

3 TNS

IS 84563
Name - OREGON PARKS & RECREATION
By - C/O MICHAEL CARRIER
Address - 1115 COMMERCIAL ST. NE SUITE 1
SALEM OR 97301-1002

Application No. INS 84563

Permit No. _____

Certificate No. _____

Stream Index, Page No. _____

SEE INS 84562

Date filed _____

Priority 10-17-2000

Action suspended until _____

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water _____

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

Three mile Creek

REMARKS

More upstream in watershed

IS 84563

on May 15, 2001

Public Notice



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

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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)
)
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

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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- (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.

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.

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).

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.

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

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PHILLIP C. WARD
Director
Oregon Water Resources Department

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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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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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
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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 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	)	
<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 they are subsequently

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Attachment B 1 of 8 pages
Settlement Agreement
IS 84562 & IS84563
WATER RESOURCES DEPT
SALEM OREGON

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

Attachment B 2 of 8 pages

Settlement Agreement

TS 5450278-1S84563

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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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WATER RESOURCES DEPT
SALEM OREGON

Attachment B 3 of 8 pages
Settlement Agreement
IS 84562 & 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

Recorded in State Record of Water Right Certificate 81723.

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Attachment B, 4 of 8 pages
Settlement Agreement
84562 & IS84563
WATER RESOURCES DEPT
SALEM OREGON

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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 WATER RESOURCES DEPT
 SALEM OREGON
 Attachment B 5 of 8 pages
 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
NOV 14 2005 IS 84562 & IS845
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.

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.

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WATER RESOURCES DEPT
SALEM, OREGON

Attachment B 7 of 8 pages
Settlement Agreement
S 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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NOV 14 2005

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

Recorded in State Record of Water Right Certificate 81724.

WATER RESOURCES DEPT
SALEM OREGON

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

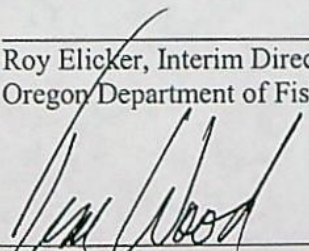
Any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine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

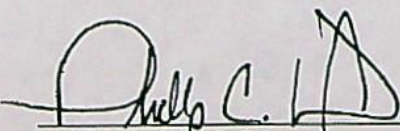
Roy Elicker, Interim Director
Oregon Department of Fish and Wildlife

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

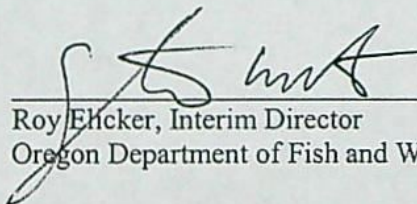
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For 

Roy Ehcker, 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

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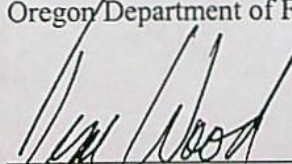
Any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine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

Roy Elicker, Interim Director
Oregon Department of Fish and Wildlife

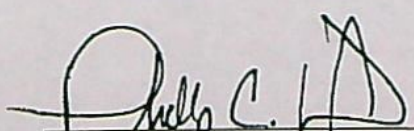
Date



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

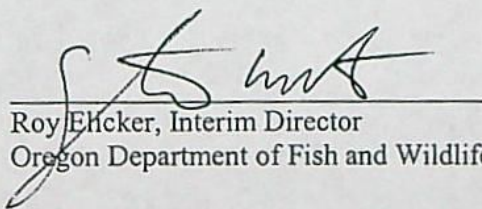
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II. Modification of the Process When Agencies File for Instream Water Rights

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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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.

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

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

*Sent copies of signed settlement
agreement + final orders to all of
those listed on the attached
service list.*

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:

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

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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
PacWest Center, Suites 1600-1900
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

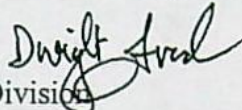
Ronald S. Yockim
Attorney at Law
548 SE Jackson, Suite #7
PO Box 2456
Roseburg, OR 97470

GENO9830

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.

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 December 14, 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

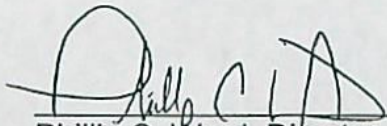
authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral 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 4th day of JANUARY, 2006.



Phillip C. Ward, Director
Oregon Water Resources Department

STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
725 Summer St NE Ste A
Salem, Oregon 97301-1266

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:

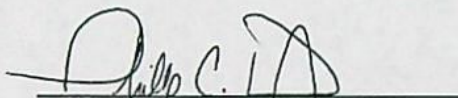
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

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.

Recorded in State Record of Water Right Certificate 81724.

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 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 4th day
of JANUARY, 2006.



Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81724.

File IS84563



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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- (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.

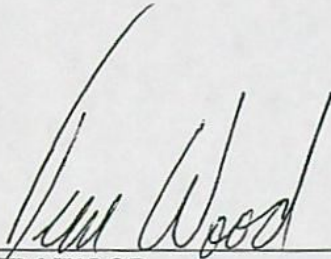
2. The Parties agree that the terms and conditions of this Agreement shall be incorporated into the Final Orders issued by OWRD in connection with IS 84562 and IS 84563, as shown in the attached Draft Final Orders and Draft Certificates (herein attached as Attachment B)
3. Upon issuance by OWRD of Final 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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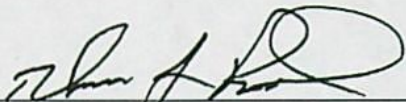
TIM WOOD
Director
Oregon Parks and Recreation Department

11/21/05
DATE

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For PHILLIP C. WARD
Director
Oregon Water Resources Department

12/5/05
DATE

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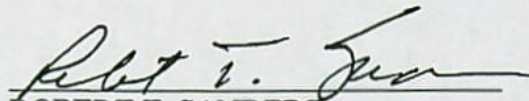
Lindsay A. Ball
LINDSAY A. BALL
Director
Oregon Department of Fish & Wildlife

11-17-05
DATE

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SALEM, OREGON**



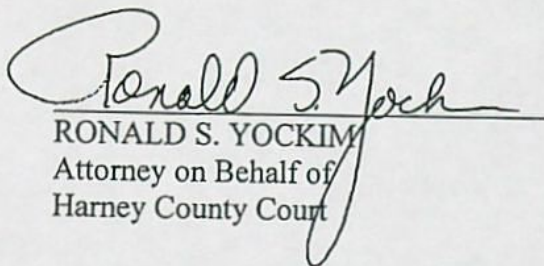
ROBERT T. SANDERS
Roaring Springs Ranch, Inc.

12/14/05
DATE

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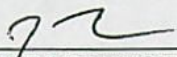
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RONALD S. YOCKIM
Attorney on Behalf of
Harney County Court

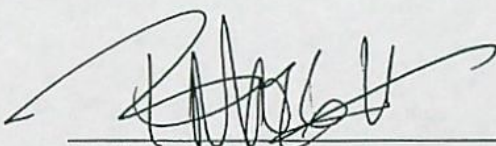
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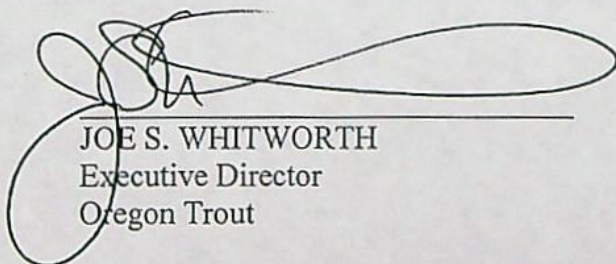
JOHN DE VOE
Executive Director
Water Watch of Oregon

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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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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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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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	0.00
May	2.55	4982.64	2200.54	53.20	53.00	71.25	4380.00	3258.04	0.00
June	1.77	3458.34	1527.43	31.10	31.00	71.25	4240.00	1844.68	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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DEC 27 2005

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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DEC 27 2005

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

RECEIVED

DEC 27 2005

**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, 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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DEC 27 2005

**WATER RESOURCES DEPT
SALEM, OREGON**

Recorded in State Record of Water Right Certificate 81724

Attachment C 4 of 4 pages
Settlement Agreement
IS84562 & IS84563



Oregon

Theodore R. Kulongoski, Governor

Bent

Water Resources Department

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

October 29, 2003

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

RE: Water Right Application IS 84563 (Threemile Creek) in the Name of the Oregon
Department of Parks and Recreation

Dear Mike:

Thank you for your letter of October 2, 2003, in which you requested I suspend processing of instream water right application IS 84653 (Threemile Creek, Harney County). Accordingly, I am placing this application on administrative hold.

Please let us know when you wish to reactivate this application in the future.

Sincerely,

Paul R. Cleary
Director

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

The following description identifies the flow requirements for the recreational uses of Threemile 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 Threemile Creek for the benefit of public recreation and scenic attraction.

Recreational Use: Scenic attraction/aesthetics, hiking, camping, hunting, wildlife viewing and nature study/interpretation. Threemile Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). The creek anchors the southern boundary of the 20,699 acre, Home Creek unit of the Steens Mountain Wilderness Area designated by Congress in October 2000. (Map 2). Threemile 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 the canyon it has cut, Threemile Creek is the dynamic focus, the crux of the canyon, and it guides ones eye, spirit and imagination around each bend, over each rock and across the span of time and space.

Threemile Creek canyon is easily accessed from State Route 205 about 27 miles south of Frenchglen. The creek arises on the southwestern flank of Steens Mountain at an elevation of about 6,340 feet in the Henry Basin. A short stream, Threemile Creek flows only about seven miles before discharging onto the Catlow Valley, a Pleistocene era lakebed.

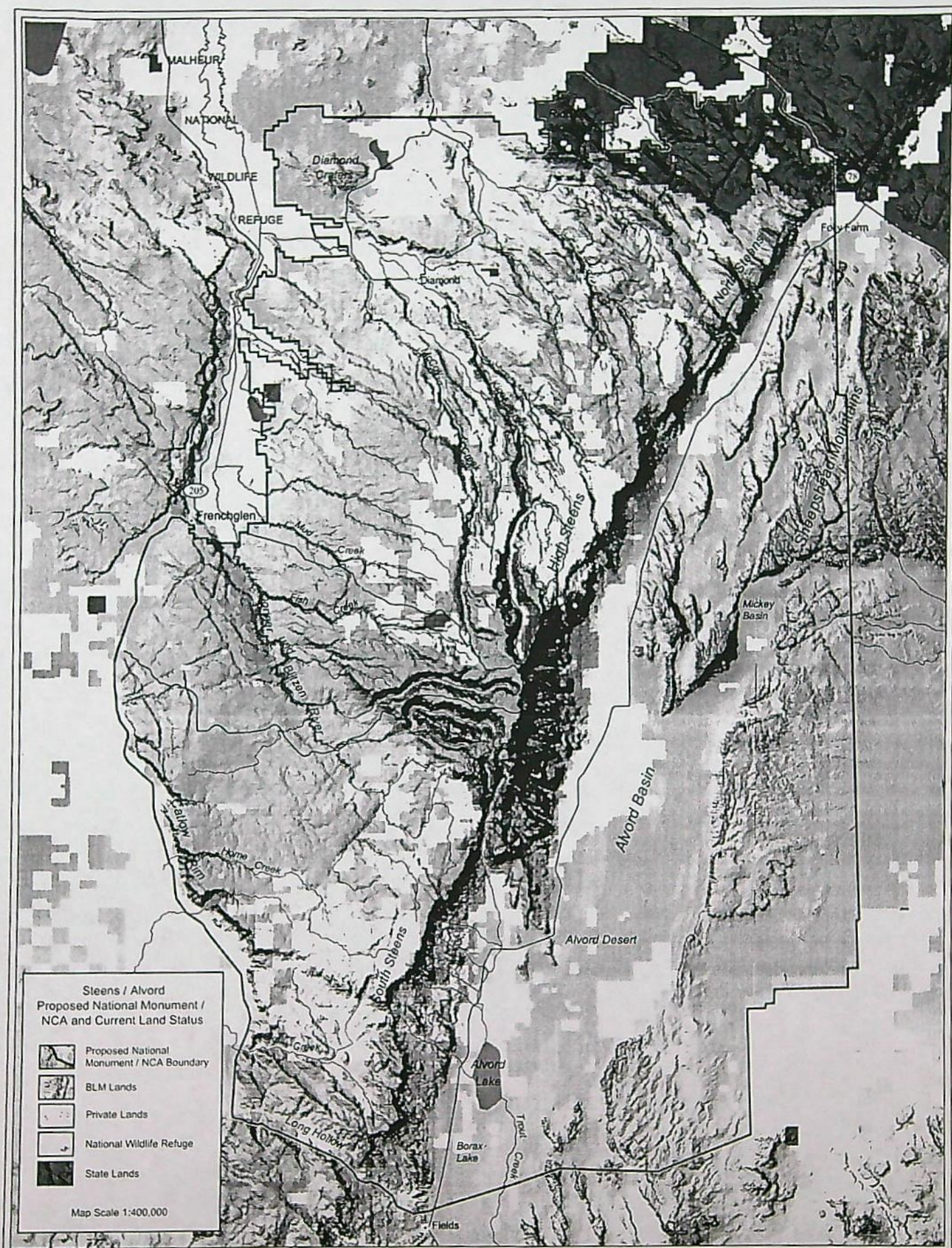
For the first 4.5 miles, the creek gathers energy flowing in a shallow depression and across upland meadow areas. Here its gradient is a respectable 100 feet per mile. About 2.5 miles from the highway, the creek begins its descent in earnest, dropping about 1,250 feet at an average gradient of 500 feet per mile.

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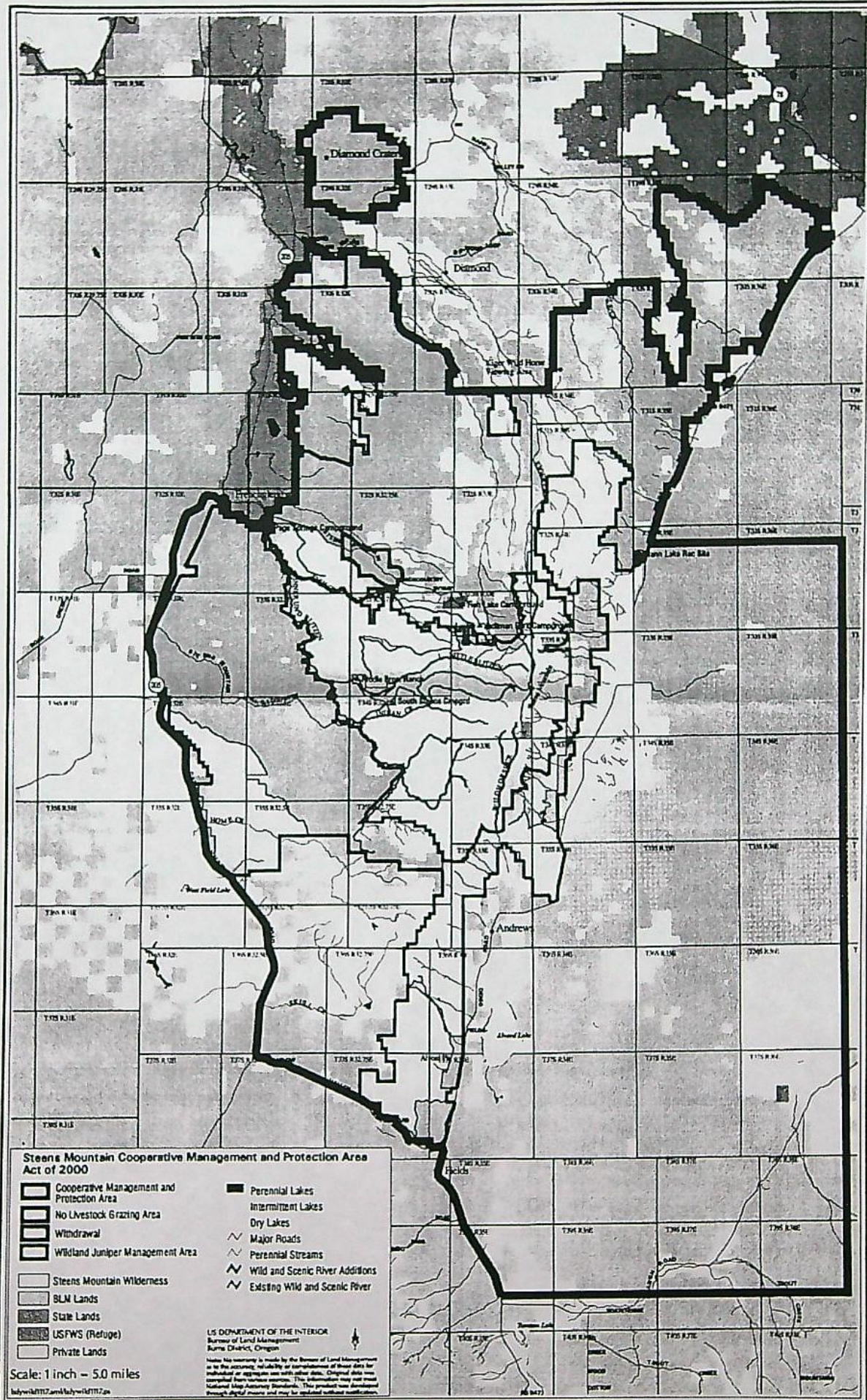
JAN 17 2002

WATER RESOURCES DEPT
SALEM, OREGON

MAP 1



MAP 2



During the wetter Pleistocene era, Threemile Creek was a more powerful stream as evidenced by the size of the canyon through which it now flows. Today, the creek is small and narrow, its channel bordered by grasses and shrubs and strewn with boulders. Threemile Creek's pools, falls and tumbling water, delight the eye, appease the ear, refresh the spirit and beckon the imagination. Without the creek, the canyon would be impressive and interesting, but with the creek it is irresistible.

Where Threemile Creek breaches the Catlow Rim, the canyon measures about one mile across from rim to rim and about 1,600 feet from rim top to creek bottom. Looking southwest from the mouth of Threemile Creek canyon, one views the Catlow Valley, a remnant lakebed. During glacial times, this valley was one of the largest bodies of water in southeastern Oregon. To the east, the land slopes ever upward for another dozen 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 this area as wilderness reinforces the assertion 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 Threemile Creek.

Time period of Use: Year-round. Threemile Creek is accessible to recreational use 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
5	6	8	12	12	7	5	4	4	4	4	5

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 Threemile Creek from its intersection with the Steens Mountain Wilderness Boundary, being the west section line of Section 21, Township 35 South, Range 32½ East, Willamette Meridian, Harney County; ---

--- downstream to the intersection of Threemile Creek with the Steens Mountain Wilderness boundary, being in the Northwest ¼ of the Northwest ¼ of Section 25, Township 35 South, Range 32 East, Willamette Meridian, in Harney County, about one quarter mile upstream from the Highway 205 crossing of Threemile Creek. This is a change from the downstream terminus of the proposed protected reach specified in the instream water right application submitted on October 17, 2000. This change moves

the protected reach terminus upstream from the previously requested location at the Highway 205 crossing of Threemile Creek. This change is intended to accommodate the interests of the Oregon Department of Fish and Wildlife and the Roaring Springs Ranch by avoiding the inclusion of the Roaring Springs Ranch diversion works located about 100 yards upstream from Highway 205.

Experience setting: Visitors to the above-described area can expect an experience at the primitive end of the Recreational Opportunity Spectrum (ROS). (ROS Users Guide, United States Department of Agriculture, Forest Service). The entire stream reach for which flow protection is sought lies within the Home Creek unit of the Steens Mountain Wilderness Area. There are no roads, buildings or other signs of development within this portion of the Threemile Creek drainage. 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. 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 those they preferred. The survey found that recreationists tend to prefer recreational settings that are more natural or primitive than those they are often able to 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, which provide the primitive settings desired. The table below shows uses and preferences for Primitive and Semi-primitive ROS settings for two categories of activities that apply to Threemile Creek.

Activity	ROS Setting Type			
	Primitive		Semi-primitive	
	Used	Preferred	Used	Preferred
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 Threemile Creek through instream water rights will help preserve the wilderness character of the area thereby addressing the public preference to have and recreate in primitive, unaltered settings. Recreation use of Threemile Creek will increase as people learn of its new designation and seek to experience the natural values it offers.

Amount of recreational use: Recreational use data are not available for Threemile 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 Threemile Creek. Use is dispersed and unmonitored. The BLM managed the Threemile Creek drainage 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.

Threemile Creek canyon and its drainage provide a variety of wilderness recreation opportunities, including hiking, camping, big game and upland bird hunting, wildlife viewing, nature photography and interpretation. Except for primitive trails, game tracks or cow paths, there are no developed or designated trails or campgrounds in the canyon or along the rims. Hikers and campers are challenged to rely on their own skills and resources to find suitable camps and access routes.

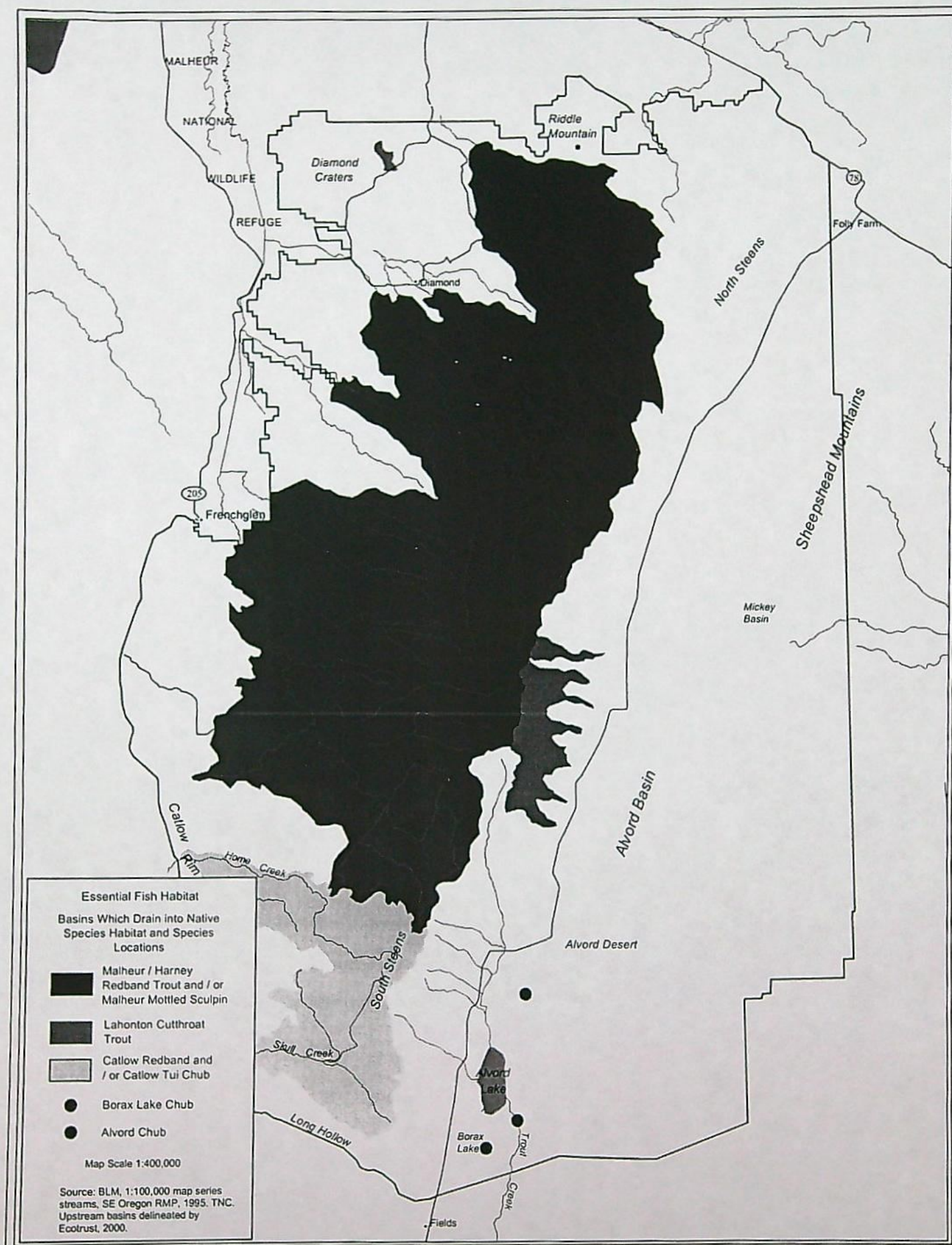
Animal species, including fish, which rely on Threemile Creek for habitat, add significantly to the aesthetic attraction and experience for visitors to the area. Threemile Creek is essential habitat for populations of Catlow Valley Redband Trout and Catlow tui chub. (Map 3). However, trout populations are currently low due to poor habitat conditions and drought effects in recent years. (Personal communication with Bob Hooten, Natural Production Program Manager, Oregon Department of Fish and Wildlife, Portland, January 9, 2002). Accordingly, Threemile Creek is currently closed to fishing and has been for several recent years.

Protecting redband trout was an important goal in the establishment of the Steens Mountain Wilderness. 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 Threemile Creek. Threemile Creek Reservoir owned by Roaring Springs Ranch has been renovated to provide fish rearing.

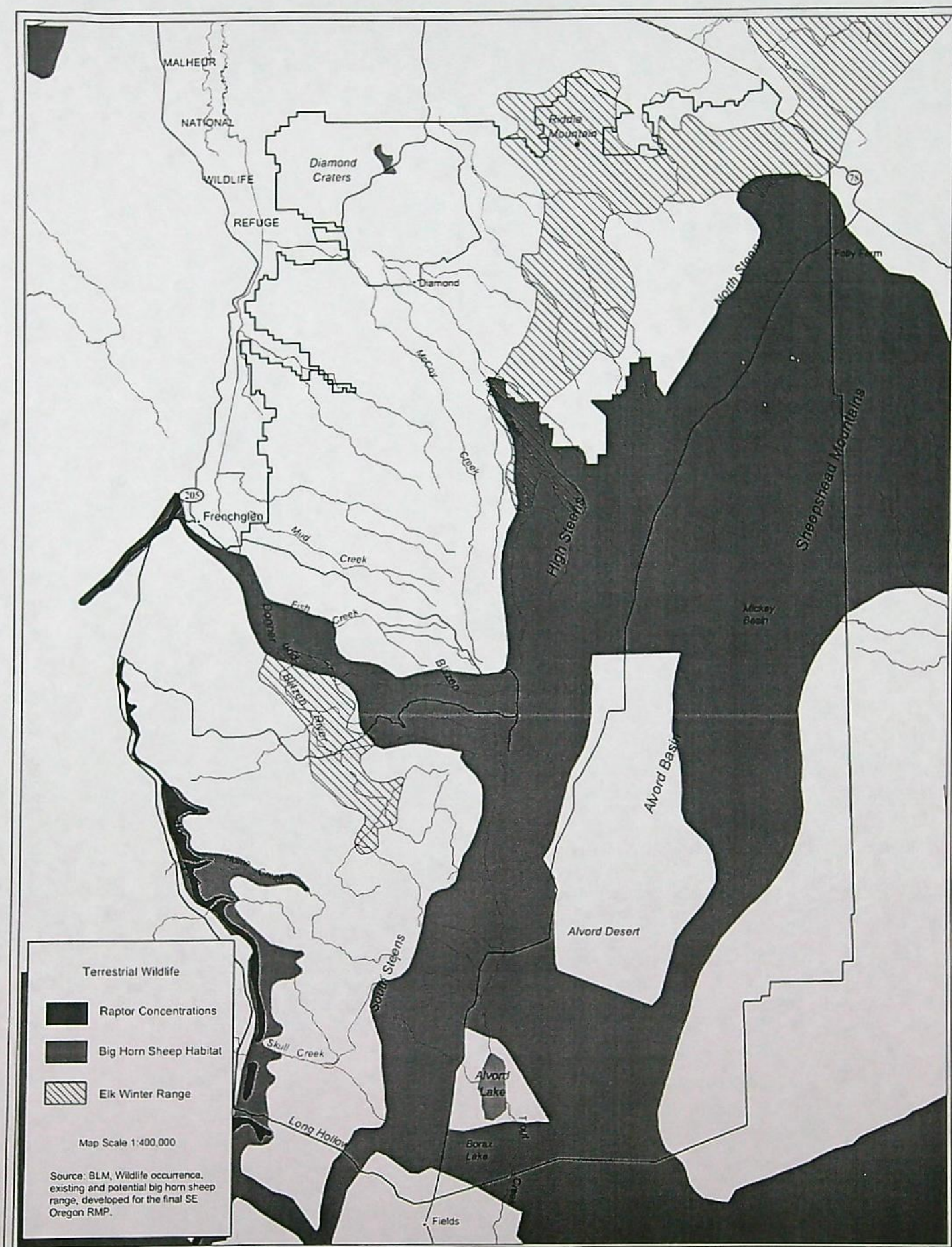
Threemile Creek canyon's steep talus slopes, rugged basalt cliffs and dense brush thickets, provide excellent habitat for big game species. California big horn sheep prefer the canyon's sheer rock outcrops, cliffs and upland areas. (Map 4). Steens Mountain supports a healthy population of big horn sheep, which range widely on the mountain. Adults and lambs are spring viewing attractions in Home and Threemile creek canyons, and along the Catlow Rim as well.

The Catlow Rim, including Threemile Creek canyon, is high density breeding habitat for a variety of hawk species including Swainson's, red-tailed, Cooper's and sharp-shinned hawks. (Map 4). Other significant raptor species that breed in the area include golden

MAP 3



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

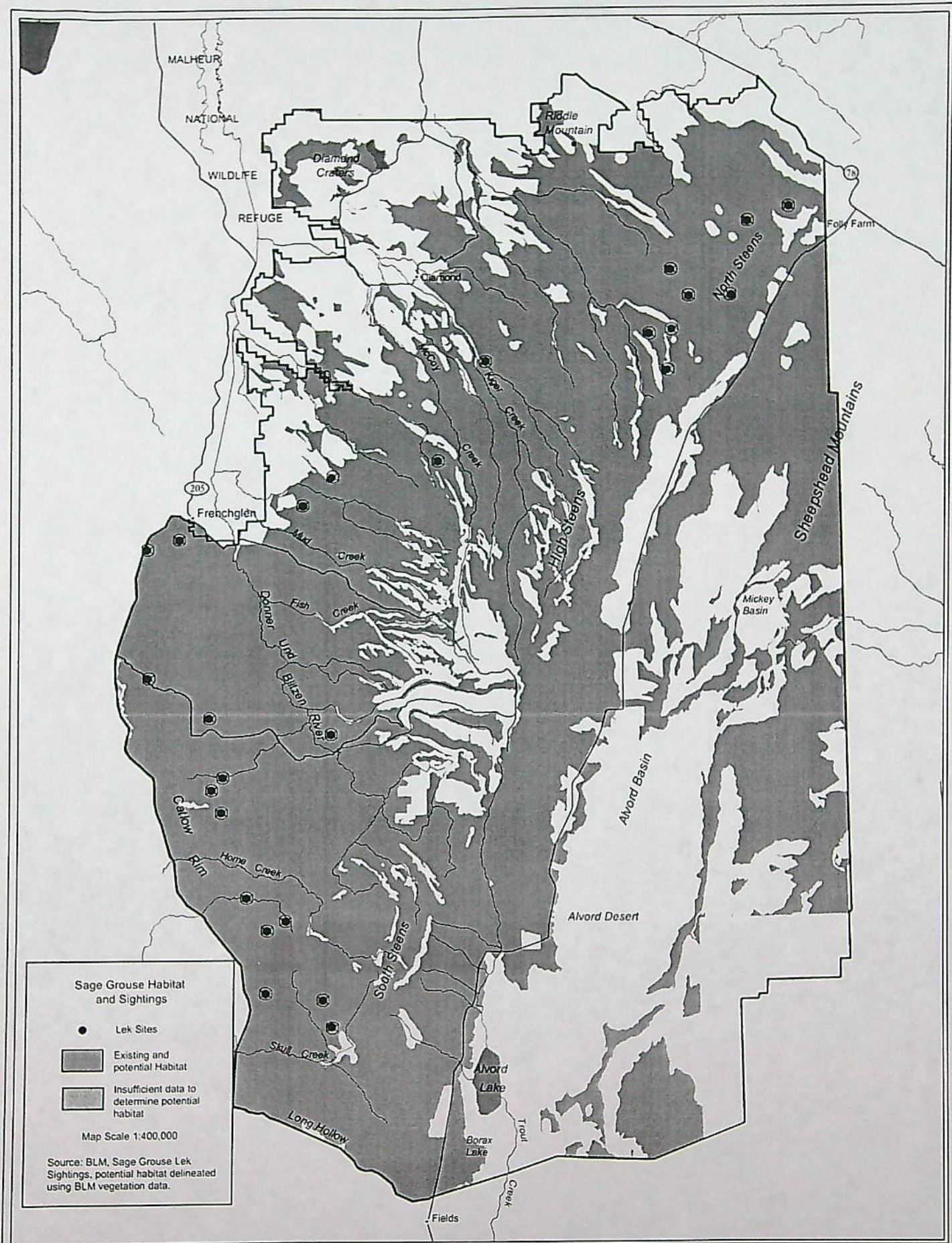
Township 35 South, Range 32 ½ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 33, 34, 35

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



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

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

Lillebo, Tim. Eastern Oregon Field Representative, Oregon Natural Resources Council. Telephone conversation, January 10, 2002.

McAllister, David. Director, Habitat Division, Oregon Department of Fish and Wildlife. Letter to Paul Cleary, Director, Oregon Water Resources Department. June 13, 2001.

ROS Users Guide. United States Department of Agriculture, Forest Service.

Sherbourne, Mark. Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.

Q:\ Instream Water Rights\Threemile Creek (2) Rec Flow Rqmnt Methodology 01-16-2002.doc

ReneeM

From: Renee Moulun [Renee.M.MOULUN@wrd.state.or.us]
Sent: Thursday, October 23, 2003 8:16 AM
To: Paul Cleary (E-mail)
Cc: Diane Addicott (E-mail)
Subject: Letter to Carrier

Hi Paul:

I am attaching a letter placing application IS 84563 on hold per Mike Carrier's request. Because the hold is unusual (it does not specify an expiration date) I thought it would be a good idea for you to sign it. Please let me know if this is okay with you.

Thanks,
Renee



Carrier hold.doc

Renee Moulun
Water Resources Department
725 NE Summer St., Ste. A
Salem, OR 97301-2430
(503) 996-0824

VIA MAIL

October 22, 2003

Michael Carrier
Director
Oregon Parks & Recreation Department
725 Summer St. NE, Suite "X"
Salem, OR 97301

RE: Water Right Application IS 84563 (Threemile Creek) in the Name of the Oregon
Department of Parks and Recreation

Dear Mike:

Thank you for your letter of October 2, 2003, in which you requested I suspend processing of instream water right application IS 84653 (Threemile Creek, Harney County). Accordingly, I am placing this application on administrative hold.

Please let us know when you wish to reactivate this application in the future.

Sincerely,

Paul R. Cleary,
Director



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.

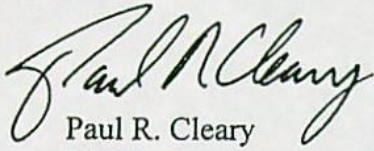
OPRD has informed us it cannot accept the terms of your August 8, 2003, letter insofar as the above-referenced instream water right applications. OWRD and ODFW agree with OPRD's assessment of your client's position. Accordingly, OPRD will be requesting to send the protests associated with its instream 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 cursive script, appearing to read "Paul R. Cleary".

Paul R. Cleary
Director

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



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

Park and Recreation Department

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Salem, OR 97301-1002

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www.oregonstateparks.org

*Frunch
Bridg
Tom P.*



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

THEODORE R. KULONGOSKI
GOVERNOR



Benue
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.

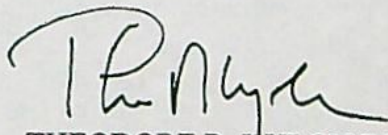
Over the last year, the state agencies have worked to navigate a course through the many conflicts and concerns associated with these applications. Toward this end, the state agencies have listened carefully to the concerns raised by you, by the ranch, and by environmental community. In addition, representatives 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

Office of the Director
2501 SW First Avenue
PO Box 59
Portland, OR 97207
(503) 872-5272
FAX (503) 872-5276
TTY (503) 872-5259
Internet WWW:<http://www.dfw.state.or.us/>



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.

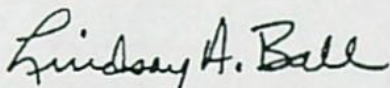
Conclusion

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

Office of Judge Steven E. Grasty

450 North Buena Vista, Burns, Oregon 97720

Phone: 541-573-6356 Fax: 541-573-8387

E-mail: sgrasty@oregonvos.net

Websites: www.co.harney.or.us ♦ www.harneycountyeconomicdevelopment.com

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're
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



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

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Direct Line: Portland 503.796.2872;

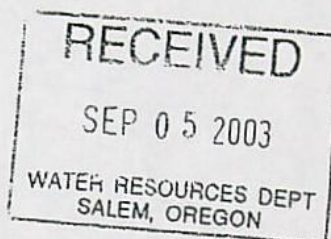
Salem 503.399.7712

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.

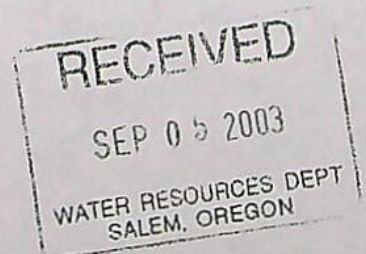
Sincerely,

Martha O. Pagel (mca)

Martha O. Pagel

MOP:mca

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



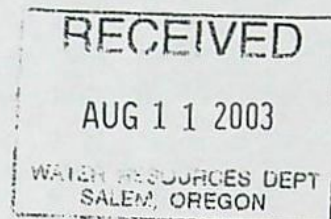


SCHWABE, WILLIAMSON & WYATT, P.C.
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MARTHA O. PAGEL
Direct Line: Portland 503.796.2872;
Salem 503.399.7712
E-Mail: mpagel@schwabe.com

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

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

Ben
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

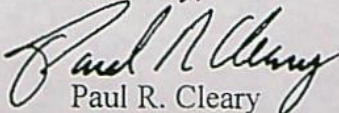
The stage agencies (OWRD, OPRD and ODFW) are unified only in submitting the following as a single resolution to the outstanding applications and the associated protests on R 84576, S 84577, R 85167, S 85168, IS 84562 and IS 84563:

- (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: Jerry Rodgers
Mitch Lewis



SCHWABE, WILLIAMSON & WYATT, P.C.
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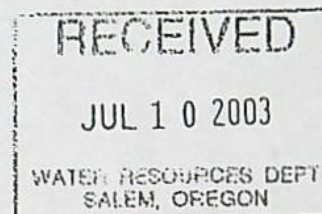
MARTHA O. PAGEL

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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





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

Office of the Director
2501 SW First Avenue
PO Box 59

Portland, OR 97207

(503) 872-5272

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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

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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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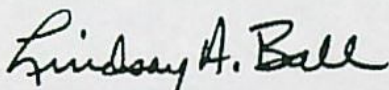
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stream habitat abundance, obstacles to trout migration, isolation of segments of the redband trout population, reduced flow during the critical migration and spawning periods, and altered instream structure by reducing peak flows. Given these impacts, 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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SALEM, OREGON

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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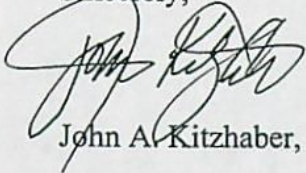
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Paul Cleary, Director
June 14, 2001
Page 2

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 dark ink, appearing to read "John A. Kitzhaber", is written over the printed name.

John A. Kitzhaber, M.D.

JAK/NR/sm



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

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158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
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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

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

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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IN REPLY REFER TO:

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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.

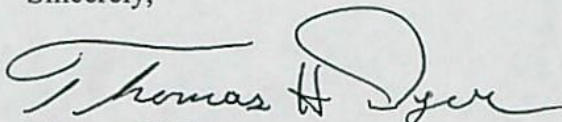
Home Creek and Threemile Creek contain Catlow redband trout and Catlow tui chub, which are both State sensitive and BLM Special Status species. The Home and Threemile Creek watersheds are located within the area covered by the Catlow CA, which was signed in August of 1997 by Oregon Department of Fish 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

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AUG 05 2002

WATER RESOURCES DEPT.
SALEM, OREGON

cc: Cindy Weston, Burns District BLM
Darren Brumback, Burns District BLM
Andrews Resource Area Field Manager

RECEIPT # 54614

INVOICE #_____

RECEIVED FROM: Susan Hueskman
BY: U.S. Dept. INT. - BLM

APPLICATION	see below
PERMIT	
TRANSFER	

TOTAL REC'D	\$100.00
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0417	WRD MISC CASH ACCT
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IS 84562

IS 84563

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REDUCTION OF EXPENSE

VOUCHER #

0427	WRD OPERATING ACCT
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0407 COPY & TAPE FEES

77235

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EXAM FEE

2

0202	\$
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0206	S
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EXAM FEE	
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0219	\$
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0220

234 OTHER (IDENTIFY) Request for standing \$100.00

0437	WELL CONST. START FEE
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\$

CARD #

CARD #

0539	LOTTERY PROCEEDS
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1302 LOTTERY PROCEEDS

0467	HYDRO ACTIVITY
------	----------------

LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)
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0231 HYDRO LICENSE FEE (FW/WRD)

HRDRO APPLICATION

RECEIPT # 54614

DATED: 8/5/02 BY: Connie Price

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

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AUG 09 2002

WATER RESOURCES DEPT.
SALEM, OREGON

RONALD S. YOCKIM

Attorney at Law

548 S.E. Jackson
Suite #7
P.O. Box 2456
Roseburg, Oregon 97470

(541) 957-5900
FAX (541) 957-5923

August 8, 2002

Via Express Mail

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. 84563

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 84563) for an instream water right on Threemile 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 84563.

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. Threemile Creek is a high desert stream extending approximately seven (7) miles and terminating into the Catlow Valley, a closed desert basin. Of these seven miles OSPR

Dwight French, Acting Administrator
August 8, 2002
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requests an instream right for essentially all of 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 Threemile 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. (See "Recreation Flow Requirement Methodology for Threemile Creek, Tributary to Garrison Lake, Harney County, Oregon" hereinafter referred to as "Recreation Flow Methodology", p 6).

3. The OSPR has not completed a recreation analysis for the stream. (id. p. 6).

4. 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).

5. The OSPR acknowledges that there are no designated recreation facilities within the proposed instream reach (id. p. 6). Further the analysis states that the only trails within the instream reach area are primitive trails or cow paths (id. p. 6).

6. The OSPR notes that Threemile 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 recreational and aesthetic values supporting the proposed instream flow are general values for the entire wilderness area and not specific to the stream. The report fails to quantify (a) which features are within the instream reach as opposed to the greater drainage area; (b) whether the aesthetic and recreational values are dependent upon water flows; and, (c) the minimum flows necessary for these values.

7. The Recreation Flow Methodology report is incomplete and references the attributes of Home Creek rather than Threemile Creek (See id. pp. 7 - 8).

8. 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.

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9. 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 describes the attributes and usage of Threemile Creek in general non-site specific terms. Where it does discuss the aesthetics in detail it relates to attributes not dependent upon instream flows (id. p. 6-7).

10. The Recreation Flow Methodology does not identify the flow or water level needed to accommodate the predominant recreational use during each specific month (See OAR 736-060-0015(1)).

11. 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 Threemile 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.

(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, 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 nor is there any finding as to whether the land use goals have been satisfied. The only reference in the file is a general notation that the area is zoned EFRU-1 (exclusive farm and range use), it does not address the compatibility requirements. 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

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case the allocation of 100% of the water for instream recreation and aesthetic values does not represent the balancing of public interest.

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 instream flows for fisheries purposes. Review of the instream statutes reveals that 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

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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."

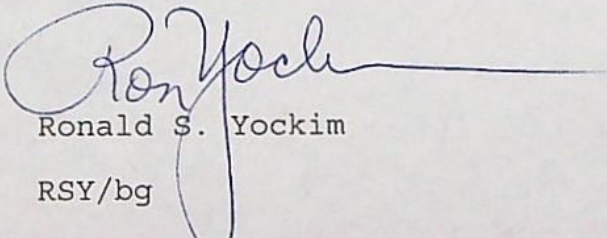
Neither OSPR's application nor the Department's PFO provide any information about how OSPR quantified the requested flows. The methodology contains only the bare assertion that the flows requested are the amount necessary to maintain the purposes. It provides no support for this claim. Without support 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.

C. CONCLUSION.

As discussed in the preceding paragraphs, application 84563 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.

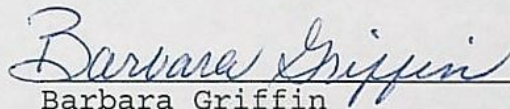
Sincerely,


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 84563" 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

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AUG 09 2002

WATER RESOURCES DEPT.
SALEM, OREGON



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

Paid by Account!
R. W.

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

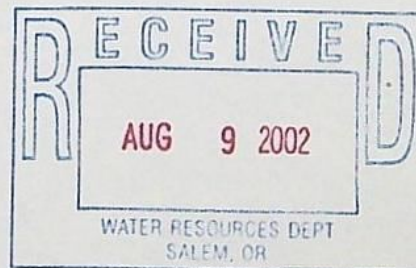
**Re: Protest to Proposed Final Orders for Instream Water Right Applications
No. IS 84562 and IS 84563**

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.

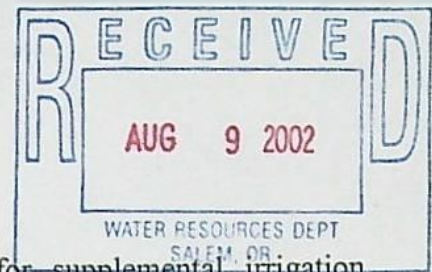
Name of protestants

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.

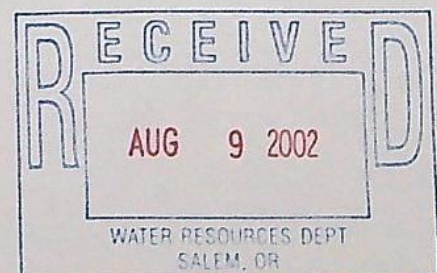
5. For IS 84562 (Home Creek), approximately one-half of the reach proposed for inclusion in an instream water right is within private lands owned by RSR. Because there is no public access to the stream in that area, and the stream itself is not navigable for public recreation purposes, there is no basis for assertion of a public recreational interest, as required under ORS 537.336 (3).

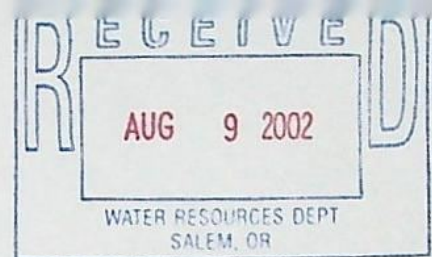
Description of how the PFOs are in error or deficient and how to correct the alleged error or deficiency.

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

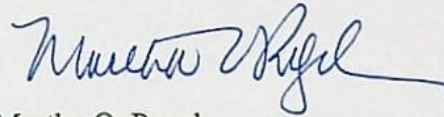
This protest is filed on the basis of significant errors and deficiencies in the applications and PFOs for instream water rights that should lead to denial of the proposed uses. If the Director of WRD decides to schedule a contested case hearing on the matter, RSR would expect to participate as a party 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.

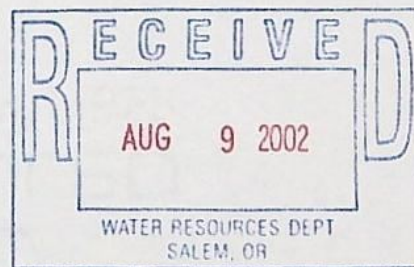
Sincerely,



Martha O. Pagel

MOP:mca

cc: Stacy Davies, Roaring Springs Ranch
Michael Carrier, Oregon Parks and Recreation Department



Messenger Delivered

August 9, 2002

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

Re: Protest of Instream Water Right Application 84563
Threemile 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

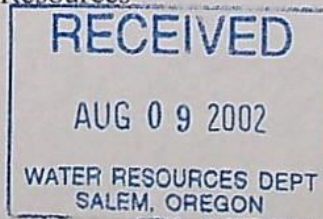
Oregon Trout
117 SW Front Ave
Portland, OR 97204
(503)222-9091
contact: Aubrey Russell
aubrey.russell@ortrout.org

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. Threemile 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:

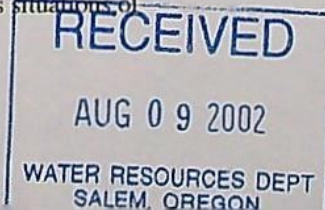
- 1) The interest of protecting sufficient streamflows (both in quantity and quality) in Threemile Creek necessary for public interest uses of water which include fish and wildlife, and the habitat necessary for fish and wildlife survival and the recreational, scenic and aesthetic use of the area;
- 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 Threemile 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

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



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.

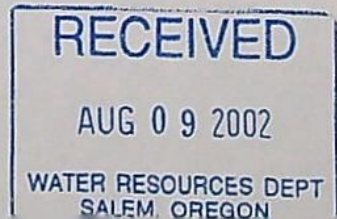
In addition, the flows proposed in the PFO are already lower than those originally determined by the Parks Department to be necessary to for recreation and scenic attraction values within the Steens Wilderness Area. To allow further reduction in flows through this exception would further undermine the 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.

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

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 carry such a condition.



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 Threemile 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.

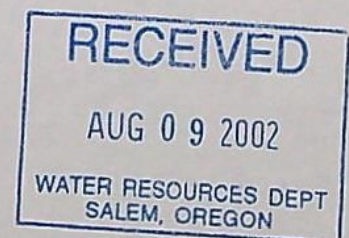
The Departments rules allow for instream water rights to be granted at levels higher than the estimated average natural flow where periodic flow levels are significant for the public use applied for. OAR 690-77-015(4). However, it appears that the state limited the instream water right application to 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. Threemile 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.**

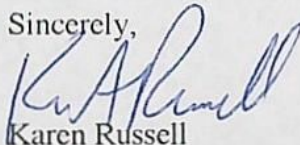
This protest is filed pursuant to OAR 690-77-0043(1). The legal authorities currently known to the Protestants as supporting this protest includes the standards and process contained in the permitting statute (ORS 537.150 – 537.211), the Instream Water Right Act ORS 537.332 et seq., ORS 536, OAR 690-77, 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,



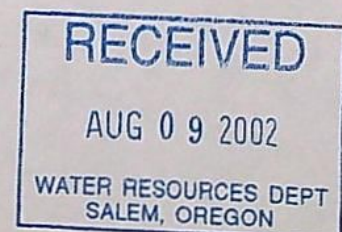
Karen Russell
WaterWatch



Mac Lacy
Oregon Natural Desert Association



Aubrey Russell
Oregon Trout



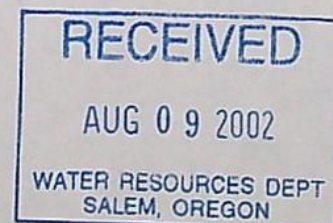
CERTIFICATE OF SERVICE

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,

M. Kramer





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
Habitat Division
Oregon Department of Fish & Wildlife
2501 SW First Ave., P.O. Box 59
Portland, OR 97207

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

Martha Pagel
Attorney at Law
Schwabe, Williamson & Wyatt
PacWest Center, Suites 1600-1900
1211 S.W. Fifth Ave.
Portland, OR 97204-3795

Karen Russell
Attorney at Law
WaterWatch of Oregon
213 S.W. Ash, Ste. 208
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.

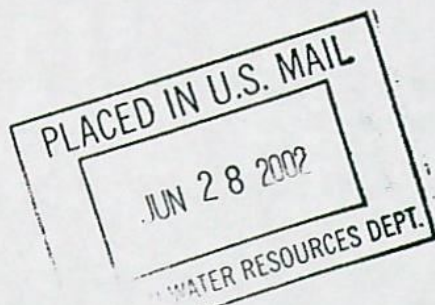
Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Renee Moulun
Protest Program Coordinator
(503) 378-8455 ext. 239: Renee.M.Moulun@wrdd.state.or.us



Oregon Water Resources Department
Water Rights/Adjudication Section



Application Number: IS 84563

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: Threemile 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
5.0	6.0	8.0	12.0	12.0	7.0	5.0	4.0	4.0	4.0	4.0	5.0

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 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 Threemile Creek, Tributary to Garrison Lake, Harney County, Oregon. (OAR 736-060-015)

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
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

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
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.33	4.25	4.29	4.4	4.62

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

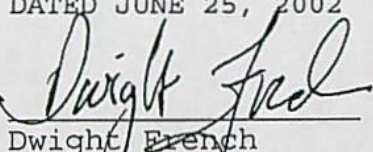
- the proposed use, as limited in the draft certificate, will not result in injury to other water rights,
- the proposed use, as limited in the draft certificate, will not impair or be detrimental to the public interest as provided in ORS 537.170.
- the proposed use, as limited in the draft certificate, 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
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

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: 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, 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 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__.

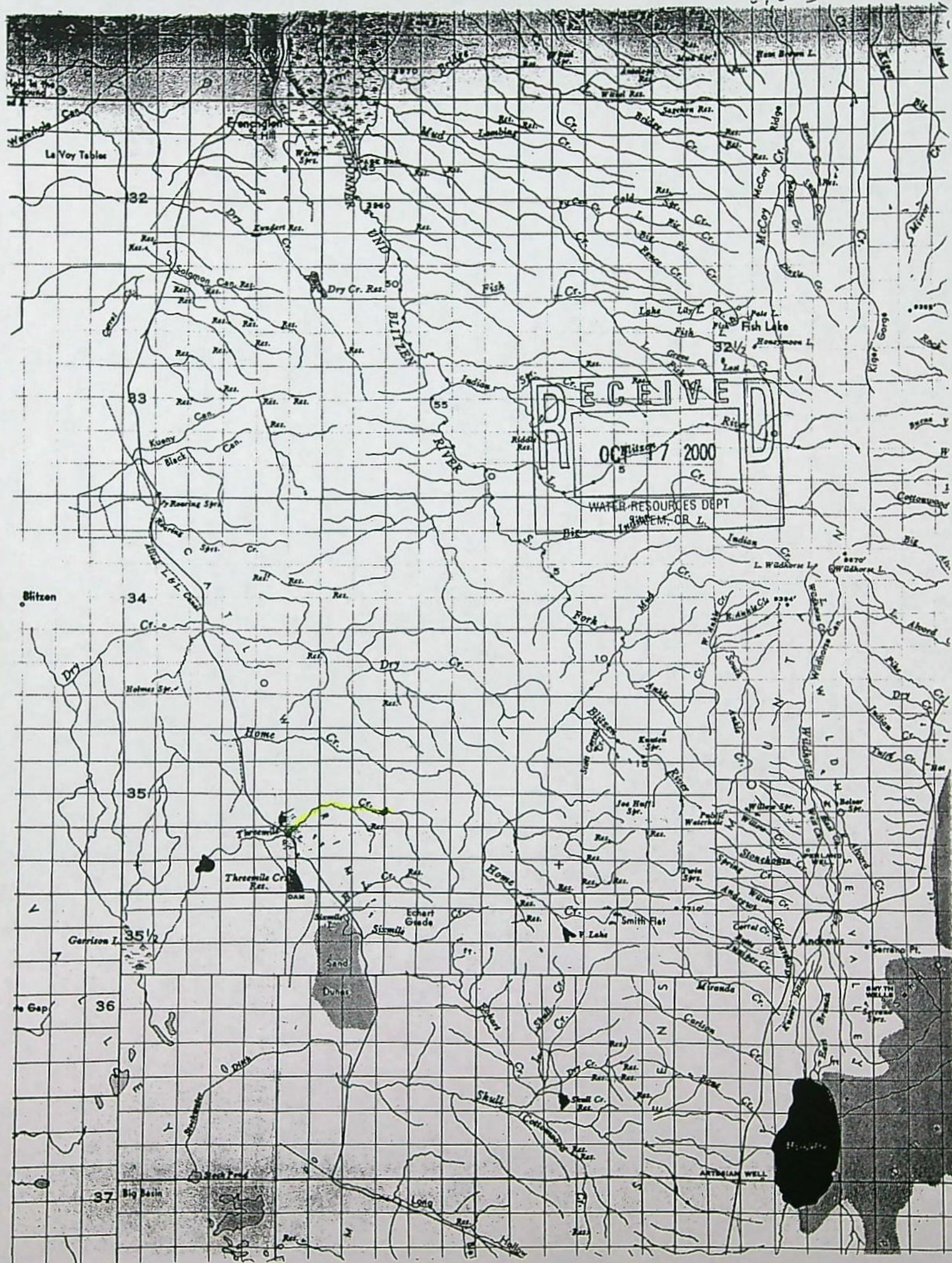
DRAFT

Water Resources Director

Recorded in State Record of Water Right Certificate number __DRAFT__.

IS84563

Recorded in State Record of Water Right Certificate #####.



2011 11 16

Application No. 84563
Permit No.

Mailing List for PFO Copies

Application #IS-84563

PFO Date JUNE 25, 2002

Original mailed to:

~~Applicant:~~ Oregon Department of Parks and Recreation, 1115 Commercial Street NE, Suite 1 Salem, Oregon 97301-1002

Copies sent to:

- ~~1.~~ WRD - File # IS-84563
- ~~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: <u>TEB</u>
(Support Staff)
on: <u>6/25/02</u>
(Date)
<i>given to me 6/25/02</i>
<i>TEB</i>

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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54727**

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

INVOICE # _____

RECEIVED FROM: Waterwatch of Oregon

BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # Wells Fe-90 Bank OTHER: (IDENTIFY) ☐

☒ #3243 ☐

TOTAL REC'D \$ 400.00

0417 WRD MISC CASH ACCT

84562 - \$200.00
84563 - \$200.00

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

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

EXAM FEE

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

RECORD FEE

\$ _____

\$ _____

\$ _____

LICENSE FEE

\$ _____

\$ _____

\$ _____

223 OTHER (IDENTIFY) Protest Fee

\$400.00
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 (FW/WRD)

0231 HYDRO LICENSE FEE (FW/WRD)

HRDRO APPLICATION _____

\$ _____

\$ _____

\$ _____

RECEIPT # **54727**

DATED 8/10/02

BY Connie Vance

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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54727**

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

INVOICE # _____

RECEIVED FROM: Waterwatch of Oregon

BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 23243 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 400.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

84562 - \$200.00
84563 - \$200.00

\$
\$
\$
\$

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

223 OTHER (IDENTIFY) Protest Fee

**RECEIVED
EXAM FEE
OVER THE COUNTER**

EXAM FEE

\$

\$

EXAM FEE

\$

\$

0202

0204

0206

0219

0220

RECORD FEE

\$
\$
\$
\$
\$
\$

LICENSE FEE

\$
\$

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)

HRDRO APPLICATION

\$
\$
\$

RECEIPT # **54727**

DATED: 8/9/02

BY: Connie Vance

WaterWatch
213 SW Ash, Suite 208
Portland, OR 97204

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



(503) 241-0484

ACCT. NO.
851624NON-NEGOTIABLE AIRBILL SHIPPER'S AGENT
PICKUP TIME AND DATE

DRIVER

PDX 609203

CGR:

DATE 8/9/02

DECLARED VALUE
\$

NAME Karen Russell (503) 295-4039

FROM COMPANY NAME

WaterWatch of Oregon

ADDRESS

213 SW Ash St, Suite 208

CITY

Portland

REFERENCE

TELEPHONE

NAME

Water Rights Sect (503) 778-2455

TO (FROM) COMPANY NAME

Oregon Water Resources Dept

ADDRESS

158 12th St NE

CITY

Salem

DEPT / ORDER NO.

TELEPHONE

STATE

OR

ZIP

97204

STATE

OR

ZIP REQUIRED

97301

THIRD
PARTY
BILLING

NAME

ADDRESS

CITY

STATE

ZIP

NO. PCS.

DESCRIPTION

WEIGHT

RATE

AMOUNT

AIR EXPRESS

LOCAL DELIVERY

SPECIAL INSTRUCTIONS

ADVANCED
FEESNEXT DAY A.M.
(DELIVER WEEKDAY)☐ EXPRESS LETTER
(UP TO 6 oz.)☐ SUPER RUSH ☐

INTERNATIONAL

☐ EXPRESS ENVELOPE
(UP TO 2 lbs.)☐ DIRECT ☐

*NEXT DAY BY 9

☐ CUSTOMER PACKAGE
(OVER 2 lbs.)☐ DEFERRED ☐

*SATURDAY SVC

☐ OVERNIGHT TUBE☐ ROUND TRIP ☐

*SAME DAY

☐☐ ROUTE ☒

*LATE PICKUP

☐

*EXTRA CHARGE APPLIES

DEL. DEADLINE

WRONG
ADDRESSWAITING
TIME

OTHER

ATTEMPT

LATE
PICKUP

RECEIVED BY

X

TIME

DATE

D/M #

RETURN TO

TIME

DATE

D/M #

SEE REVERSE SIDE FOR CONDITIONS OF CARRIAGE, LIMITATIONS OF LIABILITY.

MISCELLANEOUS ROUTE SLIP

HERB MOSGAR

☐

ROGER WRIGHT

☐

DWIGHT FRENCH

☐

LISA JUUL

☐

RENEE MOULUN

☒

CORY ENGEL

☐

RUSS KLASSEN

☐

ANITA HUFFMAN

☐

JONNINE FUSS

☐

DIANNA GUTHRIE

☐

JERRY SAUTER

☐

KERRY LEFEVER

☐

JERRY GAINEY

☐

TERI HRANAC

☐

GERRY CLARK

☐

STEVE BROWN

☐

DOROTHY PEDERSEN

☐

TIMMIE BRANDT

☐



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

Internet WWW:<http://www.dfw.state.or.us/>



July 15, 2002

Dwight French
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

Re: Oregon Department of Parks and Recreation's application IS-84563 for a new in-stream water right on Threemile Creek, Tributary to Catlow Valley

Dear Mr. French:

The Oregon Department of Fish and Wildlife (ODFW) supports the proposed final order for application IS-84563 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 Threemile 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)

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54722**

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

INVOICE # _____

RECEIVED FROM: Ronald S. Yackim, Attorney

BY: _____

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # X 96-505 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 200.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

\$

\$

\$

\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

\$

0427 WRD OPERATING ACCT

77235

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

\$

0202

0204

0206

0219

0220

RECORD FEE

\$

\$

\$

LICENSE FEE

\$

\$

223 OTHER (IDENTIFY) Protest Fee

584563

\$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)

HRDRO APPLICATION

\$

\$

\$

RECEIPT # **54722**

DATED: 8/10/02

BY: Connie Vance

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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54722**

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

INVOICE # _____

RECEIVED FROM: Ronald S Yockim, Attorney

BY: _____

APPLICATION	
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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\$
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REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

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0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

0410 RESEARCH FEES

0408 MISC REVENUE: (IDENTIFY) _____

(New) TC162 DEPOSIT LIAB. (IDENTIFY) _____

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WELL CONSTRUCTION

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LANDOWNER'S PERMIT

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0202

0204

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RECORD FEE

\$

\$

\$

LICENSE FEE

\$

\$

OTHER (IDENTIFY) Protest Fee

584563

200.00

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

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0233 POWER LICENSE FEE (FW/WRD)

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HRDRO APPLICATION

\$

\$

\$

RECEIPT # **54722**

DATED: 8/9/02 BY: Connie Vance

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

FROM

RONALD S. YOCKIM

ATTORNEY AT LAW

548 S.E. JACKSON ST., SUITE 7

P.O. BOX 2456

ROSEBURG, OREGON 97470

SHIP TO

DWIGHT FRENCH, ACTING ADMINISTRATOR
WATER RIGHTS AND ADJUDICATIONS DIV
OREGON WATER RESOURCES DEPT
158 12TH STREET NE
SALEM OR 97310

MISCELLANEOUS ROUTE SLIP

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

☐

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54303**

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

\$

0205 TRANSFER

\$

0206

\$

WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

234 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 # **54303**

DATED: 7/22/02 BY: Connie Vance

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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **54303**

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

\$

0205 TRANSFER

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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

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0233 POWER LICENSE FEE (FW/WRD)

\$

0231 HYDRO LICENSE FEE (FW/WRD)

\$

HYDRO APPLICATION

\$

RECEIPT # **54303**

DATE: 7/22/02

BY: Connie Vance

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

gon

DEPARTMENT OF
FISH AND WILDLIFE

Habitat Division
2501 SW First Ave., P.O. Box 59
Portland, Oregon 97207

*Address
Service
Requested*

PRESORTED
FIRST CLASS



U.S.

H METER 5

Dwight French
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

FAIKNMS 97310



R = Request

INS
84563

Stream: THREEMILE CR @ mouth

WAB ID #: 31200803

WABS ABOVE: 0

MO	WAB ID # 31200803	Sum Upstream WABs			Difference			Difference	
		Flow	CSM	% Ann	Flow	CSM	% Ann	With 50% Flow	
IR	R								
4.5	1 5	4.85	.54	6.5	.00	.00	.0	.00	.00
5.5	2 6	5.66	.63	7.6	.00	.00	.0	.00	.00
7.5	3 8	7.89	.88	10.5	.00	.00	.0	.00	.00
11.5	4 12	11.50	1.28	15.4	.00	.00	.0	.00	.00
11.5	5 12	11.40	1.27	15.2	.00	.00	.0	.00	.00
6.5	6 2	6.89	.77	9.2	.00	.00	.0	.00	.00
4.5	7 5	4.74	.53	6.3	.00	.00	.0	.00	.00
4.0	8 4	4.33	.48	5.8	.00	.00	.0	.00	.00
4.0	9 4	4.25	.47	5.7	.00	.00	.0	.00	.00
4.0	10 4	4.29	.48	5.7	.00	.00	.0	.00	.00
4.0	11 4	4.40	.49	5.9	.00	.00	.0	.00	.00
4.5	12 5	4.62	.52	6.2	.00	.00	.0	.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

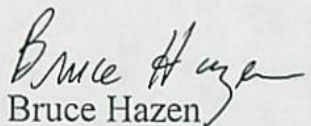
MO	WAB ID # 31200804	Sum Upstream WABs			Difference			Difference	
		Flow	CSM	% Ann	Flow	CSM	% Ann	With 50% Flow	
1		.57	.15	3.9	.00	.00	.0	.00	.00
2		1.00	.26	6.9	.00	.00	.0	.00	.00
3		1.96	.51	13.5	.00	.00	.0	.00	.00
4		3.27	.86	22.5	.00	.00	.0	.00	.00
5		4.10	1.07	28.2	.00	.00	.0	.00	.00
6		1.87	.49	12.9	.00	.00	.0	.00	.00
7		.49	.13	3.4	.00	.00	.0	.00	.00
8		.20	.05	1.4	.00	.00	.0	.00	.00
9		.17	.04	1.2	.00	.00	.0	.00	.00
10		.18	.05	1.2	.00	.00	.0	.00	.00
11		.30	.08	2.1	.00	.00	.0	.00	.00
12		.42	.11	2.9	.00	.00	.0	.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	

Date: October 05, 2000

TO: Steve Brutscher
Oregon Parks and Rec. Dept.
1115 Commercial St. NE Suite 1
Salem, OR 97301-1002

FROM: Bruce Hazen
BLM H.C. 74 12533 Hwy 20 East
Hines, OR 97738

As requested, I have enclosed a map and data associated with water quality monitoring sites on Home and Threemile Creeks. I can be contacted at : 541 573 4505 (office) or bhazen@fs.fed.us


Bruce Hazen
Biological technician

Application No. 84562
Permit No.

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

Threemile
Creek
Above Canyon

Threemile
Creek
Mouth

To Fields

● Water Quality Monitoring Sites

Major Streams

Proposed Wilderness Areas

Major Roads

Application No. 84562
Permit No.

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 0 2 4 Miles

Application No. 84562
 Permit No.

Stream	Site	Date	Flows	ph	DO	Sp Con	Turb	
Three Mile Creek	Above Diverson	July30, 96	1.953	9.3	10.8	xxx	milky 10in	
Home Creek	Above Home Creek Butte	July23, 96	5.794	9.13	8.62	0.094	colored 1ft	
Home Creek	At Mouth	July30, 96	4.148	9.9	7.9	xxx	clear 2ft	
Home Creek	Upper Xing	Sept.11, 96	3.368	8.51	9.66	0.089	23.4	

Water quality information for the Burns District for 1996

Water Quality information for the Burns District for 1997

file H:\user\Fish\wq97\wq97burn.tbl

Site/location	Date	Time	Flows	DO	Ph	Air C Temp.	Water C Temp.	Specific Conductivity	Turbidity
ANDREWS RESOURCE AREA									
Three Mile Creek	4/16	11:30	4.0095	9.4	9.45	18	10.34	0.086	48.3
Mouth	9/8	15:30	7.3953	8.28	9.22	31	13.61	0.089	62.4
Three Mile Creek above canyon	6/11	12:30		3.48	11.45	15	22.29	0.102	63.8
	10/6	DRY							
Home Creek	4/16	12:30	32.3632	9.68	8.56	18	7.84	0.072	47.7
Mouth	9/8	16:25	5.7408	7.2	9.32	29	16.94	0.097	30.2
Home Creek	5/27	12:05	15.363	8.96	10.33	15	10.68	0.081	33.9
Uppper Crossing	10/6	12:40	4.9021	9.55	11	10	7.34	0.087	9.4
Home Creek	4/24	11:00	60.515	10.47	8.4	2	3.57	0.071	105
Home Creek Butte	10/9	14:00	3.45925	9.63	10.69	8	8.19	0.092	23.7

Water Quality information for the Burns District, Bureau of Land Management for 1998

-All sites on or adjacent to BLM Lands

-Data originator for all sites is BLM Burns

-Data recorded using the H2O Water Quality Multiprobe Hydrolab

Site/Location	Date	Time	Flows CFS	DO	Ph	Air C Temp.	Water C Temp.	Specific Conductivity	Turbidity
ANDREWS RESOURCE AREA									
Threemile Creek Mouth	04/20	14:05	21.4	8.79	10.75	18	10.55	0.055	24.2
	05/26	11:10	17.3	6.6	9.4	6	5.5	0.1	12.5
	09/30	13:20	3.7	9.89	10.11	22	11.57	0.091	7.5
Home Creek Mouth	04/20	14:45	51.3	7.83	10.78	20	11.47	0.065	26.1
	05/26	12:00	Too high	6.7	9.2	6	5.6	0.1	45
	10/01	12:35	5.2	10.05	10.13	24	11.78	0.09	12.4
Home Creek Butte	07/13	11:00	8.7	5.3	11.4	21.0	18.4	Na	2.3
Home Creek Upper Crossing	06/15	10:45	44	6.25	10.01	14	10.93	0.073	17.1
	11/05	10:00	7.2	12.28	10.74	-2	2.6	0.084	23

Water Quality Information for the Burns District, Bureau of Land Management for 1999

- All sites on or adjacent to BLM Land
- Data originator for all sites is BLM Burns
- Data recorded using the H2O Water Quality Multiprobe Hydrolab

Site/Location	Date	Time	Flows CFS	DO	Ph	Air C Temp.	Water C Temp.	Specific Conductivity	Turbidity	Bank Full Width
ANDREWS RESOURCE AREA										
Threemile Creek Mouth	4/19		Too High	14.02	7.13	14	4.56	0.051	48.6	
	5/10		11.79	13.18	6.83	8	4.99	0.067	18.6	14.3
	5/19		7.47	11.08	8.03	20	12.27	0.069	4.6	
	10/28		4.39	10.38	7.58	8	5.97	0.091	11.4	
Home Creek Mouth	4/19		Too High	13.57	7.17	14	4.73	0.053	40.1	
	5/10		Too High	14.03	7.22	9	3.47	0.062	74.8	
	5/19		Too High	11.5	7.61	22	11.74	0.056	14.4	
	10/28		5.21							
Home Creek at Home Creek Butte	5/25		51.61	12.14	8.40	22	13.49	0.056	39.7	36.5
	7/27		6.56	7.40	8.47	27	18.9	0.093	7.3	
	11/15		3.86	11.71	9.29	10	9.30	0.081	65.4	

1999

Site/Location	Date	Time	Flows CFS	DO	Ph	Air C Temp.	Water C Temp.	Specific Conductivity	Turbidity	Bank Full Width
Home Creek Upper Crossing	5/11		Too High	12.17	7.11	10	8.03	0.059	45	15
	11/5		2.88	9.71	7.43	12	9.68	0.088	48.1	

Application No. 84562
Permit No.

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

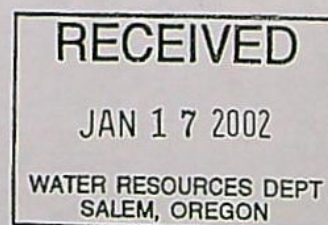
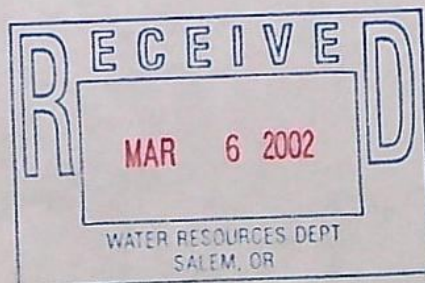
The following description identifies the flow requirements for the recreational uses of Threemile Creek in accordance with the provisions of Oregon Administrative Rules (OAR) 736-060-0015, Recreation Flow Requirement Methodology administered by the Oregon Parks and Recreation Department (OPRD). This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

Recreational Use: Scenic attraction/aesthetics, hiking, camping, hunting, wildlife viewing and nature study/interpretation. Threemile Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). The creek anchors the southern boundary of the 20,699 acre, Home Creek unit of the Steens Mountain Wilderness Area designated by Congress in October 2000. (Map 2). Threemile Creek canyon offers the visitor spectacular high desert scenery, impressive geology, viewable fish and wildlife, diverse plant communities and living natural history.

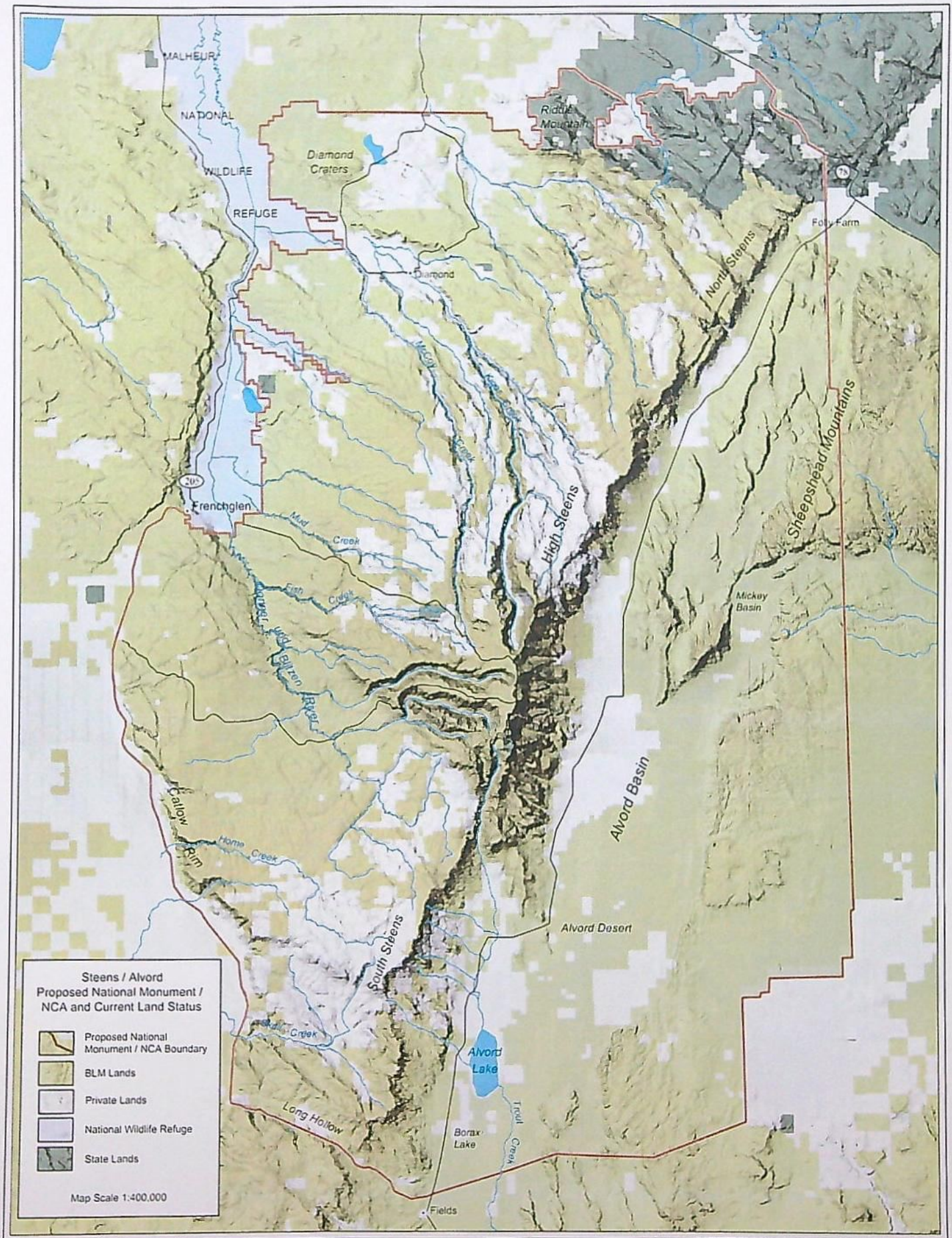
For those that prefer to look inside while outside, there is remoteness, solitude, isolation, tranquility, closeness to nature and spirit liberating space in this challenging and pristine environment. In the midst of the canyon it has cut, Threemile Creek is the dynamic focus, the crux of the canyon,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

Threemile Creek canyon is easily accessed from State Route 205 about 27 miles south of Frenchglen. The creek arises on the southwestern flank of Steens Mountain at an elevation of about 6,340 feet in the Henry Basin. A short stream, Threemile Creek flows only about seven miles before discharging onto the Catlow Valley, a Pleistocene era lakebed.

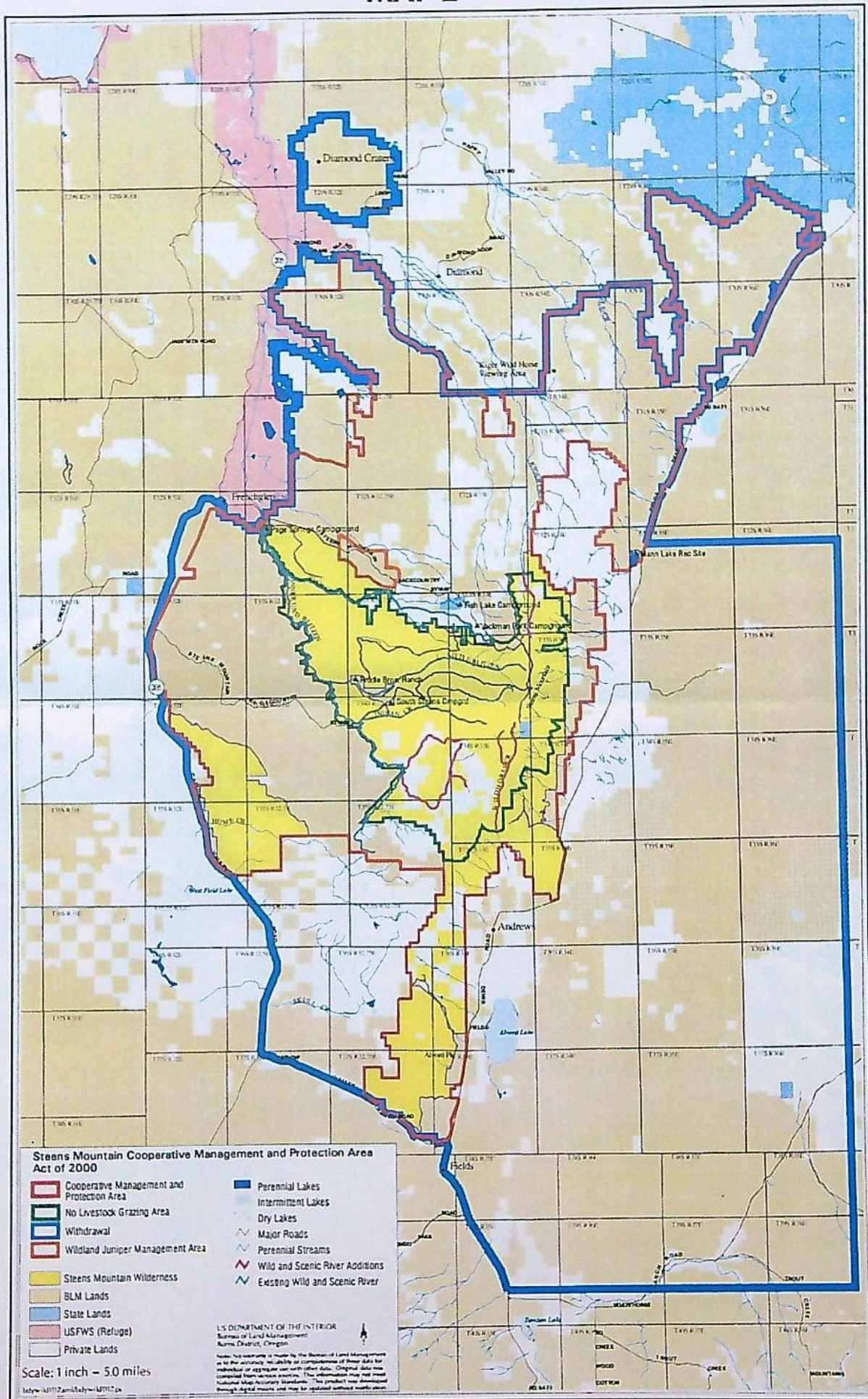
For the first 4.5 miles, the creek gathers energy flowing in a shallow depression and across upland meadow areas. Here its gradient is a respectable 100 feet per mile. About 2.5 miles from the highway, the creek begins its descent in earnest, dropping about 1,250 feet at an average gradient of 500 feet per mile.



MAP 1



MAP 2



During the wetter Pleistocene era, Threemile Creek was a more powerful stream as evidenced by the size of the canyon through which it now flows. Today, the creek is small and narrow, its channel bordered by grasses and shrubs and strewn with boulders. Threemile Creek's pools, falls and tumbling water, delight the eye, appease the ear, refresh the spirit and beckon the imagination. Without the creek, the canyon would be impressive and interesting, but with the creek it is irresistible.

Where Threemile Creek breaches the Catlow Rim, the canyon measures about one mile across from rim to rim and about 1,600 feet from rim top to creek bottom. Looking southwest from the mouth of Threemile Creek canyon, one views the Catlow Valley, a remnant lakebed. During glacial times, this valley was one of the largest bodies of water in southeastern Oregon. To the east, the land slopes ever upward for another dozen 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 this area as wilderness reinforces the assertion 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 Threemile Creek.

Time period of Use: Year-round. Threemile Creek is accessible to recreational use 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
5	6	8	12	12	7	5	4	4	4	4	5

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 Threemile Creek from its intersection with the Steens Mountain Wilderness Boundary, being the west section line of Section 21, Township 35 South, Range 32½ East, Willamette Meridian, Harney County; ---

--- downstream to the intersection of Threemile Creek with the Steens Mountain Wilderness boundary, being in the Northwest ¼ of the Northwest ¼ of Section 25, Township 35 South, Range 32 East, Willamette Meridian, in Harney County, about one quarter mile upstream from the Highway 205 crossing of Threemile Creek. This is a change from the downstream terminus of the proposed protected reach specified in the instream water right application submitted on October 17, 2000. This change moves

the protected reach terminus upstream from the previously requested location at the Highway 205 crossing of Threemile Creek. This change is intended to accommodate the interests of the Oregon Department of Fish and Wildlife and the Roaring Springs Ranch by avoiding the inclusion of the Roaring Springs Ranch diversion works located about 100 yards upstream from Highway 205.

Experience setting: Visitors to the above-described area can expect an experience at the primitive end of the Recreational Opportunity Spectrum (ROS). (ROS Users Guide, United States Department of Agriculture, Forest Service). The entire stream reach for which flow protection is sought lies within the Home Creek unit of the Steens Mountain Wilderness Area. There are no roads, buildings or other signs of development within this portion of the Threemile Creek drainage. 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. 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 those they preferred. The survey found that recreationists tend to prefer recreational settings that are more natural or primitive than those they are often able to 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, which provide the primitive settings desired. The table below shows uses and preferences for Primitive and Semi-primitive ROS settings for two categories of activities that apply to Threemile Creek.

Activity	ROS Setting Type			
	Primitive		Semi-primitive	
	Used	Preferred	Used	Preferred
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 Threemile Creek through instream water rights will help preserve the wilderness character of the area thereby addressing the public preference to have and recreate in primitive, unaltered settings. Recreation use of Threemile Creek will increase as people learn of its new designation and seek to experience the natural values it offers.

Amount of recreational use: Recreational use data are not available for Threemile 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 Threemile Creek. Use is dispersed and unmonitored. The BLM managed the Threemile Creek drainage 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.

Threemile Creek canyon and its drainage provide a variety of wilderness recreation opportunities, including hiking, camping, big game and upland bird hunting, wildlife viewing, nature photography and interpretation. Except for primitive trails, game tracks or cow paths, there are no developed or designated trails or campgrounds in the canyon or along the rims. Hikers and campers are challenged to rely on their own skills and resources to find suitable camps and access routes.

Animal species, including fish, which rely on Threemile Creek for habitat, add significantly to the aesthetic attraction and experience for visitors to the area. Threemile Creek is essential habitat for populations of Catlow Valley Redband Trout and Catlow tui chub. (Map 3). However, trout populations are currently low due to poor habitat conditions and drought effects in recent years. (Personal communication with Bob Hooten, Natural Production Program Manager, Oregon Department of Fish and Wildlife, Portland, January 9, 2002). Accordingly, Threemile Creek is currently closed to fishing and has been for several recent years.

Protecting redband trout was an important goal in the establishment of the Steens Mountain Wilderness. 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 Threemile Creek. Threemile Creek Reservoir owned by Roaring Springs Ranch has been renovated to provide fish rearing.

Threemile Creek canyon's steep talus slopes, rugged basalt cliffs and dense brush thickets, provide excellent habitat for big game species. California big horn sheep prefer the canyon's sheer rock outcrops, cliffs and upland areas. (Map 4). Steens Mountain supports a healthy population of big horn sheep, which range widely on the mountain. Adults and lambs are spring viewing attractions in Home and Threemile creek canyons, and along the Catlow Rim as well.

The Catlow Rim, including Threemile Creek canyon, is high density breeding habitat for a variety of hawk species including Swainson's, red-tailed, Cooper's and sharp-shinned hawks. (Map 4). Other significant raptor species that breed in the area include golden

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:

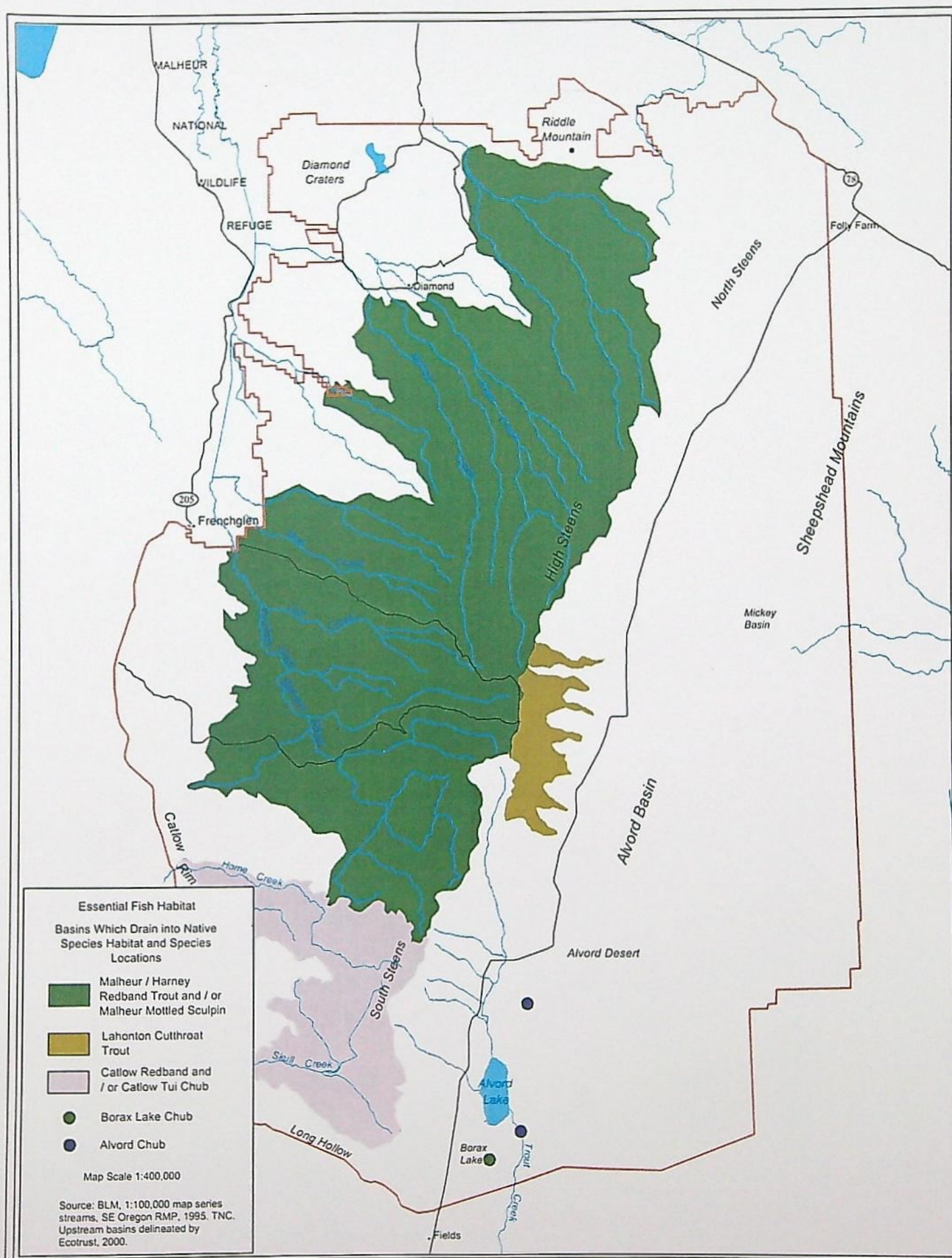
Township 35 South, Range 32 East: Sections 10, 11, 12

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

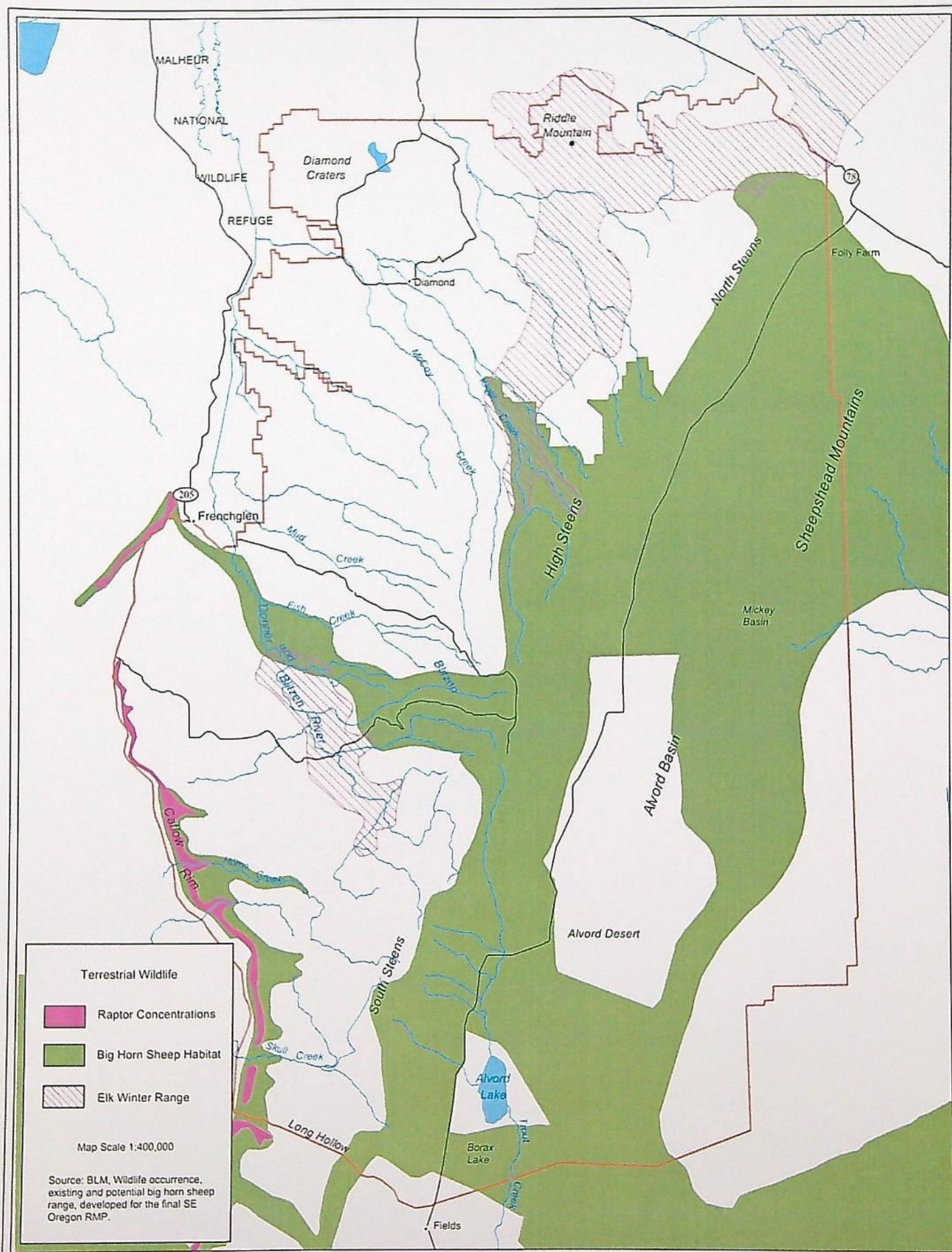
Township 35 South, Range 32 ¾ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34

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

MAP 3



MAP 4



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

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

Lillebo, Tim. Eastern Oregon Field Representative, Oregon Natural Resources Council. Telephone conversation, January 10, 2002.

McAllister, David. Director, Habitat Division, Oregon Department of Fish and Wildlife. Letter to Paul Cleary, Director, Oregon Water Resources Department. June 13, 2001.

ROS Users Guide. United States Department of Agriculture, Forest Service.

Sherbourne, Mark. Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.

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

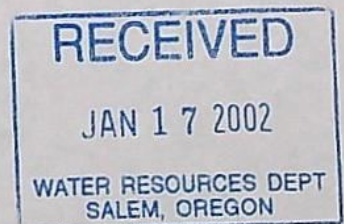
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Recreational Use: Scenic attraction/aesthetics, hiking, camping, hunting, wildlife viewing and nature study/interpretation. Threemile Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). The creek anchors the southern boundary of the 20,699 acre, Home Creek unit of the Steens Mountain Wilderness Area designated by Congress in October 2000. (Map 2). Threemile Creek canyon offers the visitor spectacular high desert scenery, impressive geology, viewable fish and wildlife, diverse plant communities and living natural history.

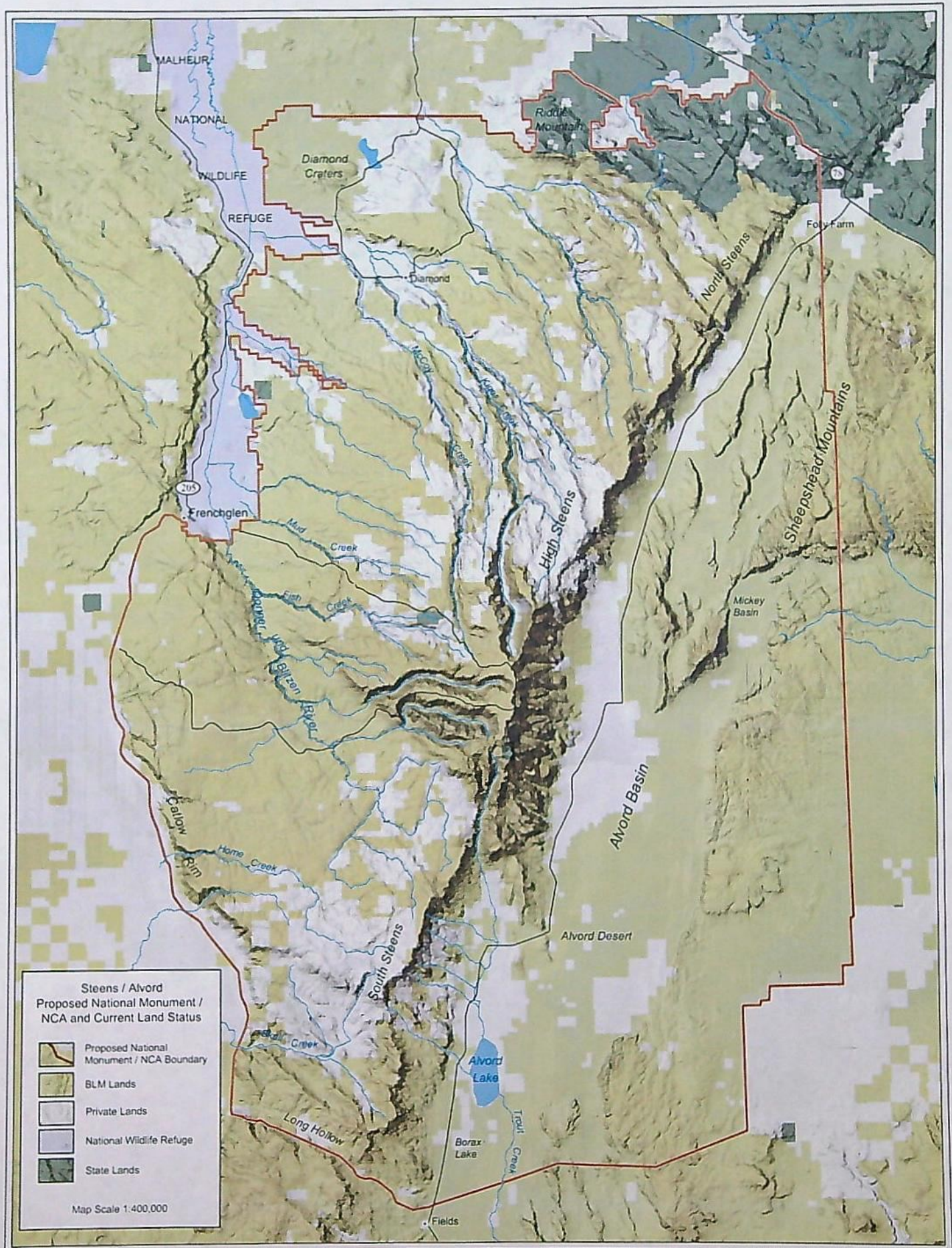
For those that prefer to look inside while outside, there is remoteness, solitude, isolation, tranquility, closeness to nature and spirit liberating space in this challenging and pristine environment. In the midst of the canyon it has cut, Threemile Creek is the dynamic focus, the crux of the canyon,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

Threemile Creek canyon is easily accessed from State Route 205 about 27 miles south of Frenchglen. The creek arises on the southwestern flank of Steens Mountain at an elevation of about 6,340 feet in the Henry Basin. A short stream, Threemile Creek flows only about seven miles before discharging onto the Catlow Valley, a Pleistocene era lakebed.

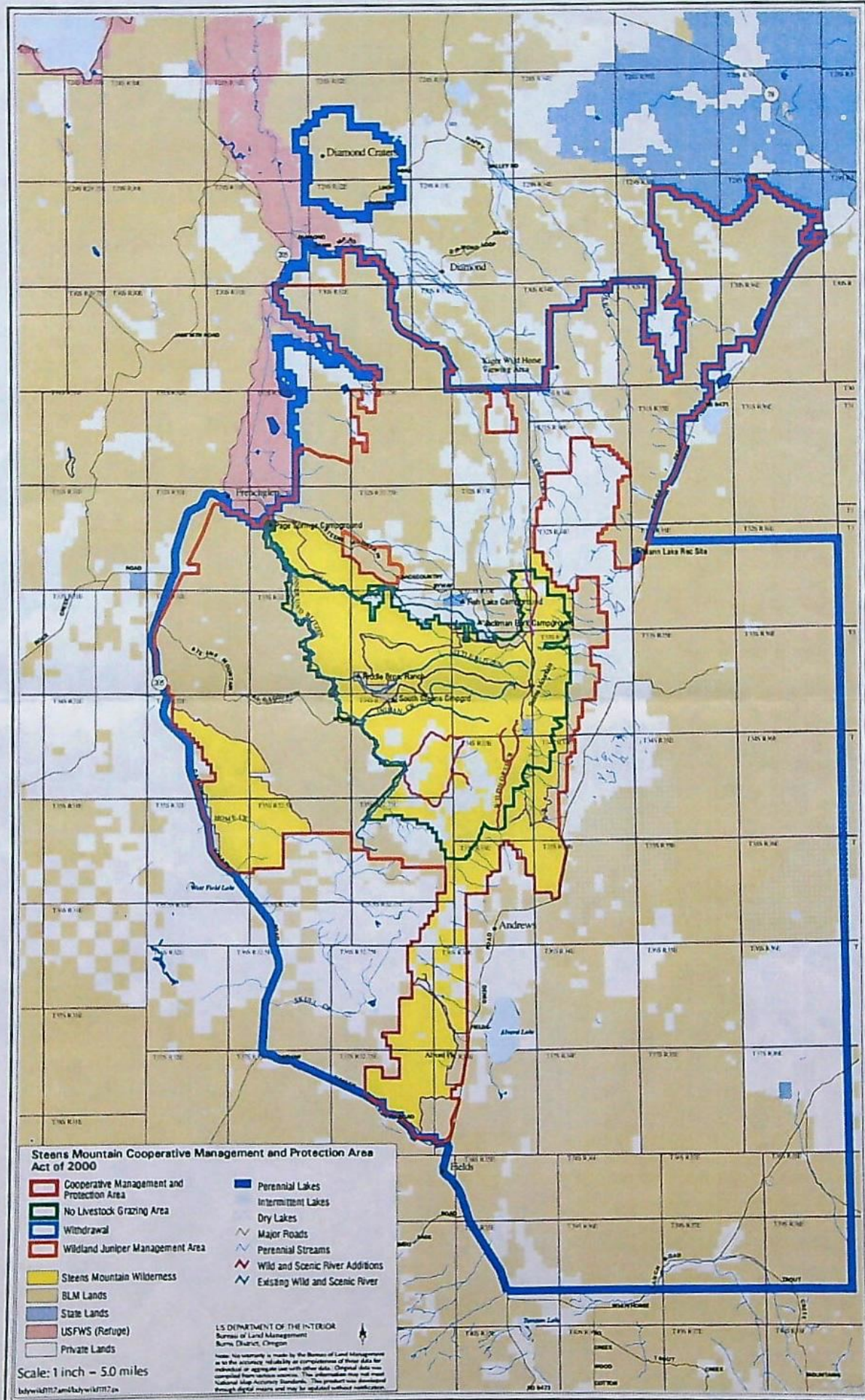
For the first 4.5 miles, the creek gathers energy flowing in a shallow depression and across upland meadow areas. Here its gradient is a respectable 100 feet per mile. About 2.5 miles from the highway, the creek begins its descent in earnest, dropping about 1,250 feet at an average gradient of 500 feet per mile.



MAP 1



MAP 2



During the wetter Pleistocene era, Threemile Creek was a more powerful stream as evidenced by the size of the canyon through which it now flows. Today, the creek is small and narrow, its channel bordered by grasses and shrubs and strewn with boulders. Threemile Creek's pools, falls and tumbling water, delight the eye, appease the ear, refresh the spirit and beckon the imagination. Without the creek, the canyon would be impressive and interesting, but with the creek it is irresistible.

Where Threemile Creek breaches the Catlow Rim, the canyon measures about one mile across from rim to rim and about 1,600 feet from rim top to creek bottom. Looking southwest from the mouth of Threemile Creek canyon, one views the Catlow Valley, a remnant lakebed. During glacial times, this valley was one of the largest bodies of water in southeastern Oregon. To the east, the land slopes ever upward for another dozen 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 this area as wilderness reinforces the assertion 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 Threemile Creek.

Time period of Use: Year-round. Threemile Creek is accessible to recreational use 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
5	6	8	12	12	7	5	4	4	4	4	5

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 Threemile Creek from its intersection with the Steens Mountain Wilderness Boundary, being the west section line of Section 21, Township 35 South, Range 32½ East, Willamette Meridian, Harney County; ---

--- downstream to the intersection of Threemile Creek with the Steens Mountain Wilderness boundary, being in the Northwest ¼ of the Northwest ¼ of Section 25, Township 35 South, Range 32 East, Willamette Meridian, in Harney County, about one quarter mile upstream from the Highway 205 crossing of Threemile Creek. This is a change from the downstream terminus of the proposed protected reach specified in the instream water right application submitted on October 17, 2000. This change moves

the protected reach terminus upstream from the previously requested location at the Highway 205 crossing of Threemile Creek. This change is intended to accommodate the interests of the Oregon Department of Fish and Wildlife and the Roaring Springs Ranch by avoiding the inclusion of the Roaring Springs Ranch diversion works located about 100 yards upstream from Highway 205.

Experience setting: Visitors to the above-described area can expect an experience at the primitive end of the Recreational Opportunity Spectrum (ROS). (ROS Users Guide, United States Department of Agriculture, Forest Service). The entire stream reach for which flow protection is sought lies within the Home Creek unit of the Steens Mountain Wilderness Area. There are no roads, buildings or other signs of development within this portion of the Threemile Creek drainage. 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. Management is designed to preserve and protect the natural resource features, values and functions of the lands within this wilderness area.

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Activity	ROS Setting Type			
	Primitive		Semi-primitive	
	Used	Preferred	Used	Preferred
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 Threemile Creek through instream water rights will help preserve the wilderness character of the area thereby addressing the public preference to have and recreate in primitive, unaltered settings. Recreation use of Threemile Creek will increase as people learn of its new designation and seek to experience the natural values it offers.

Amount of recreational use: Recreational use data are not available for Threemile 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 Threemile Creek. Use is dispersed and unmonitored. The BLM managed the Threemile Creek drainage 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.

Threemile Creek canyon and its drainage provide a variety of wilderness recreation opportunities, including hiking, camping, big game and upland bird hunting, wildlife viewing, nature photography and interpretation. Except for primitive trails, game tracks or cow paths, there are no developed or designated trails or campgrounds in the canyon or along the rims. Hikers and campers are challenged to rely on their own skills and resources to find suitable camps and access routes.

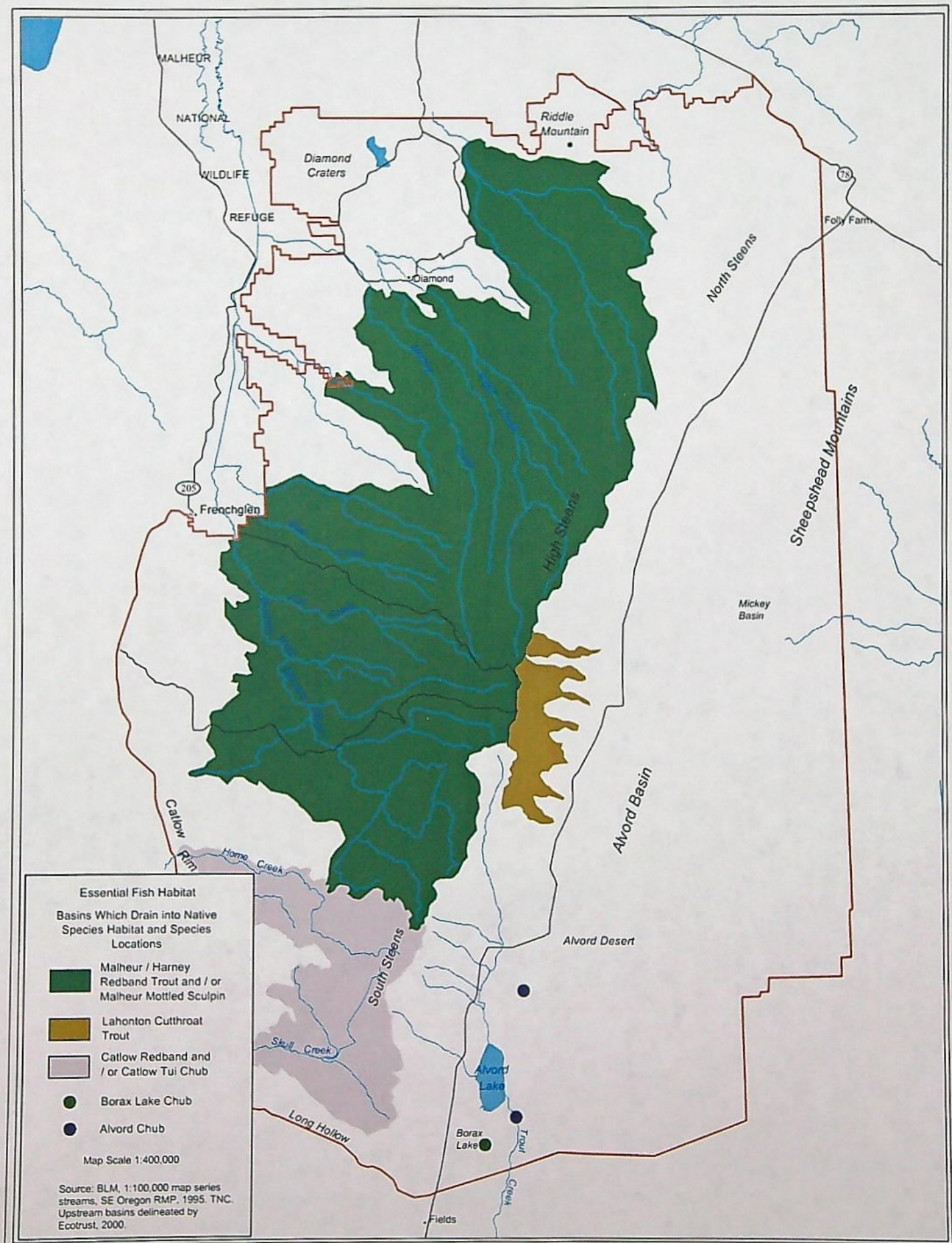
Animal species, including fish, which rely on Threemile Creek for habitat, add significantly to the aesthetic attraction and experience for visitors to the area. Threemile Creek is essential habitat for populations of Catlow Valley Redband Trout and Catlow tui chub. (Map 3). However, trout populations are currently low due to poor habitat conditions and drought effects in recent years. (Personal communication with Bob Hooten, Natural Production Program Manager, Oregon Department of Fish and Wildlife, Portland, January 9, 2002). Accordingly, Threemile Creek is currently closed to fishing and has been for several recent years.

Protecting redband trout was an important goal in the establishment of the Steens Mountain Wilderness. 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 Threemile Creek. Threemile Creek Reservoir owned by Roaring Springs Ranch has been renovated to provide fish rearing.

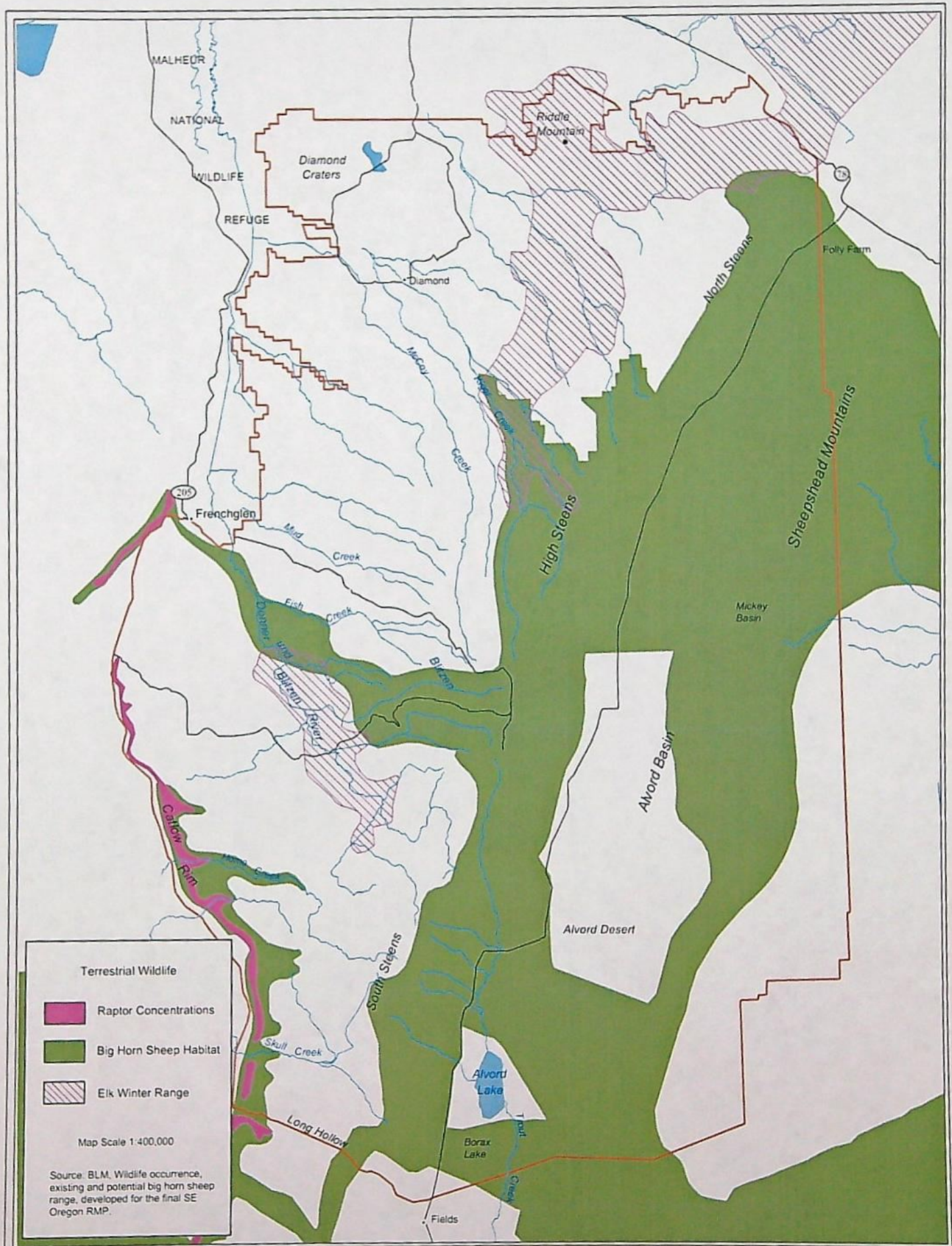
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The Catlow Rim, including Threemile Creek canyon, is high density breeding habitat for a variety of hawk species including Swainson's, red-tailed, Cooper's and sharp-shinned hawks. (Map 4). Other significant raptor species that breed in the area include golden

MAP 3



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

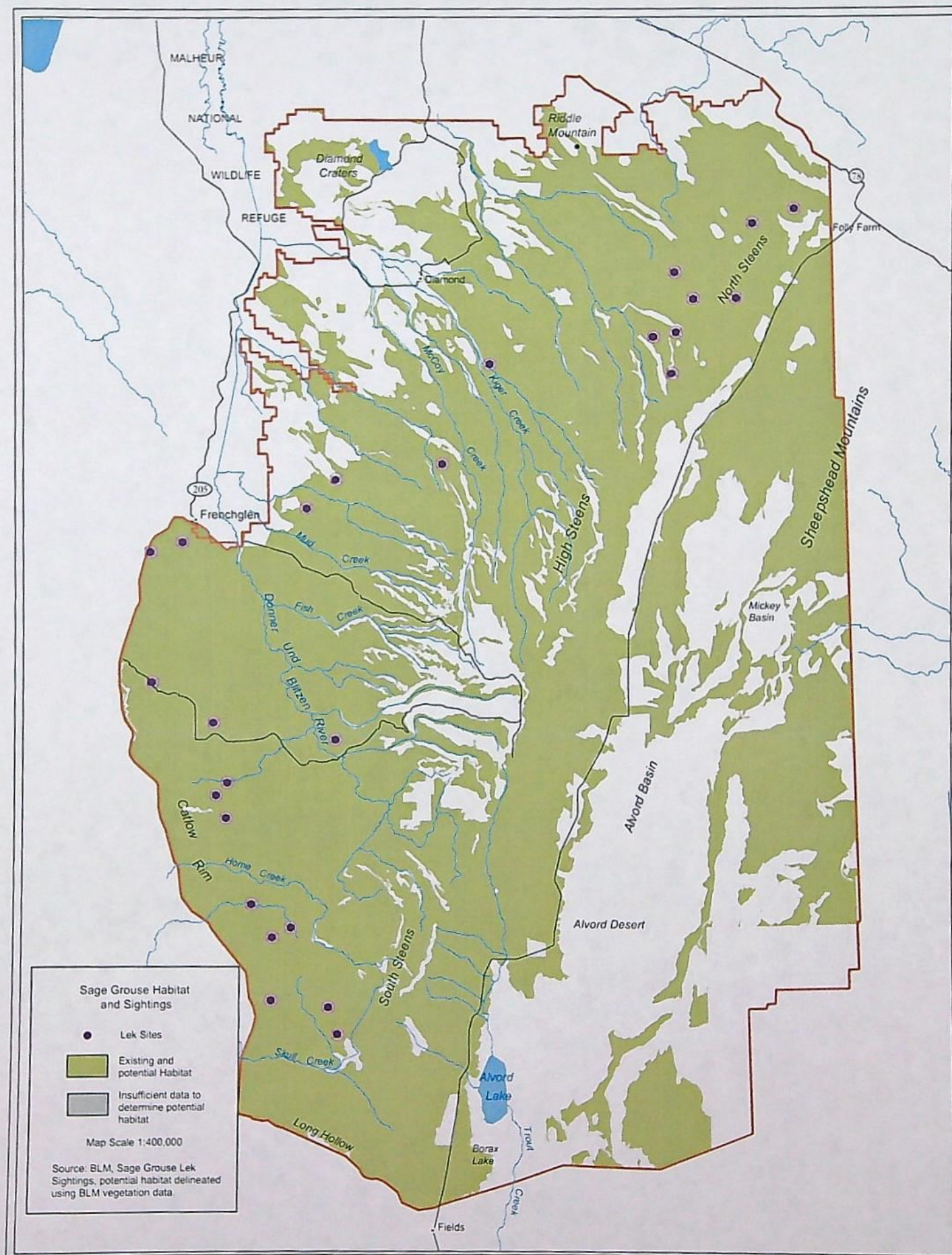
Township 35 South, Range 32 ½ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 33, 34, 35

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



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

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

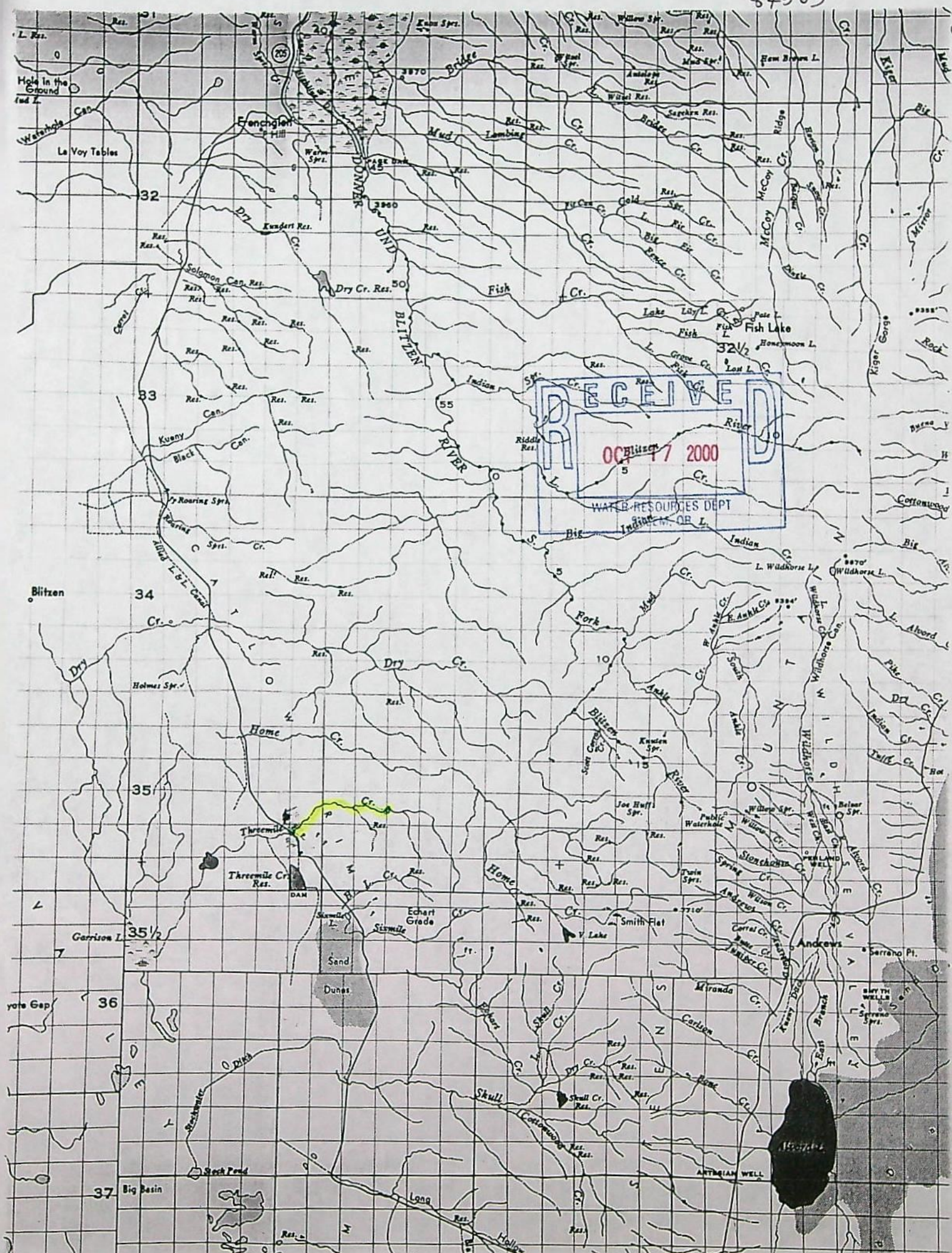
Lillebo, Tim. Eastern Oregon Field Representative, Oregon Natural Resources Council. Telephone conversation, January 10, 2002.

McAllister, David. Director, Habitat Division, Oregon Department of Fish and Wildlife. Letter to Paul Cleary, Director, Oregon Water Resources Department. June 13, 2001.

ROS Users Guide. United States Department of Agriculture, Forest Service.

Sherbourne, Mark. Bureau of Land Management, Burns District. Telephone conversation, January 9, 2002.

Q:\Instream Water Rights\Threemile Creek (2) Rec Flow Rqmnt Methodology 01-16-2002.doc



June 25, 2002

App# Basin Source Quantity Use Cnty/Priority Pod Vicinity Name/Address Stage/Status
(CONTD)

INSTREAM WATER RIGHT APPLICATION

APP #	BASIN	SOURCE	COUNTY & PRIORITY	APPLICATION & ADDRESS
IS- 84563	12	THREEMILE CREEK> CATLOW VALLEY	HARNEY 10/17/2000	OR DEPT OF PARKS & REC 1115 COMMERCIL ST NE. SUITE 1 SALEM, OR 97301-1002

USE: Providing required stream flows for recreation and scenic attraction

REACH

LOCATION: Threemile Creek from the west section line of Section 21 (SW 1/4 NW 1/4, Section 21, T35S, R321/2E, W.M.); to the boundary of the wilderness Area boundary (NW 1/4 NW 1/4, Section 25, T35S, R32E, W.M.)

PROPOSED

QUANTITY ALLOWED:

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



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

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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

John A. Kitzhaber, M.D., Governor

Parks and Recreation Department

1115 Commercial St. NE

Salem, OR 97301-1002

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RECEIVED

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.

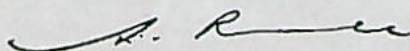
In addition to the benefit that they may confer on redband trout, the OPRD applications are aimed at protecting scenic and recreational values in these two streams. These values were discussed by representatives from the local ranching community, from the state, and from federal agencies during a process 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.

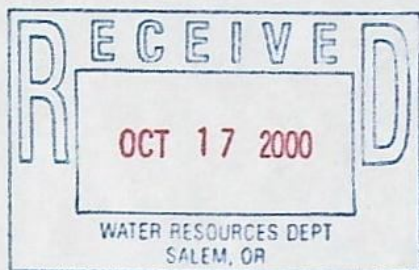
⁴ Bowers, ODFW Southeast region stock review, 1995.

⁵ Bowers and Perkins, 1996.

cc: Martha Pagel
Stephanie Parent
Bill Marlett
Karen Russell
Rick Kepler
Wayne Bowers

IWA Application # 84563

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 Threemile Creek, a tributary to Garrison Lake in the Catlow Valley in the 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
5	6	8	12	12	7	5	4	4	4	4	5

4. The specified flows are requested to be maintained in the reach of the stream from the intersection of Threemile Creek with the west section line of Section 21, Township 35 South, Range 32 1/2 East, Willamette Meridian, in Harney County . .

Downstream to the intersection of Threemile Creek with Highway 205 being in the NW 1/4 of the NW 1/4 of Section 25, 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. 84563
Permit No.

IWA Application # _____

Certificate # _____

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

Establish a gaging structure at the intersection of Threemile 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 Threemile 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.

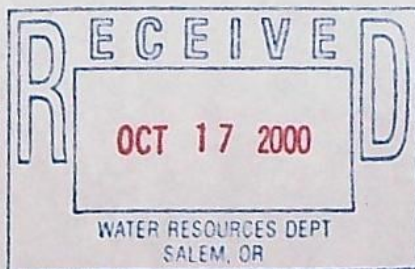
An instream water right may be allowed for an instream beneficial use of water subject to existing water rights with an effective date prior to the filing date of this application.

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. 84563
Permit No.



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.

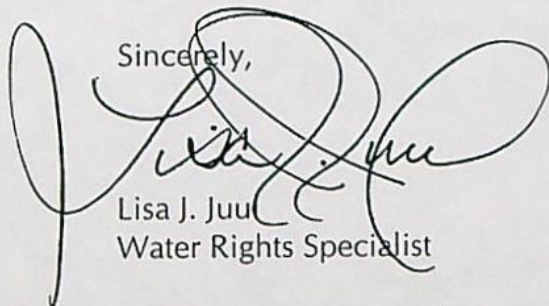
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If you have any questions:

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 handwritten signature in black ink, appearing to read 'Lisa J. Juu', is written over the typed name and title.

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.

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 0 2 4 Miles



Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
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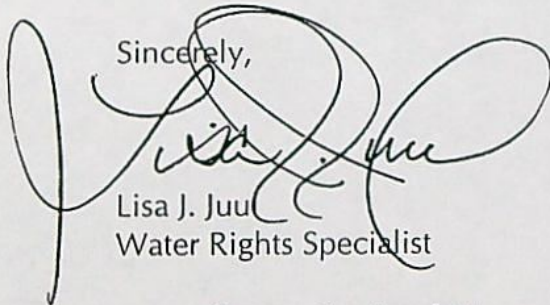
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Lisa J. Juu
Water Rights Specialist

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

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	

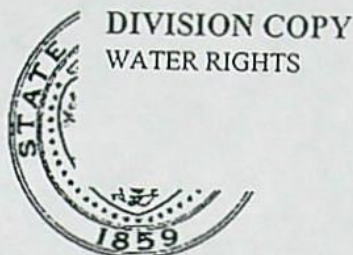
Stream: SIXMILE CR @ mouth

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	

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; WALK PO BOX 369 LAKE OSWEGO,OR 97034	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				NENW,SECTION 35		
		WELL 10>DANIELS CR				T16S, R3W		
		WELL 11>DANIELS CR				SWNW,SECTION 36		
		WELL 12>DANIELS CR				T16S, R3W		
		WELL 13>DANIELS CR				NWNW,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; ANDER 6780 RESERVOIR RD THE DALLES,OR 97058	PFO 2

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

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 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 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

mean, however, that monies will be reasonably distributed throughout the state over a ten-year period.

(3) Survey and Planning Projects: It is the long-range objective of the State Historic Preservation Office to compile a comprehensive inventory of all properties in the state which may be of historical significance, and also to complete enough inventory information about prehistoric sites to predict probable location of these sites. Pending availability, federal funds are allocated by the office for surveys to compile these inventories, and also to plan development projects (though it is better to include planning as part of development projects). When allocating these funds, staff will take the following criteria into account:

(a) Survey Projects:

(A) Need — the completeness of previous surveys and the degree to which the proposed survey will expand inventory information will be evaluated.

(B) Probability — the likelihood that the survey area contains prehistoric or significant historic resources will be evaluated. Surveys of areas with potentially greater numbers of higher concentrations of resources will receive higher priority, other factors being equal, than surveys of areas of lesser numbers or concentration of resources.

(C) Scope — the comprehensiveness of the proposed survey will be evaluated. Surveys that include the identification of all historic as well as prehistoric resources in a given area and surveys to identify all of one kind of resource (for example, all wooden barns before 1940) in a large area (such as a large metropolitan center or an entire county) will receive priority over surveys to identify limited kinds of resources in limited areas, if enough grant money is available to undertake the larger project.

(D) Sponsorship — generally, recognition of the proposed survey for land-use planning purposes by the appropriate unit or units of local government will be regarded as a precondition to the award of survey funds. In addition, provision to make the survey results (except archeological site information) available to the public at the local level will always be regarded as a precondition to funding.

(E) Objective and Procedure — the proposed project's research design, methodology, procedure, organization, and duration will be evaluated for clarity, completeness and feasibility. It is important to note that the intent of survey funding is to assist projects with beginning and ending dates and clearly defined statements of purpose, rather than to fund ongoing programs.

(F) Matching Share and Administration — the nature and amount of matching share will be evaluated for accountability and facility of administration. Also, the survey project proponent's ability to keep administrative records will be evaluated. It is preferred that all survey projects be sponsored by and administered through units of local government.

(b) Planning Projects — the criteria which apply to Development Projects above will be applied to the selection of planning projects. Generally, planning funds will be awarded only when an especially important or complex project requires a lengthy planning process before construction can begin, or the nature of the project entails no construction or tangible development. Otherwise, the project planning costs should be included in Acquisition and Development grant costs.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 358.612 & ORS 358.617

Hist.: PR 3-1981, f. & cf. 2-26-81

736-055-0015

Advisory Committee Review and Public Comment

At least once a year, staff will inform the State Advisory Committee on Historic Preservation of projects that have been selected for grant funding at a regular meeting of the Committee. The Committee may review this information and comment or make policy recommendations. Staff will make the date of this review known to the press and to anyone who has asked to be informed of it. Government agencies or the public may comment on allocation policy at this or any other regular meeting of the committee.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 358.622

Hist.: PR 3-1981, f. & cf. 2-26-81

DIVISION 60

INSTREAM WATER RIGHTS

736-060-0000

Purpose

(1) These rules, promulgated in accordance with ORS 537.332 to 537.360, set the policy, procedures, standards, methodology, and definitions for instream water right applications made by the Oregon State Parks and Recreation Department to the Water Resources Department, for the protection of recreational values and scenic attraction.

(2) These rules set out: The methodology for determining flow requirements and water surface elevations for recreational use(s) and scenic attraction, the standard for setting the priority for processing instream water right proposals, the internal procedures for application for and coordination of instream water rights, and the process for assisting with transfers of regular water rights to instream water rights.

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 390.124, ORS 537.336 & ORS 537.338

Hist.: PR 5-1991, f. & cert. cf. 5-17-91

736-060-0005

Policy

It is the policy of the Parks and Recreation Department to apply to the Water Resources Department for instream water rights on the streams, rivers, lakes, and wetlands of the state to protect scenic attraction and recreational values for the benefit of present and future generations of citizens of this state.

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.336(3)

Hist.: PR 5-1991, f. & cert. cf. 5-17-91

736-060-0010

Definitions

As used in these rules:

(1) "Application" means the instream water right application form developed by the Water Resources Department as referenced in OAR 690-077-0020(1).

(2) "Commission" means the Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "DEQ" means the Department of Environmental Quality.

(5) "Director" means the director of the Parks and Recreation Department.

(6) "Instream Water Rights Coordinator" or "Coordinator" means the staff person in the Department whose responsibility includes receiving, reviewing, and preparing all material pertinent to filing for and obtaining an instream water right from the Water Resources Department.

(7) "Instream Water Right Study" means a recreation flow requirement proposal developed by the Department or the public-at-large utilizing the Oregon Recreation Methodology.

(8) "ODFW" means the Oregon Department of Fish and Wildlife.

(9) "Oregon Recreation Methodology" means the methodology developed by the Department to determine the recreation flow or water level requirements for scenic attraction and recreational values of a stream, river, lake or wetland. (See OAR 736-060-0015.) Definitions specific to this methodology are as follows:

(10) "Recreation Flow Requirement" means the amount of water needed to accommodate the predominant recreational use(s) or scenic attraction occurring during any given month. This is determined by the Oregon Recreation Methodology (section (9) of this rule). This requirement may be quantified as:

(a) An amount of flow in cubic feet per second (cfs), such as in a stream or river;

- (b) A water surface elevation above mean sea level (feet); or
- (c) Acre feet.

(11) "Amount of Recreation Use" means the number of users that participate in each specific recreational use. This is usually expressed in number of visitors over a certain period of time (e.g., one visitor in a 24 hour period is one visitor day).

(12) "Competing Uses" means all water uses that are perceived to be in competition with recreational uses, including both competing instream recreational uses (for example white water rafting and fishing) and out of stream uses.

(13) "Experience Setting" means a description of the natural surroundings, land, recreation facility developments, and public recreation use conditions encountered by recreational users.

(14) "Location of Recreational Use" means the site or river segment where the recreational activity takes place.

(15) "Time Period of Recreation Use" means the time period, by month, for any given recreation use.

(16) "Type of Recreational Use" means specific recreational use(s) that are stream flow or water-level dependent (for example boating, fishing, white water kayaking).

(17) "Scenic Attraction" means a picturesque natural feature or setting of a stream, river, or lake, including, but not limited to, waterfalls, rapids, pools, springs, wetlands, and islands that may create viewer interest, fascination, admiration, or attention.

(18) "WRD" means the Water Resources Department.

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0015

Recreation Flow Requirement Methodology

(1) Recreation flow requirements requested in Department instream water right applications shall be based on the methodology in this section. According to this methodology, the recreation flow is the flow or water level needed to accommodate the predominant recreational use(s) occurring during any given month. The Department shall make this determination using the following procedure:

(a) Each existing type of recreational use shall be identified and fully described. Each type may have separate, discrete, instream flow requirements and seasons of use. Some stream flow dependent uses may occur on the riverbank including, but not limited to, scenic attraction and wildlife viewing, camping, hiking, boating access, and picnicking;

(b) Each type of recreational use shall be described as follows and according to the definitions (OAR 736-060-0010):

(A) Time period of recreational use;

(B) Stream flow, or range of flows, that support the use depicted by month, or by half-month if appropriate, and quantified in cubic feet per second (cfs), or, if for a lake or other standing water body, in feet above mean sea level or acre feet;

(C) Location(s) of recreational use. Locations may be described in any way that provides sufficient details to identify a common location for the use, including by reference to the Environmental Protection Agency's stream reach numbering system or other such documented system in wide use;

(D) Experience setting. Reference to the "Recreation Opportunity Spectrum" system of the U.S. Forest Service is helpful, but not mandatory. A discussion of current and planned recreation developments and management programs must be included;

(E) Amount of recreational use. The popularity of a stream, river, lake, or wetland, while not the sole basis for instream water rights requests, must be taken into account. The Department will use its best efforts to obtain quantifiable data on actual recreational use. Professional judgment described in relative terms (i.e., low, moderate, or high) may be used when precise data are not available;

(F) Competing use(s), if any;

(G) Institutional constraints. These may include, but are not limited to:

(i) Recreation use permits;

(ii) Fishing regulations;

(iii) Dam releases;

(iv) Minimum perennial streamflows or other instream water rights;

(v) Court decisions;

(vi) Standards contained in OAR 690-077-0045 (WRD);

(vii) Acknowledged comprehensive land use plan of local government.

(c) Depict the flows needed by month to accommodate the predominant recreational use(s), and explain how these flows were established.

(2) The following sources may be consulted for information described in subsections (1)(a) and (b) of this rule and for determining recreation flow requirements. Other appropriate sources may be used:

(a) "Recreational Values on Oregon Rivers" prepared for the Northwest Power Planning Council (1987) by State Parks and Recreation Department;

(b) Local, state, and federal managing agency plans, records, and reports;

(c) Professional guide service records (i.e., trip logs, etc.);

(d) River recreation guides and publications;

(e) Professional or expert opinion, i.e., published authors, professional guides, agency staff, etc.;

(f) On-site surveys of recreational users;

(g) Water Resources Department records, basin reports, and water use programs pertinent to recreation flow;

(h) U.S. Geologic Survey and Oregon stream gauge records;

(i) Reports prepared under the National Environmental Policy Act;

(j) "Nationwide River Inventory" prepared by the National Park Service;

(k) "Oregon Outdoor Recreation Plan" (SCORP) prepared by the Department;

(l) Findings and conclusions of other instream recreation flow studies conducted using generally accepted methods where consistent with goals and policies of the Parks and Recreation Department;

(m) Recreation flow assessments conducted by WRD.

(3) In situations where recreation flow data does not exist, the instream flow requirements of ODFW or DEQ, whichever is higher, may satisfy the recreation flow requirement necessary for recreational value and scenic attraction.

(4) Staff gauges or other generally established river level measuring devices shall be used to report recreation flow requirements only when a stream cross section analysis has been conducted which will allow accurate conversion to cfs. Direct measurement shall be used to determine lake water surface elevations above mean sea level necessary to maintain recreational value or scenic attraction.

(Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.)

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0020

Responsibilities to WRD

(1) The Department shall coordinate with WRD on establishing priorities for monitoring of flows of instream water rights: The Department shall coordinate with WRD watermasters to develop monitoring plans for instream water rights. The location and method of instream flow measurement shall be selected to ensure that the instream water right is adequately monitored throughout the entire reach. Monitoring plans may include:

(a) Use of volunteers and Department personnel to conduct monitoring;

(b) The frequency of monitoring;

(c) A system for reporting and enforcing violations of instream water rights.

(2) In cases where it is known that the request for flows is higher than the estimated average natural flow, as defined by WRD, the Department shall provide in the application justification

Application No. 84562

Permit No. Chapter 736 Parks and Recreation Department

for additional flow or identify the intended source of water in accordance with OAR 690-077-0045(3)(e) (WRD).

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0030

Internal Application Process for Instream Water Right

(1) While only Parks, ODF&W, and DEQ may request instream water rights, requests may be initiated by the Department, by other local, state, or federal agencies, or by the public at large.

(2) All requests and studies shall be submitted to the instream water rights Coordinator, using a typewritten or printed format and including the following information:

(a) A description of the location of recreational use, including a description of the existing flow regime by month following the Oregon Recreation Methodology (OAR 736-060-0015);

(b) A summary of the study participants and a list of authors and their qualifications;

(c) The recreation flow requirement recommendation expressed in cubic feet per second, or, if for standing water body, in feet above mean sea level or in acre feet; and

(d) The date and the signature of the submitting authority, organization, or individual.

(3) The instream water rights Coordinator shall review all studies within a reasonable time for compliance with this rule and Department goals, objectives, and policies. The study may be returned to the initiator for amendment, changes, or additional justification.

(4) If the study is found to be consistent with this rule and Department goals, objectives, and policies, the Coordinator may prepare a draft application. If competing instream recreational uses exist, the Director may choose to apply for only the predominant recreational use or uses. The Director shall maintain a record of the reasons for the decision. The draft application shall contain all the information required by OAR 690-077-0020.

(5) The Coordinator shall notify ODF&W and DEQ of the proposed application. Changes or corrections to the draft application suggested by DEQ and ODF&W shall be reviewed and made if they are determined to be consistent with available information, this rule, Department goals, objectives, policies, and the purposes for the instream water right application.

(6) DEQ, or ODF&W, or both, may incorporate the public uses for which they are responsible into a Department application for instream water rights in accordance with OAR 690-077-0020.

(7) To the greatest extent possible, the final application shall accommodate the requests of ODF&W and DEQ, provided such amendments are consistent with available data, this rule, Department goals, objectives, and policies, and the purposes of the instream water right application. In the event the Department withdraws an application of an instream water right that was proposed by anyone other than the Department, it shall endeavor to notify the party of the reasons for withdrawal.

(8) The final application shall be signed by the Director or the Director's designated representative. If DEQ or ODF&W, or both, are combining their applications for an instream water right with the Department's application, the application must be signed by designated representatives of the respective agencies.

(9) The Coordinator shall notify affected local governments, pursuant to OAR 690-077-0020(4), and, by request, any other interested parties, of the instream water right application.

(10) The Department at any time in the application process, may withdraw an application on which it is the sole signator. If the Department is a co-applicant with ODF&W or DEQ, or both, any party may withdraw its interest in the application.

(11) The priority of instream water right acquisition shall be for streams:

(a) Designated as a State Scenic Waterway, or National Wild and Scenic River;

(b) With significant statewide recreation opportunities;

(c) With recreation opportunities of regional significance;

(d) With potential of being adversely impacted by continued out of stream appropriation; or

(e) Identified as important recreational resources in comprehensive plans or regional economic strategies.

(12) Amendments, whether for greater or lesser flows than those previously granted, will be processed under the standards contained in OAR 690-077-0080 (WRD).

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

736-060-0040

Purchase, Lease, or Gift of Water Rights for Instream Water Rights

(1) The Department may purchase, lease, or accept as gifts, water rights for the purpose of transferring the water right to an instream water right for the public uses and purposes set forth in OAR 736-060-0000 through 736-060-0040:

(a) Water rights that may be transferred to instream water rights shall be reviewed for potential benefits and adverse impacts to recreation values and scenic attraction;

(b) Standards set out in this rule shall apply to establish priorities for water rights that are to be bought or leased;

(c) Gifts of water rights shall be accepted regardless of priorities set out in OAR 736-060-0020, if the transfer does not harm recreation or scenic attraction values. Donors of gifts shall be recognized through a formal Commission process.

(2) Instream water rights are held by the Water Resources Department in the public interest in accordance with ORS 537.332 to 537.360.

Stat. Auth.: ORS 183.335(7), ORS 183.341 & ORS 537.332 - ORS 537.360

Stats. Implemented: ORS 537.338 & ORS 537.341

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

DIVISION 70

STATE AGENCY COORDINATION

736-070-0010

Purpose

(1) The purpose of these rules is to establish the procedures used by the Parks and Recreation Department in implementing the provisions of its State Agency Coordination Program, as required by ORS 197.180 and OAR Chapter 660, Division 30 and 31. The State Agency Coordination program will assure that the Department's land use programs comply with the statewide land use planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations. It is not the intent of these rules to prevent either the Parks and Recreation Commission or the Parks and Recreation Department from carrying out their statutory responsibilities.

(2) Division 70 shall control over any related or inconsistent rule provisions relating to statewide goal compliance and comprehensive plan compatibility in OAR Chapter 736, Division 2 through 55.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.180

Hist.: PR 3-1991, f. & cert. ef. 3-8-91

736-070-0020

Definitions

As used in these rules:

(1) "Acknowledged Comprehensive Plan" means a city or county comprehensive land use plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, 197.640 to 197.649 and 197.625.

(2) "Affected Local Government" means a city or county government that has land use planning jurisdiction.

(3) "Commission" means the Parks and Recreation Commission.

(4) "Compatibility" means that the Department has taken actions pursuant to this division, including applicable procedures in the Department's State Agency Coordination Program, and



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.

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. 84563
Permit No.



Oregon

John A. Kitzhaber, M.D., Governor

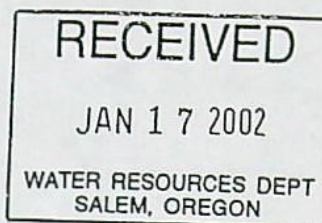
Parks and Recreation Department

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.

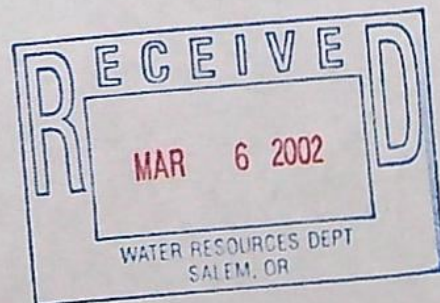
If you have questions about the enclosed materials, please don't hesitate to contact me or Steve Brutscher of my staff. Steve can be reached at 503.378.4168 x 235.

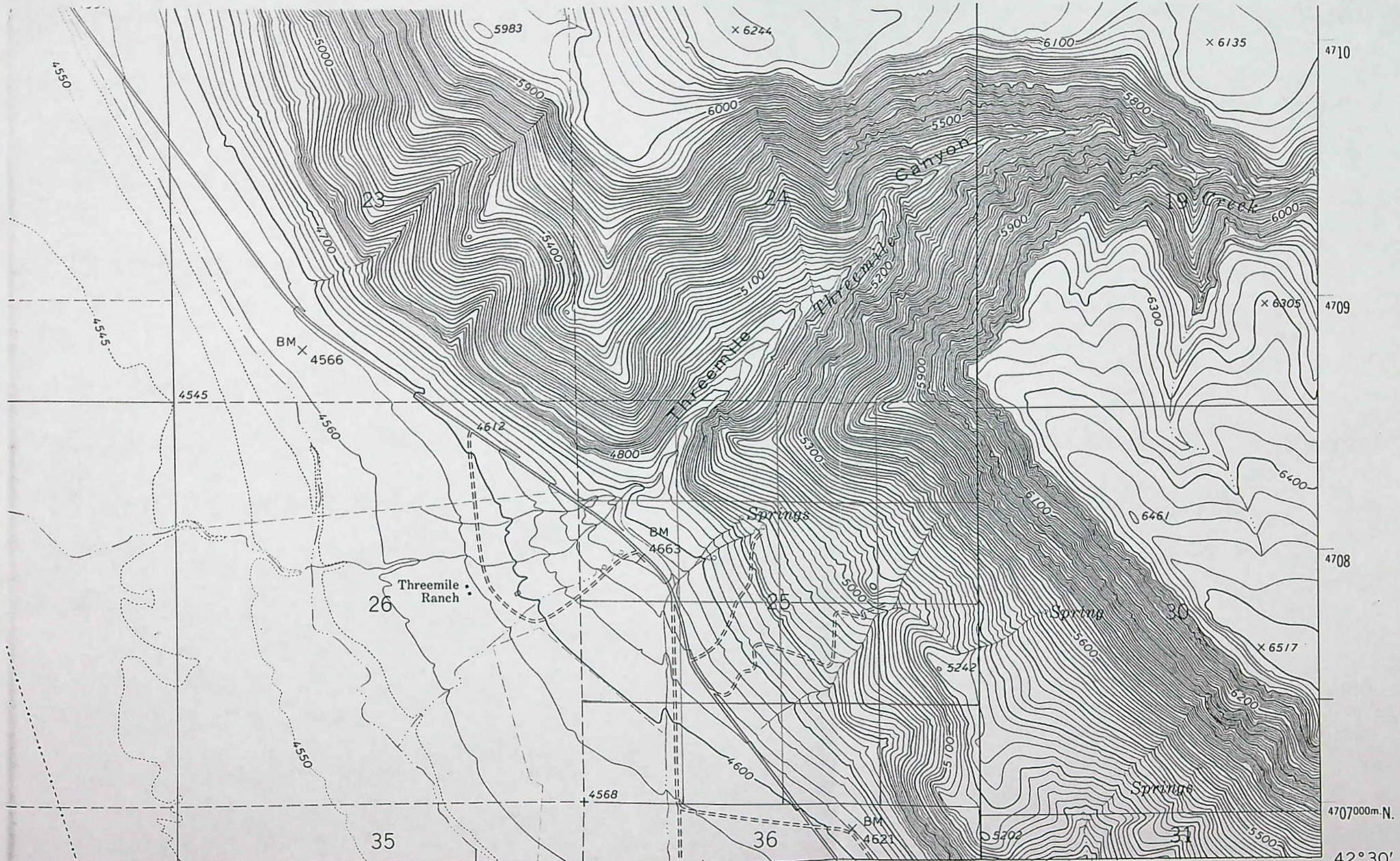
Sincerely,

Michael Carrier

Michael Carrier
Director

Enclosures





SCALE 1:24000

0 1 MILE

3000 4000 5000 6000 7000 FEET

0 1 KILOMETER

INTERVAL 20 FEET

REPRESENT 5-FOOT CONTOURS

IS MEAN SEA LEVEL

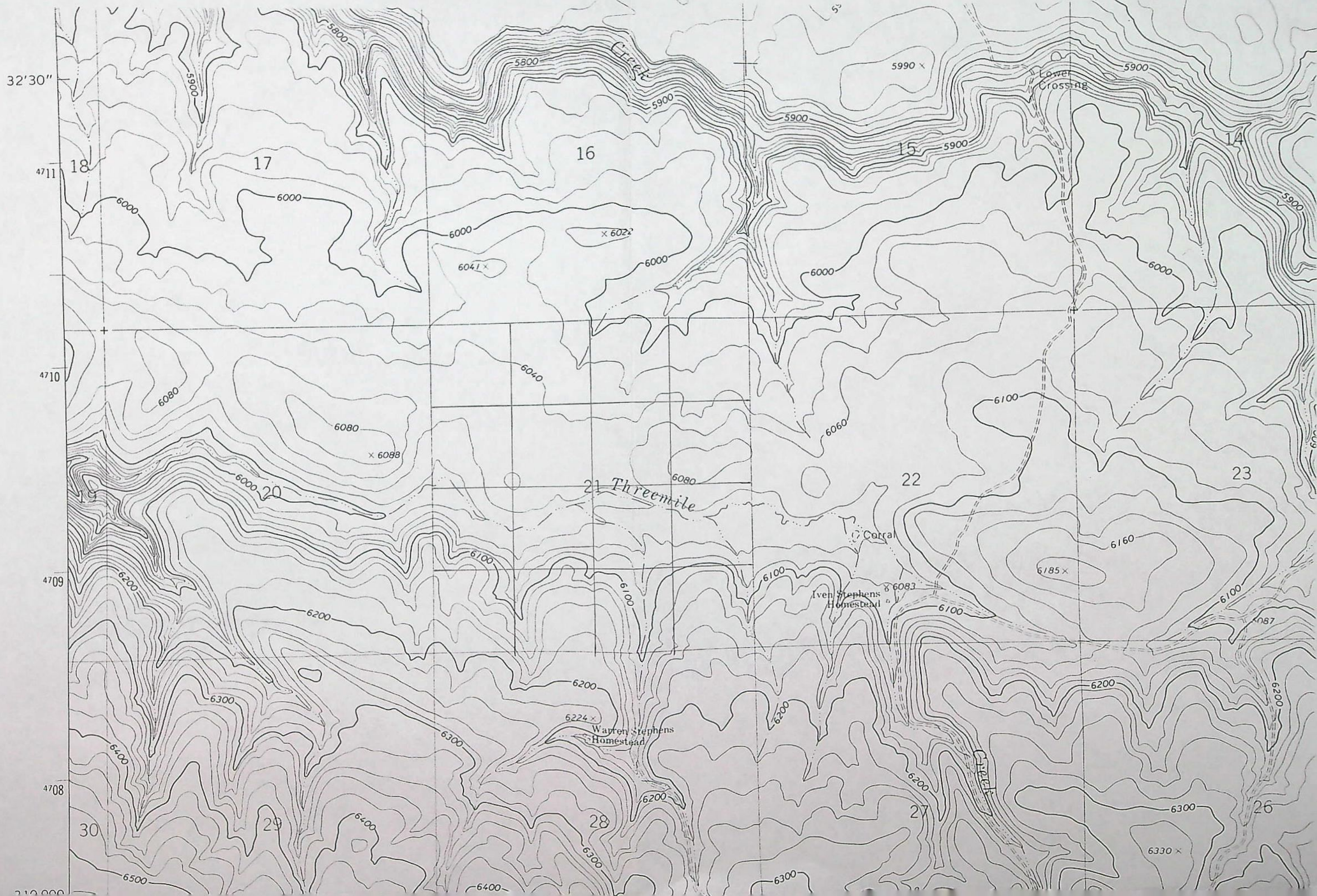


ROAD CLASSIFICATION

Primary highway, hard surface _____ Light-duty road, hard or improved surface _____

Secondary highway, hard surface _____ Unimproved road _____

Interstate Route U. S. Route State Route





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

RECEIVED

JUL 26 2001

WATER RESOURCES DEPT
SALEM, OREGON

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

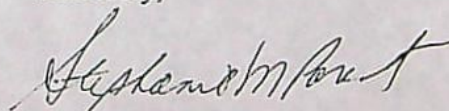
Re: Pending Instream Water Right Applications for Home and Threemile Creeks, Malheur
Lake Basin IS 84562 and 84563, Oregon Parks and Recreation Department

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

RECEIVED

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:

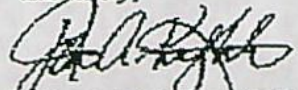
The Steens Mountain Cooperative Management and Protection Act of 2000 (H.R. 4828) is currently before the United States Congress. If H.R. 4828 becomes law, a portion of the drainage area of Home Creek and Threemile Creek in Harney County will be designated a federal wilderness area. This area will be 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

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

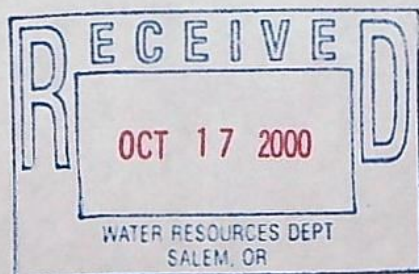
Dear Sirs,

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 1/2 South, Ranges 32, 32 1/2, and 32 3/4 East, Willamette Meridian, approximately 22 miles south of Frenchglen.

Sincerely,

Steven C. Brutscher
Policy and Planning Division

Local Govt. NOI Letter 10_17_2000



Application No.
Permit No.

84563



**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **45080**

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: # ☒ 24-7038 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

66111

MISCELLANEOUS

\$

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY)

\$ 10.00

(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)

\$

HYDRO APPLICATION

\$

RECEIPT # **45080**

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

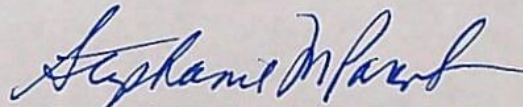
To Whom It May Concern:

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

RECEIVED

MAY 15 2001

WATER RESOURCES DEPT
SALEM, OREGON

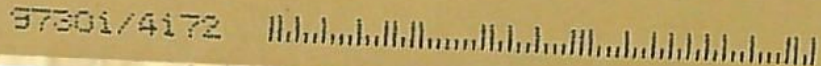
S. Parent

PACIFIC ENVIRONMENTAL
ADVOCACY CENTER
10015 S.W. Terwilliger Blvd.
Portland, OR 97219



Water Rights Section
Oregon Water Resources Dept.
158th 12th St NE
Salem, OR 97301-4172

97301/4172



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: # 24201 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

0407	MISCELLANEOUS	\$
0410	COPY & TAPE FEES	\$
0408	RESEARCH FEES	\$
0408	MISC REVENUE: (IDENTIFY) _____	\$ <u>20.00</u>
(New) TC162	DEPOSIT LIAB. (IDENTIFY) _____	\$
0201	WATER RIGHTS:	
0203	SURFACE WATER	\$
0205	GROUND WATER	\$
0218	TRANSFER	\$
	WELL CONSTRUCTION	
	WELL DRILL CONSTRUCTOR	\$
	LANDOWNER'S PERMIT	\$
	OTHER (IDENTIFY) _____	\$

EXAM FEE	
\$	0202
\$	0204
\$	0206
EXAM FEE	
\$	0219
	0220

RECORD FEE	
\$	
\$	
\$	
LICENSE FEE	
\$	
\$	

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

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

IS 84563

P.F.O.
IS-84562
84563

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

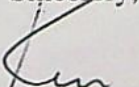
Dear Dwight,

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

RECEIVED

MAY 14 2001

WATER RESOURCES DEPT
SALEM, OREGON

**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 • TELEX: 650-686-1360

MARTHA O. PAGEL
Direct Line: (503) 796-2872
E-Mail: mpagel@schwabe.com

April 19, 2001

Water Rights Information Group
Oregon Water Resources Department
158 12th St. NE
Salem, OR 97301-4172

Re: R-84576 and S-84577
Roaring Springs Ranch, Inc.

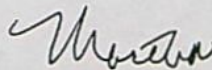
Ladies and Gentlemen:

Please be advised that I will be representing the applicant, Roaring Springs Ranch, Inc. on matters relating to the above-referenced applications. Stacy L. Davies is currently listed as the contact person for the application, and should remain so. However, please add my name to your distribution list to receive copies of correspondence and documents provided to the applicant.

In addition, we are very interested in tracking the progress of two pending Instream Water Right applications, No. 84562 and No. 84563, that will have a direct bearing on our own applications. It is my understanding that Proposed Final Orders have not yet been issued on these pending applications. We would like to receive notice of the PFOs, when issued, and would like to be added to the Department's mailing list for subsequent notices and actions. Please let me know if a fee is required, at this time, in order to receive notice and copies of the PFO and other documents.

You may reach me at my Salem address and phone: 1011 Liberty St. SE, Salem, OR 97302, 503-399-7712, FAX 503-399-1645. Thank you for your assistance.

Sincerely,



Martha O. Pagel

MOP:njm

cc: Stacy L. Davies, Ranch Manager

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APR 20 2001

WATER RESOURCES DEPT.
SALEM, OREGON

PORTLAND OREGON • BEND OREGON • SEATTLE WASHINGTON • VANCOUVER WASHINGTON • WASHINGTON DISTRICT OF COLUMBIA
503 222-9981 • 541 330-0904 • 206 622-1711 • 360 694-7551 • 202 661-7060

PDX/073928/098125/MOP/901181.1

Name _____

By _____

Address _____

Date filed _____

Priority _____

Action suspended until _____

Return to applicant _____

Date of approval _____

Application No. INS 84563

Permit No. _____

Certificate No. _____

Stream Index, Page No. _____

Date

FEE PAID
Amount

0

Cert. Fee

Date

FEE REFUNDED
Amount

Date

To Whom

ASSIGNMENTS

Address

Volume

2 INS

Name _____

By _____

Address _____

Date filed _____

Priority _____

Action suspended until _____

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Application No. INS 84562

Permit No. _____

Certificate No. _____

Stream Index, Page No. _____

Date

FEE PAID
Amount

Receipt

0

Cert. Fee

Date

FEE REFUNDED
Amount

Checl

Date

To Whom

ASSIGNMENTS

Address

Volume

REMARKS

Home Creek

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 # 15-84562/13-84563
Applicant's Name: OREGON PARKS & RECREATION DEPARTMENT

SOURCE OF WATER: ☐ GROUNDWATER ☒ SURFACE WATER ☐ STORAGE

DESCRIPTION OF THE SOURCE: HOME CREEK
(A spring, well, sump, exempt pond, unnamed stream, etc.)

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APR 13 2001

WATER RESOURCES DEPT.
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

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

Fax Transmittal

TO: MARTHA

FAX: 503-399-1645 DATE: THURS 4-12-2001 PAGES: 3

FROM: HERZB

COMMENTS: _____

2 Page ISR APPLIC
84563

FOR 2001
DATE THU 4-12 TIME _____ A.M. P.M.
FROM MARTHA
FIRM _____
PHONE 503-399-7712
☐ FAX AREA CODE NUMBER EXTENSION
☐ MOBILE 503-399-1645
AREA CODE NUMBER TIME TO CALL

TELEPHONED	☒	PLEASE CALL	☒
RETURNED YOUR CALL	☐	WILL CALL AGAIN	☐
CAME TO SEE YOU	☐	RUSH	☐
WANTS TO SEE YOU	☐	SPECIAL ATTENTION	☐
WAITING TO SEE YOU	☐	HOLDING LINE	☐

MESSAGE
AM ORIG
ISW 84563

SIGNED _____ FORM 4007 MADE IN U.S.A.

Services

al.

nent

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s

il Services

Water Rights & Adjudications

- Water Rights Information
- Adjudications
- Hydroelectric
- Certificates/Final Proofs
- Hearings/Contested Cases

Northwest Region

- District 16 Watermaster
- Transfers

FAX: 503-378-6203

191

MESSAGE

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 Tule Chub

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

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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FEB 16 2001

WATER RESOURCES DEPT.
SALEM, OREGON

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

From: Steve Brutscher
To: Rick KRUGER; Steve Brutscher
Date: 10/11/00 9:05AM
Subject: Instream Water Rights

October 11, 2000

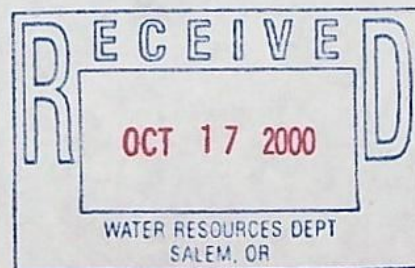
Rick -

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 84563
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

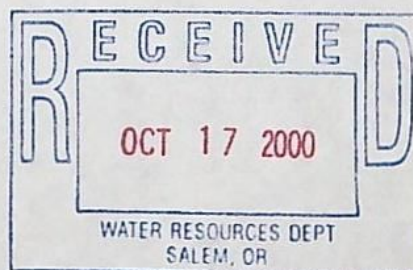
As per WRD and OPRD rules for filing instream water rights applications, I am advising you of OPRD's intent to file instream water right applications on Home Creek and Threemile Creek in the Malheur Lake Basin in Harney County. We are making this filing at the direction of the Governor's Office. We expect 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. 84563
Permit No.

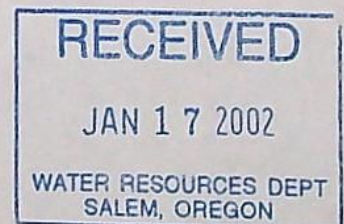
Recreation Flow Requirement Methodology For Home Creek, Tributary to Garrison Lake, Harney County, Oregon

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.

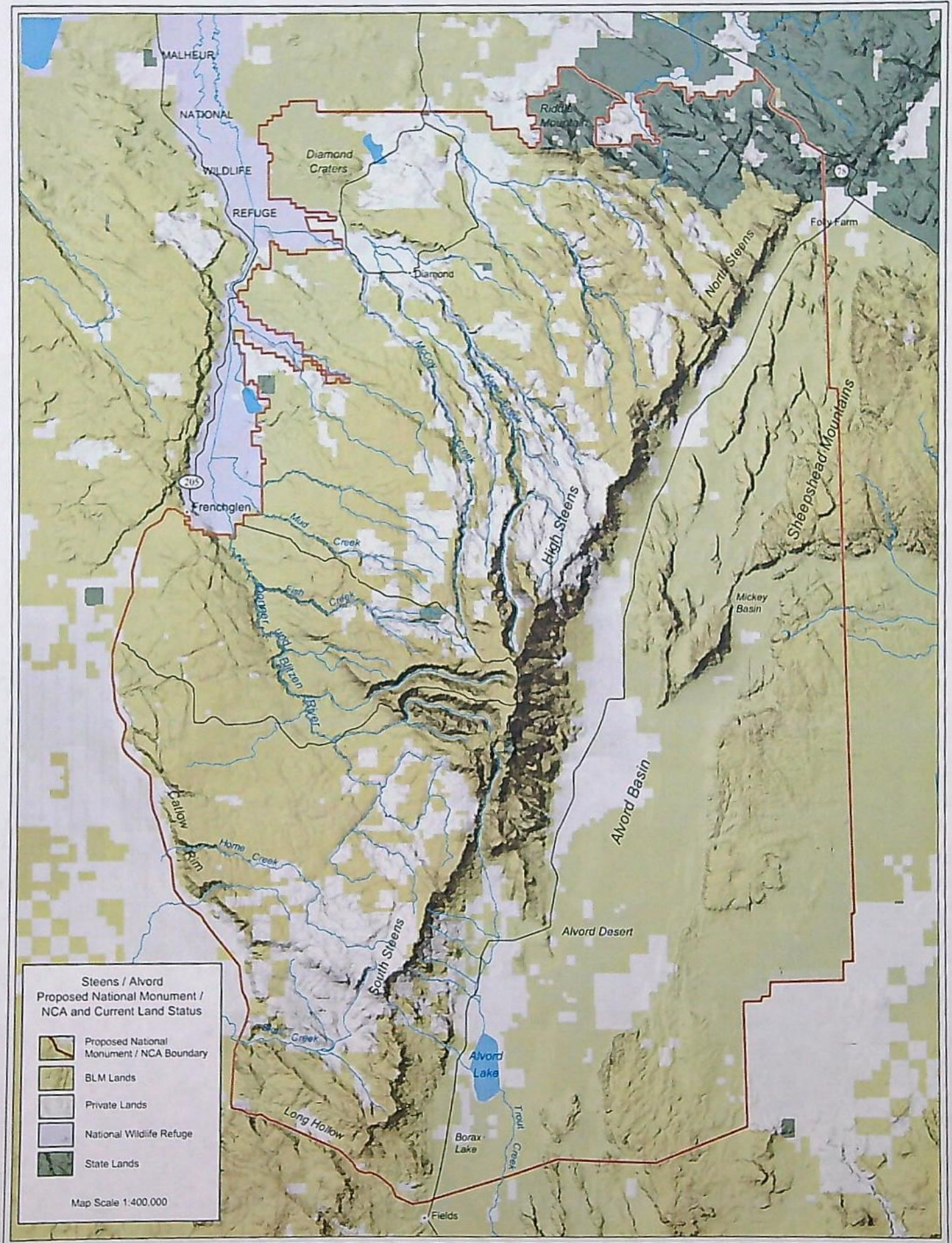
Recreational Use: Scenic attraction/aesthetics, hiking, camping, fishing, wildlife viewing and nature study/interpretation. Home Creek drains the southwestern flank of Steens Mountain in Oregon's high desert, Basin and Range Province. (Map 1). Home Creek is the centerpiece of the 20,699 acre Home Creek 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.

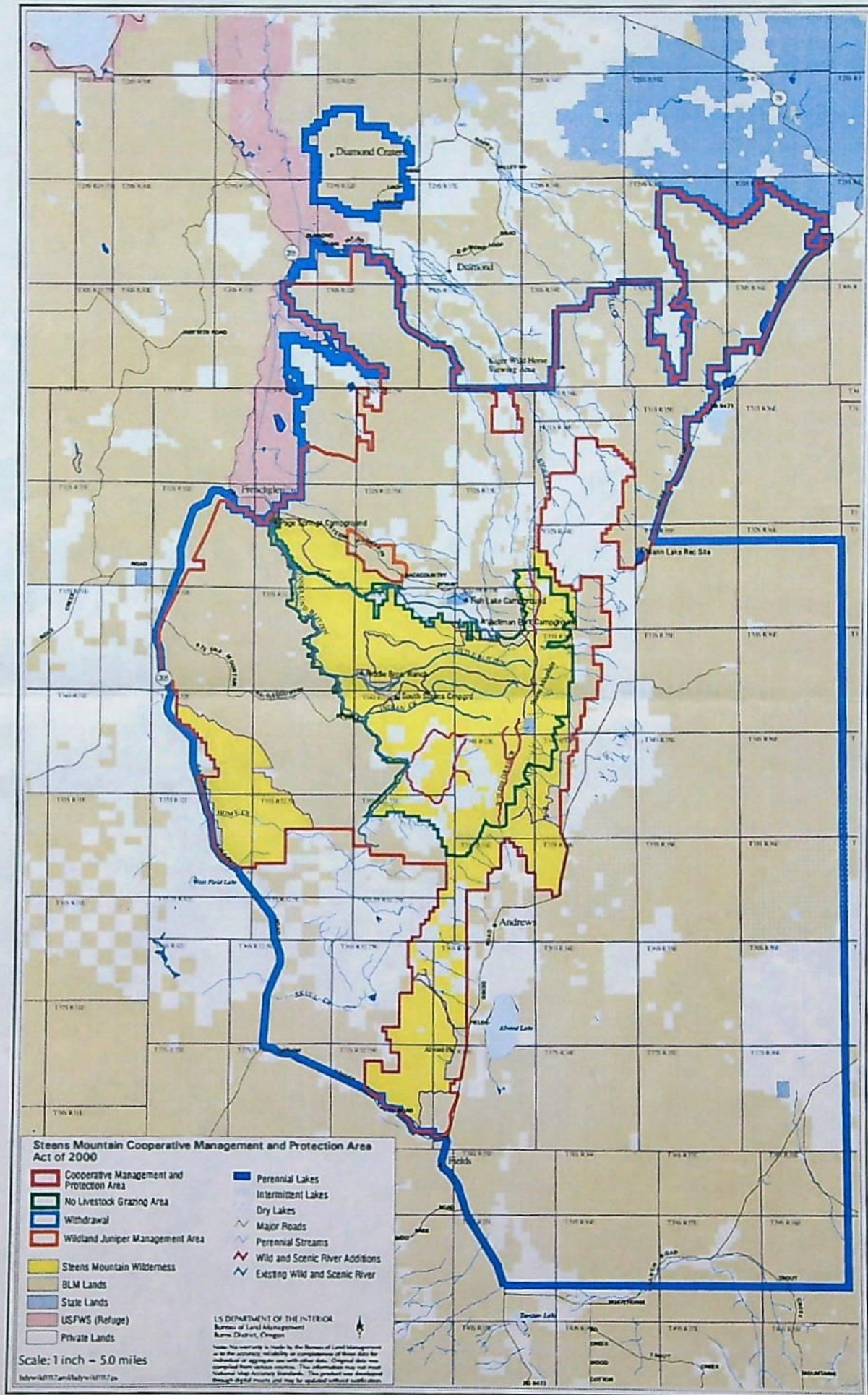
Home Creek is a narrow, boulder strewn, high gradient, pool and drop, perennial stream, arising on the southwestern flank of Steens Mountain at an elevation of about 7,400 feet. From its headwaters, Home Creek flows about 20 miles northwestward to the Catlow Valley, slicing through the Catlow Rim about 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



MAP 2



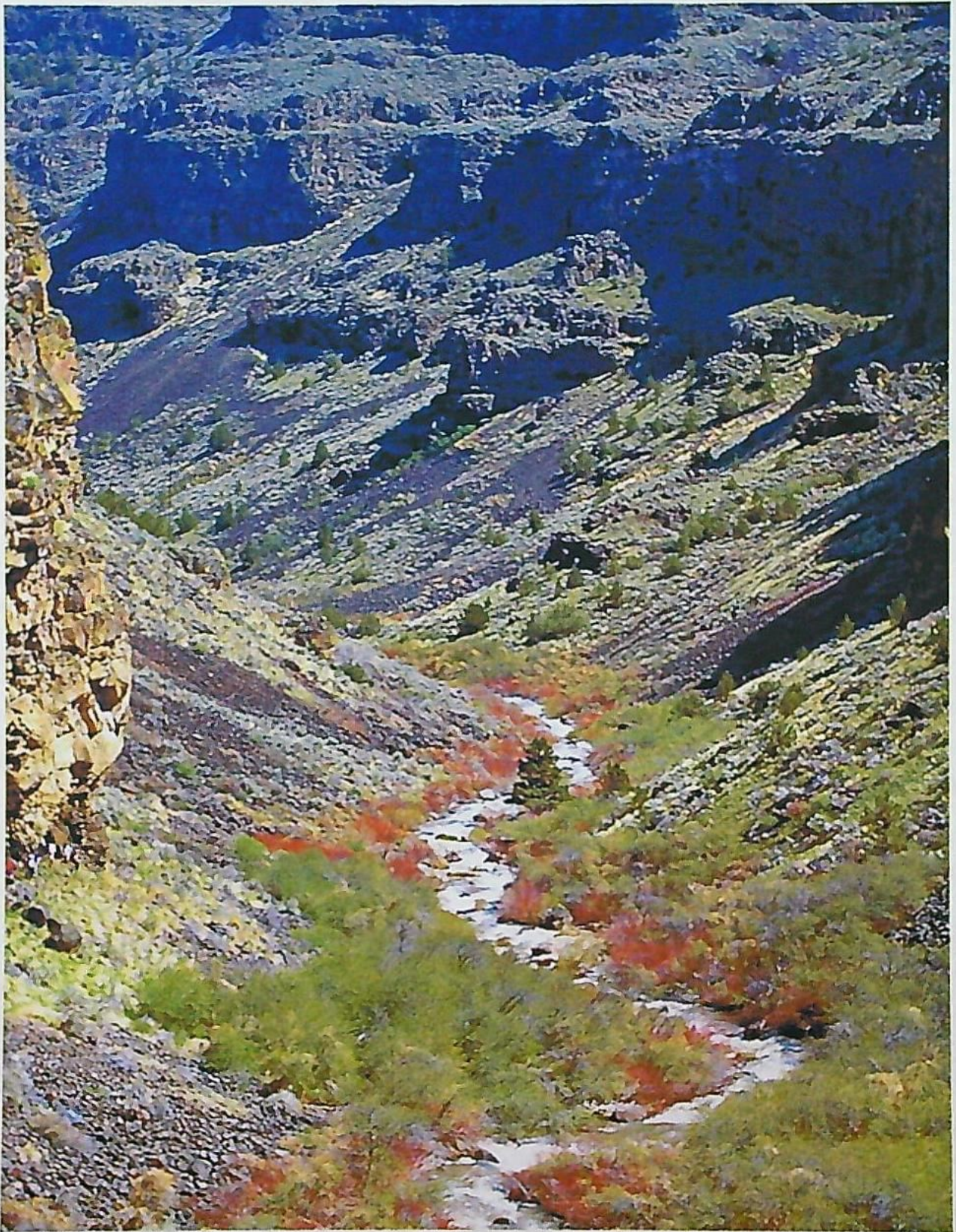


Photo by Greg Burke

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:

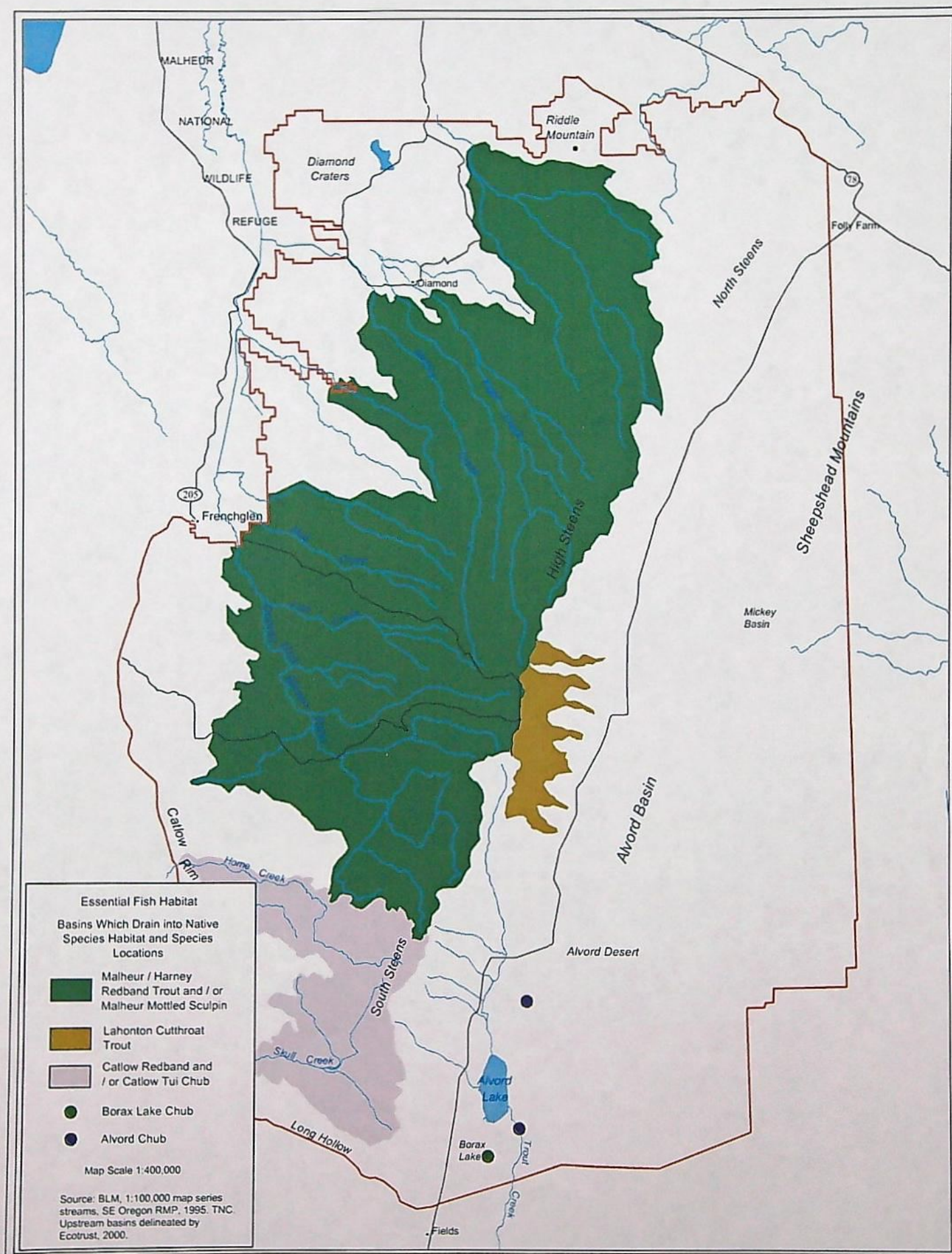
Township 35 South, Range 32 East: Sections 10, 11, 12

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

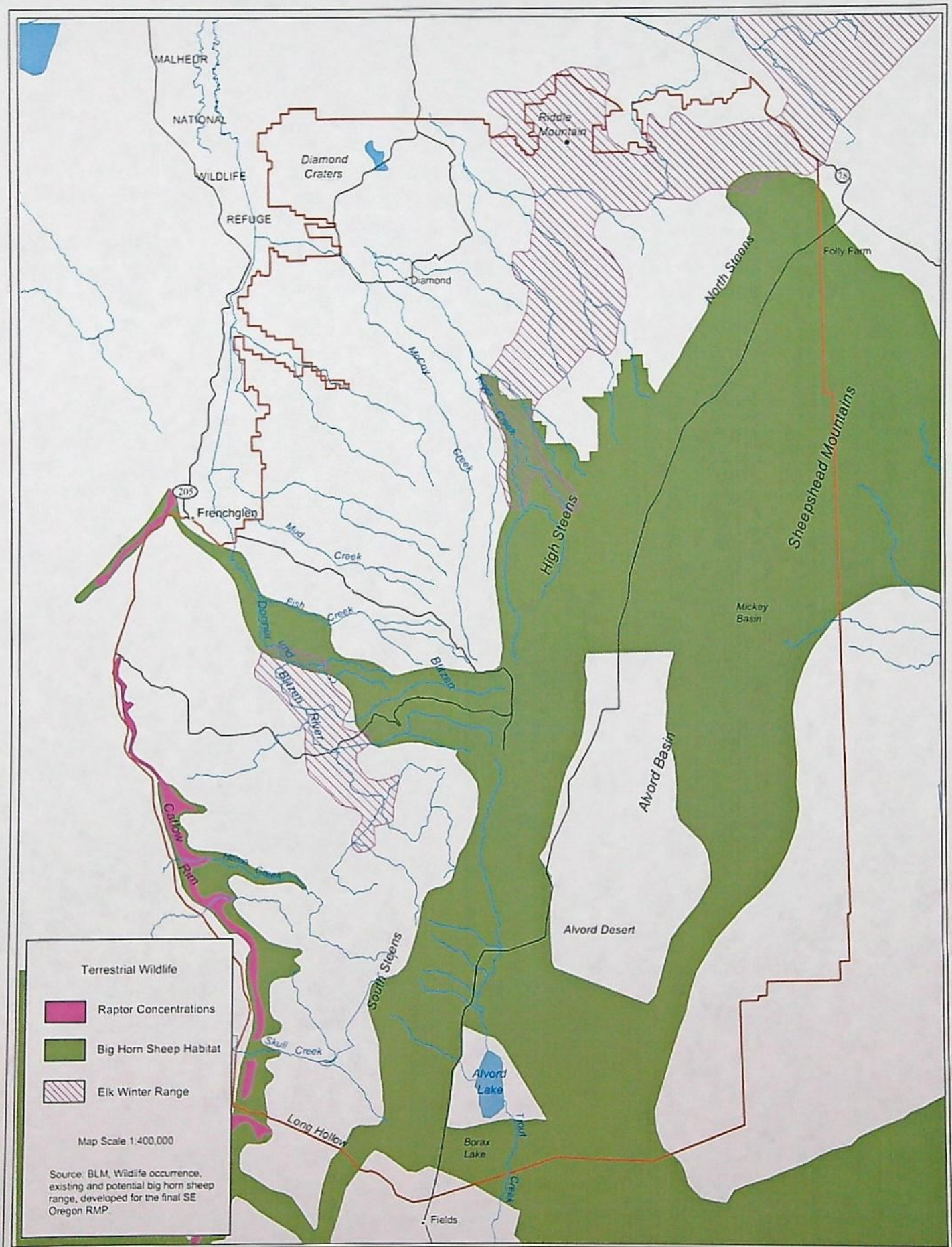
Township 35 South, Range 32 ¾ East: Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34

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

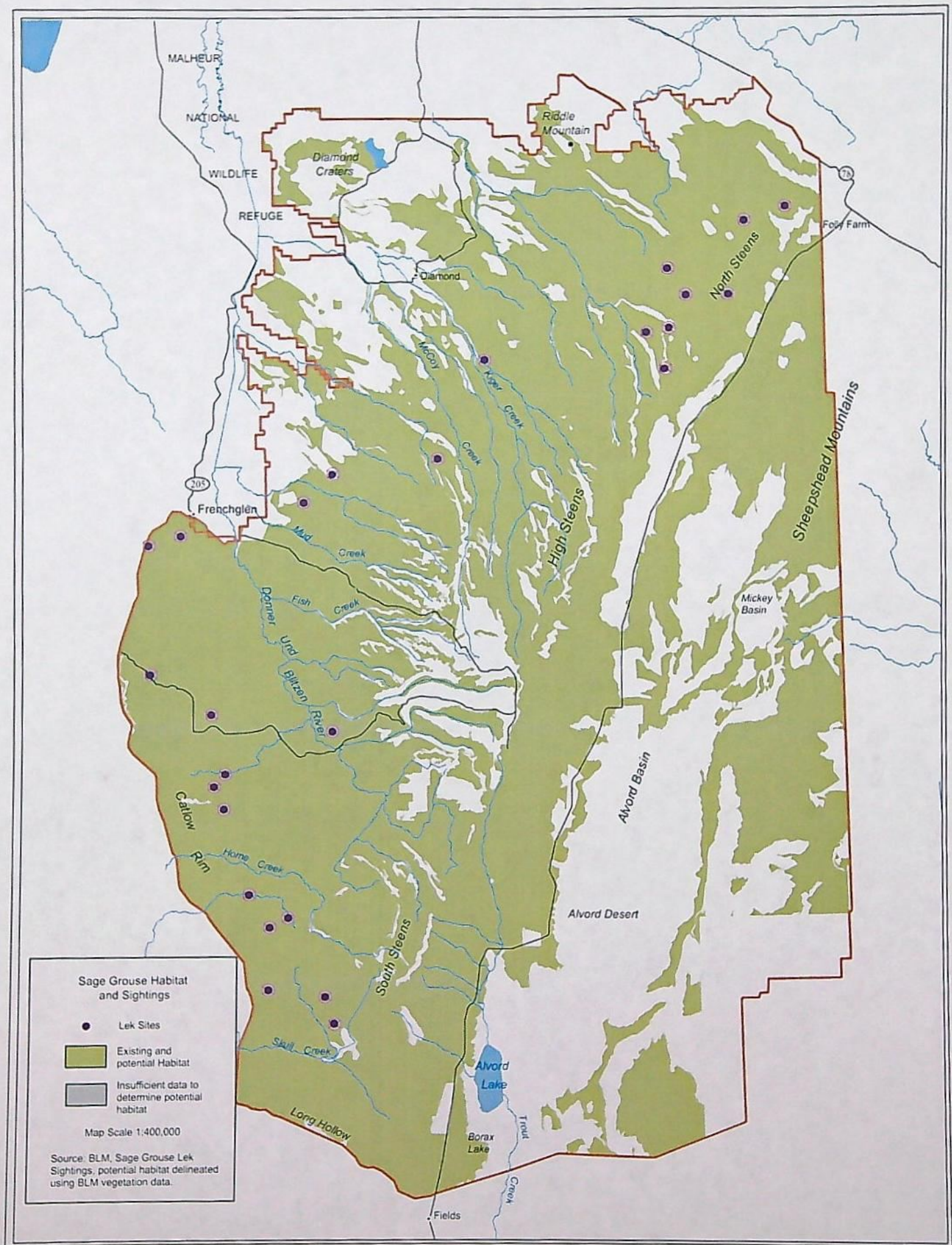
MAP 3



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

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- 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.

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		

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MAR 14 2002

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T35S R32½E

1

6

N

Home

x Home Creek Butte

VALLEY

Creek

Threemile

R
1
N

West Field
Lake

Three Mile
Dam

36

RECEIVED

Russ -

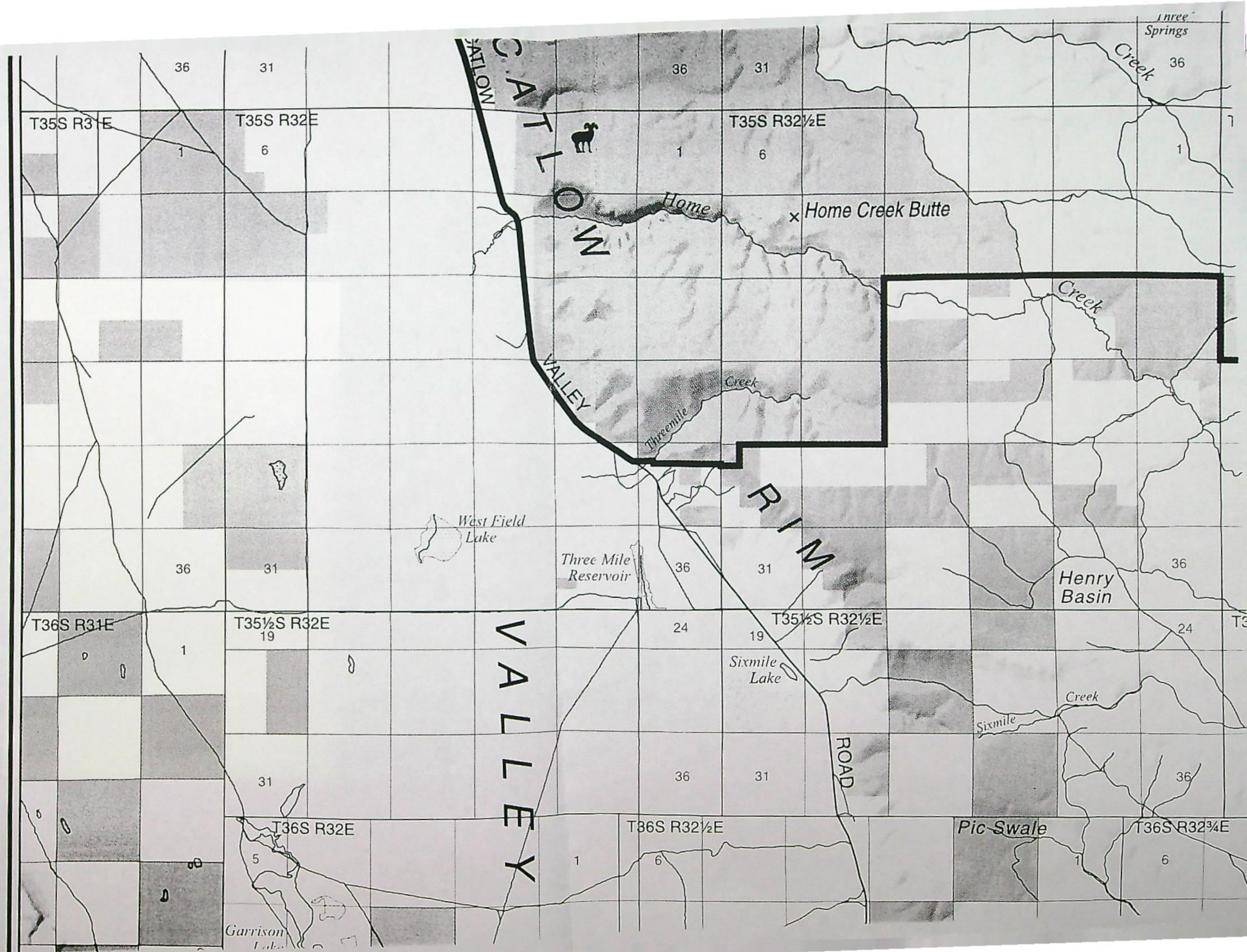
MAR 14 2002

WATER RESOURCES DEPT.
SALEM, OREGON

Here are a couple
copies of the map
blown up to
different sizes.
I didn't find
a notes and bounds
description so have
nothing more definitive
to give you at this
point.

Steve Butcher

MAR 14 2002
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