLEMENT AGREEMENT
Roaring Springs Ranch, Inc.	)	
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Intervenor</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Intervenor</i>	)	

On October 17, 2000, the Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84563 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

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Settlement Agreement
IS 84562 & IS84563

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84563 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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Attachment B 6 of 8 pages
Settlement Agreement
IS 84562 & IS845

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Threemile Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

THREEMILE CREEK FROM THE WEST SECTION LINE OF SECTION 21 (SW 1/4 NW 1/4, SECTION 21, T35S, R32½E, W.M.); TO THE BOUNDARY OF THE WILDERNESS AREA BOUNDARY (NW 1/4 NW 1/4, SECTION 25, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands

Recorded in State Record of Water Right Certificate 81724.

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Attachment B 7 of 8 pages
Settlement Agreement
IS 84562 & IS84563

for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this _____ day of _____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81724.

File IS84563

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**WATER RESOURCES DEPT
SALEM, OREGON**

Attachment B 8 of 8 pages
Settlement Agreement
IS 84562 & IS84563

Recorded in State Record of Water Right Certificate 81724.



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 23, 2005

Daina Upite
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020

Re: In the Matter of Water Right Application IS 84562 in the name of the Oregon
Department of Parks and Recreation
DOJ File No.: 690202 GN0835-03

Dear ALJ Upite:

Enclosed is a copy of the signed settlement agreement resolving the protests in the above-referenced matter. This agreement resolves all of the issues in the contested case which is hereby withdrawn from the Office of Administrative Hearings.

Thank you for presiding over this matter while it was before you and for your patience during the settlement process.

Sincerely,

Renee Moulun
Assistant Attorney General
Of Attorneys for the Oregon
Water Resources Department

RM1:rm1/GEN08309

Cc: (w/o enclosure) Tim Wood
Phil Ward
Dwight French
Steven Shipsey
Rick Kepler
Jas Adams
Karen Russell
Barbara Scott-Brier
Martha Pagel
Stephanie Parent
Ron Yockim

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**WATER RESOURCES DEPT
SALEM, OREGON**

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BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications)
IS 84562 and IS 84563 in the Name of the)
Oregon Parks and Recreation)
Department)
Applicant)
)
Roaring Springs Ranch, Inc.)
Protestant)
)
Harney County Court)
Protestant)
)
WaterWatch of Oregon)
Protestant)
)
Oregon Department of Fish & Wildlife)
Intervenor)
)
United States Department of Interior)
Bureau of Land Management)
Intervenor)

SETTLEMENT AGREEMENT

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SALEM, OREGON

The Oregon Water Resources Department ("OWRD"), the Oregon Parks and Recreation Department ("OPRD"), Roaring Springs Ranch, Inc., Harney County Court, WaterWatch of Oregon, Oregon Natural Desert Association and Oregon Trout ("WaterWatch"), the Oregon Department of Fish and Wildlife ("ODFW") and United States Department of Interior, Bureau of Land Management ("BLM"), collectively referred to as the "Parties" to this Agreement, enter into this Settlement Agreement ("Agreement") and hereby stipulate and agree as follows.

A. Background of This Agreement

1. Application IS 84562 (Home Creek)

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

2. Application IS 84563 (Threemile Creek)

- (a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

- (b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

3. Agreement to settle

- (a) On the basis of numerous settlement discussions, the parties agree that the protests against applications IS 84562 and IS 84563 may be resolved on the following terms.

B. Modification of the process when agencies file for instream water rights

1. OPRD and ODFW will enter into a Memorandum of Agreement ("MOA") with OWRD wherein the three state agencies agree that any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.
2. OWRD will propose the written documentation requirement of the MOA as a rule within 180 days of signing this settlement agreement. Any final rule adopted by Oregon Water Resources Commission will replace the MOA.
3. The parties clarify that any rulemaking described in paragraph B(1) and (2) above will not add any additional substantive requirements to the rules governing OPRD's or ODFW's instream application process, but that the intent is to assure that OWRD receive documentation of the methodology by which quantification of requested flows is calculated or achieved.

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C. Terms of the Agreement for Application IS 84562 (Home Creek)

1. Amendment of reach on Home Creek subject to an instream water right

- (a) OPRD will draft a letter to OWRD amending its application IS 84562 such that the reach for the instream water right is described as follows:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

2. Potential future small storage ponds on private lands on ephemeral streams in the Home Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Home Creek basin for the purposes of maintaining or improving riparian areas on Home Creek, protecting instream flows in Home Creek, or providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84562, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph C(2)(a) above, up to a cumulative total of four-hundred acre feet (400 AF) of water as follows:
- (i) Such small storage ponds will be constructed only on ephemeral streams in the Home Creek Basin;
- (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 400 AF limit described in paragraph C(2)(b) above.

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**WATER RESOURCES DEPT
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- (d) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) may be constructed either off channel or in channel on ephemeral streams in the Home Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
- (e) Any final order and certificate issuing from application IS 84562 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (f) The parties agree that the condition specified in paragraph C(2)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84562.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

3. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84562 for purposes of water regulation to junior priority date water rights for human consumption as may be subsequently authorized by OWRD on private land not to exceed a cumulative total of up to 0.05 cubic foot per second (0.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84562 shall contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

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WATER RESOURCES DEPT
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- (d) The parties agree that the conditions specified in paragraph C(3)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84562.

4. Large storage facility

- (a) OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree for the purposes of this Agreement to use the OWRD's "precipitation over drainage basin area" methodology described in its Memorandum to Phil Ward from Tom Paul, dated June 6, 2005, incorporated by reference herein (and attached hereto as Attachment A), and stipulate that based on that methodology, four-thousand-five-hundred-fifty acre feet (4550 AF) of water is available for a reservation pursuant to ORS 537.356 (reservation of water for multipurpose storage uses) in the Home Creek basin area as the Home Creek basin is defined by OWRD.
- (b) WaterWatch expressly does not stipulate that 4550 AF of water is available for future storage in the Home Creek basin area. WaterWatch reserves the right to challenge water availability relating to any application for water storage, with the exception of potential future small storage referred to in paragraph C(2)(a) – (f) above. In reserving this right to challenge water availability, WaterWatch acknowledges that the proposed reservation will include a specific finding relating to water availability.
- (c) Harney County Court may file a request for reservation of water for multipurpose storage on Home Creek.
- (d) In addition to the requirements of ORS chapter 537 and applicable rules, OWRD will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:
- (i) The proposed reservoir and any water rights secondary to the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;
 - (ii) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with ODFW and DEQ; and,
 - (iii) Whether minimum bypass flows are required.
- (e) Any final order approving an application for a permit to store water as described paragraph C(4)(d) above shall contain the findings required in paragraph C(4)(d) and also contain conditions setting an appropriate storage season and conditions

necessary to ensure no injury to senior water rights (including IS 84562) and to protect instream values.

(f) Effective date of reservation rules:

- (i) Any reservation of water requested by Harney County Court shall be effective for twenty (20) years from the date of the final rule granting the reservation, unless the effective date has been extended by further rulemaking of the Water Resources Commission.
- (ii) The expiration of the Home Creek basin reservation rule shall not affect pending applications that have been received and deemed complete and not defective by the OWRD pursuant to ORS 537.150(2), prior to the expiration date of the rules.

(g) Progress Reports

- (i) If the OWRD has not received applications for multipurpose reservoir permits for the full quantity of reserved water in the Home Creek basin within five years of the final rule granting the reservation, the OWRD will provide the parties with a progress report on the development of the reservations. The OWRD will continue to provide progress reports at five-year intervals while the reservation is in effect unless OWRD receives applications for multipurpose reservoir permits for the full quantity of reserved water.
- (h) Roaring Springs Ranch agrees to withdraw its existing applications R 84576 and S 84577 within fifteen (15) days of the effective date of a reservation consistent with the terms of this Agreement, but preserves its right to seek the water (4550 AF of storage for supplemental irrigation of 5700.2 acres) described in R 84576 and S 84577 under the reservation. Roaring Springs Ranch further agrees to put its application on hold pending the outcome of the reservation. If the proposed reservation is not approved by the Water Resources Commission and established by rule, Roaring Springs Ranch shall not be required to withdraw its pending applications R 84576 and S 84577, and OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree that for purposes of this Agreement, the OWRD's determination of water availability shall be in accordance with the June 6, 2005 memorandum from Tom Paul to Phil Ward referenced above in paragraph C(4)(a). WaterWatch does not agree that the June 6, 2005, memorandum referenced in paragraph C(4)(a) is the appropriate water availability analysis and reserves the right to challenge water availability in any further proceedings regarding applications R 84576 and S 84577 to address this issue if the proposed reservation is not approved.
- (i) The parties agree to not object to or to support the establishment of a reservation with the conditions identified in paragraph C(4)(d) – (h).

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SALEM, OREGON

D. Terms of Agreement Application IS 84563 (Threemile Creek)

- 1. Potential future small storage ponds on private lands on ephemeral streams in the Threemile Creek basin**
 - (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Threemile Creek basin for the purposes of maintaining or improving riparian areas on Threemile Creek, protecting instream flows in Threemile Creek, and providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
 - (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84563, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph D(1)(a) above up to a cumulative limit of ninety-two acre feet (92 AF) of water as follows:
 - (i) Such small storage ponds will be constructed only on ephemeral streams in the Threemile Creek basin;
 - (ii) No such small storage pond may exceed fifteen acre feet (15AF).
 - (c) The parties clarify that the ponds identified in paragraphs D(1)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 92 AF limit described in paragraph D(1)(b) above.
 - (d) The parties clarify that the ponds identified in paragraph D(1)(a) – (c) may be constructed either in channel or off channel on ephemeral streams in the Threemile Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
 - (e) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized

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by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

- (f) The parties agree that the conditions specified in paragraph D(1)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84563.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

2. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84563 for purposes of water regulation to junior priority date water rights for human consumption as may subsequently be authorized by OWRD not to exceed a cumulative total of up to 0.05 cubic foot per second (.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
- (d) The parties agree that the conditions specified in paragraph D(2)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84563.

E. General Provisions

- 1. In signing this Agreement, the parties preserve any rights authorized by law not expressly waived by this Agreement.

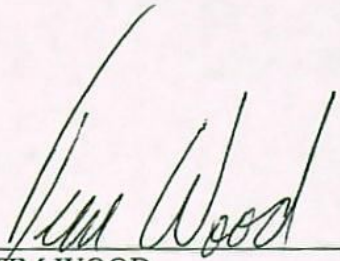
2. The Parties agree that the terms and conditions of this Agreement shall be incorporated into the Final Orders issued by OWRD in connection with IS 84562 and IS 84563, as shown in the attached Draft Final Orders and Draft Certificates (herein attached as Attachment B)
3. Upon issuance by OWRD of Final Orders and Certificates for IS 84562 and IS 84563 that conform to the attached Draft Final Orders and Draft Certificates, the Parties agree that all issues raised in protests filed to applications IS 84562 and IS 84563 are resolved. In addition, the parties expressly waive any right to file exceptions or to seek judicial review of such Final Orders or Certificates referred to in paragraph E(2) above.
4. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations and corporations connected with them.
5. Each party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of the Agreement.
6. The terms, provisions, conditions, and covenants of this Agreement are not severable. If any term, provision, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree to reconvene to renegotiate the terms of this Agreement.
7. This Agreement may be executed in several counterparts and all documents so executed will constitute one Agreement, binding on the parties, notwithstanding that the parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Agreement by facsimile transmission is effective as delivery of an original signed counterpart of this Agreement.
8. The parties agree that this Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes. The parties agree that no offers or compromises made in the course of negotiations shall be construed as admissions against interest and shall not be construed as establishing either legal or policy precedence for any future actions.
9. The parties agree to each bear their own costs and attorney fees.
10. This Agreement is effective as of the date of the last signature hereto.

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SALEM, OREGON



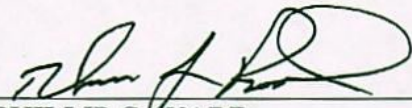
TIM WOOD
Director
Oregon Parks and Recreation Department

11/21/05
DATE

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For PHILLIP C. WARD
Director
Oregon Water Resources Department

12/5/05
DATE

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SALEM, OREGON

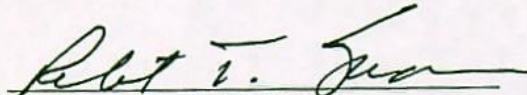
Lindsay A. Ball
LINDSAY A. BALL
Director
Oregon Department of Fish & Wildlife

11-17-05
DATE

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**WATER RESOURCES DEPT
SALEM, OREGON**



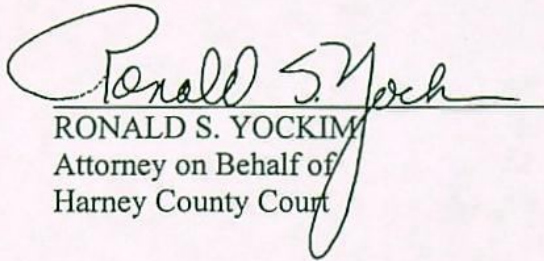
ROBERT T. SANDERS
Roaring Springs Ranch, Inc.

12/14/05
DATE

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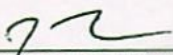
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RONALD S. YOCKIM
Attorney on Behalf of
Harney County Court

11-15-05
DATE

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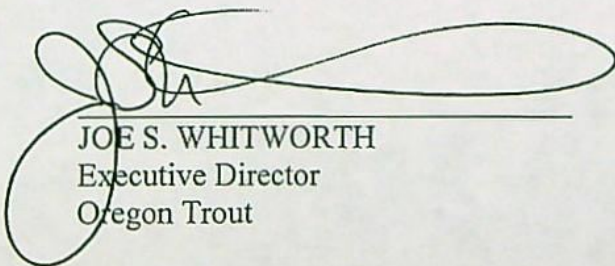
JOHN DE VOE
Executive Director
WaterWatch of Oregon

11/21/05
DATE



BILL MARLETT
Executive Director
Oregon Natural Desert Association

11/23/05
DATE



JOE S. WHITWORTH
Executive Director
Oregon Trout

21 Nov 2005
DATE

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DEC 27 2005
WATER RESOURCES DEPT
SALEM, OREGON

Dana R. Shuford
DANA R. SHUFORD
Burns District Manager
United States Bureau of Land Management

12/2/05
DATE

Barbara Scott Brier
BARBARA SCOTT BRIER
Attorney Advisor
United States Department of Interior

12/5/05
DATE

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WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

June 6, 2005

TO: Phil Ward
FROM: Tom Paul
SUBJECT: Home Creek Reservation Request and Available Water

We have been involved in settlement discussions regarding an instream water right and a new storage application in the Home Creek basin. One possibility for settlement is a reservation for future storage. ORS 537.356 allows the Commission to reserve *unappropriated* water for multipurpose storage for future economic development. The Department may process reservation requests for up to the amount of unappropriated water. When processing reservation requests, the Department begins the assessment by looking at the 50 % exceedance flow information generated by the water availability model. This information is usually a conservative estimate of the amount of basin yield that may be available for storage. Use of the water availability model at 50% exceedance for evaluating water reservation requests is not required by rule or statute. Other hydrologic evaluations are often employed to estimate available unappropriated water that may be available for storage.

In the determination of median flow estimates, a base period is chosen and all the average daily flows for a specific date are arranged from high to low. The middle value, or median, is selected as the 50% exceedance flow. Half of the flow values are above the median, and half are below, so it is statistically valid to consider the median flow value as being present or exceeded 50% of the time. An average flow value for the same data set would be the sum of all the values divided by the total number of data used. The average value thereby relates directly to volume or basin yield.

Stream flow can be highly variable, especially east of the Cascades in an area such as Home Creek. When determining water availability for a direct flow appropriation the water availability model is used to determine when and how much live flow is available. The appropriate statistic in this case is an exceedance stream flow because it is a flow rate that exists 50% or 80% of the time. This statistic tells us how often to expect a given rate of stream flow. This same information is normally not an accurate estimate of basin yield, information that would be used to evaluate an application for storage (or reservation for storage). More accurate results would normally be derived using average flow, or estimating average runoff from average precipitation.

In the case of Home Creek, the reservation request is for 4,500 acre feet of water. Using the water availability model and the 50% exceedance flows results in an estimate of 70 acre-feet of water available for storage. It is important to understand that this estimate is based on median flow, a statistic best used in relation to live flow, not basin yield or

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WATER RESOURCES DEPT
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Attachment A 1 of 2 pages
Settlement Agreement
IS 84562 & IS84563

volume. Median flow is the flow that is expected 50% of the time, while average flow relates to volume, or basin yield, and is a more appropriate method for estimating available water for storage.

The department has additional hydrologic data which also can be used to determine the basin yield and the amount of unappropriated water. Staff compared the 50% exceedance flow generated from the water availability model to the volume generated by using average precipitation data. These two different methods produce different results. The 50% exceedance approach results in 70 acre feet of available water, while the average precipitation and resulting runoff method results in potential storage of over 16,000 acre-feet.

The following table calculates unappropriated water using average monthly precipitation and runoff information from National Resource Conservation Service (NRCS).

Home Creek at the mouth # 84562

Ac-ft/in runoff per sq mi	SCS runoff (in)	% runoff	Area (sq-mi)
53.3	14	44.20%	36.66

MONTH	Precipitation inches/month	Equivalent acre/foot per month	Runoff acre/foot per month	Flow @ 50% exceedance in CFS	Instream water right in CFS	Existing water rights in CFS	Equivalent existing water rights in AF	Instream water right equivalent acre foot per month	Potential Runoff Subject to Storage
January	3.67	7171.10	3167.05	3.49	3.49			214.59	2952.46
February	3.71	7249.26	3201.57	7.05	7.00			388.76	2812.81
March	4.51	8812.44	3891.93	17.40	17.00			1045.29	2846.64
April	2.64	5158.50	2278.20	35.60	35.60	71.25	4240.00	2118.35	0.00
May	2.55	4982.64	2200.54	53.20	53.00	71.25	4380.00	3258.84	0.00
June	1.77	3458.54	1527.43	31.10	31.00	71.25	4240.00	1844.63	0.00
July	0.61	1191.93	526.40	8.39	8.00	71.25	4380.00	491.90	0.00
August	0.93	1817.20	802.55	3.58	3.58	71.25	4380.00	220.13	0.00
September	1.29	2520.63	1113.21	3.03	3.03	71.25	4240.00	180.30	0.00
October	2.07	4044.73	1786.32	3.15	3.15			193.69	1592.63
November	4.18	8167.63	3607.15	2.83	2.83			168.40	3438.75
December	3.71	7366.50	3253.34	2.91	2.91			178.93	3074.41
TOTALS	31.64	61941.1	27355.69	171.73	170.59		25860.00	10303.81	16717.70

 -- Irrigation Season (No Water Available)

The table shows that based on average precipitation water in excess of existing water rights, including the instream water right, is available October through March. This will vary year to year based on precipitation occurrences and other hydrologic factors. Based on the average precipitation data there appears to be unappropriated water in the Home Creek basin for the Department to accept and process a reservation request for 4,500 acre feet of water.

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WATER RESOURCES DEPT
SALEM, OREGON

Attachment A 2 of 2 pages.
Settlement Agreement
IS 84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
IS 84562 in the Name of the Oregon Parks)
and Recreation Department)
Applicant)

FINAL ORDER INCORPORATING
SETTLEMENT AGREEMENT

Roaring Springs Ranch, Inc.)
Protestant)

Harney County Court)
Protestant)

WaterWatch of Oregon)
Protestant)

Oregon Department of Fish & Wildlife)
Intervenor)

United States Department of Interior)
Bureau of Land Management)
Intervenor)

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WATER RESOURCES DEPT
SALEM, OREGON

On October 17, 2000, Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84562 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

Attachment B 1 of 4 pages
Settlement Agreement
IS84562 & IS84563

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84562 is APPROVED and a certificate shall issue.

DATED this ____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.

3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

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WATER RESOURCES DEPT
SALEM, OREGON

Recorded in State Record of Water Right Certificate 81723.

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Settlement Agreement
IS84562 & IS84563

4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of _____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81723.

File IS84562

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WATER RESOURCES DEPT
SALEM, OREGON

Recorded in State Record of Water Right Certificate 81723.
Attachment B 4 of 4 pages
Settlement Agreement
IS84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84563 in the Name of the Oregon Parks
and Recreation Department
Applicant

Roaring Springs Ranch, Inc.
Protestant

Harney County Court
Protestant

WaterWatch of Oregon
Protestant

Oregon Department of Fish & Wildlife
Intervenor

United States Department of Interior
Bureau of Land Management
Intervenor

)
)
)
) **FINAL ORDER INCORPORATING**
) **SETTLEMENT AGREEMENT**

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WATER RESOURCES DEPT
SALEM, OREGON

On October 17, 2000, the Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order ("PFO") proposing to approve the application for the proposed use in the following amounts in cubic foot per second ("cfs"):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement ("Agreement") was reached among the Parties resolving the protests described above.

The certificate for application IS 84563 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

Attachment C 1 of 4 pages
Settlement Agreement
IS84562 & IS84563

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84563 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

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**WATER RESOURCES DEPT
SALEM, OREGON**

Attachment C 2 of 4 pages
Settlement Agreement
IS84562 & IS84563

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Threemile Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

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WATER RESOURCES DEPT
SALEM, OREGON

To be maintained in:

THREEMILE CREEK FROM THE WEST SECTION LINE OF SECTION 21 (SW 1/4 NW 1/4, SECTION 21, T35S, R32½E, W.M.); TO THE BOUNDARY OF THE WILDERNESS AREA BOUNDARY (NW 1/4 NW 1/4, SECTION 25, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands

Recorded in State Record of Water Right Certificate 81724.

Attachment C 3 of 4 pages
Settlement Agreement
IS84562 & IS84563

for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

5. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.
6. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of __, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81724.

File IS84563

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**WATER RESOURCES DEPT
SALEM, OREGON**

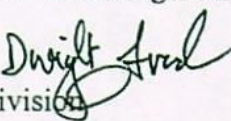
Recorded in State Record of Water Right Certificate 81724

Attachment C 4 of 4 pages
Settlement Agreement
IS84562 & IS84563

Memo

Oregon Water Resources Department Water Rights & Adjudication Division

To: Settlement Parties
Home Creek/Threemile Creek Settlement Agreement

From: Dwight French, Administrator 
Water Rights & Adjudication Division

RE: Transmittal of Final Signed Agreement
Final Orders and Certificates for Two Instream Water Rights

January 10, 2006

Please find attached a copy of the signed settlement agreement as well as copies of the final orders and certificates for the Home Creek and Threemile Creek instream water rights.

I want to thank all of you for your contributions to the process that led to achieving a settlement agreement. I know that every party has to be a contributor or "giver" in order for these multi-party settlements to end in a settlement. So, thanks for giving.

I especially want to thank Renee Moulon (and Shannon O'Fallon before her) who guided and navigated and nudged all of us along during these past few months.

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NOV 02 2005

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation
Applicant

vs.

Roaring Springs Ranch, Inc.
Protestant

Harney County Court
Protestant

WaterWatch of Oregon¹
Protestant

Oregon Department of Fish & Wildlife
Intervenor

United States Department of Interior
Bureau of Land Management
Intervenor

ORDER SETTING SECOND
SETTLEMENT STATUS
CONFERENCE

Mike Reynolds,
for the file

Cindy

A settlement status conference was held by at
9:00 a.m., with Administrative Law Judge Dain
Moulun for Oregon Water Resources Department
Oregon Parks and Recreation Department, Mar
Yockim for Harney County Court, Stephanie Parent for WaterWatch, Rick Kepler for Oregon
Department of Fish and Wildlife, and Darren Brumback for the United States Department of
Interior, Bureau of Land Management.

Ms. Moulun reported on behalf of all the participants that another 30 days is needed to
finalize the agreement. Accordingly, another settlement status conference will be held
November 14, 2005, beginning at 9 a.m., by telephone. To access the conference, please dial
503-378-5680 and, when prompted, dial 8503021 as the access code.

¹ Oregon Natural Desert Association and Oregon Trout joined WaterWatch of Oregon in filing a single, joint protest
in this matter. All three organizations share a common interest in this matter and speak with a singular voice,
through WaterWatch of Oregon.

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WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	(	ORDER SETTING SECOND
IS 84562 in the Name of the Oregon	(	SETTLEMENT STATUS
Department of Parks and Recreation	(	CONFERENCE
<i>Applicant</i>	(	
vs.	(	
Roaring Springs Ranch, Inc.	(	
<i>Protestant</i>	(	
	(	
Harney County Court	(	
<i>Protestant</i>	(	
	(	
WaterWatch of Oregon ¹	(	
<i>Protestant</i>	(	
	(	
Oregon Department of Fish & Wildlife	(	
<i>Intervenor</i>	(	
	(	
United States Department of Interior	(	
Bureau of Land Management	(	
<i>Intervenor</i>	(	

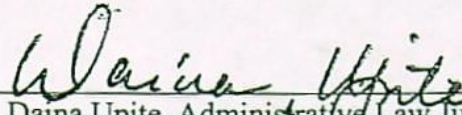
A settlement status conference was held by telephone on October 18, 2005, beginning at 9:00 a.m., with Administrative Law Judge Daina Upite presiding. Participating were Renee Moulun for Oregon Water Resources Department, Steve Shipsey and Shelley McIntyre for Oregon Parks and Recreation Department, Martha Pagel for Roaring Springs Ranch, Ron Yockim for Harney County Court, Stephanie Parent for WaterWatch, Rick Kepler for Oregon Department of Fish and Wildlife, and Darren Brumback for the United States Department of Interior, Bureau of Land Management.

Ms. Moulun reported on behalf of all the participants that another 30 days is needed to finalize the agreement. Accordingly, another settlement status conference will be held **November 14, 2005, beginning at 9 a.m.**, by telephone. To access the conference, please dial 503-378-5680 and, when prompted, dial 8503021 as the access code.

¹ Oregon Natural Desert Association and Oregon Trout joined WaterWatch of Oregon in filing a single, joint protest in this matter. All three organizations share a common interest in this matter and speak with a singular voice, through WaterWatch of Oregon.

Please do not call before the time set for the conference. If you experience difficulty making the connection, please hang up and call Stacey Silbernagel at 503-947-1814.

IT IS SO ORDERED.



Daina Upite, Administrative Law Judge
Office of Administrative Hearings

Date: November 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2005, I served a true copy of the following: **ORDER SETTING SECOND SETTLEMENT STATUS CONFERENCE**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Tim Wood, Director
Oregon Parks and Recreation
725 Summer Street NE, Suite C
Salem, OR 97301
Tim.Wood@state.or.us

Steven Shipsey
Oregon Department of Justice
General Counsel, Natural Resources
1162 Court Street NE
Salem, OR 97301
(503) 947-4500
(503) 378-3802
steve.shipsey@doj.state.or.us

Rick Kepler, Habitat Program Manager
Oregon Dept. of Fish & Wildlife
Fish Division
3406 Cherry Avenue NE
Salem, OR 97303
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Shelley McIntyre
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General Counsel/Natural Resources
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Fax: (503) 229-5797
shelley.mcintyre@doj.state.or.us

Karen Russell
WaterWatch of Oregon, Inc.
213 SW Ash, Suite 208
Portland, OR 97204
Phone: (503) 295-4039, ext. 24
FAX: (503) 295-2791
karen@waterwach.org

Barbara Scott-Brier
Office of the Solicitor
Pacific Northwest Region
U.S. Dept. of Interior
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Portland, OR 97232
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Martha O. Pagel
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1211 SW Fifth Avenue
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Phone: (503) 222-9981
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mpagel@schwabe.com

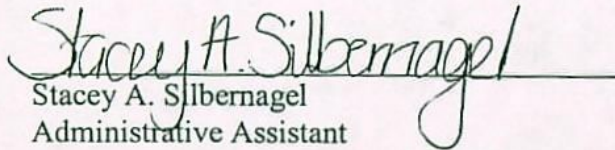
Stephanie M. Parent
Pacific Environmental Advocacy Center
Northwestern School of Law
Lewis & Clark College
10015 SW Terwilliger Blvd.
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parent@lclark.edu

Renee M. Moulun
Assistant Attorney General
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Salem, OR 97301-4096
Phone: 503-947-4500
Fax: 503-378-3802
Renee.m.moulun@doj.state.or.us

✓ Ronald S. Yockim
Attorney at Law
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Roseburg, OR 97470
Phone: (541) 957-5900
FAX: (541) 957-5923
ryockim@mcsi.net

✓ Phil Ward, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97309-4020
Phillip.C.Ward@state.or.us

7 Darren Brumback
United States Department of Interior
Bureau of Land Management
28910 Hwy 20 West
Hines, OR 97738
Phone: 541-573-4418
Fax: 541-573-4411
Darren_brumback@blm.gov


Stacey A. Silbernagel
Administrative Assistant

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SEP 07 2005

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

WATER RESOURCES DEPT
SALEM, OREGON

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation
Applicant

vs.

Roaring Springs Ranch, Inc.
Protestant

Harney County Court
Protestant

WaterWatch of Oregon¹
Protestant

Oregon Department of Fish & Wildlife
Intervenor

United States Department of Interior
Bureau of Land Management
Intervenor

ORDER SETTING SETTLEMENT
STATUS CONFERENCE

Mike R.

for the file

Cindy

A Pre-hearing Conference was held by telephone at 10:00 a.m., with Administrative Law Judge Dain Moulun for Oregon Water Resources Department, Recreation Department, Martha Pagel for Roaring Springs Ranch, Ron Lockhart for Harney County Court, Stephanie Parent for WaterWatch, Rick Kepler for Oregon Department of Fish and Wildlife, and Barbara Scott-Brier and Darren Brumback for the United States Department of Interior, Bureau of Land Management.

Ms. Moulun reported on behalf of all the participants that settlement discussions are proceeding well, and that they are in the process of completing an agreement. A single substantive issue remains to be resolved, which the participants expect will be resolved in the next week. Thereafter, all participants will need to sign the agreement, and obtaining approval from the Department of the Interior is likely to take at least 30 days. Therefore, because it is likely that this matter will be settled, the hearing now set to begin October 18, 2005 will be a settlement status conference.

¹ Oregon Natural Desert Association and Oregon Trout joined WaterWatch of Oregon in filing a single, joint protest in this matter. All three organizations share a common interest in this matter and speak with a singular voice, through WaterWatch of Oregon.

RECEIVED

SEP 07 2005

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	(	ORDER SETTING SETTLEMENT
IS 84562 in the Name of the Oregon	(	STATUS CONFERENCE
Department of Parks and Recreation	(	
<i>Applicant</i>	(	
vs.	(	
Roaring Springs Ranch, Inc.	(	
<i>Protestant</i>	(	
	(	
Harney County Court	(	
<i>Protestant</i>	(	
	(	
WaterWatch of Oregon ¹	(	
<i>Protestant</i>	(	
	(	
Oregon Department of Fish & Wildlife	(	
<i>Intervenor</i>	(	
	(	
United States Department of Interior	(	
Bureau of Land Management	(	
<i>Intervenor</i>	(	

A Pre-hearing Conference was held by telephone on September 2, 2005, beginning at 10:00 a.m., with Administrative Law Judge Daina Upite presiding. Participating were Renee Moulun for Oregon Water Resources Department, Steve Shipsey for Oregon Parks and Recreation Department, Martha Pagel for Roaring Springs Ranch, Ron Yockim for Harney County Court, Stephanie Parent for WaterWatch, Rick Kepler for Oregon Department of Fish and Wildlife, and Barbara Scott-Brier and Darren Brumback for the United States Department of Interior, Bureau of Land Management.

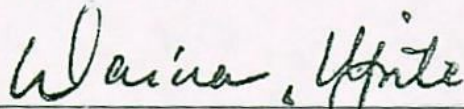
Ms. Moulun reported on behalf of all the participants that settlement discussions are proceeding well, and that they are in the process of completing an agreement. A single substantive issue remains to be resolved, which the participants expect will be resolved in the next week. Thereafter, all participants will need to sign the agreement, and obtaining approval from the Department of the Interior is likely to take at least 30 days. Therefore, because it is likely that this matter will be settled, the hearing now set to begin October 18, 2005 will be a settlement status conference.

¹ Oregon Natural Desert Association and Oregon Trout joined WaterWatch of Oregon in filing a single, joint protest in this matter. All three organizations share a common interest in this matter and speak with a singular voice, through WaterWatch of Oregon.

The settlement status conference will be October 18, 2005, beginning at 9:00 a.m. To access the conference, please dial 503-378-5680 and, when prompted, dial 8503021 as the access code.

Please do not call before the time set for the conference. If you experience difficulty making the connection, please hang up and call Stacey Silbernagel at 503-373-0386 or 503-378-8224 (general reception).

IT IS SO ORDERED.



Daina Upite, Administrative Law Judge
Office of Administrative Hearings

Date: September 2, 2005

RECEIVED

SEP 07 2005

**WATER RESOURCES DEPT
SALEM, OREGON**

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2005, I served a true copy of the following: **ORDER SETTING SETTLEMENT STATUS CONFERENCE**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Tim Wood, Director
Oregon Parks and Recreation
725 Summer Street NE, Suite C
Salem, OR 97301
Tim.Wood@state.or.us

Steven Shipsey
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General Counsel, Natural Resources
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(503) 378-3802
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Fax: (503) 796-2900
mpagel@schwabe.com

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Northwestern School of Law
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Phone: 503-947-4500
Fax: 503-378-3802
Renee.m.moulun@doj.state.or.us

RECEIVED

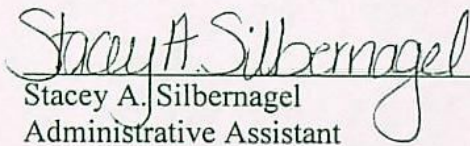
SEP 07 2005

**WATER RESOURCES DEPT
SALEM, OREGON**

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Roseburg, OR 97470
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ryockim@mcsi.net

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Phillip.C.Ward@state.or.us

Darren Brumback
United States Department of Interior
Bureau of Land Management
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Hines, OR 97738
Phone: 541-573-4418
Fax: 541-573-4411
Darren_brumback@blm.gov


Stacey A. Silbernagel
Administrative Assistant

RECEIVED

SEP 07 2005

**WATER RESOURCES DEPT
SALEM, OREGON**

HARDY MYERS
Attorney General

File



PETER D. SHEPHERD
Deputy Attorney General

COPY

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 12, 2005

BY E-MAIL TO daina.upite@state.or.us
and REGULAR MAIL

Daina Upite
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020

RECEIVED
JUL 14 2005
WATER RESOURCES DEPT
SALEM, OREGON

Re: In the Matter of the Water Right Application IS 84562 in the name of the Oregon Water
Resources Department
DOJ File No.: 690-202-GN0835-03

Dear Administrative Law Judge Daina Upite:

Enclosed herewith for filing in the above-captioned matter on behalf of the Oregon Water
Resources Department are the following:

1. Oregon Water Resources Department's Withdrawal of Counsel of Shannon K. O'Fallon and Appearance of Renee M. Moulun as Counsel; and
2. Certificate of Filing/Service.

Sincerely,

Renee M. Moulun
Assistant Attorney General
Natural Resources Section

RMM:jrs/GENN2342

Enclosures

c: Service List
Shannon O'Fallon, DOJ

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84562 in the Name of Oregon Parks and	)	OREGON WATER RESOURCES
Recreation Department	)	DEPARTMENT'S WITHDRAWAL
<i>Applicant</i>	)	OF COUNSEL OF SHANNON K.
	)	O'FALLON AND APPEARANCE OF
Roaring Springs Ranch, Inc.	)	RENEE M. MOULUN AS COUNSEL
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Intervenor</i>	)	
	)	
United States Department of the Interior	)	
Bureau of Land Management	)	
<i>Intervenor</i>	)	
	)	

Shannon K. O'Fallon hereby withdraws as counsel with the Oregon Department
of Justice for the Oregon Department of Resources in the above case. Renee M. Moulun
of the Oregon Department of Justice hereby enters her appearance as counsel in this

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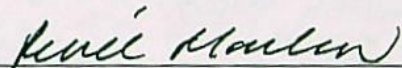
matter. All future pleadings and correspondence related to the above case should be served on her as follows:

RENEE M. MOULUN
Assistant Attorney General
Oregon Department of Justice
1162 Court Street N.E.
Salem, OR 97301-4096
Phone: 503-947-4500
Fax: 503-378-3802
renee.m.moulun@doj.state.or.us

DATED this 12th day of July 2005.

Respectfully Submitted,

HARDY MYERS
Attorney General



Renee M. Moulun, #96370
Assistant Attorney General
Of Attorneys for the Oregon Water
Resources Department

CERTIFICATE OF FILING/SERVICE

I certify that on July 12, 2005, the OREGON WATER RESOURCES DEPARTMENT'S WITHDRAWAL OF COUNSEL OF SHANNON K. O'FALLON AND APPEARANCE OF RENEE M. MOULUN AS COUNSEL was filed with Daina Upite, Administrative Law Judge, Office of Administrative Hearings, PO Box 14020, Salem, OR 97309-4020, via e-mail to daina.upite@state.or.us and stacey.a.silbernagel@state.or.us, and via first-class mail, postage prepaid. I further certify that a true and correct copy of the above document was served on July 12, 2005, by e-mail (where an e-mail address is indicated), and by first-class mail postage prepaid to the addresses below.

Tim Wood, Director
Oregon Parks and Recreation Dept.
725 Summer Street NE, Suite C
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tim.wood@state.or.us

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shelley.mcintyre@doj.state.or.us

Steven Shipsey (**Hand delivered**)
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Barbara Scott-Brier
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Pacific Northwest Region
U.S. Dept. of Interior
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Fax: (503) 231-2166

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Darren Brumback
United States Department of Interior
Bureau of Land Management
Burns District Office
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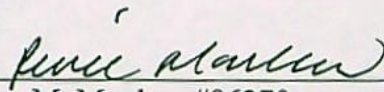
Martha O. Pagel
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Fax: (503) 796-2900
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Lewis & Clark College
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Karen Russell
WaterWatch of Oregon, Inc.
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Portland, OR 97204
Phone: (503) 295-4039, ext. 24
FAX: (503) 295-2791
karen@waterwatch.org



Renee M. Moulun, #96370
Assistant Attorney General
Of Attorneys for the Oregon Water
Resources Department

B

STATE OF OREGON
Office of the Water Resources Director
Salem, Oregon 97310

According to the terms of Permit No. _____,
construction work was required to be completed on or before
_____.

A blank upon which to notify this office of the completion of such work is attached to your permit. If the work has been completed, you should promptly fill out and forward this notice. If the work was not completed but has been prosecuted with reasonable diligence, an application for extension of time may be submitted.

If the work has been abandoned or has not been prosecuted with reasonable diligence, notice to this effect together with authority to cancel the permit would be greatly appreciated.

RECEIVED

JUN 13 2005

WATER RESOURCES DEPT
SALEM, OREGON

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation
Applicant

vs.

Roaring Springs Ranch, Inc.
Protestant

Harney County Court
Protestant

WaterWatch of Oregon¹
Protestant

Oregon Department of Fish & Wildlife
Intervenor

United States Department of Interior
Bureau of Land Management
Intervenor

**ORDER GRANTING UNOPPOSED
MOTION TO STAY BRIEFING
DEADLINES AND SETTING PRE-
HEARING CONFERENCE**

Pursuant to the order dated February 3, 2005, written direct testimony and exhibits are to be filed by June 15, 2005. An in-person hearing for cross-examination of witnesses is scheduled for October 18-19, 2005.

On June 6, 2005, the Oregon Water Resources Department (OWRD) filed an Unopposed Motion to Stay Briefing Deadlines, to allow the parties opportunity to engage in settlement discussions. OWRD requests that a pre-hearing conference be scheduled for the week of July 11-14, 2005.

The motion is GRANTED. A pre-hearing conference will be held on **Wednesday, July 13, 2005 at 9:00 a.m. by telephone**. To access the conference, please dial (503) 378-5680, and, when prompted, dial **8503021** as the access code.

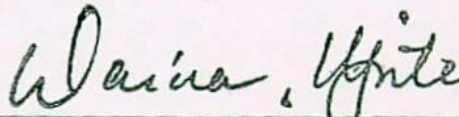
¹ Oregon Natural Desert Association and Oregon Trout joined WaterWatch of Oregon in filing a single, joint protest in this matter. All three organizations share a common interest in this matter and speak with a singular voice, through WaterWatch of Oregon.

Please do not call before the time set for the Hearing, as your call may be misdirected by the system. If you experience any difficulty making the connection, please hang up and call **Stacey Silbernagel at (503) 373-0386.**

The purpose of the conference is to report on the status of settlement discussions and to adjust the pre-hearing schedule as necessary.

If the date and time set for the conference are not acceptable to any participant, please confer with other participants to agree upon a mutually acceptable date and time, and file a motion requesting the change **no later than Monday, June 27, 2005.**

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Daina Upite", written over a horizontal line.

Daina Upite, Administrative Law Judge
Office of Administrative Hearings

Date: June 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2005, I served a true copy of the following: **ORDER GRANTING UNOPPOSED MOTION TO STAY BRIEFING DEADLINES AND SETTING PREHEARING CONFERENCE**, by depositing the same in the U.S. Post Office, Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Tim Wood, Director
Oregon Parks and Recreation
725 Summer Street NE, Suite C
Salem, OR 97301
Tim.Wood@state.or.us

Steven Shipsey
Oregon Department of Justice
General Counsel, Natural Resources
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Salem, OR 97301
(503) 947-4500
(503) 378-3802
steve.shipsey@doj.state.or.us

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Oregon Dept. of Fish & Wildlife
Fish Division
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Salem, OR 97303
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karen@waterwach.org

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Pacific Northwest Region
U.S. Dept. of Interior
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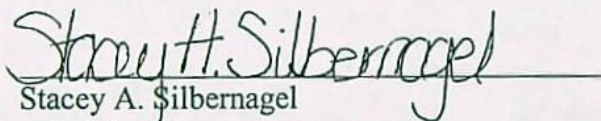
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Salem, OR 97309-4020
Phillip.C.Ward@state.or.us


Stacey A. Silbernagel
Administrative Assistant



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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

VIA FACSIMILE

November 26, 2003

Michael Carrier
Director
Oregon Parks and Recreation Dept.
725 Summer St. NE, Suite C
Salem, OR 97301

RE: Instream Water Right Application IS 84562 in the Name of the Oregon
Department of Parks and Recreation

Dear Mr. Carrier:

I would like to apologize for not having this notice served to you directly as well as to Richard Whitman at the Department of Justice. I would be happy to reschedule this prehearing conference if the current date is inconvenient. Please let me know if you need this conference rescheduled or if you have any other questions regarding this proceeding: (503) 986-0824.

Again, I apologize for any inconvenience I may have caused.

Sincerely,

Renee Moulun
Protest Program Coordinator

Attachment (Notice of Prehearing Conference IS 84562)

Cc: Paul Cleary
Dick Bailey
Richard Whitman

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84562 in the Name of the Oregon	)	
Department of Parks and Recreation	)	
<i>Applicant</i>	)	NOTICE OF
	)	PREHEARING
	)	CONFERENCE
Roaring Springs Ranch, Inc.	)	
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Request for Standing</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Request for Standing</i>	)	

PLEASE TAKE NOTICE

A telephone prehearing conference will be held on the above-captioned matter on **Monday, December 8, 2003, at 10:30 a.m. to 12:00 p.m. PST.**

To call into this prehearing conference dial the following number: (503) 378-3003

The prehearing conference will be conducted by Administrative Law Judge Daina Upite of the Office of Administrative Hearings.

The purpose of the prehearing conference is to set a date and time for the contested case hearing, to determine a schedule for prehearing filings and discovery and to discuss and finalize the proposed hearing issues listed below.

Proposed Issues

1. The proposed allocation to instream recreational purposes will eliminate all opportunity for future storage, without sufficient demonstration of need, and without appropriate weighing and balancing by the WRD of competing

interests in the water available for allocation. Approval of the Proposed Final Order ("PFO") will result in no water being available for storage purposes, causing direct and substantial harm to Roaring Springs Ranch ("RSR"). (RSR Protest at pg. 2.)

2. The amounts proposed for approval are not the "minimum" amount needed for the recreational objectives to be protected by the proposed instream right, as required under ORS 537.332(2). (RSR Protest at pg. 2.)
3. The requested instream flow levels were not determined and supported in accordance with the requirements of the Recreation Flow Requirement Methodology prescribed in applicable administrative rules of the Oregon Parks and Recreation Department ("OPRD"). Because of this serious deficiency in the instream applications, the Oregon Water Resources Department ("OWRD") should have refused to accept the applications for filing. (RSR Protest at pg. 3.)
4. Even if the Recreation Flow Requirement Methodology rules were appropriately applied, the rules are deficient in that they fail to address the requirement for identifying the minimum amount necessary for the public recreational uses. (RSR Protest at pg. 3.)
5. For IS 84562 (Home Creek), approximately one-half of the reach proposed for inclusion in an instream water right is within private lands owned by RSR. Because there is no public access to the stream in that area, and the stream itself is not navigable for public recreation purposes, there is no basis for assertion of a public recreational interest, as required under ORS 537.336. (RSR Protest at pg. 3.)
6. The Application and PFO are incomplete and deficient because:
 - a. The PFO states the proposed instream water right is for the purpose of recreation and scenic attraction. However, the Recreation Flow Methodology for Home Creek only quantifies the flow requirements for undocumented recreational use which is acknowledged to be low. (Harney County Court ("HCC") Protest at pg. 3.)
 - b. The recreation flow report addresses scenic attractions within the Home Creek unit of the Steens Mountain Wilderness, but does not identify the location of the aesthetic values in this stretch or that portion of the requested stream reach that lies outside the wilderness. (HCC Protest at pg. 3.)
 - c. The PFO is inadequate because it does not explain or relate the flows requested to the recreation or scenic values within this stretch. An instream water right cannot be granted when there is no stated public

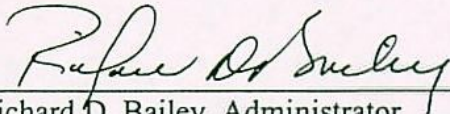
purpose for it. In this case, the scenic values are listed as "spectacular desert scenery, impressive geology, viewable fish and wildlife, diverse plant communities and living natural history" (p.1) Nowhere is there a description of how these values relate to the requested instream flows. (HCC Protest at pg. 4.)

- d. OPRD's application fails to include essential information required by the Division 77 rules including: (1) identification of affected local governments and copies of letters notifying these governments of the intent to file application, OAR 690-77-0020(4)(j); (2) that the Oregon Department of Fish & Wildlife and Department of Environmental Quality were notified of the proposed application prior to the submission of the application (OAR 690-077-0020(2) & (4)(h)); and (3) the application fails to identify compliance with the settlement between OWRD and Water for Life relative to instream water rights. (HCC Protest at pg. 4.)
 - e. The application and PFO do not provide documentary evidence that the flows are the minimum amount necessary to support the recreational use (undocumented use) and scenic attributes (ORS 537.332(2)). (HCC protest at pg. 4.)
 - f. Without the information referenced in (a) through (e) above, the application is incomplete. Under the applicable rules when the application was filed, the Department had no choice but to remand the application to OPRD (OAR 690-077-0027(1)). Notwithstanding the lack of authority to process the incomplete application, the OWRD now proposes to approve an incomplete application. (HCC Protest at pg. 4.)
7. The public interest presumption is not established.
- a. There is no evidence that the proposed use complies with the State Agency Agreement for Land Use. (HCC Protest at pg. 4.)
 - b. The public interest provisions of ORS 537.153(2) and OAR 690-077-0033(1) require a balancing of public interest and this was not done in the PFO. (HCC Protest at pg. 4 & 5.)
 - c. The proposed use cannot be found to be in the public interest under OAR 690-077-0037(2) based on the existing record. (HCC Protest at pg. 5.)
 - d. Fish flows are not within OPRD authority. (HCC Protest at pg. 5.)
 - e. No support exists for OPRD's contention that the requested flows are necessary. (HCC Protest at pg. 6.)

8. The condition of use proposed in the PFO exempting human consumption and livestock use will impair the protestant's interest in ensuring that the purposes of the instream water right are fulfilled. (WaterWatch of Oregon ("WW") Protest pg. 3.)
9. The flows proposed in the PFO are less than those originally requested by the Parks Department and will impair protestants' interest in ensuring that flows are sufficient to protect the scenic, recreational and fishery values of the Creek. (WW Protest at pg. 5.)

A service list and a copy of NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES OREGON WATER RESOURCES DEPARTMENT are attached.

DATED this 23 day of October, 2003.

A handwritten signature in dark ink, appearing to read "Richard D. Bailey", is written over a horizontal line.

Richard D. Bailey, Administrator
Water Rights Division
Water Resources Department

CERTIFICATE OF FILING/SERVICE

I certify that on October 24, 2003, the original of REFERRAL FORM, NOTICE OF PREHEARING CONFERENCE and a true, exact and full copy of the NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES OREGON WATER RESOURCES DEPARTMENT was served by certified mail, postage prepaid upon Administrative Law Judge Daina Upite, Office of Administrative Hearings, P.O. Box 14020, Salem, OR 97309-4020. I further certify that a true, exact and fully copy of the REFERRAL FORM, NOTICE OF PREHEARING CONFERENCE and NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES OREGON WATER RESOURCES DEPARTMENT was served by certified mail on the parties below, by depositing same in the United States Post Office at Salem, Oregon.

Richard M. Whitman
Oregon Department of Justice
General Counsel/Natural Resources
1162 Court St NE
Salem, OR 97301

Ronald S. Yockim
Attorney at Law
548 SE Jackson, Suite #7
PO Box 2456
Roseburg, OR 97470

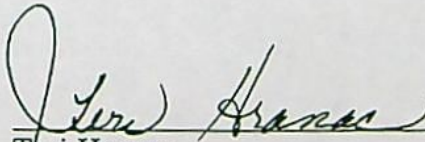
Barbara Scott-Brier
Office of the Solicitor
Pacific Northwest Region
U.S. Dept. of Interior
500 NE Multnomah St., Suite 607
Portland, OR 97232

Shannon O'Fallon
Oregon Department of Justice
Natural Resources
1162 Court St NE
Salem, OR 97301

Martha O. Pagel
Schwabe, Williamson & Wyatt, PC
PacWest Center, Suites 1600-1900
1211 SW Fifth Avenue
Portland, OR 97204-3795

Renee Moulun (hand delivered)
Protest Program Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Karen Russell
WaterWatch of Oregon, Inc.
213 SW Ash, Suite 208
Portland, OR 97204


Teri Hranac

JULY 21, 2005

1. EPHEMERAL STREAM ^{15 ACRE FOOT} SMALL STORAGE
 USES. NO SPACING RESTRICTIONS. 400 ACRE FEET
 NOT LIMITED TO CATTLE
 MALHEUR MODEL ORS 537.409
 [CONCEPTUAL AGREEMENT W/ WATER WATCH ET AL. UNDECIDED]

2. CAP ON HUMAN CONSUMPTION

3. 4550 WATER AVAILABILITY

4. AGENCY IN-STREAM APPLICATION MOA

5. REACH LIMIT

6. THREE MILE IN
GLOBAL SETTLEMENT

1. DRAFT EMAILED	7/28
2. RESPONSES	8/4
3. PRE-HEARING	8/11
BEFORE ALJ.	



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 15, 2005

RECEIVED
APR 18 2005
WATER RESOURCES DEP
SALEM, OREGON

Martha Pagel
Swabe, Williamson & Wyatt, P.C.
PacWest Center, Suites 1600-1900
1211 SW Fifth Avenue
Portland, OR 97204-3795

Re: Home Creek Instream Water Right Application IS 84562
DOJ File: 690202/GN0835-03

Dear Martha:

At the settlement meeting on February 17, 2005, as well as in a previous meeting with OPRD and OWRD, Roaring Springs Ranch (RSR) proposed three settlement terms:

- (1) Modification of the process when agencies file for instream water rights;
- (2) Modification in this case of the reach of the instream water right to limit it to the wilderness area; and
- (3) Subordination of the instream water right to 6000 acre feet of future storage.

The state is willing to agree to the first two of the three settlement terms; the subordination term, however, is problematic.

1. Process when agencies request instream flows

OPRD and ODFW are willing to enter into a Memorandum of Agreement with OWRD, wherein these agencies would agree to submit written documentation of how the methods in its rules are being applied in preparation of any future application for an instream water right. OWRD is not opposed to a rule change in which it would propose language similar to that you drafted, however an MOA would be immediate and would provide certainty as to the outcome.

2. Limiting reach to wilderness area

OPRD is willing to draft a letter to OWRD amending its application to reduce the reach to encompass only the boundaries of the wilderness area.

3. Subordination

In order for the state to agree to subordination, the subordination would have to be coupled with minimum bypass flows. To this end, the state has been exploring whether and how

minimum bypass flows can be identified that would still be protective of the scenic and recreational values for which the instream water right was requested. Given this, and given that OPRD is seeking to protect as much of Home Creek's natural hydrograph as legally possible, the state has been unable to find a practical or factual basis for accepting flows lower than the estimated average natural flow (ENAF). In addition, OPRD is concerned with the recreational fishery on Home Creek and, short of a study by ODFW, there is no basis upon which to accept lower flows than those requested and still be assured that the recreational fishery can be protected with a subordination in place.

If RSR were willing to accept a settlement agreement where the minimum bypass flows are set at flows levels recommended by ODFW, we should discuss that. However, ODFW has indicated it is unlikely an ODFW study would show that fish can be protected at levels below ENAF at critical times of the year.

Even if the state could agree to bypass flows that are less than the ENAF, subordination to 6,000 acre feet of future storage is unworkable. At an 80% exceedance level, 4 out of 5 years, the entire basin, including Smith Flats and V Lake only receives 5,247 acre feet of water. Further, RSR has offered no factual basis for its demand of 6,000 acre feet of water for future storage.

4. Other possible settlement options

The state is hopeful that even without the subordination, RSR can agree to settlement. As you know, OWRD does not have to use the 50% exceedance when determining whether water is available for a given storage project. This means that if the instream water right is certificated as currently proposed, it, by itself, does not necessarily preclude OWRD from finding water is available for storage. See OAR 690-410-0070(2)(c).

a. Reservation for Multipurpose Storage

ORS 537.356 provides for a local government or an individual cooperating jointly with a local government, to request that the Oregon Water Resources Commission reserve unappropriated water for multipurpose storage for future economic development. One of the main benefits of a reservation of water, is that the priority date is the date on which the commission takes action to initiate the rulemaking process. Consequently, if a reservation were in place, even if RSR were to withdraw its current applications for the upper reservoirs, it could be assured that no other senior instream water rights would be established on Home Creek.

b. Subordination for human consumption and livestock

Off-stream water for livestock can be obtained without first obtaining a water right permit. See ORS 537.141(2). However, there remains the condition to subordinate the instream water right to human consumption and livestock. This means that if a junior water right is issued on Home Creek for human consumption or off-stream livestock use,

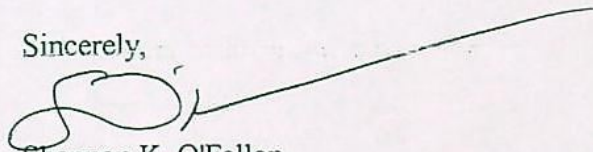
in times of water shortage, these junior water rights would not be regulated off in favor of the instream water right. The subordination does not affect exempt uses.

Using some basic assumptions derived from discussions with range specialists at the Oregon Department of Agriculture, OWRD has determined that for a three months grazing season, July – September, 0.05 cfs (35,000 gallons/day) or 9.88 acre feet is a reasonable cap on the amount of water needed for livestock in the Home Creek Basin.¹

Based on an estimation of ten permits, a reasonable cap for human consumption would be 0.05 cfs (10 x 0.005).

I am hopeful that there is an opportunity for settlement along the lines I have discussed above. Please do not hesitate to contact me with respect to any aspect of these terms.

Sincerely,



Shannon K. O'Fallon
Senior Assistant Attorney General
Natural Resources Section

SKO:lss /GENL9121.DOC

cc: Phillip Ward, OWRD Director
Tim Wood, OPRD Director
Jim Myron, Governor's Office
Rick Kepler, ODFW
Steven Shipsey, DOJ
Shelley McIntyre, DOJ
Barbara Scott-Brier, US DOI
Cindy Weston, BLM
Stephanie Parent, Lewis & Clark College
Karen Russell, Water Watch of Oregon
Ron Yockim, Attorney at Law

¹ The Home Creek Basin is approximately 33 square miles or 21,120 acres. Plant productivity estimates from the Natural Resources Conservation Service (NRCS) indicate total plant dry weight production for the dominant soils in the area to be 1,000 lb/acre in a favorable precipitation year, 800 lbs/acre in a normal year, and 600 lbs/acre in a dry year. Using a maximum forage use of 50% with a minimum remaining not less than 400 lb/acre, total forage available for this allotment would vary between 4.2 and 10.56 million lbs (i.e. 200 lbs max in a dry year or 50% of 1000 lb in a favorable year). In a dry year, assuming that cows are grazing the entire 21,120 acres, and not taking into account the condition of the forage, or forage needed for any other purpose such as wildlife (elk and deer), there would be 5,280 AUMs available, or 4 acres/AUM. An AUM is an animal unit month and is the amount of forage that an animal would need in one month. Given the drought cycle Oregon is currently experiencing, that cattle cannot likely graze all of the acres in the Home Creek Basin, and given that the number of 5,280 AUMs does not take into account the actual condition of the forage, OWRD proposes using a more conservative number of 5 acres/AUM, or 4,224 AUMs. Based on a cow's water needs (16.5 gallons/day for a lactating cow and 9.5 for her calf, 26 gallons total), the amount of water needed for a three months grazing season, July – September is 0.050 cfs or 9.88 acre feet.

ADDED TO FILE
3-4-5
DWT

Exceedance Level: 50

Date: 02/23/2005

WAB ID #: 84562 # WABS ABOVE: 2

Streams Above: 1 HOME CR AT V LAKE RES SITE

2 HOME CR AT SMITH FLAT RES SITE

Mo	Sum Upstream WABs						Difference			Total ac-ft/mo	
	Flow	CSM	% Ann	Flow	CSM	% Ann	Flow	CSM	% Ann w/50% Exc.		
1	3.49	0.10	2.00	0.84	0.12	2.00	2.65	0.09	2.00	0.00	214.59
2	7.05	0.19	4.10	1.70	0.24	4.10	5.35	0.18	4.10	0.00	391.54
3	17.40	0.47	10.10	4.21	0.60	10.20	13.20	0.44	10.10	0.00	1069.88
4	35.60	0.97	20.70	8.59	1.23	20.70	27.00	0.91	20.70	0.00	2118.35
5	53.20	1.45	31.00	12.80	1.84	31.00	40.40	1.36	31.00	0.00	3271.14
6	31.10	0.85	18.10	7.51	1.08	18.10	23.60	0.79	18.10	0.00	1850.58
7	8.39	0.23	4.90	2.03	0.29	4.90	6.36	0.21	4.90	0.00	515.88
8	3.58	0.10	2.10	0.86	0.12	2.10	2.72	0.09	2.10	0.00	220.13
9	3.03	0.08	1.80	0.73	0.10	1.80	2.30	0.08	1.80	0.00	180.30
10	3.15	0.09	1.80	0.76	0.11	1.80	2.39	0.08	1.80	0.00	193.69
11	2.83	0.08	1.60	0.68	0.10	1.60	2.15	0.07	1.60	0.00	168.40
12	2.91	0.08	1.70	0.71	0.10	1.70	2.20	0.07	1.70	0.00	178.93
											10373.40 ac-ft/yr

WAB ID #: 31200808 # WABS ABOVE: 0

Mo	Flow	Sum Upstream WABs					Difference			Difference w/50% Exc.		Total ac-ft/mo
		CSM	% Ann	Flow	CSM	% Ann	Flow	CSM	% Ann			
1	0.14	0.13	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.61	
2	0.28	0.26	4.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15.55	
3	0.70	0.64	10.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43.04	
4	1.42	1.29	20.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	84.50	
5	2.13	1.94	31.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	130.97	
6	1.24	1.13	18.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	73.79	
7	0.34	0.31	4.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	20.91	
8	0.14	0.13	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.61	
9	0.12	0.11	1.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.14	
10	0.13	0.12	1.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.99	
11	0.11	0.10	1.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.55	
12	0.12	0.11	1.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.38	
											415.02 ac-ft/yr	

WAB ID #: 31200809 # WABS ABOVE: 0

Mo	Flow	Sum Upstream WABs					Difference			Total ac-ft/mo
		CSM	% Ann	Flow	CSM	% Ann	Flow	CSM	% Ann w/50% Exc.	
1	0.70	0.12	2.00	0.00	0.00	0.00	0.00	0.00	0.00	43.04
2	1.42	0.24	4.10	0.00	0.00	0.00	0.00	0.00	0.00	78.86
3	3.51	0.60	10.20	0.00	0.00	0.00	0.00	0.00	0.00	215.82
4	7.17	1.22	20.70	0.00	0.00	0.00	0.00	0.00	0.00	426.64
5	10.70	1.82	30.90	0.00	0.00	0.00	0.00	0.00	0.00	657.92
6	6.27	1.07	18.10	0.00	0.00	0.00	0.00	0.00	0.00	373.09
7	1.69	0.29	4.90	0.00	0.00	0.00	0.00	0.00	0.00	103.91
8	0.72	0.12	2.10	0.00	0.00	0.00	0.00	0.00	0.00	44.27
9	0.61	0.10	1.80	0.00	0.00	0.00	0.00	0.00	0.00	36.30
10	0.63	0.11	1.80	0.00	0.00	0.00	0.00	0.00	0.00	38.74
11	0.57	0.10	1.60	0.00	0.00	0.00	0.00	0.00	0.00	33.92
12	0.59	0.10	1.70	0.00	0.00	0.00	0.00	0.00	0.00	36.28
										2088.79 ac-ft/yr

Mo	Flow	Sum Upstream WABs			Difference			Difference		Total ac-ft/mo
		CSM	% Ann	Flow	CSM	% Ann	Flow	CSM	% Ann w/50% Exc.	
1	0.36	0.06	2.10	0.00	0.00	0.00	0.00	0.00	0.34	22.14
2	0.55	0.09	3.10	0.00	0.00	0.00	0.00	0.00	0.87	30.55
3	1.30	0.22	7.40	0.00	0.00	0.00	0.00	0.00	2.21	79.93
4	3.79	0.64	21.60	0.00	0.00	0.00	0.00	0.00	3.38	225.52
5	5.18	0.88	29.60	0.00	0.00	0.00	0.00	0.00	5.52	318.51
6	3.32	0.56	19.00	0.00	0.00	0.00	0.00	0.00	2.95	197.55
7	0.94	0.16	5.40	0.00	0.00	0.00	0.00	0.00	0.75	57.80
8	0.46	0.08	2.60	0.00	0.00	0.00	0.00	0.00	0.26	28.28
9	0.41	0.07	2.30	0.00	0.00	0.00	0.00	0.00	0.20	24.40
10	0.43	0.07	2.50	0.00	0.00	0.00	0.00	0.00	0.20	26.44
11	0.41	0.07	2.30	0.00	0.00	0.00	0.00	0.00	0.16	24.40
12	0.36	0.06	2.10	0.00	0.00	0.00	0.00	0.00	0.23	22.14
										1057.65 ac-ft/yr

Home Creek Carrying Capacity – Estimate based on limited information

Assumptions:

Elevation 5500 – 7600 ft. from west to east

- mostly gradual elevation change

Precipitation primarily winter – spring; July and August are generally dry

Grazing season

33.66 sq. m

Conservation

Moderate (

At 10 ac/AU

At 5 ac/AU

Capacity

10 ac/AU

5 ac/AU

Mike
1500
folder

nit month) – see definition below
c/AUM

animal units	
grazing	3 months grazing
075	715
150	1430

If the grazing season is extended into the fall, numbers would be adjusted accordingly if they are in for the entire season.

Definitions:

Animal Unit Month (AUM): The amount of dry forage required by one animal unit for one month based on a forage allowance of 26 pounds per day.

Animal Unit: Considered to be one mature cow of approximately 1000 pounds, either dry or with calf up to 6 months of age, or their equivalent, based on a standardized amount of forage consumed.

Home Creek Carrying Capacity – Estimate based on limited information

Assumptions:

Elevation 5500 – 7600 ft. from west to east

- mostly gradual elevation change

Precipitation primarily winter – spring; July and August are generally dry

Grazing season: July - September

33.66 sq. miles X 640 ac/sq. mi. = 21542 acres

Conservative carrying capacity = 10 ac/AUM (animal unit month) – see definition below

Moderate (probably reasonable) carrying capacity = 5 ac/AUM

At 10 ac/AUM, carrying capacity = 2150 AUMs

At 5 ac/AUM, carrying capacity = 4300 AUMs

Capacity	Number of animal units		
	1 month grazing	2 months grazing	3 months grazing
10 ac/AUM	2150	1075	715
5 ac/AUM	4300	2150	1430

If the grazing season is extended into the fall, numbers would be adjusted accordingly if they are in for the entire season.

Definitions:

Animal Unit Month (AUM): The amount of dry forage required by one animal unit for one month based on a forage allowance of 26 pounds per day.

Animal Unit: Considered to be one mature cow of approximately 1000 pounds, either dry or with calf up to 6 months of age, or their equivalent, based on a standardized amount of forage consumed.

ORE

Post-it® Fax Note		7671	Date	# of pages
To			From	3/18/05
Co./Dept.			Co.	
Phone #			Phone #	2535
Fax #			Fax #	

ES



State of Oregon
 Water Resources Department
 725 Summer St NE, Ste A
 Salem, OR 97301-1266
 (503) 986-0800
www.wrd.state.or.us

FAX TRANSMITTAL

TO: Rick Keppler FAX NUMBER: 503-947-6070
 DATE: 3/18/05 PAGES: 3, INCLUDING COVER SHEET
 FROM: Dwight French PHONE: (503) 986-0 819
 COMMENTS: _____

- WATER RIGHTS**
- Water Rights information
 - Adjudications
 - Hydroelectric
 - Certifications / Final Proofs
 - Hearings / Contested Cases

FAX: (503) 986-0901

- FIELD SERVICES**
- Regional Liaisons
 - Transfers
- TECHNICAL SERVICES**
- Hydrographics
 - Ground Water
 - Information Services
 - GIS/Mapping
 - Dam Safety
 - Enforcement
 - Water Use Reporting

FAX: (503) 986-0902

- NORTHWEST REGION**
- District 16 Watermaster
- DIRECTOR'S OFFICE**
- Water Resources Commission
 - Legislation and Rules
 - Public Information
- ADMINISTRATIVE SERVICES**
- Fiscal / Accounting
 - Human Resources / Personnel
 - Water Development Loan Fund
 - Support Services

FAX: (503) 986-0903

OREGON WATER RESOURCES DEPARTMENT



State of Oregon
Water Resources Department
725 Summer St NE, Ste A
Salem, OR 97301-1266
(503) 986-0800
www.wrd.state.or.us

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ADMINISTRATIVE SERVICES

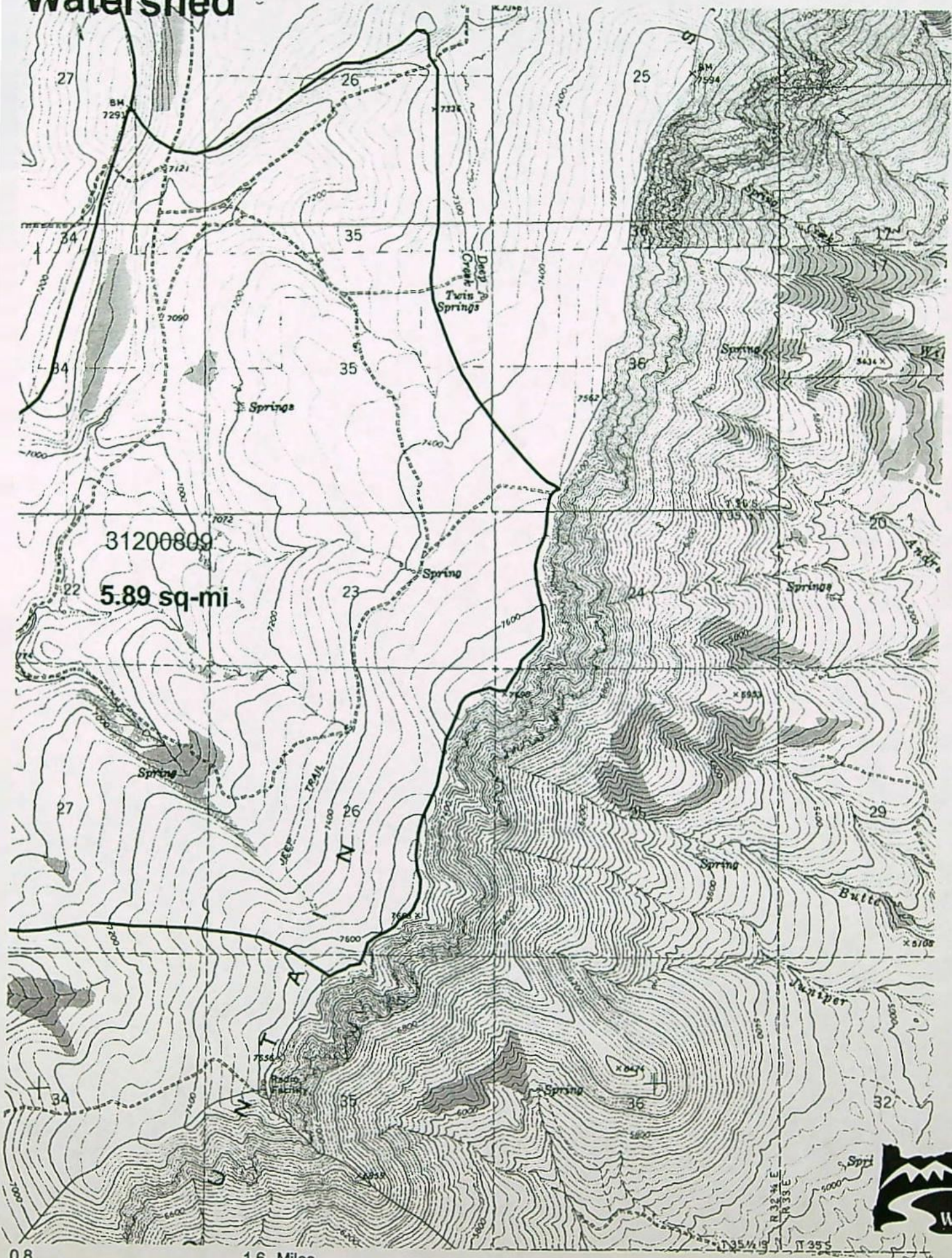
- Fiscal / Accounting
- Human Resources / Personnel
- Water Development Loan Fund
- Support Services

FAX: (503) 986-0903

C



Watershed



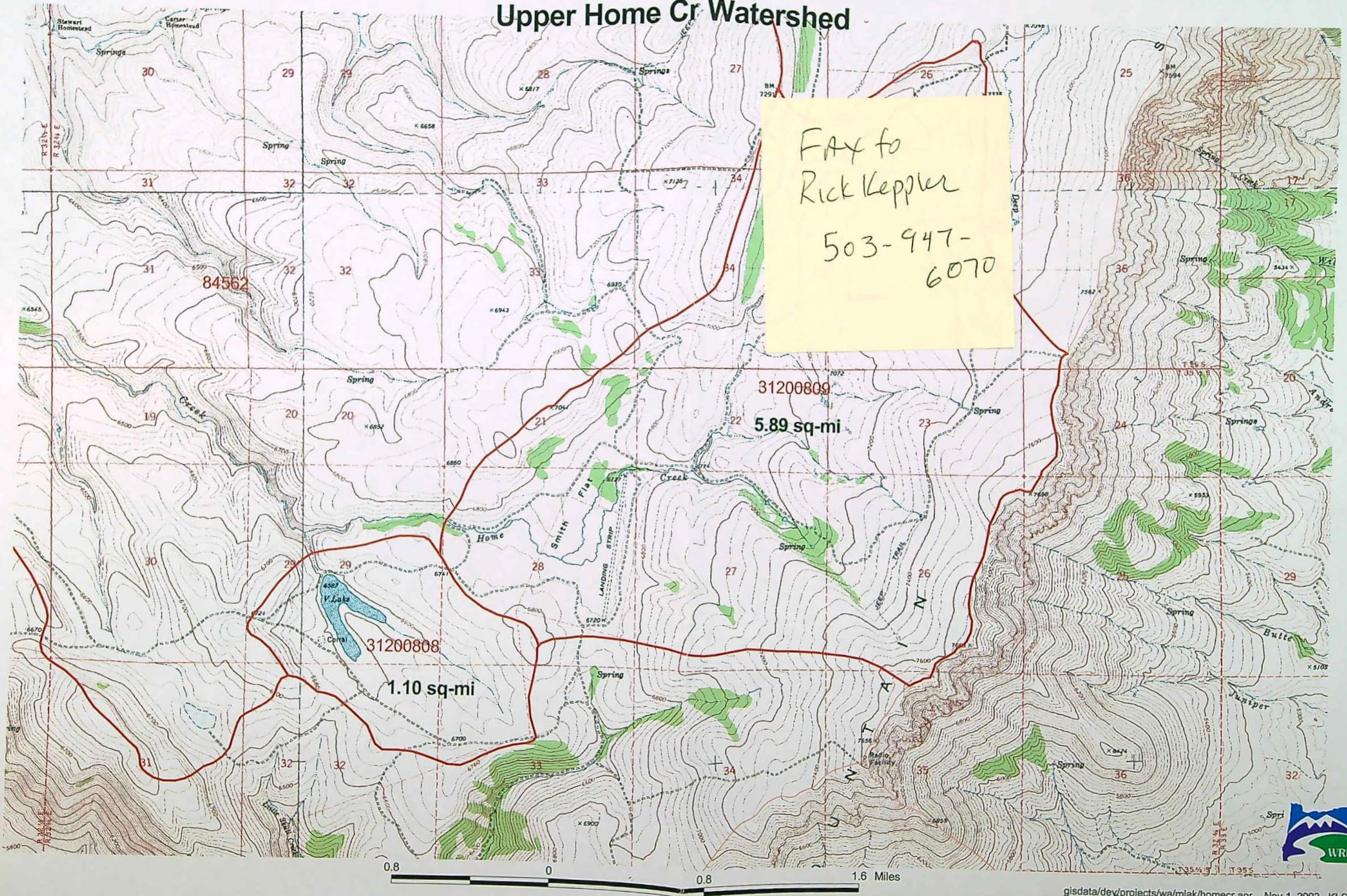
0.8 1.6 Miles



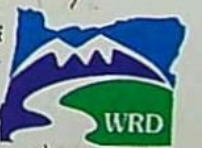
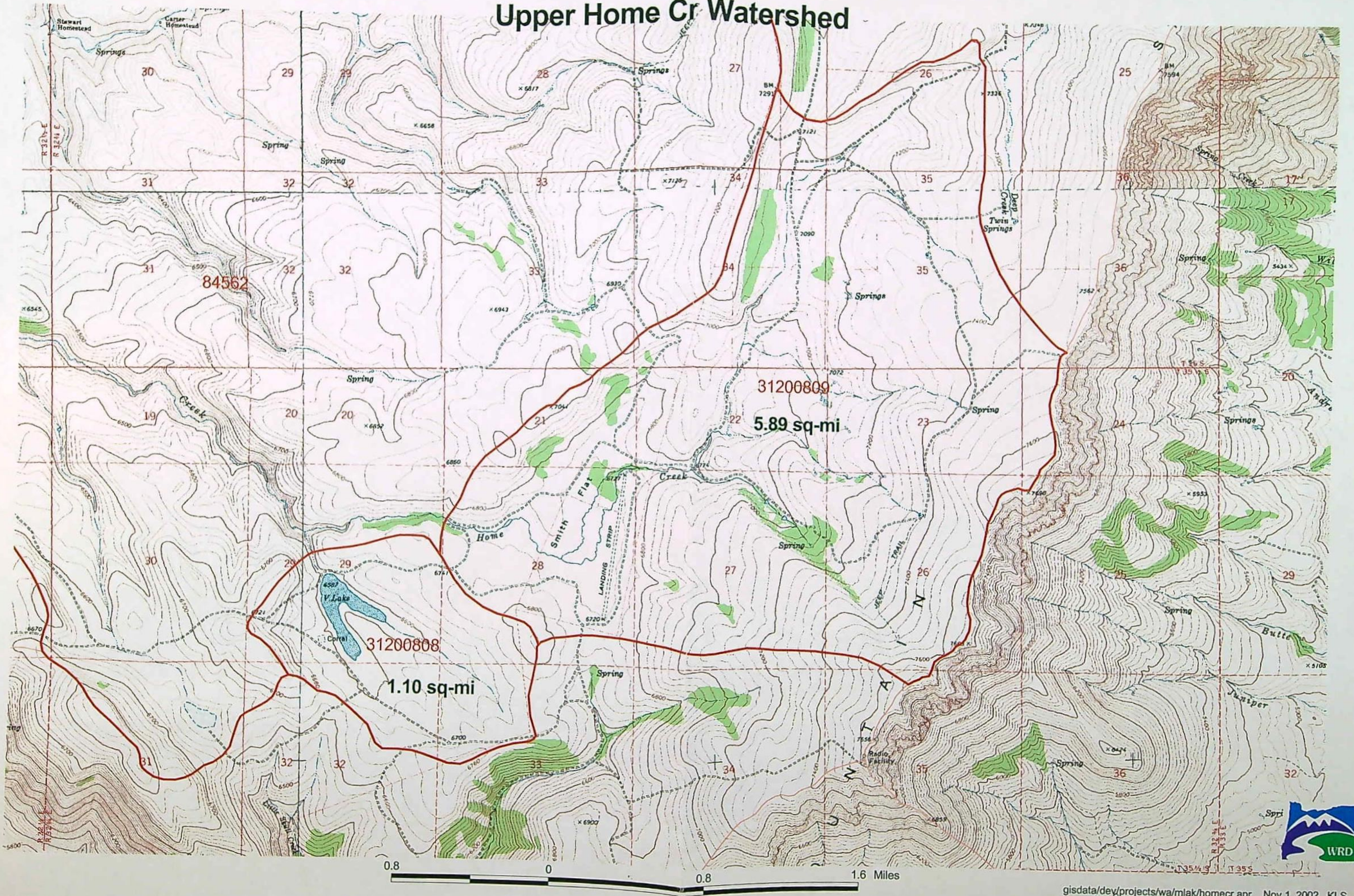
Upper Home Cr Watershed

Fax to
Rick Keppler

503-947-
6070



Upper Home Cr Watershed



HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

March 11, 2005

RECEIVED

BY E-MAIL TO daina.upite@state.or.us
and REGULAR MAIL

Daina Upite
Administrative Law Judge
Office of Administrative Hearings
Salem, OR 97309-4020

RE: In the Matter of the Water Right Application IS 8456
Resources Department
DOJ File No.: 690-202-GN0835-03

Dear Administrative Law Judge Daina Upite:

Enclosed herewith for filing in the above-captioned matter on behalf of the Oregon Water Resources Department are the following:

1. Order on Petition for an Order to take a Deposition of a Witness; and
2. Certificate of Filing/Service.

Sincerely,

A handwritten signature in black ink, appearing to read "S. O'Fallon".

Shannon K. O'Fallon
Senior Assistant Attorney General
Natural Resources Section

SKO:lal/GENL9148

Enclosure

c: Service List

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

March 11, 2005

RECEIVED
MAR 14 2005
WATER RESOURCES DEPT.
SALEM, OREGON

BY E-MAIL TO daina.upite@state.or.us
and REGULAR MAIL

Daina Upite
Administrative Law Judge
Office of Administrative Hearings
Salem, OR 97309-4020

RE: In the Matter of the Water Right Application IS 84562 in the name of the Oregon Water
Resources Department
DOJ File No.: 690-202-GN0835-03

Dear Administrative Law Judge Daina Upite:

Enclosed herewith for filing in the above-captioned matter on behalf of the Oregon Water
Resources Department are the following:

1. Order on Petition for an Order to take a Deposition of a Witness; and
2. Certificate of Filing/Service.

Sincerely,

Shannon K. O'Fallon
Senior Assistant Attorney General
Natural Resources Section

SKO:lal/GENL9148
Enclosure
c: Service List

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84562 in the Name of the Oregon	)	
Parks and Recreation Department	)	
<i>Applicant</i>	)	ORDER ON PETITION
	)	FOR AN ORDER TO TAKE
	)	A DEPOSITION OF A WITNESS
	)	
Roaring Springs Ranch, Inc.	)	
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Intervenor</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Intervenor</i>	)	

Pursuant to OAR 137-003-0572(1), depositions may not be taken in a contested case without agency authorization. Once a petition for an agency order to take a deposition of a witness is filed, the agency "shall consider the petition and issue a written order either granting or denying the deposition." *Id.*, at (3).

Roaring Springs Ranch (RSR) has petitioned the Oregon Water Resources Department for an order to take the deposition of Steven C. Brutscher, a former employee of the Oregon Parks and Recreation Department (OPRD).¹ As noted by RSR,

¹ Water Watch also filed a request for a deposition, but in the alternative, requested an informal meeting with staff at the Department to discuss the condition in the Proposed Final Order relating to subordination to human consumption and livestock. An informal meeting was held, and WaterWatch informed the Department it did not need to conduct a deposition.

Mr. Brutscher prepared the instream water right application at issue. RSR argues that Mr. Brutscher's testimony is material, and there is no other adequate means of obtaining the witness's testimony.

The issues that remain for hearing, and which RSR believes Mr. Brutscher has information, are:

1. Whether OWRD erred by failing to limit the proposed instream water right to the "minimum" amount needed; and
2. Whether there is a basis for asserting a public recreational interest, as required under ORS 537.336, when there is no public access to Home Creek for approximately one-half of the reach proposed for inclusion in an instream water right, because it is within private lands owned by RSR, and because the stream is not navigable for public recreational purposes.

OPRD objected to the request for a deposition arguing that the first issue stated above is whether the Department erred in failing to limit the proposed instream water right to the minimum amount needed, not whether OPRD erred in requesting a particular level of flow. Therefore, Mr. Brutscher's testimony is unlikely to yield material testimony. In addition, OPRD points out that RSR asserts "only Mr. Brutscher can testify as to whether and how he considered the minimum flow and public access issues while preparing application IS 84562." OPRD Objection, at 2, quoting RSR Petition, at 3. In OPRD's view, RSR wants to continue to delve into whether OPRD was required to consider minimum flows in preparing the application, which is an issue that has been resolved through summary judgment motions. Lastly, OPRD argues that with respect to

issue two above, RSR could obtain the necessary information from Mr. Brutscher through interrogatories.

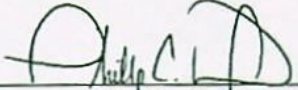
RSR responded to OPRD's objection, arguing that Mr. Brutscher's testimony "will tend to prove whether the requested amount was, in fact, the minimum quantity required to support the proposed public use, and thus whether the Oregon Water Resources Department ("OWRD") erred in proposing to approve the requested amount." RSR Reply, at 2. RSR also argues that interrogatories are limited to twenty and the method does not allow for follow-up questions . . . [i]t is essential that Roaring Springs have the opportunity to conduct an unrestricted inquiry into the thought process of Mr. Brutscher with respect to Issues 1 and 2 . . ." *Id.*, at 3.

Mr. Brutscher's testimony will likely be material to issues 1 and 2 stated above. However, there is a preference in the Model Rules governing contested cases for seeking information through informal means, before requesting an order requiring discovery. *See* OAR 137-003-0570. The Department considers depositions to be the most formal means of discovery, and a deposition should be ordered only as a last-resort. In this case, RSR requested documents from OPRD, but did not attempt to engage in any other informal or formal means of discovery, such as requests for admission or interrogatories. It is unconvincing that interrogatories would not yield material information, when RSR did not even attempt to gather information through this method. While interrogatories are limited to twenty, a party may also submit up to twenty requests for admission. Further, Mr. Brutscher submitted an affidavit during summary judgment briefing which explains the thought process he went through in filing the application.

///

Given the facts above, the Department denies RSR's Petition for an Order to Take
a Deposition of a Witness.

DATED this 14th day of March 2005.



Phillip C. Ward, Director
Oregon Water Resources Department

CERTIFICATE OF FILING/SERVICE

I certify that on March 11, 2005, the ORDER ON PETITION FOR AN ORDER TO TAKE A DEPOSITION OF A WITNESS was filed with Daina Upite, Administrative Law Judge, Office of Administrative Hearings, PO Box 14020, Salem, OR 97309-4020, via e-mail to daina.upite@state.or.us and stacey.a.silbernagel@state.or.us, and via first-class mail, postage prepaid. I further certify that a true and correct copy of the above document was served on March 11, 2005, by e-mail (where an e-mail address is indicated), and by first-class mail postage prepaid to the addresses below.

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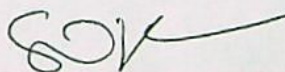
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Of Attorneys for the Oregon Water
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Mike Reynolds,

For the File

Carly

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STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation,
Applicant

Roaring Springs Ranch, Inc.,
Protestant

Harney County Court,
Protestant

WaterWatch of Oregon,
Protestant

Oregon Department of Fish & Wildlife,
Intervenor

United States Department of Interior Bureau
of Land Management,
Intervenor

REPLY TO OREGON PARKS AND
RECREATION DEPARTMENT'S
OBJECTION TO ROARING SPRINGS
RANCH, INC.'S PETITION TO
OREGON WATER RESOURCES
DEPARTMENT FOR AN ORDER TO
TAKE DEPOSITIONS

INTRODUCTION

On February 25, 2005, applicant Oregon Parks and Recreation Department ("OPRD") filed an objection to Roaring Springs Ranch, Inc.'s ("Roaring Springs") petition for an order to take the deposition of Steven C. Brutscher, Natural Resources Specialist IV for OPRD. OPRD objects to Roaring Springs' request on two bases. First, OPRD claims that the requested deposition of Mr. Brutscher is unlikely to yield testimony material to Issue 1 in this case,¹

¹ The February 3, 2005 Post Pre-Hearing Conference Order, Scheduling Order defines Issue 1 as:
"Whether OWRD erred by failing to limit the proposed instream water right to the 'minimum' amount needed." See Order at 2.

because Administrative Law Judge ("ALJ") Upite has held that "OPRD was not required, as a matter of law, to apply for the minimum quantity of water necessary to support public use." See Order on Motions for Ruling on Legal Issues at 5 (August 11, 2004). Second, OPRD objects to Roaring Springs request to depose Mr. Brutscher as to Issue 2 in this case,² because OPRD believes written interrogatories would be an adequate method of obtaining the requested testimony. Accordingly, Roaring Springs offers this reply to further clarify the bases for its proposed deposition of Mr. Brutscher.

ROARING SPRINGS' REPLY

Roaring Springs has not mischaracterized Issue 1, as suggested by OPRD. Roaring Springs acknowledges that the legal issue for hearing is "[w]hether OWRD erred by failing to limit the proposed instream water right to the 'minimum' amount needed." See February 3, 2005 Post Pre-Hearing Conference Order; Scheduling Order at 2. However, ALJ Upite recognized the importance of resolving a related factual issue, namely, "whether the minimum quantity required to support the public use is equal to the necessary quantity requested by OPRD." See Order on Motions for Ruling on Legal Issues at 5 (August 11, 2004). Although Oregon law may not require OPRD to request the minimum quantity required to support the proposed public use, Mr. Brutscher's testimony is still material to this factual issue. His testimony will tend to prove whether the requested amount was, in fact, the minimum quantity required to support the proposed public use, and thus whether the Oregon Water Resources Department ("OWRD") erred in proposing to approve the requested amount. It does not matter whether Mr. Brutscher

² The February 3, 2005 Post Pre-Hearing Conference Order; Scheduling Order defines Issue 2 as: "Whether there is a basis for asserting a public recreational interest, as required under ORS 537.336, when there is no public access to Home Creek for approximately one-half of the reach proposed for inclusion in an instream water right, because it is within private lands owned by Roaring Springs Ranch, and because the stream is not navigable for public recreation purposes."

was required by statute to request the minimum quantity. Therefore, Mr. Brutscher's testimony is material to Issue 1 in this case.

OPRD also objects to Roaring Springs request to depose Mr. Brutscher as to Issue 2 in this case, because OPRD believes written interrogatories would be an adequate method of obtaining the requested testimony. However, the number of written interrogatories is limited to twenty and the method does not allow for follow-up questions. See OAR 137-003-0570(5)(f). Moreover, documents in Roaring Springs' possession indicate that OPRD based its request for an in-stream water right largely on the undocumented thought process of Mr. Brutscher. See Affidavit of Steven C. Brutscher in Support of Oregon Parks and Recreation Department's and Oregon Water Resources Department's Responses ¶ 10. This makes it very difficult, if not impossible, for Roaring Springs to obtain the requested testimony by means of written interrogatories. It is essential that Roaring Springs have the opportunity to conduct an unrestricted inquiry into the thought process of Mr. Brutscher with respect to Issues 1 and 2 in this case.

Roaring Springs has requested an order to depose Mr. Brutscher pursuant to the Oregon Administrative Procedures Act ("APA") and OAR 137-003-0572. See ORS 183.425. The APA "evinces an intent fully to inform persons of the case before them." *Spray v. Board of Medical Examiners*, 50 Or. App. 311, 330 (1981)(citing ORS 183.413). The Oregon Court of Appeals has said "a party to a contested case hearing has the right to be generally informed of the case ..." *Gregg v. Oregon Racing Com.*, 38 Or. App. 19, 26 (1979). Although this right does not include the "right to delve and pry into all the records of the agency, or to examine secret reports of the agency's investigators," see *Id.*, that is not what Roaring Springs is trying to do. Due process requires OWRD and OPRD to allow discovery of all the evidence the agencies may

rely upon in this case, including the testimony of OWRD and OPRD's key witness, Mr. Brutscher. *See Spray*, 50 Or. App. at 330; 49 Op. Atty Gen. Ore. 32, 64-65 (April 29, 1998). The proposed deposition of Mr. Brutscher would not prejudice Mr. Brutscher's rights or the rights of OPRD. Mr. Brutscher and OPRD would be represented by counsel, who would be allowed to raise objections and ensure that questioning is not conducted in bad faith. *See OAR* 137-003-0572.

Discovery rules for contested case hearings "are intended to facilitate prompt, fair and fully informed resolution of a contested case." *See Oregon Attorney General's Administrative Law Manual* at 94 (January 15, 2004) ("Attorney General's Manual"). The Attorney General's Manual says that discovery is

"designed to expedite the contested case hearing and to facilitate developing a full record for a fair decision on the merits by allowing pre-hearing exchange of information. Discovery should be used to the extent that it allows parties and the agency to become better prepared for the hearing, to dispense with proof of uncontested matters, to avoid surprise at the hearing and the need for a continuance, and to increase the likelihood of informal resolution of the contested case."

In this case, the proposed deposition of Mr. Brutscher is the only adequate method for preparing for hearing on these issues. It is also the only method that would be consistent with the fundamental objectives of discovery, which include expediting and simplifying agency proceedings.

CONCLUSION

Based on the foregoing arguments and authorities, Roaring Springs respectfully urges OWRD to disregard OPRD's objections and grant Roaring Springs' request for an order to take the deposition of Mr. Brutscher on Issues 1 and 2.

PAGE 4 – REPLY TO OREGON PARKS AND RECREATION DEPARTMENT'S
OBJECTION TO ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON
WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE
DEPOSITIONS

Dated this 4th day of March, 2005.



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PAGE 5 - REPLY TO OREGON PARKS AND RECREATION DEPARTMENT'S
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DEPOSITIONS

pdx/073928/137595/DWM/1279521.1

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2005 I delivered a true and correct copy of REPLY TO OREGON PARKS AND RECREATION DEPARTMENT'S OBJECTION TO ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE DEPOSITIONS via facsimile and by depositing same in the U.S. Post Office, at Portland, Oregon, with sufficient first-class postage prepaid, addressed to the following:

Original to:

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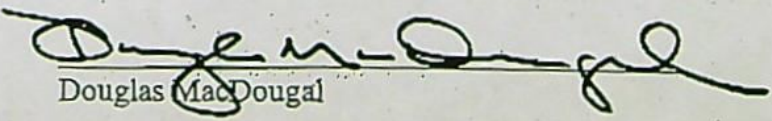
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Dated this 4th day of March, 2005.


Douglas MacDougal

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
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Applicant

Roaring Springs Ranch, Inc.,
Protestant

Harney County Court,
Protestant

WaterWatch of Oregon,
Protestant

Oregon Department of Fish & Wildlife,
Intervenor

United States Department of Interior Bureau
of Land Management,
Intervenor

REPLY TO OREGON PARKS AND
RECREATION DEPARTMENT'S
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RANCH, INC.'S PETITION TO
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DEPARTMENT FOR AN ORDER TO
TAKE DEPOSITIONS

Mike Reynolds,

For File

Thx.
(Cindy)

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REPLY TO OREGON PARKS AND
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RANCH, INC.'S PETITION TO
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DEPARTMENT FOR AN ORDER TO
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“Whether there is a basis for asserting a public recreational interest, as required under ORS 537.336, when there is no public access to Home Creek for approximately one-half of the reach proposed for inclusion in an instream water right, because it is within private lands owned by Roaring Springs Ranch, and because the stream is not navigable for public recreation purposes.”

was required by statute to request the minimum quantity. Therefore, Mr. Brutscher's testimony is material to Issue 1 in this case.

OPRD also objects to Roaring Springs request to depose Mr. Brutscher as to Issue 2 in this case, because OPRD believes written interrogatories would be an adequate method of obtaining the requested testimony. However, the number of written interrogatories is limited to twenty and the method does not allow for follow-up questions. *See* OAR 137-003-0570(5)(f). Moreover, documents in Roaring Springs' possession indicate that OPRD based its request for an in-stream water right largely on the undocumented thought process of Mr. Brutscher. *See* Affidavit of Steven C. Brutscher in Support of Oregon Parks and Recreation Department's and Oregon Water Resources Department's Responses ¶ 10. This makes it very difficult, if not impossible, for Roaring Springs to obtain the requested testimony by means of written interrogatories. It is essential that Roaring Springs have the opportunity to conduct an unrestricted inquiry into the thought process of Mr. Brutscher with respect to Issues 1 and 2 in this case.

Roaring Springs has requested an order to depose Mr. Brutscher pursuant to the Oregon Administrative Procedures Act ("APA") and OAR 137-003-0572. *See* ORS 183.425. The APA "evinces an intent fully to inform persons of the case before them." *Spray v. Board of Medical Examiners*, 50 Or. App. 311, 330 (1981)(citing ORS 183.413). The Oregon Court of Appeals has said "a party to a contested case hearing has the right to be generally informed of the case ..." *Gregg v. Oregon Racing Com.*, 38 Or. App. 19, 26 (1979). Although this right does not include the "right to delve and pry into all the records of the agency, or to examine secret reports of the agency's investigators," *see* *Id.*, that is not what Roaring Springs is trying to do. Due process requires OWRD and OPRD to allow discovery of all the evidence the agencies may

rely upon in this case, including the testimony of OWRD and OPRD's key witness, Mr. Brutscher. *See Spray*, 50 Or. App. at 330; 49 Op. Atty Gen. Ore. 32, 64-65 (April 29, 1998). The proposed deposition of Mr. Brutscher would not prejudice Mr. Brutscher's rights or the rights of OPRD. Mr. Brutscher and OPRD would be represented by counsel, who would be allowed to raise objections and ensure that questioning is not conducted in bad faith. *See* OAR 137-003-0572.

Discovery rules for contested case hearings "are intended to facilitate prompt, fair and fully informed resolution of a contested case." *See* Oregon Attorney General's Administrative Law Manual at 94 (January 15, 2004) ("Attorney General's Manual"). The Attorney General's Manual says that discovery is

"designed to expedite the contested case hearing and to facilitate developing a full record for a fair decision on the merits by allowing pre-hearing exchange of information. Discovery should be used to the extent that it allows parties and the agency to become better prepared for the hearing, to dispense with proof of uncontested matters, to avoid surprise at the hearing and the need for a continuance, and to increase the likelihood of informal resolution of the contested case."

In this case, the proposed deposition of Mr. Brutscher is the only adequate method for preparing for hearing on these issues. It is also the only method that would be consistent with the fundamental objectives of discovery, which include expediting and simplifying agency proceedings.

CONCLUSION

Based on the foregoing arguments and authorities, Roaring Springs respectfully urges OWRD to disregard OPRD's objections and grant Roaring Springs' request for an order to take the deposition of Mr. Brutscher on Issues 1 and 2.

PAGE 4 – REPLY TO OREGON PARKS AND RECREATION DEPARTMENT'S
OBJECTION TO ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON
WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE
DEPOSITIONS

Dated this 4th day of March, 2005.



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(503) 796-2900 FAX
dmacdougal@schwabe.com
Of Attorneys for Roaring Springs Ranch

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2005 I delivered a true and correct copy of REPLY TO OREGON PARKS AND RECREATION DEPARTMENT'S OBJECTION TO ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE DEPOSITIONS via facsimile and by depositing same in the U.S. Post Office, at Portland, Oregon, with sufficient first-class postage prepaid, addressed to the following:

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Phillip C. Ward, Acting Director
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Salem, OR 97301
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Fax: 503-986-0903
Email: phillip.c.ward@wrdd.state.or.us

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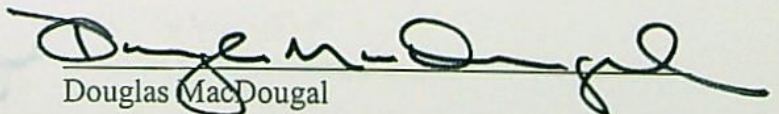
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Dated this 4th day of March, 2005.


Douglas MacDougal

Oregon Water Resources Department



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Phone: 503-986-0900
<http://www.wrd.state.or.us>

~~Jonnie~~
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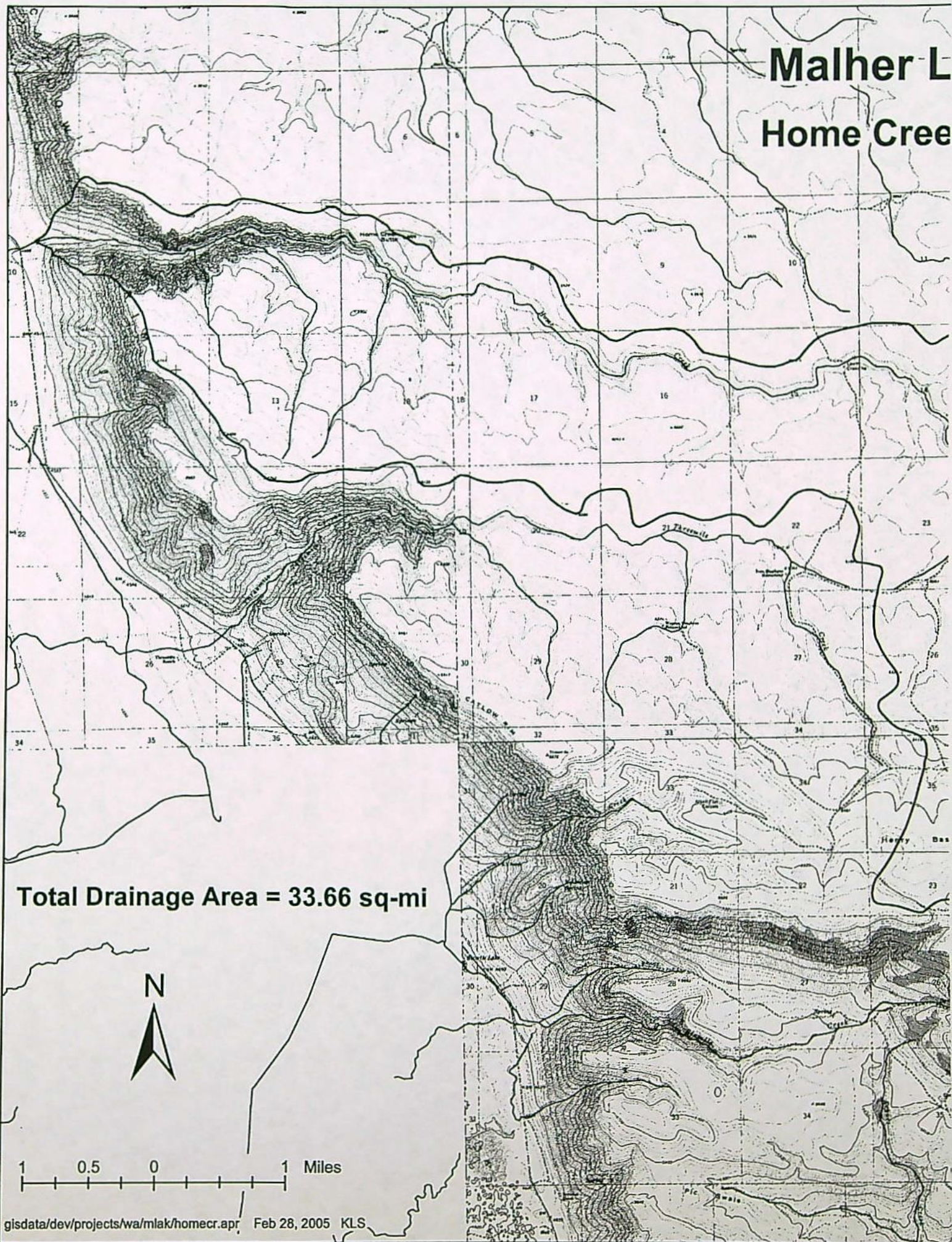
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Malher L Home Cree



Total Drainage Area = 33.66 sq-mi



1 0.5 0 1 Miles

ike Basin Watershed

84562

26.67 sq-mi

5.89 sq-mi

31200809

1.10 sq-mi
31200808



Malher Lake Basin Home Creek Watershed

Total Drainage Area = 33.66 sq-mi



1 0.5 0 1 Miles

84562

26.67 sq-mi

5.89 sq-mi

31200809

1.10 sq-mi

31200808





Mike Reynolds
for the file

Cindy

ON & WYATT, P.C.

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STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation,
Applicant

Roaring Springs Ranch, Inc.,
Protestant

Harney County Court,
Protestant

WaterWatch of Oregon,
Protestant

Oregon Department of Fish & Wildlife,
Intervenor

United States Department of Interior Bureau
of Land Management,
Intervenor

PROTESTANT ROARING SPRINGS
RANCH, INC.'S PETITION TO
OREGON WATER RESOURCES
DEPARTMENT FOR AN ORDER TO
TAKE DEPOSITIONS

Pursuant to ORS 183.425 and OAR 137-003-0572, Protestant Roaring Springs Ranch, Inc. ("Roaring Springs") petitions the Oregon Water Resources Department for an order to take the deposition of Steven C. Brutscher, Natural Resources Specialist IV for the Oregon Parks and Recreation Department ("OPRD").

ELEMENTS OF PETITION

1. Name and address of witness

Steven C. Brutscher

Oregon Parks and Recreation Dept.

PAGE 1 – PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON
WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE
DEPOSITIONS

pdx/073928/137595/DWM/1275738.1

725 Summer St. NE, Suite C

Salem, OR 97301

2. Testimony of the Witness is Material

Testimony is material if it "tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable." OAR 137-003-0572(2). The issues that remain for hearing include: (1) whether the quantity of water requested by OPRD is the minimum quantity required to support the proposed recreational use, as required by ORS 537.332 and 537.343; and (2) whether public uses relating to recreation and scenic attraction are associated with Home Creek where it flows through private land, as required by 537.336(3).

The testimony of Steven C. Brutscher is material to both of these issues. Mr. Brutscher prepared application IS 84562 for OPRD and was the person responsible for determining the amount of water requested in that application. He chose to request an amount that would "preserve the present characteristics of Home Creek." See Affidavit of Steven C. Brutscher in Support of Oregon Parks and Recreation Department's and Oregon Water Resources Department's Responses ¶ 12. His testimony would tend to prove whether OPRD requested the minimum quantity required to support the proposed recreational uses. In addition, Mr. Brutscher could testify, based on personal experience and conversations with others, as to whether the public is able to view Home Creek in areas where the creek flows through private lands. See Affidavit of Steven C. Brutscher ¶¶ 8, 9, 12.

3. No Other Means of Obtaining the Witness's Testimony is Adequate

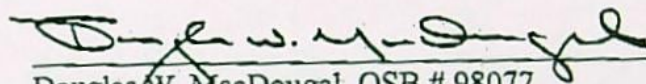
Taking a deposition is the only adequate method for obtaining Mr. Brutscher's testimony as to whether OPRD requested the minimum quantity of water to support recreational uses and whether the public is able to use stream reaches that cross private lands. Roaring Springs cannot obtain the kind of detailed information necessary to resolve these issues by means of other discovery methods, which do not allow the type of examination that is necessary. Mr.

Brutscher's affidavit raises a number of questions regarding the minimum flow and public access issues, which cannot be answered by reference to the records produced by OPRD and OWRD. OPRD based application IS 84562 largely on the undocumented "thought process" of Mr. Brutscher. *See e.g.* Affidavit of Steven C. Brutscher ¶ 10. As a result, there are few relevant documents available and only Mr. Brutscher can testify as to whether and how he considered the minimum flow and public access issues while preparing application IS 84562.

CONCLUSION

For the reasons above, Roaring Springs respectfully requests an order to take the deposition of Steven C. Brutscher.

Dated this 16th day of February, 2005.



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Of Attorneys for Roaring Springs Ranch

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2005 I delivered a true and correct copy of
 PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON WATER
 RESOURCES DEPARTMENT FOR AN ORDER TO TAKE DEPOSITIONS via facsimile and
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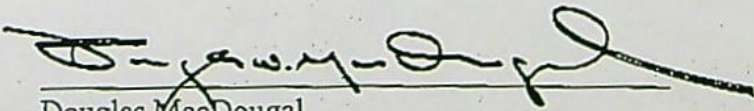
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Dated this 16th day of February, 2005.


Douglas MacDougal

HARD
Attorney

Mike Reynolds
for the record.

Thanks,
Cindy



DEPARTMENT OF JUSTICE
LEGAL COUNSEL DIVISION

February 25, 2005

and phillip.c.ward@wrds.state.or.us

Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
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Phillip C. Ward
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Salem, OR 97309-4020

RE: In the Matter of the Water Right Application IS 84562 in the name of the Oregon Parks
and Recreation Department
DOJ File No.: 690-202-GN0835-03

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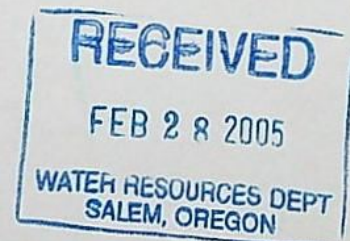
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2. Certificate of Filing/Service.

Sincerely,

Shannon K. O'Fallon
Senior Assistant Attorney General
Natural Resources Section

SKO:la/GENL0460
Enclosure
c: Service List





DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 25, 2005

BY E-MAIL TO daina.upite@state.or.us and phillip.c.ward@wrd.state.or.us
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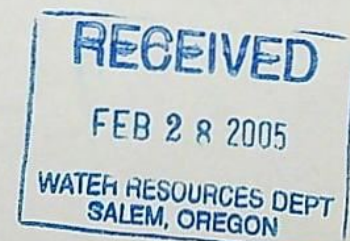
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1. Limited Objection to WaterWatch's Request for Deposition of Witness; and
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Sincerely,

Shannon K. O'Fallon
Senior Assistant Attorney General
Natural Resources Section

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Enclosure
c: Service List



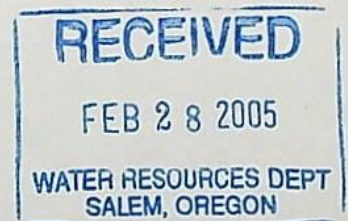
STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	
IS 84562 in the Name of the Oregon	)	
Parks and Recreation Department	)	
<i>Applicant</i>	)	LIMITED OBJECTION TO
	)	WATERWATCH'S REQUEST
	)	FOR DEPOSITION OF
	)	WITNESS
Roaring Springs Ranch, Inc.	)	
<i>Protestant</i>	)	
	)	
Harney County Court	)	
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Intervenor</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Intervenor</i>	)	

WaterWatch has requested the deposition(s) of unspecified Oregon Water Resources Department witnesses, who have knowledge about the basis for the proposed condition to give priority to human and livestock use over the instream use. WaterWatch has also submitted a request to the Department to informally exchange information about this matter, in lieu of depositions. The Department and WaterWatch have agreed to meet and discuss the condition to give priority to human and livestock use. The Department

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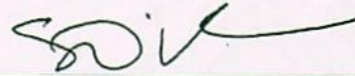
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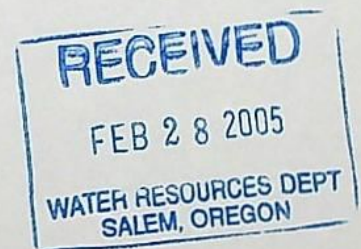
intends to answer questions posed by WaterWatch in this informal meeting, and therefore, the Department objects to the request for depositions.

DATED this 25th day of February 2005.

Respectfully Submitted,



Shannon K. O'Fallon, #00169
Assistant Attorney General
Of Attorneys for the Oregon Water
Resources Department



CERTIFICATE OF FILING/SERVICE

I certify that on February 25, 2005, the LIMITED OBJECTION TO WATERWATCH'S REQUEST FOR DEPOSITION OF WITNESS was filed with Daina Upite, Administrative Law Judge, Office of Administrative Hearings, PO Box 14020, Salem, OR 97309-4020, via e-mail to daina.upite@state.or.us and stacey.a.silbernagel@state.or.us, and via first-class mail, postage prepaid. I further certify that a true and correct copy of the above document was served on February 25, 2005, by e-mail (where an e-mail address is indicated), and by first-class mail postage prepaid to the addresses below.

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tim.wood@state.or.us

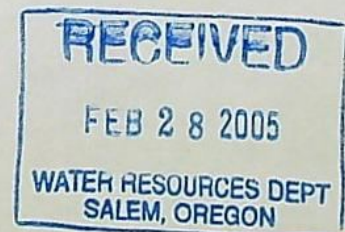
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Rick Kepler, Habitat Program Manager
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Shelley McIntyre (via hand delivery)
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General Counsel/Natural Resources
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Darren Brumback
United States Department of Interior
Bureau of Land Management
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Fax: (541) 573-4411
darren_brumbach@blm.gov

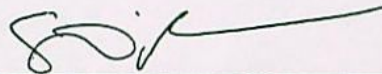


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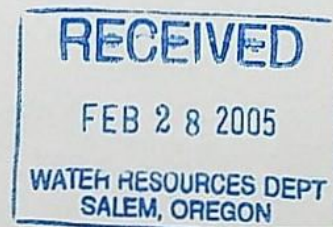
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karen@waterwatch.org



Shannon K. O'Fallon, #00169
Assistant Attorney General
Of Attorneys for the Oregon Water
Resources Department



HARDY M
Attorney General

Mike Reynolds,

Please keep with
the rest of the
record.

BY

Cindy

Dair
Adm.
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020



DEPARTMENT OF JUSTICE
COUNSEL DIVISION

February 25, 2005

REGULAR MAIL

RE: In the Matter of the Water Right Application IS 84562 in the Name of the Oregon Parks
and Recreation Department
DOJ File No.: 634-900-GN0797-03

Dear Administrative Law Judge Daina Uprite:

Enclosed herewith for filing in the above-captioned matter on behalf of the Oregon Parks
and Recreation Department are the following:

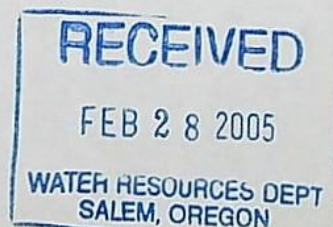
1. Applicant Oregon Parks and Recreation Department's Objection to Protestant
Roaring Springs Ranch, Inc.'s Petition to Oregon Water Resources Department
for an Order to Take Depositions; and
2. Certificate of Filing/Service.

Sincerely,

Virginia H. Gustafson
for #85221

Steve Shipsey
Assistant Attorney General
Natural Resources Section

SXS:jrs/GENL8082
Enclosure
c: Service List



HARDY MYERS
Attorney General



COPY
PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 25, 2005

BY E-MAIL TO daina.upite@state.or.us and REGULAR MAIL

Daina Upite
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020

RE: In the Matter of the Water Right Application IS 84562 in the Name of the Oregon Parks
and Recreation Department
DOJ File No.: 634-900-GN0797-03

Dear Administrative Law Judge Daina Upite:

Enclosed herewith for filing in the above-captioned matter on behalf of the Oregon Parks
and Recreation Department are the following:

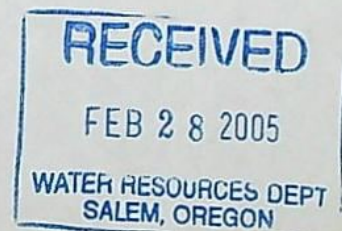
1. Applicant Oregon Parks and Recreation Department's Objection to Protestant
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Sincerely,

Virginia H. Gustafson
for #85221

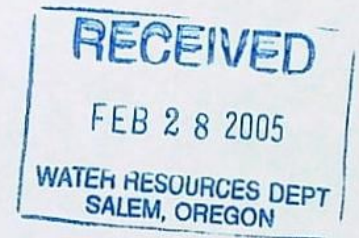
Steve Shipsey
Assistant Attorney General
Natural Resources Section

SXS:jrs/GENL8082
Enclosure
c: Service List



STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application	)	APPLICANT OREGON PARKS
IS 84562 in the Name of the Oregon	)	AND RECREATION
Parks and Recreation Department,	)	DEPARTMENT'S OBJECTION
<i>Applicant</i>	)	TO
	)	ROARING SPRINGS RANCH,
	)	INC.'S PETITION TO OREGON
Roaring Springs Ranch, Inc.	)	WATER RESOURCES
<i>Protestant</i>	)	DEPARTMENT FOR AN
	)	ORDER TO TAKE
Harney County Court	)	DEPOSITIONS
<i>Protestant</i>	)	
	)	
WaterWatch of Oregon	)	
<i>Protestant</i>	)	
	)	
Oregon Department of Fish & Wildlife	)	
<i>Request for Standing</i>	)	
	)	
United States Department of Interior	)	
Bureau of Land Management	)	
<i>Request for Standing</i>	)	



On February 16, 2005, protestant Roaring Springs Ranch, Inc. (Roaring Springs) petitioned the Oregon Water Resources Department for an order to take the deposition of Steven C. Brutscher, Natural Resources Specialist IV for the Oregon Parks and Recreation Department (OPRD). Protestant Roaring Springs contends that taking Mr. Brutscher's deposition is the only adequate method of obtaining the kind of detailed information necessary to resolve the issues remaining in this case. However, protestant Roaring Springs request is based in part on a faulty characterization of what the remaining issues are. In its request, protestant Roaring Springs states:

"The issues that remain for hearing include: (1) whether the quantity of water requested by OPRD is the minimum quantity required to support the proposed recreational use, as required by ORS 537.332 and 537.343." Protestant Roaring

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Springs Ranch, Inc.'s Petition to Oregon Water Resources Department for an
Order to Take Depositions at 2

WATER RESOURCES DEPT
SALEM, OREGON

However, the February 3, 2005 Post Pre-Hearing Conference Order; Scheduling Order states:

"The parties agreed that the following issues remain disputed:

"1. Whether OWRD erred by failing to limit the proposed instream water right to the 'minimum' amount needed." Order at 2.

Therefore, properly characterized, the issue that remains in this case is whether Oregon Water Resources Department erred in failing to limit the instream water right, not whether applicant OPRD erred in requesting the particular level of instream flow.

Administrative Law Judge Upite has held in this case that:

"ORS 537.336(3) does provide that OPRD shall request an in-stream water right for the quantity of water necessary to support the proposed public uses. Therefore, OPRD was not required, as a matter of law, to apply for the minimum quantity of water necessary to support public use." August 11, 2004 Order at 5.

Because applicant OPRD is not required as a matter of law to apply for the minimum quantity of water necessary, the requested deposition of Mr. Brutscher related to minimum flows is unlikely to yield testimony material to an issue in this case and should be denied.

Furthermore, protestant Roaring Springs asserts that a deposition is necessary in part because "only Mr. Brutscher can testify as to *whether and how he considered the minimum flow* and public access issues *while preparing* application IS 84562."

Protestant Roaring Springs Ranch, Inc.'s Petition to Oregon Water Resources Department for an Order to Take Depositions at 3. (Emphasis supplied.) Protestant Roaring Springs' request indicates a continuing interest in pursuing an issue that is no longer in this case: whether OPRD is required to consider the minimum flow while preparing application IS 84562. Judge Upite has resolved this issue in the August 11, 2004 Order on Motion for Ruling on Legal Issues and affirmed that resolution in the December 3, 2004 Order on Reconsideration of Order on Motion for Ruling on Legal Issues. Judge Upite ruled that

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SALEM, OREGON

OPRD complied with its rules in preparing the application as a matter of law. August 11, 2004 Order at 6; December 3, 2004 Order at 2. Judge Upite ruled that OPRD was not required, as a matter of law, to apply for the minimum quantity of water necessary to support public use. August 11, 2004 Order at 5. Furthermore, Judge Upite dismissed protestant Roaring Springs challenge that OPRD's rules inadequately address recreational use minimum flow requirements as being outside the scope of this proceeding. August 11, 2004 Order at 7. The issue that remains in dispute in this matter is: "Whether OWRD erred by failing to limit the proposed instream water right to the 'minimum' amount needed." Protestant Roaring Springs request to depose an OPRD employee is not likely to yield testimony material to the propriety of another agency's action and should be denied.

Protestant Roaring Springs requests to depose Mr. Brutscher regarding Issue 2 in this case.¹ Applicant OPRD contends that taking a deposition is not the only adequate method for obtaining Mr. Brutscher's testimony as to this issue. OAR 137-003-0572(2). Applicant OPRD submits that written interrogatories related to this issue could provide an adequate other method of obtaining the requested testimony. *Id.* Applicant OPRD does not object to written interrogatories from protestant Roaring Springs that are material to Issue 2.

CONCLUSION

For the reasons above, OPRD objects to protestant Roaring Springs request for an order to take the deposition of Steven C. Brutscher. To the extent, if any, that OWRD grants protestant Roaring Springs request, applicant OPRD requests that OWRD's order

¹ Issue 2, as stated in the February 3, 2005 Post Pre-Hearing Conference Order; Scheduling Order, is:

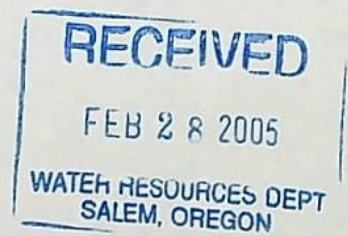
"Whether there is a basis for asserting a public recreational interest, as required under ORS 537.336, when there is no public access to Home Creek for approximately one-half of the reach proposed for inclusion in an instream water right, because it is within private lands owned by Roaring Springs Ranch, and because the stream is not navigable for public recreation purposes."

limit the scope of the deposition to the Issue 2. If OWRD were to grant the request for deposition on the Issue 1, applicant OPRD requests that the scope of the deposition be limited to the remaining issued and not allow testimony on issues that have been resolved by the Order on Motion for Ruling on Legal Issues or the Order on Reconsideration of Order on Motion for Ruling on Legal Issues issued by Judge Upite.

DATED this 25th day of February, 2005.

Respectfully Submitted,

Virginia H. Shipsey
for Steve Shipsey, #94435
Assistant Attorney General
Of Attorneys for Oregon Parks
and Recreation Department



CERTIFICATE OF FILING/SERVICE

I certify that on February 25, 2005, APPLICANT OREGON PARKS AND RECREATION DEPARTMENT'S OBJECTION TO PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE DEPOSITIONS was filed with Daina Upite, Administrative Law Judge, Office of Administrative Hearings, PO Box 14020, Salem, OR 97309-4020, via e-mail to daina.upite@state.or.us and stacey.a.silbernagel@state.or.us, and via first-class mail, postage prepaid. I further certify that a true and correct copy of the above document was served on February 25, 2005, by e-mail (where an e-mail address is indicated), and by first-class mail postage prepaid to the addresses below.

Tim Wood, Director
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725 Summer Street NE, Suite C
Salem, OR 97301
Phone: (503) 986-0707
FAX: (503) 986-0794
tim.wood@state.or.us

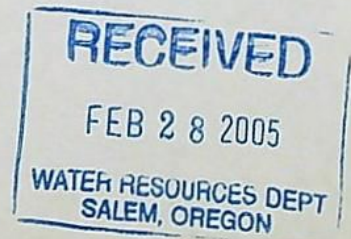
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karen@waterwatch.org

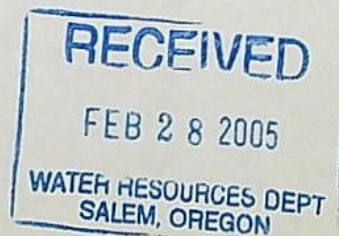
Phillip C. Ward
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ryockim@mcsi.net

for Virginia H. Shipsey
Steve Shipsey, #94435
Assistant Attorney General
Of Attorneys for Oregon Parks
and Recreation Department



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FEB 17 2005

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

WATER RESOURCES DEPT
SALEM, OREGON

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation,
Applicant

Roaring Springs Ranch, Inc.,
Protestant

Harney County Court,
Protestant

WaterWatch of Oregon,
Protestant

Oregon Department of Fish & Wildlife,
Intervenor

United States Department of Interior Bureau
of Land Management,
Intervenor

PROTESTANT ROARING SPRINGS
RANCH, INC.'S PETITION TO
OREGON WATER RESOURCES
DEPARTMENT FOR AN ORDER TO
TAKE DEPOSITIONS

Mike Reynolds,

For File
Please.

Cindy

Pursuant to ORS 183.425 and OAR _____, Inc. ("Roaring Springs") petitions the Oregon Water Resources Department for an order to take the deposition of Steven C. Brutscher, Natural Resources Specialist IV for the Oregon Parks and Recreation Department ("OPRD").

ELEMENTS OF PETITION

1. Name and address of witness

Steven C. Brutscher

Oregon Parks and Recreation Dept.

PAGE 1 – PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON
WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE
DEPOSITIONS

pdx/073928/137595/DWM/1275738.1

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FEB 17 2005

STATE OF OREGON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
OREGON WATER RESOURCES DEPARTMENT

WATER RESOURCES DEPT
SALEM, OREGON

In the Matter of Water Right Application
IS 84562 in the Name of the Oregon
Department of Parks and Recreation,
Applicant

Roaring Springs Ranch, Inc.,
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Harney County Court,
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WaterWatch of Oregon,
Protestant

Oregon Department of Fish & Wildlife,
Intervenor

United States Department of Interior Bureau
of Land Management,
Intervenor

PROTESTANT ROARING SPRINGS
RANCH, INC.'S PETITION TO
OREGON WATER RESOURCES
DEPARTMENT FOR AN ORDER TO
TAKE DEPOSITIONS

Pursuant to ORS 183.425 and OAR 137-003-0572, Protestant Roaring Springs Ranch, Inc. ("Roaring Springs") petitions the Oregon Water Resources Department for an order to take the deposition of Steven C. Brutscher, Natural Resources Specialist IV for the Oregon Parks and Recreation Department ("OPRD").

ELEMENTS OF PETITION

1. Name and address of witness

Steven C. Brutscher

Oregon Parks and Recreation Dept.

PAGE 1 – PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON
WATER RESOURCES DEPARTMENT FOR AN ORDER TO TAKE
DEPOSITIONS

pdx/073928/137595/DWM/1275738.1

725 Summer St. NE, Suite C

Salem, OR 97301

2. Testimony of the Witness is Material

Testimony is material if it “tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.” OAR 137-003-0572(2). The issues that remain for hearing include: (1) whether the quantity of water requested by OPRD is the minimum quantity required to support the proposed recreational use, as required by ORS 537.332 and 537.343; and (2) whether public uses relating to recreation and scenic attraction are associated with Home Creek where it flows through private land, as required by 537.336(3).

The testimony of Steven C. Brutscher is material to both of these issues. Mr. Brutscher prepared application IS 84562 for OPRD and was the person responsible for determining the amount of water requested in that application. He chose to request an amount that would “preserve the present characteristics of Home Creek.” *See* Affidavit of Steven C. Brutscher in Support of Oregon Parks and Recreation Department’s and Oregon Water Resources Department’s Responses ¶ 12. His testimony would tend to prove whether OPRD requested the minimum quantity required to support the proposed recreational uses. In addition, Mr. Brutscher could testify, based on personal experience and conversations with others, as to whether the public is able to view Home Creek in areas where the creek flows through private lands. *See* Affidavit of Steven C. Brutscher ¶¶ 8, 9, 12.

3. No Other Means of Obtaining the Witness’s Testimony is Adequate

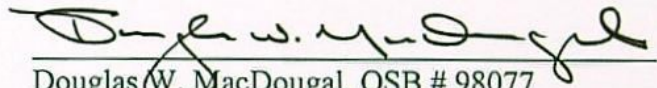
Taking a deposition is the only adequate method for obtaining Mr. Brutscher’s testimony as to whether OPRD requested the minimum quantity of water to support recreational uses and whether the public is able to use stream reaches that cross private lands. Roaring Springs cannot obtain the kind of detailed information necessary to resolve these issues by means of other discovery methods, which do not allow the type of examination that is necessary. Mr.

Brutscher's affidavit raises a number of questions regarding the minimum flow and public access issues, which cannot be answered by reference to the records produced by OPRD and OWRD. OPRD based application IS 84562 largely on the undocumented "thought process" of Mr. Brutscher. *See e.g.* Affidavit of Steven C. Brutscher ¶ 10. As a result, there are few relevant documents available and only Mr. Brutscher can testify as to whether and how he considered the minimum flow and public access issues while preparing application IS 84562.

CONCLUSION

For the reasons above, Roaring Springs respectfully requests an order to take the deposition of Steven C. Brutscher.

Dated this 16th day of February, 2005.



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dmacdougal@schwabe.com
Of Attorneys for Roaring Springs Ranch

RECEIVED

FEB 17 2005

WATER RESOURCES DEPT
SALEM, OREGON

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2005 I delivered a true and correct copy of
PROTESTANT ROARING SPRINGS RANCH, INC.'S PETITION TO OREGON WATER
RESOURCES DEPARTMENT FOR AN ORDER TO TAKE DEPOSITIONS via facsimile and
by depositing same in the U.S. Post Office, at Portland, Oregon, with sufficient first-class
postage prepaid, addressed to the following:

Original to:

Phillip C. Ward, Acting Director
Oregon Water Resources Department
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Salem, OR 97301
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Fax: 503-986-0903
Email: phillip.c.ward@wrdd.state.or.us

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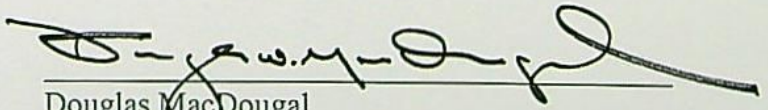
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Adam Sussman
Protest Program Coordinator
Oregon Water Resources Department
725 Sumner St., NE, Suite A
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Fax: 503-986-0903
Email: Adam.p.Sussman@wrd.state.or.us

Dated this 16th day of February, 2005.


Douglas MacDougal

Relating to applications for in-stream water rights submitted by state agencies:

ORS 537.338 is amended to read:

537.338 (1) Rules for state agency request for in-stream water right. The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336.

(2) The rules shall include requirements that an application for an in-stream water right: (a) shall be based upon methods of determining instream flow needs that have been approved by rule of the agencies submitting the application, and (b) shall include written documentation of how the methods were applied in preparation of the application.

*LOWERS SPRINGS LAUNCH ISSUE
MARTHA PABER*

Recreation Flow Requirement Methodology For Home Creek, Tributary to Garrison Lake, Harney County, Oregon

The following description identifies the flow requirements for the recreational uses of Home Creek in accordance with the provisions of Oregon Administrative Rules (OAR) 736-060-0015, Recreation Flow Requirement Methodology administered by the Oregon Parks and Recreation Department (OPRD). This information is in support of OPRD's application dated October 17, 2000, for instream water rights in Home Creek for the benefit of public recreation and scenic attraction.

Recreational Use: Scenic attraction/aesthetics, hiking, camping, fishing, wildlife viewing and nature study/interpretation. Home Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). Home Creek is the centerpiece of the 20,699 acre Home Creek unit of the Steens Mountain Wilderness Area designated by Congress in October 2000. (Map 2). Whether from the vantage point of canyon rim, creek side, or the talus slopes and basalt outcrops in between, Home Creek canyon offers the visitor spectacular high desert scenery, impressive geology, viewable fish and wildlife, diverse plant communities and living natural history.

For those that prefer to look inside while outside, there is remoteness, solitude, isolation, tranquility, closeness to nature and spirit liberating space in this challenging and pristine environment. In the midst of this stunning and arid landscape, Home Creek is the dynamic focus, the crux of the canyon, and it guides one's eye, spirit and imagination around each bend, over each rock and across the span of time and space.

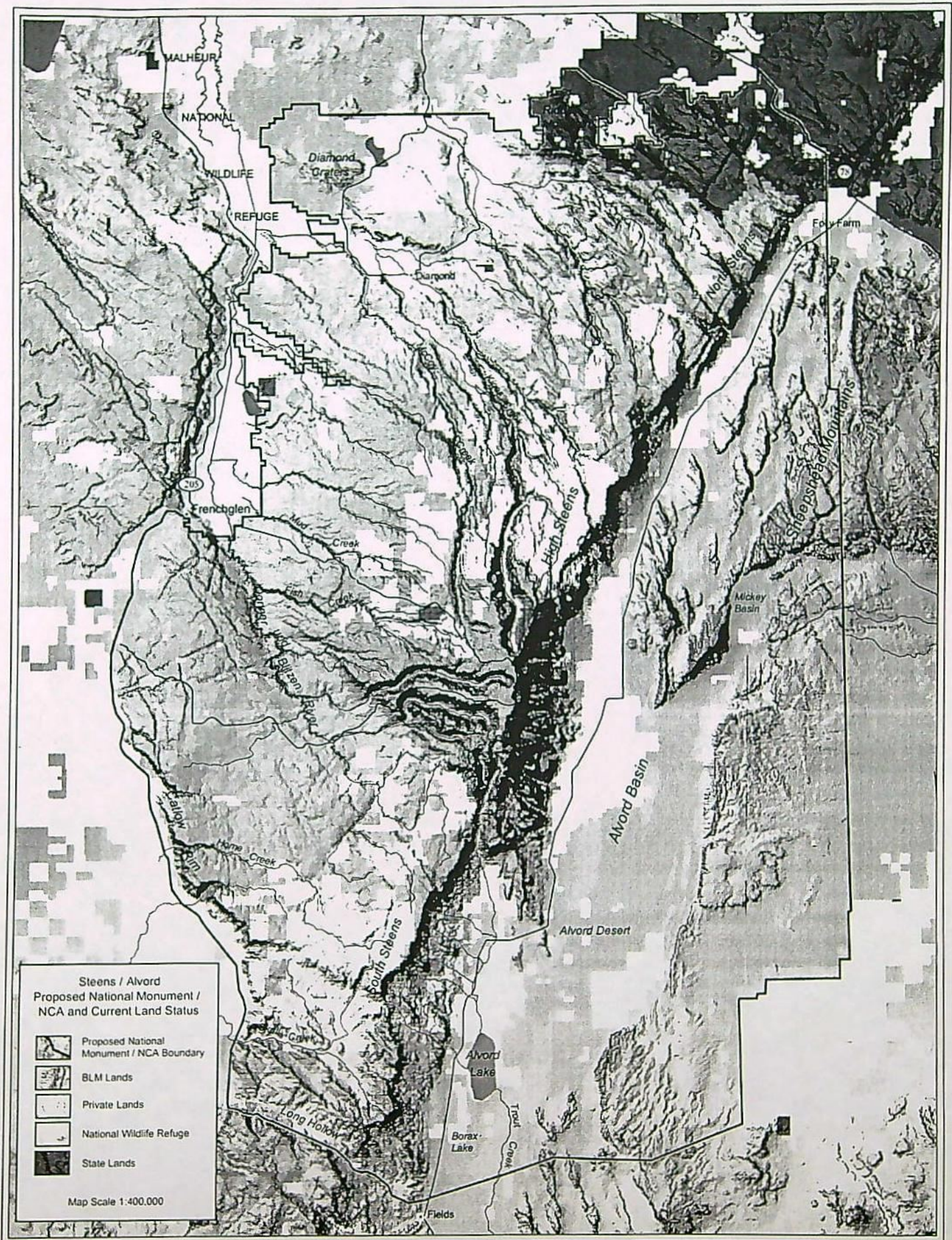
Home Creek is a narrow, boulder strewn, high gradient, pool and drop, perennial stream, arising on the southwestern flank of Steens Mountain at an elevation of about 7,400 feet. From its headwaters, Home Creek flows about 20 miles northwestward to the Catlow Valley, slicing through the Catlow Rim about 23 miles south of Frenchglen. The steep gradient (average 140 foot drop per mile) and rock filled channel generate continuous white water that provides a striking contrast to the brown-gray-black basalt canyon walls and the green riparian vegetation. In autumn, streamside vegetation turns various shades of yellow and red enhancing this contrast.

RECEIVED

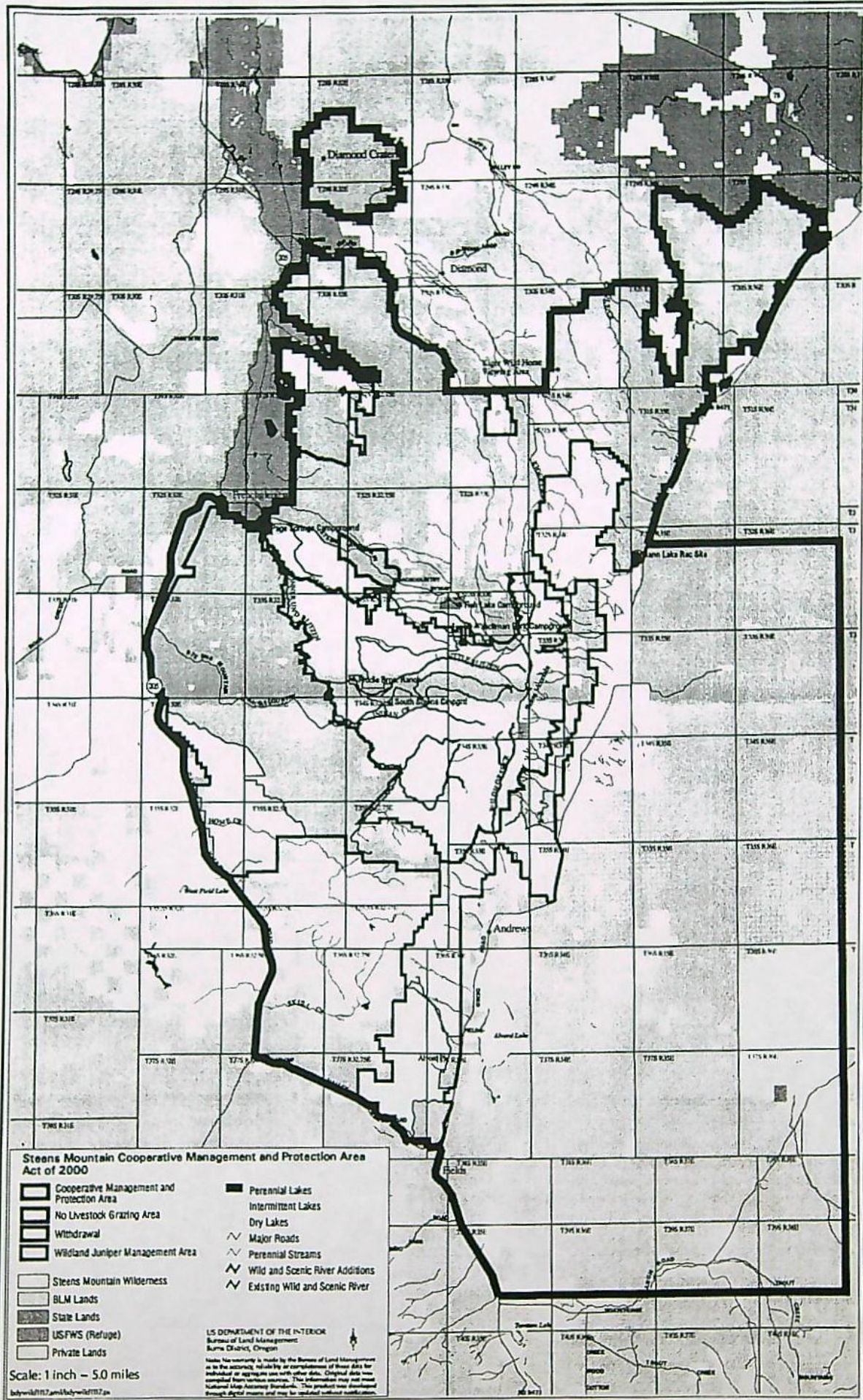
JAN 17 2002

WATER RESOURCES DEPT
SALEM, OREGON

MAP 1



MAP 2



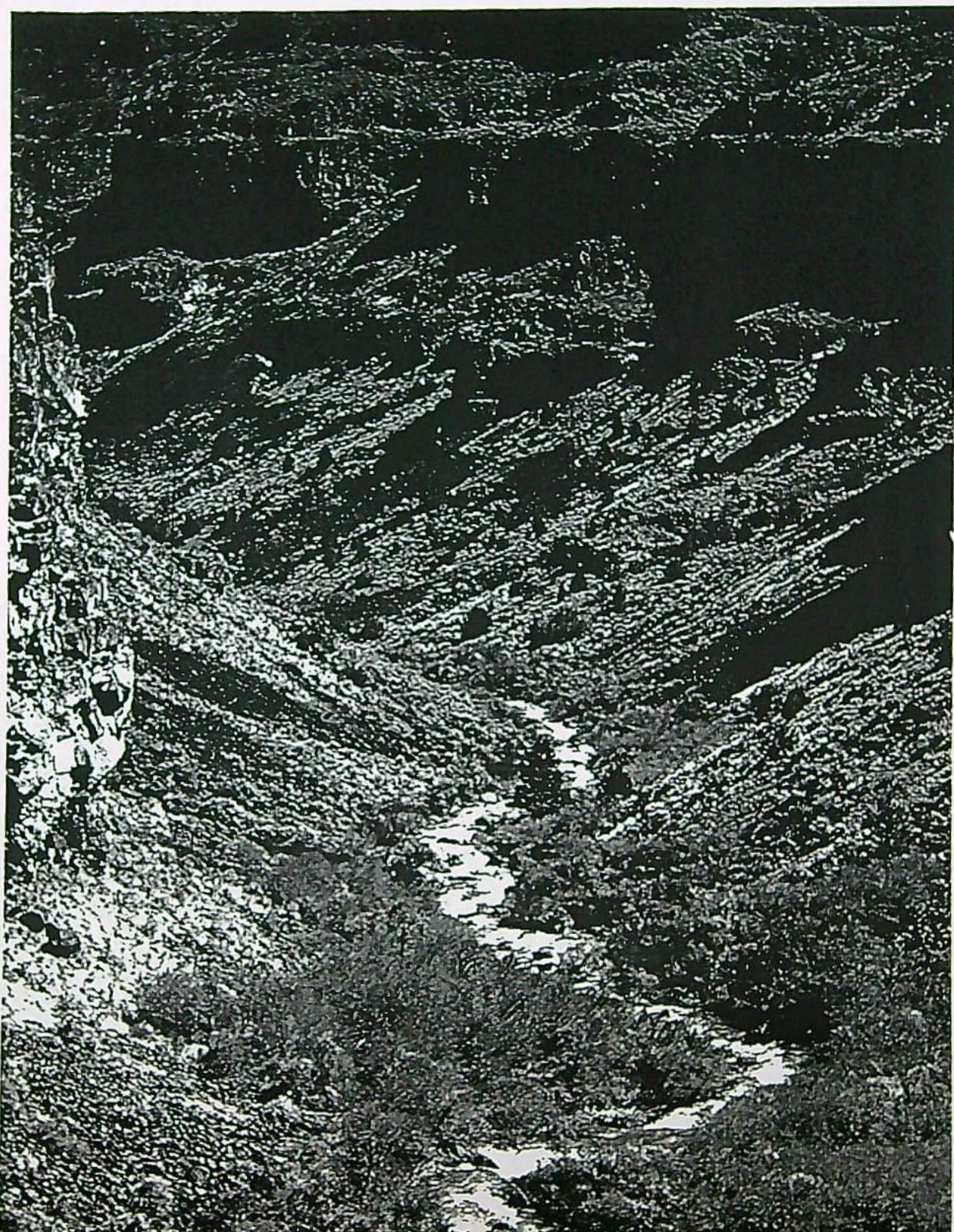


Photo by Greg Burke

Home Creek – note the hikers at the base of the outcrop on the extreme left.

Where Home Creek breaches the Catlow Rim, the canyon measures about one mile across from rim to rim and about 1,400 feet from top to bottom. Looking west from the mouth of Home Creek canyon, one views the Catlow Valley, now arid rangeland, or pastureland where irrigation can be applied. To the east, the land slopes upward for another 14 miles traveling through several vegetation zones and a variety of habitats before reaching elevations of about 7,700 feet along the southern summit of Steens Mountain. Whether in the canyon bottom or upland areas, the visitor is constantly reminded of the impressive scope, scale and biological diversity of the area.

In short, Congressional designation of the area as wilderness reinforces that the highest and best use of the area is the preservation of its natural features, systems and functions, including the creek's hydrology. The flows protected by the requested instream water right will help maintain the outstanding and unique wilderness resources of Home Creek.

Time period of Use: Year-round. Home Creek is accessible and used in all seasons.

Stream flow supporting recreational use: Flows are in cubic feet per second.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	7	17	36	53	31	8	4	4	4	3	3

These flows represent 50 percent exceedence values for each month based on calculations conforming to standards and procedures used by the Water Resources Department for estimating flows on ungaged streams.

Location of use: The specified flows are requested to be maintained in Home Creek from Upper Crossing in the SE ¼ of the NW ¼ of Section 24, Township 35 South, Range 32 ½ East, Willamette Meridian, Harney County; ---

downstream to the intersection of Home Creek with the Steens Mountain Wilderness Area boundary being the west quarter section line of the SE ¼ of the NE ¼ of Section 10, Township 35 South, Range 32 East, Willamette Meridian, in Harney County.

Experience setting: Visitors to the above-described area can expect an experience at the semi-primitive to primitive end of the Recreational Opportunity Spectrum (ROS). (ROS Users Guide, United States Department of Agriculture, Forest Service). A primitive road crosses the proposed reach at Upper Crossing and again about two miles downstream at Lower Crossing. Though this reach of stream traverses some private lands, it qualifies as semi-primitive, motorized (in the vicinity of the two road crossings) and semi-primitive, non-motorized for a portion of the two-mile reach between these crossings. This reach of stream offers moderate to high probability of experiencing isolation from the sights and sounds of humans, independence, closeness to nature, tranquility, and the need for self-reliance in an environment that offers challenge and risk.

From Lower Crossing downstream to State Highway 205, Home Creek flows about seven miles in an increasingly deep gorge. This reach of stream provides a primitive experience characterized by extreme high probability of isolation from the sights and sounds of humans, independence, closeness to nature, tranquility and need for self-reliance in an environment that offers a high degree of challenge and risk.

The lower five miles of the subject reach is within the boundaries of the Steens Mountain Wilderness Area. Land ownership in this reach is predominantly Bureau of Land Management. Management is designed to preserve and protect the natural resource features, values and functions of the lands within this wilderness area.

The 1994-1999 Statewide Comprehensive Outdoor Recreation Plan (SCORP) surveyed recreationists to learn more about the recreation settings they used and the recreation settings they preferred. The SCORP analysis found that recreationists tend to prefer recreational settings that are more natural or primitive than the ones they use. This is especially true for outdoor activities that focus on and draw from the natural resource land base. Hunting, fishing, nature study, wildlife observation, hiking, tent camping, backpacking, and climbing are some examples.

There are various reasons for the disparity between settings used and those preferred. Perhaps the most important reason is the dwindling availability and protection of resource lands of adequate areal extent that provide the primitive settings desired. The table below shows uses and preferences for Primitive and Semi-primitive ROS settings from the 1994-1999 SCORP for three categories of activities that are common on Home Creek.

Activity	ROS Setting Type			
	Primitive		Semi-primitive	
	Used	Preferred	Used	Preferred
Bank Fishing	10.1%	20.5%	15.1%	26.2%
Nature study - wildlife viewing	8.3%	25.2%	30.1%	40.3%
Hiking – backpacking trails	23.3%	37.1%	34.2%	36.2%

Source: 1994-1999 Statewide Comprehensive Outdoor Recreation Plan, OPRD, page III-16.

Protecting the flow regime in Home Creek through instream water rights will help preserve the integrity of the primitive/semi-primitive (wilderness) character of the area thereby addressing the public preference to have and recreate in such settings.

Amount of recreational use: Recreational use data are not available for Home Creek. Overall, recreation use levels in the area are low when compared to use levels elsewhere on Steens Mountain i.e. Fish Lake campground, Kiger Gorge overlook, Big Indian Gorge overlook, Steens Mountain summit.

There are no designated or developed recreation facilities on Home Creek. Use is dispersed and unmonitored. Administered by the BLM, the Home Creek drainage was

managed as a wilderness study area from the mid 1980's to October 30, 2000, when President Clinton signed a bill designating it a wilderness area. The area's wilderness designation is indicative of its primary recreation attraction – unaltered and unspoiled nature in a magnificent geographical setting. Recreation use of Home Creek will increase as people learn of its new designation and seek to experience the natural values it offers.

Home Creek and its drainage do receive recreational use. An undeveloped campground is located at the mouth of Home Creek canyon about one quarter mile east of where highway 205 crosses the creek. Visitors hiking in the area commonly use this campground as a base of operations. (Personal communication with Rick Hall, Natural Resource Specialist, Burns District BLM, January 9, 2002).

Except for an undesignated, primitive trail that extends about one-half mile upstream from the mouth of the canyon, there are no developed trails or other recreation facilities in the Home Creek canyon. However, rim and gorge hikes along the creek are featured in Oregon Desert Guide, 70 Hikes, by Andy Kerr, published by The Mountaineers, 2000. The Oregon Natural Desert Association has run a day hike in Home Creek canyon in conjunction with its annual Desert Conference in each of the last ten years. (Personal communication with Bill Marlett, Executive Director, Oregon Natural Desert Association, September 5, 2001).

Anecdotal information from users of the area indicates Home Creek does afford big game and upland bird hunting, fishing, wildlife viewing and nature interpretation opportunities. Animal species that rely on Home Creek for habitat add significantly to the aesthetic attraction and experience for visitors to the area.

Home Creek is essential habitat for populations of Catlow Valley Redband Trout and Catlow tui chub. (Map 3). It is the only stream along the Catlow Rim that is open to fishing. (Oregon Department of Fish and Wildlife, 2002 Sport Fishing Regulations, www.dfw.state.or.us/ODFWhtml/Regulations/2002_Southeast.pdf). During the early 1990's, the redband trout were the subject of study for listing as threatened or endangered. With the resurgence of the wet cycle in the last half of the decade, these fish have rebounded somewhat and are no longer candidate species for listing. However, the Catlow Valley Redband Trout remains on the Oregon Department of Fish and Wildlife's Sensitive Species List. Protecting redband trout was an important goal in the establishment of the Steens Mountain Wilderness. The requested instream water rights will provide adequate protection to all life stages of the redband trout including the necessary flow velocities to maintain healthy habitat conditions.

The tui chub is native to the Catlow Valley. Their range is restricted to Home, Threemile and Skull creeks, all of which drain the Catlow Rim. The redband trout and Catlow tui chub are the subjects of a conservation agreement involving the Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Bureau of Land Management and the Roaring Springs Ranch. The partners are working to improve habitat for these fish in Home Creek.

Home Creek's canyon and rugged basalt cliffs provide preferred habitat for California big horn sheep. (Map 4). The big horn sheep populations on Steens Mountain (including those that inhabit Home Creek) are stable and healthy and have been used as relocation stock elsewhere. Adults and lambs are spring viewing attractions in Home Creek and Threemile Creek canyons and along the Catlow Rim as well.

The rim rock area of the canyon is high density breeding habitat for a variety of hawk species including Swainson's, red-tailed, Coopers and sharp-shinned hawks. (Map 4). Other significant raptor species that breed in the area include golden eagles, prairie falcons and long-eared owls. Home Creek drainage is also habitat for sage grouse, although lek sites (traditional sage grouse mating strut areas) have not been documented in the Home Creek drainage. (Map 5).

Competing uses: There are no competing uses for the flows in Home Creek in the reach proposed for instream water rights. There are no known diversions, dams, or consumptive uses of water between Upper Crossing and the wilderness area boundary near the mouth of the canyon.

A search of 59 sections in four townships in the Platcard report on the Water Resources Department's web site (www.wrd.state.or.us) yielded no record of water rights in or upstream of the proposed protected reach. The sections queried include:

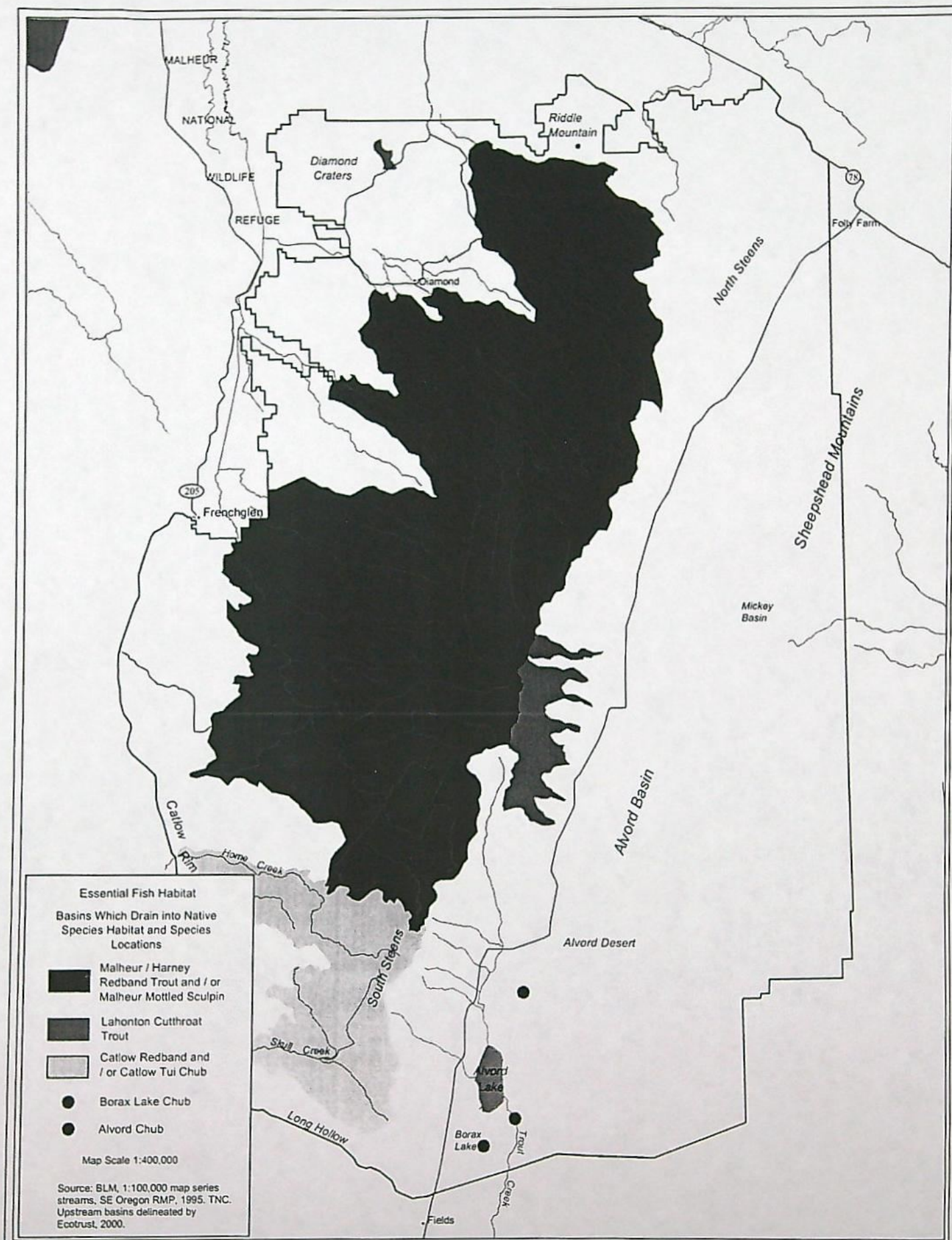
Township 35 South, Range 32 East: Sections 10, 11, 12

Township 35 South, Range 32 ½ East: Sections 1 through 36

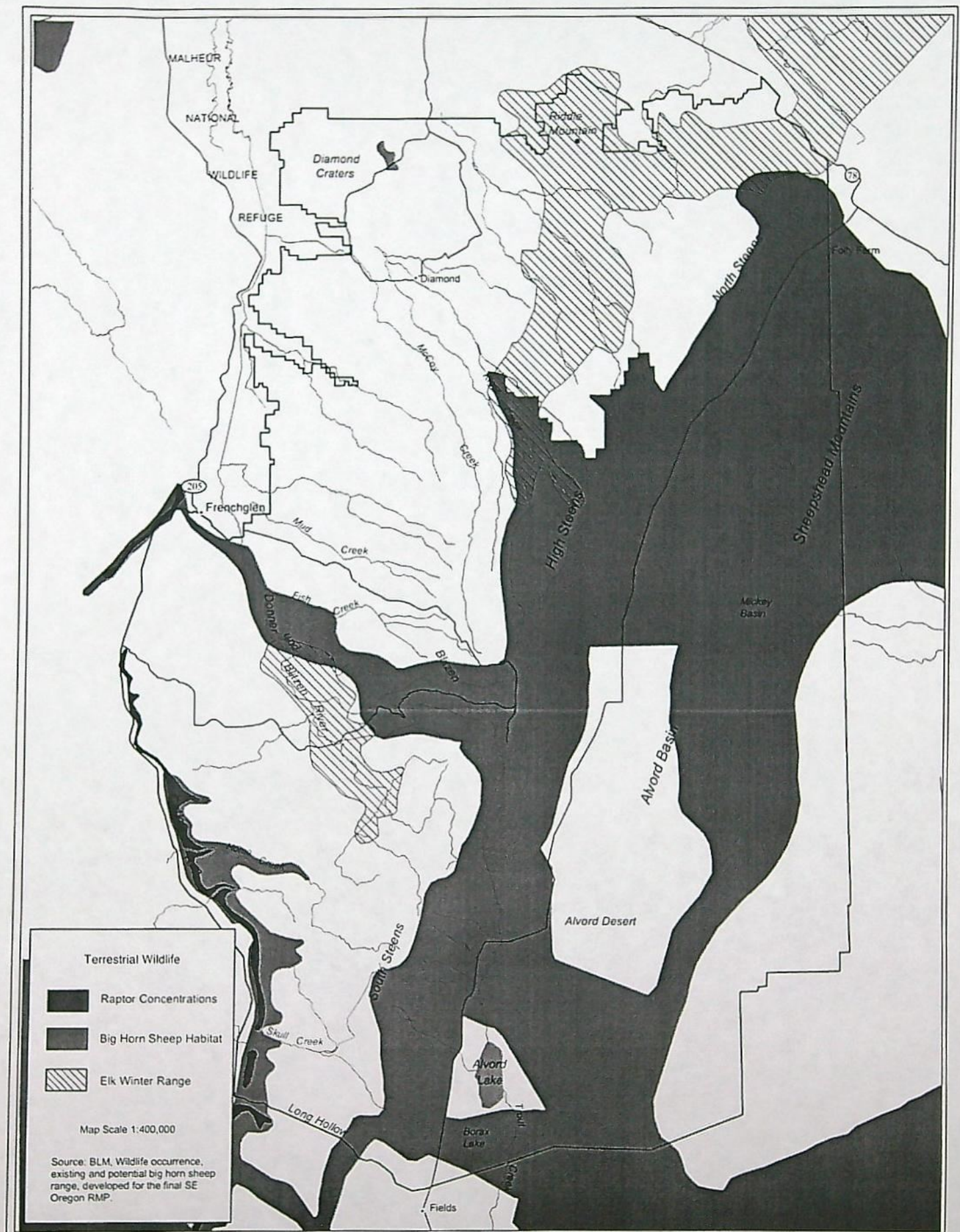
Township 35 South, Range 32 ¾ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34

Township 35 ½ South, Range 32 ¾ East: Sections 3, 4, 5, 6, 7, 8, 9, 10

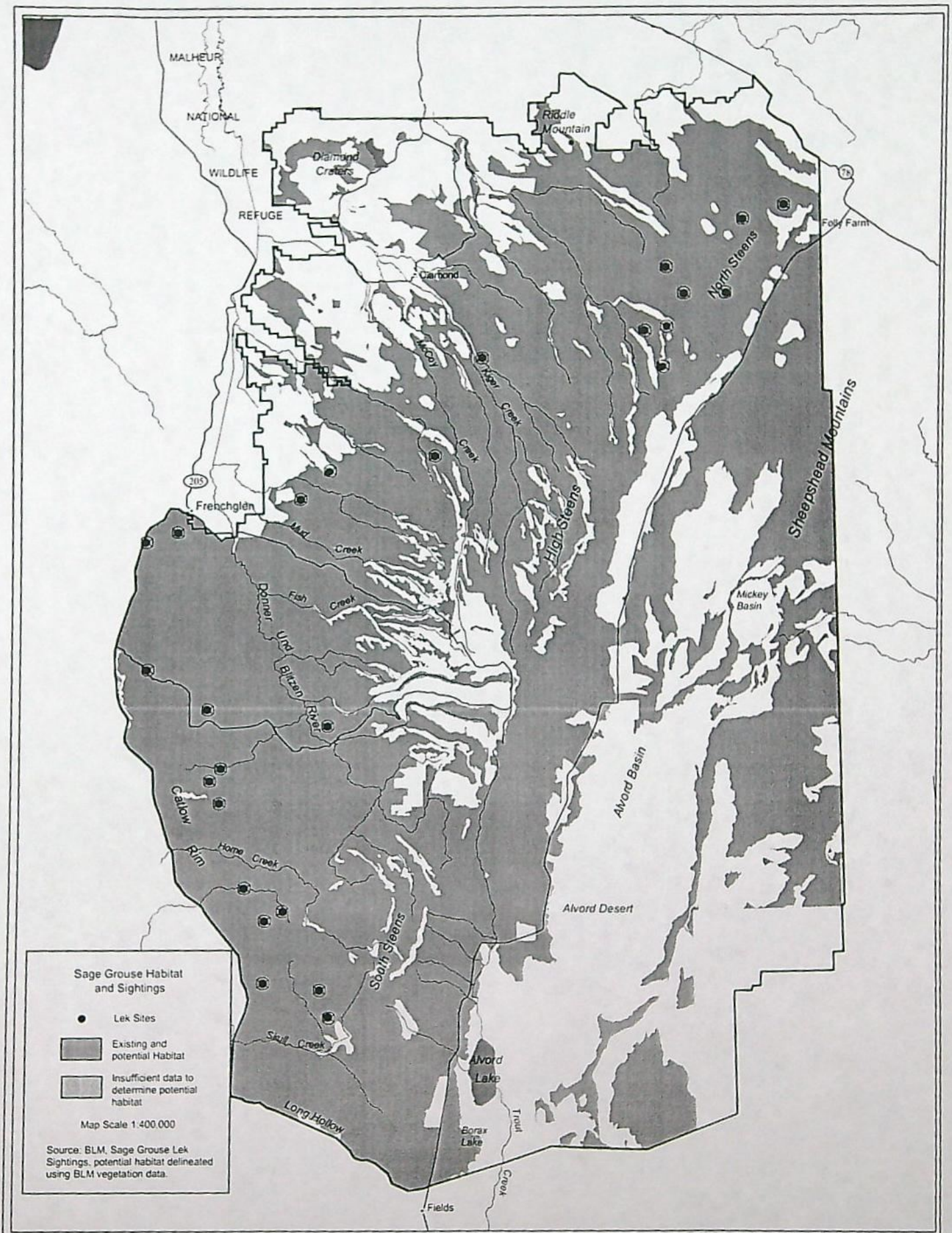
MAP 3



MAP 4



MAP 5



Institutional constraints:

Recreation use permits: Lands bordering Home Creek are largely federal lands managed by the Bureau of Land Management. The BLM requires special recreation use permits for commercial guide services, group events or competitive events utilizing public lands in the Home Creek drainage. Existing commercial use permits (i.e. hunting and fishing guides) issued by the BLM do permit use in the Home Creek drainage. The BLM indicates that no commercial use permit currently administered specifies Home Creek as the predominant area of use. (Personal communication with Mark Sherbourne, Burns District BLM, January 9, 2002).

Fishing regulations: The 2002 Oregon Sport Fishing Regulations, Oregon Department of Fish and Wildlife, include Home Creek in the Southeast Corner of the Southeast Zone of Oregon. Trout fishing is open all year on Home Creek. Nothing in the regulations indicates they would constrain the requested instream flows.

Dam releases: There are no dams that regulate or affect flows in Home Creek. There may be small livestock impoundments in the headwater areas of Home Creek but these are small volume, usually holding less than an acre-foot of water and are of no measurable impact on flows in the creek.

Minimum perennial streamflows /instream water rights: There are no minimum perennial streamflows or other instream water rights on Home Creek.

Court decisions: There are no known court decisions that present an institutional constraint on instream water rights for Home Creek.

Standards contained in OAR 690-077-0045: Not applicable. WRD repealed this rule in August 1992.

Acknowledged comprehensive land use plan of local government: The Home Creek drainage is zoned EFRU-1 (exclusive farm and range use, 160 acre minimum) in the Harney County Comprehensive Land Use Plan. Nothing in this zone affects the establishment of instream water rights. (Personal communication with Richard Jennings, Planning Director, Harney County Planning Department, January 10, 2002.)

References

- Bergerson, Terry. SCORP Planner, Oregon Parks and Recreation Department. Memorandum, December 28, 2001.
- Bowers, Wayne. Fish Biologist, Oregon Department of Fish and Wildlife, Hines Field Office. Telephone conversation, August 31, 2001.
- Hall, Rick. Natural Resources Specialist, Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.
- Hooten, Bob. Natural Production Program Manager, Oregon Department of Fish and Wildlife. Telephone conversation, January 9, 2002.
- Jennings, Richard. Planning Director, Harney County Planning Department. Telephone conversation, January 10, 2002.
- Kerr, Andy. Oregon Desert Guide 70 Hikes. Seattle: The Mountaineers, 2000.
- Lillebo, Tim. Eastern Oregon Field Representative, Oregon Natural Resources Council. Telephone conversation, January 10, 2002.
- Marlett, Bill. Executive Director, Oregon Natural Desert Association. Telephone conversation, September 5, 2001.
- McAllister, David. Director, Habitat Division, Oregon Department of Fish and Wildlife. Letter to Paul Cleary, Director, Oregon Water Resources Department. June 13, 2001.
- Quigley, Thomas and Sylvia Arbelbide, technical editors, An Assessment of Ecosystem Components the Interior Columbia Basin: Volume III, (USDA Forest Service Pacific Northwest Research Station, Portland, Oregon, 1997): Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-25.
- ROS Users Guide. United States Department of Agriculture, Forest Service.
- Sherbourne, Mark. Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.
- U.S. Department of the Interior, Bureau of Land Management. Draft Southeast Oregon Resource Management Plan/Environmental Impact Statement. (Vale and Burns Districts, 1998): 2-53. Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-24.
- U.S. Department of the Interior, Bureau of Land Management. *Steens Mountain Area*. (Burns District, Hines, Oregon, 1999): 55-56. Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-20 and A-21.
- Witzel, John. Owner, Steens Mountain Packers, Frenchglen, Oregon. Telephone conversation, January 9, 2002.



Oregon

Theodore R. Kulongoski, Governor

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

VIA FACSIMILE

November 26, 2003

Michael Carrier
Director
Oregon Parks and Recreation Dept.
725 Summer St. NE, Suite C
Salem, OR 97301

RE: Instream Water Right Application IS 84562 in the Name of the Oregon
Department of Parks and Recreation

Dear Mr. Carrier:

I would like to apologize for not having this notice served to you directly as well as to Richard Whitman at the Department of Justice. I would be happy to reschedule this prehearing conference if the current date is inconvenient. Please let me know if you need this conference rescheduled or if you have any other questions regarding this proceeding: (503) 986-0824.

Again, I apologize for any inconvenience I may have caused.

Sincerely,

Renee Moulun
Protest Program Coordinator

Attachment (Notice of Prehearing Conference IS 84562)

Cc: Paul Cleary
Dick Bailey
Richard Whitman



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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

VIA MAIL

October 23, 2003

Ron Yockim
Attorney at Law
548 SE Jackson St., Ste. 7
P.O. Box 2456
Roseburg, OR 97470

RE: Instream Water Right Application IS 84562 in the Name of the Oregon Parks and Recreation Department ("OPRD")

Dear Ron:

I am enclosing a letter from Paul Cleary to Martha Pagel, dated October 1, 2003, for your reference. Mr. Carrier, Director of OPRD has since requested the Oregon Water Resources Department to refer IS 84562 to the Office of Administrative Hearings for a contested case hearing.

Please feel free to call me if you have any questions: (503) 986-0824.

Sincerely,

Renee Moulun
Division Protest Coordinator

Enclosure (as specified)



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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

VIA MAIL

October 23, 2003

Karen A. Russell
Senior Staff Attorney
WaterWatch of Oregon
213 SW Ash, Ste. 208
Portland, OR 97204

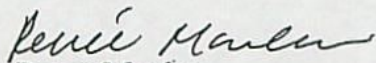
RE: Instream Water Right Application IS 84562 in the Name of the Oregon Parks and Recreation Department ("OPRD")

Dear Karen:

I am enclosing a letter from Paul Cleary to Martha Pagel, dated October 1, 2003, for your reference. Mr. Carrier, Director of OPRD has since requested the Oregon Water Resources Department to refer IS 84562 to the Office of Administrative Hearings for a contested case hearing.

Please feel free to call me if you have any questions: (503) 986-0824.

Sincerely,


Renee Moulun
Division Protest Coordinator

Enclosure (as specified)





Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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

VIA MAIL

October 23, 2003

Stephanie M. Parent
Pacific Environmental Advocacy Center
1001 S.W. Terwilliger Blvd.
Portland, OR 97219

RE: Instream Water Right Application IS 84562 in the Name of the Oregon Parks and Recreation Department ("OPRD")

Dear Stephanie:

I am enclosing a letter from Paul Cleary to Martha Pagel, dated October 1, 2003, for your reference. Mr. Carrier, Director of OPRD has since requested the Oregon Water Resources Department to refer IS 84562 to the Office of Administrative Hearings for a contested case hearing.

Please feel free to call me if you have any questions: (503) 986-0824.

Sincerely,

Renee Moulun
Division Protest Coordinator

Enclosure (as specified)



Oregon

Theodore R. Kulongoski, Governor

Park and Recreation Department

1115 Commercial St. NE

Salem, OR 97301-1002

(503) 378-6305

FAX (503) 378-6447

www.oregonstateparks.org

Frunch
Bridley
Tom P.
Renee. ✓



October 2, 2003

Mr. Paul Cleary, Director
Water Resources Department
725 Summer Street NE, Ste. A
Salem, Oregon 97301

Dear Paul:

This letter is to request that the Water Resources Department suspend the instream water right application filed by Oregon Parks and Recreation Department for Three Mile Creek (IS 84563) and place this application on administrative hold. I am also requesting that the application for Home Creek (IS 84562) and the associated protests to this application be moved to a contested case hearing.

Thank you for the assistance you and your staff have provided in our efforts to achieve a settlement of the protests regarding the above-referenced applications.

Sincerely,

Michael Carrier

Michael Carrier
Director

Cc: Dave Wright



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
503-378-3739
FAX 503-378-8130

October 1, 2003

Martha O. Pagel
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center, Suites 1600 - 1900
1211 Southwest Fifth Ave.
Portland, OR 97203-3795

Re: Roaring Springs Ranch R 84576, S 84577, R 85167, S 85168; Instream Water
Right Applications IS 84562 and IS 84563.

Dear Martha:

As you are aware, I met with the Oregon Parks and Recreation Department ("OPRD") and the Oregon Department of Fish and Wildlife ("ODFW") earlier this month to discuss your August 8, 2003, response to the state's "unified position" as described in my letter to you dated July 28, 2003.

As you requested, the Oregon Department of Water Resources ("OWRD") will recommence processing of application R 85167 for storage of 2,152 acre feet of water from the terminus of Home Creek (the "lower reservoir"). OWRD will also recommence processing of application S 85168 for supplemental irrigation of 1,510 acres. OWRD will continue to work with the Roaring Springs Ranch on the remaining issues associated with processing these applications.

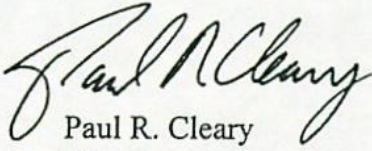
OPRD has informed us it cannot accept the terms of your August 8, 2003, letter insofar as the above-referenced instream water right applications. OWRD and ODFW agree with OPRD's assessment of your client's position. Accordingly, OPRD will be requesting to send the protests associated with its instream water right application IS 84562 (Home Creek) to contested case hearing. OPRD is also requesting that instream water right application IS 84563 (Threemile Creek) be placed on hold.

I am aware of your client's desire to proceed as quickly as possible with the contested case hearing on application IS 84562 as the resolution of such case will have an impact on your client's pending applications R 84576 for storage of 3,500 acre feet ("upper" reservoirs) and S 84577 for supplemental irrigation of 5,700.2 acres. Accordingly, we will work to proceed as quickly as possible on the hearing of IS 84562 and will continue to hold applications R 84576 and S 84577 pending resolution of the contested case for IS 84562.

Martha O. Pagel
October 1, 2003
Page Two

Given your request to proceed with the actions outlined above, OWRD does not plan to pursue further negotiations with the Roaring Springs Ranch or the other participants in these cases at this time. Please let me know if we have misinterpreted your request in regard to the outlined actions or the desirability of further negotiations. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul R. Cleary". The signature is fluid and cursive, with the first name "Paul" being more prominent than the last name "Cleary".

Paul R. Cleary
Director

c: Michael Carrier, OPRD
Lindsay Ball, ODFW
Jim Myron, Governor's Office
David Van't Hof, Governor's Office



SCHWABE, WILLIAMSON & WYATT, P.C.
ATTORNEYS AT LAW

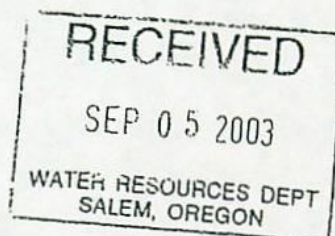
PACWEST CENTER, SUITES 1600-1900 • 1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795
TELEPHONE: 503.222.9981 • FAX: 503.796.2900 • www.schwabe.com

MARTHA O. PAGEL
Direct Line: Portland 503.796.2872;
Salem 503.399.7712
E-Mail: mpagel@schwabe.com

September 4, 2003

Renee Moulun
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172

Re: Roaring Springs Ranch Applications
Our File No. 073928-098125



Dear Renee:

This will confirm our phone conversation earlier today, in which we discussed the state's response to our letter of August 8, 2003. You indicated that the agencies are scheduled to meet on September 9, and that you expect to provide a response after that date. Thank you for the update; we will look forward to your response.

In the meantime, as we discussed, Roaring Springs Ranch (RSR) is still anxious to proceed with processing of Applications R-85167 and S-85168, relating to the "lower" reservoir on Home Creek. These applications have been on an informal administrative hold, initiated by WRD. We would like to proceed with the applications as requested in my August 8 letter. My letter notes that the department's initial review appears to have been based on an erroneous water availability determination. We would hope to have this issue addressed in a Proposed Final Order or revised Initial Review.

My letter of August 8 also requested that the department proceed with scheduling contested case hearings for both the protested instream water right applications, and RSR's applications for the "upper" reservoirs on Home Creek. We asked that the instream water right proceed first, because RSR's applications will be directly affected by the outcome of the instream water right proceedings. You have indicated that WRD does not plan to forward the instream water right matters to the Hearings Panel until requested to do so by the applicant, the Oregon Parks and Recreation Department (OPRD).

Pursuant to ORS 537.175(2), the applicant may request a delay in the contested case hearing schedule for "a reasonable period of time." Although we agree that such a delay can be useful while parties are engaged in active negotiations, we are concerned with the slow pace of settlement efforts to date, and with the apparent lack of progress. We would therefore appreciate clarification as to the amount of time OPRD has requested under the statute, and will look forward to proceeding as soon as possible.

Renee Moulun
September 4, 2003
Page 2

Finally, given WRD's decision not to proceed at this time with scheduling of a contested case hearing for IS 84562, I must amend my earlier request concerning RSR's applications for the upper reservoirs. As noted in my August 8 letter, these applications will be directly affected by the outcome of the contested instream water right applications. As a result, we are forced to wait until those issues are resolved before we can proceed.

To summarize, at this point, we are requesting the following:

1) That WRD proceed immediately with continued processing RSR's applications for the "lower" reservoir on Home Creek (R-85167 and S-85168). This would include a review of the previous "water availability" determination.

2) That WRD not schedule contested case hearings on RSR's "upper" reservoir applications (R-84576 and S-84577) until further notice from us.

3) That the state agencies provide a prompt response to my August 8 letter, following your scheduled meeting on September 9, and that WRD advise us as soon as possible regarding the next steps for processing the Home Creek instream water right application (IS 84562).

Thank you for your assistance. We look forward to hearing from you soon.

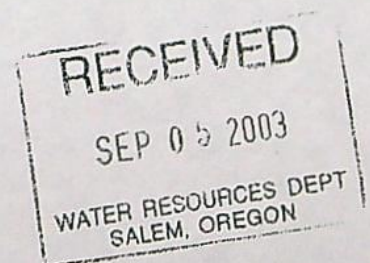
Sincerely,

Martha O. Pagel (mca)

Martha O. Pagel

MOP:mca

cc: Paul Cleary, WRD
Mike Carrier, OPRD —
Stacy Davies
Ron Yockim





SCHWABE, WILLIAMSON & WYATT, P.C.
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August 8, 2003

RECEIVED

AUG 11 2003

WATER RESOURCES DEPT
SALEM, OREGON

Mr. Paul Cleary
Director
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172

Re: Roaring Springs Ranch / Instream Water Right Applications
Our File No. 073928-098125

Dear Paul:

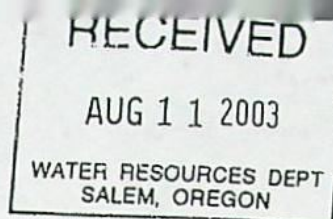
Thank you for your letter of July 28, 2003, regarding the state's settlement concepts. As described more fully below, we cannot accept the terms proposed in your letter, and at this point, it is not clear whether further negotiations would be fruitful. We therefore request that the Water Resources Department (WRD) move forward immediately with further administrative action on the pending applications, including referral of IS 84562 to the Office of Administrative Hearings for scheduling of a contested case hearing.

As described in my letter of July 9, 2003, we believe the schedule of contested cases should begin with IS 84562, the instream application for Home Creek. This matter should be considered first because its outcome will have a direct bearing on applications R-84576 and S-84577, the "upper" reservoir applications of Roaring Springs Ranch (RSR).

In addition, we request that the WRD immediately continue processing RSR applications R-85167 and S-85168, relating to the proposed "lower" reservoir on Home Creek. These applications should not be affected by the contested proceedings under IS 84562 because the applications seek use of water below the reach of the proposed instream water right. In that regard, we believe the Initial Review issued by WRD on June 21, 2002, is in error with respect to the water availability determination. The Initial Review indicates that water is not available for the proposed reservoir and secondary use because of the pending instream water right application. However, as noted, the reach of the proposed instream water right is above the proposed reservoir, and therefore should not be a factor in the water availability determination. In addition, based on previous contacts with WRD and other agency staff, it would appear this application can and should be approved. We therefore request immediate administrative action to continue with the process.

Finally, we note that we are hopeful these matters may be ultimately resolved through further settlement discussions, even though we cannot support further delays in application

Mr. Paul Cleary
August 8, 2003
Page 2



processing on the basis of settlement proposals that appear, at this point, to be so far apart. The state's suggestion to place the pending instream water right application for Three Mile Creek on "indefinite administrative hold" would only postpone, without resolving, the need to address our concerns. Similarly, the state's proposal for Home Creek is not workable for the Ranch, and fails to acknowledge RSR's concerns about the validity and credibility of the instream water right application. In our view, the alternatives described in my letter of July 9 offer a more practical and effective long-term resolution. We were disappointed that the state did not respond more directly to our proposals and we hope the state may be willing to reconsider these concepts for future discussions.

In the meantime, we would appreciate confirmation from WRD as soon as possible regarding the proposed schedule for further administrative proceedings.

Thank you, in advance, for your assistance.

Sincerely,

Martha O. Pagel (mca)

Martha O. Pagel

MOP:mca

cc: Lindsay Ball, ODFW
Michael Carrier, OPRD
Renee Moulun
Ron Yockim
Stacy Davies





Oregon

Theodore R. Kulongoski, Governor

VIA MAIL

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
503-378-3739
FAX 503-378-8130

July 28, 2003

Martha O. Pagel
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center, Suites 1600 – 1900
1211 Southwest Fifth Ave.
Portland, OR 97203-3795

Re: Water Right Applications R 84576, S 84577, R 85167, S 85168, IS 84562 and
IS 84563

Dear Martha:

Thank you for your letter of July 9, 2003, in which you provide Roaring Springs Ranch's ("RSR's") and Harney County's position with regard to the above-captioned applications. Although I understand your client's concerns about the seeming slow pace of these negotiations, please keep in mind that the large number of parties involved has attenuated the settlement process considerably. I also want to express my appreciation for RSR's and Harney County's continued willingness to negotiate.

Despite the lack of a formal follow-up meeting to our last negotiating session, OWRD, ODFW and Stacey Davies have visited the site of the proposed reservoir at Smith Flats and V Lake. In addition, the state – Oregon Water Resources Department ("OWRD"), Oregon Parks and Recreation Department ("OPRD"), and the Oregon Department of Fish and Wildlife ("ODFW") – has had several discussions regarding its position on all of the pending applications. Pursuant to these discussions, the state has formed a "unified position" that will streamline the process and may facilitate further settlement discussion. Toward that end, the state offers the following settlement concepts for your client's consideration.

Settlement Concepts

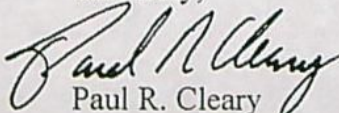
The stage agencies (OWRD, OPRD and ODFW) are unified only in submitting the following as a single resolution to the outstanding applications and the associated protests on R 84576, S 84577, R 85167, S 85168, IS 84562 and IS 84563:

- (a) Three Mile Creek (IS 84563): OWRD will place an indefinite administrative hold on the application given that the segment is located wholly on Bureau of Land Management lands contained within the Steens Mountain Wilderness.

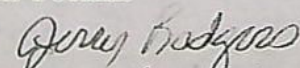
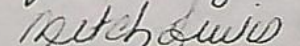
- (b) Roaring Springs Ranch (Lower Reservoir R 85167 & S 85168): OWRD will approve the lower reservoir (with screening as ODFW directs). OWRD, OPRD and ODFW support the supplemental irrigation of 1,510 acres out of the lower reservoir.
- (c) Home Creek (IS 84562): Roaring Springs Ranch (Smith Flats Reservoir & V Lake Reservoir R 84576 & S 84577)
- Existing irrigation in Smith Flats: The state does not support a water right permit for the active irrigation of Smith Flats, but will not object to "passive" or un-manipulated flows for the natural irrigation of Smith Flats meadow.
- Stock ponds in the Home Creek Basin: The state will favorably consider allowing appropriation from Home Creek to fill gravity-fed off stream stock ponds. If Roaring Springs Ranch ("RSR") is interested in this option the state will need more information from RSR regarding how many stock ponds they are considering, the size of the stock ponds, the total acre foot of water required, where the ponds would be located and how and how often the ponds would be filled.
- V Lake: The V Lake component of application R 84576 is acceptable provided any outlets from V Lake are screened to prevent non-native fish from escaping and provided V Lake is not filled from the Smith Flat drainage. The state supports the use of V Lake for the supplemental irrigation of 1,510 acres.
- Smith Flats Reservoir: The state does not support the Smith Flats Reservoir for the reasons provided in the letter from ODFW to Paul Cleary, dated June 17, 2003.

Please let me know at your earliest convenience if your client is willing to pursue settlement in accordance with the above concepts. Your response will allow us to assess whether an additional follow-up meeting between the parties would be productive. Thank you for your attention to this matter; I look forward to hearing from you.

Sincerely,


Paul R. Cleary
Director

c: Michael Carrier
Lindsay Ball
Rick Kepler
Ron Yockim

cc: 




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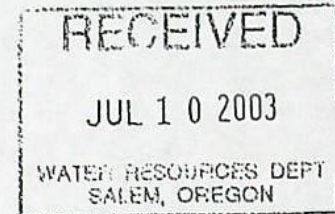
MARTHA O. PAGEL

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July 9, 2003



Paul Cleary
Director
Oregon Water Resources Department
158 12th St. NE
Salem, OR

Re: Steens Mountain/Catlow Valley Water Right Applications: R-84576, S-84577,
R-85167, S-85168, IS 84562 and IS 84563
Our File No. 073928-098125

Dear Paul:

On November 4, 2002, our clients, Roaring Springs Ranch (RSR), met with a number of state agency representatives and interested parties to discuss possible settlement of the above-referenced disputed water right applications. Since then, we have been expecting to receive a settlement proposal from the state, as a follow-up to the November meeting. To date, however, we have received no such proposal, and our repeated efforts to schedule a follow-up meeting have failed.

RSR's applications R-84576 and S-84577 have now been pending for nearly three years. Applications R-85167 and S-85168 were filed more than a year ago and have not been processed past the initial review stage. At this point, RSR is anxious to determine whether there is a realistic opportunity for settlement, or if not, to proceed with administrative actions to determine the final outcome of their pending applications. Toward that end, we have developed the following settlement concepts in cooperation with Harney County. Please note that these proposals are offered solely for the purpose of compromise and settlement within the framework of the settlement process initiated by the state and other parties:

Settlement Concepts

Option 1: The state would recommend approval of Applications R-85167 and S-85168, for the Lower Reservoir. RSR would withdraw Applications R-84567 and S-84577, and the state would withdraw Applications IS-84562 and IS-84563, with an agreement that both RSR and the state would abandon further efforts on these projects. RSR would retain the discretion to file future applications for off-stream storage for livestock watering purposes.

Option 2: The state would support approval of the Lower Reservoir. RSR would withdraw Applications R-84567 and S-84577, and would work with the state and Harney

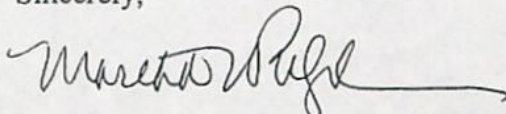
Paul Cleary
July 9, 2003
Page 2

County to support rulemaking by the Water Resources Commission to establish a reservation of 5500 acre-feet of water for future multipurpose storage in the basin. The state would proceed with issuance of the pending instream water rights, subject to the reservation. Under this approach, any future use of the reserved water would require approval of a water right application under the rules and procedures in effect at the time of the application. The reservation would have the effect of determining that water is available for storage, notwithstanding the instream water rights, and of establishing a priority date as of the date the reservation rule.

We are requesting that you respond to us within two weeks as to whether the state is willing to pursue settlement discussions along these lines. If so, we would expect to schedule a follow-up meeting with the appropriate state representatives within 30 days. If we are unable to make progress toward settlement within this time frame, we will request that WRD take immediate steps to continue processing the RSR applications for the Lower Reservoir. At the same time, we will ask that IS-84562 (Home Creek) be referred to the Hearings Panel for scheduling of a contested case hearing. We recommend that hearings on RSR's applications for the upper reservoirs on Home Creek (R-84576 and S-84577) be delayed until completion of the hearing on the instream water right, because the outcome of that proceeding would have a direct bearing on RSR's applications. A hearing on IS 84563 would be scheduled following completion of the other actions.

Thank you, in advance, for your assistance in coordinating the state's response to this proposal. We look forward to hearing from you soon.

Sincerely,



Martha O. Pagel

MOP:mca

cc: Michael Carrier
Lindsay Ball
Stacy Davies
Steve Grasty
Ron Yockim
Renee Moulun



THEODORE R. KULONGOSKI
GOVERNOR



Bent
RECEIVED

AUG 18 2003

WATER RESOURCES DEPT.
SALEM, OREGON

August 18, 2003

The Honorable Steven E. Grasty
Harney County Court
450 North Buena Vista
Burns, OR 97720

Dear Judge Grasty:

Thank you for your letter of July 8, 2003, in which you expressed concerns regarding instream water right applications filed by the Oregon Department of Parks and Recreation (OPRD) that are currently pending before the Oregon Water Resources Department (OWRD). The concerns you have raised are important ones, and I hope you will agree that the state agencies are working to arrive at a solution that will address all of the interests that bear on these applications.

As you are aware, OPRD has filed two instream water right applications on Home Creek (IS 84562) and Threemile Creek (IS 84563). As you are also aware, the Roaring Springs Ranch has filed four applications for storage seeking water from Home Creek for supplemental irrigation. Additionally, the Roaring Springs Ranch has filed protests against the instream water right applications on Home Creek and Threemile Creek. As such, all of these applications have become intertwined, and any negotiated outcome will require resolution of all concerns raised by the many participants in this complex proceeding, including those raised by the Harney County Court.

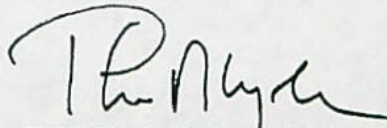
Over the last year, the state agencies have worked to navigate a course through the many conflicts and concerns associated with these applications. Toward this end, the state agencies have listened carefully to the concerns raised by you, by the ranch, and by environmental community. In addition, representatives from Oregon Department of Fish and Wildlife and Oregon Water Resources Department have met personally with the manager of the ranch at the site of two of the proposed reservoirs. OPRD's intent in filing the instream water right applications was not to encumber Harney County with onerous regulations or to prevent further economic growth in Harney County. As such, the agencies have spent considerable time and effort crafting a proposal that would allow further economic growth in Harney County while also protecting the recreational and fisheries interests on Home Creek. Please be assured that the resolution the state proposes includes specific accommodations to the Roaring Springs Ranch and the economic interests of Harney County.

The Honorable Steven E. Grasty
August 18, 2003
Page Two

The state agencies have developed a "unified position" and shared it with the Roaring Springs Ranch (copy enclosed). Hopefully the state's proposal can serve as the platform for further discussions with all of the participants in this proceeding. This position addresses the economic concerns you provided in your letter in four respects. First, it proposes to place an indefinite hold on the Threemile Creek application as this segment is located wholly on Bureau of Land Management lands contained within the Steens Mountain Wilderness Area. Second, it proposes to approve Roaring Springs Ranch's application for a lower reservoir and supplemental irrigation of 1,510 acres out of that lower reservoir. Third, although the agencies do not support the ranch's plans to develop a reservoir at Smith Flats, they do support the ranch's utilization of existing "passive" or un-manipulated flows for natural irrigation of Smith Flats Meadow. Fourth, the agencies will favorably consider allowing appropriation from Home Creek to fill gravity-fed off stream stock ponds, and also support the use of V Lake for supplemental irrigation purposes.

These components of the state agencies' position take into account the importance of ranching to Harney County and address the need for ranchers to be able to access more water to support grazing and irrigation of ranch crops. I appreciate your interest and involvement in this regard and hope you will continue to work with the state agencies, the ranch, my office, and the environmental interests with the goal of finding a mutually agreeable negotiated resolution.

Sincerely,



THEODORE R. KULONGOSKI
Governor

TRK:jeb/sm

Enclosure



Oregon

Theodore R. Kulongoski, Governor

June 17, 2003

Paul Cleary, Director
Oregon Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97301

Department of Fish and Wildlife

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Dear Director Cleary:

This letter is in response to your request for a summary of potential fishery impacts to redband trout associated with water rights proposals R 84576 and S 84577 submitted by Roaring Springs Ranch on Home Creek (Catlow Basin, Harney County). Summarized below is the Oregon Department of Fish and Wildlife's (ODFW) analysis of the fishery issues associated with these water development proposals. This analysis includes background information on how these proposals potentially conflict with our statutory Wildlife Policy to maintain sustainability of Home Creek redband trout and our ability to meet fishery management objectives for Catlow Basin. These issues have been previously discussed in person with Roaring Springs Ranch Manager Stacy Davies during site visits to the Ranch on January 10 and April 14, 2003 by Tim Walters and Bob Hooton of my staff. In recent years ODFW has enjoyed a productive relationship with Roaring Springs Ranch personnel in the implementation of fish and habitat improvement projects on the Ranch, and hopes to continue this relationship into the future.

Water Development Proposals

Proposals R 84576 and S 84577 are to construct two dams with associated reservoirs in the headwaters of Home Creek. At Smith Flat Reservoir, the dam would be 50 feet high, cover 230 acres and hold 3500 acre ft. of water. The reservoir would inundate much of the remaining stream habitat currently occupied by redband trout above the proposed dam site. At V Lake, the dam would be 45 ft high, cover 90 acres and hold 1050 acre ft. of water. The dam would enlarge a naturally fishless lake on an intermittent tributary to upper Home Creek. Part of the water impounded in the Smith Flat Reservoir would be used to fill nearby V Lake. In addition, the proposals request supplemental irrigation water rights for 1510 acres downstream in Catlow Valley.

Fishery Management Objectives

In accordance with the ODFW Wildlife Policy (ORS 496.012), Home Creek is principally managed by ODFW to maintain sustainable populations of native trout and Tui chub. Secondly, we also manage a fishery to provide a modest consumptive harvest opportunity on native redband trout in a semi-remote setting consistent with sustainability of native fish. No hatchery fish are stocked in the basin, and angling

regulations are designed to encourage catch and release fishing with high survival of fish released.

These management objectives are also consistent with the Native Fish Conservation Policy (OAR 635-007-0502). This policy directs ODFW to "maintain and restore naturally produced native fish species, taking full advantage of the productive capacity of natural habitats, in order to provide substantial ecological, economic, and cultural benefits to the citizens of Oregon". In addition, ODFW has worked closely with other state and federal agencies and landowners, including staff from the Roaring Springs Ranch, through the Catlow Conservation Agreement to maintain and improve aquatic habitat in the basin. We have a strong agency commitment to continue those efforts:

Redband Trout Conservation Concerns

Loss of Fish and Fish Habitat

Based on stream surveys conducted in 1999 (Dambacher 2001), upper Home Creek in the area of Smith Flats is a significant rearing area for redband trout in the Home Creek system. Inundation of stream reaches above the proposed dam site would result in a direct loss of spawning and stream rearing habitat. While remaining redband trout would likely rear in the newly formed reservoir, based on a preliminary site visit in April 2003, we are concerned that the redband trout left will be unable to successfully reproduce to any significant extent in the stream reaches remaining above the head of the reservoir. In addition, development of reservoirs in these locations could provide ideal habitat for introduced strains of hatchery trout or warmwater species, resulting in additional potential genetic and ecological impacts to native redband trout.

Smith Flats Reservoir as currently proposed will likely result in a direct loss of both stream habitat and fish population abundance in the area above the dam site.

In the larger Catlow Basin context, 1999 surveys also revealed that Home Creek has the most stable population of redband trout of the three east side Catlow Valley streams with native trout. Data collected in 1999 indicated that the redband trout population was relatively healthy in the Catlow Basin during the environmental conditions of that time. According to Dambacher (2001), there were approximately 55,000 1+ (one year old or older) redband trout in the Catlow basin, and trout densities in Home Creek were generally moderate (1.3 to 8.7 g/m²), with a few sites exceeding 8.7 g/m². Surveys in both 1995 and 1999 indicated that the highest abundance of 1+ redband trout was in reaches with spring flow and in canyon reaches (Dambacher 2001). The 1995 survey also indicated that age 0+ fish were similarly distributed but more restricted to reaches with aquatic macrophytes and cold water temperatures.

We are concerned that if significant fish population impacts are allowed to occur in Home Creek and the current drought conditions persist, sustainability of the Catlow Basin complex of streams overall will be placed at increased risk.

Migration Barriers and Loss of Connectivity

Reservoirs on upper Home Creek will likely impact redband trout through isolating segments of the population, reducing the ability of the population to respond to changing environmental conditions. In 1999, the area above Smith Flats had some of the highest densities of redband trout in the Home Creek basin. A reservoir at Smith Flats would likely isolate this segment of the creek, resulting in loss of connectivity between segments of the population. Loss of connectivity will likely result in the loss of historic refugia, and an inability to recolonize additional stream reaches after catastrophic events. This could lead to overall population decline or even extinction of segments of the Home Creek population. In addition, redband trout distribution varies with changes in habitat caused by climate cycles or land management activities. Reducing accessible habitat through construction of a reservoir could limit the ability of the population to rebound during wet climate cycles.

Modification of Natural Hydrograph

Development of a reservoir complex at Smith Flat and V Lake on Home Creek as originally proposed could have substantial impacts on native redband trout through modifying the natural flow regime. In order to fill the reservoirs most of the natural winter and spring run off will need to be retained behind the dams and not allowed to pass downstream during periods when native redband trout are genetically adapted to optimally benefit from these conditions.

Natural flows in Home Creek protect redband populations by forming the stream channel at high flow and providing fish passage during migration periods. Natural high flows create habitat by moving substrate, creating pools, and moving woody material. This maintains fish habitat and aquatic organisms that support trout populations. Changing the flow regime will modify natural channel forming processes, restrict flow during migration periods, and change substrate composition instream. Such changes could significantly reduce the viability of the redband trout population in Home Creek.

The proposed reservoirs would reverse the natural flow regime (i.e. high spring flows and low summer flows) affecting the suitability of the habitat to which the redband population has adapted. Providing flows in the upper channel of Home Creek during summer and fall months when it is naturally dry in order to meet downstream irrigation needs would not necessarily be beneficial to redband trout. Such a flow regime could attract redband trout to an area of the stream, and then possibly strand them in late summer when water is cut off. In addition, according to WRD's water availability model the reservoirs are unlikely to fill in many years creating a smaller pool susceptible to increased warming that would deliver warmer water to Home Creek further exasperating the natural thermal heating of the system. Changing the natural hydrograph may also make the stream system more suitable to other species that would compete with the redband trout further reducing their numbers. At present, population abundance of redband trout is likely in balance with the habitat carrying capacity of the basin as dictated by local environmental conditions.

Recreational Fishery Concerns

As stated earlier, an important part of ODFW's mission is to provide recreational fishery opportunities in streams consistent with sustainability of native fishes. Of the four streams containing native redband trout in the Catlow Basin, only Home and Rock creeks are currently open to angling. The remaining streams (Skull and Threemile creeks) are closed due to low trout population abundance. In addition to our concerns that these water development proposals could significantly place Home Creek redband trout at higher conservation risk, we are also concerned about any potential loss of angling opportunity in a basin that has already limited opportunities.

Additional Issues

Fish Passage Requirements

Consistent with ORS 509.585 and OAR 635-412-0020 through 635-412-0030, if Smith Flats Dam were constructed the Oregon Fish and Wildlife Commission would either require the developer to provide upstream and downstream fish passage at the dam, or potentially grant a waiver for fish passage if certain conditions are met. Providing fish passage consistent with OAR 635-412-0020 on an isolated 50' high irrigation dam will likely provide significant engineering challenges, and flows needed to meet passage criteria would likely be inconsistent with water development objectives of the reservoir.

By rule, a passage waiver can only be granted if a net benefit to sustainability of Home Creek redband trout resulted from this water development proposal. For the reasons mentioned earlier in this letter (loss of fish abundance, loss of connectivity, loss of stream habitat) demonstrating an overall net benefit to Home Creek redband trout Smith Flat Reservoir is difficult to envision and likely expensive to evaluate.

Redband trout populations in the Catlow basin have been subjected to extremes in environmental conditions over thousands of years, and have developed complex life history traits to exploit those conditions. Historically, during periods of high precipitation, redband trout have evolved to utilize the entire Home Creek watershed, including the valley floor. During dry cycles, redband trout have been restricted to the upper portions of streams (Bowers et al. 1999). In order to adequately evaluate the life history(s) of Home Creek redband trout and potential benefits from reservoir development, evaluations by necessity will need to occur over a broad time period and encompass both high and low precipitation cycles.

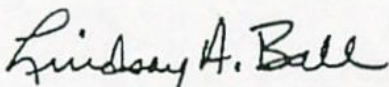
Conclusion

Home Creek is an isolated stream in Catlow Basin, but contains a relatively healthy population of redband trout. Our current analysis concludes that development of currently proposed reservoirs at Smith Flat and V Lake will likely result in an increased risk to Home Creek redband trout. Such risk factors include localized losses of fish and

stream habitat abundance, obstacles to trout migration, isolation of segments of the redband trout population, reduced flow during the critical migration and spawning periods, and altered instream structure by reducing peak flows. Given these impacts, it will be difficult to demonstrate a net benefit to the redband trout population by constructing the proposed reservoir complex in the headwaters of Home Creek basin. This analysis is based on the proposed two reservoir complex with flows collected in Smith Flats reservoir being also used to augment storage in V Lake reservoir. Increasing storage at V Lake reservoir with no inflow provided from Smith Flats is unlikely to impact downstream fish resources in Home Creek because there are no fish in this basin and V Lake does not contribute to Home Creek flows in most years. Constructing V Lake reservoir by itself would be acceptable provided any outlets are screened to prevent non-native fish from escaping and the reservoir relies on its own drainage basin to fill.

Thank you again for the opportunity to comment. If you have additional questions please do not hesitate to contact Rick Kepler of my staff. He can be reached in Portland by telephone at (503) 872-5255 ext. 5426 or by e-mail at rick.j.kepler@state.or.us

Sincerely,



Lindsay A. Ball, Director
Oregon Department of Fish and Wildlife

References

Bowers, W., R. Smith, R. Messmer, C. Edwards, and R. Perkins. 1999. Conservation status of Oregon Basin redband trout. Oregon Department of Fish and Wildlife, Portland.

Dambacher, J.M., K.K. Jones, and H.W. Li. 2001. The distribution and abundance of Great Basin redband trout: and application of variable probability sampling in a 1999 status review. Oregon Department of Fish and Wildlife, Information Reports 2001-08, Portland.

Cc: Michael Carrier, Parks and Recreation Department Salem
Jim Myron, Governor's Natural Resource Office Salem

cc: DJ
TB



HARNEY COUNTY COURT

C: Renee M.
Office of Judge Steven E. Grasty

450 North Buena Vista, Burns, Oregon 97720

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July 8, 2003

The Honorable Ted Kulongoski
Office of the Governor
State Capitol Building, Room 160
900 Court Street NE
Salem, Oregon 97301-4047

Sir:

Greetings from Harney County. This letter is to follow up on a conversation you and I had some weeks ago regarding my concerns about the in-stream water right application on Home Creek and Three Mile Creek in the southern end of Harney County. The Steen's Mountain Cooperative Management and Protection Act (SMCMPA) is a truly unique piece of legislation written by Harney County folks, environmentalists, ranchers, members of the County Court, hunters, fishermen, state agencies, the Governor and of course our federal legislators. If the end result of all that effort is to truly be successful we must stay at the table and keep to the original intent and agreements written into the law. Harney County and its citizens (along with many other Oregonians) claim the Steen's as a beautiful and unique place and as our own. As Governor you have done a commendable job of recognizing the importance of economic development to all parts of this state. These in-stream water right applications can certainly be considered an economic issue due to their potential impact on the economy of Harney County.

I truly admire your commitment to bureaucratic streamlining and believe this is a case where you have the opportunity to head off one more layer of paperwork laid upon the private sector in Oregon. As I explained in our phone conversation Three Mile Creek lies entirely within a nationally designated wilderness area. While I am not an expert on wilderness area regulation I assure you that it is sizeable and complex. To even consider that an additional layer of special state designation, along with its piles of regulation, would accomplish any additional benefits past a wilderness designation makes no sense at all.

Home Creek has exactly the same issue plus a few additional ones. The topography of the section in question is so severe and rocky that there is little use other than the occasional fisherman climbing through and fishing the pools. These two points make for a good number of Rocky Mountain sheep calling it home and prevent any commercial uses, even grazing. Immediately above the steep canyon is a fair amount of private

*Jim -
Just to alert you if you've
not already seen this. Steve claims,
on page 3, that there was never
agreement on an instream application
in lieu of Federal water rights.
Rmg*

ground, which takes in a sizeable amount of the upper basin of Home Creek drainage. The landowner, Roaring Springs Ranch, has a long track record of cooperative management efforts together with ODF&W, environmental groups and the BLM.

I would hope that the goals of the Oregon Parks and Recreation in-stream application is to preserve and protect the recreation opportunity along with the incredible scenic value of both Home and Three Mile creeks. Both of those values are already protected in many ways and show the lack of need for the water rights.

- The current BLM Resource Management Plan (RMP) provides substantial protection for the scenic, cultural and aquatic values there.
- The updated RMP, which is required in the Steens Mountain Act, is under way and will provide for even more restrictive protections on these creeks and the entire Steen's area.
- The Steen's Mountain Advisory Committee (another requirement of the Steen's Act) is actively involved in the RMP update and is looking for processes that preserve the fantastic conditions of the area.
- The importance of these two fisheries means that ODF&W manages them to maintain a sustainable population of native trout and a modest consumptive harvest.
- ODF&W follows its "Native Fish Conservation Policy" (OAR 635-007-0502) to take full advantage of the productive capacity of the natural habitat.
- The private landowner is a solid proponent of caring for the environment.
- Harney County's Comprehensive Land Use Plan regulates uses in the area.
- Many environmental groups are focused on the area and provide a constant source of oversight on any changes.
- Historically this area has been well maintained, everyone comments on the incredible views, fishing and natural conditions here.
- The ranching industry as a whole is very focused on protecting what exists here today. This is the way that the industry proves itself to be a leader in environmental protection.

To say the least these two creeks have much oversight and plenty of regulation applying to them. It is simply overkill to put more on them. I am sure that several arguments will be made in opposition to these arguments, so perhaps the following will be helpful.

- To the best of anyone's memory there was NOT an agreement made during the writing of the SMCMPA to provide an "in-stream" application in lieu of a federal water right. This statement is based on a response from Lindsay Slater, staff to Senator Wyden and lead on this legislation.
- The two current water rights applications filed by Roaring Springs Ranch should be considered as separate issues and can be handled on their own merits, either opposed or supported on that basis. They should not be considered a part of the in-stream application. They are completely separate applications.
- Viewed from Salem the impact of these applications on our economy is very tiny. Viewed from an Ag based economy looking towards Salem these applications severely impact us by placing another layer of bureaucracy on us.
- An "in-stream" water right seems to indicate that someone will be taking the water out and this right will prevent that. Topography alone will prevent the removal of any water in these streams.

I hope that you will remember that Harney County has exceeded the statewide average on the un-employment rate for nearly 3 years, for us to have to be focused on this issue simply detracts from our ability to stay focused on economic issues. One job in Harney County compares to 143.8 in Multnomah County, so even losing one ranch job would have a large negative impact on our economy. Losing a ranch as large as Roaring Springs to bureaucratic regulation would be same as losing a 3000 plus employer in Portland. Surely there are better uses of public resources than pursuing this kind of additional layers of regulation. Please consider withdrawal of the in-stream water right application.

Thank you for your consideration of this issue. I would be happy to make myself available, either in Salem or by phone, for discussion.

Sincerely,

Steven E. Grasty
Judge, Harney County Court

SEG:sj

Reece - contact 8/19
Re other agencies and
Jim Myron/David Vait
Hof and see if we can
meet after the Sept. 3
Natural Resource Cabinet
meeting - 10:05 AM or so - and
decide how to proceed. Thanks
JL

LIAMSON & WYATT, P.C.

- A W

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August 8, 2003

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SALEM, OREGON

Director

Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172

Re: Roaring Springs Ranch / Instream Water Right Applications
Our File No. 073928-098125

Dear Paul:

Thank you for your letter of July 28, 2003, regarding the state's settlement concepts. As described more fully below, we cannot accept the terms proposed in your letter, and at this point, it is not clear whether further negotiations would be fruitful. We therefore request that the Water Resources Department (WRD) move forward immediately with further administrative action on the pending applications, including referral of IS 84562 to the Office of Administrative Hearings for scheduling of a contested case hearing.

As described in my letter of July 9, 2003, we believe the schedule of contested cases should begin with IS 84562, the instream application for Home Creek. This matter should be considered first because its outcome will have a direct bearing on applications R-84576 and S-84577, the "upper" reservoir applications of Roaring Springs Ranch (RSR).

In addition, we request that the WRD immediately continue processing RSR applications R-85167 and S-85168, relating to the proposed "lower" reservoir on Home Creek. These applications should not be affected by the contested proceedings under IS 84562 because the applications seek use of water below the reach of the proposed instream water right. In that regard, we believe the Initial Review issued by WRD on June 21, 2002, is in error with respect to the water availability determination. The Initial Review indicates that water is not available for the proposed reservoir and secondary use because of the pending instream water right application. However, as noted, the reach of the proposed instream water right is above the proposed reservoir, and therefore should not be a factor in the water availability determination. In addition, based on previous contacts with WRD and other agency staff, it would appear this application can and should be approved. We therefore request immediate administrative action to continue with the process.

Finally, we note that we are hopeful these matters may be ultimately resolved through further settlement discussions, even though we cannot support further delays in application

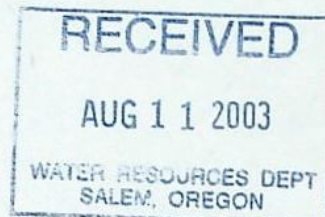


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MARTHA O. PAGEL
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August 8, 2003



Mr. Paul Cleary
Director
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172

Re: Roaring Springs Ranch / Instream Water Right Applications
Our File No. 073928-098125

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Mr. Paul Cleary
August 8, 2003
Page 2

processing on the basis of settlement proposals that appear, at this point, to be so far apart. The state's suggestion to place the pending instream water right application for Three Mile Creek on "indefinite administrative hold" would only postpone, without resolving, the need to address our concerns. Similarly, the state's proposal for Home Creek is not workable for the Ranch, and fails to acknowledge RSR's concerns about the validity and credibility of the instream water right application. In our view, the alternatives described in my letter of July 9 offer a more practical and effective long-term resolution. We were disappointed that the state did not respond more directly to our proposals and we hope the state may be willing to reconsider these concepts for future discussions.

In the meantime, we would appreciate confirmation from WRD as soon as possible regarding the proposed schedule for further administrative proceedings.

Thank you, in advance, for your assistance.

Sincerely,

Martha O. Pagel (mca)

Martha O. Pagel

MOP:mca

cc: Lindsay Ball, ODFW
Michael Carrier, OPRD
Renee Moulun
Ron Yockim
Stacy Davies





Oregon

Theodore R. Kulongoski, Governor

VIA MAIL

Bene
Water Resources Department

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503-378-3739
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July 28, 2003

Martha O. Pagel
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center, Suites 1600 – 1900
1211 Southwest Fifth Ave.
Portland, OR 97203-3795

Re: Water Right Applications R 84576, S 84577, R 85167, S 85168, IS 84562 and
IS 84563

Dear Martha:

Thank you for your letter of July 9, 2003, in which you provide Roaring Springs Ranch's ("RSR's") and Harney County's position with regard to the above-captioned applications. Although I understand your client's concerns about the seeming slow pace of these negotiations, please keep in mind that the large number of parties involved has attenuated the settlement process considerably. I also want to express my appreciation for RSR's and Harney County's continued willingness to negotiate.

Despite the lack of a formal follow-up meeting to our last negotiating session, OWRD, ODFW and Stacey Davies have visited the site of the proposed reservoir at Smith Flats and V Lake. In addition, the state – Oregon Water Resources Department ("OWRD"), Oregon Parks and Recreation Department ("OPRD"), and the Oregon Department of Fish and Wildlife ("ODFW") – has had several discussions regarding its position on all of the pending applications. Pursuant to these discussions, the state has formed a "unified position" that will streamline the process and may facilitate further settlement discussion. Toward that end, the state offers the following settlement concepts for your client's consideration.

Settlement Concepts

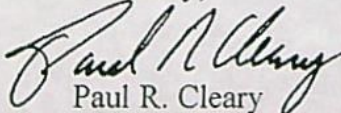
The stage agencies (OWRD, OPRD and ODFW) are unified only in submitting the following as a single resolution to the outstanding applications and the associated protests on R 84576, S 84577, R 85167, S 85168, IS 84562 and IS 84563:

- (a) Three Mile Creek (IS 84563): OWRD will place an indefinite administrative hold on the application given that the segment is located wholly on Bureau of Land Management lands contained within the Steens Mountain Wilderness.

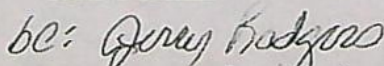
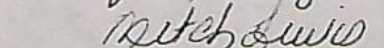
- (b) Roaring Springs Ranch (Lower Reservoir R 85167 & S 85168): OWRD will approve the lower reservoir (with screening as ODFW directs). OWRD, OPRD and ODFW support the supplemental irrigation of 1,510 acres out of the lower reservoir.
- (c) Home Creek (IS 84562): Roaring Springs Ranch (Smith Flats Reservoir & V Lake Reservoir R 84576 & S 84577)
 - Existing irrigation in Smith Flats: The state does not support a water right permit for the active irrigation of Smith Flats, but will not object to "passive" or un-manipulated flows for the natural irrigation of Smith Flats meadow.
 - Stock ponds in the Home Creek Basin: The state will favorably consider allowing appropriation from Home Creek to fill gravity-fed off stream stock ponds. If Roaring Springs Ranch ("RSR") is interested in this option the state will need more information from RSR regarding how many stock ponds they are considering, the size of the stock ponds, the total acre foot of water required, where the ponds would be located and how and how often the ponds would be filled.
 - V Lake: The V Lake component of application R 84576 is acceptable provided any outlets from V Lake are screened to prevent non-native fish from escaping and provided V Lake is not filled from the Smith Flat drainage. The state supports the use of V Lake for the supplemental irrigation of 1,510 acres.
 - Smith Flats Reservoir: The state does not support the Smith Flats Reservoir for the reasons provided in the letter from ODFW to Paul Cleary, dated June 17, 2003.

Please let me know at your earliest convenience if your client is willing to pursue settlement in accordance with the above concepts. Your response will allow us to assess whether an additional follow-up meeting between the parties would be productive. Thank you for your attention to this matter; I look forward to hearing from you.

Sincerely,


Paul R. Cleary
Director

c: Michael Carrier
Lindsay Ball
Rick Kepler
Ron Yockim

cc: 




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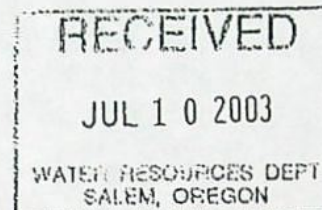
MARTHA O. PAGEL

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Salem 503.399.7712

E-Mail: mpagel@schwabe.com

July 9, 2003



Paul Cleary
Director
Oregon Water Resources Department
158 12th St. NE
Salem, OR

Re: Steens Mountain/Catlow Valley Water Right Applications: R-84576, S-84577,
R-85167, S-85168, IS 84562 and IS 84563
Our File No. 073928-098125

Dear Paul:

On November 4, 2002, our clients, Roaring Springs Ranch (RSR), met with a number of state agency representatives and interested parties to discuss possible settlement of the above-referenced disputed water right applications. Since then, we have been expecting to receive a settlement proposal from the state, as a follow-up to the November meeting. To date, however, we have received no such proposal, and our repeated efforts to schedule a follow-up meeting have failed.

RSR's applications R-84576 and S-84577 have now been pending for nearly three years. Applications R-85167 and S-85168 were filed more than a year ago and have not been processed past the initial review stage. At this point, RSR is anxious to determine whether there is a realistic opportunity for settlement, or if not, to proceed with administrative actions to determine the final outcome of their pending applications. Toward that end, we have developed the following settlement concepts in cooperation with Harney County. Please note that these proposals are offered solely for the purpose of compromise and settlement within the framework of the settlement process initiated by the state and other parties:

Settlement Concepts

Option 1: The state would recommend approval of Applications R-85167 and S-85168, for the Lower Reservoir. RSR would withdraw Applications R-84567 and S-84577, and the state would withdraw Applications IS-84562 and IS-84563, with an agreement that both RSR and the state would abandon further efforts on these projects. RSR would retain the discretion to file future applications for off-stream storage for livestock watering purposes.

Option 2: The state would support approval of the Lower Reservoir. RSR would withdraw Applications R-84567 and S-84577, and would work with the state and Harney

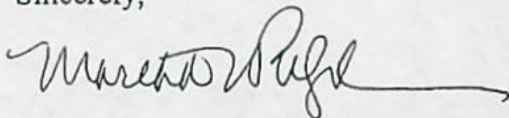
Paul Cleary
July 9, 2003
Page 2

County to support rulemaking by the Water Resources Commission to establish a reservation of 5500 acre-feet of water for future multipurpose storage in the basin. The state would proceed with issuance of the pending instream water rights, subject to the reservation. Under this approach, any future use of the reserved water would require approval of a water right application under the rules and procedures in effect at the time of the application. The reservation would have the effect of determining that water is available for storage, notwithstanding the instream water rights, and of establishing a priority date as of the date the reservation rule.

We are requesting that you respond to us within two weeks as to whether the state is willing to pursue settlement discussions along these lines. If so, we would expect to schedule a follow-up meeting with the appropriate state representatives within 30 days. If we are unable to make progress toward settlement within this time frame, we will request that WRD take immediate steps to continue processing the RSR applications for the Lower Reservoir. At the same time, we will ask that IS-84562 (Home Creek) be referred to the Hearings Panel for scheduling of a contested case hearing. We recommend that hearings on RSR's applications for the upper reservoirs on Home Creek (R-84576 and S-84577) be delayed until completion of the hearing on the instream water right, because the outcome of that proceeding would have a direct bearing on RSR's applications. A hearing on IS 84563 would be scheduled following completion of the other actions.

Thank you, in advance, for your assistance in coordinating the state's response to this proposal. We look forward to hearing from you soon.

Sincerely,



Martha O. Pagel

MOP:mca

cc: Michael Carrier
Lindsay Ball
Stacy Davies
Steve Grasty
Ron Yockim
Renee Moulun





Oregon

Theodore R. Kulongoski, Governor

June 17, 2003

Paul Cleary, Director
Oregon Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97301

Department of Fish and Wildlife

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Dear Director Cleary:

This letter is in response to your request for a summary of potential fishery impacts to redband trout associated with water rights proposals R 84576 and S 84577 submitted by Roaring Springs Ranch on Home Creek (Catlow Basin, Harney County). Summarized below is the Oregon Department of Fish and Wildlife's (ODFW) analysis of the fishery issues associated with these water development proposals. This analysis includes background information on how these proposals potentially conflict with our statutory Wildlife Policy to maintain sustainability of Home Creek redband trout and our ability to meet fishery management objectives for Catlow Basin. These issues have been previously discussed in person with Roaring Springs Ranch Manager Stacy Davies during site visits to the Ranch on January 10 and April 14, 2003 by Tim Walters and Bob Hooton of my staff. In recent years ODFW has enjoyed a productive relationship with Roaring Springs Ranch personnel in the implementation of fish and habitat improvement projects on the Ranch, and hopes to continue this relationship into the future.

Water Development Proposals

Proposals R 84576 and S 84577 are to construct two dams with associated reservoirs in the headwaters of Home Creek. At Smith Flat Reservoir, the dam would be 50 feet high, cover 230 acres and hold 3500 acre ft. of water. The reservoir would inundate much of the remaining stream habitat currently occupied by redband trout above the proposed dam site. At V Lake, the dam would be 45 ft high, cover 90 acres and hold 1050 acre ft. of water. The dam would enlarge a naturally fishless lake on an intermittent tributary to upper Home Creek. Part of the water impounded in the Smith Flat Reservoir would be used to fill nearby V Lake. In addition, the proposals request supplemental irrigation water rights for 1510 acres downstream in Catlow Valley.

Fishery Management Objectives

In accordance with the ODFW Wildlife Policy (ORS 496.012), Home Creek is principally managed by ODFW to maintain sustainable populations of native trout and Tui chub. Secondarily, we also manage a fishery to provide a modest consumptive harvest opportunity on native redband trout in a semi-remote setting consistent with sustainability of native fish. No hatchery fish are stocked in the basin, and angling

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regulations are designed to encourage catch and release fishing with high survival of fish released.

These management objectives are also consistent with the Native Fish Conservation Policy (OAR 635-007-0502). This policy directs ODFW to "maintain and restore naturally produced native fish species, taking full advantage of the productive capacity of natural habitats, in order to provide substantial ecological, economic, and cultural benefits to the citizens of Oregon". In addition, ODFW has worked closely with other state and federal agencies and landowners, including staff from the Roaring Springs Ranch, through the Catlow Conservation Agreement to maintain and improve aquatic habitat in the basin. We have a strong agency commitment to continue those efforts.

Redband Trout Conservation Concerns

Loss of Fish and Fish Habitat

Based on stream surveys conducted in 1999 (Dambacher 2001), upper Home Creek in the area of Smith Flats is a significant rearing area for redband trout in the Home Creek system. Inundation of stream reaches above the proposed dam site would result in a direct loss of spawning and stream rearing habitat. While remaining redband trout would likely rear in the newly formed reservoir, based on a preliminary site visit in April 2003, we are concerned that the redband trout left will be unable to successfully reproduce to any significant extent in the stream reaches remaining above the head of the reservoir. In addition, development of reservoirs in these locations could provide ideal habitat for introduced strains of hatchery trout or warmwater species, resulting in additional potential genetic and ecological impacts to native redband trout.

Smith Flats Reservoir as currently proposed will likely result in a direct loss of both stream habitat and fish population abundance in the area above the dam site.

In the larger Catlow Basin context, 1999 surveys also revealed that Home Creek has the most stable population of redband trout of the three east side Catlow Valley streams with native trout. Data collected in 1999 indicated that the redband trout population was relatively healthy in the Catlow Basin during the environmental conditions of that time. According to Dambacher (2001), there were approximately 55,000 1+ (one year old or older) redband trout in the Catlow basin, and trout densities in Home Creek were generally moderate (1.3 to 8.7 g/m²), with a few sites exceeding 8.7 g/m². Surveys in both 1995 and 1999 indicated that the highest abundance of 1+ redband trout was in reaches with spring flow and in canyon reaches (Dambacher 2001). The 1995 survey also indicated that age 0+ fish were similarly distributed but more restricted to reaches with aquatic macrophytes and cold water temperatures.

We are concerned that if significant fish population impacts are allowed to occur in Home Creek and the current drought conditions persist, sustainability of the Catlow Basin complex of streams overall will be placed at increased risk.

Migration Barriers and Loss of Connectivity

Reservoirs on upper Home Creek will likely impact redband trout through isolating segments of the population, reducing the ability of the population to respond to changing environmental conditions. In 1999, the area above Smith Flats had some of the highest densities of redband trout in the Home Creek basin. A reservoir at Smith Flats would likely isolate this segment of the creek, resulting in loss of connectivity between segments of the population. Loss of connectivity will likely result in the loss of historic refugia, and an inability to recolonize additional stream reaches after catastrophic events. This could lead to overall population decline or even extinction of segments of the Home Creek population. In addition, redband trout distribution varies with changes in habitat caused by climate cycles or land management activities. Reducing accessible habitat through construction of a reservoir could limit the ability of the population to rebound during wet climate cycles.

Modification of Natural Hydrograph

Development of a reservoir complex at Smith Flat and V Lake on Home Creek as originally proposed could have substantial impacts on native redband trout through modifying the natural flow regime. In order to fill the reservoirs most of the natural winter and spring run off will need to be retained behind the dams and not allowed to pass downstream during periods when native redband trout are genetically adapted to optimally benefit from these conditions.

Natural flows in Home Creek protect redband populations by forming the stream channel at high flow and providing fish passage during migration periods. Natural high flows create habitat by moving substrate, creating pools, and moving woody material. This maintains fish habitat and aquatic organisms that support trout populations. Changing the flow regime will modify natural channel forming processes, restrict flow during migration periods, and change substrate composition instream. Such changes could significantly reduce the viability of the redband trout population in Home Creek.

The proposed reservoirs would reverse the natural flow regime (i.e. high spring flows and low summer flows) affecting the suitability of the habitat to which the redband population has adapted. Providing flows in the upper channel of Home Creek during summer and fall months when it is naturally dry in order to meet downstream irrigation needs would not necessarily be beneficial to redband trout. Such a flow regime could attract redband trout to an area of the stream, and then possibly strand them in late summer when water is cut off. In addition, according to WRD's water availability model the reservoirs are unlikely to fill in many years creating a smaller pool susceptible to increased warming that would deliver warmer water to Home Creek further exasperating the natural thermal heating of the system. Changing the natural hydrograph may also make the stream system more suitable to other species that would compete with the redband trout further reducing their numbers. At present, population abundance of redband trout is likely in balance with the habitat carrying capacity of the basin as dictated by local environmental conditions.

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Recreational Fishery Concerns

- As stated earlier, an important part of ODFW's mission is to provide recreational fishery opportunities in streams consistent with sustainability of native fishes. Of the four streams containing native redband trout in the Catlow Basin, only Home and Rock creeks are currently open to angling. The remaining streams (Skull and Threemile creeks) are closed due to low trout population abundance. In addition to our concerns that these water development proposals could significantly place Home Creek redband trout at higher conservation risk, we are also concerned about any potential loss of angling opportunity in a basin that has already limited opportunities.

Additional Issues

Fish Passage Requirements

Consistent with ORS 509.585 and OAR 635-412-0020 through 635-412-0030, if Smith Flats Dam were constructed the Oregon Fish and Wildlife Commission would either require the developer to provide upstream and downstream fish passage at the dam, or potentially grant a waiver for fish passage if certain conditions are met. Providing fish passage consistent with OAR 635-412-0020 on an isolated 50' high irrigation dam will likely provide significant engineering challenges, and flows needed to meet passage criteria would likely be inconsistent with water development objectives of the reservoir.

By rule, a passage waiver can only be granted if a net benefit to sustainability of Home Creek redband trout resulted from this water development proposal. For the reasons mentioned earlier in this letter (loss of fish abundance, loss of connectivity, loss of stream habitat) demonstrating an overall net benefit to Home Creek redband trout Smith Flat Reservoir is difficult to envision and likely expensive to evaluate.

Redband trout populations in the Catlow basin have been subjected to extremes in environmental conditions over thousands of years, and have developed complex life history traits to exploit those conditions. Historically, during periods of high precipitation, redband trout have evolved to utilize the entire Home Creek watershed, including the valley floor. During dry cycles, redband trout have been restricted to the upper portions of streams (Bowers et al. 1999). In order to adequately evaluate the life history(s) of Home Creek redband trout and potential benefits from reservoir development, evaluations by necessity will need to occur over a broad time period and encompass both high and low precipitation cycles.

Conclusion

Home Creek is an isolated stream in Catlow Basin, but contains a relatively healthy population of redband trout. Our current analysis concludes that development of currently proposed reservoirs at Smith Flat and V Lake will likely result in an increased risk to Home Creek redband trout. Such risk factors include localized losses of fish and

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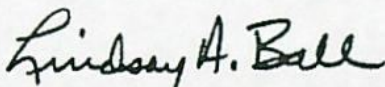
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SALEM, OREGON

stream habitat abundance, obstacles to trout migration, isolation of segments of the redband trout population, reduced flow during the critical migration and spawning periods, and altered instream structure by reducing peak flows. Given these impacts, it will be difficult to demonstrate a net benefit to the redband trout population by constructing the proposed reservoir complex in the headwaters of Home Creek basin. This analysis is based on the proposed two reservoir complex with flows collected in Smith Flats reservoir being also used to augment storage in V Lake reservoir. Increasing storage at V Lake reservoir with no inflow provided from Smith Flats is unlikely to impact downstream fish resources in Home Creek because there are no fish in this basin and V Lake does not contribute to Home Creek flows in most years. Constructing V Lake reservoir by itself would be acceptable provided any outlets are screened to prevent non-native fish from escaping and the reservoir relies on its own drainage basin to fill.

Thank you again for the opportunity to comment. If you have additional questions please do not hesitate to contact Rick Kepler of my staff. He can be reached in Portland by telephone at (503) 872-5255 ext. 5426 or by e-mail at rick.j.kepler@state.or.us

Sincerely,



Lindsay A. Ball, Director
Oregon Department of Fish and Wildlife

References

Bowers, W., R. Smith, R. Messmer, C. Edwards, and R. Perkins. 1999. Conservation status of Oregon Basin redband trout. Oregon Department of Fish and Wildlife, Portland.

Dambacher, J.M., K.K. Jones, and H.W. Li. 2001. The distribution and abundance of Great Basin redband trout: and application of variable probability sampling in a 1999 status review. Oregon Department of Fish and Wildlife, Information Reports 2001-08, Portland.

Cc: Michael Carrier, Parks and Recreation Department Salem
Jim Myron, Governor's Natural Resource Office Salem

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JUN 10 2003
WATER RESOURCES DEPT.
SALEM, OREGON



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130
www.wrd.state.or.us

VIA MAIL

October 3, 2002

Oregon Parks & Recreation
c/o Michael Carrier
1115 Commercial St. NE, Ste. 1
Salem, OR 97301

Rick Kepler, Manager
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Oregon Department of Fish & Wildlife
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Portland, OR 97310

Ronald S. Yockim
Attorney at Law
548 S.E. Jackson, Ste. 7
P.O. Box 2456
Roseburg, OR 97470

RE: Water right applications IS 84562 and IS 84563 in the Name of the Oregon
Department of Parks & Recreation

Dear Ladies and Gentlemen:

This letter confirms a meeting set for November 4, 2002, 9:30 a.m. to 12:00 p.m. in Conference Room D at the Oregon Water Resources Department, 158 12th St. N.E., Salem, OR. The meeting will discuss the issues raised in the protests and requests for standing with regard to the above-captioned applications.

The participants can also expect discussion on applications R 84567 and S 84577 in the name of Roaring Springs Ranch as these applications are relevant to discussion regarding the instream water right applications.

Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Renee Moulun
Protest Program Coordinator
(503) 378-8455 ext. 239: Renee.M.Moulun@wrd.state.or.us



Catlow Redband Trout
and Catlow Tui Chub

Conservation Agreement and Strategy

Sept. 1997

CONSERVATION AGREEMENT

Catlow redband trout (*Oncorhynchus mykiss* ssp.)
and Catlow tui chub (*Gila bicolor* ssp.)

This Conservation Agreement for the Catlow redband trout (*Oncorhynchus mykiss* ssp.) and Catlow tui chub (*Gila bicolor* ssp.) has been developed in order to expedite conservation measures needed for the continued existence and recovery of these species. These measures will be taken in accordance with the Endangered Species Act (ESA) of 1973 as amended. The agreement focuses on two objectives. The first is to reduce and eliminate significant threats. The second is to enhance and/or stabilize specific stream reaches of occupied and unoccupied historic habitat. These objectives will be reached through implementation of the Conservation Strategy for the species (Attachment A). Full implementation of this agreement and the associated strategy will reduce threats to the Catlow redband trout and Catlow tui chub that may otherwise warrant their listing as threatened or endangered under the ESA.

The Catlow redband trout is an undescribed subspecies of rainbow trout. It is endemic to the Catlow Valley of Oregon. The Catlow tui chub, a small minnow, is an undescribed subspecies of tui chub and is also endemic to the Catlow Valley of Oregon. Landownership of the basins of the Catlow Valley streams addressed by this Conservation Agreement are 39 percent Federal (Bureau of Land Management (BLM)) and 61 percent private, with all of the private lands being owned by the Roaring Springs Ranch, Inc. (RSR). Past and present human activities, such as domestic livestock grazing, wild horse use, suppression of wildfire, road construction, and irrigation developments, have degraded the habitat available to these fish. Populations appear to have a smaller distribution than they did in the past. These streams also have relatively small drainages; therefore, populations are naturally small, making them susceptible to such events as prolonged natural periods of drought or catastrophic wildfires. Because of the activities and the status of the populations, the species are considered by the U.S. Fish and Wildlife Service (USFWS) to be Species of Concern.

Because the landownership of the Catlow Valley stream drainages is a mix of private and public, the purpose of this agreement is to improve and enhance the habitat of the Catlow redband trout and the Catlow tui chub while maintaining a viable ranch grazing program for the RSR and multiple-use resource management for the BLM. Changes in grazing and water management on one part of RSR or BLM lands within the drainages can affect the total RSR operation, BLM management for its resources, and overall habitat of the Catlow redband trout and Catlow tui chub. Conservation management as described in the Conservation Strategy will also have effects on other public lands, including the Malheur National Wildlife Refuge (MNWR), and how the Oregon Department of Fish and Wildlife (ODFW) manages the species. Effective management will require biologically driven adaptive management and consideration of the overall RSR operation, BLM resource management, MNWR resource management, and ODFW species management.

I. INVOLVED PARTIES

State of Oregon

Department of Fish and Wildlife
High Desert Region
61374 Parrell Road
Bend, Oregon 97702
(541) 388-6363

United States Department of the Interior

Fish and Wildlife Service
Oregon State Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179

Fish and Wildlife Service
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(541) 493-2612

Bureau of Land Management
Burns District
HC 74-12533, Highway 20 West
Hines, Oregon 97738
(541) 573-4400

Private

Roaring Springs Ranch, Inc.
985 NW Second Street
Kalama, Washington 98625
(360) 673-2825

Separate Memorandum(a) of Understanding and Cooperative Agreements will be developed with additional parties, as necessary, to ensure implementation of specific conservation measures.

II. AUTHORITY

The signatory parties hereto enter into this Conservation Agreement and the attached Conservation Strategy under Federal and State law, as applicable, including, but not limited to, Section 2(c)(2) of the ESA, which states that "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." Additional authorities include the Fish and Wildlife Act of 1956, as amended; the Fish and Wildlife Coordination Act, as amended; and the Sikes Act.

The public agencies that are party to this Agreement recognize that they each have specific statutory responsibilities which cannot be delegated, particularly with respect to the management and conservation of wildlife and the management, development, and allocation of water resources. Nothing in this Agreement or the Strategy is intended to abrogate any of the parties' respective responsibilities.

The signatories understand that all activities that may occur on RSR property for the implementation of this Conservation Agreement and the Conservation Strategy are at the sole discretion and by permission of RSR.

Because a major factor in improving and enhancing habitat for the Catlow redband trout and Catlow tui chub is the biologically driven adaptive management of upland vegetation, riparian areas, and water to provide habitat and forage, changes to the tentative annual grazing management plan may be needed as information on the forage and water conditions become available during the year. Responsibility and authority to make the needed changes to the tentative annual grazing management plan as information on the forage and water conditions become more available as the year unfolds shall rest with the RSR Manager, the BLM Andrews Resource Area Manager (AM), and the AM's Range Management representative.

The signatories understand that implementation of this Conservation Agreement and the Conservation Strategy may not preclude the listing of the species as threatened or endangered under the ESA.

This Agreement is subject to, and is intended to be consistent with, all applicable Federal and State laws.

III. STATUS AND DISTRIBUTION OF THE CATLOW REDBAND TROUT AND CATLOW TUI CHUB

The Catlow redband trout and Catlow tui chub were Federal Category II candidate species but are now a Species of Concern, after USFWS finalized their revised candidate policy on December 5, 1996. They are both BLM Sensitive species and Oregon Sensitive species. They do not currently fall under any protective Federal or State legislation. They are provided protection only through the policy of the individual government agencies. When the species were removed from the Category II list in 1996, BLM's interim policy was that management for those removed species would be the same as that for BLM Sensitive species.

The Catlow redband trout is still found in all of its east Catlow Valley streams -- Home, Threemile, and Skull Creeks. In 1995, the population was at such low levels in Skull Creek that an ODFW inventory failed to find them; however, in 1996 trout were observed by BLM personnel during field monitoring for other than fish presence, and in 1997 the trout presence was verified during a reinventory of the stream by ODFW. In the same 1995 fish inventory in Threemile Creek, the fish were no longer found in the lowermost kilometer of the stream, where they had been found previously, and their numbers were estimated to be a magnitude lower than in the past.

The Catlow tui chub continue to occur in Skull Creek, including Skull Creek Reservoir, and in Threemile Reservoir. They have not been found in Threemile Creek, where they had been previously observed in 1971, and they have not been found in lower Home Creek, where they had been previously found in 1939, 1954, 1972, and 1976, according to the Oregon Natural Heritage Database (ONHD). They continue to occur in the springs and ditches near the RSR headquarters, Sixmile Reservoir and its feeder springs, Garrison Lakes, and the valley wetlands downstream of Home Creek (W. Bowers, ODFW, personal observation).

IV. PROBLEMS FACING THE SPECIES

The Conservation Strategy provides a detailed review of existing and potential problems and threats to the species that the signatories to this agreement will address with management actions.

V. CONSERVATION ACTIONS TO BE IMPLEMENTED

In order to meet the objectives of this Agreement, 37 conservation actions will be implemented. In general these actions address the following: (1) further studies and monitoring of conditions for establishing baselines and determining effectiveness of the management actions and (2) elimination or reduction of the existing or potential threats. These actions are described in detail in the Conservation Strategy. In addition, four general administrative actions, as outlined below, will be implemented: coordinate conservation activities, implement the conservation schedule, fund conservation actions, and assess conservation progress.

Coordinating Conservation Activities

- Administration of the conservation agreement will be conducted through coordination of the signatories to this Agreement and may include contact of technical and legal advisors and other members as deemed necessary by the signatories.
- The USFWS will be responsible for the coordination of activities of the signatories relative to the overall implementation of the Conservation Strategy; however, signatories are not required to contact the USFWS to implement their respective conservation measures.
- The signatories will meet annually to assess progress on the implementation and effectiveness of the conservation strategy and modify the strategy as required.
- The signatories will be contacted by the USFWS biannually to report on the progress of implementing the conservation strategy.
- The signatories agree that at the end of each grazing and growing season, the RSR Manager, the BLM Andrews Resource AM, and the AM's Range Management representative shall report to each of the signatories on the year's progress in moving towards the desired habitat conditions.
- The signatories agree that specific projects, program management, and annual grazing management for implementing the Conservation Strategy will be finalized and approved by all signatories prior to January 1 of the year in which the projects, programs, or grazing strategies are to be implemented.

Implementing Conservation Schedule

- A total of 10 years is anticipated for full implementation of the actions identified and specified in the Conservation Strategy. Nevertheless, the signatories agree that significant actions to benefit the Catlow redband trout and Catlow tui chub will be implemented within the first 5 years.
- An overall schedule of conservation actions is in the Conservation Strategy. Specific conservation actions will be scheduled on a yearly basis. Priorities will be established based on monitoring, funding, and agreement of the signatories.

Funding Conservation Actions

- It is anticipated that expenditures to implement this Agreement could exceed \$300,000. Actions for restoring the habitat and fish passage will incur the greatest expense during the first 3 to 5 years of the agreement.
- Funding for the Conservation Agreement will be provided by a variety of sources. Federal, State and local sources will need to provide or secure funding for the conservation measures identified in the Conservation Agreement.
 - Federal sources include, but will not be limited to, the USFWS, MNWR, and BLM. This includes potential partnership and challenge cost-share funds through public and private agencies and organizations. The USFWS, MNWR, and BLM will work with the other signatories in applying for funds through other public agencies, such as the Natural Resource Conservation Service or the Oregon Department of Environmental Quality.
 - State funding sources include, but will not be limited to, ODFW. This includes potential partnership and challenge cost-share funds through public and private agencies and organizations.
 - Local sources of funding and support will be sought from the Harney County Watershed Council and other local agencies and organizations.
- In-kind contributions in the form of personnel, field equipment, supplies, etc., will be provided by the RSR and other agencies or organizations.
- It is understood that all funding commitments made under this Agreement are subject to the discretion of the funding sources.

Conservation Progress Assessment

- USFWS will provide to all signatories of this document a written biannual assessment of progress toward implementing actions identified in this agreement.
- An annual assessment of conservation accomplishments and subsequent yearly schedules will be made by the signatories. This assessment will determine the effectiveness of this agreement and strategy and whether revisions are warranted. It will be provided to all signatories to this document.

VI. DURATION OF AGREEMENT

The initial term of this Agreement shall be 5 years from the latest signature date. Prior to the end of the 5-year period, a thorough analysis of actions implemented for the species will be conducted by the signatories. If all signatories agree that sufficient progress has been made toward the conservation of the Catlow redband trout and Catlow tui chub, this Agreement shall be extended for an additional 5 years. Any signatory may withdraw from this Agreement on 60 days written notice to each of the other signatories.

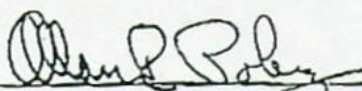
VII. NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

Signing of this agreement is covered under authorities outlined in Section III listed above. It is anticipated that any survey, collection, or research activities for implementation and maintenance of the Conservation Agreement will not entail significant Federal actions under the National Environmental Policy Act (NEPA) and will be given a categorical exclusion designation. All other Federal actions that have not already been analyzed under NEPA will be evaluated prior to implementation and will comply with NEPA regulations.

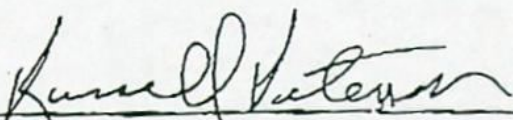
VIII. FEDERAL AGENCY COMPLIANCE

- During the performance of this agreement, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin.
- No member or delegate to Congress or resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

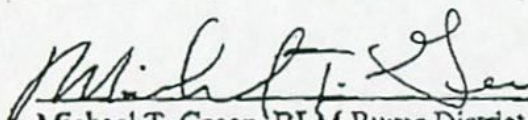
IX. SIGNATURES


Allan Polenz, ODFW High Desert Region

8/26/97
Date


Russell Peterson, USFWS Oregon State Office

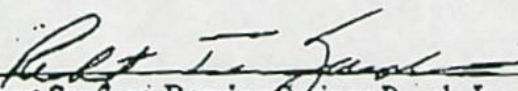
8/27/97
Date


Michael T. Green, BLM Burns District

8/25/97
Date


Forrest Cameron, USFWS, MNR

8/26/97
Date


Robert Sanders, Roaring Springs Ranch, Inc.

8/27/97
Date

CONSERVATION STRATEGY

Catlow redband trout (*Oncorhynchus mykiss* ssp.)

Catlow tui chub (*Gila bicolor* ssp.)

PURPOSE

The purpose of this document is to describe specific procedures and strategies required for conservation of Catlow redband trout and Catlow tui chub. The general conservation approach focuses on two main objectives. The first objective is to eliminate threats where possible and to reduce to the greatest extent possible those threats that cannot be eliminated entirely. The second is to enhance and/or stabilize habitat conditions in specific reaches of occupied and unoccupied habitat. The desired outcome is that the species will increase to occupy at least 80 percent of its historic habitat.

Definitions

For the purposes of the Agreement and Strategy, the following terms are defined:

Current habitat - Habitat consisting of stream reaches and other water bodies currently occupied by self-sustaining Catlow redband trout or Catlow tui chub populations. For Catlow redband trout, current habitat includes stream reaches in most of Home Creek, lower canyon reaches of Threemile Creek, and upper canyon reaches of Skull Creek. For Catlow tui chub, current habitat includes Threemile Reservoir, Skull Creek Reservoir, Skull Creek below the reservoir, lower Echart Creek (tributary to Skull Creek), Roaring Springs, the ditches at the Roaring Springs Ranch (RSR) headquarters, Sixmile Reservoir and its feeder springs, Garrison Lakes, and the valley wetlands and swamps where Home Creek terminates. The extent of current habitat probably fluctuates with changing environmental conditions.

Historic habitat - Historic habitat consists of stream reaches and other water bodies that have been shown, can be shown, and/or can logically be deduced as historically being occupied by Catlow redband trout or Catlow tui chub. Natural historic habitat for both species on the eastside of Catlow Valley includes the Garrison Lakes, Roaring Springs, and the stream reaches, major tributaries, and valley wetlands of Home Creek, Threemile Creek, and Skull Creek. The exact extent of natural historic habitat for each species and the distribution of each species within these water systems are unknown and probably fluctuated with changing environmental conditions.

In addition, artificial (human-made) habitats that have been used in the past by both species include Threemile Reservoir, Skull Creek Reservoir, and irrigation ditches. Sixmile Reservoir has also been used by Catlow tui chub in the past.

Self-Sustaining Population - Self-sustaining populations are those with sufficient numbers, age class structure, and natural reproductive success to provide for their long-term survival.

BACKGROUND

The Catlow redband trout and Catlow tui chub are found in three major streams and springs that flow off Steens Mountain on the east side of Catlow Valley, part of the Guano subbasin, and in one stream that flows off Hart Mountain on the west side of Catlow Valley. This conservation agreement and strategy address the eastside waters - Home Creek, Threemile Creek, and Skull Creek, as well as Sixmile Creek, Garrison Lakes, and Roaring Springs.

Home Creek, Threemile Creek, Skull Creek, and Sixmile Creek begin on a plateau before they cut down through their respective canyons, which exhibit Steens Basalt lava flows in their walls. The present amount of the flow in the creeks is undersized for the size of the canyon through which it flows, indicating that the canyon was downcut by the creek mostly during the wetter Late Pleistocene, common for this geographic region. At the mouth of Home Creek Canyon there is a curved deposit of alluvium that may either be a delta that formed during the time of pluvial Catlow Lake or it may be recent faulting of a shoreline wave-cut terrace formed by the pluvial Catlow Lake. A linear plateau northeast of the streams, consisting of sediments capped by the Devine Canyon Ash-Flow Tuff, have a linear form that is parallel to those of Home and Threemile Creeks, suggesting that the tuff was deposited in an ancient drainage that had the same trend as the current drainage. It is common to see similar linear plateaus paralleling present-day drainages on the west slope of Steens Mountain.

Home, Threemile, and Sixmile Creeks begin in broader valleys, flow through steep-walled canyons, then terminate in Catlow Valley. Skull Creek lies south of a faultline that caused this part of the plateau not to fault as high and to have deeper soils. It does not have the steep-walled canyon reach of the other streams, but it also terminates in Catlow Valley. Historically, all four streams may have had the potential to flow to the Garrison Lakes during high water years. Home Creek continues to flow to the intermittent Garrison Lakes. Threemile Creek, which drained to West Field Lake before flowing to the Garrison Lakes, now flows mainly to Threemile Reservoir. Sixmile Creek, a small stream relative to the others, flows to Sixmile Reservoir. Skull Creek currently flows to "South Catlow" lake, the southern end of the Garrison Lakes, where it may still have potential to connect with the remainder of the Garrison Lakes during high water years. A portion of Skull Creek is diverted to Skull Creek Reservoir, which is situated off of the main channel near the middle reaches of the stream.

Roaring Springs, the namesake for RSR, flows out of the different layers in the basalt cliff face at the northern end of the Catlow Rim. Situated approximately 8 miles north of the east Catlow Valley streams, the spring complex is large, extending over a mile, and flows a short distance to irrigation ditches.

The basins provide habitat for numerous nonaquatic species, several of which are Special Status species or species of management concern. Home and Threemile Creeks both flow through steep-walled canyons, used by California bighorn sheep and wintering mule deer. Steep canyon walls provide good sites for nesting raptors. In the upper elevations, the habitat is a broader valley, with mule deer summer use and some antelope summer use. Sage grouse use the mid and upper portions spring through fall, and a lek is located in the upper Threemile drainage. The Federally endangered American peregrine falcon and the Federally threatened northern bald eagle are documented migrants for the area. Other Bureau of Land Management (BLM) Sensitive species that are found or possibly found in the area are ferruginous hawk, Townsend's big-eared bat, Preble's shrew, Swainson's hawk, merlin, yellow-billed cuckoo, bank swallow, mountain bluebird, western bluebird, loggerhead shrike, bobolink, sandhill crane, and northern sagebrush lizard. Management for the conservation of Catlow redband trout and Catlow tui chub could benefit several of these other Special Status species. Also, because the management for the eastside Catlow streams involves an area that extends beyond their watersheds, habitat improvements are expected for other Special Status species, such as the inland redband trout and Malheur mottled sculpin, in the adjacent South Fork Donner and Blitzen River watershed.

The Catlow redband trout and Catlow tui chub, as subspecies, were added to the Category II candidate species on the U.S. Fish and Wildlife Service (USFWS) Notice of Review in 1991 and 1982, respectively. In 1996, they were dropped from the Category II list, but continue to be recognized as Species of Concern. They are also identified as BLM Sensitive species. The Catlow tui chub, as a subspecies, is on the Oregon list of Species at Risk and on the American Fisheries Society Species of Concern list of 1989. Redband trout, as a group, are on these lists and were identified as a subspecies by the American Fisheries Society in 1989 (Williams et al., 1989). No other fish species, besides the Catlow redband trout and Catlow tui chub, are known to occur in the east Catlow Valley drainages.

Systematics and Description

The Catlow redband trout is a recognized but not yet formally described subspecies of rainbow trout, *Oncorhynchus mykiss* (Behnke, 1992). Analyses of morphological and allozyme variation have suggested that in closed and long-isolated basins, such as Catlow Valley, the evolutionary lineage may have been different, and the redband have retained traits similar to those found in cutthroat trout, possibly indicating that they retained primitive traits of their cutthroat trout-like ancestor. This is not found in the evolutionary lines of the redband trout in the Columbia River basin, including the redband trout in nearby Harney basin (Currens, 1996). Based on 10 specimens collected in 1968 from Threemile Creek, Behnke (1992) describes Catlow redband trout as having 62-65 (mean 64) vertebrae, 20-22 (21) gill rakers, 30-46 (37) pyloric caeca, 28-33 (30) scales above the lateral line, and 129-146 (139) scales in the lateral series. None had basibranchial teeth.

The Catlow tui chub is a recognized but not yet formally described subspecies of *Gila bicolor*, which, at the species level, is a fairly widespread western cyprinid in the Great Basin. The first studies on the genetics of the Catlow tui chub are still underway, but early indications are that they are distinguishable genetically from the tui chub of adjacent basins (P. Harris, Oregon State University (OSU), personal communication). Morphometrically, Catlow tui chub are distinct from *Gila bicolor oregonensis*, with which they were once classified (Kunkel, 1976). It is a small to medium-sized, fine-scaled minnow up to about 8 inches long as an adult. Upper parts are deep olive with a brassy reflection and underparts are white. The olive fins may be tinted with red.

Life History

Catlow redband trout

Very little life history work has been conducted on the Catlow redband trout. Redband trout in general spawn in spring in gravels of streams. Eggs take 4 to 7 weeks to hatch, followed by a 3 to 7 day alevin stage. Maturity occurs in 2 to 3 years (Sigler and Sigler, 1987).

The most extensive life history study on Catlow redband trout to date was conducted by Kunkel, (1976) on the Catlow redband trout of the Threemile Creek system. Catlow redband trout in Threemile Reservoir were known to migrate from the reservoir into the stream to spawn. In the past, spawning fish were seen moving up from Threemile Reservoir to the creek during April and May. Eggs were collected from Catlow redband trout females in Threemile Creek during March 1975. Compared to the fish in the stream, the fish in the reservoir were larger, up to 8 pounds. During the summer of 1974, Catlow redband trout used deeper water in Threemile Reservoir, presumably because of excessive water temperature in shallow areas. Average pH in the reservoir and stream was 7.5. Alkalinity in the reservoir ranged from 54.8 to 64.5 mg/l CaCO₃, while TDS in the reservoir ranged from 110 to 190 mg/l. A cursory examination of stomach contents of Catlow redband trout indicated that caddisfly (*Trichoptera*) larvae, mayfly (*Ephemeroptera*) and stonefly (*Plecoptera*) naiads, aquatic beetles (*Coleoptera*), and snails (*Gastropoda*) were important components of their diet. In Threemile Reservoir, Catlow redband trout were also observed feeding on Catlow tui chub. In Threemile Reservoir, Catlow redband trout were found with Catlow tui chub, but the tui chub were absent from the stream reaches.

In the summer of 1995, the Oregon Department of Fish and Wildlife (ODFW) fish distribution surveys found that in Home Creek the age 1+ Catlow redband trout were most abundant in the steep canyon reaches and in reaches heavily influenced by spring seeps, while the age 0+ fish were similarly distributed but more restricted to reaches with aquatic macrophytes and cold water temperatures. Scale analysis indicated growth rates of Catlow redband trout in Home and Threemile Creeks as being as much as 1.97 inches between ages 1 and 2 (ODFW, 1996).

Catlow redband trout have been observed co-occurring with Catlow tui chub in Threemile Reservoir (Kunkel, 1976) and in Rock Creek, on the west side of Catlow Valley (P. Harris, OSU, personal communication).

Catlow tui chub

Little is known about the habitat requirements specific to the Catlow tui chub. Tui chub, in general, spawn in shallow water in the vicinity of heavy beds of vegetation, where females widely deposit adhesive eggs and males then fertilize them (Sigler and Sigler, 1987). The reaches in Skull Creek, where the Catlow tui chub are currently found, are characterized by low gradient, numerous pools and glides, and abundant aquatic vegetation or algae (ODFW, 1996).

The fry of other subspecies of tui chub in Eagle Lake and Lake Tahoe use areas with much cover and organic matter, including beds of aquatic plants (Moyle, 1976). An affinity for open water in small, high desert systems has been seen in other small-sized subspecies of tui chub in the Cowhead and Honey Lake basins (G. Lampinan, BLM, personal observation). Their use of the lower gradient reaches of Skull Creek and abundance in Threemile Reservoir and Skull Creek Reservoir reflect this affinity for low velocity habitats. The larger size of the fish in the reservoirs, up to 8 inches, reflects the productivity of the reservoirs (Kunkel, 1976).

Little is known about the predator/prey relationship of the Catlow tui chub and other organisms. Tui chub, in general, are opportunistic omnivores, primarily feeding on invertebrates on the bottom or on plants. As a small fish, with an adult size generally about 5 inches long (ODFW, 1992), Catlow tui chub can fall prey to other piscivorous organisms. In Threemile Reservoir, Catlow tui chub were found to be an important food source for Catlow redband trout (Kunkel, 1976).

Catlow tui chub have been found in all of the watersheds that also contain Catlow redband trout; however, they are found in lower elevations than are the trout (Kunkel, 1976; P. Harris, OSU, personal communication; Oregon Natural Heritage Database (ONHD) records). They are also found in waters where Catlow redband trout are absent, such as Roaring Springs and in some stream reaches where Catlow redband trout may have occurred historically.

Historic Distribution in the East Catlow Valley Streams

Catlow redband trout and Catlow tui chub are endemic to the Catlow Valley of the Guano subbasin (HUC 17120008).

In 1973-1975, the main Threemile Creek population of Catlow redband trout was found in approximately 0.7-mile of stream that lies above the diversion structure at the mouth of the canyon and in 1974-1975 in Threemile Reservoir (Kunkel, 1976). In 1975, they were found in Home Creek from the upper reaches to the mouth of the canyon (Kunkel, 1976). Because Threemile Reservoir is an unnatural perennial habitat for Catlow redband trout, the reservoir probably had been providing an extension of the natural perennial habitat into the valley floor.

Catlow tui chub are historically known from Threemile Creek, Skull Creek, and Home Creek (ODFW, 1992). They had been collected from Threemile Creek in 1954 and 1971 (Kunkel, 1976). In the Threemile system, Catlow tui chub were found only in Threemile Reservoir and not in the stream reaches during Kunkel's 1973-1975 studies (Kunkel, 1976). According to ONHD records, in 1939, 1954, 1972, and 1976, Catlow tui chub were found in Home Creek just below where it enters the valley floor. Catlow tui chub were found in Skull Creek in 1993 and 1995, and in Roaring Springs and Threemile Reservoir in 1993 (P. Harris, OSU, personal communication). Current habitat includes Threemile Reservoir, Skull Creek Reservoir, Skull Creek below the reservoir, lower Echart Creek (tributary to Skull Creek), Roaring Springs, the ditches at RSR headquarters, Sixmile Reservoir and its feeder springs, Garrison Lakes, and the valley wetlands and swamps where Home Creek terminates (W. Bowers, ODFW, personal observation).

PROBLEMS FACING THE SPECIES

Current Distribution in the East Catlow Valley streams

In 1995, ODFW conducted the most recent extensive survey for the fish species' distributions. In general, the distributions of both species in the east Catlow Valley streams have diminished.

Catlow redband trout were found only in Home Creek and Threemile Creek in ODFW's 1995 surveys. In the 2.36 miles that were surveyed in Threemile Creek, the majority of Catlow redband trout were found in the upper 1.62 miles, above a major spring system and in an area with a very narrow, steep V-shaped valley floor. Although 25 percent of the reach was either dry or puddled, the redband trout were distributed throughout this upper reach. The lower 0.75-mile of the stream, below the major spring system, has a broad valley floor with constraining terraces, with some portions constrained by moderate V-shaped hillslopes. The lowermost Catlow redband trout were found approximately 0.62-mile upstream from Highway 205. None were found in Skull Creek in 1995; however, in 1996 Catlow redband trout were observed in Skull Creek above Skull Creek Reservoir (J. Buchanan, BLM, personal communication) and their presence verified during a reinventory of the stream by ODFW in 1997. None were found during the 1993 OSU museum collection efforts in Threemile Reservoir or Roaring Springs.

The Catlow tui chub were found only in Skull Creek in the 1995 stream sampling effort that also included Threemile Creek and Home Creek. In Skull Creek, the Catlow tui chub were found in the lower reaches below Skull Creek Reservoir and in the lower reaches of Echart Creek, a tributary that enters Skull Creek below the reservoir. The 1995 sampling did not include other waters where Catlow tui chub had been seen previously or could potentially have been occurring.

In 1996, Catlow tui chub were observed in Skull Creek Reservoir. They had also been previously noted in Roaring Springs and Threemile Creek Reservoir during the 1993 collection efforts for the OSU museum collection. These locations were the historical sites where Catlow tui chub had been recorded for Michigan State University and OSU museums dating back to 1937.

Abundance

Catlow redband trout are not abundant anywhere in their range (W. Bowers, ODFW, personal communication; P. Harris, OSU, personal communication). ODFW estimated the population of redband trout at 265 in Threemile Creek, but this is based on 2-pass electrofishing surveys with extremely large confidence intervals. No statistically reliable population estimate has been made for the Catlow redband trout.

Catlow tui chub have a restricted range but appeared to be locally abundant in streams and in Threemile Reservoir, Roaring Springs, and Sixmile Reservoir (ODFW, 1992; Kunkel, 1976). No population estimates have been made for the Catlow tui chub.

Factors affecting status

The five factors affecting status that are identified in Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.) are as follows:

- 1) present or threatened destruction, modification, or curtailment of its habitat or range;
- 2) utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;
- 3) disease or predation;
- 4) absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and,
- 5) other natural or human-made factors affecting its continued existence.

For the Catlow redband trout and Catlow tui chub, these are addressed below:

1) Present or threatened destruction, modification, or curtailment of its habitat or range

a) Past information

i) 1976 trout habitat study

Channelization, livestock grazing practices, and dewatering for irrigation have been previously identified as causes for the lower reaches of Threemile Creek, below the diversion box, being unsuitable for trout habitat (Kunkel, 1976). Fish have difficulty returning to the reservoir because of low flows and diversions. However, the presence of Threemile Reservoir has also been attributed with higher than otherwise expected production in Catlow redband trout (Kunkel, 1976).

ii) Livestock grazing on Steens Mountain and the South Steens Allotment

A long history of livestock grazing, stemming back prior to the turn of the 20th century, has resulted in fish habitat degradation.

Livestock grazing use on Steens Mountain and the South Steens Allotment has been high since prior to the turn of the century compared to the last 10 years, as outlined in more detail in the South Steens Allotment Management Plan (AMP). In the 1900's, habitat degradation on Steens Mountain was attributed to heavy sheep use, estimated at 182,500 sheep grazing. No records are known on the number of cattle on the mountain, but it is generally accepted that cattle use was much higher than at present. Horses used by cattle barons such as Peter French numbered upward of 3,000 head. From the 1930's to 1950's, transient sheep outfits (those without base property to support their flocks during the winter) were no longer allowed to use the area, and livestock shifted from permitted sheep to permitted cattle on the South Steens Allotment, which includes most of the flowing stream portions of the Home, Threemile, Sixmile, and Skull Creek drainages. The 1959 Frenchglen adjudication set the preference for the BLM lands in the South Steens Allotment at 21,926 animal unit months (AUMs), some of which were since withdrawn and some allocated to wildlife or wild horses.

The present use, which is lower than historic and permitted use, is described in the South Steens AMP, which has the continued improvement to all of the land (upland and riparian) on both private and public lands as the primary objective.

b) Recent information

i) South Steens AMP analysis

The Home, Skull, and Threemile stream drainages that lie above the valley floor are 19,843, 30,007, and 6,400 acres in size, respectively. They are entirely within the South Steens Allotment, and together their 56,250 acres is 16.9 percent of the 332,400-acre allotment.

In general, the analysis for the South Steens AMP indicated that after decades of either no or improper livestock management, significant portions of many streams have degraded fish habitat, as exhibited by a lack of woody riparian cover, unprotected streambanks, and poor instream structure due to sedimentation (see Appendix 1 for ODFW aquatic habitat inventory and BLM water quality information). Riparian woody species, such as willows, and herbaceous species, such as sedges, are needed to aid with bank development and energy dissipation and to provide instream cover and structure. Riparian vegetation is also needed to provide shade, especially where woody species are possible, control channel width, and increase the water retention capability of the streambanks, all of which would allow cooler summer water temperatures through reduced solar heating and increased summer baseflow. Erosion has deteriorated undercut banks, which can also provide shade for fish. Fine sediments have covered spawning gravel and degraded foraging habitat.

High water temperatures, a lack of shade, and organic enrichment from cattle and horses contribute to a large volume of filamentous algae in the water of several streams, notably Home Creek. The combination of impacts to water quality could result in changed macroinvertebrate species composition and diversity and eventually in reduced production.

Riparian habitat condition of the BLM reaches of the three streams ranges from excellent to poor. Home Creek has 5.2 miles in poor condition, 0.3 in fair, and 2.3 in excellent. Threemile Creek has 1.4 in poor and 2.2 in good. Skull Creek has 1.7 in poor condition. Non-BLM reaches were not assessed for riparian condition. Much of the habitat in good or excellent condition is in rugged, rocky country inaccessible to most grazing animals (1995 South Steens AMP Environmental Assessment (EA), pp. 11-12).

ii) Construction of the Blitzen Protection Fence

In 1997, in compliance with a court order relating to livestock grazing in the Donner und Blitzen Wild and Scenic River corridor, the BLM began laying out and will complete construction of the Blitzen Protection Fence, which separates the South Fork Donner und Blitzen River and the uppermost reaches of Home Creek from the rest of the South Steens Pasture, which contains the remainder of Home Creek and all of Threemile Creek above the valley floor. The Blitzen Protection Fence had been analyzed as part of an alternative (Alternative II) in the 1995 South Steens AMP EA, but the alternative called for it to be built in conjunction with a second fence, the Lauserica Fence, to create more opportunities for a rotational grazing system, improve control over livestock movement and distribution, and allow accelerated recovery of the riparian and aquatic resources.

Without the Lauserica Fence, not part of the court order, negative impacts to Home Creek and Threemile Creek could occur. Because the only perennial and reliable water available for livestock during the season of use in the South Steens Pasture will be in Home Creek and Threemile Creek, a shift is expected in livestock and wild horse distribution toward Home Creek and Threemile Creek during this time. The upper reaches of these streams are in low to moderate gradient meadow systems, making these reaches easily accessible and very susceptible to degradation. The degraded habitat conditions described above are expected either to decline or to be slowed in recovery.

iii) ODFW Aquatic Habitat Inventory

In 1994 and 1995, BLM and ODFW, respectively, conducted the ODFW aquatic habitat inventory on Home Creek, Threemile Creek, and Skull Creek (ODFW, 1996; see Appendix 1 for ODFW aquatic habitat inventory information). Overall, their findings were that the riparian vegetation in lower canyon reaches were comprised of alder, willow, chokecherry, and dogwood thickets interspersed by stands of juniper. Riparian zones of stream reaches on the flats above the canyons and in open valleys were generally lacking in broadleaf species but had juniper and occasional clumps of willow. In the upper reaches of Home Creek and Skull Creek, riparian zones supported dense thickets of willow and were often surrounded by aspen groves. Impacts to riparian vegetation were most evident in reaches in the flats, open valleys, and headwater spring areas, and less in canyon reaches.

Threemile Creek was divided into two reaches, totaling 2.99 miles. The lowermost 0.75-mile is in a broad valley floor with constraining terraces, with some constraint by moderate V-shaped hillslopes and a gradient of 5.5 percent. Twenty-six percent of the stream was identified as having actively eroding banks, based on identifying an entire habitat unit's length for each bank as actively eroding if the predominant condition of the bank indicated active erosion. A diversion is at the lower end of this reach, just above Highway 205. The upper 2.24 miles have a very narrow, steep V-shaped valley floor, and the channel is constrained by hillslopes with a stream gradient averaging 10.3 percent. Habitat from woody debris and undercut banks was lacking. Approximately 25 percent of this reach was either dry or puddled. The lowermost fish were found approximately 0.62-mile above Highway 205. Most of the fish were found in the upper reach.

A total of 19.95 miles on BLM and private lands were surveyed on Home Creek in 1994 and 1995. Fine sediments were the dominant substrate for most of the reaches. Most of the reaches also had bank class identified as actively eroding. Pool habitats were not abundant, although where they did occur, in the lowermost reaches, they were usually lacking in instream cover and depth. ODFW identified a lack of large woody debris, but the drainage does not have large diameter trees as part of the vegetative community.

The lowermost reach also was constrained by bulldozed dikes, in addition to its multiple terraces. Reach 2, beginning approximately 1.24 miles above Highway 205 and continuing for 1.45 miles, had no identified habitat problems. Reaches 8 and 9, beginning 14.85 miles above Highway 205 and extending 1.49 miles, had dry areas but a higher percentage of vegetatively stable streambanks. Redband trout were in large numbers where temperatures were kept cool by nearby springs, such as in Reach 5, 7.02 miles above Highway 205 and extending 3.73 miles.

A total of 13.61 miles were surveyed on Skull Creek in 1994 and 1995. The lower reaches, 6.46 miles with low to moderate gradient, had pools as the predominant habitat type. Skull Creek Reservoir is located in this portion of the drainage, but it is not on the stream; however, it is being fed by diverted water from the stream. The upper reaches, 3.85 miles and moderate to high gradient, had riffle or cascade habitat as predominant. Numerous diversions and check dams occur in the reaches above and below the reservoir. Catlow tui chub were found in the lower reaches.

No fish were found in the upper reaches in the 1995 fish survey; however, Catlow redband trout were found in 1996 in the upper reaches. Catlow tui chub were also found in Echart Creek, a tributary to Skull Creek above the reservoir.

iii) Water quality data

BLM has been monitoring the temperature in Home, Skull, and Threemile Creeks using automatic temperature recorders since 1995. Stream temperatures in Home and Skull Creeks are higher than the Oregon water quality standard, which is a maximum of 64.0 °F for a 7-day rolling average of the daily maxima (see Appendix 1). The 1995 data for Threemile Creek indicated that the stream met the standard, with 60.9 °F as the maximum of the 7-day rolling average of the daily maxima. Home Creek at the mouth of the canyon, and Skull Creek, immediately above Highway 205, did not meet the standard, with maxima of 71.3 °F and 94.1 °F, respectively. In 1996, the maxima for the 7-day rolling average of the daily maxima for Home Creek were 75.2 °F, 81.5 °F, and 76.7 °F at the mouth of the canyon, above Home Creek Butte, and at "Upper Crossing," respectively. For Skull Creek, temperatures were 85.7 °F and 80.9 °F at sites immediately above Highway 205 and approximately 2.5 miles above the highway, respectively. The recorder in Threemile Creek did not function properly in 1996.

2) Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it

Because of the small populations and limited distribution, angling pressure in the streams and at Threemile Reservoir pose a potential threat to the species.

Threemile Creek was closed to angling through emergency regulations in 1995 and continues to be closed based on the 1996 regulations.

Home Creek and Skull Creek are managed under the Statewide regulations; five fish per day.

3) Disease or predation

The existing condition is presumed to be that no disease threat currently is occurring in any of the drainages because there have been no known introductions of potential fish vectors (i.e., exotic species). Because no introduced predators are in the system, it is also presumed that no unnatural predation or competition threat is occurring. Oregon has taken precautions to prevent introduction of nonnative fishes in streams where redband trout and Catlow tui chub are known to be present (ODI'W, 1992).

4) Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat

The Catlow redband trout and Catlow tui chub were Federal Category II candidate species but are now a Species of Concern, after USFWS restructured their candidate species program in 1996. They do not currently fall under any protective Federal legislation. Protection is provided only through the policies of the individual Federal agencies. When the species were removed from the Category II list in 1996, BLM's interim policy was that management for those removed species would be the same as that for Bureau Sensitive species. For the Bureau, Oregon State Office policy is that "For Bureau sensitive species where lands administered by BLM or actions have a significant effect on their status (Manual 6840.06D), . . . BLM Districts will protect, manage and conserve the species and their habitats such that any Bureau action will not contribute to the need to list any of these species." No other regulatory mechanism relative to the organisms exists.

The State of Oregon classifies the Catlow redband trout and Catlow tui chub as "sensitive" species. This classification includes those species that may require special attention for their recovery or to prevent them from being listed as State endangered or threatened. No specific protective State legislation is provided relating to the "sensitive" classification. Protection is provided through policy, such as taking precautions to prevent introduction of nonnative fishes in streams where redband trout and Catlow tui chub are known to be present, and regulation, such as the angling closure on Threemile Creek.

All of the waters fall under the regulations affecting water quality and are subject to the water quality standards in the Oregon Administrative Rules, Section 340-41. Because their recorded stream temperatures were higher than the Oregon water temperature standard, Home Creek and Skull Creek are on the Environmental Protection Agency (EPA) 1996 list of "water quality limited" streams that require the application of sufficiently stringent pollution controls (1972 Clean Water Act Section 303(d)). The temperature standard for cold-water fish, as an identified beneficial use, was applied to these streams. Management practices in the watersheds of 303(d) listed streams will have to comply with an EPA approved "Total Maximum Daily Load" (TMDL), the strategy for bringing the waters into compliance with water quality standards. Compliance with the TMDL should benefit both fish species.

Home Creek and Threemile Creek were determined to be "eligible" for designation as part of the Wild and Scenic River (WSR) system and are currently under review for "suitability" for designation. The decision on which streams would continue to have a "suitable" designation will be made in the BLM's Record of Decision for the Southeastern Oregon Resource Management Plan (SEORMP), currently in progress. The Catlow redband trout was identified as an "outstandingly remarkable value" for these streams. Interim management for the "eligible" streams is for the protection or enhancement of such values until and unless the BLM decision is that they are not "suitable." If the BLM decision is that they are "suitable," then the interim management to protect or enhance the outstandingly remarkable values continues to apply until and unless Congress determines them not to be "suitable."

The Home Creek and Threemile Creek basins on BLM-managed lands are also in a proposed Catlow Redband Area of Critical Environmental Concern (ACEC), with the Catlow redband trout identified as a "relevant and important value." Decision on the ACEC designation will also be made in the Record of Decision for the SEORMP. If the SEORMP Record of Decision includes the Catlow Redband Area as an ACEC, management would emphasize the protection of the relevant and important value.

5) Other natural or human-made factors affecting its continued existence.

The Catlow Valley lies in the northern portion of the Guano subbasin, which has no hydrologic connection to adjacent subbasins. Catlow redband trout and Catlow tui chub are the only redband trout or tui chub in the Guano subbasin and have no hydrologic connection to redband trout or tui chub populations in other subbasins. The Catlow redband trout have a limited distribution, occurring only in the three small streams on the eastside of Catlow Valley and one small stream, Rock Creek, on the west side of the valley, which is not being addressed by this Conservation Strategy. The risk of catastrophic event in any one of the three eastside Catlow Valley streams would probably affect the other two because of their close proximity.

Recolonization would be difficult if a stream's population were lost, because the hydrologic connections among the eastside Catlow Valley streams have been eliminated or impaired. Under unaltered conditions, movement among streams by the Catlow redband trout and Catlow tui chub may be possible only during years when water is sufficient to connect the Garrison Lakes and South Catlow Lake. This natural problem is exacerbated by the alterations that have occurred for irrigation purposes in the lower reaches of the eastside Catlow Valley streams. The Catlow redband trout's ability to recolonize is further limited to periods of cool temperatures because of its physiologic need for cooler water temperature.

Potential risks of climatic events, such as drought periods, on small, isolated populations are high (ODFW, 1992). The recent drought lasting from 1987 to 1994 probably was a major factor in the current low population numbers of Catlow redband trout in Skull Creek and the stream resident population in Threemile Creek. The low water levels also eliminated effective fish passage from Threemile Reservoir to Threemile Creek.

If the genetic integrity of the fish is dependent upon their ability to interact among the Catlow streams through fish movement among the eastside Catlow Valley streams, the potential for risk to this genetic integrity exists because of the same conditions affecting recolonization.

Genetic integrity is also dependent upon protection from hybridization. For redband trout in general, ODFW identified threats as potential hybridization with other rainbow trout subspecies (ODFW, 1992). ODFW cites the possible introduction of other chub species or subspecies that could hybridize with the Catlow tui chub as a reason for their sensitive status. Although Oregon has taken precautions to prevent introduction of nonnative fishes in streams where redband trout and Catlow tui chub are known to be present, the possibility of illegal introductions exists.

CONSERVATION ACTIONS TO BE IMPLEMENTED

Conservation measures needed for the continued existence of the Catlow redband trout and Catlow tui chub focus on the elimination of significant threats or reduction of those threats that cannot be completely eliminated to the maximum extent possible. The goal is to have the species occupy at least 80 percent of its historic range within each of its historic stream drainages. To meet this goal, for each potential or existing threat listed above, management actions are described below to address two objectives: 1) conducting further studies and monitoring of conditions, and 2) eliminate or reduce significant threats. Some actions have already been undertaken to meet these objectives, and they are identified in this section as well.

- 1) Threat to be addressed: Present or threatened destruction, modification, or curtailment of its habitat or range

a) Further studies and monitoring of conditions

- 1) Condition assessment by an interdisciplinary team for the privately owned riparian areas in drainages.
- 2) Reassessment of bank stability based on linear feet or photopoints to obtain a more site-specific baseline monitoring of the active erosion that may be occurring.
- 3) Assessment of water flow patterns, diversion system, potential risks to movement or loss, and potential fish passage protections for these areas as well as to study possible historic connectivity.
- 4) Establish baseline data for monitoring additional water quality parameters besides temperature and substrate composition.
- 5) Assessment of Smith Flat and Skull Creek Meadows for potential management to improve valley function, wetland habitats and hydrologic connections within these areas.
- 6) Study the potential for aspen regeneration in several locations, especially in upper Skull Creek Canyon and upper Home Creek.
- 7) Population estimates per ODFW-identified stream reaches in all three streams to determine baseline levels for monitoring.
- 8) Survey or resurvey Skull Creek Reservoir, Threemile Reservoir, and Sixmile Reservoir for fish presence and assess these reservoirs as potential refugia.
- 9) Continue monitoring riparian areas, fisheries and aquatic habitat, and water quality as described in the South Steens AMP Monitoring Plan.
- 10) Develop and implement a monitoring plan for changes in riparian areas, fish and aquatic habitat, and water quality for private lands comparable to the monitoring described in the South Steens AMP Monitoring Plan.
- 11) Develop and implement a monitoring plan for Catlow redband trout and Catlow tui chub that addresses size/age class structure, abundance and range.

b) Elimination or reduction of threat - Actions already taken :

- 1) Implementation of the South Steens AMP, completed in 1995, preferred alternative, including adaptive management if monitoring indicates prescribed activities are not effective at improving riparian areas and water quality.

The South Steens AMP has as one of its goals the improvement and maintenance of riparian habitat by increasing herbaceous and desired woody species (willows and associated species), including an improved trend on 5.6 miles of Home Creek and Threemile Creek within 3 years of management plan implementation. Skull Creek would have slower recovery with an upward trend measurable within 3 years after implementation of the plan.

The AMP also had as one of its goals the maintenance or improvement of fisheries and aquatic habitat through changes in riparian vegetation within the allotment to enhance water temperatures, reduce peak flows, increase sustained flows, and reduce the amount of fine sediments in the substrates of the streams.

Specific to the Catlow streams are the grazing strategies for the South Steens, Skull Creek, Skull Lake, and V Lake Pastures (see Pages 28 ff in AMP). In addition, maximum utilization levels are 45 percent of annual growth on herbaceous species and 20 percent on woody species in riparian zones. Livestock is being managed in such a way as to promote faster recovery of lower Home Creek (from Catlow Rim to Upper Crossing) and Threemile Creek, for example, using riders to discourage cattle from using riparian areas, adjusting timing of use to allow recovery of riparian vegetation, or using the areas for trailing only.

No fall grazing will be allowed in lower Skull Creek, though trailing would occur. Prescribed fire would be used in the drainages for overall restoration of the vegetation (pp. 33 of AMP and appendix for mitigations).

Begun in late 1995 and finished in 1996, the Penland Fence was reconstructed for implementation of the plan and improved livestock control.

In 1996, the first prescribed burns in the upper Home Creek watershed were conducted for restoration of the upland vegetation.

To comply with a 1997 court order regarding the Donner und Blitzen WSR, the BLM is required to rest the WSR corridor from livestock grazing until completion of the Blitzen Protection Fence and an Environmental Impact Statement that analyzes the effects of livestock grazing on the WSR. In order to ensure compliance with the court order, the South Steens Pasture was not used for livestock grazing in 1997, which resulted in rest from livestock grazing on most of Home Creek and all of Threemile Creek. Construction of the Blitzen Protection Fence has been funded and will begin in 1997. The portion of the South Steens Pasture that is being separated out by Blitzen Protection Fence is referred to as the Blitzen Pasture. The Blitzen Pasture, which includes some of the headwater tributaries to Home Creek, will continue to be rested from livestock use until completion of an Environmental Impact Statement that analyzes the effects of livestock grazing in the WSR corridor. Because the Blitzen Protection Fence separates the South Steens Pasture from the WSR corridor, livestock grazing in the South Steens Pasture will resume in 1998.

In 1997, the Miner's Field Allotment, southeast of the South Steens Allotment, is being used to provide rest to portions of the Catlow drainages.

- 2) Livestock grazing use of Malheur National Wildlife Refuge (MNWR) pastures to provide further rest to pastures containing the east Catlow Valley streams

In 1997, the MNWR permitted RSR to put 500 cattle on the MNWR to relieve pressures that were created when the South Steens Pasture of the South Steens Allotment was rested in order to comply with the court order described above.

- 3) Coordination between ODFW and RSR on fish distribution, fish habitat and fish passage assessment

In 1995, RSR permitted ODFW to conduct their fish habitat inventory on private lands to complete the survey of the entire stream reaches begun by BLM on public lands in 1994.

In 1996, ODFW and RSR investigated fish passage concerns and opportunities in the Threemile drainage above Threemile Reservoir. RSR is currently investigating possible sources for purchasing or manufacturing a fish passage device.

In spring 1997, RSR permitted ODFW to conduct a fish inventory in other perennial or flowing waters on private property and to reinventory Skull Creek.

- 4) Development of new livestock management strategy for private lands by RSR

In 1997, RSR began developing a new livestock management strategy for private lands within the Catlow stream basins to improve riparian condition and fish habitat. It was recognized that under the grazing strategy of the selected alternative of the South Steens AMP, annual hot season use of the private V Lake Pasture and Telephone Field Pasture would not allow riparian and aquatic habitat restoration in the headwaters of Home Creek and Skull Creek. Recovery of these headwaters is required to achieve recovery of the lower reaches of the streams, and recovery of the upper Skull Creek area is critical for maintaining the current limited Catlow redband trout population in that stream.

RSR is working with the BLM, USFWS, MNWR, and peers in developing the new strategy. The MNWR and RSR have discussed possible cost-share funding possibilities for any necessary livestock control structures that may be needed and possible additional use of refuge lands provide additional rest when needed to the Catlow to the eastside Catlow Valley streams. Coordination with BLM is ongoing, because the overall RSR ranching program includes use of the South Steens Allotment as well as RSR lands.

- 5) RSR activities to improve habitat conditions in the eastside Catlow Valley streams

In 1997, RSR began reconstruction of the headgate and erosion control of the earthen dam at Skull Creek Reservoir for better control of water from the reservoir and reduced risk of failure of the dam.

In 1997, RSR began improving the gravel access road from Highway 205 to Skull Creek Reservoir, including a stretch at the lower end of Skull Creek Meadows that is currently degraded to a level of causing meadow loss and erosion. Besides providing wetland habitat, Skull Creek Meadows contain the hydrologic connection between upper Skull Creek and lower Skull Creek. The meadows are also a depositional area for sediment leaving the upper watershed and a retention area for runoff to allow later season release of flow.

In 1997, RSR began laying out the Stephens Fence on RSR lands to provide a livestock control device between the upper watershed of Threemile Creek and most of the upper watershed of Home Creek. This is the area that is expected to receive increased livestock grazing pressure as a result of the construction of the Blitzen Protection Fence. Although livestock would still be able to move between the drainages on the BLM land at the western end of the Stephens Fence, the fence will provide better opportunity for the RSR herders to control livestock distribution and movement to reduce the impacts to the riparian areas.

RSR currently has the Roaring Springs fenced off. Surface-disturbing activities are limited to livestock and wildlife grazing. RSR will continue monitoring its springs to ensure their integrity.

c) Elimination or reduction of threat - Actions still needed

- 1) Alleviation of increased livestock grazing pressure resulting from court ordered Blitzen Protection Fence

Completion of the court-ordered Blitzen Protection Fence is needed to create the Blitzen Pasture to provide opportunities for accelerated recovery in the headwater tributaries to Home Creek.

Because the Blitzen Protection Fence will cause livestock distribution in the South Steens Pasture of the South Steens Allotment to shift to, and increase pressure on, Home Creek and Threemile Creek, additional fencing will be needed to enable livestock distribution that will allow continued and possibly accelerated progress in the recovery of the riparian areas in Home and Threemile Creeks. One such control structure is the proposed Lauserica Fence, which was analyzed in the EA for the BLM's South Steens AMP, Alternative II, but not part of the selected alternative. The Lauserica Fence would result in a split of the large South Steens Pasture into two smaller pastures (Steens Pasture and Home Creek Pasture). The Home Creek Pasture would contain reaches of Home Creek and Threemile Creek. The creation of two pastures out of the large South Steens Pasture would provide the opportunity for better management and rest for these reaches of Home Creek and Threemile Creek to offset the expected increase in livestock grazing pressure.

Although construction of RSR's Stephens Fence would help their herders comply with the South Steens AMP, full effectiveness of this fence would be dependent upon construction of the Lausserica Fence (see above) to alleviate some of the increased grazing pressure and the construction of an additional BLM gap fence that connects to the west end of the Stephens Fence. This additional fence would be approximately 1-mile long and close the gap between the Stephens Fence and an area where topography would serve as an effective barrier to livestock movement between the Home Creek and Threemile Creek watersheds. Construction of the RSR's Stephens Fence and the BLM's gap fence would effectively place Home Creek and Threemile Creek into separate pastures, providing additional flexibility and opportunity in establishing a grazing strategy that would further accelerate recovery of the habitat in these streams.

Between the time that the Blitzen Protection Fence and any necessary additional livestock control structures can be constructed, livestock distribution will rely on the use of RSR riders to reduce the amount of livestock grazing within the riparian areas of Home and Threemile Creeks.

- 2) Implementation of an adaptive rotational grazing system that is a coordinated effort by RSR, BLM, and MNWR

RSR, BLM, and MNWR will continue coordination and implementation of their respective grazing management strategies to effect improvement in fish habitat in the eastside Catlow Valley streams, regardless of landownership. For restoration of the fish habitat at the watershed scale, the RSR grazing management strategy and the South Steens Allotment grazing management strategy must work in concert because the RSR operation uses both RSR and BLM pastures for its usual operation. Coordination with the MNWR grazing management strategy and other BLM grazing management strategies is also required if MNWR or other BLM pastures are to be used to provide additional rest to the pastures containing the eastside Catlow Valley streams. Management for RSR, BLM, and MNWR would be adaptive, with annual consideration given to past seasons' monitoring results, pre-season monitoring for climatic conditions, water availability, and availability of MNWR or other BLM pastures. Adaptive management means that annual prescriptions may have changes made in stocking level, pasture rotation, timing of grazing, or any other modification of the general schedule to allow fish habitat recovery while also achieving other management objectives.

The RSR grazing management strategy that is currently being developed by RSR, in coordination with the BLM South Steens AMP and the MNWR grazing management strategy, would allow accelerated improvement in the eastside Catlow Valley streams. To put the coordinated strategies into place, RSR will need to complete construction of the RSR Stephens Fence to help with the herding that is needed to meet livestock distribution requirements under the South Steens AMP. To alleviate the potential impacts from increased livestock pressure expected from the construction of the Blitzen Protection Fence and to promote accelerated recovery of the stream habitat, the BLM will need to construct the Lauserica Fence (see above) and the gap fence to the west of the Stephens Fence. BLM must comply with NEPA and other requirements prior to construction of the BLM fences.

RSR will construct holding facilities within the private pastures of the South Steens Allotment to improve the capability for timely gathering and removal when needed or required. This will be especially helpful during the interim between construction of the Blitzen Protection Fence and the other livestock control fences.

3) Implementation of fish passage projects

RSR will continue working with ODFW to provide fish passage between Threemile Reservoir and Threemile Creek.

RSR will develop and implement a strategy to alleviate fish passage problems that are identified in forthcoming assessments. ODFW, MNWR, USFWS, and BLM will provide specialist assistance to make recommendations to RSR on how to improve fish passage. Areas already identified as possibly having fish passage problems are the lower reaches of the streams between their mouths at the canyons, Garrison Lakes, and South Catlow Lake; and the Skull Creek Meadows area, including diversions to Skull Creek Reservoir. Solutions will be management based first, if possible, such as floodplain habitat restoration to provide holding areas for upstream migrants during spring runoff periods. Management based solutions would provide the best opportunity for long-term improvements. Solutions may also look at adjusting timing and flows through diversions and ditches to provide water for fish passage as well as water for ranch operations. Project-oriented solutions may include structures such as screens, ladders or steps, where feasible.

- 4) Development and implementation of management and restoration projects for wetlands and aspen stands within the basins

Streamside aspen stands provide shade and potential structure for stream development in the Catlow Valley streams. Upslope aspen stands provide potential structure for stream development as well as the canopy cover required for better infiltration of the soils during runoff periods and improved late season flows in the streams. Several of the aspen stands are decadent, with little regeneration. Wetlands, such as at Skull Creek Meadows or Smith Flat, provide for energy diffusion during runoff events, lower velocity refugia for fish during runoff events, hydrologic connection among tributaries within the basins, sediment deposition, potential holding habitat for fish, high production of invertebrates, and saturation for later release for improved late season flows in the streams. These areas also provide habitats for several of the other Special Status species in the basins.

BLM will continue its program for aspen regeneration on public lands according to the South Steens AMP, mainly through the use of management-ignited fire and livestock management. RSR will develop a program for aspen regeneration on RSR aspen groves. Specialist assistance for recommendations will be provided by BLM. BLM and RSR will coordinate their respective control programs to reduce the potential for impact to fish habitat from the control practices. BLM and RSR will coordinate with MNWR to determine if MNWR pastures could be used to provide rest to aspen groves to promote aspen regeneration.

- 2) Threat to be addressed: Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it

- a) Further studies and monitoring of conditions

- 1) Angling

ODFW will continue monitoring angler use on Home Creek.

- 2) Scientific or educational collection

Continued review of all permits for scientific or education collection are reviewed for effects by the ODFW.

- b) Elimination or reduction of threat - Actions already taken
 - 1) Angling

Threemile Creek was closed to angling beginning mid-season 1995 and continues to be closed.

RSR has already instituted internal control over angler use of Threemile Reservoir.
 - 2) Scientific or educational collection

N/A
- c) Elimination or reduction of threat - Actions still needed
 - 1) Angling

ODFW will adjust angling regulations, as necessary, if monitoring indicates that angler use is detrimental to the maintenance of a healthy Catlow redband trout population in Home Creek.

ODFW will close Skull Creek to angling.
 - 2) Scientific or educational collection

For any permits issued by ODFW, constraints will be added for the conservation of the species. These constraints may include a requirement of nonlethal sampling techniques.
- 3) Threat to be addressed: Disease or predation
 - a) Further studies and monitoring of conditions
 - 1) Disease and Predation

Continue fish presence studies to ensure that no illegal introductions have occurred.

- b) Elimination or reduction of threat - Actions already taken
 - 1) Disease and Predation

ODFW already has regulations prohibiting the introduction of nonnative species, including live bait, into the basins.
- c) Elimination or reduction of threat - Actions still needed
 - 1) If monitoring detects exotic species through illegal introductions, ODFW will develop and implement a strategy for appropriately preventing the exotic species from becoming a problem for the Catlow redband trout and Catlow tui chub. ODFW will coordinate with RSR and BLM as landowners and managers. Coordination with RSR would be especially helpful if manipulations of waters in the irrigation system could provide a nonchemical means of eliminating the problem. BLM, USFWS, and MNWR will provide specialist assistance for developing and implementing the ODFW strategy.
- 4) Threat to be addressed: Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat
 - a) Further studies and monitoring of conditions

Continued monitoring of AMP implementation and effectiveness.
 - b) Elimination or reduction of threat - Actions already taken and Actions still needed

N/A
- 5) Threat to be addressed: Other natural or human-made factors affecting its continued existence
 - a) Further studies and monitoring of conditions
 - 1) Natural rarity

Additional surveys of other waters in Catlow Valley are needed to know the full extent of Catlow redband trout and Catlow tui chub distribution and to determine if other species have been introduced into these waters.

Effects of natural events, such as droughts or floods, are unclear and in need of more study. Because the watersheds are still recovering, the natural timing and duration of the runoff is still unknown; therefore, natural flood regimes are unknown. Included in this study should be a determination of the historical water distribution and connections and whether or not these connections still occur so that the potential for recolonization can be assessed.

2) Genetic integrity

Genetic analysis needs to be conducted on the populations once there are sufficient fish numbers to allow removal of individuals for the analysis without causing the populations to be at such low levels that they are at risk of no longer being self-sustaining.

As in 1 above, a determination of the historical water distribution and connections is needed for future planning to maintain the appropriate level of genetic interchange or isolation in order to maintain the genetic integrity of the population or populations.

b) Elimination or reduction of threat - Actions already taken

1) Natural rarity

RSR has already begun discussions with USFWS, ODFW, BLM, and MNWR on the potential to improve the security of RSR's Threemile Reservoir, Skull Creek Reservoir, and Sixmile Reservoir as fish refugia in case of catastrophic event or severe climatic event.

In 1997, RSR is working on improving the stability of the earthen dam on Skull Creek Reservoir and the water control structure at its dam.

In 1997, ODFW is conducting surveys of other waters in the valley for fish distribution.

2) Genetic integrity

State regulations are already in place that prohibit the introduction of nonnative species, including live-bait, into the basins. This should reduce the potential for genetic hybridization/introgression.

Catlow redband trout and Catlow tui chub have been collected in the past for OSU for genetic analysis. Both studies are underway. The Catlow tui chub study is closest to completion, pending genetic analysis of tui chub from adjacent basins for comparison purposes.

c) Elimination or reduction of threat - Actions still needed

1) Natural rarity

RSR and ODFW will coordinate on sampling Skull Creek Reservoir, Sixmile Reservoir, and Threemile Reservoir to know what fish species are currently present in them. If needed, BLM, USFWS, and MNWR will provide specialist assistance to ODFW or RSR to implement sampling.

If fish are found in other waters in the lower elevation portions of the valley, an assessment of how these fish may recolonize other areas should be made and a contingency plan developed for preparation in the case of localized population losses.

2) Genetic integrity

Completion of the genetic analyses for Catlow redband trout and Catlow tui chub will be needed prior to completion of any contingency plan for recolonization in the case of localized population losses (see 1 above).

Upon completion of the genetic analyses, a plan for appropriately maintaining the genetic interchange or genetic isolation of the local populations will be developed. This plan will address methods for providing fish interchange or isolation based on comparisons of current hydrologic patterns with historic ones.

DESIRED OUTCOME

Implementation of the conservation agreement and strategy will initiate or continue management actions that should provide for the conservation of the Catlow redband trout and Catlow tui chub. The desired outcome is that the species will increase to occupy at least 80 percent of its historic habitat. Significant threats will be eliminated or reduced, especially through the improvements in the riparian, water quality and instream habitat conditions.

The following objectives have been developed to move toward meeting the desired outcome and for future monitoring of the implementation and effectiveness of this plan (see Appendix 2 for more specific actions and timeframes to meet these objectives). As future monitoring is conducted, timeframes may be refined to reflect site-specific potential recovery rates.

- 1) Streamside riparian vegetation should provide adequate bank stability, instream cover, overhanging cover, stream shade, and water storage capacity within their potential in order to maintain the associated water quality and quantity necessary to provide fish habitat. This includes riparian areas that may be upstream of or along tributaries that are outside of the current or historic fish distribution but may influence the areas of current or historic distribution. Achievement of this objective is also dependent upon the ability of the upland vegetation and soils to provide adequate infiltration of water and soil surface protection within their potential.
 - A) Management will be in place within 2 years of implementation of this strategy to maintain riparian areas that currently meet the objective.
 - B) Management will be in place within 2 years to improve riparian areas that currently do not meet the objective.
 - i) Upward trend will be observable within 5 years of management implementation for all of these areas.
 - ii) The resource objective will be achieved within 10 years of management implementation on 80 percent of the riparian areas that contain current fish distribution in Home Creek, Threemile Creek above Highway 205, and Skull Creek above Skull Creek Reservoir.
 - iii) The resource objective will be achieved within 10 years of management implementation on 70 percent of the riparian areas that are upstream of the current fish distribution in Home Creek, Threemile Creek, and Skull Creek.
 - iv) The resource objective will be achieved within 15 years of management implementation on the remaining streamside riparian areas.
- 2) Fish will have passage to and from spawning areas, rearing areas, and holding areas; have access to be able to recolonize Home, Threemile, and Skull Creeks if needed; and have access among all three stream systems for population mixing to maintain genetic integrity.
 - A) Management will be to continue providing fish passage where currently available.
 - B) Where historic hydrologic connections are already known but barriers exist, within 2 years of implementation of this strategy, fish passage will be provided if a feasible method exists, or a management plan will be developed and implemented as needed to simulate movement among the streams if fish passage cannot be provided.

- C) Within 2 years of completion of the study for historical hydrologic connections and genetic analysis, for any newly discovered barriers, fish passage will be provided if a feasible method exists, or a management plan will be developed and implemented as needed to simulate movement among the streams if fish passage cannot be provided.
- 3) Refugia will be available for the fish species in the event of catastrophic event.
 - A) If any of the major reservoirs are determined to be potential refugia, appropriate agreements and management plans will be developed and implemented within 3 years of the determination of their function as potential refugia.
- 4) The historic distribution of the fish species will remain free of threat from exotic species.
 - A) Within 1-year of detection of introduced exotic species, appropriate management actions will be taken to remove any disease, predation, or genetic threats to the Catlow redband trout or Catlow tui chub.

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Appendix 1. ODFW aquatic habitat inventory and BLM water quality data.

Habitat information for Home Creek from ODFW Aquatic Habitat Inventory conducted in summer 1995. Figures are based on habitat units in primary and secondary channels, except reach length.

Reach	Start (T-R-S)	Reach length (m)	Dominant valley type	Dominant channel constraint	Avg gradient (%)	Dominant substrate and %	% fines (silt/organic, sand)	Dominant habitat and %	Actively eroding bank (%)	Fish occurrence	Fish notes
1	35S-32E-10NE	1993	broad	terrace; built-doored dykes	5.3	boulder (36) cobble (31)	10	riffle (63) scour pool (27)	33.9	RDT	
2	35S-32E-11NE	2321	narrow	hillslope	7.5	boulder (33) gravel (23)	23	cascade (46) scour pool (25)	1.9	RDT	
3	35S-32.5E-7NW	4052	broad (71%)	alternating terrace; hillslope	1.7	gravel (28) cobble (21)	43	riffle (65) scour pool (19)	69.5	RDT	
4	35S-32.5E-16NW	2952	narrow	hillslope	5.3	gravel (34) cobble (21) sand (21)	37	riffle (64) rapid (13)	95.9	RDT	
5	35S-32.5E-15NE	6038	broad	terrace	2.9	gravel (33) silt/org (27)	48	riffle (58) scour pool (21)	97.5	RDT	
6	35S-32.5E-25NE	4608	narrow (86%)	hillslope	6.6	gravel (26) cobble (25)	28	rapid (50) riffle (37)	53.4	RDT	
7	35S-32.75E-31SW	1900	broad (55%)	terrace; hillslope	3.8	gravel (32) silt/org (24)	43	riffle (71) glide (16)	64.5	not sampled	
8	35.5S-32.75E-19SW	1287	broad	unconstrained multiple channel	4.9	gravel (30) cobble (26)	34	riffle (51) dry (32)	41.8	no fish	
9	35.5S-32.75E-29NW	1139	narrow	hillslope	8.9	boulder (25) cobble (24)	28	riffle (59) rapid (15)	0	RDT	cranky
10	35.5S-32.75E-29NE	3188	broad	unconstrained single; multiple channel	3.3	silt/org (36) sand (32)	68	glide (45) riffle (39)	92.4	RDT	No fish at lower end of reach. Fish found at Smith Flat on upper end of reach.
11	35.5S-32.75E-22SW	562	narrow	hillslope	6.7	gravel (29) sand (26)	46	riffle (78) rapid (13)	93.0	No fish	RDT found in adjacent tributary.

Habitat information for Skull Creek from ODFW Aquatic Habitat Inventory conducted in summer 1995. Figures are based on habitat units in primary and secondary channels, except reach length.

Reach	Start (T-R-S)	Primary channel length (m)	Dominant valley type	Dominant channel constraint	Avg gradient (%)	Dominant substrate and %	% Fine sediment (silt, organic, sand)	Dominant habitat and %	Actively eroding bank class (%)	Fish occurrence	Fish notes
1	36S-32.5E-21NW	551	broad	terraces	1.7	gravel (31) cobble (28)	22	scour pool (43) rapid (28)	15.8	TC	
2	36S-32.5E-21NW	6428	broad	terraces	1.1	gravel (31) silt/org (25) sand (25)	50	scour pool (51) riffle (37)	53.9	TC	
3	36S-32.5E-24NW	3394	broad	unconstrained single channel	1.0	silt/org (40) sand (26)	66	dammed and BW (83) riffle (10)	94.5	TC	
4	36S-32.5E-19SE	2804	broad	unconstrained single channel	0.7	silt/org (69) sand (16)	85	dammed and BW (45) riffle (28)	52.7	TC	
5	36S-32.75E-21NW	902	narrow	hillslope	0.0	-	-	dammed (100)	0.0		Skull Creek Res.
6	36S-32.75E-21NE	1311	broad	unconstrained single channel	2.5	gravel (29) silt/org (27)	46	rifle (72) rapid (17)	38.6		
7	36S-32.75E-9NE	3521	narrow	hillslope	9.0	gravel (10) sand (20) cobble (20)	33	rapid (53) cascade (45)	33.7		
8	35.5S-32.75E-34N	1016	narrow	hillslope	11.1	silt/org (37) sand (21) gravel (21)	58	cascade (68) rapid (72)	40.9		

Habitat information for Threemile Creek from ODFW Aquatic Habitat Inventory conducted in summer 1994. Figures are based on habitat units in primary and secondary channels, except reach length.

Reach	Stream (T-R-S)	Primary channel length (m)	Dominant valley type	Dominant channel substrate	Avg. gradient (%)	Dominant substrate and %	% Fine sediment (silt, organic, sand)	Dominant habitat and %	Active eroding bank class (%)	Fish occurrence	Fish notes
1	335-32E-25NW	1218	bead (78%)	terrace and hilllope	5.5	boulder (39) cobble (27)	17	rapid (41) cascade (22)	26.4	RDT	
2	335-32E-24SE	2574	narrow	hilllope	10.3	boulder (30) cobble (24)	24	cascade (56) avg (25)	0.0	RDT	

BLM water quality data for Home Creek from 1972 to 1996. Water chemistry data prior to 1995 were collected with Hach kits, post-1995 with Hydrolab.

HOME	Site	time	Flow (cfs)	Atemp (c)	Waterup (c)	do (mg/l)	do (%sat)	cond (mS/cm)	pH	turb	color	TotAlk (mg/l)	TotHard (mg/l)	NO3 (mg/l)	TotSO4 (mg/l)	NO2 (mg/l)	Cu (ppm)	Pheno (ppm)
Site A: Above Highway 205, mouth of canyon			Site B: Above Highway 205 bridge															
	05/14/86	A	1330	16.053	11	9.5	9.5	0.059	7.6	2 ftu	25	40	20	0.65	8			
	08/27/86	A	1500	5.243	27.5	19.5	8	0.09	6.8	10 ftu	18	52	40	0.55	9			
	06/15/90	A	940		24	18	8.5	0.11	8.35	0 ftu	0	40	35	0.2	0			
	07/12/90	A	945		29	19	8	0.091	7.75	0 ftu	0	30	40	0.2	0			
	08/09/90	A	1110		29	20	8	0.106	8.45	0 ftu	0	35	35	0.2	0			
	09/20/90	A	1230		22	12.5		0.97	8.6	10 ftu	25	30	35	0.35	3			
	06/25/91	A	1130	5.6	17	13		0.086	8.2	12 ftu	30	20	30	0.3	7			
	07/31/91	A	1100	3.8	28.9	20.6		0.088	8.4	15 ftu	12	40	20	0.4	7			
	09/26/91	A	1330		27.8	15.6		0.088	8.5			20		0.3	7			
	06/11/92	A	1100	2.2	26.7	17.8		0.112	8.54	10 ftu	30	45	30	0.4	2			
	07/29/92	A	1245	0.5	31.1	23		0.123	8.35	0 ftu	0	60	35	0.3	0			
	08/16/92	A	1130		28.9	21.1		0.096	8.35	0 ftu	10	35	35	0.2	0			
	09/14/92	A	1330	1	25.6	15		0.104	8.24	10 ftu	30	40	25	0.35	0			
	09/23/92	A	1090		28.9	17.2		0.126	8.7	0 ftu	0	35	25	0.2	0			
	06/07/94	A	1100	5.61		12.2				140 ftu	2	50	40	0.1	8	0.018		
	08/25/94	A				8.3		0.091										
	09/21/95	A	1400	4.2		12.31	7.37	77.5	0.093	8.55	0 ntu							
	10/17/95	A	1624			7.98	8.1		0.087	8.36								
	05/31/96	A	850	18.48	20.5	10.5	9.9		0.084	8								
	06/16/93	A?	1000		18.9	15.6		0.094	8.24	10 ftu	40	45	35	0.5	4			
	07/28/93	A?	930		26.7	16.7		0.082	7.8	0 ftu	0	65	40	0.3	4			
	09/28/72	B	930	7.5	6.7	4.4												
	11/19/81	B	1445		9	3.5	10		0.08	8.6	5 ftu	30		19	0.6			
	12/17/81	B	1330		7	0	11		0.07	8.2	35 ftu	140	50	17	0.9			0
	05/03/82	B	915		12	4	10		0.05	7.8	170 ftu	240	31	14	2	35		
	06/01/82	B	1430	15.89	17	12	8		0.063	7.3	10 ftu	40	39	11	0.7	4	0.2	
	07/14/82	B	840	5.15	17.5	15.5	9		0.07	8.2	30 ftu	60	42	14	0.5	15	0.05	
	04/27/83	B	1400		15	9	10		0.06	7.6	45 ftu	130	30	30	0.5	15		
	04/18/84	B	1430		8	6	10		0.05	8.2	70 ftu	200	400	400	0.7	17		
	06/28/85	B	930	6.376	26	15.5	9.5		0.07	8.2	0 ftu	1	35	20	0.45	10		
	02/09/96	B	1330		13	3												
	08/10/82	B?	900	5.09	23	15	7		0.075	7.6	15 ftu	40	62	38	0.5	5	0.15	

BLM water quality data for Skull Creek from 1973 to 1996. Water chemistry data prior to 1995 were collected with Hach kits, post-1995 with Hydrolab.

SKULL	Site	time	sed (ppm)	flow (cfs)	Atemp (c)	Wtemp (c)	do (mg/l)	do (%sat)	cond (mS/cm)	pH	turb	color	TotAlk (mg/l)	TotHard (mg/l)	NO3 (mg/l)	TotSO4 (mg/l)
Site A: Above Highway 205			Site B: Approximately 2.5 mi above Highway 205 on BLM by old canal													
03/16/73	A		18													
06/10/94	A	950		2.37		16.7	10				0 jtu	0	150	140	0.2	0
08/25/94	A								0.343	8.55						
09/21/95	A	1115				12.09	9.41	98.7	0.384	9.29	0(7) ntu					
10/17/95	A	1530				11.71	7.94		0.386	9.35						
02/09/96	A	1300			13	6										
05/31/96	B	1105		5	21	15.5	11.7		0.288							

BLM water quality data for Threemile Creek from 1990 to 1996. Water chemistry data prior to 1995 were collected with Hach kits, post-1995 with Hydrolab.

THREEMILE	Site	time	sed (ppm)	flow (cfs)	Atemp (c)	Wtemp (c)	do (mg/l)	do (%sat)	cond (mS/cm)	pH	turb	color	TotAlk (mg/l)	TotHard (mg/l)	NO3 (mg/l)	TotSO4 (mg/l)	NO2 (mg/l)
Site A: Above diversion, 1/4 mi above Highway 205			Site B: Above diversion, 1/4 mi above Highway 205														
06/15/90	A	1230			31	18		9	0.092	7.4	0		35	35	0.2	0	
07/12/90	A	1200			37	18		9	0.077	6.1	0		25	30	0.2	0	
08/16/90	A	1100			22	14			0.032	8.62	0		25	25	0.2	75	
09/20/90	A	1120			20.5	11.5			0.084	8.52	4 jtu		25	30	0.7	4	
07/09/91	A	1300			33.3	17.8			0.081	9.15			25	25	0.35	5	
08/01/91	A	1100		1.8	27.8	14.4			0.076	8.5	15 jtu		30	25	0.6	7	
09/26/91	A	1330		3	7	14.4			0.079	8.7			30		0.4	0	
06/11/92	A	1340		1.44	27.8	16.7			0.078	8.4	10 jtu	10	35	20	0.2	2	
08/16/92	A	1430			31.1	17.8			0.072	8.5	20 jtu	40	30	25	0.4	2	
09/14/92	A	1000			21.3	13.3			0.082	8	10 jtu	10	25	20	0.2	4	
09/23/92	A	1100			29.4	13.3		8.68	0.051	2.5(7)	100 jtu	0	20		0.6	0.5	
06/16/93	A	1230			18.9	14.4			0.079	8.38	20 jtu	30	35	30	0.4	5	
07/28/93	A	1130			27.8	16.7			0.086	8.2	5 jtu	10	40	30	0.25	5	
06/07/94	A	1400		3.03		15.6	9				0 jtu	10	1	3.5	0.2	3	0.005
08/25/94	A								0.073	8.28							
09/12/95	A	1300		2.2													
09/21/95	A	1300				11.7	7.41	76.7	0.087	8.52	11.5 ntu						
10/17/95	A	1601				11.49	7.24		0.09	8.44	19 ntu						
05/11/96	A	950		2.34	18	12	9.6		0.087	8							
08/18/92	B	1130			35.6	19			0.084	7.8	15 jtu	20	35	20	0.2	0	

BLM Stream Temperature Monitoring

1995 stream temperature data for Home, Threemile, and Skull Creeks. Onset HoboTemps were used.

Stream, site	Instream start (day, time)	Instream end (day, time)	Summer maximum °C	Max 7 day rolling average maximum °C
Home, lower	07/19 @ 0031	08/31 @ 1531	22.59	21.82
Threemile, lower	07/19 @ 0022	09/21 @ 1012	16.26	16.07
Skull, lower	07/20 @ 0027	10/16 @ 0753	36.54	34.48

1996 Stream temperature data for Home and Skull Creeks. Onset HoboTemps were used for Home at mouth of canyon and Skull at Highway 205. Onset StowAways were used for other sites.

Stream, site (T-R-S)	Period of analysis (date and time)*	Interval (min)	Max 7 day avg of the daily max	Period of max (# of periods exceeding avg)	Max temp	Date of max
Home, mouth of canyon (35S-32E-SEN810)	06/01 @ 0014 to 07/29 @ 1302; 07/31 @ 0026 to 09/25 @ 1402	48	24.02	07/21-27 (78)	25.15	07/25
Home, above Home Creek Butte (35S-31E-SENW7)	07/24 @ 0024 to 07/30 @ 1152*	30	27.51	07/24-30 (1)	30.36	07/25
Home, upper crossing (35S-31E-NENW24)	06/20 @ 0026 to 10/31 @ 1926	30	24.86	07/20-26 (67)	26.23	07/12
Skull, 2.5 mi above Highway 205 (by old corral) (36S-32W-SWNW23)	06/01 @ 0018 to 07/29 @ 1218; 07/31 @ 0030 to 09/25 @ 1542	48	27.14	07/09-15 07/10-16 (100)	28.75	07/23
Skull, above Highway 205 bridge (36S-32W-NWNW21)	06/01 @ 0016 to 07/29 @ 1216; 07/31 @ 0031 to 09/25 @ 1526	48	29.83	08/14-20 (116)	33.29	08/16

*recorder appeared to have been exposed on 07/31

Appendix 2. Schedule of conservation actions. RSR has sole authority over all management activities or actions taken on RSR lands. WAWR and BLM have authority over land use activities occurring on their respective lands. ODFW has jurisdiction over any activities involving direct animal collections or examinations. The "Responsible Party" has responsibility to take the lead on the action item. "Coordinating Parties" are those that could provide technical assistance, provide opportunities for funding, or whose participation in the action item will improve its potential success. (BLM-Bureau of Land Management, RSR-Rising Springs Ranch, WAWR-Walden National Wildlife Refuge, USFWS-USFWS Oregon State Office, ODFW-Oregon Department of Fish and Wildlife, EOARC-Eastern Oregon Agricultural Research Center, OSU-Oregon State University)

Conservation Action Number	Conservation Action	Start Date	Expected Completion Date	Responsible Party (Coordinating Parties)	Estimated Cost	Comments
1.A.1	Condition assessment of RSR riparian areas above Highway 205.	1997	1998	BLM and RSR (WAWR)	\$3,000	
1.A.1	Condition assessment of RSR riparian areas in watersheds below Highway 205.	1998	2000	BLM and RSR (WAWR)	\$5,000	
1.A.2	Site-specific baseline monitoring of bank stability for streams above Highway 205, private and public.	1997	1999	BLM and RSR (WAWR)	\$1,000	
1.A.3, 5.A.1, 5.A.2	Assessment of water flow patterns on private lands to identify potential fish passage problems and historical hydrologic connectivity.	1996	1998	ODFW and RSR (BLM, WAWR)	\$5,000	Possibly through aerial videography then ground truthing at diversion points.
1.A.4	Baseline monitoring of water quality parameters in addition to temperature and substrate composition.	1996 (started for BLM) 1998 (start for RSR)	1998	BLM (RSR)	\$2,000	Could be done in conjunction with riparian condition assessment and bank stabilization re-assessment.
1.A.5	Assess Smith Flat and Skull Creek Meadows for potential wetlands and hydrologic connection improvement.	1997	1998	WAWR, BLM, and RSR	\$1,000	
1.A.6	Study potential for aspen regeneration in Skull Creek Canyon and upper Home Creek.	1998	2000	RSR and WAWR (BLM, EOARC)	\$3,000	

Conservation Action Number	Conservation Action	Start Date	Expected Completion Date	Responsible Party (Coordinating Parties)	Estimated Cost	Comments
1.a.6	Study potential for aspen regeneration in other areas in the basin.	2000 1995 (BLM already making cursory studies on public lands)	2000	RSR and MNWR (BLM, EOARC)	\$5,000	
1.a.7	Population estimates per ODFW-identified reaches for baseline monitoring.	1999	1999	ODFW (RSR, BLM, MNWR)	\$3,000	Electrofishing will be necessary; will need to be scheduled during periods of low stress to fish. Actual year may be dependent upon climatic conditions.
1.a.8 and 5.a.1	Survey Small Creek Reservoir, Three-mile Reservoir, and Six-mile Reservoir for fish presence.	1997	1998	ODFW and RSR (BLM, MNWR)	\$1,000	
1.a.8	Assess reservoirs in 1.a.7 for effectiveness as refugia.	1997	1998	ODFW, USFWS and RSR	-	
1.a.9	Continue monitoring for riparian, fish/aquatic habitat, and water quality for South Steers AMP.	1995	ongoing	BLM	\$8,000 (annual)	
1.a.10	Develop and implement monitoring plan for riparian, fish/aquatic habitat, and water quality for RSR.	1998	ongoing once developed	RSR (BLM, ODFW)	\$5,000 (per monitoring year, expected not to be every year)	Some data collected for South Steers AMP monitoring may preclude need for RSR monitoring where BLM and RSR stream reaches are adjacent.
1.a.11	Develop and implement monitoring plan for effectiveness of management of species health and distribution.	1999 (Development) 2002 (Implement)	Ongoing	BLM, RSR, USFWS, ODFW	\$7,000 (per monitoring year, expected not to be every year)	Changes in species abundance, age class structure, and distribution are not expected until many years after riparian vegetation resource objective is achieved.

Conservation Action Number	Conservation Action	Start Date	Expected Completion Date	Responsible Party (Coordinating Parties)	Estimated Cost	Comments
1.c.1	Construction of Eliza Protection Fence.	1997	1997	BLM	\$40,000	
1.c.1	NEPA analysis for BLM connecting fence to RSR Stephens Fence.	1997	1998	BLM	-	
1.c.1	Construction of the RSR Stephens Fence.	1997	1997	RSR and MNWR (BLM)	\$25,000	
1.c.1	If approved in NEPA decision records, construction of the Leistera Fence and the Gap fence (connecting to RSR Stephens Fence).	First possible season after decision records	-	BLM	\$45,000	
1.c.2	Development of a grazing management strategy that encompasses a variety of possible use areas to allow improvement of habitat.	1997 (started with use of other areas on MNWR, BLM, and RSR)	Adaptive management is ongoing	RSR and BLM (MNWR, USFWS)	-	
1.c.2	Construction of holding pens to facilitate livestock gathering and removal.	1997	1998	RSR (BLM)	\$30,000	
1.c.3	Improve fish passage at Threemile Reservoir diversion structure.	1996	1998	RSR and ODFW (BLM, MNWR)	\$10,000	Possibly less cost if structure is manufactured instead of purchased or if alternatives to ladders can be identified.
1.c.3	Changes in management of constructed projects to facilitate fish passage where problems are identified in L.A.	Within 1 year of assessment in L.A.	Within 3 years of assessment of L.A.	ODFW, RSR, and MNWR (BLM, USFWS)	\$7	Dependent upon assessment results.
1.c.4	Continue species regeneration program on public lands.	Ongoing	2002	BLM (RSR)	\$20,000	

Conservation Action Number	Conservation Action	Start Date	Expected Completion Date	Responsible Party (Coordinating Parties)	Estimated Cost	Comments
1.c.4	Identification of potential of wetland and riparian stand improvement projects.	1998	1998	RSR, MNWR (BLM)	-	
1.c.4	Implementation of wetland and riparian stand improvement projects.	Within 3 years of assessment in 1.c.4	Within 5 years of assessment of 1.c.4	RSR, MNWR (BLM)	\$7	Dependent upon assessment results.
2.a.1	Continue monitoring angler use on Home Creek and Shell Creek.	Ongoing	Ongoing	ODFW	-	Conducted as part of law enforcement.
2.a.2	Continue review of permits for effect.	Ongoing	Ongoing	ODFW	-	
2.c.1	Adjust angling regulations if needed.	Immediately if needed	Within 1 year if needed	ODFW	-	Adjustments would be through emergency and standard regulations.
2.c.1	Close Skull Creek to angling.	1998	-	ODFW	-	
2.c.2	Require conservation constraints on scientific collection permits for the Cutthroat trout.	Immediately	Ongoing	ODFW	-	
3.a.1	Continue fish presence studies.	Ongoing	Ongoing	ODFW	-	
3.c.1	Develop and implement strategy to remove detrimental exotic species.	Within 1 year of finding detrimental exotic species (or earlier if needed)	Within 1 year of treatment strategy	ODFW (RSR, BLM, USFWS, MNWR)	-	
3.a.1	Conduct additional surveys for fish distribution.	1997	1998	ODFW (BLM)	\$10,000	"
3.a.2	Genetic analysis of Cutthroat trout.	When population is robust enough for sampling	Within 3 years of start	ODFW (BLM)	\$30,000	
3.a.2	Genetic analysis of Cutthroat trout.	Ongoing	1998	ODFW (BLM, OSU)	\$10,000	Study almost completed.

Conservation Action Number	Conservation Action	Start Date	Expected Completion Date	Responsible Party (Coordinating Parties)	Estimated Cost	Comments
S.c.1	Develop contingency plan for recolonization in case of localized population losses.	Within 1 year of fish inventories and water pattern assessment	Within 1 year of start	USFWS, ODFW (RSR, BLM, OSU, MNWR)	-	
S.c.2	Development of plan to ensure genetic integrity is maintained.	Within 1 year of completion of genetic analysis and water pattern assessment	Within 1 year of start	USFWS, ODFW (RSR, BLM, OSU, MNWR)	-	

Summary of Estimated Budget Needs by Responsible Party and Year for 1998 through 2001. This is a gross estimate. Dollars represent costs associated with purchases as well as labor. Dollars do not represent overhead. Responsible parties are those identified in the above schedule. Amounts are split among parties where more than one were identified. When more than one year were identified, amounts were spread across years, unless it was for a project, in which case the completion year was used. Cost share and coordination opportunities may result in redistribution or reductions in costs to individual parties.

Responsible Party	1997	1998	1999	2000	2001
BLM	\$48,000	\$57,000	\$13,000	\$15,000	\$15,000
RSR	12,500	24,000	6,000	4,000	1,000
ODFW	18,000	5,000	6,000	1,000	6,000
MNWR	12,500	1,000		2,000	
TOTAL	\$91,000	\$87,000	\$25,000	\$22,000	\$22,000

CATLOW REDBAND TROUT HABITAT IN EAST CATLOW VALLEY

-  Catlow redband trout (current)
-  Catlow Streams
-  Other Streams
-  Catlow redband trout (historic)*

0 1 2 3 4 Miles

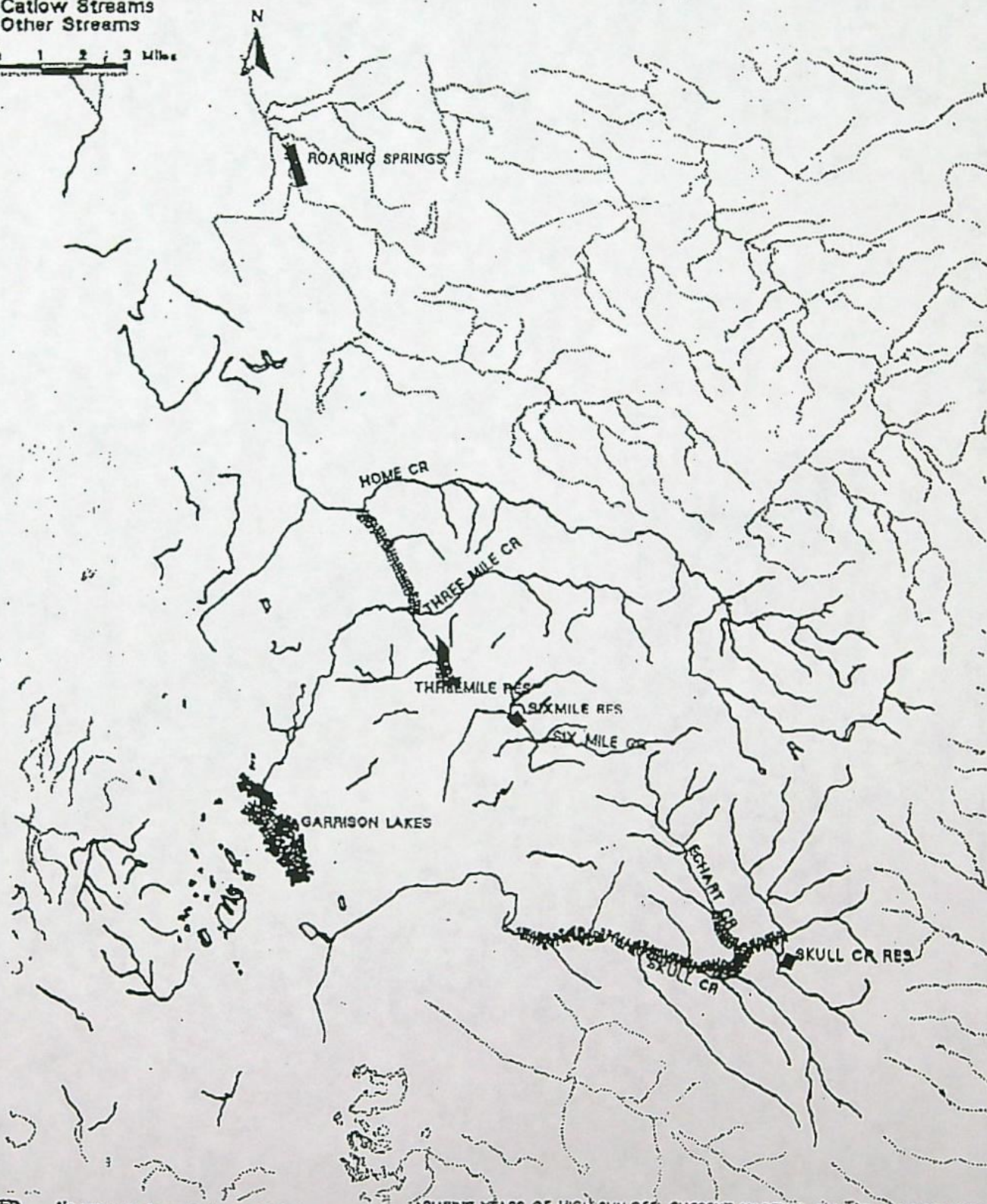
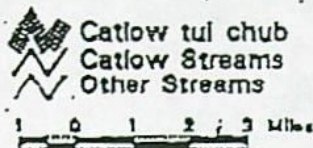


No warranty is made by the BLM for use of the data for purposes not intended by BLM.

7/29/97 Burns District GIS

*DURING YEARS OF HIGH RUN-OFF, HISTORIC HABITAT MAY HAVE INCLUDED DITCHES AND WATERWAYS IN THE LOWER VALLEY TO A MIXING AREA IN THE GARRISON LAKES.

CURRENT CATLOW TUI CHUB HABITAT IN EAST CATLOW VALLEY*



No warranty is made by the BLM for use of the data for purposes not intended by BLM.

7/23/97 Burns District GIS

*DURING YEARS OF HIGH RUN-OFF, CURRENT HABITAT WOULD INCLUDE DITCHES AND WATERWAYS IN THE LOWER VALLEY. THIS EXPANDED HABITAT IS EXPECTED TO BE THE SAME AS HISTORIC HABITAT.

EASTSIDE CATLOW STREAMS AND SOUTH STEENS ALLOTMENT

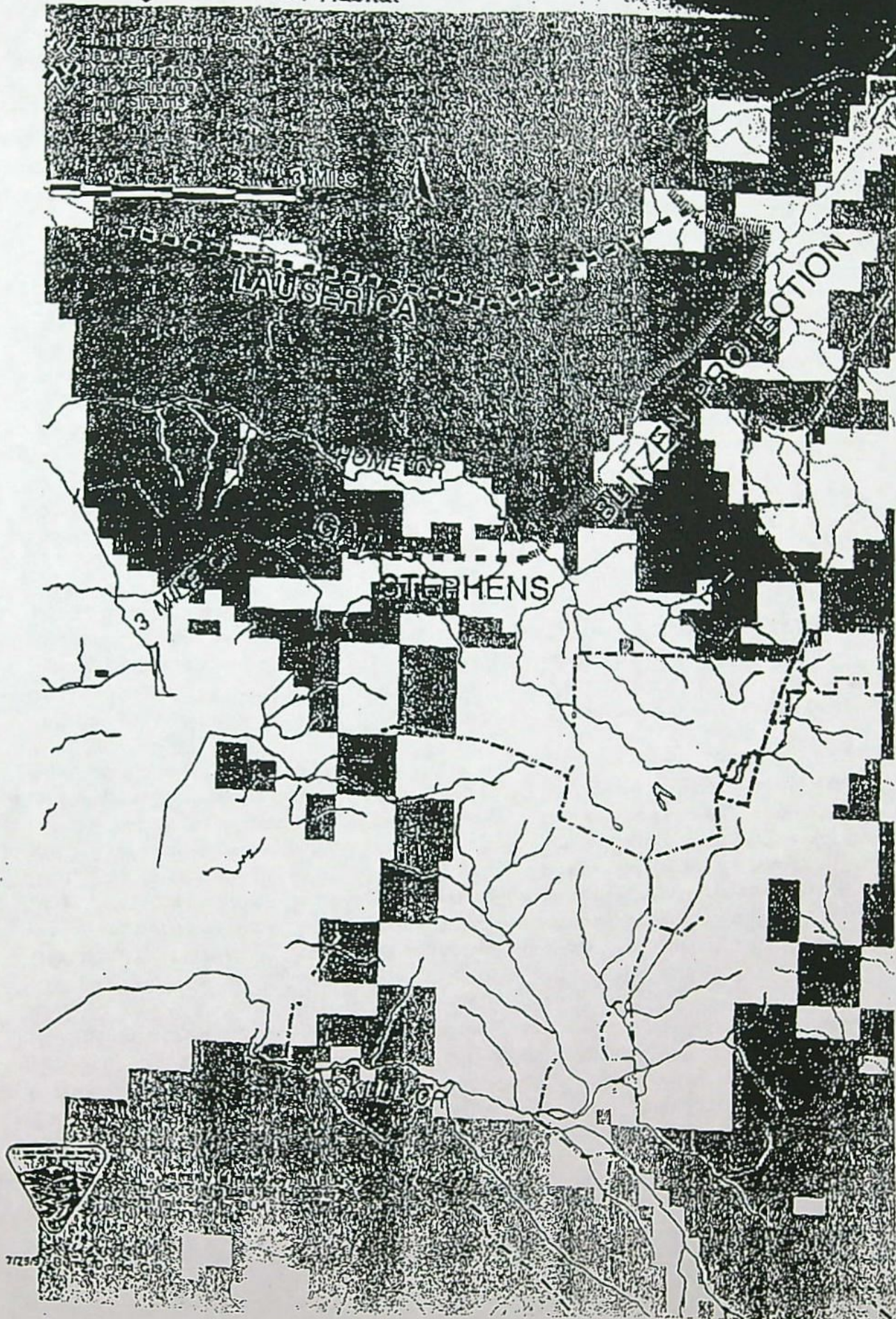
- South Steens Allotment
- Lakes and Reservoirs
- Catlow Streams
- Other Streams
- BLM

1 0 2 Miles



7/25/97

Existing and Proposed Fences Affecting Catlow Fish Habitat



Amendment to the
Catlow Redband Trout and Catlow Tui Chub
Conservation Agreement and Strategy

Background:

The original Catlow Redband Trout and Catlow Tui Chub Conservation Agreement and Strategy (Conservation Agreement) was signed by Roaring Springs Ranch, U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Land Management (BLM), and Oregon Department of Fish and Wildlife, by August 27, 1997. The Conservation Agreement's duration was five years, or August 27, 2002.

Of major importance to the Conservation Agreement signatories was "shared benefits" between private and public resources. Shared benefits have been achieved, under the Conservation Agreement, with a careful balance of grazing management and habitat restoration activities on Roaring Springs Ranch, and BLM and USFWS lands. Under the Cooperative Agreement, USFWS' Malheur National Wildlife Refuge (Refuge) committed to providing pastures for five complete seasons of livestock grazing by Roaring Springs Ranch. The allowed period of use on the Refuge is September 1 through the following January 31. Grass cuttings, beginning August 10, are required for Refuge pastures.

Only four full seasons of Roaring Springs Ranch use on the Refuge will have occurred prior to the completion of the five year Conservation Agreement. During the 2002 annual Conservation Agreement meeting, all parties verbally agreed to extend the duration of the Conservation Agreement, thereby allowing the fifth year of agreed-upon "shared benefits" grazing by Roaring Springs Ranch on Refuge pastures.

Amendment to the Conservation Agreement:

The signatories of the Conservation Agreement propose to extend the duration of the Conservation Agreement, from August 27, 2002, until January 31, 2003. The main purpose of the amendment is to complete the fifth year of "shared benefits" management of private and public lands within the Conservation Agreement. The amendment will allow Roaring Springs Ranch to use irrigated meadow pastures during the 2002-2003 Refuge grazing season. Specific dates and actions of importance include initiation of grass cutting in irrigated meadow pastures starting August 10, 2002, and approximately 10,000 AUM's of livestock use of irrigated meadows between September 1, 2002, and January 31, 2003. No additional actions by any Conservation Agreement party are required under this proposed Conservation Agreement amendment.

As documented during the 2002 annual Conservation Agreement meeting, all parties agreed that the Conservation Agreement was a beneficial action. The parties determined that additional discussions, associated with a longer-term renewal of the Conservation Agreement, should continue between signing of this amendment and the end of the Conservation Agreement extension, on January 31, 2003.

Rob Sanders
RSG Forest Products
985 NW 2nd Street
Kalama, WA 98625

Stacy Davies
Roaring Springs Ranch
HC 72 Box 50
Frenchglen, OR 97736

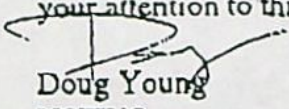
Chad Karges
Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, OR 97721

Cindy Weston
Burns BLM
HC 74-12533 Hwy 20 West
Hines, OR 97738

Chip Dale
Oregon Department of Fish and Wildlife
61374 Parrell Rd.
Bend, OR 97702

Ray Perkins
Oregon Department of Fish and Wildlife
Ontario Field Station
3814 Clark Blvd
Ontario, OR 97914

Here is the signed amendment to the Catlow Valley Fishes Conservation Agreement. Thanks for
your attention to this issue.


Doug Young
USFWS

84562

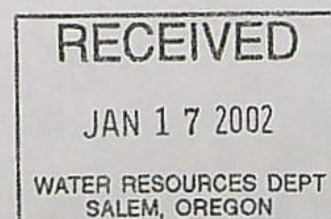
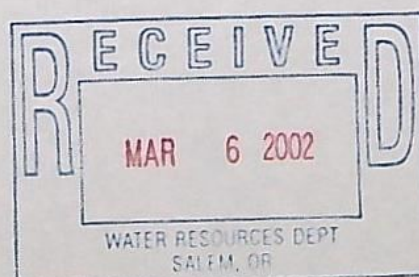
Recreation Flow Requirement Methodology For Home Creek, Tributary to Garrison Lake, Harney County, Oregon

The following description identifies the flow requirements for the recreational uses of Home Creek in accordance with the provisions of Oregon Administrative Rules (OAR) 736-060-0015, Recreation Flow Requirement Methodology administered by the Oregon Parks and Recreation Department (OPRD). This information is in support of OPRD's application dated October 17, 2000, for instream water rights in Home Creek for the benefit of public recreation and scenic attraction.

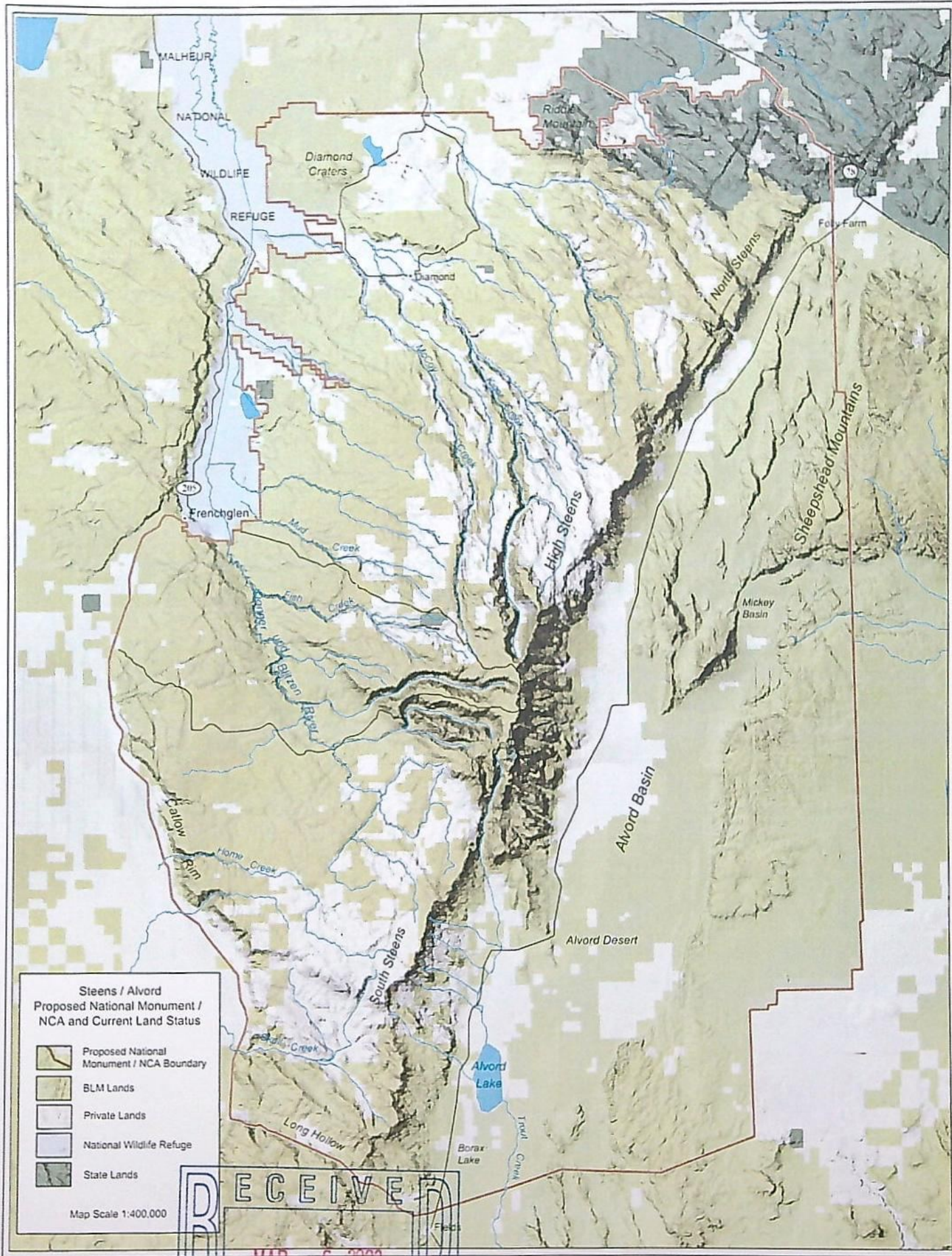
Recreational Use: Scenic attraction/aesthetics, hiking, camping, fishing, wildlife viewing and nature study/interpretation. Home Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). Home Creek is the centerpiece of the 20,699 acre Home Creek unit of the Steens Mountain Wilderness Area designated by Congress in October 2000. (Map 2). Whether from the vantage point of canyon rim, creek side, or the talus slopes and basalt outcrops in between, Home Creek canyon offers the visitor spectacular high desert scenery, impressive geology, viewable fish and wildlife, diverse plant communities and living natural history.

For those that prefer to look inside while outside, there is remoteness, solitude, isolation, tranquility, closeness to nature and spirit liberating space in this challenging and pristine environment. In the midst of this stunning and arid landscape, Home Creek is the dynamic focus, the crux of the canyon, and it guides one's eye, spirit and imagination around each bend, over each rock and across the span of time and space.

Home Creek is a narrow, boulder strewn, high gradient, pool and drop, perennial stream, arising on the southwestern flank of Steens Mountain at an elevation of about 7,400 feet. From its headwaters, Home Creek flows about 20 miles northwestward to the Catlow Valley, slicing through the Catlow Rim about 23 miles south of Frenchglen. The steep gradient (average 140 foot drop per mile) and rock filled channel generate continuous white water that provides a striking contrast to the brown-gray-black basalt canyon walls and the green riparian vegetation. In autumn, streamside vegetation turns various shades of yellow and red enhancing this contrast.

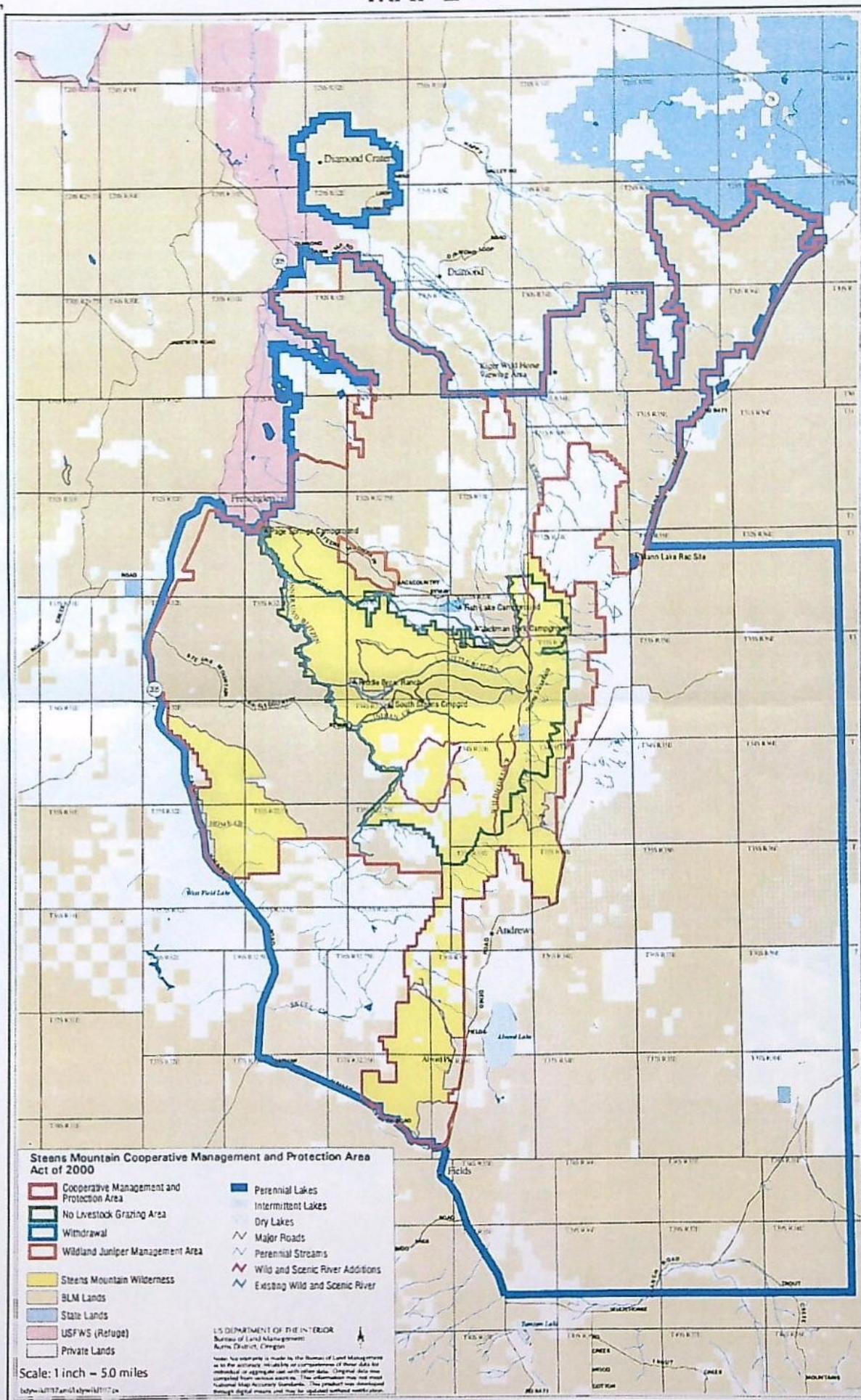


MAP 1



Attachment to Recreation Flow Requirement Methodology
For Home Creek, Tributary to Garrison Lake,
Harney County, Oregon dated 01/16/02

MAP 2



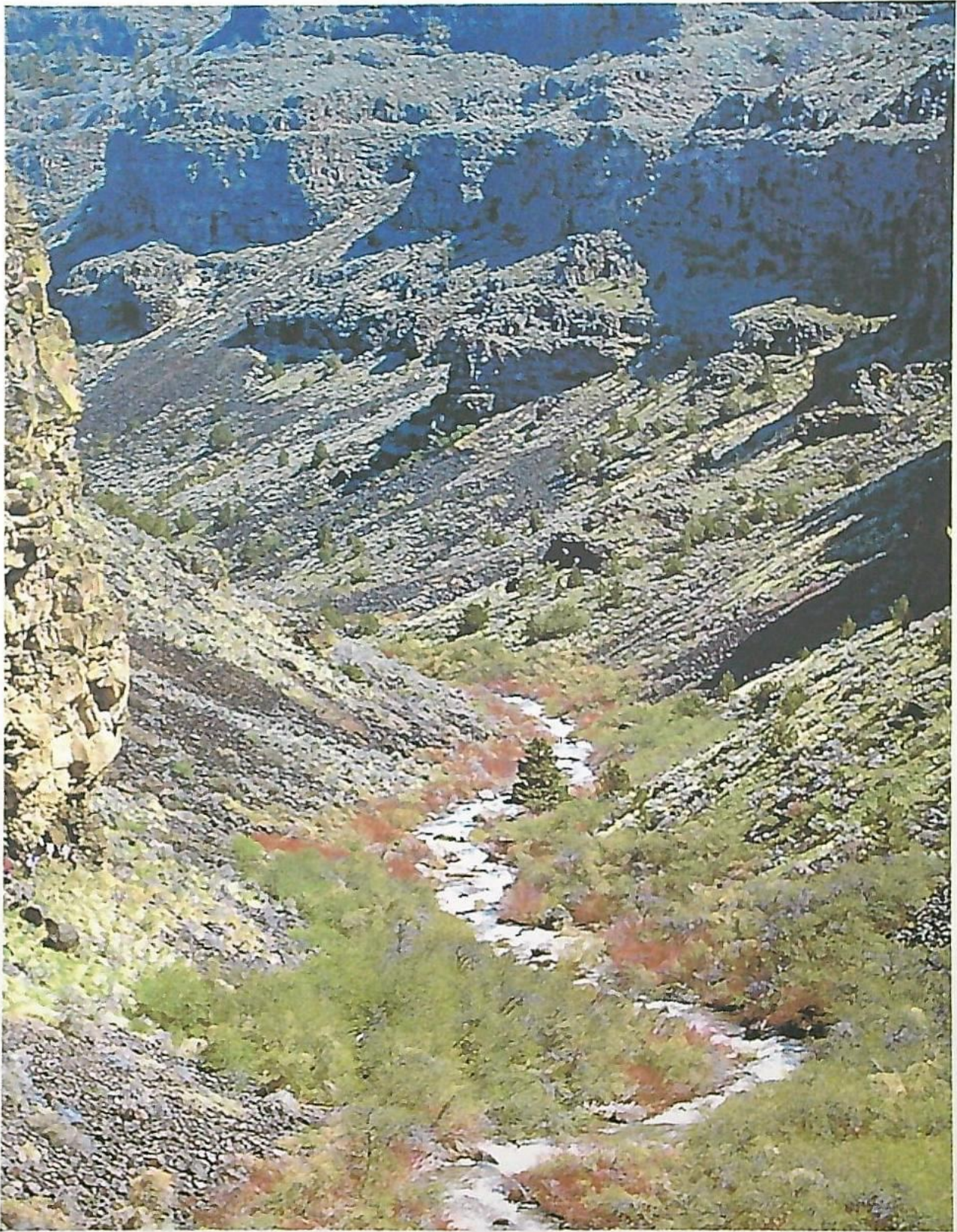


Photo by Greg Burke

Home Creek – note the hikers at the base of the outcrop on the extreme left.

Where Home Creek breaches the Catlow Rim, the canyon measures about one mile across from rim to rim and about 1,400 feet from top to bottom. Looking west from the mouth of Home Creek canyon, one views the Catlow Valley, now arid rangeland, or pastureland where irrigation can be applied. To the east, the land slopes upward for another 14 miles traveling through several vegetation zones and a variety of habitats before reaching elevations of about 7,700 feet along the southern summit of Steens Mountain. Whether in the canyon bottom or upland areas, the visitor is constantly reminded of the impressive scope, scale and biological diversity of the area.

In short, Congressional designation of the area as wilderness reinforces that the highest and best use of the area is the preservation of its natural features, systems and functions, including the creek's hydrology. The flows protected by the requested instream water right will help maintain the outstanding and unique wilderness resources of Home Creek.

Time period of Use: Year-round. Home Creek is accessible and used in all seasons.

Stream flow supporting recreational use: Flows are in cubic feet per second.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	7	17	36	53	31	8	4	4	4	3	3

These flows represent 50 percent exceedence values for each month based on calculations conforming to standards and procedures used by the Water Resources Department for estimating flows on ungaged streams.

Location of use: The specified flows are requested to be maintained in Home Creek from Upper Crossing in the SE ¼ of the NW ¼ of Section 24, Township 35 South, Range 32 ½ East, Willamette Meridian, Harney County; ---

downstream to the intersection of Home Creek with the Steens Mountain Wilderness Area boundary being the west quarter section line of the SE ¼ of the NE ¼ of Section 10, Township 35 South, Range 32 East, Willamette Meridian, in Harney County.

Experience setting: Visitors to the above-described area can expect an experience at the semi-primitive to primitive end of the Recreational Opportunity Spectrum (ROS). (ROS Users Guide, United States Department of Agriculture, Forest Service). A primitive road crosses the proposed reach at Upper Crossing and again about two miles downstream at Lower Crossing. Though this reach of stream traverses some private lands, it qualifies as semi-primitive, motorized (in the vicinity of the two road crossings) and semi-primitive, non-motorized for a portion of the two-mile reach between these crossings. This reach of stream offers moderate to high probability of experiencing isolation from the sights and sounds of humans, independence, closeness to nature, tranquility, and the need for self-reliance in an environment that offers challenge and risk.

From Lower Crossing downstream to State Highway 205, Home Creek flows about seven miles in an increasingly deep gorge. This reach of stream provides a primitive experience characterized by extreme high probability of isolation from the sights and sounds of humans, independence, closeness to nature, tranquility and need for self-reliance in an environment that offers a high degree of challenge and risk.

The lower five miles of the subject reach is within the boundaries of the Steens Mountain Wilderness Area. Land ownership in this reach is predominantly Bureau of Land Management. Management is designed to preserve and protect the natural resource features, values and functions of the lands within this wilderness area.

The 1994-1999 Statewide Comprehensive Outdoor Recreation Plan (SCORP) surveyed recreationists to learn more about the recreation settings they used and the recreation settings they preferred. The SCORP analysis found that recreationists tend to prefer recreational settings that are more natural or primitive than the ones they use. This is especially true for outdoor activities that focus on and draw from the natural resource land base. Hunting, fishing, nature study, wildlife observation, hiking, tent camping, backpacking, and climbing are some examples.

There are various reasons for the disparity between settings used and those preferred. Perhaps the most important reason is the dwindling availability and protection of resource lands of adequate areal extent that provide the primitive settings desired. The table below shows uses and preferences for Primitive and Semi-primitive ROS settings from the 1994-1999 SCORP for three categories of activities that are common on Home Creek.

Activity	ROS Setting Type			
	Primitive		Semi-primitive	
	Used	Preferred	Used	Preferred
Bank Fishing	10.1%	20.5%	15.1%	26.2%
Nature study - wildlife viewing	8.3%	25.2%	30.1%	40.3%
Hiking – backpacking trails	23.3%	37.1%	34.2%	36.2%

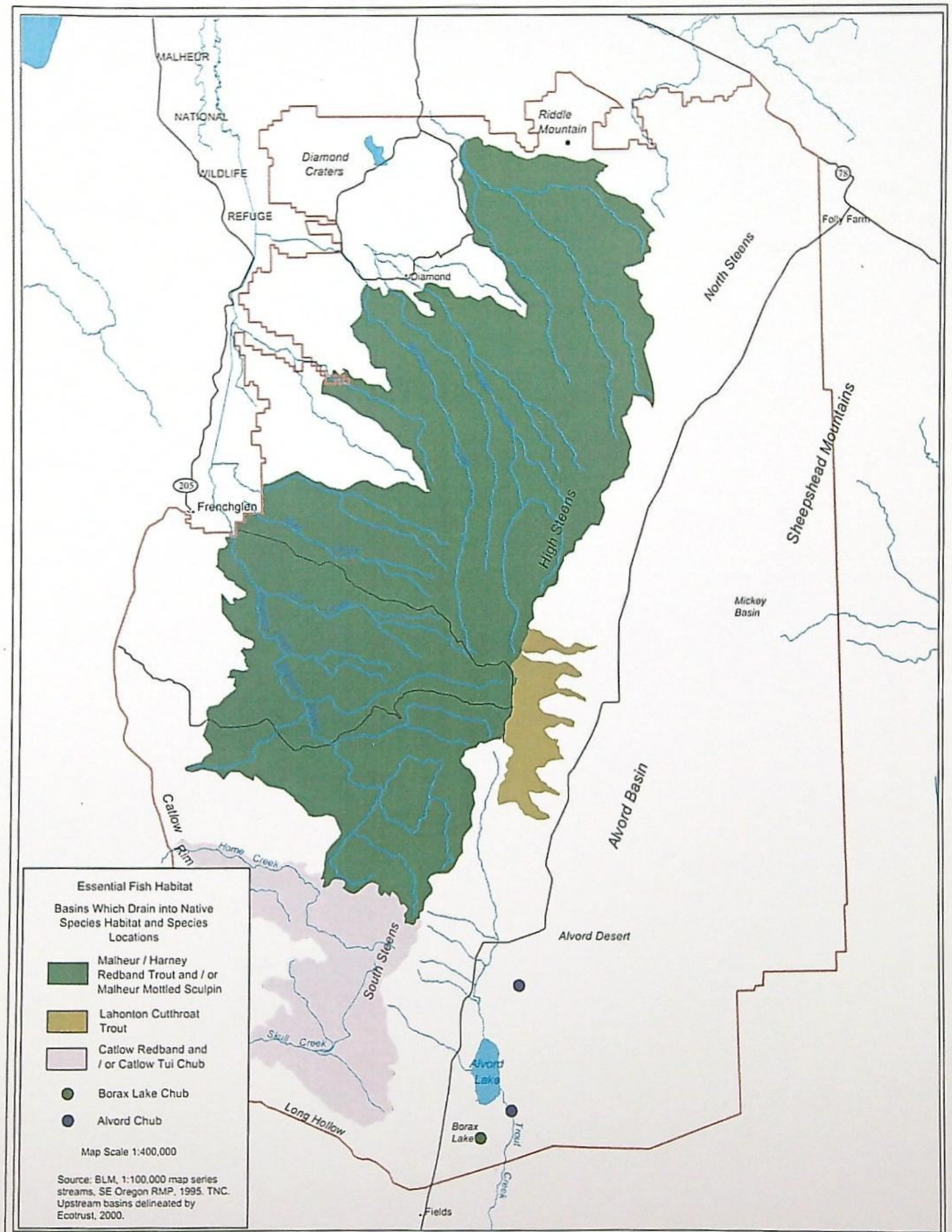
Source: 1994-1999 Statewide Comprehensive Outdoor Recreation Plan, OPRD, page III-16.

Protecting the flow regime in Home Creek through instream water rights will help preserve the integrity of the primitive/semi-primitive (wilderness) character of the area thereby addressing the public preference to have and recreate in such settings.

Amount of recreational use: Recreational use data are not available for Home Creek. Overall, recreation use levels in the area are low when compared to use levels elsewhere on Steens Mountain i.e. Fish Lake campground, Kiger Gorge overlook, Big Indian Gorge overlook, Steens Mountain summit.

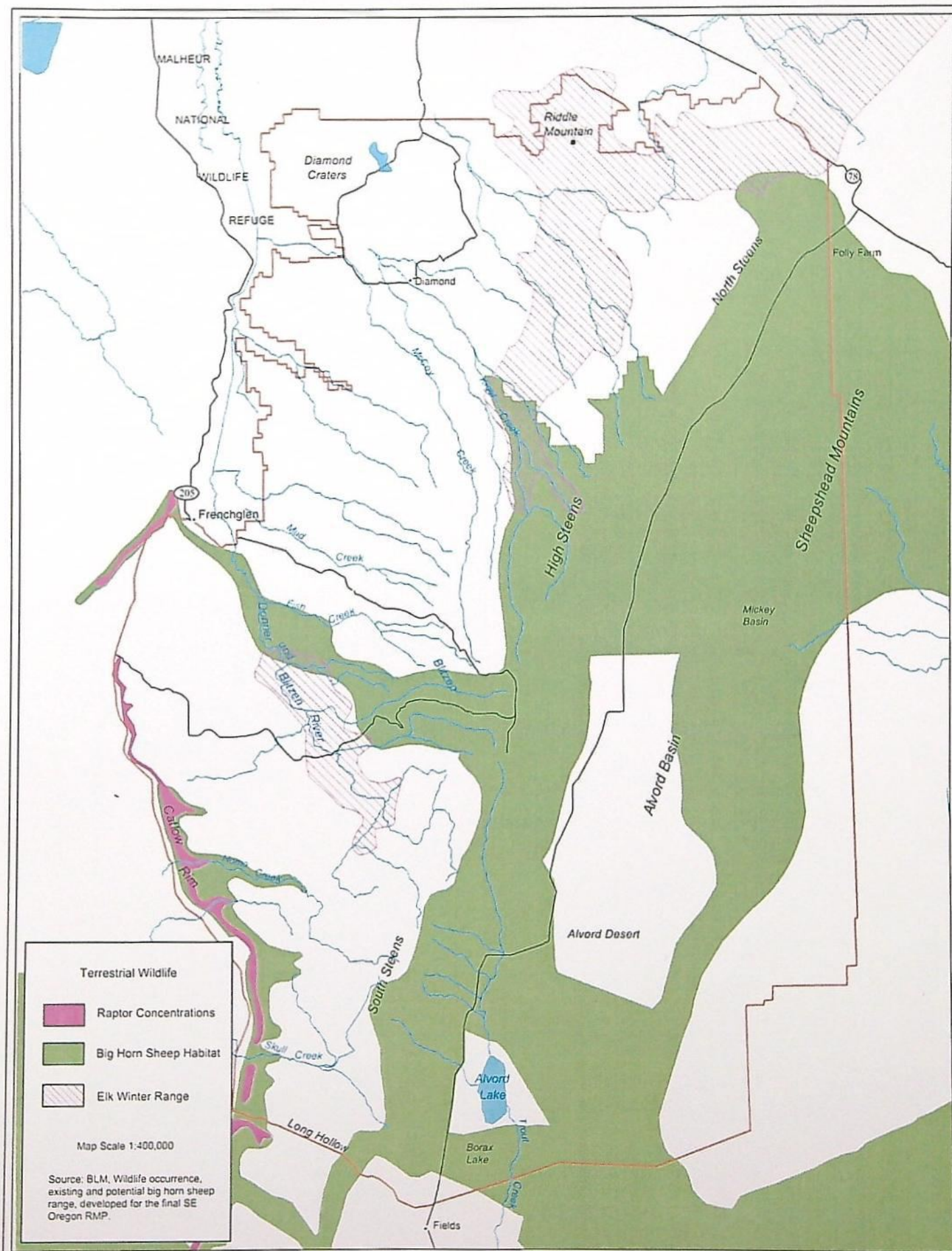
There are no designated or developed recreation facilities on Home Creek. Use is dispersed and unmonitored. Administered by the BLM, the Home Creek drainage was

MAP 3



Attachment to Recreation Flow Requirement Methodology
 For Threemile Creek, Tributary to Garrison Lake,
 Harney County, Oregon dated 01/16/02

MAP 4



eagles, prairie falcons and long-eared owls. Threemile Creek drainage is documented habitat for sage grouse. Several lek sites (traditional sage grouse mating strut areas) have been identified in the creek's drainage area. (Map 5). Watching the sage grouse mating ritual is a special attraction for birders.

Competing uses: There are no known diversions, dams, consumptive rights or competing uses for the flows in Threemile Creek in the reach proposed for instream water rights. A search of 13 sections in two townships in the Platcard report on the Water Resources Department's web site (www.wrd.state.or.us) yielded no record of water rights in or upstream of the proposed protected reach. The sections queried include:

Township 35 South, Range 32 East: Sections 24, 25

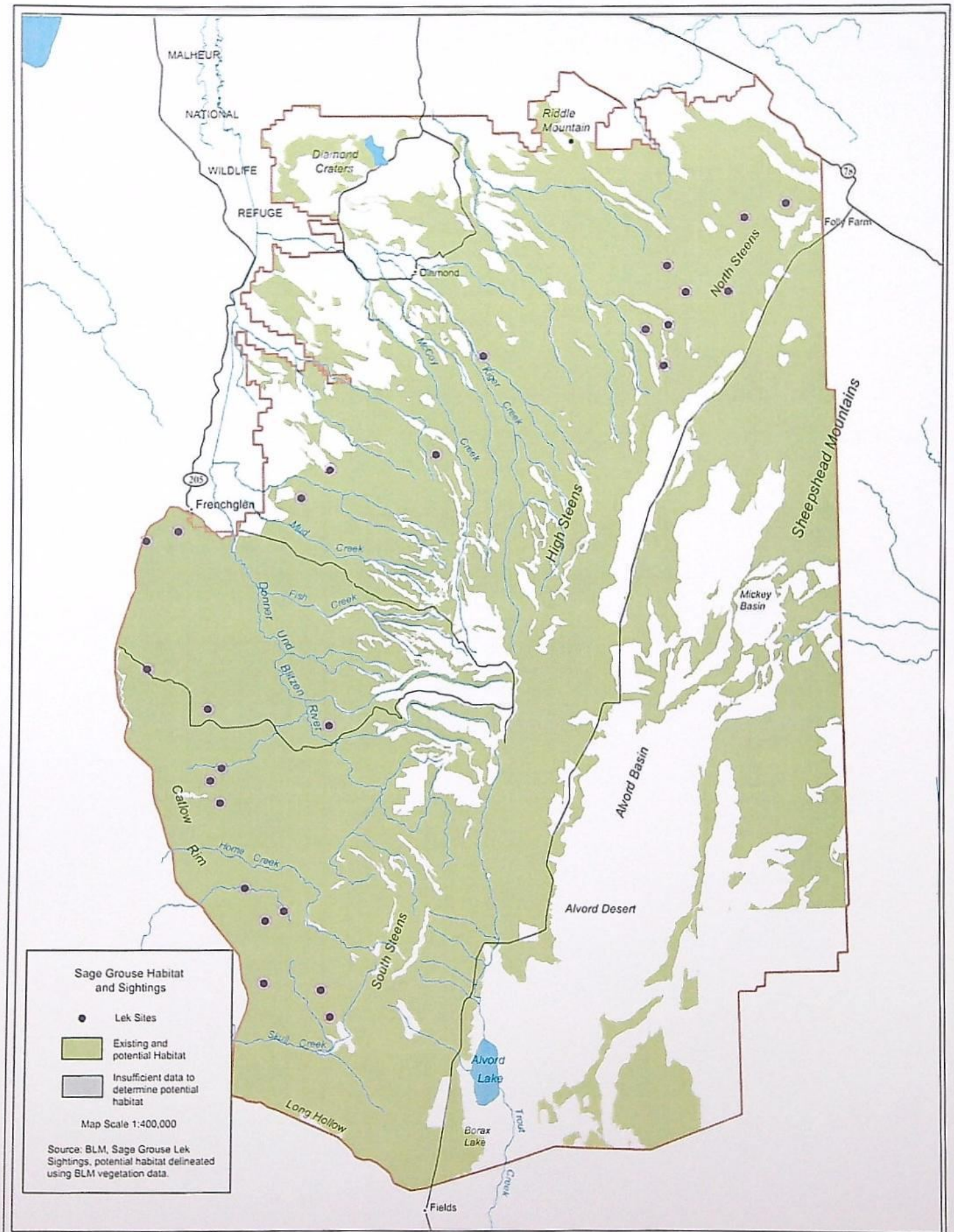
Township 35 South, Range 32 ½ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 33, 34, 35

Institutional constraints:

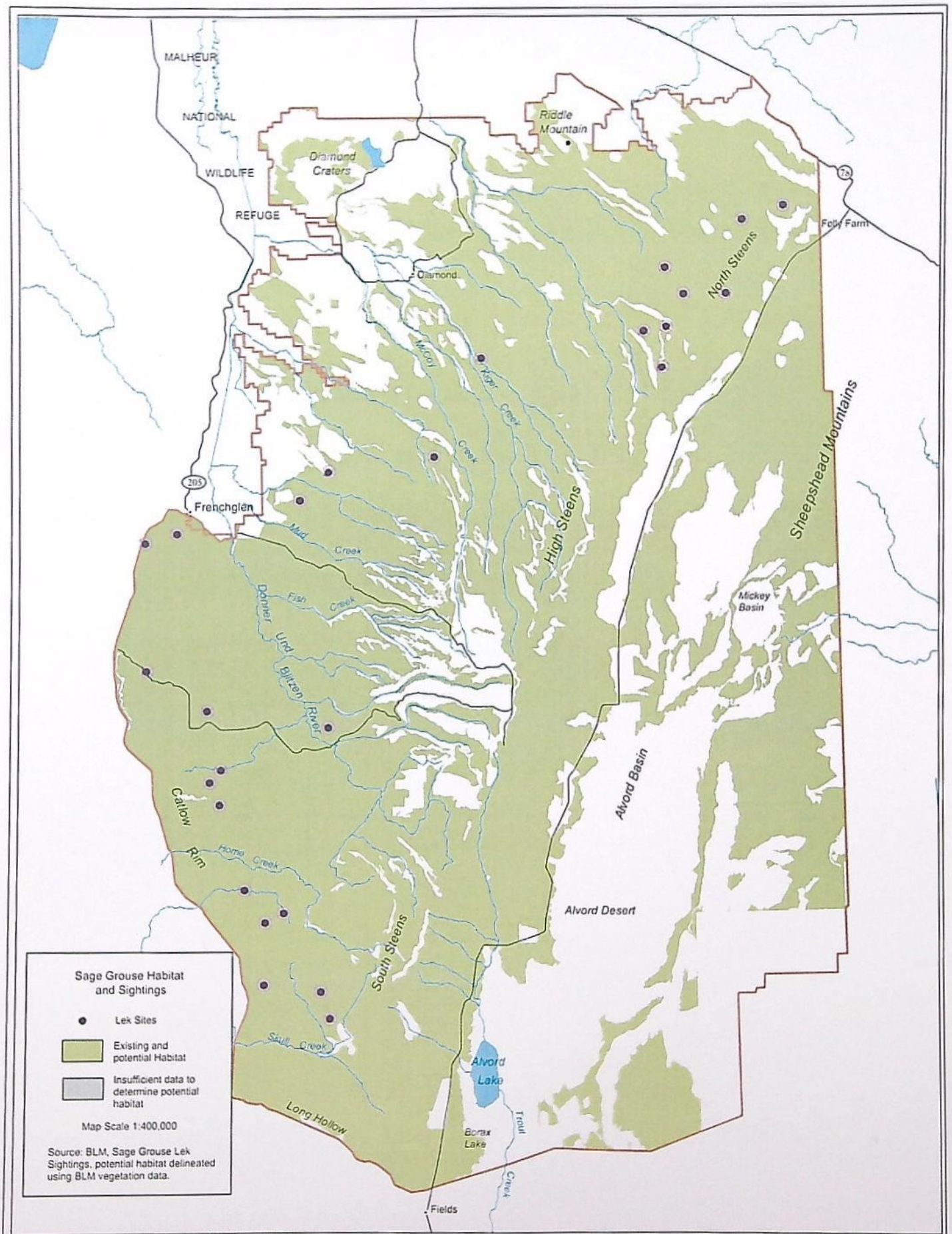
Recreation use permits: Lands bordering Threemile Creek are largely federal lands managed by the Bureau of Land Management. The BLM requires special recreation use permits for commercial guide services, group events or competitive events utilizing public lands in the Threemile Creek drainage. Existing commercial use permits (i.e. hunting and fishing guides) issued by the BLM do permit use in the Threemile Creek drainage. The BLM indicates that no commercial use permit currently administered specifies Threemile Creek as the predominant area of use. (Personal communication with Mark Sherbourne, Burns District BLM, January 9, 2002).

Fishing regulations: The 2002 Oregon Sport Fishing Regulations, Oregon Department of Fish and Wildlife, include Threemile Creek in the Southeast Corner of the Southeast Zone of Oregon. Trout fishing is closed year-round on Threemile Creek due to low numbers of fish in the stream. Nothing in the regulations suggests the regulations will constrain the requested instream flows. Protection of the flows in Threemile Creek via an instream water right will help maintain natural flows and habitat critical to survival of fish in Threemile Creek.

MAP 5



MAP 5



Institutional constraints:

Recreation use permits: Lands bordering Home Creek are largely federal lands managed by the Bureau of Land Management. The BLM requires special recreation use permits for commercial guide services, group events or competitive events utilizing public lands in the Home Creek drainage. Existing commercial use permits (i.e. hunting and fishing guides) issued by the BLM do permit use in the Home Creek drainage. The BLM indicates that no commercial use permit currently administered specifies Home Creek as the predominant area of use. (Personal communication with Mark Sherbourne, Burns District BLM, January 9, 2002).

Fishing regulations: The 2002 Oregon Sport Fishing Regulations, Oregon Department of Fish and Wildlife, include Home Creek in the Southeast Corner of the Southeast Zone of Oregon. Trout fishing is open all year on Home Creek. Nothing in the regulations indicates they would constrain the requested instream flows.

Dam releases: There are no dams that regulate or affect flows in Home Creek. There may be small livestock impoundments in the headwater areas of Home Creek but these are small volume, usually holding less than an acre-foot of water and are of no measurable impact on flows in the creek.

Minimum perennial streamflows /instream water rights: There are no minimum perennial streamflows or other instream water rights on Home Creek.

Court decisions: There are no known court decisions that present an institutional constraint on instream water rights for Home Creek.

Standards contained in OAR 690-077-0045: Not applicable. WRD repealed this rule in August 1992.

Acknowledged comprehensive land use plan of local government: The Home Creek drainage is zoned EFRU-1 (exclusive farm and range use, 160 acre minimum) in the Harney County Comprehensive Land Use Plan. Nothing in this zone affects the establishment of instream water rights. (Personal communication with Richard Jennings, Planning Director, Harney County Planning Department, January 10, 2002.)

References

- Bergerson, Terry. SCORP Planner, Oregon Parks and Recreation Department. Memorandum, December 28, 2001.
- Bowers, Wayne. Fish Biologist, Oregon Department of Fish and Wildlife, Hines Field Office. Telephone conversation, August 31, 2001.
- Hall, Rick. Natural Resources Specialist, Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.
- Hooten, Bob. Natural Production Program Manager, Oregon Department of Fish and Wildlife. Telephone conversation, January 9, 2002.
- Jennings, Richard. Planning Director, Harney County Planning Department. Telephone conversation, January 10, 2002.
- Kerr, Andy. Oregon Desert Guide 70 Hikes. Seattle: The Mountaineers, 2000.
- Lillebo, Tim. Eastern Oregon Field Representative, Oregon Natural Resources Council. Telephone conversation, January 10, 2002.
- Marlett, Bill. Executive Director, Oregon Natural Desert Association. Telephone conversation, September 5, 2001.
- McAllister, David. Director, Habitat Division, Oregon Department of Fish and Wildlife. Letter to Paul Cleary, Director, Oregon Water Resources Department. June 13, 2001.
- Quigley, Thomas and Sylvia Arbelbide, technical editors, An Assessment of Ecosystem Components the Interior Columbia Basin: Volume III, (USDA Forest Service Pacific Northwest Research Station, Portland, Oregon, 1997): Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-25.
- ROS Users Guide. United States Department of Agriculture, Forest Service.
- Sherbourne, Mark. Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.
- U.S. Department of the Interior, Bureau of Land Management. Draft Southeast Oregon Resource Management Plan/Environmental Impact Statement. (Vale and Burns Districts, 1998): 2-53. Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-24.
- U.S. Department of the Interior, Bureau of Land Management. *Steens Mountain Area*. (Burns District, Hines, Oregon, 1999): 55-56. Quoted in Rick Brown, Steens Mountain – Alvord Basin Objects of Historic and Scientific Interest, (Conservation Science Support Center, Portland, Oregon, 2000), A-20 and A-21.
- Witzel, John. Owner, Steens Mountain Packers, Frenchglen, Oregon. Telephone conversation, January 9, 2002.

JOHN A. KITZHABER, M.D.
GOVERNOR



June 14, 2001

Paul Cleary, Director
Water Resources Department
Commerce Building
158 12th St. NE
Salem, OR 97301

Dear Paul:

As you consider the application by Oregon Parks and Recreation Department (OPRD) for instream water rights on Home Creek and on Threemile Creek in the Malheur Lake Basin, I ask that you accord a high level of importance to the recreational, wildlife and scenic values that will be served by these rights.

The application by OPRD furthers an agreement by the broad range of interests that participated last year in the drafting of the Steens Mountain Cooperative Management and Protection Act of 2000. I believe that the Steens legislation created a welcome balance between the ranching and the recreational and scenic values of the lands and waters surrounding Steens Mountain. The extensive input from the local ranching community, among others, led to the provision of an instream water right to protect these scenic and recreational values. The collaborative effort drew strong support from Oregon's congressional delegation and from my office for such an instream water right to be protectable under Oregon law. At the time, this water right was agreed upon as the most effective means short of a Wild and Scenic River designation to protect instream flows through the Steens wilderness area. The values found in Home and Threemile Creeks made it essential for OPRD to submit this application for an instream right, and to do so in a way that would ensure that the natural hydrograph and its benefits be preserved.

I am also hopeful that this instream right will help advance the conservation of Catlow redband trout and tui chub. These species have been the target of protection efforts for a number of years. Cooperation between local ranching interests, the conservation community, the State of Oregon and federal agencies led to a Conservation Agreement in 1997 designed to protect these fish. To see the same type of cooperative approach to conserving species adopted in the Steens legislation heartened me greatly. Though this approach takes more work, it creates real and working solutions.

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JUN 20 2001

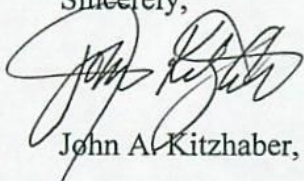
WATER RESOURCES DEPT.
SALEM, OREGON

Paul Cleary, Director
June 14, 2001
Page 2

Preserving the natural flow regime in Home Creek and Threemile Creek will provide not only water quality and fish habitat benefits, but will serve to protect the recreational values that are at the center of the Steens legislation. Because of this, these applications have my highest level of support.

Thank you for working on the difficult task of balancing beneficial uses of Oregon's increasingly scarce water resource.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Kitzhaber", is written over the word "Sincerely,".

John A. Kitzhaber, M.D.

JAK/NR/sm



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130
www.wrd.state.or.us

VIA MAIL

October 24, 2002

Michael Carrier
Director
Parks and Recreation Department
1115 Commercial St. NE
Salem, OR 97301-1002

RE: Water Right Applications IS 64562 and IS 84563 in the Name of the Parks and Recreation Department

Dear Mr. Carrier:

Thank you for your letter of October 22, 2002, in which you requested the Oregon Water Resources Department place the above-captioned applications on hold while the participants seek settlement opportunities. Accordingly, the applications will be placed on hold until **January 22, 2003**.

Sincerely,

Renee Moulun
Protest Program Coordinator



OREGON PARKS & RECREATION DEPARTMENT

1115 COMMERCIAL ST NE

SALEM OR 97310-1001

PHONE (503) 378-6305

FAX (503) 378-6447

TO: RENEE MOLLINFAX #: 503-378-6203VOICE #: 503-378-8455 x 239FROM: STEVE BRUTSCHERVOICE#: 503 378 4168 x235DATE: 10/23/02PAGES: 2 w/COVER

RE: LETTER REQUESTING ADMINISTRATIVE HOLD
ON APPLICATIONS IS 84562 AND IS 84563.
ORIGINAL IN SHUTTLE MAIL. LET ME KNOW
IF THIS IS NOT ADEQUATE.

IF YOU HAVE PROBLEM RECEIVING THIS FAX PLEASE CALL ASAP



Oregon

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

1115 Commercial St. NE

Salem, OR 97301-1002

(503) 378-6305

FAX (503) 378-6447

www.prd.state.or.us



October 22, 2002

Renee Moulun
Water Resources Department
158 12th St NE
Salem OR 97310

RE: Instream Water Right Applications IS 84562 and IS 84563

Dear Ms. Moulun:

Several parties protested the proposed final orders on the above referenced applications by the August 9, 2002 deadline. The parties have agreed to meet on November 4, 2002 to discuss resolution of these protests. We request the Water Resources Department place these applications on administrative hold to allow adequate time for the parties to seek settlement opportunities.

Sincerely,

Michael Carrier
Director

Q:\Instream Water Rights\Letter to Renee Moulun re Administrative Hold 10_22_2002.doc



**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54614**

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

INVOICE # _____

RECEIVED FROM: Susan Huerckman
BY: U.S. Dept. INT. - BLM

APPLICATION	<u>see below</u>
PERMIT	
TRANSFER	

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

TOTAL REC'D \$ 100.00

0417 WRD MISC CASH ACCT

IS 84562

ADJUDICATIONS

IS 84563

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

\$
\$
\$
\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

\$

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

0410 RESEARCH FEES

0408 MISC REVENUE: (IDENTIFY) _____

(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

77235

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\$
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\$

WATER RIGHTS:

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

EXAM FEE

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0202

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0204

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0206

EXAM FEE

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0219

0220

RECORD FEE

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\$

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LICENSE FEE

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234 OTHER (IDENTIFY) Request for standing \$100.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY) _____

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\$

CARD #

CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

0231 HYDRO LICENSE FEE (FW/WRD)

HYDRO APPLICATION

\$

\$

\$

RECEIPT # **54614**

DATED: 8/5/02 BY: Connie Vance

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

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
BURNS DISTRICT
28910 HWY 20 WEST
HINES, OREGON 97738

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



WATER RESOURCES DEPARTMENT
158 12TH STREET, NE
SALEM, OREGON 97310

97301+4172





United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Burns District Office
28910 Hwy 20 West
Hines, Oregon 97738
or020mb@or.blm.gov
www.or.blm.gov/Burns/

RECEIVED

AUG 05 2002

WATER RESOURCES DEPT.
SALEM, OREGON

IN REPLY REFER TO:

AUG - 1 2002

7250(020)

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

Dear Sir:

The Burns District, Bureau of Land Management (BLM) requests standing in two proposed final orders, application numbers IS 84562 and IS 84563 for Home Creek and Threemile Creek, tributaries to Catlow Valley. The BLM supports the proposed final orders as issued because they would positively affect wilderness values, population viability of the Catlow redband trout and Catlow tui chub, implementation of the Catlow Redband Trout and Catlow Tui Chub Conservation Agreement (Catlow CA), and water quality in Home Creek.

Portions of both Home Creek and Threemile Creek flow through BLM land and are within wilderness, as designated by the Steens Mountain Cooperative Management and Protection Act of 2000. Retaining natural flows in Home and Threemile Creeks would enhance wilderness, scenic, and recreational values. Alteration of the natural flow regime may reduce the wilderness, scenic, and recreational values.

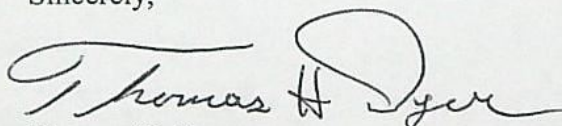
Home Creek and Threemile Creek contain Catlow redband trout and Catlow tui chub, which are both State sensitive and BLM Special Status species. The Home and Threemile Creek watersheds are located within the area covered by the Catlow CA, which was signed in August of 1997 by Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Malheur National Wildlife Refuge, Bureau of Land Management, and Roaring Springs Ranch, Inc.

One of the primary goals of the conservation agreement is "to have the species occupy at least 80 percent of its historic range within each of the historic stream drainages." These historic drainages include Home and Threemile Creeks, and maintaining natural flows increases the likelihood that the fish can access and populate their historic range. Great Basin redband trout, which include the Catlow redband trout, were petitioned for listing as threatened under the Endangered Species Act (ESA) in September of 1997. In March of 2000, the U.S. Fish and Wildlife Service issued a finding on the petition of not warranted for listing, with the Catlow CA restoration efforts described as a major contributor leading to a reduction in threats to redband trout. The BLM is concerned about the possibility of Great Basin redband trout becoming listed under the ESA because of the impact on management of public land. Retention of a natural flow regime in these streams will benefit redband trout and tui chub, and support the goals and objectives of the Catlow CA. Any reduction or alteration of natural flow may negate some of the benefits realized thus far in the implementation of the Catlow CA.

Home Creek, from mouth to headwaters, is on the Oregon Department of Environmental Quality 303(d) list for temperature. Maintaining a natural flow regime would maintain or increase riparian vegetation and maintain stream channels, which may help improve stream temperature. Reduction or alteration of natural flow may exacerbate the temperature problems.

I certify to the best of my knowledge that the information provided is accurate, true, and correct. If you have any questions about the information provided or require additional information, please contact Cindy Weston at (541) 573-4418.

Sincerely,



Thomas H. Dyer
District Manager

RECEIVED

AUG 05 2002

WATER RESOURCES DEPT.
SALEM, OREGON

cc: Cindy Weston, Burns District BLM
Darren Brumback, Burns District BLM
Andrews Resource Area Field Manager



Oregon

John A. Kitzhaber, M.D., Governor

Department of Fish and Wildlife

Habitat Division
2501 SW First Avenue
PO Box 59
Portland, OR 97207
(503) 872-5255
FAX (503) 872-5269
TTY (503) 872-5259

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JUL 22 2002

WATER RESOURCES DEPT.
SALEM, OREGON

July 15, 2002

Internet WWW:<http://www.dfw.state.or.us/>

Dwight French
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210



Re: Oregon Department of Parks and Recreation's application IS-84562 for a new in-stream water right on Home Creek, Tributary to Catlow Valley

Dear Mr. French:

The Oregon Department of Fish and Wildlife (ODFW) supports the proposed final order for application IS-84562 and requests standing to participate in any settlement or contested case proceedings. The \$50.00 fee for requesting standing is enclosed. Although the in-stream water right is being requested for "recreation and scenic attraction" protecting in-stream flows in Home Creek will help support some of the more health populations of redband trout in the area.

ODFW is the State of Oregon's agency charged with protecting fish and wildlife in Oregon (ORS 496.012) and, therefore, has a public interest in the final resolution of the in-stream water right application.

Sincerely,

Rick Kepler
Water Program Manager, Habitat Division
Phone: (503) 872-5255 ext. 5426

Enclosure: \$50.00 check for fee

Cc: Steve Brutscher, Oregon Parks and Recreation Department
Bob Hooton – ODFW High Desert Region (Bend)
Ray Perkins – ODFW High Desert Region (Ontario)

RONALD S. YOCKIM

Attorney at Law

548 S.E. Jackson
Suite #7
P.O. Box 2456
Roseburg, Oregon 97470

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AUG 09 2002

WATER RESOURCES DEPT
SALEM, OREGON

(541) 957-5900
FAX (541) 957-5923

August 8, 2002

Via Federal Express

Dwight French, Acting Administrator
Water Rights and Adjudications Division
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97310

Re: Protest of Harney County to the Proposed Final Order for
Instream Water Rights Application No. 84562

Dear Mr. French:

The Harney County Court, on behalf of the citizens of Harney County, presents this protest of the Oregon State Parks and Recreation ("OSPR") application (application No. IS 84562) for an instream water right on Home Creek. Because the instream right may affect land use within Harney County, the County has a strong interest in the Water Resources Department's (the "WRD" or "Department") review of this matter. Harney County therefore submits this protest to the Department's Proposed Final Order ("PFO") of application No. IS 84562.

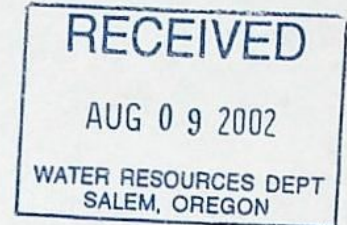
The name of the protestant is Harney County. Its address is 450 N. Buena Vista, Burns, Oregon 97720. Attorney Ronald S. Yockim is the contact person at P.O. Box 2456, Roseburg, Oregon, (541-957-5900). All formal correspondence regarding the protest should be sent to Harney County with a copy to Mr. Yockim. Any questions or comments on technical or policy matters should be addressed to Mr. Yockim.

A detailed description of how the PFO would impair Harney County's interest and how it is otherwise deficient is provided below, along with citations to legal authority supporting Harney County's position.

A. BACKGROUND.

1. Home Creek is a high desert stream extending approximately 20 miles and terminating into the desert. Of these 20 miles OSPR requests an instream right for essentially all of

Dwight French, Acting Administrator
August 8, 2002
Page 2



the flow of the stream (See OWRD Water Availability Table in the application file).

2. There are no anadromous fish species in the reach of Home Creek for which OSPR seeks an instream water right. The stream is currently closed to fishing by Oregon Department of Fish & Wildlife and no recreational fisheries occur along this stream.

3. Home Creek extends through both private and federal land with ownership being approximately equally divided. This reach is not designated as a state scenic waterway.

4. The OSPR has not completed a recreation analysis for the stream. (See "Recreation Flow Requirement Methodology for Home Creek, Tributary to Garrison Lake, Harney County, Oregon" hereinafter referred to as "Recreation Flow Methodology", p. 6).

5. Absent a recreational use analysis, the OSPR is unable to determine the amount of recreation use as per OAR 736-060-0010(11) but acknowledges that recreational use levels in the area are low (id. p. 6).

6. The OSPR acknowledges that there are no designated recreation facilities within the proposed instream reach (id. p. 6).

7. The OSPR notes that Home Creek is the centerpiece of the Home Creek Unit of the Steens Mountain Wilderness Area (id. p. 1); however, it fails to note that the majority of the proposed instream flow reach is outside the wilderness and is on private property. (See Burns District Andrews/Steens Resource Management Plan Scoping Map).

8. The Recreation Flow Methodology report is incomplete and references the attributes of Threemile Creek rather than Home Creek (See id. pp. 7 - 10).

9. The description of recreation use within the Recreation Flow Methodology does not identify where in the instream reach the recreational use occurs (See OAR 736-060-0010(14)). The report only describes the location in general terms and appears to indicate that use is outside the stream area.

10. The Recreation Flow Methodology does not describe where the aesthetic attributes are encountered by the recreational users (See OAR 736-060-0010(13) & (14)). The report only

Dwight French, Acting Administrator
August 8, 2002
Page 3

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AUG 09 2002

WATER RESOURCES DEPT
SALEM, OREGON

describes the attributes and usage of Home Creek in general non-site specific terms.

11. The Recreation Flow Methodology does not identify the flow or water level needed to accommodate the predominant recreational use during the specific months (See OAR 736-060-0015(1)).

12. The Recreation Flow Methodology states the scenic attraction associated with Home Creek's water flows is the primitive/semi-primitive character of the area (id. p. 5 & 6); that it is a narrow, boulder strewn, high gradient, pool and drop, perennial stream (id. p. 1); and, that the steep gradient and rock filled channel generate continuous white water (id. p. 1).

13. On June 28, 2002, the Department published a PFO concluding that the proposed use would not injure existing water rights and that it is consistent with the public interest. The PFO recommends approval of the application. For the reasons stated below, Harney County respectfully disagrees with the Department's conclusions and protests that the PFO is technically flawed and fails to establish the statutory presumption that the proposed use will not impair the public interest.

B. SPECIFIC OBJECTIONS.

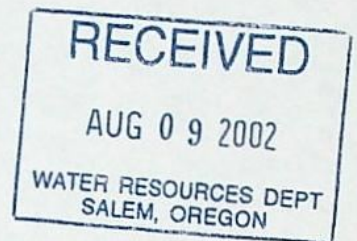
1. The Application and Proposed Final Order are Incomplete and Deficient.

(a) The PFO states the proposed instream water right is for the purpose of recreation and scenic attraction. However, the Recreation Flow Methodology for Home Creek only quantifies the flow requirements for undocumented recreational use which is acknowledged to be low.

(b) The recreation flow report addresses scenic attractions within the Home Creek unit of the Steens Mountain Wilderness, but does not identify the location of the aesthetic values in this stretch or that portion of the requested stream reach that lies outside the wilderness.

(c) The PFO is inadequate because it does not explain or relate the flows requested to the recreation or scenic values within this stretch. An instream water right cannot be granted when there is no stated public purpose for it. In this case, the scenic values are listed as "spectacular high desert scenery,

Dwight French, Acting Administrator
August 8, 2002
Page 4



impressive geology, viewable fish and wildlife, diverse plant communities and living natural history" (p.1). Nowhere is there a description of how these values relate to the requested instream flows.

(d) OSPR's application fails to include essential information required by the Division 77 rules including: (1) identification of affected local governments and copies of letters notifying these governments of the intent to file application, OAR 690-77-020(4(j)); (2) that the Oregon Department of Fish & Wildlife and Department of Environmental Quality were notified of the proposed application prior to the submission of the application (OAR 690-077-0020(2) & (4)(h)); and, (3) the application fails to identify compliance with the settlement between OWRD and Water for Life relative to instream water rights.

(e) The application and PFO do not provide documentary evidence that the flows are the minimum amount necessary to support the recreation use (undocumented use) and scenic attributes (ORS 537.332(2)).

Without the information referenced in a through e above, the application is incomplete. Under the applicable rules when the application was filed, the Department had no choice but to remand the application to OSPR (OAR 690-77-027(1)). Notwithstanding the lack of authority to process the incomplete application, the OWRD now proposes to approve an incomplete application. The only cure for this defect is to return the application to OSPR for the filing of a complete application.

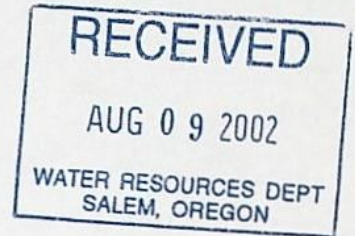
2. The Public Interest Presumption is not Established.

(a) There is No Evidence that the Proposed Use Complies with the State Agency Agreement for Land Use.

There is no evidence of any kind in the WRD file that Harney County was ever notified of this application. Significantly, there is no land use compatibility statement in the file. The water right cannot be granted unless the requirements of OAR 690, Division 5 are met.

(b) Public Interest Balance.

The public interest provisions of ORS 537.153(2) and OAR 690-77-033(1) require a balancing of public interest. In this case the allocation of 100% of the water for instream recreation



and aesthetic values does not represent the balancing of public interest, especially where there are other applications pending. These other applications provide a context for achieving the balance.

3. The Proposed Use Cannot Be Found to be in the Public Interest Based on the Existing Record.

Under OAR 690-77-037(2), if the public interest presumption is rebutted, then the WRD must determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8) to insure an equitable allocation of water between instream and other uses of the water. Rather than doing this, the PFO simply concludes that the proposed use is consistent with the public interest. ORS 537.170(8). The PFO conclusions are not justified based on the record before the Department.

The management objectives necessary to support the identified recreation and scenic values are not at all clear. Further, the PFO does not address what flows are necessary or how they were quantified. The PFO, at a minimum, must address how the proposed flows actually achieve the management objectives contained in the applications.

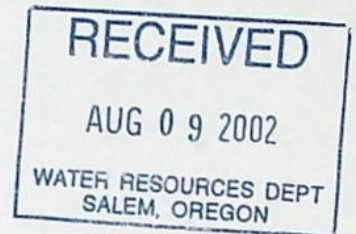
The public interest determination should consider the following uses that the proposed use would impair: 1) "the maximum economic development of the waters involved," ORS 537.170(8)(b); and, 2) "the prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved," ORS 537.170(8)(e).

4. Fish Flows Not Within OSPR Authority.

The PFO does not address the interrelationship between the requested fish habitat flows and the requested recreation flows. The assumption is made that they are consistent; however, this is not necessarily true. It is of particular note that the Oregon Department of Fish & Wildlife has not applied for fisheries flows and has closed this stream to fishing. It is not within OSPR's authority to request instream flows for fisheries purposes.

Because the proposed use impairs the public interest according to the standards described in ORS 537.170(8), the Department is obligated to deny the application, unless it makes specific findings that, "considering all of the public interest factors listed in ORS 537.170(8) the issuance of an instream

Dwight French, Acting Administrator
August 8, 2002
Page 6



water right certificate will not impair or be detrimental to the public interest." OAR 690-77-037(5). Given the range of public interest factors that an instream water right would adversely affect, as described above, such findings would be impossible to make based on the existing record.

5. No Support Exists for OSPR's Contention that the Requested Flows are "Necessary."

Neither OSPR's application nor the Department's PFO provide any information about how OSPR quantified the requested flows. The methodology contains only the bare assertion that the flows requested are the amount necessary to maintain the purposes. It provides no support for this claim. Without support for its numbers, OSPR has failed to make even a minimal showing that the amount of water in its application is either "necessary" or reasonable. Without this information, the application is defective for seeking water not demonstrated to be in the public interest, and the PFO is deficient for failing to identify this flaw.

C. CONCLUSION.

As discussed in the preceding paragraphs, application 84562 and the Department's Proposed Final Order are defective on public interest and technical grounds. For that reason, Harney County urges the Department to deny the application in its current form.

Please call if you have any questions or would like to meet with Harney County to address its concerns.

Sincerely,

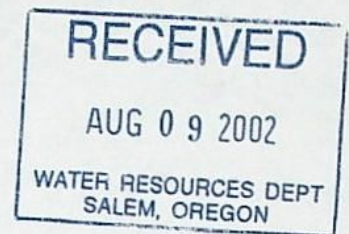
A handwritten signature in dark ink, appearing to read "Ron Yockim". The signature is fluid and cursive, with a long horizontal line extending to the right.

Ronald S. Yockim

RSY/bg

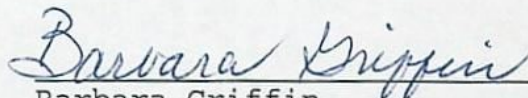
cc: Harney County

CERTIFICATE OF SERVICE



I hereby certify that on August 8, 2002, I served a true copy of the "Protest of Harney County to the Proposed Final Order for Instream Water Rights Application 84562" on Oregon Department of Parks and Recreation by depositing the same in the U.S. Mail, postage paid, at Roseburg, Oregon, addressed as follows:

Oregon Department of Parks and Recreation
1115 Commercial Street, NE
Salem, OR 97310-1001


Barbara Griffin
Secretary to Ronald S. Yockim

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54693**

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

INVOICE # _____

RECEIVED FROM: Ronald S Yockim
BY: Attorney At Law

APPLICATION	84562
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # X96505 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 200.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

**RECEIVED
OVER THE COUNTER**

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REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

\$

0427 WRD OPERATING ACCT

77235

MISCELLANEOUS

0407 COPY & TAPE FEES

0410 RESEARCH FEES

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(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

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0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

EXAM FEE

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EXAM FEE

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0202

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0206

0219

0220

RECORD FEE

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LICENSE FEE

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0223 OTHER (IDENTIFY) Protest Fee 7200.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY) _____

\$

\$

CARD #

CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

0231 HYDRO LICENSE FEE (FW/WRD)

HYDRO APPLICATION

\$

\$

\$

RECEIPT # **54693**

DATED: 8/9/02 BY: Connie Vance

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**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54693**

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

INVOICE # _____

RECEIVED FROM: Ronald S Yockim
BY: Attorney At Law

APPLICATION	84562
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 96-505 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 200.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

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OVER THE COUNTER**

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\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

0410 RESEARCH FEES

0408 MISC REVENUE: (IDENTIFY) _____

(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

WATER RIGHTS:

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

EXAM FEE

\$

\$

\$

EXAM FEE

\$

RECORD FEE

0202

0204

0206

LICENSE FEE

0219

0220

OTHER (IDENTIFY) Protest Fee

\$ 200.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY) _____

\$

\$

CARD #

CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

0231 HYDRO LICENSE FEE (FW/WRD)

HYDRO APPLICATION

\$

\$

\$

RECEIPT # **54693**

DATED 8/9/02 BY Connie Jones

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Company RONALD S YOCKIM ATTY AT LAW

Address 548 SE JACKSON ST STE 7

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Not available with
FedEx First Overnight

☐ HOLD Saturday
at FedEx Location
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to select locations

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☐ Yes
As per attached
Shipper's Declaration

☐ Yes
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not required

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359

in Time

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August 9, 2002

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

Re: Protest of Instream Water Right Application 84562
Home Creek, Tributary to Catlow Valley

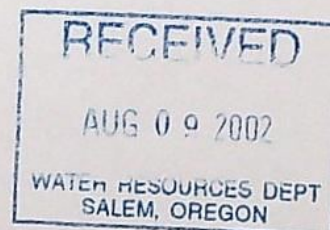
Dear Water Rights Section:

WaterWatch of Oregon, the Oregon Natural Desert Association and Oregon Trout strongly support the flows requested in the instream water right application submitted by the Oregon Department of Parks and Recreation. These flows are critical to protect scenic and recreational values of these creeks as they flow through the Wilderness Area designated in the Steens Mountain Cooperative Management and Protection Act of 2000. The instream flow requests also provides critical habitat for redband trout, a state-sensitive species. In addition, protection of instream flows is necessary ensure protection of the quality of the water flowing through these creeks.

While we fully support the adoption of this instream water right, we have some concerns with the Proposed Final Order (PFO) as issued. Thus, pursuant to OAR 690-77-0043(1), ORS 537.332 et seq, ORS 537.153, WaterWatch, the Oregon Natural Desert Association and Oregon Trout (hereinafter Protestants) file this protest along with the protest fee of \$200 against the PFO for Application 84563.

a. Name, address, telephone number of Protestants

WaterWatch of Oregon
213 SW Ash, Suite 208
Portland, OR 97310
(503)295-4039
contact: Karen Russell
karen@waterwatch.org



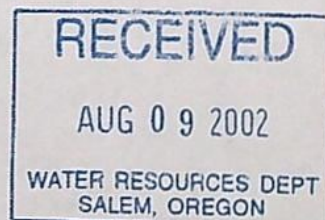
Oregon Natural Desert Association
917 SW Oak Street, Suite 408
Portland, OR 97205
503.525.0193
contact: Peter M. Lacy (Mac)
lacy@onda.org

Oregon Trout
117 SW Front Ave
Portland, OR 97204
(503)222-9091
contact: Aubrey Russell
aubrey.russell@ortrout.org

b. Protestant interest/public interest statement

Protestant WaterWatch of Oregon is a non profit organization dedicated to promoting water policies for Oregon that provide the quality and quantity of water necessary to support fish, wildlife, recreation, biological diversity and ecological values of Oregon's rivers and streams. WaterWatch has been active in streamflow protection and restoration since its inception in 1985. WaterWatch was one of the "sponsors" of the Instream Water Rights Act and has been a party to numerous proceedings surrounding the implementation of this Act. WaterWatch was involved in the proceedings to convert minimum perennial streamflows in the Malheur Lake Basin to instream water rights and supported a request to restrictively classify waters in the basin to protect instream flow needs.

Protestant Oregon Natural Desert Association (ONDA) is a non-profit public interest organization dedicated to preserving and protecting the public lands of eastern Oregon. ONDA's mission is to protect, defend, and restore forever, the health of Oregon's native deserts. ONDA has a long history of interest and involvement in the management of grazing, riparian areas, water quality, and fish and wildlife in eastern Oregon, and in particular, in this basin. The members and staff of ONDA use and enjoy the public lands, waters, and natural resources in this area for countless recreational, scientific spiritual, educational, aesthetic, and other purposes. ONDA was one of the organizations deeply involved in the negotiations and drafting of the Steens Mountain Cooperative Management and Conservation Act, which led to the request for the instream water right at issue here. In addition, ONDA was one of the petitioners seeking listing of the redband trout under the federal Endangered Species Act.



Protestant Oregon Trout is a non profit organization whose mission is to restore wild, native fish populations and the habitat they depend on. Oregon Trout has a long-standing interest in this basin. Home Creek is home to redband trout that were the subject of a petition for listing under the Federal Endangered Species Act submitted by Oregon Trout. Despite the decision not to list redband trout under the ESA, redband trout remain an Oregon state sensitive species of particular concern to Oregon Trout and its members. In 1990 Oregon Trout successfully petitioned the Water Resources Commission to amend the Malheur Lake Basin Program to restrictively classify the surface waters in the basin in order to protect instream flows for fish in the basin. Oregon Trout was also instrumental in the designation of the West's first fish refuge, which protects redband trout within the Steens Mountain Cooperative Management and Conservation Area. Finally, Oregon Trout was active in the discussions leading up the Steens legislation that led to the submission of this instream water right application and the one for Home Creek.

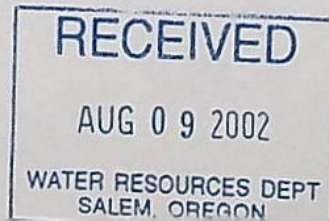
In protesting application 84563 Protestants are representing the interests of their organizations, their members and the general public interest in the water resources in the basin and this state. These groups have members throughout the state who use and enjoy the Malheur Lake Basin watershed and the Steens Wilderness Area. All of the groups' members, board members, and staff benefit from knowing that such a resource exists even if they have not visited the watershed. The public interest represented is multifaceted and includes, but is not limited to:

- 1) The interest of protecting sufficient streamflows (both in quantity and quality) in Home Creek necessary for public interest uses of water which include fish and wildlife, and the habitat necessary for fish and wildlife survival and the recreational, scenic and aesthetic use of the area;
- 2) The interest in ensuring a balance between instream and out-of-stream uses in the basin;
- 3) The interest in ensuring that the agency has the tools and mechanisms in place to regulate water use in the basin and to ensure that the instream water right will be adequately protected; and
- 4) The interest in ensuring that the agency implement water laws and policies in a manner that manages and allocates the water resource in a manner that maintains the ecological integrity of the Home Creek watershed and the Steens Wilderness Area.

c. **How the action proposed in the PFO will impair or be detrimental to the Protestants' interest.**

1. The condition of use proposed in the PFO exempting human consumption and livestock use will impair the Protestants' interest in ensuring that the purposes of the instream water right are fulfilled.

The PFO proposes the following condition: "For purposes of water distribution, this instream water right shall not have priority over human or livestock consumption."



This condition subordinates this instream flow request to human consumption and livestock uses in perpetuity without any cap on the amount of the exception or any limitations on the water uses to be given priority. The PFO fails to provide any legal or factual justification for this condition.¹

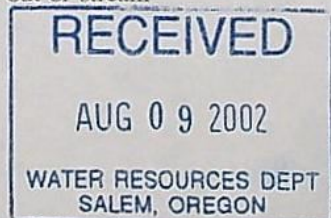
Individually this exception will directly lessen the amount of water available instream to satisfy the purposes of the instream water right. Moreover, nothing in the proposed condition addresses, much less limits, the cumulative effects of such a condition on streamflows needed for the instream values that would be protected by the instream water right. Such an open-ended exception could ultimately lead to a fundamental undermining and possibly a total negation of the instream water right.

In addition, the flows proposed in the PFO are already lower than those originally determined by the Parks Department to be necessary to for recreation and scenic attraction values within the Steens Wilderness Area. To allow further reduction in flows through this exception would further undermine the instream values (that also include fish and water quality values) and should not be allowed.

The proposed condition is also inconsistent with the very purpose of the federal wilderness designation and the very values that the instream water right application seeks to protect. The Steens Mountain Cooperative Management and Protection Act of 2000 protected this area for its wild and unaltered state. In negotiations on this Act federal protection of streamflows was determined to not be necessary for this stream based upon commitments from the state and others that an instream water right would be established to protect the wild and unaltered nature of this stream. The very purpose of this application is to provide long-term protection of the values that form the basis for the federal wilderness designation. See Letter from Governor John Kitzhaber to Mike Carrier, Department of Parks and Recreation (September 29, 2000).

This proposed condition also runs contrary to the intent behind the Instream Water Rights Act (ORS 537.332 to 537.360) which allowed the state to establish instream water rights to be held in trust for the benefit of the people of the state to maintain water in-stream for public use. ORS 537.332(3). "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise. ORS 537.332(4). To subordinate this instream water right to human consumption and livestock uses would specifically benefit a person or small group of persons to the detriment of the instream values that benefit the public at large. This is not consistent with the intent of the Instream Water Rights Act.

¹ In the past the Department has used ORS 536.310(12) to justify this type of condition on instream water right applications. However, this statute provides a preference for human consumption and livestock use where there is a conflict between competing applications for water and does not address situations of potential conflict at some nebulous future date. In addition, even if the statute were to mandate such an open-ended subordination of rights (which it does not), nothing in the statute limits such a subordination to instream water rights and every water right issued by the Department whether instream or out-of-stream would have to be subject to such a condition.



Moreover this proposed condition is contrary to the public interest in protecting the resource. The Commission's statewide policies recognize the importance of maintaining streamflows and place high priority on protecting streamflows. OAR 690-410-030. This policy directs the state to take action to not only protect streamflows but to restore streamflows in places that provide a high public benefit. *Id.* Adoption of this instream water right, without the proposed condition, is an important step toward meeting that goal. Protection of the streamflows in the creek within this wilderness area provides benefits to not only the people of Oregon but to people through out the nation.

In sum, the streamflows requested by the Department of Parks are critical to protect the recreational and scenic attraction values of Home Creek, water quality in the creek and to provide habitat for redband trout. The proposed condition would undermine these flows is not in the public interest and should be removed.

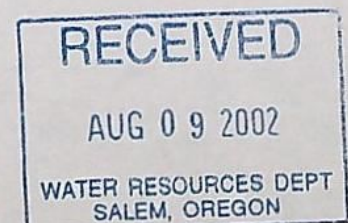
2. The flows proposed in the PFO are less than those originally requested by the Parks Department and will impair Protestants' interest in ensuring that flows are sufficient to protect the scenic, recreational and fishery values of the Creek.

The PFO notes that the original application requested flows that exceeded the Department's estimated average natural flow for the creek. As a result the Parks Department amended its request to bring the requested flows down to the level of the estimated average natural flow.

The Departments rules allow for instream water rights to be granted at levels higher than the estimated average natural flow where periodic flow levels are significant for the public use applied for. OAR 690-77-015(4). However, it appears that the state limited the instream water right application to the estimated average natural flow levels without determining whether the higher flows were "significant" for the recreational and scenic uses applied for. The reduction in flow is of even greater concern when coupled with the proposal to subordinate these flows to livestock and human consumption use.

In addition, we are very concerned about the conclusion in the PFO that water will still be available for storage in this stream system. Home Creek is one of the only streams in the Catlow basin which has remained largely free of dams and which has therefore retained its natural hydrograph and stream function. The effect of this has been to provide an important stronghold for redbands in the basin and has retained the wild, unaltered nature of the stream which was critical for the inclusion of this area in the designation of this area as wilderness by recent federal legislation.

The reduction in flows proposed for approval undermines the very values that the Parks Department is seeking to protect and is not in the public interest. The instream water right should be granted at levels originally requested by the Parks Department.



- d. **How the PFO is in error or deficient and how to correct the alleged error or deficiency.**

The PFO is deficient for the reasons outlined above and should be amended to eliminate the open-ended exception for human and livestock consumption and to protect streamflows at the levels originally requested by the Oregon Parks Department.

- e. **Any citation of legal authority supporting the protest, if known.**

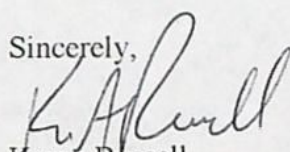
This protest is filed pursuant to OAR 690-77-0043(1). The legal authorities currently known to the Protestants as supporting this protest includes the standards and process contained in the permitting statute (ORS 537.150 to 537.211), the Instream Water Right Act ORS 537.332 et seq, ORS 536, OAR 690-77, OAR 690-310, OAR 690-400, OAR 690-410, Steens Mountain Cooperative Management and Protection Act of 2000, ORS 496.435, ORS 468B.015, ORS 468B.010 and legal authority cited elsewhere in this protest.

- f. **The \$200 protest fee as required under ORS 536.050 has been submitted with this protest.**

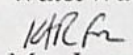
Conclusion

The proposed instream water right will protect flows needed for recreational and aesthetic values and fish life in this creek. These values have statewide and even national significance and streamflows are critical to the protection of these values. We strongly support the approval of this application and urge the state not to condition the use in a way that will undermine the very purposes of the instream right.

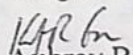
Sincerely,


Karen Russell

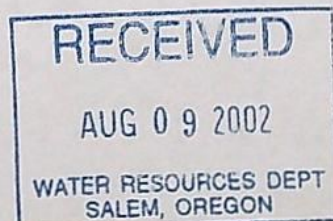
WaterWatch


Mac Lacy

Oregon Natural Desert Association


Aubrey Russell

Oregon Trout



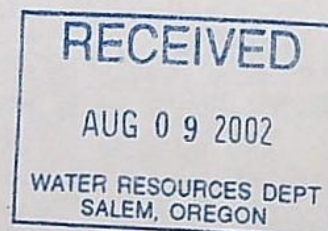
CERTIFICATE OF SERVICE

I certify that on 9th day of August 2002 I submitted this Protest to the address below, by regular mail by placing a copy in a sealed envelope, postage prepaid, addressed as follows and depositing it in the U.S. Mail at Portland, Oregon:

Michael Carrier
Oregon Department of Parks and Recreation
1115 Commercial Street NE, Suite 1
Salem, OR 97301-1002

Dated August 9, 2002,

McEvamer





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JUN 15 2001

WATER RESOURCES DEPT.
SALEM, OREGON

O R E G O N T R O U T

Paul Cleary, Director
Water Resources Department
Commerce Building
158 12th St. NE
Salem, OR 97301

Via fax and U.S. Mail

June 13, 2001

RE: Applications INS-84562 and INS-84563

Dear Director Cleary:

Thank you for this opportunity to comment on the applications submitted by Oregon Parks and Recreation Department for instream water rights on Home and Threemile Creeks in Harney County.

Oregon Trout has a long-standing interest in the waters of Home and Threemile Creeks. These Creeks are home to Redband Trout which were the subject of a petition for listing under the federal Endangered Species Act submitted by Oregon Trout to the United States Department of Fish and Wildlife (USFW) in 1997. Despite the non-listing decision made by USFW, Redband Trout remain an Oregon state sensitive species of particular concern to Oregon Trout and its members. Oregon Trout was also instrumental in the designation of the West's first fish refuge, which protects redband trout within the Steens Mountain Cooperative Management and Conservation Area. Finally, Oregon Trout was active in the discussions leading up to the Steens legislation that led to private, federal and state agreement to pursue instream water rights on Home and Threemile Creeks.

The importance of Home Creek in particular to Oregon Basin redband trout is not reflected in the Division 33 reviews conducted by DEQ and ODFW. The larger context of redband trout populations shows the critical nature of Home Creek as habitat for these fish. United States Forest Service Fishery Biologist Phil Howell has commented that: "The status of redbands [in the] Catlow Valley and other desert basins, is particularly bleak. Redbands in 94% of those watersheds are classified as depressed."¹

¹ Howell, P. 1997. Fisheries 22(3): 34-36.



Home Creek is one of the only streams in the Catlow basin which has remained largely free of dams and which has therefore retained its natural hydrograph and stream function. The effect of this has been to provide an important stronghold for the redbands in the basin. The other creeks in the basin have been assessed as having populations that are "severely depressed and close to extinction"² (Skull Creek); "severely depressed and in danger of extinction"³ (Threemile Creek); and "severely depressed due to drought and limited habitat"⁴ (Rock Creek). Home Creek ("depressed but stable"⁵) has the strongest remaining population of redband trout, and represents the last best chance for recovery of these fish from sensitive status rather than decline of these fish towards listing under the state and federal ESA's.

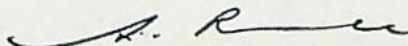
In addition to the benefit that they may confer on redband trout, the OPRD applications are aimed at protecting scenic and recreational values in these two streams. These values were discussed by representatives from the local ranching community, from the state, and from federal agencies during a process that led to the Steens Mountain Cooperative Management and Protection Act of 2000. While it was decided that federal Wild and Scenic status was not necessary for the reaches of these two streams that pass through wilderness areas, it was intended that an instream water right would be used under state law to ensure the wild, unaltered nature of the streams. The recreational and scenic values that this confers on users of the wilderness area are the basis for OPRD's application in this case.

While recreational and scenic values may be generally difficult to quantify, it is relatively easy to document the benefits of natural, unaltered hydrologic functioning on the health of fish populations. The recreational value to fishermen, in turn, is easily demonstrated, especially where—as in the case of Home Creek—a stream's population represents (regrettably) one of the rare opportunities for fishing redbands in the vicinity. Protecting natural flows protects this valuable recreational resource.

Oregon Trout hopes that the Department will resist any challenge to these applications for instream water rights on Home and Threemile Creeks.

Thank you for your consideration on this matter.

Sincerely,



Aubrey Russell
Water Policy Advocate
Oregon Trout

² Dambacher and Stevens, ODFW Aquatic Inventory, 1996.

³ Bowers and Perkins, ODFW Southeast Oregon Fish Review, 1996.

⁴ Bowers, ODFW Southeast region stock review, 1995.

⁵ Bowers and Perkins, 1996.

cc: Martha Pagel
Stephanie Parent
Bill Marlett
Karen Russell
Rick Kepler
Wayne Bowers



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MARTHA O. PAGEL

Direct Line: Portland 503.796.2872;

Salem 503.399.7712

E-Mail: mpagel@schwabe.com

August 9, 2002

BY HAND DELIVERY

Dwight W. French
Manager, Water Rights Section
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97310

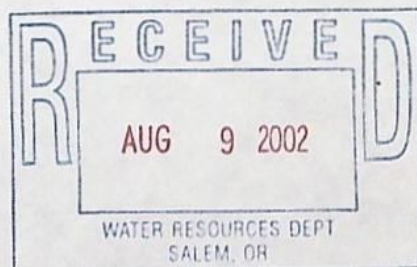
**Re: Protest to Proposed Final Orders for Instream Water Right Applications
No. IS 84562 and IS 84563**

Dear Mr. French:

This protest is filed on behalf of Roaring Springs Ranch, Inc. (RSR, or "protestants"), with respect to both of the above-referenced Instream Water Right Applications. The required fee of \$200 for each protest should be deducted from the Schwabe Williamson & Wyatt account. I will be the attorney of record for RSR in this matter.

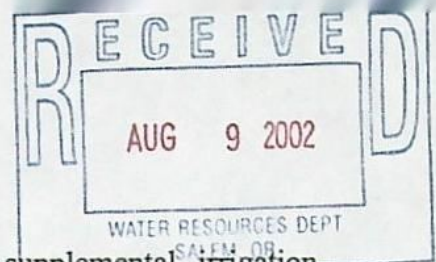
Name of protestants

Roaring Springs Ranch, Inc.
Stacy L. Davies, Ranch Manager
HC 72 Box 50
Frenchglen, OR 97736
Phone: 541-495-2263
Fax: 541-495-2266



Interest in the Proposed Final Orders (PFOs)

The interests of RSR will be directly harmed if the instream PFOs are approved, as proposed. RSR has four pending water right applications for use of waters from Home Creek, or related tributaries: R-84576 and S-84577, requesting storage of waters from an Unnamed Stream and Home Creek, and subsequent use of the stored water for supplemental irrigation; and R-85167 and S-85168, requesting multi-purpose storage of waters from Home Creek at a



different location, and subsequent use of the stored water for supplemental irrigation. Applications R-84576 and S-84577 were filed just two weeks after the Oregon Parks and Recreation Department (OPRD) filed the two protested instream water right applications. RSR initially attempted to file the applications prior to the filing of the instream flow applications. However, the WRD rejected the attempted filing and requested additional information. During the interim, between that initial attempt and the completed filing of the RSR applications, the WRD received the instream applications from the OPRD.

The WRD's Initial Reviews for R-84576 and S-84577 included findings that water would be available during at least part of the requested storage season, and that the applications could be approved. Despite these initial findings, the two applications were recently proposed for denial, based largely on a revised finding by WRD that water is not available, as a result of the proposed approval of the two instream water right applications. Initial Reviews have recently been issued for R-85167 and S-85168, also proposing denial because no water will be available if the instream water right applications are approved.

As general interests and concerns, described more fully below, protestants assert the WRD should have rejected and refused to file the instream applications because they failed to contain information required to support the requested flow levels. Had the applications been rejected for such deficiencies, as were the original applications that were attempted to be filed by RSR, then the RSR applications might very well have been senior to the instream applications.

Having accepted the instream applications for filing, the WRD should have required additional information to support the requested flow amounts, pursuant the applicable administrative rules. In the absence of such information in the record, the applications and PFOs are defective, and the proposed use must be denied. If the instream flow levels were properly established, protestants contend that their storage and supplemental irrigation needs could be accommodated, while still providing adequate water to meet instream flow needs for recreational purposes.

Description of how the PFOs would impair or be detrimental to protestants' interests.

Approval of the PFOS would impair or be detrimental to RSR's and the public's interests, as set forth below:

1. The proposed allocation to instream recreational purposes will eliminate all opportunity for future storage, without sufficient demonstration of need, and without appropriate weighing and balancing by the WRD of competing interests in the water available for allocation. Approval of the PFOs will result in no water being available for storage purposes, causing direct and substantial harm to RSR.

2. The amounts proposed for approval are not the "minimum" amount needed for the recreational objectives to be protected by the proposed instream right, as required under ORS 537.332(2).



3. The requested instream flow levels were not determined and supported in accordance with the requirements of the Recreation Flow Requirement Methodology prescribed in applicable administrative rules of the OPRD. Because of this serious deficiency in the instream applications, WRD should have refused to accept the applications for filing.

4. Even if the Recreation Flow Requirement Methodology rules were appropriately applied, the rules are deficient in that they fail to address the requirement for identifying the minimum amount necessary for the public recreational uses.

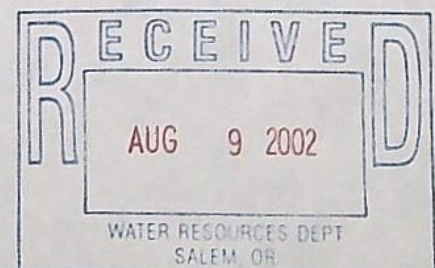
5. For IS 84562 (Home Creek), approximately one-half of the reach proposed for inclusion in an instream water right is within private lands owned by RSR. Because there is no public access to the stream in that area, and the stream itself is not navigable for public recreation purposes, there is no basis for assertion of a public recreational interest, as required under ORS 537.336 (3).

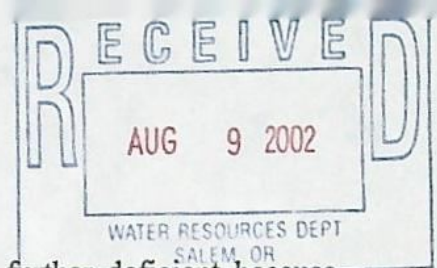
Description of how the PFOs are in error or deficient and how to correct the alleged error or deficiency.

Both PFOs are in error and deficient because they fail to address the factual and legal determinations necessary to support the establishment of an instream water right for recreational purposes. Applicable administrative rules of the OPRD require that department to identify, with specificity, the predominant recreational use(s) for which the instream water right is sought, and the seasonal instream flow requirements associated with such uses. OAR 736-060-0015(1). Pursuant to ORS 537.332(2) and OAR 690-77-0020(3), the amount of water approved for an instream water right must be the "minimum quantity of water necessary to support the public use requested by the agency." The two instream water right applications request amounts of water based merely on water availability determinations by the WRD, at a 50 percent exceedance flow level. The PFOs fail to provide any findings of fact to support a conclusion that the amounts proposed for approval are necessary for specific recreation purposes and consistent with the Recreation Flow Requirement Methodology, or that they reflect the minimum amount necessary for the public recreational use, as required by statute.

Because the applications and PFOs fail to address the issue of the "minimum" amount of water needed for the public use, and fail to demonstrate compliance with the required flow methodology, as described above, the WRD cannot conclude that the proposed use "complies with rules of the Water Resources Commission." As a result, the presumption has not been established that the proposed use will not impair or be detrimental to the public interest.

Because the proposed use described in the PFOs does not satisfy the requirements for the public interest presumption, the WRD is required to consider the public interest review factors listed in ORS 537.170(8). No such evaluations or findings have been made.





For IS 84562 (Home Creek), the application and PFO are ~~further deficient because~~ approximately one-half of the stream reach proposed for an instream water right is surrounded by private land, owned by RSR. Pursuant to ORS 537.336(2), an instream right for recreation purposes may be requested only upon waters "in which there are public uses relating to recreation and scenic attraction." No such uses are available in the absence of access to the stream reach by land or water.

These errors and deficiencies should be corrected by issuing a final order denying the proposed uses.

Citation of Legal Authority

ORS 537.332(2), defining "instream flow" as the minimum amount of water necessary for the public use.

ORS 537.336(3), providing that instream water rights may be requested by the Parks and Recreation Department on waters of this state "in which there are public uses relating to recreation and scenic attraction."

OAR 690-77-0020, requiring applications for instream water rights to be based upon methods of determining instream flow that have been approved by administrative rules of the applicant agency.

OAR 736-060-0015, describing the Recreation Flow Requirement Methodology to be utilized by the OPRD in developing applications for instream water rights. (Protestants note that the rules were adopted prior to, and have not been modified since, enactment by the Legislative Assembly of ORS 537.332(2), requiring instream flows to be set at the minimum amount of water necessary for the public use.)

OAR 690-77-0033, providing that an application is entitled to a presumption that it will not impair or be detrimental to the public interest only when four conditions are met, including a condition that the proposed use be consistent with the rules of the Water Resources Commission.

OAR 690-77-0037, requiring consideration of various factors, including economic development, in order to determine whether the proposed use will impair or be detrimental to the public interest, when the public interest presumption is not otherwise met.

Conclusion

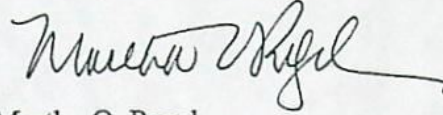
This protest is filed on the basis of significant errors and deficiencies in the applications and PFOs for instream water rights that should lead to denial of the proposed uses. If the Director of WRD decides to schedule a contested case hearing on the matter, RSR would expect to participate as a party in any such proceeding, and would consider participation in alternative dispute resolution efforts. We believe adequate water is available within the Home



Dwight W. French
August 9, 2002
Page 5

Creek sub-basin to provide for both public recreational uses and additional storage as requested by RSR.

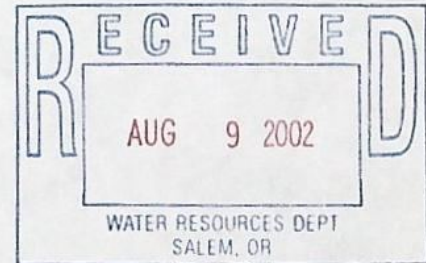
Sincerely,



Martha O. Pagel

MOP:mca

cc: Stacy Davies, Roaring Springs Ranch
Michael Carrier, Oregon Parks and Recreation Department



Oregon Water Resources Department
Water Rights/Adjudication Section



Application Number: IS 84562

Proposed Final Order

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

Application History

On October 17, 2000, the Oregon Department of Parks and Recreation submitted an application to the Department for an instream water right certificate for the following use.

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

To be maintained in:

Home Creek from Upper Crossing (SE 1/4 NW 1/4, Section 24, T35S, R32E, W.M.); to the boundary of the Steens Wilderness Area boundary (SE 1/4 NE 1/4, Section 10, T35S, R32E, W.M.)

The Department mailed the applicant notice of its Initial Review on January 19, 2001. Public notice of the application was provided in the Department's weekly public notice on May 15, 2001. Comments were received from the public and agencies.

The following supporting data was submitted by the applicant:

Recreation Flow Requirement Methodology for Home Creek, Tributary to Garrison Lake, Harney County, Oregon. (OAR 736-060-015)

PFO
3/2008
02

On June 10, 2002, the Department received a request from the Oregon Department of Parks and Recreation to amend the flows requested in application IS-84562. The amendment reduced the requested flows so they no not exceed the available flows, as represented in the Initial Review.

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

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

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

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

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

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

Findings of Fact

The Malheur Lake Basin Program does not specifically withdraw the stream from further appropriation for instream use. OAR 690-77-015(8) identifies that the use is considered to be classified to allow instream use unless instream use is specifically withdrawn from appropriation for such use. Therefore the use is classified.

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

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

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

Per OAR 690-77-015 the amount of water allowed during any identified time period for the water right shall not exceed the estimated average natural flow.

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.05	17.4	35.6	53.2	31.1	8.39	3.58	3.03	3.15	2.83	2.91

The applicant submitted evidence of notification of Harney County Planning Department and agencies qualified to submit instream water rights.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complied with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Malheur Lake Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

The proposed instream flows do not fully appropriate this source of water. Water is available for additional storage.

As amended the amount of water requested does not exceed the estimated average natural flow during any period.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a

preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

The Department therefore concludes that

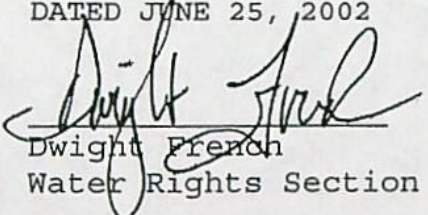
- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, will include the following condition: For purposes of water distribution, this instream water right shall not have priority over human or livestock consumption.
- the flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.
- the stream flows listed below represent the flows necessary to support the public use.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

Recommendation

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

DATED JUNE 25, 2002


Dwight French
Water Rights Section Manager

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this

- proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
 - Any citation of legal authority to support your protest, if known; and
 - If you are not the applicant, the \$200 protest fee required by ORS 536.050 and proof of service of the protest upon the applicant.
 - If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
 - If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

Requests for Standing

Under the provisions of 537.153(5), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **August 9, 2002**.

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

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

This document was prepared by Russell W. Klassen. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 1-503-378-8455 extension 266.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun. Her extension number is 239.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201. Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 158 12th ST. NE Salem, OR 97310
Fax: (503)378-6203

klasserw-WEEK 361

DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing a
attraction.

creation and scenic

To be maintained in:

HOME CREEK FROM U
W.M.); TO THE BOUN
1/4, SECTION 10, 1

SECTION 24, T35S, R32½E,
EA BOUNDARY (SE 1/4 NE

The right is establishe

537.341.

The date of priority is

The following condition

r this certificate:

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

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

Recorded in State Record of Water Right Certificate #####.

DRAFT
STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

HOME CREEK FROM UPPER CROSSING (SE 1/4 NW 1/4, SECTION 24, T35S, R32E, W.M.); TO THE BOUNDARY OF THE STEENS WILDERNESS AREA BOUNDARY (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

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

Recorded in State Record of Water Right Certificate #####.

to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director affixed this ____ day of
_____, 20__.

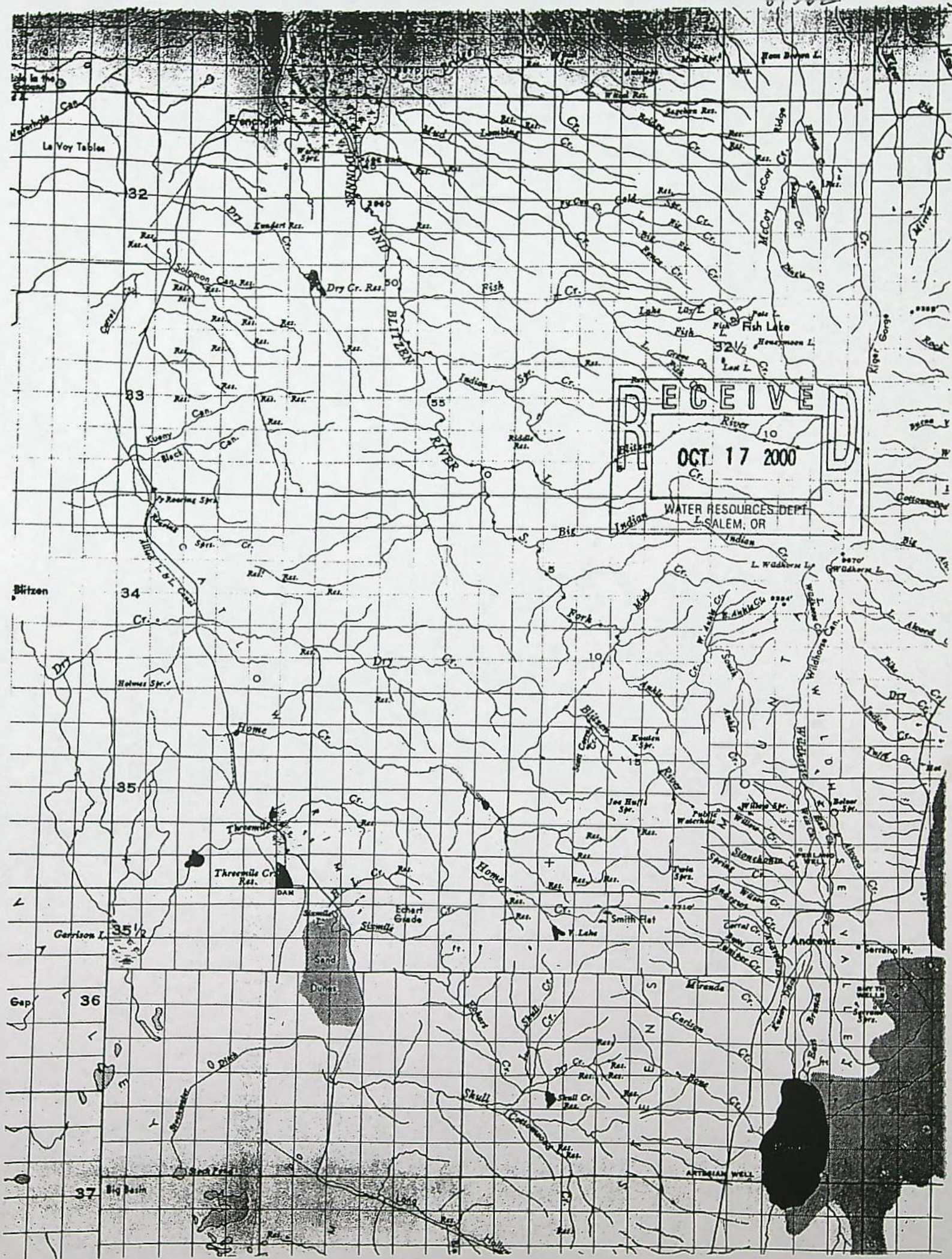
DRAFT

Water Resources Director

Recorded in State Record of Water Right Certificate number __DRAFT__.

IS84562

Recorded in State Record of Water Right Certificate #####.



RECEIVED
OCT 17 2000
WATER RESOURCES DEPT
SALEM, OR

0000 51 100

Application No. 84562
Permit No.

Mailing List for PFO Copies

Application #IS-84562

PFO Date JUNE 25, 2002

Original mailed to:

~~A~~ Applicant: Oregon Department of Parks and Recreation, 1115 Commercial Street NE, Suite 1 Salem, Oregon 97301-1002

Copies sent to:

- ~~1~~ WRD - File # IS-84562
- ~~2~~ WRD - Water Availability: Ken Stahr

PFO, Map, and Fact Sheet Copies sent to:

- ~~3~~ WRD - Watermaster # District 10
- ~~4~~ WRD - Regional Manager: ER
- ~~5~~ ODFW District Biologist: Wayne Bowers
- ~~6~~ DEQ E- D. Nichols

Review Forms completed and Copies Mailed

By: REB

(Support Staff)

on: 6/28/02

(Date)

given to me 6/27/02
— JEB

Copies sent to Other Interested Persons (*CWRE, Agent, Well Driller, Commenter, etc.*)

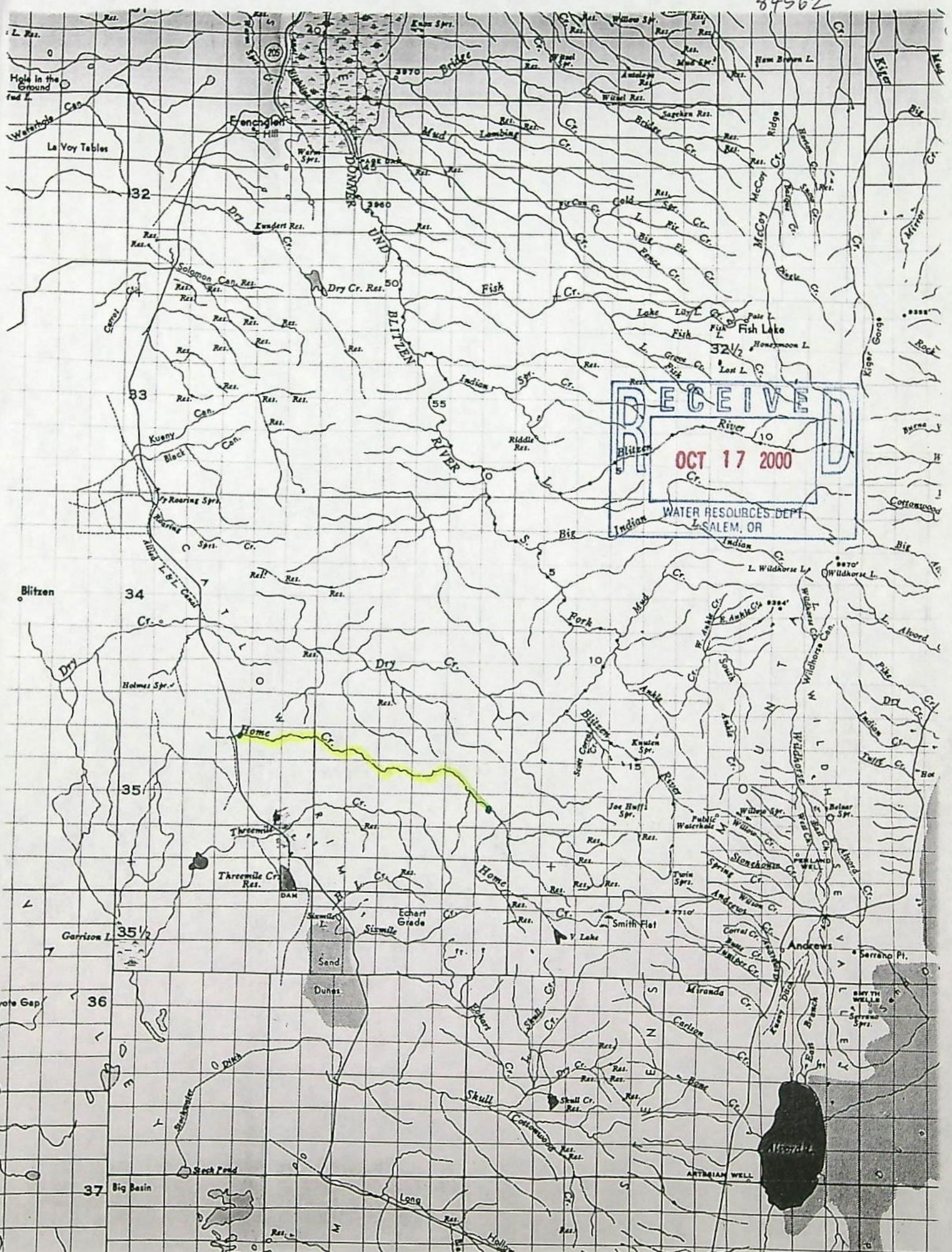
- ~~7~~ Stephanie M. Parent, Pacific Environmental Advocacy Center, 10015 SW Terwilliger Boulevard, Portland, Oregon 97219
- ~~8~~ Karen Russell, WaterWatch, 213 SW Ash Street, Suite 208 Portland, OR 97204
- ~~9~~ David McAllister, ODFW, Habitat Division, 2501 SW First Avenue, PO Box 59, Portland, OR 97207

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

- ~~1~~ Kemper M. McMaster, Fish and Wildlife Service, 2600, SE 98th Avenue, Ste 100, Portland, Oregon 97266
- ~~2~~ Bruce Hazen, BLM H.C. 74 12533 Hwy 20 East, Hines, OR 97738
- ~~3~~ Martha O. Pagel, Schwabe Williamson & Wyatt, 1011 Liberty Street SE, Salem, OR 97302
- ~~4~~ Aubrey Russell, Oregon Trout, 117 SW Naito Parkway, Portland, OR 97204

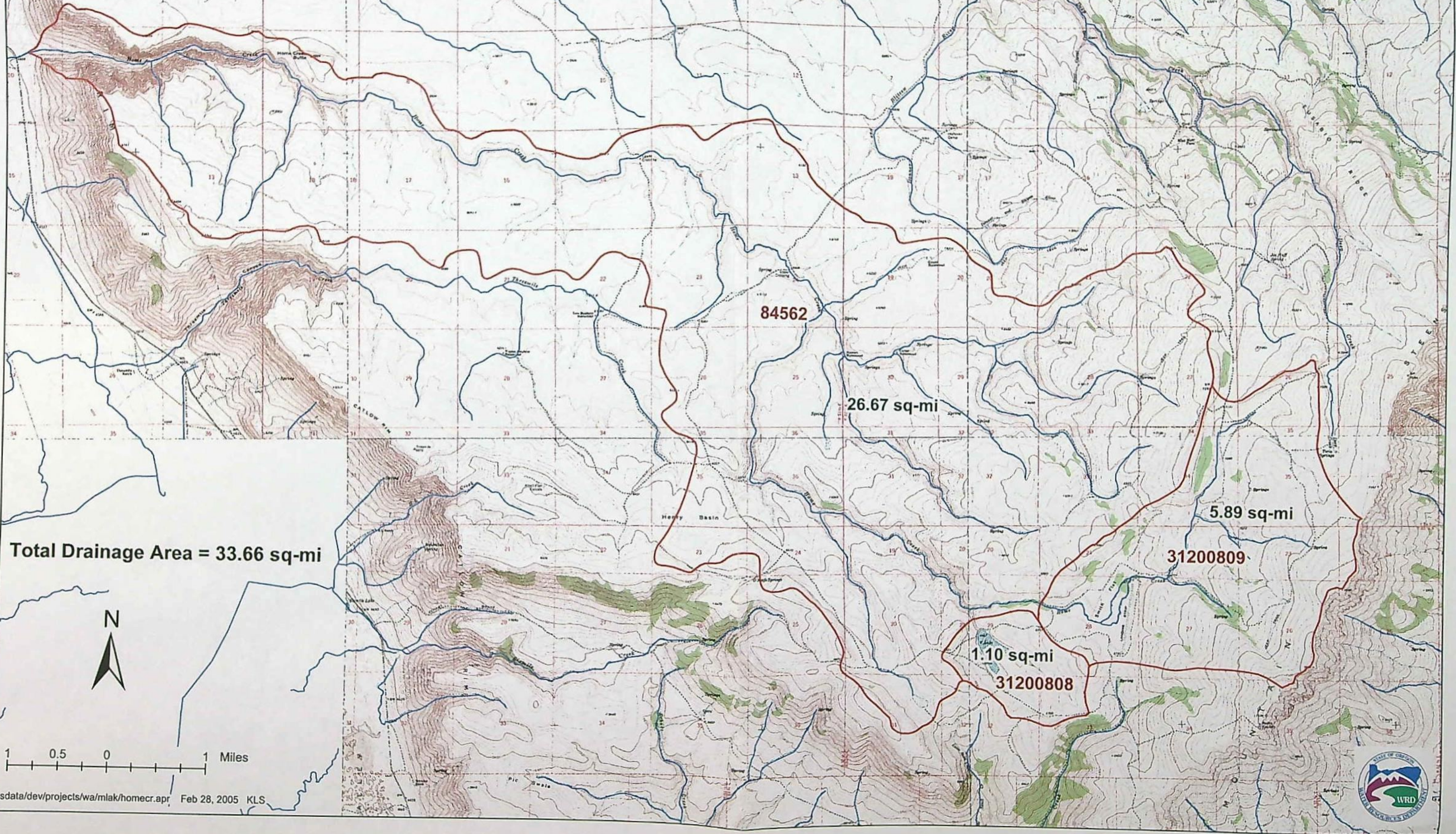
CASEWORKER : RWK WEEK 361

84562



Malher Lake Basin

Home Creek Watershed





Oregon

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

1115 Commercial St. NE

Salem, OR 97301-1002

(503) 378-6305

FAX (503) 378-6447

www.prd.state.or.us

June 7, 2002

Paul Cleary, Director
Oregon Water Resources Department
158 12th Street NE
Salem OR 97310



Dear Paul,

Oregon Parks and Recreation Department filed instream water rights applications 84562, Home Creek, and 84563, Threemile Creek, on October 17, 2000. On January 18, 2002, we submitted the recreation flow requirement documentation for these two applications. In some months, flow amounts requested in our filings exceed the amount of water available at the 50 percent exceedence level as specified in your department's Initial Review. We would like to amend our filings so our requested flows do not exceed the available flows represented in the Initial Review. The flows that follow reflect the amounts in our initial filing and the flow levels we are proposing as an amendment to our initial filing. Please contact Steve Brutscher at (503) 378-4168 X 235 if there are questions about this request.

Home Creek Initial Request

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CFS	4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

Home Creek Amended Request

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CFS	3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

Threemile Creek Initial Request

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CFS	5.0	6.0	8.0	12.0	12.0	7.0	5.0	4.0	4.0	4.0	4.0	5.0

Threemile Creek Amended Request

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CFS	4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

Sincerely,

Michael Carrier
Director

Q:\Instream Water Rights\Letter Amending Home and Threemile Cr. Filings 6-7-2002.

*Dwight -
Original to
Paul Cleary.*

Steve B.

RECEIVED

JUN 10 2002

WATER RESOURCES DEPT.
SALEM, OREGON

Oregon Water Resources Department



State of Oregon
Water Resources Department
158 12th Street NE, Salem, OR 97310
1(800)624-3199 • (503)378-8455
www.wrd.state.or.us

FAXED

Fax Transmittal

TO: Mitch Lewis, WM #10
FAX: Direct DATE: 4/10/01 PAGES: 13
FROM: Kerry Lefever X276
COMMENTS: Div 33 of IS-84562 & IS-84563

Thanks Mitch!

Kerry

Director's Office

- Water Resources Commission
- Legislation and Rules
- Public Information

Field & Technical Services

- Dam Safety
- Hydrographics
- Ground Water
- Information Services
- GIS/Mapping

Administrative Services

- Accounting/Fiscal
- Personnel
- Water Development Loan Fund

Resource Management

- Regional Liaisons

Field & Technical Services

- Enforcement

Water Rights & Adjudications

- Water Rights Information
- Adjudications
- Hydroelectric
- Certificates/Final Proofs
- Hearings/Contested Cases

Northwest Region

- District 16 Watermaster
- Transfers

FAX: 503-378-2496

FAX: 503-378-8130

FAX: 503-378-6203

WATERMASTER DIVISION 33 APPLICATION WORK SHEET

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species,
OAR 690-33-310 through 340.

Date: 4/10/01 21 day Deadline Date: ASAP Application # 15-84562/15-84563
Applicant's Name: OREGON PARKS & RECREATION DEPARTMENT

SOURCE OF WATER: ☐ GROUNDWATER ☐ SURFACE WATER ☐ STORAGE

DESCRIPTION OF THE SOURCE: _____
(A spring, well, sump, exempt pond, unnamed stream, etc.)

1) If from surface water, does the water at the proposed diversion location flow into another water body?

☐ YES ☐ NO ☐ SOMETIMES

If sometimes, describe the time period, Between: _____ and _____.

2) Does the source ever go dry in the area of the proposed diversion?

☐ YES ☐ NO

3) To your knowledge, has the requested source of water been regulated because of insufficient flow to satisfy existing water rights including instream water rights?

☐ YES ☐ NO

If YES, please explain: _____

4) Is there sufficient flow at the proposed point of diversion to satisfy all existing water rights and provide the quantity of water requested under this application?

☐ YES ☐ NO

5) Did you meet with staff from another agency to discuss this application?

☐ YES ☐ NO

Who: _____ Agency: _____ Date: _____

6) Is mitigation an option?

☐ YES ☐ NO

If YES, please explain: _____

Comments: _____

Name: _____ Date: _____ Title: _____

WRD Contact: Kerry Lefever, Acting Interagency Coordinator, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: Kerry.A.LEFEVER@wrdr.state.us



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130

January 19, 2001

OREGON PARKS AND RECREATION DEPARTMENT
c/o MICHAEL CARRIER
1115 COMMERCIAL STREET NE, SUITE 1
SALEM, OREGON 97301-1002

Reference: Instream water rights in the Malheur Lake Basin,
Application Files 84562 and 84563

Dear Oregon Parks and Recreation Department:

This document, called an "Initial Review", is to inform you of the potential limitations to your proposed instream water right and to describe some of your options. Based on the information you have supplied, the Water Resources Department has made several determinations:

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under OAR 512, the Malheur Lake Basin Program;

1. Application File #84562

The priority date for this instream water right application is October 17, 2000.

HOME CREEK, tributary to GARRISON LAKE

From HOME CREEK at UPPER CROSSING being in the SE¼ NW¼ of SECTION 24, T. 35 S, R. 32 ½ E, WM; downstream to the intersection of HOME CREEK and the PROPOSED STEENS MOUNTAIN WILDERNESS AREA BOUNDARY being the west quarter section line of the SE¼ NE¼ of SECTION 10, T. 35 S, R. 32 E, WM.

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

- b. The amount of water available, in the appropriate reach, at a 50 % exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.05	17.4	35.6	53.2	31.1	8.39	3.58	3.03	3.15	2.83	2.91

- c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. Application File #84563

The priority date for this instream water right application is October 17, 2000.

THREEMILE CREEK, tributary to GARRISON LAKE

From the intersection of THREEMILE CREEK with the west section line of Section 21, T. 35 S, R. 32 ½ E, WM; downstream to the intersection of THREEMILE CREEK with Highway 205, being in the NW¼ of the NW¼ of Section 25, T. 35 S, R. 32 E, WM.

- a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5.0	6.0	8.0	12.0	12.0	7.0	5.0	4.0	4.0	4.0	4.0	5.0

- b. The amount of water available, in the appropriate reach, at a %50 exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.33	4.25	4.29	4.40	4.62

- c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

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

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

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **March 2, 2001**. For your convenience you may use the enclosed "STOP PROCESSING" form.

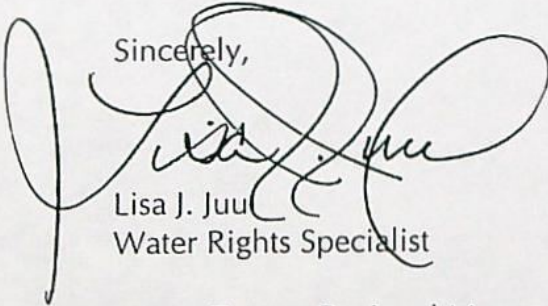
To Proceed With Your Application:

If you choose to proceed with the applications, you do not have to notify the Department. Your applications will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period, the Department will complete a public interest review and issue a proposed final order.

If you have any questions:

If you have any questions concerning your applications for instream water rights, please feel free to contact Jake Szramek at (503) 378-8455, extension 274, or toll free in Oregon at 1-800-624-3199, extension 274. Please remember to have your application number(s) available if you decide to call.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Lisa J. Juul', is written over the typed name and title.

Lisa J. Juul
Water Rights Specialist

cc: Eastern Regional Manager, Watermaster District #10, Water Availability Section

enclosures: Stop Processing Form
Flow Chart Water Rights Process

Water Quality Monitoring Sites

To Frenchglen

Steens Mountain Backcountry Byway

To
South Steens
Campground

205

Home
Creek
Mouth

Home Creek At
Home Creek
Butte

Home Creek Sites

Mouth T35S R32E Sec 10 SENE
Butte T35S R32.5E Sec 7 NESE
Crossing T35S R32.5E Sec 24 NWNW

Threemile Creek Sites

Mouth T35S R32E Sec 25 NWNW
Above Canyon T35S R32.5E Sec 20 NESE

Home Creek
Upper
Crossing

Threemile
Creek
Mouth

Threemile
Creek
Above Canyon

To Fields

● Water Quality Monitoring Sites

Major Streams

Proposed Wilderness Areas

Major Roads

Application No. 84562
Permit No.

2 0 2 4 Miles

No warranty made by the BLM
for use of the data for purposes
not intended by the BLM.
Kelly Hazen, Burns BLM GIS
October 4, 2000 waterqual.apr



NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00
Area	32.27				.00			.00		
Relief	1110.00				.00			.00		
Slope	2.75				.00			.00		
Elevation	5730.00				.00			.00		
MAP	23.40				.00			.00		
Jan Min T	13.00				.00			.00		
Jul Min T	42.10				.00			.00		
Yield	9.59				.00			.00		

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00
Area	36.66				.00			.00		
Relief	2870.00				.00			.00		
Slope	6.67				.00			.00		
Elevation	6430.00				.00			.00		
MAP	26.80				.00			.00		
Jan Min T	12.40				.00			.00		
Jul Min T	41.10				.00			.00		
Yield	19.80				.00			.00		

Stream: THREEMILE CR @ mouth

WAB ID #: 31200803

WABS ABOVE: 0

MO	WAB ID # 31200803			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	4.85	.54	6.5	.00	.00	.0	.00	.00	.0	.00
2	5.66	.63	7.6	.00	.00	.0	.00	.00	.0	.00
3	7.89	.88	10.5	.00	.00	.0	.00	.00	.0	.00
4	11.50	1.28	15.4	.00	.00	.0	.00	.00	.0	.00
5	11.40	1.27	15.2	.00	.00	.0	.00	.00	.0	.00
6	6.89	.77	9.2	.00	.00	.0	.00	.00	.0	.00
7	4.74	.53	6.3	.00	.00	.0	.00	.00	.0	.00
8	4.33	.48	5.8	.00	.00	.0	.00	.00	.0	.00
9	4.25	.47	5.7	.00	.00	.0	.00	.00	.0	.00
10	4.29	.48	5.7	.00	.00	.0	.00	.00	.0	.00
11	4.40	.49	5.9	.00	.00	.0	.00	.00	.0	.00
12	4.62	.52	6.2	.00	.00	.0	.00	.00	.0	.00
Area	8.96			.00				.00		
Relief	1600.00			.00				.00		
Slope	8.59			.00				.00		
Elevation	6170.00			.00				.00		
MAP	23.90			.00				.00		
Jan Min T	12.50			.00				.00		
Jul Min T	41.60			.00				.00		
Yield	39.50			.00				.00		

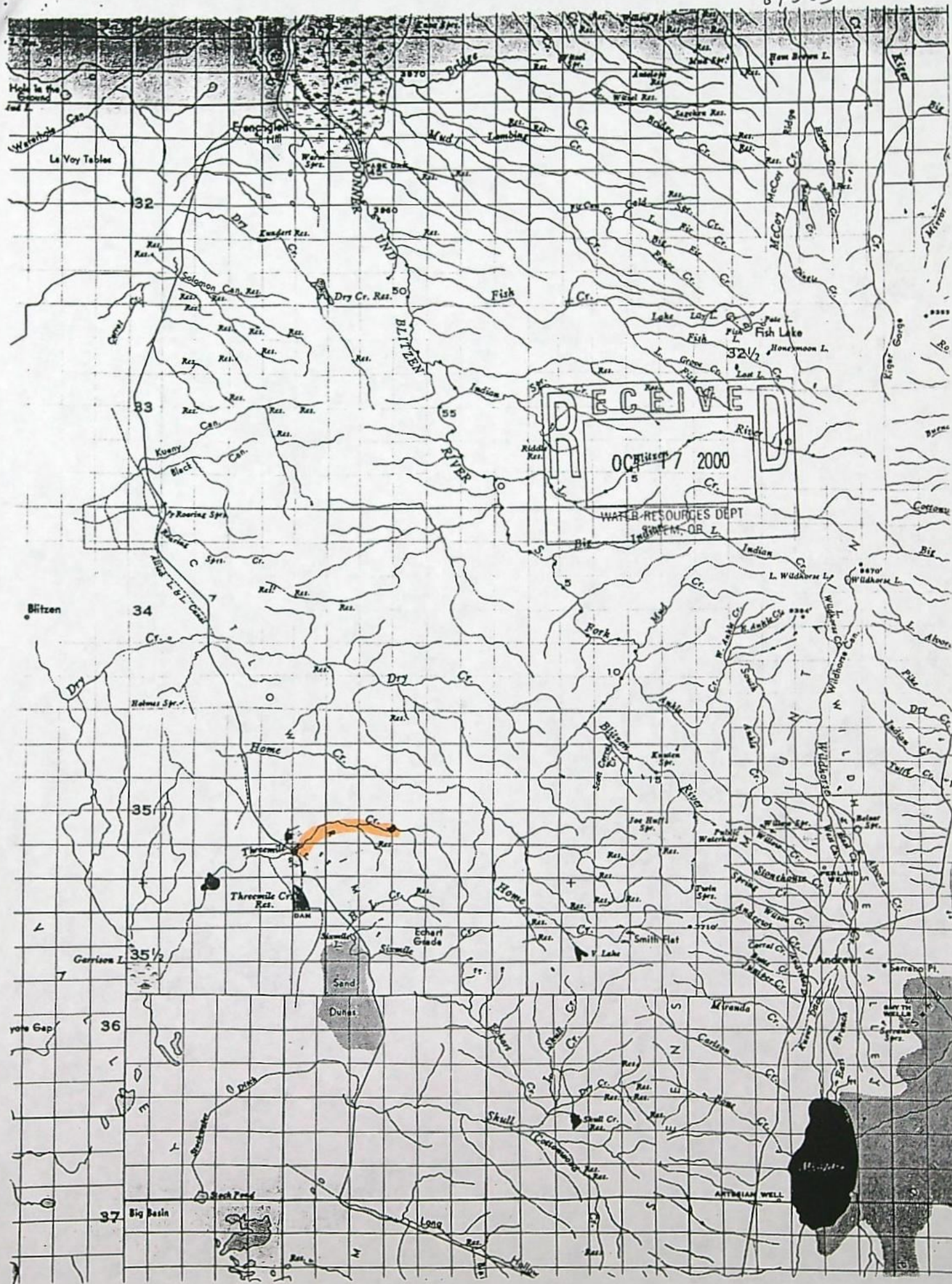
Stream: SIXMILE CR @ mouth

WAB ID #: 31200804

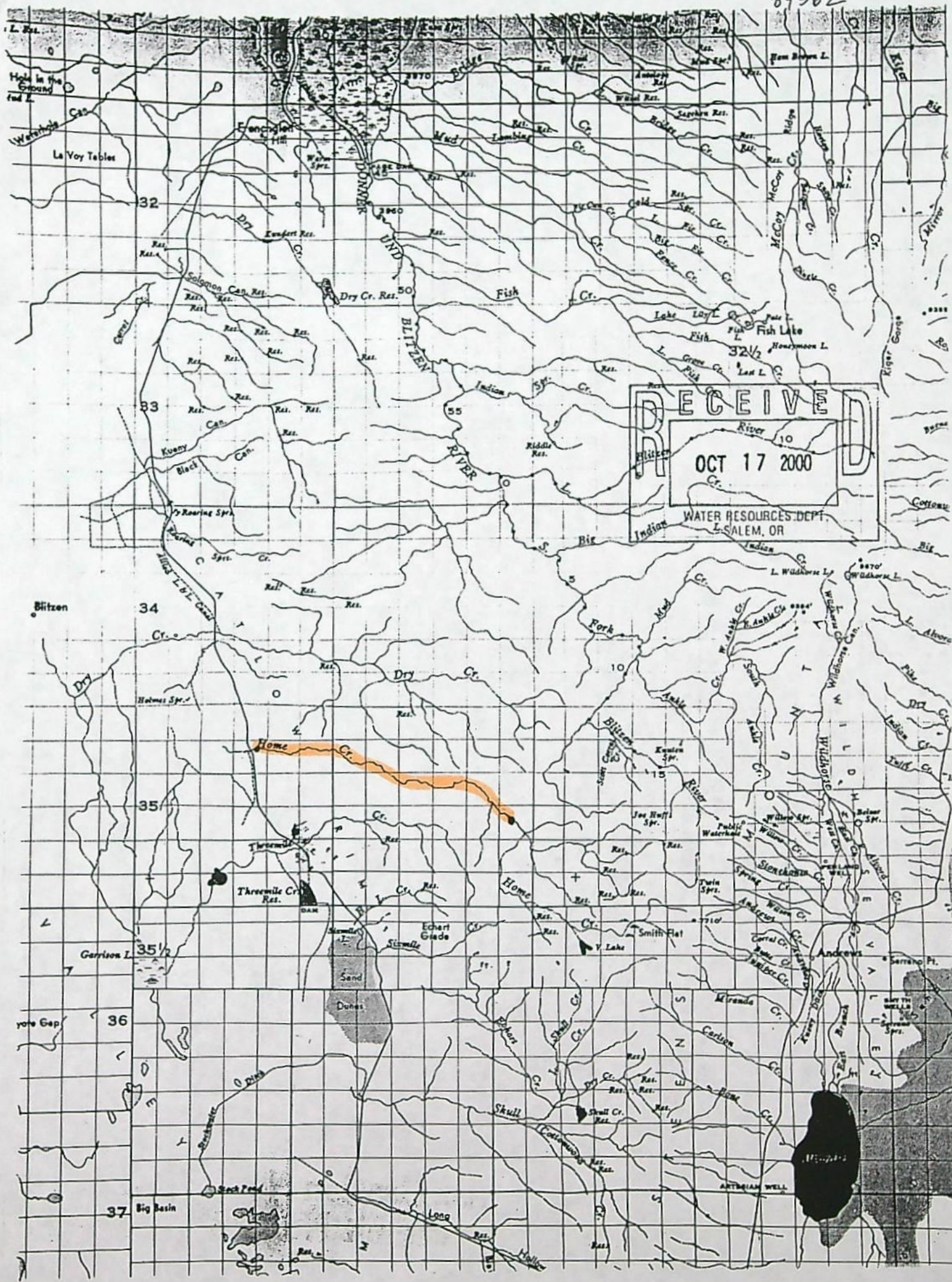
WABS ABOVE: 0

MO	WAB ID # 31200804			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	.57	.15	3.9	.00	.00	.0	.00	.00	.0	.00
2	1.00	.26	6.9	.00	.00	.0	.00	.00	.0	.00
3	1.96	.51	13.5	.00	.00	.0	.00	.00	.0	.00
4	3.27	.86	22.5	.00	.00	.0	.00	.00	.0	.00
5	4.10	1.07	28.2	.00	.00	.0	.00	.00	.0	.00
6	1.87	.49	12.9	.00	.00	.0	.00	.00	.0	.00
7	.49	.13	3.4	.00	.00	.0	.00	.00	.0	.00
8	.20	.05	1.4	.00	.00	.0	.00	.00	.0	.00
9	.17	.04	1.2	.00	.00	.0	.00	.00	.0	.00
10	.18	.05	1.2	.00	.00	.0	.00	.00	.0	.00
11	.30	.08	2.1	.00	.00	.0	.00	.00	.0	.00
12	.42	.11	2.9	.00	.00	.0	.00	.00	.0	.00
Area	3.82			.00				.00		
Relief	1840.00			.00				.00		
Slope	12.30			.00				.00		
Elevation	6000.00			.00				.00		
MAP	24.70			.00				.00		
Jan Min T	13.40			.00				.00		
Jul Min T	42.50			.00				.00		
Yield	17.43			.00				.00		

84563



84562



ODFW DIVISION 33 APPLICATION REVIEW SHEET W. Bowers

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 1/26/01 21 day Deadline Date: 2/23/01 Application # 15-84562/15-84563

Applicant's Name: OREGON PARKS & REC DEPT

1) Will the proposed use occur in an area that may affect the essential habitat of sensitive, threatened, or endangered fish species? [690-33-330(1)]

NO ☒ YES Species: Redband Trout Status: Sensitive, Threatened, Endangered
Catlow River Club

IF ANSWER TO QUESTION (1) IS YES, CONTINUE ON THIS PAGE TO QUESTION (2).

IF ANSWER IS NO, FILL OUT PUBLIC INTEREST REVIEW SHEET (PAGE 2)

What stage or value is at risk (circle all that apply): Spawning, Incubation, Rearing, Passage, Habitat Value

2) Will the proposed use result in a LOSS in the essential habitat of THREATENED OR ENDANGERED SPECIES or a NET LOSS in the habitat of a SENSITIVE SPECIES?

☒ NO / YES

A) Standard of NET LOSS applies to sensitive species statewide. [690-33-330(2)(a)]

B) Standard of LOSS applies to T or E species outside the Columbia Basin. [690-33-330(2)(b)]

3) Can conditions be applied to mitigate the impact to the essential habitat of a S, T or E species?

NO / YES [690-33-330(3)]

Which conditions are recommended? _____

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts to the essential habitat of S, T or E species, would the proposed use harm the species?

NO / YES [690-33-330(4)]

If YES, please explain: _____

ODFW RECOMMENDATION:

____ Approval with fishery conditions.

☒ Approval without fishery conditions.

____ Denial.

ODFW Representative: Name: Wayne Bowers Date: 2-6-01

WRD Contact: Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wr.state.or.us

DEQ DIVISION 33 APPLICATION REVIEW SHEET

Nichols

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 1/26/01 21 day Deadline Date: 2/23/01 Application # 15-84562/15-84563

Applicant's Name: OREGON PARKS & REC DEPT

1) Does the proposed use comply with state and federal water quality standards?

NO ☒ YES

If NO, how? _____

1) If the answer to question (1) is YES, will the proposed use still result in a diminution of water quality for the habitat of sensitive, threatened or endangered species?

☒ NO / YES

If YES, how? _____

2) Can conditions be applied to mitigate the impact of the use?

NO / YES

Which conditions are recommended? No need

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts, would the proposed use harm the species? NO / YES

If YES, please explain: _____

RECEIVED

FEB 16 2001

WATER RESOURCES DEPT.
SALEM, OREGON

DEQ RECOMMENDATION:

- ☐ Approval with conditions.
☒ Approval without conditions.
☐ Denial.

Mail to:

RECEIVED

JAN 30 2001

Eastern Region - Bend

DEQ Representative Name: Nichols

Date: 2-13-01

WRD Contact: Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wrdr.state.or.us

RECEIVED

PUBLIC INTEREST REVIEW SHEET FOR USE BY ODFW

Page 2

WATER RESOURCES DEPT.
SALEM, OREGON

Application # _____ Applicant's Name: _____

1) Will the proposed use occur in an area that may affect the habitat of fish or wildlife species?

NO ☒ YES Species: Redband Trout, Cutlow Tail chub
Other: _____

What stage or value is at risk (circle all that apply): Spawning, Incubation, Rearing, Passage, Habitat Value

2) Will the proposed use result in a loss of habitat? ☒ NO / YES

3) Can conditions be applied to mitigate the impact to the loss of habitat? NO / YES

Which conditions are recommended? _____

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts to the habitat, would the proposed use harm the species?
NO / YES

If YES, please explain: _____

ODFW RECOMMENDATION:

_____ Approval with conditions.

☒ Approval without conditions.

_____ Denial.

ODFW Representative: Name: Wayne Bowers Date: 2-16/01

WRD Contact: Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wrdd.state.or.us

R = Request
=

Home Creek

INS
84562

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann		
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00	
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00	
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00	
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00	
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00	
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00	
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00	
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00	
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00	
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00	

Area	32.27	.00	.00
Relief	1110.00	.00	.00
Slope	2.75	.00	.00
Elevation	5730.00	.00	.00
MAP	23.40	.00	.00
Jan Min T	13.00	.00	.00
Jul Min T	42.10	.00	.00
Yield	9.59	.00	.00

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802	Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
		Flow	CSM	% Ann		Flow	CSM	% Ann	
1	4	3.49	.10	2.0	.00	.00	.0	.00	.00
2	7	7.05	.19	4.1	.00	.00	.0	.00	.00
3	17	17.40	.47	10.1	.00	.00	.0	.00	.00
4	36	35.60	.97	20.7	.00	.00	.0	.00	.00
5	53	53.20	1.45	31.0	.00	.00	.0	.00	.00
6	63	31.10	.85	18.1	.00	.00	.0	.00	.00
7	8	8.39	.23	4.9	.00	.00	.0	.00	.00
8	4	3.58	.10	2.1	.00	.00	.0	.00	.00
9	4	3.03	.08	1.8	.00	.00	.0	.00	.00
10	4	3.15	.09	1.8	.00	.00	.0	.00	.00
11	3	2.83	.08	1.6	.00	.00	.0	.00	.00
12	3	2.91	.08	1.7	.00	.00	.0	.00	.00

Area	36.66	.00	.00
Relief	2870.00	.00	.00
Slope	6.67	.00	.00
Elevation	6430.00	.00	.00
MAP	26.80	.00	.00
Jan Min T	12.40	.00	.00
Jul Min T	41.10	.00	.00
Yield	19.80	.00	.00

IP
3.5
7.0
17.0
35.5
53.0
31.0
8.0
3.5
3.0
3.0
2.5
2.5

App# Basin Source Quantity Use Cnty/Priority Pod Vicinity Name/Address Stage/Status
(CONTD)

INSTREAM WATER RIGHT APPLICATION

<u>APP #</u>	<u>BASIN</u>	<u>SOURCE</u>	<u>COUNTY & PRIORITY DATE</u>	<u>APPLICANT NAME & ADDRESS</u>
IS- 84562	12	HOME CREEK> CATLOW VALLEY	HARNEY 10/17/2000	OREGON DEPT OF PARKS & REC 1115 COMMERCIAL ST NE, SUITE 1 SALEM, OR 97301-1002

USE: Providing required stream flow for recreation and scenic attraction.

REACH

LOCATION: Home Creek from Upper Crossing (SE 1/4 NW 1/4, Section 24, T35S, R321/2E, W.M.); to the boundary of the Steens Wilderness Area boundary (SE 1/4 NE 1/4, Section 10, T35S, R32E, W.M.)

PROPOSED

QUANTITY ALLOWED:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54302**

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

INVOICE # _____

RECEIVED FROM: OR Dept. OF Fish
BY: And Wildlife

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 96-10 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 50.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY)

\$

WATER RIGHTS:

0201 SURFACE WATER

EXAM FEE

\$

0202

RECORD FEE

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

\$

WELL CONSTRUCTION

EXAM FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

LICENSE FEE

\$

LANDOWNER'S PERMIT

0220

\$

234 OTHER (IDENTIFY) Request For Studing \$ 50.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **54302**

DATE: 7/22/02 BY: Connie Lane

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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54302**

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

INVOICE # _____

RECEIVED FROM: OR Dept. OF Fish
BY: And Wildlife

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 96-10 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 50.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY) _____

\$

OTHER: (IDENTIFY) _____

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY) _____

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

\$

WATER RIGHTS:

EXAM FEE

RECORD FEE

0201 SURFACE WATER

\$

0202

\$

0203 GROUND WATER

\$

0204

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0205 TRANSFER

\$

0206

\$

WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER

(IDENTIFY)

Request For Standing

\$ 50.00

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY) _____

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **54302**

DATED: 7/22/02

BY: Connie Daise

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HERB MOSGAR

☐

DWIGHT FRENCH

☒

RENEE MOULUN

☐

RUSS KLASSEN

☐

JONNINE FUSS

☐

JERRY SAUTER

☐

JERRY GAINEY

☐

GERRY CLARK

☐

DOROTHY PEDERSEN

☐

ROGER WRIGHT

☐

LISA JUUL

☐

CORY ENGEL

☐

ANITA HUFFMAN

☐

DIANNA GUTHRIE

☐

KERRY LEFEVER

☐

TERI HRANAC

☐

STEVE BROWN

☐

TIMMIE BRANDT

☐

WATER RESOURCES DEPARTMENT

RECEIPT # 54153

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

INVOICE # _____

RECEIVED FROM: Ronald S. Yockim
BY: Attorney At Law

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 96-505 OTHER: (IDENTIFY) ☐TOTAL REC'D \$ 37.52

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY) _____

\$

OTHER: (IDENTIFY) _____

\$

REDUCTION OF EXPENSE

CASH ACCT. _____

\$

PCA AND OBJECT CLASS _____

VOUCHER # _____

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$ 27.52

0410 RESEARCH FEES

\$ 10.00

0408 MISC REVENUE: (IDENTIFY) _____

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(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

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WATER RIGHTS:

EXAM FEE

RECORD FEE

0201 SURFACE WATER

\$

0202

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0203 GROUND WATER

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0204

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0205 TRANSFER

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0206

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WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY) _____

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD # _____

0210 MONITORING WELLS

\$

CARD # _____

OTHER (IDENTIFY) _____

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HRDRO APPLICATION _____

\$

RECEIPT # 54153

DATED: 7/16/02

BY: Connie Vance

STATE OF OREGON
WATER RESOURCES DEPARTMENT
RECEIPT # **54153** 158 12TH ST. N.E.
SALEM, OR 97310-0210 INVOICE # _____
378-8455 / 378-8130 (FAX)

RECEIVED FROM: Ronald S. Yockim
BY: Attorney At Law

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 96-505 OTHER: (IDENTIFY) ☐ TOTAL REC'D \$ 37.52

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

\$ 27.52

0410 RESEARCH FEES

\$ 10.00

0408 MISC REVENUE: (IDENTIFY)

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY)

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WATER RIGHTS:

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EXAM FEE

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\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY)

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0211 WELL CONST START FEE

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CARD #

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\$

CARD #

OTHER (IDENTIFY)

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1302 LOTTERY PROCEEDS

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0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FWWRD)

\$

0231 HYDRO LICENSE FEE (FWWRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **54153** DATED: 7/16/02 BY: Connie Vance
Distribution-White Copy-Customer, Yellow Copy-Fiscal, Blue Copy-File, Buff Copy-Fiscal

WATER RESOURCES DEPARTMENT

NAME: R. Yockim DATE: 7/15/02
 ADDRESS: PO Box 2456
 CITY: Roseburg ST. OR ZIP: 97470

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Don DeTella

RONALD S YOCKIM, ATTORNEY AT LAW		6122
(541)957-5900		
P O BOX 2456		
ROSEBURG, OR 97470-0511		Date <u>7/15/02</u>
		96-505/1232 41
Pay to the Order of	<u>Oregon Water Resources Dept.</u>	\$ <u>37.52</u>
	<u>Thirty Seven and 52/100</u>	Dollars
	UMPQUA BANK	1-866-4UMPQUA (1-866-486-7782)
For	<u>Barbara Griffin</u>	MP
		

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Records have been redacted or withheld pursuant to the exemption for financial transfer records specified in ORS 192.345(27).

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JUL 10 2002

RONALD S. YOCKIM
Attorney at Law

WATER RESOURCES DEPT.
SALEM, OREGON

548 S.E. Jackson
Suite #7
P.O. Box 2456
Roseburg, Oregon 97470

(541) 957-5900
FAX (541) 957-5923

July 9, 2002

Dwight French
Water Right Section Manager
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97310

Re: Home Creek and Threemile Creek
Instream Water Right Applications

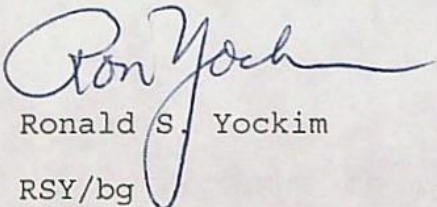
Dear Mr. French:

Harney County Court has requested that I review the Instream Water Right Applications and Proposed Final Order for Instream Application IS 84562 and Instream Application IS 84563. To assist in my review of these documents, I would appreciate it if you could send me copies of the supporting documents submitted by the application "Recreation Flow Requirement Methodology for Home Creek, Tributary to Garrison Lake, Harney County, Oregon" and "Recreation Flow Requirement Methodology for Threemile Creek, Tributary to Garrison Lake, Harney County, Oregon."

I would also appreciate copies of any water availability tables or analysis prepared by the Water Resources Department on these two applications.

Your prompt attention to this matter would be appreciated. If you have any questions, please don't hesitate to contact me.

Sincerely,



Ronald S. Yockim

RSY/bg

cc: Harney County Court

December 14, 1990

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 512
MALHEUR LAKE BASIN PROGRAM PROVISION

[ED. NOTE: This Division was renumbered from OAR 690-080 by WRD 23-1990, f. & cert. ef. 12-14-90]

Water Availability

690-512-040 (1) Except as provided in section (3) of this rule, the Department shall not accept an application for permit, or issue a permit, for any use of surface water, or of groundwater the use of which has the potential to substantially interfere with surface water, in the Malheur Lake Basin unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:

(a) Streamflow measurements of gage records from the source or, for use of groundwater, the stream in hydraulic connection with the source; or

(b) An estimate of water availability from the source or, for use of groundwater, the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other, similar streams and considers current demands for water affecting the streamflows.

(2) The criteria used in determining if the use of groundwater has the potential to substantially interfere with surface water shall be those established in OAR Chapter 690, Division 9.

(3) This rule shall not apply to issuance of:

(a) Instream water rights;

(b) Permits for storage of water between March 1 and May 31 if the application is not required to be referred to the Commission under OAR 690-11-080(2)(a)(C); or

(c) Permits for use of water legally stored.

Stat. Auth.: ORS 536.300 & 536.340

Hist.: WRD 23-1990, f. & cert. ef. 12-14-90

Application No. 84562
Permit No.

Recreation Sites

The Bureau of Land Management maintains three recreation sites along the Steens Mountain Summit Road.

- Fish Lake — 20 camp units
8 picnic units
- Page Springs — 15 camp units
8 picnic units
- Jackman Park — 4 camp units*

All sites have fireplaces, toilets, and garbage disposal facilities. Trailer hookups, showers, or electricity are not available.

*No garbage disposal facilities — pack in - pack out

STEENS MOUNTAIN

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

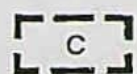
Application No. BURNS DISTRICT
Permit No. 84562 1984

DATES ROADS ARE OPEN

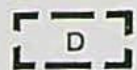
MAY 1 - OCT. 31

JUNE 15 - OCT. 31

ROADS CLOSED PERMANENTLY



JULY 1 - OCT. 15



MAY 1 - DEC. 31



ROADS OPEN YEAR LONG

BLM

STATE

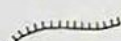
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GRAVEL

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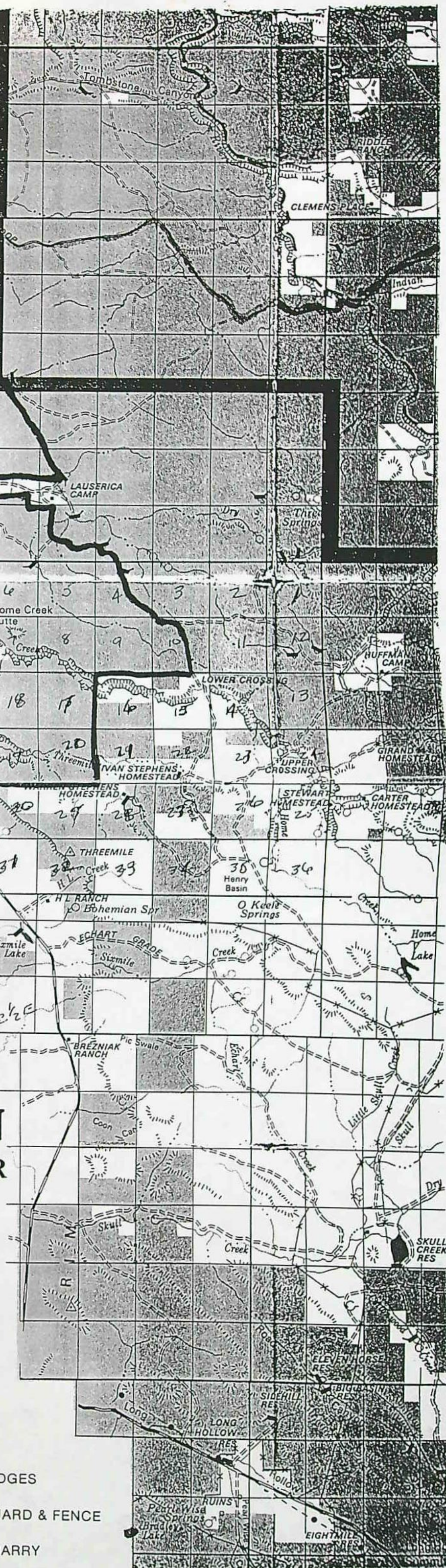


GATES

RIMS & LEDGES

CATTLEGUARD & FENCE

MINE & QUARRY





Oregon

John A. Kitzhaber, M.D., Governor

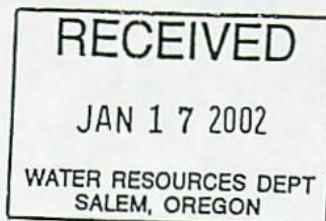
Parks and Recreation Department

Office of the Director
1115 Commercial St. NE
Salem, OR 97301-1002
(503) 378-5019
FAX (503) 378-8936



January 18, 2002

Paul Cleary, Director
Oregon Water Resources Department
158 12th St NE
Salem OR 97310



RECEIVED
OVER THE COUNTER

C. Vance

Dear Paul,

Oregon Parks and Recreation Department filed instream water right applications on Home Creek and Threemile Creek in Harney County on October 17, 2000. We filed these applications at Governor Kitzhaber's direction as part of the state's contribution to resource protection in the recently designated Steens Mountain Cooperative Management and Protection Area and Steens Mountain Wilderness Area. Enclosed, in support of our filings, is the recreation flow requirement methodology documentation for Home and Threemile Creeks.

Dave McAllister, Director Habitat Division, Oregon Department of Fish and Wildlife, wrote to you on June 13, 2001, supporting our instream water right filings on Home and Threemile creeks. Dave commented, in his letter, on ODFW's partnership with the Roaring Springs Ranch to improve habitat for redband trout and Catlow tui chub in Home and Threemile creeks. Dave requested the downstream terminus of the Threemile Creek instream flow reach be moved from the Highway 205 crossing, upstream to the wilderness area boundary to avoid inclusion of the Roaring Springs Ranch diversion works on Threemile Creek. Accordingly, please note on page 4 of the Threemile Creek documentation, we propose a change in the downstream terminus of the protected reach. If we need to file a revised application to accomplish this change, please advise me.

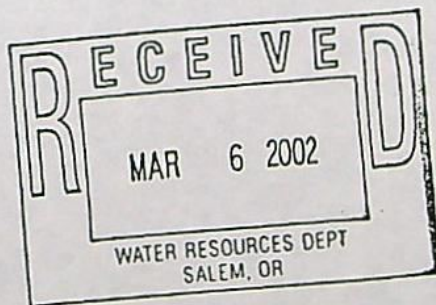
If you have questions about the enclosed materials, please don't hesitate to contact me or Steve Brutscher of my staff. Steve can be reached at 503.378.4168 x 235.

Sincerely,

Michael Carrier

Michael Carrier
Director

Enclosures



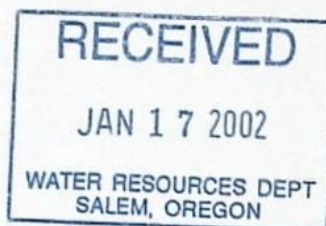


Oregon

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

Office of the Director
1115 Commercial St. NE
Salem, OR 97301-1002
(503) 378-5019
FAX (503) 378-8936



January 18, 2002

Paul Cleary, Director
Oregon Water Resources Department
158 12th St NE
Salem OR 97310

Dear Paul,

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Sincerely,

Michael Carrier
Director

Enclosures





Oregon

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

Office of the Director
1115 Commercial St. NE
Salem, OR 97301-1002
(503) 378-5019
FAX (503) 378-8936



July 24, 2001

Paul Cleary, Director
Oregon Water Resources Department
158 12th St NE
Salem OR 97310

Dear Paul,

Oregon Parks and Recreation Department filed instream water right applications on Home Creek and Threemile Creek in the Malheur Lake Basin on October 17, 2000. The Water Resources Department assigned application file numbers 84562 and 84563 to the Home Creek and Threemile Creek applications respectively. Please place applications 84562 and 84563 on administrative hold pending our further notice. I understand the administrative hold will expire in 180 days unless extended for good cause shown.

Sincerely,

Michael Carrier
Director

Q:\Instream Water Rights\Home Creek Admin Hold Rqst 7_24_2001.doc

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JUL 26 2001

WATER RESOURCES DEPT
SALEM, OREGON

Oregon

Parks & Recreation Department
1115 Commercial Street NE Suite 1
Salem, Oregon 97301-1002

73410-0900

WR

**PAUL CLEARY, DIRECTOR
OREGON WATER RESOURCES DEPARTMENT
158 12TH ST NE
SALEM OR 97310**



97301X4172 09



PACIFIC ENVIRONMENTAL ADVOCACY CENTER

10015 S.W. Terwilliger Boulevard

Portland, Oregon 97219

phone: 503-768-6736 fax: 503-768-6642

June 14, 2001

Water Rights Section
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172
FAX: (503) 378-2496

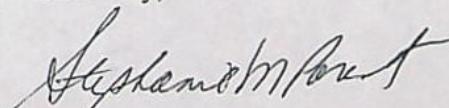
Re: Pending Instream Water Right Applications for Home and Threemile Creeks, Malheur Lake Basin IS 84562 and 84563, Oregon Parks and Recreation Department

To Whom It May Concern:

I am submitting these additional public comments to supplement the public comments I submitted on behalf of the Oregon Natural Desert Association (ONDA) dated May 14, 2001. In furtherance of ONDA's assertion that the approval of instream water rights for Home and Threemile Creek is in the public interest, I submit the enclosed letter from Governor John A. Kitzhaber, M.D. to the Department of Parks and Recreation (dated September 29, 2000). In this letter, the Governor states that the State of Oregon has a public interest obligation to assist in the protection of federal wilderness areas. The Governor specifically requested that the Department apply for the in-stream water rights in Home and Threemile Creeks that are the subject of applications IS 84562 and 84563. The Governor believes protecting these in-stream flows "could be a significant step in the long-term protection of the recreational and scenic attraction values which form the basis of the federal wilderness designation."

Thank you for your careful attention to this matter. I look forward to receiving the proposed final orders. Should you have any questions that I may address, please, do not hesitate to call me at the number above.

Sincerely,



Stephanie M. Parent

enclosure

cc: Bill Marlett

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JUN 18 2001

WATER RESOURCES DEPT.
SALEM, OREGON

JOHN A. KITZHABER, M.D.
GOVERNOR



September 29, 2000

Mike Carrier
Department of Parks and Recreation
1115 Commercial Street NE
Salem, OR 97301-1002

Dear Mike:

The Steens Mountain Cooperative Management and Protection Act of 2000 (H.R. 4828) is currently before the United States Congress. If H.R. 4828 becomes law, a portion of the drainage area of Home Creek and Threemile Creek in Harney County will be designated a federal wilderness area. This area will be known as the Steens Mountain Wilderness Area. The United States Bureau of Land Management, in its proposal to the Secretary of the Interior to seek designation of this area as wilderness, identified a number of recreation and scenic attraction values to be protected by wilderness designation.

I believe the State of Oregon has a public interest obligation to assist in the protection of the federal wilderness areas identified in H.R. 4828, and should investigate what actions it can take to facilitate protection of wilderness values. A number of these values are related to protection of in-stream flows in Home and Threemile Creeks where these creeks traverse the proposed Wilderness Area. As such, I ask that you undertake an investigation of what actions are available to your Department under Oregon law that would assist in the protection of this wilderness area. In particular I request your Department apply for in-stream water rights pursuant to ORS 537.336(3) to protect public uses relating to recreation and scenic attractions. In-stream water rights protecting flows on the reaches of Home and Threemile Creeks within the Steens Mountain Wilderness Area could be a significant step in the long-term protection of the recreational and scenic attraction values which form the basis of the federal wilderness designation.

I am certain the scientific evaluations which were completed by the Department of the Interior will provide a substantial portion of the documentation you will need to determine the quantity of water necessary to support the public uses which must be identified in your Department's application for an in-stream water right under state law. I will ask the Department of the Interior to make their technical information available to you as soon as possible. I will also ask the Oregon Department of Water Resources to work closely and expeditiously with your Department in this regard.

Thank you for your interest and assistance.

Sincerely,

John A. Kitzhaber, M.D.

JK/NR/sm

cc: Secretary Bruce Babbitt
Paul Cleary

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JUN 18 2001

WATER RESOURCES DEPT.
SALEM, OREGON



Oregon

John A. Kitzhaber, M.D., Governor

June 13, 2001

Paul R. Cleary, Director
Oregon Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97301-4172

RECEIVED

Department of Fish and Wildlife

JUN 14 2001

WATER RESOUR.
SALEM, OREGON DEPT.

C: Dwight
Habitat Division
2501 SW First Avenue
PO Box 59
Portland, OR 97207
(503) 872-5255
FAX (503) 872-5269
TTY (503) 872-5259
Internet www.dfw.state.or.us/



Regarding: Water Right application files INS-84562 (Home Cr.), INS-84563 (Threemile Cr.)

Dear Mr. Cleary:

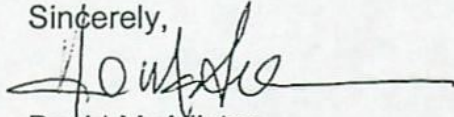
By this letter, Oregon Department of Fish and Wildlife (ODFW) supports Oregon Parks and Recreation Department's (Parks) Instream Water Right applications for Home and Threemile creeks in Catlow Valley, Oregon. Our support is based on providing protection for Catlow Valley Redband Trout and other aquatic life found in the two stream segments Parks has filed on. Protecting redband trout was an important goal in the recent creation of the Steens Mountain Wilderness Area which includes the Home Creek and Threemile Creek watersheds. The Catlow Valley Redband Trout is on ODFW's Sensitive Species List. It is ODFW's position that the flows requested will provide adequate protection to all life stages of redbands. This includes runoff flows with enough velocity to create habitat by moving bedload, scouring pools, creating jams of woody material, and moving sediments necessary for maintaining fish habitat and associated aquatic life necessary for maintenance of trout populations.

The redband trout populations in Catlow Valley are found in four disjunct streams; Home Creek, Rock Creek, Skull Creek and Threemile Creek. ODFW habitat and fish surveys have found the populations to be naturally small and at risk. The small populations in Skull Creek and Threemile Creek are protected under ODFW fishing regulations with both streams closed to all angling. The other two streams are managed under restrictive bag and tackle regulations.

ODFW is a partner in the Catlow Redband Trout and Catlow Tui Chub Conservation Agreement along with the US Fish and Wildlife Service, Bureau of Land Management and the Roaring Springs Ranch. The agencies and the ranch have worked to improve habitat for the two species. Part of the cooperative work has included renovation of Threemile Creek Reservoir that is privately owned by the Roaring Springs Ranch who is cooperatively operating the reservoir to provide fish rearing. As a partner in the agreement, the ranch has requested ODFW's support for requesting the lower boundary of the instream water right for Threemile Creek be moved upstream about ¼ mile from Highway 205 to the

private property-wilderness boundary. With the change, the ranch's irrigation structure located about 100 yards above the highway would remain outside of the area protected by the instream water right. The change would not reduce protection for redband trout. Therefore, ODFW would support a change in the lower boundary of the Threemile Creek instream water right application upstream to the wilderness boundary if Parks is amenable.

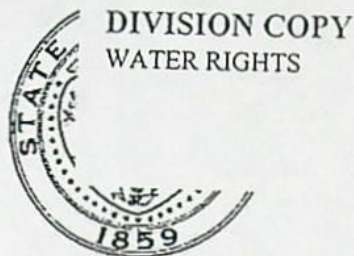
Sincerely,

A handwritten signature in black ink, appearing to read "D. McAllister", with a long horizontal flourish extending to the right.

David McAllister
Director, Habitat Division

C: Stacy Davies, Roaring Springs Ranch (Frenchglen)
Oregon Parks and Recreation Department
Miles Brown, U.S. Bureau of Land Management (Hines)
Doug Young, U.S. Fish and Wildlife Service (Portland)

OREGON WATER RESOURCES DEPARTMENT



Commerce Building
158 12th Street NE
Salem OR 97301-4172

PUBLIC NOTICE OF WATER USE REQUESTS

May 15, 2001

*This notice is also available on our web page at the following address:
http://www.wrd.state.or.us/cgi-bin/notices.pl?water_rights*

This publication lists recently-filed water use requests and other items or agency activities requiring public notice. It also describes public comment processes and deadlines. Types of water use requests and notices contained here may include:

- **Permit applications/Instream Water Right applications**
Requests to use, store, divert or pump surface water or groundwater/Requests made by the state Departments of Fish & Wildlife, Environmental Quality or Parks and Recreation for water to be used and kept in-channel.
- **Extensions of Time to Perfect Water Rights Permits**
Proposed Final Orders regarding requests to extend time limits to fully develop water use projects and beneficially apply water.
- **Limited Licenses**
Requests to use water for 5 years or less. Licenses are subordinate to other rights and may be revoked if a use is found to injure other water right holders.
- **Expedited Reservoir Applications (ORS 537.409)**
Applications for storage permits for small ponds filed under a simplified review process.
- **Transfer Applications & Permit Amendment Notices**
Requests to change points of diversion or appropriation or places or types of use.
- **Transfers within Irrigation District Boundaries (ORS 540.580)**
Petitions requesting transfers in place of use within a district's boundaries.
- **Water Right Cancellations**
Abandonment of perfected and developed water rights and requests to cancel all or a portion of rights.
- **Proposed Orders on HB 3111 Remapping Petitions**
The Director's preliminary decision on petitions submitted by irrigation districts and other qualifying associations to change water rights to reflect actual usage.
- **Applications filed/Registrations Issued for Wetland, Stream, Riparian Enhancement or Storm Water Management Projects (ORS 537.015)**
Applications for water use for special projects and registrations allowing use of water while decisions are reached on pending applications.
- **Instream Leases**
Short-term leases by water right holders of their water rights for instream uses.
- **Conservation Plans**
Water management and conservation plans submitted by municipalities and agricultural water suppliers under provisions of OAR Chapter 690, Division 86.
- **Hydroelectric Applications, Notice of Intent, or First-Stage Consultation Document (HB 2119)**
- **Surface Water Registration Statement (SWR) Amendments (OAR 690-028-055(1))**
Requests to amend Pre-1909 Surface Water Registration Statements filed pursuant to ORS 539.240, including amendments in ownership, point of diversion, place of use, and type of use.

Permit Applications

The following pages of this notice list permit applications that the Oregon Water Resources Department is evaluating for compliance with state water laws and regulations. Public participation and comment is encouraged. Opportunities for public involvement vary according to the stage of the permit evaluation.

Initial Review Stage (IR in the "stage" column of the permit listing)

The Department has given the applicant the results of an initial review of water use restrictions, water availability and other limits that affect the agency's decision on whether to issue a permit. The applicant has asked the agency to proceed to the next stage of evaluation. The Department welcomes comments from interested persons, agencies and organizations on the proposed water use.

The comment deadline for initial reviews appearing in this public notice is 5pm, Thursday, June 14, 2001.

Although we cannot respond individually to all comments, each will be considered as the agency makes its permit decision.

Proposed Final Order Stage (PFO in the "stage" column of the permit listing)

The proposed final order is the Department's preliminary decision on the water use request. It will indicate how the comments received on the application in the first stage were considered. The PFO documents the agency's decision through specific findings. If appropriate, it includes a draft permit specifying any conditions or restrictions on the use.

Persons interested in receiving a mailed copy of a PFO must pay a statutorily-required fee of \$10. (Any person paying \$10 to receive a PFO by mail will also receive a copy of the Final Order when it is issued.) PFO's may be viewed for free at the Department's Salem Office or at the district watermaster office nearest the proposed use.

Those disagreeing with the Department's decision as expressed in the PFO have 45 days to file a protest.

The protest deadline for proposed final orders appearing in this public notice is 5pm, Friday, June 29, 2001.

The protest filing fee is \$200 for everyone but the applicant. Detailed requirements for filing a protest will be sent with copies of the PFO. Persons who support the PFO may file a "standing" fee of \$50 to retain the ability to participate in future proceedings relating to an application. Before participation is allowed, an additional \$150 will be required at the time of the proceeding.

How To Read the Listing

Applications are organized by Oregon's major river basins, as listed below:

1-North Coast	8-Grande Ronde	15-Rogue
2-Willamette	9-Powder	16-Umpqua
3-Sandy	10-Malheur	17-S. Coast
4-Hood	11-Owyhee	18-Mid Coast
5-Deschutes	12-Malheur L.	19-Columbia
6-John Day	13-Goose/Summer	20-Snake
7-Umatilla	14-Klamath	



G-12345	2	Dry Cr. > Rowe R.	0.50	C	IR	40.00	Coos	1/1/1995	SENE, SECTION 9, T16S, R4W	W. Clinton...	PFO	2
Basin number		What it flows into	Amount	Unit of measure: C - cubic feet per second G - gallons per minute A - acre-feet	Type of use (e.g.: IR - irrigation; see codes below)	Irrigated acres	County of use; Priority date		Legal description of general area of use: "Southeast quarter of the Northeast quarter of Section 9, Township 16 South, Range 4 West."	Applicant name & address	Stage of Review: IR initial review PFO proposed final order	Decision codes: 1 permit may be issued as requested by applicant 2 permit may be issued with appropriate conditions 3 permit unlikely to be issued
The source	Application number: G - groundwater R - reservoir S - surface I - instream											

Some commonly-used Type of Use abbreviations (for definitions, please consult Oregon Administrative Rules Chapter 690, Division 300):

AG-agriculture	GD-group domestic	MU-municipal
CF,CH,CL,CR-cranberry uses	GR-groundwater recharge	NU-nursery use
CM-commercial	GT-geothermal	PA-pollution abatement
CS-campground	IC-irrigation, primary & supplemental	PW-power
DI-domestic, incl. lawn & garden	ID,IL-irrigation with Domestic or Livestock use, respectively	QM-quasi-municipal
DN-domestic, incl. non-commercial	IM-industrial, manufacturing	RC-recreation
DO-domestic	IR-irrigation	RW-road construction
DS-domestic/stock	IS-supplemental irrigation	ST-storage
FI-fish	LV,LW-livestock/wildlife	SW-swimming
FP-fire protection	MI-mining	TC-temperature control
FW-fish & wildlife		WI-wildlife

May 15, 2001

App#	Basin	Source	Quantity	Use	Cnty/Priority	Pod Vicinity	Name/Address	Stage/Status
G-15075	2	A WELL>PECAN CR	0.0180 C	ID	1.40 Clackamas 12/10/1999	SESE,SECTION 16 T 2S, R1E	CITY OF LAKE OSWEGO; PO BOX 369 LAKE OSWEGO,OR 97034	WALK PFO 2
G-15194	2	A WELL>MOLALLA R	1.0000 C	ID NU	40.00 Clackamas 9/ 7/2000	NENW,SECTION 26 T 4S, R1E	RICHARD F CHEADLE 28000 S DRYLAND RD CANBY,OR 97013	PFO 2
G-15227	2	WELL 1>DANIELS CR	0.8275 C	QM	Lane	NWNW,SECTION 35	COUNTRY VIEW ESTATES WATE	PFO 2
		WELL 2>DANIELS CR		IR 137.20	10/ 9/2000	T16S, R3W	91000 RIDGEVIEW RD	
		WELL 3>DANIELS CR				SWNE,SECTION 35	EUGENE,OR 97408	
		WELL 4>DANIELS CR				T16S, R3W		
		WELL 5>DANIELS CR				SWSW,SECTION 26		
		WELL 6>DANIELS CR				T16S, R3W		
		WELL 7>DANIELS CR				SESW,SECTION 26		
		WELL 8>DANIELS CR				T16S, R3W		
		WELL 9>DANIELS CR				SENW,SECTION 35		
		WELL 10>DANIELS CR				T16S, R3W		
		WELL 11>DANIELS CR				SENW,SECTION 35		
		WELL 12>DANIELS CR				T16S, R3W		
		WELL 13>DANIELS CR				NWNE,SECTION 35		
		WELL 14>DANIELS CR				T16S, R3W		
		WELL 15>DANIELS CR				NWNW,SECTION 35		
						T16S, R3W		
R-84049	4	S FK MILL CR/CRW C R>MILL	2100.0000 A	MU	Hood River 1/21/1999	NENW,SECTION 20 T 1S, R11E	CITY OF THE DALLES 6780 RESERVOIR RD THE DALLES,OR 97058	PFO 2
S-84050	4	CROW CR RES>S FK MILL CR	2100.0000 A	MU	Wasco 1/21/1999	NENW,SECTION 20 T 1S, R11E	CITY OF THE DALLES; 6780 RESERVOIR RD THE DALLES,OR 97058	ANDER PFO 2

INSTREAM-WATER RIGHT APPLICATION

<u>APP #</u>	<u>BASIN</u>	<u>SOURCE</u>	<u>COUNTY & PRIORITY DATE</u>	<u>APPLICANT NAME & ADDRESS</u>
IS- 84562	12	Home Cr> Garrison Lk	Harney 10/17/2000	Oregon Parks & Recreation Dept c/o Michael Carrier 1115 Commercial St NE, Suite 1 Salem, OR 97301-1002

USE: Instead Water Right to benefit public uses, which includes recreation and scenic attraction.

REACH

LOCATION: From Home Creek at Upper Crossing being in the SE 1/4 NW 1/4 of Section 24, T. 35 South, R. 32 ½ E, WM;
downstream to the intersection of Home Creek and the proposed Steens Mountain Wilderness area boundary being the west quarter section line of the SE 1/4 NE 1/4 of Section 10, T. 35 South, R. 32 E, WM.

PROPOSED

QUANTITY ALLOWED:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

INSTEAD WATER RIGHT APPLICATION (Contd.)

<u>APP#</u>	<u>BASIN</u>	<u>SOURCE</u>	<u>COUNTY & PRIORITY DATE</u>	<u>APPLICANT NAME & ADDRESS</u>
IS- 84563	12	Threemile Cr> Garrison Lk	Harney 10/17/2000	Oregon Park & Recreation Dept c/o Michael Carrier 1115 Commercial St NE, Suite 1 Salem, OR 97301-1002

USE: Instead Water Right to benefit public uses, which includes recreation and scenic attraction

REACH

LOCATION: From the intersection of Threemile Creek with the west section line of Section 21, T. 35 South, R. 32 ½ East, WM;
downstream to the intersection of Threemile Creek with Highway 205, being in the NW 1/4 of the NW 1/4 of Section
25, T. 35 South, R. 32 E, WM.

PROPOSED

QUANTITY ALLOWED:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Oregon Fish and Wildlife Office
2600 S.E. 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179 FAX: (503) 231-6195

RECEIVED

MAY 25 2001

WATER RESOURCES DEPT.
SALEM, OREGON

Reply To: 8330.6492 (01)
OALS Number: 01-2813
File Name: home threemile cr water rights.wpd

May 21, 2001

Paul R. Cleary, Director
Oregon Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97301-4172

Subject: Water Right Application Files: R-84576, **INS-84562**, INS-84563

Dear Mr. Cleary:

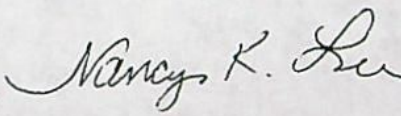
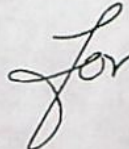
The U.S. Fish and Wildlife Service (Service) is signatory to the Catlow Valley Fishes Conservation Agreement (Conservation Agreement), a multi-entity conservation agreement to conserve rare fish species on the southwestern slope of Steens Mountain. Recently, the Oregon Department of State Parks submitted two instream flow applications, one for Home Creek (INS-84562) and one for Threemile Creek (INS-84563). Roaring Springs Ranch has submitted an application (R-84576) to develop two reservoirs in the Home Creek drainage, and annually release storage into Home Creek for "irrigation, livestock, wildlife, fish life, recreation, and stream flow augmentation". Home Creek and Threemile Creek are two of the three streams identified in the Conservation Agreement, and are central to the ongoing conservation benefits derived from the Conservation Agreement.

The Service believes that two of these water right applications partially conflict with the purpose of the Conservation Agreement, which is to balance the economic and environmental needs on the Catlow Valley streams. The Conservation Agreement specifically states (page 1): "Because the land ownership of the Catlow Valley stream drainages is a mix of private and public, the purpose of this agreement is to improve and enhance the habitat of the Catlow redband trout and the Catlow tui chub while maintaining a viable ranch grazing program for the Roaring Springs Ranch and multiple-use resource management for the BLM". We provide a brief summary of our concerns, and recommendations for resolving these conflicts. One application (INS-84562) appears to support balanced economic and environmental interests, therefore the Service has no comment.

1. State Parks Application INS-84563 extends along Threemile Creek to State Highway 205, which is below Roaring Springs Ranch's Threemile Creek diversion feature. By relocating the downstream end of application INS-84563, from Highway 205 upstream approximately 1/4 mile to the Home Creek Wilderness boundary, the instream flow benefits to Catlow Valley fishes and Roaring Springs Ranch economic benefits would be successfully balanced. We recommend that any final order identify the Home Creek Wilderness boundary as the downstream end of the instream water right.
2. Roaring Springs Ranch Application R-84576 would create one on-stream reservoir and enlarge one existing off-stream reservoir in the headwaters of Home Creek. The Service believes the on-stream reservoir (termed Smith Flat Reservoir in the application) would have significant, negative environmental consequences. These consequences include changes in Home Creek hydrology, channel structure, water quality, plant and insect life, and, ultimately, in the fish population. Impacts of reservoir construction on terrestrial wildlife species is also a Service concern. The off-channel enlarged reservoir (V Lake Reservoir), while still of concern to the Service, would have less detrimental impacts to Home Creek. In summary, the Service does not support the portion of R-84576 that proposes on-channel storage of water (Smith Flat Reservoir). The Service believes, with proper management features in place (fish screening, maintenance agreement, diversion and release agreements) the off-channel reservoir poses less serious threats to the aquatic resources of Home Creek. We further believe that the Conservation Agreement would offer a potential mechanism for developing these management features and agreements.

The Service hopes these comments will be beneficial in Oregon Water Resources Department's review and final decisions on these three water right applications. If you have any questions, please contact Doug Young, Fish and Wildlife Biologist (503-231-6179).

Sincerely,


 Kemper M. McMaster
State Supervisor

CC: S. Davies, Roaring Springs Ranch (Frenchglen, OR)
Oregon Department of State Parks (Salem, OR)
W. Bowers, Oregon Department of Fish and Wildlife (Hines, OR)
D. Blackstun, U.S. Bureau of Land Management (Hines, OR)

JOHN A. KITZHABER, M.D.
GOVERNOR



September 29, 2000

Mike Carrier
Department of Parks and Recreation
1115 Commercial Street NE
Salem, OR 97301-1002

Dear Mike:

The Steens Mountain Cooperative Management and Protection Act of 2000 (H.R. 4828) is currently before the United States Congress. If H.R. 4828 becomes law, a portion of the drainage area of Home Creek and Threemile Creek in Harney County will be designated a federal wilderness area. This area will be known as the Steens Mountain Wilderness Area. The United States Bureau of Land Management, in its proposal to the Secretary of the Interior to seek designation of this area as wilderness, identified a number of recreation and scenic attraction values to be protected by wilderness designation.

I believe the State of Oregon has a public interest obligation to assist in the protection of the federal wilderness areas identified in H.R. 4828, and should investigate what actions it can take to facilitate protection of wilderness values. A number of these values are related to protection of in-stream flows in Home and Threemile Creeks where these creeks traverse the proposed Wilderness Area. As such, I ask that you undertake an investigation of what actions are available to your Department under Oregon law that would assist in the protection of this wilderness area. In particular I request your Department apply for in-stream water rights pursuant to ORS 537.336(3) to protect public uses relating to recreation and scenic attractions. In-stream water rights protecting flows on the reaches of Home and Threemile Creeks within the Steens Mountain Wilderness Area could be a significant step in the long-term protection of the recreational and scenic attraction values which form the basis of the federal wilderness designation.

I am certain the scientific evaluations which were completed by the Department of the Interior will provide a substantial portion of the documentation you will need to determine the quantity of water necessary to support the public uses which must be identified in your Department's application for an in-stream water right under state law. I will ask the Department of the Interior to make their technical information available to you as soon as possible. I will also ask the Oregon Department of Water Resources to work closely and expeditiously with your Department in this regard.

Thank you for your interest and assistance.

Sincerely,

John A. Kitzhaber, M.D.

JK/NR/sm

cc: Secretary Bruce Babbitt
Paul Cleary

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MAY 15 2001

WATER RESOURCES DEPT.
SALEM, OREGON



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Memorandum

To: Lenna Aoki, Director, Office of Legislative Affairs

From: Bob Anderson, Counselor to the Secretary *BA*

Re: Steens Mountain Water Rights Issues

Date: September 28, 2000

You asked me to review the water rights protections that have been proposed as part of the Steens Mountain Wilderness legislation. Based on my discussions with the BLM and the Solicitor, I am satisfied that instream values in the proposed wilderness areas are adequately secured. In most cases there are overlapping sources of legal protection to ensure that water remains in the rivers and creeks in the proposed wilderness areas. A brief summary follows.

1. Donner und Blitzen Drainage.

A majority of the proposed wilderness is located high on the mountain and includes the headwaters of the Donner und Blitzen River and its tributaries. First, these rivers would be protected from diversions due their inclusion as wilderness. We have successfully claimed and litigated water rights for wilderness areas in other circumstances. See, *In re SRBA, Case No. 39576 - Wilderness Reserved Claims*, 1999 WL 778325 (Idaho 1999) (rehearing pending). The Idaho wilderness involved the water rights disclaimer from the Wilderness Act that is proposed to be part of the Steens legislation. Second, the Donner und Blitzen, portions of Mud Creek, Ankle Creek, and the S. Fork of Ankle Creek would be designated as Wild and Scenic Rivers. Designation as a wild and scenic river carries with it a reservation of water rights sufficient to fulfill the purposes of such designation. See Coggins, Wilkinson and Leschy, *Federal Public Lands and Resources Law* 393-395 (3d ed. 1993). This has been Executive Branch policy for the past 21 years. Third, these rivers drain into the Malheur National Wildlife Refuge and as such are subject to a reserved water right with a 1908 priority date to protect the purposes of the Refuge. In addition, the U.S. Fish and Wildlife Service is in the process of confirming substantial water to the Refuge pursuant to Oregon law. Finally, we are the principal landowner surrounding these river systems. As such we have the ability and legal obligation to control access to the rivers to ensure that diversions from non-wilderness BLM lands do not impair downstream wilderness values.

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WATER RESOURCES DEPT.
SALEM, OREGON

2. Creeks and Rivers Flowing Into Alvord Lake and Desert.

All of these creeks have their headwaters within wilderness boundaries. As such they are protected by virtue of the wilderness claim to reserved water. As with the Donner and Blitzen drainage, the Alvord area creeks are already protected by the fact the government as property owner can deny access to those who would divert water for out of stream uses. In fact, the BLM would have a legal obligation to ensure that diversions from its non-wilderness lands did not impair downstream wilderness values. In addition, Wildhorse Creek and Little Wildhorse Creek are designated as wild and scenic rivers and thus have a federal reserved right to fulfill those purposes.

3. Home Creek.

The western portion of wilderness contains Home Creek, Dry Creek and Threemile Creek. Implied federal reserved rights to protect the wilderness values would provide protection against upstream diversions. As noted above, we have successfully claimed and litigated water rights for wilderness areas in other circumstances. See, *In re SRBA, Case No. 39576 - Wilderness Reserved Claims*, 1999 WL 778325 (Idaho 1999) (rehearing pending). The Idaho wilderness involved the water rights disclaimer from the Wilderness Act that is proposed to be part of the Steens legislation. Also, the federal government is the principal property owner adjacent to the Creeks and thus the BLM would have an obligation to preclude upstream diversions by limiting access to those who would divert water. Put another way, the BLM would be obliged to exercise all of its authority to ensure that it did not permit activities that could impair downstream wilderness values. Moreover, Dry Creek and Threemile Creek are not perennial streams above the wilderness area and thus have little practical value as sources for diversion.

END

2

TOTAL P.03

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MAY 15 2001

WATER RESOURCES DEPT.
SALEM, OREGON

TOTAL P.02

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **45081**

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

INVOICE # _____

RECEIVED FROM: Stephanie Parent
BY: John Dossett

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # ☒ 94-7038 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 10.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY)

\$

OTHER: (IDENTIFY)

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

\$

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY)

\$

WATER RIGHTS:

EXAM FEE

RECORD FEE

0201 SURFACE WATER

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$

0206

\$

WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY)

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FWWRD)

\$

0231 HYDRO LICENSE FEE (FWWRD)

\$

HRDRO APPLICATION

\$

RECEIPT # **45081**

DATED 05/15/01 BY C. Vance

PACIFIC ENVIRONMENTAL ADVOCACY CENTER

10015 S.W. Terwilliger Boulevard

Portland, Oregon 97219

phone: 503-768-6736 fax: 503-768-6642

May 14, 2001

Water Rights Section
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172
FAX: (503) 378-2496

Re: Pending Instream Water Right Applications for Home and Threemile Creeks, Malheur Lake Basin IS 84562 and 84563, Oregon Parks and Recreation Department

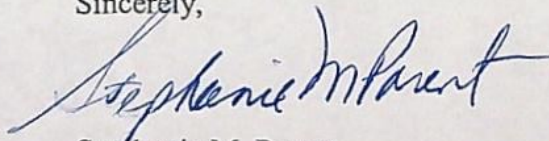
To Whom It May Concern:

I submit this public comment on behalf of the Oregon Natural Desert Association (ONDA). ONDA urges the Department approve and issue instream water rights for Home and Threemile Creek in the public interest. Protection of instream flows will preserve the scenic and recreational values of these creeks as they flow through the Wilderness Area designated in the Steens Mountain Cooperative Management and Protection Act of 2000. In addition, these instream flows will benefit redband trout, a state sensitive species. Finally, instream flows will contribute to protection of water quality that is already impaired for temperature.

Please, send a copy of any Proposed Final Order and Final Order for IS 84562 and IS 84563 as soon as they are issued. Enclosed is a check for \$20 (\$10 per application) as required under ORS 536.050(1)(p).

Thank you for your careful attention to this matter. I look forward to receiving the proposed final orders. Should you have any questions that I may address, please, do not hesitate to call me at the number above.

Sincerely,



Stephanie M. Parent

enclosure

cc: Bill Marlett

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MAY 15 2001

WATER RESOURCES DEPT
SALEM, OREGON

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **45053**

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

INVOICE # _____

RECEIVED FROM: Karen A. Russell

BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 24-201 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 20.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

\$

PUBLICATIONS / MAPS

\$

OTHER: (IDENTIFY) _____

\$

OTHER: (IDENTIFY) _____

\$

REDUCTION OF EXPENSE

CASH ACCT.

\$

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

66111

MISCELLANEOUS

\$

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY) _____

\$

(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

\$

WATER RIGHTS:

0201 SURFACE WATER

\$

0203 GROUND WATER

\$

0205 TRANSFER

\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

\$

LANDOWNER'S PERMIT

\$

OTHER (IDENTIFY) _____

EXAM FEE	
\$	0202
\$	0204
\$	0206
EXAM FEE	
\$	0219
	0220

RECORD FEE	
\$	
\$	
\$	
\$	
LICENSE FEE	
\$	
\$	

P.F.O.
IS-84562
84563

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

0210 MONITORING WELLS

\$

OTHER (IDENTIFY) _____

CARD #

CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

\$

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FWWRD)

\$

0231 HYDRO LICENSE FEE (FWWRD)

\$

HYDRO APPLICATION

\$

RECEIPT # **45053**

DATED

05/14/01

BY

C. Vance

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

ISF 4562

By fax and regular mail.

May 10, 2001

Dwight French
Water Resources Department
158 12th Street NE
Salem, OR 97310

Re: Pending Instream Water Right Applications for Home and Threemile
Creeks, Malheur Lake Basin
IS 84562 and 84563, Oregon Parks and Recreation Department

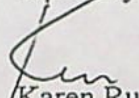
Dear Dwight,

WaterWatch strongly supports the issuance of instream water rights for Home and Threemile Creek. Protection of instream flows in Threemile Creek and Home Creek is necessary to preserve the scenic and recreational values of these creeks as they flow through the Wilderness Area designated in the Steens Mountain Cooperative Management and Protection Act of 2000. These instream flow requests also provide critical habitat for redband trout, a state-sensitive species that has been petitioned for listing as endangered under the federal Endangered Species Act. In addition, protection of instream flows is necessary ensure protection of the quality of the water flowing through these creeks.

We request a copy of any Proposed Final Order and Final Order for IS 84562 and IS 84563 as soon as they are issued. A copy of this letter is being sent by mail with a check for \$20 (\$10 per application) as required under ORS 536.050(1)(p).

Please call if you have any questions about this request.

Sincerely,



Karen Russell
Senior Staff Attorney

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MAY 14 2001

WATER RESOURCES DEPT
SALEM, OREGON

WATERMASTER DIVISION 33 APPLICATION WORK SHEETRecommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species,
OAR 690-33-310 through 340.Date: 4/10/01 21 day Deadline Date: ASAP Application # 15-84562/13-84563
Applicant's Name: OREGON PARKS & RECREATION DEPARTMENTSOURCE OF WATER: ☐ GROUNDWATER ☒ SURFACE WATER ☐ STORAGEDESCRIPTION OF THE SOURCE: HOME CREEK
(A spring, well, sump, exempt pond, unnamed stream, etc.)**RECEIVED**

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SALEM, OREGON

1) If from surface water, does the water at the proposed diversion location flow into another water body?

☐ YES ☒ NO ☐ SOMETIMES

If sometimes, describe the time period, Between: _____ and _____

2) Does the source ever go dry in the area of the proposed diversion?

☐ YES ☒ NO

3) To your knowledge, has the requested source of water been regulated because of insufficient flow to satisfy existing water rights including instream water rights?

☐ YES ☒ NO

If YES, please explain: _____

4) Is there sufficient flow at the proposed point of diversion to satisfy all existing water rights and provide the quantity of water requested under this application?

☒ YES ☐ NO

5) Did you meet with staff from another agency to discuss this application?

☐ YES ☒ NO

Who: _____ Agency: _____ Date: _____

6) Is mitigation an option?

☐ YES ☒ NO

If YES, please explain: _____

Comments: _____

Name: _____ Date: _____ Title: _____

WRD Contact: Kerry Lefever, Acting Interagency Coordinator, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: Kerry.A.LEFEVER@wrdr.state.us

Revised: 02/23/01

DEQ DIVISION 33 APPLICATION REVIEW SHEET

Nichols

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 1/26/01 21 day Deadline Date: 2/23/01 Application # 15-84562/15-84563

Applicant's Name: OREGON PARKS & REC DEPT

1) Does the proposed use comply with state and federal water quality standards?

NO ☒ YES

If NO, how?

1) If the answer to question (1) is YES, will the proposed use still result in a diminution of water quality for the habitat of sensitive, threatened or endangered species?

☒ NO / YES

If YES, how?

2) Can conditions be applied to mitigate the impact of the use?

NO / YES

Which conditions are recommended?

No need

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts, would the proposed use harm the species? NO / YES

If YES, please explain:

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DEQ RECOMMENDATION:

☐ Approval with conditions.

☒ Approval without conditions.

☐ Denial.

Mail to:

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JAN 30 2001

Eastern Region - Bend

DEQ Representative: Name:

Nichols

Date:

2-13-01

WRD Contact:

Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division

1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wrdr.state.us

Revised: 01/19/01



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130

January 19, 2001

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OREGON PARKS AND RECREATION DEPARTMENT
c/o MICHAEL CARRIER
1115 COMMERCIAL STREET NE, SUITE 1
SALEM, OREGON 97301-1002

Eastern Region - Bend

Reference: Instream water rights in the Malheur Lake Basin,
Application Files 84562 and 84563

Dear Oregon Parks and Recreation Department:

This document, called an "Initial Review", is to inform you of the potential limitations to your proposed instream water right and to describe some of your options. Based on the information you have supplied, the Water Resources Department has made several determinations:

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under OAR 512, the Malheur Lake Basin Program;

1. **Application File #84562**

The priority date for this instream water right application is October 17, 2000.

HOME CREEK, tributary to GARRISON LAKE

From HOME CREEK at UPPER CROSSING being in the SE¼ NW¼ of SECTION 24, T. 35 S, R. 32 ½ E, WM; downstream to the intersection of HOME CREEK and the PROPOSED STEENS MOUNTAIN WILDERNESS AREA BOUNDARY being the west quarter section line of the SE¼ NE¼ of SECTION 10, T. 35 S, R. 32 E, WM.

a. **The amount of water requested for instream use:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

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SALEM, OREGON



- b. The amount of water available, in the appropriate reach, at a 50 % exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.05	17.4	35.6	53.2	31.1	8.39	3.58	3.03	3.15	2.83	2.91

- c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. Application File #84563

The priority date for this instream water right application is October 17, 2000.

THREEMILE CREEK, tributary to GARRISON LAKE

From the intersection of THREEMILE CREEK with the west section line of Section 21, T. 35 S, R. 32 ½ E, WM; downstream to the intersection of THREEMILE CREEK with Highway 205, being in the NW¼ of the NW¼ of Section 25, T. 35 S, R. 32 E, WM.

- a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5.0	6.0	8.0	12.0	12.0	7.0	5.0	4.0	4.0	4.0	4.0	5.0

- b. The amount of water available, in the appropriate reach, at a %50 exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.33	4.25	4.29	4.40	4.62

- c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

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

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

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Page 2

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SALEM, OREGON

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **March 2, 2001**. For your convenience you may use the enclosed "STOP PROCESSING" form.

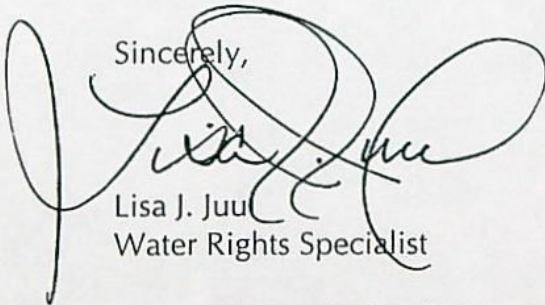
To Proceed With Your Application:

If you choose to proceed with the applications, you do not have to notify the Department. Your applications will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period, the Department will complete a public interest review and issue a proposed final order.

If you have any questions:

If you have any questions concerning your applications for instream water rights, please feel free to contact Jake Szramek at (503) 378-8455, extension 274, or toll free in Oregon at 1-800-624-3199, extension 274. Please remember to have your application number(s) available if you decide to call.

Sincerely,



Lisa J. Juu
Water Rights Specialist

cc: Eastern Regional Manager, Watermaster District #10, Water Availability Section

enclosures: Stop Processing Form
Flow Chart Water Rights Process

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Page 3

WATER RESOURCES DEPT.
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Water Quality Monitoring Sites

To Frenchglen

Steens Mountain Backcountry Byway

To
South Steens
Campground

205

Home
Creek
Mouth

Home Creek At
Home Creek
Butte

Home Creek Sites
Mouth T35S R32E Sec 10 SENE
Butte T35S R32.5E Sec 7 NESE
Crossing T35S R32.5E Sec 24 NWNW

Threemile Creek Sites
Mouth T35S R32E Sec 25 NWNW
Above Canyon T35S R32.5E Sec 20 NESE

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WATER RESOURCES DEPT.
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● Water Quality Monitoring Sites

Major Streams

Proposed Wilderness Areas

Major Roads

Application No. 84562
Permit No.

To Fields

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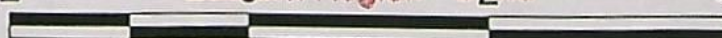
Eastern Region - B2nd

4 Miles

No warranty made by the BLM
for use of the data for purposes
not intended by the BLM.
Kelly Hazen, Burns BLM GIS
October 4, 2000 waterqual.apr



2



NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann		
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00	
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00	
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00	
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00	
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00	
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00	
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00	
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00	
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00	
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00	
Area	32.27				.00			.00			
Relief	1110.00				.00			.00			
Slope	2.75				.00			.00			
Elevation	5730.00				.00			.00			
MAP	23.40				.00			.00			
Jan Min T	13.00				.00			.00			
Jul Min T	42.10				.00			.00			
Yield	9.59				.00			.00			

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802			Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann		
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00	.00
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00	.00
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00	.00
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00	.00
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00	.00
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00	.00
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00	.00
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00	.00
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00	.00
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00	.00
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00	.00
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00	.00
Area	36.66				.00			.00			
Relief	2870.00				.00			.00			
Slope	6.67				.00			.00			
Elevation	6430.00				.00			.00			
MAP	26.80				.00			.00			
Jan Min T	12.40				.00			.00			
Jul Min T	41.10				.00			.00			
Yield	19.80				.00			.00			

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SALEM, OREGON

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Eastern Region - Bend

Stream: THREEMILE CR @ mouth

WAB ID #: 31200803

WABS ABOVE: 0

MO	WAB ID # 31200803	Flow	CSM	% Ann	Sum Upstream WABs	Flow	CSM	% Ann	Flow	Difference	Difference
										CSM	With 50% Flow
1		4.85	.54	6.5	.00	.00	.0		.00	.00	.00
2		5.66	.63	7.6	.00	.00	.0		.00	.00	.00
3		7.89	.88	10.5	.00	.00	.0		.00	.00	.00
4		11.50	1.28	15.4	.00	.00	.0		.00	.00	.00
5		11.40	1.27	15.2	.00	.00	.0		.00	.00	.00
6		6.89	.77	9.2	.00	.00	.0		.00	.00	.00
7		4.74	.53	6.3	.00	.00	.0		.00	.00	.00
8		4.33	.48	5.8	.00	.00	.0		.00	.00	.00
9		4.25	.47	5.7	.00	.00	.0		.00	.00	.00
10		4.29	.48	5.7	.00	.00	.0		.00	.00	.00
11		4.40	.49	5.9	.00	.00	.0		.00	.00	.00
12		4.62	.52	6.2	.00	.00	.0		.00	.00	.00
Area		8.96			.00				.00		
Relief		1600.00			.00				.00		
Slope		8.59			.00				.00		
Elevation		6170.00			.00				.00		
MAP		23.90			.00				.00		
Jan Min T		12.50			.00				.00		
Jul Min T		41.60			.00				.00		
Yield		39.50			.00				.00		

Stream: SIXMILE CR @ mouth

WAB ID #: 31200804

WABS ABOVE: 0

MO	WAB ID # 31200804	Flow	CSM	% Ann	Sum Upstream WABs	Flow	CSM	% Ann	Flow	Difference	Difference
										CSM	With 50% Flow
1		.57	.15	3.9	.00	.00	.0		.00	.00	.00
2		1.00	.26	6.9	.00	.00	.0		.00	.00	.00
3		1.96	.51	13.5	.00	.00	.0		.00	.00	.00
4		3.27	.86	22.5	.00	.00	.0		.00	.00	.00
5		4.10	1.07	28.2	.00	.00	.0		.00	.00	.00
6		1.87	.49	12.9	.00	.00	.0		.00	.00	.00
7		.49	.13	3.4	.00	.00	.0		.00	.00	.00
8		.20	.05	1.4	.00	.00	.0		.00	.00	.00
9		.17	.04	1.2	.00	.00	.0		.00	.00	.00
10		.18	.05	1.2	.00	.00	.0		.00	.00	.00
11		.30	.08	2.1	.00	.00	.0		.00	.00	.00
12		.42	.11	2.9	.00	.00	.0		.00	.00	.00
Area		3.82			.00				.00		
Relief		1840.00			.00				.00		
Slope		12.30			.00				.00		
Elevation		6000.00			.00				.00		
MAP		24.70			.00				.00		
Jan Min T		13.40			.00				.00		
Jul Min T		42.50			.00				.00		
Yield		17.43			.00				.00		

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SALEM, OREGON

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JAN 30 2001

Eastern Region - Bend

Eastern Region - Behind

WATER RESOURCES DE
SALEM, OREGON

From: Steve Brutscher
To: Roger S Wood ; Russell Harding; Steve Brutscher; Thomas N Rosetta
Date: 10/11/00 4:34PM
Subject: Instream Water Rights

As per WRD and OPRD rules for filing instream water rights applications, I am advising you of OPRD's intent to file instream water right applications on Home Creek and Threemile Creek in the Malheur Lake Basin in Harney County. We are making this filing at the direction of the Governor's Office. We expect to submit the application early the week of October 16.

Home Creek and Threemile Creek are small streams draining the southwest flank of Steens Mountain and cutting through the Catlow Rim to the Catlow Valley. Both streams head on private land but flow through BLM land for portions of their lengths. The directive from the Governor's Office regarding these streams is part of the strategy involved in the effort to designate Steens Mountain as a Wilderness Area.

We are making this filing for recreation and scenic attraction flows. We are using, for the most part, calculated flow data supplied to us by WRD. If you have an interest in being a co-applicant on either or both of these applications let me know right away. Thanks.

Steven C. Brutscher
Policy and Planning Division
Oregon Parks and Recreation Department
1115 Commercial St. NE, Suite 1
Salem, OR 97301-1002
(503) 378-4168 ext. 235
Fax: (503) 378-6447

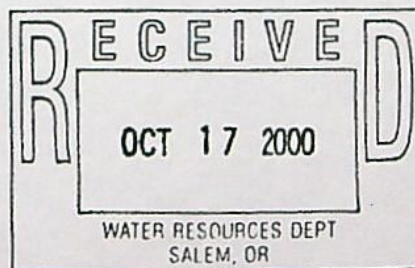
CC: Tammy Baumann

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WATER RESOURCES DEPT.
SALEM, OREGON

Application No. 84562
Permit No.



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JAN 30 2001

Eastern Region - Bend

84563



From: Steve Brutscher
To: Roger S Wood ; Russell Harding; Steve Brutscher; Thomas N Rosetta
Date: 10/11/00 4:34PM
Subject: Instream Water Rights

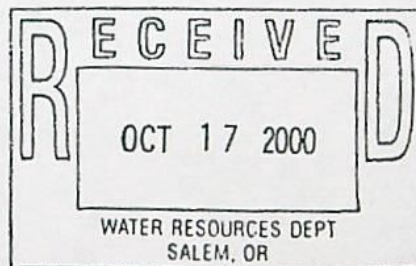
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Steven C. Brutscher
Policy and Planning Division
Oregon Parks and Recreation Department
1115 Commercial St. NE, Suite 1
Salem, OR 97301-1002
(503) 378-4168 ext. 235
Fax: (503) 378-6447

CC: Tammy Baumann



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FEB 16 2001

WATER RESOURCES DEPT.
SALEM, OREGON

Application No. 84563
Permit No.

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Eastern Region - Bend

ENTER OREGON
WALL HERRING JEN

LET 12

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Gillaspie
Roberts

Dave Smith → 598-5579
Schaefer 6121



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130

January 19, 2001

OREGON PARKS AND RECREATION DEPARTMENT
c/o MICHAEL CARRIER
1115 COMMERCIAL STREET NE, SUITE 1
SALEM, OREGON 97301-1002

Reference: Instream water rights in the Malheur Lake Basin,
Application Files 84562 and 84563

Dear Oregon Parks and Recreation Department:

This document, called an "Initial Review", is to inform you of the potential limitations to your proposed instream water right and to describe some of your options. Based on the information you have supplied, the Water Resources Department has made several determinations:

The referenced applications are complete and not defective.

The proposed use is not prohibited by law;

The instream use is allowed under OAR 512, the Malheur Lake Basin Program;

1. Application File #84562

The priority date for this instream water right application is October 17, 2000.

HOME CREEK, tributary to GARRISON LAKE

From HOME CREEK at UPPER CROSSING being in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of SECTION 24, T. 35 S, R. 32 $\frac{1}{2}$ E, WM; downstream to the intersection of HOME CREEK and the PROPOSED STEENS MOUNTAIN WILDERNESS AREA BOUNDARY being the west quarter section line of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of SECTION 10, T. 35 S, R. 32 E, WM.

a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.0	7.0	17.0	36.0	53.0	31.0	8.0	4.0	4.0	4.0	3.0	3.0

- b. The amount of water available, in the appropriate reach, at a 50 % exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.05	17.4	35.6	53.2	31.1	8.39	3.58	3.03	3.15	2.83	2.91

- c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

2. Application File #84563

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From the intersection of THREEMILE CREEK with the west section line of Section 21, T. 35 S, R. 32 ½ E, WM; downstream to the intersection of THREEMILE CREEK with Highway 205, being in the NW¼ of the NW¼ of Section 25, T. 35 S, R. 32 E, WM.

- a. The amount of water requested for instream use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
5.0	6.0	8.0	12.0	12.0	7.0	5.0	4.0	4.0	4.0	4.0	5.0

- b. The amount of water available, in the appropriate reach, at a %50 exceedence level:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.33	4.25	4.29	4.40	4.62

- X c. Allowable water use:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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NOTE: Exceptions to the instream water right flows are likely to appear on the certificate if one is issued. The Department is working on the exact wording of the conditions. The conditions are likely to allow some amount of additional appropriations for human and livestock consumption.

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

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

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this you must notify the Department in writing by **March 2, 2001**. For your convenience you may use the enclosed "STOP PROCESSING" form.

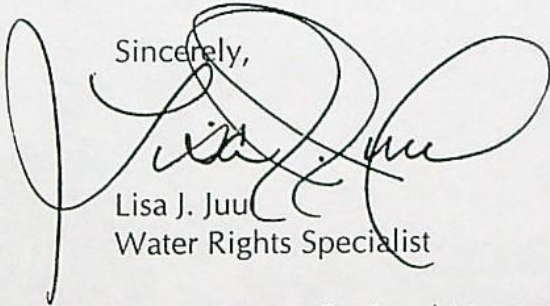
To Proceed With Your Application:

If you choose to proceed with the applications, you do not have to notify the Department. Your applications will automatically be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period, the Department will complete a public interest review and issue a proposed final order.

If you have any questions:

If you have any questions concerning your applications for instream water rights, please feel free to contact Jake Szramek at (503) 378-8455, extension 274, or toll free in Oregon at 1-800-624-3199, extension 274. Please remember to have your application number(s) available if you decide to call.

Sincerely,



Lisa J. Juu
Water Rights Specialist

cc: Eastern Regional Manager, Watermaster District #10, Water Availability Section

enclosures: Stop Processing Form
Flow Chart Water Rights Process

Water Quality Monitoring Sites

To Frenchglen

Steens Mountain Backcountry Byway

To
South Steens
Campground

205

Home
Creek
Mouth

Home Creek At
Home Creek
Butte

Home Creek Sites
Mouth T35S R32E Sec 10 SENE
Butte T35S R32.5E Sec 7 NESE
Crossing T35S R32.5E Sec 24 NWNW

Threemile Creek Sites
Mouth T35S R32E Sec 25 NWNW
Above Canyon T35S R32.5E Sec 20 NESE

Home Creek
Upper
Crossing

Threemile
Creek
Mouth

Threemile
Creek
Above Canyon

To Fields

● Water Quality Monitoring Sites

Major Streams

Proposed Wilderness Areas

Major Roads

Application No. 84562
Permit No.

2 0 2 4 Miles

No warranty made by the BLM
for use of the data for purposes
not intended by the BLM.
Kelly Hazen, Burns BLM GIS
October 4, 2000 waterqual.apr



NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00

Area	32.27	.00	.00
Relief	1110.00	.00	.00
Slope	2.75	.00	.00
Elevation	5730.00	.00	.00
MAP	23.40	.00	.00
Jan Min T	13.00	.00	.00
Jul Min T	42.10	.00	.00
Yield	9.59	.00	.00

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00

Area	36.66	.00	.00
Relief	2870.00	.00	.00
Slope	6.67	.00	.00
Elevation	6430.00	.00	.00
MAP	26.80	.00	.00
Jan Min T	12.40	.00	.00
Jul Min T	41.10	.00	.00
Yield	19.80	.00	.00

2-84576

Stream: THREEMILE CR @ mouth

WAB ID #: 31200803

WABS ABOVE: 0

MO	WAB ID # 31200803			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	4.85	.54	6.5	.00	.00	.0	.00	.00	.0	.00
2	5.66	.63	7.6	.00	.00	.0	.00	.00	.0	.00
3	7.89	.88	10.5	.00	.00	.0	.00	.00	.0	.00
4	11.50	1.28	15.4	.00	.00	.0	.00	.00	.0	.00
5	11.40	1.27	15.2	.00	.00	.0	.00	.00	.0	.00
6	6.89	.77	9.2	.00	.00	.0	.00	.00	.0	.00
7	4.74	.53	6.3	.00	.00	.0	.00	.00	.0	.00
8	4.33	.48	5.8	.00	.00	.0	.00	.00	.0	.00
9	4.25	.47	5.7	.00	.00	.0	.00	.00	.0	.00
10	4.29	.48	5.7	.00	.00	.0	.00	.00	.0	.00
11	4.40	.49	5.9	.00	.00	.0	.00	.00	.0	.00
12	4.62	.52	6.2	.00	.00	.0	.00	.00	.0	.00
Area	8.96				.00			.00		
Relief	1600.00				.00			.00		
Slope	8.59				.00			.00		
Elevation	6170.00				.00			.00		
MAP	23.90				.00			.00		
Jan Min T	12.50				.00			.00		
Jul Min T	41.60				.00			.00		
Yield	39.50				.00			.00		

Stream: SIXMILE CR @ mouth

WAB ID #: 31200804

WABS ABOVE: 0

MO	WAB ID # 31200804			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	.57	.15	3.9	.00	.00	.0	.00	.00	.0	.00
2	1.00	.26	6.9	.00	.00	.0	.00	.00	.0	.00
3	1.96	.51	13.5	.00	.00	.0	.00	.00	.0	.00
4	3.27	.86	22.5	.00	.00	.0	.00	.00	.0	.00
5	4.10	1.07	28.2	.00	.00	.0	.00	.00	.0	.00
6	1.87	.49	12.9	.00	.00	.0	.00	.00	.0	.00
7	.49	.13	3.4	.00	.00	.0	.00	.00	.0	.00
8	.20	.05	1.4	.00	.00	.0	.00	.00	.0	.00
9	.17	.04	1.2	.00	.00	.0	.00	.00	.0	.00
10	.18	.05	1.2	.00	.00	.0	.00	.00	.0	.00
11	.30	.08	2.1	.00	.00	.0	.00	.00	.0	.00
12	.42	.11	2.9	.00	.00	.0	.00	.00	.0	.00
Area	3.82				.00			.00		
Relief	1840.00				.00			.00		
Slope	12.30				.00			.00		
Elevation	6000.00				.00			.00		
MAP	24.70				.00			.00		
Jan Min T	13.40				.00			.00		
Jul Min T	42.50				.00			.00		
Yield	17.43				.00			.00		

ODFW DIVISION 33 APPLICATION REVIEW SHEET *W. Bowers*

Recommendations for Water Right Applications that may affect the Habitat of Sensitive, Threatened or Endangered Fish Species, OAR 690-33-310 through 340.

Date: 1/26/01 21 day Deadline Date: 2/23/01 Application # 15-84562/15-84563

Applicant's Name: OREGON PARKS & REC DEPT

1) Will the proposed use occur in an area that may affect the essential habitat of sensitive, threatened, or endangered fish species? [690-33-330(1)]

NO ☒ YES Species: Redband Trout Status: ☒ Sensitive, Threatened, Endangered
Catlow River Club

IF ANSWER TO QUESTION (1) IS YES, CONTINUE ON THIS PAGE TO QUESTION (2),

IF ANSWER IS NO, FILL OUT PUBLIC INTEREST REVIEW SHEET (PAGE 2)

What stage or value is at risk (circle all that apply): Spawning, Incubation, Rearing, Passage, Habitat Value

2) Will the proposed use result in a LOSS in the essential habitat of THREATENED OR ENDANGERED SPECIES or a NET LOSS in the habitat of a SENSITIVE SPECIES?

☒ NO / YES

A) Standard of NET LOSS applies to sensitive species statewide. [690-33-330(2)(a)]

B) Standard of LOSS applies to T or E species outside the Columbia Basin. [690-33-330(2)(b)]

3) Can conditions be applied to mitigate the impact to the essential habitat of a S, T or E species?

NO / YES [690-33-330(3)]

Which conditions are recommended? _____

(Try to select conditions from the Menu of Conditions)

4) If conditions cannot be identified to offset impacts to the essential habitat of S, T or E species, would the proposed use harm the species?

NO / YES [690-33-330(4)]

If YES, please explain: _____

ODFW RECOMMENDATION:

_____ Approval with fishery conditions.

☒ Approval without fishery conditions.

_____ Denial.

ODFW Representative: Name: Wayne Bowers Date: 2-6-01

WRD Contact: Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wrdd.state.or.us

RECEIVED

PUBLIC INTEREST REVIEW SHEET FOR USE BY ODFW

Page 2

WATER RESOURCES DEPT.
SALEM, OREGON

Application # _____ Applicant's Name: _____

- 1) Will the proposed use occur in an area that may affect the habitat of fish or wildlife species?

NO ☒ YES

Species: Resident Trout, Cutthroat Trout

Other: _____

What stage or value is at risk (circle all that apply): Spawning, Incubation, Rearing, Passage, Habitat Value

- 2) Will the proposed use result in a loss of habitat? ☒ NO / YES

- 3) Can conditions be applied to mitigate the impact to the loss of habitat? NO / YES

Which conditions are recommended? _____

(Try to select conditions from the Menu of Conditions)

- 4) If conditions cannot be identified to offset impacts to the habitat, would the proposed use harm the species?

NO / YES

If YES, please explain: _____

ODFW RECOMMENDATION:

_____ Approval with conditions.

☒ Approval without conditions.

_____ Denial.

ODFW Representative: Name: Wayne Bowers Date: 2-10-01

WRD Contact: Brendalee S. Wilson, Interagency Coordinator/Policy Analyst, Water Rights Division
1-800-624-3199 ext: 276 / Fax: 503-378-6203 / e-mail: brendalee.s.wilson@wrdd.state.or.us

Mailing List for IR Copies

Instream Water Right Appl's
#IS-84562 - and - #IS-84563

IR Date : January 19, 2001

Original mailed to:

Applicant: OREGON PARKS AND RECREATION DEPARTMENT
c/o MICHAEL CARRIER
1115 COMMERCIAL STREET NE, SUITE 1
SALEM, OREGON 97301-1002

Copies sent to:

- ✓ 1. WRD File #IS-84562
- & -
✓ File #IS-84563

Copies Mailed
By: <u>DG</u>
(SUPPORT STAFF)
on: <u>1/19/01</u>
(DATE)

- ✓ 2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

- ✓ 3. ~~WRD - Regional Manager: Bob Main - SCR~~ "NO" DWF

IR, Map, Water Availability & Fact Sheet... 9 sets of copies... Give to Kerry for mailing

- ✓ 5. WRD - Watermaster # District 12: Lloyd Van Gordan
✓ 4. ODFW Biologist District: #8 Wayne Bowers, Hines
✓ 5. DEQ: Eastern Region - Dick Nichols, Bend
✓ 6. DOA (Salem): Steve Applegate
7. NMFS: Marc Liverman
9. Columbia River Intertribal Fish Commission
10. US Fish & Wildlife
11. NW Power Planning Council

KZ not in
Upper Columbia

ID# LJJ

COPY511.1R



Oregon

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

1115 Commercial St. NE

Salem, OR 97301-1002

(503) 378-6305

FAX (503) 378-6447

www.prd.state.or.us



October 17, 2000

Harney County Planning Department
450 N. Buena Vista
Burns, OR 97720

Dear Sirs,

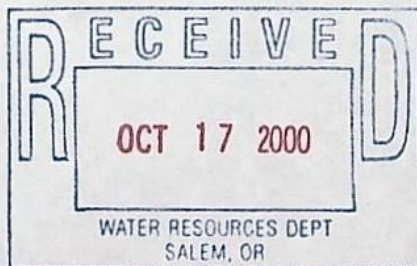
Pursuant to State Water Resources Department administrative rules 690-077-0010 and 690-077-0020 (4)(j), the Oregon Parks and Recreation Department (OPRD) hereby notifies you of OPRD's intent to file instream water right applications on Home Creek and Threemile Creek in Harney County. Home Creek and Threemile Creek are located in Township 35 and 35 ½ South, Ranges 32, 32 ½, and 32 ¾ East, Willamette Meridian, approximately 22 miles south of Frenchglen.

Sincerely,

Steven C. Brutscher

Steven C. Brutscher
Policy and Planning Division

Local Govt. NOI Letter 10_17_2000



Application No. 84562
Permit No.



From: Steve Brutscher
To: Rick KRUGER; Steve Brutscher
Date: 10/11/00 9:05AM
Subject: Instream Water Rights

October 11, 2000

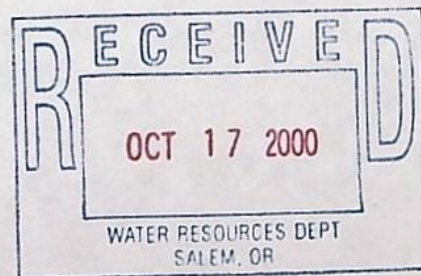
Rick -

The governor's office has directed OPRD to file instream water rights on a couple of small streams in southeastern Oregon; Home Creek and Threemile Creek, draining the southern flank of Steens Mountain through the Catlow Rim. We expect to make this filing in the next four or five working days. If ODFW is interested in joining us in this application we invite you to do so. Please let me know in the next three or four days if ODFW would be interested in doing this.

The intent of our filing is to protect flows for scenic attraction and recreation in those portions of these two streams that flow through the prospective Steens Mountain Wilderness Area, currently the subject of legislation before Congress.

Steven C. Brutscher
Policy and Planning Division
Oregon Parks and Recreation Department
1115 Commercial St. NE, Suite 1
Salem, OR 97301-1002
(503) 378-4168 ext. 235
Fax: (503) 378-6447

CC: Tammy Baumann



Application No. 84562
Permit No.

From: Steve Brutscher
To: Roger S Wood ; Russell Harding; Steve Brutscher; Thomas N Rosetta
Date: 10/11/00 4:34PM
Subject: Instream Water Rights

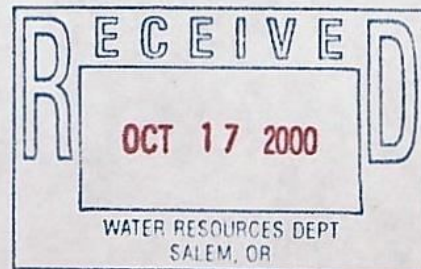
As per WRD and OPRD rules for filing instream water rights applications, I am advising you of OPRD's intent to file instream water right applications on Home Creek and Threemile Creek in the Malheur Lake Basin in Harney County. We are making this filing at the direction of the Governor's Office. We expect to submit the application early the week of October 16.

Home Creek and Threemile Creek are small streams draining the southwest flank of Steens Mountain and cutting through the Catlow Rim to the Catlow Valley. Both streams head on private land but flow through BLM land for portions of their lengths. The directive from the Governor's Office regarding these streams is part of the strategy involved in the effort to designate Steens Mountain as a Wilderness Area.

We are making this filing for recreation and scenic attraction flows. We are using, for the most part, calculated flow data supplied to us by WRD. If you have an interest in being a co-applicant on either or both of these applications let me know right away. Thanks.

Steven C. Brutscher
Policy and Planning Division
Oregon Parks and Recreation Department
1115 Commercial St. NE, Suite 1
Salem, OR 97301-1002
(503) 378-4168 ext. 235
Fax: (503) 378-6447

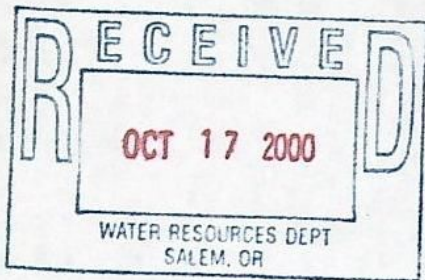
CC: Tammy Baumann



Application No. 84562
Permit No.

IWA Application # 84562

Certificate # _____



STATE OF OREGON

PARKS AND RECREATION DEPARTMENT

Application for an Instream Water Right
by Oregon Parks and Recreation Department

There is no fee required for this application.

Applicant: Michael Carrier for Oregon Parks and Recreation Department
1115 Commercial St. NE, Suite 1, Salem, Oregon 97301-1002

1. The name of the stream of the proposed instream water right is Home Creek, a tributary to Garrison Lake in the Catlow Valley in Malheur Lake Basin.
2. The public uses this instream water right will benefit are recreation and scenic attraction.
3. The amount of water (in cubic feet per second) needed by month for each category of public use is as follows:

Use(s): Recreation and scenic attraction.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	7	17	36	53	31	8	4	4	4	3	3

4. The specified flows are requested to be maintained in the reach of the stream from Upper Crossing in the SE ¼ of the NW ¼ of Section 24, Township 35 South, Range 32 1/2 East, Willamette Meridian, in Harney County . . .

Downstream to the intersection of Home Creek with the proposed Steens Mountain Wilderness Area boundary, being the west quarter section line of the SE ¼ of the NE ¼ of Section 10, Township 35 South, Range 32 East, Willamette Meridian, in Harney County.

5. The method used to determine the requested amounts is as described in OAR 736-060-0015, Recreation Flow Requirement Methodology.
6. When were the following state/affected local government agencies notified of the intent to file for the instream water right?

Department of Fish and Wildlife
Department of Environmental Quality
Oregon Parks and Recreation Department
Harney County Planning Department

Date: October 11, 2000
Date: October 11, 2000
Date: October 11, 2000
Date: October 17, 2000

Application No. 84562
Permit No.

IWA Application # _____

Certificate # _____

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

Establish gaging structures at the road crossing at Upper Crossing and/or at the intersection of Home Creek with Highway 205 south of Frenchglen.

8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures: None.

9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-077-0020 (5) (c)]: None.

10. Remarks: This application intends to protect scenic attraction and recreation flows on that portion of Home Creek that flows through a canyon offering little opportunity for water diversion and which traverses BLM land and cuts through the Catlow Rim on the western margin of Steens Mountain.

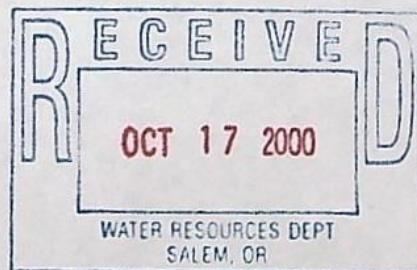
An instream water right may be allowed for an instream beneficial use of water subject to existing water rights with an effective date prior to the filing date of this application.

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

Date: 10/17/00

Signed: *James A. Warner*
Director's Office
Oregon Parks and Recreation Department

Q:\Steens Wilderness Instream Water Right\Home Creek ISW Application 10-11-2000.doc



Application No. 84562
Permit No.

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID #	Flow	CSM	% Ann	Sum Upstream WABs	Flow	CSM	% Ann	Difference	Difference
									CSM	With 50% Flow
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00
Area	32.27			.00			.00			
Relief	1110.00			.00			.00			
Slope	2.75			.00			.00			
Elevation	5730.00			.00			.00			
MAP	23.40			.00			.00			
Jan Min T	13.00			.00			.00			
Jul Min T	42.10			.00			.00			
Yield	9.59			.00			.00			

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID #	Flow	CSM	% Ann	Sum Upstream WABs	Flow	CSM	% Ann	Difference	Difference
									CSM	With 50% Flow
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00
Area	36.66			.00			.00			
Relief	2870.00			.00			.00			
Slope	6.67			.00			.00			
Elevation	6430.00			.00			.00			
MAP	26.80			.00			.00			
Jan Min T	12.40			.00			.00			
Jul Min T	41.10			.00			.00			
Yield	19.80			.00			.00			

Paul JE
Dwight

Kelly HAZEN
(541) 573 4470
ARC EXP. FILE OF
OR SHAPE
.JPG

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00

Area	32.27	.00	.00
Relief	1110.00	.00	.00
Slope	2.75	.00	.00
Elevation	5730.00	.00	.00
MAP	23.40	.00	.00
Jan Min T	13.00	.00	.00
Jul Min T	42.10	.00	.00
Yield	9.59	.00	.00

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802			Sum Upstream WABs			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00

Area	36.66	.00	.00
Relief	2870.00	.00	.00
Slope	6.67	.00	.00
Elevation	6430.00	.00	.00
MAP	26.80	.00	.00
Jan Min T	12.40	.00	.00
Jul Min T	41.10	.00	.00
Yield	19.80	.00	.00

Stream: THREEMILE CR @ mouth

WAB ID #: 31200803

WABS ABOVE: 0

MO	WAB ID # 31200803			Sum Upstream WABs			Flow	Difference		Difference
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	With 50% Flow
1	4.85	.54	6.5	.00	.00	.0	.00	.00	.0	.00
2	5.66	.63	7.6	.00	.00	.0	.00	.00	.0	.00
3	7.89	.88	10.5	.00	.00	.0	.00	.00	.0	.00
4	11.50	1.28	15.4	.00	.00	.0	.00	.00	.0	.00
5	11.40	1.27	15.2	.00	.00	.0	.00	.00	.0	.00
6	6.89	.77	9.2	.00	.00	.0	.00	.00	.0	.00
7	4.74	.53	6.3	.00	.00	.0	.00	.00	.0	.00
8	4.33	.48	5.8	.00	.00	.0	.00	.00	.0	.00
9	4.25	.47	5.7	.00	.00	.0	.00	.00	.0	.00
10	4.29	.48	5.7	.00	.00	.0	.00	.00	.0	.00
11	4.40	.49	5.9	.00	.00	.0	.00	.00	.0	.00
12	4.62	.52	6.2	.00	.00	.0	.00	.00	.0	.00
Area	8.96							.00		
Relief	1600.00							.00		
Slope	8.59							.00		
Elevation	6170.00							.00		
MAP	23.90							.00		
Jan Min T	12.50							.00		
Jul Min T	41.60							.00		
Yield	39.50							.00		

Stream: SIXMILE CR @ mouth

WAB ID #: 31200804

WABS ABOVE: 0

MO	WAB ID # 31200804			Sum Upstream WABS			Flow	Difference		Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann	
1	.57	.15	3.9	.00	.00	.0	.00	.00	.0	.00
2	1.00	.26	6.9	.00	.00	.0	.00	.00	.0	.00
3	1.96	.51	13.5	.00	.00	.0	.00	.00	.0	.00
4	3.27	.86	22.5	.00	.00	.0	.00	.00	.0	.00
5	4.10	1.07	28.2	.00	.00	.0	.00	.00	.0	.00
6	1.87	.49	12.9	.00	.00	.0	.00	.00	.0	.00
7	.49	.13	3.4	.00	.00	.0	.00	.00	.0	.00
8	.20	.05	1.4	.00	.00	.0	.00	.00	.0	.00
9	.17	.04	1.2	.00	.00	.0	.00	.00	.0	.00
10	.18	.05	1.2	.00	.00	.0	.00	.00	.0	.00
11	.30	.08	2.1	.00	.00	.0	.00	.00	.0	.00
12	.42	.11	2.9	.00	.00	.0	.00	.00	.0	.00
Area	3.82							.00		
Relief	1840.00							.00		
Slope	12.30							.00		
Elevation	6000.00							.00		
MAP	24.70							.00		
Jan Min T	13.40							.00		
Jul Min T	42.50							.00		
Yield	17.43							.00		

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801	Flow	CSM	% Ann	Sum Upstream WABs	Flow	CSM	% Ann	Flow	Difference	Difference
										CSM	With 50% Flow
1		1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00
2		3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00
3		12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00
4		27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00
5		13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00
6		3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00
7		.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00
8		.47	.01	.7	.00	.00	.0	.00	.00	.0	.00
9		.37	.01	.6	.00	.00	.0	.00	.00	.0	.00
10		.44	.01	.7	.00	.00	.0	.00	.00	.0	.00
11		.42	.01	.7	.00	.00	.0	.00	.00	.0	.00
12		.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00

Area	32.27	.00	.00
Relief	1110.00	.00	.00
Slope	2.75	.00	.00
Elevation	5730.00	.00	.00
MAP	23.46	.00	.00
Jan Min T	13.6	.00	.00
Jul Min T	42	.00	.00
Yield		.00	.00

Stream: HOME
WAB ID #: 31

MO	WAB	Difference	Difference
		CSM % Ann	With 50% Flow
1		.0	.00
2		.0	.00
3		.0	.00
4		.0	.00
5		.0	.00
6		.0	.00
7		.0	.00
8		.0	.00
9		.0	.00
10		.0	.00
11		.0	.00
12	2.5	.0	.00

Area	36.1
Relief	2870.00
Slope	6.67
Elevation	6430.00
MAP	26.80
Jan Min T	12.40
Jul Min T	41.10
Yield	19.80

Prwright - JMD
For your review and response as necessary - do they need to file a revised application?
1/26/02
JE

1-28

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

[illegible]

Stream: HOME
WAB ID #: 31

MO	WAB			Difference SM % Ann	Difference With 50% Flow
1				.0	.00
2					.00
3					.00
4					.00
5					.00
6					.00
7	8.1				.00
8	3.58				.00
9	3.03				.00
10	3.15	.01			.00
11	2.83	.08			.00
12	2.91	.08	1		.00
Area		36.66			
Relief		2870.00			
Slope		6.67			
Elevation		6430.00			
MAP		26.80			
Jan Min T		12.40		.00	
Jul Min T		41.10		.00	
Yield		19.80		.00	

NATURAL STREAMFLOW FOR SELECTED WATERSHEDS

Basin: MALHEUR LAKE
Time: 11:22

Exceedance Level: 50
Date: 10/16/2000

Stream: DRY CR @ mouth
WAB ID #: 31200801

WABS ABOVE: 0

MO	WAB ID # 31200801			Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann		
1	1.25	.04	2.0	.00	.00	.0	.00	.00	.0	.00	
2	3.33	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
3	12.30	.38	19.3	.00	.00	.0	.00	.00	.0	.00	
4	27.10	.84	42.5	.00	.00	.0	.00	.00	.0	.00	
5	13.10	.41	20.5	.00	.00	.0	.00	.00	.0	.00	
6	3.32	.10	5.2	.00	.00	.0	.00	.00	.0	.00	
7	.86	.03	1.4	.00	.00	.0	.00	.00	.0	.00	
8	.47	.01	.7	.00	.00	.0	.00	.00	.0	.00	
9	.37	.01	.6	.00	.00	.0	.00	.00	.0	.00	
10	.44	.01	.7	.00	.00	.0	.00	.00	.0	.00	
11	.42	.01	.7	.00	.00	.0	.00	.00	.0	.00	
12	.87	.03	1.4	.00	.00	.0	.00	.00	.0	.00	

Area	32.27	.00	.00
Relief	1110.00	.00	.00
Slope	2.75	.00	.00
Elevation	5730.00	.00	.00
MAP	23.40	.00	.00
Jan Min T	13.00	.00	.00
Jul Min T	42.10	.00	.00
Yield	9.59	.00	.00

Stream: HOME @ mouth
WAB ID #: 31200802

WABS ABOVE: 0

MO	WAB ID # 31200802			Sum Upstream WABs			Flow	Difference			Difference With 50% Flow
	Flow	CSM	% Ann	Flow	CSM	% Ann		CSM	% Ann		
1	3.49	.10	2.0	.00	.00	.0	.00	.00	.0	.00	
2	7.05	.19	4.1	.00	.00	.0	.00	.00	.0	.00	
3	17.40	.47	10.1	.00	.00	.0	.00	.00	.0	.00	
4	35.60	.97	20.7	.00	.00	.0	.00	.00	.0	.00	
5	53.20	1.45	31.0	.00	.00	.0	.00	.00	.0	.00	
6	31.10	.85	18.1	.00	.00	.0	.00	.00	.0	.00	
7	8.39	.23	4.9	.00	.00	.0	.00	.00	.0	.00	
8	3.58	.10	2.1	.00	.00	.0	.00	.00	.0	.00	
9	3.03	.08	1.8	.00	.00	.0	.00	.00	.0	.00	
10	3.15	.09	1.8	.00	.00	.0	.00	.00	.0	.00	
11	2.83	.08	1.6	.00	.00	.0	.00	.00	.0	.00	
12	2.91	.08	1.7	.00	.00	.0	.00	.00	.0	.00	

Area	36.66	.00	.00
Relief	2870.00	.00	.00
Slope	6.67	.00	.00
Elevation	6430.00	.00	.00
MAP	26.80	.00	.00
Jan Min T	12.40	.00	.00
Jul Min T	41.10	.00	.00
Yield	19.80	.00	.00

IS 84562

OREGON PARKS & RECREATION
C/O MICHAEL CARRIER
1115 COMMERCIAL ST. NE SUITE 1
SALEM OR 97301-1002

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