Oregon Water Resources Department
Water Right Services Division

Water Right Application IS-89828 in the name of OREGON DEPARTMENT OF FISH AND WILDLIFE	)))	PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application IS-89828 and a certificate consistent with the attached draft certificate.

This Proposed Final Order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest with no further action required by the Department unless a timely protest is received or the Proposed Final Order is withdrawn by the Department. ORS 536.077(4) and (5).

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, ORS 537.332 through 537.343, ORS 537.349, and Oregon Administrative Rule (OAR) Chapter 690, Division 77, and the Willamette Basin Program (OAR 690-502). These statutes and rules can be viewed on the following website: www.oregon.gov/OWRD/programs/policylawandrules/

The Department's main website can be found at: 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;

c) The proposed use will not injure other water rights; and

d) The proposed use complies with the rules of the Commission.

ORS 537.153(2); 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 August 28, 2024, the Oregon Department of Fish and Wildlife filed a complete application for the following instream water right certificate:

Source: SOUTH FORK MCKENZIE RIVER, TRIBUTARY TO MCKENZIE RIVER
Use: PUBLIC INSTREAM USE FOR THE CONSERVATION, MAINTENANCE AND ENHANCEMENT OF AQUATIC AND FISH LIFE, WILDLIFE, AND FISH AND WILDLIFE HABITAT
County: LANE COUNTY
Location: SOUTH FORK MCKENZIE RIVER, FROM RIVER MILE 3.7 (SWNE, SECTION 31, TOWNSHIP 16 SOUTH, RANGE 5 EAST, W.M.) TO MOUTH RIVER MILE 0.0 (NESW, SECTION 23, TOWNSHIP 16 SOUTH, RANGE 4 EAST, W.M.), TRIBUTARY TO MCKENZIE RIVER

Amount of water requested by month (or half-month) in cubic feet per second (CFS):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
400.0	400.0	400.0	400.0	400.0	400.0	250.0	250.0	250.0	400.0	400.0	400.0

2. On December 13, 2024, the Department mailed the applicant notice of its Initial Review, determining that the instream protection of water in South Fork McKenzie River, from river mile 3.7 to mouth river mile 0.0, tributary to McKenzie River, for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat is allowable; however, it is limited to the lesser of the requested rate or the estimated average natural flow, as shown below. The applicant did not notify the Department to stop processing the application within 14 days of that date.

Amount allowable by month (or half-month) for instream use (CFS):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
400.0	400.0	400.0	400.0	400.0	400.0	250.0	250.0	247.0	270.0	400.0	400.0

3. On December 17, 2024, the Department provided notice of the application in its weekly public notice, requesting comments and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

Presumption Criterion (a) Consistency with Basin Program

4. Instream use is allowed under the Willamette Basin Program (OAR 690-502-0080(1)(b)). OAR 690-077-0039(2)(b).

Presumption Criterion (b) Water Availability

5. Existing out-of-stream appropriations are not a factor in determining the amount allowable for an instream water right. OAR 690-077-0015(3).

6. An assessment of estimated average natural flow and water availability at 50% exceedance probability for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. The assessment established, during the period of use requested, the estimated average natural flow shown below. OAR 690-077-0039(2)(c).

Estimated Average Natural Flow (CFS):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
953.0	969.0	861.0	1,010.0	1,100.0	580.0	310.0	264.0	247.0	270.0	583.0	939.0

7. Water available for instream water right applications is limited to the lesser of the requested rate or the estimated average natural flow, except where periodic flows that exceed the natural flow or level are significant for the applied public use. ORS 537.343(1)(b); OAR 690-077-0015(4).

Amount of water requested under this application by month (or half-month) (CFS):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
400.0	400.0	400.0	400.0	400.0	400.0	250.0	250.0	250.0	400.0	400.0	400.0

Amount allowable by month (or half-month) for instream use (CFS):

JAN	**FEB**	**MAR**	**APR**	**MAY**	**JUN**	**JUL**	**AUG**	**SEP**	**OCT**	**NOV**	**DEC**
400.0	**400.0**	**400.0**	**400.0**	**400.0**	**400.0**	**250.0**	**250.0**	**247.0**	**270.0**	**400.0**	**400.0**

Presumption Criterion (c) Injury Determination

8. Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date; therefore, the proposed use will not injure other water rights. OAR 690-077-0000(6); OAR 690-077-0039(2)(d).

Presumption Criterion (d) Whether the Use Complies with Rules of the Commission

9. No land use information was received by the Department within the 30-day comment period; therefore, the proposed instream water right is presumed to be compatible with the comprehensive land use plans and land use regulations of affected local governments. OAR 690-077-0031(5).

10. The proposed use is located within or above the McKenzie Scenic Waterway, as designated under ORS 390.826.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-077-0039(2)(g).

Further Evaluation of the Proposed Use

11. The Department has received public comments related to the possible issuance of the attached draft certificate. OAR 690-077-0031(4).

12. The Department has carefully considered the comments to determine if they provide evidence that the proposed use will impair or be detrimental to the public interest and has determined that no public interest issues as identified in ORS 537.170(7) have been raised. OAR 690-077-0037(3); OAR 690-077-0039(1).

13. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-077-0037(3).

Other Criteria and Requirements

14. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSIONS OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing instream water right certificates, ORS 537.343(1) authorizes the Department to include any limitations or conditions necessary and consistent with the intent of ORS 537.332 to ORS 537.360.

PROPOSED ORDER

The Department recommends approval of Application IS-89828 and issuance of a certificate consistent with the attached draft certificate.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by the Department on or before October 16, 2026, and the Department does not withdraw this Proposed Final Order on or before November 18, 2026, this Proposed Final Order is a final order without any further action by the Department on November 18, 2026.

DATED September 1, 2026

Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 537.153(6) and ORS 536.077(1) (for surface water) or ORS 537.621(6) and ORS 536.077(1) (for groundwater), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.d.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **October 16, 2026.**

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;
- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonable available arguments that support the protestant's position, which may include arguments related to the public interest presumption factors under ORS 537.153(2) and the public interest factors under ORS 537.170(7);
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of $720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of $1,425 required by ORS 536.050.

If a timely protest is filed, after the protest period has ended, the Director will: (1) issue a final order if the applicant has not filed a protest and the Director finds that there are no significant issues related to the proposed use of water; (2) schedule a contested case hearing if a protest has been submitted; or (3) provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the case to the Office of Administrative Hearings for a contested case hearing.

Requests for Party Status: Under the provisions of ORS 537.153(6) and ORS 536.077(2) (for surface water) or ORS 537.621(6) and ORS 536.077(2) (for groundwater), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than **November 16, 2026**.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requestor and any organization the requestor represents;
- Name, address, and email address of the requestor's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of $1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 609-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a

protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. 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 "authorized representative" as defined at OAR 137-003-0555(1)(b) 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 to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil.

- If you have any questions about statements contained in this document, please contact Brandon Self at Brandon.A.Self@water.oregon.gov or 971-990-9890.
- If you have questions about how to file a protest or a request for party status, or if you have previously filed a protest or a request for party status and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
- If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
- Address any correspondence to: Water Right Services Division
  725 Summer St NE, Suite A
  Salem, OR 97301-1266

STATE OF OREGON

COUNTY OF LANE

DRAFT CERTIFICATE TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT CERTIFICATE IS HEREBY ISSUED TO

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

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: IS-89828

SOURCE OF WATER: SOUTH FORK MCKENZIE RIVER, TRIBUTARY TO MCKENZIE RIVER

PURPOSE: PUBLIC INSTREAM USE FOR THE CONSERVATION, MAINTENANCE AND ENHANCEMENT OF AQUATIC AND FISH LIFE, WILDLIFE, AND FISH AND WILDLIFE HABITAT

DATE OF PRIORITY: AUGUST 28, 2024

TO BE MAINTAINED IN: SOUTH FORK MCKENZIE RIVER, FROM RIVER MILE 3.7 (SWNE, SECTION 31, TOWNSHIP 16 SOUTH, RANGE 5 EAST, W.M.) TO MOUTH RIVER MILE 0.0 (NESW, SECTION 23, TOWNSHIP 16 SOUTH, RANGE 4 EAST, W.M.), TRIBUTARY TO MCKENZIE RIVER

The right is established under Oregon Revised Statutes 537.341.

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 by month or half-month, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
400.0	400.0	400.0	400.0	400.0	400.0	250.0	250.0	247.0	270.0	400.0	400.0

2. For purposes of water distribution, this instream right shall not have priority over human or livestock consumption.

3. 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.

4. The flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach.

ISSUED _____

DRAFT - THIS IS NOT A CERTIFICATE

Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department