February 23, 2016

Mrs. Jane O'Keeffe, Chair
Oregon Environmental Quality Commission
Mr. Dick Pedersen, Director
Oregon Department of Environmental Quality
DEQ Headquarters Office
811 SW 6th Avenue
Portland, OR 97204-1390

Subject: Resubmittal of -
Petition for Designating by Rule the North Fork Smith River and all of its Tributaries as "Outstanding Resource Waters of Oregon"

Dear Chair O'Keeffe and Director Pedersen:

Pursuant to OAR 137-001-0070 and OAR 340-011-0046, I resubmit the enclosed Petition requesting promulgation of rule amendments to designate the North Fork Smith River and all of its tributaries and wetlands in Curry County as "Outstanding Resource Waters of Oregon".

I originally submitted the Petition on January 4, 2016 and withdrew it on January 25, 2016 to make some revisions.

Please contact me if you have any questions regarding this Petition or would like more information. Thank you for your consideration.

Sincerely,

Gordon R. Lyford
P.O. Box 118
O'Brien, Oregon 97534

(541)596-2017

Cc: Kate Brown, Governor of Oregon

BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION

Petition for Rule Amendments Designating the North Fork Smith River System in Curry County as "Outstanding Resource Waters of Oregon"

February 23, 2016

Pursuant to OAR 137-001-0070 and OAR 340-011-0046, and the following supporting facts and arguments, I petition the Oregon Environmental Quality Commission to promulgate rule amendments designating the North Fork Smith River and all of its tributaries in Curry County as "Outstanding Resource Waters of Oregon".

As per OAR 137-001-0070(1), petitioner:

Gordon R. Lyford
P.O. Box 118
O'Brien, Oregon 97534

Interested persons include all of those who signed the attached February 2, 2015 letter to Mrs. Jane O'Keeffe, Chair of the Oregon Environmental Quality Commission (Commission), and Mr. Dick Pedersen, Director of the Oregon Department of Environmental Quality (DEQ).

As per OAR 137-001-0070(1)(a), proposed rule amendment language to be adopted:

The complete proposed rule language with the **additions** to the existing Antidegradation rule OAR 340-041-0004 and the **additions** to the existing Basin-Specific Criteria (South Coast) rule OAR 340-041-0305 are listed below:

OAR 340-041-0004

Antidegradation

(1) Purpose. The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The standards and policies set forth in OAR 340-041-0007 through 340-041-0350 are intended to supplement the Antidegradation Policy.

(2) Growth Policy. In order to maintain the quality of waters in the State of Oregon, it is the general policy of the Commission to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) through (9) of this rule.

(3) Nondegradation Discharges. The following new or increased discharges are subject to this Division. However, because they are not considered degradation of water quality, they are not required to undergo an antidegradation review under this rule:

(a) Discharges Into Existing Mixing Zones. Pollutants discharged into the portion of a water body that has been included in a previous mixing zone for a permitted source, including the zones of initial dilution, are not considered a reduction in water quality, so long as the mixing zone is established in accordance with OAR 340-041-0053, there are no other overlapping mixing zones from other point sources, and the discharger complies with all effluent limits set out in its NPDES permit.

(b) Water Conservation Activities. An increase in a pollutant concentration is not considered a reduction in water quality so long as the increase occurs as the result of a water conservation activity, the total mass load of the pollutant is not increased, and the concentration increase has no adverse effect on either beneficial uses or threatened or endangered species in the water body.

(c) Temperature. Insignificant temperature increases authorized under OAR 340-041-0028(11) and (12) are not considered a reduction in water quality.

(d) Dissolved Oxygen. Up to a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach is not considered a reduction in water quality so long as it has no adverse effects on threatened and endangered species.

(4) Recurring Activities. Since the baseline for applying the antidegradation policy to an individual source is the water quality resulting from the source's currently authorized discharge, and since regularly-scheduled, recurring activities remain subject to water quality standards and the terms and conditions in any applicable federal and state permits, certifications and licenses, the following activities will not be considered new or increasing discharges and will therefore not trigger an antidegradation review under this rule so long as they do not increase in frequency, intensity, duration or geographical extent:

(a) Rotating grazing pastures,

(b) Agricultural crop rotations, and

(c) Maintenance dredging.

(5) Exemptions to the Antidegradation Requirement. Some activities may, on a short term basis, cause temporary water quality degradation. However, these same activities may also have substantial and desirable environmental benefits. The following activities and situations fall into this category. Such activities and situations remain subject to water quality standards, and must demonstrate that they have minimized adverse affects to threatened and endangered species in order to be exempt from the antidegradation review under this rule:

(a) Riparian Restoration Activities. Activities that are intended to restore the geomorphology or riparian vegetation of a water body, or control invasive species need not undergo an antidegradation review so long as the Department determines that there is a net ecological benefit to the restoration activity. Reasonable measures that are consistent with the restoration objectives for the water body must be used to minimize the degradation;

(b) Emergency Situations. The Director or a designee may, for a period of time no greater than 6 months, allow lower water quality without an antidegradation review under this rule in order to respond to public health and welfare emergencies (for example, a significant threat of loss of life, personal injury or severe property damage); and

(c) Exceptions. Exceptions authorized by the Commission or Department under (9) of this rule.

(6) High Quality Waters Policy: Where the existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality must be maintained and protected. However, the Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2) and (9) of this rule, and 340-041-0007(4), may allow a lowering of water quality in these high quality waters if it finds:

(a) No other reasonable alternatives exist except to lower water quality; and

(b) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference;

(c) All water quality standards will be met and beneficial uses protected; and

(d) Federal threatened and endangered aquatic species will not be adversely affected.

(7) Water Quality Limited Waters Policy: Water quality limited waters may not be further degraded except in accordance with section (9)(a)(B), (C) and (D) of this rule.

(8) Outstanding Resource Waters Policy. Where existing high quality waters constitute an outstanding State or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values must be maintained and protected, and classified as "Outstanding Resource Waters of Oregon."

(a) The Commission may specially designate high quality water bodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those water bodies. The Department will develop a screening process and establish a list of nominated water bodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority water bodies for nomination include:

(A) Those in State and National Parks;

(B) National Wild and Scenic Rivers;

(C) State Scenic Waterways;

(D) Those in State and National Wildlife Refuges; and

(E) Those in federally designated wilderness areas.

(b) The Department will bring to the Commission a list of water bodies that are proposed for designation as Outstanding Resource Waters at the time of each triennial Water Quality Standards Review; and

(c) When designating Outstanding Resource Waters, the Commission may establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission may not allow activities that may lower water quality below the level established except on a short term basis to respond to public health and welfare emergencies, or to obtain long-term water quality improvements.

(d) The following are Outstanding Resource Waters of Oregon:

(A) The North Fork Smith River and its tributaries and associated wetlands, South Coast Basin. See OAR 340-041-0305(4).

(9) Exceptions. The Commission or Department may grant exceptions to this rule so long as the following procedures are met:

(a) In allowing new or increased discharged loads, the Commission or Department must make the following findings:

(A) The new or increased discharged load will not cause water quality standards to be violated;

(B) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference; and

(C) The new or increased discharged load will not unacceptably threaten or impair any recognized beneficial uses or adversely affect threatened or endangered species. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other State and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;

(D) The new or increased discharged load may not be granted if the receiving stream is classified as being water quality limited under sub-section (a) of the definition of “Water Quality Limited” in OAR 340-041-0002, unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Effective July 1, 1996, in water bodies designated water-quality limited for dissolved oxygen, when establishing WLAs under a TMDL for water bodies meeting the conditions defined in this rule, the Department may at its discretion provide an allowance for WLAs calculated to result in no measurable reduction of dissolved oxygen (DO). For this purpose, "no measurable reduction" is defined as no more than 0.10 mg/L for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the water quality limited segment. The allowance applies for surface water DO criteria and for Intergravel dissolved oxygen (IGDO) if a determination is made that the conditions are natural. The allowance for WLAs applies only to surface water 30-day and seven-day means; or

(iv) Under extraordinary circumstances to solve an existing, immediate and critical environmental problem, the Commission or Department may, after the completion of a TMDL but before the water body has achieved compliance with standards, consider a waste load increase for an existing source on a receiving stream designated water quality limited under sub-section (a) of the definition of “Water Quality Limited” in OAR 340-041-0002. This action must be based on the following conditions:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses or adversely affect threatened or endangered species; and

(IV) That any waste load increase granted under subparagraph (iv) of this paragraph is temporary and does not extend beyond the TMDL compliance deadline established for the water body. If this action will result in a permanent load increase, the action has to comply with sub-paragraphs (i) or (ii) of this paragraph.

(b) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(c) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values and environmental quality in general. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Department may consider the following:

(A) Environmental Effects Criteria:

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes;

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, so long as the loading has no adverse affect on threatened and endangered species;

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams is finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading;

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives may be evaluated.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07

Basin-Specific Criteria (South Coast)

340-041-0305

Water Quality Standards and Policies for this Basin

(1) pH (Hydrogen ion concentration) pH values may not fall outside the following ranges:

(a) Estuarine and fresh waters: 6.5-8.5.

(b) Marine waters: 7.0-8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-04l-0300: 100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30) and for direct ocean discharges: A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(4) Outstanding Resource Waters of Oregon (ORWs)

(a) The North Fork Smith River and all of its tributaries and associated wetlands (HUC 1801010101) in Oregon. These streams include but are not limited to the North Fork Smith River, Chrome Creek, Spokane Creek, Fall Creek, Cedar Creek, Horse Creek, Packsaddle Creek, Baldface Creek, Taylor Creek, Biscuit Creek, Wimer Creek, McGee Creek, Cabin Creek, Diamond Creek, and the North Fork Diamond Creek.

(b) The current high water quality, exceptional ecological values, and existing and designated uses of the ORWs identified in this rule ("these waters") shall be maintained and protected except as altered by natural causes.

(c) No new NPDES discharge or expansion of an existing discharge to these waters shall be allowed.

(d) No new NPDES discharge or expansion of an existing discharge to waters upstream of or tributary to these waters shall be allowed if such discharge would significantly degrade the water quality within these waters.

(e) No activities shall be allowed that would degrade the existing water quality and ecological characteristics and values of these waters.

(f) DEQ may allow an exception to 340-041-0305 (b) through (e) for a defined limited duration if an activity or discharge:

(A) is needed to respond to a public health or welfare emergency; or

(B) is expected to result in the restoration or enhancement of the water quality or ecological integrity of these waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048
Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

As per OAR 137-001-0070(1)(b), facts and arguments:

The relevant facts and arguments are also discussed in the February 2, 2015 letter to the Commission Chair and the DEQ Director (Attachment 1).

Of note is that the North Fork Smith River basin in Oregon is entirely on public land, mostly Rogue River-Siskiyou National Forest lands. Those lands include the Kalmiopsis Wilderness, the North Fork Smith River Wild and Scenic River corridor, and the South Kalmiopsis and Packsaddle Inventoried Roadless Areas.

Background on the North Fork Smith River Watershed in Oregon

The Smith River watershed lies within the Klamath-Siskiyou Mountain Province, a unique region of high biological diversity and great national significance in southwest Oregon and northwest California.[1] The Smith River includes three major forks: the Middle Fork, South Fork, and North Fork (Attachment 5). The North Fork Smith River rises in Oregon and drains an area of approximately 101,180 acres, which is 19.8 percent of the Smith River watershed. The North Fork Smith River watershed in Oregon includes 57 percent (57,990 acres or 91 square miles) of the entire North Fork Smith River watershed and is the subject of this Petition. The North Fork Smith River watershed in Oregon—with the exception of 555 acres of Oregon Common School Trust lands—lies entirely within the Rogue River-Siskiyou National Forest.[2] The exceptionally high quality waters of the North Fork Smith River in Oregon are critical to supporting unique botanical ecosystems, world-class fisheries, pure drinking water, and outstanding recreation and tourism activities.

From the rugged mountain headwaters in Oregon, the North Fork Smith flows south joining the Middle Fork Smith River at Gasquet, 10 miles south of the state line, then joining the mainstem Smith River at Hiouchi and then winds through Del Norte County flowing into the Pacific Ocean near the community of Smith River, approximately 13 miles north of Crescent City and 3.5 miles south of the Oregon border. The highest summit in the North Fork Smith River watershed is Chetco Peak in the Kalmiopsis Wilderness at an elevation of 4,672 feet. Only one percent of the watershed lies in the snow pack zone, with 46 percent of the watershed in the transient snow zone (2,500 to 4,000 ft.).[3] Owing to strong orographic effects and proximity to the Pacific Ocean, the North Fork Smith River watershed receives high rainfall.[4] Most of the basin's 100 inches to 150 inches of annual precipitation falls as rain during the November through April period.[5] A USGS hydrograph illustrates the river discharge at Gasquet during water years 1912 and 1913 (Attachment 6).

[1] See: http://www.dfw.state.or.us/conservationstrategy/docs/document_pdf/b-eco_km.pdf
[2] Oregon Common School Trust lands acreage from Curry County Assessor Plat Map 41S11W (4/17/2008).
[3] U.S. Forest Service, 1995, "North Fork of the Smith River Watershed Analysis," Iteration 1.0, Rogue River-Siskiyou National Forest, Chetco Ranger District.
[4] U.S. Forest Service, 1996, "Ecosystem Analysis of the Smith River at the Basin and Subbasin Scales," Six Rivers National Forest, Version 1.0.
[5] U.S. Forest Service, 1995, "North Fork of the Smith River Watershed Analysis."

The Smith River and its tributaries are nationally renowned for their clear waters. The North Fork Smith River is considered to have the most outstanding water clarity in the system.[6] The North Fork Smith River's waters clear quickly after storms, and even during moderately high winter flows between storms the clarity is exceptional.[7] The North Fork Smith River's outstanding water quality is a reflection of the integrity of its watershed. In Oregon, 88 percent of the river's watershed lies within the Kalmiopsis Wilderness and two Forest Service Inventoried Roadless Areas.[8]

The U.S. Congress has recognized the Smith River's outstanding values by designating 338 miles of the river and its tributaries as National Wild and Scenic Rivers, making it one of the most comprehensively protected Wild and Scenic River systems in the nation.[9] Congress added the North Fork Smith River to the National Wild and Scenic River System in two separate acts. Thirteen miles of the North Fork Smith River in Oregon were designated "Wild and Scenic" by Congress in 1988. That designation was based on the river's nationally outstanding water quality, fisheries, and scenic values.[10] In 1990, Congress passed the Smith River National Recreation Area Act, formally adding the North Fork Smith River and its tributaries in California to the National Wild and Scenic River System.[11] According to the Forest Service's Wild and Scenic River Management Plan for Oregon's North Fork Smith River, the outstanding water quality of the river in Oregon is "an integral part of the Smith River system overall."[12] The plan also found that the North Fork Smith River in Oregon is outstandingly remarkable "due to its substantial contribution to the world-class fishery of the greater Smith River."[13]

The Forest Service has also found Baldface Creek—a major pristine Oregon tributary of the North Fork Smith River—eligible to be added to the National Wild and Scenic River System.[14] The agency, in its wild and scenic river eligibility assessment, specifically noted the importance of Baldface Creek's high quality water and fish habitat to the North Fork Smith River, and the Smith River system as a whole.[15] The agency also found all of Baldface Creek's perennial tributaries to be eligible for

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[6] U.S. Forest Service, 1996, "Ecosystem Analysis of the Smith River at the Basin and Subbasin Scales."
[7] *Id.*, p. 142.
[8] Of the 57,990 acres of the North Fork Smith River's watershed in Oregon, 19,180 acres lie within the Kalmiopsis Wilderness. In addition, 24,780 acres of the watershed are located within the Inventoried South Kalmiopsis Roadless Area, and 6,890 acres are within the Inventoried Packsaddle Roadless Area. The Roadless Areas are subject to the U.S. Forest Service's Roadless Area Conservation Rule at 36 CFR Part 294, which prohibits new road construction but allows mining and access to mining claims.
[9] See: http://www.rivers.gov/rivers/smith.php
[10] See: http://www.rivers.gov/rivers/smith-nf.php
[11] See: http://www.rivers.gov/rivers/smith.php
[12] U.S. Forest Service, 2003, "North Fork Smith Wild and Scenic River Management Plan," Siskiyou National Forest. Available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5315366.pdf
[13] *Id.*
[14] U.S. Forest Service, 1993, "Wild and Scenic River Eligibility Study for Baldface Creek and Its Tributaries," Siskiyou National Forest; and "Wild and Scenic River Eligibility Findings," Michael J. Lunn, Supervisor, Siskiyou National Forest, February 14, 1994.
[15] The U.S. Forest Service "Wild and Scenic River Eligibility Study for Baldface Creek" states: "Baldface Creek provides some of the best water quality and fisheries habitat known on the Siskiyou National Forest. The world-class fishery on the Smith River depends on the water and fish produced in the Baldface Creek drainage . . . The combination of key fishery attributes and limited access contributes to the high quality environment. This watershed could be used as a model of the desired conditions for restoration projects in other watershed."

designation as Wild and Scenic Rivers, with the highest potential classification of "Wild."[16] The exceptional value of the remote area is also highlighted by a 2004 recommendation by the Secretary of Agriculture to Congress to add 64,000 acres of the North and South Kalmiopsis Roadless Areas to the Kalmiopsis Wilderness.[17] The watershed of Baldface Creek comprises a significant part of that recommended South Kalmiopsis Wilderness addition.[18] The North Fork Smith River watershed in Oregon is considered in near-pristine condition.[19] Because of its high fisheries values, the entire North Fork Smith River watershed, including Baldface Creek, is designated a Tier-One Key Watershed under the Northwest Forest Plan.[20] The Forest Service land allocations include Wilderness, Wild and Scenic River, Research Natural Area, Late-Successional Reserve, and Inventoried Roadless Area.[21]

Only sparse water quality information is available for those streams. A search found two water quality samples on the Middle Fork Smith River and two water quality samples on Chrome Creek. Table 1 summarizes the results of the two water quality samples collected on May 24, 2002 and July 23, 2003 from the Middle Fork Smith River about 1.9 miles downstream from the mouth of the North Fork Smith River below Gasquet (station code 103WE1072). This data is available online from the California Environmental Data Exchange Network. Table 2 summarizes the results of the two water quality samples collected on August 25, 1999 and September 12, 2007 from Chrome Creek at river mile 0.22 (station ID 21848). This data is available from the DEQ LASAR online database.

Chrome Creek water temperatures were measured with an automatic recorder at half hour intervals during the period June 9, 1999 through October 6, 1999. During those days overall water temperatures averaged 16.1 degrees C and ranged from 10.6 degrees C to 21.4 degrees C. The daily average water temperatures ranged from 12.4 degrees C to 19.7 degrees C. Of those 120 days, 65 days exceeded the DEQ core cold-water habitat criteria of 16 degrees C for fish. However, Chrome Creek is wholly inside the Kalmiopsis Wilderness and the water temperatures are entirely natural. Therefore, nothing should be done or can legally be done to "fix" the summer water temperatures.

The DEQ Water Quality Assessment, Oregon's 2010 Integrated Report, contains information for both Chrome Creek (Attachment 7) and the North Fork Smith River (Attachment 8). It shows a water quality status of category 2 (attaining) for Chrome Creek and category 3B (potential concern) for the North Fork Smith River. Those categories are not water quality limited or 303(d) listed. Currently there are not any activities in the North Fork Smith River basin in Oregon that would cause point or significant nonpoint pollution. In sum, the North Fork Smith River watershed in Oregon is an extraordinary place characterized by streams of "High Quality Waters" that are cherished by the public.

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[16] *Id.* and "Wild and Scenic River Eligibility Findings."
[17] See: http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2004/07/0279.xml
[18] See: http://kalmiopsisrivers.org/2004-proposed-kalmiopsis-wilderness-additions/
[19] The U.S. Forest Service's "Watershed Analysis for the North Fork Smith River" notes that: "The undisturbed wilderness parts of the basin could be considered representative of the reference condition landscape."
[20] U.S. Forest Service, 2005, "Baldface Creek Level II Stream Survey," Siskiyou Research Group, July 2005. Available on request from the petitioners.
[21] U.S. Forest Service, 1995, "North Fork of the Smith River Watershed Analysis."

Table 1 – Middle Fork Smith River 1.9 Miles below the Mouth of the North Fork Smith River

Analyte	Units	May 24, 2002 Results	July 23, 2003 Results	Notes
pH	pH	8.3	8.52	
Specific Conductivity	uS/cm	117.8	132.8	
Total Dissolved Solids @ k=0.64	mg/l	75.4	85.0	<300 = Excellent
Turbidity, total	NTU	0.16	0.17	<1 = Pristine
Suspended Solids, total	mg/l	0.12	0.4	
Organic + Inorganic Carbon	mg/l	13.44	16.38	
Silica as SiO2	mg/l	14.11	15.72	
Calcium	mg/l	4.26	4.58	
Magnesium	mg/l	11.56	13.31	
Sodium	mg/l	1.99	2.78	
Potassium	mg/l	0.18	0.27	
Phosphorus	mg/l	0.003	<0.002 ND	
Chloride	mg/l	2.38	N/A	
Sulfate	mg/l	2.05	2.17	
Nitrogen, total	mg/l	0.017	0.053	

Table 2 – Chrome Creek at River Mile 0.22

Analyte	Units	Aug 25, 1999 Results	Sep 12, 2007 Results	Notes
pH	pH	8.0	8.1	
Specific Conductivity	uS/cm	144	139	
Temperature	C	17.5 @ 11:15	16.8 @ 15:10	
Total Dissolved Solids	mg/l	84	96	<300 = Excellent
Turbidity, total	NTU	<1	<1	<1 = Pristine
Phosphorus	mg/l	<0.01	<0.01	
Chloride	mg/l	5.0	5.6	
Sulfate	mg/l	0.89	1.01	
Nitrogen, total	mg/l	<0.02	<0.02	

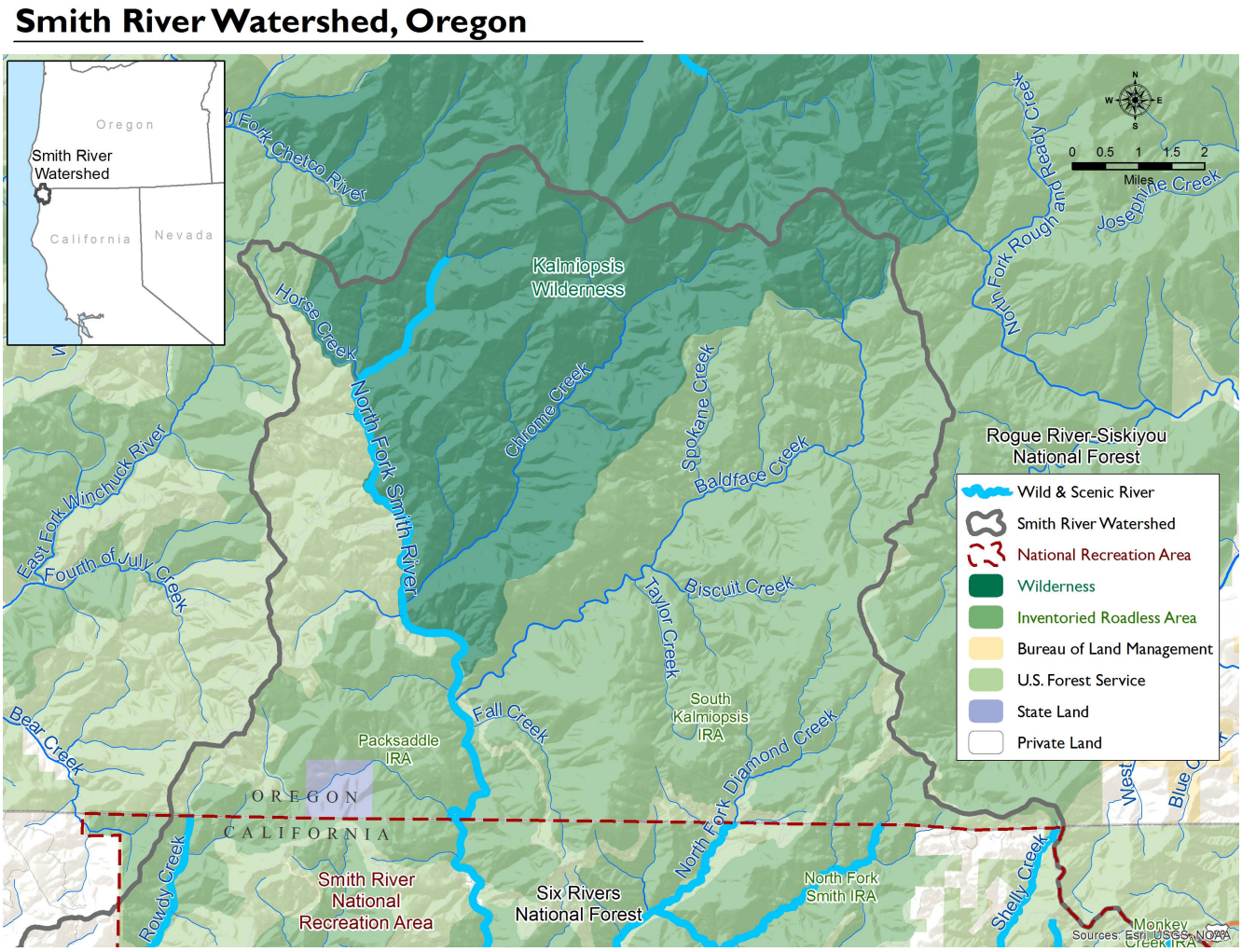

Figure 1- While the Smith River enters the Pacific Ocean from California, 11.6 % of its watershed, or 59,200 acres, lies in Oregon. Of that area, 98% (57,990 acres) lies within the North Fork Smith River watershed.

Map courtesy of Trout Unlimited (2015).

Argument

The Commission should designate the North Fork Smith River system as "Outstanding Resource Waters of Oregon" in order to maintain and protect the levels of water quality needed to support the existing beneficial uses and to ensure compliance with the State Antidegradation Policy.

The existing beneficial uses of the North Fork Smith River system, described below, are based on the water being pure, the watershed being intact, and the absence of basin activities that can cause sources of point and nonpoint pollution (some minor nonpoint pollution may occur due to soil erosion from trails). Maintaining and protecting the "High Quality Waters" and exceptional water quality of the North Fork Smith River system for fish and aquatic life, aesthetic quality, rare plant habitats, drinking water for downstream communities and individuals, and recreation and tourism activities is in the public interest. DEQ table 300A lists the designated beneficial water uses for the South Coast Basin (Attachment 9).

A. The North Fork Smith River system's aquatic ecosystems support salmon, steelhead, and other resident fish species that are included in the existing designated beneficial water use of fish and aquatic life.

The Smith River and its tributaries provide pristine habitat for multiple fish populations, producing high numbers of Chinook, steelhead, anadromous sea-run cutthroat trout and resident rainbow and cutthroat trout.[22] The river is recognized as one of the premier salmon strongholds along the entire Pacific Coast.[23] A world-class salmon and steelhead river,[24] the Smith River fishery contributes significantly to the economy of northwest California and southwest Oregon, an area known as the Wild Rivers Coast.[25] Oregonians and Californians have worked for decades and invested millions of dollars to protect the Smith River watershed's vital salmon and trout habitat.

According to the Forest Service, the North Fork Smith River watershed in Oregon has fish habitat in near-pristine condition and functions to produce high numbers of anadromous fish.[26] The North Fork Smith River is a relatively low-gradient river, dropping approximately 1,800 feet from an elevation of 2,900 feet in its headwaters in the Kalmiopsis Wilderness to 1,100 feet at the Oregon-California border.[27] Its larger tributaries, Chrome and Baldface Creeks (both located in Oregon), are also low gradient stream systems offering complex, near-pristine fish habitat with no barriers to fish migration.[28] Some of the most productive salmon, steelhead, and cutthroat trout habitat in the whole

[22] U.S. Forest Service, 1995, "North Fork of the Smith River Watershed Analysis," p.12.
[23] North American Salmon Stronghold Partnership, June 2010 Assessment, Available at: http://www.wildsalmoncenter.org/pdf/CA Stronghold map - June 2010 Approved.pdf
[24] U.S. Forest Service, 2003, "North Fork Smith Wild and Scenic River Management Plan."
[25] See, for example, "Salmon Run Spawns Profits," *Wall Street Journal,* February 7, 2011. See also note no. 39.
[26] USDA Forest Service, 1995, "North Fork of the Smith River Watershed Analysis."
[27] See: http://www.rivers.gov/rivers/smith-nf.php
[28] U.S. Forest Service, 2005, "Baldface Creek Level II Stream Survey," and personal communication with Steve Brazier, Rogue River-Siskiyou National Forest biologist, December 3, 2014.

Smith River system are found in the North Fork Smith River system in Oregon.[29] Coho salmon exist in the upper reaches of the North Fork Smith River above Chrome Creek, and in Baldface Creek.[30] At Baldface Creek and downstream, spring chinook and summer steelhead occur.[31]

The Smith River watershed lies within the range of the Southern Oregon and Northern California Coast coho ("SONCC coho") that are listed as threatened under the Federal Endangered Species Act.[32] In the Federal Recovery Plan for the SONCC coho, the Smith River's population is identified as a "core functionally independent unit" that is at high risk of extinction.[33]

The California Department of Fish and Wildlife (CDFW), in a July 8, 2014 letter to the Oregon Water Resources Department (OWRD) opposing issuance of a limited license to supply water for exploratory drilling for a proposed nickel strip mine, detailed the high biological significance of the Smith River, including its "renowned anadromous fisheries" (Attachment 2). The CDFW letter provides the following overview of the importance of the Smith River watershed for fishery resources:

> "[t]he Smith River is one of two watersheds in California described as "irreplaceable" with respect to salmonid population resiliency and biodiversity (Wild Salmon Center 2012). Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*) are abundant throughout the watershed and are of great ecological and economic benefit to California and Oregon. Coho salmon (*O. kisutch*) also occur in the Smith River watershed but have declined significantly in California, which has led to federal and State listing pursuant to their respective Endangered Species Acts. The California coho salmon population has declined by 70% during the last 40 years (DFG 2004). CDFW has identified the Smith River coho salmon as a key population to maintain or improve as part of the *Recovery Strategy of California Coho Salmon* (DFG 2004)."

The letter discusses, in particular, the Oregon portion of the watershed, stating that:

> "CDFW scientists have documented a remote inland sub-population of coho salmon in Baldface Creek, 85 km from the confluence of the Pacific Ocean (Garwood and Larson 2014). The headwaters of Baldface Creek near Frantz meadow is low gradient, contains high-quality spawning gravel, and has an abundance of large woody debris recruited from the surrounding old-growth Douglas fir (*Pseudotsuga menziesii*) forest."

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[29] U.S. Forest Service, 1993, "Wild and Scenic River Eligibility Study Baldface Creek," and "Wild and Scenic River Eligibility Findings."
[30] U.S. Forest Service, 1996, "Ecosystem Analysis of the Smith River at the Basin and Subbasin Scales," p. 144.
[31] *Id*.
[32] NOAA Fisheries, "Southern Oregon Northern California Coast Coho Recovery Plan," 2014. Available at: http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/southern_oregon_northern_california_coast/SONCC_recovery_plan.html
[33] For Smith River's population, see: http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/southern_oregon_northern_california/SONCC%20Final%20Sept%202014/sonccfinal_ch15_smithriver.pdf

Supported by high quality waters, the recreational and sport fisheries industry in southwest Oregon, and specifically in Curry County, is an important part of the local economy, with anglers coming from around the nation to experience a unique fishing experience. Several rivers having prime salmon and steelhead habitat, including the North Fork Smith River, contribute to this economy. The DEQ South Coast Basin maps 300A and 300B show the fish use designations (Attachments 10 and 11). According to the 2009 Oregon Department of Fish and Wildlife Report "Fishing, Hunting, Wildlife Viewing and Shellfishing in Oregon"; in 2008 alone, anglers made roughly 87,000 fishing trips, and freshwater sport fishing activities brought approximately $9 million into the South Coast region's economy.[34]

In sum, the Commission should grant the Petition to designate the North Fork Smith River and all of its tributaries as "Outstanding Resource Waters of Oregon" in order to maintain and protect the water quality needed for supporting the existing beneficial uses related to the nationally significant fisheries and the associated local and regional economies.

B. The North Fork Smith River system's globally significant wetlands and associated botanical habitats are included in the existing designated beneficial water use of aesthetic quality.

The North Fork Smith River watershed hosts many of the rare and unique plant species of Oregon. Many of those plants are water-dependent species that grow in wetland areas such as wet meadows, riparian zones, fens, springs, and seeps that are dependent on free flowing surface waters and emerging groundwater. A large portion of the Smith River watershed supports unique flora that exists on unusual soils derived from ultramafic parent material. Especially important are the plant communities of the serpentine *Darlingtonia* wetland environments. The hydrologic regimes of the *Darlingtonia* fens are considered perhaps the most critical component of those wetlands and their associated rare plant habitats.[35]

Due to the ecological significance of these wetland plant communities in southwest Oregon and northwest California, the serpentine *Darlingtonia* wetlands, including five associated rare-plant species, are subject to an interagency Conservation Agreement, signed by three federal agencies and six offices in 2006.[36] The cooperating federal offices include the Rogue River-Siskiyou National Forest, Six Rivers National Forest, Bureau of Land Management Medford District, Bureau of Land Management Coos Bay District, Fish & Wildlife Service Roseburg Field Office, and Fish & Wildlife Service Arcata Fish and Wildlife Office. Interested parties to the Conservation Agreement include the

[34] "Fishing, Hunting, Wildlife Viewing, and Shellfishing in Oregon: 2008 State and County Expenditure Estimates," 2009, prepared for Oregon Department of Fish and Wildlife and Travel Oregon, by Dean Runyan Associates. Table 8 and Table C-1.

[35] U.S. Forest Service, U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, 2006, "Conservation Agreement for *Hastings bracteosa, H. atropurpurea, Gentiana setigera, Epilobium oreganum*, and *Viola primulifolia* ssp. *occidentalis* and serpentine *Darlingtonia* wetlands and fens from Southwestern Oregon and Northwestern California," hereafter referred to as "Serpentine *Darlingtonia* Fen Conservation Agreement." Available at: https://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/ConsvAgreements/SerpentineFen-CA_6-2006.pdf

[36] "Serpentine *Darlingtonia* Fen Conservation Agreement."

Oregon Division of State Lands, Oregon Department of Agriculture, and the Oregon Biodiversity Information Center of Portland State University. The goals of the Conservation Agreement include identifying the essential serpentine *Darlingtonia* fens that support the sensitive species of concern and locally rare and endemic plant species, identifying and inventorying important new habitats, and coordinating future research to understand the ecology of these systems for the protection of these rare plant species and their habitats into the future.

The Conservation Agreement covers the geographic area known as the western Siskiyou Mountains, which includes the North Fork Smith River watershed and surrounding watersheds in Curry, Josephine, and Del Norte counties. Included in the region are several Forest Service Botanical Areas and Bureau of Land Management Areas of Critical Environmental Concern. For example, the North Fork Smith River Botanical Area is located in California and abuts Oregon. The region covered by the Conservation Agreement has not been thoroughly surveyed for the plant species of concern especially in the Oregon portion of the North Fork Smith River watershed. However, the east side of McGrew Hill (Taylor Creek drainage) was surveyed by a Forest Service botanist in 2014, and the local "water loving" endemics *Carex mendocinensis, Castilleja miniata* ssp. *elata, Cypripedium californicum, Darlingtonia californica, Lathyrus delnortensis, Lilium pardalinum* ssp. *vollmeri, Chamaecyparis lawsoniana, Pinguicula vulgaris* ssp. *macroceras* were documented. Many stands of very large old growth Port Orford cedar (*Chamaecyparis lawsoniana*) trees were also noted.[37] More plant surveys of the North Fork Smith River watershed in Oregon are needed in order to fully assess the presence and extent of the water-dependent, endemic species identified in the Conservation Agreement.

In sum, the Commission should grant the Petition to designate the North Fork Smith River and all of its tributaries as "Outstanding Resource Waters of Oregon" in order to maintain and protect the water quality needed for supporting the existing beneficial uses of water related to the unique botanical habitats.

C. The North Fork Smith River system provides clean sustainable drinking water supplies to downstream users that are included in the existing designated beneficial uses of public domestic water supply and private domestic water supply.

The Smith River is of great importance as a municipal drinking water supply for several communities in California such as Gasquet, Hiouchi, and Crescent City. Many individual diverters with riparian rights also rely on the pure river for drinking water supplies. These existing beneficial uses of water were discussed in letters sent to the OWRD from the Mayor of Crescent City and the California North Coast Regional Water Quality Control Board (NCRWQCB).

The Mayor of Crescent City, Richard Holley, submitted a July 8, 2014 letter to the OWRD opposing the limited license application to divert water for exploratory drilling associated with a large nickel strip mine proposal (Attachment 3).

[37] Personal communication by phone; G. Lyford, February 2015.

Mayor Holley's letter highlights the gravity of the issue for the Crescent City's water supply stating:

> "The Smith River is the source for Crescent City's municipal water system, which serves approximately 14,000 residents year-round and tens of thousands of visitors throughout the year. The quality of the water extracted by the City from below the bed of the Smith River as well as the quantity of water in the Smith River are of paramount importance to providing safe, reliable drinking water. The appropriation and use of water . . . from tributaries to the North Fork Smith River raises significant concerns for the City as to the project's impacts on both the quality and quantity of the water in the Smith River."

The California NCRWQCB submitted a July 8, 2014 letter to the OWRD opposing the limited license water application and discussing the existing beneficial uses (Attachment 4). In that letter they state:

> "The Smith River is a unique and thriving natural resource of pristine high-quality water, often referred to as the crown jewel of the North Coast Region of California. Its unspoiled water quality is the water supply for several communities including Gasquet, Hiouchi and Crescent City."

In sum, the Commission should grant the Petition to designate the North Fork Smith River and all of its tributaries as "Outstanding Resource Waters of Oregon" in order to maintain and protect the water quality needed for supporting the existing beneficial uses of water related to the clean drinking water supplies for several downstream communities and many individual users.

D. The North Fork Smith River system's world-class water based recreation and tourism activities are included in the existing designated beneficial uses of wildlife and hunting, fishing, boating, water contact recreation, and aesthetic quality.

The Smith River system provides exceptional water related tourism and recreational opportunities. Many communities depend significantly on recreational tourism generated by the quality and quantity of water in the Smith River system. Use of the Smith River waters to support recreation and tourism—both in Oregon and in California—is an existing beneficial use. Beyond the extensive fishing related activities and their associated economic values (discussed in section A), kayakers and whitewater rafters from across the nation also use the Smith River system, including the North Fork Smith River in Oregon. In addition, camping, swimming, and hiking draw many more people to the watershed's rivers and streams. Moreover, because of its unique geology and rare plants, the watershed attracts a variety of people interested in natural history and botany, including those with professional scientific interests.

The Mayor of Crescent City explained in his July 8, 2014 letter to the OWRD:

> "In addition to providing drinking water to the City's municipal water users, the Smith River offers a multitude of recreational activities including kayaking, rafting, swimming, and fishing. The Smith River and its tributaries are the spawning grounds and habitat for a world-class fishery (salmon, steelhead, cutthroat trout). These recreational and fishing opportunities are not only enjoyed and valued by local residents, they are also an important feature of the region's tourist industry."

The Forest Service reports that in California, recreation is the primary use of the North Fork Smith River and that the majority of the recreation takes place near, on, or in the water, with sport fishing an increasing draw.[38] Both the Smith River National Recreation Area Act, permanently protecting all federal lands of the Smith River watershed within California,[39] and Congress's designation of 338 miles of rivers and streams as National Wild and Scenic Rivers are testament to the importance of these waterways to providing nationally significant recreational opportunities. In addition, when California designated their portion of the Smith River in its State Wild and Scenic River System, it recognized "the value of the beneficial uses to the local culture, environment and economy . . ." declaring "certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state."[40]

In their July 8, 2014 letter to the OWRD the NCRWQCB discussed the beneficial uses of the North Fork Smith River. The letter reviews the appropriate beneficial uses stating:

> "Though identified in the 1970s as suitable for providing the beneficial use of industrial water supply, it is clear that the value of the beneficial uses to the local culture, environment and economy associated with the 1990 designation of the North Fork Smith River as a wild and scenic river far outweigh those of an industrial water supply project. This is particularly true since staff find the proposed project risks pose significant threat to all other downstream uses. Given the ecological and socioeconomic implications, we believe it is in the best interest of the people of Oregon and California to preserve this unique resource and deny any further attempts to permanently alter the headwaters of this designated national treasure."

In sum, the Commission should grant the Petition to designate the North Fork Smith River and all of its tributaries as "Outstanding Resource Waters of Oregon" in order to maintain and protect the water quality needed for supporting the existing beneficial uses of water related to the nationally significant recreational and tourism activities and the associated local and regional economies.

[38] U.S. Forest Service, 1996, "Ecosystem Analysis of the Smith River at the Basin and Subbasin Scales," p. 140.
[39] Smith River National Recreation Area Act of 1990, Pub. L. No. 101-612, 104 Stat. 3209 (1990).
[40] State of California, Public Resources Code §5093.50.

As per OAR 137-001-0070(1)(c), asserted propositions of law:

40 CFR 131.12(a)(3) - Antidegradation Policy:

“Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.”

OAR 340-013-0005 - Wilderness, Recreational, and Scenic Area Rules - Environmental Standards for Wilderness Areas:

“Therefore, it is declared to be the policy and purpose of the Department of Environmental Quality to maintain the environment of wilderness areas essentially in a pristine state and as free from air, water, and noise pollution as is practically possible and to permit its alteration only in a manner compatible with recreational use and the enjoyment of the scenic beauty and splendor of these lands by the citizens of Oregon and of the United States.”

OAR 340-041-0002(44) – Definition:

“ "Outstanding Resource Waters" means waters designated by the EQC where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values or where special water quality protection is needed to maintain critical habitat areas.”

OAR 340-041-0004(1) – Antidegradation Purpose:

“The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The standards and policies set forth in OAR 340-041-0007 through 340-041-0350 are intended to supplement the Antidegradation Policy.”

OAR 340-041-0004(6) - High Quality Waters Policy:

“Where the existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality must be maintained and protected.”

OAR 340-041-0004(8) - Outstanding Resource Waters Policy:

“Where existing high quality waters constitute an outstanding State or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values must be maintained and protected, and classified as "Outstanding Resource Waters of Oregon”.”

OAR 340-041-0004(8)(a)(B, E) - Outstanding Resource Waters:

“(a) The Commission may specially designate high quality water bodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those water bodies. The Department will develop a screening process and establish a list of nominated water bodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority water bodies for nomination include:

(B) National Wild and Scenic Rivers;

(E) Those in federally designated wilderness areas.”

ORS 468B.015(5) – Water Quality, Public Health and Safety, Water Pollution Control – Policy:

“To cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives. [Formerly 449.077 and then 468.710; 2009 c.248 §1]”

As per OAR 137-001-0070(2), petitioner requests amendments to existing rules:

This Petition requests that the Commission add rule language to OAR 340-041-0004 and OAR 340-041-0305 and does not propose to revise or delete any current rule language. The Petition does not dispute the continued need for the existing rules. Rather the proposed rule additions seek to implement the existing rules by designating "Outstanding Resource Waters of Oregon". The existing rules fulfill state responsibilities under the Federal Clean Water Act and are consistent with federal regulations.

As per OAR 137-001-0070(2)(a), options to reduce negative economic impact on business:

The economies of Curry County and Del Norte County are based on maintaining the current high water quality of the Smith River system. This is discussed above relative to the fisheries and recreational activities. Therefore, adopting this Petition will provide positive economic impacts.

As per OAR 137-001-0070(2)(b), continued need for the existing rules:

The existing rules are based on the Federal Clean Water Act. An August 8, 2013 USEPA letter and document to the DEQ regarding the Federal Antidegradation Policy gave a favorable opinion of the existing rules (see the reference in the Conclusion below).

As per OAR 137-001-0070(2)(c), complexity of the existing rules:

The existing rules are not overly complex and similar rule versions have been successfully implemented in many states.

As per OAR 137-001-0070(2)(d), extent to which the existing rules overlap, duplicate, or conflict with other state or federal rules and with local government regulations:

The North Fork Smith River basin in Oregon lies entirely on federally managed land except for one 555-acre parcel of state land. An "Outstanding Resource Waters of Oregon" designation would be compatible with the federal Wilderness, Wild and Scenic River, and Inventoried Roadless Area management plans. It would also support the threatened coho management objectives.

As per OAR 137-001-0070(2)(e), degree to which technology, economic conditions, and other factors have changed in the subject area:

The North Fork Smith River basin in Oregon is an undeveloped wilderness quality area as discussed above. The basin has not experienced significant human caused changes and covers a portion of the Tolowa Tribe's ancestral lands. Early in the 20th century some prospecting and trail building activities occurred. Over time the basin has been affected by natural disturbances such as the 2002 lightning caused Biscuit fire and the 2015 lightning caused Buckskin fire. Fire suppression and rehabilitation activities occurred during the Buckskin fire. The natural conditions of the watershed support the local economies and new technologies are not applicable.

Conclusion

Based on the information presented in this Petition the Commission should designate the North Fork Smith River and all of its tributaries and wetlands in Curry County as "Outstanding Resource Waters of Oregon". The North Fork Smith River system is an ideal candidate to be the first designated "Outstanding Resource Waters of Oregon". There are certainly some other waters in Oregon that also qualify for this designation, however it is now time for the Commission to move forward by taking action to initially implement the law and policy in this case. Such action would also be congruous with the high priority proposal currently before the NCRWQCB to designate the California portion of the Smith River system "Outstanding National Resource Waters" as part of their Triennial Review (Attachment 12). Therefore it is now appropriate for both states to coordinate establishing these designations.

The North Fork Smith River and all of its tributaries undeniably qualify to be designated as "Outstanding Resource Waters of Oregon". The river system constitutes an outstanding state and national resource because it is habitat for threatened coho and other resident fish species, it flows through and from the Federally designated Kalmiopsis Wilderness, and it is in part a National Wild and Scenic River. The "High Quality Waters" and ecological values are extraordinary and must be maintained and protected from any activities in the basin, such as nickel strip mining and road construction, that would degrade the existing water quality that is required for the existing beneficial uses discussed above. In addition the river crosses the state border from Oregon into protected California lands and waters and an upstream state must not degrade the waters of a downstream state.

Designating the North Fork Smith River and all of its tributaries as "Outstanding Resource Waters of Oregon" would be consistent with the August 8, 2013 USEPA letter and document to the DEQ regarding the Federal Antidegradation Policy. The "Outstanding Resource Waters of Oregon" designation process is thoroughly reviewed in that document --The EPA's Review of Portions of Oregon's March 2001 Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications, August 8, 2013. The DEQ Internal Management Directive provides policy direction for processing an "Outstanding Resource Waters of Oregon" designation request.

The North Fork Smith River and all of its tributaries are too precious to allow any degradation because this watershed in its present condition is crucial to supporting the economy of many communities with its pure drinking waters, pristine and productive salmon habitat, and unparalleled recreation and fishing opportunities. Thank you for your consideration.

Sincerely,

Gordon R. Lyford
P.O. Box 118
O'Brien, Oregon 97534

List of Attachments

Attachment 1: Sixteen citizens, letter to Mrs. Jane O'Keeffe, Chair of the Oregon Environmental Quality Commission, and Mr. Dick Pedersen, Director of the Oregon Department of Environmental Quality, Subject: Outstanding Resource Waters in Oregon – North Fork Smith River Basin (February 2, 2015) (Corrected 11/29/2015).

Attachment 2: California Department of Fish and Wildlife, letter to Tom Paul, Oregon Water Resources Department, Subject: Limited License Application LL1533 and Cleopatra Check Drilling Program (July 8, 2014).

Attachment 3: Mayor of Crescent City, Mr. Richard Holley, letter to Oregon Water Resources Department, Public Comment: Limited License for Cleopatra Check Drilling Program (LL-1553) (July 8, 2014).

Attachment 4: California North Coast Regional Water Quality Board, letter to Oregon Water Resources Department, Subject: Comments on the Limited License 1533 Application (Water Right Application for the Proposed Cleopatra Project in the Headwaters of the Smith River) (July 8, 2014).

Attachment 5: Smith River map, USGS online Streamer tool.

Attachment 6: Hydrograph, USGS 11531500 NF Smith River at Gasquet, California, water years 1912 and 1913.

Attachment 7: Oregon's 2010 Integrated Report for Chrome Creek.

Attachment 8: Oregon's 2010 Integrated Report for the North Fork Smith River.

Attachment 9: Table 300A, Designated Beneficial Uses, South Coast Basin.

Attachment 10: Draft Revised Figure 300A: Fish Use Designations, South Coast Basin, Oregon.

Attachment 11: Figure 300B: Salmon and Steelhead Use Designations, South Coast Basin, Oregon.

Attachment 12: Addendum to the November 2014 Staff Report for the 2014 Triennial Review of the WATER QUALITY CONTROL PLAN for the NORTH COAST REGION (February 25, 2015).

February 2, 2015
Corrected 11/29/2015

Mrs. Jane O'Keeffe, Chair
Oregon Environmental Quality Commission
Mr. Dick Pedersen, Director
Oregon Department of Environmental Quality
DEQ Headquarters Office
811 SW 6th Avenue
Portland, OR 97204-1390

Subject: Outstanding Resource Waters in Oregon – North Fork Smith River Basin

Dear Chair O'Keeffe and Director Pedersen:

The undersigned conservation and fishing organizations, representing many thousands of members, are requesting that the Oregon Department of Environmental Quality (Department) and the Environmental Quality Commission (Commission) designate the North Fork Smith River and all of its tributaries in Curry County as Outstanding Resource Waters under OAR 340-041-0004(8).

"Outstanding Resource Waters means those waters designated by the Commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality or ecological values or where special water quality protection is needed to maintain critical habitat areas", OAR 340-041-0002(44). The US Environmental Protection Agency defines Outstanding Resource Waters as "Tier 3" (40 CFR 131.12(a)(3)).

Rising in Curry County, Oregon and flowing into Del Norte County, California, the North Fork Smith River and all of its tributaries unequivocally qualify as Outstanding Resource Waters in Oregon. The North Fork Smith River and its tributaries are pristine and are in reference water quality condition because they remain undammed, undeveloped, and flow through and from the Kalmiopsis Wilderness and the South Kalmiopsis Roadless Area. Recognizing the stream's outstandingly remarkable water quality and world-class fishery, Congress added the North Fork Smith River in Oregon to the National Wild and Scenic River system in 1988. By rule the North Fork Smith River has priority to be nominated as Outstanding Resource Waters because it flows through a Federal Wilderness Area and a National Wild and Scenic River corridor, OAR 340-041-0004(8)(a)(B, E).

However, this remarkable watershed is now threatened by a nickel strip mine planned by a foreign-owned company that currently has a mineral exploration proposal before the Rogue River-Siskiyou National Forest for analysis. We are concerned that any mining development in the North Fork Smith River watershed would significantly degrade this National Wild and Scenic River's extraordinary water quality.

Water quality impacts from the development of a strip mine would, in fact, detrimentally impact the very values that designation under the National Wild and Scenic River System strives to protect including fish habitat, recreation, and domestic water supplies for downstream communities.

The National Wild and Scenic North Fork Smith River and its tributaries support several imperiled fish species including Southern Oregon and Northern California Coast coho salmon, which are listed under the Endangered Species Act as threatened. Other species that depend on this river system's clean cool water for survival include steelhead trout, Chinook salmon, and coastal cutthroat trout.

Kayakers and white water rafters from across the nation flock to the Smith River system, including the North Fork Smith River in Oregon, to paddle and float its clear waters. Camping, swimming, and hiking also draw thousands to this river's corridor. These recreational activities support the economies of local communities. Central to the river's recreational attraction is its crystal clear waters.

The North Fork Smith River watershed also provides clean drinking water to a number of downstream communities and individual diverters. The community of Gasquet holds a water right from the North Fork Smith River. Hiouchi, Jedediah Smith Redwoods State Park, Crescent City, and Pelican Bay State Prison hold water rights downstream on the mainstem Smith River.

Baldface Creek is a major tributary of the North Fork Smith River in Oregon. In 1994 the US Forest Service studied Baldface Creek and all of its perennial tributaries and found that they are eligible for designation as Wild under the National Wild and Scenic Rivers System due to outstandingly remarkable water quality and fishery values. In 2004 the US Secretary of Agriculture recommended adding the Baldface Creek watershed to the adjacent Kalmiopsis Wilderness.

Since the North Fork Smith River is a border-crossing stream, the Commission is required to cooperate with the agencies of adjacent states and the federal government to prevent water pollution, ORS 468B.015(5).

The purpose of the Clean Water Act's "Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses", 340-041-0004(1).

OAR 340-041-0004(8) states the "Outstanding Resource Waters Policy" as "Where existing high quality waters constitute an outstanding State or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values must be maintained and protected, and classified as Outstanding Resource Waters of Oregon."

"The Commission may specially designate high quality water bodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those water bodies. The Department will develop a screening process and establish a list of nominated water bodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment 305(b) Report", OAR 340-041-0004(8)(a). "The Department will bring to the Commission a list of water bodies that are proposed for designation as Outstanding Resource Waters at the time of each triennial Water Quality Standards Review", OAR 340-041-0004(8)(b). "When designating Outstanding Resource Waters, the Commission may establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission may not allow activities that may lower water quality below the level established except on a short term basis to respond to public health and welfare emergencies, or to obtain long-term water quality improvements", OAR 340-041-0004(8)(c).

We understand that, to date, the Commission has not designated any Outstanding Resource Waters in Oregon. The North Fork Smith River basin is an ideal candidate for granting the first designation of Outstanding Resource Waters in Oregon and to proactively set a positive statewide example. A companion request is now before the California North Coast Regional Water Quality Control Board (NCRWQCB) for its triennial review (see the attached letters).

The Commission has a public trust responsibility and duty to prevent the degradation of the North Fork Smith River system and to protect the public interest. Therefore, we ask that the nomination of the North Fork Smith River system as Outstanding Resource Waters be immediately reviewed by the Department and added to the Commission's agenda for its next public meeting. Please let each of us know in writing what your decision is. Thank you for considering this request.

Sincerely,

Susan Jane M. Brown, Staff Attorney Western Environmental Law Center 1216 Lincoln Street Eugene, OR 97401	Kimberley Priestley, Senior Policy Analyst WaterWatch of Oregon 213 SW Ash St., Suite 208 Portland, OR 97204
Gordon R. Lyford, Agricultural Engineer Wild Rivers Water Rights P.O. Box 118 O'Brien, OR 97534	Ann Vileisis, President Kalmiopsis Audubon Society P.O. Box 1265 Port Orford, OR 97465
Cameron La Follette, Executive Director Oregon Coast Alliance P.O. Box 857 Astoria, OR 97103	Eileen Cooper, Vice President Friends of Del Norte P.O. Box 229 Gasquet, CA 95543

Dave Willis, Chair Soda Mountain Wilderness Council P.O. Box 512 Ashland, OR 97520	Joseph Vaile, Director Klamath-Siskiyou Wildlands Center P.O. Box 102 Ashland, OR 97520
Alyssa Babin, Founder and President Wild and Scenic Rivers P.O. Box 1600 Brookings, OR 97415	Megan Hooker, Associate Stewardship Director American Whitewater megan@americanwhitewater.org Bend, OR 97701
Barbara Ullian, Coordinator Friends of the Kalmiopsis P.O. Box 1265 Port Orford, OR 97465	Dave Steindorf, California Stewardship Director American Whitewater 4 Baroni Drive Chico, CA 95928
Glen H. Spain, NW Regional Director Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Institute for Fisheries Resources (IFR) P.O. Box 11170 Eugene, OR 97440-3370	Curtis Knight, Executive Director California Trout 360 Pine St., 4th Floor San Francisco, CA 94104
Guido Rahr, Executive Director Wild Salmon Center 721 NW 9th Ave, Suite 300 Portland, OR 87209	Grant Werschkull, Executive Director Smith River Alliance P.O. Box 2129 Crescent City, CA 95531

Attachment: Friends of Del Norte January 9, 2015 Letter to the California NCRWQCB.
Smith River Rancheria January 20, 2015 Letter to the California NCRWQCB.

Cc: Governor Kitzhaber
Richard Whitman, Natural Resources Policy Director
Alydda Mangelsdorf, California NCRWQCB

Friends of Del Norte

Committed to our environment since 1973

A nonprofit, membership based conservation group
advocating sound environmental policies for our region.
PO Box 229, Gasquet, CA 95543

Jan. 9, 2015

Water Quality Control Board

Alydda Mangelsdorf
Supervisor, Planning Unit
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403
(707) 576-6735 (ph) (707) 523-0135 (fax) Email: Alydda.Mangelsdorf@waterboards.ca.gov
Matt St. John
Executive Officer

Regarding Triennial Review of CA North Coast Regional Basin Plan- Comments due Jan. 9, 2015

Task 11 Designate Wild and Outstanding National Resource Water (ONRW) for the Smith River, focusing on the three forks (including tributaries) of the Smith River, as a high priority.

The Smith River has been recommended by numerous environmental organizations, and your staff, as deserving of the highest water quality designation as an ONRW. However, this recommendation has not been taken up as a high priority. It is now urgent to obtain this protective status, because the Smith River is under immediate threat of proposed strip mining for nickel and strategic metals. Your own staff has recently responded (attachments) to a current proposal for water extraction to enable strip mining adjacent to the North Fork, stating that the Smith River is the crown jewel of California, and that strip mining along the North Fork in Oregon would not be in the public's best interest. Currently the Oregon Dept. of Water Resources has rejected the proposal for water extraction.

We ask that the California Water Quality Board and the Oregon Department of Environmental Quality Commission work in concert, to fully protect the three forks of the Smith River, the North, Middle and South, which wholly traverse Federal Lands, and terminate at the Main Stem within Jedediah Redwood State Park , a world heritage site.

Designation as ONRW would better safeguard outstanding national values that include protection of critical habitat for California's last Endangered Coho Salmon, enjoyment of a recreational treasure, the longest stretch of National and State Wild and Scenic River (over 300 miles), and an aesthetic focal point for both Redwood National and State Park (a UNESCO world heritage site), as well as Smith River National Recreation Area. Also included in a long list of beneficial use is supplying most of Del Norte County with the highest quality drinking water, and an important cultural heritage resource of the Tolowa Native American Tribes.

We now ask you to take urgently needed action to protect these values, because the Smith River is under immediate threat from nickel/rare mineral strip mining proposals. The Smith River is currently recognized as one of the most threatened rivers by American Rivers because of current strip mining proposals.

Designation as ONRW will protect the Smith River from antidegradation policy loop holes, that could allow pollution from industrial development of strategic metals of national importance to trump the important values that we currently enjoy. Unfortunately, the Siskiyou-Rogue River National Forest Service is dictated by the antiquated 1872 Mining Act, which places mining as a best use of their landscape. The mining company, Redflat Nickel has not been deterred in their quest, and is appealing the Oregon Water Resources decision. If Redflat Nickel finds an alternate water source for their exploration, the Forest Service can be forced to acquiesce. ONRW designation by both Oregon and California will close the antidegradation loop hole, and give the forks of the Smith River the added protection that is needed.

Please elevate to a high priority ONRW designation of the three forks of the Smith River. Attached are some of the responses of the entire community of Del Norte, California, and Southern Oregon, to the proposed mining on a tributary of the North Fork Smith River in Oregon. These include Crescent City Council, Del Norte County Board of Supervisors, California Dept of Fish and Wildlife, California Dept of Water Resources, several environmental organizations. An outpouring of thousands of citizen responses also opposed the strip mining threat, as well as the two Native American Rancherias within Del Norte County, representing the Tolowa Tribe with concern for their ancestral lands within both California and Oregon.

Thank you,

Eileen Cooper

Eileen Cooper, vice president, FODN- on behalf of the Board
707-465-8904
upsprout@yahoo.com

Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525
Ph: (707) 487-9255 Fax: (707) 487-0930

January 20, 2015

North Coast Regional Water Quality Control Board
John W. Corbett, Chairman
550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

The Smith River Rancheria ("Tribe") is a federally recognized Tribe of Tolowa Dee-ni' (people) with ancestral lands in southern Oregon and northern California. The Tribe has a significant interest and an inherent obligation to care for, and protect the web of life of the important natural resources located within our ancestral lands.

The Smith River is under immediate threat from nickel/rare mineral strip-mining proposals. American Rivers currently recognize the Smith River as one of the most threatened rivers because of current strip mining proposals.

Designation as ONRW would better safeguard outstanding national values that include protection of critical habitat for California's last Endangered Coho Salmon, enjoyment of a recreational treasure, the longest stretch of National and State Wild and Scenic River (over 300 miles), and an aesthetic focal point for both Redwood National and State Park (a UNESCO World Heritage Site), as well as Smith River National Recreation Area. Also included in this long list of beneficial use is supplying most of Del Norte County with the highest quality drinking water, and an important cultural heritage resource of the Tolowa Dee-ni'. All of these features place the Smith River as a top quality ONRW.

The Tribe recommends that the North Coast Regional Water Quality Board elevate to a high priority, the Outstanding National Resource Water (ONRW) designation of the North, Middle and South forks of the Smith River, including its tributaries.

Respectfully,

Denise Padgette
Vice Chair

Kara Brundin-Miller
Tribal Chairperson
On behalf of the Smith River Rancheria Tribal Council

Cc: Matt St. John, Executive Officer NCRWQCB
Alydda Mangelsdorf, Supervisor, Planning Unit NCRWQCB

Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 – Northern
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

July 8, 2014

Mr. Tom J. Paul, Acting Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Sent via email to Director@wrd.state.or.us

Subject: Limited License Application LL1533 and Cleopatra Check Drilling Program

Dear Mr. Paul:

The California Department of Fish and Wildlife (CDFW) recently became aware of the Red Flat Nickel Corporation (RFNC) Plan of Operations, Cleopatra Check Drilling Program (Project), submitted to the United States Forest Service (USFS) Rogue River-Siskiyou National Forest on October 26, 2012. The Oregon Water Resources Department is now reviewing, with a two week public comment period, Limited License Application LL1533 for diverting water from an unnamed tributary to Taylor Creek, thence Baldface Creek, thence North Fork Smith River. Water diverted from the tributary would be used to facilitate drilling 59 exploratory boreholes to characterize mineral resources. Since this portion of the National Forest is roadless, the drill platform and appurtenant components would be moved from each borehole location by helicopter. The ultimate goal of the RFNC is to operate a nickel, cobalt, and chromium strip mine on a 3,980 acre mineral claim.

As the trustee for California's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary to sustain their populations. The Smith River is California's fourth largest coastal river, with a watershed area of approximately 610 square miles in California and 115 square miles in Oregon (DFG 2004). The Smith River is unmatched in California for its free-flowing status, highly dynamic flow-rate, botanical diversity, renowned anadromous fisheries, and Wild and Scenic status. A large portion of the Smith River watershed supports a unique flora, which exists on unusual soils derived from ultramafic parent material (DFG 2004).

Biological Significance of the Smith River Watershed and Baldface Creek

The Smith River is one of two watersheds in California described as "irreplaceable" with respect to salmonid population resiliency and biodiversity (Wild Salmon Center 2012). Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*) are abundant throughout the watershed and are of great ecological and economic benefit to California and Oregon. Coho salmon (*O. kisutch*) also occur in the Smith River watershed but have declined significantly in California,

which has led to federal and State listing pursuant to their respective Endangered Species Acts. The California coho salmon population has declined by 70% during the last 40 years (DFG 2004). CDFW has identified the Smith River coho salmon as a key population to maintain or improve as part of the *Recovery Strategy of California Coho Salmon* (DFG 2004).

Since coho salmon use a variety of habitat features and depend on many different parts of the watershed, from upper reaches to estuaries, they are an indicator of watershed health (DFG 2007). CDFW scientists have documented a remote inland sub-population of coho salmon in Baldface Creek, 85 km from the confluence of the Pacific Ocean (Garwood and Larson 2014). The headwaters of Baldface Creek near Frantz meadow is low gradient, contains high-quality spawning gravel, and has an abundance of large woody debris recruited from the surrounding old-growth Douglas fir (*Pseudotsuga menziesii*) forest. Since low densities of coho salmon where observed throughout this index reach, adults could be migrating further up the drainage, and further investigation will likely discover more vital information regarding coho salmon spatial structure and habitat preferences in Baldface Creek and the greater Smith River watershed (Garwood and Larson 2014).

Metal Mining

The U.S. Environmental Protection Agency (USEPA) is responsible for the Toxics Release Inventory (TRI) which tracks the management of certain toxic chemicals that may pose a threat to human health and the environment (see http://www2.epa.gov/toxics-release-inventory-tri-program/2012-tri-national-analysis-overview for additional information). According to the USEPA, the extraction and beneficiation of minerals associated with metal mining generates large amounts of waste and the industry's total disposal or other releases reflect the high volume of materials managed on-site at metal mines (USEPA 2012). Out of all reporting sectors in 2012 (latest available data) tracked by the TRI, the metal mining sector reported the largest disposal or other releases of toxic chemicals, representing 40% of the releases for all industries.

The southern terminus of the Project is just two miles north of the Oregon/California border. Based on our initial evaluation within the time available for comment, large-scale industrial metal mining appears to be the most impactful of all the extraction industries with legacy issues that can continue in perpetuity. CDFW is very concerned this Project will have significant irreversible effects on the Smith River watershed in California and on the fish and wildlife that depend upon it.

Recommendation

CDFW recommends denial of Limited License Application LL1533, because all subsequent phases of this Project beyond exploratory drilling are likely to have significant environmental impacts on the Smith River in California.

If you have any questions or comments regarding this matter, please contact Michael van Hattem, Environmental Scientist, at (707) 445-5368, or 619 Second Street, Eureka, California 95501.

Sincerely,

for **NEIL MANJI**
Regional Manager
Region 1 – Northern

References

Department of Fish and Game. 2004. Recovery Strategy for California Coho Salmon. Report to the California Fish and Game Commission. Sacramento, CA.

Department of Fish and Game. 2007. *California Wildlife Conservation Challenges*. Prepared by the U. C. Davis Wildlife Health Center for the California Department of Fish and Game. Sacramento, CA.

Garwood, J. and M. Larson. 2014. Reconnaissance of salmonid redd abundance and juvenile salmonid spatial structure in the Smith River with emphasis on Coho Salmon (*Oncorhynchus kisutch*). California Department of Fish and Wildlife, Fisheries Restoration Grants Program, Arcata, CA. 63p.

Wild Salmon Center. 2012. The California Salmon Stronghold Initiative. Prepared for the California Department of Fish and Game. 21 p. Available at: http://www.wildsalmoncenter.org/programs/north_america/california.php

USEPA. 2012. U.S. Environmental Protection Agency. Toxics Release Inventory (2012) Program National Analysis Overview. Available at: http://www2.epa.gov/toxics-release-inventory-tri-program/2012-tri-national-analysis-overview.

ec: Mona Daugherty and Jeremiah Puget
North Coast Regional Water Quality Control Board
Mona.Daugherty@waterboards.ca.gov, Jeremiah.Puget@waterboards.ca.gov

Dan Free
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377 J STREET CRESCENT CITY, CALIFORNIA 95531-4025

Administration/Finance: 707-464-7483
Utilities: 707-464-6517
Public Works/Planning: 707-464-9506
FAX: 707-465-4405

July 8, 2014

Oregon Water Resources Department
Attn: Tom J. Paul, Acting Director
725 Summer Street NE, Suite A
Salem, OR 97301-1271

PUBLIC COMMENT: Limited License for Cleopatra Check Drilling Program (LL-1533)

Dear Mr. Paul:

It has come to the attention of the City Council of the City of Crescent City that Red Flat Nickel Corp. has submitted an application to the OWRD for a limited use water license in conjunction with the "Cleopatra Check Drilling Program" located in Southern Oregon within the Rogue River – Siskiyou National Forest. Red Flat Nickel Corp. proposes to appropriate water from an unnamed tributary to Taylor Creek, which is a tributary to Baldface Creek, which flows into the North Fork Smith River, a National Wild and Scenic River. The project is also within the watershed of two other tributaries to the North Fork Smith River, Diamond Creek and Fall Creek. The North Fork Smith River is one of three forks that feed into and make up the Smith River, which flows through Del Norte County, California to the coast.

The Smith River is the source for Crescent City's municipal water system, which serves approximately 14,000 residents year-round and tens of thousands of visitors throughout the year. The quality of the water extracted by the City from below the bed of the Smith River as well as the quantity of water in the Smith River are of paramount importance to providing safe, reliable drinking water. The appropriation and use of water for drilling exploration from tributaries to the North Fork Smith River raises significant concerns for the City as to the project's impacts on both the quality and quantity of water in the Smith River.

First, the City is troubled that the OWRD is approving an aspect of the project prior to the completion of an environmental assessment. Without such an environmental assessment, the City is concerned that this project has the potential to negatively impact the water quality of the North Fork Smith River, and therefore, the quality of the City's municipal water supply.

Second, the California State Water Resources Control Board has declared the Smith River to be fully appropriated year round. If new water licenses are issued along the tributaries to the Smith River, the flow of Smith River will be impacted.

Third, in addition to providing drinking water to the City's municipal water users, the Smith River offers a multitude of recreational activities including kayaking, rafting, swimming, and fishing. The Smith River and its tributaries are the spawning grounds and habitat for a world-class fishery (salmon, steelhead, cutthroat trout). These recreational and fishing opportunities

are not only enjoyed and valued by local residents, they are also an important feature of the region's tourist industry.

Due to the potential for this project and its associated appropriation of water from the tributaries to the North Fork Smith River to negatively impact the City's municipal water source, the City Council of the City of Crescent City opposes the approval of this limited water license (LL-1533).

If you have any questions you can contact Eugene Palazzo, City Manager at 707-464-7483 ext. 232 or by email at epalazzo@crescentcity.org. Please send all future notices and related project documents to the following address:

City of Crescent City
Attn: City Manager
377 J Street
Crescent City, CA 95531

Sincerely,

Richard Holley, Mayor

cc: Edmund G. Brown, Governor of California
John Kitzhaber, Governor of Oregon
Dianne Feinstein, U.S. Senator
Barbara Boxer, U.S. Senator
Ron Wyden, U.S. Senator
Jeff Merkley, U.S. Senator
Jared Huffman, U.S. Representative
Jim Nielsen, California State Senator
Wild Rivers Ranger District, U.S. Forest Service

July 8, 2014

Mr. Tom J. Paul, Acting Director
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Tom.J.Paul@wdr.state.or.us

Dear Mr. Paul,

Subject: Comments on the Limited License 1533 Application (Water Right Application for the Proposed Cleopatra Project in the Headwaters of the Smith River)

File: North Fork Smith River Cleopatra Mining Project

The North Coast Regional Water Quality Control Board (Regional Water Board) would like to thank you for this opportunity to comment on the Limited License 1533 (LL-1533) application by the Red Flat Nickel Corporation posted by the Oregon Water Resources Department. The Smith River is a unique and thriving natural resource of pristine high-quality water, often referred to as the crown jewel of the North Coast Region of California. Its unspoiled water quality is the water supply for several communities including Gasquet, Hiouchi and Crescent City. It is a state and federally designated Wild and Scenic River with world class recreational opportunities and a habitat stronghold for a declining population of rare, threatened and endangered anadromous fish. The active recreational and fishing industries supported by the Smith River make it a vital part of the Northern California environment, economy, and culture. Staff find that a mining project in this location has a high risk of resulting in discharges of waste with significant adverse impacts to water quality. For this, and the many additional reasons detailed in the attached letter, the staff of the Regional Water Board urges the Oregon Water Resources Department to deny the LL-1533 application. For the protection of this nationally designated recreational area, we further recommend denial of any future proposals to mine the headwaters of the Smith River.

The LL-1533 application filed by the Red Flat Nickel Corporation (St Peter Port Capital Ltd), headquartered in the United Kingdom (Guernsey), should be reviewed in full context of the

proposal in order to determine the potential damage to the public interest and to downstream water right holders. For this proposed phase of work, the Red Flat Nickel Corporation plans to drill 59 exploratory holes to collect geologic samples for mineral analysis. The Red Flat Nickel Corporation's longer term plans are to mine about 4,000 acres of public land. The LL-1533 application proposes to divert surface water from an unnamed tributary of Taylor Creek in the Siskiyou National Forest in Curry County, Oregon for mineral exploration drilling. However, this unnamed tributary is a headwater stream to the North Fork Smith River. Both the short term drilling and diversion plans and long term plan to mine the headwaters of the Smith River have potential for significant adverse effects on the environment and could impair the existing and nationally protected beneficial uses of the Smith River.

The North Fork Smith River's outstanding values are its scenic quality including the pristine character of the landscape, the river's clear turquoise colored waters, and the excellent water quality which contributes to the overall functioning of the river's ecosystem. The world class anadromous fishery depends on the excellent water quality that supports the many miles of near-pristine spawning and rearing habitat.

The beneficial uses as listed in the *Water Quality Control Plan for the North Coast Region* (Basin Plan) for the Smith River include:

Municipal and Domestic Supply (MUN)
Agricultural Supply (AGR)
Industrial Service Supply (IND)
Industrial Process Supply (PRO)
Freshwater Replenishment (FRSH)
Navigation (NAV)
Water Contact Recreation (REC-1)
Non-Contact Water Recreation (REC-2)
Commercial and Sport Fishing (COMM)
Cold Freshwater Habitat (COLD)
Wildlife Habitat (WILD)
Rare, Threatened, or Endangered Species (RARE)
Marine Habitat (MAR)
Migration of Aquatic Organisms (MIGR)
Spawning, Reproduction, and/or Early Development (SPWN)
Estuarine Habitat (EST)
Aquaculture (AQUA)
Native American Culture (CUL)
Subsistence Fishing (FISH)

The beneficial uses as part of Oregon's water quality standards include:

Domestic water supply
Fishing
Industrial water supply
Boating
Irrigation
Water contact recreation
Livestock watering
Aesthetic quality
Fish and aquatic life
Hydropower
Wildlife and hunting
Commercial navigation and transportation

The Six Rivers National Forest has determined that the beneficial uses of the North Fork Smith River are:
Migration and spawning of anadromous fish

Municipal and domestic water supplies
Water-based recreation
Wildlife habitat

Additionally, the North Fork Smith River is designated as both a Federal and California Wild and Scenic River. In 1990, the North Fork Smith River in California was added to the National Wild and Scenic River System by the Smith River National Recreation Area Act.

> *It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution[1].*

Though identified in the 1970s as suitable for providing the beneficial use of industrial water supply, it is clear that the value of the beneficial uses to the local culture, environment and economy associated with the 1990 designation of the North Fork Smith River as a wild and scenic river far outweigh those of an industrial water supply project. This is particularly true since staff find the proposed project risks pose significant threat to all other downstream uses. Given the ecological and socioeconomic implications, we believe it is in the best interest of the people of Oregon and California to preserve this unique resource and deny any further attempts to permanently alter the headwaters of this designated national treasure.

In addition, approvals by United States Forest Service (USFS), to the extent it exercises decision-making authority over the water right decision, and certainly in its permit or license for the mining activity, must be accompanied by water quality certification pursuant to the Clean Water Act section 401. Because of the interstate nature of the proposed project, Regional Water Board would hope to have a role in in the certification process. Water quality certifications contain conditions to ensure that any project will comply with state water quality standards and any other water quality requirements of state law.

Consideration of the following factors will show that approval of the LL-1533 application is not in the public interest because of the high-risk location and potential cause of injury to existing water right holders and important natural resources.

1) The location of the claim is not well suited for such an industrial operation. According to precipitation data between 1961 and 1990[2], this area was one of the

[1] California PUBLIC RESOURCES CODE §5093.50.

[2] http://www.wrcc.dri.edu/precip.html

wettest in the western states averaging well over 100 inches of precipitation annually. The Smith River watershed is well known for its large amounts of runoff and dramatic swings in flows. The precipitation rates combined with a mining operation atop steep topography make the proposed operations a high risk for discharges of waste and associated water quality impacts. Controlling discharges of waste and preventing pollution to the otherwise high-quality waters would be incredibly difficult, if not impossible, given the setting of the proposed project.

2) The high-quality water of the Smith River is recognized in the North Coast Basin Plan as point source discharges of waste are prohibited in the Smith River and its tributaries in California.

3) The California State Water Resources Control Board (SWRCB), on November 19, 1998, by Order WR 98-08 (see link below), has declared the Smith River system to be fully appropriated year round.
http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1998/wro98-08.pdf

   The SWRCB found that a declaration that specifically identified that a stream system is fully appropriated should encompass all upstream sources which contribute to the identified stream if, and to the extent that, such sources are hydraulically continuous to the identified stream system. (WR Order 98-08 at 21.) Under Public Resources Code §5093.55, no diversion shall be constructed unless and until the Secretary (California Resources Agency) determines that the diversion is necessary to supply domestic water to residents and it will not adversely affect the free-flowing condition and natural character of the river. No department of the state may assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a diversion that could have an adverse effect on the free-flowing condition and natural character of the river. (Pub. Resources Code, § 5093.56.) The Oregon WRD should consult with the California Resources Agency and the California Department of Fish and Wildlife (DFW) to determine whether the proposed project would adversely affect the free-flowing condition and natural character of the Smith River.

4) The Oregon WRD should consult with the California SWRCB Division of Water Rights to determine whether downstream water right holders would be injured and/or public trust resources would be damaged by diversions under the LL-1533 application if approved.

5) Due to the lack of infrastructure in this wild and scenic area, the initial drilling operations will be mobilized by helicopter. Therefore, the remoteness of the proposed place of use and future project location are clearly problematic for timely inspection or enforcement.

6) Using the public waters of Oregon and California to facilitate such an industrial development in a headwater of an important California river by a foreign corporation could impair high quality-waters and be detrimental to the public interest. Such an industrial development could disturb, harm, or destroy the local flora and fauna, pollute the water, degrade the area with helicopter noise, equipment noise, offensive visual blight, and air pollution from dust clouds and exhaust fumes.

For all of these reasons provided please deny the LL-1533 application.

If you have any questions or concerns regarding this letter, feel free to contact Jeremiah J. Puget, Environmental Scientist of my staff, at (707) 576-2835.

Sincerely,

Original signed by David Leland for

Matthias St. John
Executive Officer

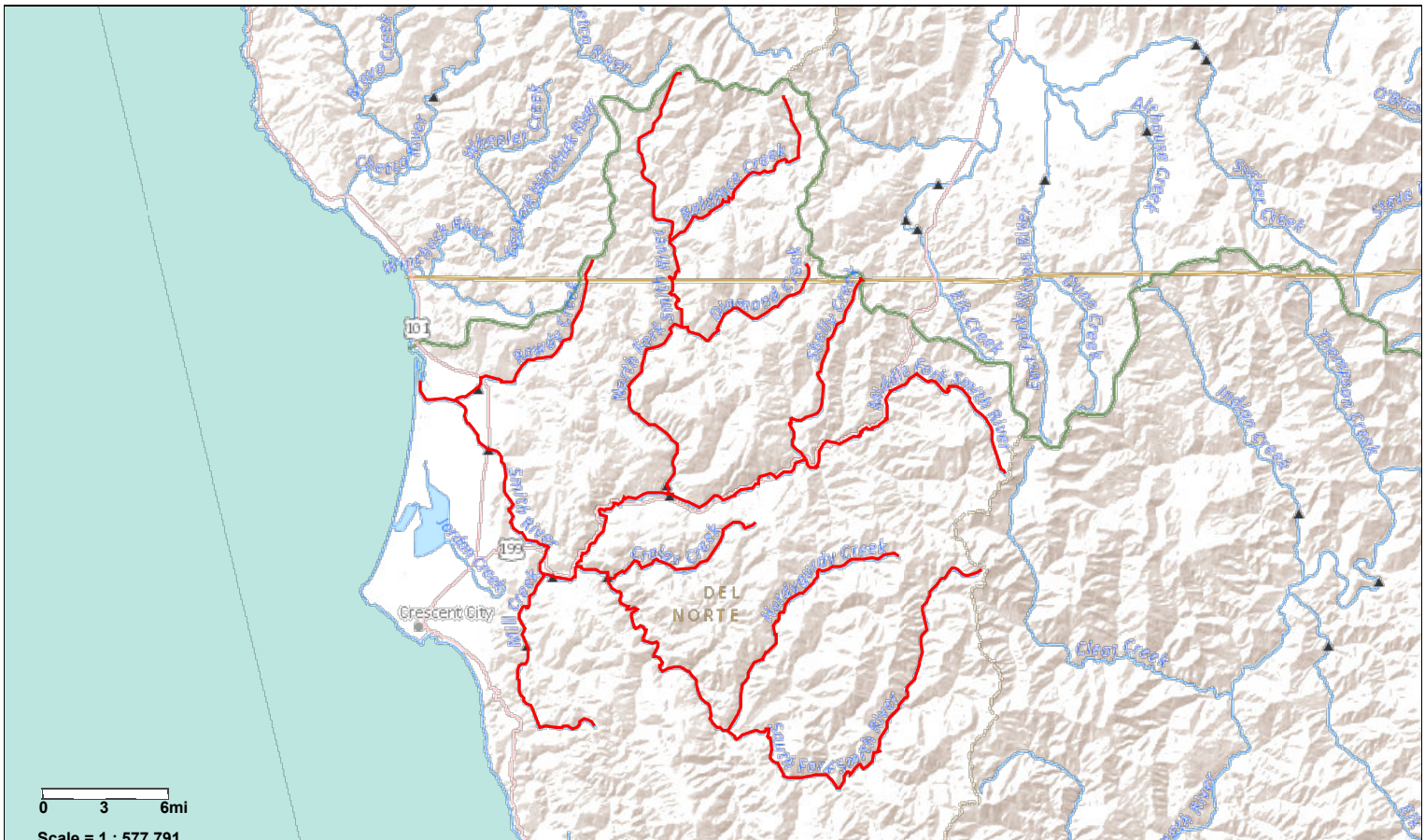
140708_JJP_dp_NFSmithRiver_WaterRightComment_Ltr

Web link: SWRCB Order WR 98-08
http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1998/wro98-08.pdf

cc: Oregon Governor John Kitzhaber, 160 State Capitol, 900 Court Street NE, Salem, OR 97301
California Governor Edmund G. Brown Jr., c/o State Capitol, Suite 1173, Sacramento, CA 95814
Senator Jeff Merkley, 495 State Street, Suite 330, Salem, OR 97301
Representative Peter DeFazio, 125 Central Avenue, Suite 350, Coos Bay, OR 97420
Representative Jared Huffman, 999 Fifth Avenue, Suite 290, San Rafael, CA 94901
Felicia Marcus, Chair SWRCB, Felicia.Marcus@waterboards.ca.gov
Tom Howard, Executive Director, SWRCB, Tom.Howard@waterboards.ca.gov
Tina Lanier, District Ranger, Gold Beach Ranger District, 29279 Ellenburg Avenue, Gold Beach, OR 97444
Robert Shoemaker, Wild Rivers Ranger District, 2164 N.E., Spalding Avenue, Grants Pass, OR 97526
City Manager of Crescent City, Eugene Palazzo, City Hall 377 J Street, Crescent City, CA 95531
Big Rock Community Services District, 2680 US Highway 199, Crescent City, CA 95531
Gasquet Community Services District, 250 Middle Fork Gasquet Road, Gasquet, CA 95543
Jerry Sauter, Oregon Water Resources Department, jerry.k.sauter@wrd.state.or.us
Pam Blake, Oregon Water Resources Department, BLAKE.Pam@deq.state.or.us
Michael Van Hattem, California Department of Fish and Wildlife
Michael.vanHattem@wildlife.ca.gov

USGS
The National Map

Streamer



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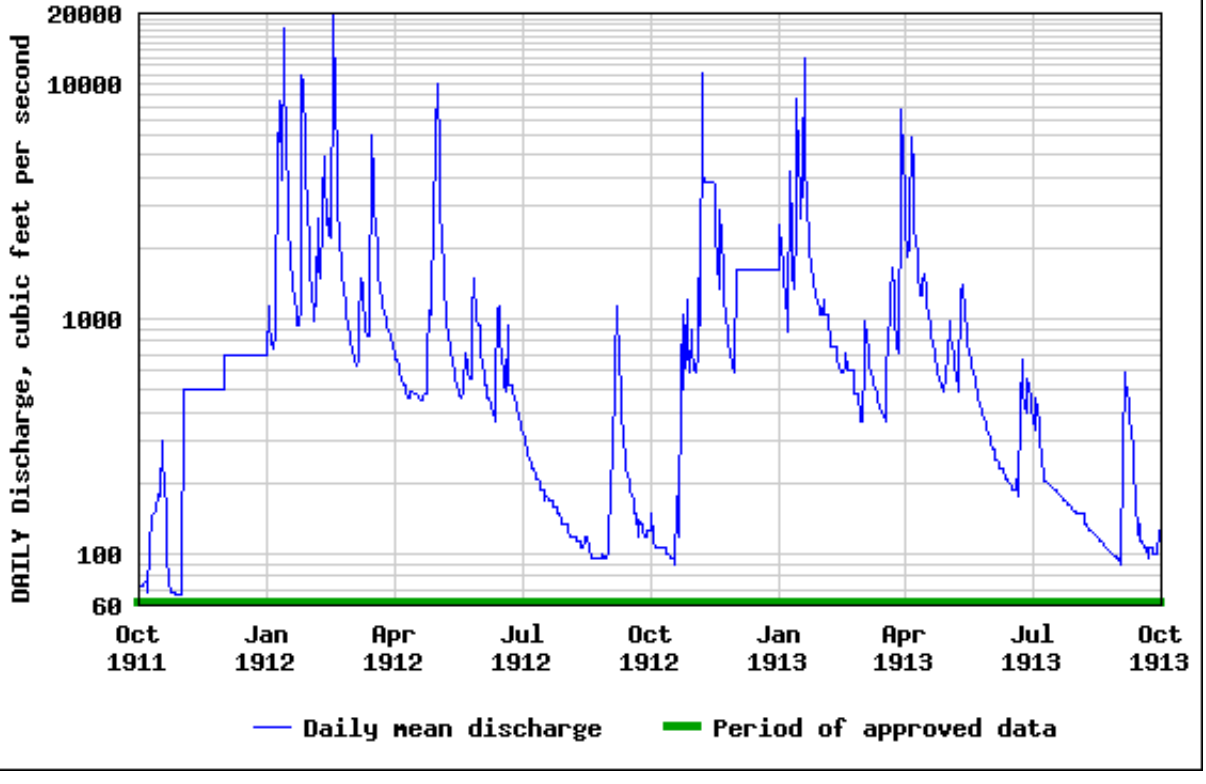
USGS 11531500 NF SMITH R A GASQUET CA



Oregon Department of Environmental Quality

Oregon DEQ: Water Quality - Water Quality Assessment - Oregon's 2010 Integrated Report Database

12/11/2015 6:58:22 PM

Oregon's 2010 Integrated Report

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Basin Name Subbasin **4th Field HUC** **Record ID**	Water Body **LLID River Miles Segment Miles Beach Name Beach ID**	Pollutant	Season	Criteria	**Beneficial Uses**	**Status**	**2010 Assessment Action**	**[Data Source] Supporting Data**
Northern California Coastal Smith 18010101 24214	Chrome Creek 1239837420435 0 to 8.2 8.2	Biological Criteria	Year Around	Biocriteria: Waters of the state must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.	Aquatic life	Cat 2: Attaining some criteria/uses	Added to database	2010 Data: LASAR 21848 River Mile 0.23 FROM 8/25/1999 To 8/25/1999 0 out of 1 (0%) samples outside WCCP regional criteria. Previous Status Previous Action: Previous Listing Year:

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Oregon Department of Environmental Quality

Oregon DEQ: Water Quality - Water Quality Assessment - Oregon's 2010 Integrated Report Database

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Lookup LASAR Link to LASAR

Basin Name Subbasin **4th Field HUC** **Record ID**	Water Body **LLID River Miles Segment Miles Beach Name Beach ID**	Pollutant	Season	Criteria	**Beneficial Uses**	**Status**	**2010 Assessment Action**	**[Data Source] Supporting Data**
Northern California Coastal Smith 18010101 24207	North Fork Smith River 1239681418479 14.4 to 27.5 13.1	Biological Criteria	Year Around	Biocriteria: Waters of the state must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.	Aquatic life	Cat 3B: Potential concern	Added to database	2010 Data: LASAR 35749 River Mile 19.24 FROM 7/3/1999 To 7/3/1999 0 out of 1 (0%) samples outside WCCP regional criteria. Previous Status Previous Action: Previous Listing Year:

To select new search criteria **click here** - **DO NOT USE THE BACK ARROW.**

Table 300A

Designated Beneficial Uses
South Coast Basin
(340-41-0300)

Beneficial Uses	Estuaries & Adjacent Maine Waters	All Steams & Tributaries Thereto
Public Domestic Water Supply[1]		X
Private Domestic Water Supply[1]		X
Industrial Water Supply	X	X
Irrigation		X
Livestock Watering		X
Fish & Aquatic Life[2]	X	X
Wildlife & Hunting	X	X
Fishing	X	X
Boating	X	X
Water Contact Recreation	X	X
Aesthetic Quality	X	X
Hydro Power		X
Commercial Navigation & Transportation	X	
[1] With adequate pretreatment (filtration & disinfection) and natural quality to meet drinking water standards.		
[2] See also Figures 300A and 300B for fish use designations for this basin.		

Table produced November, 2003

*Draft Revised Figure 300A: Fish Use Designations**
South Coast Basin, Oregon

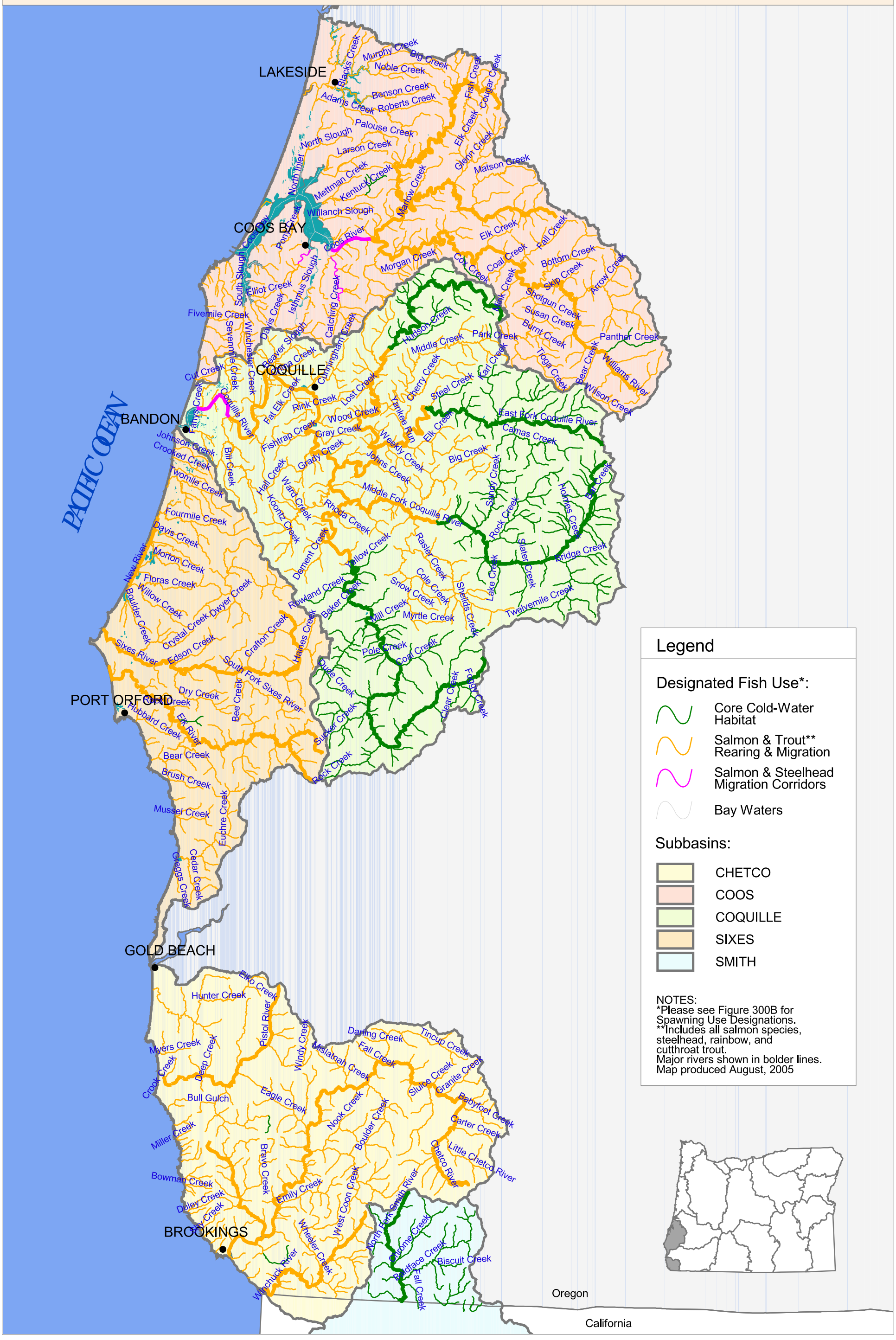
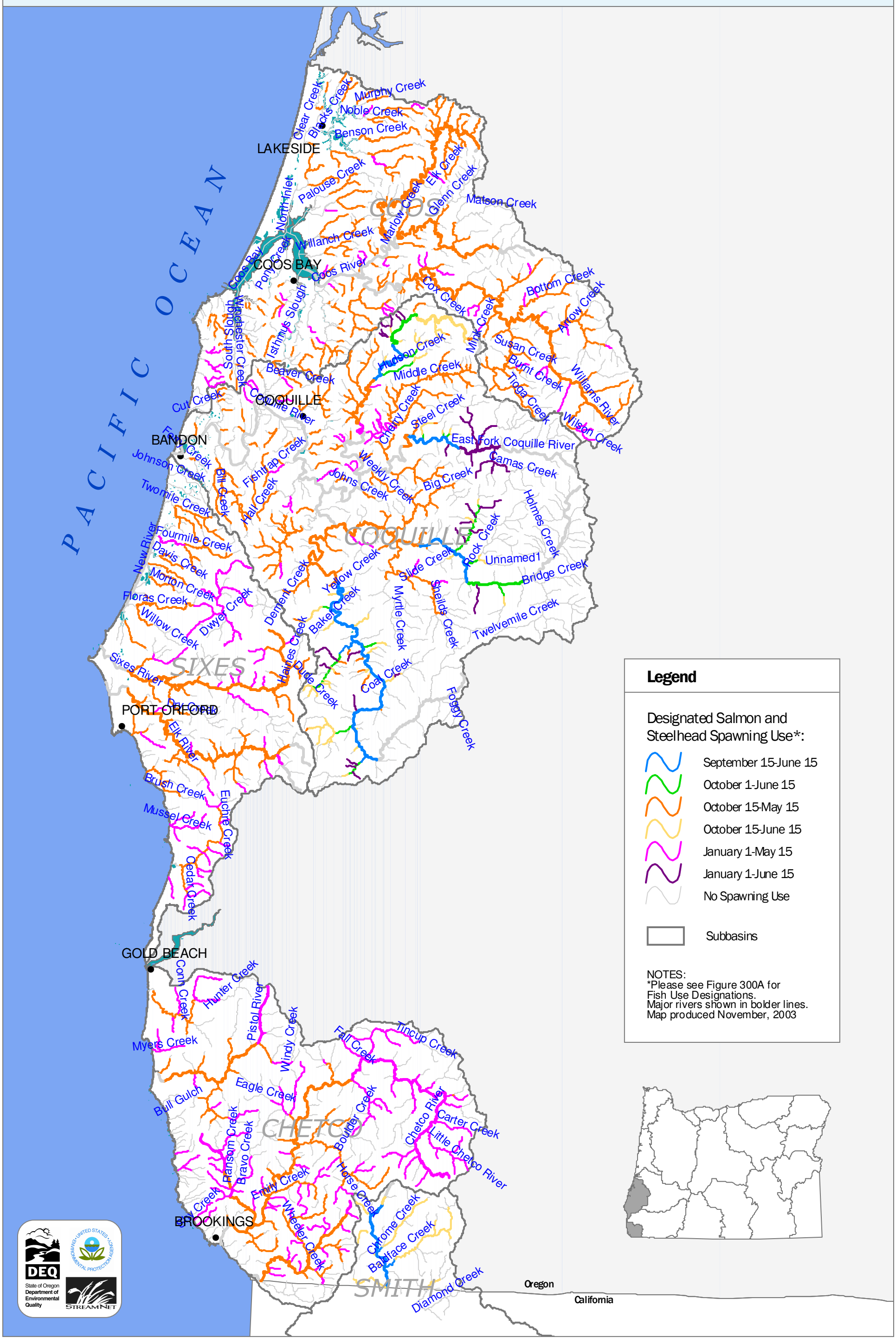


Figure 300B: Salmon and Steelhead Spawning Use Designations South Coast Basin, Oregon*



Addendum

to the
November 2014 Staff Report for the 2014 Triennial Review of the
WATER QUALITY CONTROL PLAN
for the
NORTH COAST REGION

February 25, 2015

In response to the public comments on the proposed Basin Plan amendment project priorities, this addendum has been prepared to summarize the changes to the proposed priorities in the November 21, 2014 Staff Report as follows:

1. Add the revision of beneficial uses and water quality objectives as a potential outcome of priority #1c – Develop ocean beaches and freshwater streams bacteria TMDL Action Plan;

2. Upgrade the designation of Outstanding National Resource Waters (beginning with the Smith River) as priority #4; revise draft proposed priority project #4 as # 5, #5 as #6, and #6 as #7; and

3. Increase the number of projects to be included in the high priority category from 6 to 7 to account for the assistance of scientific aides.