



Baldface Creek

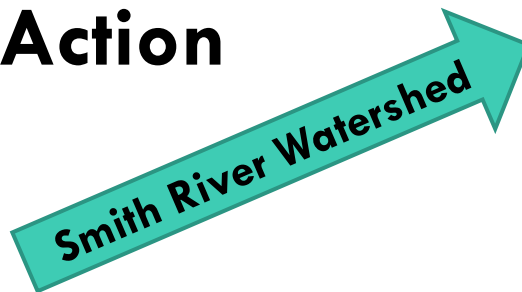
Photo credit: Jon Parmentier

**RULEMAKING: DIVISION 517 - SOUTH COAST BASIN PROGRAM  
RULEMAKING TO RECLASSIFY THE WATERS OF THE SMITH RIVER  
WATERSHED IN CURRY COUNTY**

Racquel Rancier, Senior Policy Coordinator

# Overview

- **Background**
- **Analysis**
  - **Staff Report and Attachment 1**
- **Proposed Rules**
  - **Attachment 4**
- **Commission Action**
  - **Staff report**



# Background

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- **August 2015 – Petition for withdrawal from appropriation.**
  - **Proposed to withdraw all surface and groundwater from appropriation except for instream public uses, and including exempt uses**
- **November 2015 - Commission directed staff to undertake a basin program amendment to classify the waters for instream uses**

# Overview of Classifications

- **Has the effect of restricting the new uses allowed for new water rights to those that are specified by the classification: Highest and best uses**
- **No other uses are allowed, except:**
  - ▣ **uses that do not require a water right (ex. 537.141)**
  - ▣ **alternative reservoirs (ex. 537.409)**
  - ▣ **other uses as allowed by law or approved by the Commission (ex. 537.295, 537.040)**

# Rulemaking Process

- ❑ **RAC held June 30, 2016 in Brookings, OR**
- ❑ **Notice of rulemaking published in the September 2016 Oregon Bulletin, Grants Pass Daily Courier, and Curry Pilot**
- ❑ **September 28, 2016 request to extend public comment deadline by 30 days**
- ❑ **Public hearing held in Brookings September 29, 2016**
- ❑ **Public comment period closed October 28, 2016**

# Public Hearing Draft Proposed Rules

- **Current classified uses:**
  - **Domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife, and fish life uses**
  
- **Proposed rules classify Smith River watershed in Curry County:**
  - **Surface waters for human consumption, livestock, and instream public uses including pollution abatement, fish life, wildlife and recreation**
  - **Groundwater for exempt uses outlined in ORS 537.545**
  - **See Attachment 2**

# Public Comments

- **Received over 2,000 comments in support**
  - **5 written in support but requested changes**
  - **More than 500 from Oregon and 500 from California**
  - **49 states**
  - **27 countries**
- **Opposition**
  - **4 written comments; 3 oral comments**
- **Summary of Comments and Department responses are included in Attachment 3**



# Policy Considerations



Barbara Ullian

Photo credit Barbara Ullian

North Fork Smith River, Oregon



# Policy Considerations

- **ORS 536.340 – Commission may “classify” waters as to the “highest and best use” ...“in aid of an integrated and balanced program for the benefit of the state as a whole.”**
- **ORS 536.220 provides for facilitation of “the maximum beneficial use and control” with consideration of the “multiple aspects” of water use to “best protect and promote the public welfare generally.”**
- **ORS 536.310 outlines 13 policies to be considered**
- **Analysis in Attachment 1**

# Policy Considerations

- **OAR 690-410 includes policies on:**
  - **groundwater management**
  - **hydroelectric power development**
  - **instream flow protection**
  - **interstate cooperation**
  - **water resources protection on public riparian lands**
  - **conservation and efficient water use**
  - **water allocation**
  - **water storage**

# Policy Considerations

## Notable Policies in OAR 690-410

- ❑ **0040 (1)** “The state will seek to cooperate with other states ... actively pursued to benefit...Oregon’s citizens.”
- ❑ **0070 (2)(j)** “When classifying... the Commission shall seek consistency with management plans for public lands and resources.”
- ❑ **0050 (1)** “The water-related functions of riparian areas on public lands shall be protected...”
- ❑ **0030 (1)** “Protecting streamflows which are needed to support public uses is a high priority...”
- ❑ **0070 (2)(h)** “When instream flow needs are not protected by instream water rights, new out-of-stream allocations may be limited or conditioned to protect public uses.”

# Watershed Characteristics and Analysis

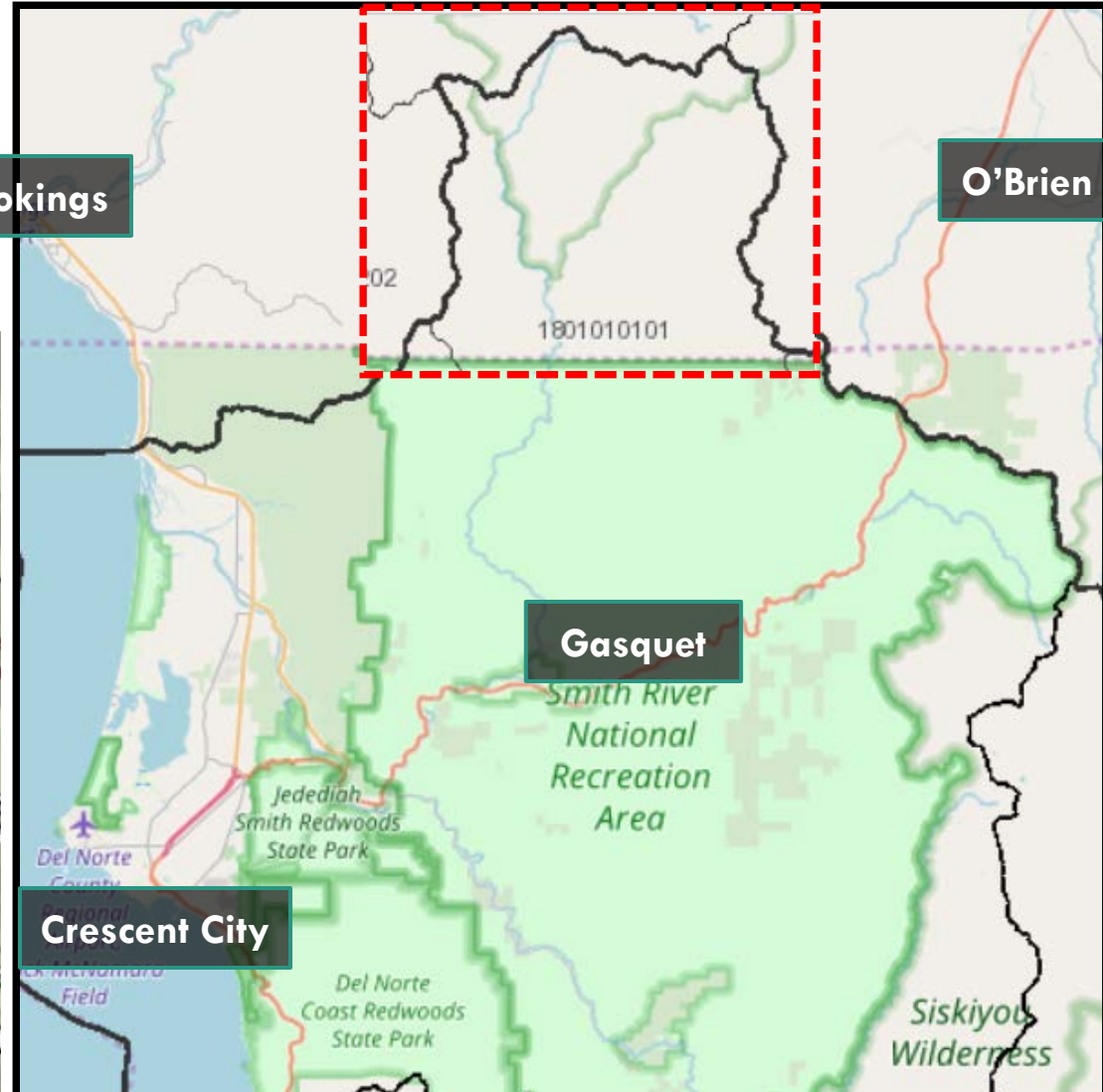


Barbara Ullian



# Remote Location Limits Beneficial Uses

- ❑ Not easily accessible
- ❑ Low road density
- ❑ No towns in OR

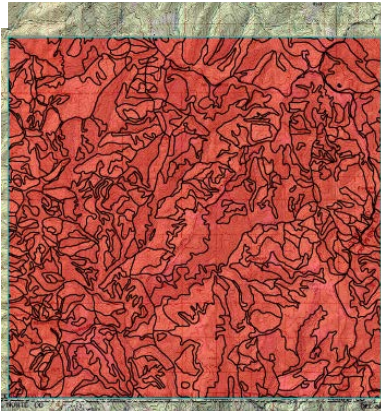


# Potential Beneficial Uses Limited by Watershed Characteristics

Suitability for  
Natural Surf. Road



General Irrigation



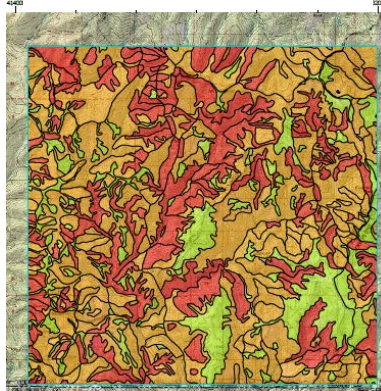
Pond Reservoir Areas



Non-irrigated  
Capability



Erosion: Off  
Trail/Road



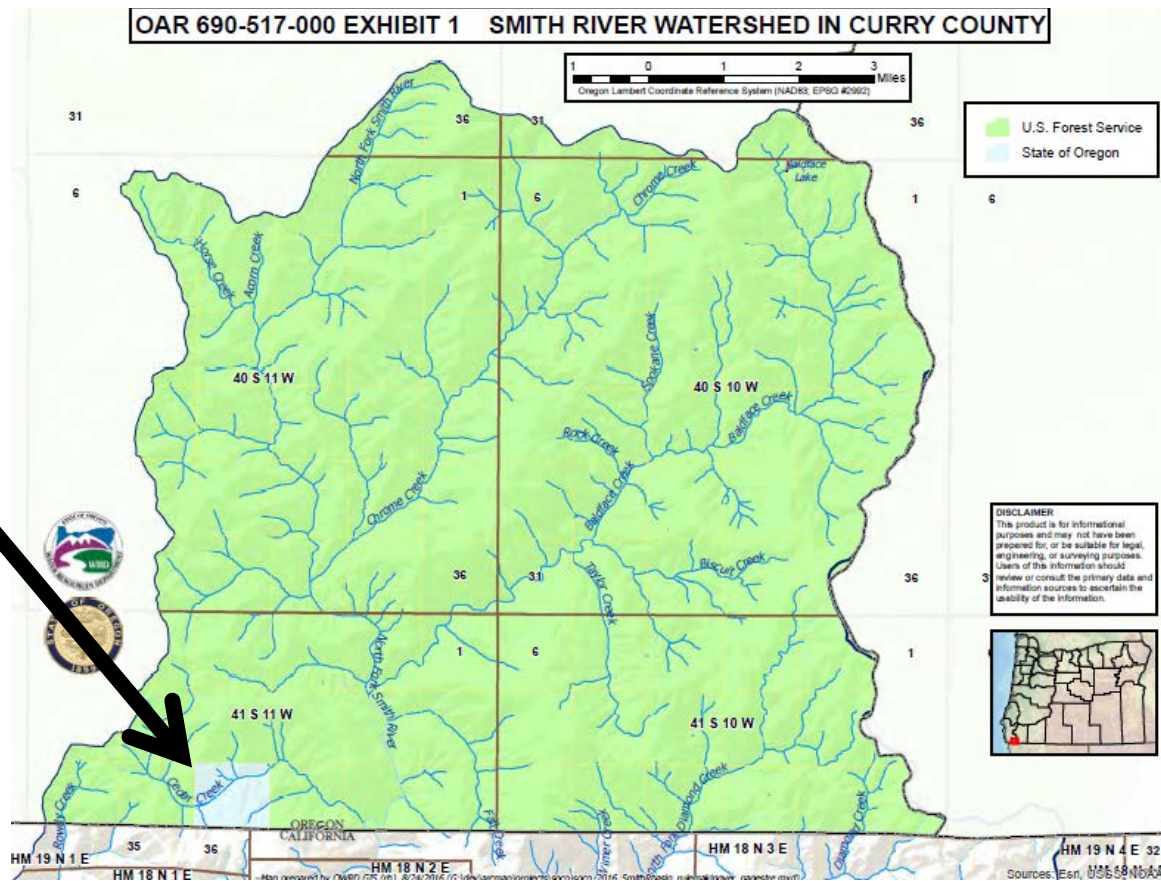
- ❑ **Soils limit potential beneficial uses**
- ❑ **Steep slopes**
- ❑ **Erodible soils**

**Source: NRCS Web Soil Survey**



# Ownership and Beneficial Uses

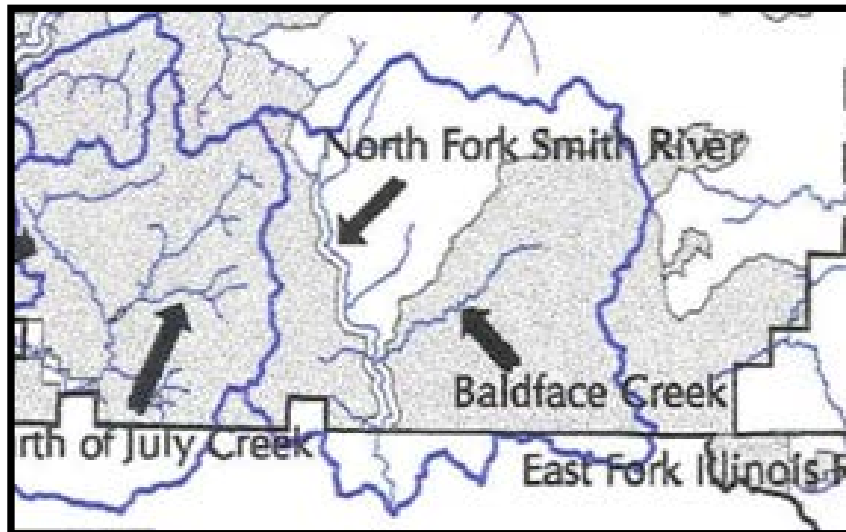
- **Public Ownership:**
  - **Mostly U.S. Forest Service (green)**
  - **Oregon Dept. of State Lands (blue)**
- **No private lands**
- **No water rights**
- **No known exempt wells**



**OAR 690-410-0070 (2)(j) “When classifying... the Commission shall seek consistency with management plans for public lands and resources.”**






# Federal Land Management

## Key Watersheds and Anadromous Fish Streams



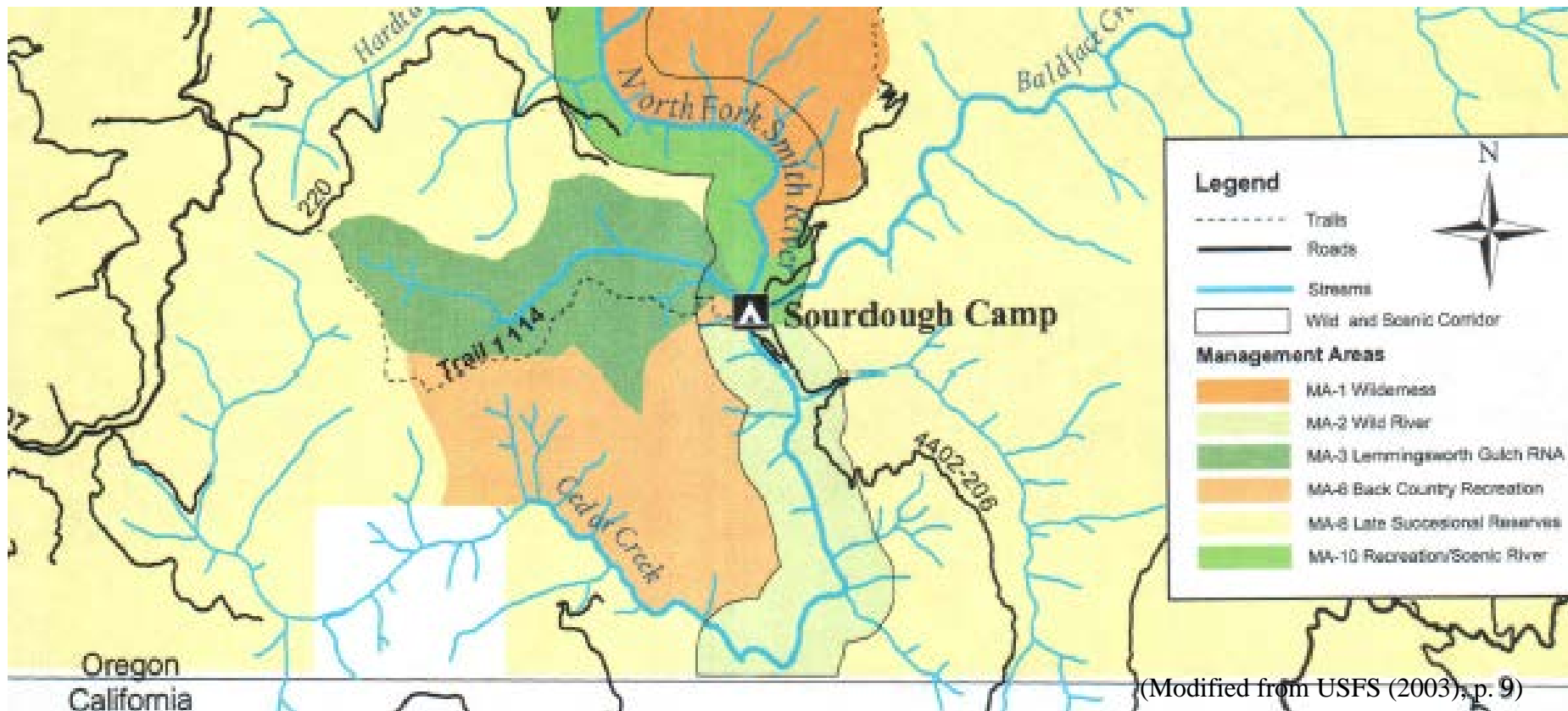
## Wilderness and Inventoried Roadless Areas



-  Inventoried Roadless Area where road construction or reconstruction is allowed
-  Inventoried Roadless Area where road construction or reconstruction is not allowed
-  Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
-  Designated Areas outside of Inventoried Roadless Areas
-  National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map

# Federal Land Management

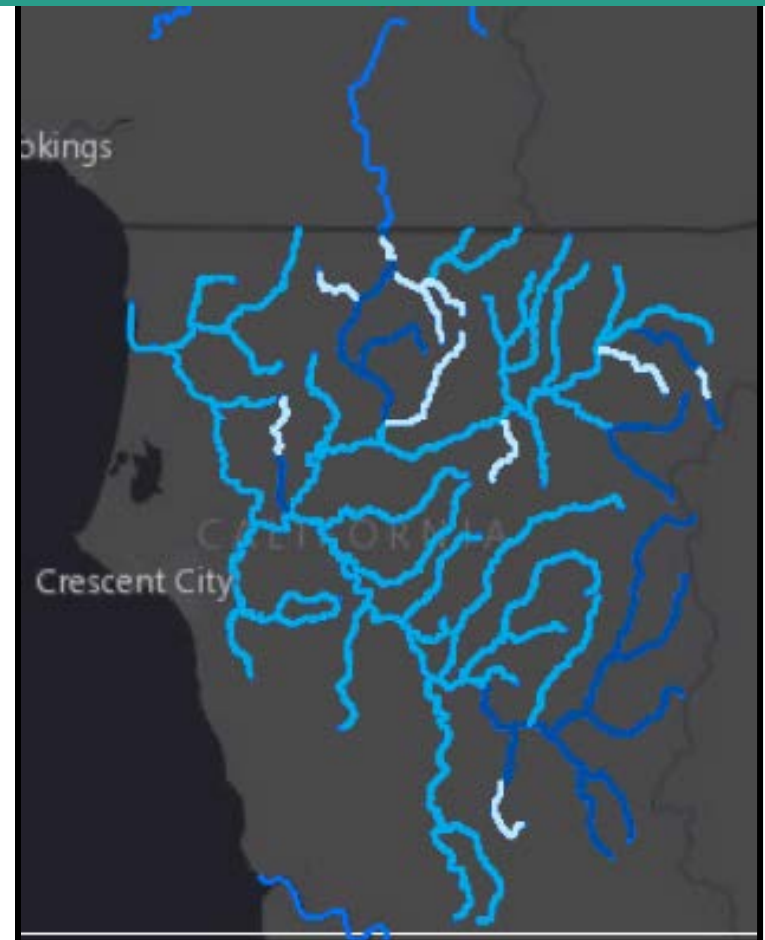
- Lemmingsworth Gulch Natural Research Area
- Cedar Creek Backcountry Recreation



# Wild and Scenic Rivers and Eligible Rivers

- ❑ **An Outstanding Remarkable Value (ORV) is a unique, rare or exemplary feature that is significant at a regional or national level.**
- ❑ **Three tiers of Rivers: Wild, Scenic or Recreational**

## Wild and Scenic River Designations: Federal and State



# Shared Waters: California

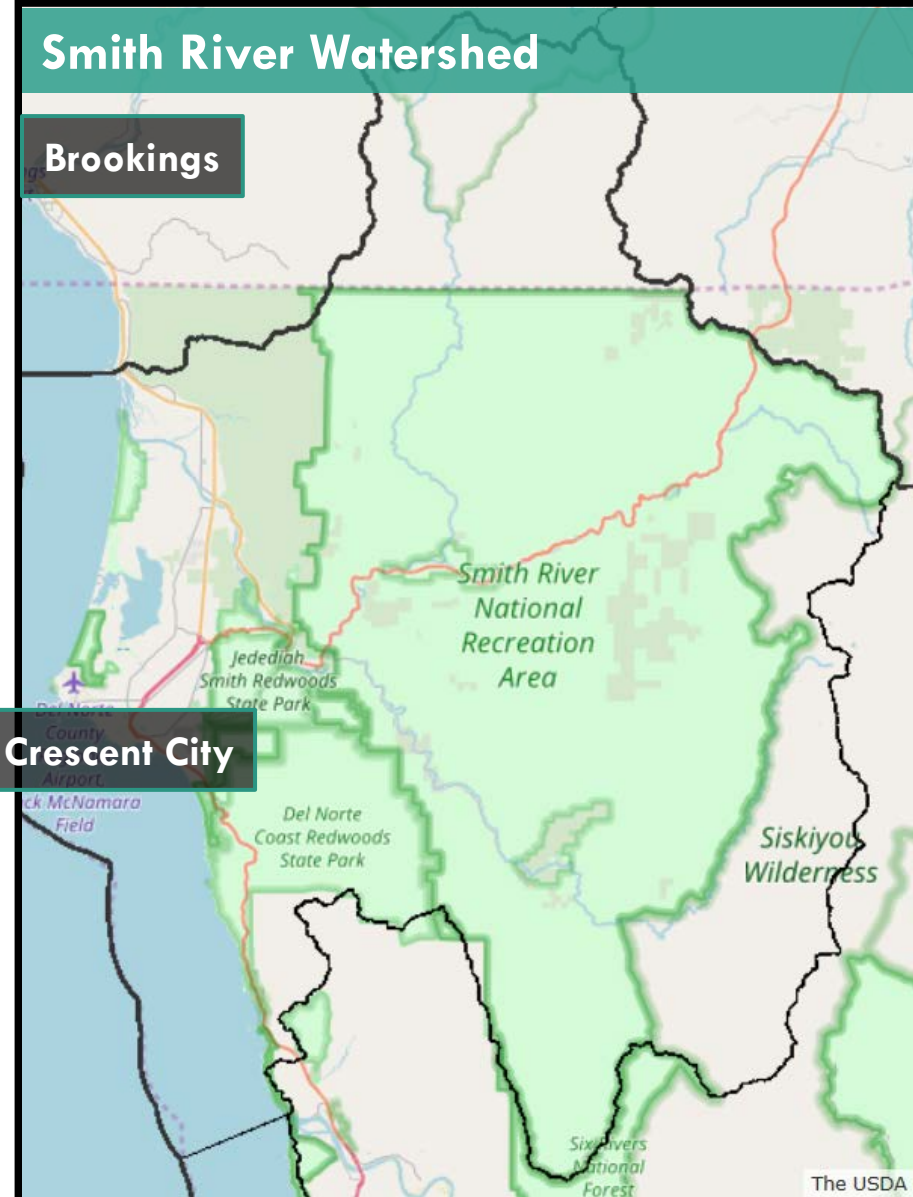
## Wild and Scenic River Designations: Federal and State



## Smith River Watershed

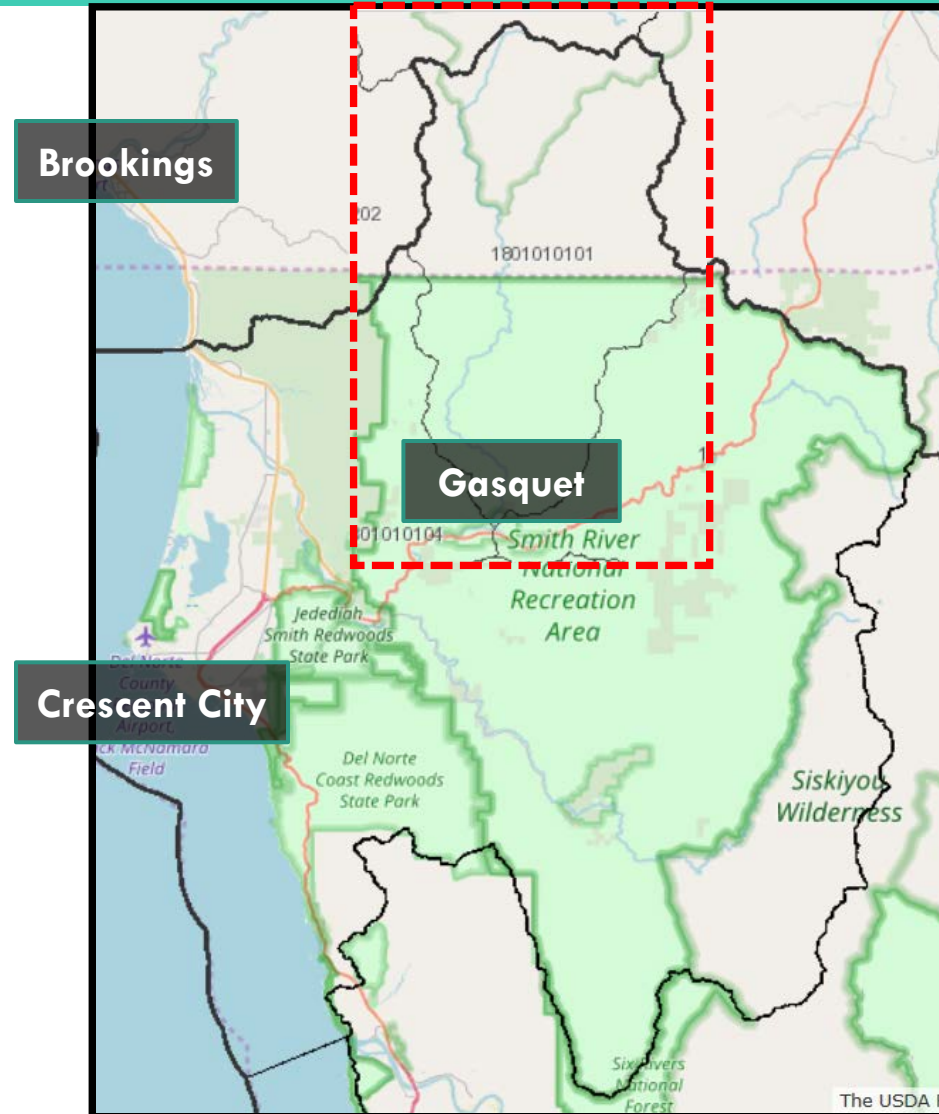
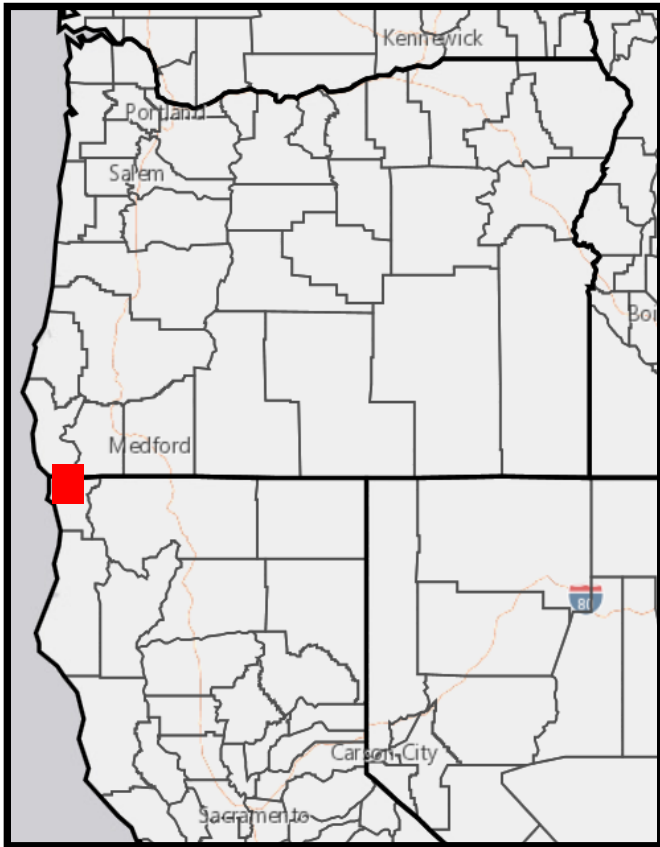
Brookings

Crescent City





# Shared Waters: California



**OAR 690-410-0040 (1) “The state will seek to cooperate with other states ...”**



# Outstanding Resource Water

**Environmental Quality Commission Designated the North Fork Smith River, its tributaries, and wetlands for:**

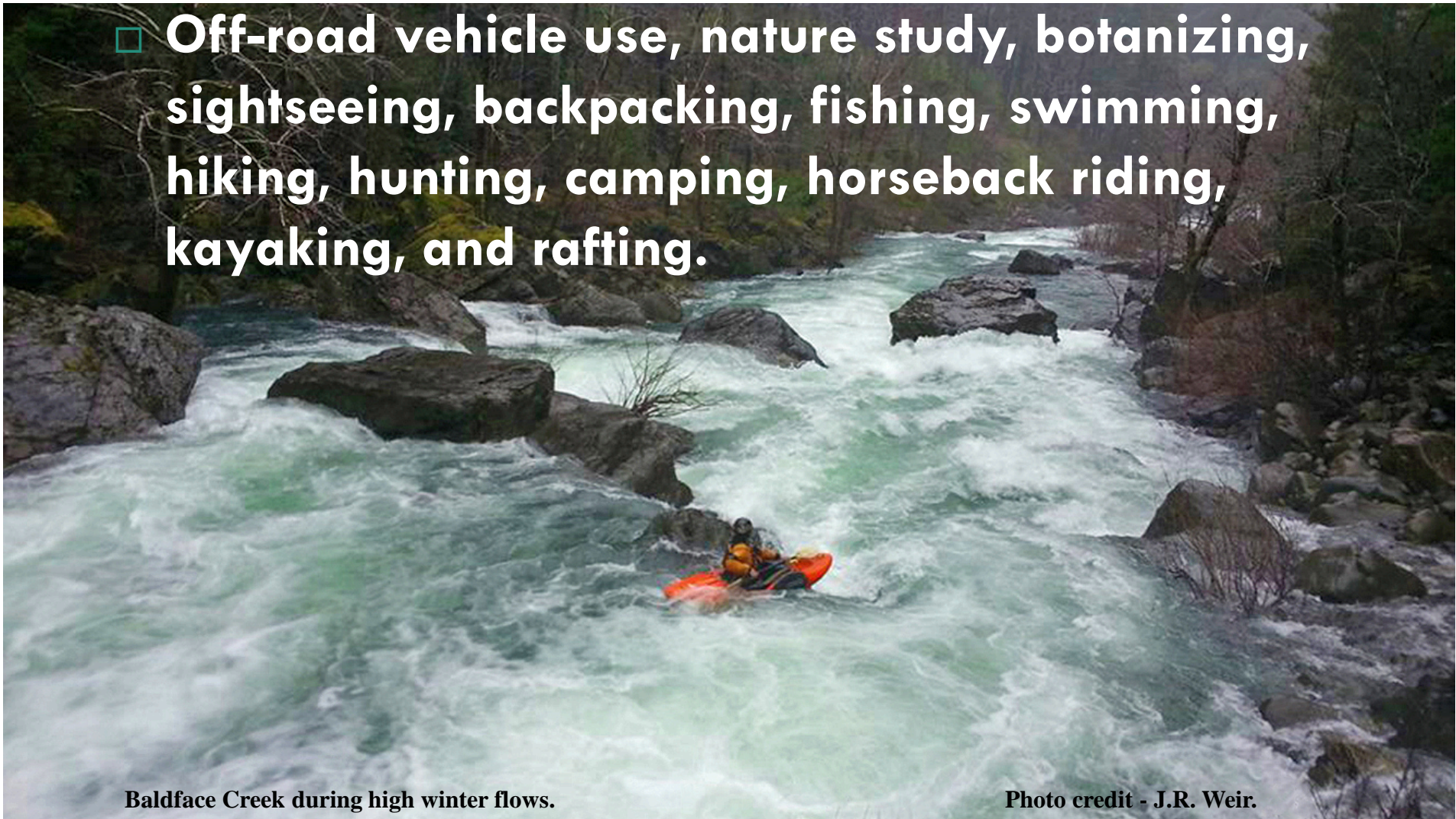
- ▣ Clarity and color of the waters & high water quality
- ▣ Critical habitat for threatened Coho salmon and others
- ▣ Rare plants/Darlingtonia wetlands
- ▣ Importance of the pristine nature of the waters to recreationalists in the state and in the larger region

**Modifies anti-degradation rule; maintain existing water quality and uses; prohibit new permitted point source discharges to the waters and other activities that would degrade water quality / exceptional ecological characteristics**

- ▣ Likely will preclude mining

# Recreational Uses

- Off-road vehicle use, nature study, botanizing, sightseeing, backpacking, fishing, swimming, hiking, hunting, camping, horseback riding, kayaking, and rafting.



Baldface Creek during high winter flows.

Photo credit - J.R. Weir.

# Fisheries and Wildlife

- **SONCC Coho (threatened), coastal cutthroat trout, rainbow trout, steelhead, and Chinook salmon, as well as Pacific Lamprey.**
  - **Critical habitat for Coho**
  - **Northwest Forest Plan Key Watershed**
- **Known location of Foothill Yellow-Legged Frog, a sensitive species.**



# Groundwater Supports Instream Public Uses

- **Streamflows during the low flow season demonstrate that groundwater contributes to surface water flows**
- **Cold water inputs from groundwater, seeps, springs and bogs, are maintain water quality for fisheries and supports rare plant habitats**

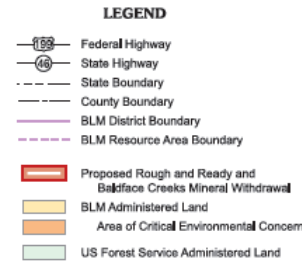


# Mining

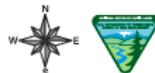
- **Existing Claims**
- **Mineral withdrawals – subject to valid existing rights**
  - **Wilderness**
  - **Wild and Scenic River (Wild Section)**
  - **20 year Public Land Order (Scenic Section)**
  - **20 year Public Land Order in 2017 map next page**
  - **National Recreation Area in California is also withdrawn from mining**
- **Compatibility with other uses**
- **Outstanding Resource Waters Designation**

# Federal Mineral Withdrawal

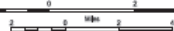
- Unlikely mining will happen in the future
- Does not prevent development of existing mining claims if undergo validity examination and validated



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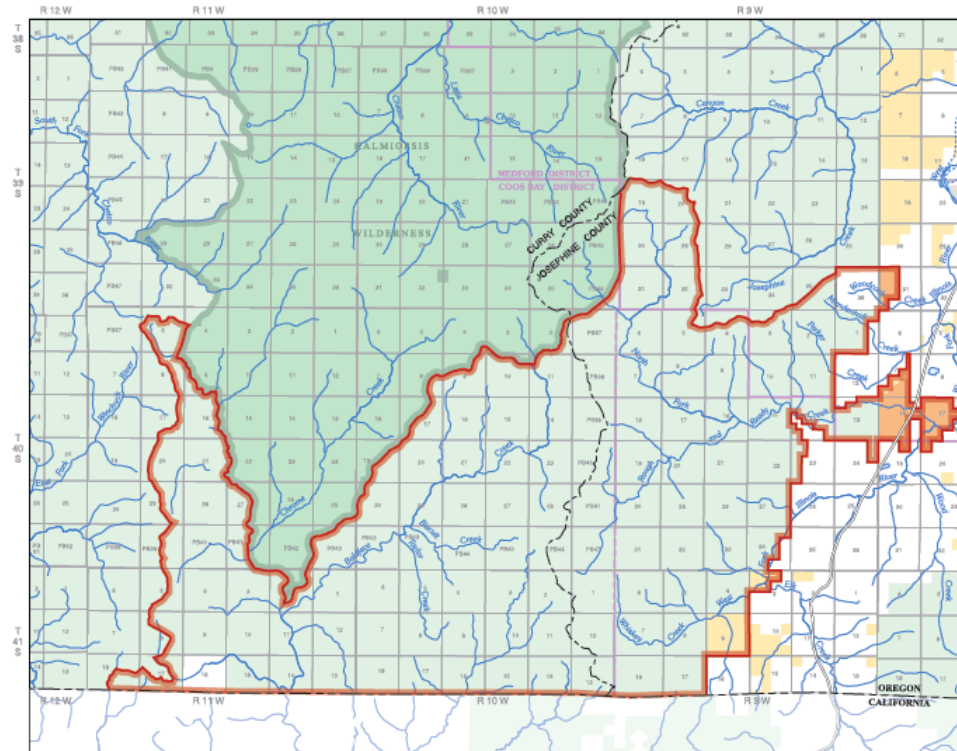
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North American Datum of 1983

## Rough and Ready and Baldface Creeks Mineral Withdrawal Proposal Coos Bay District and Medford District

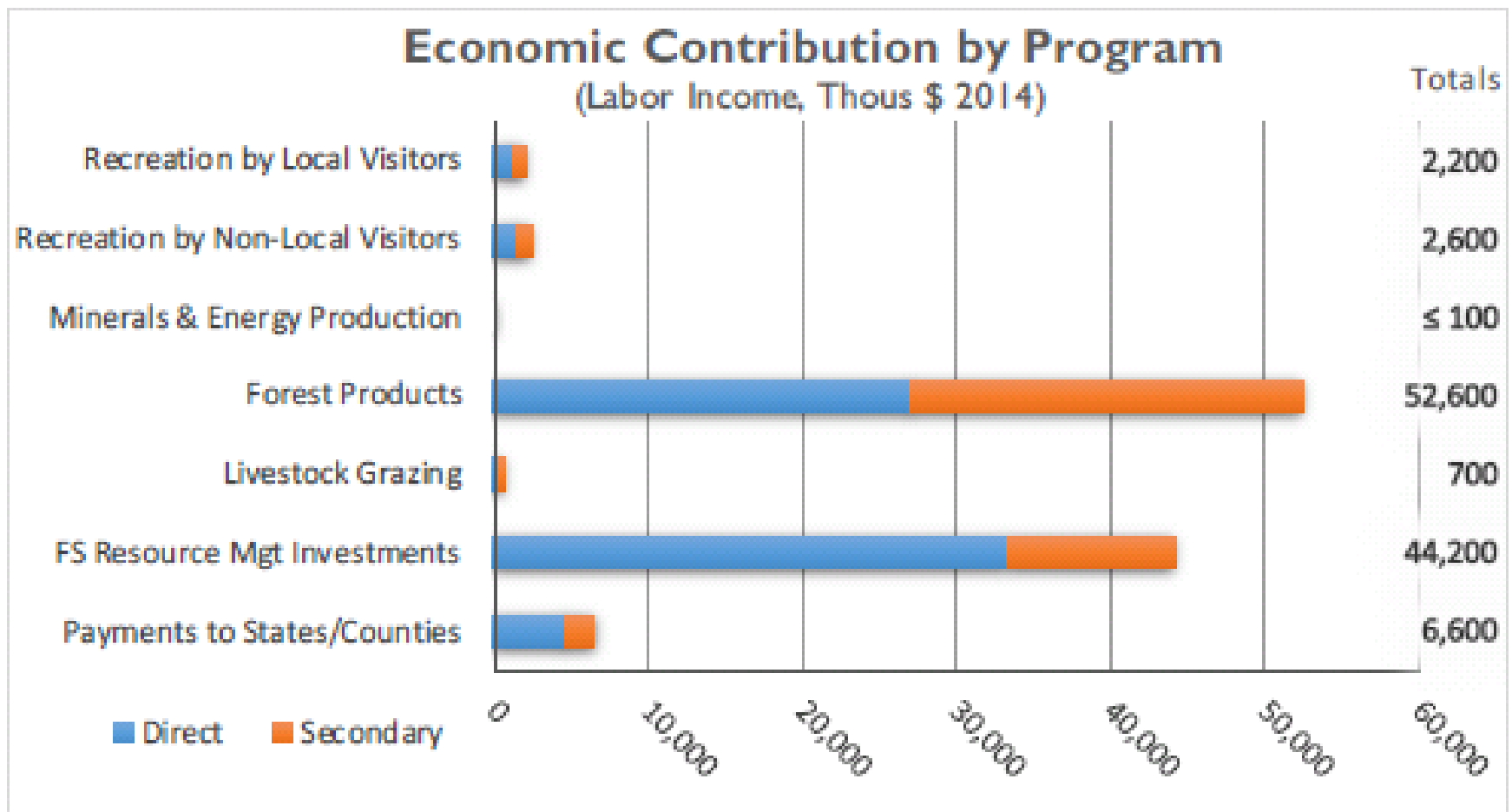
This map prepared at the request of Senator Ron Wyden and Representative Peter DeFazio  
January 12, 2015



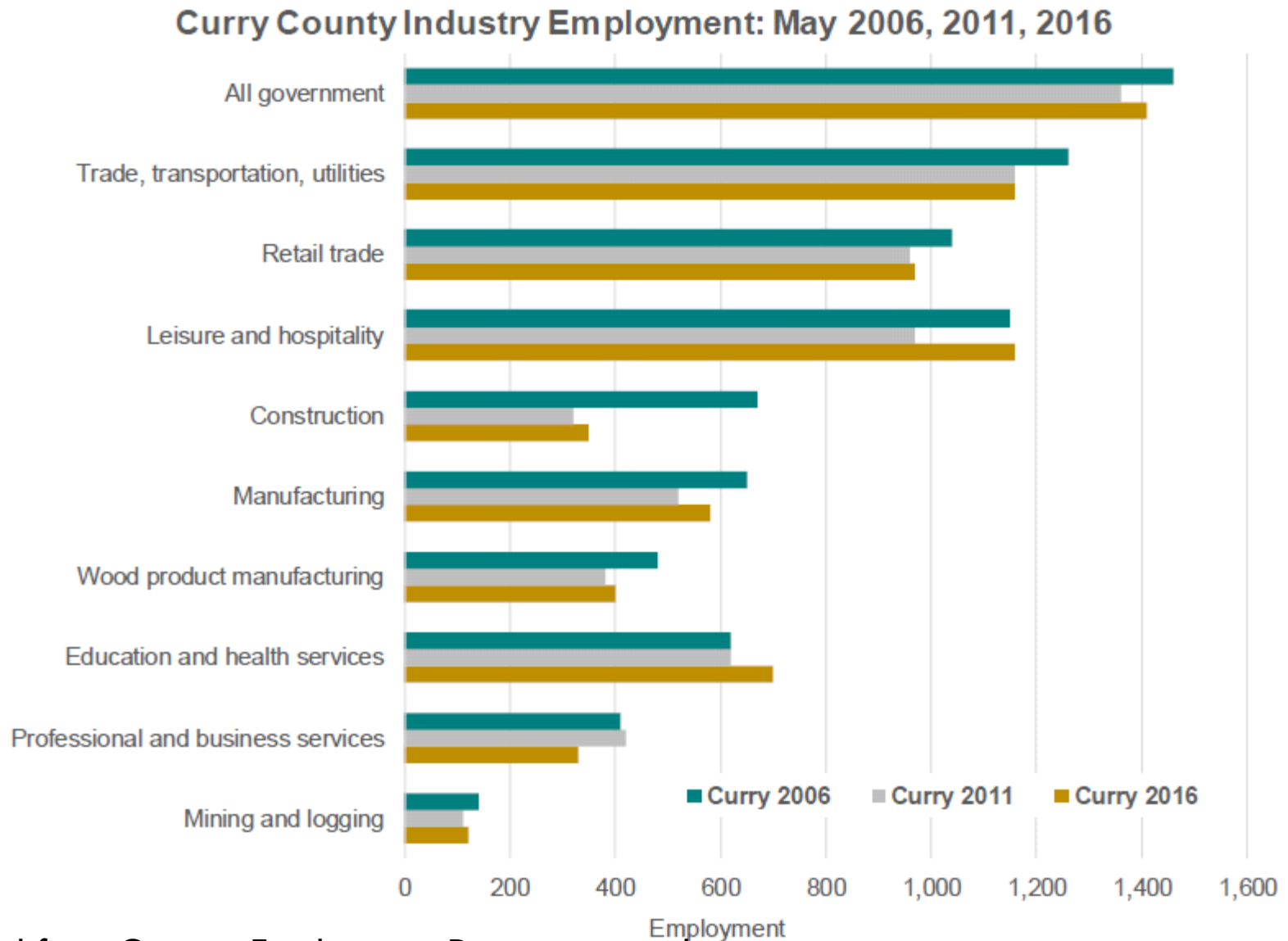


# Economics

## Rogue River-Siskiyou Economic Contributions 2014



# Economics



Excerpted from Oregon Employment Department n.d.

# Summary

Ensures the “highest and best use” of the waters for the benefit of the state as a whole and for the best interest of the public generally:

- (1) seeking consistency with other agency management plans and maintaining the current public uses of the Smith River watershed;
- (2) protecting the state's preference and interest in maintaining adequate supplies for human consumption and livestock;
- (3) protecting and preserving the principle of the sovereignty of this state, while cooperating with other states;
- (4) preserving streamflows to support aquatic life, minimize pollution, and maintain recreation values;
- (5) recognizing the economic values to this state of public instream uses in this watershed, while considering other beneficial uses – other beneficial uses are unlikely to occur, except incidental water for human consumption and stock.

# Modification to Public Hearing Draft

- ❑ **Public Hearing Draft of the Proposed Rules in Attachment 2 inadvertently deleted “and” between wildlife and fish life uses of existing rule language in subsection 12**
- ❑ **Corrected in Proposed Final Draft in Attachment 4**
  - ❑ **No other changes proposed.**

(1112) All other surface and ground-water resources are classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife\_fish life uses.



# Commission Action

## Alternatives

1. Adopt the final proposed rules in Attachment 4.
2. Adopt final proposed rules as modified by the Commission.
3. Not adopt final proposed rules and request the Department to further evaluate the issues.

## Recommendation

The Director recommends Alternative 1; that the Commission adopt the final proposed rules in attachment 4.



**THANK YOU**