

2

Name Oregon Department of Fish and Wildlife
 By Attn: Anne Hayden-Lesmeister
 Address 4034 Fairview Industrial Dr. SE
Salem, OR. 97302

Priority _____

County _____ WM# _____

RELATED FILES

DEVELOPMENT

Date

Completion _____

Extended to _____

Final Proof received _____

~~Proposed~~ Cert. Mailed 5/20/2022

Application No. 15 89072

Permit No. _____

Certificate No. 96251

Date

DENIED _____

MISFILED _____

WITHDRAWN _____

CANCELLED _____

Volume | Page

FEES PAID

Date

Amount

Receipt No.

Cert. Fee

FEES REFUNDED

Date

Amount

Receipt No.

ASSIGNMENTS

Date

To Whom

Address

REMARKS

MAP LOCATION _____

Rev. 04/03

Mailing List for IS FO
Scheduled Mailing Date:

Application: IS-89072

Applicant:

Oregon Department of Fish & Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

OWRD copies:

- WRD - Watermaster: Susan Douthit, District 15- Electronic
- WRD – Regional Manager: Jake Johnstone - Electronic
- WRD - Data Center - Electronic
- WRD - Water Availability - Electronic
- WRD – File - Paper

Other persons to receive copies:

ODFW: Anne Hayden-Lesmeister – Send certified mail
Caseworker: Craig Kohanek

<u>Copies Mailed</u>	
by:	<u>TM</u>
	(STAFF)
on:	<u>8/20/2022</u>
	(DATE)

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

Water Right Application IS-89072)
in the name of Oregon Department of Fish &) FINAL ORDER
Wildlife)

Summary: Order approving Application IS-89072 and issuing Certificate 96251.

Authority:

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.140 to 537.250, and 537.332 through 537.360, 537.017 and Oregon Administrative Rule (OAR) Chapter 690, Division 77, and the South Coast Basin Program (OAR 690-515). These statutes and rules can be viewed on following website: <http://www.oregon.gov/OWRD/programs/policylawandrules/Pages.default.aspx>

The Department's main page is <https://www.oregon.gov/OWRD>.

This Final Order is issued pursuant to ORS 537.170(6) to (9) and OAR 690-077-0047.

FINDINGS OF FACT

1. On November 30, 2020, the Oregon Department of Fish & Wildlife submitted an instream water right application to the Department.
2. On January 4, 2022, the Department issued a Proposed Final Order recommending approval of the application. The protest period closed February 18, 2022 and no protest was filed.
3. The Department has found the proposed use complies with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 and does not impair and is not detrimental to the public interest as conditioned.
4. Pursuant to OAR 690-077-0015(4) the Department reduced the amount of water to the estimated average natural flow and pursuant to 690-077-0047(2) conditioned the water right.
5. The findings of fact in the Proposed Final Order are incorporated herein.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 536.075 and ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to OAR 137-004-0080 you may petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

CONCLUSIONS OF LAW

1. The conclusions of law in the Proposed Final Order are incorporated herein.
2. The proposed use, as conditioned, would not impair or be detrimental to the public interest.

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of the water to be appropriated for the project.

ORDER

Application IS-89072 is approved and water right Certificate 96251 is issued.

DATED **MAY 20 2022** _____

A handwritten signature in black ink, appearing to read "Dwight French", is written over a horizontal line.

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

-
- If you have any questions about statements contained in this document, please contact R. Craig Kohanek at ron.c.kohanek@oregon.gov or 503-968-0823.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503 986-0900.
-

STATE OF OREGON
COUNTY OF COOS
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER STREET NE, STE A
SALEM, OR 97301

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

APPLICATION FILE NUMBER: IS-89072

SOURCE OF WATER: CUNNINGHAM CREEK, TRIBUTARY TO COQUILLE RIVER

BENEFICIAL USE: FISH LIFE AND WILDLIFE USES

DATE OF PRIORITY: NOVEMBER 30, 2020

To be maintained in: Cunningham Creek, tributary to Coquille River, beginning at river mile 0.7 (NESW, S36, T27S, R13W, WM) in Coos County (43.185497, -124.1927) and continuing downstream to the mouth river mile 0.0 (NENE, S2, T28S, R13W, WM) in Coos County (43.178971, -124.202923).

The right is established under Oregon Revised Statute 537.341

The following conditions apply to the use of the 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
-	-	-	-	15.9	8.37	3.86	1.93	1.38	1.61	12.1	-

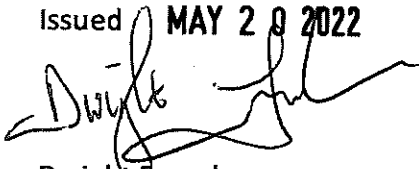
2. The water right holder shall measure and report the instream flow along the reach of the stream or river described in the certificate as may be required by the standards for instream water right reporting of the Water Resources Commission.

Application IS-89072

Certificate 96251

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 measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Issued **MAY 20 2022**

A handwritten signature in black ink, appearing to read "Dwight French", is written over the printed name.

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing List for IS PFO
Scheduled Mailing Date:

Application: IS-89072

Applicant:

Oregon Department of Fish & Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302

OWRD copies:

WRD - Watermaster: Susan Douthit, District 15- Electronic
WRD – Regional Manager: Jake Johnstone - Electronic
WRD - Data Center - Electronic
WRD - Water Availability - Electronic
WRD – File - Paper

Other persons to receive copies:

ODFW: Anne Hayden-Lesmeister – Send certified mail

Caseworker: Craig Kohanek

Copies Mailed
by:
TM
(STAFF)
on:
1/4/2022
(DATE)

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

Water Right Application IS-89072 in the)	PROPOSED FINAL ORDER
name of Oregon Department of Fish and)	
Wildlife)	

Summary: The Department proposes to issue an order approving Application IS-89072 and issue a certificate consistent with the attached draft certificate.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.140 to 537.250 and 537.332 through 537.360, and Oregon Administrative Rule (OAR) Chapter 690, Division 77 and South Coast Basin Program Division 517. These statutes and rules can be viewed on the Oregon Water Resources website:

<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

The Department's main page is:

<http://www.oregon.gov/OWRD>

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- (a) 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);
- (b) Water is available; OAR 690-077-0015(4)
- (c) The proposed use will not injure other water rights; and
- (d) The proposed use complies with the rules of the Commission. OAR 690-077-0033(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-077-0037(3).

If the Department determines that the presumption is established and not overcome the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On November 30, 2020, Oregon Department of Fish & Wildlife filed a complete application for the following water use:

Source: CUNNINGHAM CREEK, TRIBUTARY TO COQUILLE RIVER
Use: PUBLIC USE, SPECIFICALLY FISH LIFE AND WILDLIFE.
County: COOS COUNTY
Location: CUNNINGHAM CREEK, TRIBUTARY TO COQUILLE RIVER, BEGINNING AT RIVER MILE 0.7 (NESW, S36, T27S, R13W, WM) IN COOS COUNTY (43.185497, -124.1927) AND CONTINUING DOWNSTREAM TO THE MOUTH RIVER MILE 0.0 (NENE, S2, T28S, R13W, WM) IN COOS COUNTY (43.178971, -124.202923).

Rate: (IN CUBIC FEET PER SECOND (CFS) REQUESTED BY MONTH:

Fish Life and Wildlife Uses:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
-	-	-	-	21.7	8.4	3.9	2.3	2.1	4.6	16/26	-

2. On January 14, 2021, the Department mailed the applicant notice of its initial review, determining that "some percentage of the water applied for has been determined allocable for the purposes identified in this application." The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On January 19, 2021, the Department gave public notice of the initial review in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. Numerous written comments favoring and opposing the application were received during the 30-day comment period.

Presumption Criteria (a) Consistency with Basin Program

5. "Fish life and Wildlife use's" are classified as allowed under the South Coast Basin Program (OAR 690-517-0000(11)). ORS 537.343(1); OAR 690-077-0039(2)

Presumption Criteria (b) Water Availability

6. An assessment of surface water availability was completed, and a copy of this assessment is in the file. The amount of out-of-stream appropriations is not a factor in determining the amount of an instream water right, pursuant to OAR 690-077-0015(3) and OAR 690-077-0015(4). The table below compares the requested flows in the application for Cunningham Creek on a monthly basis (in CFS) to the estimated average natural flow (EANF). The last row is the allowable amount and the amount in the proposed certificate, pursuant to ORS 537.343(1)(b) and OAR 690-077-0039(2)(c). The amount allocated for this application shall not exceed the estimated average natural streamflow occurring from the drainage system, pursuant to ORS 537.343(1)(b) and OAR 690-077-0039(2)(c).

Fish Life and Fish Habitat:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
-	-	-	-	21.7	8.4	3.9	2.3	2.1	4.6	16/26	-

Estimated Average Natural Flow:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
62.8	68.5	49.6	33	15.9	8.37	3.86	1.93	1.38	1.61	12.1	51.2

Allowable Instream Use:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
-	-	-	-	15.9	8.37	3.86	1.93	1.38	1.61	12.1	-

Presumption Criteria (c) Injury Determination

7. The proposed use is junior in priority and by operation of the prior appropriation doctrine will not injure other water rights. ORS 537.343(1); OAR 690-077-0039(2)(d)

Presumption Criteria (d) Whether the use complies with rules of the Commission

8. The Department placed the application on the Department’s Public Notice for a 30-day comment period. Consistent with OAR 690-077-0031, copies of the notice were sent to the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse. No land use information was received by the Department during the initial review 30-day public comment period. Pursuant to OAR 690-077-0031(5) the Department may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.
9. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

Whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170

10. Based on an evaluation of the proposed use, information available in its files or received from other interested agencies and any other available information, the Department has determined that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170. OAR 690-077-0039(2)(e)

Determination of Presumption that a proposed surface water use will not impair or be detrimental to the public interest

11. Based on the review of the presumption criteria (a)-(d) above and Finding of Fact #11, the Department finds that a rebuttable presumption has been established. 537.343(1); OAR 690-077-0039(2)(g)

CONCLUSIONS OF LAW

The proposed use would not impair or be detrimental to the public interest.

When issuing certificates, ORS 537.343(1) authorizes the Department to include provisions or restrictions concerning the use, control and management of the water to be appropriated for the project. The attached draft permit is conditioned accordingly.

PROPOSED ORDER

The Department recommends approval of Application IS-89072 and issuance of a certificate consistent with the attached draft certificate.

DATED JAN 04 2022



Alyssa Mucken
Water Rights Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Protests

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Under the provisions of ORS 537.153(7), the Proposed Final Order may be protested. Protests must be received in the Water Resources Department no later than **February 18, 2022**. Protests 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 the 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;
- To affect the department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(6) requires that a protest demonstrate by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 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.

Requests for Standing

Under the provisions of ORS 537.153(7) persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **February 18, 2022**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;

- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

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 either:

- 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.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers:

Active duty servicemembers have a right to stay a proceeding under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260 the Oregon Military Department at 503-584-3571, or the nearest United State Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a tollfree telephone number.

This document was prepared by R. Craig Kohanek. If you have any questions about any of the statements contained in this document, I can be reached at 503-979-3185.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-979-9160.

If you have other questions about the Department or any of its programs, please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON
COUNTY OF COOS
PROPOSED CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

OREGON WATER RESOURCES DEPARTMENT
725 SUMMER STREET NE, STE A
SALEM, OR 97301

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

APPLICATION FILE NUMBER: IS-89072

SOURCE OF WATER: CUNNINGHAM CREEK, TRIBUTARY TO COQUILLE RIVER

BENEFICIAL USE: FISH LIFE AND WILDLIFE USES

DATE OF PRIORITY: NOVEMBER 30, 2020

To be maintained in: Cunningham Creek, tributary to Coquille River, beginning at river mile 0.7 (NESW, S36, T27S, R13W, WM) in Coos County (43.185497, -124.1927) and continuing downstream to the mouth river mile 0.0 (NENE, S2, T28S, R13W, WM) in Coos County (43.178971, -124.202923).

The right is established under Oregon Revised Statute 537.341

The following conditions apply to the use of the 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
-	-	-	-	15.9	8.37	3.86	1.93	1.38	1.61	12.1	-

2. The water right holder shall measure and report the instream flow along the reach of the stream or river described in the certificate as may be required by the standards for instream 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 measured at the lower end of the stream reach to protect necessary flows throughout the reach.

Issued _____

DRAFT

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department



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

Application for Instream Water Right Certificate

RECEIVED

NOV 30 2020

SECTION 1: ORGANIZATION INFORMATION AND SIGNATURE

Organization Information

OWRD

NAME OREGON DEPT. OF FISH AND WILDLIFE		PHONE 503-947-6000	FAX 503-947-6202
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302-1142	E-MAIL *

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

AGENT / BUSINESS NAME ANNA PAKENHAM STEVENSON / OREGON DEPT. OF FISH AND WILDLIFE		PHONE 503-947-6084	FAX 503-947-6202
ADDRESS 4034 FAIRVIEW INDUSTRIAL DR. SE			CELL
CITY SALEM	STATE OR	ZIP 97302-1142	E-MAIL * ANNA.P.STEVENSON@STATE.OR.US

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

Anna Pakenham Stevenson
Water Program Manager

11/30/2020

Applicant Signature

Print Name and Title

Date

Applicant Signature

Print Name and Title

Date

SECTION 2: NOTIFICATION TO DEQ, ODFW, AND PARKS

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

Oregon Department of Environmental Quality was notified on: 10/21/2020

Oregon Department of Fish and Wildlife was notified on: N/A

Oregon Parks and Recreation Department was notified on: 10/21/2020

SECTION 3: NOTIFICATION TO AFFECTED LOCAL GOVERNMENTS

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

SECTION 4: SOURCE AND REACH

Stream or lake name: Cunningham Creek

Tributary to: Coquille River

If the source is a stream, indicate the reach delineated by river mile (the upstream point to the downstream point) of the proposed instream water right:

Cunningham Creek, tributary to Coquille River, beginning at river mile 0.7 (NESW, S36, T27S, R13W, WM) in Coos County (43.185497, -124.1927) and continuing downstream to the mouth river mile 0.0 (NENE, S2, T28S, R13W, WM) in Coos County (43.178971, -124.202923).

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

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

SECTION 5: PUBLIC USES AND AMOUNTS

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

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

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

OWRD Administrative Rule 690-077-0015(4) requires OWRD to limit the approved flow to meet the following standard:

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Unit
-	-	-	-	21.7	8.4	3.9	2.3	2.1	4.6	16/26	-	<input checked="" type="checkbox"/> CFS

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

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

SECTION 6: DATA, METHODS, AND COMPLIANCE

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

The Oregon Method (Thompson 1972) was used in the South Coast Basin Investigation to develop flow recommendations. The Oregon Method is a habitat-based method that determines the degree of habitat at different streamflow rates and life stages. It requires repeated measurements at different flows. The criteria cover fish spawning, adult migration, and rearing habitat. The desired flow levels are determined by examining flow vs. habitat at different flow levels. Methods for assessing flow needs for spawning, rearing and passage were described by Thompson (1972) as follows:

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

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

OAR 635-400-0015 Determination of Instream Flow Measurement Methodologies
ODFW followed all procedures laid out in the agency’s rules - Determination of Instream Flow Measurement Methodologies. Specifically, the Basin Investigation Report (BIR) flows for this instream flow recommendation were based on ‘The Oregon Method,’ an approved method for determining an instream flow requirement. The BIR identifies fish and wildlife resources of the basin, their distribution, limiting factors, harvest, and water requirements. Stream flow recommendations of the BIR are

specifically designed to meet the seasonal biological requirements of the basin’s fish. These BIR flow recommendations were evaluated against the range of naturally occurring streamflows and reviewed for fish periodicity by ODFW district fish biologists, yielding the recommendations in this instream water right application (see attached BIR: *South Coast Basin*).

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

Consistent with our rules, ODFW used the following resources and standards to prioritize waterways for instream water right applications: 1) basin and subbasin plans, management objectives, statutes, administrative rules and Commission policies; 2) the presence of fish and wildlife species that are considered endangered, threatened, sensitive or otherwise important; 3) the need to conserve, maintain or enhance fish or wildlife habitats or functions, including but not limited to, passage, spawning, incubation, rearing, and wintering habitats that maintain or improve the species.

OAR 635-400-0025- Responsibilities to WRD

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

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

Instream Water Rights application initiation, consultation, review, processing, submittal, and record keeping was consistent with ODFW rules. Specifically, the application was initiated and processed by the proper ODFW staff, was presented to OWRD within the timelines stated in the internal rules, and ODFW shall also abide by the review requirements and make any required corrections requested by OWRD.

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

SECTION 7: WITHIN A DISTRICT

If the reach is located within an irrigation district or other water district, please provide their contact information.

Irrigation District Name	Address	
City	State	Zip

SECTION 8: REMARKS

Use this space to clarify any information you have provided in the application.

Copies of letters to local governments and Basin Investigation Reports are not attached to each application individually; rather, they are provided separately (hard copy and electronically) for each administrative basin.

SECTION 9: MAP

☒ Please provide a basin map that identifies the reach of the stream or the lake.

- Attached at end of application.

YOU ARE ENCOURAGED TO PROVIDE THIS INFORMATION:

A means and location for measuring the instream water right:

- Please see section 6

The strategy and responsibility for monitoring flows for the instream right:

- Please see section 6

Any provisions needed for managing the water right to protect the public uses: None

- Please see section 6

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

☐ SECTION 1:

☐ SECTION 2:

☐ SECTION 3:

☐ SECTION 4:

☐ SECTION 5:

☐ SECTION 6:

☐ SECTION 7:

☐ SECTION 8:

☐ SECTION 9:

☐ Other:

Proposed Instream Water Right Cunningham Creek



Proposed Instream Water Right

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310

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

Source: CUNNINGHAM CR tributary to COQUILLE R

County: COOS

Purpose: Providing required stream flows for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

To be maintained in:

CUNNINGHAM CREEK FROM CALLOWAY CREEK (NENE, M SECTION 36, T27S, R13W WM); TO THE MOUTH AT RIVER MILE 0.0 (NENE, SECTION 2, T28S R13W WM)

The right is established under Oregon Revised Statutes 537.341.

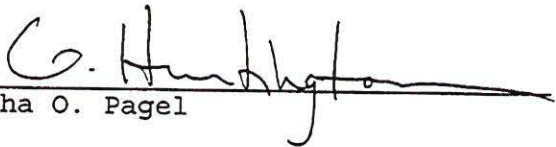
The date of priority is 6/30/1992 .

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
27.0	27.0	27.0	27.0	15.9	7.66	3.16	1.45	0.97	1.15	10.5	27.0
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 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 to protect necessary flows throughout the reach.

Witness the signature of the Water Resources Director,
affixed OCTOBER 18, 1996.


Martha O. Pagel

Recorded in State Record of Water Right Certificate number 73090.

[Print Report](#)



**Oregon Water Resources Department
Attribute Report**

Report Date: Sep 21, 2021

General:

TRSQQ:	WM27.00S13.00W36SESW
DLC:	-
Latitude:	43.1838601064
Longitude:	-124.1951156164
Buffer ft:	100
DEM Elev. ft. (NAVD1929):	24.353
Lidar Elev. ft. (NAVD1988):	16.4
Basin Name:	South Coast
Basin Plan:	2-Coquille
County:	Coos
WM District:	15
WM Region:	SOUTHWEST
ODFW Region, District:	Southwest Region, Coos-Coquille District
Irrigation District AOI:	-
Irrigation District, Other:	-
Dams (Permit):	-
Water Rights:	Platcard for WM27.00S13.00W36
Well Logs:	Logs for WM27.00S13.00W36

Rules:

Withdrawn Authority:	-
Groundwater Restricted:	-
GW Restricted Subunit:	-
GW ODEQ Management Area:	-
GW Umatilla Muni Wells (5mile):	-
Rule 4D:	Rules apply
Division 33:	Statewide

Irrigation Season of Use:

(unajudicated, west side)
Adj. Status: Unadjudicated
Subarea: undefined
Irr. Season: Mar 1 to Oct 31
Duty: 2.5
Rate: 1/80

Water Quality Limited
Pollutant 2018:

Cunningham Creek
Descr.: Headwaters WA Unit to confluence with Coquille River
ID.: OR_SR_1710030505_02_104991
Impaired Uses: Fish and Aquatic Life; Fishing; Water Contact Recreation
Impairment Cause: Dissolved Oxygen- Year Round; Fecal Coliform; E. coli
Year Listed: 1998
Year Last Assessed: 2018
Attaining Uses: -
Insuff. Data Uses: Private Domestic Water Supply; Public Domestic Water Supply
Unassessed Uses: Aesthetic Quality; Boating; Hydro Power; Industrial Water Supply; Irrigation; Livestock Watering; Wildlife and Hunting
Parameters Assessed: Aldrin; Guthion; Chlordane; Chlorpyrifos; DDT 4,4'; Dieldrin; Endosulfan; Endrin; Heptachlor; Heptachlor Epoxide; BHC Gamma (Lindane); Malathion; Methoxychlor; Mirex; Parathion; Dissolved Oxygen; Endosulfan Alpha; BHC Alpha; Endosulfan Beta; Chlorophenoxy Herbicide (2,4-D); BHC Beta; Endosulfan Sulfate; Endrin Aldehyde; DDD 4,4'; DDE 4,4'; Pentachlorophenol; Chlorophenoxy Herbicide (2,4,5,TP); Fecal Coliform; E. coli
Parameter Group Assessed: PESTICIDES; PESTICIDES ; DISSOLVED OXYGEN; TOXIC ORGANICS ; PATHOGENS
TMDLs:
Status: Impaired
Acre: null
Mile: null

Fish Habitat 2018:

Species: Chinook salmon
Anad. Run: Fall
Life History: Anadromous
Habitat Use: Rearing
Basis: ConcurProfOpinion
Stream: Cunningham Creek

Origin: NativeLocal
Pop. Sustained: Mixed
Source Agcy: ODFW

Species: Coastal cutthroat trout
Anad. Run: NA
Life History: AnadRes
Habitat Use: Unknown
Basis: UndocObsFish
Stream: Cunningham Creek
Origin: NativeLocal
Pop. Sustained: Natural
Source Agcy: PSMFC

Species: Steelhead
Anad. Run: Winter
Life History: Anadromous
Habitat Use: Rearing
Basis: ConcurProfOpinion
Stream: Cunningham Creek
Origin: NativeLocal
Pop. Sustained: Mixed
Source Agcy: ODFW

Species: Coho salmon
Anad. Run: NA
Life History: Anadromous
Habitat Use: Rearing
Basis: DownstreamDocObsFish
Stream: Cunningham Creek
Origin: NativeLocal
Pop. Sustained: Mixed
Source Agcy: ODFW

Is in Deschutes Study Area:

-

Deschutes Zone Impact:

-

Deschutes Zone Overlay:

-

Scenic Water Way:

-

Hydrography:

OWRD Streamcode:	1715100670 - Cunningham Cr
Waterbody Name:	-
HUC 10:	1710030505
HUC Watershed:	Coquille River
WAB Wshed Order:	2
WAB Analysis:	CUNNINGHAM CR > COQUILLE R - AT MOUTH
Streamflow:	OWRD Opportunities: Fair ODFW Needs: Highest Combined Priority: Current resources priority
Gaging Station Data:	-

Sources:

General
<i>Oregon Public Land Survey Quarter-quarters.</i> Bureau of Land Management, Oregon Water Resources Department.. n.d. 1:24,000.
<i>Oregon Donation Land Claims.</i> Oregon Water Resources Dept., 2020. September 16, 2020.
<i>Elevation.</i> DEM 10m. - -
<i>Elevation.</i> Lidar Elevation. DOGAMI Bare Earth 1:3.
<i>OWRD Administrative Basins.</i> Oregon Water Resources Department. January 1, 1995.
<i>Oregon Counties.</i> Bureau of Land Management (BLM), Oregon State Office.. January 1, 2008.
<i>OWRD Watermaster Districts.</i> Oregon Water Resources Department. December 30, 2019.
<i>OWRD Regions.</i> Oregon Water Resources Department. January 1, 1995.
<i>ODFW Districts and Regions.</i> Oregon Department of Fish and Wildlife. August 28, 2012.
<i>Water Organizations</i> Oregon Water Resources Department. April 1, 2013. 1:24,000.
<i>Large Dams Inventory.</i> Oregon Water Resources Department. August 12, 2014. 1:24,000.
Rules
<i>Withdrawn Authority Areas.</i> Oregon Water Resources Commission. January 1, 2007.
<i>OWRD Groundwater Restricted Areas.</i> Oregon Water Resources Department. October 5, 2016.
<i>OWRD Groundwater Restricted Areas - Subunits.</i> Oregon Water Resources Department. April

1, 2009.

ODEQ Groundwater Management Areas (GWMAs). Oregon Department of Environmental Quality. April 21, 2008.

Groundwater Umatilla Municipal Wells 5-mile buffer. Oregon Water Resources Department. June 28, 2012.

National Marine Fisheries Service (NMFS) 4(d) Rule. National Marine Fisheries Service. January 1, 2007.

Division 33. Oregon Water Resources Dept., 2018. September 20, 2018. 1:100,000.

Irrigation Season of Use. Oregon Water Resources Department, 2017.. March 24, 2017.

Oregon Fish Habitat 2018. Oregon Department of Fish and Wildlife, Jon K. Bowers, Ruth Schellbach, David L. Bradford. Numerous fisheries biologists from ODFW as well as other natural resource agencies and tribes have contributed toward the development of these data. Data originator names are attributed at the feature level.. February 2, 2018. 1:24,000.

Deschutes USGS Groundwater Study Area. Water Resources Commission, U.S. Geological Survey (USGS) Water Resources Division (Portland, OR), Oregon Water Resources Department.. January 1, 2001. 1:100,000.

Deschutes Zones of Impact. Oregon Water Resources Department.. October 25, 2007.

Deschutes Zones Overlay. Oregon Water Resources Department. October 25, 2007.

Oregon State Scenic Waterway areas. Oregon Water Resources Department, Oregon Parks and Recreation Department.. January 1, 2007.

Hydrography

Routed OWRD Streamcodes (conflated to the NHD). Oregon Water Resources Dept.. August 11, 2014.

OWRD Lake Streamcodes (conflated to the NHD). Oregon Water Resources Dept.. August 7, 2015.

Oregon Watershed Boundary Dataset - Watersheds. Funding for the Watershed Boundary Dataset (WBD) was provided by the USDA-NRCS, USGS and EPA along with other federal, state and local agenciesies. Representatives from many agencies contributed a substantial amount of time and salary towards quality review and updating of the dataset in order to meet the WBD Standards. Acknowledgment of the originating agencies would be appreciated in products derived from these data. See dataset specific metadata for further information. n.d.

Water Availability Basins. Oregon Water Resources Department.. n.d. 1:100,000.

Priority Watersheds for Streamflow Restoration. Oregon Water Resources Dept. and the Oregon Dept. of Fish & Wildlife.. January 15, 2004.

Stream Gage Stations. Oregon Water Resources Department and US Geological Survey. n.d.

[close](#)

[Print Report](#)



January 14, 2021

Oregon Department of Fish and Wildlife
4034 Fairview Industrial Drive SE
Salem, OR 97302-1142

Reference: Instream water rights in the South Coast Basin, Application IS-89072.

Dear Oregon Department of Fish and Wildlife:

**THIS IS NOT A WATER RIGHT CERTIFICATE
AND IS SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING**

This document is to inform you of the preliminary analysis of your water right applications, the potential limitations to your proposed instream water right, and to describe some of your options. Based on the information you have provided the Water Resources Department has made the following preliminary determinations:

Please reference the application number when sending correspondence regarding conclusions of this Initial Review.

Preliminary Determinations (Oregon Administrative Rule (OAR) 690-077-0029)

1. The application proposes the instream protection of water in Cunningham Creek for the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat.
2. The referenced application is complete and not defective.
3. The proposed use is not prohibited, restricted, or limited by law except for water availability limitations in certain months as noted below.
4. The reach proposed in this application for an instream water right is in the South Coast Basin.
5. The instream fish life, and wildlife uses are allowed under the South Coast Basin Program OAR (690-517-0000(11)).
6. Water allocable for instream use is limited to the estimated average natural flow. Specifically, (OAR 690-077-0015(4) states "If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system except where periodic flows that exceed the natural flow or level are significant for the applied public use".
7. All amounts of water in this document are shown in cubic feet per second.

Priority date: November 30, 2020

Description:

Cunningham Creek, tributary to Coquille River, beginning at river mile 0.7 (NESW, S36, T27S, R13W, WM) in Coos County (43.185497, -124.1927) and continuing downstream to the mouth river mile 0.0 (NENE, S2, T28S, R13W, WM) in Coos County (43.178971, -124.202923).

a. The amount of water requested for instream use:

Fish Life and Fish Habitat:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0	0	0	0	21.7	8.4	3.9	2.3	2.1	4.6	16/26	0

Estimated Average Natural Flow:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
62.8	68.5	49.6	33	15.9	8.37	3.86	1.93	1.38	1.61	12.1	51.2

Allowable Instream Use:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0	0	0	0	15.9	8.37	3.86	1.93	1.38	1.61	12.1	0

Summary of Determination:

A percentage of the water applied for has been determined allocable for the purpose(s) identified in the application. That rate allowed is shown in the table above titled “Allowable Instream Use” and, if less than the rate shown in “Requested for Fish Life and Fish Habitat” table, is limited to the rate shown in the “Estimated Average Natural Flow” table.

The application can be moved to the next phase of the water rights application review process. Comments received within the comment period will be evaluated at the next phase of the process.

Withdrawal:

If you choose not to proceed, you may withdraw your application. To accomplish this, you must notify the Department in writing by **February 2, 2021**.

To Proceed with Your Application:

If you choose to proceed with an application, you do not have to notify the Department. Your application will automatically be placed on the Department’s Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a proposed final order.

If you have any question:

Feel free to contact R. Craig Kohanek at (503) 986-0823 or Ron.C.Kohanek@oregon.gov if you have questions. Please have the application number available if you call.

Sincerely,

R. Craig Kohanek
Water Rights Analyst

Cc: File
Watermaster #13