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October 3, 2008

RECEIVED
OCT 06 2008
WATER RESOURCES DEPT
SALEM, OREGON

Phillip C. Ward
Director, Oregon Water Resources Department
725 Summer Street, Suite A
Salem, OR 97301

Re: Application for Reservation of Water for Economic Development
Home Creek Sub-basin

Dear Director Ward:

On behalf of Harney County, we are submitting the enclosed application for a reservation of water in the Home Creek sub-basin, tributary to Catlow Valley. The application proposes a reservation of 4,550 acre-feet (AF) of water for future multi-purpose storage. This request is submitted in fulfillment of a November, 2005 Settlement Agreement among numerous state agencies and parties regarding water use and development in the Home Creek area. A copy of the Settlement Agreement is enclosed.

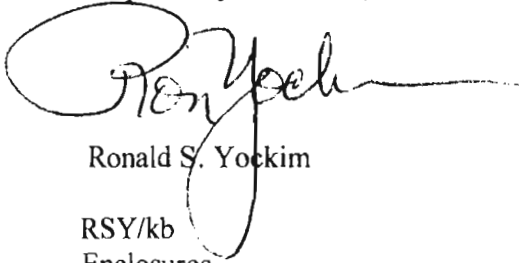
The Settlement Agreement was entered into by the Oregon Water Resources Department (OWRD); the Oregon Parks and Recreation Department (OPRD); the Oregon Department of Fish and Wildlife (ODFW); Roaring Springs Ranch, Inc., Water Watch of Oregon, the Oregon Natural Desert Association, and Oregon Trout (collectively, Water Watch); the United States Department of Interior, Bureau of Land Management (BLM); and, the Harney County Court.

The specific purpose of the Settlement Agreement was to resolve disputes among the parties relating to water right applications which were pending before OWRD, as well as to provide guidance for future water development in the Home Creek sub-basin. The disputed applications included two requests for Instream Water Rights filed by OPRD, and two applications for private reservoir storage filed by Roaring Springs Ranch. The instream water right applications were protested by Roaring Springs Ranch and by Harney County. Similarly the Roaring Springs Ranch applications were protested by Water Watch. The settlement prescribed terms and conditions under which the various protests would be resolved. The agreement also included provisions providing for rulemaking by OWRD to clarify the process by which future Instream Water Right applications may be filed, as well as authorized the Harney County Court to request rulemaking for a reservation of water for multi-purpose storage to promote economic development. Specific terms and conditions for the proposed reservation are addressed in the Settlement Agreement.

Phillip C. Ward
October 3, 2008
Page Two

We thank you, in advance, for your assistance in processing the reservation request, and we look forward to working with OWRD in completing the rulemaking process.

Respectfully submitted,



Ronald S. Yockim

RSY/kb
Enclosures

Cc: Tim Wood, Director
Phillip C. Ward, Director
Rick Kepler, Habitat Program Manager, Fish Division
Stacy Davies, Roaring Springs Ranch
Steve Grasty, Harney County Judge
Dan Nichols, Harney County Commissioner
Jack Drinkwater, Harney County Commissioner
John De Voe, Executive Director WaterWatch of Oregon
Bill Marlett, Executive Director Oregon Natural Desert Assoc.
Joe S. Whitworth, Executive Director Oregon Trout
Dana R. Shuford, Burns District Manager BLM
Barbara Scott Brier, Attorney Advisor US Dept. of Interior



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1271
 (503) 986-0900
 www.wrd.state.or.us

Application for
 Reservation of Water for

Economic Development

DATE: 10-3-08

In accordance with OAR 690-079-0060 requests for reservations of water for future economic development shall include the following information:

(1) Agency Name and Address:

Contact Name Harney County c/o Ronald S. Yockim, Attorney
 Address PO Box 2456, Roseburg, OR 97470
 Phone 541-957-5900
 Email ryockim@cmspan.net

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 SALEM, OREGON

(2) Purpose of the reservation:

Multi-purpose reservoir storage for future economic development

(3) Amount of water proposed to be reserved and evidence of water availability:

4550 acre-feet- pursuant to attached Settlement Agreement, Section 4, p.5-6

(4) Source(s) of water to supply the reservation:

Home Creek sub-basin, Malheur Lake Basin

(5) If the reservation is to be provided by existing storage, agreement to the proposed reservation by the party in charge of disposition of the stored water or evidence of authorization or allocation consistent with the proposed reservation:

N/A

(6) If the proposal is to reserve water to be stored in a new facility, evidence that sites for the storage facility can be developed and that water is available for storage

See attached settlement agreement and OWRD memorandum regarding water availability.

(7) Approximate season(s) of use:

October - March

(8) Approximate location(s) of use:

Roaring Springs Ranch

(9) Evidence that the proposal is compatible with overall basin program goals and policies:

See OAR 690.512.0040 (Malheur Lake Basin program)

(10) Identification of affected local governments and copies of letters notifying each local government of the intent to file a reservation request accompanied by a description of the reservation proposal:

Harney County (applicant)

(11) Intended types of use(s) of the reserved water:

Examples (not limited to): Livestock, irrigation, wildlife, recreation

(12) Expected duration of the reservation prior to application for use of the water:

20 years

(13) Economic benefits provided:

Maintain and enhance farming/ranching in Harney County

(14) Water sources alternatives:

No alternative sources available for storage. See Attached settlement agreement.

(15) Evidence that the proposal does not conflict with Scenic Waterway flow requirements:

N/A.

(16) Evidence that the proposed reservation and water use(s) will promote the beneficial use of the water without waste:

See attached settlement agreement

(17) Potential adverse impacts on water resources:

None: issues have been addressed in settlement agreement by establishing Instream Water Rights and providing for future economic use through this memorandum

Last updated: 10/3/2005

Reservation of Water 2

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OCT 06 2008

WATER RESOURCES DEPT
SALEM, OREGON



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: November 10, 2005

TO: Phil Ward, Tom Paul and Dwight French (OWRD)
Tim Wood (OPRD) and Steve Shipsey (DOJ)
Rick Kepler (ODFW) and Shelley McIntyre (DOJ)
Stacy Davies (Roaring Springs Ranch) and Martha Pagel (Schwabe
Williamson & Wyatt)
Steve Grasty (Harney County Court) and Ron Yockim
Karen Russell (WaterWatch) and Stephanie Parent (PEAC)
Darren Brumback (BLM) and Barbara Scott-Brier (U.S. DOI)

FROM: Renee Moulun, Assistant Attorney General
Natural Resources Section

SUBJECT: Final Draft Settlement Agreement & Attachments A & B
In the Matter of Instream Water Right Applications IS 84562 (Home Creek)
and IS 84563 (Threemile Creek)

Greetings:

Enclosed for your signature is a copy of the Settlement Agreement resolving the protests to water right applications IS 84562 and IS 84563. Also enclosed are Attachment A: Memorandum from Tom Paul to Phil Ward dated June 6, 2005, and Attachment B: Draft Final Order Incorporating Settlement Agreement and Draft Certificate for IS 84562 and Draft Final Order Incorporating Settlement Agreement and Draft Certificate for IS 84563.

Please review the enclosed documents and if you have any corrections please advise me and copy all of the parties with the corrections by November 17, 2005. If you have no corrections, please sign the appropriate signature page and return the signed page to me at the Department of Justice at your earliest opportunity. Once I have received all of the signature pages I will compile one original and will forward it to OWRD. Upon receiving the executed Agreement, OWRD will issue the final orders and certificates for applications IS 84562 and IS 84563. OWRD will then mail you a copy of the Agreement as well as copies of the Final Orders and Certificates.

As you are aware, OPRD, ODFW and OWRD will enter into an MOA regarding amendments to OAR Chapter 690 division 77 as specified in the Settlement Agreement Paragraph B. OWRD will propose language contained in the MOA, as provided in Paragraph B(1), as a rule within 180

November 10, 2005

Page 2

days of signing the settlement agreement, and any rules adopted by the Water Resources Commission will replace the MOA.

On a personal note, I would like to express my sincere appreciation for your hard work, creativity and especially for your patience in resolving the difficult issues associated with these two applications. The Settlement Agreement (I believe) reflects a commendable commitment by all of the parties to find a workable solution.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Applications)
 IS 84562 and IS 84563 in the Name of the)
 Oregon Parks and Recreation)
 Department)
Applicant)
)
 Roaring Springs Ranch, Inc.)
Protestant)
)
 Harney County Court)
Protestant)
)
 WaterWatch of Oregon)
Protestant)
)
 Oregon Department of Fish & Wildlife)
Intervenor)
)
 United States Department of Interior)
 Bureau of Land Management)
Intervenor)

SETTLEMENT AGREEMENT

The Oregon Water Resources Department (“OWRD”), the Oregon Parks and Recreation Department (“OPRD”), Roaring Springs Ranch, Inc., Harney County Court, WaterWatch of Oregon, Oregon Natural Desert Association and Oregon Trout (“WaterWatch”), the Oregon Department of Fish and Wildlife (“ODFW”) and United States Department of Interior, Bureau of Land Management (“BLM”), collectively referred to as the “Parties” to this Agreement, enter into this Settlement Agreement (“Agreement”) and hereby stipulate and agree as follows.

A. Background of This Agreement

1. Application IS 84562 (Home Creek)

(a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order (“PFO”) proposing to approve the application for the proposed use in the following amounts in cubic foot per second (“cfs”):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

(b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

2. Application IS 84563 (Threemile Creek)

(a) On October 17, 2000, OPRD submitted an application to the OWRD for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order (“PFO”) proposing to approve the application for the proposed use in the following amounts in cfs:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

(b) On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from ODFW and BLM. The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

3. Agreement to settle

(a) On the basis of numerous settlement discussions, the parties agree that the protests against applications IS 84562 and IS 84563 may be resolved on the following terms.

B. Modification of the process when agencies file for instream water rights

1. OPRD and ODFW will enter into a Memorandum of Agreement (“MOA”) with OWRD wherein the three state agencies agree that any future application for an instream water right will include written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.
2. OWRD will propose the written documentation requirement of the MOA as a rule within 180 days of signing this settlement agreement. Any final rule adopted by Oregon Water Resources Commission will replace the MOA.
3. The parties clarify that any rulemaking described in paragraph B(1) and (2) above will not add any additional substantive requirements to the rules governing OPRD’s or ODFW’s instream application process, but that the intent is to assure that OWRD receive documentation of the methodology by which quantification of requested flows is calculated or achieved.

C. Terms of the Agreement for Application IS 84562 (Home Creek)

1. Amendment of reach on Home Creek subject to an instream water right

- (a) OPRD will draft a letter to OWRD amending its application IS 84562 such that the reach for the instream water right is described as follows:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NW 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

2. Potential future small storage ponds on private lands on ephemeral streams in the Home Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Home Creek basin for the purposes of maintaining or improving riparian areas on Home Creek, protecting instream flows in Home Creek, or providing water for livestock or fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84562, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph C(2)(a) above, up to a cumulative total of four-hundred acre feet (400 AF) of water as follows:
- (i) Such small storage ponds will be constructed only on ephemeral streams in the Home Creek Basin;
- (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 400 AF limit described in paragraph C(2)(b) above.

- (d) The parties clarify that the ponds identified in paragraph C(2)(a) and (b) may be constructed either off channel or in channel on ephemeral streams in the Home Creek basin. The parties intend that, to the extent possible, the ponds authorized under this provision will be constructed in natural draws or on ephemeral streams, in order to avoid the need for mechanical diversion or by-pass flow structures or devices.
- (e) Any final order and certificate issuing from application IS 84562 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (f) The parties agree that the condition specified in paragraph C(2)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84562.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

3. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84562 for purposes of water regulation to junior priority date water rights for human consumption as may be subsequently authorized by OWRD on private land not to exceed a cumulative total of up to 0.05 cubic foot per second (0.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84562 shall contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

- (d) The parties agree that the conditions specified in paragraph C(3)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84562.

4. Large storage facility

- (a) OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree for the purposes of this Agreement to use the OWRD's "precipitation over drainage basin area" methodology described in its Memorandum to Phil Ward from Tom Paul, dated June 6, 2005, incorporated by reference herein (and attached hereto as Attachment A), and stipulate that based on that methodology, four-thousand-five-hundred-fifty acre feet (4550 AF) of water is available for a reservation pursuant to ORS 537.356 (reservation of water for multipurpose storage uses) in the Home Creek basin area as the Home Creek basin is defined by OWRD.
- (b) WaterWatch expressly does not stipulate that 4550 AF of water is available for future storage in the Home Creek basin area. WaterWatch reserves the right to challenge water availability relating to any application for water storage, with the exception of potential future small storage referred to in paragraph C(2)(a) – (f) above. In reserving this right to challenge water availability, WaterWatch acknowledges that the proposed reservation will include a specific finding relating to water availability.
- (c) Harney County Court may file a request for reservation of water for multipurpose storage on Home Creek.
- (d) In addition to the requirements of ORS chapter 537 and applicable rules, OWRD will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:
- (i) The proposed reservoir and any water rights secondary to the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;
 - (ii) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with ODFW and DEQ; and,
 - (iii) Whether minimum bypass flows are required.
- (e) Any final order approving an application for a permit to store water as described paragraph C(4)(d) above shall contain the findings required in paragraph C(4)(d) and also contain conditions setting an appropriate storage season and conditions

necessary to ensure no injury to senior water rights (including IS 84562) and to protect instream values.

(f) Effective date of reservation rules:

- (i) Any reservation of water requested by Harney County Court shall be effective for twenty (20) years from the date of the final rule granting the reservation, unless the effective date has been extended by further rulemaking of the Water Resources Commission.
- (ii) The expiration of the Home Creek basin reservation rule shall not affect pending applications that have been received and deemed complete and not defective by the OWRD pursuant to ORS 537.150(2), prior to the expiration date of the rules.

(g) Progress Reports

- (i) If the OWRD has not received applications for multipurpose reservoir permits for the full quantity of reserved water in the Home Creek basin within five years of the final rule granting the reservation, the OWRD will provide the parties with a progress report on the development of the reservations. The OWRD will continue to provide progress reports at five-year intervals while the reservation is in effect unless OWRD receives applications for multipurpose reservoir permits for the full quantity of reserved water.
- (h) Roaring Springs Ranch agrees to withdraw its existing applications R 84576 and S 84577 within fifteen (15) days of the effective date of a reservation consistent with the terms of this Agreement, but preserves its right to seek the water (4550 AF of storage for supplemental irrigation of 5700.2 acres) described in R 84576 and S 84577 under the reservation. Roaring Springs Ranch further agrees to put its application on hold pending the outcome of the reservation. If the proposed reservation is not approved by the Water Resources Commission and established by rule, Roaring Springs Ranch shall not be required to withdraw its pending applications R 84576 and S 84577, and OWRD, OPRD, ODFW, BLM, Roaring Springs Ranch and Harney County Court agree that for purposes of this Agreement, the OWRD's determination of water availability shall be in accordance with the June 6, 2005 memorandum from Tom Paul to Phil Ward referenced above in paragraph C(4)(a). WaterWatch does not agree that the June 6, 2005, memorandum referenced in paragraph C(4)(a) is the appropriate water availability analysis and reserves the right to challenge water availability in any further proceedings regarding applications R 84576 and S 84577 to address this issue if the proposed reservation is not approved.
- (i) The parties agree to not object to or to support the establishment of a reservation with the conditions identified in paragraph C(4)(d) – (h).

D. Terms of Agreement Application IS 84563 (Threemile Creek)

1. Potential future small storage ponds on private lands on ephemeral streams in the Threemile Creek basin

- (a) For private lands, the parties agree that future small storage ponds may be developed on ephemeral streams in the Threemile Creek basin for the purposes of maintaining or improving riparian areas on Threemile Creek, protecting instream flows in Threemile Creek, and providing water for livestock and fire suppression. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
- (b) OPRD agrees to subordinate a water right issued pursuant to application IS 84563, for purposes of water regulation, to junior priority date water rights for small storage ponds as may be authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for the purposes identified in paragraph D(1)(a) above up to a cumulative limit of ninety-two acre feet (92 AF) of water as follows:
 - (i) Such small storage ponds will be constructed only on ephemeral streams in the Threemile Creek basin;
 - (ii) No such small storage pond may exceed fifteen acre feet (15AF).
- (c) The parties clarify that the ponds identified in paragraphs D(1)(a) and (b) above are to be filled by natural run off or flow. The ponds may be filled only once per storage season unless otherwise provided in a water right permit. If a water right permit authorizes pond maintenance or more than one fill per storage season, the total amount of water authorized for the initial fill, plus subsequent pond maintenance or refill, shall be specified in the water right, and the total allocation to such water right shall be subtracted from the 92 AF limit described in paragraph D(1)(b) above.
- (d) The parties clarify that the ponds identified in paragraph D(1)(a) – (c) may be constructed either in channel or off channel on ephemeral streams in the Threemile Creek basin.
- (e) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of

water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

- (f) The parties agree that the conditions specified in paragraph D(1)(e)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding livestock use for application IS 84563.
- (g) The parties reserve the right to challenge any application for small storage ponds referred to in this section or OWRD action relating to such small storage ponds for failure to be consistent with the terms of this agreement or any applicable law or regulation.

2. Cap on human consumption on private land

- (a) OPRD agrees to subordinate a water right issued pursuant to application IS 84563 for purposes of water regulation to junior priority date water rights for human consumption as may subsequently be authorized by OWRD not to exceed a cumulative total of up to 0.05 cubic foot per second (.05 cfs).
- (b) The parties clarify that water rights for human consumption are limited to 0.005 cfs per household on private land.
- (c) Any final order and certificate issuing from application IS 84563 will contain the following Specific Condition:
 - (i) For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
- (d) The parties agree that the conditions specified in paragraph D(2)(c)(i) above shall replace the existing proposed condition in the PFO and draft certificate regarding use of water for human consumption for application IS 84563.

E. General Provisions

1. In signing this Agreement, the parties preserve any rights authorized by law not expressly waived by this Agreement.
2. The Parties agree that the terms and conditions of this Agreement shall be incorporated into the Final Orders issued by OWRD in connection with IS 84562 and IS 84563, as shown in the attached Draft Final Orders and Draft Certificates (herein attached as Attachment B)

3. Upon issuance by OWRD of Final Orders and Certificates for IS 84562 and IS 84563 that conform to the attached Draft Final Orders and Draft Certificates, the Parties agree that all issues raised in protests filed to applications IS 84562 and IS 84563 are resolved. In addition, the parties expressly waive any right to file exceptions or to seek judicial review of such Final Orders or Certificates referred to in paragraph E(2) above.
4. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations and corporations connected with them.
5. Each party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of the Agreement.
6. The terms, provisions, conditions, and covenants of this Agreement are not severable. If any term, provision, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree to reconvene to renegotiate the terms of this Agreement.
7. This Agreement may be executed in several counterparts and all documents so executed will constitute one Agreement, binding on the parties, notwithstanding that the parties did not sign the same original or the same counterparts. Delivery of an executed signature page to this Agreement by facsimile transmission is effective as delivery of an original signed counterpart of this Agreement.
8. The parties agree that this Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes. The parties agree that no offers or compromises made in the course of negotiations shall be construed as admissions against interest and shall not be construed as establishing either legal or policy precedence for any future actions.
9. The parties agree to each bear their own costs and attorney fees.
10. This Agreement is effective as of the date of the last signature hereto.

/// /// ///

TIM WOOD
Director
Oregon Parks and Recreation Department

DATE

PHILLIP C. WARD
Director
Oregon Water Resources Department

DATE

RICK KEPLER
Habitat Program Manager, Fish Div.
Oregon Department of Fish & Wildlife

DATE

STACY DAVIES
Roaring Springs Ranch

DATE

STEVE GRASTY
County Judge
Harney County Court

DATE

DAN NICHOLS
Commissioner
Harney County Court

DATE

JACK DRINKWATER
Commissioner
Harney County Court

DATE

JOHN DE VOE
Executive Director
WaterWatch of Oregon

DATE

BILL MARLETT
Executive Director
Oregon Natural Desert Association

DATE

JOE S. WHITWORTH
Executive Director
Oregon Trout

DATE

DANA R. SHUFORD
Burns District Manager
United States Bureau of Land Management

DATE

BARBARA SCOTT BRIER
Attorney Advisor
United States Department of Interior

DATE

STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

June 6, 2005

TO: Phil Ward
FROM: Tom Paul
SUBJECT: Home Creek Reservation Request and Available Water

We have been involved in settlement discussions regarding an instream water right and a new storage application in the Home Creek basin. One possibility for settlement is a reservation for future storage. ORS 537.356 allows the Commission to reserve *unappropriated* water for multipurpose storage for future economic development. The Department may process reservation requests for up to the amount of unappropriated water. When processing reservation requests, the Department begins the assessment by *looking at the 50 % exceedance flow information generated by the water availability model*. This information is usually a conservative estimate of the amount of basin yield that may be available for storage. Use of the water availability model at 50% exceedance for evaluating water reservation requests is not required by rule or statute. Other hydrologic evaluations are often employed to estimate available unappropriated water that may be available for storage.

In the determination of median flow estimates, a base period is chosen and all the average daily flows for a specific date are arranged from high to low. The middle value, or median, is selected as the 50% exceedance flow. Half of the flow values are above the median, and half are below, so it is statistically valid to consider the median flow value as being present or exceeded 50% of the time. An average flow value for the same data set would be the sum of all the values divided by the total number of data used. The average value thereby relates directly to volume or basin yield.

Stream flow can be highly variable, especially east of the Cascades in an area such as Home Creek. When determining water availability for a direct flow appropriation the water availability model is used to determine when and how much live flow is available. The appropriate statistic in this case is an exceedance stream flow because it is a flow rate that exists 50% or 80% of the time. This statistic tells us how often to expect a given rate of stream flow. This same information is normally not an accurate estimate of basin yield, information that would be used to evaluate an application for storage (or reservation for storage). More accurate results would normally be derived using average flow, or estimating average runoff from average precipitation.

In the case of Home Creek, the reservation request is for 4,500 acre feet of water. Using the water availability model and the 50% exceedance flows results in an estimate of 70 acre-feet of water available for storage. It is important to understand that this estimate is based on median flow, a statistic best used in relation to live flow, not basin yield or

volume. Median flow is the flow that is expected 50% of the time, while average flow relates to volume, or basin yield, and is a more appropriate method for estimating available water for storage.

The department has additional hydrologic data which also can be used to determine the basin yield and the amount of unappropriated water. Staff compared the 50% exceedance flow generated from the water availability model to the volume generated by using average precipitation data. These two different methods produce different results. The 50% exceedance approach results in 70 acre feet of available water, while the average precipitation and resulting runoff method results in potential storage of over 16,000 acre-feet.

The following table calculates unappropriated water using average monthly precipitation and runoff information from National Resource Conservation Service (NRCS).

Home Creek at the mouth # 84562

Ac-ft/in runoff per sq mi SCS runoff (in) % runoff Area (sq-mi)

53.3 14 44.20% 36.66

MONTH	Precipitation inches/month	Equivalent acre/foot per month	Runoff acre/foot per month	Flow @ 50% exceedance in CFS	Instream water right In CFS	Existing water rights in CFS	Equivalent existing water rights in AF	Instream water right equivalent acre foot per month	Potential Runoff Subject to Storage
January	3.67	7171.10	3167.05	3.49	3.49			214.59	2952.46
February	3.71	7249.26	3201.57	7.05	7.00			388.75	2812.81
March	4.51	8812.44	3891.93	17.40	17.00			1045.29	2846.64
April	4.64	9158.50	3275.20	35.50	35.00	71.25	4240.00	216.35	0.00
May	2.55	4982.64	2200.54	39.20	39.00	71.25	4380.00	3258.81	0.00
June	1.77	3458.54	1527.43	31.10	31.00	71.25	4240.00	1844.63	0.00
July	0.81	1591.93	628.40	8.39	8.00	71.25	4380.00	491.90	0.00
August	0.93	1817.20	802.55	1.58	3.58	71.25	4380.00	220.13	0.00
September	1.29	2520.63	1113.41	3.03	3.03	71.25	4240.00	180.30	0.00
October	2.07	4044.73	1786.32	3.15	3.15			193.69	1592.63
November	4.18	8167.63	3607.15	2.83	2.83			168.40	3438.75
December	3.71	7366.50	3253.34	2.91	2.91			178.93	3074.41
TOTALS	31.64	61941.1	27355.69	171.73	170.59		25860.00	10303.81	16717.70

 -- Irrigation Season (No Water Available)

The table shows that based on average precipitation water in excess of existing water rights, including the instream water right, is available October through March. This will vary year to year based on precipitation occurrences and other hydrologic factors. Based on the average precipitation data there appears to be unappropriated water in the Home Creek basin for the Department to accept and process a reservation request for 4,500 acre feet of water.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)	
IS 84562 in the Name of the Oregon Parks)	
and Recreation Department)	
<i>Applicant</i>)	FINAL ORDER INCORPORATING
)	SETTLEMENT AGREEMENT
Roaring Springs Ranch, Inc.)	
<i>Protestant</i>)	
)	
Harney County Court)	
<i>Protestant</i>)	
)	
WaterWatch of Oregon)	
<i>Protestant</i>)	
)	
Oregon Department of Fish & Wildlife)	
<i>Intervenor</i>)	
)	
United States Department of Interior)	
Bureau of Land Management)	
<i>Intervenor</i>)	

On October 17, 2000, Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Home Creek, for recreation and scenic attraction (Application IS 84562). On June 25, 2002, the OWRD issued a Proposed Final Order (“PFO”) proposing to approve the application for the proposed use in the following amounts in cubic foot per second (“cfs”):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement (“Agreement”) was reached among the Parties resolving the protests described above.

The certificate for application IS 84562 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84562 is APPROVED and a certificate shall issue.

DATED this ____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

STATE OF OREGON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Home Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

HOME CREEK FROM UPPER BOUNDARY OF THE STEENS WILDERNESS AREA (NE 1/4 NE 1/4, SECTION 17, T35S, R32½E, W.M.); TO THE LOWER BOUNDARY OF THE STEENS WILDERNESS AREA (SE 1/4 NE 1/4, SECTION 10, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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
3.49	7.0	17.0	35.6	53.0	31.0	8.0	3.58	3.03	3.15	2.83	2.91

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 regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Recorded in State Record of Water Right Certificate 81723.

Attachment B 3 of 8 pages
Settlement Agreement
IS 84562 & IS84563

4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock or fire suppression use but each not to exceed 15 AF in size, up to a cumulative limit of 400 AF of water. Such ponds may be constructed either in channel or off channel only on ephemeral streams in the Home Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.
5. 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.
6. 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 this ____ day of
____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81723.

File IS84562

Recorded in State Record of Water Right Certificate 81723.

Attachment B 4 of 8 pages
Settlement Agreement
IS 84562 & IS84563

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)	
IS 84563 in the Name of the Oregon Parks)	
and Recreation Department)	
<i>Applicant</i>)	FINAL ORDER INCORPORATING
)	SETTLEMENT AGREEMENT
Roaring Springs Ranch, Inc.)	
<i>Protestant</i>)	
)	
Harney County Court)	
<i>Protestant</i>)	
)	
WaterWatch of Oregon)	
<i>Protestant</i>)	
)	
Oregon Department of Fish & Wildlife)	
<i>Intervenor</i>)	
)	
United States Department of Interior)	
Bureau of Land Management)	
<i>Intervenor</i>)	

On October 17, 2000, the Oregon Parks and Recreation Department submitted an application to the Oregon Water Resources Department (OWRD) for an instream water right certificate on Threemile Creek, for recreation and scenic attraction (Application IS 84563). On June 25, 2002, the OWRD issued a Proposed Final Order (“PFO”) proposing to approve the application for the proposed use in the following amounts in cubic foot per second (“cfs”):

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62

On August 9, 2002, the OWRD received timely filed protests to the PFO from Roaring Springs Ranch, Harney County Court and WaterWatch. OWRD also received requests for standing from the Oregon Department of Fish and Wildlife (ODFW) and the Bureau of Land Management (BLM). The matter was referred to the Office of Administrative Hearings and ODFW and BLM were granted party status.

On November _____, 2005, a Settlement Agreement (“Agreement”) was reached among the Parties resolving the protests described above.

The certificate for application IS 84563 shall include the following conditions:

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently

authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.

Based on the Agreement which is incorporated herein, and the conditions specified herein, the proposed use as conditioned, will not impair or be detrimental to the public interest.

Therefore, pursuant to ORS 537.170, application IS-84563 is APPROVED and a certificate shall issue.

DATED this _____ day of _____, 2005.

Phillip C. Ward, Director
Oregon Water Resources Department

STATE OF OREGON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97301

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

Source: Threemile Creek, tributary to Catlow Valley

County: Harney

Purpose: Providing required stream flows for recreation and scenic attraction.

To be maintained in:

THREEMILE CREEK FROM THE WEST SECTION LINE OF SECTION 21 (SW 1/4 NW 1/4, SECTION 21, T35S, R32½E, W.M.); TO THE BOUNDARY OF THE WILDERNESS AREA BOUNDARY (NW 1/4 NW 1/4, SECTION 25, T35S, R32E, W.M.)

The right is established under Oregon Revised Statutes 537.341.

The date of priority is October 17, 2000.

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
4.85	5.66	7.89	11.5	11.4	6.89	4.74	4.0	4.0	4.0	4.0	4.62
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 regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD on private land for human consumption not to exceed a cumulative total of 0.05 cfs and not to exceed 0.005 cfs per household.
4. For purposes of water regulation, this water right does not have priority over junior priority date water rights as may be subsequently authorized by OWRD pursuant to ORS 537.140 to ORS 537.211 or ORS 537.409 to store water on private lands

Recorded in State Record of Water Right Certificate 81724.

Attachment B 7 of 8 pages
Settlement Agreement
IS 84562 & IS84563

for livestock and fire suppression use, but each not to exceed 15 AF in size, up to a cumulative limit of 92 AF of water. Such ponds must be constructed either in channel or off channel only on ephemeral streams in the Threemile Creek basin, and are to be filled by natural runoff or flow. While wildlife may incidentally use such small storage ponds, wildlife is not a purpose for which the ponds may be developed.

5. 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.
6. 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 this _____ day of _____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward, Director
Oregon Water Resources Department

Recorded in State Record of Water Right Certificate number 81724.

File IS84563

Attachment B 8 of 8 pages
Settlement Agreement
IS 84562 & IS84563

Recorded in State Record of Water Right Certificate 81724.