

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application IS-72169)	
)	
Oregon Department of Fish and Wildlife,)	
Applicant)	
)	FINAL ORDER INCORPORATING CONSENT
Burnt River Irrigation District,)	AGREEMENT
Protestant)	
)	
WaterWatch of Oregon, Inc.,)	
Intervenor)	

Summary: Order approving Application IS-72169 and issuing Certificate 98265.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.140 to 537.252 and 537.332 to 537.360, Oregon Administrative Rules (OAR) Chapter 690, Division 77, and the Powder Basin Program (OAR Chapter 690, Division 509).

These statutes and rules can be viewed on the Oregon Water Resources Department's website: <https://www.oregon.gov/owrd/programs/policylawandrules/Pages/default.aspx>

The Oregon Water Resources Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

This final order is issued pursuant to ORS 537.170(6) to (9), 183.417(3), and OAR 690-077-0047, 137-003-0510(4), and 137-003-0665(5).

APPLICATION HISTORY

1. The Application History section of the August 27, 1996, Proposed Final Order is incorporated herein by reference.

FINDINGS OF FACT

1. The findings of fact in the August 27, 1996, Proposed Final Order are incorporated herein by reference, with the additions and changes shown below.
2. On January 29, 1992, the Oregon Department of Fish and Wildlife submitted an application for an instream water right to the Oregon Water Resources Department (Department).

3. On August 27, 1996, the Department issued a Proposed Final Order recommending approval of the application.
4. On October 9, 1996, the Burnt River Irrigation District filed a timely protest of the Proposed Final Order.
5. On October 11, 1996, WaterWatch of Oregon filed a timely request for standing in support of the Proposed Final Order.
6. On August 15, 2015, WaterWatch of Oregon filed a timely petition for party status.
7. On September 14, 2021, the Department referred the protest to the Oregon Office of Administrative Hearings for a contested case hearing.
8. On July 14, 2023, the Department granted WaterWatch of Oregon limited party status.
9. On January 21, 2025, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District entered into a Settlement and Water Bypass Agreement to resolve Burnt River Irrigation District's protest. The Settlement and Water Bypass Agreement was conditioned and contingent upon the Department issuing a Final Order and Certificate that sets the instream reach for the instream water right requested by the Oregon Department of Fish and Wildlife consistent with the terms of the Settlement and Water Bypass Agreement.
10. On June 2, 2025, the Department, the Oregon Department of Fish and Wildlife, the Burnt River Irrigation District and WaterWatch of Oregon (Parties) entered into a Consent Agreement to resolve this matter. The Settlement and Water Bypass Agreement is attached to the Consent Agreement as Exhibit A for convenient reference but is not incorporated into the Consent Agreement. The Consent Agreement is incorporated into this final order by reference and is attached hereto and made a part of this order. The Settlement and Water Bypass Agreement is not incorporated into or made part of this order.
11. Pursuant to the terms of the Consent Agreement, the Department shall issue a certificate that reflects an amendment of the reach of the requested instream water right from the

reach described in the August 27, 1996, Proposed Final Order to following reach (Revised Reach):

REACH 1 - BURNT RIVER FROM THE BASE OF UNITY DAM AT APPROXIMATELY RIVER MILE 82.9 (SWSE, SECTION 21, TOWNSHIP 12S, RANGE 37E, WM), DOWNSTREAM APPROXIMATELY 2,500 FEET TO JUST UPSTREAM OF HIGH LINE DITCH DIVERSION AT APPROXIMATELY RIVER MILE 82.5 (SWSW, SECTION 22, TOWNSHIP 12S, RANGE 37E, WM)

REACH 2 – BURNT RIVER FROM GAGE 13274020 ABOVE CLARKS CREEK NEAR BRIDGEPORT, APPROXIMATELY RIVER MILE 46.1 (SWSW, SECTION 20, TOWNSHIP 12S, RANGE 41E, WM) TO FORMER USGS GAGE 13274200 AT APPROXIMATELY RIVER MILE 41.7 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E, WM)

The Revised Reach amends the reach described in the Proposed Final Order by omitting a portion of the middle of the reach, thereby shortening the reach and splitting it into two separate reaches.

In addition, both the reach described in the Proposed Final Order and the Revised Reach identify Unity Dam as the upstream terminus of the instream water right reach. However, the Revised Reach updates the description of the upstream terminus by specifying that the upstream terminus is “the base of Unity Dam,” and by describing the location of the dam as “at approximately river mile 82.5,” rather than “at approximately river mile 77.1.” This update to the description of the upstream terminus does not change the location of the upstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the upstream terminus under current conditions.

Finally, both the reach described in the Proposed Final Order and the Revised Reach identify the location of USGS gage 13274200 as the downstream terminus of the instream water right reach. However, the Revised Reach updates the description of the downstream terminus by adding “former” in recognition that USGS gage 13274200 no longer exists, and by describing the location of the gage as “at approximately river mile 41.7,” rather than “at approximately river mile 41.5.” This update to the description of the downstream terminus does not change the location of the downstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the downstream terminus under current conditions.

The requested instream water right, as altered to reflect the Revised Reach, is referred to herein as the Revised Proposed Use.

12. All findings of fact in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.
13. Certificate condition #5 in the draft certificate included with the Proposed Final Order reads “[t]he flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.” Certificate condition #5 in Certificate 98265 issued with this order has been modified to reflect that the Revised Proposed Use includes two instream flow reaches and reads “[t]he flows are to be measured at the lower end of reach 2 to protect necessary flows throughout reach 1 and reach 2.”

CONCLUSIONS OF LAW

1. The conclusions of law in the August 27, 1996, Proposed Final Order are incorporated herein by reference.
2. All conclusions of law in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.

ORDER

Application IS-72169, as amended by the Consent Agreement, is approved, and Certificate 98265 is issued.

DATED JUNE 27, 2025



Katherine Ratcliffe, Administrator
Water Right Services Division
for Ivan Gall, Director
Oregon Water Resources Department

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF:

Water Right Applications IS-72168, IS-72169
and IS-72186

Oregon Department of Fish and Wildlife,
Applicant

Burnt River Irrigation District,
Protestant

WaterWatch of Oregon,¹
Intervenor.

OAH Reference Nos. 2021-OWRD-00051, 2021-OWRD-00053 and 2021-OWRD-00083

Agency Case Nos. IS-72168, IS-72169, IS-72186

**ODFW, OWRD, BRID, AND WATERWATCH
CONSENT AGREEMENT**

Whereas, on January 21, 2025, the Oregon Department of Fish and Wildlife (ODFW) and the Burnt River Irrigation District (BRID or Protestant) entered into a Settlement and Water Bypass Agreement, attached as Exhibit A (Settlement Agreement).² As set forth in Sections 9 and 31, the Settlement Agreement is conditioned and contingent on the Oregon Water Resources Department's (OWRD) issuance of Final Orders and Certificates for all of the Instream Water Rights (IS-72168, IS-72169, and IS-72186) that set instream reaches for the Instream Water Rights consistent with the terms of the Settlement Agreement. Section 31 further provides that BRID will withdraw its protests and that BRID and ODFW will not challenge OWRD's issuance of final orders for the Instream Water Rights so long as such orders are consistent with the terms of the Settlement Agreement.

Whereas, WaterWatch of Oregon (WaterWatch or Intervenor) was advised of the Settlement Agreement and given opportunity to comment on it, and does not intend to seek a

¹ WaterWatch of Oregon is a party to IS-72168 and IS-72169, but not to IS-72186.

² The Settlement Agreement is attached to this Consent Agreement only for convenient reference. The Settlement Agreement is not incorporated into this Consent Agreement.

different outcome in the contested cases for IS-72168 or IS-72169 (WaterWatch is not a party to IS-72186).

Whereas, OWRD intends to issue Final Orders and Certificates that set instream reaches for the Instream Water Rights that are consistent with the terms of the Settlement Agreement, which are attached hereto and incorporated herein as Exhibit B.

Whereas, ODFW and BRID agree that OWRD's issuance of Final Orders and Certificates attached as Exhibit B will constitute issuance of Final Orders and Certificates consistent with the terms of the Settlement Agreement as contemplated by Sections 9 and 31 of the Settlement Agreement.

The ODFW, OWRD, BRID, and WaterWatch (each individually a "Party" and collectively "Parties") do hereby stipulate and agree as follows:

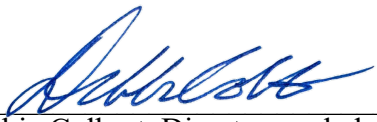
A. Terms of the Agreement

1. After signing of this Consent Agreement by all Parties, the Protestant will within 7 days withdraw their protests in the above referenced matters (Water Right Applications IS-72168, IS-72169 and IS-72186), and OWRD will within 7 days thereafter withdraw the referral of the protests of these matters from the Office of Administrative Hearings.
2. Within 28 days of the signing of this Consent Agreement by all Parties, OWRD will issue final orders incorporating this Consent Agreement and certificates, in the form of the draft final orders and certificates attached hereto and incorporated herein as Exhibit B.
3. By signing this Consent Agreement, each Party waives the right to a further contested case hearing on these matters and any and all right to petition for reconsideration or judicial review of any final orders issued in these matters in accordance with this Consent Agreement.

4. All terms and conditions of the Instream Water Rights are set forth in the draft Certificates included in Exhibit B. The Settlement Agreement is not incorporated into the Instream Water Rights and is not an existing water right of record or relative entitlement to water under ORS 540.045. OWRD is not responsible for enforcing any terms of the Settlement Agreement. OWRD's agreement to this Consent Agreement does not constitute agreement to any portion of the Settlement Agreement.

B. Consent

1. Each Party to this Consent Agreement represents, warrants, and agrees that the person who executes this Agreement on its behalf has the full right and authority to enter into this Consent Agreement on behalf of that Party and bind that Party to the terms of this Consent Agreement.
2. Each Party to this Consent Agreement certifies that it has had a reasonable opportunity to review and request changes to the Consent Agreement, and that it has signed this Consent Agreement of its own free will and accord.
3. Each Party to this Consent Agreement certifies that it has read the entire Consent Agreement, including the draft final orders and draft certificates attached hereto as Exhibit B.
4. Each Party to this Consent Agreement agrees that nothing in this Consent Agreement establishes factual, legal, or policy precedent.
5. This Agreement may be signed in counterparts.



Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

May 28, 2025

DATE

Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

DATE

William Moore on behalf of
Burnt River Irrigation District

DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

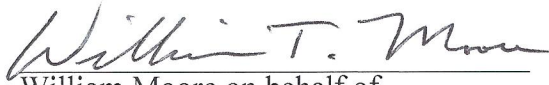
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Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

DATE

Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

DATE



William Moore on behalf of
Burnt River Irrigation District

5-21-2025

DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

DATE

Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

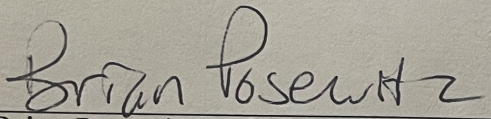
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Katherine Ratcliffe, Administrator,
Water Rights Services Division, on behalf of
Oregon Department of Water Resources

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William Moore on behalf of
Burnt River Irrigation District

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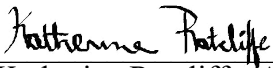
Brian Posewitz on behalf of
WaterWatch of Oregon

5-30-25

DATE

Debbie Colbert, Director, on behalf of
Oregon Department of Fish and Wildlife

DATE



Katherine Ratcliffe, Administrator,
Water Right Services Division, on behalf of
Oregon Water Resources Department

June 2, 2025

DATE

William Moore on behalf of
Burnt River Irrigation District

DATE

Brian Posewitz on behalf of
WaterWatch of Oregon

DATE

SETTLEMENT AND WATER BYPASS AGREEMENT

Burnt River Irrigation District (“**BRID**”) and the Oregon Department of Fish and Wildlife (“**ODFW**”), referred to collectively as the “**Parties**” and each individually as “**Party**”, do hereby stipulate and agree in this Settlement and Water Bypass Agreement (“**Agreement**”), as follows:

Recitals

- A. BRID is the operator of the Unity Dam, located on the Burnt River. The dam is a channel-spanning dam, constructed by the U.S. Department of the Interior, Bureau of Reclamation in 1936 to 1938. Unity Dam is operated by BRID pursuant to the Contract Between the United States and the Burnt River Irrigation District, dated December 24, 1935, as amended.
- B. Prior to construction of Unity Dam, the Burnt River and its tributaries had robust flows in the spring, with greatly decreased flows during the summer. Tributaries froze on occasion, suspending or reducing flows in Burnt River and its tributaries during the coldest parts of the year.
- C. As of the date of this Agreement, BRID operates Unity Dam to bypass flows to the Burnt River primarily when flows are not needed for storage. BRID also bypasses high springtime flows, which may provide scouring benefits in the Burnt River. BRID generally stores water between October and April and releases stored water for irrigation use by its members between May and September. During the late fall and winter months (October through February), BRID limits releases and bypass flows, sometimes to as low as a monthly average of 1 cfs or less, depending on conditions and downstream demands. In the winter, an ice sheet may form on parts or the whole of the reservoir pool. When that condition occurs, BRID may hold the reservoir level static to prevent suspension of the ice layer, a condition that can lead to structural damage and may be a public safety hazard.
- D. Springs and return flows feed the Burnt River, maintaining base flows year round, regardless of bypass flows. The Burnt River and its tributaries also freeze on occasion such that water flows sharply decline or cease in certain parts of the system, above and below the dam.
- E. BRID’s Drought Resolutions are specific to local conditions affecting the BRID and are based on snow pack, precipitation, and water levels in the watersheds that supply water to the BRID system.
- F. BRID conducts annual maintenance activities on the dam and related structures, usually in October or November. These activities may interrupt flows for a short period, normally one to two hours, if at all. BRID is sometimes required to draw down water levels in Unity Reservoir to perform major maintenance or to allow the Bureau of Reclamation to complete inspections to verify the integrity of the dam and related structures. These activities depend on conditions of the dam and related infrastructure. They are infrequent and do not occur on a set cycle.

- G. Inflows to Unity Reservoir are estimated based on the reservoir pool elevation as measured by the staff gage located on the dam. Inflows are calculated using a rating curve that is based on a reservoir survey conducted by the Bureau of Reclamation. As of April 15, 2024, stream flows in the Burnt River are measured year round at the following gage locations:

13273000 Burnt River near Hereford (operated by OWRD; partially funded by BRID)
 13274020 Burnt River above Clarks Creek near Bridgeport (operated by Idaho Power Company; partially funded by BRID)
 13274400 Burnt River above Banks Diversion near Durkee (operated by OWRD; partially funded by BRID)
 13275000 Burnt River at Huntington (operated by Idaho Power Company)
 13272500 Hydromet Gage at Unity Dam (operated by Bureau of Reclamation; partially funded by BRID)

Data from the staff and stream gages is uploaded nearly instantaneously to the respective stream gage operator's websites.

- H. On January 29, 1992, ODFW filed instream water right applications IS-72168, IS-72169, and IS-72186 (collectively, "**ODFW Instream Applications**") with the OWRD. The ODFW Instream Applications request instream water rights in the following reaches:

IS-72168

To be maintained in:

BURNT RIVER FROM USGS GAGE 13274200 AT RIVER MILE 41.5 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E WM); TO BROWNLEE RESERVOIR POOL AT RIVER MILE +1.0 (SW1/4, SECTION 8, TOWNSHIP 14S, RANGE 45E WM)

IS-72169

To be maintained in:

BURNT RIVER FROM UNITY DAM AT RIVER MILE 77.1 (SWSE, SECTION 21, TOWNSHIP 12S, RANGE 37E WM); TO USGS GAGE 13274200 AT RIVER MILE 41.5 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E WM)

IS-72186

To be maintained in:

NORTH FORK BURNT RIVER FROM CAMP CREEK AT RIVER MILE 14.8 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E WM); TO UNITY RESERVOIR AT RIVER MILE 2.0 (NENW, SECTION 17, T12S, R37E, WM)

- I. The purpose of the ODFW Instream Applications is to provide water for "migration, spawning, egg incubation, fry emergence and juvenile rearing of rainbow trout" ("**Fish Life Cycle Purposes**").
- J. Reaches of the Burnt River referenced in this agreement support all life stages of native Redband Trout (*Oncorhynchus mykiss gibbsi*) in addition to various native whitefish, pikeminnow, sculpin, dace, and sucker populations. Redband trout are remnants of Snake River steelhead that, along with Chinook salmon, were historically present in the Burnt River. The construction of Unity Dam in 1938 precluded fish from accessing the North and South Forks of the Burnt River, documented as principal spawning areas for steelhead and

Chinook salmon. Lower reaches of the Burnt River were subsequently blocked by the construction of the Hells Canyon Complex of dams on the Snake River, completed in 1967. A 1967 basin investigation report conducted by the Oregon State Game Commission found that guaranteed releases of water below Unity Reservoir during fall and winter filling periods would significantly increase the fish production capabilities of the Burnt River segment below the reservoir.

- K. OWRD issued a Proposed Final Order and draft water right certificate for ODFW's instream application IS-72186 on May 14, 1996, and Proposed Final Orders and draft water right certificates for ODFW's instream applications IS-72168 and IS-72169 on August 27, 1996.
- L. In July and October 1996, BRID filed timely protests of the Proposed Final Orders (collectively the "**BRID Protests**").
- M. On September 14, 2021, OWRD referred the BRID Protests to the Oregon Office of Administrative Hearings ("**OAH**") for contested case hearings.
- N. The Parties each desire to resolve the BRID Protests and support the Fish Life Cycle Purposes set forth in the ODFW Instream Applications.
- O. The Parties are entering into this Agreement on the conditions that once effective by signature of all parties:
 - a. The Parties will pursue withdrawal of the cases from the OAH by supporting OWRD's written notification to the OAH pursuant to OAR 137-003-0515(4)(b) that all of the issues in the case have been resolved without need to hold a hearing; and
 - b. The Parties will agree to OWRD's issuance of Final Orders and instream water right certificates ("**Certificates**") that are consistent with the terms and conditions of this Agreement (the "**Instream Water Rights**").

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER CONSIDERATION GIVEN AND RECEIVED, THE PARTIES AGREE AS FOLLOWS:

1. **Recitals.** Each of the recitals set forth above are provided for the sole purpose of explaining the understanding of the parties at the time of formation of this Agreement.
2. **Base Flows.** Except as set forth in Section 4, BRID shall modify its operations to bypass 15 cfs to the Burnt River ("**Base Flows**").
3. **Measurement of Flows; Obligation with Respect to Maintaining Gages.** For purposes of determining compliance with Base Flows and Minimum Flows required by this Agreement, flows shall be measured at the gage stations 13273000 (Burnt River near Hereford) and 13274020 (Burnt River above Clarks Creek near Bridgeport) and reservoir inflows calculated using measurements at 13272500 (Hydromet Gage at Unity Dam) (collectively "**Flow Measurement Locations**"), and BRID shall provide funding sufficient to maintain these gages absent mutual agreement on an alternative means of obtaining the necessary information obtained by such gages. If gage stations 13273000 or 13274020 are temporarily inoperable, BRID shall use the 13272500

(Hydromet Gage at Unity Dam) to provide reasonable flow estimates for the purposes of this provision. Base Flows and Minimum Flows, where applicable, shall be measured as daily averages and as weekly rolling (7 day) averages at each gage independently. Rolling 7-day averages are evaluated for each day, and are calculated as the average of daily flows for the day in question and the six previous days. For example, the 7-day average for March 7th is the average of daily flows from March 1st-7th. Base Flows and Minimum Flows requirements will be met when, at all Flow Measurement Locations being used to determine compliance, daily average flows are not less than twenty percent (20%) of the required flows, and weekly rolling (7 day) average flows are at or above the required flows. Whether BRID has complied with this Base Flows and Minimum Flows requirements will be based on raw data maintained by BRID rather than final published data. Raw discharge data can have errors. Any instantaneous measurement that is less than fifty-percent (50%) or exceeds one hundred and fifty-percent (150%) of the average daily or weekly stream flow shall be reviewed for errors. Where there is an error, BRID will evaluate the neighboring reported raw measurements that are not in error, identify the cause of the error, and when appropriate interpolate between the non-erroneous measurements to arrive at a substitute for the erroneous measurement. Final, preliminary, and provisional data can be used to aid in the error correction process. When the Burnt River freezes, water released from Unity Dam may not reach or may not be flowing past the Flow Measurement Locations (each a “**Freeze Condition**”), or both. During any Freeze Condition, the absence of some or any recorded stream flows at any one or all of the Flow Measurement Locations shall not be considered a breach of or default under this Agreement as long as BRID notifies ODFW, within a reasonable period of time not to exceed seven (7) calendar days, of the time and date the Freeze Condition commenced and concluded. However, during a Freeze Condition, BRID shall use the 13272500 (Hydromet Gage at Unity Dam) to the extent possible to provide reasonable flow estimates for the purposes of determining daily and weekly flow averages. Weekly rolling (7 day) average flows will be calculated using the day prior to commencement of a Freeze Condition.

4. Minimum Flows. BRID may bypass less than the 15 cfs Base Flows (“**Minimum Flows**”) under the following limited circumstances:

a. Reduced Inflow. Where inflows to the Unity Reservoir, as measured at the Hydromet Gage at Unity Dam, drop below 15 cfs, BRID will ramp the bypass flows down to a level equal to inflows. BRID shall thereafter maintain bypass flows at a level that is at least equal to inflows, increasing bypass flows as inflows increase, until inflows to the Unity Reservoir, as measured at the Hydromet Gage at Unity Dam, return to 15 cfs.

b. Drought Declarations. Drought Declarations may be adopted by BRID board resolution, but shall only be adopted when the following criteria are met: On February 1, (1) Unity Reservoir is at less than forty-percent (40%) of its storage capacity; or, (2) the snow-water equivalent measured at the Natural Resources Conservation Service Tipton SNOTEL site is less than eight (8) inches. Provided however that for the purposes of this Agreement BRID may not adopt a Drought Declaration more than one (1) time in a three-year period. Prior to adopting a Drought Declaration, BRID shall consult with local ODFW staff to set criteria that, when met, will terminate the Drought Declaration. Each Drought Declaration shall expire on September 30, if not earlier terminated. From the effective date of a Drought Declaration until its termination or expiration, BRID shall bypass a minimum of 5 cfs and make reasonable efforts to bypass, but is not required to bypass, the 15 cfs Base Flows.

c. **Frozen Unity Reservoir Safety Hazard.** When Unity Reservoir freezes to the extent that it creates an ice layer, and outflows exceed inflows, the reservoir can experience a condition referred to as a suspended ice layer. A suspended ice layer creates a safety hazard, which is particularly of concern due to public use of the reservoir. Should a suspended ice layer occur, BRID shall, for public safety reasons, immediately reduce bypass flows to a minimum of 5 cfs, if necessary, in order to increase reservoir water levels such that the ice layer is no longer suspended and is no longer creating a safety hazard. BRID agrees to notify ODFW, within a reasonable period of time, not to exceed seven (7) calendar days, of the time and date of this safety hazard and to return to Base Flows immediately upon resolution of the safety hazard, which shall be resolved with the reservoir levels returning to the level of the ice layer or melting of the ice layer, whichever occurs first. At the commencement of this Agreement, no Party anticipates that BRID will not be able to bypass 5 cfs when a frozen Unity Reservoir safety hazard condition occurs, and BRID has provided information that this rare condition has not lasted longer than a few days historically.

d. **Minimum Pool.** When Unity Reservoir reaches its minimum pool elevation of 3776.5 feet, BRID shall not be required to bypass flows until the elevation increases to 3790 feet. Upon attaining the elevation of 3790 feet, BRID shall bypass 5 cfs and thereafter increase bypass flows by ten percent (10%) per one (1) foot of elevation gain until it reaches the Base Flow of 15 cfs. The elevation of Unity Reservoir shall be determined using the water surface elevation data available on the Bureau of Reclamation's Hydromet website for Unity Reservoir. At the commencement of this Agreement, Parties understand that Unity Reservoir rarely reaches its minimum pool elevation.

5. **Normal Maintenance and Repairs.** Routine inspections, maintenance, and repairs are required for the Unity Dam on a regular, annual basis, generally in October and November ("Normal Maintenance"). During any Normal Maintenance, BRID shall provide Base Flows or Minimum Flows, as applicable, except when doing so will create an unreasonable safety or public health risk or unreasonably impede BRID's ability to complete the inspection, maintenance or repairs in a timely and cost-effective manner, all of which shall be determined in BRID's reasonable discretion but in consultation with ODFW. BRID shall give ODFW thirty (30) calendar days advanced notice of Normal Maintenance, during which time ODFW may provide input to BRID regarding preferred timing and duration of flow interruptions, if any. BRID shall consider and incorporate ODFW's input to the maximum extent possible.

6. **Major Repairs and Modifications.** BRID may be required to drain or partially drain Unity Reservoir to inspect the dam or to perform major repairs or modifications ("Major Maintenance"). Not less than ninety (90) calendar days before drawdown will start, or as soon as possible, if less than ninety (90) calendar days, BRID shall notify and initiate consultation with ODFW regarding the planned timing and duration of the drawdown and of bypass flows during the Major Maintenance period. BRID shall implement ODFW's drawdown and flow recommendations obtained during that consultation to the maximum extent reasonable and feasible, accounting for economic, public health and safety, and environmental considerations, as well as direction from other agencies who may authorize or approve activities associated with the Major Maintenance.

7. Measurement Records. In the event that streamflow measurements at the Flow Measurement Locations become unavailable on OWRD's website or Idaho Power Company's website, or the reservoir elevation level data becomes unavailable on the Bureau of Reclamation's website, the Parties shall collaboratively secure an alternative means to maintain and provide a record of flows as contemplated in this Agreement; provided, however that BRID shall bear the expense, if any, of providing that alternative means of maintaining and providing measurement records. Except where such changes are temporary, the agreed-upon changes related to measurement records shall be in writing and documented as an addendum to this Agreement. This requirement related to measurement records is distinct from BRID's obligations set forth in Section 3 of this Agreement to provide funding sufficient to operate or otherwise operate Flow Measurement Gages absent mutual agreement on an alternative means of obtaining the necessary information obtained by such gages.

8. Annual Compliance Report. BRID shall submit an annual compliance report to ODFW that outlines the dates that Base and Minimum Flows were provided and the dates that relevant exceptions were triggered or in effect such that flow releases were minimized or curtailed. The report shall also identify any instances of non-compliance with the terms and conditions of this Agreement and provide an explanation for non-compliance. The report shall be submitted to ODFW on or before May 1 of each year, and shall cover the period of April 1 to March 31.

9. ODFW Instream Reaches. Parties agree, and this Agreement is contingent upon, OWRD issuing Final Orders and Certificates that set the instream reaches to the following:

- a) IS-72168: Reach 1- Burnt River from former USGS Gage 13274200 at approximately River Mile 41.7 (NWNW, Section 10, Township 12S, Range 41E, WM) to OWRD Gage 13274400 at Burnt River above Banks Diversion near Durkee, approximately River Mile 31.3 (NESW, Section 26, Township 11S, Range 42E, WM); Reach 2- Burnt River from cement plant bridge at approximately River Mile 22.9 (SENE, Section 11, Township 12S, Range 43E, WM) to Brownlee Reservoir Pool at approximately River Mile +1.0 (SW1/4, Section 8, Township 14S, Range 45E, WM).
- b) IS-72169: Reach 1- Burnt River from the base of Unity Dam at approximately River Mile 82.9 (SWSE, Section 21, Township 12S, Range 37E, WM), downstream approximately 2,500 ft to just upstream of High Line Ditch Diversion at approximately River Mile 82.5 (SWSW, Section 22, Township 12S, Range 37E, WM); Reach 2 - Burnt River from gage 13274020 above Clarks Creek near Bridgeport, approximately River Mile 46.1 (SWSW, Section 20, Township 12S, Range 41E, WM) to former USGS Gage 13274200 at approximately River Mile 41.7 (NWNW, Section 10, Township 12S, Range 41E, WM).
- c) IS-72186: Reach 1- North Fork Burnt River from Camp Creek at approximately River Mile 16.5 (NESW, Section 34, Township 10S, Range 36E, WM) to the OWRD Gage 13269450 above the Big Flat Diversion Ditch at approximately River Mile 8.7 (NENE, Section 25, Township 11S, Range 36E, WM); Reach 2 - North Fork Burnt River at Unity Reservoir near the outlet of North Fork Burnt River Above West Fork Burnt River Water Availability Basin, approximately River Mile 2.4 (NENW, Section 17, Township 12S, Range 37E, WM).

Specific descriptive information including published coordinates and aerial imagery reference points and locations regarding the agreed-upon reaches of the Instream Water Rights is attached as Exhibit A. Parties understand and agree that river miles are approximate and change naturally over time, and that the additional information in Exhibit A is provided to ensure more precise, durable and understandable reference points for future reference.

10. New Instream Water Right Applications. ODFW shall not file new instream water right applications on the reaches described in the ODFW Instream Applications. For avoidance of doubt, these reaches are depicted in Exhibit B.

11. Default; Remedies. Where a party fails to comply with the terms and conditions of this Agreement, the non-defaulting Party may provide written notice to the defaulting party of the default and the defaulting party shall cure, or, where such default is not immediately curable, take all reasonable steps to cure, its noncompliance within ten (10) calendar days of receipt of written notice. If the party fails to exercise reasonable efforts to cure its noncompliance, the other party's exclusive remedy, after compliance with Dispute Resolution process set forth below, will be to seek specific performance of the terms and conditions set forth in this Agreement. Either party may file for a temporary restraining order and injunction seeking to compel the other party to comply with the terms of this Agreement. In no case, however, shall any party be entitled to a remedy of monetary damages. The Parties understand and agree that OWRD watermasters will continue to regulate the distribution of water in accordance with existing water rights of record and relative entitlements to water pursuant to ORS 540.045; provided further that OWRD is not responsible for enforcing Base Flows, Minimum Flows, or other bypass flows described in this Agreement.

12. Dispute Resolution. The Parties agree to use best efforts to pursue, in good faith, implementation of the terms and conditions of this Agreement. It is the intent of the Parties to resolve any dispute arising out of this Agreement through unassisted, informal negotiations outside of court, and that litigation will be used only after good faith efforts to resolve disagreements are unsuccessful. To this end, Parties understand and agree to prioritize resolution of any noncompliance or alleged noncompliance with the terms and conditions of this Agreement through consideration of mitigation equal to the value of the flow releases as a first step in the dispute resolution process. In considering the need for mitigation, the Parties shall consider the benefits and provide credit for flows that exceeded the Base or Minimum Flows during the 15 days prior to and 15 days after (a 31 day period) the day on which noncompliance occurs. When Base Flows are not met, mitigation is two (2) times the amount of noncompliance minus credit for flows that exceeded Base Flows during the 31 day period; and when Minimum Flows are not met, mitigation is three (3) times the amount of noncompliance minus credit for flows that exceeded Minimum Flows during the 31 day period. Any mitigation shall be provided within one year of the date of default and shall occur from October – March, except that such mitigation may be deferred by up to one year where BRID adopts a Drought Declarations in accordance with Paragraph 4.b.

13. Process. The Parties agree to assign authorized representative(s) to comply with the following informal resolution process. Within five (5) business days of receipt of a written notice of default that sets forth a summary of the disagreement and any documents or supporting materials that assist in describing the issue or appropriate resolution (the “**Dispute**”), the Parties shall assign representatives to make good faith efforts to resolve the Dispute. If these representatives cannot resolve the Dispute within the next ten (10) business days, the Parties shall designate senior

managers, in the case of ODFW, and one or more board members and the district manager, in the case of BRID, to meet at a mutually agreed upon location, which may include an electronic meeting forum if agreed to by both Parties, to resolve the Dispute. The additional representatives shall seek to resolve the Dispute within thirty (30) calendar days of the date of receipt of the Dispute notice.

14. Attorney Fees. In the event of any litigation between the Parties with respect to this Agreement, all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party at and in preparation for such litigation, excluding any mediation or non-binding arbitration, but including any court proceeding, appeal, petition for review or in any proceeding before a U.S. Bankruptcy Court, shall be paid by the other party, subject to the prevailing party's good faith participation in informal resolution efforts prior to initiating any court proceeding.

15. Force Majeure. Notwithstanding any conditions in this Agreement to the contrary, no Party shall be deemed to be in default by any other Party by reason of failure of performance caused by or resulting from an act of God, strike, lockout or other disturbance, act of public enemy, pandemic, war, blockage, riots, lightning, fire, flood, explosion, dam failure, failure to timely receive necessary government approvals, or restraints of the government, or any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party claiming such.

16. Termination. This Agreement may not be terminated, canceled or rescinded by the Parties, except by mutual written consent of both Parties, except that after compliance with the Dispute Resolution process set forth in Section 12 above, ODFW may seek unilateral termination of the Agreement if BRID has defaulted on its obligation to provide Base or Minimum flows as required by this Agreement more than three (3) times within one (1) year and the Parties do not have an agreed-upon mitigation plan and timeline for implementation to compensate for the value of the bypass flows.

17. Five Year Reviews. The Parties shall meet on each five (5) year anniversary following the Effective Date of this Agreement and shall, at that time, discuss whether amendments to the Agreement may be necessary to address conditions that could not have been anticipated at the time the Parties entered into the Agreement, and to otherwise assess and improve the effectiveness of the Agreement. The Parties agree that conditions that could not have been anticipated shall include any change in law or change in interpretation of existing laws related to this Agreement or the Parties' compliance with its terms; the Parties further agree that such changes may necessitate a review prior to the five (5) year anniversary. No amendments shall be made without mutual consent of the Parties; provided further that no amendments shall be made that would either increase Base Flows or diminish the benefits to the fishery resource intended by the original Agreement.

18. Notices; Designated Representatives. Unless specified otherwise herein, any written notice required under this Agreement shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified mail with a return receipt requested, addressed to the address below or to such other address as may be specified from time to time by either of the Parties in writing.

All notices to BRID shall be sent to:

Burnt River Irrigation District (BRID)
c/o District Manager
19498 Hwy 245
Hereford, OR 97837 Tel.: 541-480-4465
Email: briver@ortelco.net
Designated Representative: District Manager

All notices to ODFW shall be sent to both:

Oregon Department of Fish and Wildlife
La Grande/Grande Ronde Watershed District Office
c/o Watershed Manager
107 20th Street
LaGrande, OR 97850
Tel: 541-963-2138 Fax: 541-963-667
Email: jeff.yanke@odfw.oregon.gov
Designated Representative: LaGrande Watershed Manager

And

Oregon Department of Fish and Wildlife
Headquarters
c/o Water Program Manager
4034 Fairview Industrial Drive SE
Salem, OR 97302
Tel: (503) 947-6000
Email: spencer.r.sawaske@odfw.oregon.gov
Designated Representative: Water Program Manager

The Parties consent that all other written communications may be by electronic mail to the Designated Representative noted above. Both Parties shall update such addresses within five (5) business days of a change in any Designated Representative or provide a replacement Designated Representative and their associated electronic mail address should the position be empty for a period of more than five (5) business days.

19. Cooperation. The Parties agree to cooperate fully to execute any and all supplemental documents, and to take all additional actions, that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

20. Choice of Law; Venue. It is understood and agreed that this Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any circuit court action or suit brought by the Parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Baker County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District

Court for the District of Oregon. ALL PARTIES HEREBY CONSENT TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVE ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVE ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State Agencies of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State Agencies to the jurisdiction of any court.

21. Constitutionality. The State's obligations under this Agreement are conditioned upon the State receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the State, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

22. Severability. In the event that any of the terms or conditions, or any portion of them, contained in this Agreement are unenforceable or declared invalid for any reason whatsoever, the same shall not affect the enforceability or validity of the remaining terms and conditions hereof.

23. No Waiver. No waiver of any right under this Agreement will be binding on a Party unless it is in writing and signed by the Party making the waiver.

24. Counting of Days. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or legal holiday, the time period shall be extended until the next day which is not a Saturday, Sunday or legal holiday in the State of Oregon.

25. Opportunity to Review. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.

26. No Interpretation in Favor of Any Party. It is understood and agreed that the Parties drafted the Agreement together and that its provisions should not be interpreted to favor any Party against another Party as the drafter.

27. Review of Entire Agreement. Each Party to this Agreement certifies that it has read the entire Agreement and understands and agrees with the contents thereof.

28. No Precedent. The Parties agree that nothing in this Agreement establishes factual, legal, or policy precedent.

29. Authority of Signor; BRID Representation. 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 this Agreement. In addition, BRID represents that it shall faithfully comply with all obligations established in its contract with the United States related to the Unity Dam and reservoir works

(contract number ILR-821) for the express purpose of ensuring no cause exists for the United States to take back such transferred works.

30. Counterparts; Electronic Signatures. The Agreement may be executed in one or more counterparts, and all counterparts so executed shall constitute one agreement, binding on all of the Parties to this Agreement, even though all of the Parties are not signatories to the original or the same counterpart. Any counterpart of this Agreement, which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, is for all purposes deemed a fully executed instrument. The Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original, manual signature. Without limitation, “electronic signature” shall include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature or any symbol adopted by either party with the intent to sign this Agreement.

31. Final Orders; Consent to Withdrawal of Protests. This Agreement is conditioned on and contingent on OWRD’s issuance of Final Orders and Certificates for all of the Instream Water Rights; provided further that BRID agrees to withdraw its protests and all Parties agree not to challenge OWRD’s issuance of Final Orders for all of the Instream Water Rights consistent with the terms of this Agreement.

32. Defense of the Agreement. The Parties agree to support this Agreement, including responding to any third-party challenge to this Agreement or the Final Orders. However, the form, manner and timing of each Party’s support are reserved to the discretion of each Party; provided further that in no case shall the BRID or any attorney engaged by the BRID defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor shall they purport to act as the legal representative of the State of Oregon or any of its agencies.

33. Consent. The Parties hereby acknowledge that they have read and understand the terms of this Agreement. The Parties understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the Parties.

WHEREAS, the Parties have entered into this Agreement effective as of the date of the last signature below.

Burnt River Irrigation District

Name: _____

Date: _____

Position: _____

Oregon Department of Fish and Wildlife

Name:  _____

Date: ____01/15/25____

Position: _____
 _____ Director _____

(contract number ILR-821) for the express purpose of ensuring no cause exists for the United States to take back such transferred works.

30. Counterparts; Electronic Signatures. The Agreement may be executed in one or more counterparts, and all counterparts so executed shall constitute one agreement, binding on all of the Parties to this Agreement, even though all of the Parties are not signatories to the original or the same counterpart. Any counterpart of this Agreement, which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, is for all purposes deemed a fully executed instrument. The Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original, manual signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions of an original signature or any symbol adopted by either party with the intent to sign this Agreement.

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33. Consent. The Parties hereby acknowledge that they have read and understand the terms of this Agreement. The Parties understand and agree that this Agreement and all documents incorporated by reference set forth the entire Agreement of the Parties.

WHEREAS, the Parties have entered into this Agreement effective as of the date of the last signature below.

Burnt River Irrigation District

Name: William T. Moon

Date: 1-21-2025

Position: Board Chairman

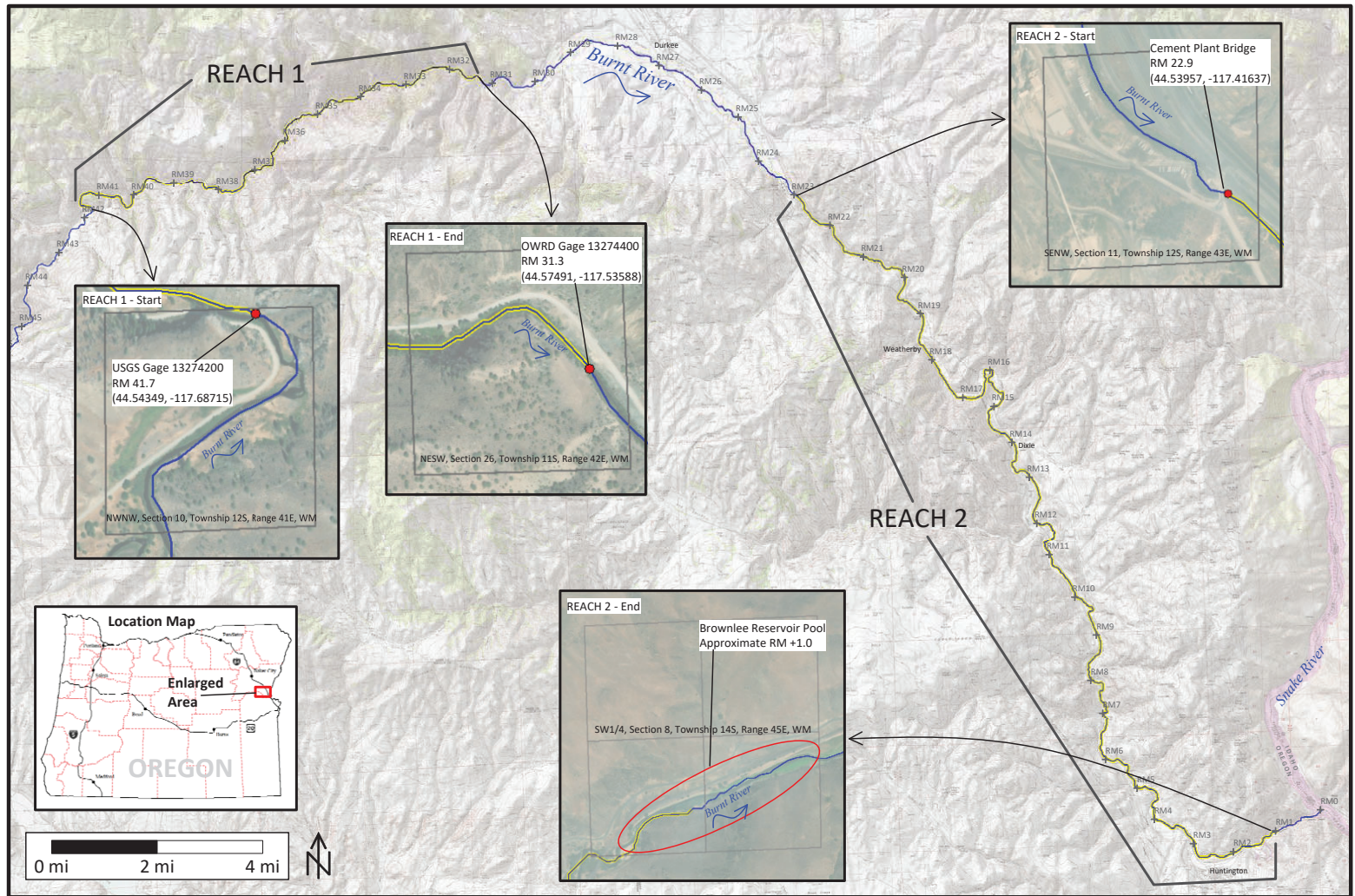
Oregon Department of Fish and Wildlife

Name: _____

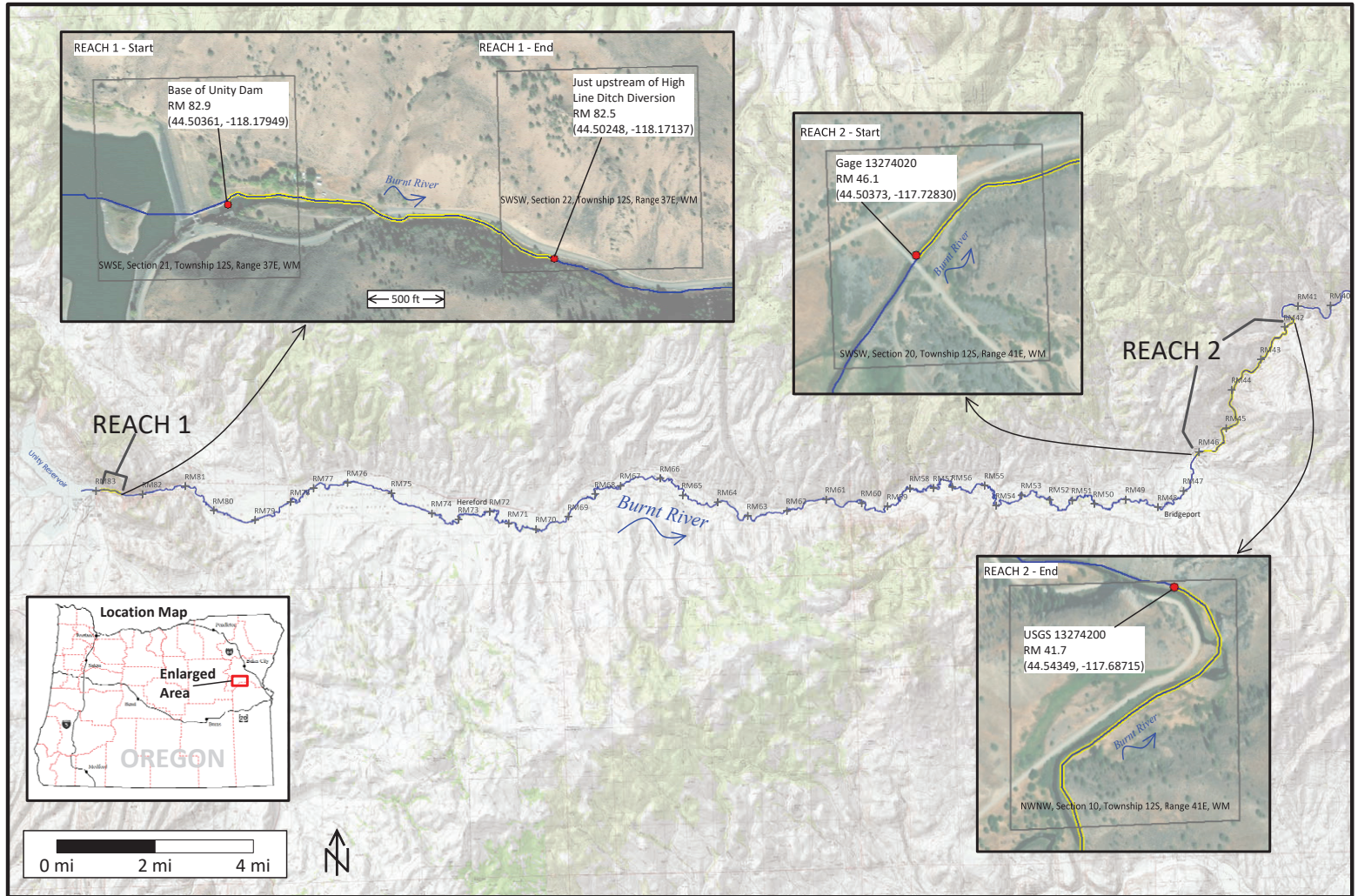
Date: _____

Position: _____

IS-72168 Reach Location Map



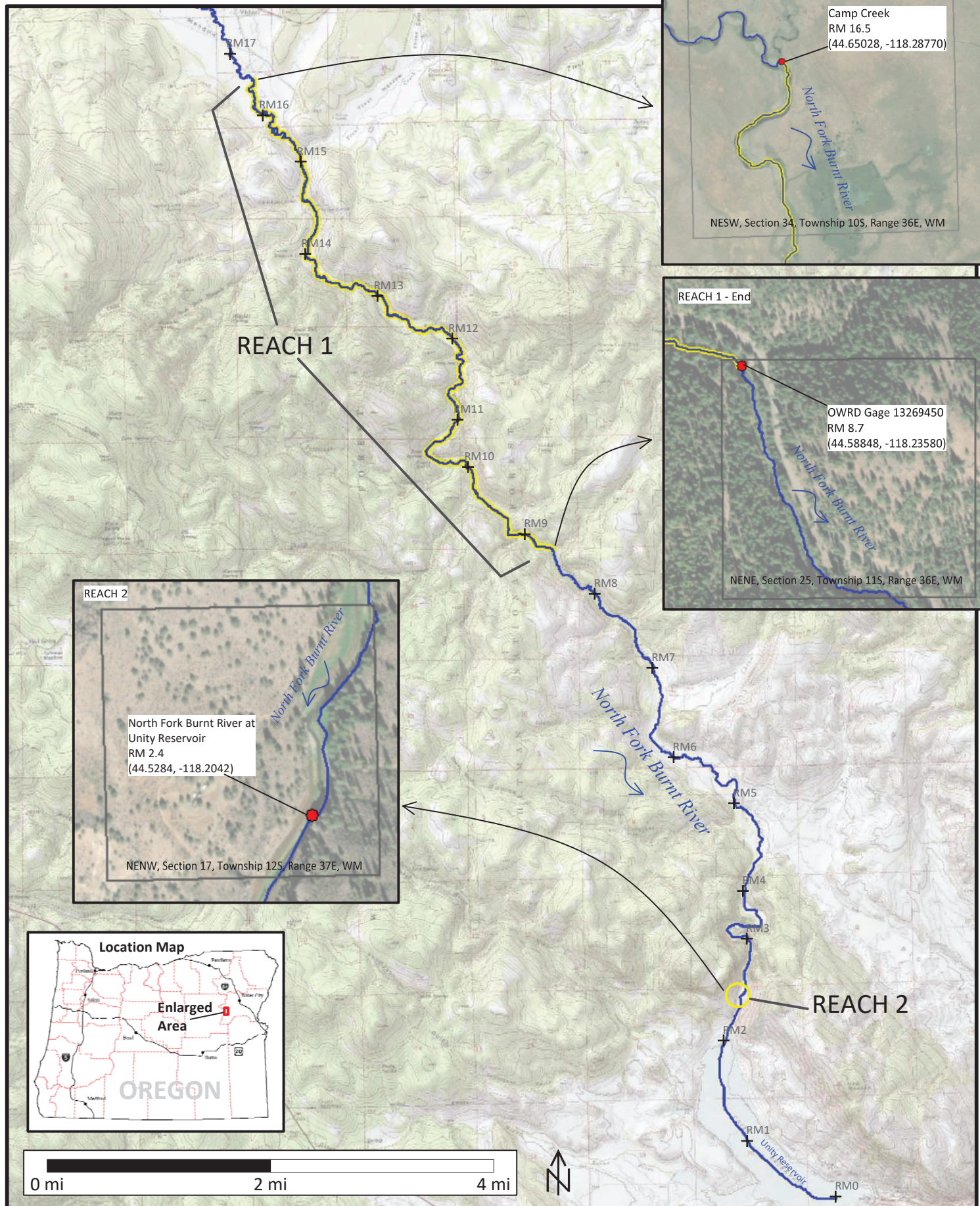
IS-72169 Reach Location Map



NOTE: River Miles derived from OWRD provided stream layer (5/3/24)

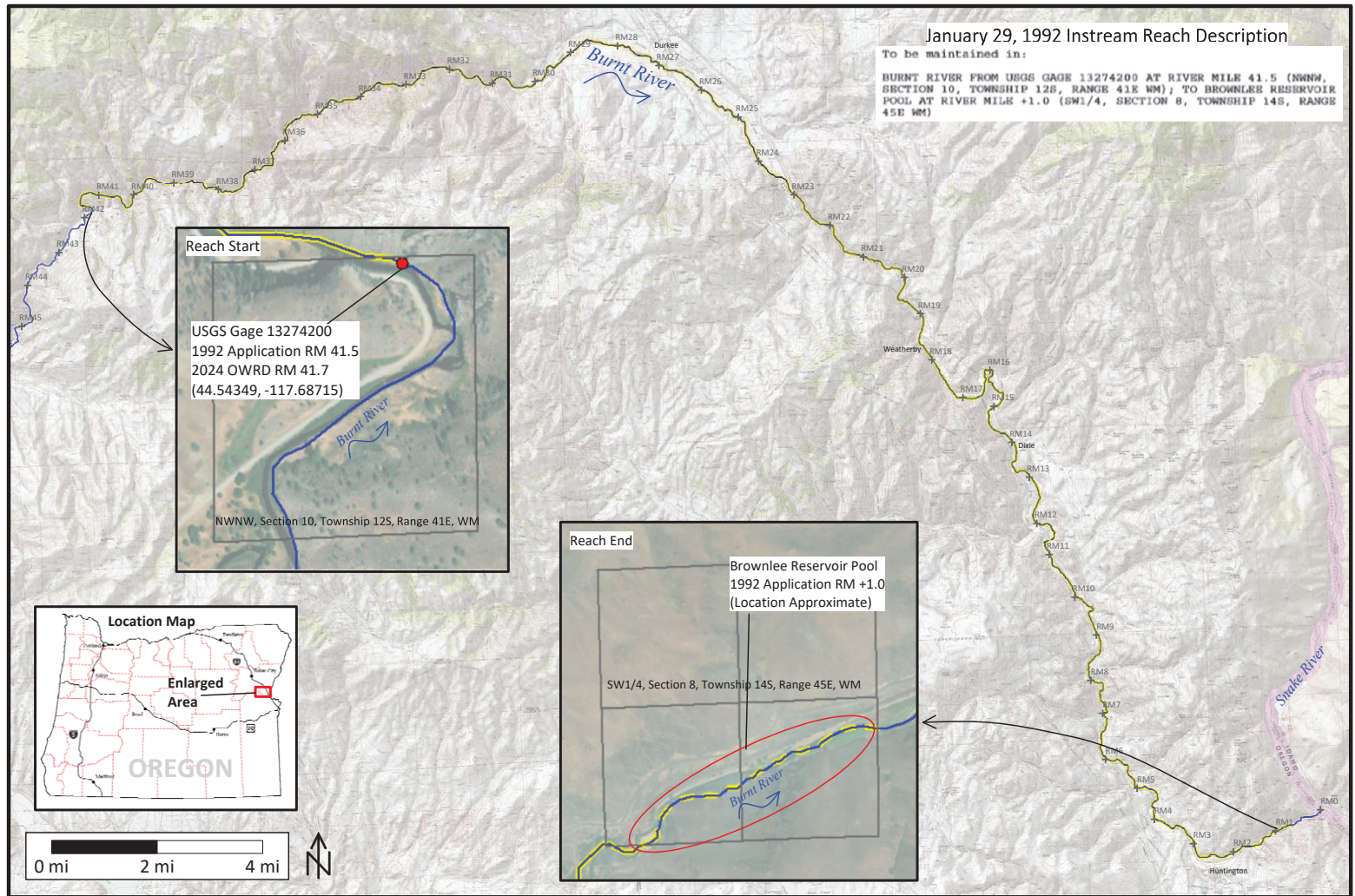
IS-72186 Reach Location Map

EXHIBIT A

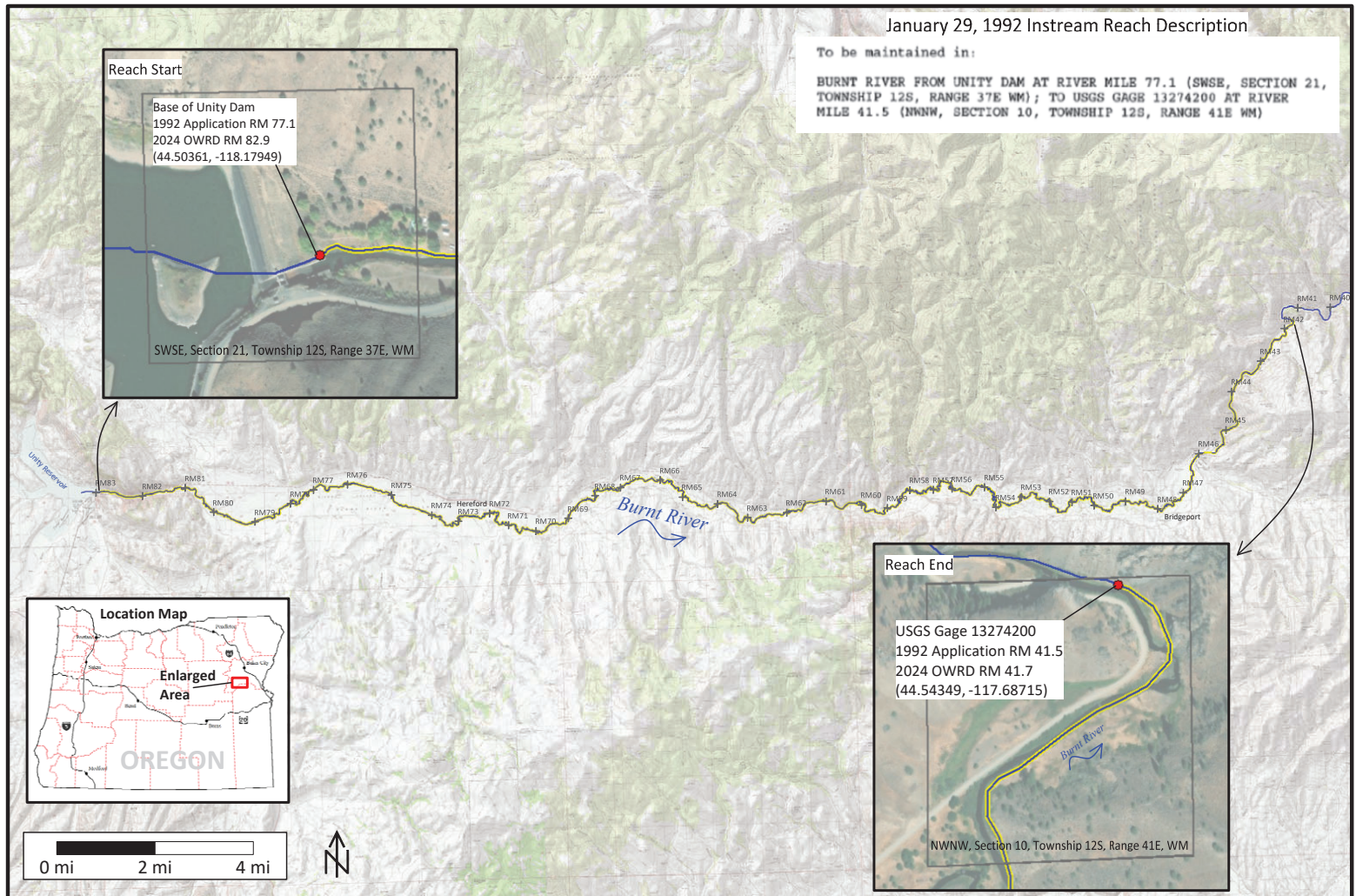


NOTE: River Miles derived from OWRD provided stream layer (5/3/24)

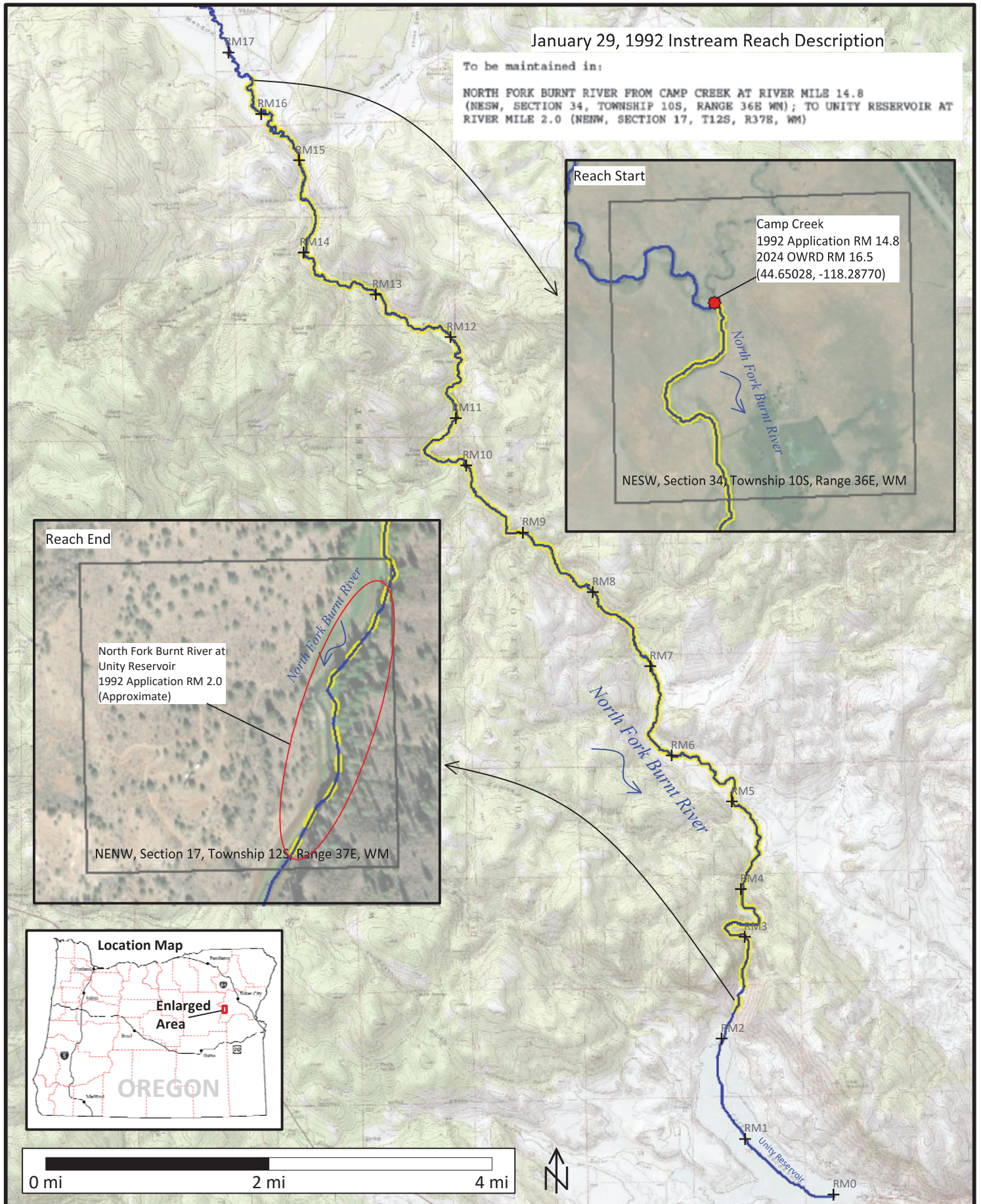
ODFW Instream Application IS-72168 Reach Location Map



ODFW Instream Application IS-72169 Reach Location Map



ODFW Instream Application IS-72186 Reach Location Map



NOTE: River Miles derived from OWRD provided stream layer (5/3/24)

**Oregon Water Resources Department
Water Right Services Division**

Water Right Application IS-72168)	
)	
Oregon Department of Fish and Wildlife,)	
Applicant)	
)	FINAL ORDER INCORPORATING CONSENT
Burnt River Irrigation District,)	AGREEMENT
Protestant)	
)	
WaterWatch of Oregon, Inc.,)	
Intervenor)	

Summary: Order approving Application IS-72168 and issuing Certificate 98264.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.140 to 537.252 and 537.332 to 537.360, Oregon Administrative Rules (OAR) Chapter 690, Division 77, and the Powder Basin Program (OAR Chapter 690, Division 509).

These statutes and rules can be viewed on the Oregon Water Resources Department's website: <https://www.oregon.gov/owrd/programs/policylawandrules/Pages/default.aspx>

The Oregon Water Resources Department's main page is:
<http://www.oregon.gov/OWRD/pages/index.aspx>

This final order is issued pursuant to ORS 537.170(6) to (9), 183.417(3), and OAR 690-077-0047, 137-003-0510(4), and 137-003-0665(5).

APPLICATION HISTORY

1. The Application History section of the August 27, 1996, Proposed Final Order is incorporated herein by reference.

FINDINGS OF FACT

1. The findings of fact in the August 27, 1996, Proposed Final Order are incorporated herein by reference, with the additions and changes shown below.
2. On January 29, 1992, the Oregon Department of Fish and Wildlife submitted an application for an instream water right to the Oregon Water Resources Department (Department).

3. On August 27, 1996, the Department issued a Proposed Final Order recommending approval of the application.
4. On October 9, 1996, the Burnt River Irrigation District filed a timely protest of the Proposed Final Order.
5. On October 11, 1996, WaterWatch of Oregon filed a timely request for standing in support of the Proposed Final Order.
6. On August 15, 2015, WaterWatch of Oregon filed a timely petition for party status
7. On September 14, 2021, the Department referred the protest to the Oregon Office of Administrative Hearings for a contested case hearing.
8. On July 14, 2023, the Department granted WaterWatch of Oregon limited party status.
9. On January 21, 2025, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District entered into a Settlement and Water Bypass Agreement to resolve Burnt River Irrigation District's protest. The Settlement and Water Bypass Agreement was conditioned and contingent upon the Department issuing a Final Order and Certificate that sets the instream reach for the instream water right requested by the Oregon Department of Fish and Wildlife consistent with the terms of the Settlement and Water Bypass Agreement.
10. On [REDACTED], the Department, the Oregon Department of Fish and Wildlife, the Burnt River Irrigation District and WaterWatch of Oregon (Parties) entered into a Consent Agreement to resolve this matter. The Settlement and Water Bypass Agreement is attached to the Consent Agreement as Exhibit A for convenient reference but is not incorporated into the Consent Agreement. The Consent Agreement is incorporated into this final order by reference and is attached hereto and made a part of this order. The Settlement and Water Bypass Agreement is not incorporated into or made part of this order.
11. Pursuant to the terms of the Consent Agreement, the Department shall issue a certificate that reflects an amendment of the reach of the requested instream water right from the

reach described in the August 27, 1996, Proposed Final Order to following reach (Revised Reach):

REACH 1 – BURNT RIVER FROM FORMER USGS GAGE 13274200 AT APPROXIMATELY RIVER MILE 41.7 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E, WM) TO OWRD GAGE 13274400 AT BURNT RIVER ABOVE BANKS DIVERSION NEAR DURKEE, APPROXIMATELY RIVER MILE 31.3 (NESW, SECTION 26, TOWNSHIP 11S, RANGE 42E WM)

REACH 2 – BURNT RIVER FROM CEMENT PLANT BRIDGE AT APPROXIMATELY RIVER MILE 22.9 (SENW, SECTION 11, TOWNSHIP 12S, RANGE 43E, WM) TO BROWNLEE RESERVOIR POOL AT APPROXIMATELY RIVER MILE +1.0 (SW ¼, SECTION 8, TOWNSHIP 14S, RANGE 45E, WM)

The Revised Reach amends the reach described in the Proposed Final Order by omitting a portion of the middle of the reach, thereby shortening the reach and splitting it into two separate reaches. In addition, both the reach described in the Proposed Final Order and the Revised Reach identify the location of USGS gage 13274200 as the upstream terminus of the instream water right reach. However, the Revised Reach updates the description of the upstream terminus by adding “former” in recognition that USGS gage 13274200 no longer exists, and by describing the location of the gage as “at approximately river mile 41.7,” rather than “at approximately river mile 41.5.” These updates to the description of the upstream terminus do not change the location of the upstream terminus or expand the instream water right reach. Instead, they provide a more accurate description of the location of the upstream terminus under current conditions.

The requested instream water right, as amended to reflect the Revised Reach, is referred to herein as the Revised Proposed Use.

12. All findings of fact in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.
13. Certificate condition #5 in the draft certificate included with the Proposed Final Order reads “[t]he flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.” Certificate condition #5 in Certificate 98264 issued with this order has been modified to reflect that the Revised Proposed Use includes two instream flow reaches and reads “[t]he flows are to be measured at the lower end of reach 2 to protect necessary flows throughout reach 1 and reach 2.”

CONCLUSIONS OF LAW

1. The conclusions of law in the August 27, 1996, Proposed Final Order are incorporated herein by reference.
2. All conclusions of law in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.

ORDER

Application IS-72168, as amended by the Consent Agreement, is approved, and Certificate 98264 is issued.

DATED _____

Katherine Ratcliffe, Administrator
Water Right Services Division
for Ivan Gall, Director
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER ST NE SUITE A
SALEM OR 97301

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

APPLICATION FILE NUMBER: IS-72168

SOURCE OF WATER: BURNT RIVER, TRIBUTARY TO SNAKE RIVER

PURPOSE: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE, AND JUVENILE REARING OF
RAINBOW TROUT

DATE OF PRIORITY: JANUARY 29, 1992

TO BE MAINTAINED IN: **REACH 1** - BURNT RIVER FROM FORMER USGS GAGE 13274200 AT
APPROXIMATELY RIVER MILE 41.7 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE
41E, WM) TO OWRD GAGE 13274400 AT BURNT RIVER ABOVE BANKS
DIVERSION NEAR DURKEE, APPROXIMATELY RIVER MILE 31.3 (NESW, SECTION
26, TOWNSHIP 11S, RANGE 42E WM)
REACH 2 – BURNT RIVER FROM CEMENT PLANT BRIDGE AT APPROXIMATELY
RIVER MILE 22.9 (SENW, SECTION 11, TOWNSHIP 12S, RANGE 43E, WM) TO
BROWNLEE RESERVOIR POOL AT APPROXIMATELY RIVER MILE +1.0 (SW ¼,
SECTION 8, TOWNSHIP 14S, RANGE 45E, WM)

The right is established under Oregon Revised Statutes 537.341. The reaches in which water is to be maintained under this right reflect the Settlement and Water Bypass Flow Agreement entered into by the Burnt River Irrigation District and the Oregon Department of Fish and Wildlife on January 21, 2025 (Settlement Agreement). The Settlement Agreement is not incorporated into this certificate by reference and is not an “existing water right of record” as that term is defined and used in ORS 540.045 or a “relative entitlement to water” as that term is used in ORS 540.045. All terms and conditions of this right are set forth in this certificate.

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:

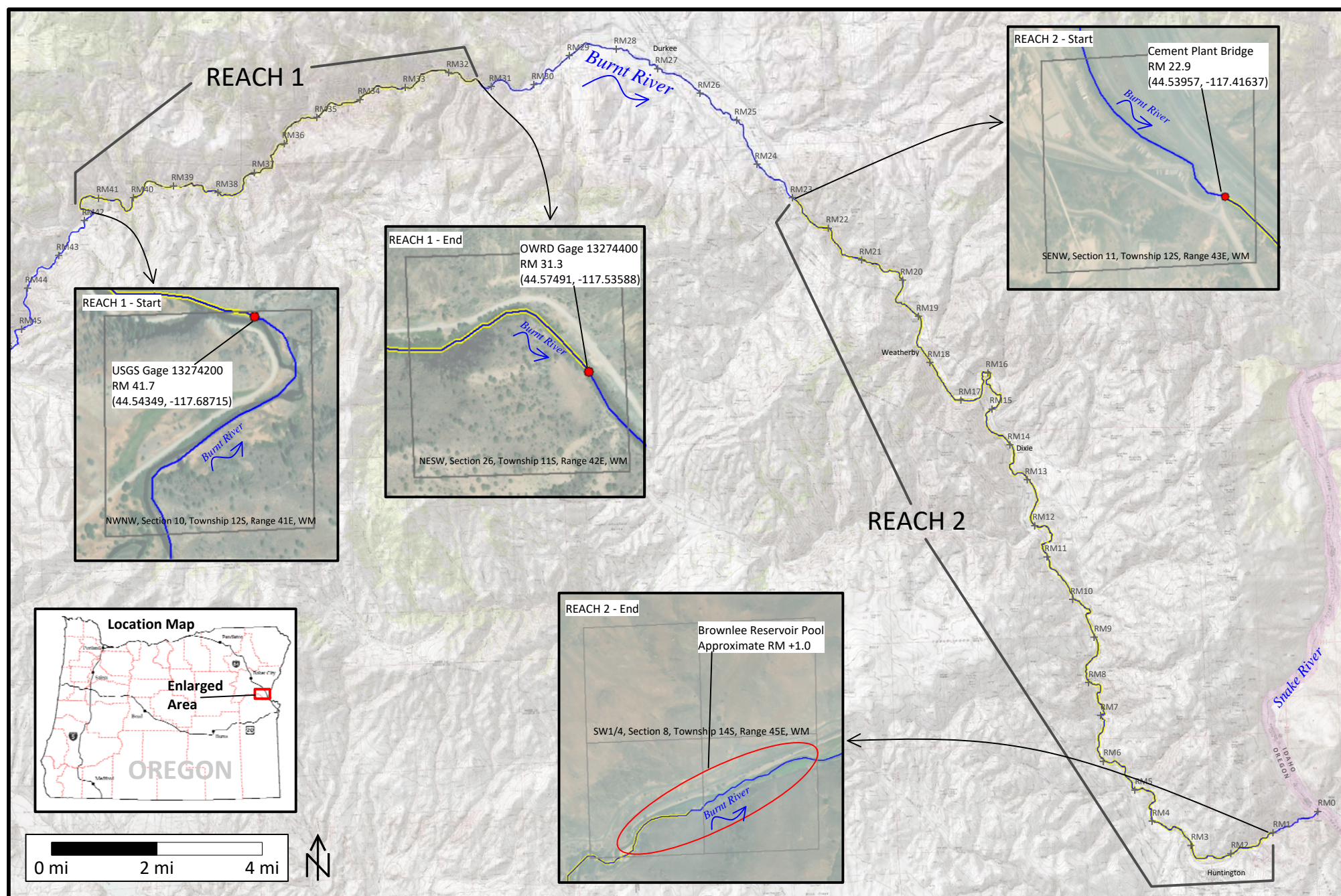
Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1 st ½	25.0	25.0	50.0	50.0	50.0	50.0	25.0	25.0	25.0	25.0	25.0	25.0
2 nd ½	25.0	40.0	50.0	50.0	50.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0

2. The water right holder shall measure and report the in-stream flow along the reaches 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 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 reach 2 to protect necessary flows throughout reach 1 and reach 2.

ISSUED _____

Katherine Ratcliffe, Administrator
 Water Right Services Division
for Ivan Gall, Director
 Oregon Water Resources Department

IS-72168 Reach Location Map



**Oregon Water Resources Department
Water Right Services Division**

Water Right Application IS-72169)	
)	
Oregon Department of Fish and Wildlife,)	
Applicant)	
)	FINAL ORDER INCORPORATING CONSENT
Burnt River Irrigation District,)	AGREEMENT
Protestant)	
)	
WaterWatch of Oregon, Inc.,)	
Intervenor)	

Summary: Order approving Application IS-72169 and issuing Certificate 98265.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.140 to 537.252 and 537.332 to 537.360, Oregon Administrative Rules (OAR) Chapter 690, Division 77, and the Powder Basin Program (OAR Chapter 690, Division 509).

These statutes and rules can be viewed on the Oregon Water Resources Department's website: <https://www.oregon.gov/owrd/programs/policylawandrules/Pages/default.aspx>

The Oregon Water Resources Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

This final order is issued pursuant to ORS 537.170(6) to (9), 183.417(3), and OAR 690-077-0047, 137-003-0510(4), and 137-003-0665(5).

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7. On September 14, 2021, the Department referred the protest to the Oregon Office of Administrative Hearings for a contested case hearing.
8. On July 14, 2023, the Department granted WaterWatch of Oregon limited party status.
9. On January 21, 2025, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District entered into a Settlement and Water Bypass Agreement to resolve Burnt River Irrigation District's protest. The Settlement and Water Bypass Agreement was conditioned and contingent upon the Department issuing a Final Order and Certificate that sets the instream reach for the instream water right requested by the Oregon Department of Fish and Wildlife consistent with the terms of the Settlement and Water Bypass Agreement.
10. On [REDACTED], the Department, the Oregon Department of Fish and Wildlife, the Burnt River Irrigation District and WaterWatch of Oregon (Parties) entered into a Consent Agreement to resolve this matter. The Settlement and Water Bypass Agreement is attached to the Consent Agreement as Exhibit A for convenient reference but is not incorporated into the Consent Agreement. The Consent Agreement is incorporated into this final order by reference and is attached hereto and made a part of this order. The Settlement and Water Bypass Agreement is not incorporated into or made part of this order.
11. Pursuant to the terms of the Consent Agreement, the Department shall issue a certificate that reflects an amendment of the reach of the requested instream water right from the

reach described in the August 27, 1996, Proposed Final Order to following reach (Revised Reach):

REACH 1 - BURNT RIVER FROM THE BASE OF UNITY DAM AT APPROXIMATELY RIVER MILE 82.9 (SWSE, SECTION 21, TOWNSHIP 12S, RANGE 37E, WM), DOWNSTREAM APPROXIMATELY 2,500 FEET TO JUST UPSTREAM OF HIGH LINE DITCH DIVERSION AT APPROXIMATELY RIVER MILE 82.5 (SWSW, SECTION 22, TOWNSHIP 12S, RANGE 37E, WM)

REACH 2 – BURNT RIVER FROM GAGE 13274020 ABOVE CLARKS CREEK NEAR BRIDGEPORT, APPROXIMATELY RIVER MILE 46.1 (SWSW, SECTION 20, TOWNSHIP 12S, RANGE 41E, WM) TO FORMER USGS GAGE 13274200 AT APPROXIMATELY RIVER MILE 41.7 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E, WM)

The Revised Reach amends the reach described in the Proposed Final Order by omitting a portion of the middle of the reach, thereby shortening the reach and splitting it into two separate reaches.

In addition, both the reach described in the Proposed Final Order and the Revised Reach identify Unity Dam as the upstream terminus of the instream water right reach. However, the Revised Reach updates the description of the upstream terminus by specifying that the upstream terminus is “the base of Unity Dam,” and by describing the location of the dam as “at approximately river mile 82.5,” rather than “at approximately river mile 77.1.” This update to the description of the upstream terminus does not change the location of the upstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the upstream terminus under current conditions.

Finally, both the reach described in the Proposed Final Order and the Revised Reach identify the location of USGS gage 13274200 as the downstream terminus of the instream water right reach. However, the Revised Reach updates the description of the downstream terminus by adding “former” in recognition that USGS gage 13274200 no longer exists, and by describing the location of the gage as “at approximately river mile 41.7,” rather than “at approximately river mile 41.5.” This update to the description of the downstream terminus does not change the location of the downstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the downstream terminus under current conditions.

The requested instream water right, as altered to reflect the Revised Reach, is referred to herein as the Revised Proposed Use.

12. All findings of fact in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.
13. Certificate condition #5 in the draft certificate included with the Proposed Final Order reads “[t]he flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.” Certificate condition #5 in Certificate 98265 issued with this order has been modified to reflect that the Revised Proposed Use includes two instream flow reaches and reads “[t]he flows are to be measured at the lower end of reach 2 to protect necessary flows throughout reach 1 and reach 2.”

CONCLUSIONS OF LAW

1. The conclusions of law in the August 27, 1996, Proposed Final Order are incorporated herein by reference.
2. All conclusions of law in the August 27, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.

ORDER

Application IS-72169, as amended by the Consent Agreement, is approved, and Certificate 98265 is issued.

DATED _____

Katherine Ratcliffe, Administrator
Water Right Services Division
for Ivan Gall, Director
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER ST NE SUITE A
SALEM OR 97301

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

APPLICATION FILE NUMBER: IS-72169

SOURCE OF WATER: BURNT RIVER, TRIBUTARY TO SNAKE RIVER

PURPOSE: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE, AND JUVENILE REARING OF
RAINBOW TROUT

DATE OF PRIORITY: JANUARY 29, 1992

TO BE MAINTAINED IN: **REACH 1** - BURNT RIVER FROM THE BASE OF UNITY DAM AT APPROXIMATELY RIVER MILE 82.9 (SWSE, SECTION 21, TOWNSHIP 12S, RANGE 37E, WM), DOWNSTREAM APPROXIMATELY 2,500 FEET TO JUST UPSTREAM OF HIGH LINE DITCH DIVERSION AT APPROXIMATELY RIVER MILE 82.5 (SWSW, SECTION 22, TOWNSHIP 12S, RANGE 37E, WM)
REACH 2 – BURNT RIVER FROM GAGE 13274020 ABOVE CLARKS CREEK NEAR BRIDGEPORT, APPROXIMATELY RIVER MILE 46.1 (SWSW, SECTION 20, TOWNSHIP 12S, RANGE 41E, WM) TO FORMER USGS GAGE 13274200 AT APPROXIMATELY RIVER MILE 41.7 (NWNW, SECTION 10, TOWNSHIP 12S, RANGE 41E, WM)

The right is established under Oregon Revised Statutes 537.341. The reaches in which water is to be maintained under this right reflect the Settlement and Water Bypass Flow Agreement entered into by the Burnt River Irrigation District and the Oregon Department of Fish and Wildlife on January 21, 2025 (Settlement Agreement). The Settlement Agreement is not incorporated into this certificate by reference and is not an “existing water right of record” as that term is defined and used in ORS 540.045 or a “relative entitlement to water” as that term is used in ORS 540.045. All terms and conditions of this right are set forth in this certificate.

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:

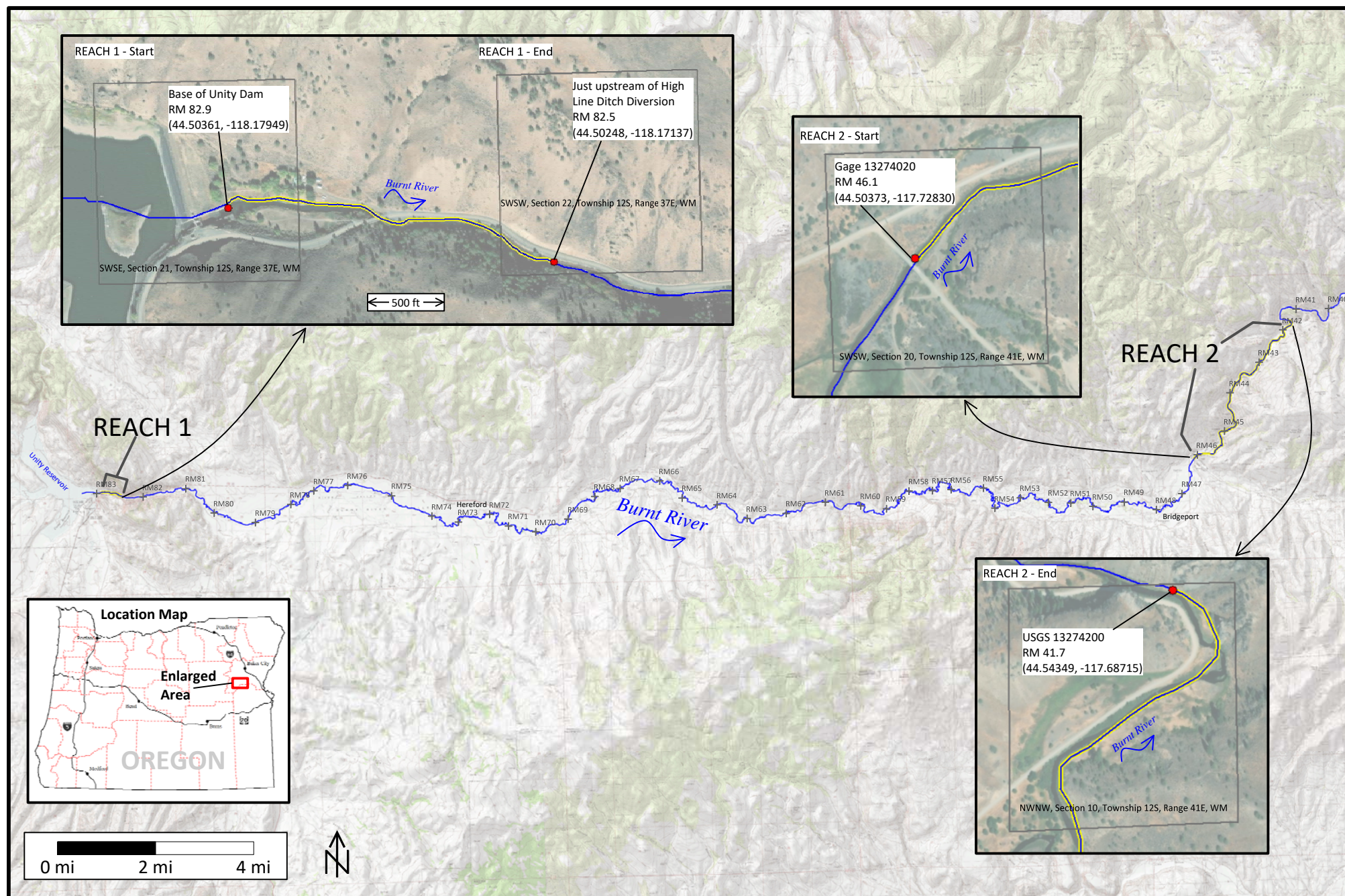
Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1 st ½	25.0	25.0	50.0	50.0	50.0	50.0	25.0	25.0	25.0	25.0	25.0	25.0
2 nd ½	25.0	40.0	50.0	50.0	50.0	40.0	25.0	25.0	25.0	25.0	25.0	25.0

2. The water right holder shall measure and report the in-stream flow along the reaches 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 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 reach 2 to protect necessary flows throughout reach 1 and reach 2.

ISSUED _____

Katherine Ratcliffe, Administrator
 Water Right Services Division
for Ivan Gall, Director
 Oregon Water Resources Department

IS-72169 Reach Location Map



**Oregon Water Resources Department
Water Right Services Division**

Water Right Application IS-72186)	
)	
Oregon Department of Fish and Wildlife,)	
Applicant)	
)	FINAL ORDER INCORPORATING CONSENT
Burnt River Irrigation District,)	AGREEMENT
Protestant)	
)	

Summary: Order approving Application IS-72186 and issuing Certificate 98266.

Authority

The application is being processed in accordance with Oregon Revised Statutes (ORS) 537.140 to 537.252 and 537.332 to 537.360, Oregon Administrative Rules (OAR) Chapter 690, Division 77, and the Powder Basin Program (OAR Chapter 690, Division 509).

These statutes and rules can be viewed on the Oregon Water Resources Department's website: <https://www.oregon.gov/owrd/programs/policylawandrules/Pages/default.aspx>

The Oregon Water Resources Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

This final order is issued pursuant to ORS 537.170(6) to (9), 183.417(3), and OAR 690-077-0047, 137-003-0510(4), and 137-003-0665(5).

APPLICATION HISTORY

1. The Application History section of the May 14, 1996, Proposed Final Order is incorporated herein by reference.

FINDINGS OF FACT

1. The findings of fact in the May 14, 1996, Proposed Final Order are incorporated herein by reference, with the additions and changes shown below.
2. On January 29, 1992, the Oregon Department of Fish and Wildlife submitted an application for an instream water right to the Oregon Water Resources Department (Department).

3. On May 14, 1996, the Department issued a Proposed Final Order recommending approval of the application.
4. On July 25, 1996, the Burnt River Irrigation District filed a timely protest of the Proposed Final Order.
5. On September 14, 2021, the Department referred the protest to the Oregon Office of Administrative Hearings for a contested case hearing.
6. On January 21, 2025, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District entered into a Settlement and Water Bypass Agreement to resolve Burnt River Irrigation District's protest. The Settlement and Water Bypass Agreement was conditioned and contingent upon the Department issuing a Final Order and Certificate that sets the instream reach for the instream water right requested by the Oregon Department of Fish and Wildlife consistent with the terms of the Settlement and Water Bypass Agreement.
7. On [REDACTED], the Department, the Oregon Department of Fish and Wildlife and the Burnt River Irrigation District (Parties) entered into a Consent Agreement to resolve this matter. The Settlement and Water Bypass Agreement is attached to the Consent Agreement as Exhibit A for convenient reference but is not incorporated into the Consent Agreement. The Consent Agreement is incorporated into this final order by reference and is attached hereto and made a part of this order. The Settlement and Water Bypass Agreement is not incorporated into or made part of this order.
8. Pursuant to the terms of the Consent Agreement, the Department shall issue a certificate that reflects an amendment of the reach of the requested instream water right from the reach described in the August 27, 1996, Proposed Final Order to following reach (Revised Reach):

REACH 1 - NORTH FORK BURNT RIVER FROM CAMP CREEK AT APPROXIMATELY RIVER MILE 16.5 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E, WM) TO THE OWRD GAGE 13269450 ABOVE THE BIG FLAT DIVERSION DITCH AT APPROXIMATELY RIVER MILE 8.7 (NENE, SECTION 25, TOWNSHIP 11S, RANGE 36E, WM)

REACH 2 – NORTH FORK BURNT RIVER AT UNITY RESERVOIR NEAR THE OUTLET OF NORTH FORK BURNT RIVER ABOVE WEST FORK BURNT RIVER WATER AVAILABILITY BASIN, APPROXIMATELY RIVER MILE 2.4 (NENW, SECTION 17, TOWNSHIP 12S, RANGE 37E, WM)

The Revised Reach amends the reach described in the Proposed Final Order by omitting a portion of the middle of the reach, thereby shortening the reach and splitting it into two separate reaches.

In addition, both the reach described in the Proposed Final Order and the Revised Reach identify Camp Creek as the upstream terminus of the instream water right reach. However, the Revised Reach updates the description of the upstream terminus by describing the location of Camp Creek as “at approximately river mile 16.5,” rather than “at approximately river mile 14.8.” This update to the description of the upstream terminus does not change the location of the upstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the upstream terminus under current conditions.

Finally, both the reach described in the Proposed Final Order and the Revised Reach identify Unity Reservoir as the downstream terminus of the instream water right reach. However, the Revised Reach updates the description of the downstream terminus by adding “near the outlet of North Fork Burnt River above West Fork Burnt River Water Availability Basin,” and by describing the location of Unity Reservoir as “at approximately river mile 2.4,” rather than “at approximately river mile 2.0.” This update to the description of the downstream terminus does not change the location of the downstream terminus or expand the instream water right reach. Instead, the update provides a more accurate description of the location of the downstream terminus under current conditions.

The requested instream water right, as amended to reflect the Revised Reach, is referred to herein as the Revised Proposed Use.

9. All findings of fact in the May 14, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.
10. Certificate condition #5 in the draft certificate included with the Proposed Final Order reads “[t]he flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.” Certificate condition #5 in Certificate 98266 issued with this order has been modified to reflect that the Revised Proposed Use includes two instream flow reaches and reads “[t]he flows are to be measured at the lower end of reach 2 to protect necessary flows throughout reach 1 and reach 2.”

CONCLUSIONS OF LAW

1. The conclusions of law in the May 14, 1996, Proposed Final Order are incorporated herein by reference.
2. All conclusions of law in the May 14, 1996, Proposed Final Order concerning the “proposed use” apply equally to the Revised Proposed Use.

ORDER

Application IS-72186, as amended by the Consent Agreement, is approved, and Certificate 98266 is issued.

DATED _____

Katherine Ratcliffe, Administrator
Water Right Services Division
for Ivan Gall, Director
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE IS HEREBY ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER ST NE SUITE A
SALEM OR 97301

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

APPLICATION FILE NUMBER: IS-72186

SOURCE OF WATER: NORTH FORK BURNT RIVER, TRIBUTARY TO BURNT RIVER

PURPOSE: MIGRATION, SPAWNING, EGG INCUBATION, FRY EMERGENCE, AND JUVENILE REARING OF
RAINBOW TROUT

DATE OF PRIORITY: JANUARY 29, 1992

TO BE MAINTAINED IN: **REACH 1** - NORTH FORK BURNT RIVER FROM CAMP CREEK AT APPROXIMATELY
RIVER MILE 16.5 (NESW, SECTION 34, TOWNSHIP 10S, RANGE 36E, WM) TO THE
OWRD GAGE 13269450 ABOVE THE BIG FLAT DIVERSION DITCH AT
APPROXIMATELY RIVER MILE 8.7 (NENE, SECTION 25, TOWNSHIP 11S, RANGE
36E, WM)
REACH 2 – NORTH FORK BURNT RIVER AT UNITY RESERVOIR NEAR THE OUTLET
OF NORTH FORK BURNT RIVER ABOVE WEST FORK BURNT RIVER WATER
AVAILABILITY BASIN, APPROXIMATELY RIVER MILE 2.4 (NENW, SECTION 17,
TOWNSHIP 12S, RANGE 37E, WM)

The right is established under Oregon Revised Statutes 537.341. The reaches in which water is to be maintained under this right reflect the Settlement and Water Bypass Flow Agreement entered into by the Burnt River Irrigation District and the Oregon Department of Fish and Wildlife on January 21, 2025 (Settlement Agreement). The Settlement Agreement is not incorporated into this certificate by reference and is not an “existing water right of record” as that term is defined and used in ORS 540.045 or a “relative entitlement to water” as that term is used in ORS 540.045. All terms and conditions of this right are set forth in this certificate.

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:

Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1 st ½	6.0	6.0	25.0	25.0	25.0	25.0	12.0	6.0	4.88	4.99	6.0	6.0
2 nd ½	6.0	12.0	25.0	25.0	25.0	20.0	6.0	6.0	4.88	4.99	6.0	6.0

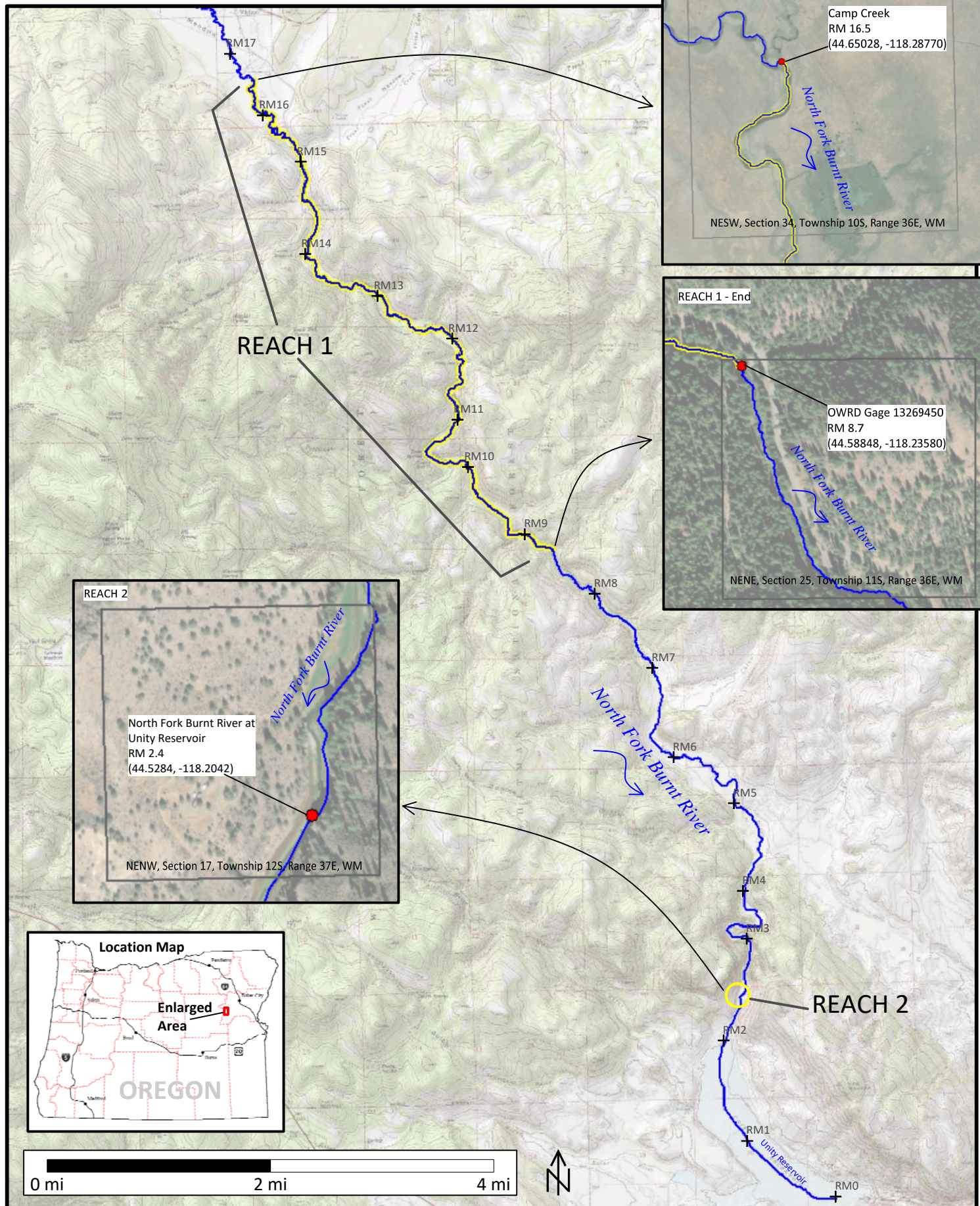
2. The water right holder shall measure and report the in-stream flow along the reaches of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. For purposes of water distribution, this instream right 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 reach 2 to protect necessary flows throughout reach 1 and reach 2.

ISSUED _____

Katherine Ratcliffe, Administrator
 Water Right Services Division
for Ivan Gall, Director
 Oregon Water Resources Department

IS-72186 Reach Location Map

EXHIBIT B



NOTE: River Miles derived from OWRD provided stream layer (5/3/24)