

Application No. 15 **89085**

Permit No. _____

Certificate No. 96245

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

Date

DENIED _____

MISFILED _____

WITHDRAWN _____

CANCELLED _____

Volume | Page

FEES PAID

Date	Amount	Receipt No.
<u>2-18-2022</u>	<u>\$270.00</u>	<u>137484</u>

Cert. Fee

FEES REFUNDED

Date	Amount	Receipt No.

ASSIGNMENTS

Date

To Whom

Address

REMARKS

MAP LOCATION _____

Mailing List for IS FO

Scheduled Mailing Date:

Application: IS-89085

Applicant:

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

OWRD copies:

WRD - Watermaster: Scott Ceciliani, District 14 - 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:

5/20/2022

(DATE)

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

Water Right Application IS-89085)	
In the name of Oregon Department of Fish &)	FINAL ORDER
Wildlife)	

Summary: Order approving Application IS-89085 and issuing Certificate 96245.

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 690-517). 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

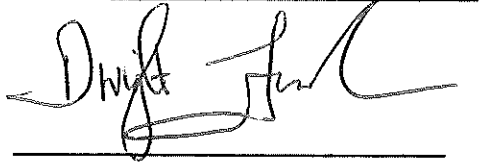
1. The conclusions of law in the Proposed Final Order are incorporated herein.
2. The proposed use, as conditioned, would not impair or be detrimental to the public interest.

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-89085 is approved and water right Certificate 96245 is issued.

DATED MAY 20 2022



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 CURRY
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-89085

SOURCE OF WATER: WINCHUCK RIVER, TRIBUTARY TO PACIFIC OCEAN

BENEFICIAL USE: FISH LIFE AND WILDLIFE USES

DATE OF PRIORITY: NOVEMBER 30, 2020

To be maintained in: Winchuck River, tributary to Pacific Ocean, beginning at river mile 10.2 (SWNE, S10, T41S, R12W, WM) in Curry County (42.019, -124.106) and continuing downstream to river mile 0.5 (SESE, S23, T41S, R13W, WM) in Curry County (42.005, -124.207).

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
205	205	205	205	85.1	68.3	38.1	22.3	-	26.9/-	197	205

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 MAY 20 2022



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

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **137484** 725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax) INVOICE # _____

RECEIVED FROM: Waterwatch of Oregon Inc APPLICATION 15-89085
BY: _____ PERMIT _____
TRANSFER _____

CASH: ☐ CHECK: # 14884 OTHER: (IDENTIFY) ☐
TOTAL REC'D \$ 270.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$
OTHER: (IDENTIFY) \$

0243 I/S Lease 0244 Muni Water Mgmt. Plan 0245 Cons. Water

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$
0410 RESEARCH FEES \$
0408 MISC REVENUE: (IDENTIFY) \$
TC162 DEPOSIT LIAB. (IDENTIFY) \$
0240 EXTENSION OF TIME \$

WATER RIGHTS:

0201 SURFACE WATER EXAM FEE 0202 \$
0203 GROUND WATER EXAM FEE 0204 \$
0205 TRANSFER EXAM FEE

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR EXAM FEE 0219 \$
LANDOWNER'S PERMIT EXAM FEE 0220 \$

0234 OTHER (IDENTIFY) Request for Standing \$270.00

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ CARD#
0210 MONITORING WELLS \$ CARD#

OTHER (IDENTIFY)

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

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

TREASURY OTHER / RDX

FUND _____ TITLE **RECEIVED**
OBJ. CODE _____ VENDOR # **OVER THE COUNTER**
DESCRIPTION \$

RECEIPT: **137484** DATED: 2-18-2022 BY: [Signature]

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

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **137484** 725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax) INVOICE # _____

RECEIVED FROM: Waterwatch of Oregon Inc APPLICATION 15-89085
BY: _____ PERMIT _____
TRANSFER _____

CASH: ☐ CHECK: # 14884 OTHER: (IDENTIFY) ☐
TOTAL REC'D \$ 270.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$
OTHER: (IDENTIFY) \$

0243 I/S Lease 0244 Muni Water Mgmt. Plan 0245 Cons. Water

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$
0410 RESEARCH FEES \$
0408 MISC REVENUE: (IDENTIFY) \$
TC162 DEPOSIT LIAB. (IDENTIFY) \$
0240 EXTENSION OF TIME \$

WATER RIGHTS:

0201 SURFACE WATER EXAM FEE 0202 \$
0203 GROUND WATER EXAM FEE 0204 \$
0205 TRANSFER EXAM FEE

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR EXAM FEE 0219 \$
LANDOWNER'S PERMIT EXAM FEE 0220 \$

0234 OTHER (IDENTIFY) Request for Standing \$270.00

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ CARD#
0210 MONITORING WELLS \$ CARD#

OTHER (IDENTIFY)

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

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

TREASURY OTHER / RDX

FUND _____ TITLE **RECEIVED**
OBJ. CODE _____ VENDOR # **OVER THE COUNTER**
DESCRIPTION \$

RECEIPT: **137484** DATED: 2-18-2022 BY: [Signature]

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



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

February 18, 2022

Oregon Water Resources Department
Attn: Water Rights Section, Craig Kohanek
725 Summer St NE, Suite A
Salem, OR 97301

Re: Request for Standing, IS 89085, Winchuck River, South Coast

Dear Mr. Kohanek,

WaterWatch of Oregon (WaterWatch) files this Request for Standing regarding the Proposed Final Order (PFO) proposing approval of application IS-89085 in the name of Oregon Department of Fish and Wildlife, along with the required \$270 standing statement fee. WaterWatch supports the PFO's approval of the application and would be harmed if it were denied.

A. Name, mailing address and telephone number:

Requester's name: Kimberley Priestley, kjp@waterwatch.org
Requester's address and phone number: see organizational information below.
Organization represented: WaterWatch of Oregon, Inc.
213 SW Ash, Suite 208
Portland, OR 97204
PH: 503.295.4039
FAX: 503.295.2791

RECEIVED

FEB 18 2022

OWRD

B. Statement of Support of the Proposed Final Order

WaterWatch supports the PFO because WaterWatch supports the PFO's proposed approval of this instream water right application and, specifically, the conclusions of law that that water is available, that the proposed use will not injure other water rights, and that the required presumption has been established, and that the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

WaterWatch maintains that by filing a standing statement, WaterWatch becomes a party to any contested case for this application, and therefore may participate as a full party in any contested case addressing any protest issues raised by the applicant as well as any issues raised in this standing statement. ORS 537.170(2) (prescribing parties to a contested case regarding a water permit to include: "(a) The applicant; (b) Any person who timely filed a protest; and (c) Any person who timely filed a request for standing...").¹

¹ Further, a party to a contested case (other than a limited party) may participate on all the issues properly in the contested case. *See e.g.*, OAR 137-003-0580 (any party may file a motion for
WaterWatch of Oregon www.waterwatch.org
Main Office: 213 SW Ash St. Suite 208 Portland, OR 97204 Main Office: 503.295.4039
Southern Oregon Office: PO Box 261, Ashland, OR, 97520 S. OR Office: 541.708.0048

WaterWatch contends that if the WRD reverses its recommendation to approve this application and/or amends and/or reverses its Findings of Fact and Conclusions of Law regarding water availability or injury, and/or this matter is referred to contested case, WaterWatch reserves the right to raise additional public interest issues that would provide grounds for approval of this application. These are outlined in Section C.

C. Statement of How Requesters Would Be Harmed If the Proposed Final Order is Modified

In requesting standing for this matter, WaterWatch is representing its organizational interest, the interests of its members, staff and board, and the general public interest in sound water policy, and the instream values and fish and wildlife resources of the Winchuck River.

WaterWatch works across Oregon, including the South Coast, to protect streamflows and the public interest in the development and implementation of water policy and statute at the state and federal level, and by protecting Oregon's waterways through legislation and administrative and judicial proceedings. WaterWatch dedicated resources to helping craft and pass Oregon's Instream Water Rights Act, and subsequently to defending the Act in various forums. WaterWatch has worked to protect the Instream Water Rights Act flows in the legislature, courts and water right forums. WaterWatch has worked to protect streamflows on the South Coast for decades. WaterWatch has members throughout the Pacific Northwest, including the South Coast specifically.

The PFO finds that water is available for the proposed use and that the use will not injure other water right holders. Based on these and other finding, the PFO finds that the required presumption has been established and thus the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170. Based on these findings the WRD recommends approval of the application. WaterWatch supports these findings and the recommendation to approve.

If WRD modifies the PFO, or modifies its content in a Final Order, to deny the permit or reduce the flow amounts proposed for issuance, WaterWatch's interests that would be harmed include, but are not limited to, an interest in ensuring that streamflows and water quality needed for fish and wildlife are protected and where necessary, restored. In addition, WaterWatch's members regularly use the waters and areas that would be impacted by a denial.

summary determination); ORS 183.450(2) ("All evidence shall be offered and made a part of the record in the case . . ."); ORS 183.450(3) ("Every party shall have the right of cross-examination of witnesses who testify and shall the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency."); OAR 137-003-0060 ("(4) The hearing shall be conducted so as to include the following: (a) The statement of evidence of the proponent in support of its action; (b) The statement and evidence of opponents, interested agencies and other parties; except that limited parties may address only subjects within the area to which they have been limited" (emphasis added)).

RECEIVED
FEB 18 2022

OWRD

Furthermore, if the WRD modifies the PFO, or modifies its content in a Final Order, including but not limited to denying the permit or reducing the amount proposed for issuance, WaterWatch reserves the right to raise additional issues to support issuance of the Instream Water Right application. These include but are not limited to additional issues that provide legal rational for approval of this permit in the amount applied for by ODFW that WaterWatch reserves the right to raise if this matter goes to contested case and/or the WRD proposes to modify the PFO, or FO, to deny or reduce the amount of flow protected under the permit, including the following:

- WRD should issue the permit in the amount requested: WRD's limitation of ODFW's requested flow amount to the Estimated Average Natural Flow (ENAF) is inconsistent with the intent of ORS 537.332 to 537.360, and thus the reduction is in violation of ORS 537.343(1).
- WRD's reliance on rule provisions in OAR 690-77 that are inconsistent with the Instream Water Rights Act exceeds the agency's statutory authority, including but not limited to the agency's reliance on the Div 77 rules to limit the instream water rights to ENAF, condition the right not to be additive, and subordinate the instream water right to livestock and human consumption.

If WRD modifies the PFO, or modifies its content in a FO, to deny the permit, reduce the permitted amount, or reduce or weaken the rational for approval, WaterWatch reserves the right to address issues arising out of those changes and any issues related to the proposed use.

D. Standing Statement Fee: The required standing statement fee of \$270 is included with this document.

E. Request for Party Status: WaterWatch requests that WRD make WaterWatch a party to any proceeding regarding this PFO, whether or not a contested case is scheduled.

Proof of Service: Proof of filing and service to the applicant is attached.

Dated February 18, 2022

By:



Kimberley Priestley
WaterWatch of Oregon

RECEIVED

FEB 18 2022

OWRD

Certificate of Service and Filing

I certify that on February 18, 2022, a copy of the foregoing Request for Standing regarding the PFO approving application IS 89085 was served and filed on the following by the method indicated:

Served on:

Chandra Ferrari
Oregon Department of Fish and Wildlife
4034 Fairview Industrial Dr SE
Salem, OR 97302-1142
by placing in the US Postal Mail

Filed with:

Water Rights and Adjudication
725 Summer St NE, Suite A
Salem, OR 97301-1266

By hand delivery



Kimberley Priestley
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204
503.295.4039 x4
FAX: 503.295.2791
kjp@waterwatch.org

RECEIVED
FEB 18 2022
OWRD

Mailing List for IS PFO
Scheduled Mailing Date:

Application: IS-89085

Applicant:

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

OWRD copies:

WRD - Watermaster: Scott Ceciliani, District 14 - 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:

1/4/2021

(DATE)

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

Water Right Application IS-89085 in the)
name of Oregon Department of Fish and)
Wildlife)

PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application IS-89085 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: WINCHUCK RIVER, TRIBUTARY TO PACIFIC OCEAN
Use: PUBLIC USE, SPECIFICALLY FISH LIFE AND WILDLIFE.
County: CURRY COUNTY
Location: WINCHUCK RIVER, TRIBUTARY TO PACIFIC OCEAN, BEGINNING AT RIVER MILE 10.2 (SWNE, S10, T41S, R12W, WM) IN CURRY COUNTY (42.019, -124.106) AND CONTINUING DOWNSTREAM TO RIVER MILE 0.5 (SESE, S23, T41S, R13W, WM) IN CURRY COUNTY (42.005, -124.207).

Rate: SHOWN BELOW 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
205	205	205	205	164.3	86.1	38.1	22.3	-	51.1/-	205	205

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 uses" 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 Winchuck River 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 some months 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 Wildlife Uses:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
205	205	205	205	164.3	86.1	38.1	22.3	-	51.1/-	205	205

Estimated Average Natural Flow:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
527	570	453	232	85.1	68.3	38.1	22.3	13	26.9	197	559

Allowable Instream Use:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
205	205	205	205	85.1	68.3	38.1	22.3	-	26.9/-	197	205

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-89085 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 CURRY
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-89085

SOURCE OF WATER: WINCHUCK RIVER, TRIBUTARY TO PACIFIC OCEAN

BENEFICIAL USE: FISH LIFE AND WILDLIFE USES

DATE OF PRIORITY: NOVEMBER 30, 2020

To be maintained in: Winchuck River, tributary to Pacific Ocean, beginning at river mile 10.2 (SWNE, S10, T41S, R12W, WM) in Curry County (42.019, -124.106) and continuing downstream to river mile 0.5 (SESE, S23, T41S, R13W, WM) in Curry County (42.005, -124.207).

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
205	205	205	205	85.1	68.3	38.1	22.3	-	26.9/-	197	205

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

OWRD

Organization Information

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

Tributary to: Pacific Ocean

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:

Winchuck River, tributary to Pacific Ocean, beginning at river mile 10.2 (SWNE, S10, T41S, R12W, WM) in Curry County (42.019, -124.106) and continuing downstream to river mile 0.5 (SESE, S23, T41S, R13W, WM) in Curry County (42.005, -124.207).

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
205	205	205	205	164.3	86.1	38.1	22.3	-	51.1/-	205	205	<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 Winchuck River



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

OREGON



WATER RESOURCES
DEPARTMENT

RECEIVED

FEB 16 2012

OWRD

Date Received (Date Stamp Here)

OWRD Over-the-Counter Submission Receipt

Applicant Name(s) & Address: Water Watch of Oregon
213 SW Ash, Suite 208 Portland, OR
97204

Transaction Type: Standing

Fees Received: \$ 270

☐ Cash



Check:

Check No.

14884

Name(s) on Check: Water Watch of Oregon, Inc

Address on Check: 213 SW Ash, Suite 208
Portland, OR 97204-272

Thank you for your submission. Oregon Water Resources Department (Department) staff will review your submittal as soon as possible.

If your submission is determined to be complete, you will receive a receipt for the fees paid and an acknowledgement letter stating your submittal is complete.

If determined to be incomplete, your submission and the accompanying fees will be returned with an explanation of deficiencies that must be addressed in order for the submittal to be accepted.

If you have any questions, please feel free to contact the Department's Customer Service staff at 503-986-0801 or 503-986-0810.

Sincerely,

OWRD Customer Service Staff

Submission received by:

J Pierceall

(Name of OWRD staff)

Instructions for OWRD staff:

- Complete this Submission Receipt, and make two (2) copies. Place one copy with the check/cash; and place the other copy with the submission (i.e., the application or other document).
- Date-stamp all pages. (NOTE: Do not stamp check.)
- Give this original Submission Receipt to the applicant.
- Record Submission Receipt information on the "RECEIVED OVER THE COUNTER" log sheet.
- Place the Submission Receipt with check/cash in the small top drawer (i.e., "Fiscal Pick Up Drawer"). Place the Submission Receipt with submission (application/other document) in the large bottom drawer.