



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

OPAL CREEK ANCIENT FOREST CENTER  
ATTENTION: KATIE RYAN  
721 NW 9<sup>TH</sup> AVENUE, SUITE 236  
PORTLAND, OR 97209-3451

September 21, 2012

Reference: File S-87833

Dear Applicant:

**THIS IS NOT A PERMIT AND IS  
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed the use of 0.23 cubic foot per second (CFS) of water from Flume Creek, a tributary of Opal Creek, for year-round domestic use for 13 households and 90 boarding house beds.

We understand that Application S-87492 will be withdrawn, which proposed the use of surface water for domestic use from the same point of diversion and for the same place of use.

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Flume Creek, a tributary of Opal Creek, for domestic use is allowable under the Willamette Basin Program.
4. The proposed use is located above the Santiam River Scenic Waterway, as designated under Oregon Revised Statute 390.826.
5. The application requested 0.23 CFS of water to provide domestic use for 13 households and 90 boarding house beds. The standard allowable rate of water necessary for domestic use or human consumption use (indoor use only: cooking, drinking, sanitation) is limited to 0.01 CFS for each 10 households or fraction. Assuming the typical water use for people using 5 beds is roughly equal to one household; then the amount of water that people using 90 beds would consume is the same volume of water as 18 households would use. Therefore, the allowable rate of water necessary for 31 households (13 plus 18) is 0.04 CFS. If the application is approved, the rate allowed will be limited to 0.04 CFS.

6. The application is subject to Section 4(d) of the Endangered Species Act.
7. Upon consideration of your request for full or partial refund of examination fees, the Department has determined that no fees will be refunded; the examination fees required for Application S-87833 are based on staff time necessary for review and processing of application documents.
8. Surface water is not available during the months of June, August, September and October due to requirements for existing water rights and/or minimum flows in a scenic waterway. However, human consumption of water (indoor use only: cooking, drinking and sanitation) from the proposed source may be considered a high public interest use if there is no reasonable alternative.

The application included information intending to document that no alternate water source is available, and that denial of the permit would cause loss of reasonable expectation for use of the property. The Department will consider this information and work with the Oregon Department of Fish and Wildlife to attempt to determine conditions which will protect instream values during the months when instream flow requirements are not met. If this can be achieved, the Department may recommend approval of 0.04 CFS for human consumption, further limited to 11,900 gallons per day (based on a limit of 500 gallons per day (gpd) per household and 60 gpd per bed), at the next step in processing.

#### Summary of Allowable Water Use

**Because not all items above are favorable, the use of 0.23 CFS of water from Flume Creek, a tributary of Opal Creek, for year-round domestic use for 13 households and 90 boarding house beds is not allowable.**

**However, if conditions can be applied to protect instream values, the Department may recommend approval of the application for year-round human consumption use (indoor use only: cooking, drinking, sanitation) at a rate of 0.04 CFS for 13 households and 90 boarding house beds, further limited to 11,900 gallons per day.**

At this time, you must decide whether to proceed or to withdraw your application as described below.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

#### To Proceed With Your Application:

If you choose to proceed with your 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.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, October 5, 2012**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
  - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.
  - B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded water-use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
  - C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
  - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at [http://www.oregon.gov/ODA/NRD/water\\_agplans.shtml](http://www.oregon.gov/ODA/NRD/water_agplans.shtml) to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0816 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Kerry Kavanagh, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kerry Kavanagh  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-87833  
WAB 2-112  
POU 2-112  
GW

# APPLICATION FACT SHEET

Application File Number: S-87833

Applicant: OPAL CREEK ANCIENT FOREST CENTER

County: Marion

Watermaster: 16

Priority Date: August 24, 2012

Source: FLUME CREEK, A TRIBUTARY OF OPAL CREEK

Use: DOMESTIC USE FOR 13 HOUSEHOLDS AND 90 BOARDING HOUSE BEDS

Quantity: 0.23 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 8 LT N SANTIAM R MISC

Point of Diversion Location: NWNE, SECTION 33, T8S, R5E, W.M.; 730 FEET SOUTH AND 1250 FEET WEST FROM NE CORNER, SECTION 33

Place of Use:

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SECTION 28  
TOWNSHIP 8 SOUTH, RANGE 5 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, October 5, 2012**

**PUBLIC NOTICE DATE: Tuesday, September 25, 2012**

**30 DAY COMMENT DEADLINE DATE: Thursday, October 25, 2012**

# Mailing List for IR Copies

Application #S-87833

IR Date: September 21, 2012

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**Original mailed to applicant VIA EMAIL:**

~~OPAL CREEK ANCIENT FOREST CENTER  
ATTENTION: KATIE RYAN  
721 NW 9<sup>TH</sup> AVENUE, SUITE 236  
PORTLAND, OR 97209-3451~~

**SENT VIA EMAIL:**

1. Applicant - [kryan@opalcreek.org](mailto:kryan@opalcreek.org)
2. Agent - [lynne@lpartchan.com](mailto:lynne@lpartchan.com)
3. WRD - Watermaster #16
4. ODFW
5. DEQ

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>
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Copies sent to:

1. WRD - File # S-87833
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. Department of Agriculture
4. Kim Kratz, Director, Oregon State Habitat Office  
National Marine Fisheries Service, 1201 NE Lloyd Blvd, Portland OR 97232
5. U.S. Fish and Wildlife Service, Oregon Fish & Wildlife Office, Attn: Paul Henson,  
2600 SE 98<sup>th</sup> Avenue, Suite 100, Portland, OR 97266

Affected Landowners (include "Notice of Initial Review--Affected Landowner")

1. USDA, US Forest Service, HC73 Box 320, Mill City, OR 97630

Caseworker: Kerry Kavanagh

COPYSHT.IR