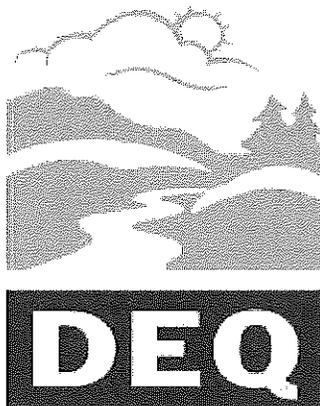


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 08/13/1999**



**State of Oregon
Department of
Environmental
Quality**

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*****Revised*** A G E N D A**

ENVIRONMENTAL QUALITY COMMISSION MEETING

August 12-13, 1999
Klamath Falls, Oregon

Notes: Because of the uncertain length of time needed for each agenda item, the Commission may deal with any item at any time in the meeting. If a specific time is indicated for an agenda item, an effort will be made to consider that item as close to that time as possible. However, scheduled times may be modified if agreeable with participants. Anyone wishing to listen to the discussion on any item should arrive at the beginning of the meeting to avoid missing the item of interest.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. The public comment period has already closed for the Rule Adoption items and, in accordance with ORS 183.335(13), no comments can be presented to the Commission on those agenda items. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Thursday, August 12, 1999

The Commission will tour various sites in the Klamath Basin before the meeting

Oregon Institute of Technology

3201 Campus Drive

Student Center

Klamath Falls, Oregon

4:30-6:30 p.m. Meet with Local Officials

Friday, August 13, 1999

Klamath County Government Center

305 Main St., Hearing Room 219

Klamath Falls, Oregon

Beginning at 8:30 a.m.

A. Approval of Minutes

B. †Rule Adoption: Green Permits

- C. **Informational Item:** Application of The Natural Step Principles at Collins Products, Klamath Falls
- D. **Informational Item:** ~~Update on 2-Cycle Marine Engines~~
This item has been moved to the September 30-October 1, 1999 EQC Meeting
- E. **Action Item:** Final Order Regarding the Appeal of Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129
- F. **Action Item:** City of Silverton Request for Mass Load Increase and Exception to Minimum Dilution Rule
- G. **Action Item:** Application for Designation as a Quiet Area for an Area Outside O'Brien, Oregon
- H. **Informational Item:** Legislative and Budget Update

I. **Commissioners' Reports**

J. **Director's Report**

Hearings have already been held on the Rule Adoption items and the public comment period has closed. In accordance with ORS 183.335(13), no comments can be presented by any party to either the Commission or the Department on these items at any time during this meeting.

The Commission will have lunch at 12:00 noon. . No Commission business will be discussed.

The Commission has set aside August 18, 1999, for their next meeting. It will be in Portland, Oregon.

Copies of staff reports for individual agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204, telephone 229-5301, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

If special physical, language or other accommodations are needed for this meeting, please advise the Director's Office, (503)229-5301 (voice)/(503)229-6993 (TTY) as soon as possible but at least 48 hours in advance of the meeting.

July 29, 1999

Kingsley Field

Arrive 8:30 AM
Depart 9:00 AM

Klamath Overlook

Arrive 9:45 AM
Depart 10:00 AM

Spring Ck. Overlook

Arrive 10:20 AM
Depart 10:55 AM

Sprague R. Overlook

Arrive 12:00 Noon
Depart 12:15 PM

Bonanza Spring

Arrive 12:45 PM
Depart 1:30 PM

Quality Inn - K-Falls

Arrive 3:00 PM

OREGON WATER RESOURCES DEPARTMENT

KLAMATH ADJUDICATION AND ALTERNATIVE DISPUTE RESOLUTION

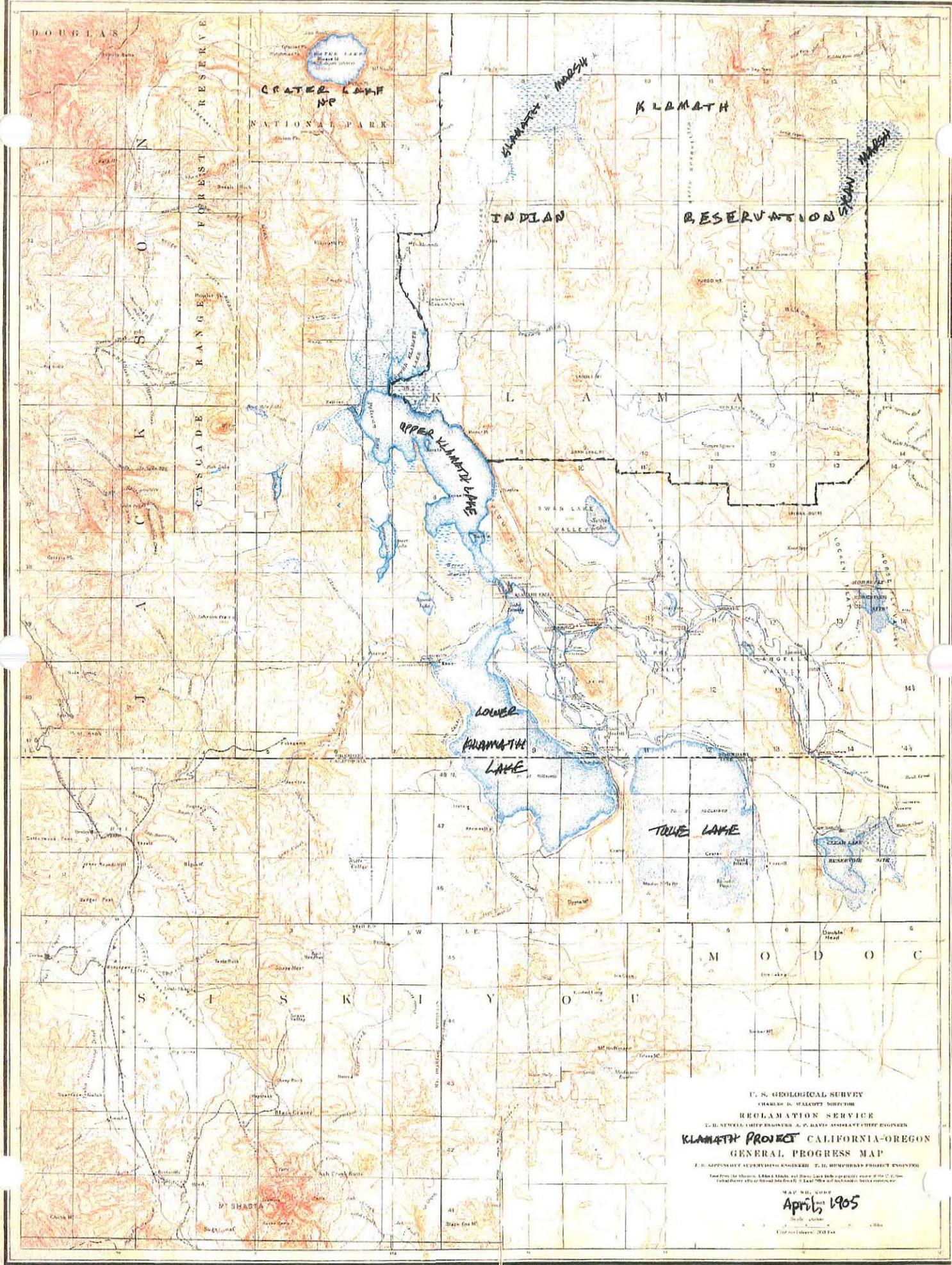
The Klamath Basin lies east of the Cascade Mountains in South-central Oregon. Water is used in the Basin for almost every category of beneficial use. In addition, the streams, rivers lakes and riparian areas of the Basin are home to a wide variety of fish and wildlife species. Much of the Basin is semi-arid; therefore, irrigation is essential for crop production. The United States Bureau of Reclamation Klamath Project is located along the Oregon/California border in the south portion of the Basin. The Project receives water from the Klamath and Lost Rivers and the water stored in Upper Klamath Lake and Gerber and Clear Lake Reservoirs. In addition, four large federal wildlife refuges, Oregon's only national park and the former Klamath Indian Reservation are located in the Basin.

The Oregon Water Resources Department (Department) initiated the Klamath Basin Adjudication (KBA) in 1975. KBA is an Oregon general stream adjudication conducted under the provisions of ORS 539.010 through 539.220. The final adjudication decree will be issued by the Klamath County Circuit Court. The KBA is the seventh subbasin adjudication in the Klamath Basin. All persons claiming a federal reserved water right or a right to water the use of which began before February 24, 1909, were required file proofs of claim with the Department during the 1990-91 private right claiming period or the 1996-97 federal water right claiming period. Approximately 700 claims were filed in the KBA, including approximately 400 claims filled by various agencies of the United States Government and the Klamath Tribes. The KBA is the first Oregon general stream adjudication in which large, complex federal claims have been filed.

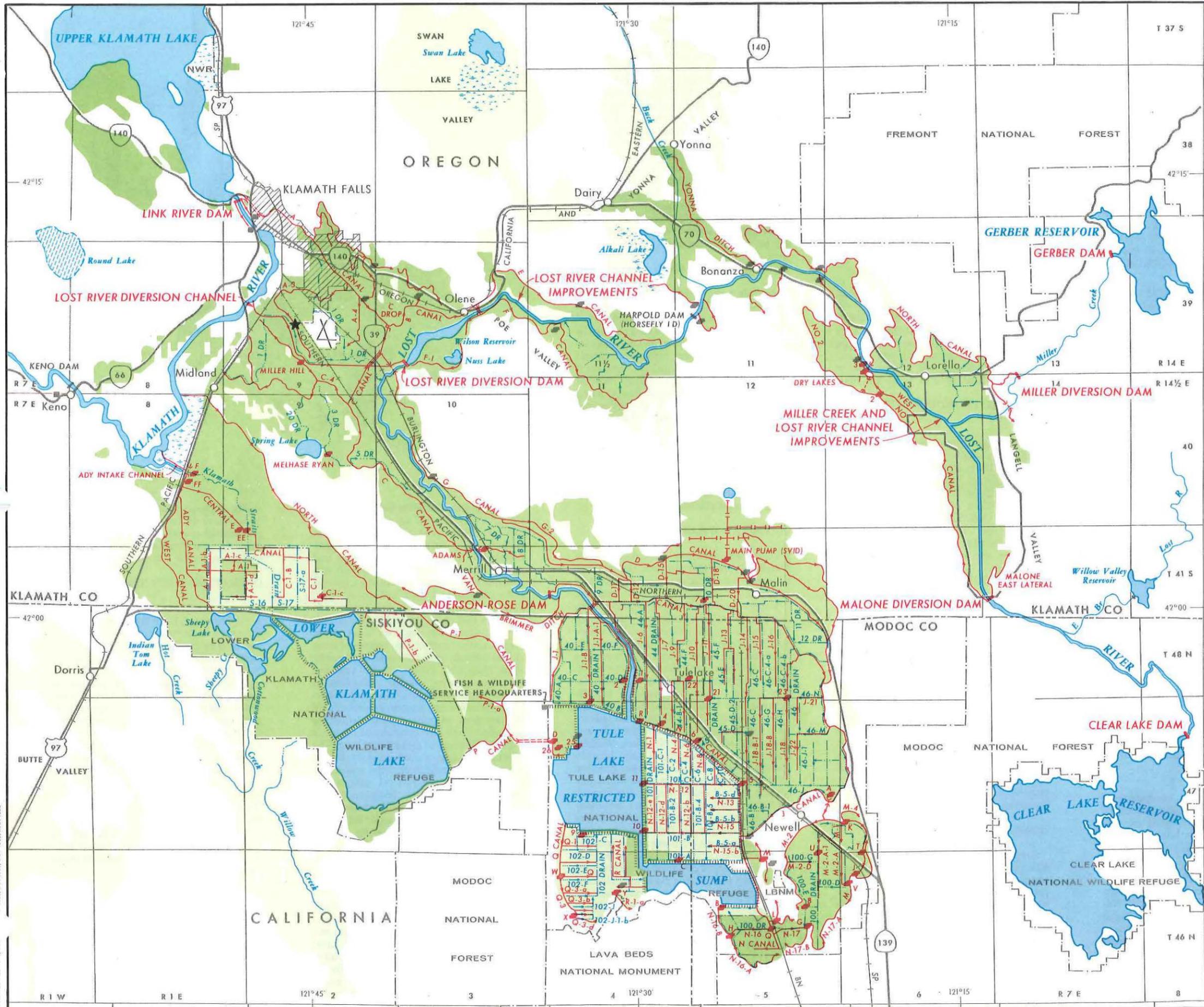
Department staff will review each claim for completeness. When the claim review is completed, the Department will open the claims for inspection by anyone interested in the adjudication. Following the open inspection period, any "party" may submit contests of claims to the Department. A party is defined in the Department's administrative rules, "includes all claimants and holders of permitted, certificated, or decreed water rights on the stream subject to the adjudication." Following resolution of the contests, the KBA adjudicator will draft the findings of fact and order of determination to be presented to the Klamath County Circuit Court. After opportunities for parties to file exceptions to the findings and determination, the Circuit Court will issue its water right decree. Standard judicial appeal procedures are available to all parties; however, once final the decree is the final determination of the pre-1909 and federal reserved water rights in the Klamath Basin.

Given the magnitude of the claims and the complex adjudication of these claims, the Department believes that some form of alternative dispute resolution (ADR) could be used to resolve many of the issues surrounding the adjudication. In addition, resolution of the adjudication issues will likely involve many collateral matters such as the balance between water supply and demand, conjunctive surface water/ground water administration, water quality, endangered species, interstate water administration and state/federal coordination in water management. Therefore, the Department has initiated a voluntary ADR process to provide a forum to address adjudication claim issues and the collateral matters related to allocation and management of water in the basin.

The ADR Process is intended to provide a voluntary process for resolution of KBA contests as well as a forum for evaluation of the full range of water allocation and management issues in the Basin. The ADR Process is a forum for claimants, other water right holders and interested parties to meet and discuss opportunities for resolution of the Basin's water issues. The Director of the Department is the ADR Process leader. A neutral mediator from outside the Department is facilitating the ADR meetings.



U. S. GEOLOGICAL SURVEY
 CHARLES D. WALCOTT DIRECTOR
 RECLAMATION SERVICE
 E. H. NEWELL CHIEF ENGINEER A. P. BAYNE ASSISTANT CHIEF ENGINEER
KLAMATH PROJECT CALIFORNIA-OREGON
 GENERAL PROGRESS MAP
 J. E. APPENDIX SUPERVISING ENGINEER E. H. HUMPHREYS PROJECT ENGINEER
Scale from the Standard, United States and British Lake Levels approximately correct if the C. G. M. datum is used and the datum is the same as that of the U. S. G. S. and the British datum.
 MAY 1905
April 1905
 U. S. GEOLOGICAL SURVEY



- BUREAU OF RECLAMATION COMPLETED OR AUTHORIZED WORKS**
- DAM AND RESERVOIR
 - DRAIN
 - CANAL
 - PIPELINE
 - SIPHON
 - FLUME
 - TUNNEL
 - DROP
 - PUMPING PLANT
 - PROJECT HEADQUARTERS
 - WATER SERVICE AREA
 - PROJECT LAND LEASE AREA
 - IRRIGATION DISTRICT PUMPING PLANT
 - PRIVATE UTILITY POWERPLANT

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
KLAMATH PROJECT
 OREGON - CALIFORNIA
 MID-PACIFIC REGION
 MAP NO. 12-208-124
 MILES
 0 2 4 6
 KILOMETERS
 0 2 4 6
 MARCH 1998

PRINTED FEB 1976, SEF
 NY 1985, JAN 1989, OCT 1995, MAR 1998

FACTUAL DATA ON THE KLAMATH PROJECT

IRRIGATION PLAN

The Klamath Project on the Oregon-California border in Oregon's Klamath County and California's Siskiyou and Modoc Counties was one of the earliest Federal reclamation projects. In early 1905, Oregon and California State Legislatures ceded title in Lower Klamath and Tule Lakes to the United States for project development under provisions of the Reclamation Act of 1902. Construction was authorized by the Secretary of the Interior on May 15, 1905, for project works to drain and reclaim lakebed lands of the Lower Klamath and Tule Lakes, to store waters of the Klamath and Lost Rivers, to divert irrigation supplies, and to control flooding of the reclaimed lands. Under provisions of the Reclamation Act, project costs were to be repaid through the sale of water rights to homesteaders on the reclaimed project lands.

WATER SUPPLY

Two main sources supply the water for the Klamath Project. One consists of Upper Klamath Lake and the Klamath River, and the other consists of Clear Lake Reservoir, Gerber Reservoir, and Lost River, which are located in a closed basin. The total drainage area which includes the Lost River and Klamath River watershed above Keno is approximately 5,700 mi² (1470 x 10³ ha).

FEATURES OF THE PROJECT PLAN

LINK RIVER DAM on Link River at the head of the Klamath River and just west of Klamath Falls, Oregon, regulates flow from Upper Klamath Lake Reservoir. This reservoir is a principal source of water supply for the project. The dam is a reinforced concrete slab structure, with a height of 22 ft (7 m) and a crest length of 435 ft (133 m). The reservoir has a capacity of 735,000 acre-ft (907 x 10⁶ m³) and is operated by the Pacific Power and Light Company, subject to Klamath Project rights.

GERBER DAM and Reservoir on Miller Creek, 14 mi (23 km) east of Bonanza, Oregon, provides storage for irrigation and reduces flow into the reclaimed portions of Tule Lake and the restricted sump areas in the Tule Lake National Wildlife Refuge. The dam is a concrete arch structure, with a height of 84.5 ft (25.8 m) and a crest length of 478 ft (146 m). The reservoir has a capacity of 94,000 acre-ft (116 x 10⁶ m³).

CLEAR LAKE DAM and Reservoir on Lost River in California, about 19 mi (31 km) southeast of Malin, Oregon, provides storage for irrigation and reduces flow into the reclaimed portion of Tule Lake and the restricted sump areas in Tule Lake National Wildlife Refuge. The dam is an earth and rock fill structure, with a height of 42 ft (13 m) and crest length of 840 ft (256 m). The reservoir has a capacity of 527,000 acre-ft (650 x 10⁶ m³).

MALONE DIVERSION DAM on Lost River, about 11 mi (18 km) downstream from Clear Lake Dam, diverts water to serve lands in Langell Valley. The dam, and earth embankment with a concrete gate structure, has a height of 32 ft (10 m) and a crest length of 515 ft (157 m).

LOST RIVER DIVERSION DAM on Lost River, about 4 mi (6 km) below Olene, Oregon, diverts excess water to the Klamath River through the Lost River Diversion Channel and thereby controls downstream flow in Lost River to control or restrict flooding of the reclaimed portions of the Tule Lake bed and to regulate sumps of the Tule Lake National Wildlife Refuge. It is a horseshoe-shaped, multiple-arch concrete structure with earth embankment wings. The structure height is 42 ft (13 m) and the crest length is 675 ft (206 m).

LOST RIVER DIVERSION CHANNEL extends from the Lost River Diversion Dam to the Klamath River, a distance of nearly 8 mi (13 km). The channel carries excess water to the Klamath River and also supplies additional irrigation water from the Klamath River by reverse flow for the reclaimed lakebed lands of Tule Lake.

ANDERSON-ROSE DAM on the Lost River, about 3 mi (5 km) southeast of Merrill, Oregon, diverts water to serve the lands reclaimed from the bed of Tule Lake. The dam is a reinforced concrete slab and buttress structure with a height of 23 ft (7 m) and a crest length of 324 ft (99 m).

MILLER DIVERSION DAM on Miller Creek, 8 mi (13 km) below Gerber Dam, diverts water to serve lands in Langell Valley. The dam is a concrete weir, removable crest, and earth embankment wing structure, with a height of 32 ft (10 m) and crest length of 290 ft (88 m).

PUMPING PLANTS. There are 5 major pumping plants with power input ranging from 450 to 3,650 hp (336 to 2722 kW) and capacities from 60 to 300 ft³/s (1.7 to 8.5 m³/s), and 40 pumping plants of less than 1,000 hp (746 kW).

CANALS, LATERALS, AND DRAINS. There are 18 canals with a total length of 185 mi (298 km) and diversion capacities ranging from 35 to 1,150 ft³/s (1 to 33 m³/s). Laterals total 516 mi (830 km) and drains 728 mi (1172 total km).

TULE LAKE TUNNEL. A concrete-lined tunnel, 6,600 ft (2000 m) in length and with a capacity of 300 ft³/s (8 m³/s) conveys drainage water from Tule Lake restricted sumps to Lower Klamath Lake.

KLAMATH STRAITS DRAIN. The enlarged 600 ft³/s (17 m³/s) drain conveys drainage water from Lower Klamath National Wildlife Refuge and irrigated land which has been reclaimed from Lower Klamath Lake. The drain, which extends from the State Line Road northwesterly to Klamath River, removes the excess winter flows and the drainage from the lower basin, a closed basin, to the Klamath River.

IRRIGABLE ACRES

The project area includes 233,625 acres (94 545 ha) of irrigable lands of which 204,492 acres (82 758 ha) were irrigated by the project in 1979.

SOILS

Soil varies from sandy loam to peaty and clay loams throughout the irrigable areas.

IRRIGATION SEASON

The average irrigation season extends from April through September. The growing season varies considerable from year to year, but averages approximately 120 days from about May 15 to September 15.

PRECIPITATION AND TEMPERATURE

The annual precipitation over the project area averages about 14 in (356 mm). At Klamath Falls temperatures have ranged between recorded extremes of 105 °F (41 °C) and -24 °F (-31 °C). Temperatures average about 67 °F (19 °C) during July and August, 29 °F (-2 °C) during the coldest winter month and about 48 °F (9 °C) for the year.

PRINCIPAL PRODUCTS AND MARKETS

The principal crops grown in this area are cereal grains, alfalfa hay, irrigated pastures for beef cattle, onions, potatoes, and grass seed. The area is noted for the production of malting barley. With excellent rail connections to San Francisco and Portland, both within a distance of 400 mi (644 km) from the project area, the principal markets for agricultural products are in Oregon and California, and adjoining states.

BASIN GEOGRAPHY

The Upper Klamath River Basin as shown on the above map encompasses an area of about 9,500 mi² (2460 x 10³ ha), including the Klamath Project service area. The terrain varies from rugged, heavily timbered mountain slopes to rolling sagebrush benches and broad flat valleys. Most of the valleys of the basin area high and comparatively flat valleys. Most of the valleys of the basin are high and comparatively flat; the elevation above sea level ranging from 2,600 ft (792 m) in Scott Valley to 5,000 ft (1524 m) in the Sycan Marsh. The highest of the mountains is Mt. Shasta, 14,161 ft (4316 m) above sea level. Forest lands total about two-thirds of the basin area and most of the remaining third is arable land.

HOMESTEAD LANDS

Oregon and California legislation which relinquished state title to project lands, and congressional action which directed the project undertaking, provided for disposition of the reclaimed lands in accordance with the 1902 Reclamation Act. Under provisions of the act, the reclaimed public lands were to be opened for homesteading, subject to water right charges designed to repay project costs. The first public lands were opened for homestead in March 1917, for Unit 3 of the Main Division which in-

cluded 3,250 acres (1315 ha) of private lands and 2,700 acres (1093 ha) of public lands. The 1917 land opening notice announced a construction charge of \$39 per irrigable acre for land already in private ownership and \$45 per irrigable acre for unentered public land. Reclaimed lands in the Tule Lake Division were opened for homestead entry under 10 different public notices - the first in 1922 and the last in 1948. In total, about 44,000 acres (18 x 10³ ha) making up 614 farm units were homesteaded in the Tule Lake Division. The 1922 homestead notice, later recalled, included a construction charge of \$90 per irrigable acre. Subsequent land openings in the Tule Lake Division included a construction charge of \$88.35 per acre, contingent on the landowners forming an irrigation district to assume joint liability for construction costs.

PUBLIC LEASE LANDS

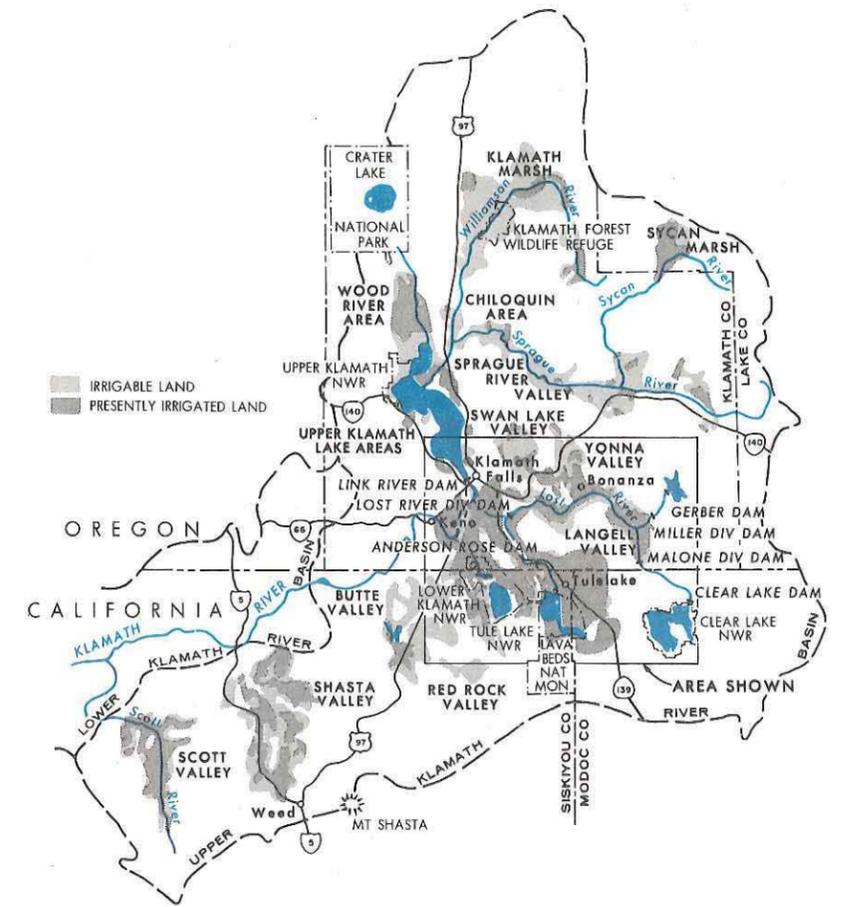
As Tule Lake receded, reclaimed lands were leased for farming before opening to homestead. The practice of leasing served to develop and improve the land during the construction of irrigation and drainage facilities to serve farm units and permit homestead entry. To protect developed homestead lands from flooding, areas at lower elevations were designated as sump areas and reserved for flood control and drainage. Some of the marginal sump acreage subject to less frequent flooding was made available for leasing, but retained in Federal ownership. In addition to providing flood control, the reserved sump areas also preserved existing marsh habitat which has subsequently been included within the basin's national wildlife refuge areas.

NATIONAL WILDLIFE REFUGES

A strategic junction in the routes of the Pacific Flyway, the Klamath Basin annually receives the largest concentration of migratory waterfowl in North America. During migration, the area provides feeding and resting grounds for more than 5 million ducks and geese. By Executive Order in 1908, President Theodore Roosevelt established the Lower Klamath Lake area as the first Federal wildlife refuge for waterfowl in the Nation. Today the Klamath Basin is the site of five national wildlife refuges: the Lower Klamath, Tule Lake, Clear Lake, and Upper Klamath refuges within the Klamath Project service area, and the Klamath Forest National Wildlife Refuge north of the project area. In addition to wildlife conservation, a key function of the refuge areas is to decrease crop depredation in California's Central and Imperial Valleys. Refuge areas attract and delay the migrating birds during harvest of rice and other valley crops. Provisions for waterfowl management purposes are included in Public Lease Land agreements to provide for the growing of grain and cereal crops for waterfowl forage. The bulk of waterfowl food is gleaned by the birds from the lease lands after harvest. Additional acreage in the refuge areas is farmed by the Fish and Wildlife Service specifically for waterfowl food, nesting habitat, and cover.

RECREATION, FISH, AND WILDLIFE

While migrating waterfowl are the most



widely recognized wildlife feature of the basin, a variety of other animals, birds, and fish inhabit the area. Game resources include deer, elk, antelope, bear, and cougar. Furbearers include muskrat, beaver, and mink. Upland game birds include 10 species, most notably doves, pheasant, grouse, and quail. Rainbow trout is the most important game fish, found in relatively large numbers and most sought by fishermen. Basin fishery also includes three other major species of trout, two species of landlocked salmon, and eight species of warm-water game fish. Recreation and tourism, the fastest growing industry, ranks third as a contributor to the basin's economy, following agriculture and timber. Sport hunting of waterfowl at refuge public shooting grounds brings into commercial channels substantial sums of money each year. The spectacular sight of millions of ducks and geese, and thousands of other water and marsh birds on the Federal refuges is a prime tourist attraction. Klamath Project reservoirs join other federally administered parks and forest areas as major recreation sites, providing opportunities for fishing, swimming, boating, skiing, camping, and picnicking.

HYDROELECTRIC POWER

By contract executed in 1917, the United States authorized California-Oregon Power Company (now the Pacific Power and Light Company) to construct Link River Dam. The dam, deeded to the United States, is operated and maintained by the power company in accordance with project needs. Under the contract, all irrigation

rights and requirements are protected and water users of the Klamath Project are provided for as preference power customers. The original contract was amended in 1956 and extended for a 50-year period.

OPERATING AGENCIES

Clear Lake Dam, Gerber Dam, and Lost River Diversion Dam are operated by the Bureau of Reclamation; Link River Dam is operated by Pacific Power and Light Company; Anderson-Rose Dam is operated by Tulelake Irrigation District; and Malone and Miller Diversion Dams are operated by Langell Valley Irrigation District. Project canals and pumping plants are operated by the various irrigation districts. Recreational facilities at Lower Klamath Lake, Tule Lake, and Upper Klamath Lake are administered by the Fish and Wildlife Service. The Bureau of Land Management administers Gerber Reservoir recreation facilities. Recreation facilities at Malone and Wilson Reservoirs are administered by the Bureau of Reclamation. National wildlife refuges in the Klamath Basin are administered by the Fish and Wildlife Service as part of the national wildlife refuge system.

Address all inquiries regarding additional information concerning this project to:

Regional Director, Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825-1898

**BRIEFING ON
TERMINATION AND RELATED ISSUES
FOR PARTICIPANTS IN THE
ALTERNATIVE DISPUTE RESOLUTION PROCESS**

May 11, 1999 Klamath Falls, Oregon

I. Historical Background of the Tribes.

The Klamath and Modoc Tribes, and the Yahooskin Band of the Snake Indians (here called the "Tribes" or "Klamath Tribes") have lived in the Klamath Basin since time immemorial. The Tribes' origin myths hold that the Klamath people were created here. Modern anthropologists say that the Basin has been inhabited for at least 14,000 years. Prior to the arrival of Western Europeans the Tribes derived an abundant livelihood from the land and its resources. The arrival of the federal military in the mid-1800's marked the beginning of the diminishment of the Tribes' land and resources.

In 1864 the Tribes together with representatives of the United States government met at Council Groves to negotiate the Peace Treaty of 1864.¹ Both the Tribes and the United States wanted to negotiate an arrangement that would allow the Tribes to continue their self-sufficiency. The United States, in particular, did not want to have to undertake the support of the Indians. Accordingly, in the Treaty, while the Tribes ceded over 20 million acres of land, the parties agreed to reserve to the Tribes a significant land base, and further agreed to a number of measures essential to the future capability of the Tribes to derive a livelihood from their diminished land base. These Treaty promises included the following.

- A. The Tribes reserved to their exclusive use and occupation 2.5 million acres of their former lands. These lands were deemed by the Tribes to be the minimum necessary to sustain their livelihood.
- B. The Tribes also reserved the *exclusive* right to hunt, fish, trap and gather within the Reservation boundaries, and they reserved all of the water necessary to meet the needs of the Reservation.

The United States, however, began immediately to diminish the Reservation through fraudulent surveys and other takings until by 1954 it was reduced to 1.2 million acres, 880,000 of

¹ A copy of the Treaty is attached here.

which were trust lands held by the Tribes or tribal members.²

II. A Detailed history of Termination.³

Synopsis: Termination for the Klamath Tribes was, in its simplest terms:

- a unilateral federal policy which identified a tribe that was by most measures successful; primarily because of their ability to utilize the resources of their reservation -- hunting, fishing, trapping, gathering, timber and ranching;
- a federal determination that the tribal people were ready assimilation into the majority culture, based on the Tribes' success at deriving their livelihood from the land, BUT over the objections of elected tribal officials and against the determination by the BIA that the Tribes were not ready for this experiment;
- implementation of a federal plan that the assimilation would take place by taking away from the Tribes the very resources that made them successful, and against the recommendations of the Stanford Institute which had done the only study by anyone concerning the likely success of Termination -- concluding that it would be a dismal failure;
- and when it was clear that the experiment was a dismal failure the federal government and others blamed the Klamath people because they didn't make this fatally flawed federal policy work.

A. **A Federal Indian Policy Disaster.** Federal-Indian policy was set by the federal government with NO meaningful Indian input and experienced wide swings from the time of the establishment of the United States until present day.

1. 1780's to 1830's "The Colonial Era" generally honored tribal sovereignty, negotiated for ownership of tribal lands.
2. 1830's to 1880's "The Removal Era" forced removal and limitation of tribes to reserved homelands.
3. 1880's to 1934 "The Allotment Era" forced assimilation and diminishment of tribal land holdings. (American Indian tribes lost 90 million acres of reservation land in this era.)

² Please see the attached maps.

³ Officially, Termination was brought about by The Klamath Termination Act of August 13, 1954, 25 U.S.C. § 564. A copy of the Act is attached.

4. 1934 to early 1950's "Indian Reorganization Act Era" supported tribal governments and respected tribal self determination but created largely dysfunctional and non-traditional government systems; the United States failed to keep most of the promises of the Act to assist tribes in retention and re-acquisition of former tribal lands.
5. 1953 to 1970's "The Termination Era" forced assimilation and unilateral abrogation of federal responsibilities; this resulted in the loss of significant rights and fiscal benefits.
6. 1970's to Present "The Era of Self-Determination" restored to Tribes genuine and meaningful input into the formulation and implementation of federal Indian policy.⁴

B. Tribal economics prior to termination. The Klamath people were essentially self-sufficient prior to Termination. For example:

1. tribal members' per capita income was 93% of majority society;
2. the Tribes were no financial burden on taxpayers:
 - a. the Klamaths were the only tribe in the Nation paying all the Reservation's federal administrative costs;
 - b. only five tribal members were on welfare in 1957, four on old age assistance and one on aid to disabled.

C. Tribal livelihood and economy was land based including hunting, fishing, trapping, gathering, timber, and ranching. This successful tribal economy was derived exclusively from land based activities – from subsistence hunting, fishing and gathering and income from timber and ranching activities. In addition the Tribes had their own credit system and loan funds supported by these resources.

D. Termination was unilateral federal initiative. The Termination legislation for the Klamath Tribes was set in motion by a single member of Congress and implemented over official tribal protest. Tribal members were never given a vote on whether to accept or reject Termination.

1. The legislation was largely pushed by a single senator.

⁴ This doesn't mean that tribes get everything they want. Few, if any, political groups enjoy that benefit. What it does mean is that Indian policy is no longer adopted by Congress or the Executive without tribal input on the issue. In that sense, tribes have joined the rest of America in participation in the formulation of policies that impact their lives.

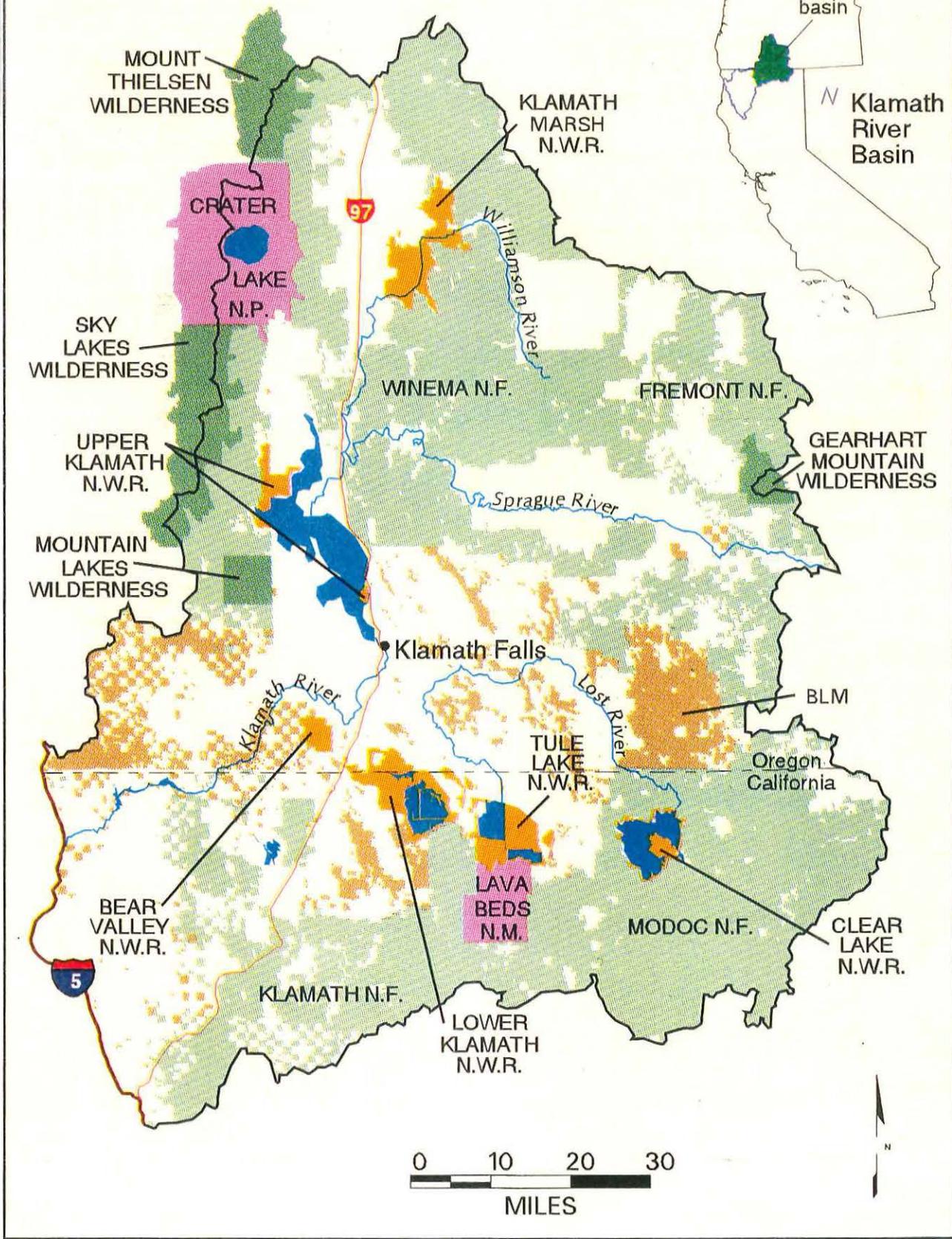
2. That senator exploited the sympathies of one un-elected Klamath member and then claimed tribal support.
3. Tribal elected leaders were in Washington to secure legislation to pay federal debts to the Tribes. The Senator held that legislation hostage to force the leaders to appear at the Termination hearings. Even under this pressure tribal elected leaders refused to support the Termination legislation.
4. There was tribal support for doing away with federal supervision *BUT NOT* tribal lands, but this support was subverted into a plan to divest tribal ownership of their lands.

E. **Federal plan for Termination.** The federal plan for Klamath Termination was contrary to the criteria adopted by the federal government, and the Klamath Termination Act was enacted against the recommendation of the BIA.

1. The federal government (through the actions of a single senator) identified the Klamaths as being ready for Termination of its governmental and societal structure and assimilation into the mainstream of the majority culture. This was based on the legislative determination that the Tribes were ready because of their progressive ways.
2. There were no studies done prior to Termination. The only study on the impacts of termination prior to its implementation was done by the Stanford Institute. That study concluded that the implementation of Termination would be a disaster. The Stanford study was ignored. Termination was implemented against this recommendation; it became the disaster that was predicted.
3. The results of termination were that fully one-half of the adults and over half of all tribal members had their assets placed into mandatory guardianships, trusts or conservatorships (over 1,200 in all)⁵ because they were determined to be "incompetent" to handle their affairs.
 - a. These guardianship accounts were largely managed by local attorneys, or bank trust officers (most of whom were attorneys). It is well known that some of these "trustees" went to jail for the more outrageous violations of the trusts.

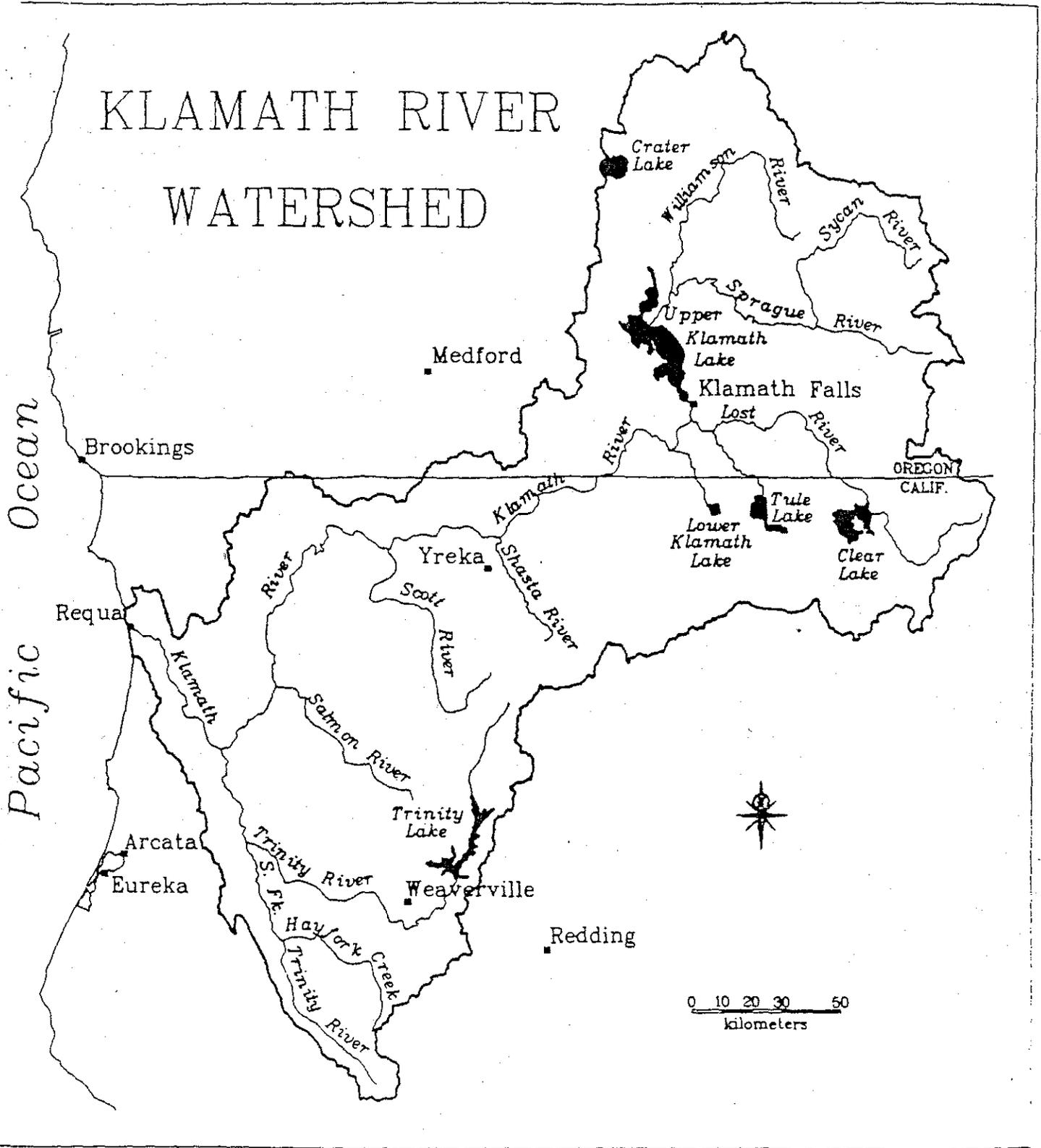
⁵ There were at the time of Termination 2,133 enrolled members of the Klamath Tribes who were declared by Congress to be prepared for full assimilation into the majority society. That very same government then determined that fully 59% of all the tribal members were incompetent to handle their own affairs.

Upper Klamath River Basin



KLAMATH RIVER WATERSHED

Pacific Ocean



OREGON
CALIF.

0 10 20 30 50
kilometers

FACTUAL DATA ON THE KLAMATH PROJECT

IRRIGATION PLAN

The Klamath Project on the Oregon-California border in Oregon's Klamath County and California's Siskiyou and Modoc Counties was one of the earliest Federal reclamation projects. In early 1905, Oregon and California State Legislatures ceded title in Lower Klamath and Tule Lakes to the United States for project development under provisions of the Reclamation Act of 1902. Construction was authorized by the Secretary of the Interior on May 15, 1905, for project works to drain and reclaim lakebed lands of the Lower Klamath and Tule Lakes, to store waters of the Klamath and Lost Rivers, to divert irrigation supplies, and to control flooding of the reclaimed lands. Under provisions of the Reclamation Act, project costs were to be repaid through the sale of water rights to homesteaders on the reclaimed project lands.

WATER SUPPLY

Two main sources supply the water for the Klamath Project. One consists of Upper Klamath Lake and the Klamath River, and the other consists of Clear Lake Reservoir, Gerber Reservoir, and Lost River, which are located in a closed basin. The total drainage area which includes the Lost River and Klamath River watershed above Keno is approximately 5,700 mi² (1470 x 10³ ha).

FEATURES OF THE PROJECT PLAN

LINK RIVER DAM on Link River at the head of the Klamath River and just west of Klamath Falls, Oregon, regulates flow from Upper Klamath Lake Reservoir. This reservoir is a principal source of water supply for the project. The dam is a reinforced concrete slab structure, with a height of 22 ft (7 m) and a crest length of 435 ft (133 m). The reservoir has a capacity of 735,000 acre-ft (907 x 10⁶ m³) and is operated by the Pacific Power and Light Company, subject to Klamath Project rights.

GERBER DAM and Reservoir on Miller Creek, 14 mi (23 km) east of Bonanza, Oregon, provides storage for irrigation and reduces flow into the reclaimed portions of Tule Lake and the restricted sump areas in the Tule Lake National Wildlife Refuge. The dam is a concrete arch structure, with a height of 84.5 ft (25.8 m) and a crest length of 473 ft (146 m). The reservoir has a capacity of 94,000 acre-ft (116 x 10⁶ m³).

CLEAR LAKE DAM and Reservoir on Lost River in California, about 19 mi (31 km) southeast of Malin, Oregon, provides storage for irrigation and reduces flow into the reclaimed portion of Tule Lake and the restricted sump areas in Tule Lake National Wildlife Refuge. The dam is an earth and rock fill structure, with a height of 42 ft (13 m) and crest length of 840 ft (256 m). The reservoir has a capacity of 527,000 acre-ft (650 x 10⁶ m³).

MALONE DIVERSION DAM on Lost River, about 11 mi (18 km) downstream from Clear Lake Dam, diverts water to serve lands in Langell Valley. The dam, and earth embankment with a concrete gate structure, has a height of 32 ft (10 m) and a crest length of 515 ft (157 m).

LOST RIVER DIVERSION DAM on Lost River, about 4 mi (6 km) below Olene, Oregon, diverts excess water to the Klamath River through the Lost River Diversion Channel and thereby controls downstream flow in Lost River to control or restrict flooding of the reclaimed portions of the Tule Lake bed and to regulate sumps of the Tule Lake National Wildlife Refuge. It is a horseshoe-shaped, multiple-arch concrete structure with earth embankment wings. The structure height is 42 ft (13 m) and the crest length is 675 ft (206 m).

LOST RIVER DIVERSION CHANNEL, extends from the Lost River Diversion Dam to the Klamath River, a distance of nearly 8 mi (13 km). The channel carries excess water to the Klamath River and also supplies additional irrigation water from the Klamath River by reverse flow for the reclaimed lakebed lands of Tule Lake.

ANDERSON-ROSE DAM on the Lost River, about 3 mi (5 km) southeast of Merrill, Oregon, diverts water to serve the lands reclaimed from the bed of Tule Lake. The dam is a reinforced concrete slab and buttress structure with a height of 23 ft (7 m) and a crest length of 324 ft (99 m).

MILLER DIVERSION DAM on Miller Creek, 8 mi (13 km) below Gerber Dam, diverts water to serve lands in Langell Valley. The dam is a concrete weir, removable crest, and earth embankment wing structure, with a height of 32 ft (10 m) and crest length of 290 ft (88 m).

PUMPING PLANTS. There are 5 major pumping plants with power input ranging from 450 to 3,650 hp (336 to 2722 kW) and capacities from 60 to 300 ft³/s (1.7 to 8.5 m³/s), and 40 pumping plants of less than 1,000 hp (746 kW).

CANALS, LATERALS, AND DRAINS. There are 18 canals with a total length of 185 mi (298 km) and diversion capacities ranging from 35 to 1,150 ft³/s (1 to 33 m³/s). Laterals total 516 mi (830 km) and drains 728 mi (1172 total km).

TULE LAKE TUNNEL. A concrete-lined tunnel, 6,600 ft (2000 m) in length and with a capacity of 300 ft³/s (8 m³/s) conveys drainage water from Tule Lake restricted sumps to Lower Klamath Lake.

KLAMATH STRAITS DRAIN. The enlarged 600 ft³/s (17 m³/s) drain conveys drainage water from Lower Klamath National Wildlife Refuge and irrigated land which has been reclaimed from Lower Klamath Lake. The drain, which extends from the State Line Road northwesterly to Klamath River, removes the excess winter flows and the drainage from the lower basin, a closed basin, to the Klamath River.

IRRIGABLE ACRES

The project area includes 233,625 acres (94 545 ha) of irrigable lands of which 204,492 acres (82 758 ha) were irrigated by the project in 1979.

SOILS

Soil varies from sandy loam to peaty and clay loams throughout the irrigable areas.

IRRIGATION SEASON

The average irrigation season extends from April through September. The growing season varies considerable from year to year, but averages approximately 120 days from about May 15 to September 15.

PRECIPITATION AND TEMPERATURE

The annual precipitation over the project area averages about 14 in (356 mm). At Klamath Falls temperatures have ranged between recorded extremes of 105 °F (41 °C) and -24 °F (-31 °C). Temperatures average about 67 °F (19 °C) during July and August, 29 °F (-2 °C) during the coldest winter month and about 48 °F (9 °C) for the year.

PRINCIPAL PRODUCTS AND MARKETS

The principal crops grown in this area are cereal grains, alfalfa hay, irrigated pastures for beef cattle, onions, potatoes, and grass seed. The area is noted for the production of malting barley. With excellent rail connections to San Francisco and Portland, both within a distance of 400 mi (644 km) from the project area, the principal markets for agricultural products are in Oregon and California, and adjoining states.

BASIN GEOGRAPHY

The Upper Klamath River Basin as shown on the above map encompasses an area of about 9,500 mi² (2460 x 10³ ha), including the Klamath Project service area. The terrain varies from rugged, heavily timbered mountain slopes to rolling sagebrush benches and broad flat valleys. Most of the valleys of the basin are high and comparatively flat valleys. Most of the valleys of the basin are high and comparatively flat; the elevation above sea level ranging from 2,600 ft (792 m) in Scott Valley to 5,000 ft (1524 m) in the Sycan Marsh. The highest of the mountains is Mt. Shasta, 14,161 ft (4316 m) above sea level. Forest lands total about two-thirds of the basin area and most of the remaining third is arable land.

HOMESTEAD LANDS

Oregon and California legislation which relinquished state title to project lands, and congressional action which directed the project undertaking, provided for disposition of the reclaimed lands in accordance with the 1902 Reclamation Act. Under provisions of the act, the reclaimed public lands were to be opened for homesteading, subject to water right charges designed to repay project costs. The first public lands were opened for homestead in March 1917, for Unit 3 of the Main Division which in

cluded 3,250 acres (1315 ha) of private lands and 2,700 acres (1093 ha) of public lands. The 1917 land opening notice announced a construction charge of \$39 per irrigable acre for land already in private ownership and \$45 per irrigable acre for unentered public land. Reclaimed lands in the Tule Lake Division were opened for homestead entry under 10 different public notices - the first in 1922 and the last in 1948. In total, about 44,000 acres (18 x 10³ ha) making up 614 farm units were homesteaded in the Tule Lake Division. The 1922 homestead notice, later recalled, included a construction charge of \$90 per irrigable acre. Subsequent land openings in the Tule Lake Division included a construction charge of \$88.35 per acre, contingent on the landowners forming an irrigation district to assume joint liability for construction costs.

PUBLIC LEASE LANDS

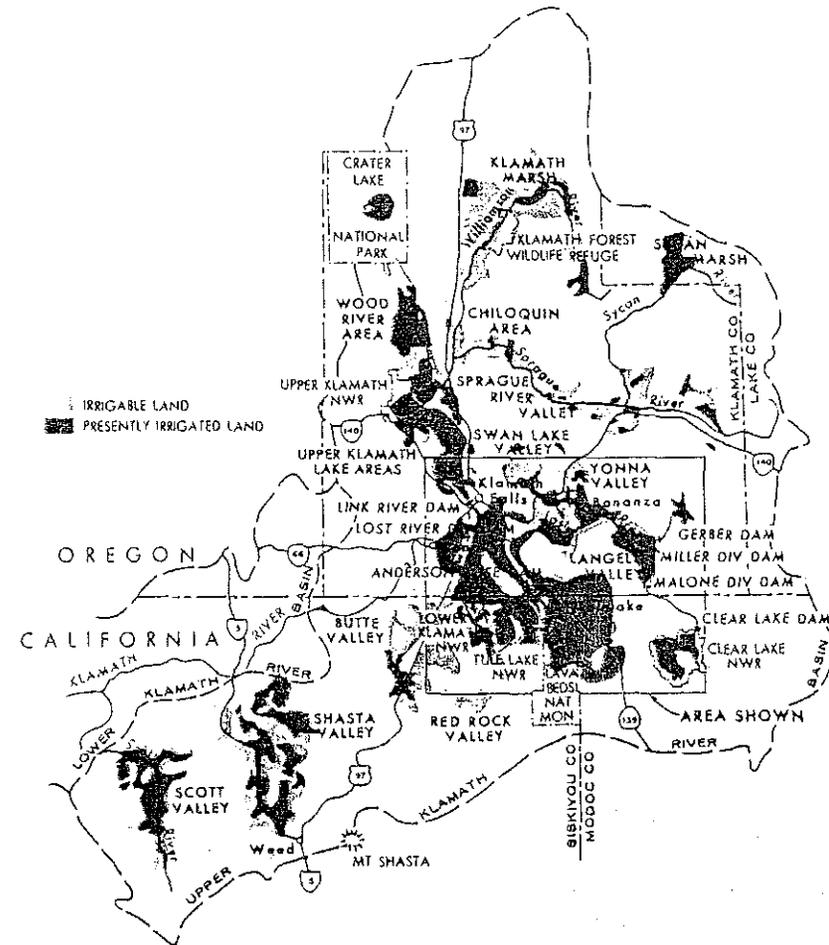
As Tule Lake receded, reclaimed lands were leased for farming before opening to homestead. The practice of leasing served to develop and improve the land during the construction of irrigation and drainage facilities to serve farm units and permit homestead entry. To protect developed homestead lands from flooding, areas at lower elevations were designated as sump areas and reserved for flood control and drainage. Some of the marginal sump acreage subject to less frequent flooding was made available for leasing, but retained in Federal ownership. In addition to providing flood control, the reserved sump areas also preserved existing marsh habitat which has subsequently been included within the basin's national wildlife refuge areas.

NATIONAL WILDLIFE REFUGES

A strategic junction in the routes of the Pacific Flyway, the Klamath Basin annually receives the largest concentration of migratory waterfowl in North America. During migration, the area provides feeding and resting grounds for more than 5 million ducks and geese. By Executive Order in 1908, President Theodore Roosevelt established the Lower Klamath Lake area as the first Federal wildlife refuge for waterfowl in the Nation. Today the Klamath Basin is the site of five national wildlife refuges: the Lower Klamath, Tule Lake, Clear Lake, and Upper Klamath refuges within the Klamath Project service area, and the Klamath Forest National Wildlife Refuge north of the project area. In addition to wildlife conservation, a key function of the refuge areas is to decrease crop depredation in California's Central and Imperial Valleys. Refuge areas attract and delay the migrating birds during harvest of rice and other valley crops. Provisions for waterfowl management purposes are included in Public Lease Land agreements to provide for the growing of grain and cereal crops for waterfowl forage. The bulk of waterfowl food is gleaned by the birds from the lease lands after harvest. Additional acreage in the refuge areas is farmed by the Fish and Wildlife Service specifically for waterfowl food, nesting habitat, and cover.

RECREATION, FISH, AND WILDLIFE

While migrating waterfowl are the most



widely recognized wildlife feature of the basin, a variety of other animals, birds, and fish inhabit the area. Game resources include deer, elk, antelope, bear, and cougar. Furbearers include muskrat, beaver, and mink. Upland game birds include 10 species, most notably doves, pheasant, grouse, and quail. Rainbow trout is the most important game fish, found in relatively large numbers and most sought by fishermen. Basin fishery also includes three other major species of trout, two species of landlocked salmon, and eight species of warm-water game fish. Recreation and tourism, the fastest growing industry, ranks third as a contributor to the basin's economy, following agriculture and timber. Sport hunting of waterfowl at refuge public shooting grounds brings into commercial channels substantial sums of money each year. The spectacular sight of millions of ducks and geese, and thousands of other water and marsh birds on the Federal refuges is a prime tourist attraction. Klamath Project reservoirs join other federally administered parks and forest areas as major recreation sites, providing opportunities for fishing, swimming, boating, skiing, camping, and picnicking.

HYDROELECTRIC POWER

By contract executed in 1917, the United States authorized California-Oregon Power Company (now the Pacific Power and Light Company) to construct Link River Dam. The dam, deeded to the United States, is operated and maintained by the power company in accordance with project needs. Under the contract, all irrigation

rights and requirements are protected and water users of the Klamath Project are provided for as preference power customers. The original contract was amended in 1956 and extended for a 50-year period.

OPERATING AGENCIES

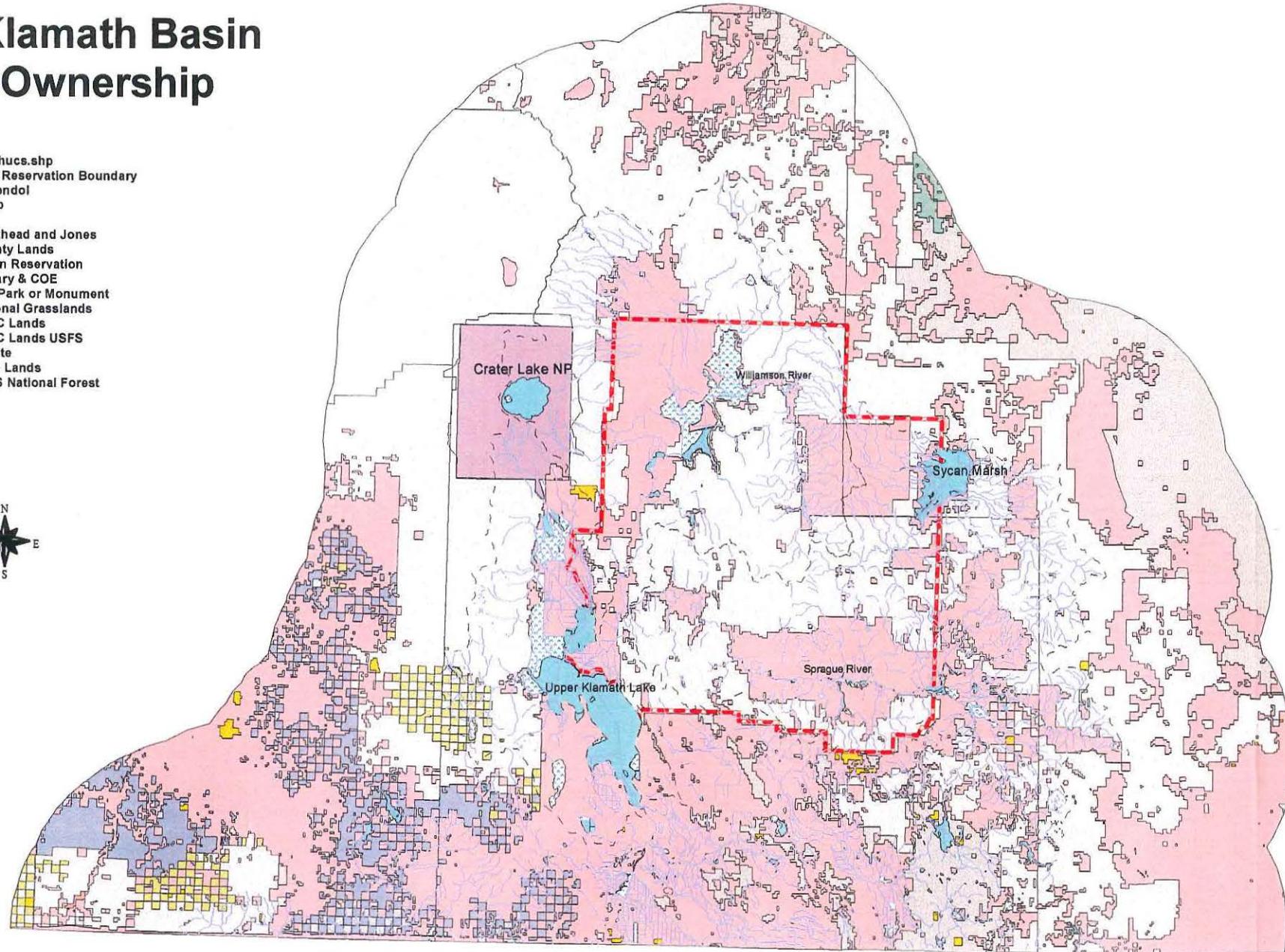
Clear Lake Dam, Gerber Dam, and Lost River Diversion Dam are operated by the Bureau of Reclamation; Link River Dam is operated by Pacific Power and Light Company; Anderson-Rose Dam is operated by Tulelake Irrigation District; and Malone and Miller Diversion Dams are operated by Langell Valley Irrigation District. Project canals and pumping plants are operated by the various irrigation districts. Recreational facilities at Lower Klamath Lake, Tule Lake, and Upper Klamath Lake are administered by the Fish and Wildlife Service. The Bureau of Land Management administers Gerber Reservoir recreation facilities. Recreation facilities at Malone and Wilson Reservoirs are administered by the Bureau of Reclamation. National wildlife refuges in the Klamath Basin are administered by the Fish and Wildlife Service as part of the national wildlife refuge system.

Address all inquiries regarding additional information concerning this project to:

Regional Director, Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825-1898

Upper Klamath Basin Land Ownership

- UKibhucs.shp
- 1864 Reservation Boundary
- Crlabndol
- Ownership
 - BLM
 - Bankhead and Jones
 - County Lands
 - Indian Reservation
 - Military & COE
 - Nat. Park or Monument
 - National Grasslands
 - O & C Lands
 - O & C Lands USFS
 - Private
 - State Lands
 - USFS National Forest



CALIFORNIA



Approved _____
Approved with Corrections _____

Minutes are not final until approved by the EQC

Environmental Quality Commission Minutes of the Two Hundred and Seventy-Sixth Meeting

**June 24-25, 1999
Tours and Regular Meeting**

On June 24, 1999, the Environmental Quality Commission traveled to Hermiston, Oregon. They toured McNary Dam and the Umatilla Chemical Depot before meeting with local officials. On June 25, 1999, the Commission met for their regular meeting at the Oxford Suites, 1050 N First Ave, Hermiston, Oregon. The following Environmental Quality Commission members were present:

Carol Whipple, Chair
Melinda Eden, Vice Chair
Linda McMahan, Member
Mark Reeve, Member

Also present were Larry Knudsen, Larry Edelman and Steve Bushong, Assistant Attorneys General, Oregon Department of Justice (DOJ); Langdon Marsh, Director, Department of Environmental Quality (DEQ); and other staff from DEQ.

Note: The Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of the record and is on file at the above address. These written materials are incorporated in the minutes of the meeting by reference.

The Commission held an executive session to consult with legal counsel regarding G.A.S.P., et al v. Department of Environmental Quality (Case No. 9708-06159) before the regular meeting on June 25. Chair Whipple called the regular meeting to order at 8:40 a.m.

A. Approval of Minutes

A motion was made by Commissioner Reeve to approve the minutes as written. Commissioner Eden seconded the motion and it carried with four "yes" votes.

B. Informational Item: Update on the Umatilla Agent Disposal Facility

Wayne Thomas, Umatilla Chemical Agent Disposal Program Manager, briefed the commission on permit modifications received and approved to date for the Umatilla Chemical Agent Disposal Facility (UMCDF). Communications between DEQ and the Permittee were discussed, and Mr. Thomas outlined the many meetings that are required to achieve clear conversation.

The Hermiston DEQ office Outreach Program was described for the Commission. The new Umatilla website will be online by late August, the Public Involvement Plan was recently implemented, and the UMCDF Public Awareness Plan was approved by the Department. The latter plan will cover systemization activities beginning in October 1999.

The current program issues were discussed as follows.

- The Dunnage Incinerator(DUN): The DUN is on hold, alternatives are being reviewed, and the Army is expected to make a decision by August 1999. Any decision will likely result in a Class 3 modification requiring EQC approval.
- Carbon Filters: The NRC will release a report on carbon filters at the end of June or early July. A representative from NRC will attend the August 19, 1999 Citizens Advisory Commission meeting to brief them.
- Legal Proceedings: The Department will treat the petitioners' letter dated December 14, 1998, as effectively requesting reconsideration and/or revocation of the permits based on new evidence. The Department will decide by mid August 1999 whether or not to consider new evidence offered by the petitioners and (assuming that such evidence will be considered) will proceed to address petitioners request for reconsideration/revocation under established statutory and regulatory guidelines.
- Construction Schedule: The Army is currently reviewing a revised construction and systemization schedule and construction is approximately 50percent complete. Plant system testing is scheduled to begin in early October and the first tests will involve activation of the boilers which will produce visible emissions. Once the boilers are fired they will operate for the life of the project. Plant System Testing does not involve chemical agents or surrogate agents.
- Storage Permit Application: The Umatilla Chemical Depot (UCD) submitted a RCRA Part B Hazardous Waste Storage Permit Application in March 1999 and it is currently under review. An initial Notice of Deficiency was issued on May 24, 1999, and a response should be received by July 26, 1999. The Department is scheduling a public information meeting in August/September to provide information and listen to public concerns prior to developing a draft permit.

The following recommendations were made to the Commission on some of the program issues:

- The EQC request that the Army provide a briefing at the August Commission meeting on Dunnage Incinerator/Secondary Waste issues.
- A future presentation by NRC on the Carbon Filter Report be done.
- Schedule a Carbon Filter Work Session.
- The Department will provide results of the compilation and a review of exhibits from the legal proceedings.

C. Action Item: Appeal of Hearing Order Assessing Civil Penalty in the Matter of Umatilla Refuse Group Cooperative, Case No. SW-ER-96-129

The Department of Environmental Quality and Umatilla Refuse Group Cooperative were both appealing the Amended Hearing Order Assessing Civil Penalty dated October 26, 1998. In that order the Refuse Group was found to be in violation of ORS Chapter 459 for establishing an unpermitted solid waste disposal site and was held liable for a civil penalty in the amount of \$4,800.

The Department was represented by Larry Edelman, Department of Justice; and the Refuse Group was represented by Val Toronto and Vera Simonton. The Department argued that the hearing officer erred in finding that the Refuse Group was liable for only one violation. Instead, the Department believed that the Refuse Group had violated ORS Chapter 459 on at least three occasions for either establishing or maintaining an unpermitted disposal site. The Refuse Group argued that they had never intended to create a solid waste disposal site thus they had not violated any statute or rule.

The Commission affirmed the Order in its findings that the Refuse Group had created an illegal solid waste disposal site. The Commission held that while the Refuse Group may have believed they had not created a solid waste disposal site, that belief did not relieve them of their legal duties to either obtain a permit or to ensure that the waste brought to the site was proper.

The Commission also affirmed the Order in its determination of the penalty amount in regards to the cooperativeness and economic benefit calculations. The Commission held that once the Refuse Group

knew there was a violation, they cooperated in having the waste removed from the site and the cost of the removal negated any economic benefit the Refuse Group may have obtained.

The Commission modified the Order in regards to the number of violations. The hearing officer held that there was only one violation since the Refuse Group was only able to 'establish' a solid waste disposal site once. The Commission held that the number of violations should be three as recommended by the Department since the statute also makes the 'maintaining' of a solid waste disposal site without a permit a violation.

Finally, the Commission modified the Order for the R factor assessed in calculating the civil penalty. The R factor is based on the level of mens rea for each violation. The Commission held that the R factor for the first violation should be zero, the second violation should be two and the third violation should be six. The increase in the R factor reflects the fact that the Refuse Group, once it was given notice by the Department that there may be problems at the site, should have taken affirmative action to prevent further improper waste from being deposited at the site. The total penalty assessed by the Commission for the three violations was \$11,400.

Commissioner Eden made a motion to have the Commission's counsel, Larry Knudsen prepare an Order with the specifications for the Commission's review and adoption at the August Commission meeting in Klamath Falls. Commissioner McMahan seconded the motion and it carried with three "yes" votes. Commissioner Reeve voted no. While agreeing with the remainder of the Commission's findings, he did not agree with the R factor determination.

D. Temporary Rule Adoption: Designate Methane Generated from Solid Waste Landfills, in Certain Circumstances, as a Hazardous Substance, Pursuant to ORS 465.400

Paul Slyman, Manager of the Cleanup Program of Waste, Management and Cleanup, and Barrett MacDougall, Business Financial Officer, presented this agenda item. The Killingsworth Fast Disposal site is a 24 acre construction and demolition landfill in NE Portland. The presentation also included information about seeking a prospective purchaser, coordinating with Metro regarding a potential release from liability, designating methane a characteristic hazardous waste, and adopting methane as a hazardous substance for the purpose of accessing the Solid Waste Orphan Site Account. The rule is limited to methane from abandoned landfills when present at concentrations greater than 5percent by volume, when a potential exists for it to migrate into confined spaces, and poses a threat to human health or safety. Commissioners wanted to ensure the Solid Waste (SW) Orphan Site Account is used wisely, and reimbursed, if possible. They also wanted know why the original post closure financial responsibility wasn't greater, and what the CU program will do if the construction is not completed within 180 days of the temporary rule adoption. The CU program intends to discuss these, and other issues with the Cleanup Advisory Committee Chair as well as SW officials in the upcoming months.

A motion was made by Commissioner Reeve to adopt the temporary rule and the statement of need and justification as found in Attachment A and B. It was seconded by Commissioner Eden, and carried with four "yes" votes.

Public Comment:

Karyn Jones presented testimony regarding the Dunnage Incinerator. She requested that the information item regarding carbon filters be held in Hermiston or Portland rather than Klamath Falls so that more citizens from the area surrounding the Umatilla Chemical Depot could attend.

E. Rule Adoption: Title V Permitting Fees and Rule Housekeeping

Andy Ginsburg, Manager of Air Quality Development, and Scott Manzano, lead rule writer, presented this item. The rule would increase Title V fees by the 1998 CPI of 1.62 percent, assess fees to non-major sources subject to Title V permitting, and six solid waste landfills would be assessed fees under the

proposed change. The fee requirement is a federal law. The Department received only one public comment, which was from Northwest Pulp and Paper Association (NPPA), questioning the fee increase. NPPA and other fee payer representatives were contacted during rule development, and prior to the public comment period. The Department discussed the proposed permitting fees with the affected landfills during the rulemaking.

The Department's proposal to incorporate the General Air Contaminant Discharge Permit (ACDP) into the State Implementation Plan fulfills a federally required administrative action.

Commissioner Reeve moved the proposed rules for the fee increase, non-major source fee applicability, and the ACDP incorporation be approved. Commissioner McMahan seconded the motion and it carried with four "yes" votes.

F. Approval of Tax Credits

Maggie Vandehey, pollution tax credit coordinator, presented this item.

Staff and the Commission briefly discussed several applications where the facility cost was less than the cost claimed on the pollution control facility application. No applicant disputed the reduction in facility cost.

Application No. 4687 - Intel

Intel claimed a system that was not operational. They voluntarily removed the system from the application (\$2M). The facility cost was also reduced by the amount of the process ductwork and ineligible acid waste piping (\$356K).

Application No. 4806 – Willamette Industries

This application was brought before the Commission in 1998. At that time, the applicant wished to submit additional information that could change DEQ's determination that the cost of restrooms, a storage area, a mechanical shop, and a fire protection system did not qualify under the pollution control statute and rules. The applicant did not submit additional information.

Application No. 4903 – Willamette Industries

Staff reduced the facility cost by the amount of the pipe and conveyor system, and associated electrical because the components did not contribute to air pollution control.

Application No. 5053 – Wellons

The eligible facility cost was reduced by the amount of the opacity monitor, the conveyors and augers. Commissioner Reeve asked if the opacity monitor had a feedback loop to the ESP. Staff stated there was not a feedback loop; therefore, the monitor was not an eligible cost for an air pollution control facility.

Applications Nos. 5171 and 5172

Commissioner Reeve noted these applications were for similar systems yet one gets 100 percent and the other is 84 percent. He asked if the only difference is the \$50,000 cut off? Maggie Vandehey confirmed that both systems include corrosion protection; and the only reason for the different percentages was based upon the 1995 legislation that limited the factors to be considered for facilities with costs not to exceed \$50,000.

Applications Nos. 5201 and 5202

It was noted the same issues applied to these applications with the added factor that No. 5202 could have split into two applications in order to receive 100% of the facility cost allocable to pollution control. The equipment could have been submitted on two applications had they been purchased at different times and on different invoices.

Commissioner Reeve made a motion to approve the tax credit applications presented in Attachment B of Agenda Item F. Commissioner Eden seconded the motion and it carried with four "yes" votes.

The following applications presented for denial in Attachment C were removed from the agenda at the request of the applicants.

Application No. 4801 – Valmont Industries, Inc.

This application was removed pending additional information regarding the “hazardous material” versus “hazardous waste.”

Application No. 4860 – Waste Control Systems, Inc.

This application was removed pending applicant’s research of the tipping fees included in the return on investment calculation.

Application Nos. 4959 and 4965 – Tidewater Barge Lines, Inc.

Tidewater Barge Lines’ attorney, David E. Filippi, provided supplemental evidence regarding the two barges on June 18, 1999. The applicant showed that improved safety of the vessel and crew, lower insurance costs, and the protection of petroleum products being carried were not motivating factors for the double hulling of two barges. Ms. Vandehey stated that the Department has no specific evidence to the contrary.

The Department initially recommended the denial of these applications because it was consistent with the Commission’s denial of a previous tax credit (application nos. 4417 – 1995) claiming a double-hulled barge. Considering the supplemental evidence, staff would recommend approving these two facilities if the accounting review proved supportive. The applications could not be recommended for approval at this meeting since the independent accounting review had not been performed. However, given the historical denial of a similar facility and the fact the applicant could spend as much as \$5,000 for an accounting review for each application, staff asked if the Commission could provide reasonable guidance regarding the approval of these two applications. The applicant’s attorney asked for a preliminary approval of the applications. Commissioner McMahan stated that she did not think staff should deviate from standard practices. Though preliminary approval was not provided, the Commission stated they would consider application Nos. 4959 and 4965 based upon staff’s recommendation and upon the evidence provided.

Application No. 4980 – Willamette Industries

The applicant requested the denial of this application be postponed until the EQC meets in Portland since they wish to address the Commission.

Commission Action by Application Number

App. No.	Applicant	Certified Cost	Percent Allocable	Commission Action
4635	NPI, Inc. dba/Northwest Polymers	\$ 26,787	100%	Approve
4687	Intel Corporation	\$ 242,195	100%	Approve
4806	Willamette Industries, Inc.	\$ 156,122	100%	Approve
4863	NPI, Inc. dba/Northwest Polymers	\$ 1,343	100%	Approve
4903	Willamette Industries, Inc.	\$ 45,788	100%	Approve
5007	Widmere Brothers Brewing Company	\$ 81,767	100%	Approve
5053	Wellons, Inc.	\$ 65,583	100%	Approve
5063	WWDD Partnership	\$ 9,747	100%	Approve
5132	Portland General Electric Company	\$ 20,487	100%	Approve
5134	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve
5135	Aire-Flo Heating & Air Conditioning, Inc.	\$ 1,289	100%	Approve
5136	Willamette Industries, Inc.	\$ 62,966	100%	Approve

5143	Thomas & Son Beverage, Inc.	\$ 257,212	100%	Approve
5144	Sam Trakul Investments, Inc.	\$ 1,884	100%	Approve
5149	Dunn & Leblanc, Inc.	\$ 120,338	100%	Approve
5150	Dunn & Leblanc, Inc.	\$ 11,367	100%	Approve
5151	Dunn & Leblanc, Inc.	\$ 600	100%	Approve
5153	United Disposal Service, Inc.	\$ 47,016	100%	Approve
5155	United Disposal Service, Inc.	\$ 163,489	100%	Approve
5164	United Disposal Service, Inc.	\$ 9,010	100%	Approve
5166	Willamette Industries, Inc.	\$ 27,842	100%	Approve
5171	Johns Ranch, Inc.	\$ 30,340	100%	Approve
5172	Matthew L. Carlough	\$ 08,975	84%	Approve
5176	United Disposal Service, Inc.	\$ 142,089	100%	Approve
5180	United Disposal Service, Inc.	\$ 8,440	100%	Approve
5182	Capitol Recycling & Disposal, Inc.	\$ 5,032	100%	Approve
5183	Capitol Recycling & Disposal, Inc.	\$ 4,950	100%	Approve
5192	Dunn & Leblanc, Inc.	\$ 36,198	100%	Approve
5201	Timothy & Lori Van Leeuwen	\$ 34,558	100%	Approve
5202	KG Farms	\$ 94,000	56%	Approve
4801	Valmont Industries, Inc.	\$ 407,722	100%	Remove From Agenda
4860	Waste Control Systems, Inc.	\$3,091,970	0%	Remove From Agenda
4959	Tidewater Barge Lines, Inc.	\$ 775,000	100%	Remove From Agenda
4965	Tidewater Barge Lines, Inc.	\$ 775,000	100%	Remove From Agenda
4980	Willamette Industries, Inc.	\$ 18,041	100%	Remove From Agenda

G. Informational Item: Green Permits Program

An informational presentation on Green Permits was provided by Paul Burnet, Special Projects Manager, and Marianne Fitzgerald, Green Permits Coordinator. Additional comments were contributed by Ray Hendriks of Louisiana Pacific's Hines facility. Green Permits were explained as a voluntary, incentive-based approach to encouraging environmental results better than what is required by law. Key provisions of the program were explained. The Commission was advised that draft rules would be on the August agenda.

H. Commissioners' Reports

Melinda Eden gave a summation of a public meeting regarding the Umatilla Chemical Depot she attended in June.

I. Director's Report

After the Coast Guard completed its oil removal activity on the stern section of the New Carissa, a wreck removal contract was awarded to Donjon/Devine. Nearly 250 tons of steel have been removed. Divers will survey the engine room, and will attempt to repair it to re-float the stern. DEQ is coordinating with state and federal agencies to facilitate timely processing of the application, while ensuring environmental protection. Because of a small good weather window, work must be completed before October.

During the summer of 1998, the Medford-Ashland area experienced five days of ozone exceedance under the EPA's newly adopted standard (0.08 ppm for an 8-hour average). In an effort to avoid a future non-attainment classification for ozone (a 3-year average of the fourth-highest daily 8-hour average), the

Medford area is implementing a Clean Air Action Day (CAAD) strategy patterned on the Portland program.

In mid June AQ released new permit templates for Air Contaminant Discharge Permits (ACDP) and received EPA approval of new formats for the Title V permits. These new templates and formats will streamline permit development and improve statewide consistency. Additional templates are under development for specific industry categories.

EPA recently conducted a performance review of the State Revolving Fund Program administered by the Water Quality Program. The SRF Program provides low interest loans to communities for water pollution control projects. EPA stated "We wish to compliment you and your staff on your work over the last year. The annual review confirmed our long-held view that the Oregon Clean Water State Revolving Fund program is well managed and forward looking".

The final Portland Harbor Sediments Management Plan will be available at the end of June. The first phase of implementation, slated to begin in July, will include development of remedial investigation work plan, additional site discovery work to identify responsible parties, and continued public involvement. Discussions continue with natural resource trustees and tribal governments about their involvement and participation during implementation.

The US EPA is soon to make an announcement about highlighting the corrective action performance at facilities that are considered a high priority under the Government Performance Results Act (GPRA). These high priority facilities, of which there are eleven in Oregon, will be followed to assess their achievement of two environmental indicators (controlling groundwater releases and controlling human exposures) by the year 2005.

Joni Hammond, Lynne Kennedy and Dick Nichols met with the Idaho Division of Environmental Quality and Idaho Power Company representatives to discuss the TMDLs for portions of the Snake River. Idaho Power owns three hydro-electric units on the Middle Snake River: Brownlee, Oxbow, and Hells Canyon Dams. These dams will need to renew their Federal Energy Regulatory Commission (FERC) licenses in 2005. All three projects may be contributing to water quality problems that have been identified on Oregon and Idaho's 303d lists. Before FERC can issue their license, both Departments of Environmental Quality must certify the projects as not violating water quality standards (Section 401 of CWA). The ability to provide such a certification will be greatly enhanced if Idaho and Oregon can establish TMDLs for the river prior to the need for certification. As a result of the meeting, Idaho Power will support funding for Oregon DEQ to participate in a joint TMDL for the Snake River with the State of Idaho.

In light of Karyn Jones' request to have the work session on carbon filters be held closer to Hermiston, the Commission will set a special meeting in August for items involving the Umatilla Chemical Depot only.

There being no further business, the meeting was adjourned at 2:35 p.m.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item B
August 13, 1999 Meeting

Title:

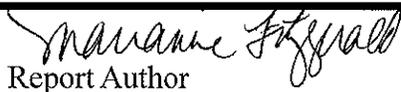
Adoption of Green Permits Rules

Summary:

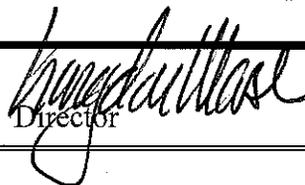
The proposed Green Permits rules establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The statutes authorize DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The Green Permits may modify existing permits or regulatory requirements. The proposed rules also require participating facilities to report on environmental performance, and discuss performance with interested stakeholders. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

Department Recommendation:

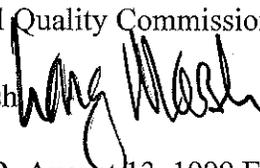
The Department recommends that the Commission adopt the rules regarding Green Permits as presented in Attachment A of the Department Staff Report.


Report Author

Division Administrator


Director

State of Oregon
Department of Environmental Quality Memorandum

Date: July 27, 1999
To: Environmental Quality Commission
From: Langdon Marsh 
Subject: Agenda Item B, August 13, 1999 EQC Meeting
Adoption of Green Permits Rules

Background

On May 14, 1999, the Director authorized the Office of the Director to proceed to a rulemaking hearing on proposed rules, which would establish a Green Permits program for the State of Oregon.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on June 1, 1999. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on May 18, 1999.

Two public hearings were held on June 15, 1999, with Paul Burnet serving as Presiding Officer in Portland and Grecia Castro serving as Presiding Officer in Springfield. Written comments were received through June 18, 1999. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing and all the written comments received.

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment D.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

The 1997 Oregon Legislature enacted Green Permits legislation to encourage regulated facilities to adopt innovative strategies that achieve environmental results that are significantly better than otherwise provided by law. The law authorizes the EQC to establish by rule the terms and conditions for Green Permits, and the procedures for the application, review and public participation in the process for issuance of the Green Permits.

The proposed rules would establish two types of Green Permits: a Custom Waiver Permit, and a Green Environmental Management Systems (GEMS) Permit.

- The Custom Waiver Permit may waive certain permit or regulatory requirements if the waiver is needed to achieve the predicted environmental results.
- The GEMS Permit has three tiers (Participant, Achiever, Leader) in which increasing levels of performance receive increasing regulatory benefits. All three GEMS Permits require implementation of an environmental management system. The Criteria for Approval for GEMS Permits are summarized in Attachment E.

Both the Custom Waiver Permit and the GEMS Permits require participating facilities to report on environmental performance, and discuss environmental priorities and performance with interested stakeholders.

The proposed rules establish the procedures by which DEQ and the Lane Regional Air Pollution Authority (LRAPA) will issue Green Permits. The proposed rules address criteria for approval of the Custom Waiver Permit and the three types of GEMS Permits, as well as procedures for issuing, modifying, renewing and terminating the permits. The proposed rules also include cost recovery provisions to reimburse the agencies for the staff time administering the program.

Relationship to Federal and Adjacent State Rules

The Green Permits program is unique to the State of Oregon. There are no federal requirements applicable to the Green Permits program. DEQ is working with the U.S. Environmental Protection Agency on developing a Memorandum of Agreement on Regulatory Innovation that will clarify EPA's role and responsibilities in issuing Green Permits.

The State of Washington has established a similar program, called the "Environmental Excellence Program Agreements." Other states (e.g. Wisconsin, Colorado, Illinois) have also enacted similar legislation.

Authority to Address the Issue

The Department has the statutory authority to address this issue under ORS 468.020. The rules implement ORS 468.501 through 468.521.

Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)

The Green Permits program is a new, voluntary program. DEQ wished to develop a program that encouraged or rewarded environmental performance beyond current regulatory requirements that was voluntary, market-driven, and outcome-based. DEQ has been soliciting input on this concept from a wide range of stakeholders through focus groups, informational meetings and conference presentations since 1994.

DEQ conducted an initial feasibility study that was issued in July, 1995. The enabling legislation was enacted in 1997. After further discussion and evaluation, a proposed framework based on tiers of performance and incentives was developed in January, 1998. The Department recruited facilities to participate in a pilot project to test the framework design. Out of nine applicants, the Department selected four pilots. Although one of the pilots closed its facility in September, 1998, all four pilot facilities have provided valuable assistance in developing procedures for issuing this type of Green Permit (now known as the Green Environmental Management System Permit).

The Green Permits Advisory Committee was established in the fall of 1998, consisting of twenty-four members representing businesses, environmental organizations, financial institutions, neighborhoods, consultants and DEQ staff (see Attachment F). The Green Permits Advisory Committee has met eleven times since October 6, 1998 to discuss the details of the Green Permits legislation and the proposed program and rules.

The Green Permits Advisory Committee reviewed the experiences of the four pilot facilities participating in the Environmental Management Systems Incentives Project, and reviewed the statute to determine the most effective way to implement the program. The committee considered whether prior performance achievements should be required, or whether demonstration of projected future accomplishments would be adequate for approval of the permit. The committee also considered the potential environmental effects of waivers, and recommended procedures to ensure that public health and the environment would be protected. Other key issues included maintaining simplicity and flexibility, and balancing the needs of a voluntary program with meaningful incentives.

The rules are written to balance flexibility and accountability for a variety of facilities that may wish to enter the program. DEQ is developing accompanying program guidance that will have additional detail regarding program implementation. As experience is gained in implementing the program, some of the procedures may be revised to improve program efficiency and effectiveness.

The Green Permits program is intended to be a pilot program, and the original authorizing legislation stated that the agencies cannot issue Green Permits after December 31, 2000. The 1999 Oregon Legislature extended that sunset date to December 31, 2003 (SB 774). DEQ and LRAPA will be evaluating the program prior to the 2003 legislative session to evaluate the program's effectiveness and determine whether to recommend continuance of the program, and whether to recommend changes to the program.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

The proposed Green Permits program comprises two types of Green Permits: one that may waive environmental laws if necessary to achieve superior results (the Custom Waiver Permit), and one that encourages the use of environmental management systems to achieve superior results (the Green Environmental Management System Permit, or GEMS Permit). GEMS permits would be available at three levels (participant, achiever, and leader) to allow a wide range of facilities to participate and to provide incentives for continual improvement.

The proposed rule package presented for public hearing reflected the recommendations of the Green Permits Advisory Committee. The Advisory Committee discussed a number of issues during rules development, such as whether the permits should be issued based on past performance achievements or commitments regarding future performance improvements. The Committee also discussed the stakeholder involvement process and the level of responsiveness needed to assure that public input is considered by the facility during discussions of the facility's environmental program. Most of the issues were resolved during the committee process, and few comments were received during the public comment process. Since this is a new program, the Committee supported testing the proposed procedures.

Summary of Significant Public Comment and Changes Proposed in Response

Two sets of comments were received, both of them in writing and attached to the Hearing Officer's Report. The Department's response to comments was discussed with the Green Permits Advisory Committee at its June 18, 1999 meeting.

The Oregon Environmental Council (OEC) views the Green Permits program as a high-risk and resource-intensive effort. They are concerned about over-reliance on environmental management systems to ensure improved performance, and stress the need to maintain a strong enforcement program. They also stressed the importance of meaningful participation by environmental concerns in the Green Permits program and serious consideration of their issues by DEQ. OEC believes that the Green Permits Program will be effective only if significant improvements to the environment are expected and rewarded, and that token improvements will erode the credibility of DEQ. They concluded by stating that they hope the Green Permits program will succeed.

The Department agrees with the OEC's cautions about the program and will be mindful of these issues as we begin implementation. This is a new program, and we need to build experience with the proposed procedures. The agencies will be reviewing the program to evaluate its effectiveness before deciding whether to request reauthorization from the Oregon Legislature in 2003, and the Oregon Environmental Council and the Green Permits Advisory Committee will be invited to participate in the program review. No changes to the proposed rule language have been made in response to these comments.

The U.S. Environmental Protection Agency (EPA) Region 10 office states its support of DEQ's efforts on Green Permits. It wishes to clarify the procedures for involving EPA in decisions on whether a waiver or incentive might affect a federally delegated program. Specifically, EPA requests that the draft rules be amended to include language that would explicitly state that DEQ will seek EPA input in making these determinations, and that DEQ will not issue a waiver or incentive without EPA concurrence.

The Department agrees with EPA's comment that the process needs to be very clear for involving EPA in decisions affecting federal programs or federally delegated programs. The Department will amend the rule to incorporate the EPA comments, although not all of the proposed language has been incorporated into the rule (see Attachment D). The agencies may issue a Green Permit based on state authorities and not incorporate a specific waiver into the permit until EPA action has been taken. This will allow DEQ to move forward with issuing Green Permits and not hold up the entire permit while waiting to resolve a few, but potentially difficult issues. As stated earlier, DEQ and EPA are developing a Memorandum of Agreement that will clarify roles and process for issuing Green Permits.

The Department also received some comments from the Department of Justice that clarify certain provisions in the rules. The most significant change is in OAR 340-014-0165, Cost Recovery, in which the language was modified to be more consistent with the statute. These changes were not included in the rule draft that was available for public comment.

Finally, one other significant change to the rules that was not available for public comment during the public comment period is the proposed procedure for terminating or modifying the Green Permit upon sale or exchange of the facility. This issue was not raised until recently when DEQ was drafting the permit template. The proposed rule states that the Green Permit would terminate within 60 days after sale or exchange of the facility unless a permit modification is pending or completed. This would allow for the transfer of the official applicant of record, but provides an opportunity for DEQ and the public to review whether the applicant can continue to meet the requirements of the Green Permit prior to transfer. The proposed language for OAR 340-014-0160(7) was circulated to the Green Permits Advisory Committee, and one comment requested more certainty in the period of time for DEQ response so that this process would not hold up the transaction. The proposed rule language states that the agency will determine whether the modification is minor or significant upon receipt of the application, and will follow the procedures for modification, but the rules do not guarantee a certain response time.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

DEQ has been developing procedures for the Green Permits program with the assistance of the four pilot facilities and the Green Permits Advisory Committee. DEQ has also established an internal team of staff representing each program and each regional office to assist in developing the program. The proposed Rule Implementation Plan is included as Attachment G.

DEQ has drafted an implementation guide for the proposed GEMS Permit and intends to draft guidance for the proposed Custom Waiver Permit. The implementation guide currently includes procedures for stakeholder involvement.

DEQ proposes to maintain a Green Permits Program Coordinator within the Office of the Director, and as applications are received, the coordinator would delegate most of the permit application review and permit development work to the region in which the facility is located. A team leader will be assigned to each facility to act as a liaison between the facility and agency staff, and to coordinate with other agencies as needed. The agencies may limit the number of applications accepted, depending upon resources available to administer the program. The Green Permits Program Coordinator will provide training and support to staff as needed to implement the program efficiently. The team leaders will provide technical assistance to facilities, and evaluate whether the facilities meet the criteria for approval and draft the permit. Several opportunities exist for public participation in the development of the Green Permit, and stakeholder involvement is encouraged.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules regarding Green Permits as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rules Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Fiscal and Economic Impact Statement
 - 3. Land Use Evaluation Statement
 - 4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
 - 5. Cover Memorandum from Public Notice
- C. Presiding Officer's Report on Public Hearing and Written Comments Received
- D. Department's Evaluation of Public Comment, and Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- E. Summary of the GEMS Permits Proposed Criteria for Approval
- F. Advisory Committee Membership
- G. Rule Implementation Plan
- H. ORS 468.501 through 468.521

Reference Documents (available upon request)

- "Recognizing Environmentally Proactive Sources—Feasibility Assessment of a "Green Permits" Program, prepared by Ross and Associates for DEQ, July, 31, 1995.
- House Bill 3457, 1997 Oregon Legislature, codified under ORS 468.501 through 468.521
- "Environmental Management Systems Incentives Project" Final Report, prepared by Ross and Associates for DEQ, January 30, 1998
- "EMS Green Permits Program Guide," Review Draft for Program Development, prepared by Rifer Environmental for DEQ, February 12, 1999
- Draft "Stakeholder Guidelines," prepared by Cogan Owens Cogan for DEQ, January 7, 1999

Approved:
Division: _____

Report Prepared By: Marianne Fitzgerald
Phone: (503) 229-5946
Date Prepared: July 26, 1999

OREGON ADMINISTRATIVE RULES
REQUIREMENTS FOR GREEN PERMITS

OAR 340-014-0100 Purpose of Green Permits

The purpose of the Green Permits program is to achieve environmental results that are significantly better than otherwise required by law through adoption of environmental management systems or use of innovative approaches or strategies. Agencies shall encourage applications that promote pollution prevention, source reduction, more efficient use of natural resources, improvements in technology or practices, utilization of environmental management systems and creation of public and private entity partnerships that can achieve environmental results that are significantly better overall than otherwise required by law.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0105 Definitions

- 1) "Agency" or "Agencies" means either the Department of Environmental Quality or the Lane Regional Air Pollution Authority or both, as the context requires.
- 2) "Applicant" means a facility that has applied for a Custom Waiver Permit or GEMS Permit.
- 3) "Baseline" means the calendar year preceding the year in which the Custom Waiver Permit or GEMS Permit is applied for, or other 12-month period approved by the agency.
- 4) "Custom Waiver Permit" means a type of Green Permit that grants a waiver with respect to a particular facility approved under OAR 340-014-0110.

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- 5) "Environmental impact" means any change to the environment wholly or partially resulting from, either directly or indirectly, the facility's activities, products, or services. An environmental impact may be determined circumstantially, without direct measurement.
- 6) "Environmental Laws" means ORS 454.605 to 454.780, 459.005 to 459.153, 459.705 to 459.790, 459.992, 459.995, 465.003 to 465.034, 466.005 to 466.385, 468.005 to 468.997, 468A.005 to 468A.992 and 468B.005 to 468B.500 and rules adopted thereunder. The term does not include any provision of the Oregon Revised Statutes or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.
- 7) "Environmental life cycle aspects" means elements of a facility's activities, products or services that can interact with the environment at any stage of the system, including but not limited to raw material acquisition, utilization of natural resources, transportation of materials, and ultimate use and disposal of the product.
- 8) "Environmental management system" (EMS) means a continual cycle of planning, implementing, reviewing and improving the actions the facility takes to meet its environmental obligations and improve environmental performance, and that can be objectively verified.
 - a) Environmental management systems include the environmental management system standard established by the International Organization for Standardization (ISO 14001) and other standards that meet the criteria for approval for GEMS Permits under OAR 340-014-0115 through 340-014-0125.
 - b) A "robust" environmental management system is a system that can function effectively without being dependent upon particular individuals within the facility.
- 9) "Facility" means any site or contiguous sites, any manufacturing operation or contiguous operations, or any business or municipal activity regulated under any provision of the environmental laws.

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- 10) "Green Permit" means a permit that provides administrative benefits or reduces environmental regulatory requirements to facilities that meet criteria for either a GEMS Permit or a Custom Waiver Permit.
- 11) "Green Environmental Management System Permit" or "GEMS Permit" means a type of Green Permit that meets the criteria for approval for a GEMS Participant Permit, a GEMS Achiever Permit, or a GEMS Leader Permit.
- 12) "GEMS Participant Permit" (also known as Tier I) means a permit issued under OAR 340-014-0115.
- 13) "GEMS Achiever Permit" (also known as Tier II) means a permit issued under OAR 340-014-0120.
- 14) "GEMS Leader Permit" (also known as Tier III) means a permit issued under OAR 340-014-0125.
- 15) "Natural resources" include ecosystems and the raw materials extracted from them.
- 16) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.
- 17) "Pollution prevention" applies to environmental degradation caused by human activities. Pollution prevention means source reduction or any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions and discharges) prior to recycling, treatment, or disposal; reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; and reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.
 - a) Source reduction can include equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, purchasing or inventory controls.

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b) Source reduction does not include any practice which alters the physical, chemical or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

Environmental management approaches such as recycling, combustion, treatment, control and disposal are not pollution prevention.

18) "Pollution Prevention Hierarchy" means pollution should first be prevented or reduced at the source; pollution that cannot be prevented should be recycled in an environmentally safe manner; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

19) "Regulated Pollutant" means any pollutant that is regulated under environmental laws, regardless of the amount that is generated, emitted or discharged into the environment by the facility.

20) "Significant" and "significantly" shall be determined by the agency, taking into consideration input from the facility and stakeholders.

21) "Stakeholder" means persons inside and outside of a facility who may have an interest in or be affected by the facility's environmental performance.

22) "Sustainable Development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, that enables people to meet their current needs without compromising the ability of future generations to meet their own needs, does not threaten ecological life support systems, and preserves biodiversity.

23) "Waiver" means an exception from otherwise applicable requirements of environmental laws.

Statutory Authority: ORS 468.020

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Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0110 Criteria for Approval of a Custom Waiver Permit

- 1) An agency or agencies may approve a Custom Waiver Permit upon demonstration to the agency's satisfaction that:
 - a) the waiver requested is necessary to achieve environmental results that are significantly better than otherwise required by law;
 - b) the applicant will achieve environmental results that are significantly better than otherwise required by law;
 - c) the applicant has submitted a stakeholder involvement plan relating to the custom waiver and has begun implementing the plan, considering the results of stakeholder involvement in decisionmaking, and responding to comments received from stakeholders during the application review process;
 - d) the waiver is not likely to create a significant threat to human health or the environment; and
 - e) the applicant will report on environmental performance and stakeholder involvement activities related to the custom waiver at least annually.
- 2) In order to determine whether predicted environmental results will be achieved, an agency shall consider:
 - a) the technical basis for such a prediction, such as reliance upon proven technology or projections based upon demonstrably sound scientific principles;
 - b) the applicant's record in Oregon of complying with applicable federal, state and local environmental laws and regulations. Any applicant with a criminal conviction of any environmental law within the prior year shall not be eligible for a Custom Waiver permit; and
 - c) the applicant's ability to review, monitor, assess, and manage the environmental impacts related to its custom waiver.

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- 3) In determining whether the predicted environmental results are significantly better than otherwise required by law, the agency's consideration shall include:
 - a) the environmental results that are required by law and baseline performance data for the facility;
 - b) the degree of improvement with respect to the time to achieve the predicted results, any environmental costs of achieving the results, the degree of uncertainty in achieving the results, and the environmental results currently achieved by the facility; and
 - c) the potential impacts of the waiver on human health and the environment.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0115 Criteria for Approval of a GEMS Participant Permit

An agency or agencies may approve a GEMS Participant Permit (also known as Tier I) upon demonstration to the agency's satisfaction that the applicant has:

- 1) Implemented a basic, robust environmental management system that is driven by environmental impacts, helps integrate environmental and business functions, provides a mechanism for evaluating continual improvement, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and pollution prevention hierarchy when setting objectives and targets and implementing the environmental program; and committed to continual improvement;
- 2) Evaluated environmental impacts of at least the facility's regulated pollutants, and set objectives and targets that will improve environmental performance in management and reduction of regulated or unregulated pollutants;

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- 3) Developed an environmental program that will achieve environmental results that are significantly better than otherwise required by law, demonstrated by projected reductions in targeted environmental impacts;
- 4) Established performance measures that will be used to explain environmental information in context with past performance;
- 5) Submitted a baseline performance report that summarizes:
 - a) Environmental policies affecting the facility operations;
 - b) Environmental information regarding significant environmental impacts; and
 - c) The environmental program that will achieve the results anticipated in (2) and (3) above;
- 6) Developed a plan for an annual update of the performance report that includes an update of the information required in (5) above, and:
 - a) Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed;
 - b) Environmental management system deficiencies and how addressed;
 - c) Compliance issues and how addressed; and
 - d) Stakeholder involvement activities, and input received from stakeholders; and
- 7) Developed a plan for stakeholder involvement that provides information to the public regarding environmental performance on at least an annual basis, and includes a mechanism for receiving and responding to comments.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0120 Criteria for Approval of a GEMS Achiever Permit

An agency or agencies may approve a GEMS Achiever Permit (also known as Tier II) upon demonstration to the agency's satisfaction that the applicant has:

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- 1) Implemented, and will maintain and improve a robust environmental management system that is certified as meeting the ISO 14001 standard, or meets the purpose or intent of each of the ISO 14001 clauses, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and pollution prevention hierarchy in setting objectives and targets and developing the environmental program; and committed to continual improvement;
- 2) Evaluated environmental impacts and set objectives and targets that will achieve superior environmental performance for those site-based aspects that have significant impacts, taking into consideration both regulated and unregulated pollutants and other environmental impacts;
- 3) Developed an environmental program that will achieve environmental results that are significantly better than otherwise required by law;
- 4) Established performance measures that will be used to explain environmental information in context with past performance;
- 5) Submitted a baseline performance report that summarizes:
 - a) Environmental policies affecting the facility operations;
 - b) Environmental information regarding significant environmental impacts, including those appropriate to the scope of the targeted impacts; and
 - c) Performance measures and performance achievements, including a description of the environmental program that will achieve the results described in sections (2) and (3) above, and a demonstration that the facility has reduced overall environmental impacts in the three year period prior to applying for the GEMS Permit, or, for new facilities, demonstrated by methods used to minimize environmental impacts in the design of the facility; and
- 6) Developed a plan for an annual update of the performance report that updates the information required in (5) above, and includes:

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- a) Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed;
 - b) Environmental management system deficiencies and how addressed;
 - c) Compliance issues, and how addressed;
 - d) Stakeholder involvement activities, and input received from stakeholders and how addressed; and
 - e) Revised objectives and targets for targeted impacts; and
- 7) Developed a program for stakeholder involvement appropriate to the scope of the environmental management system and site-based impacts, and has implemented and continues to implement activities that provide for dialogue regarding environmental performance and a mechanism for receiving, considering and responding to comments received. The facility shall:
- a) Encourage public inquiries and comments regarding the facility's environmental performance;
 - b) Provide mechanisms to discuss the environmental policy, annual performance report, environmental aspects and impacts, and establishment of objectives and targets; and
 - c) Consider results of stakeholder involvement in decisionmaking, and respond to comments received.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0125 Criteria for Approval of a GEMS Leader Permit

An agency or agencies may approve a GEMS Leader Permit (also known as Tier III) upon demonstration to the agency's satisfaction that the applicant has or is able to meet the criteria for the GEMS Achiever Permit and has implemented the following activities:

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- 1) Implemented, and will maintain and improve a robust environmental management system that is certified as meeting the ISO 14001 standard, or meets the purpose or intent of each of the ISO 14001 clauses, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and pollution prevention hierarchy in setting objectives and targets and developing the environmental program; and committed to continual improvement;
- 2) Evaluated environmental impacts and set objectives and targets that meet the expectations for a GEMS Achiever Permit and demonstrates industry leadership in applying sustainable development principles to the environmental life cycle aspects of its activities, products and services;
- 3) Developed an environmental program that achieves environmental results that are significantly better than otherwise required by law;
- 4) Established performance measures that will be used to explain environmental information in context with past performance;
- 5) Submitted a baseline performance report that summarizes:
 - a) Environmental policies affecting the facility operations;
 - b) Environmental information regarding significant environmental impacts, including those appropriate to the scope of the targeted impacts; and
 - c) Performance measures and performance achievements, including a description of the environmental program that achieves the results anticipated in sections (2) and (3) above, and a demonstration that the facility has reduced overall environmental impacts in the three year period prior to applying for the GEMS Permit, or, for new facilities, demonstrated by methods used to minimize environmental impacts in the design of the facility;
- 6) Developed a plan for an annual update of the performance report that updates the information required in (5) above, and includes:

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- a) Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed;
 - b) Environmental management system deficiencies and how addressed;
 - c) Compliance issues, and how addressed;
 - d) Stakeholder involvement activities, and input received from stakeholders and how addressed; and
 - e) Revised objectives and targets for targeted impacts; and
- 7) Developed a program for stakeholder involvement appropriate to the scope of the environmental management system and impacts relating to the environmental life cycle analysis of activities, products and services, and has implemented and continues to implement activities that provide for dialogue regarding environmental performance and a mechanism for receiving, considering and responding to comments received. The facility shall:
- a) Encourage public inquiries and comments regarding the facility's environmental performance, and make efforts to establish and maintain understanding, constructive dialogue and partnership with significant stakeholders;
 - b) Provide mechanisms to discuss the environmental policy, annual performance report, environmental aspects and impacts, and establishment of objectives and targets; and
 - c) Consider results of stakeholder involvement in decisionmaking, and respond to comments received.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0130 Technical Assistance and Recognition Program for GEMS

Permits

- 1) The agency shall provide technical assistance to applicants that have applied for a GEMS permit upon request by the applicant.
- 2) The agency shall establish a program for recognizing achievements of facilities that have an approved GEMS Permit commensurate with the type of GEMS Permit approved. Facilities with a Custom Waiver Permit are not eligible for the recognition program.
- 3) Facilities with an approved GEMS Permit may promote their achievements in a manner that is commensurate with the type and duration of GEMS permit approved.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0135 Waivers or Incentives

- 1) A Custom Waiver Permit shall identify the environmental requirements that are waived or replaced and under what conditions. A GEMS Permit shall identify the regulatory flexibility granted by the permit, including the environmental requirements that are waived or replaced and under what conditions.
- 2) Notwithstanding any other provision of law, any requirement under the environmental laws, except those required by treaty, interstate compact, court order or by a federal law, that is contrary to the terms and provisions of a Custom Waiver Permit or a GEMS Permit shall not apply to a facility operating under a Custom Waiver Permit or a GEMS Permit. Any prior conflicting permit condition shall be revised by an agency that has jurisdiction over the Custom Waiver Permit or GEMS Permit through the procedures for issuing a Custom Waiver Permit or GEMS Permit. Except as specifically revised in a Custom Waiver Permit or a GEMS Permit, any existing environmental permit or requirement shall remain in effect.

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- 3) GEMS Permits may provide incentives that vary by the type of GEMS Permit received, in which increasing levels of performance receive increasing regulatory benefits.
 - a) For all GEMS permits, the agency may apply its enforcement discretion to address appropriate compliance issues through improvements to the environmental management system;
 - b) For GEMS Achiever and GEMS Leader Permits, the agency may provide expeditious reviews of proposed modifications to existing permits, modify existing permits for maximum flexibility for process changes which do not negatively impact the environment, extend the duration of permits or synchronize the timeframes of permit renewals, modify recordkeeping or reporting requirements, coordinate reporting cycles among permits, or provide other benefits that streamline regulatory interactions or benefit the facility. For GEMS Achiever and GEMS Leader Permits, the agency may provide waivers of environmental laws, if needed, to make these incentives possible.
 - c) For GEMS Leader Permits, the agency may facilitate innovative approaches that involve more than one facility (e.g., multiple applications for the same project, such as facilitating a supplier-customer relationship).
- 4) When a specific waiver or incentive affects a federal requirement or a state requirement that implements a federally delegated, authorized or approved program, the U.S. Environmental Protection Agency (USEPA) may need to take action in order to provide the waiver or incentive, including but not limited to, rulemakings, or approval of a revision to an authorized program or the State of Oregon Clean Air Act Implementation Plan. When USEPA determines that USEPA action is required for a specific waiver or incentive, the agencies shall not issue the waiver or incentive until after the USEPA has agreed to take action, has complied with applicable federal

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statutory standards and procedures, including public review and comment, and has notified the agencies that the waiver or incentive may be issued.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0140 Conditions and Limitations of Custom Waiver Permits or

GEMS Permits

- 1) All Custom Waiver Permits shall expire after five years unless renewed.
- 2) All GEMS Participant Permits shall expire after three years unless renewed. GEMS Participant Permits may only be renewed one time. After one renewal, the participant shall apply for a different type of GEMS permit or the permit shall be terminated.
- 3) The renewal period for a GEMS Achiever or GEMS Leader Permit shall be negotiable, subject to the following limitations:
 - a) no GEMS Achiever or GEMS Leader Permit period shall exceed ten years; and
 - b) no GEMS Achiever or GEMS Leader Permit shall provide any waiver that extends for a period that exceeds two times the length of the period that otherwise would have been required in the absence of the GEMS permit by any environmental law applicable to the requirement being waived.
- 4) Facilities with an approved Custom Waiver Permit shall submit an annual report containing information required under OAR 340-014-0110. Facilities with an

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approved GEMS permit shall submit an annual report containing information required under OAR 340-014-0115, 340-014-0120 or 340-014-0125.

- 5) At least once every three years, a facility with an approved GEMS permit shall demonstrate in its annual report, and the agency shall verify, that the environmental management system is being effectively implemented.
- 6) Each Custom Waiver Permit shall include a stakeholder involvement plan relating to the custom waiver. The stakeholder involvement plan shall provide information to the public regarding environmental performance relating to the custom waiver on at least an annual basis, and shall include a mechanism for receiving and responding to comments received.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0145 Procedures for Issuing Custom Waiver Permits or GEMS

Permits

- 1) Applications for Custom Waiver Permits or GEMS Permits shall be made to the Department of Environmental Quality in a format specified by the Department. Facilities located in Lane County may choose to apply with the Lane Regional Air Pollution Authority (LRAPA) if the application includes issues within the jurisdiction of LRAPA. The application shall include sufficient information to evaluate the intent and ability of the applicant to meet the criteria for approval of the Custom Waiver Permit or GEMS Permit. The Department may modify application procedures for the three facilities participating in the Environmental Management Systems Incentives

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Project pilot project beginning May 20, 1998 and ending with the agency's final decision on issuing the GEMS Permit.

- 2) The agencies may limit the number of Custom Waiver Permit or GEMS Permit applications accepted by the agencies. In making this determination, the agencies may consider the resources available to process and administer the permit. The agencies may also consider the regulated status and compliance history of the facility when determining whether to accept an application.
- 3) The agency shall coordinate with other agencies as may be necessary to obtain federal, state and local approvals for issuing a Custom Waiver Permit or GEMS Permit. The agency shall provide a copy of each application accepted to the USEPA, and request assistance in identifying any decisions for waivers or incentives that require USEPA action as expeditiously as possible.
- 4) If the proposed Custom Waiver Permit or GEMS Permit is to replace in whole or part any existing permit, an application for a Custom Waiver Permit or GEMS Permit shall be treated as an application for renewal of a permit under OAR 340-014-0030 or other applicable rule. As long as the application is made in a timely manner prior to the expiration date of the existing permit(s), the existing permit(s) shall remain in effect until final action has been taken on the Custom Waiver Permit or GEMS permit application subject to this section.
- 5) Upon acceptance of the application, the agency shall provide public notice of the application and the proposed process for considering issuance of the Custom Waiver Permit or GEMS Permit, including the proposed timeline for public notice and comment. Applications for a Custom Waiver Permit, GEMS Achiever Permit and GEMS Leader Permit shall specify methods in which the public may comment on early drafts of the permit.
- 6) The agency shall verify that the applicant has satisfied the criteria for approval of the Custom Waiver Permit or GEMS Permit. The agency shall provide an opportunity

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for public notice and comment on the proposed Custom Waiver Permit or GEMS Permit. All comments must be submitted in writing within 30 calendar days from the commencement of the public notice period if such comments are to receive consideration prior to final action on the application. If, within 14 days after commencement of the public notice period, the agency receives written requests from ten persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the agency shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Notice of such a hearing may be given, in the agency's discretion, either in the notice accompanying the proposed provisions or in such other manner as is reasonably calculated to inform interested persons. The agency may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the agency shall consider comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered. The agency shall provide a response to the major comments received, and make the response available to the facility and the persons who provided comments on the draft permit prior to taking final action on the Custom Waiver Permit or GEMS Permit.

- 7) The decision of an agency to refuse to issue a Custom Waiver Permit or GEMS Permit is not subject to judicial review. The decision of an agency to issue a Custom Waiver Permit or GEMS Permit may be appealed in accordance with the provisions of ORS 468.513.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

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OAR 340-014-0150 Procedures for Renewing Custom Waiver Permits or GEMS

Permits

Upon receipt of an application for renewal of the Custom Waiver Permit or GEMS Permit, the agency shall verify that the permittee continues to meet the criteria for approval of the Custom Waiver Permit or GEMS Permit, and evaluate whether the waivers should be continued. The agency shall provide public notice of the renewal application and proposed changes in the Custom Waiver Permit or GEMS Permit, in accordance with the procedures described in OAR 340-014-0145(6).

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0155 Procedures for Modifying Custom Waiver Permits or GEMS

Permits

- 1) A facility with a GEMS permit may apply for a different type of GEMS Permit at any time.
- 2) A facility with a Custom Waiver Permit or a GEMS permit may apply for a modification of the terms or conditions of a Custom Waiver Permit or GEMS permit at any time. Upon receipt of an application for modification, the agency shall determine whether the proposed modification is a minor modification or a significant modification, taking into consideration whether modifications to waivers are proposed. If the proposal is a significant modification, the agency shall follow the procedures described in OAR 340-014-0145. If the proposal is a minor modification, the agency shall provide public notice in accordance with OAR 340-014-0145(5), and if, within 30 days after commencement of the public notice period, the Department receives written requests from ten persons, or from an organization or organizations representing at least ten persons, for reconsideration as a significant modification,

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then the agency shall follow all of the remaining procedures described in OAR 340-014-0145.

- 3) An agency may propose to modify a facility's GEMS permit in accordance with the procedures described in OAR 340-014-0160 (4) if the facility no longer meets the criteria for its GEMS permit but may meet the criteria for a different type of GEMS permit. Upon receipt of the corrective action report and upon completion of such additional investigation as may be required, the agency will either modify the permit in accordance with the procedures above, or withdraw its intent to modify the permit.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

OAR 340-014-0160 Termination of Green Permits

- 1) A facility may terminate a Custom Waiver Permit or GEMS Permit by providing 30 days written notice to the agency.
- 2) An agency may terminate the facility's GEMS Permit in accordance with the procedures in subsection (4) if:
 - a) The facility does not develop an annual performance report and make it available to the agency and the public in a timely fashion;
 - b) The facility no longer meets the criteria for approval for a GEMS Permit or the facility is not effectively implementing its environmental management system;
 - c) The facility is found guilty of a criminal violation of environmental law;
 - d) The facility fails to correct a violation discovered through routine environmental management system reviews or agency inspections within a reasonable time frame; or
 - e) The facility experiences repeat violations that reflect a serious underlying deficiency in the facility's environmental management system.

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- 3) An agency may terminate the facility's Custom Waiver Permit in accordance with the procedures in subsection (4) if it fails to comply with any term or condition in the Custom Waiver Permit, or if the facility is found guilty of a criminal violation of environmental law.
- 4) In the event that an agency decides to terminate a Custom Waiver Permit or GEMS Permit, it shall notify the permittee by registered mail or by personal service of its intent to terminate the permit. Such notification shall include the reasons for the termination. Such notice shall allow the permittee a reasonable period of time within which to correct the alleged deficiencies and to submit a corrective action report to the agency confirming that the facility has been brought into compliance or will be brought into compliance within a reasonable time considering all the circumstances. Upon receipt of the corrective action report and upon completion of such additional investigation as may be required, the agency will either terminate the Custom Waiver Permit or GEMS Permit, modify the Custom Waiver Permit or GEMS Permit, or withdraw its intent to terminate. A termination shall become effective 30 days from the date of mailing of the final notice of termination unless within that time the permittee requests a hearing before the Environmental Quality Commission or its authorized representative. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.
- 5) If the agency finds that there is a serious danger to the public health or safety and if grounds exist for termination as set forth above, it may, pursuant to applicable statutes and rules, suspend or revoke a Custom Waiver Permit or GEMS Permit effective immediately. Notice of such suspension or revocation must state the reasons for such action and advise the permittee that a hearing before the Environmental Quality Commission or its authorized representative may be requested. Such a request for hearing shall be made in writing to the Agency within 90 days of the date of suspension and shall state the grounds for the request. Any hearing shall be conducted pursuant to OAR Chapter 340, Division 11.

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- 6) After an agency or facility issues a final notice of termination of a Custom Waiver Permit or GEMS Permit in the manner provided above, the permittee shall have 30 days to apply for any permit or approval affected by the termination of all or a portion of the Custom Waiver Permit or GEMS Permit. An application filed during the 30-day period shall be considered a timely application for renewal of a permit under the terms of the applicable law. The application form may request reinstatement of the permit conditions that were in effect prior to the issuance of the Custom Waiver Permit or GEMS permit. The terms and conditions of the Custom Waiver Permit or GEMS Permit shall continue in effect until a final permit or approval is issued or denied. In order to achieve an orderly transition and compliance with the environmental laws, the agency may issue an order establishing conditions for the interim operation of the facility.
- 7) Custom Waiver Permits and GEMS Permits are issued to the official applicant of record and shall be automatically terminated within 60 days after sale or exchange of the facility or activity which is covered by the permit unless a permit modification is pending or completed. The new owner or operator may apply for a modification of the Custom Waiver Permit or GEMS Permit to transfer the official applicant of record. The application for modification shall be made at least 60 days prior to the sale or exchange of the facility or activity. The applicant shall demonstrate to the agency's satisfaction that the applicant can continue to meet the requirements of the Custom Waiver Permit or GEMS Permit. Upon receipt of an application for modification, the agency shall determine whether the proposed modification is a minor modification or significant modification. The agency shall follow the procedures for modifying Custom Waiver Permits or GEMS Permits described in OAR 340-014-0155.

Statutory Authority: ORS 468.020

Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513, 468.516, 468.518, 468.521

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OAR 340-0165 Cost Recovery

The agency shall recover the costs of the agency in developing, negotiating, and publicizing, a Custom Waiver Permit or GEMS Permit, and may recover the costs of administering a Custom Waiver Permit or GEMS Permit, including permit modifications and renewals, in the following manner:

- 1) The applicant or permittee shall fully reimburse the agency for the agency's invoiced direct and indirect costs of conducting the review, negotiating the relevant permit revisions or conditions, responding to public comment, administering the Custom Waiver Permit or GEMS Permit, monitoring the provisions in the Custom Waiver Permit or GEMS Permit and environmental outcomes resulting from the Custom Waiver Permit or GEMS Permit, and publicizing and conducting the public hearings. Indirect costs shall be comprised of general management, support, administrative and overhead costs of the agency that the agency deems to be allocable using generally accepted accounting principles.
- 2) The agency shall provide the applicant with a budget that estimates the direct and indirect costs that will be charged to the applicant under this section upon acceptance of the application. During the permit application process and during the term of the permit once issued, the agency shall provide quarterly updates of estimated future costs.
- 3) The agency shall appropriately document the direct and indirect costs of the agency and collect payment for such costs from the permittee. The agency shall collect a deposit from the applicant, against which the agency shall bill until the deposit is depleted. When the deposit is depleted, the agency shall collect an additional deposit. The initial deposit shall accompany the applicant's initial Custom Waiver Permit or GEMS Permit application and shall be in the amount of \$5000. The agency shall deliver to the applicant or permittee an accounting of all charges and the amount of the deposit remaining at the closure of each month's accounting records.

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Statutory Authority: ORS 468.020

**Statutes Implemented: ORS 468.501, 468.503, 468.506, 468.508, 468.511, 468.513,
468.516, 468.518, 468.521**

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For the
Green Permits Program

Supporting Procedural Documents

1. Legal Notice of Hearing
2. Fiscal and Economic Impact Statement
3. Land Use Evaluation Statement
4. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
5. Cover Memorandum from Public Notice

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

DEQ – Office of the Director
Agency and Division

Chapter 340
Administrative Rules Chapter Number

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Rules Coordinator

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<u>June 15, 1999</u>	<u>1:30 p.m.</u>	<u>Portland, Oregon</u>	<u>Paul Burnet, DEQ</u>
Hearing Date	Time	Location	Presiding Officer

Lane Regional Air Pollution Authority
1010 Main Street

<u>June 15, 1999</u>	<u>1:30 p.m.</u>	<u>Springfield, Oregon</u>	<u>Grecia Castro, LRAPA</u>
Hearing Date	Time	Location	Presiding Officer

Are auxiliary aids for persons with disabilities available upon advance request?

Yes No

RULEMAKING ACTION

ADOPT: OAR 340-014-0100, 340-014-0105, 340-014-0110, 340-014-0115, 340-014-0120, 340-014-0125, 340-014-0130, 340-014-0135, 340-014-0140, 340-014-0145, 340-014-0150, 340-014-0155, 340-014-0160, 340-014-0165

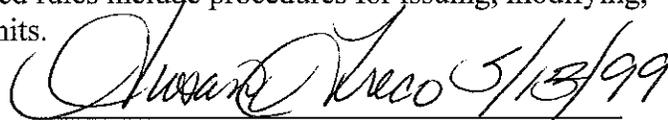
Statutory Authority.: ORS 468.020

Statutes Implemented: ORS 468.501 through 468.521

RULE SUMMARY

The proposed Green Permits rules establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The statutes authorize DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The Green Permits may modify existing permits or regulatory requirements. The proposed rules also require participating facilities to report on environmental performance, and discuss performance with interested stakeholders. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

June 18, 1999
Last Day for Public Comment


Authorized Signer and Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For the
Green Permits Program

Fiscal and Economic Impact Statement

Introduction

The proposed new Green Permits rules would establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The program authorizes DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results, subject to specific conditions. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

The proposed program encourages a wide range of innovative approaches, including the use of environmental management systems to achieve superior environmental performance. The program recognizes improved performance for both regulated and unregulated pollutants, and requires measurable improvements in environmental performance. The GEMS Permit includes three tiers (Participant, Achiever and Leader Permits) to allow a wide range of participants to enter the program and to provide incentives for continual improvement. The program also includes a number of incentives or benefits for participating facilities, such as flexible permits, streamlined reporting, and enforcement discretion.

General Public

The proposed rules require that the agencies notify the public when an application is received, and when the draft Green Permit is developed. It also requires that the facility communicate with interested stakeholders regarding environmental performance during the application review process and periodically during the tenure of the permit. The public may choose to participate depending on their concern or interest in the environmental performance of the facility. The program is designed to encourage meaningful communication. Some of the benefits of the Green Permits program to the public include more readily available information about participating facilities' environmental issues and performance, and greater opportunities for dialogue regarding that performance.

Small Business

The proposed rules do not differentiate between small businesses and large businesses. The Custom Waiver Permit and the Green Environmental Management System Permit (GEMS Permit) are voluntary programs that are available to any facility regulated under environmental laws in Oregon. Impacts are described under “Large Business” below.

Large Business

If a facility voluntarily applies for a Green Permit, the proposed rules require applicants to demonstrate that they will achieve environmental performance that is significantly better than otherwise required by law. The Custom Waiver Permit allows waivers of environmental laws if they are needed to achieve the results. The GEMS Permit also allows waivers of environmental laws, and provides other incentives or benefits, for facilities that adopt environmental management systems. Facilities will experience some fiscal impact in developing the environmental management system and in reporting on their environmental performance and discussing their performance with the public and other interested stakeholders. This program includes many benefits for facilities, such as improved government and community relationships, the option of simplified permitting and reporting requirements, and a potential for higher efficiency and reduced liability.

The Green Permits program is funded through cost recovery. The statute (ORS 468.521) specifies the method in which agency costs will be reimbursed. An applicant provides a \$5000 deposit with its application, and the agencies (DEQ and LRAPA) invoice the applicant for the time spent processing the permit. DEQ has been developing procedures for implementing the program with the assistance of three pilot facilities. DEQ estimates estimate that for a medium-size, medium complexity manufacturing facility \$5000 to \$10,000 may be needed to process and maintain a GEMS permit. However, there are many variables that affect this cost, as stated under “Assumptions” below. The cost to process a Custom Waiver Permit will be variable since this is dependent on the complexity of the proposal.

Local Governments

The legislation authorizes the Lane Regional Air Pollution Authority to implement the Green Permits program in Lane County. Other local governments that may be affected by the program include the publicly owned treatment works (POTWs). In some instances, the DEQ may work in partnership with the POTWs and other local governments to implement incentives provided to the facilities, but this would be done on a voluntary, case-by-case basis.

POTWs are facilities that are regulated by DEQ and they may apply for a Green Permit. Other local government operations would also be eligible to apply for a Green Permit if they are regulated under environmental laws in the state of Oregon.

State Agencies

The impact on DEQ will be the staff resources required to issue and maintain the Green Permit. Approximately 100 hours of staff time are estimated to issue and maintain each Green Permit. The agency will recover costs associated with issuing and maintaining the Green Permit through the cost-recovery provisions in the rules. The agencies may limit the number of applications accepted by the agencies. No increase in FTE is anticipated.

Other state agencies are not affected by this program at this time, although as with local governments, they would be eligible to apply for a Green Permit and they may be requested to assist with implementing incentives requested by facilities, on a case-by-case basis.

Assumptions

For a Custom Waiver Permit, the program assumes that the applicant will be able to clearly demonstrate that performance is significantly better than otherwise required by law, and the waiver is needed to achieve that performance. Criteria for approval of the Custom Waiver Permit are described in the rule.

For a GEMS Permit, the program assumes that the applicant will have a functioning environmental management system (EMS) and performance that is significantly better than otherwise required by law. The EMS must be able to be objectively verified by the agency. Criteria for approval of the GEMS permit are also described in the rules.

Both the Custom Waiver Permit and the GEMS Permits require a plan for reporting on environmental performance and discussing performance with the public and other interested and affected stakeholders.

The resources needed to verify that the applicant has met all of the criteria for approval are difficult to estimate because it will be dependent upon the complexity of the facility, and the waivers or incentives requested by the facility. Another factor would be the type of EMS implemented by the facility and the ease of verification of the EMS. Checklists have been developed to simplify this process. If the facility has been certified by a third party as meeting the international ISO 14001 environmental management system standard, then verification that all of the criteria for approval have been met should be relatively easy. In other cases, additional time may be needed to review how well the system functions. It is also difficult to estimate the level of technical assistance that may be requested or needed to help the facility meet program requirements, or the time needed to

review data regarding environmental performance. In addition, the amount of public comments and the level of stakeholder involvement associated with each facility may vary considerably.

The Department is preparing guidance for implementing the Custom Waiver Permit and GEMS Permit to help the facilities prepare applications that can be processed efficiently.

Housing Cost Impact Statement

The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Green Permits

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed new Green Permits rules would establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The program authorizes DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results, subject to specific conditions. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? Yes No

a. If yes, identify existing program/rule/activity:

Issuance, renewal or modification of environmental permits in accordance with OAR 340-018-0000 through 340-018-0200.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? Yes No (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

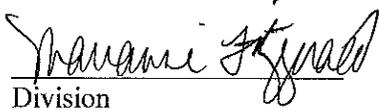
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The proposed rules authorize the Department to issue Green Permits. The proposed rules may affect environmental permits described in the Department's state agency coordination program, OAR 340-018-0000 through 340-018-0200. The Green Permits may waive certain environmental laws or modify existing permit conditions. If the Green Permit is issued in place of a traditional permit, or if the Green Permit causes a modification to a traditional permit in accordance with OAR 340-018-0050, the Department would require that a Land Use Compatibility Statement be signed by the affected local government prior to issuing the permit.

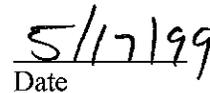
In order to participate in the program, the permittee will be required to achieve results that are significantly better than otherwise required by law, so it is expected that the environment will benefit from this program.

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

No new procedures are proposed.


Division


Intergovernmental Coordinator


Date

**Questions to be Answered to Reveal
Potential Justification for Differing from Federal Requirements.**

- 1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?**

There are no federal requirements applicable to the Green Permits program. It is a voluntary program that authorizes DEQ and LRAPA to waive environmental regulations, and seek waivers from other regulatory requirements to implement the program. The facilities seeking waivers must demonstrate that they will achieve environmental results that are significantly better than otherwise required by law.

- 2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?**

Not applicable

- 3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**

Not applicable

- 4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?**

This is a voluntary program that will achieve the results described above.

- 5. Is there a timing issue, which might justify changing the time frame for implementation of federal requirements?**

No

- 6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?**

Yes, since it encourages facilities to achieve environmental performance beyond that required by law.

7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

There are two types of Green Permits and three levels of Green Environmental Management Systems (GEMS) permits that allow a wide range of facilities to participate.

8. Would others face increased costs if a more stringent rule is not enacted?

Not applicable

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

If a facility voluntarily applies for a Green Permit, the proposed rules require that the participating facility provide the public with a report on their environmental performance, and provide a mechanism for discussing their performance with stakeholders. This provides assurance to the public that environmental objectives of this program will be met.

10. Is demonstrated technology available to comply with the proposed requirement?

Not applicable

11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain?

Yes. The program encourages the use of innovative approaches or strategies not otherwise encouraged or allowed under existing regulations. The GEMS Permit also requires consideration of pollution prevention (source reduction) and the pollution prevention hierarchy in developing the environmental program.

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 14, 1999

To: Interested and Affected Public

Subject: Rulemaking Proposal and Rulemaking Statements:
Proposed Green Permits Program Rules

This memorandum contains information on a proposal by the Department of Environmental Quality (Department) to adopt new rules/rule amendments regarding Green Permits. Pursuant to ORS 183.335, this memorandum also provides information about the Environmental Quality Commission's intended action to adopt a rule.

This proposal would adopt rules to establish a program for issuing Green Permits. The proposed program would encourage and reward actions that achieve environmental performance that is significantly better than otherwise provided by law. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The proposed rules authorize DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results, subject to specific conditions. The proposed rules also include procedures for issuing, modifying, renewing and terminating the Green Permits.

The Department has the statutory authority to address this issue under ORS 468.020. These rules implement ORS 468.501 through 468.521.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

- Attachment A The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
- Attachment B A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment C Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.
- Attachment D The actual language of the proposed rule.
- Attachment E Members of the Green Permits Advisory Committee

Hearing Process Details

The Department is conducting a public hearing at which comments will be accepted either orally or in writing. The hearing will be held as follows:

Date: June 15, 1999
Time: 1:30 p.m.
Place: Oregon Department of Environmental Quality
Conference Room 3A
811 S.W. Sixth Avenue
Portland, OR

Date: June 15, 1999
Time: 1:30 p.m.
Place: Lane Regional Air Pollution Authority
1010 Main Street
Springfield, OR

Deadline for submittal of Written Comments: June 18, 1999, 5:00 p.m.

Paul Burnet of DEQ will be the Presiding Officer at the hearing in Portland. Grecia Castro of the Lane Regional Air Pollution Authority will be the Presiding Officer in Springfield.

Written comments can be presented at the hearing or to the Department any time prior to the date above. Comments should be sent to: Department of Environmental Quality, Attention: Marianne Fitzgerald, Office of the Director, 811 S.W. 6th Avenue, Portland, Oregon 97204.

In accordance with ORS 183.335(13), no comments from any party can be accepted after the deadline for submission of comments has passed. Thus if you wish for your comments to be considered by the Department in the development of these rules, your comments must be received prior to the close of the comment period. The Department recommends that comments be submitted as early as possible to allow adequate review and evaluation of the comments submitted.

What Happens After the Public Comment Period Closes

Following close of the public comment period, the Presiding Officers will prepare a report that summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report. The public hearing will be tape recorded, but the tape will not be transcribed.

The Department will review and evaluate the rulemaking proposal in light of all information received during the comment period. Following the review, the rules may be presented to the EQC as originally proposed or with modifications made in response to public comments received.

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is August 13, 1999. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process.

You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period. Otherwise, if you wish to be kept advised of this proceeding, you should request that your name be placed on the mailing list.

Background on Development of the Rulemaking Proposal

Why is there a need for the rule?

The 1997 Oregon Legislature created the Green Permits program to encourage regulated facilities to achieve environmental results that are significantly better than otherwise provided by law. The law requires the EQC to establish by rule the terms and conditions for Green Permits and the procedures for the application, review and public participation in the process for issuance of the Green Permits. The program includes cost recovery to fund DEQ staff time spent administering the program.

How was the rule developed?

The Green Permits program is a new, voluntary program. The Department wished to develop a program that encouraged or rewarded environmental performance beyond current regulatory requirements that was voluntary, market-driven, and outcome-based. DEQ has been soliciting input from a wide range of stakeholders through focus groups, informational meetings and conference presentations since 1994.

An initial feasibility study was published in July, 1995. The legislation was enacted in 1997. After further evaluation, a proposed framework for an Environmental Management System Incentives Project (EMSIP) was developed in January, 1998. The EMSIP framework was considered one of the potential types of Green Permit envisioned in the legislation. The Department recruited facilities to participate in a pilot project to test the EMSIP design. Out of nine applicants, the Department selected four pilots. One of the pilots closed its facility in September, 1998, but all

four pilots have provided valuable assistance in developing procedures for issuing this type of Green Permit (now known as the Green Environmental Management System Permit).

The Green Permits Advisory Committee was established in the fall of 1998, consisting of twenty-four members representing businesses, environmental organizations, financial institutions, neighborhoods, consultants and DEQ staff (see Attachment E). The Green Permits Advisory Committee has met nine times since October 6, 1998 to discuss the details of the Green Permits legislation and the proposed program and rules.

The rules are written to balance flexibility and accountability for a wide range of proposals and for a variety of facilities that may wish to enter the program. DEQ is developing accompanying program guidance that will have more detail regarding program implementation. As experience is gained in implementing the program, some of the procedures may be revised to improve program efficiency and effectiveness.

What issues have been discussed?

The proposed Green Permits program proposes two types of Green Permits: one that may waive environmental laws if necessary to achieve superior results (the Custom Waiver Permit), and one that encourages the use of environmental management systems to achieve superior results (the Green Environmental Management System Permit, or GEMS Permit). The rules also propose three types of GEMS permits (participant, achiever, leader) to allow a wide range of facilities to participate and to provide incentives for continual improvement.

The Green Permits Advisory Committee reviewed the experiences of the pilot facilities participating in the Environmental Management Systems Incentives Project, and reviewed the statute to determine the most effective way to implement the program. The committee considered whether past performance achievements were required, or whether demonstration of projected future accomplishments would be considered for approval of the permit. The committee also considered the potential environmental effects of waivers, including procedures to ensure that public health and the environment would be protected. Other key issues included maintaining simplicity and flexibility, and balancing the needs of a voluntary program with meaningful incentives.

What Documents Were Relied Upon during Program Development?

- "Recognizing Environmentally Proactive Sources—Feasibility Assessment of a "Green Permits" Program, prepared by Ross and Associates for DEQ, July, 31, 1995.
- House Bill 3457, 1997 Oregon Legislature, codified under ORS 468.501 through 468.521

- “Environmental Management Systems Incentives Project” Final Report, prepared by Ross and Associates for DEQ, January 30, 1998
- “EMS Green Permits Program Guide,” Review Draft for Program Development, prepared by Rifer Environmental for DEQ, February 12, 1999
- Draft “Stakeholder Guidelines,” prepared by Cogan Owens Cogan for DEQ, January 7, 1999

Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality’s office at 811 S.W. 6th Avenue, Portland, Oregon. Please contact Marianne Fitzgerald (see contact information below) for times when the documents are available for review.

Who does this rule affect including the public, regulated community or other agencies, and how does it affect these groups?

The proposed Green Permits program is a voluntary program. All facilities that are regulated under environmental laws of the state of Oregon may apply for a Green Permit. Facilities that elect to apply for a Custom Waiver Permit or GEMS Permit are expected to demonstrate that their environmental performance is or will be significantly better than otherwise required by law. All facilities that apply will also be expected to encourage meaningful stakeholder involvement in discussing the facility’s environmental performance. The public may receive more information on the facility’s overall environmental performance than otherwise required by law.

Other agencies that may be affected by proposed Green Permits include the U.S. Environmental Protection Agency, and local publicly owned treatment works. The Lane Regional Air Pollution Authority is also authorized to issue Green Permits under these statutes and rules. The proposed program will encourage interagency coordination on environmental issues affecting the facility.

How will the rule be implemented?

DEQ has been developing procedures for the Green Permits program with the assistance of the EMSIP pilot facilities and the Green Permits Advisory Committee. DEQ has also established an internal team of staff representing each program and each regional office to assist in developing the program.

Two types of Green Permits are proposed: The Custom Waiver Permit, and the GEMS Permit.

- The Custom Waiver Permit may waive certain permit or regulatory requirements if the waiver is needed to achieve the predicted environmental results. A more detailed description of the proposed criteria for approval of the Custom Waiver Permit is in OAR 340-014-0110.
- The GEMS Permit has three tiers (Participant, Achiever, Leader) in which increasing levels of performance receive increasing regulatory benefits. All three GEMS Permits require

implementation of an environmental management system. A more detailed description of the proposed criteria for approval of the GEMS Permits is in OAR 340-014-0115 through 340-014-0125.

Both the Custom Waiver Permit and the GEMS Permits require participating facilities to report on environmental performance, and discuss performance with interested stakeholders.

DEQ has drafted an implementation guide for the proposed GEMS Permit and intends to draft guidance for the proposed Custom Waiver Permit.

DEQ proposes to maintain a Green Permits Program Coordinator within the Office of the Director, and as applications are received, the coordinator would delegate most of the permit application review and permit development work to the region in which the facility is located. A team leader will be assigned to each facility to act as a liaison between the facility and agency staff, and to coordinate with other agencies as needed. The program is funded through cost recovery. The agencies may limit the number of applications accepted.

Are there time constraints?

The 1997 legislation (HB 3457, Section 11) states that no green permit may be issued after December 31, 2000. As of this date, SB 774 is pending in the 1999 Oregon Legislature to extend the deadline to December 31, 2003.

Contact for More Information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Marianne Fitzgerald
Green Permits Program Coordinator
Office of the Director
811 S.W. Sixth Avenue
Portland, OR 97204
Phone (503) 229-5946
Fax (503) 229-5850
Email fitzgerald.marianne@deq.state.or.us

This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Public Affairs at 503-229-5317 to request an alternate format.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 21, 1999

To: Environmental Quality Commission

From: Paul Burnet
Manager, Pollution Prevention Unit

Subject: Presiding Officer's Report for Rulemaking Hearings
Title of Proposal: *Proposed Green Permit Program Rules*
Hearing Date and Time: *June 15, 1999, beginning at 1:30 PM*
Hearing Locations:
Portland, DEQ Headquarters Building
811 SW 6th Avenue
Portland, Oregon

Springfield, LRAPA Offices
1010 Main Street
Springfield, Oregon

General

Rulemaking hearings on the above titled proposal were convened at 1:30 PM in both Portland and Springfield. Paul Burnet of DEQ served as the presiding officer for the Portland hearing, and Grecia Castro of LRAPA presided at the hearing in Springfield.

In the Portland hearing, three people (other than DEQ staff) were in attendance, and one person gave testimony. In the Springfield hearing, no member of the public was in attendance. People in attendance were asked to sign witness registration forms if they wished to present testimony. People were also advised of the procedures to be followed and that the hearing was being recorded. Individuals in attendance at the Portland hearing had participated in the Green Permits Advisory Committee and were therefore knowledgeable on the proposed rules, but were asked if they had any questions or would like any clarification prior to the hearing. No requests were made.

Summary of Oral Testimony (Portland)

Jeff Allen, Executive Director, Oregon Environmental Council

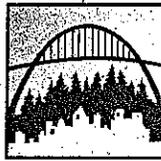
Mr. Allen summarized OEC's written comments, which were also submitted as testimony to DEQ. Mr. Allen stated that he is a member of the Green Permits Advisory Committee, and was involved in the negotiation of the Green Permits bill (HB 3457) in 1997. OEC views the Green Permits program as a high-risk and resource-intensive effort. They are concerned about over-reliance on environmental management systems to ensure improved performance, and stress the need to maintain a strong enforcement program. The importance of meaningful participation by environmental concerns in the Green Permits program and serious consideration of their issues

by DEQ was also stressed. OEC believes that the Green Permits Program will be effective only if significant improvements to the environment expected and rewarded, and that token improvements will erode the credibility of DEQ. Mr. Allen concluded by stating that he hopes the Green Permits program will succeed.

Summary of Written Testimony

Two written comments were submitted to the Department prior to the close of the public comment period on June 18, 1999, and are attached to this report:

1. *Jeff Allen, Executive Director, Oregon Environmental Council*, letter dated June 15, 1999. Summarized in oral comments above.
2. *Chuck Clarke, Regional Administrator, EPA Region 10*, letter dated June 18, 1999. EPA states its support of DEQ's efforts on Green Permits. It wishes to clarify the procedures for involving EPA in decisions on whether a waiver or incentive might affect a federally delegated program. Specifically, EPA requests that the draft rules be amended to include language that would explicitly state that DEQ will seek EPA input in making these determinations, and that DEQ will not issue a waiver or incentive without EPA concurrence.



OREGON
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June 15, 1999

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Executive Director

Jeff Allen

Attention: Marianne Fitzgerald
Department of Environmental Quality
Office of the Director
811 SW 6th Avenue
Portland, OR 97204

Dear Marianne:

As you know, I was an active participant in the negotiations that produced HB 3457 in the 1997 Legislature. For the past several months, the Oregon Environmental Council (OEC) has been active in the Green Permits Advisory Committee (GPAC) through my participation and that of Beth Woodward.

The points we wish to make have all been expressed during GPAC meetings or in previous written comments to DEQ. We make them here because we believe that the success or failure of this Green Permits program will depend largely on case-by-case decisions and on policy not clearly expressed in these rules.

OEC supports creative approaches to encouraging superior environmental performance, and we believe there are potential benefits to the Green Permits program. However, we also believe this is a high-risk, resource-intensive program that should be treated as a carefully managed, experimental pilot project.

We believe a few points are worth-keeping in mind as the program is implemented over the coming months:

“Environmental Management” Does Not Ensure Environmental Performance

The best intentions for improved environmental management cannot be implemented without a good understanding of how environmental processes work and how a facility could be impacting them. Interdisciplinary education in the natural sciences is essential to complete evaluation of impacts. Furthermore, an environmental management system can appear to be effective without actually reducing the a facility's harmful impacts to the environment. By analogy, the world's most accurate watch still won't guarantee you arrive on time. A strong enforcement program is still required to ensure accountability for the basic requirements of state and federal law. DEQ should not rely on the existence of an EMS to evaluate compliance. This may be particularly true in the case of EMS's certified to comply with ISO 14001, as DEQ has indicated it may not scrutinize them as carefully.

520 S.W. 6th Avenue, Suite 940 • Portland, Oregon 97204-1535

503-222-1963 • FAX 503-222-1405

oecc@orcouncil.org

www.orcouncil.org



Stakeholder Participation Must be Meaningful

Oregonians currently enjoy some basic level of assurance that facilities meet standards established in state and federal law, and recourse to administrative and judicial appeals or citizen suits when facilities fail to meet those standards. The Green Permits program could potentially begin to undermine some of those assurances. This only becomes palatable if citizens have meaningful input into the process and are taken seriously.

It is difficult for individuals and non-profit organizations to dedicate the significant (uncompensated) time each facility will need. Stakeholder participation will only work as intended if comments are a) seriously considered and b) considered individually rather than according to majority opinion. Conflicts of interest on the part of stakeholders who benefit personally from facility-derived profits should not be allowed to drown out legitimate concerns about ecological and esthetic impacts. If insufficient numbers of stakeholders choose to participate, the specific green permit -- and the overall program -- should be reevaluated.

This Program Should be Extremely Limited

Green Permits only serve the public interest if they substantially improve environmental performance; and even then, the improvement must be worth the additional effort expended by DEQ, stakeholders, and the facility in question. In other words, there must be substantial benefits for all concerned. Furthermore, DEQ's limited budget and staff will likely constrain this program to a very small number of participants, particularly at the higher program levels. Even with the cost-sharing provisions provided for in these rules, DEQ will not recover all the costs of creating and managing the Green Permits program.

DEQ's role in this new type of permits is pivotal, especially for the GEMS Partner and Leader permits. The value derived may depend entirely on what impacts the agency decides are "significant"-and must therefore be addressed-and on what DEQ considers to be "significantly better" environmental performance. Awarding facility owners recognition, greater flexibility, and expensive personal attention for token improvements will only mislead the public, erode the credibility of the agency, and divert resources from enforcing basic environmental standards.

It should be remembered that performance required under environmental regulations is generally not anywhere near the level required to ensure sustainability and protect public health. "Flexibility" should only be allowed in the service of demonstrably greater results.

I appreciate the hard work that DEQ staff and other GPAC members have put into developing this program, and hope that it proves successful. Thank you for the opportunity to comment.

Sincerely,



Jeff Allen
Executive Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

JUN 18 1999

Reply To
Attn Of: OI-081

State of Oregon
Department of Environmental Quality

FAX
COPY
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Langdon Marsh
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

OFFICE OF THE DIRECTOR

Re: EPA comments on Oregon's Proposed Green Permits Rules

Dear Mr. Marsh:

Lovey

This letter provides comments of the U.S. Environmental Protection Agency (EPA) on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules and rule amendments regarding "Green Permits," formally known as Green Environmental Management System (GEMS) Permits and Custom Waiver Permits. These rules have been written to implement 1997 legislation codified in ORS 468.501 through 468.521.

The proposed Green Permit rules would authorize DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or to seek exemptions or waivers from regulatory requirements for participating facilities. The stated purpose of this voluntary program is to encourage facilities to achieve environmental performance that is significantly better than otherwise provided by law.

EPA applauds Oregon's innovative efforts to promote environmental management systems and environmental stewardship, and stands ready to work with DEQ and LRAPA to increase the efficiency and effectiveness of environmental programs to meet these goals. We have worked with your Agency as it developed these proposed rules, and we appreciate that the proposal already reflects a number of suggestions from EPA. We offer the following comments in recognition of the special relationship between Oregon and EPA that exists for implementation of federal environmental programs under Oregon laws. Our focus is to clarify the roles and responsibilities of DEQ, LRAPA, and EPA for evaluating and acting upon exemption or waiver requests under these rules so that all stakeholders will appreciate how the agencies will work together to address federal program requirements. Towards that end, we look forward to developing a Memorandum of Agreement (MOA) that further defines how the agencies will work together to implement these rules.

1. Waivers or Incentives that Require EPA Action.

As you are aware, a number of Oregon permit programs and regulatory requirements are contained within programs that have been approved, delegated or authorized by EPA. EPA asks that the proposed Green Permits rules be clarified to recognize more fully EPA's role in waiver and incentive decisions that affect federal programs. Any State innovation proposal that would modify a federal requirement, including a State requirement that implements a federally-authorized program, must be subject to federal review. This approach is also reflected in both the Oregon legislation that these proposed rules are intended to implement and the Joint State/EPA Agreement To Pursue Regulatory Innovations.

While each of the federal programs run by Oregon is based on differing statutory and regulatory regimes, they have common aspects that are relevant here. One general principle is that the State program can be no less stringent than the federal requirement. A second general principle is that once a State requirement has been included in a program approved or authorized by EPA, any revisions to that program must be submitted to EPA for review in the same manner as the original program. In some instances, EPA may have to engage in rulemaking to adopt revisions to existing federal requirements in order to allow a waiver or deviation from established programs, which may take some time to complete. Until EPA approves changes in a State authorized program or makes a federal rule change, the State must operate consistent with the federally-approved requirements, and the regulated community continues to be subject to the existing federally approved and federally enforceable requirements. If changes are made to a federally approved State requirement absent appropriate action by EPA, the regulated community would be vulnerable to laws suits (e.g. citizen suits) and it may constitute the basis for withdrawal of the federal program. This is a result that we are sure EPA and Oregon both are committed to avoiding.

a. Due to this situation, EPA asks Oregon to add more specific language in the proposed rules to clarify EPA's role in reviewing and approving changes that impact federally authorized program requirements. While subsection 0135(4) does reference EPA involvement "when a specific waiver or incentive may constitute the basis for withdrawal of a federally delegated program," EPA is concerned that the language does not accurately reflect the intentions of either Oregon or EPA regarding the Green Permit program. We are concerned that the existing language fosters the misimpression that consultation between Oregon and EPA will commence in earnest only once such a withdrawal scenario has arisen. We also want to ensure that all stakeholders understand that EPA involvement is necessary when a waiver or incentive affects either a federal requirement directly or a state requirement that is part of a federally approved program. For these reasons, EPA asks that section 340-014-0145 be amended as follows:

0135(4): "When a specific waiver or incentive affects a federal requirement or a State requirement that implements a federally delegated, authorized or approved program, providing the waiver or incentive may first necessitate action by the U.S. Environmental

Protection Agency (USEPA), including, but not limited to, rulemakings, SIP revisions, or approval of a revision to an authorized program. When it is determined, pursuant to 0145(3), that USEPA action is required, the agency shall not issue the waiver or incentive until after the USEPA has agreed to take action, has complied with applicable federal statutory standards and procedures, including public review and comment, and has notified the agency that the waiver or incentive may be issued.”

b. Since so many of Oregon’s requirements are contained in programs that have been approved under federal laws and regulations, EPA will need to play an active role in reviewing Custom Waiver or GEMS permit applications so we can assist DEQ and LRAPA to identify where federal requirements are implicated, and thereby ensure EPA is aware of and prepared to take the steps needed to achieve the flexibility contemplated by the State. The proposed rules are unclear about how the agencies will identify waivers or incentives that affect federal requirements. Making EPA clearly involved in the process early can minimize potential delays that necessary EPA actions might impose if discovered late in the process. EPA involvement early in the process would also assist the agencies in preparing for public notice and comment in a timely way. Accordingly, we ask that you add the following text to 340-014-0145(3):

“The agency shall coordinate with other agencies as may be necessary to obtain federal, state and local approvals for issuing a Custom Waiver Permit or GEMS Permit. The agency shall provide a copy of each application to the U.S. Environmental Protection Agency (USEPA) Region 10, and request assistance in identifying any decisions for requirements, waivers, or incentives that under the law are to be made by EPA, prior to commencement of public notice required by 0145(6). If, within 45 days of receipt of the proposed Custom Waiver Permit or GEMS Permit, the USEPA determines in writing that the proposed permit would affect a federal requirement, the agency shall not issue the proposed permit until the USEPA has determined, consistent with 0135(4) that the waiver or incentive may be issued.”

2. Developing a Memorandum of Agreement.

EPA and Oregon already understand the need for a Memorandum of Agreement, similar to the one negotiated by Wisconsin and EPA concerning implementation of the Wisconsin Environmental Cooperation Pilot Agreement (February 3, 1999). It will be useful to describe in the MOA how the agencies will together review applications and work with the applicants so that these innovative permits can proceed smoothly with every reasonable opportunity to succeed. EPA also wants to clarify how enforcement discretion will be applied to Green Permit recipients and how enforcement decisions and actions on the part of each agency are coordinated so that we can establish a cooperative approach for consulting with each other under our separate authorities. We expect that EPA’s previous experience with the Wisconsin Environmental Cooperation Pilot Program will help guide this effort. While the MOA will be greatly beneficial in

implementing the program, the rule language changes that we have offered are critical to ensuring that both the regulated community and the Oregon agencies have a clear recognition of how the Green Permits process must address federal laws in order to achieve the objectives of the legislation.

Thank you for the opportunity to review these proposed rules. If you would like to talk with me about our comments, you can call me at (206) 553-1234. John Palmer from EPA Region 10 has been our contact person for coordinating these comments and assisting Oregon in the development of the Green Permit Program, and he can be reached at (206) 553-6521.

Sincerely yours,

A handwritten signature in cursive script that reads "Chuck Clarke".

Chuck Clarke
Regional Administrator

cc: Marianne Fitzgerald

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For the
Green Permits Program

Department's Evaluation of Public Comments, and
Detailed Changes to Original Rulemaking Proposal
Made in Response to Public Comment

Summary of the Proposed Rule

The proposed new Green Permits rules would establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The program authorizes DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results, subject to specific conditions. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

Summary of Comments Received

1. Oregon Environmental Council

The Oregon Environmental Council (OEC) views the Green Permits program as a high-risk and resource-intensive effort. They are concerned about over-reliance on environmental management systems to ensure improved performance, and stress the need to maintain a strong enforcement program. The importance of meaningful participation by environmental concerns in the Green Permits program and serious consideration of their issues by DEQ was also stressed. OEC believes that the Green Permits Program will be effective only if significant improvements to the environment are expected and rewarded, and that token improvements will erode the credibility of DEQ. They concluded by stating that they hope the Green Permits program will succeed.

Department's Response: The Department agrees with the OEC's cautions about the program and will be mindful of these issues as we begin implementation. This is a new program, and we need to build experience with the proposed procedures. The program is a limited pilot project and the agencies cannot issue Green Permits after December 31, 2003 (the 1999 Oregon Legislature extended the sunset date through SB 774). The agencies will be reviewing the program to evaluate its effectiveness before deciding whether to request reauthorization from the Oregon Legislature in 2003, and the Oregon Environmental Council and the Green Permits Advisory Committee will be invited to

participate in the program review. No changes to the proposed rule language have been made in response to these comments.

2. The U.S. Environmental Protection Agency (EPA), Region 10

EPA Comment #1: The EPA Region 10 office states its support of DEQ's efforts on Green Permits. It wishes to clarify the procedures for involving EPA in decisions on whether a waiver or incentive might affect a federally delegated program. Specifically, EPA requests that the draft rules be amended to include language that would explicitly state that DEQ will seek EPA input in making these determinations, and that DEQ will not issue a waiver or incentive without EPA concurrence.

Department's Response: The Department agrees with EPA's comment that the role of EPA needs to be very clear in the proposed rule, so that the facilities and the public understand how decisions affecting federal programs or federally delegated programs will be made. The Department will amend the rule to incorporate the comments from EPA.

The following is the original proposed rule circulated for public review:

OAR 340-014-0135, Waivers or Incentives

- (3) When a specific waiver or incentive may constitute the basis for withdrawal of a federally delegated program, the legal mechanisms required to provide the waiver or incentive may necessitate decisions by the U.S. Environmental Protection Agency (USEPA), including, but not limited to, rulemakings, SIP revisions, and program authorizations. When a specific waiver or incentive will require a federal decision, the agency shall not issue the waiver or incentive until the federal agency has agreed to seek the change and has complied with applicable federal statutory standards and procedures, including public review and comment, necessary to effect the change.

The following is the proposed revised language, incorporating EPA comments:

OAR 340-014-0135, Waivers or Incentives

- (3) When a specific waiver or incentive affects a federal requirement or a state requirement that implements a federally delegated, authorized or approved program, the U.S. Environmental Protection Agency (USEPA) may need to take action in order to provide the waiver or incentive, including but not limited to, rulemakings, or approval of a revision to an authorized program or the State of Oregon Clean Air Act Implementation Plan. When USEPA determines that USEPA action is required for a specific waiver or incentive, the agencies shall not issue the waiver or incentive until after the USEPA has agreed to take action, has complied with applicable federal statutory standards and procedures, including public review and comment, and has notified the agencies that the waiver or incentive may be issued.

EPA Comment #2: EPA also commented regarding the need to confirm EPA involvement in considering Green Permits as early as possible in the process. They suggested language that specifies 45 days for EPA to make a determination regarding whether the proposed permit would affect a federal requirement.

Department's Response: DEQ agrees that the EPA needs to be involved in Green Permit applications as early as possible in the process, and will incorporate the first sentence of EPA's proposed language into the draft rule. DEQ disagrees, however, with the need to specify 45 days to make a determination regarding EPA involvement. We believe that the term "expeditiously" is preferable to a specific time limit, because enforcement of this time limit would be difficult and unlikely. It may, in fact, slow down processing of applications if a permit writer chose to procrastinate action until the end of the 45-day period. Targeted timeframes and procedures for review of Green Permits will be specified in the Memorandum of Agreement being developed with EPA.

The following is the original proposed rule circulated for public review:

OAR 340-014-0145, Procedures for Issuing Custom Waiver Permits or GEMS Permits
(3) The agency shall coordinate with other agencies as may be necessary to obtain federal, state and local approvals for issuing a Custom Waiver Permit or GEMS Permit.

The following is the proposed revised language, incorporating EPA comments:

OAR 340-014-0145, Procedures for Issuing Custom Waiver Permits or GEMS Permits
(3) The agency shall coordinate with other agencies as may be necessary to obtain federal, state and local approvals for issuing a Custom Waiver Permit or GEMS Permit. The agency shall provide a copy of each application accepted to the USEPA, and request assistance in identifying any decisions for waivers or incentives that require USEPA action as expeditiously as possible.

EPA Comment #3: EPA suggested adding language to the draft rule specifying that the agency shall not issue the proposed permit until the USEPA has determined that the waiver or incentive may be issued.

Department's Response: DEQ disagrees with the request that the agency shall not issue the proposed permit until the USEPA has determined that the waiver or incentive may be issued. This proposal is in conflict with (and somewhat redundant with) the EPA comment #1 above, and we believe that EPA's concerns regarding issuing specific waivers prior to EPA approval have been incorporated into the revised language under comment #1 above. DEQ proposes to provide public notice of all proposed waivers with the draft Green Permit, but will not incorporate the specific waiver into the permit until the waiver is approved by EPA. This will allow DEQ move forward with issuing Green Permits and not hold up the entire permit while waiting to resolve a few, but potentially difficult issues. In this case, the agency would modify the Green Permit after EPA

notifies DEQ of its approval of the waiver. No changes to the proposed rule language have been made in response to these comments.

EPA Comment #4: EPA supports the development of a Memorandum of Agreement to clarify how the agencies will together review applications and work with the applicants so that innovative Green Permits can proceed smoothly with every reasonable opportunity to succeed. EPA also wants to clarify in the Agreement how enforcement discretion will be applied to the Green Permit recipients and how enforcement decisions and actions on the part of each agency are coordinated so that we can establish a cooperative approach for consulting with each other under our separate authorities.

Department's Response: The Department agrees with EPA on the importance of clarifying roles and responsibilities up front to ensure the success of the program, including the coordination of appropriate enforcement response. We wish to clarify the Department's proposed procedures for enforcement response. The proposed rule (OAR 340-014-0135(3)(a)) only allows enforcement discretion for facilities that have been issued a GEMS permit. The agency may address appropriate compliance issues through improvements to the environmental management system, because these systems contain procedures for documenting compliance issues, and instituting corrective and preventive action. Each GEMS permittee will issue an annual report that includes information on compliance issues and how they were addressed, and the report will be available for public review and comment. If compliance issues are not addressed appropriately, the agency may initiate termination procedures for all or part of the GEMS Permit. No changes to the proposed rule language have been made in response to these comments. These procedures will be clarified in the Memorandum of Agreement.

Oregon Department of Environmental Quality
GEMS Permits, Proposed Criteria for Permit Approval

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Environmental Management System Characteristics	Implemented a basic, robust EMS that is driven by environmental impacts, helps integrate environmental and business functions, provides a mechanism for evaluating continual improvement, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and hierarchy in setting objectives and targets and developing the environmental management program; and committed to continual improvement.	Implemented, and will maintain and improve a robust EMS that is certified as meeting the ISO 14001 standard, or meets the purpose or intent of each of the ISO 14001 clauses, and supports verification; committed to maintaining and exceeding regulatory compliance; committed to applying the pollution prevention definition and hierarchy in setting objectives and targets and developing the environmental management program; and committed to continual improvement.	
Scope of Targeted Environmental Impacts	Evaluated environmental impacts and set objectives and targets that will improve environmental performance in management and reduction of regulated pollutants.	Evaluated environmental impacts and set objectives and targets that will achieve superior environmental performance for those site-based aspects that have significant impacts, taking into consideration both regulated and unregulated environmental pollutants and other environmental impacts.	Evaluated environmental impacts and set objectives and targets that will meet the expectations for a GEMS Achiever Permit and demonstrates industry leadership in applying sustainable development principles to the environmental life cycle aspects of its activities, products and services. This could include leadership through relevant supplier and customer chains, including use and disposal of products.
Baseline Performance Reporting	Submitted a baseline performance report that summarizes: <ul style="list-style-type: none"> -Environmental policies affecting the facility's operations; -Environmental information regarding significant environmental impacts; and -The environmental program that will achieve the results described above. 	Submitted a baseline environmental performance report that summarizes: <ul style="list-style-type: none"> -Environmental policies affecting the facility operations; -Environmental information regarding significant environmental impacts, including those appropriate to the scope of the targeted impacts; and -Performance measures and performance achievements, including a description of the environmental program that will achieve the results described above. 	
Annual Performance Reporting	Developed a plan for an annual update of the performance report that includes an update of the information above, and: <ul style="list-style-type: none"> -Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed; -EMS deficiencies, and how addressed; -Compliance issues, and how addressed; and -Stakeholder involvement activities and input received from stakeholders. 	Developed a plan for an annual update of the performance report that updates the information above, and includes: <ul style="list-style-type: none"> -Performance achievements, and, if appropriate, a description of any obstacles encountered and how addressed; -EMS deficiencies, and how addressed; -Compliance issues, and how addressed; -Stakeholder involvement activities, and input received from stakeholders and how addressed; and -Revised objectives and targets for targeted impacts. 	
Performance Measures	Established performance measures that will be used to explain environmental information in context with past performance and future improvements.		
Performance Achievements (past)	Not required	Demonstrated that the facility has reduced overall environmental impacts in the three-year period prior to applying to the GEMS permit tier, or, for new facilities, demonstrated by methods used to minimize environmental impacts in the design of the facility.	
Performance Achievements (future)	Developed an environmental program that will achieve environmental results that are significantly better than otherwise required by law, demonstrated by projected reductions in environmental impacts that are appropriate to the scope of the targeted environmental impacts and evidence that the reductions will be achieved.		

**Oregon Department of Environmental Quality
GEMS Permits, Proposed Criteria for Permit Approval (continued)**

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Stakeholder Involvement	Developed a plan for stakeholder involvement that provides information to the public regarding environmental performance on at least an annual basis, and includes a mechanism for receiving and responding to comments.	Developed a program for stakeholder involvement appropriate to the scope of the EMS and site-based impacts; and has implemented and continues to implement activities that provide for two-way dialogue regarding environmental performance and a mechanism for receiving, considering and responding to comments received. The facility shall: -Encourage public inquiries and comments regarding the facility's environmental performance; -Provide mechanisms to discuss the environmental policy, annual performance report, environmental aspects and impacts, and establishment of objectives and targets; and -Consider results of stakeholder involvement in decisionmaking, and respond to comments received. The main difference between the Achiever and Leader permit requirements is in the scope of the audience targeted for outreach.	

GEMS Permits, Proposed Incentives or Benefits

Program Elements	GEMS Participant (Tier I, limited to 6 years)	GEMS Achiever (Tier II)	GEMS Leader (Tier III)
Incentives	All GEMS Permittees would be eligible for the following GEMS permit incentives: <ul style="list-style-type: none"> • A single point of contact (team leader) for agency assistance on environmental issues; • Technical assistance on EMS development, compliance assistance and stakeholder involvement activities; • Modified enforcement response procedures in which compliance issues that are self-reported or discovered during inspections are corrected in a way that focuses on improvements to the environmental management system. 		
Recognition	Limited public recognition as a participant in the GEMS program.	Public recognition as a GEMS Achiever, such as recognition at conferences or a Director's Award	Public recognition as a GEMS Leader, such as recognition at conferences or a Governor's Award, plus additional publicity.
Regulatory Waivers	Not eligible	Streamlined permitting, regulatory flexibility, or other waivers or benefits that are tailored to the facility's needs. Increasing levels of performance would receive increasing regulatory benefits.	Tier II incentives, and if appropriate, benefits that tailor the environmental regulatory interactions to a group of facilities, such as multiple corporate facilities within the state, or multiple facilities working together in a supplier-customer relationship.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
GREEN PERMITS ADVISORY COMMITTEE
MEMBERSHIP LIST (alphabetical by name)

Name	Organization	Interest Represented	Notes
Bill Funk	Northwestern School of Law and Lewis and Clark College	University	Committee Chair
Jeff Allen (backup: Beth Woodward)	Oregon Environmental Council	Stakeholder	
Sarah Allender (backup: Michelle Michaud)	Port of Portland	Facility	
Marcia Anderson	Sierra Club	Stakeholder	
Dorothy Atwood	EMCON Associated Oregon Industries		
Robert Braun (backup: Jeff Lyon, J.R. Simplot)	Ore-Ida Foods, Inc. Northwest Food Processors Association	Facility	
Cory Ann Chang	DEQ	Agency	Pilot-ex officio
Linda Frazier	Sony Disc Manufacturing	Facility	ISO 14001 certified
Keith Euhus	Weyerhaeuser	Facility	
Greg Goebel	Industrial Publishing	Facility	
Bob Guerra	DEQ	Agency	Pilot-ex officio
John Haines	Shorebank Pacific	Financial	
Ray Hendricks (backup: Jennifer Gomersall)	Louisiana Pacific	Facility	Pilot-ex officio
Drew Johnson (backup: Grecia Castro)	Lane Regional Air Pollution Authority	Agency	
Kevin Masterson	DEQ	Agency	Pilot-ex officio
John MacKellar	DEQ	Agency	Pilot-ex officio
James Ollerenshaw	City of Eugene Association of Clean Water Agencies	Facility	
Jeff Omelchuck	International Quality Associates	EMS Evaluation	Pilot-ex officio
John Palmer	EPA Region 10	Agency	
Laurie Patterson	OKI Semiconductor JAE Oregon	Facility	Pilot-ex officio ISO 14001 certified
Morgan Rider	LSI Logic	Facility	Pilot-ex officio
Jim Robison	North Portland Neighborhood Assn.	Stakeholder	
Lynn St. Georges	Oregon Natural Step Network	Stakeholder	
David Wilson (backup: Tom Hosler)	PacifiCorp	Facility	Pilot-ex officio

Staff: Marianne Fitzgerald, DEQ EMSIP Project and Green Permits Program Coordinator,
phone (503) 229-5946, fax (503) 229-5850, email fitzgerald.marianne@deq.state.or.us

Ex officio means that these members are part of the Environmental Management Systems Incentives Project (EMSIP) pilot project.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For the
Green Permits Program

Rule Implementation Plan

Summary of the Proposed Rule

The proposed new Green Permits rules would establish a voluntary program that encourages facilities to achieve environmental performance that is significantly better than otherwise provided by law. The proposed rules would establish two types of Green Permits: a Custom Waiver Permit and a Green Environmental Management Systems (GEMS) Permit. The program authorizes DEQ and the Lane Regional Air Pollution Authority (LRAPA) to provide or, where necessary, to seek exemptions or waivers from regulatory requirements for facilities that achieve superior results, subject to specific conditions. The proposed rules include procedures for issuing, modifying, renewing and terminating the Green Permits.

Proposed Effective Date of the Rule

The rules will be filed with the Secretary of State immediately following adoption by the Environmental Quality Commission, to be effective upon filing.

Proposal for Notification of Affected Persons

The Green Permits program is a voluntary program for facilities that are interested in participating. DEQ has been maintaining a mailing list of over 350 persons who are interested in the development of the program, and has sent periodic updates to the list since September 1997. DEQ has been mailing detailed packets with proposed rule drafts to over 75 persons since the Green Permits Advisory Committee began meeting in October 1998. All of these people have been notified of the opportunity to comment at the rulemaking hearing and received copies of the draft rules. The list of those most interested in the program (approximately 75 persons) will receive copies of the rule adoption package at the end of July. The complete mailing list (approximately 350 persons) will be notified after the rules are adopted and when the program application materials are ready, which should be approximately October 1, 1999.

Proposed Implementing Actions

A team of DEQ and LRAPA staff has been meeting since June 1998 to help develop the details of the program. A program implementation guide is being developed along with the rules. DEQ has been developing procedures with the assistance of the pilot facilities and the Green Permits Advisory

Committee. Many of the procedures are incorporated into the rules, although the guidance will provide the worksheets for evaluation of the proposals.

The Green Permits Team has been working with the pilot facilities to evaluate their proposals and develop the draft Green Permits. After the rules are adopted, if the pilot facilities meet the criteria for approval, the Department will take final action on the draft Green Permits after issuing public notice and considering comments received.

DEQ proposes to maintain an agency program coordinator within the Office of the Director, and as applications are received, delegate most of the Green Permit work to the regions in which the facility is located. A team leader will be assigned for each facility to act as liaison between the facility and agency staff. DEQ'S regional Division Administrator will determine how many applications the region can accept, although other agencies may need to be consulted (i.e. LRAPA, EPA) prior to making this determination. The agencies may limit the number of applications accepted by the agencies.

The Green Permits Team is currently developing the program application materials: the application form and instructions, implementation guide and worksheets, checklist for approval, permit templates, and a program brochure. The agency coordinator will prepare staff guidance for cost recovery, since only activities that are unique to the Green Permits program and determined to be appropriate will be invoiced to the facility.

Proposed Training/Assistance Actions

All current members of the EMSIP Team have been working with pilot facilities to test implementation of the program prior to rule adoption. These staff are very familiar with the details of the program, and may either continue to serve on this project or may help mentor other staff who are assigned to the facilities. The team leaders assigned to the facilities may need training in environmental management systems, and all team members may need training in the program elements. Fifteen staff received training in environmental management systems (ISO 14001 Lead Auditor training) in July, 1998. Additional staff training is proposed for the fall of 1999.

The Green Permits Program Coordinator will schedule individual meetings with interested facilities to provide more detailed information regarding potential participation in the program.

Outreach

The initial outreach to regulated facilities, consultants and attorneys regarding the Green Permits Program will be to those who have expressed interest in the program and are currently on the Green Permits mailing list. In addition, the staff training planned for the fall of 1999 will provide the regional staff with sufficient information, and brochures, so they may introduce the program to the regulated facilities they encounter during the normal course of their duties. The Department will also make program brochures available at the Northwest Environmental Conference, scheduled in Portland on November 2-3, 1999 with an expected attendance by over 400 persons from throughout the state.

Depending on the level of interest in the program, the Department will determine what additional outreach is needed during the winter of 1999/00.

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product. [Formerly 468.960]

468.490 [1977 c.650 §9; repealed by 1991 c.920 §24]

468.491 Limit on costs certified by commission for tax credit. (1) The total of all costs of investments that receive a preliminary certification from the Environmental Quality Commission for tax credits in any calendar year shall not exceed \$1,500,000. If the applications exceed the \$1,500,000 limit, the commission, in the commission's discretion, shall determine the dollar amount certified for any investments and the priority between applications for certification based upon the criteria contained in ORS 468.451 to 468.491.

(2) Not less than \$500,000 of the \$1,500,000 annual certification limit shall be allocated to investments having a certified cost of \$100,000 or less for any qualifying business.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any investments shall not exceed \$500,000. However, if the applications certified in any calendar year do not total \$1,000,000, the commission may increase the certified costs above the \$500,000 maximum for previously certified investments. The increases shall be allocated according to the commission's determination of how the previously certified investments meet the criteria of ORS 468.451 to 468.491. The increased allocation to previously certified investments under this subsection shall not include any of the \$500,000 reserved under subsection (2) of this section. [Formerly 468.965]

468.495 [1977 c.650 §7; repealed by 1991 c.920 §24]

468.500 [Formerly 449.850; renumbered 468A.100 in 1991]

GREEN PERMITS

468.501 Definitions for ORS 468.501 and 468.506 to 468.521. As used in ORS 468.501 and 468.506 to 468.521:

(1) "Agency" means either the Department of Environmental Quality or the Lane Regional Air Pollution Authority created pursuant to ORS 468A.010 to 468A.180, or both, as the context requires.

(2) "Commission" means the Environmental Quality Commission.

(3) "Environmental laws" means ORS 454.605 to 454.780, 459.005 to 459.153, 459.705 to 459.790, 459.992, 459.995, 465.003 to 465.034 and 466.005 to 466.385 and ORS chapters 468, 468A and 468B and rules adopted thereunder. "Environmental laws" does not include any

provision of Oregon Revised Statutes or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.

(4) "Facility" means any site or contiguous sites, any manufacturing operation or contiguous operations, or any business or municipal activity regulated under any provision of the environmental laws.

(5) "Green Permit" means a permit that provides administrative benefits or reduces regulatory requirements to facilities that meet criteria established by the Environmental Quality Commission.

(6) "Sponsor" means a person, group or association that submits a proposal under the Green Permit program. [1997 c.553 §2]

Note: 468.501 to 468.521 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.503 Purpose of Green Permits. The purpose of ORS 468.501 and 468.506 to 468.521 is to authorize:

(1) The issuance of Green Permits to persons regulated under the environmental laws of the State of Oregon.

(2) The Environmental Quality Commission to develop Green Permit criteria that will result in the use of innovative environmental approaches or strategies not otherwise recognized or allowed under existing regulations, to achieve environmental results that are significantly better than otherwise required by law.

(3) An agency to provide or, where necessary, to seek exemptions or waivers from regulatory requirements as considered necessary to implement the provisions of ORS 468.501 and 468.506 to 468.521.

(4) An agency to encourage applications for Green Permits that promote pollution prevention, source reduction, more efficient use of natural resources, improvements in technology or practices, utilization of environmental management systems and creation of public and private entity partnerships that can achieve environmental results that are significantly better overall than otherwise required by law. [1997 c.553 §1]

Note: See note under 468.501.

468.505 [Formerly 449.855; renumbered 468A.105 in 1991]

468.506 Commission rulemaking to carry out Green Permit program. The Environmental Quality Commission shall establish by rule criteria for Green Permits and procedures for the application, review and public participation in the process of issuance of the permits. In establishing the criteria for Green Permits, the commission:

(1) Shall consider the objectives set forth in ORS 468.503;

(2) May establish classes or categories of Green Permits as the commission considers appropriate; and

(3) May limit the number and duration of such permits issued by the agencies for the purpose of evaluating the effectiveness of the Green Permit program. [1997 c.553 §3]

Note: See note under 468.501.

468.508 Eligibility for Green Permit.

Any person owning or operating a facility or contiguous facilities subject to regulation under the environmental laws may act as a sponsor and propose a Green Permit. [1997 c.553 §4]

Note: See note under 468.501.

468.510 [Formerly 449.857; renumbered 468A.110 in 1991]

468.511 Environmental laws not applicable to facility operating under Green Permit. Notwithstanding any other provision of law, any requirement under the environmental laws, except those required by treaty or interstate compact or by a federal law, that is contrary to the terms and provisions of a Green Permit shall not apply to a facility operating under a Green Permit. Any prior conflicting permit condition shall be revised by the agency that has jurisdiction over the Green Permit. Except as specifically revised in a Green Permit, any existing environmental permit or requirement shall remain in effect, notwithstanding issuance of a Green Permit. [1997 c.553 §5]

Note: See note under 468.501.

468.513 Judicial review of agency decision on issuance of Green Permit. The decision of an agency to refuse to issue a Green Permit is not subject to judicial review. The decision of an agency to issue a Green Permit may be appealed in accordance with the provisions of ORS 183.484 pertaining to review of an order in other than a contested case. [1997 c.553 §6]

Note: See note under 468.501.

468.515 [Formerly 449.870; renumbered 468A.115 in 1991]

468.516 Termination of Green Permit.

If a sponsor operating a facility under a Green Permit fails to perform any term or condition in the Green Permit, the agency may, after written notice to the permittee, terminate the Green Permit in whole or in part. The permittee may appeal the agency's decision to terminate a Green Permit to the Environmental Quality Commission. The commission's decision on appeal shall be an order in other than a contested case. [1997 c.553 §7]

Note: See note under 468.501.

468.518 Application for permit or approval affected by termination of Green Permit. After an agency issues a notice of termination of a Green Permit in the manner provided in ORS 468.516, the operator of the facility shall have 30 days to apply for any permit or approval affected by the termination of all or a portion of the Green Permit. An application filed during the 30-day period shall be considered a timely application for renewal of a permit under the terms of the applicable law. The terms and conditions of the Green Permit shall continue in effect until a final permit or approval is issued or denied. In order to achieve an orderly transition and compliance with the environmental laws, the agency may issue an order establishing conditions for the interim operation of the facility. [1997 c.553 §8]

Note: See note under 468.501.

468.520 [Formerly 449.865; 1991 c.890 §1; renumbered 468A.120 in 1991]

468.521 Recovery of costs of agency in developing, negotiating and publicizing Green Permit; disposition of moneys collected. The agency shall recover the costs of the agency in developing, negotiating and publicizing a Green Permit in the following manner:

(1) The sponsor shall fully reimburse the agency for the agency's direct and indirect costs of conducting the review, negotiating the relevant permit revisions, responding to public comment, monitoring the provisions in the Green Permit and environmental outcomes resulting from the Green Permit and publicizing and conducting the public hearings.

(2) The agency shall appropriately document the direct and indirect costs of the agency and collect payment for such costs from the sponsor. The agency shall collect a deposit from the sponsor, against which the agency shall bill until the deposit is depleted. When the deposit is depleted, the agency shall collect an additional deposit. The initial deposit shall accompany the sponsor's initial Green Permit proposal and shall be in the amount of \$5,000. The agency shall deliver to the sponsor an accounting of all charges and the amount of the deposit remaining at the closure of each month's accounting records.

(3) All moneys collected by the Department of Environmental Quality pursuant to this section shall be deposited into the General Fund of the State Treasury to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the Department of Environmental Quality for the payment of expenses of the Department of Environmental Quality in carrying out the provisions of ORS 468.501 and 468.506 to 468.521. The Director of the

Department of Environmental Quality shall keep a record of all moneys deposited into the State Treasury pursuant to this section and shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. The fees collected under this section by the Lane Regional Air Pollution Authority shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are the funds collected by the Department of Environmental Quality under this section. [1997 c.553 §9]

Note: See note under 468.501.

Note: Sections 10 and 11, chapter 553, Oregon Laws 1997, provide:

Sec. 10. The Environmental Quality Commission shall submit a report to the Seventieth Legislative Assembly that addresses the status and success of the Green Permit program. The report may include recommendations regarding the continuation or modification of the program, development of other programs or the establishment of a permanent Green Permit program. [1997 c.553 §10]

Sec. 11. An agency shall not issue a Green Permit after December 31, 2000. [1997 c.553 §11]

- 468.525 [Formerly 449.867; 1991 c.890 §2; renumbered 468A.125 in 1991]
- 468.530 [Formerly 449.885; 1983 c.233 §1; renumbered 468A.130 in 1991]
- 468.535 [1973 c.835 §99; 1987 c.660 §28; 1987 c.741 §20; renumbered 468A.135 in 1991]
- 468.540 [Formerly 449.910; renumbered 468A.140 in 1991]
- 468.545 [Formerly 449.863; renumbered 468A.145 in 1991]
- 468.550 [Formerly 449.890; renumbered 468A.150 in 1991]
- 468.555 [Formerly 449.883; 1991 c.752 §19; renumbered 468A.155 in 1991]
- 468.560 [Formerly 449.900; renumbered 468A.160 in 1991]
- 468.565 [Formerly 449.905; renumbered 468A.165 in 1991]
- 468.570 [Formerly 449.915; renumbered 468A.170 in 1991]
- 468.575 [Formerly 449.920; renumbered 468A.175 in 1991]
- 468.580 [Formerly 449.923; renumbered 468A.180 in 1991]
- 468.600 [1975 c.366 §1; renumbered 468A.650 in 1991]
- 468.605 [1975 c.366 §2; 1977 c.18 §1; 1977 c.206 §1; 1983 c.148 §1; renumbered 468A.655 in 1991]
- 468.610 [1977 c.206 §4; renumbered 468A.660 in 1991]
- 468.612 [1989 c.903 §2; renumbered 468A.625 in 1991]
- 468.614 [1989 c.903 §3; renumbered 468A.630 in 1991]
- 468.615 [1977 c.206 §2; repealed by 1987 c.414 §172]
- 468.616 [1989 c.903 §4; renumbered 468A.635 in 1991]
- 468.618 [1989 c.903 §5; renumbered 468A.640 in 1991]
- 468.620 [1977 c.206 §3; repealed by 1987 c.414 §172]
- 468.621 [1989 c.903 §6; renumbered 468A.645 in 1991]
- 468.630 [1983 c.333 §4; renumbered 468A.460 in 1991]
- 468.635 [1983 c.333 §8; renumbered 468A.465 in 1991]
- 468.640 [1983 c.333 §7; renumbered 468A.470 in 1991]
- 468.645 [1983 c.333 §9; repealed by 1991 c.752 §28]
- 468.650 [1983 c.333 §10; 1991 c.752 §19a; renumbered 468A.475 in 1991]
- 468.655 [1983 c.333 §§5,6; 1991 c.752 §20; renumbered 468A.480 in 1991]
- 468.659 [1989 c.917 §2; 1993 c.742 §106; repealed by 1997 c.82 §7]
- 468.660 [1989 c.917 §1; repealed by 1997 c.82 §7]
- 468.661 [1989 c.917 §20; 1991 c.67 §131; repealed by 1997 c.82 §7]
- 468.662 [1989 c.917 §3; repealed by 1997 c.82 §7]
- 468.663 [1989 c.917 §25; 1993 c.742 §107; repealed by 1997 c.82 §7]
- 468.664 [1989 c.917 §4; 1993 c.742 §108; repealed by 1997 c.82 §7]
- 468.665 [1989 c.917 §15; 1993 c.742 §109; repealed by 1997 c.82 §7]
- 468.666 [1989 c.917 §5; repealed by 1997 c.82 §7]
- 468.667 [1989 c.917 §8; repealed by 1997 c.82 §7]
- 468.668 [1989 c.917 §9; 1991 c.67 §132; 1993 c.736 §55; repealed by 1997 c.82 §7]
- 468.669 [1989 c.917 §11; repealed by 1997 c.82 §7]
- 468.670 [1989 c.917 §13; repealed by 1997 c.82 §7]
- 468.671 [1989 c.917 §16; repealed by 1997 c.82 §7]
- 468.672 [1989 c.917 §18; repealed by 1997 c.82 §7]
- 468.673 [1989 c.917 §21; repealed by 1997 c.82 §7]
- 468.674 [1989 c.917 §24; repealed by 1997 c.82 §7]
- 468.675 [1989 c.917 §6; repealed by 1993 c.742 §105]
- 468.676 [1989 c.917 §7; repealed by 1993 c.742 §105]
- 468.677 [1989 c.917 §10; repealed by 1993 c.742 §105]
- 468.678 [1989 c.917 §12; repealed by 1993 c.742 §105]
- 468.679 [1989 c.917 §14; repealed by 1993 c.742 §105]
- 468.680 [1989 c.917 §17; repealed by 1993 c.742 §105]
- 468.681 [1989 c.917 §19; repealed by 1993 c.742 §105]
- 468.682 [1989 c.917 §22; repealed by 1993 c.742 §105]
- 468.683 [1989 c.917 §23; repealed by 1993 c.742 §105]
- 468.685 [1989 c.917 §26; repealed by 1995 c.79 §283]
- 468.686 [1989 c.847 §2; renumbered 468B.200 in 1991]
- 468.687 [1989 c.847 §3; renumbered 468B.205 in 1991]
- 468.688 [1989 c.847 §4; renumbered 468B.210 in 1991]
- 468.689 [1989 c.847 §5; renumbered 468B.215 in 1991]
- 468.690 [1989 c.847 §6; renumbered 468B.220 in 1991]
- 468.691 [1989 c.833 §17; renumbered 468B.150 in 1991]
- 468.692 [1989 c.833 §18; renumbered 468B.155 in 1991]
- 468.693 [1989 c.833 §19; 1991 c.67 §133; renumbered 468B.160 in 1991]
- 468.694 [1989 c.833 §25; renumbered 468B.165 in 1991]
- 468.695 [1989 c.833 §27; renumbered 468B.170 in 1991]
- 468.696 [1989 c.833 §§31,33; renumbered 468B.175 in 1991]
- 468.698 [1989 c.833 §§36,37; renumbered 468B.180 in 1991]
- 468.699 [1989 c.833 §29; renumbered 468B.185 in 1991]
- 468.700 [Formerly 449.075; renumbered 468B.005 in 1991]
- 468.705 [Formerly 449.070; renumbered 468B.010 in 1991]
- 468.710 [Formerly 449.077; renumbered 468B.015 in 1991]

Internet Web Sites...



• www.CollinsWood.com

- links to other sites supporting sustainability

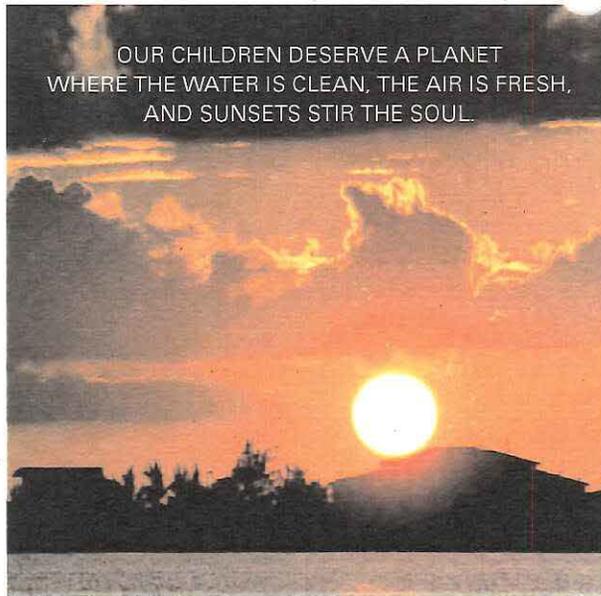
• www.naturalstep.org

For additional information about our Journey to Sustainability please contact:

Fravis Wilson (JTS Plant Facilitator)
(541) 885-3247 Phone
(541) 882-8671 Fax
twilson@collinsco.com

Collins Products LLC
P.O. Box 16
6410 Highway 66
Klamath Falls, Oregon 97601

OUR CHILDREN DESERVE A PLANET
WHERE THE WATER IS CLEAN, THE AIR IS FRESH,
AND SUNSETS STIR THE SOUL.



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**Collins
Products** LLC



Investing in Our Future
Changing, building, growing...
Planning for our tomorrow

Collins Products Commitment

Journey to Sustainability (JTS) is a concept that helps us think in terms of reducing man's impact on the earth by systematically reducing our dependence on nonrenewable products and processes that cause pollutants in nature.

Collins Products is dedicated to utilizing the principles of The Natural Step (TNS)* in its' business practices. This is a commitment to the future of our company, our employees, our families, our community and the environment. We believe the integration of TNS principles into our daily business practices will provide us with long term environmental, social and financial benefits that we could not obtain by other methods.

**The Natural Step is a non-profit environmental education organization working to build an ecologically and economically sustainable society.*

The JTS Focus

- Strive to eliminate air pollution sources.
- Strive to eliminate all waste water discharge.
- Strive to eliminate waste to landfills.
- Strive to utilize renewable energy.
- Promote the principles and concepts of TNS and JTS at Collins Products and in our communities.

Basic Principles and Concepts of *The Natural Step*

Science:

- ◇ Matter and energy can not be created or destroyed (Conservation Law)
- ◇ Matter and energy tend to spread spontaneously (2nd Law of Thermodynamics)
- ◇ Concentrated and structured matter is being converted into dispersed waste (What we consume)
- ◇ Green cells are essentially the only net producer of concentration and structure (Photosynthesis)

"As long as the rate at which disorder is created is in balance with the rate at which green plants can restore order, the system will not run down. This is the heart of Sustainability."

Dr. Karl-Henrik Robèrt, Founder-TNS

4 System Conditions:

- 1 Substances from the earth's crust must not systematically increase in nature. (i.e. Fossil fuels, metals and other minerals must not be extracted at a faster rate than their slow redeposit into the earth's crust.)
- 2 Substances produced by society must not systematically increase in nature. (i.e. Substances must not be produced faster than they can be broken down and be reintegrated into the cycles of nature or be deposited into the earth's crust.)
- 3 The physical basis for the productivity and diversity of nature must not be systematically deteriorated. (i.e. The productive surfaces of nature must not be diminished in quality or quantity, and we must not harvest more from nature than can be recreated and renewed.)
- 4 There must be fair and efficient use of resources with respect to meeting human needs. (i.e. Basic human needs must be met with the most resource efficient methods possible, including equitable resource distribution.)

These conditions are our compass as we move toward a sustainable society by utilizing the concept of sustainable development.

4 Rs of Sustainability

- Re-focus
- Reduce
- Re-use
- Recycle

Collins Products Business Strategy

- How can we reduce our dependence on mining and fossil fuels?
- How can we reduce our dependence on unnatural substances?
- How can we reduce our dependence on nature-consuming activities?
- How can we do more with less?

Concept Path

We have begun a journey that will lead us to protect and enhance the systems of the earth that sustain all life. We are at the beginning of that journey. While we know where the end should be, we do not know the "best" path to follow to reach that end or if we will ever call the journey finished. The principles of TNS will be our compass. This journey will not be short. It will require course corrections and there will be obstacles to overcome. But this journey must be traveled for the benefit of the earth we live on and for the economic advantage it will provide for our company now and in the future.

With an understanding of these principles, we can begin to make sensible decisions for our businesses, organizations, and families. We can then align ourselves with the natural systems upon which our society is ultimately dependent.

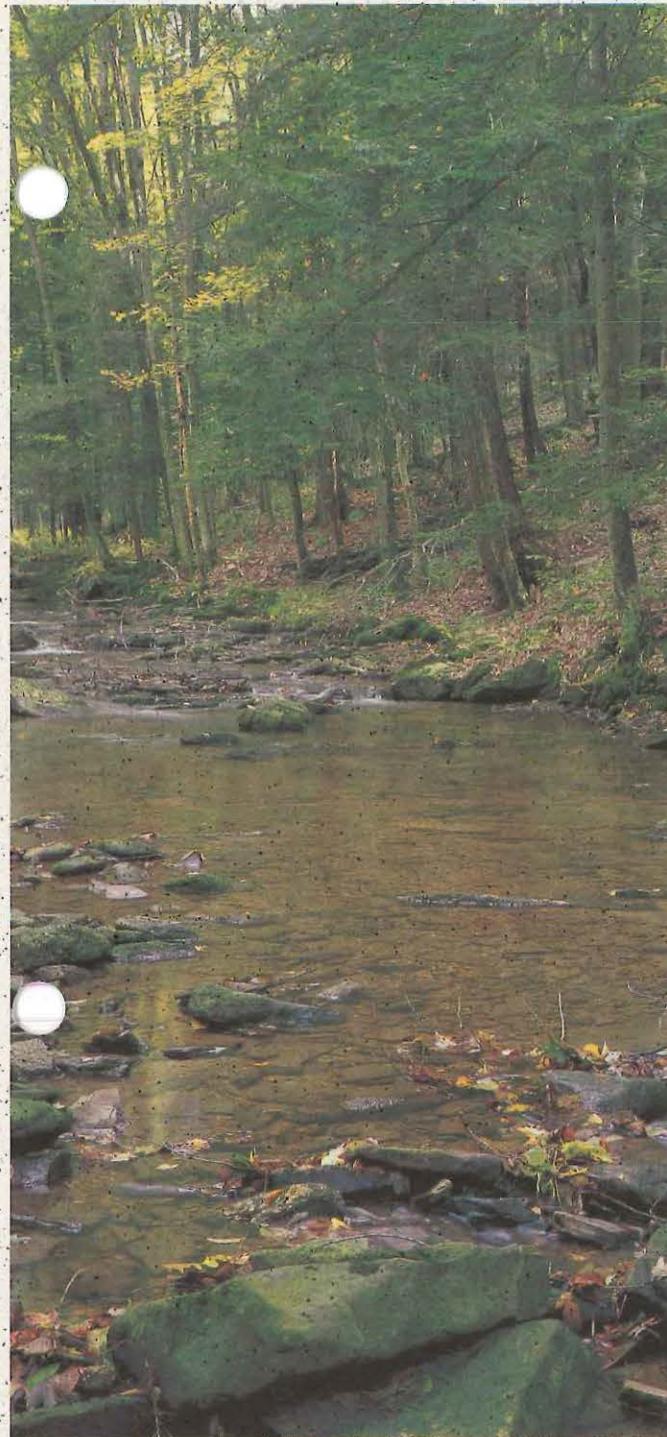
The family-owned Collins Companies traces its roots back to 1855 when T.D. Collins began timber operations in Pennsylvania. By the turn of the century, the family expanded west and by 1940, the third generation, Truman W. Collins, was articulating a vision of sustainable forestry that was half a century ahead of its

"If you want change, you must be the change."

Mahatma Gandhi

time. That vision has brought Collins a number of honors including:

- Presidential Award for Sustainable Development from President Bill Clinton
- Green Cross Millennium Award from Mikhail S. Gorbachev, President of Green Cross International
- Governor's Challenge Award for Excellence/Sustainable Oregon from Governor John Kitzhaber
- Enterprise Award for Best Business Practices for Building Strategic Alliances from Arthur Anderson, US Bank, and *Oregon Business Magazine*
- Founder of the New Northwest from *Sustainable Northwest*
- Inc. Magazine Marketing Masters Award from *Inc. Magazine*
- Jim Quinn, President and CEO of The Collins Companies, was awarded "Timber Man of the Year" from *Timber Processing Magazine*



The Collins Companies



Collins Pine Company
Forest & Mill • Chester, California



Kane Hardwood
Kane, Pennsylvania



Collins Products, LLC
Klamath Falls, Oregon



Fremont Sawmill
Lakeview, Oregon



Chester, Paradise, and
Orville, California

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Portland, Oregon 97201-5708 USA
Tel: 503-227-1219
Fax: 503-227-5349

Sales

800-329-1219
Tel: 503-417-7755
Fax: 503-417-1441

www.CollinsWood.com

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THE COLLINS

Responsible Environment

products that are in accordance with the Stewardship Council, you can have sustainable forestry. Every company is going, rigorous, and has said by their word to evolving a sustainable forest independently.

Forest ecosystem

A diverse, multilayered, single-species tree farms, forests, containing more than a hundred years old trees. We celebrate our bald eagles, rubber-boas, and beavers, in rookeries and the Goose Lake trout, enriched by our meadows, and lakes. And they are the trees that grow from the fertile soil.

Well-managed

As a producer of CollinsWood, we have a management philosophy that is respected and, we hope, as good as well as for those who are committed in words.

the total forest

of wood on a sustained,

economic benefits to the communities.

CollinsWood®

Environmentally certified wood products

- Softwood Lumber
- Hardwood Lumber
- Softwood Plywood
- Softwood Particleboard
- Veneer Logs
- Veneer

Independent scientific evaluation and certification lets consumers know the facts

Collins was the first privately-owned forest products company in the United States to be comprehensively evaluated and independently certified by Scientific Certification Systems (SCS) in accordance with the strict rules of the Forest Stewardship Council (FSC). The Council is an independent, international, member-based organization that accredits certification bodies

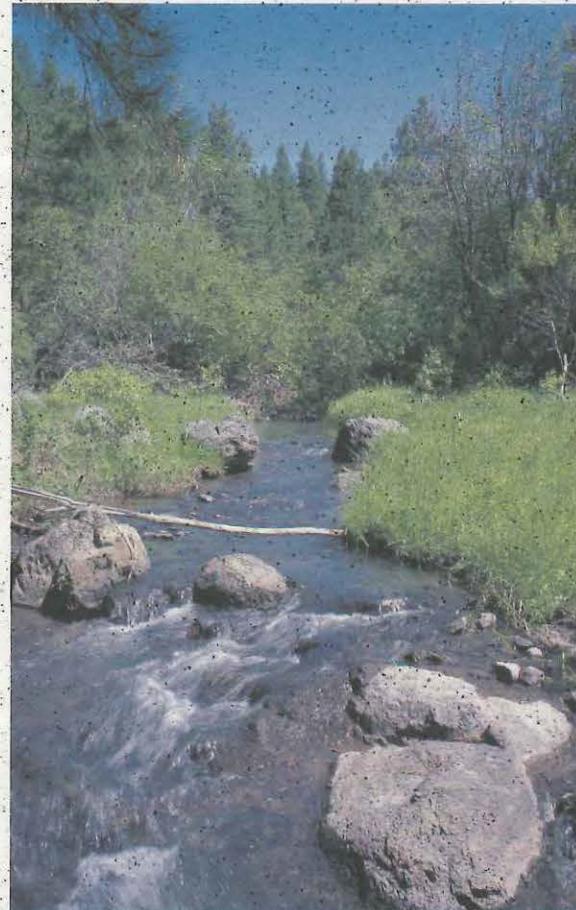


and promotes voluntary third-party certification. The FSC logo on a product provides consumers with an assurance that the wood they use comes from forests managed in an environmentally and socially responsible manner.

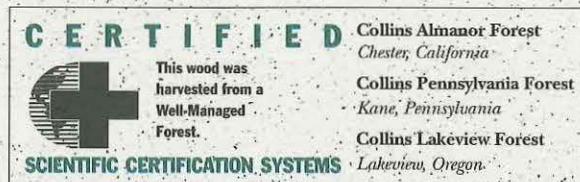


Today, all three of Collins' hardwood and softwood forests are certified and, in addition, Collins Products, LLC, manufactures certified plywood and particleboard.

But the story doesn't stop there. Collins has now instituted the principles of The Natural Step into its three manufacturing plants at Collins Products in Klamath Falls, Oregon. The Natural Step is an international environmental organization dedicated to shifting people and businesses away from linear, resource-wasting, toxic-spreading methods of materials handling and manufacturing toward cyclical resource-preserving methods.



We are the first North American forest products company to grow, manufacture, and market certified lumber, plywood, and particleboard while implementing sustainable practices into three of our manufacturing plants. Not just words or slogans, but actions. Actions to protect the integrity of our total forest ecosystem and our Earth.



"In 1941 Collins Almanor Forest held 1.5 billion board-feet of timber, enough to build 150,000 homes. Loggers have since removed 1.7 billion board-feet, but the forest has nearly as much wood as it had when logging began, all of it still in a mature forest that attracts bald eagles, ospreys, goshawks, and northern spotted owls." Seth Zuckerman, SIERRA CLUB MAGAZINE

"For more than 50 years, the small, family-owned timber company has practiced a kind of sustained yield, selective harvest management that is a relative oddity in the industry but wins plaudits from the environmental community... there are no clear cuts... and even after decades of cutting, most stands in the Collins Almanor Forest still contain some magnificent 200- and 300-year-old trees with diameters reaching five and six feet." Tom Kenworthy, THE WASHINGTON POST

"The Key [to the Collins operation] is selective logging, taking only those trees that are diseased or whose growth rate has slowed, while leaving the most vigorous. There are no clear cuts here, no same-aged rows of trees. The forest floor is 'messy' with soil-enriching debris. Loggers are careful to leave any trees with bird nests, even those marked for harvest." Cover Story by Brad Knickerbocker CHRISTIAN SCIENCE MONITOR

"Cutting trees and preserving forests can be complimentary goals. As Aldo Leopold wrote in A Sand County Almanac, 'It is a matter of what a man thinks about while chopping, or while deciding what to chop.' The fact that sustainable forestry is so rare has more to do with management priorities than with any technical challenges the foresters face. Half a continent apart, with radically different terrain and tree species, the Menominee forest of central Wisconsin and the Collins Almanor Forest of northeastern California exemplify good management... both are managed for a wide diversity of species, following a conservative selection formula that strengthens the genetic work of the forest by targeting old, weak, or crowded timber." Scott Landis, PATAGONIA CATALOG

HARDY MYERS
Attorney General



DAVID SCHUMAN
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

July 28, 1999

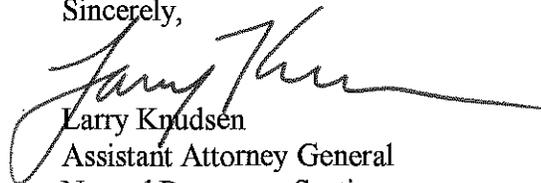
Carol Whipple, Chair
Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

Re: Umatilla Refuse Group Order

Dear Carol:

I have attached a draft Commission order for the Umatilla Refuse Group appeal. I believe it is consistent with the Commission's decision at the June 25 meeting in Hermiston. I made a number of editorial changes to the Hearing Officer's decision. In addition, I made substantive modifications to the Civil Penalty section to make the order conform to the Commission's decision. To aid in your review, I have also attached a version of the draft order that shows the major modifications in bold font. My understanding is that the Commission will consider the written order during its August meeting in Klamath Falls and make any revisions that it believes to be appropriate at that time.

Sincerely,



Larry Knudsen
Assistant Attorney General
Natural Resources Section

LJK:cer/GEN26026

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DRAFT

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

IN THE MATTER OF:)	FINDINGS, CONCLUSIONS,
)	DECISION AND
)	FINAL ORDER
Umatilla Refuse Group Co-Op,)	
An Oregon Non-Profit Corporation,)	NO. SW-ER-96-129
Respondent)	UMATILLA COUNTY

BACKGROUND

The Department of Environmental Quality, (DEQ) issued the Respondent Umatilla Refuse Group Cooperative (Respondent) a notice of assessment of civil penalty on June 7, 1996, under Oregon Revised Statutes (ORS) Chapters 468.126 through 468.140 and 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12. On June 24, 1996, Respondent appealed the notice.

After pre-hearing telephone conferences on July 9, 1998, and July 17, 1998, a hearing was held in Portland, Oregon, on July 22 and 23, 1998, before the Commission's hearing officer, Lawrence S. Smith. Respondent was represented by its president, Kalvin Garton. Larry Cwik, an environmental law specialist, represented DEQ.

The hearing record remained open for DEQ to file a hearing memorandum. It was received on August 4, 1998. Respondent responded to the memorandum on August 14, 1999. DEQ filed a reply to the response on August 28, 1998, and the record was closed.

The hearing record also remained open for an affidavit and/or testimony from Warren Taylor, witness for Respondent. On August 19, 1998, Respondent submitted records of dumping complaints in Umatilla County, but no affidavit from Warren Taylor or offer of his testimony. No such affidavit or offer was received by September 1, 1998, so the record was closed. The record of dumping complaints was not received into the record because the record did not remain open for that evidence.

The hearing record finally remained open to give DEQ an opportunity to provide legal argument from the Attorney General's office in response to legal arguments by Respondent. The argument was received on August 6, 1998. Respondent responded to it in its memorandum of August 14, 1998. On September 23, 1998, DEQ filed a petition for clarification. The hearing officer issued an amended decision and final order on October 26, 1998.

1 Both Respondent and DEQ filed timely notices of appeal to Commission. On June 25,
2 1999, the Commission heard oral argument and reached a preliminary decision.

3
4 **ISSUES**

5 Did Respondent establish, operate or maintain a solid waste disposal site without a solid
6 waste disposal facility permit in violation of ORS 459.205(1) and
OAR 340-93-050(1)?

7 Did DEQ properly assess a penalty for three days of violation?

8 Was the amount of the penalty appropriate under OAR 340-012-0045?
9

10 **FINDINGS OF FACT**

11 1. In 1994, Respondent incorporated as a non-profit private corporation to provide
12 recycling and other services for its members. Respondent sought to set up a recycling and
13 composting center near or around Pendleton, Oregon, for conversion of waste into usable
products. It was interested in accepting clean wood chips and construction debris for use as
cattle bedding and other beneficial uses.

14 2. Members of Respondent were part of a group that worked successfully against the
15 siting of a landfill in a Pendleton neighborhood. Respondent has continued to oppose Pendleton
16 Sanitary Service as the sole solid waste handler in the Pendleton area. Respondent believes that
17 the monopoly enjoyed by Pendleton Sanitary Service has caused a large increase in disposal fees
and that the increase in fees has led to much more illegal dumping. Respondent alleged in this
18 proceeding and other fora that the City of Pendleton, Umatilla County and DEQ have established
a flow control plan that protects Pendleton Sanitary Service's monopoly in disposing of solid
19 waste in Umatilla County. Respondent has pursued this theory in state court and in complaints
filed against Pendleton Sanitary Service, Umatilla County, and the City of Pendleton.

20 3. In 1994, Respondent entered into protracted negotiations with DEQ, Umatilla County,
21 and the City of Pendleton to receive a permit or authorization to establish a recycling and
composting operation. Respondent proposed to locate the operation on property leased from one
22 of its members on the member's cattle ranch (Torco Ranch) off Birch Creek Road, southeast of
Pendleton (Tax Lot 3800, Section 24, Township 2 North, Range 31 East, Willamette Meridian,
23 Oregon).

24 4. During the negotiations, the administrator of the eastern region for DEQ told
25 Respondent in a letter of October 13, 1995, that Respondent could accept clean fill and/or
source-separated material without a permit if it met the exemption in OAR 340-93-050. (Exhibit
26 9.) Based on Respondent's application, the administrator did not feel this option was

1 appropriate. In another letter on the same date, the administrator told Respondent that as long as
2 the clean wood chips and clean fill were source-separated where generated and do not come as
3 mixed waste, they are acceptable as compost materials. (Exhibit 10.) The administrator went on
4 to say that if Respondent wanted to process more than those two materials, it would need a solid
waste letter authorization (SWLA). In a letter of December 28, 1995, the administrator said
Respondent would definitely need a SWLA from DEQ before accepting the materials listed in its
application. (Exhibit 11.)

5 5. On February 28, 1996, the administrator of the eastern region for DEQ wrote to
6 Respondent, saying that Respondent needed to submit a land use compatibility statement
(LUCS) from Umatilla County to complete its application for an SWLA. (Exhibit 12.)
7 Respondent never obtained this LUCS and therefore never completed its application to DEQ for
8 an SWLA.

9 6. On March 13, 1996, the administrator of the eastern region for DEQ wrote to
10 Respondent, summarizing DEQ's understanding of a meeting on February 9, 1996. (Exhibit 13.)
11 In that letter, the administrator said that two alternatives proposed by Respondent were
12 appropriate for an SWLA, but that DEQ needed an LUCS before it could issue the SWLA.
13 Respondent reported that the proposed SWLA did not give it enough time to do what it proposed
14 in its demonstration project and the cost of an application for a Solid Waste Disposal (SWD)
permit was too high. DEQ told Respondent that the SWLA for its proposed demonstration
project was good for six months, with an extension for another six months. Respondent felt it
needed at least four to five years to determine whether its project was feasible. DEQ suggested
applying for a solid waste disposal (SWD) permit after one year with the SWLA.

15 7. Starting on March 9, 1996, the general manager for Respondent began negotiating with
16 Mike Johnson, Inc., a waste hauler located in the State of Washington. Johnson had been
17 awarded the contract of removing the construction debris from the site of the former Harris Pine
18 Mills. The site also contained a furniture factory and a retail sales store. The site was being
19 cleared for construction of a Wal-Mart store in Pendleton. The general manager told Johnson
20 that Respondent would take clean wood chips that were ground on site and other recyclable
21 items. Respondent wanted to mix the chips with manure for fertilizer and use the wood chips for
22 blotting under its compost operation. They also wanted to use wood chips for cattle bedding and
23 anti-erosion materials. The general manager understood that Johnson would be hauling only
clean wood and clean fill to Respondent's site on Torco Ranch and provided two employees to
Johnson to separate the materials on the Wal-Mart site. Around April 8, 1996, Johnson began
transporting wood chips made from the boards in the buildings. These boards had never been
treated or painted, except for painted boards from the front of the retail store. Johnson was told
to tarp the loads so the wood chips would not fly away in transit, but instead, he put crushed rock
on them to keep the wood chips down while he transported them.

24 8. A person with Pendleton Sanitary Service and another citizen complained to DEQ
25 about Johnson's dumping of these materials on Torco Ranch. DEQ noted that Respondent had
26 advertised that it could take solid waste for recycling. On April 9, 1996, DEQ inspected the
Torco Ranch with the general manager for Respondent. Large piles of wood chips with rocks in

1 them were on site, as well as piles of demolished wood planks, some asphalt shingles, metal, and
2 gypsum board that had been separated out in small piles. (See Exhibit 23, pictures.) The general
3 manager admitted that the wood waste was not clean fill. The general manager said that the
4 wood would be ground after Respondent bought a tub grinder, which it would not do until it

5 9. On April 12, 1996, at 8:05 a.m., the general manager for Respondent signed a written
6 contract with Mike E. Johnson, Inc., stating that Respondent would receive source-separated
7 material and clean fill. (Exhibit 26.)

8 10. On April 16, 1996, DEQ mailed a notice of noncompliance to the general manager for
9 Respondent. (Exhibit 22.) The notice stated specific steps for corrective action, including taking
10 of no more waste, removal of wood waste by May 31, 1996, and removal of other wastes. A
11 newspaper article dated April 19, 1996, stated that DEQ was taking such actions against
12 Respondent.

13 11. After April 9, 1996, Johnson was required to remove construction and other debris
14 immediately from the Wal-Mart site, before it was separated or chipped. Johnson removed this
15 material and dumped it on respondent's site at the Torco Ranch. Johnson dumped some of this
16 material on the Torco Ranch the morning of April 18, 1996. A Umatilla County sheriff cited
17 Respondent with a violation on April 18, 1996, for allowing an unpermitted waste disposal site
18 on its property. (Exhibit 17.) **On May 1, 1996, an official of the Umatilla County Sheriff's
19 Office inspected the Torco Ranch Site and took photographs and videotape. The photos
20 and tape show large piles of wood, metal seams, insulation, roofing material, and some
21 plastic. (Exhibit 15.)**

22 12. On May 21, 1996, the general manager for Respondent wrote a letter to Johnson,
23 demanding removal of 20 of the 140 loads on the Torco Ranch because these 20 loads could not
24 be source-separated. (Exhibit 36.) On May 31, 1996, an attorney for Respondent wrote a letter to
25 Johnson formally demanding Johnson to remove 46 truck loads of material which could not be
26 source-separated by hand. (Exhibit 7.) Johnson never removed these loads, and Respondent was
told it would cost too much to pursue legal action against Johnson because he was out-of-state.

27 13. Respondent removed much of the non-wood waste by August 19, 1996, when DEQ
28 again inspected the site at the Torco Ranch. DEQ's manager of solid waste wrote to Respondent
29 on August 21, 1996, telling Respondent that the vast majority of the waste on site was wood
30 from a construction and demolition site, which DEQ did not consider clean fill and must be
31 removed. (Exhibit 29.) The letter said that brick or concrete could remain because it was clean
32 fill. Finally, the DEQ manager required Respondent to coordinate any removal with Umatilla
33 County and to provide receipts of dumps at authorized sites.

34 14. By September 16, 1996, Respondent had removed all but the wood chips on the site
35 and some paper and wood waste. (See Exhibit 41, pictures provided by Respondent.) DEQ
36 continued to require that all wood chips also be removed. On February 24, 1997, the landowner

1 of Torco Ranch wrote to DEQ and reported that the cost of cleanup was \$25,763.11. (Exhibit
2 34.) He advised DEQ that this cost was higher than it should have been because he thought DEQ
3 required him to dispose of the waste with Pendleton Sanitary Service, where the cost was \$55 per
4 ton, instead of the dump in Athena, Oregon, which charges \$5 per ton for dumping. Among the
5 owner's costs were a \$5,000 donation to Respondent to get the cleanup started, \$3,500 to rent
6 machinery for the cleanup, about \$5,000 to crews for hand-separating the material and picking
7 up, and \$12,530.11 to Pendleton Sanitary Service. The owner estimated that the pile was over
8 90% wood and hauled 227.82 tons from the site. The owner finally said that some more hand-
9 separating needed to be done.

10 **ULTIMATE FINDINGS**

11 Respondent established, **operated and maintained** an unpermitted disposal site.

12 **APPLICABLE LAW**

13 ORS 459.205(1) states:

14 Except as provided by ORS 459.215, a disposal site shall not be
15 established, operated, maintained or substantially altered, expanded or
16 improved, and change shall not be made in the method or type of disposal
17 at a disposal site, until the person owning or controlling the disposal site
18 obtains a permit therefor from the department as provided in ORS 459.235.

19 ORS 459.005(8) defines "disposal site" as:

20 [L]and and facilities used for the disposal, handling or transfer of,
21 or energy recovery, material recovery and recycling from solid wastes,
22 including but not limited to dumps, landfills, sludge lagoons, sludge
23 treatment facilities, disposal sites for septic tank plumbing or cesspool
24 cleaning service, transfer stations, energy recovery facilities, incinerators
25 for solid waste delivered by the public or by a collection service,
26 composting plants and land and facilities previously used for solid waste
disposal at a land disposal site; but the term does not include a facility
authorized by a permit issued under ORS 466.005 to 466.385 to store, treat
or dispose of both hazardous waste and solid waste; a facility subject to the
permit requirements of ORS 468B.050; a site which is used by the owner
or person in control of the premises to dispose of soil, rock, concrete or
other similar nondecomposable material, unless the site is used by the

public either directly or through a collection service; or a site operated by a
wrecker issued a certificate under ORS 822.110.

1 ORS 459.005(19) defines “recyclable material” as:

2 [A]ny material or group of materials that can be collected and sold
3 for recycling at a net cost equal to or less than the cost of collection and
4 disposal of the same material.

4 ORS 459.005(20) defines “recycling” as:

5 [A]ny process by which solid waste materials are transformed into
6 new products in a manner that the original products may lose their identity.

7 ORS 459.005(24) defines “solid waste” as:

8 [A]ll useless or discarded putrescible and nonputrescible materials,
9 including but not limited to garbage, rubbish, refuse, ashes, paper and
10 cardboard, sewage sludge, septic tank and cesspool pumpings and other
11 sludge, useless or discarded commercial, industrial, demolition and
12 construction materials, discarded and abandoned vehicles or parts thereof,
13 discarded home and industrial appliances, manure, vegetable or animal
14 solid and semisolid materials, dead animals and infectious waste as defined
15 in ORS 459.386.

13 OAR 340-093-0050 states:

14 (1) Except as provided by section (2) of this rule, no person shall
15 establish, operate, maintain or substantially alter, expand, improve or close
16 a disposal site, and no person shall change the method or type of disposal
17 at a disposal site, until the person owning or controlling the disposal site
18 obtains a permit therefor from the Department.

18 (2) Persons owning or controlling the following classes of disposal
19 sites are specifically exempted from the above requirements to obtain a
20 permit under OAR Chapter 340, Division 93 through 97, but shall comply
21 with all other provisions of OAR Chapter 340, Divisions 93 through 97 and
22 other applicable laws, rules and regulations regarding solid waste disposal:

21 (a) A facility authorized by a permit issued under ORS 466.005 to
22 466.385 to store, treat or dispose of both hazardous waste and solid waste;

22 (b) Disposal sites, facilities or disposal operations operated
23 pursuant to a permit issued under ORS 468B.050;

23 (c) A land disposal site used exclusively for the disposal of clean fill
24 unless the materials have been contaminated such that the Department
25 determines that their nature, amount or location may create an adverse
26 impact on groundwater, surface water or public health or safety.

25 (d) Composting operations used only by the owner or persons in
26 control of a dwelling unit to dispose of food scraps, garden wastes, weeds,
lawn cuttings, leaves, and prunings generated at that residence and

operated in a manner approved by the Department;

(e) Facilities which receive only source separated materials for the purposes of material recovery or composting, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health.

OAR 340-093-0030(78) states:

“Source Separated” means that the person who last uses recyclable materials separates the recyclable material from solid waste.

CONCLUSIONS AND REASONS

The basic facts regarding the violation are not in dispute. A disposal site as defined by ORS 459.205(1) was established by Respondent on its site on the Torco Ranch when mixed materials, and not only clean fill, were dumped on the site. Respondent has never had a permit to dump such materials, so it violated the law.

Respondent argued that DEQ gave it permission to dump clean fill and clean wood chips on the site without a permit. That claim is not strictly true, but in any event, it is not relevant in this case because the general manager for Respondent admitted the wood chips dumped on the site were mixed with rocks and other materials. The chips were not clean because Johnson mixed rocks with the wood chips to keep them down. Some of the wood chips were from the painted front of the retail store and were not untreated wood, as claimed by Respondent. Many materials were mixed together, so the pile was not only clean fill and woodchips. The issue of impact of groundwater is not pertinent because the site was not used exclusively for disposal of clean fill, as required by OAR 340-093-0050(2)(c), and because much more than source-separated materials were received on the site, as required by OAR 340-093-0050(2)(c). Respondent’s arguments might have been more persuasive if they operated as they said they would, by accepting only clean fill and clean wood chips. Respondent alleges that position, but the material dumped on their site did not fit that description, and Respondent needed a permit for accepting such materials.

Regarding Respondent’s specific allegations, Respondent has not established that it was the victim of selective enforcement. The three other alleged violations were not similar enough in regards to what was dumped and the seriousness of the violation to establish unequal treatment. Respondent’s violation is very much different because it was so obvious, occurring after extensive negotiation with DEQ on Respondent’s need for a permit, because Respondent advertised that it would receive waste and because it received mixed materials after it was clearly told it needed a permit.

Respondent argued repeatedly that it should have been granted a permit. Its remedy for such a claim is legal action against DEQ for the permit or against Umatilla County for refusing

1 to issue a land use compatibility statement (LUCS). As stated more than once in the hearing, the
2 evidence that respondent should have been granted a permit is not relevant to whether there was
3 a violation. Even if Respondent established that it was entitled to a permit, this entitlement
4 without actually receiving the permit is not a defense to dumping without a permit. As stated
5 above, Respondent had other avenues to secure its permit. Its belief that it deserves the permit
6 does not relieve it of its legal duty to procure it before accepting waste at its site.

7 Respondent alleged that DEQ failed to provide sufficient assistance in setting up its
8 demonstration project. Respondent has not established any lack of cooperation, but even if it
9 had, the evidence is not relevant unless it establishes equitable estoppel against DEQ, which was
10 not alleged or established.

11 A DEQ publication did state that solid waste rules cannot be easily applied to composting
12 operations, but the types of dumped materials were mixed and not suitable for composting.
13 Independent of the DEQ publication, the manager for DEQ clearly stated to Respondent what
14 was needed, a solid waste authorization letter (SWLA) or solid waste disposal (SWD) permit.
15 DEQ was not completely consistent in stating what was required, but that was mainly because
16 respondent changed its application and because it was a new project. Respondent clearly knew
17 that it had to procure a LUCS from Umatilla County before it would have an SWLA or SWD and
18 legally receive materials at its site.

19 Respondent alleged that it gave sufficient notice to Mike Johnson to stop the dumping,
20 but Respondent's manager signed a contract with Johnson on April 12 after receiving notice
21 from DEQ at a site visit on April 9 that no more dumping should be allowed. If Respondent
22 wanted to stop Johnson, it should not have signed a contract with him three days after he started
23 dumping material on site.

24 Respondent alleged that DEQ is not meeting its recycling goals and not managing the
25 environment properly. Such a claim is not relevant regarding the violation, but it may be
26 relevant in political forums, such as the legislature, regarding whether DEQ is fulfilling its legal
27 responsibilities.

28 Respondent cited *Woodfeathers, Inc. v. Washington County*, 1997 WL 31180 (D Or
29 March 31, 1997) No. 96-257-HA and *C & A Carbone Inc. v. Town of Clarkston*, 511 US 383
30 (1994) in support of its position, but did not explain how these cases supported a particular
31 defense theory, except to say "flow control". Those cases deal with interstate commerce and not
32 solid waste disposal sites. DEQ's alleged violation did not involve interstate commerce, so these
33 cases are not on point. **Moreover, the *Woodfeathers* decision has since been reversed and
34 remanded. *Woodfeathers, Inc. v. Washington County*, ___ F3d ___, 1999 WL 314694 (9th Cir.
35 1999).**

36 CIVIL PENALTY

37 **The notice of assessment of civil penalty includes three separate days of violation of
38 ORS 459.205(1). The hearing officer concluded that only one violation was established.**

1 The Commission affirms DEQ's determination of three days of violation. The statute
2 provides that "a disposal site shall not be established, operated, maintained or substantially
3 altered, expanded or improved" without a permit. Under the statute, each day that the
4 person owning or controlling disposal maintains an unpermitted site is a separate day of
5 violation. Moreover, here the record establishes three separate incidents. Solid waste was
6 found at the Respondent's site on April 9, 1996. (Finding 8.) Additional solid waste was
7 dumped at the site on April 18, 1996. (Finding 11.) Waste was again documented at the
8 site on May 1, 1996. (Finding 11.)

9 Respondent established a disposal site without first obtaining a permit, which is a Class 1
10 violation under OAR 340-012-0065(1)(b). The volume of the material disposed was between 40
11 and 400 cubic yards, so the magnitude was moderate under OAR 340-012-0090(4)(a)(ii). The
12 \$10,000 matrix is the relevant matrix because it is a violation of solid waste statutes under
13 OAR 340-012-0042(1)(j). The base penalty under this matrix is \$3,000. The base penalty may
14 be increased or decreased, based on the other factors set out in OAR 340-012-0045 and the civil
15 penalty formula: $BP + [(0.1 \times BP) \times (P+H+O+R+C)] + EB$.

16 A value of 0 was given for the P (prior significant actions), H (past history) and O
17 (occurrence). DEQ and the hearing officer supplied a value of 6 for R (cause of the
18 violation) based on the determination Respondent's violation was intentional. DEQ and
19 the hearing officer reasoned that Respondent knew that it needed a permit to allow
20 dumping and it allowed dumping anyway. A majority of the Commission concludes that
21 the value should be 0 for the first violation (insufficient information), 2 for the second
22 violation (negligence) and 6 for the third violation (intentional).

23 DEQ also gave factor C (cooperation) a value of 2 based on a lack of cooperation.
24 The hearing officer reduced the value to 0 because Respondent did remove the waste
25 somewhat promptly after realizing it could not compel Johnson to remove it. DEQ does
26 not challenge this determination and the Commission affirms the hearing officer's
determination.

The last factor, EB represents economic benefit, which is what Respondent gained
by dumping this material. This factor is to avoid the cases where a violator performs a
cost-benefit analysis and concludes it makes better business sense to accept the fine rather
than pay to comply. DEQ set a value of \$2,500 for EB. Because Respondent was caught
and complied with the law by removing all the material at the site at considerable expense,
the hearing officer determined there was no received no economic gain. DEQ does not
contest this point, and the Commission affirms the hearing officer's determination.

The penalty is: Violation 1 - \$3,000
Violation 2 - \$3,600
Violation 3 - \$4,800
Total -\$11,400

1 **FINAL ORDER**

2 IT IS HEREBY ORDERED that Umatilla Refuse Group Co-Op is liable for a total civil
3 penalty of \$11,400 plus interest pursuant to Oregon Revised Statute
4 (ORS) 82.010, from the date this order is signed below until paid; and that if the civil penalty
5 remains unpaid for more than ten (10) days, this order may be filed with each County Clerk and
6 execution shall issue therefor.

7 Dated this ____ day of August, 1999.

8 ENVIRONMENTAL QUALITY COMMISSION

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10 _____
11 Carol A. Whipple
12 Chair
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23 **RIGHT TO JUDICIAL REVIEW:**

24 You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must
25 file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served on you. If this
26 Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the
date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60
day time period, you will lose your right to appeal.

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CERTIFICATE OF MAILING

I certify that I mailed the attached FINDINGS, CONCLUSIONS, DECISION AND FINAL ORDER to each of the following persons on _____, 1999:

Kal Garton
Umatilla Refuse Group Cooperative
440 SW 1st Avenue
Pendleton, OR 97801

Susan M. Greco
Department of Environmental Quality

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 17, 1999

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item F, City of Silverton Request for Mass Load Increase and Exception to Minimum Dilution Rule, EQC Meeting August 13, 1999

Statement of Purpose

The City of Silverton is proposing to expand and upgrade the wastewater treatment plant serving the City. Although the new facilities will provide a very high level of treatment, the City will not, over time, be able to meet the existing mass load limitations during certain times of the year. In addition, the City will not be able to meet the Willamette Basin dilution requirement within Silver Creek or the new wetland. This agenda item requests that the Commission grant the two exceptions needed for the City to proceed with the project.

Background

In 1982, the City was awarded EPA construction grants for construction of a pump station, interceptors, plant expansion and removal of excess inflow and infiltration (I/I). The new facilities constructed under the grant began operation in January 1985. The 1981 Amendments to the Clean Water Act included the requirement for a project performance certification for all new grant awards. This certification requires that, at the end of the first year of operation, the permittee must demonstrate that the project met the design performance criteria.

In January 1986, the City submitted a Negative Certification and a Corrective Action Report because of deficiencies with the new wastewater facilities. The City and the Department entered into a Stipulation and Final Order (SFO) in January 1993 with a compliance schedule to address these problems. The City submitted a Facility Plan in accordance with the SFO. The plan determined that the existing wastewater treatment plant needed to be expanded and upgraded to address the following issues:

- The existing treatment plant was approaching organic capacity and could not consistently meet all National Pollutant Discharge Elimination System (NPDES) Permit limits.
- Excessive I/I resulted in bypasses of secondary treatment.
- Ammonia and chlorine at levels that are many times the acute toxicity criteria during low flow times.

The City completed facility planning, where all reasonable alternatives for correcting the above problems were explored. The alternative chosen and approved by the Department (pending approval by the Commission in this agenda item) includes the following:

- Major plant upgrade and expansion to be completed by year 2000. This will provide adequate capacity for organic and hydraulic loads, eliminate discharges of chlorine and comply with ammonia limits; and,
- Discharge of a portion of the summer flow to a new outfall. A series of wetlands have been constructed at the Oregon Garden site. The wetlands will be considered waters of the state.

New facilities are under construction that will address the continuing NPDES Permit limit violations (for BOD₅, TSS and pH) and water quality standard violations (for chlorine and ammonia). Because of the very high level of treatment that will be required, this will be a very expensive project. The project costs are estimated at about \$14 million. Silverton has a current population of nearly 7,000.

Table 1 shows a comparison of key pollutants, between the levels currently being discharged in the summer, and the projected pollutant levels at various times during the new facilities design life. Although there will be a slight increase in the BOD and TSS discharged, the water quality impact will be much less due to the high level of ammonia removal that the new plant will provide. In addition, the new treatment plant will significantly reduce the amount of ammonia to below toxic concentrations and eliminate the discharge of chlorine entirely.

TABLE 1 - SUMMER

1998 Discharges Versus Expected Discharges Over Design Life

Pollutant	Actual Discharge 1998	Average Projected Discharge in 2005	Average Projected Discharge in 2015
BOD ₅	53 #/day	48 #/day	77 #/day
TSS	43 #/day	48 #/day	77 #/day
Ammonia (see note 1)	10.7 mg/l	1.5 mg/l	1.5 mg/l
Chlorine (see note 2)	180 ppb	0 ppb	0 ppb

Note 1 Without the Oregon Gardens project, the projected mass discharges of CBOD₅ and TSS to Silver Creek would be 69 pounds per day in 2005 and 103 pounds per day in 2015.

Table 2 compares the current winter discharges with the projected average winter discharges in the year 2015, the final year of the design life of the new treatment plant. Although the discharges for BOD and TSS will be much higher in the future, these increases are somewhat offset by the ammonia removal that will be occurring. The stream flows are much greater and the stream temperatures will be much colder in the winter than in the summer, and the impact of these somewhat greater mass loads will not adversely affect water quality. That is, the stream has a much greater assimilative capacity in the winter than in the summer and can accommodate these somewhat higher discharges. It should also be noted that the discharge of chlorine will be eliminated.

TABLE 2 - WINTER

1998 - 99 Discharges Versus Expected Discharges Over Design Life

Pollutant	Actual Discharge 1998 - 99	Average Projected Discharge in 2015
BOD ₅	165 #/day	380 #/day
TSS	199 #/day	380 #/day
Ammonia (see note 1)	4 mg/l	3 mg/l
Chlorine (see note 2)	220 ppb	0 ppb

Note 1 The acute toxicity level for ammonia is dependent on temperature and pH. At expected conditions, the acute toxicity level will be 8.46 mg/L in summer and 12.2 mg/L in winter. When the new facilities are operational, the effluent will be in compliance with the toxicity criteria at the edge of the assigned zone of immediate dilution.

Note 2 The acute toxicity level for chlorine is 19 ppb.

In order to issue the NPDES permit to allow discharge to Silver Creek, two Commission actions are required. These are discussed below.

Action # 1 - Mass Load Limit Increase Request

Summary - The City has requested a mass load increase for CBOD₅ and TSS in both the summer and winter. Because of the expected reductions in ammonia discharges (each pound of ammonia oxidized requires 4.3 pounds of oxygen), these increases in summer discharges are more than offset. Even with the proposed mass load increases, the impact on the receiving stream in the summer will be less with the proposed treatment plant and system upgrades and water quality will be improved. In the winter, dilution of the waste in the receiving stream is much greater and the oxidation of oxygen demanding pollutants is much slower due to reduced temperatures. The increase in winter discharges will not adversely affect water quality. The City has met the requirements to qualify for a mass load increase, as discussed below.

Discussion - The existing treatment plant was last upgraded in 1985. It was originally designed to meet 30 mg/L BOD₅ and TSS in the winter. The treatment plant has been able to meet the winter concentration limits but not the mass load limits. The summer limits were set by the Department at 10 mg/L BOD₅ and TSS based on the Willamette Basin minimum design criteria. The plant is not able to consistently meet the summer concentration or mass load limits for BOD₅ and TSS. The proposed plant upgrade and expansion will increase the dry weather capacity from 1.0 million gallons per day (mgd) to 2.5 mgd, and increase the peak hydraulic capacity from 4.5 mgd to 15 mgd.

Past mass load limits for all domestic wastewater plants were calculated based on the **average seasonal flow** at full plant capacity (the average flow between May 1 and October 31, and the

average flow between November 1 and April 30 in the final year of the design life). Current Department practice is to assign mass load limits based upon the **maximum month flow** expected when the treatment plant reaches capacity. This change in method of calculating the mass load limits results in the following:

- For exactly the same treatment plant, the assigned mass load limits are now significantly higher; and
- For exactly the same treatment plant, there will now be far fewer mass load limit violations towards the end of the design life of the plant; and
- For exactly the same treatment plant, the actual mass loads discharged will not change.

The Department has evaluated the proposed design of the treatment plant, and the projected flows. Based on this evaluation, the Department has proposed mass load limits that are based on the expected plant performance at peak month flows at the end of the design life. These mass load limits should be achievable through the life of the treatment plant, assuming good plant operation and that flows are at the levels expected.

Summer Mass Loads - On a monthly basis, the **proposed mass load limits** to be included in the permit for the summer discharge period will increase from 83 pounds per day to 300 pounds per day. It should be noted that CBOD₅ is of concern because of the oxygen demanding nature of the pollutant in the receiving stream. The increase in summer CBOD₅ is more than offset by the significant reductions in ammonia. It takes 4.3 pounds of oxygen to fully oxidize each pound of ammonia when discharged to surface waters. The future summer discharge will contain in total less oxygen demanding pollutants than the existing discharge. TSS has been used historically as a quick tool for evaluating the quality of effluent, however it has no environmental significance at these very low concentrations. It should also be noted that for the majority of the summer, a portion of the discharge will be directed to the wetland instead of Silver Creek. The mass load limits are to be applied to the combined discharge since they are based on the plant's capabilities.

The proposed treatment plant should be able to achieve on average 5 mg/L CBOD₅ and TSS during most of the summer. The mass loads actually discharged to Silver Creek during the dry summer period are expected to be within the **existing** assigned mass load limits, with possibly a few months above the existing assigned limits towards the end of the design life. The chart below shows a comparison of summer mass loads.

Summer Discharges, CBOD₅ and TSS

Pollutant	Average Discharge in 1998			Projected Discharge in 2015	
	Actual Discharge	Permitted Monthly Avg.	Excursions in Last 3 Years	Projected Discharge	Permitted Monthly Avg.
CBOD ₅	53 #/day	83 #/day	3	77 #/day	300 #/day
TSS	43 #/day	83 #/day	1	77 #/day	300 #/day

Notes on above chart - The actual discharges are averages for May 1 through October 31, 1998. The number of monthly excursions are based on mass loads calculated from monthly averages and are not as reported on Discharge Monitoring Reports. The future actual discharges are based on anticipated average effluent flow to Silver Creek in 2015 (1.85 MGD) and 5 mg/l of CBOD₅ and TSS.

Winter Mass Loads - The existing mass load limits for the winter are based on the design average wet weather flow of 1.5 MGD for the current facility. The proposed CBOD₅ winter mass load limits are more than twice as high as the existing mass load limits. The proposed TSS winter mass load limits are more than three times as high as the existing mass load limits. However, some reduction in the ammonia discharged during the winter period can also be expected. The following chart compares current and expected future mass loads for the winter.

Winter Discharges, CBOD₅ and TSS

Pollutant	Average Discharge in 1998 - 99			Projected Discharge in 2015	
	Actual Discharge	Permitted Monthly Avg.	Excursions in Last 3 Years	Projected Discharge	Permitted Monthly Avg.
CBOD ₅	165 #/day	380 #/day	0	380 #/day	830 #/day
TSS	199 #/day	380 #/day	1	380 #/day	1300 #/day

Notes on above chart - The actual discharges are averages for November 1, 1998 through April 30, 1999. The number of monthly excursions are based on mass loads calculated from monthly averages and are not as reported on Discharge Monitoring Reports. The future actual discharges are based on design average wet weather flow in 2015 (4.5 MGD) and 10 mg/l of CBOD₅ and TSS.

Allowing mass load increases - It is the general policy in Oregon that treatment facilities should increase treatment efficiency so that growth and development will not result in increases in mass loads. Oregon Administrative Rules (OAR) 340-41-026(3) does allow exceptions to this general policy, providing that specified findings can be made and that other criteria are considered, as described below.

The proposed wasteload must not cause water quality standard violations - The proposed wasteloads have been evaluated. Dissolved oxygen is the only water quality standard of concern with the CBOD₅ and TSS wasteloads proposed. While there will be an increase in oxygen demand from the CBOD₅, the summer discharges are more than offset by the much lower ammonia discharges and the alternate discharge point at the Oregon Gardens wetland. The projected summer discharges were evaluated, and will not cause water quality standard violations. For the winter discharges, the projected increases have been evaluated and will not cause water quality standard violations, due to the lower temperature and larger assimilative capacity in Silver Creek in the winter.

The increased wasteload must not impair any recognized beneficial use - As discussed in the rule, if a discharge meets the applicable instream water quality standards, then the

Commission may consider that beneficial uses are protected. The proposed discharge will meet the dissolved oxygen instream water quality standards, and therefore will not impair any beneficial use.

If the receiving stream is water quality limited, the TMDL and waste load allocations have been made, and the increased wasteload must be consistent with the assigned allocation - Silver Creek is not water quality limited for dissolved oxygen.

The activity associated with the waste load increase must be consistent with acknowledged local land use plans - The activity in question is serving existing customers within the City of Silverton, and providing for additional growth in the area. The activity is consistent with the adopted and approved comprehensive plan for the City.

The Commission shall consider the possible negative impact of taking the discharge out of the stream - The proposed discharge will meet all water quality standards at the point of discharge in the wetland and Silver Creek. If all water quality standards are met with the effluent in the stream, then it is assumed that fishery resources in the creek would be better off with the effluent since it will result in higher stream flows during critical summer low flow periods. Withdrawing more effluent than proposed could result in Silver Creek not having enough flow to satisfy all water rights or could potentially result in diminished water quality or a dry creek.

The Commission shall consider the instream effects, for example if the increased discharge is offset by other decreases - There are projected to be small increases in CBOD₅ and TSS actually discharged during the summer, however the impacts of these increased pollutants will be more than offset by the reduction of ammonia discharges. For the winter discharges, there will be little environmental significance due to dilution and low temperatures in Silver Creek.

The Commission shall consider the possible beneficial use of the effluent in non-discharge alternatives - The portion of the treated effluent discharged to the wetland will create water features in the Oregon Gardens and provide irrigation water for the display plants. The remaining effluent could be beneficially used as irrigation water by the City or nearby farmers in the summer. The winter flows could not be beneficially used without very costly storage, as the application for irrigation must be done in the summer.

The Commission shall consider the economic value of the assimilative capacity - The proposed waste load increases in CBOD₅ and TSS will not result in a reduction of assimilative capacity in the summer. Assimilative capacity for those pollutants is based on oxygen demand. Although the CBOD₅ loads will be somewhat higher, the overall oxygen demand in the summer (related to CBOD₅ plus the much reduced levels of ammonia) will result in improvements in dissolved oxygen in Silver Creek and compliance with WQ standards. The stream currently has a small amount of assimilative

capacity since the stream meets the dissolved oxygen standard and the remaining reserve will be increased if the proposed wasteload increases are granted.

The proposed waste load increases in CBOD₅ and TSS in the winter will result in a slight reduction of assimilative capacity. The stream easily meets the dissolved oxygen standard in the winter and the small reduction of assimilative capacity will not impact any beneficial use.

The Commission shall consider the cost of treatment technology to remain within the assigned mass loads - In order to remain within the currently permitted mass load limits, the treatment facility would have to be significantly expanded with effluent filters capable of treating all winter flows. The additional cost of the filters is estimated at \$2 million.

Recommendation regarding request for mass load increase - Based on the above findings and considerations, the Department recommends that the Commission approve the requested mass load increase.

Action # 2 - Request for Dilution Rule Waiver

Summary - The dilution rule is an older rule intended to prevent the violation of water quality standards from a discharge. The Department now has much more sophisticated tools available for predicting the impact of a proposed discharge on stream water quality. The City's consultants evaluated the proposed discharge using the Department's computer model and concluded that the proposed discharge can be safely allowed without violating water quality standards or impacting any beneficial use. The Department recommends that the dilution rule be waived.

Discussion - Oregon rules include minimum design criteria for wastewater treatment facilities in the state. One of the minimum design criteria that applies in the Willamette basin (which includes Silver Creek) is OAR 340-41-455(1)(f), the minimum dilution requirement. This rule requires that domestic wastewater treatment effluent must have a minimum dilution ratio, based on the level of treatment provided. The rule applies to facilities that have been built or expanded after 1976. For the proposed expanded treatment plant, the minimum receiving stream flows would have to be 10 times the effluent flow in the summer, and 25 times the effluent flow in the winter. The rule does allow the Commission to waive this requirement.

The minimum dilution rule is over 20 years old, and was adopted for the purpose of preventing discharges to very small receiving streams where the effluent could cause violations of instream water quality standards. It was adopted at a time when few tools were available to predict the impact of a discharge, and has served well as a "rule of thumb" to help better locate outfalls to larger and more acceptable receiving streams.

In the last five to ten years, there have been significant improvements in our ability to predict the impact of a proposed discharge. As described in previous sections, the proposed discharges have

been thoroughly evaluated. The Department expects that the proposed discharge can be allowed without causing any violation of instream water quality standards.

If the entire effluent flow was discharged to Silver Creek at worst case conditions (design average flow and 7Q10 stream flow), the dilution would be about 2 to 1 receiving stream to effluent flows during both summer and winter. By directing a portion of the flow to the Oregon Gardens wetland, dilution in September of the design year is projected to be 3.5 to 1 (worst case). During the first and last months of a very dry winter, some effluent may be directed to the wetland thereby improving dilution in Silver Creek. The City is proposing to compensate for the lack of dilution by providing a very high level of treatment.

In order to comply with the dilution requirement within Silver Creek, the City would have to provide special membrane filters to treat all effluent flows. The additional cost of these filters is estimated at \$6 million.

For the discharges to the Oregon Gardens wetland, the contents will be considered waters of the state but will be made up almost entirely of treated effluent (thereby providing no dilution). The discharge will receive a very high level of treatment and will comply with all water quality standards at the point of discharge.

Recommendation regarding request for dilution waiver - Based on the expected ability of the proposed treatment plant to meet all water quality standards, the Department recommends that the Commission waive the minimum dilution rule for the proposed Silverton treatment plant.

Authority of the Commission with Respect to the Issue

The authority for the two actions above are included in OAR 340-41-026(3) for the mass load increase request and OAR 340-41-455(1)(f) for the waiver of the minimum dilution rule.

Alternatives and Evaluation

The EQC could approve both requests and the Department would issue the NPDES permit as proposed. The new facility could begin operation almost immediately after permit issuance. All water quality standards in Silver Creek would be met as a result of the discharge from the new facility. The overall impact of the discharge on the receiving stream would be reduced significantly. This is already a very expensive project for a city the size of Silverton and denial of either request would entail additional facilities at higher costs.

The EQC could approve the dilution waiver but not the mass load increase. This would require the City to provide effluent filters in order to remain within the currently permitted mass load limits. The additional cost of the filters is estimated at \$2.0 million. The City would not be able to comply with the permit upon issuance and a Mutual Agreement and Order (MAO) with a compliance schedule and interim limits would need to be negotiated and signed.

The EQC could approve the mass load increase but not the dilution waiver. This would require the City to provide membrane filters for the effluent at an estimated cost of \$6.0 million. The City would not be able to comply with the permit upon issuance and a MAO would need to be negotiated and signed.

The EQC could deny both requests. The additional improvements necessary to comply with the dilution rule would also be sufficient for the mass load. Therefore, the estimated increased cost of \$6.0 million for improvements would be necessary should both requests be denied.

Summary of Public Input Opportunity

The City conducted a number of meetings and hearings as part of the facilities plan development process, prior to adopting the facilities plan at a City Council meeting. Public testimony was solicited by the City. In addition, the Department has placed the proposed permit and permit evaluation report out for public comment. The proposed permit and report includes a discussion of the two actions brought forth in this report. A public hearing was held on July 20, 1999 to receive verbal testimony. No comments were received during the Department's permit review process.

Conclusions

The City of Silverton is building an expanded and upgraded wastewater treatment plant. The new treatment plant plus other system improvements will substantially decrease the discharges of a number of pollutants of concern, including oxygen demanding pollutants, ammonia and chlorine. The proposed discharge to Silver Creek and the Oregon Gardens wetland will meet all water quality standards. Overall, the proposed treatment plant will significantly improve the discharge to Silver Creek.

In order for the facilities to treat and discharge the City's wastewater, two actions are required by the Commission. These actions are: a mass load increase; and, a waiver of the minimum dilution rule. The Department believes that both waivers can be granted under the terms of the applicable rules, and that it is appropriate to do so in this case.

Intended Future Actions

Provided the Commission approves this request, the next steps for the Department will be:

- Issuance of the NPDES permit for the proposed new plant.
- Modify the Stipulation and Final Order to reflect changes needed as a result of the proposed project.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate. Specifically, the Department recommends the following:

1. That the mass load increases be approved as requested based on the following findings:
 - a. The proposed wasteload will not cause water quality standard violations;
 - b. The increased wasteload will not impair any recognized beneficial use;
 - c. There are no waste load allocations relating to the increased wasteload;
 - d. The activity associated with the waste load increase is consistent with acknowledged local land use plans;
 - e. Possible negative impacts of taking the discharge out of the stream have been considered;
 - f. Instream effects have been considered;
 - g. The possible beneficial use of the effluent in non-discharge alternatives has been considered;
 - h. The economic value of the assimilative capacity has been considered; and,
 - i. The cost of treatment technology to remain within the assigned mass loads has been considered.
2. That the dilution rule be waived based on the following findings:
 - a. No violations of water quality standards will occur; and,
 - b. No impacts on any beneficial use will occur.

Attachments

Attachment 1 - Proposed NPDES permit for the City of Silverton

Reference Documents (available upon request)

NPDES permit evaluation report and fact sheet

City of Silverton Wastewater Facilities Plan and associated technical documents

Approved:

Section: Barbara Burton

Division: Barbara Burton for Greenwood

Report Prepared By: Mark E. Hamlin

Phone: (503) 378-8240, extension 239

Date Prepared: July 1, 1999

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7/1/1999

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 17, 1999

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item F, City of Silverton Request for Mass Load Increase and Exception to Minimum Dilution Rule, EQC Meeting August 13, 1999

Statement of Purpose

The City of Silverton is proposing to expand and upgrade the wastewater treatment plant serving the City. Although the new facilities will provide a very high level of treatment, the City will not, over time, be able to meet the existing mass load limitations during certain times of the year. In addition, the City will not be able to meet the Willamette Basin dilution requirement within Silver Creek or the new wetland. This agenda item requests that the Commission grant the two exceptions needed for the City to proceed with the project.

Background

In 1982, the City was awarded EPA construction grants for construction of a pump station, interceptors, plant expansion and removal of excess inflow and infiltration (I/I). The new facilities constructed under the grant began operation in January 1985. The 1981 Amendments to the Clean Water Act included the requirement for a project performance certification for all new grant awards. This certification requires that, at the end of the first year of operation, the permittee must demonstrate that the project met the design performance criteria.

In January 1986, the City submitted a Negative Certification and a Corrective Action Report because of deficiencies with the new wastewater facilities. The City and the Department entered into a Stipulation and Final Order (SFO) in January 1993 with a compliance schedule to address these problems. The City submitted a Facility Plan in accordance with the SFO. The plan determined that the existing wastewater treatment plant needed to be expanded and upgraded to address the following issues:

- The existing treatment plant was approaching organic capacity and could not consistently meet all National Pollutant Discharge Elimination System (NPDES) Permit limits.
- Excessive I/I resulted in bypasses of secondary treatment.
- Ammonia and chlorine at levels that are many times the acute toxicity criteria during low flow times.

The City completed facility planning, where all reasonable alternatives for correcting the above problems were explored. The alternative chosen and approved by the Department (pending approval by the Commission in this agenda item) includes the following:

- Major plant upgrade and expansion to be completed by year 2000. This will provide adequate capacity for organic and hydraulic loads, eliminate discharges of chlorine and comply with ammonia limits; and,
- Discharge of a portion of the summer flow to a new outfall. A series of wetlands have been constructed at the Oregon Garden site. The wetlands will be considered waters of the state.

New facilities are under construction that will address the continuing NPDES Permit limit violations (for BOD₅, TSS and pH) and water quality standard violations (for chlorine and ammonia). Because of the very high level of treatment that will be required, this will be a very expensive project. The project costs are estimated at about \$14 million. Silverton has a current population of nearly 7,000.

Table 1 shows a comparison of key pollutants, between the levels currently being discharged in the summer, and the projected pollutant levels at various times during the new facilities design life. Although there will be a slight increase in the BOD and TSS discharged, the water quality impact will be much less due to the high level of ammonia removal that the new plant will provide. In addition, the new treatment plant will significantly reduce the amount of ammonia to below toxic concentrations and eliminate the discharge of chlorine entirely.

TABLE 1 - SUMMER

1998 Discharges Versus Expected Discharges Over Design Life

Pollutant	Actual Discharge 1998	Average Projected Discharge in 2005	Average Projected Discharge in 2015
BOD ₅	53 #/day	48 #/day	77 #/day
TSS	43 #/day	48 #/day	77 #/day
Ammonia (see note 1)	10.7 mg/l	1.5 mg/l	1.5 mg/l
Chlorine (see note 2)	180 ppb	0 ppb	0 ppb

Note 1 Without the Oregon Gardens project, the projected mass discharges of CBOD₅ and TSS to Silver Creek would be 69 pounds per day in 2005 and 103 pounds per day in 2015.

Table 2 compares the current winter discharges with the projected average winter discharges in the year 2015, the final year of the design life of the new treatment plant. Although the discharges for BOD and TSS will be much higher in the future, these increases are somewhat offset by the ammonia removal that will be occurring. The stream flows are much greater and the stream temperatures will be much colder in the winter than in the summer, and the impact of these somewhat greater mass loads will not adversely affect water quality. That is, the stream has a much greater assimilative capacity in the winter than in the summer and can accommodate these somewhat higher discharges. It should also be noted that the discharge of chlorine will be eliminated.

TABLE 2 - WINTER

1998 - 99 Discharges Versus Expected Discharges Over Design Life

Pollutant	Actual Discharge 1998 - 99	Average Projected Discharge in 2015
BOD ₅	165 #/day	380 #/day
TSS	199 #/day	380 #/day
Ammonia (see note 1)	4 mg/l	3 mg/l
Chlorine (see note 2)	220 ppb	0 ppb

Note 1 The acute toxicity level for ammonia is dependent on temperature and pH. At expected conditions, the acute toxicity level will be 8.46 mg/L in summer and 12.2 mg/L in winter. When the new facilities are operational, the effluent will be in compliance with the toxicity criteria at the edge of the assigned zone of immediate dilution.

Note 2 The acute toxicity level for chlorine is 19 ppb.

In order to issue the NPDES permit to allow discharge to Silver Creek, two Commission actions are required. These are discussed below.

Action # 1 - Mass Load Limit Increase Request

Summary - The City has requested a mass load increase for CBOD₅ and TSS in both the summer and winter. Because of the expected reductions in ammonia discharges (each pound of ammonia oxidized requires 4.3 pounds of oxygen), these increases in summer discharges are more than offset. Even with the proposed mass load increases, the impact on the receiving stream in the summer will be less with the proposed treatment plant and system upgrades and water quality will be improved. In the winter, dilution of the waste in the receiving stream is much greater and the oxidation of oxygen demanding pollutants is much slower due to reduced temperatures. The increase in winter discharges will not adversely affect water quality. The City has met the requirements to qualify for a mass load increase, as discussed below.

Discussion - The existing treatment plant was last upgraded in 1985. It was originally designed to meet 30 mg/L BOD₅ and TSS in the winter. The treatment plant has been able to meet the winter concentration limits but not the mass load limits. The summer limits were set by the Department at 10 mg/L BOD₅ and TSS based on the Willamette Basin minimum design criteria. The plant is not able to consistently meet the summer concentration or mass load limits for BOD₅ and TSS. The proposed plant upgrade and expansion will increase the dry weather capacity from 1.0 million gallons per day (mgd) to 2.5 mgd, and increase the peak hydraulic capacity from 4.5 mgd to 15 mgd.

Past mass load limits for all domestic wastewater plants were calculated based on the **average seasonal flow** at full plant capacity (the average flow between May 1 and October 31, and the

average flow between November 1 and April 30 in the final year of the design life). Current Department practice is to assign mass load limits based upon the **maximum month flow** expected when the treatment plant reaches capacity. This change in method of calculating the mass load limits results in the following:

- For exactly the same treatment plant, the assigned mass load limits are now significantly higher; and
- For exactly the same treatment plant, there will now be far fewer mass load limit violations towards the end of the design life of the plant; and
- For exactly the same treatment plant, the actual mass loads discharged will not change.

The Department has evaluated the proposed design of the treatment plant, and the projected flows. Based on this evaluation, the Department has proposed mass load limits that are based on the expected plant performance at peak month flows at the end of the design life. These mass load limits should be achievable through the life of the treatment plant, assuming good plant operation and that flows are at the levels expected.

Summer Mass Loads - On a monthly basis, the **proposed mass load limits** to be included in the permit for the summer discharge period will increase from 83 pounds per day to 300 pounds per day. It should be noted that CBOD₅ is of concern because of the oxygen demanding nature of the pollutant in the receiving stream. The increase in summer CBOD₅ is more than offset by the significant reductions in ammonia. It takes 4.3 pounds of oxygen to fully oxidize each pound of ammonia when discharged to surface waters. The future summer discharge will contain in total less oxygen demanding pollutants than the existing discharge. TSS has been used historically as a quick tool for evaluating the quality of effluent, however it has no environmental significance at these very low concentrations. It should also be noted that for the majority of the summer, a portion of the discharge will be directed to the wetland instead of Silver Creek. The mass load limits are to be applied to the combined discharge since they are based on the plant's capabilities.

The proposed treatment plant should be able to achieve on average 5 mg/L CBOD₅ and TSS during most of the summer. The mass loads actually discharged to Silver Creek during the dry summer period are expected to be within the **existing** assigned mass load limits, with possibly a few months above the existing assigned limits towards the end of the design life. The chart below shows a comparison of summer mass loads.

Summer Discharges, CBOD₅ and TSS

Pollutant	Average Discharge in 1998			Projected Discharge in 2015	
	Actual Discharge	Permitted Monthly Avg.	Excursions in Last 3 Years	Projected Discharge	Permitted Monthly Avg.
CBOD ₅	53 #/day	83 #/day	3	77 #/day	300 #/day
TSS	43 #/day	83 #/day	1	77 #/day	300 #/day

Notes on above chart - The actual discharges are averages for May 1 through October 31, 1998. The number of monthly excursions are based on mass loads calculated from monthly averages and are not as reported on Discharge Monitoring Reports. The future actual discharges are based on anticipated average effluent flow to Silver Creek in 2015 (1.85 MGD) and 5 mg/l of CBOD₅ and TSS.

Winter Mass Loads - The existing mass load limits for the winter are based on the design average wet weather flow of 1.5 MGD for the current facility. The proposed CBOD₅ winter mass load limits are more than twice as high as the existing mass load limits. The proposed TSS winter mass load limits are more than three times as high as the existing mass load limits. However, some reduction in the ammonia discharged during the winter period can also be expected. The following chart compares current and expected future mass loads for the winter.

Winter Discharges, CBOD₅ and TSS

Pollutant	Average Discharge in 1998 – 99			Projected Discharge in 2015	
	Actual Discharge	Permitted Monthly Avg.	Excursions in Last 3 Years	Projected Discharge	Permitted Monthly Avg.
CBOD ₅	165 #/day	380 #/day	0	380 #/day	830 #/day
TSS	199 #/day	380 #/day	1	380 #/day	1300 #/day

Notes on above chart - The actual discharges are averages for November 1, 1998 through April 30, 1999. The number of monthly excursions are based on mass loads calculated from monthly averages and are not as reported on Discharge Monitoring Reports. The future actual discharges are based on design average wet weather flow in 2015 (4.5 MGD) and 10 mg/l of CBOD₅ and TSS.

Allowing mass load increases - It is the general policy in Oregon that treatment facilities should increase treatment efficiency so that growth and development will not result in increases in mass loads. Oregon Administrative Rules (OAR) 340-41-026(3) does allow exceptions to this general policy, providing that specified findings can be made and that other criteria are considered, as described below.

The proposed wasteload must not cause water quality standard violations - The proposed wasteloads have been evaluated. Dissolved oxygen is the only water quality standard of concern with the CBOD₅ and TSS wasteloads proposed. While there will be an increase in oxygen demand from the CBOD₅, the summer discharges are more than offset by the much lower ammonia discharges and the alternate discharge point at the Oregon Gardens wetland. The projected summer discharges were evaluated, and will not cause water quality standard violations. For the winter discharges, the projected increases have been evaluated and will not cause water quality standard violations, due to the lower temperature and larger assimilative capacity in Silver Creek in the winter.

The increased wasteload must not impair any recognized beneficial use - As discussed in the rule, if a discharge meets the applicable instream water quality standards, then the

Commission may consider that beneficial uses are protected. The proposed discharge will meet the dissolved oxygen instream water quality standards, and therefore will not impair any beneficial use.

If the receiving stream is water quality limited, the TMDL and waste load allocations have been made, and the increased wasteload must be consistent with the assigned allocation - Silver Creek is not water quality limited for dissolved oxygen.

The activity associated with the waste load increase must be consistent with acknowledged local land use plans - The activity in question is serving existing customers within the City of Silverton, and providing for additional growth in the area. The activity is consistent with the adopted and approved comprehensive plan for the City.

The Commission shall consider the possible negative impact of taking the discharge out of the stream - The proposed discharge will meet all water quality standards at the point of discharge in the wetland and Silver Creek. If all water quality standards are met with the effluent in the stream, then it is assumed that fishery resources in the creek would be better off with the effluent since it will result in higher stream flows during critical summer low flow periods. Withdrawing more effluent than proposed could result in Silver Creek not having enough flow to satisfy all water rights or could potentially result in diminished water quality or a dry creek.

The Commission shall consider the instream effects, for example if the increased discharge is offset by other decreases - There are projected to be small increases in CBOD₅ and TSS actually discharged during the summer, however the impacts of these increased pollutants will be more than offset by the reduction of ammonia discharges. For the winter discharges, there will be little environmental significance due to dilution and low temperatures in Silver Creek.

The Commission shall consider the possible beneficial use of the effluent in non-discharge alternatives - The portion of the treated effluent discharged to the wetland will create water features in the Oregon Gardens and provide irrigation water for the display plants. The remaining effluent could be beneficially used as irrigation water by the City or nearby farmers in the summer. The winter flows could not be beneficially used without very costly storage, as the application for irrigation must be done in the summer.

The Commission shall consider the economic value of the assimilative capacity - The proposed waste load increases in CBOD₅ and TSS will not result in a reduction of assimilative capacity in the summer. Assimilative capacity for those pollutants is based on oxygen demand. Although the CBOD₅ loads will be somewhat higher, the overall oxygen demand in the summer (related to CBOD₅ plus the much reduced levels of ammonia) will result in improvements in dissolved oxygen in Silver Creek and compliance with WQ standards. The stream currently has a small amount of assimilative

capacity since the stream meets the dissolved oxygen standard and the remaining reserve will be increased if the proposed wasteload increases are granted.

The proposed waste load increases in CBOD₅ and TSS in the winter will result in a slight reduction of assimilative capacity. The stream easily meets the dissolved oxygen standard in the winter and the small reduction of assimilative capacity will not impact any beneficial use.

The Commission shall consider the cost of treatment technology to remain within the assigned mass loads - In order to remain within the currently permitted mass load limits, the treatment facility would have to be significantly expanded with effluent filters capable of treating all winter flows. The additional cost of the filters is estimated at \$2 million.

Recommendation regarding request for mass load increase - Based on the above findings and considerations, the Department recommends that the Commission approve the requested mass load increase.

Action # 2 - Request for Dilution Rule Waiver

Summary - The dilution rule is an older rule intended to prevent the violation of water quality standards from a discharge. The Department now has much more sophisticated tools available for predicting the impact of a proposed discharge on stream water quality. The City's consultants evaluated the proposed discharge using the Department's computer model and concluded that the proposed discharge can be safely allowed without violating water quality standards or impacting any beneficial use. The Department recommends that the dilution rule be waived.

Discussion - Oregon rules include minimum design criteria for wastewater treatment facilities in the state. One of the minimum design criteria that applies in the Willamette basin (which includes Silver Creek) is OAR 340-41-455(1)(f), the minimum dilution requirement. This rule requires that domestic wastewater treatment effluent must have a minimum dilution ratio, based on the level of treatment provided. The rule applies to facilities that have been built or expanded after 1976. For the proposed expanded treatment plant, the minimum receiving stream flows would have to be 10 times the effluent flow in the summer, and 25 times the effluent flow in the winter. The rule does allow the Commission to waive this requirement.

The minimum dilution rule is over 20 years old, and was adopted for the purpose of preventing discharges to very small receiving streams where the effluent could cause violations of instream water quality standards. It was adopted at a time when few tools were available to predict the impact of a discharge, and has served well as a "rule of thumb" to help better locate outfalls to larger and more acceptable receiving streams.

In the last five to ten years, there have been significant improvements in our ability to predict the impact of a proposed discharge. As described in previous sections, the proposed discharges have

been thoroughly evaluated. The Department expects that the proposed discharge can be allowed without causing any violation of instream water quality standards.

If the entire effluent flow was discharged to Silver Creek at worst case conditions (design average flow and 7Q10 stream flow), the dilution would be about 2 to 1 receiving stream to effluent flows during both summer and winter. By directing a portion of the flow to the Oregon Gardens wetland, dilution in September of the design year is projected to be 3.5 to 1 (worst case). During the first and last months of a very dry winter, some effluent may be directed to the wetland thereby improving dilution in Silver Creek. The City is proposing to compensate for the lack of dilution by providing a very high level of treatment.

In order to comply with the dilution requirement within Silver Creek, the City would have to provide special membrane filters to treat all effluent flows. The additional cost of these filters is estimated at \$6 million.

For the discharges to the Oregon Gardens wetland, the contents will be considered waters of the state but will be made up almost entirely of treated effluent (thereby providing no dilution). The discharge will receive a very high level of treatment and will comply with all water quality standards at the point of discharge.

Recommendation regarding request for dilution waiver - Based on the expected ability of the proposed treatment plant to meet all water quality standards, the Department recommends that the Commission waive the minimum dilution rule for the proposed Silverton treatment plant.

Authority of the Commission with Respect to the Issue

The authority for the two actions above are included in OAR 340-41-026(3) for the mass load increase request and OAR 340-41-455(1)(f) for the waiver of the minimum dilution rule.

Alternatives and Evaluation

The EQC could approve both requests and the Department would issue the NPDES permit as proposed. The new facility could begin operation almost immediately after permit issuance. All water quality standards in Silver Creek would be met as a result of the discharge from the new facility. The overall impact of the discharge on the receiving stream would be reduced significantly. This is already a very expensive project for a city the size of Silverton and denial of either request would entail additional facilities at higher costs.

The EQC could approve the dilution waiver but not the mass load increase. This would require the City to provide effluent filters in order to remain within the currently permitted mass load limits. The additional cost of the filters is estimated at \$2.0 million. The City would not be able to comply with the permit upon issuance and a Mutual Agreement and Order (MAO) with a compliance schedule and interim limits would need to be negotiated and signed.

The EQC could approve the mass load increase but not the dilution waiver. This would require the City to provide membrane filters for the effluent at an estimated cost of \$6.0 million. The City would not be able to comply with the permit upon issuance and a MAO would need to be negotiated and signed.

The EQC could deny both requests. The additional improvements necessary to comply with the dilution rule would also be sufficient for the mass load. Therefore, the estimated increased cost of \$6.0 million for improvements would be necessary should both requests be denied.

Summary of Public Input Opportunity

The City conducted a number of meetings and hearings as part of the facilities plan development process, prior to adopting the facilities plan at a City Council meeting. Public testimony was solicited by the City. In addition, the Department has placed the proposed permit and permit evaluation report out for public comment. The proposed permit and report includes a discussion of the two actions brought forth in this report. A public hearing was held on July 20, 1999 to receive verbal testimony. No comments were received during the Department's permit review process.

Conclusions

The City of Silverton is building an expanded and upgraded wastewater treatment plant. The new treatment plant plus other system improvements will substantially decrease the discharges of a number of pollutants of concern, including oxygen demanding pollutants, ammonia and chlorine. The proposed discharge to Silver Creek and the Oregon Gardens wetland will meet all water quality standards. Overall, the proposed treatment plant will significantly improve the discharge to Silver Creek.

In order for the facilities to treat and discharge the City's wastewater, two actions are required by the Commission. These actions are: a mass load increase; and, a waiver of the minimum dilution rule. The Department believes that both waivers can be granted under the terms of the applicable rules, and that it is appropriate to do so in this case.

Intended Future Actions

Provided the Commission approves this request, the next steps for the Department will be:

- Issuance of the NPDES permit for the proposed new plant.
- Modify the Stipulation and Final Order to reflect changes needed as a result of the proposed project.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate. Specifically, the Department recommends the following:

1. That the mass load increases be approved as requested based on the following findings:
 - a. The proposed wasteload will not cause water quality standard violations;
 - b. The increased wasteload will not impair any recognized beneficial use;
 - c. There are no waste load allocations relating to the increased wasteload;
 - d. The activity associated with the waste load increase is consistent with acknowledged local land use plans;
 - e. Possible negative impacts of taking the discharge out of the stream have been considered;
 - f. Instream effects have been considered;
 - g. The possible beneficial use of the effluent in non-discharge alternatives has been considered;
 - h. The economic value of the assimilative capacity has been considered; and,
 - i. The cost of treatment technology to remain within the assigned mass loads has been considered.

2. That the dilution rule be waived based on the following findings:
 - a. No violations of water quality standards will occur; and,
 - b. No impacts on any beneficial use will occur.

Attachments

Attachment 1 - Proposed NPDES permit for the City of Silverton

Reference Documents (available upon request)

NPDES permit evaluation report and fact sheet

City of Silverton Wastewater Facilities Plan and associated technical documents

Approved:

Section: Barbara Burton

Division: Barbara Burton for Greenwood

Report Prepared By: Mark E. Hamlin

Phone: (503) 378-8240, extension 239

Date Prepared: July 1, 1999

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7/1/1999

PUBLIC NOTICE

Expiration Date: 7/31/04
Permit Number:
File Number: 81395
Page 1 of 22 Pages

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WASTE DISCHARGE PERMIT

Department of Environmental Quality
Western Region - Salem Office
750 Front St., Suite 120, Salem, OR 97301-1039
Telephone: (503) 378-8240

Issued pursuant to ORS 468.050 and The Federal Clean Water Act

ISSUED TO:

City of Silverton
306 S. Water Street
Silverton, OR 97381

SOURCES COVERED BY THIS PERMIT:

Type of Waste	Outfall Number	Outfall Location
Domestic Sewage	001	R.M. 2.45
Oregon Gardens Wetland	002	Oregon Gardens Wetland
Emergency Overflow: Surge Basin Overflow	003	R.M. 2.45

FACILITY TYPE AND LOCATION:

Existing Trickle Filter/solids Contact STP
New Anoxic Selector/Activated Sludge STP
1453 Pine Street
Silverton, Oregon
Treatment System Class: IV
Collection System Class: III

RECEIVING SYSTEM INFORMATION:

Basin: Willamette River
Sub-Basin: Molalla/Pudding
Receiving Stream: Silver Creek
Hydro Code: 22K-SILV 2.45 D
County: Marion

EPA REFERENCE NO: OR-002065-6

Issued in response to Application No. 993839 received May 28, 1996.

This permit is issued based on the land use findings in the permit record.

Barbara Burton, Water Quality Manager
Western Region

Date

PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only from the authorized discharge point or points established in Schedule A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	Page
Schedule A - Waste Discharge Limitations not to be Exceeded	2-5
Schedule B - Minimum Monitoring and Reporting Requirements	5-10
Schedule C - Compliance Conditions and Schedules	10-11
Schedule D - Special Conditions	11-14
Schedule E - Pretreatment.....	N/A
Schedule F - General Conditions.....	14-22

Unless authorized by another NPDES permit, each other direct and indirect discharge to public waters is prohibited.

SCHEDULE A

1. Waste Discharge Limitations not to be exceeded after permit issuance during operation of the existing Trickling Filter/Solids Contact plant.

a. Outfall Number 001 (Wastewater Treatment Plant Discharge)

(1) May 1 - October 31:

Parameter	Average Effluent Concentrations		Monthly* Average lb/day	Weekly* Average lb/day	Daily* Maximum lbs
	Monthly	Weekly			
BOD ₅	10 mg/l	15 mg/l	83	130	170
TSS	10 mg/l	15 mg/l	83	130	170

(2) November 1 - April 30:

Parameter	Average Effluent Concentrations		Monthly** Average lb/day	Weekly** Average lb/day	Daily** Maximum lbs
	Monthly	Weekly			
BOD ₅	30 mg/l	45 mg/l	380	570	760
TSS	30 mg/l	45 mg/l	380	570	760

* Effluent loadings are based on average dry weather design flow to the facility of 1.0 MGD.

** Effluent loadings are based on average wet weather design flow to the facility of 1.5 MGD. Daily mass load limits are suspended on any day when the total flow to the treatment facility exceeds 2.0 MGD (twice the design average dry weather flow).

(3) Other parameters (year-round)	Limitations
<i>E. coli</i> Bacteria	Shall not exceed 126 organisms per 100 ml monthly geometric mean. No single sample shall exceed 406 organisms per 100 ml. (See Note 1/)
pH	Shall be within the range of 6.0 - 9.0
BOD ₅ and TSS Removal Efficiency	Shall not be less than 85% monthly average
Total Chlorine Residual	Shall not exceed a monthly average of 0.009 mg/l or a daily maximum of 0.022 mg/l.

(4) Except as provided for in OAR 340-45-080, no wastes shall be discharged and no activities shall be conducted which violate Water Quality Standards as adopted in OAR 340-41-445 except in the following defined mixing zone:

The allowable mixing zone is that portion of Silver Creek within a radius of one hundred (100) feet from the point of discharge. The Zone of Immediate Dilution (ZID) shall be defined as that portion of the mixing zone that is within ten (10) feet of the point of discharge.

(5) Raw sewage discharges are prohibited to waters of the State from November 1 through May 21, except during a storm event greater than the one-in-five-year, 24-hour duration storm, and from May 22 through October 31, except during a storm event greater than the one-in-ten-year, 24-hour duration storm. If an overflow occurs between May 22 and June 1, and if the permittee demonstrates to the Department's satisfaction that no increase in risk to beneficial uses occurred because of the overflow, no violation shall be triggered if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm.

2. Waste Discharge Limitations not to be exceeded 60 days after the permittee has completed construction of treatment and disposal system improvements necessary to meet permit requirements listed in SCHEDULE A.2.

a. Outfall Number 001 (Wastewater Treatment Plant Discharge)

(1) May 1 - October 31:

Parameter	Average Effluent Concentrations		Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
	Monthly	Weekly			
CBOD ₅ ^{***}	10 mg/l	15 mg/l	300	330	420
TSS	10 mg/l	15 mg/l	300	330	420
NH ₃ -N	3 mg/l				

(2) November 1 - April 30:

Parameter	Average Effluent Concentrations		Monthly Average lb/day	Weekly Average lb/day	Daily Maximum lbs
	Monthly	Weekly			
CBOD ₅ ^{***}	25 mg/l	40 mg/l	830	1100	1500
TSS	30 mg/l	45 mg/l	1300	1700	2200

* Average dry weather design flow to the facility is 2.5 MGD. Effluent loadings are based on the capability of the treatment works at 3.6 MGD monthly average, 4.0 MGD weekly average and 5.0 MGD daily maximum (two year recurrence flows).

** Average wet weather design flow to the facility is 4.6 MGD. Effluent loadings are based on the capability of the treatment works at 5.0 MGD monthly average, 6.6 MGD weekly average and 8.8 MGD daily maximum (two year recurrence flows).

*** The CBOD₅ concentration limit are considered equivalent to the minimum design criteria for BOD₅ specified in Oregon Administrative Rules (OAR) 340-41. These limits and CBOD₅ mass limits may be adjusted (up or down) by permit action if more accurate information regarding CBOD₅/BOD₅ becomes available.

(3) Other parameters (year-round)	Limitations
<i>E. coli</i> Bacteria	Shall not exceed 126 organisms per 100 ml monthly geometric mean. No single sample shall exceed 406 organisms per 100 ml. (See Note 1/)
pH	Shall be within the range of 6.0 - 9.0.
CBOD ₅ and TSS Removal Efficiency	Shall not be less than 85% monthly average
Dissolved Oxygen	Shall not be less than 6.0 mg/l as a daily average (May 1 - October 31).

(4) Except as provided for in OAR 340-45-080, no wastes shall be discharged and no activities shall be conducted which violate Water Quality Standards as adopted in OAR 340-41-445 except in the following defined mixing zone:

The allowable mixing zone is that portion of Silver Creek contained within a band extending out seventeen (17) feet from the north bank of the river and extending from a point ten (10) feet upstream of the outfall to a point one hundred sixty (160) feet downstream from the outfall. The Zone of Immediate Dilution (ZID) shall be defined as

that portion of the allowable mixing zone that is within sixteen (16) feet of the point of discharge.

- (5) No chlorine or chlorine compounds shall be used for disinfection purposes and no chlorine residual shall be allowed in the effluent due to chlorine used for maintenance purposes.
- (6) The average heat energy discharged (based on temperature and volume) during the period of July through September shall not be increased beyond the average heat energy discharged during those three months for the years 1996 through 1998 (See Note 2).

b. Outfall Number 002 (Oregon Gardens Wetland Site)

Parameter	Average Effluent Concentrations		Monthly* Average lb/day	Weekly* Average lb/day	Daily* Maximum lbs
	Monthly	Weekly			
CBOD ₅ **	10 mg/l	15 mg/l	300	330	420
TSS	10 mg/l	15 mg/l	300	330	420
NH ₃ -N	3 mg/l				

* Effluent loadings are based on the capability of the treatment works at 3.6 MGD monthly average, 4.0 MGD weekly average and 5.0 MGD daily maximum (two year recurrence flows).

** The CBOD₅ concentration limit are considered equivalent to the minimum design criteria for BOD₅ specified in Oregon Administrative Rules (OAR) 340-41. These limits and CBOD₅ mass limits may be adjusted (up or down) by permit action if more accurate information regarding CBOD₅/BOD₅ becomes available.

(2) Other parameters (year-round)	Limitations
<i>E. coli</i> Bacteria	Shall not exceed 126 organisms per 100 ml monthly geometric mean. No single sample shall exceed 406 organisms per 100 ml. (See Note 1)
pH	Shall be within the range of 6.5 - 8.5.
CBOD ₅ and TSS Removal Efficiency	Shall not be less than 85% monthly average
Dissolved Oxygen	Shall not be less than 6.0 mg/l as a daily average.

(3) Notwithstanding the effluent limitations established by this permit, except as provided for in OAR 340-45-080, no wastes shall be discharged and no activities shall be conducted which violate Water Quality Standards as adopted in OAR 340-41-445. No acute or chronic toxicity due to ammonia or other compounds as measured by the bioassay monitoring shall be allowed in the effluent.

(4) No chlorine or chlorine compounds shall be used for disinfection purposes and no chlorine residual shall be allowed in the effluent due to chlorine used for maintenance purposes.

c. Combined Mass Load Discharge from Outfall 001 and 002:

The combined discharge to public waters shall not exceed the seasonally appropriate CBOD₅ and TSS mass load limits for Outfall 001.

d. Outfall Number 003 (Surge Basin Overflow)

No waste shall be discharged from this outfall and no activities shall be conducted which violate Water Quality Standards as adopted in OAR 340-41-445, unless the cause of the discharge is due to storm events as allowed under OAR 340-41-120(13) and (14) as follows:

Raw sewage discharges are prohibited to waters of the State from November 1 through May 21, except during a storm event greater than the one-in-five-year, 24-hour duration storm, and from May 22 through October 31, except during a storm event greater than the one-in-ten-year, 24-hour duration storm. If an overflow occurs between May 22 and June 1, and if the permittee demonstrates to the Department's satisfaction that no increase in risk to beneficial uses occurred because of the overflow, no violation shall be triggered if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm.

NOTES:

- 1/. If a single sample exceeds 406 organisms per 100 ml, then five consecutive re-samples may be taken at four hour intervals beginning within 28 hours after the original sample was taken. If the log mean of the five re-samples is less than or equal to 126 organisms per 100 ml, a violation shall not be triggered.
- 2/. The Department will use the average discharged flow volume to Silver Creek for the period July through September each year as a surrogate measure for heat energy. If the average discharge flow exceeds 1.0 MGD, the Department will perform a more extensive evaluation to determine compliance.

SCHEDULE B

1. Quality Assurance/Quality Control

The permittee shall monitor the parameters as specified below at the locations indicated. The laboratory used by the permittee to analyze samples shall have a quality assurance/quality control (QA/QC) program to verify the accuracy of sample analysis. If QA/QC requirements are not met for any analysis, the results shall be included in the report, but not used in calculations required by this permit. When possible, the permittee shall re-sample in a timely manner for parameters failing the QA/QC requirements, analyze the samples, and report the results.

2. Minimum Monitoring and Reporting Requirements to be met after permit issuance during operation of the existing Trickling Filter/Solids Contact plant. (unless otherwise approved in writing by the Department)

a. Influent

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annually	Verification
BOD ₅	2/Week	24-hour Composite
TSS	2/Week	24-hour Composite
pH	3/Week	Grab

b. Outfall Number 001 (Sewage Treatment Plant Discharge)

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annually	Verification
BOD ₅	2/Week	24-hour Composite
Ammonia-N	2/Week	24-hour Composite
TSS	2/Week	24-hour Composite
pH	3/Week	Grab
Temperature	2/Week	Record
<i>E. coli</i>	2/Week	Grab (See Note 1/)
Quantity Chlorine Used	Daily	Measurement
Chlorine Residual	Daily	Grab
Pounds Discharged (BOD ₅ and TSS)	2/Week	Calculation
Average Percent Removed (BOD ₅ and TSS)	Monthly	Calculation
Nutrients: TKN, NO ₂ +NO ₃ -N, Total Phosphate	1/Week (May-Oct)	24-hour Composite
Toxics: Bioassay (See Note 2/)	Semi-Annually	Acute & chronic bioassay

c. Silver Creek (See Note 3/)

Item or Parameter	Minimum Frequency	Type of Sample
Flow (upstream)	2/Week	Measurement
Temperature (upstream)	2/Week	Record
Temperature (downstream)	2/Week	Record
pH	2/Week	Grab

d. Biosolids Management

Item or Parameter	Minimum Frequency	Type of Sample
Sludge analysis including: Total Solids (% dry wt.) Volatile solids (% dry wt.) Biosolids nitrogen for: NH ₃ -N; NO ₃ -N; & TKN (% dry wt.) Phosphorus (% dry wt.) Potassium (% dry wt.) pH (standard units) Sludge metals content for: As, Cd, Cu, Hg, Mo, Ni, Pb, Se & Zn, measured as total in mg/kg	Annually	Composite sample to be representative of the product to be land applied from the sludge storage ponds (See Note 4/)
Record of % volatile solids reduction accomplished through stabilization.	Monthly when land applying biosolids (See Note 5/)	Calculation
Record of locations where biosolids are applied on each DEQ approved site. (Site location maps to be maintained at treatment facility for review request by DEQ)	Each Occurrence	Date, volume & locations where sludges were applied recorded on site location map

3. **Minimum Monitoring and Reporting Requirements to be met after the permittee has completed construction of treatment and disposal system improvements necessary to meet permit requirements listed in SCHEDULE A.2.** (unless otherwise approved in writing by the Department)

a. **Influent**

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annual	Verification
CBOD ₅	2/Week	24-hour Composite
TSS	2/Week	24-hour Composite
pH	3/Week	Grab

b. **Outfall Number 001 (Sewage Treatment Plant Discharge)**

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annual	Verification
CBOD ₅	2/Week	24-hour Composite
Ammonia-N	2/Week	24-hour Composite
TSS	2/Week	24-hour Composite
pH	3/Week	Grab
Dissolved Oxygen	2/Week	Grab
Temperature	2/Week	Record
<i>E. coli</i>	2/Week	Grab (See Note 1/)
Turbidity	Daily	Grab
UV Radiation Intensity	Daily	Reading
Pounds Discharged (BOD ₅ and TSS)	2/Week	Calculation
Average Percent Removed (BOD ₅ and TSS)	Monthly	Calculation
Nutrients: TKN, NO ₂ +NO ₃ -N, Total Phosphate	1/Week (May-Oct)	24-hour Composite
Toxics: Bioassay (See Note 2/)	Semi-Annually	Acute & chronic bioassay

c. **Outfall Number 002 (Oregon Garden Wetland)**

Item or Parameter	Minimum Frequency	Type of Sample
Total Flow (MGD)	Daily	Measurement
Flow Meter Calibration	Semi-Annual	Verification
CBOD ₅	2/Week	24-hour Composite
Ammonia-N	2/Week	24-hour Composite
TSS	2/Week	24-hour Composite
pH	3/Week	Grab
Dissolved Oxygen	2/Week	Grab
Temperature	2/Week	Record
<i>E. coli</i>	2/Week	Grab (See Note 1/)
UV Radiation Intensity Percent	Daily	Reading (See Note 6/)
Pounds Discharged (CBOD ₅ and TSS)	2/Week	Calculation
Average Percent Removed (CBOD ₅ and TSS)	Monthly	Calculation

c. Outfall Number 002 (Oregon Garden Wetland) continued

Item or Parameter	Minimum Frequency	Type of Sample
Nutrients: TKN, NO ₂ +NO ₃ -N, Total Phosphate	1/Week	24-hour Composite
Toxics: Bioassay (See Note 2/)	Semi-Annually	Acute & chronic bioassay

d. Outfalls 003 (Surge Basin Overflow)

Item or Parameter	Minimum Frequency	Type of Sample
Flow	Daily (during each occurrence)	Duration and volume

e. Silver Creek (See Note 3/)

Item or Parameter	Minimum Frequency	Type of Sample
Flow (upstream)	2/Week	Measurement
Temperature (upstream)	2/Week	Record
Temperature (downstream)	2/Week	Record
pH	2//Week	Grab

f. Oregon Garden Wetland (See Note 6/)

Item or Parameter	Minimum Frequency	Type of Sample
Ammonia-N	2/Week	Grab
Dissolved Oxygen	2/Week	Grab
Temperature	2/Week	Record
pH	2/Week	Grab

g. Biosolids Management

Item or Parameter	Minimum Frequency	Type of Sample
Sludge analysis including: Total Solids (% dry wt.) Volatile solids (% dry wt.) Biosolids nitrogen for: NH ₃ -N; NO ₃ -N; & TKN (% dry wt.) Phosphorus (% dry wt.) Potassium (% dry wt.) pH (standard units) Sludge metals content for: As, Cd, Cu, Hg, Mo, Ni, Pb, Se & Zn, measured as total in mg/kg	Annually	Composite sample to be representative of the product to be land applied from the sludge storage ponds (See Note 4/)
Record of % volatile solids reduction accomplished through stabilization.	Monthly when land applying biosolids	Calculation (See Note 5/)
Record of locations where biosolids are applied on each DEQ approved site. (Site location maps to be maintained at treatment facility for review upon request by DEQ)	Each Occurrence	Date, volume & locations where sludges were applied recorded on site location map

4. Reporting Procedures

- a. Monitoring results shall be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department's Western Region - Salem office by the 15th day of the following month.
- b. State monitoring reports shall identify the name, certificate classification and grade level of each principal operator designated by the permittee as responsible for supervising the wastewater collection and treatment systems during the reporting period. Monitoring reports shall also identify each system classification as found on page one of this permit.
- c. Monitoring reports shall also include a record of the quantity and method of use of all sludge removed from the treatment facility and a record of all applicable equipment breakdowns and bypassing.

5. Report Submittals

- a. The permittee shall have in place a program to identify and reduce inflow and infiltration into the sewage collection system. An annual report shall be submitted to the Department by February 1 each year which details sewer collection maintenance activities that reduce inflow and infiltration. The report shall state those activities that have been done in the previous year and those activities planned for the following year.
- b. For any year in which biosolids are land applied, a report shall be submitted to the Department by February 19 of the following year that describes solids handling activities for the previous year and includes, but is not limited to, the required information outlined in OAR 340-50-035(6)(a)-(e).
- c. The permittee shall submit a copy of the Annual Mitigation Monitoring Report (as required under the removal/fill permit issued by the Division of State Lands in accordance with ORS 196.800 through 196.990) by no later than the date specified by the removal/fill permit.

NOTES:

- 1/ *E. coli* monitoring must be conducted according to any of the following test procedures as specified in **Standard Methods for the Examination of Water and Wastewater, 19th Edition**, or according to any test procedure that has been authorized and approved in writing by the Director or his authorized representative:

Method	Reference	Page	Method Number
mTEC agar, MF	Standard Methods, 19th Edition	9-28	9213 D
NA-MUG, MF	Standard Methods, 19th Edition	9-63	9222 G
Chromogenic Substrate, MPN	Standard Methods, 19th Edition	9-65	9223 B
Colilert QT	Idexx Laboratories, Inc.		

- 2/ Beginning no later than September 2000, the permittee shall conduct bioassay testing at the frequency specified above. At least one test shall be performed during the period of discharge to the Oregon Gardens wetland. If all bioassay tests for discharge to the Oregon Gardens wetland shows that the effluent sample is not toxic (acute or chronic) and if all bioassay tests performed during discharge only to Silver Creek shows that the effluent sample is not toxic at the dilutions determined to occur at the Zone of Immediate Dilution and the Mixing Zone, no further bioassay testing will be required during this permit cycle. Note that bioassay test results will be required along with the next NPDES permit renewal application.

- 3/ Silver Creek flow and temperature shall be obtained upstream from the outfall location. The downstream Silver Creek temperature shall be taken at the edge of the mixing zone and from within the effluent plume. All measurements shall be instantaneous values measured within a one (1) hour period.
- 4/ Composite samples from the sludge storage ponds shall be taken from reference areas in the storage ponds pursuant to Test Methods for Evaluating Solid Waste, Volume 2: Field Manual, Physical/Chemical Methods, November 1986, Third Edition, Chapter 9,

Inorganic pollutant monitoring must be conducted according to Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Second Edition (1982) with Updates I and II and third Edition (1986) with Revision I.
- 5/ Calculation of the % volatile solids reduction is to be based on comparison of a representative grab sample of total and volatile solids entering each digester (a weighted blend of the primary and secondary clarifier solids) and a representative composite sample of sludge solids removed from the sludge storage ponds (as defined in note 4/)
- 6/ Monitoring to be performed at a location and depth approved in writing by the Department.

SCHEDULE C

Compliance Schedules and Conditions

1. Within 90 days of permit issuance, the permittee shall submit to the Department for review and approval a report that describes procedures for handling, transporting, and disposal of rags, grit, scum and screenings generated at the treatment facility. Upon written approval from the Department, the permittee shall conform with the approved procedures. Modified procedures may be followed upon prior approval in writing by the Department.
2. By no later than ninety (90) days after permit issuance, the permittee shall submit to the Department a report which either identifies known sewage bypass locations and a plan for estimating the frequency, duration and quantity of sewage bypassing treatment, or confirms that there are no bypass points. The report shall also provide a schedule to eliminate the bypass(es), if any.
3. Within 180 days of permit issuance, the permittee shall submit to the Department for review and approval an updated program and time schedule for identifying and reducing inflow. Within 60 days of receiving written Department comments, the permittee shall submit a final approvable program and time schedule. The program shall consist of the following:
 - a. Identification of all overflow points and verification that sewer system overflows are not occurring up to a 24-hour, 5-year storm event or equivalent;
 - b. Monitoring of all pump station overflow points;
 - c. A program for identifying and removing all inflow sources into the permittee's sewer system over which the permittee has legal control; and
 - d. If the permittee does not have the necessary legal authority for all portions of the sewer system or treatment facility, a program and schedule for gaining legal authority to require inflow reduction and a program and schedule for removing inflow sources.
4. By no later than May 1, 2000, the permittee shall submit to the Department for approval a study plan and schedule for periodically assessing the water quality and biological integrity of the Oregon Gardens wetland. With the permittee's application to renew this and subsequent permits, the permittee shall

include a written report detailing the chemical, physical and biological impacts of the discharge on the Oregon Gardens wetland.

5. By no later than one (1) year after issuance of this permit, the permittee shall have its wastewater treatment and collection systems supervised by one or more operators who are certified in a classification and grade level (equal to or greater) that corresponds with the classification of the system to be supervised as specified on page one of this permit. Prior to that time, the permittee must continue to provide treatment system supervision at grade level III or higher and collection system supervision at grade level II or higher.
5. By no later than two (2) years after issuance of this permit, the permittee shall submit for Department approval a temperature management plan developed in accordance with the Department's guidance for implementing the temperature standard. By no later than two (2) years after Department approval of the temperature management plan, the permittee shall implement the plan.
7. The permittee is expected to meet the compliance dates which have been established in this schedule. Either prior to or no later than 14 days following any lapsed compliance date, the permittee shall submit to the Department a notice of compliance or noncompliance with the established schedule. The Director may revise a schedule of compliance if he determines good and valid cause resulting from events over which the permittee has little or no control.

SCHEDULE D

Special Conditions

1. An adequate contingency plan for prevention and handling of spills and unplanned discharges shall be in force at all times. A continuing program of employee orientation and education shall be maintained to ensure awareness of the necessity of good inplant control and quick and proper action in the event of a spill or accident.
2. All biosolids or septage shall be managed in accordance with the current biosolids or septage management plan approved by the Department and the site authorization letters issued by the Department. The biosolids or septage management plan shall be kept current and remain on file with the permit. No substantial changes shall be made in solids management activities which significantly differ from operations specified under the approved plan without the prior written approval of the Department.

This permit may be modified to incorporate any applicable standard for biosolids use or disposal promulgated under section 405(d) of the Clean Water Act, if the standard for biosolids use or disposal is more stringent than any requirements for biosolids use or disposal in the permit, or controls a pollutant or practice not limited in this permit.

3. The permittee shall comply with Oregon Administrative Rules (OAR), Chapter 340, Division 49, "Regulations Pertaining To Certification of Wastewater System Operator Personnel" and accordingly:
 - a. The permittee shall have its wastewater system supervised by one or more operators who are certified in a classification and grade level (equal to or greater) that corresponds with the classification (collection and/or treatment) of the system to be supervised as specified on page one of this permit.

Note: A "supervisor" is defined as the person exercising authority for establishing and executing the specific practice and procedures of operating the system in accordance with the policies of the permittee and requirements of the waste discharge permit. "Supervise" means responsible for the technical operation of a system, which may affect its performance or the quality of the effluent produced. Supervisors are not required to be on-site at all times.

- b. The permittee's wastewater system may not be without supervision (as required by Special Condition 3.a. above) for more than thirty (30) days. During this period, and at any time that the supervisor is not available to respond on-site (i.e. vacation, sick leave or off-call), the permittee must make available another person who is certified at no less than one grade lower than the system classification.
- c. If the wastewater system has more than one daily shift, the permittee shall have the shift supervisor, if any, certified at no less than one grade lower than the system classification.
- d. The permittee is responsible for ensuring the wastewater system has a properly certified supervisor available at all times to respond on-site at the request of the permittee and to any other operator.
- e. The permittee shall notify the Department of Environmental Quality in writing within thirty (30) days of replacement or redesignation of certified operators responsible for supervising wastewater system operation. The notice shall be filed with the Water Quality Division, Operator Certification Program, 811 SW 6th Ave., Portland, OR 97204. This requirement is in addition to the reporting requirements contained under Schedule B of this permit.
- f. Upon written request, the Department may grant the permittee reasonable time, not to exceed 120 days, to obtain the services of a qualified person to supervise the wastewater system. The written request must include justification for the time needed, a schedule for recruiting and hiring, the date the system supervisor availability ceased and the name of the alternate system supervisor(s) as required by 3.b. above.

4. **Whole Effluent Toxicity Testing**

- a. The permittee shall conduct whole effluent toxicity tests as specified in Schedule B of this permit.
- b. Bioassay tests may be dual end-point tests in which both acute and chronic end-points can be determined from the results of a single chronic test (the acute end-point shall be based upon a 48-hour time period).
- c. Acute Toxicity Testing - Organisms and Protocols
 - (1) The permittee shall conduct 48-hour static renewal tests with the Ceriodaphnia dubia (water flea) and the Pimephales promelas (fathead minnow).
 - (2) The presence of acute toxicity will be determined as specified in **Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms**, Fourth Edition, EPA/600/4-90/027F, August 1993.
 - (3) An acute bioassay test shall be considered to show toxicity if there is a statistically significant difference in survival between the control and 100 percent effluent, unless the permit specifically provides for a Zone of Immediate Dilution (ZID) for biotoxicity. If the permit specifies such a ZID, acute toxicity shall be indicated when a statistically significant difference in survival occurs at dilutions greater than that which is found to occur at the edge of the ZID.

d. Chronic Toxicity Testing - Organisms and Protocols

- (1) The permittee shall conduct tests with: *Pimephales promelas* (fathead minnow) for growth and survival test endpoint, *Ceriodaphnia dubia* (water flea) for reproduction and survival test endpoint, and *Selanastrum capricornutum* (green alga) for growth test endpoint.
- (2) The presence of chronic toxicity shall be estimated as specified in **Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms**, Third Edition, EPA/600/4-91/002, July 1994.
- (3) A chronic bioassay test shall be considered to show toxicity if a statistically significant difference in survival, growth, or reproduction occurs at dilutions greater than that which is known to occur at the edge of the mixing zone. If there is no dilution data for the edge of the mixing zone, any chronic bioassay test that shows a statistically significant effect in 100 percent effluent as compared to the control shall be considered to show toxicity.

e. Quality Assurance

Quality assurance criteria, statistical analyses and data reporting for the bioassays shall be in accordance with the EPA documents stated in this condition and the Department's **Whole Effluent Toxicity Testing Guidance Document**, January 1993.

f. Evaluation of Causes and Exceedances

- (1) If toxicity is shown, as defined in sections c. (3) or d.(3) of this permit condition, another toxicity test using the same species and Department approved methodology shall be conducted within two weeks, unless otherwise approved by the Department. If the second test also indicates toxicity, the permittee shall follow the procedure described in section f.(2) of this permit condition.
- (2) If two consecutive bioassay test results indicate acute and/or chronic toxicity, as defined in sections c.(3) or d.(3) of this permit condition, the permittee shall evaluate the source of the toxicity and submit a plan and time schedule for demonstrating compliance with water quality standards. Upon approval by the Department, the permittee shall implement the plan until compliance has been achieved. Evaluations shall be completed and plans submitted to the Department within 6 months unless otherwise approved in writing by the Department.

g. Reporting

Along with the test results, the permittee shall include: 1. the dates of sample collection and initiation of each toxicity test; 2. the type of production; and 3. the flow rate at the time of sample collection. Effluent at the time of sampling for bioassay testing should include split samples of required parameters stated under Schedule B, condition 1. of this permit.

h. Reopener

If bioassay testing indicates acute and/or chronic toxicity, the Department may reopen and modify this permit to include new limitations and/or conditions as determined by the Department to be appropriate, and in accordance with procedures outlined in Oregon Administrative Rules, Chapter 340, Division 45.

5. Prior to increasing thermal load from the facility (design flow or temperature), the Permittee shall notify the Department in writing and obtain necessary approval.
6. The permittee shall include a projection of summertime flows expected to be discharged to Silver Creek on a monthly basis by the end of the next permit cycle with its renewal application. Alternatively, the permittee shall submit a plan and schedule for providing additional wastewater facilities that will ensure continued compliance with the temperature and all other water quality standards that are in effect at the time of application.
7. The permittee shall notify the DEQ Western Region - Salem Office (phone: 503-378-8240) in accordance with the response times noted in the General Conditions of this permit, of any malfunction so that corrective action can be coordinated between the permittee and the Department.

NPDES GENERAL CONDITIONS (SCHEDULE F)

SECTION A. STANDARD CONDITIONS

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468B.025 and is grounds for enforcement action; for permit termination, suspension, or modification; or for denial of a permit renewal application.

2. Penalties for Water Pollution and Permit Condition Violations

Oregon Law (ORS 468.140) allows the Director to impose civil penalties up to \$10,000 per day for violation of a term, condition, or requirement of a permit.

In addition, a person who unlawfully pollutes water as specified in ORS 468.943 or ORS 468.946 is subject to criminal prosecution.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee shall correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application shall be submitted at least 180 days before the expiration date of this permit.

The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts; or
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

The filing of a request by the permittee for a permit modification or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Toxic Pollutants

The permittee shall comply with any applicable effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

8. Permit References

Except for effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

SECTION B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Duty to Halt or Reduce Activity

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The term "bypass" does not include nonuse of singular or multiple units or processes of a treatment works when the nonuse is insignificant to the quality and/or quantity of the effluent produced by the treatment works. The term "bypass" does not apply if the diversion does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation.

- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities or treatment processes which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Prohibition of bypass.

- (1) Bypass is prohibited unless:
- (a) Bypass was necessary to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (c) The permittee submitted notices and requests as required under General Condition B.3.c.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the Director determines that it will meet the three conditions listed above in General Condition B.3.b.(1).

c. Notice and request for bypass.

- (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior written notice, if possible at least ten days before the date of the bypass.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in General Condition D.5.

4. Upset

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of General Condition B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in General Condition D.5, hereof (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under General Condition A.3 hereof.

- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5. Treatment of Single Operational Event

For purposes of this permit, A Single Operational Event which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. A single operational event is an exceptional incident which causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter. A single operational event does not include Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational event is a violation.

5. Overflows from Wastewater Conveyance Systems and Associated Pump Stations

a. Definitions

- (1) "Overflow" means the diversion and discharge of waste streams from any portion of the wastewater conveyance system including pump stations, through a designed overflow device or structure, other than discharges to the wastewater treatment facility.
- (2) "Severe property damage" means substantial physical damage to property, damage to the conveyance system or pump station which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of an overflow.
- (3) "Uncontrolled overflow" means the diversion of waste streams other than through a designed overflow device or structure, for example to overflowing manholes or overflowing into residences, commercial establishments, or industries that may be connected to a conveyance system.

b. Prohibition of overflows. Overflows are prohibited unless:

- (1) Overflows were unavoidable to prevent an uncontrolled overflow, loss of life, personal injury, or severe property damage;
- (2) There were no feasible alternatives to the overflows, such as the use of auxiliary pumping or conveyance systems, or maximization of conveyance system storage; and
- (3) The overflows are the result of an upset as defined in General Condition B.4. and meeting all requirements of this condition.

c. Uncontrolled overflows are prohibited where wastewater is likely to escape or be carried into the waters of the State by any means.

d. Reporting required. Unless otherwise specified in writing by the Department, all overflows and uncontrolled overflows must be reported orally to the Department within 24 hours from the time the permittee becomes aware of the overflow. Reporting procedures are described in more detail in General Condition D.5.

7. Public Notification of Effluent Violation or Overflow

If effluent limitations specified in this permit are exceeded or an overflow occurs, upon request by the Department, the permittee shall take such steps as are necessary to alert the public about the extent and nature of the discharge. Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

3. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in such a manner as to prevent any pollutant from such materials from entering public waters, causing nuisance conditions, or creating a public health hazard.

SECTION C. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and shall be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Director.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ± 10 percent from true discharge rates throughout the range of expected discharge volumes.

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties of Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years or both.

5. Reporting of Monitoring Results

Monitoring results shall be summarized each month on a Discharge Monitoring Report form approved by the Department. The reports shall be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency shall also be indicated. For a pollutant parameter that may be sampled more than once per day (e.g., Total Chlorine Residual), only the average daily value shall be recorded unless otherwise specified in this permit.

7. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean, except for bacteria which shall be averaged as specified in this permit.

3. Retention of Records

Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records of all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

9. Records Contents

Records of monitoring information shall include:

- a. The date, exact place, time and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

10. Inspection and Entry

The permittee shall allow the Director, or an authorized representative upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

SECTION D. REPORTING REQUIREMENTS

1. Planned Changes

The permittee shall comply with Oregon Administrative Rules (OAR) 340, Division 52, "Review of Plans and Specifications". Except where exempted under OAR 340-52, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers shall be commenced until the plans and specifications are submitted to and approved by the Department. The permittee shall give notice to the Department as soon as possible of any planned physical alternations or additions to the permitted facility.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit shall be transferred to a third party without prior written approval from the Director. The permittee shall notify the Department when a transfer of property interest takes place.

4. Compliance Schedule

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

5. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally (by telephone) within 24 hours, unless otherwise specified in this permit, from the time the permittee becomes aware of the circumstances. During normal business hours, the Department's Regional office shall be called. Outside of normal business hours, the Department shall be contacted at 1-800-452-0311 (Oregon Emergency Response System).

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. If the permittee is establishing an affirmative defense of upset or bypass to any offense under ORS 468.922 to 468.946, and in which case if the original reporting notice was oral, delivered written notice must be made to the Department or other agency with regulatory jurisdiction within 4 (four) calendar days. The written submission shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected;
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
- e. Public notification steps taken, pursuant to General Condition B.7.

The following shall be included as information which must be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass which exceeds any effluent limitation in this permit.
- b. Any upset which exceeds any effluent limitation in this permit.
- c. Violation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under General Condition D.4 or D.5, at the time monitoring reports are submitted. The reports shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and
- d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

7. Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Department, it shall promptly submit such facts or information.

8. Signatory Requirements

All applications, reports or information submitted to the Department shall be signed and certified in accordance with 40 CFR 122.22.

9. Falsification of Information

A person who supplies the Department with false information, or omits material or required information, as specified in ORS 468.953 is subject to criminal prosecution.

10. Changes to Indirect Dischargers - [Applicable to Publicly Owned Treatment Works (POTW) only]

The permittee must provide adequate notice to the Department of the following:

- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the Clean Water Act if it were directly discharging those pollutants and;
- b. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- c. For the purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

11. Changes to Discharges of Toxic Pollutant - [Applicable to existing manufacturing, commercial, mining, and silvicultural dischargers only]

The permittee must notify the Department as soon as they know or have reason to believe of the following:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 g/L);
 - (2) Two hundred micrograms per liter (200 g/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 g/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR 122.44(f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) Five hundred micrograms per liter (500 g/L);
 - (2) One milligram per liter (1 mg/L) for antimony;
 - (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
 - (4) The level established by the Department in accordance with 40 CFR 122.44(f).

SECTION E. DEFINITIONS

1. BOD means five-day biochemical oxygen demand.
2. TSS means total suspended solids.
3. mg/l means milligrams per liter.
4. kg means kilograms.
5. m³/d means cubic meters per day.
5. MGD means million gallons per day.

7. Composite sample means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow.
8. FC means fecal coliform bacteria.
9. Technology based permit effluent limitations means technology-based treatment requirements as defined in 40 CFR 125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR 340-41.
10. CBOD means five day carbonaceous biochemical oxygen demand.
11. Grab sample means an individual discrete sample collected over a period of time not to exceed 15 minutes.
12. Quarter means January through March, April through June, July through September, or October through December.
13. Month means calendar month.
14. Week means a calendar week of Sunday through Saturday.
15. Total residual chlorine means combined chlorine forms plus free residual chlorine.
16. The term "bacteria" includes but is not limited to fecal coliform bacteria, total coliform bacteria, and E. coli bacteria.
17. POTW means a publicly owned treatment works.

(Dec. 1, 1995)
updated 1-99 sms
sms 5-21-99
sms 6-18-99

Action Item G: O'Brien Quiet Area. EQC Meeting, Klamath Falls, August 13, 1999

Our effort to have an "O'Brien Quiet Area" designated began with concerned neighbors discussing a proposed nickel strip mine. O'Brien is a small town in southwest Josephine County, in southwest Oregon, about 5 miles north of the California-Oregon border and inland about 30 miles from the Pacific Ocean on the east side of the Kalmiopsis Wilderness. About 400 people live in O'Brien in forested rural residential homes. The citizens value the local environment and quiet, and are alarmed at the prospect of noise from a proposed strip mine.

While searching the Oregon Administrative Rules, on the State Archives web site for noise regulations, I discovered the Quiet Area definition. On January 11, 1999 I wrote a letter (exhibit 1) to the DEQ Rules Coordinator to obtain information about all Quiet Areas that have been designated in Oregon. To my surprise, I found out that a Quiet Area has never been designated in Oregon.

Since this area west of O'Brien, and adjacent to the Kalmiopsis Wilderness, includes the South Kalmiopsis Roadless Area, the Rough and Ready Botanical Area, and a proposed National Wild and Scenic River it seemed obvious that it should qualify to be the first Quiet Area designated in Oregon (under OAR 340-035-0015(50)). Therefore, on February 1, 1999 I submitted an application letter (exhibit 2) to the DEQ Rules Coordinator to designate the "O'Brien Quiet Area". That application included a map of the area, acreage totals by ownership, and justification for the Quiet Area designation.

Our primary interest is to gain as much protection as possible for the Rough and Ready Creek watershed, which is a unique and beautiful wild area in Oregon. Protection is needed as this pristine watershed is threatened by a 4,380 acre nickel strip mine proposal. Therefore, I would like to provide further justification to the Environmental Quality Commission for designating the 50,000 acre "O'Brien Quiet Area".

Quiet means still, calm, silent, hushed, secluded, peaceful, or free from noise. Quiet is not the absence of all sound, just the absence of noise. Noise is any loud unmusical or disagreeable sounds. The "O'Brien Quiet Area" contains mostly the sounds of nature such as the wind blowing through the trees, rushing water, driving rain, thunder, birds singing, bears walking, and coyotes howling. Our local Quaker Pastor has referred to this kind of quiet as the "Thundering Silence of God".

The area west of O'Brien is quiet because it is large and has never been developed. Exhibit 3 is a mosaic of visible spectrum satellite scenes of the United States obtained during clear nights. It shows the bright lights of civilization and the darkness of undeveloped areas. One can see the dark zone of the Kalmiopsis area in southwest Oregon, the vast dark areas in eastern Oregon, as well as the bright metropolitan areas along the I-5 corridor and the coastal communities. Exhibit 4 shows the forested roadless areas greater than 1,000 acres in size in Oregon. The Kalmiopsis area west of O'Brien is one of the prominent roadless areas shown on the map.

Of 1,400 watersheds in Oregon, the Rough and Ready Creek watershed is considered the most botanically diverse. Exhibit 5 is a paper by Darren Borgias that shows a map of the watershed and reviews the many unique geological and botanical values of the area. The watershed contains hundreds of plant species, many that are found no other place on earth. Exhibit 6 is a poetic article by Mary Paetzel describing Rough and Ready Creek.

This special area is world renowned and is known as a biological "hot spot". Local citizens have generated strong political support for permanent protection of the Rough and Ready Creek Watershed. Support for protection comes from many diverse groups including the County Homebuilders Association, the Quakers, the local and State Garden Clubs, Rough 'N' Ready Neighbors!, the Sierra Club, the Audubon Society, and many others. Exhibit 7 is a color tabloid produced by the Siskiyou Regional Education Project with many beautiful pictures of the Rough and Ready Creek watershed. Exhibit 8 is a May 20, 1998 letter from the majority of the Oregon Congressional delegation to the Forest Service Chief requesting protection of this watershed. Exhibit 9 is an August 3, 1999 letter from Senator Wyden to President Clinton which includes a request for special protective status for the Rough and Ready Creek watershed.

As stated in the OAR (340-013-0005) for Wilderness Areas, it is DEQ policy that wilderness areas in Oregon "are a major part of the cultural heritage of the citizens of Oregon and are a key element in developing and maintaining tourism and recreation as a viable industry. Thus, the environment of wilderness areas is deserving of the highest level of protection and safeguarding by the state in order to preserve Oregon's unique primitive and natural land areas".

Under the definition of a Quiet Area the DEQ is required to submit a staff recommendation on publicly requested Quiet Areas to the Commission. Unfortunately the July 22, 1999 DEQ staff recommendation for the "O'Brien

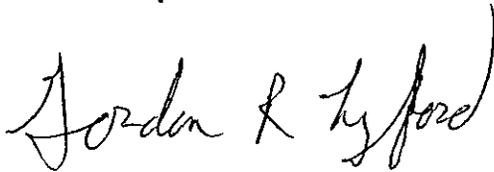
Quiet Area" is not responsive to the question at hand. The issue is not the DEQ budget level, but whether or not this area west of O'Brien is an "appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater." It is indisputable that this is an appropriate area to be designated a Quiet Area by the Commission.

There are other areas in Oregon deserving of a Quiet Area status, but none are more deserving and no other quiet areas have been requested. The DEQ staff recommendation states that the Commission could designate the "O'Brien Quiet Area" without spending any staff resources, but the DEQ could not evaluate the area or enforce the designation. In my application letter (exhibit 2) an offer was made to have neighbors volunteer to assist the DEQ in evaluating and monitoring the Quiet Area. We are also available to work with the DEQ to refine the "O'Brien Quiet Area" boundary if necessary.

Exhibit 10 is a May 27, 1998 letter from Deputy State Geologist John D. Beaulieu to Nancy Lyford stating that the Nicore mining proponent has not applied for any state permits for the proposed nickel strip mine. Therefore, declaring the "O'Brien Quiet Area" would not commit the DEQ to obligating any funds for enforcement as no present need for enforcement exists.

In conclusion, I believe the Commission should declare the "O'Brien Quiet Area". It would set a wonderful precedent and could foster greater appreciation for the qualities of quiet.

Sincerely,



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

Rough 'N' Ready Neighbors!

P.O. Box 372 O'Brien, Oregon 97534

To: Susan M. Greco
Rules Coordinator
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Date: January 11, 1999

Subject: Public Information Request: "Quiet Area Designation"

I am writing to request copies of certain public records. Our DEQ fee waiver number is DEQ-FWA-0024.

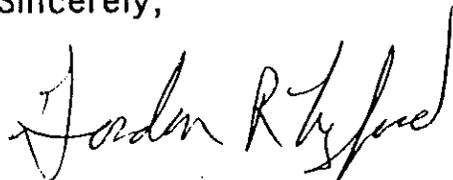
OAR 340-035-0015 (50) defines a "Quiet Area".

We are requesting a list showing the general location, size in acres, and year of designation by the Commission of all "Quiet Areas" in Oregon pursuant to the above OAR.

We would also like copies of any information and forms that would be needed to nominate an area for a "Quiet Area" designation.

If you have any questions regarding this request please call me at (541)596-2017.

Sincerely,



Gordon Lyford
Representative

Rough 'N' Ready Neighbors!

Gordon Lyford
P.O. Box 118
O'Brien, OR 97534

Susan M. Greco
Rules Coordinator
811 SW Sixth Avenue
Portland, Oregon 97204-1390

February 1, 1999

Subject: Application for a "Quiet Area Designation"

I wrote to you on January 11, 1999 to inquire about Quiet Area designations as defined under OAR 340-035-0015 (50). On January 20, 1999 we spoke by phone and you advised me that a Quiet Area has never been designated in Oregon and the Department has not been funded to implement those rules. At your suggestion, I am submitting the following information to you as a formal application to designate an area west of O'Brien, in southwest Oregon, as a Quiet Area. I understand that "the Department shall submit areas suggested by the public as quiet areas, to the Commission, with the Department's recommendation".

According to OAR 340-035-0015 (50), "Quiet Area" means any land or facility designated by the Environmental Quality Commission as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need. We believe the area west of O'Brien fully meets this definition. In fact there is probably no other area in Oregon more qualified for a Quiet Area designation. The "O'Brien Quiet Area" area would be a very appropriate place to receive the first Quiet Area designation in Oregon.

The attached map delineates the proposed 50,000 acre O'Brien Quiet Area. The proposed O'Brien Quiet Area extends from the Oregon border north to Josephine and Woodcock Mountains, and from Biscuit Hill and the southeastern Kalmiopsis Wilderness boundary east to near the town of O'Brien. The area includes about 45,820 acres of Siskiyou National Forest land, 640 acres of BLM land, 640 acres State land, and about 2,900 acres of private land. Most of this area is as quiet as nature gets. The loudest noises are generally running water, coyotes, an occasional airplane, and wind. Outside of the quiet area to the north and west is the vast

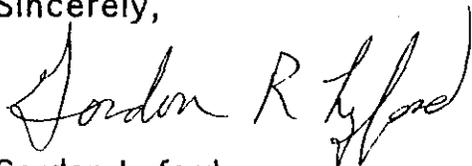
Kalmiopsis Wilderness and Siskiyou National Forest. To the south of the quiet area, in California, is the Six Rivers National Forest and Smith River National Recreation Area. Outside of the mapped quiet area and to the east is O'Brien, U.S. Highway 199, a lumber mill, and the Illinois Valley airport. The noise from those facilities is only occasionally heard one mile away on the eastern margin of the proposed O'Brien Quiet Area and can not be heard very far into the proposed quiet area.

The proposed O'Brien Quiet Area includes the South Kalmiopsis Roadless Area, the Rough and Ready Botanical Area, and Rough and Ready Creek which has segments that are eligible for National Wild and Scenic River designation. Adjoining the O'Brien Quiet Area on the east and at the mouth of Rough and Ready Creek is a BLM Area of Critical Environmental Concern and a State Botanical Wayside. This area is world renowned for its unique botanical resources and is known as the most botanically diverse area in Oregon. It is also known as one of ten "biological hot spots" on the planet. As such the solitude in this pristine wild area is enjoyed by many people while hiking, swimming, and conducting botanical and geological exploration.

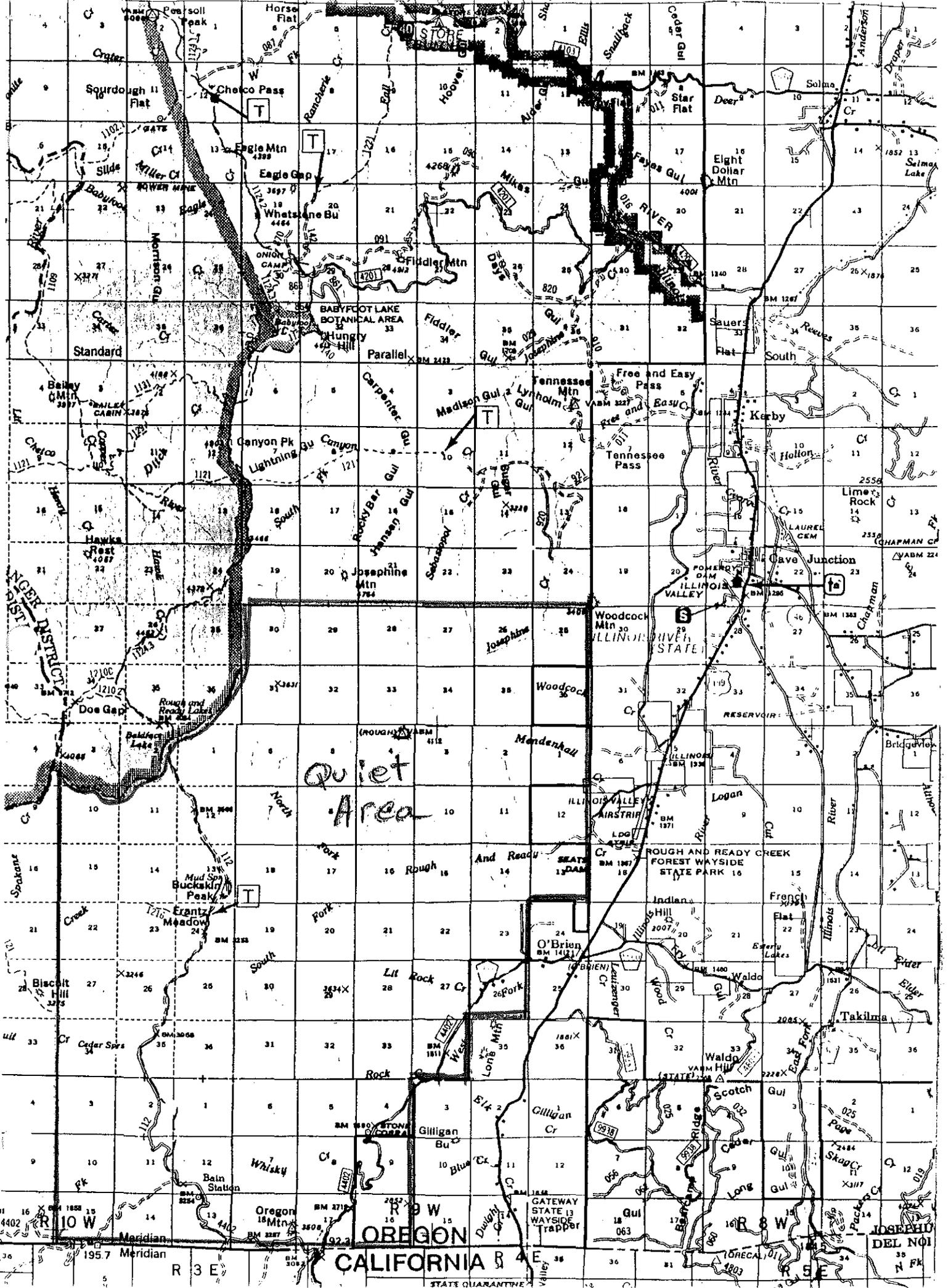
A neighbor, who is a sound engineer, estimated the existing sound levels in the proposed quiet area based on his professional judgment and experience. He stated that the general overall average sound level in most of the area is approximately 25 to 30 dBA, with some sections close to the highway as high as 40 dBA. If it would be helpful to the Department and Commission, we are willing to take sound measurements of representative locations within the proposed quiet area.

Please process this application as quickly as possible and keep me informed of the progress. If you have any questions or status reports regarding this application, please call me at (541)596-2017 or email me at ourmtn@ivnet.net. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Gordon R Lyford". The signature is written in a cursive style with a large initial "G" and "L".

Gordon Lyford
Agricultural Engineer



Quiet Area

OREGON

CALIFORNIA

STATE QUARANTINE



Wildlands of Oregon State Unprotected Roadless Areas on National Forest and BLM Lands (non-forested BLM roadless lands are not shown on this map)

Legend

Roadless Areas by Ownership

- Forest Service
- BLM
- National Park Service
- Other Federal Lands
- State, County and City
- Wilderness (in National Forests)
- Tribal
- Water

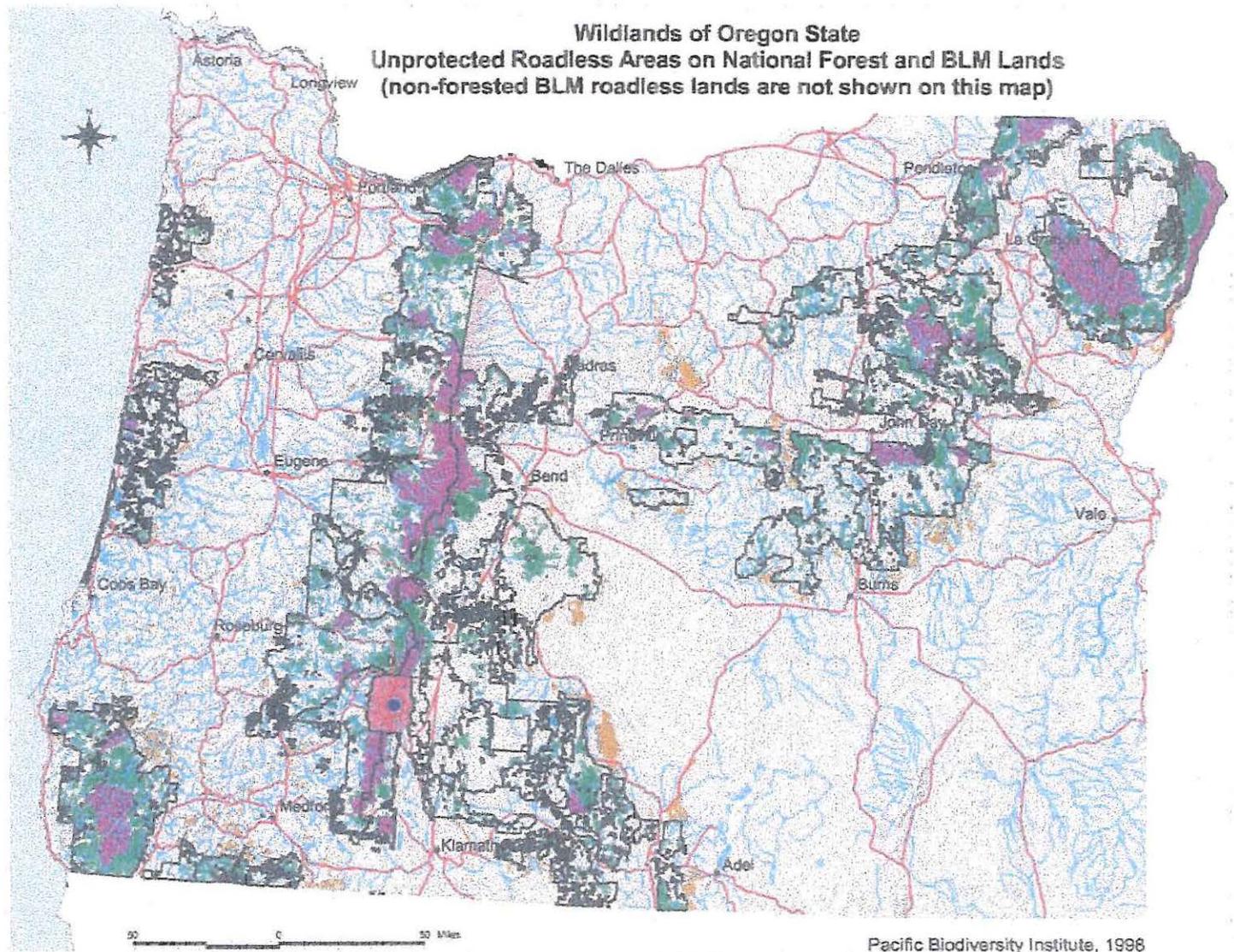
- National Forest Boundaries
- Highways
- Rivers and Streams
- Pacific Ocean
- Cities

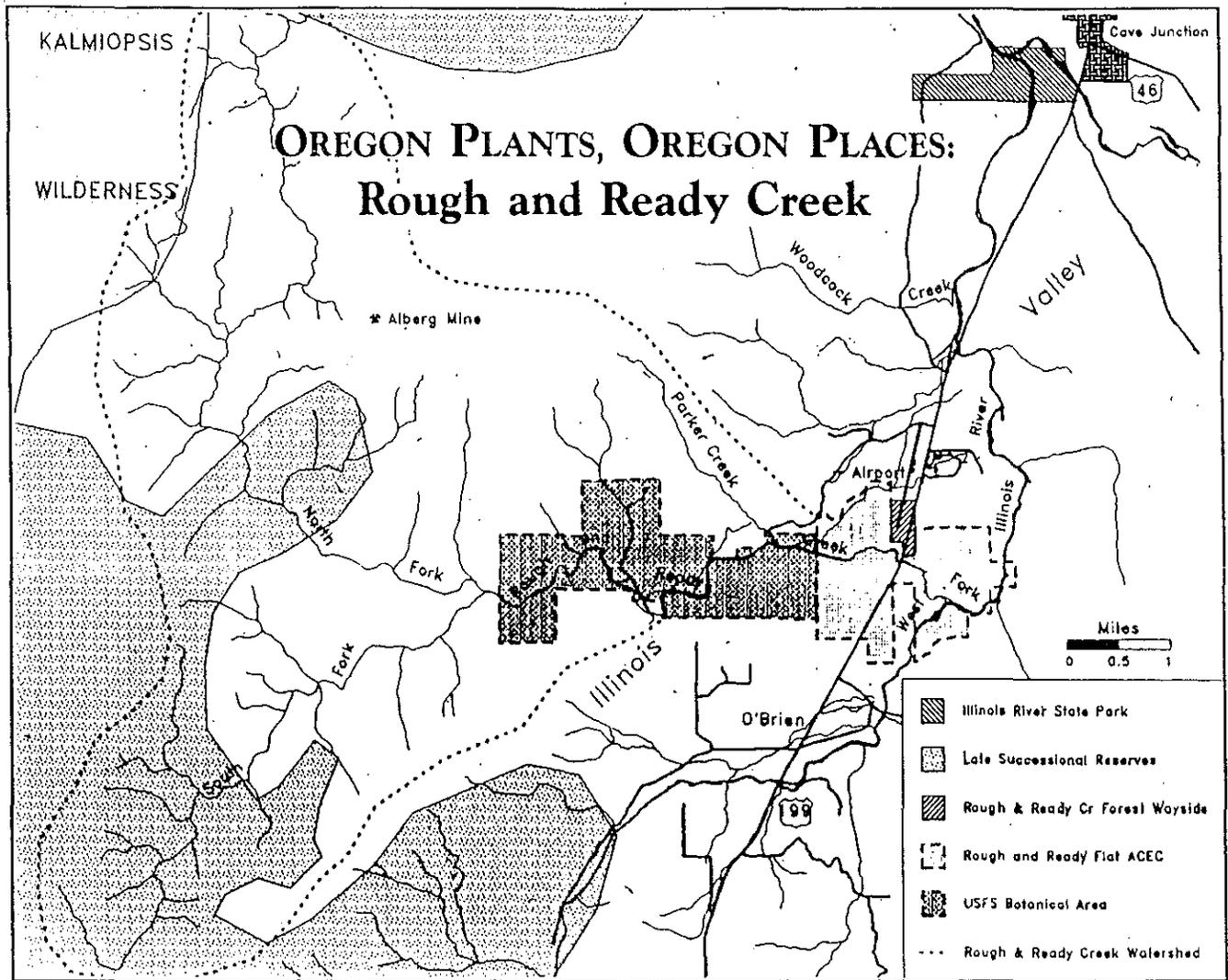
This is a preliminary map of all roadless areas at least 1000 acres in size within the forested parts of Oregon on federal land. It is an interim product of the Oregon Roadless Area Mapping Project - a cooperative project between Pacific Biodiversity Institute and Oregon Natural Resources Council.

Note: roadless lands on other public and tribal ownerships are also shown if they are part of a roadless area with at least 1000 acres on federal land.

A variety of source data was used in this analysis. These data layers include: Land use / Land cover data from the US Geological Survey, TIGER road data from the US Dept. of Commerce, detailed road data from 13 National Forests in Oregon, detailed road data from the Bureau of Land Management for western Oregon and past logging history for 5 western Oregon National Forests.

This map is now undergoing extensive further refinement through examination and interpretation of satellite imagery and high resolution digital orthophotography. More review and evaluation involving extensive field checking will also be done. Any comments or questions are appreciated.





By **DARREN BORGIAS** Species list compiled by **BARBARA ULLIAN**

Crossing Rough and Ready Creek on Highway 99 south of Cave Junction, one might be struck by the irony of the little sign proclaiming a botanical wayside in the strangely bleak terrain. Appearing impoverished or burned over, with tortured looking trees, the observer resists the idea that the site is actually a thriving ecosystem. But native plant enthu-

siasts who have visited the site recognize it as a special place. Once on foot, even a casual observer will be impressed by the rich and intriguing assemblage of wildflowers. Some are rare endemics not found outside the Illinois Valley. The complementary colors and shapes of flowers and herbage between the rounded cobbles, offer aesthetic treats that diminish only with the departure of spring. Moving down to the water and up the canyon the hiker can extend the experience through the growing season. The broad alluvial bench beside Rough and Ready Creek is one of Oregon's gems. It is the only significant example of a serpentine ecosystem on the floor of the western interior valley province of Oregon (ONHP 1993).



Alluvial Terrace: Jeffrey Pine and Ceanothus

The biological wealth of the Rough and Ready Creek watershed, a tributary of the Illinois River, is tied to the geologic history of the Klamath Range. This region and the specific subrange, the Siskiyou Mountains, is one of the great reservoirs of biological diversity in North America (Whittaker 1961). In his classic *The Klamath Knot*, David Rains Wallace aptly calls it "a venerable unity." The region is a crossroads in time and space where plant species have converged in unique combinations. It is also an important center of endemic

species of vascular plants (Smith and Sawyer 1988, Whittaker 1961). Relict species, lost from the adjoining regions, found refuge in the Siskiyou over a period of 40 million years. Throughout its history, the range provided geographic variation in climate and topography to meet the varied ecological tolerances of species lost elsewhere due to submergence, desiccation, and massive flows of lava or ice. The range has also bridged the evolving floras of the Great Basin and northern California and, for over 10 million years, the emergent Coast Range and Cascade Mountains.

Local speciation contributed a host of narrow endemics, adding to the celebrated species' richness. Many rare plant species of southern Oregon owe their origin to the selective pressures exerted by serpentine soils (Kruckeberg 1969). Massive sheets of ultramafic rock — generally referred to as serpentine — are one of the salient features of the range. The red, rocky soils derived from the parent material are high in magnesium and heavy metals, and are calcium-deficient. Some serpentine endemics are only found on the red ultramafic soils, while many regionally common species find the soils intolerable. The structure and composition of the communities offer a distinct and unique ecosystem that stands out abruptly from the non-serpentine matrix (Whittaker 1954).

The tectonic processes that formed the mountains and engendered these biological treasures, also made rich deposits of minerals. Gold, precipitated in hydrothermal vents on the ocean floor, was uplifted in the Klamaths (Orr et al 1992). Natural erosion and stream hydraulics concentrated large placer gold deposits in the rivers and streams. By 1853, miners from the California gold fields began working the beds of the Illinois River and its tributaries (Shennon 1933, Street and Street 1973). For eighty years, first with shovels and later with 6" diameter hydraulic cannons, called "giants," miners washed the floodplains and higher benches of streams into their muddy sluices. Rough and Ready Creek offered negligible gold, and was spared.



Forbs on the alluvial terrace

Timbling clear and cold out of the Siskiyou, Rough and Ready Creek rears cutthroat trout and winter steelhead in the unclogged gravels (USFS 1988). Below, a five mile stretch on the valley floor bears the freely braided channels of the stream. On the broad alluvial terrace above the present floodplain, the cobbly surface still displays the scars of torrential flooding released from local glaciers that once plucked boulders from

the creek's headwaters during the Pleistocene Epoch (Shennon 1933).

The climate of the Rough and Ready Creek watershed varies due to wide elevational range and physiography. Maritime influences reach the peaks of the watershed at the crest of the western Siskiyou Mountains, but dissipate over the interior valley which is relatively xeric. Annual precipitation may range from 600 to 1700 mm (Franklin and Dyrness 1988). Temperatures, relative to the Cascades, are warm and wet in the winter and hot and dry in the summer.

The combined effects of varied serpentine influence, soil texture, drainage, and fire history, along with a variation in precipitation due to elevation, have generated a fascinating array of communities in the watershed and on the alluvial terrace. Rare and sensitive plants are found throughout the watershed but are concentrated along the stream corridor and on the broad alluvial terrace.



Floodplain at high water

The stream is mostly unimpeded, with its floodplain system and processes largely intact. Recently deposited lenses and beds of sorted gravels nearest the shifting creek are colonized by species carried down by the stream from the highest ridges. Two species of rock cress (*Arabis modesta* and *A. koehleri* var. *stipitata*), ternate buckwheat (*Eriogonum ternatum*), and Siskiyou Mountain pennycress (*Thlaspi montanum* var. *siskiyouense*) create low miniature islands of matted vegetation. These assemble with the expected low elevation species of brodiaea, onion, and violets between glaucous, blue bunches of Idaho fescue (*Festuca idahoensis*) and Lemmon's needlegrass (*Stipa lemmonii*). Along the banks a rare willow (*Salix delnortensis*) is common.

The terrace above the riverwash supports chaparral dominated by manzanita (*Arctostaphylos viscida* and *A. canescens*) or wedgeleaf ceanothus (*Ceanothus cuneatus*). A hybrid swarm of crosses and back crosses between the *Arctostaphylos* species has been documented in the area (Gottlieb 1968). This occurs on and around non-serpentine "islands" on the terrace, and may represent the differentiation of a new species. A similar hybrid swarm between *Ceanothus cuneatus* and *C. pumilus* has also been documented in the area (Nobs 1963). A palette of colorful species lights up the terrace, including the small, strident purple blooms of Douglas' monkeyflower (*Mimulus douglasii*) together with yellow and white buckwheats,

red and pink paintbrushes, blue penstemon, and purple brodiaea, among others.

A number of different types of Jeffrey pine woodlands occur on serpentine outcrops in southwestern Oregon (Atzet 1983, White 1971), and all but one can be found in the Rough and Ready watershed. In the simplest terms, much of the terrace and the slopes of the canyon support Jeffrey pine savanna with its native perennial bunchgrass understory. The serpentine soils and intact native grass community have precluded invasion by introduced annual grasses that plague other grasslands in the West. It is on serpentine that one can glimpse what the grasslands of southern Oregon looked like at the time of settlement. The largest known population of Siskiyou fritillary (*Fritillaria glauca*) occurs here along with Howell's fawn lily (*Erythronium howellii*). In mid-summer, three rare composites, silky balsamorhiza (*Balsamorhiza sericea*), Howell's microseris (*Microseris howellii*) and Western senecio (*Senecio hesperius*) bloom with Howell's mariposa lily (*Calochortus howellii*).

Loamier soils and sites with greater moisture availability support a unique mixed conifer community with the chaparral shrubs added, along with huckleberry oak (*Quercus vaccinifolia*) and Brewer's oak (*Quercus garryana* var. *breweri*) among others. South of the creek on the alluvial terrace, an early successional forest of knobcone pine (*Pinus attenuata*) dominates areas that have burned recently.

Two rare communities occur at the highest elevations on the gently sloped ancient peneplain. On spring-moistened granitic outcrops, Western hemlock (*Tsuga heterophylla*) with Port Orford cedar (*Chamaecyparis lawsoniana*) occur as eastern extensions of a coastal type. On dry sites a hemlock forest with Sadler's oak (*Quercus sadleriana*) is also a rarity. Rough and Ready Lakes, glacial tarns at the head of the North Fork are surrounded by Western white pine (*Pinus monticola*) forest. Isolated springs and seeps along the lower slopes support serpentine hanging fens with their unique flora characterized by the insectivorous pitcher plant (*Darlingtonia californica*). In one fen is found a population of *Hastingsia bracteosa* var. *atropurpurea* (large flowered rush lily) the southernmost documented sighting of the species.



Port Orford Cedar and Hemlock forest



Rough and Ready Lakes overlook

that manage the watershed. The impetus to protect the site began in 1937 with the Illinois Valley Garden Club led by Effie Smith Smith, a woman who once called Mrs. Henry Ford to ask that the local dealer remove a billboard at the entrance to the valley, convinced the state to create the Rough and Ready Creek State Park. Succumbing to the pressures of development, the original 99-acre park was whittled down over time to the 11-acre botanical wayside that remains beside Highway 199. Expansion plans and new developments threaten to carve further into this park remnant and impact the larger Rough and Ready Creek watershed. Fortunately, recent federal designations have helped highlight the biological importance of the site.

Two federal agencies manage most of the 23,000-acre watershed. The Siskiyou National Forest has designated a Botanical Area extending over 1,500 acres at the mouth of the creek's canyon. After careful analysis, Forest Service staff found the stream eligible for designation as wild and scenic. The 2,000-acre North Fork headwaters lies within the boundary of the Kalmiopsis Wilderness, and most of the watershed is within the South Kalmiopsis Roadless Area. Additionally, some of the land is included in Late Successional Reserves designed to maintain habitat for the northern spotted owl. The Bureau of Land Management has designated a 1,162-acre Area of Critical Environmental Concern (ACEC). The ACEC covers the lower portions of the stream and terrace and wraps around the State Park Botanical Wayside, managed by the Oregon Parks and Recreation Department, linking protective status with the Forest Service Botanical Area.

Complementing the designations provided by the federal agencies is the protection work of the private non-profit corporation, The Nature Conservancy of Oregon. The Conservancy holds the protection of Rough and Ready Creek as one of its top priorities statewide, and has begun to acquire small private holdings on the floodplain and terrace. Support for protection efforts has been given by the Siskiyou Regional Education Project (SREP), a local environmental group. SREP drafted the nomination for the BLM ACEC. They have worked to stop development in the watershed, organized wildflower walks, and compiled the species list that follows.

Despite growing recognition for the area, impacts from planned development could negate protected status of the lands and

Site Conservation

As information about Rough and Ready Creek has been gained, its importance has been recognized by the agencies

erode the integrity of the watershed and its natural systems. Over 4,000 acres in the core of the watershed are covered by mining claims. Nickel deposits could be mined using open pits, and extensive roads and stream crossings would have to be developed. Downstream, local officials have drawn up plans for an expanded airport and industrial park in the area proposed for the ACEC. Finally, withdrawal of water at three diversions currently reduces summer flows in the lower stretches of the creek and could be critical to the stream ecology.

Bringing all the stakeholders at Rough and Ready to the table, including conservation groups such as the Native Plant Society of Oregon, will help to encourage creative solutions that will preserve this biologically rich and intriguing site for future generations of Oregonians. This description of the site and the plant species list are offered to encourage additional biological investigation of the Rough and Ready Creek watershed and to support conservation planning there.

Directions:

Access to the Rough and Ready State Botanical Wayside and BLM Area of Critical Environmental Concern is found 4.5 miles south of Cave Junction on Hwy. 199. The Wayside, identified by a small sign, lies on the west side of the road just before the bridge over Rough and Ready Creek. Parking space is provided at the dirt turn out. There are no other facilities at the Wayside. The ACEC lies on both sides of the highway and both sides of Rough and Ready Creek. The National Forest Botanical Area is contiguous with the west boundary of the ACEC, less than a mile from the Wayside parking. To reach the headwaters of Rough and Ready Creek first stop at the USFS office in Cave Junction to get a map and to consult on whether access has been limited to protect Port Orford cedar in the watersheds from the root pathogen *Phytophthora lateralis*.

Species List

This preliminary list was compiled from a number of sources. The nomenclature for this list follows Hickman (1993) and Peck (1961). Corrections, additions and suggestions to this list may be sent to Frank Lang, Department of Biology, Southern Oregon State College, Ashland, Oregon 97520.

TREES

Alnus rubra (red alder); *Arbutus menziesii* (Pacific madrone); *Calocedrus decurrens* (incense cedar); *Chamaecyparis lawsoniana* (Port Orford cedar); *Chrysolepis chrysophylla* var. *chrysophylla* (golden chinquapin); *Pinus attenuata* (knobcone pine); *Pinus contorta* (lodgepole pine); *Pinus jeffreyi* (Jeffrey pine); *Pinus lambertiana* (sugar pine); *Pinus monticola* (Western white pine); *Pseudotsuga menziesii* (Douglas fir); *Taxus brevifolia* (Pacific yew); *Tsuga heterophylla* (Western hemlock); *Lithocarpus densiflorus* (tanoak); *Quercus garryana* (Oregon white oak); *Quercus kelloggii* (California black oak).

SHRUBS

Amelanchier spp. (serviceberry); *Arctostaphylos canescens* (white oak-manzanita); *Arctostaphylos hispidula* (Howell's manzanita);

Arctostaphylos nevadensis (pinemat manzanita); *Arctostaphylos viscida* (whiteleaf manzanita); *Berberis aquifolium* (tall Oregon grape); *B. aquifolium* var. *repens* [*Berberis pumila*] (pygmy Oregon grape); *Berberis nervosa* (long-leaved Oregon grape); *Ceanothus cuneatus* (wedgeleaf ceanothus); *Ceanothus integerrimus* (deerbrush); *Ceanothus prostratus* (mahala mat); *Ceanothus pumilus* (dwarf ceanothus); *Ceanothus sanguineus* (red stem ceanothus); *Cercocarpus betuloides* (birchleaf mountain-mahogany); *Chrysothamnus nauseosus* var. *albicaulis* (rubber rabbit brush); *Garrya buxifolia* (boxleaf silktassel); *Garrya fremontii* (Fremont's silktassel); *Gaultheria ovatifolia* (slender salal); *Gaultheria shallon* (salal); *Holodiscus discolor* (oceanspray); *Ledum glandulosum* (Labrador tea); *Leucothoe davisiae* (Sierra leucothoe); *Physocarpus capitatus* (Pacific ninebark); *Prunus virginiana* (chokecherry); *Quercus chrysolepis* (canyon live oak); *Quercus garryana* var. *breweri* (Brewer's oak); *Quercus sadleriana* (Sadler's oak); *Quercus vaccinifolia* (huckleberry oak); *Rhamnus californica* (California coffeeberry); *Rhododendron macrophyllum* (Pacific rhododendron); *Rhododendron occidentale* (Western azalea); *Rubus discolor* (Himalayan blackberry); *Rubus laciniatus* (cut-leaved blackberry); *Rubus ursinus* (California blackberry); *Salix* spp. (willow); *Salix delnortensis* (Del Norte willow); *Salix tracyi* (Tracy's willow); *Spiraea douglasii* (Douglas spirea); *Umbellularia californica* (California bay/laurel); *Vaccinium ovatum* (evergreen huckleberry); *Vaccinium parvifolium* (red huckleberry); *Whipplea modesta* (whipple vine).

HERBS

Achillea millefolium (common yarrow); *Allium amplexans* (narrow-leaved onion); *Allium falcifolium* (sickle-leaved onion); *Amsinckia menziesii* [*A. intermedia*] (fiddleneck); *Antennaria dimorpha* (low everlasting); *Apocynum androsaemifolium* (spreading dogbane); *Arabis aculeolata* (Waldo rock cress); *Arabis breweri* (Brewer's rock cress); *Arabis koehleri* var. *stipitata* (Koehler's stipate rock cress); *Arabis modesta* (modest rock cress); *Arabis oregana* (Oregon rock cress); *Arnica cernua* (serpentine arnica); *Asclepias cordifolia* (heart-leaved milkweed); *Aster* spp.; *Astragalus* spp. (locoweed/milkvetch); *Balsamorhiza deltoidea* (deltoid balsamroot); *Balsamorhiza sericea* (silky balsamroot); *Brodiaea capitata* (common brodiaea); *Brodiaea coronaria* (harvest brodiaea); *Calochortus howellii* (Howell's mariposa lily); *Calochortus tolmiei* (Oregon mariposa lily); *Calochortus uniflorus* (pink star tulip); *Calyculdenia truncata* (rosin weed); *Calystegia atriplicifolia* (Oregon morning glory); *Camassia howellii* (Howell's camas); *Camassia quamash* (common camas); *Campanula prenanthoides* (California bluebell); *Centaurea solstitialis* (yellow star thistle); *Cardamine gemmata* (purple toothwort); *Cardamine oligosperma* (western bittercress); *Castilleja miniata* ssp. *elata* [*Castilleja elata*] (slender paintbrush); *Castilleja pruinosa* (frosty paintbrush); *Cerastium arvense* (field chickweed); *Chaenactis douglasii* (dusty maiden); *Chlorogalum pomeridianum* (soap plant); *Cirsium* spp. (purple thistle); *Clarkia* spp.; *Claytonia exigua*; *Claytonia parviflora*; *Collinsia grandiflora* (giant blue-eyed Mary); *Collinsia rattanii* (Rattan's collinsia); *Convolvulus* spp. (morning glory); *Crocidium multicaule* (spring gold); *Cuscuta occidentalis* (Western dodder); *Cypripedium californicum* (California lady slipper); *Darlingtonia californica* (California pitcher plant); *Delphinium* spp. (larkspur); *Delphinium decorum* (low larkspur); *Dicentra formosa* [ssp. *oregana*] (Oregon bleeding heart); *Dichelostemma multiflora* (many-flowered brodiaea); *Dichelostemma capitatum* [*Brodiaea pulchella*] (blue dicks); *Disporum hookeri* [var. *oreganum*] (Oregon fairy-

bell); *Dodecatheon pulchellum* [ssp. *monanthum*] (Western shooting star); *Dodecatheon hendersonii* (Henderson's shooting star); *Downingia elegans* (elegant downingia); *Draba verna* (spring Whitlow grass); *Epilobium minutum* (willow-herb); *Epilobium rigidum* (rigid willow-herb); *Epilobium brachycarpum* (patched fireweed); *Epipactis gigantea* (stream orchid); *Erodium* spp. (storksbill); *Erigeron bloomeri* var. *bloomeri* [var. *pubescens*] (rayless aster); *Eriodictyon californicum* (yerba santa); *Eriogonum dichinum* (Jayne's Canyon buckwheat); *Eriogonum nudum* (barestem buckwheat); *Eriogonum pendulum* (Waldo eriogonum); *Eriogonum spergulinum* (hair-stemmed eriogonum); *Eriogonum ternatum* (ternate eriogonum); *Eriogonum umbellatum* (sulphur buckwheat); *Eriophyllum lanatum* (woolly sunflower); *Erysimum* spp. (wallflower); *Erysimum capitatum* (Western wallflower); *Erythronium citrinum* (lemon fawn lily); *Erythronium howellii* (Howell's fawn lily); *Erythronium oregonum* (giant fawn lily); *Eschscholzia californica* (California poppy); *Eschscholzia caespitosa* (dwarf California poppy); *Euphorbia crenulata* (Chinese caps); *Fritillaria affinis* (mission bells); *Fritillaria atropurpurea* (checker lily); *Fritillaria glauca* (Siskiyou fritillaria); *Galium ambiguum* (obscure bedstraw); *Galium aparinum* (bedstraw); *Galium bolanderi* (Bolander's bedstraw); *Gentiana setigera* (elegant gentian); *Gilia capitata* (blue-headed gilia); *Goukera oblongifolia* (Western rattlesnake plaintain); *Haplopappus* spp.; *Haplopappus racemosus* ssp. *congestus*; *Hastingsia alba* (rush lily); *Hastingsia bracteosa* (large-flowered rush lily); *Helianthus* spp. (sneeze weed); *Hesperochiron pumilus* (California hesperochiron); *Hieracium albiflorum* (white-flowered hawkweed); *Hieracium bolanderi* (Bolander's hawkweed); *Hieracium parryi*; *Horkelia* spp.; *Horkelia congesta* ssp. *nemorosa* (Josephine horkelia); *Horkelia sericata* (silky horkelia); *Horkelia tridentata* (three-toothed horkelia); *Hypericum anagalloides* (trailing St. John's wort); *Hypericum perforatum* (common St. John's wort); *Iris bracteata* (Siskiyou Iris); *Lathyrus* spp. (peavine); *Lewisia leana* (Lee's lewisia); *Lewisia oppositifolia* (opposite-leaved lewisia); *Lilium bolanderi* (Bolander's lily); *Limnanthes gracilis* var. *gracilis* (slender meadow foam); *Linanthus bicolor* (two-color lily star); *Linanthus bolanderi*; *Linnaca borealis* var. *longiflora* (twin flower); *Lithophragma* spp. (fringe cup); *Lithophragma heterophyllum* (woodland star); *Lithophragma parviflorum* (small-flowered fringe cup); *Lithospermum californicum* (Western puccoon); *Lomatium engelmannii*; *Lomatium macrocarpum* (giant-seeded lomatium); *Lomatium martinalei* (few-fruited desert parsley); *Lomatium nudicaule* (pestle lomatium); *Lomatium tracyi* (Tracy's lomatium); *Lomatium tridentatum* (Lewis' lomatium); *Lomatium utriculatum* (fine-leaved desert parsley); *Lonicera hispidula* (hairy honeysuckle); *Lotus* spp. (deervetch); *Lotus oblongifolius* (Torrey's lotus); *Luina* spp. (luina); *Luina nardosmia* (cutleaf luina); *Lupinus albifrons* var. *collinus* [var. *fontineus*]; *Lupinus nanus* (dwarf lupine); *Lupinus tracyi* (Tracy's lupine); *Madia* spp. (tarweed); *Madia minima*; *Mentzelia laevicaulis* (giant blazing star); *Microseris howellii* (Howell's microseris); *Mimulus douglasii* (Douglas' monkeyflower); *Mimulus guttatus* (yellow monkeyflower); *Mimuartia douglasii* [*Arenaria douglasii*] (sandwort); *Mimuartia howellii* [*Arenaria howellii*]; *Monardella* spp. (pennyroyal); *Monardella odoratissima* (Pacific monardella); *Monardella purpurea* (Siskiyou monardella); *Montia* spp. (miner's lettuce); *Myosotis* spp. (white forget-me-not); *Nartheceum californicum* (California bog asphodel); *Orobancha uniflora* (naked broom-rape); *Orobancha fasciculata* (clustered broom-rape); *Penstemon azureus* (azure penstemon); *Penstemon laevis* (gay penstemon); *Phacelia corymbosa* (phacelia); *Phlox adsurgens* (woodland phlox); *Phlox diffusa* (spreading phlox); *Phlox gracilis*

(slender phlox); *Phlox speciosa* (showy phlox); *Pinguicula vulgaris* (butterwort); *Plagiobothrys* spp. (popcorn flower); *Plectritis congesta* (sea blush); *Polygala californica* (California milkwort); *Prunella vulgaris* (selfheal); *Pyrola picta* (white-veined wintergreen); *Ranunculus occidentalis* (Western buttercup); *Rudbeckia californica* (California cone flower); *Sanguisorba microcephala* (burnet); *Sanicula* spp. (sanicle); *Sanicula bipinnatifida* (purple sanicle); *Sanicula peckiana* (Peck's sanicle); *Satureja douglasii* (yerba buena); *Saxifraga oregana* (Oregon saxifrage); *Scutellaria* spp.; *Scutellaria angustifolia* var. *canescens* (narrowleaf skullcap); *Sedum laxum* ssp. *heckneri* (Heckner's sedum); *Senecio canus* (grey senecio); *Senecio hesperius* (Siskiyou butterweed); *Senecio macounii* (Siskiyou Mountains ragwort); *Sidalcea* spp. (checkermallow); *Sidalcea campestris*; *Sidalcea malvaeflora* ssp. *asprella* [ssp. *elegans*] (checkerbloom); *Silene campanulata* (bell catchfly); *Silene hookeri* (Hooker's pink); *Sisyrinchium bellum* (blue-eyed grass); *Sisyrinchium californicum* (golden-eyed grass); *Sisyrinchium douglasii* (grass widow); *Streptanthus howellii* (Howell's streptanthus); *Synthyris reniformis* (snow queen); *Thermopsis* spp. (yellow pea); *Thermopsis macrophylla* (California false lupine); *Thlaspi alpestre* (rock penny cress); *Thlaspi montanum* var. *siskiyouense* (Siskiyou Mt. pennycress); *Thlaspi pratense* (dwarf salsify); *Trichostema simulatum* (Siskiyou blue-curls); *Triteleia hendersonii* [*Brodiaea hendersonii*] (Henderson's brodiaea); *Triteleia hendersonii* var. *leachiae*; *Trifolium tridentatum* (sand clover); *Trillium ovatum* (white trillium); *Trillium rivale* (brook trillium); *Triteleia hyacinthina* (white hyacinth); *Verbascum blattaria* (moth mullein); *Viola canescens* (wedged leaved violet); *Viola hallii* (Hall's violet); *Viola lobata* (pine violet); *Viola orbiculata* (round-leaved violet); *Viola primulifolia* ssp. *occidentalis* (western bog violet); *Wyethia angustifolia* (narrowleaf wyethia); *Xerophyllum tenax* (bear grass); *Zigadenus micranthus* (small-flowered camas); *Zigadenus venenosus* (death camas).

FERNS

Aspidotis densa (cliff-brake); *Pteridium aquilinum* (Western brackenfern).

GRAMINOIDS

Acnatherum lemmonii [*Stipa lemmonii*] (Lemmon's needlegrass); *Bromus tectorum* (cheatgrass); *Carex* spp. (sedge); *Danthonia californica* (California oatgrass); *Elymus elymoides* [*Sitanion hystrix*] (squirreltail); *Elymus glaucus* (blue wild rye); *Festuca californica* (California fescue); *Festuca idahoensis* (Idaho fescue); *Juncus* spp. (rush); *Koeleria macrantha* (junegrass); *Luzula* spp. (wood rush); *Melica* spp. (melic); *Poa* spp. (bluegrass); *Poa pippen* (Piper's bluegrass).

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For information and maps:

Siskiyou National Forest, Grants Pass: 471-6500
 Illinois Valley Ranger District: 592-2166
 U.S. Bureau of Land Management, Medford: 770-2200
 The Nature Conservancy of Oregon, Ashland: 488-4485
 Siskiyou Regional Education Project, Cave Junction: 592-4459

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History of the University of Oregon Herbarium (1903-1993)

By DAVID H. WAGNER

Introduction

A herbarium is one of the fundamental resources of traditional botany. Its collections, library, and staff provide a wide range of services to science and society. Most universities older than a hundred years have, or have had, a herbarium because botany was a core science at the time these universities were founded. Just like universities, herbaria have definite founding dates and occasionally dates of closure. This is the story of one of the major west coast herbaria, from beginning to end. Although a herbarium is an institution, the critical elements of the story necessarily concern the people who built and cared for its collections.

Establishment

The University of Oregon Herbarium (known as ORE in the international directory of herbaria) was established in 1903, by Albert Raddin Sweetser (1861-1940). He was a Professor of Botany since 1902 and served as head of the Department of Botany from 1909 until his retirement in 1931. Although he was not an important collector himself, he was very interested in the history of plant exploration. Soon after his arrival in Oregon he made the acquaintance of the resident pioneer botanists of Portland. His first major accomplishment, in 1903, was to secure the donation of the personal collection of Thomas Jefferson Howell (1842-1912). Howell's herbarium consisted of approximately 10,000 sheets. It included

nearly 300 type specimens of plants Howell had discovered, as well as duplicates obtained in exchange from other early botanists. At that time it was considered the largest and finest herbarium at any public institution in the northwest. Howell was hired for the 1903-1904 school year to organize the collection.



Albert R. Sweetser

FROM UO HERBARIUM FILES NOW AT USL CORVALLIS

The Core of the Collection: The Big Six of Oregon

Howell was Oregon's premier resident plant explorer, a self-taught botanist who discovered more new species of plants in the state than any other. He began collecting in the mid-1870's with his older brother, Joseph. They sent their novelties to Asa Gray at Harvard University, who published formal descriptions. He named the genus *Howellia* to honor

An Ancient Scene -- As Old As The Glaciers, As New As Today

The eternal snows of the glaciers have retreated to the north, mosses and lichens have colonized rocky areas, conifers have gained a foothold, the ancient tribes of horsetails, sedges, and *Darlingtonias* are growing in small colonies in wet areas beside a creek that is home to fish species that are as old as the primal families of plants inhabiting the land. Is this a scene from the dim past before even the Rogues and Takilmas called this valley home?

Stop at Rough & Ready flats in the Illinois Valley and walk up the creek a bit and the scene before you will be very little changed since those post glacial times. Few places in our modern world show us the natural world as it was before we destroyed the handiwork of creation. Rough and Ready watershed is one of them.



Photo © Barbara Ullian

*Ancient Port Orford cedar can be found
along Rough and Ready Creek.*

Can anything live in this barren land? It seems an unwritten law of the earth's forbidding places that the more hostile they are, the more beautiful and exquisite is the life they support.

Starting in February or March the tiny white bunches of thlaspe can be found blooming in the shelter of a rock or downed log. Followed soon by the bright yellow gold stars on stems so fragile they look like the wind might blow them away, but who can weather a late snow and sleet storm.

All spring and early summer, a procession of flowering plants color the drab boulders with splashes of red, yellow, orange, and purple. With the flowers come their consorts, the wild bees, to pollinate the hardy blossoms. No flower is too small but that it has its equally tiny bee or fly who comes to sip nectar, and in the process to carry precious pollen to another flower waiting to develop its seed.

But the tide of life is not diminished when the showy blossoms fade, for now the heat of summer has brought the insect inhabitants of these barren alluvial flats to full activity. Spiders, beetles, larvae of moths and butterflies, hunting wasps, parasitic species, all interwoven in a web of life, each interdependent on the other. The top predators of the insect world, the hunting wasps, are the most active throughout the heat of June, July and August. Sceliphron, the mud dauber, is busy rolling her mud balls beside the water's edge. The *Odynerus* wasp is busy building her mud apartments. The Pompilids are relentlessly stalking their spiders, and the bramble dwellers are frantically looking into every hollow stem and beetle hole for nest sites.

Only in the waning days of late summer, after the first frost, does the life of this seemingly waste land slow down. Flowering plants have gone to seed. Insects have completed their life cycles, birds are migrating south, the leaves of the Brewer's oak have taken on their fall colors, and once again the life-giving rains have dampened the sun-baked flats and serpentine slopes of this ancient land. Again, as in so many aeons past, the stage is set for the players to return with the sun and heat of another springtime. May they not return to a devastated land created by our way of life called "progress".

- Mary Paetzel, 2/12/98

ROUGH & READY CREEK

In the World's Only Redrock Rainforest

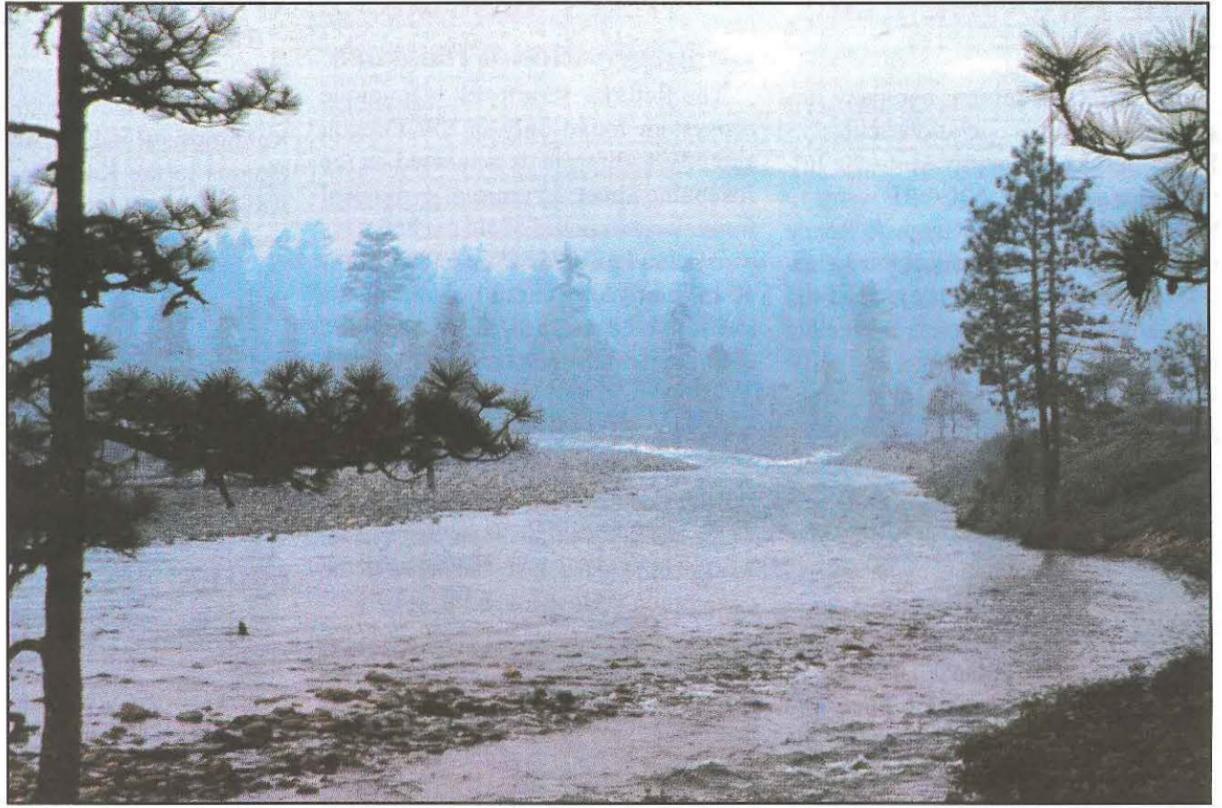
Rough & Ready Creek flows through the heart of the Redrock Rainforest, a wild, rugged landscape of unique beauty located in the Siskiyou National Forest of Southwest Oregon. While the area gets 75-150 inches of rain a year, the red rocky soil does not produce a thick lush forest like the neighboring redwoods, but a wonderland of gnarled cedars and rare wildflowers.

The plants that inhabit the Rough & Ready landscape have adapted over millions of years to the harshness of the red-colored soils and the concentrations of heavy metals as no others have been able to. Many of these plants grow nowhere else in the world.

To a growing number of botanists, writers, hikers, photographers and wildflower enthusiasts, the Rough & Ready Creek watershed is the most hauntingly lovely, lonely and intriguing country in the Siskiyou Mountains.

Rough & Ready Creek has been found eligible for consideration as a National Wild and Scenic River. Its waters even during high flow periods are as clear as distilled water and its 24,000 acre watershed is mostly roadless and untouched. It lies at the center of the larger 100,000 acre South Kalmiopsis roadless area.

On its banks are found ancient cedar and pine, grasslands and oak gardens, wild azaleas and



The Redrock Rainforest gets between 75 and 150 inches of rainfall a year. Jeffrey pine and Port Orford Cedar dominate the forest. Photo by Sandy Lonsdale.

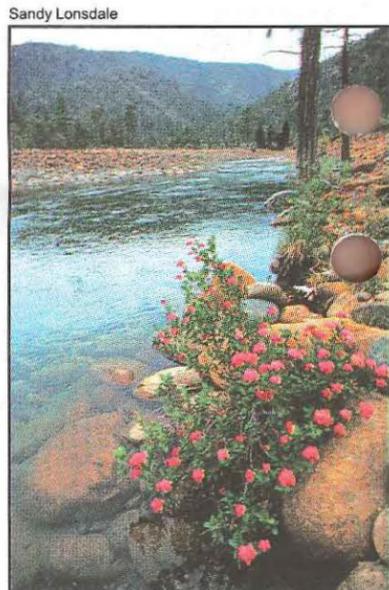
A River of Flowers

The Rough & Ready Creek watershed is an evolutionary hotspot where new species are emerging today.

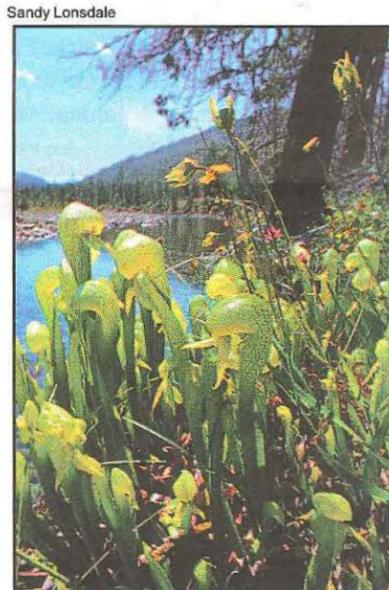
rare willows. Springs seep from under the red rocks to make boggy wetlands full of carnivorous, rare and endemic plants. In the spring and summer this red boulder strewn landscape is a tapestry of wildflowers and native grasses.

The Rough & Ready Creek watershed is an evolutionary hotspot where new species are emerging today. Tragically, the mineralized soils which have challenged such extremes in plant evolution have put Rough & Ready in the greatest jeopardy of its 40 million year old history. Under the 1872 Mining Law, the US Forest Service stands ready to approve a plan to strip mine the low-grade nickel and iron ore found in these soils.

Only an outcry from concerned citizens can save Rough & Ready Creek now.



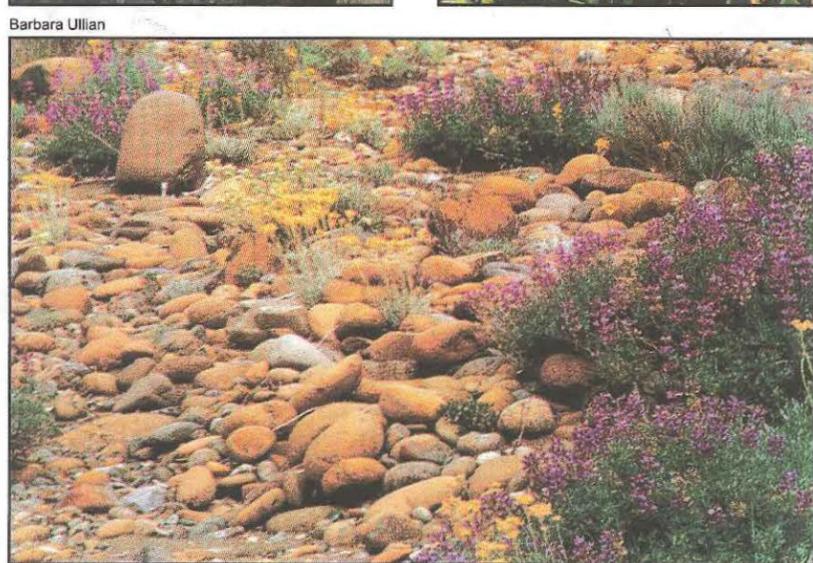
Sandy Lonsdale



Sandy Lonsdale

Here are just a few of the rare and beautiful plants and flowers found in the Rough & Ready Creek watershed. Far left: mountain spirea. Left: a darlingtonia bog on the banks of the river.

Darlingtonia californica, or the cobra plant, is an insect eating plant. Below left: wildflower display among red peridotite boulders. Below: california ladyslipper orchids. Bottom l. to r.: willow herb, howell's mariposa lily, paintbrush, stream orchid, monkeyflower.



Barbara Ullian



Sandy Lonsdale

We cannot allow the 1872 Mining Law to destroy 40 million years of evolution!



Barbara Ullian



Sandy Lonsdale



Barbara Ullian



John Erwin



Barbara Ullian

Please read on to see what you can do to help stop the strip mining of Rough & Ready Creek.

ROUGH & READY CREEK:

Wilderness Legacy or Victim of the 1872 Mining Law ?

The NICORE Plan:

The Mine

The NICORE mining company has submitted a plan of operations to the US Forest Service for approval. In the initial phase of mining, NICORE wants to bulldoze fords across Rough & Ready Creek at 7 places and across 9 tributaries; extend roads through much of the Rough & Ready watershed; use heavy machinery to dig strip mines at 4 mine sites; haul 400,000 tons of ore to a stockpile location.

The alleged end product of all this mayhem would be stainless steel that would utilize the ore deposit's low grade nickel and iron.

What's Left Out

What the miner's plan did not include was a plausible reclamation plan, any credible information that supports his claim that mining the area is economically feasible or any information as to how or where the miner would process the low grade ore into stainless steel.

NICORE's Real Plan

Another aspect of this fiasco is the fate of the 4,360 acres of mining claims that NICORE holds in the Rough & Ready Creek drainage. NICORE has applied for patent on this huge area with the intention of converting it from public land into private property for a mere \$2.50 per acre.

The scale of a nickel mine that would utilize this vast acreage staggers the imagination. Does NICORE intend to jump start a giant mine that could dominate the local ecology and the local communities? Or is this just a land grab? Is the real purpose of NICORE just to gain title to 4,360 acres of public land?

What's at stake:

An International Treasure

The Redrock Rainforest is a unique ecosystem found only in SW Oregon and NW California. It is located on the Josephine Sheet, an unusual geological formation composed of old sea bed. This ecosystem has evolved undisturbed for 40 million years—until now. If we allow it to be destroyed, there is nothing else like it on the planet.

Water Quality & Fish

Rough & Ready Creek is a candidate Wild & Scenic River. It has exceptional water quality and an important run of wild steelhead trout. It also home to the uncommon yellow-legged frog.



Young steelhead trout.

Barbara Ullian

Botanical Values

Rough & Ready Creek is a beautiful area with exceptional rare plants and plant communities. Many of these plants grow nowhere else in the world. It is one of the premier botanical sites for the western United States. An initial survey found more than 300 species of plants, many of them either rare or threatened.

Roads

NICORE wants to develop roads and fords across the creek and up the tributaries that will degrade water quality and fisheries, spread the Port Orford Cedar root disease and damage aquatic health.

Wildlands

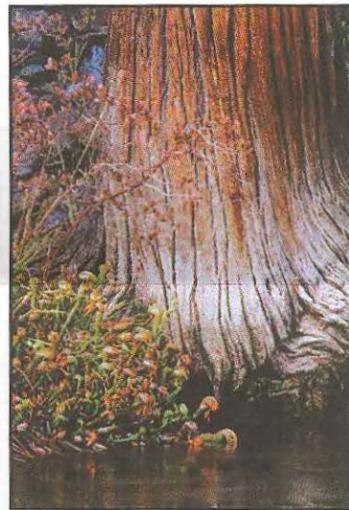
The 24,000 acre Rough & Ready Creek watershed is nearly roadless. It is part of the larger 100,000 acre South Kalmiopsis Roadless Area and is contiguous to the Kalmiopsis Wilderness Area. As such, it is an important component of our nation's wildlands.

Recreation

Due to its beauty, botanical values and wild character, Rough & Ready Creek is valuable as a recreational area. Citizens can visit unique wild flower sites near the highway or hike for days into remote backcountry locations.

Quality of Life

Mining activities will diminish the quality of life for residents for miles around. Noise, dust and possible disruption of aquifers will make life miserable for the many residents near the bottom of Rough & Ready Creek. Long term, a mine will leave a legacy of toxic pollution, ruined streams and landscapes stripped of vegetation.



Port Orford cedar – threatened by a disease spread by roads.

Barbara Ullian

The Forest Service Needs to Just Say NO MINE!

An Economic Boondoggle

The Forest Service environmental impact statement demonstrates that Nicore cannot profitably mine nickel ore from Rough & Ready Creek. The miner's plan would lose about 10 million dollars.

The news is not surprising. Nickel is available at cheap prices on the world market and expected to drop even further in the future. The only other nickel mine and smelter in the country, located in Riddle, Oregon, closed last year because it was not economical. The Rough & Ready nickel deposits are too small and too low-grade to be economically viable.

No "Right to Mine"

NICORE, Inc. has not supplied enough information on its mining plans to warrant an analysis by the Forest Service. Without information as to how ore will be processed (and a disclosure of the costs and environmental impacts and risks of such processing), a meaningful, complete analysis is not possible, yet the Forest Service stands ready to approve an Environmental Impact Statement that will allow NICORE to start taking out as much as 5000 tons of ore.

The only thing keeping this project alive is the Forest Service's interpretation of the 1872 Mining Law as a "right to mine" law.

In reality, the Forest Service can deny the plan and withdraw the area from mineral entry in order to protect Rough & Ready Creek's ecological values.

The Rough & Ready Creek Watershed is an important part of America's Wilderness Legacy

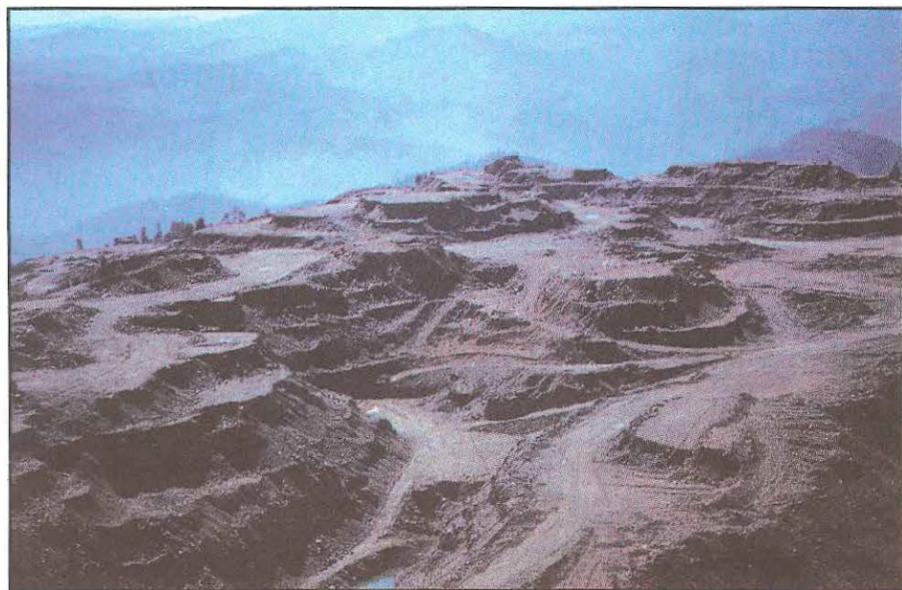


"There are few places on earth today that give a person the feeling of being the first human to see it like the Rough and Ready Creek drainage. This happens to me every time I walk along the creek."

— from a letter to the US Forest Service urging them not to approve a strip mine in the Rough & Ready Creek watershed.

The Rough & Ready Creek drainage. This 24,000 acre roadless watershed is part of the much larger 100,000 acre South Kalmiopsis Roadless Area, adjacent to the 180,000 acre Kalmiopsis Wilderness. This is one of the last, big, wild open spaces left in our country. We must protect it! Photo by Barbara Ullian.

We don't have to wonder what the Rough & Ready Creek watershed would look like when NICORE gets through mining it. Just a hundred miles north of the Illinois Valley, in Riddle, Oregon is an abandoned nickel mine. The mine and smelter were closed in 1998 because the ore was too low grade to compete on the world market.



Above: the top of Nickel Mountain near Riddle, Oregon, showing the edge of the deep pit at its center. Photo by Lane Cosner.

THE RIDDLE MINE WAS THE FOURTH HIGHEST TOXIC POLLUTER IN OREGON IN 1995

RECLAIMING NICKEL MOUNTAIN – “WHAT A JOKE!”

By Randall Cranor

I first noticed the big nickel mine up at Riddle when I moved here, about twenty years ago. You can't miss those deep scars when you drive up I-5 towards Roseburg. The mine is closed now, but there was a time not so long ago, when you could watch the top being cut off of Nickel Mountain as they hauled the ore down to the smelter below.

After about fifteen years of traveling up and down I-5 to work at various jobs planting trees, picking cones and thinning tree plantations (eking out a living in beautiful outdoor Oregon), I got a small five-day tree planting job at the Hannah Nickel Mine in Riddle, Oregon. Before I went up there, I never realized that the red-brown bare clay scars visible from the highway weren't all they'd done to Nickel Mountain.

It wasn't just the surface that had been scraped—a crater almost a mile deep had been corkscrewed out of the mountain and a poisonous-looking jade green lake lay at the bottom. We didn't go down, it would have taken a few hours of driving to get there.

Our job was to “reclaim” a portion of this mine site and it was a joke. Me and two others were to plant 5,000 or 6,000 trees on mountains of reject rock, the ore that wasn't rich enough to haul down to the smelter, and on flat, compacted sites where machinery had been located. The ground was clay, hard clay, clay gumbo and ruts filled with water. More often than not, you'd hit some football-sized

boulder that was buried almost but not quite the length of the planting side of your hoedad. So being a true tree planter, and not wanting to “J” the roots, all that was left was to plant the berms. But that's not so great either, because a seedling can get left high and dry.

Someone had tried this so-called reclamation before us, and the seedlings I saw were stunted and yellowing, nothing to be proud of, a waste of time. The restoration I was doing, no matter how hard I wanted to try, was going to be the same. I could look around me and see that they had cleaned up a lot of the old equipment, piles of rusted steel would be reclaimed as scrap and recycled. But all they were doing for the mountain was this pitiful joke of a tree-planting project. They weren't going to take all the piles of reject rock and fill in that huge crater. They were going to pack up their valuables and leave this gaping wound with a few dying yellow seedlings on it. I don't even know

why they bothered except to be able to fill out some bureaucratic form that said they had “reclaimed” Nickel Mountain. All you have to do is go look at it to see that Nickel Mountain and the creeks that used to run there will never be the same again.

Randall Cranor is a veteran tree planter who worked with Takilma's Greenside Up tree planting cooperative in the 1970's. He has done reforestation work, thinning and cone picking in Oregon, Montana and Idaho.

All you have to do is go look at it to see that Nickel Mountain and the creeks that used to run there will never be the same again.

Another View:



Norm Cegelnik

The Forest Service is supposed to manage public lands for all of us, not for the special interests. \$2.50 an acre for timberland is legalized theft. We need to revise the 1872 Mining Act. I prefer to call it the 'pork-barrel law.' I don't think there should be any patenting of public lands. What happened in the past, in the 1870's doesn't make it right.

All of this is just wanting money. It can't work. It can't be a viable mining operation. When you realize that most of the public land that has been claimed has not been mined it becomes obvious that NICORE's motive is not to mine. The motive is to grab the land. The smaller miners can't possibly patent the land. I've known a lot of miners and not many of them had the money or political clout to patent their claims.

Norm Cegelnik lives in the Illinois Valley. In the past, he did some gold mining on the Salmon River in northern California. He is a Vietnam Vet and also worked for department of Defense.

THE 1872 STORY

What is the 1872 Mining Law?

The 1872 General Mining Law, which governs exploration and extraction of hardrock minerals on millions of acres of federal public land, was created to open up the west to expansion and settlement in a bygone era. This obsolete law was designed for miners using a mule and pick ax to mine and claim public lands. The law works the same today as it did over a century ago.

What is a Mineral Patent?

If a miner can prove that valuable minerals are present, and profits are possible, he is said to have a “valid claim.” It takes a proven valid claim for a miner to receive a patent. The land then becomes the private property of the miner for a mere \$2.50 to \$5.00 per acre, about as much as you'd pay for a Big Mac and fries. In 1994, mining companies were preparing to patent mines containing \$34 billion worth of minerals.

Why does this old law still exist?

The mining industry is one of the most powerful lobbies in Washington, D.C. An assortment of Canadian, South African and U.S. companies are making billions off of royalty-free minerals taken from our public lands. An estimated \$231 billion in minerals has been extracted since the mining law was passed in 1872. Consequently, the US Congress has avoided comprehensive reform of the 1872 Mining Law, even though hundreds of thousands of US citizens have demanded new mining laws for decades.

The sins of the 1872 Mining Law:

Except for “hardrock” mining, all other forms of mining and resource extraction on public lands pay royalties into the US Treasury. Hardrock mining is exempt at the expense of taxpayers. Also, it is common for a “miner” to gain ownership of public lands under the pretense of mining. A few people have gotten very rich developing patented land into housing developments and golf courses. In one case, a developer patented 61 acres outside of Phoenix, AZ for \$153. That land is now worth \$41 million. The 125 year old mining law has evolved into an obscene land scam, robbing all the citizens of the US of precious natural beauty.

How does 1872 affect the current NICORE process?

The Forest Service and the BLM choose to interpret the 1872 Mining Law as allowing the miner an absolute right to mine, if valuable mineral deposits are proved to exist. Yet the Endangered Species Act and the Clean Water Act clearly demonstrate that laws passed in this century can protect important natural resources. The public must remind the Forest Service and the BLM that the 1872 Mining Law does not override these other laws. We must not tolerate the 1872 excuse any longer!

So how do we protect our public lands? Withdrawal from Mining!

There is a process within to “Withdraw” public lands from mining. If land is proposed for Withdrawal, the government must do a “Validity Exam” to determine whether mining would be profitable. In the case of NICORE, the ore is low grade and has little chance of passing a “Validity Exam.” Citizens can stop this mine if we insist that our legislators and government agents withdraw the Rough & Ready Watershed from mineral entry.

What's the solution to this mining mess? Turn the page...

IT'S TIME 1

What kind of future do we want

The New Economy is coming: Can we afford to mine here?

In this time of declining timber employment, critical decisions are upon us. Entering the 21st century, new realities apply. In the Klamath-Siskiyou region, our future economic health demands thoughtful interaction with our remaining natural resources. Historically, we capitalized on abundance. Now we must capitalize on the rarity and beauty of what remains. Critical decisions cannot be made by looking in the rearview mirror.

Nature's Beauty is our most valuable resource

It is nature's beauty and our quality of life that attracts people to live here. Residents new and old sustain the stores and restaurants, and bring business to contractors, many of whom used to be loggers. This trend is seen all over the rural west as self-reliant, independent small business people remain in, or relocate near former logging towns. The Illinois Valley features a growing number of families who make goods to sell in distant markets.

Mining destroys our economic base

Contrasted to this is NICORE. Fulltime, permanent jobs would be unlikely, not impossible. A handful of people might get part-time, seasonal jobs. Statistics consistently show that mining is a "Boom / Bust" operation. Typical mine owners and outside investors make money for a short time, then walk away, leaving the public with the expensive, massive and often impossible job of cleaning up pollution and destruction.

Mining's not profitable here

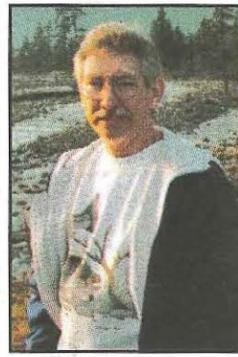
It is key to remember that the local nickel ore is not profitable on the world market. According to an independent economic study done by the Nature Conservancy, "In order to justify the capital investments needed to develop processing facilities, ore bodies far more extensive than all those in the Rough & Ready Creek Watershed and surrounding area would have to be mined. The impacts would be devastating."

Recycling works better

The old myth that we need new mines to keep the availability of goods in our society is simply not true. Nationwide, there are millions of tons of metals already above the ground. In junkyards, old dumps, backyards, basements and landfills. These are messes that need to be cleaned up. Pilot projects are proving that it is cheaper to gather and recycle these metals than to start up new mines. Let's provide jobs in the recycling industry. This has been done before — remember World War Two? All over the US, people embraced recycling and reuse of many products, especially metals.

Diversity will sustain us

Our unique Siskiyou communities stand to benefit from diversified, non-polluting, service-based growth that can provide stable jobs for locals, and keep resources and profits in the valley. Our best solutions lie in the creative ideas of individuals who seek to empower themselves, their children and the community they share. NICORE does not fit into this scenario.



Mal Sanford

As a developer and builder I must adhere to many rules and regulations administered by Federal, State, County and City agencies. I feel it is my responsibility to develop and build in an environmentally conscious manner. If the Feds are going to demand that private parties on private land meet clean water, wetlands regulations, etc., etc., they should begin by enforcement on their own lands.

The NICORE mine is a bad idea in a pristine setting. The idea that this operation could be beneficial to anyone but the owner is, I believe, ill-conceived. Just as the City of Cave Junction is preparing to come on line with infrastructure to accommodate environmentally sensitive growth, looming before us is the threat of a smelter with the potential of destroying the environment that draws people to the Illinois Valley. This mine and smelter, in my opinion, will have a devastating effect on the economy of the Illinois Valley.

Mal Sanford is a long time resident of the Illinois Valley. He is a builder and developer and is on the local, state, and national boards of the Homebuilders Association.



Meadow Martell

My commitment is to improve the place I live in. Quality of life plays an important role in economic development in Southern Oregon. Last summer I backpacked in the Rough and Ready Creek watershed and it instilled in me a sense of awe. It is a unique, irreplaceable asset.

As director of the local health clinic, I face many obstacles in recruiting good doctors to our rural community. Doctors want to live and work in an area that offers amenities like clean water and outdoor recreation. A major mining project and polluting smelter will make it very difficult for me to convince doctors that the Illinois Valley is a good place to live.

This mining project would contribute too little to our local economy to justify permanently scarring some of our rare treasures, Rough and Ready Creek.

Meadow Martell is Executive Director of the Siskiyou Community Health Center in Cave Junction. She is an avid hiker.

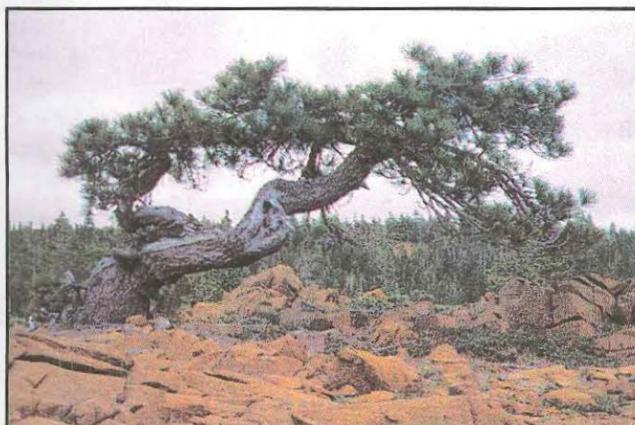


The Value of Beauty

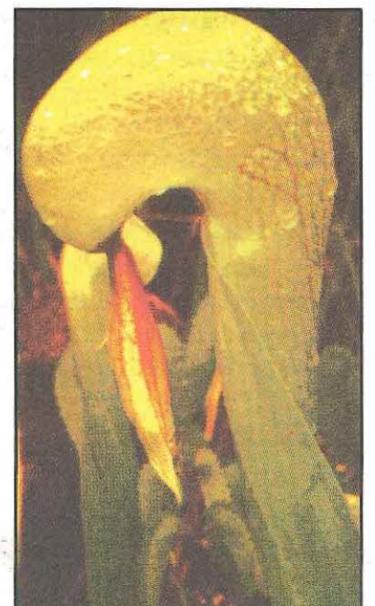
by Annette Rasch

How much is a place unlike any other on the planet worth? Otherworldly expanses stretch before the eye as a clear, fast stream flows through a valley brimming with rare and delicate plant life. A shy yellow-legged frog jumps off a red boulder into the creek, as it spots a moving shadow outline on the ground nearby. Ancient round frog eyes tilt upward, watching a huge hawk tear across the sky. Nearby, children laugh on a hot lazy day, floating in the swimming hole. They also point up at the hawk, silent for a moment; making memories. How much is a place like this worth?

Locals and visitors alike pause here, reflecting on the millions of years it took to create the quiet glory that is the Rough & Ready Creek Watershed. In our busy modern world, more city folk flock to visit; seeking peace, joy and renewal. This is why public lands are set aside for the good of all. It is surely just and right for such a place that sustains and inspires us to be held in a gentle hand, forever protected and nurtured. In the way of cycles: we must take care of the land which takes care of us. For those yet unborn will also need this quiet, beautiful experience. How much is a place like this worth?



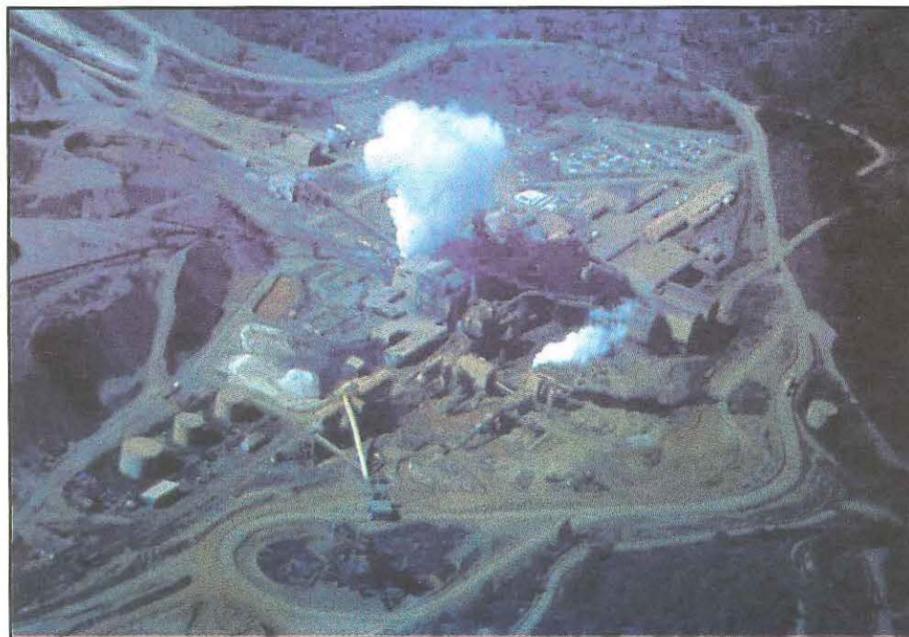
Top: bolander lily. Above: gnarled Jeffrey pine. Photos by George Shook. Far right: darlingtonia californica - the carnivorous cobra plant. Right: native azaleas growing along the banks of Rough & Ready Creek. Photos by Barbara Ullian.



TO CHOOSE

for beautiful Southwest Oregon?

Public Health and Safety: Mines are NOT good neighbors.



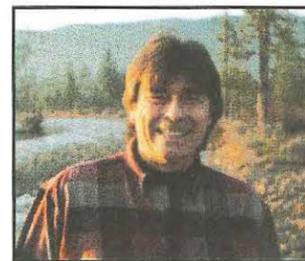
Nancy Lyford

So much of this process doesn't make sense. The miner has no reclamation plan, no financial plan, no smelter. He has never submitted a complete plan of operations. How can NICORE look at the grade of the ore and the cost of operations and think they can mine and make a profit? We feel this is just an attempt at a land grab.

We asked the Forest Service to test our water and they promised to do so. It never happened. When it rains, water pours off Our Mountain (just below mine site B) and across our property. Potentially toxic mining wastes could be transported into our water table and to the river.

This is a special area. We live here because of the solitude, beauty, clean water and clean air. I don't understand how the Forest Service could even consider allowing mining here. I think the Forest Service should close all the old bulldozer tracks they call roads around here. These are not even legal roads because there were never any permits issued. This is a place for people to enjoy the natural beauty.

Nancy Lyford is a local resident and member of the Rough 'N' Ready Neighbors! She and her husband, Gordon, own forty acres bordering Forest Service land at the base of one of the mountains proposed to be mined.



Gary Longnecker

They're flagrantly wasting our tax dollars on this analysis because the miner refuses to submit a complete plan of operations. It's ludicrous. Everything goes back to the Forest Supervisor's decision to go ahead with the process rather than have the miner produce all the required information. We simply don't have the information we need from the guy who wants to do the mining.

As far as I'm concerned, our issue, as neighbors is quality of life. There are probably 60-80 residents within earshot of this proposed mine. Noise travels. To put NICORE's rights ahead of everyone else's is not right. What would we do if arsenic and other toxics leak into our drinking water? What happens to the kids?

I worked my whole life taking care of folks and all I want is a little peace and quiet. I'm burned out and frustrated with the whole situation and I'm upset about the property value analysis. If I have known then what I know now I would never have invested \$50,000 in my property. I imagine I'm going to lose my shirt if I sell this place. The miner's going to walk away with the money and we'll have to clean it up.

Gary Longnecker, Vietnam vet and retired firefighter, has been actively involved with the Rough 'N' Ready Neighbors! in opposing the NICORE mine.



Above: the smelter at Riddle, Oregon - photo L. Cosner. Left: Dust in a bulldozer track that goes to one of NICORE's planned mine sites - photo B. Ullian. Right: a small test pit on public land used as a garbage dump by NICORE - photo R. Ziller.

"Mining gnaws away at the earth, producing toxic effluents that kill streams and poison ground water. Smelting and refining cause air pollution that is at best unpleasant and at worst is toxic to both vegetation and human health. Many mining sites are wastelands with air and water of questionable safety. This has a real impact on decisions about where to locate homes and businesses."

from *Lost Landscapes and Failed Economies: The Search for a Value of Place* by Dr Thomas Power

We do have a choice!

The Forest Service must withdraw the entire 24,000 acre roadless Rough & Ready Creek Watershed from mineral entry! Here are the steps toward protection for Rough & Ready Creek:

Step # 1 – Rights under the mining law are dependent on the discovery of a valuable mineral. If there is no valuable mineral there is no right to mine or patent public land.

Step # 2 – The Supreme Court says that a valuable mineral deposit is one that an ordinary person of prudence would invest their hard earned money and time in with a good chance of developing a profitable mine.

Step # 3 – The Forest Service prepares an economic analysis of the NICORE proposal and finds that it and all action alternatives to it will lose money and further that the Rough & Ready ores are "extreme low grade and the ore body is far smaller than other similar ore bodies considered for commercial use"—i.e. even if an economic mine could be developed, all the ore deposits in Rough & Ready Creek and probably the surrounding area would need to be mined. The environmental impacts would be disastrous.

Step # 4 – Despite all this the Forest Service and Bureau of Land Management cling to an archaic policy that assumes that NICORE has discovered a valuable mineral until proven otherwise. **They say it is not worthwhile to conduct a validity exam to determine the mineral value be-**

cause the land has not been withdrawn from mineral entry. The miner can just resubmit new plans that would have to be examined again, locking the Forest Service into a round of endless and expensive analysis.

WAIT – what's wrong with this picture? The Forest Service has the power to stop this Catch 22! It can simply withdraw the Rough & Ready Creek watershed and other sensitive areas from mineral entry, do the validity exam and protect the area from all mining!

Final Step – Massive public pressure in the form of letters to Forest Service Chief, Michael Dombeck, Secretary of Interior Bruce Babbitt, and elected representatives can convince these decisionmakers to take a stand and protect Rough & Ready Creek. This is where YOU come in.

Please turn the page for instructions on writing and sending your letters.

PLEASE JOIN US IN CARING FOR CREATION

"Your word calls us to preserve creation's fruitfulness, to practice 'shalom,' and to serve and keep creation." Colossians 1:19-20

A Pastor's View



Rev. Harold Behr

Pastor Harold Behr of the Friends Church of the Illinois Valley shared with us the following thoughts:

Q: How do you feel about the private use of Public lands?

A: When faced with opportunity for personal gain at the broader public's expense, I hear the Spirit of God within leading me to yield my rights for the sake of others. Christ lived His life in obedience to the Father, constantly laying down His life for ours. He says "If anyone would follow me they must deny themselves, and take up their cross and follow me". This is free will. This is genuine orthodoxy for Christianity. Making money is a legitimate activity, useful and industrious, but only when done with the intent of serving one another. The direct result of a genuine encounter with Christ is to live a fruitful life of love, joy and peace by denying ourselves the right to profit at our neighbor's expense.

Q: How do you see God's perspective on how mankind treats the earth?

A: From the beginning, after Creation, Genesis records we were assigned the role of "Stewardship", caring and nurturing what God had made. It was

God who first said of His creation, "It was good as He saw it", five times in Genesis One. It was Solomon who reflected the heart of God towards muddied waters and polluted water in Proverbs 25:26, "Like a muddied spring or polluted fountain are the righteous who give way before the wicked." God's passionate care for purity extends to our hearts, minds, body, spirit, lands and waters. "You will go out in joy, and be led forth in peace; the mountains and hills will burst into song before you, and the trees of the field will clap their hands." Isaiah 55:12 speaks clearly of God's Creation reflecting His Glory. Scripture and experience teach us much of God when we observe His handiwork. Unfortunately, we learn much of the unconverted soul when we see the rape of the land, the literal destruction of what God has made for us. On our current track there will be little left of the Lord's pristine creation. Will the trees weep, the mountain's song be drowned out with the sounds of machinery, as the 'Thundering Silence' of God's Presence is blasphemed?

Q. So what's the Christian's alternative?

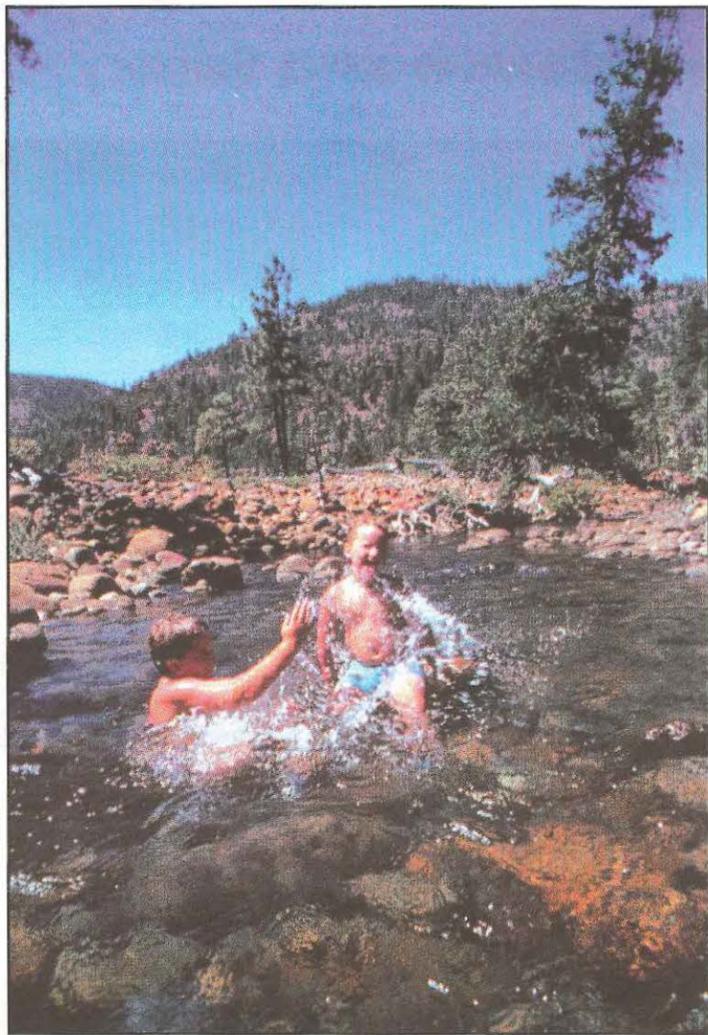
A. Well it's not to "eat and drink today for tomorrow we will be raptured." It is Christ's agenda to restore all of beauty and wholeness in people, lands and waters that the Creator intended at the beginning and which the fall of man so seriously disturbed. The creative process is still under way. Tough choices, unselfish choices must be made by those who call themselves "Friends of Jesus". Choices including denying myself, yielding my rights and serving the broader family of mankind. And the Truth is, the Bible records that Truth wins, love never fails, and God will have His way, for as the Bible records, "God is the author and finisher of our faith".

vasive weeds fill the spaces so fast that there isn't time for natives to grow.

I just don't understand how if you make the neighborhood undesirable, property values will go up (*referring to the Forest Service property value analysis which predicted that mining development would increase property values*). I feel the mine would affect our water even though the government assures us it won't.

I see it as a land grab. If I had that 4,000 acres, I would have a huge wildlife sanctuary and leave it alone.

Kathy Lombardo is a local naturalist who is often times found hiking or botanizing out by Rough and Ready Creek. She has spent countless hours pulling star thistle and other noxious weeds to protect wildflower habitat. She is also very active in the Illinois Valley Garden Club, which first recognized the need to protect Rough & Ready Creek back in the 1920's.



Sandy Lonsdale

Cooling off on a hot summer day in Rough & Ready Creek is wonderful! The river takes care of us. Now it's time to give something back to the river.

A History of Caring

Effie Smith:

Local residents first became concerned about the rare and beautiful plants of Rough & Ready Creek back in the 1920's. Effie Smith, a local homemaker, founded the Illinois Valley Garden Club in 1927 in part to help preserve the area's floral legacy.

Mrs. Smith was so impressed with the abundance of plants which flourished in the area that she was determined to find a way to protect them. Under her leadership the Garden Club worked quietly for many years to designate a state park for their protection, the Rough & Ready Creek Wayside State Park.

The Illinois Valley Garden Club is still involved in maintaining and enhancing the 11 acre state park.

Mary Paetzel:

For twenty-five years, Mary Paetzel has roamed the Siskiyou Mountains observing and recording encounters with rare wildflowers and butterflies in her illustrated journals. Mary was the first person to do a systematic survey of plants along Rough & Ready Creek. To date, more than 300 species of plants have been identified with only a small portion of the watershed surveyed.

Mary has recently published a book, *Spirit of the Siskiyou: The Journals of a Mountain Naturalist*. This wonderful journal with color reproductions of Mary's illustrations is available at the Illinois Valley visitor's center. You can also get it as a special gift when you join the Siskiyou Project.

Someone Who Cares

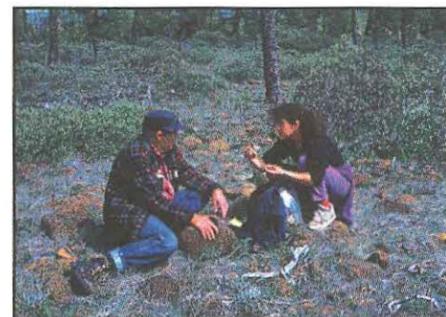


Kathy Lombardo

"I like to walk out to the botanical area on a stormy day and look at Rough and Ready Creek, the Coast Range and at Indian Hill. It hasn't changed in millions of years. I've been looking at the same buckwheat plants for 20 years. They haven't grown. Who are we, the supposed intelligent creatures to change this? I've cleaned up a few properties after logging operations. The native plants do not come back easily. The in-



Left: Phlox growing among the redrock boulders at the Rough & Ready Creek Wayside State Park. Right: Mary Paetzel and botanist Jennifer Marsden (co-founder of the Siskiyou Field Institute) on a spring day at the Rough & Ready Creek Wayside. Photos by Barbara Ullian.



"For humans to cause species to become extinct and to destroy the biological diversity of God's creation, for humans to degrade the integrity of the Earth by causing changes in its climate, stripping the Earth of its natural forests, or destroying its wetlands . . . for humans to contaminate the Earth's waters, its land, its air, and its life with poisonous substances—these are sins." — Bartholomew I, leader of the 300 million Orthodox Christians

PLEASE WRITE A LETTER

SHOW THAT YOU CARE AND WRITE A LETTER FOR ROUGH & READY CREEK.

Your letter counts. The Forest Service got 3000 letters strongly opposing the NICORE mine in 1998. As a result they slowed the approval process significantly.

Remember that the most powerful statement you can make is a personal letter in your own words. Hand-written letters are fine. Try to emphasize the value that Rough & Ready Creek has to you. Use the sample letter at right as a guide, or if you are short on time, simply make copies.

It is important to send copies of your letter to Chief Dombeck to all the other decisionmakers who are listed below. Support from all of these officials may be needed to save Rough & Ready Creek. Senator Wyden and Reps. DeFazio, Hooley and Blumenauer have already gone on record opposing this mine. Please thank them in your letter.

Questions?

Call the Siskiyou Project at (541)592-4459, or email us at project@siskiyou.org, or

check out our website at www.siskiyou.org for more information about Rough & Ready Creek and other threatened places in the wild and beautiful Siskiyou Mountains.

This publication was produced by the Siskiyou Project. Thanks to TA Allan for interview photos and to Annette Rasch, Romain Cooper and Barbara Ullian for writing. Editing and production by Kelpie Wilson.

Barbara Ullian



Barbara Ullian



Michael Dombeck
Chief of the US Forest Service
201 14th & Independence Avenue, SW
Washington, DC 20250
ph: (202) 205-1661, fax: (202) 205-1765

Dear Chief Dombeck,

The U.S. Forest Service will soon decide whether to allow NICORE, a mining company, to strip mine nickel and thereby threaten wild steelhead trout, yellow legged frogs, rare plants, and water quality within the Rough & Ready Creek watershed, one of the biggest roadless areas left on the West Coast.

Rough & Ready Creek, in the Siskiyou National Forest, is a globally outstanding botanical site with many rare and threatened plants. Due to its unique beauty, botanical values and wild character, Rough & Ready Creek is valuable as a recreational area. Citizens can visit rare wildflower sites near the highway or hike for days into remote backcountry locations.

This mining plan has been proceeding under the outdated 1872 Mining Law. Yet even this law only allows mining of economically valid ore deposits. The Forest Service's own economic analysis shows that NICORE's Plan of Operation would lose about 10 million dollars because the price of nickel ore is falling and the Rough & Ready Creek ore is not worth very much. But the Forest Service has stopped short of conducting a mineral validity exam because the policy is to assume that a valuable mineral has been found.

Please withdraw the entire Rough & Ready Creek watershed from mineral entry ASAP and initiate validity exams conducted by the government, not the miner. Rough & Ready Creek's botanical, recreation, water quality, and other natural values are far more important to future generations than the low quality nickel ore that is found there.

Sincerely,

Name _____

Address _____

Addresses of Key Officials:

Secretary Bruce Babbitt
US Department of Interior
1849 C Street, NW
Washington, DC 20240
ph: (202) 208-7351
fax: (202) 208-6956

Governor John Kitzhaber
Oregon State Capitol
Salem, OR 97310
(503) 378-4582

Senator Ron Wyden
U.S. Senate
Washington, D.C. 20510

Senator Gordon Smith
U.S. Senate
Washington, D.C. 20510

Rep. _____
U.S. House of Representatives
Washington, D.C. 20515
(Oregon reps are: DeFazio, Walden, Hooley, Blumenauer and Wu)

Capitol Switchboard
(to reach all senators and representatives): (202) 224-3121

Please Join the Siskiyou Project Today!

Siskiyou Project Network Application

Siskiyou Project, PO Box 220, Cave Junction, Oregon 97523 (541) 592-4459 www.siskiyou.org

Help the Siskiyou Project promote education, science, and advocacy to keep Rough & Ready Creek and the Klamath-Siskiyou Bioregion wild and free for future generations.

- Yes, I will join the Siskiyou Project. Here's \$35 for a one-year network membership. Please fill out the box below and, if you like, choose a gift.

Name _____		
Mailing Address _____		
City _____	State _____	Zip _____
Phone _____	Email _____	

- Here's my \$35 contribution, don't send me a gift.
- The Klamath Knot* by David Rains Wallace.
- Spirit of the Siskiyous* by Mary Paetzel
- I can't afford \$35 right now, please accept my heartfelt offering of \$ _____.
- Here's \$10 or more: \$ _____, please send me the Rough & Ready Creek video.

FOR CREDIT CARD USE

Circle One: Visa MC Discover American Express

Card #: _____

Exp Date: _____

Signature: _____

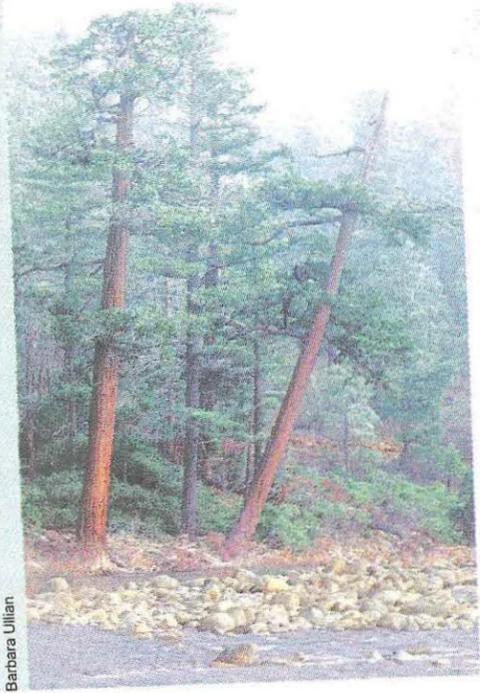
- I'm already a part of the Siskiyou Project network, but I want to give more.

\$25 \$35 \$50 \$100 \$250 \$ _____

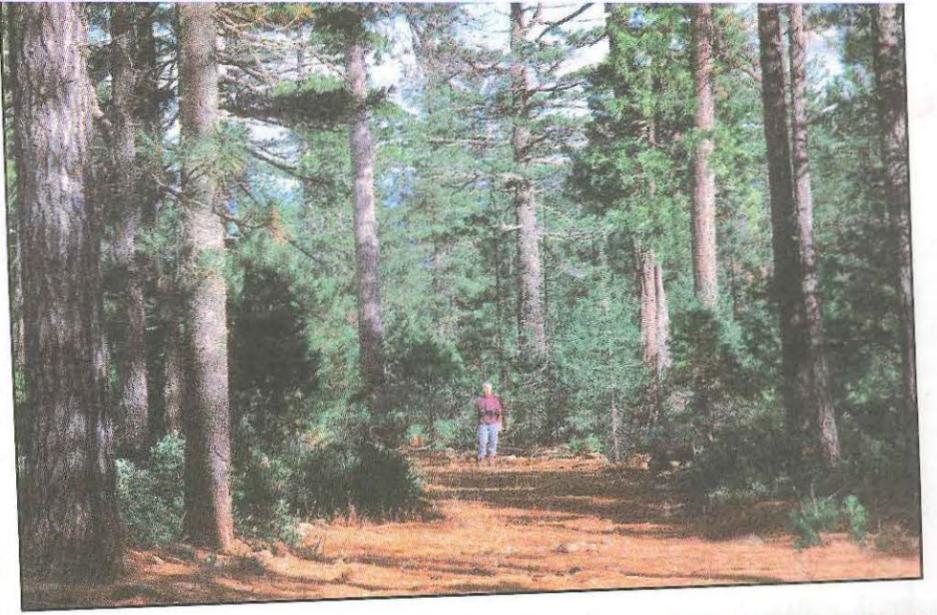
GET THE VIDEO!

Hold a letter-writing party and inform your friends. **Order the Award-Winning Rough & Ready Video.** This 10 minute video portrays the crystal clear waters and unique beauty and glory of Rough & Ready Creek's ancient landscape.

To order the video you can mail your request along with \$10 to the Siskiyou Project or you can request the video by phone or email: (541)592-4459 project@siskiyou.org

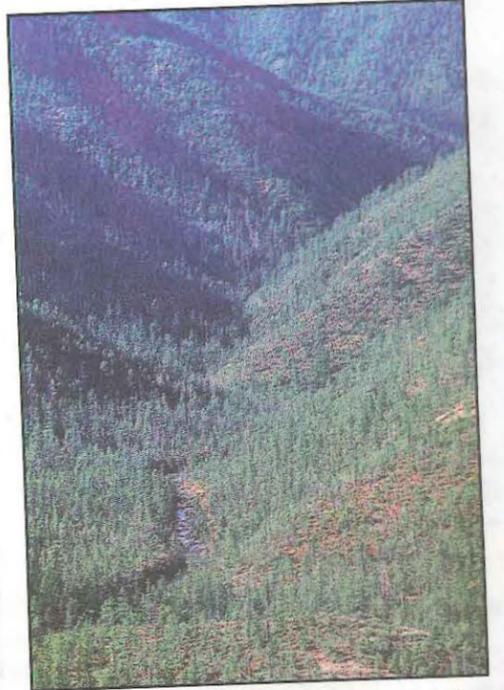


Barbara Ullian



The Wild Siskiyou is a Noah's Ark of species diversity. It is one of the last places left for Nature to flourish undisturbed.

It is one of those wild places that can carry the seeds of Creation forward into the next millennium of human habitation on this Planet, but only if we allow it to be.



Top: NICORE's proposed mine site B on the plateau at the top of Our Mountain outside of O'Brien, Oregon. Bottom: Looking from mine site B up the pristine North Fork of Rough & Ready Creek towards the location of proposed mine site A. Photos by Barbara Ullian.

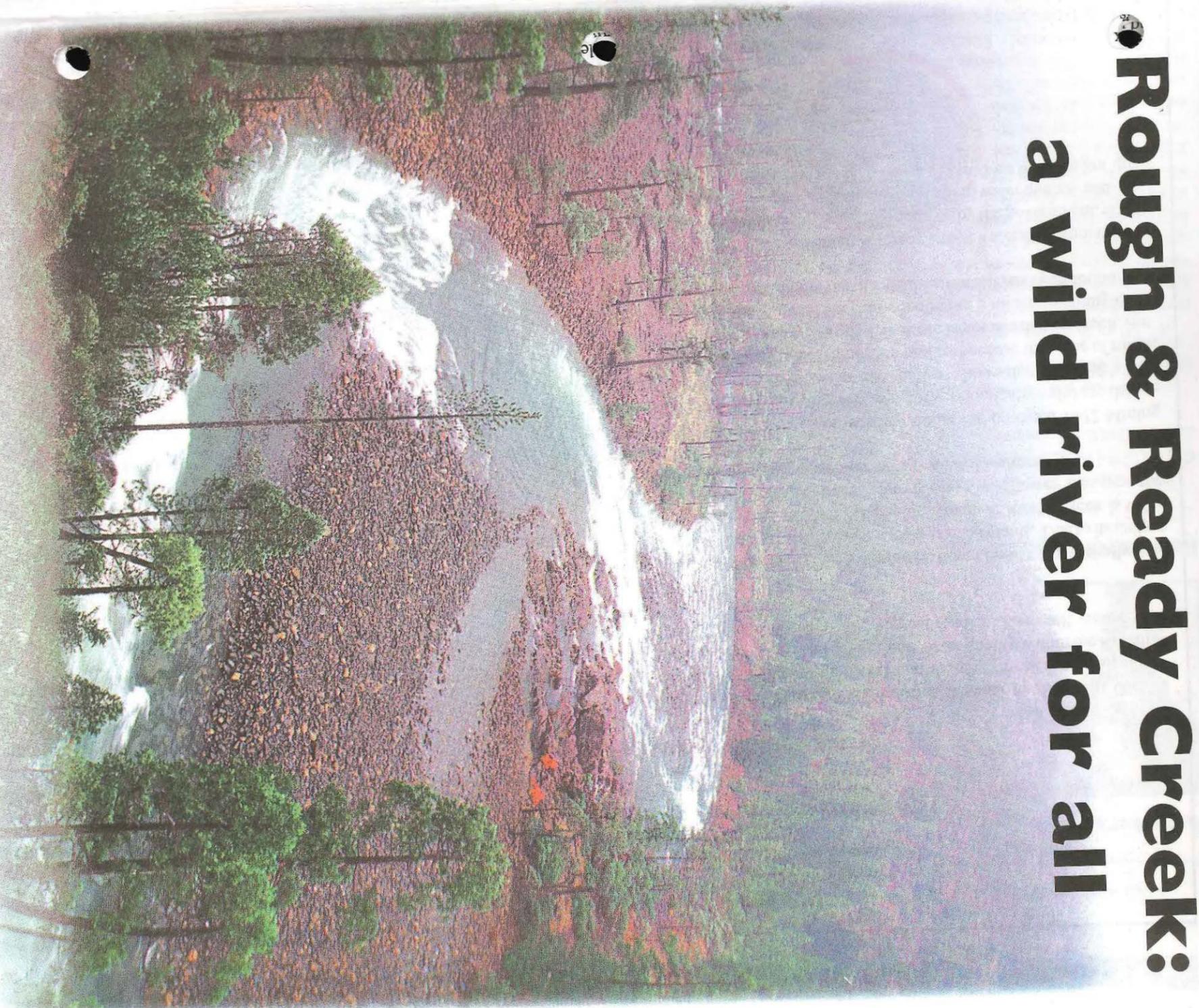
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**Rough & Ready Creek:
a wild river for all**

Rough & Ready Creek is Threatened by a Proposed Nickel Strip Mine



EXM.B.1.7.1

May 20, 1998

Exhibit 8

Mr. Mike Dombeck
Chief
USDA - Forest Service
14th and Independence Avenue, S.W.
Washington, D.C. 20090

Dear Chief Dombeck:

We are writing to ask that you take a number of actions with regard to mining claims in the Rough & Ready Creek Watershed on the Siskiyou National Forest. We are convinced that this outstanding natural area is inappropriately threatened by the proposed Nicore mining proposal.

First, we request that the Forest Service discontinue public funding of the Nicore Environmental Impact Statement until such time as the mining claims are subject to a validity examination.

And second, we ask that the area encompassed by the South Kalmiopsis roadless area, the Rough and Ready Botanical Area, and the Rough and Ready Area of Critical Environmental Concern be withdrawn from mineral entry.

As you know, in January the Forest Service released a Draft Environmental Impact Statement for the Nicore mining proposal to mine nickel and chromium for the manufacture of stainless steel. How or where this processing would take place has thus far not been disclosed.

Rough & Ready Creek flows into the Illinois Wild and Scenic River, and the Creek itself was found eligible for Wild and Scenic River status in 1993. The Outstanding Remarkable Values identified on Rough & Ready Creek include hydrological, geological, wildlife, and botanical characteristics. The watershed is renowned for its botanical diversity and high concentrations of rare plants. Both the Forest Service and Bureau of Land Management have documented the unique nature of this public land with their designations of the Rough & Ready Botanical Area and the Rough & Ready Area of Critical Environmental Concern (ACEC) respectively.

Indeed, the Forest Service has already acted to protect this unique landscape by establishing this area as off limits to timber harvest in the National Forest Plan. In addition, residents living next to the project obtain drinking water either directly from Rough & Ready Creek or via ditch recharge of shallow wells. Clearly, a mine of this character threatens the exact resources the agency has already found critical to protect.

The proposed plan of operation would build some 14 miles of road through the Botanical Area, ACEC, roadless area, and riparian reserves. It would involve construction of six crossing of the mainstem Rough & Ready Creek, and 10 crossings of its tributaries. It proposes to stockpile the ore in the Area of Critical Environmental Concern. It would initially excavate 35 acres at four separate pit sites all in the South Kalmiopsis roadless area, with the possibility of future

Mr. Mike Dombeck
May 20, 1998
Page 2

development and expansion of these sites due to the massive extent of the mining claims.

Again, we ask you to withdraw this remarkable area from mineral entry. A watershed analysis completed by the Forest Service for the West Fork subbasin, which includes the Rough & Ready Creek watershed, found that this area ranks number one in the State of Oregon for botanical diversity.

We were surprised to learn that the Forest Service decided to proceed with the environmental review of this proposal at public expense, especially when the project so clearly conflicts with the management priorities already established, and where there has been no validity examination. These costs should be paid by the mining claimant, not the taxpayer. At a time when the Forest Service is actually requiring people to pay for the privilege of hiking on a National Forest trail, it is indefensible that money can be found to expedite an environmentally disastrous mining proposal.

As you know only too well, the mining law puts the agency in the difficult position of treating mining as a use which must be accommodated at the expense of whatever public or ecological values exist at the same place. That does not, however, prevent you, and for that matter, us, from using every possible authority to prevent this project from going forward. That is our intent, and we ask that it be the Forest Service's, as well.

Thank you for your attention to our request. We look forward to hearing from you.

Sincerely,



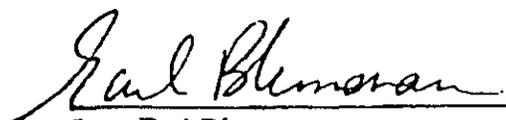
Senator Ron Wyden



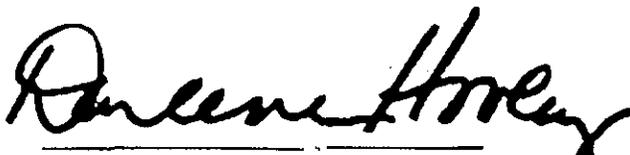
Rep. Peter DeFazio



Rep. Elizabeth Furse



Rep. Earl Blumenauer



Rep. Darlene Hooley

RON WYDEN
OREGON

United States Senate

Exhibit 9

WASHINGTON, DC 20510-3703

1st Senate Building
Washington, DC
20510-3703
(202) 224-5244

email
senator@wyden.senate.gov

web site
www.senate.gov/~wyden

August 3, 1999

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Committees:

Budget
Commerce, Science
& Transportation
Energy & Natural Resources
Environment & Public Works
Special Committee on Aging

Oregon State Offices:

500 NE Multnomah St
Suite 320
Portland, OR 97232
(503) 326-7525

151 West 7th Ave
Suite 435
Eugene, OR 97401
(541) 431-0229

3rd Annex Building
105 Fir St
Suite 210
Astoria, OR 97103
(541) 962-7691

U.S. Courthouse
310 West 6th St
Room 118
Medford, OR 97501
(541) 858-5122

The Jamison Building
131 NW Hawthorne Ave
Suite 107
Burns, OR 97701
(541) 330-9142

707 13th St, SE
Suite 285
Salem, OR 97301
(503) 599-4555

Dear Mr. President:

As you know, Oregonians are proud of our deep commitment to protecting our special natural areas. We realize you share the desire to preserve the beauty and natural heritage of Oregon for future generations. Today, I am asking that you direct your administration to work with me and all other interested Oregonians to secure additional protection of some extraordinary lands.

This job must be tackled in the Oregon tradition: through an open, inclusive process that insures full public debate; opportunities to build consensus; and a sensitivity to Oregon's special rural traditions and local economic needs. The lands I discuss in this letter continue to be the subject of strong local -- and some national -- concern. I am convinced that by working constructively with all Oregonians, your administration can assist me and the Oregon congressional delegation in bringing the people of my state together, as we resolve any differences and work towards a mutual goal: protecting Oregon for our children and grandchildren.

Steens Mountain

Steens Mountain is an Oregon crown jewel. It is phenomenal country, both in its natural beauty and in its long-standing ranching culture. The Steens deserve more significant protection and I believe it is possible to restore the area's natural ecosystems while still factoring in the needs of the region's ranchers.

As you may know, Interior Secretary Babbitt has expressed interest in providing additional protection to the Steens, and plans to visit the area soon. The Bureau of Land Management (BLM) responded to the Secretary's interest in the Steens with the appointment of the Steens Mountain management subcommittee of the Resource Advisory Council (RAC).

I look forward to the RAC's recommendations. I have already discussed this issue with my Senate colleague, Gordon Smith, and the Congressman from the area, Greg Walden, and I do not want to see the RAC's work, which will be completed October 20, 1999, or other homegrown consensus-building efforts occurring within that time frame, preempted by federal administrative actions.

In my discussions with individuals on all sides of this issue, I find a strong common interest in protecting the land, restoring natural ecosystems and retaining the wild, open character of the mountain. It is clear to me that to be successful, and to find a solution which has the broad support of Oregonians, our work will necessarily require the greater involvement of local landowners and regional conservationists. I hope to facilitate discussions with these groups in an effort to find an acceptable, progressive approach to protecting Steens Mountain.

Soda Mountain

Located in a rugged area in southern Oregon, Soda Mountain creates an ecological crossroads between the Siskiyou mountain range and the Cascade range. Soda Mountain, incorporating the temperate forests of western Oregon, the dry California chaparral brush lands and the moist marine environment of the Pacific Ocean, lies just west of Oregon's high desert country. A survey by the World Wildlife Fund named this unique, environmentally diverse area one of the top centers for biodiversity in the world.

The Soda Mountain Wilderness Study Area (WSA) sits at the heart of the larger Cascade Siskiyou Ecological Emphasis Area (CSEEA). The CSEEA was born out of the Northwest Forest Plan, providing a tool to manage the unique ecological resources of the area in which there is currently a ten-year moratorium on timber harvesting.

In 1992, the Bush administration recommended the Soda Mountain WSA for wilderness protection. This year, the Senate Appropriations Committee formally recognized the ecological importance of the area by approving \$250,000 in Land and Water Conservation Funds for the acquisition from willing landowners of WSA inholdings. A proposal for greater protection of the larger CSEEA would be desirable. By working with local governments, timber operators, environmentalists and grazing permittees, we can move forward with a land protection proposal that would enjoy broad public support.

Badlands

The Badlands WSA is located near Bend, Oregon. Like Soda Mountain, it also merits wilderness or other special protection. The Badlands is rugged, high desert country laced with volcanic ridges, outcrops and basins. Conservationists view the Badlands as a unique opportunity to restore a native high desert ecosystem in a quickly urbanizing area where the demand for wilderness, recreation and open space is increasing.

Local ranchers and conservationists are working together toward wilderness because they see it as the best use of these lands. The largest permittees seek to voluntarily retire their grazing permits if, in turn, the allotments are permanently retired from grazing. Because designation as wilderness has no effect on livestock use, this voluntary permit retirement would clearly aid in the preservation of wilderness value, wildlife habitat and restoration of a native ecosystem in close proximity to one of the fastest-growing urban areas in Oregon.

Rough and Ready Creek, Kalmiopsis

Rough and Ready Creek is within the South Kalmiopsis roadless area of the Siskiyou National Forest. The creek is a major tributary of the Illinois River, and portions of the area have already been recognized by the Forest Service for outstanding botanical and scientific values. Indeed, this region is identified by a broad array of regional, national and international scientific and conservation organizations as among the world's best centers for biological diversity.

I have been working with Congressman DeFazio, local conservationists and your administration for the past two years in an effort to prevent damage to the Rough and Ready Creek watershed from speculative mining operations. It is imperative that the area's water quality, special biodiversity and recreational opportunities be protected. As this effort continues, it is clear that special protective status for this area will further these efforts.

Bull Run/Little Sandy Watershed

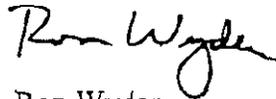
Finally, I ask that you work with me to protect the Bull Run/Little Sandy watershed which provides pure drinking water for more than one-quarter of the state's population. In the 104th Congress, I was honored to have been the principal sponsor of legislation protecting the Bull Run as part of Senator Hatfield's Oregon Resources and Conservation Act of 1996 (ORCA). My original bill called for protection of the Little Sandy sub-basin and buffer areas, as well, in order to fully protect the metropolitan region's water resources, but these protections were not included as a part of ORCA.

The City of Portland and a large coalition of local, state and national environmental groups support permanent protection for this precious public asset. In addition to its use as a watershed area for Portland, the Little Sandy provides a unique opportunity for steelhead recovery efforts close to a substantial metropolitan area. Through the collaborative efforts of the City of Portland, the State of Oregon and Portland General Electric Company, the Little Sandy dam will be removed and fish passage restored, opening approximately seven miles of important steelhead habitat and making recovery in this portion of the Bull Run watershed a very real possibility. Protection for the Little Sandy watershed would build on these exciting collaborative efforts.

In the 105th Congress, Congressman Blumenauer joined me in introducing legislation to protect the Little Sandy, and we plan to press for its protection again in this Congress. I would welcome your assistance in meeting this critical conservation goal.

As we move forward to protect the important Oregon lands discussed in this letter, I want to reiterate my desire that the task be addressed in an inclusive, public fashion. I believe we will discover a well-spring of public support for the protection of these unique lands.

Sincerely,

A handwritten signature in cursive script that reads "Ron Wyden".

Ron Wyden
United States Senator



Oregon

John A. Kitzhaber, M.D., Governor

Department of Geology & Mineral Industries

Administrative Office
800 NE Oregon Street #28, Suite 965
Portland OR 97232
(503) 731-4100
FAX (503) 731-4066

May 27, 1998

Ms. Nancy W. Lyford
P.O. Box 118
O'Brien, OR 97534

Dear Ms. Lyford:

Governor Kitzhaber has asked me to respond to your letter dated April 22, 1998, regarding Nicore's proposed nickel mine on Bureau of Land Management and U.S. Forest Service land in Josephine County.

Although the bulk of the project area, as described, is in the Siskiyou National Forest, the proposal would need to go through extensive environmental permitting and land use authorization from Josephine County. Presently, no applications for the numerous state permits required for a major operation have been filed with the appropriate state regulatory agencies. The permits are required before operations start. The Department of Geology and Mineral Industries, and other agencies, have been following the developments but until the agencies receive applications for their permits it is difficult to discuss specifics.

The Oregon agencies have a good history of working with the Forest Service, the mining company, and the public to ensure that all aspects of a proposal of this nature receive an adequate comprehensive review while avoiding needless duplication of effort. In this case, Nicore has chosen to start the permitting process by working only with the Forest Service. Listed below are the primary agencies that would be involved in permitting any mine located in Josephine County.

Department of Geology and Mineral Industries (DOGAMI): An exploration permit is required before any significant road building or drilling for exploration is started. A bond would be required to ensure that the roads are reclaimed and the drill holes properly abandoned.

Prior to start-up of a metal mine, an operating permit is required from DOGAMI. Extensive environmental baseline information must be collected and analyzed before this permit is issued. A bond is required to ensure that reclamation is completed upon completion of mining.

Department of Environmental Quality (DEQ): Mining operations would not be authorized to start until Nicore has received the appropriate storm water, process water, and air contamination discharge permits.

Ms. Nancy W. Lyford
May 27, 1998
Page 2

Water Resources Department (WRD): Water rights must be obtained for all water used in the mining and processing facilities.

Department of Fish and Wildlife and Department of Agriculture: These agencies would be involved with issues related to threatened and endangered species.

If you still have concerns regarding the elected chair of the Illinois Valley Soil and Water Conservation District, they are best addressed to that body.

Sincerely,

A handwritten signature in cursive script, appearing to read "John D. Beauken".

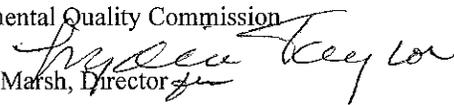
John D. Beauken
Deputy State Geologist

#20609

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 22, 1999

To: Environmental Quality Commission
From: Langdon Marsh, Director 
Subject: Agenda Item G, Application for Designation as a Quiet Area for an Area Outside O'Brien Oregon,
EQC Meeting: August 13, 1999

Statement of Purpose

The Department has received a petition requesting that the Department recommend to the Commission that an area containing approximately 50,000 acres outside of O'Brien Oregon, be designated as a Quiet Area under OAR 340-035-0015(50).

Background

Under OAR 340-035-0015(50), a quiet area is defined as "any land or facility designated by the Commission as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater." The Department is required to submit areas suggested by the public, to the Commission. The Commission has not designated any areas as Quiet Areas to date.

In February 1999, Gordon Lyford submitted an 'Application for a "Quiet Area Designation"' to the Department. The Application requests that the Commission designate an area containing 50,000 acres outside of O'Brien Oregon as a Quiet Area. The area contains national forest, BLM, state and private land.

Authority of the Commission with Respect to the Issue

Under Oregon Revised Statutes Chapter 467, the Department has been given statutory authority to control noise pollution. The rules implementing Chapter 467 are contained in Oregon Administrative Rules, Chapter 340, Division 35.

The Department has not been given funding to implement the noise control program since the 1991 legislative session. In June 1991, the Transportation Subcommittee of Ways & Means removed funding for the noise control program and eliminated the three positions for the program. The statutes and rules were not repealed to provide a model for counties and cities in developing their own programs.

Alternatives and Evaluation

The Commission can designate the area as a Quiet Area but without funding, the Department is unable to evaluate any of the claims made by the petitioner. The Commission could designate the area without spending any staff resources but the Department would be prevented from enforcing the designation.

Department Recommendation

The Department recommends that the Commission deny the Application for Designation as a Quiet Area due to the absence of funding for the noise control program.

Attachments

Application for a "Quiet Area Designation", dated February 1, 1999

Reference Documents (available upon request)

Oregon Revised Statutes, Chapter 467; Oregon Administrative Rules, Chapter 340, Division 35

Report Prepared By: Susan M. Greco

Gordon Lyford Oregon
Department of Environmental Quality
P.O. Box 118
O'Brien, OR 97534

RECEIVED
FEB 2 1999

Susan M. Greco
Rules Coordinator
811 SW Sixth Avenue
Portland, Oregon 97204-1390

OFFICE OF THE DIRECTOR

February 1, 1999

Subject: Application for a "Quiet Area Designation"

I wrote to you on January 11, 1999 to inquire about Quiet Area designations as defined under OAR 340-035-0015 (50). On January 20, 1999 we spoke by phone and you advised me that a Quiet Area has never been designated in Oregon and the Department has not been funded to implement those rules. At your suggestion, I am submitting the following information to you as a formal application to designate an area west of O'Brien, in southwest Oregon, as a Quiet Area. I understand that "the Department shall submit areas suggested by the public as quiet areas, to the Commission, with the Department's recommendation".

According to OAR 340-035-0015 (50), "Quiet Area" means any land or facility designated by the Environmental Quality Commission as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need. We believe the area west of O'Brien fully meets this definition. In fact there is probably no other area in Oregon more qualified for a Quiet Area designation. The "O'Brien Quiet Area" area would be a very appropriate place to receive the first Quiet Area designation in Oregon.

The attached map delineates the proposed 50,000 acre O'Brien Quiet Area. The proposed O'Brien Quiet Area extends from the Oregon border north to Josephine and Woodcock Mountains, and from Biscuit Hill and the southeastern Kalmiopsis Wilderness boundary east to near the town of O'Brien. The area includes about 45,820 acres of Siskiyou National Forest land, 640 acres of BLM land, 640 acres State land, and about 2,900 acres of private land. Most of this area is as quiet as nature gets. The loudest noises are generally running water, coyotes, an occasional airplane, and wind. Outside of the quiet area to the north and west is the vast

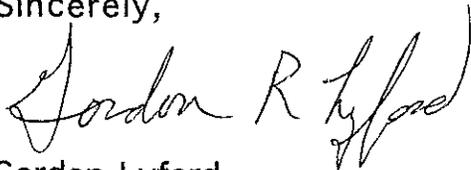
Kalmiopsis Wilderness and Siskiyou National Forest. To the south of the quiet area, in California, is the Six Rivers National Forest and Smith River National Recreation Area. Outside of the mapped quiet area and to the east is O'Brien, U.S. Highway 199, a lumber mill, and the Illinois Valley airport. The noise from those facilities is only occasionally heard one mile away on the eastern margin of the proposed O'Brien Quiet Area and can not be heard very far into the proposed quiet area.

The proposed O'Brien Quiet Area includes the South Kalmiopsis Roadless Area, the Rough and Ready Botanical Area, and Rough and Ready Creek which has segments that are eligible for National Wild and Scenic River designation. Adjoining the O'Brien Quiet Area on the east and at the mouth of Rough and Ready Creek is a BLM Area of Critical Environmental Concern and a State Botanical Wayside. This area is world renowned for its unique botanical resources and is known as the most botanically diverse area in Oregon. It is also known as one of ten "biological hot spots" on the planet. As such the solitude in this pristine wild area is enjoyed by many people while hiking, swimming, and conducting botanical and geological exploration.

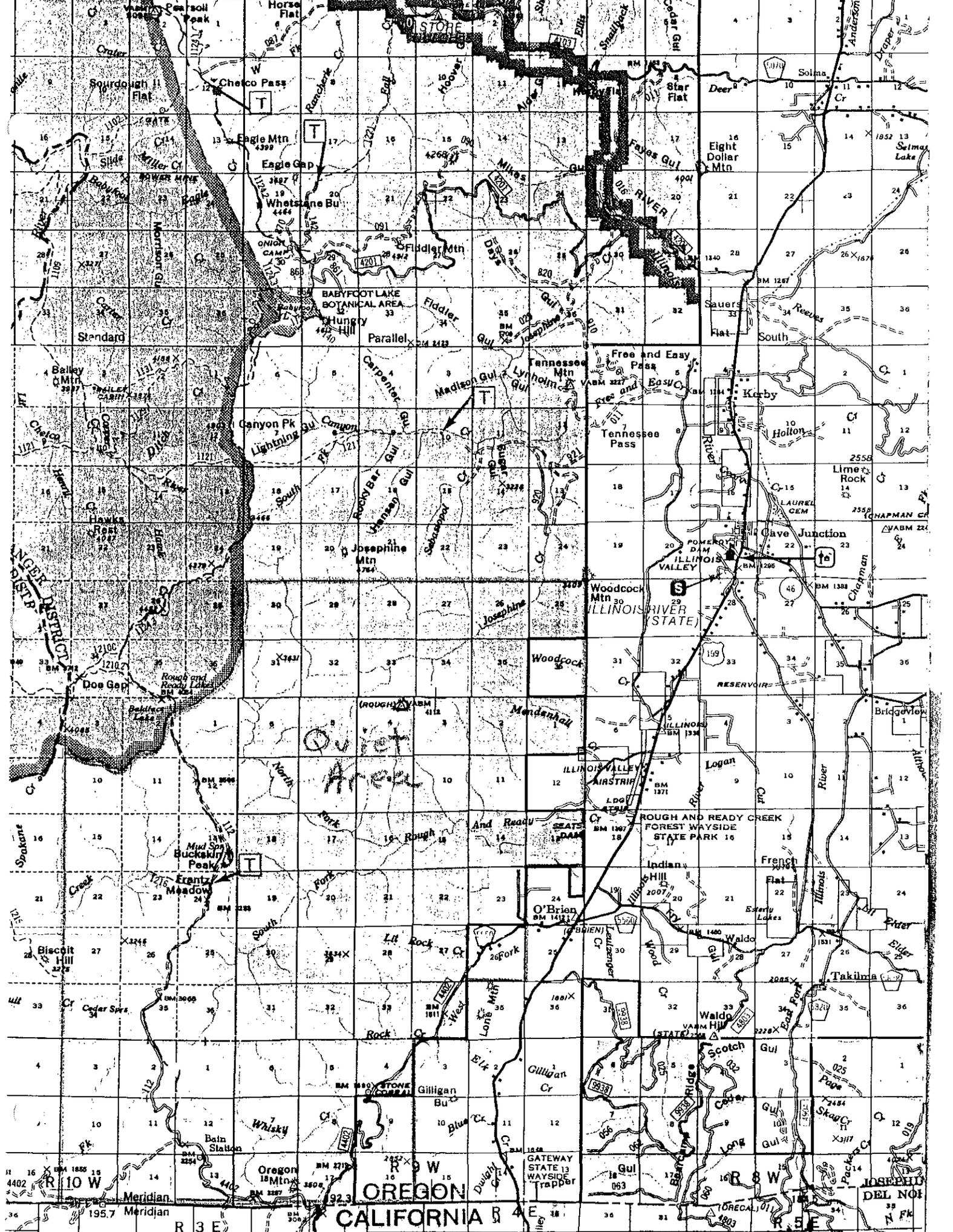
A neighbor, who is a sound engineer, estimated the existing sound levels in the proposed quiet area based on his professional judgment and experience. He stated that the general overall average sound level in most of the area is approximately 25 to 30 dBA, with some sections close to the highway as high as 40 dBA. If it would be helpful to the Department and Commission, we are willing to take sound measurements of representative locations within the proposed quiet area.

Please process this application as quickly as possible and keep me informed of the progress. If you have any questions or status reports regarding this application, please call me at (541)596-2017 or email me at ourmtn@ivnet.net. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Gordon R. Lyford". The signature is written in a cursive style with a large initial "G" and "L".

Gordon Lyford
Agricultural Engineer



Department of Environmental Quality

Memorandum

To: Environmental Quality Commission and other interested persons

From: Lauri Aunan, Assistant to the Director
Department of Environmental Quality

Date: August 6, 1999

Subject: 1999 Legislation

The 70th Oregon Legislative Assembly spent much of its time addressing budget issues. As in 1997, funding for Oregon schools and transportation consumed much of the discussion. Funding for natural resource agencies was a priority for Governor Kitzhaber.

The major environmental bills of the session were passage of a new law to track pesticide use (HB 3602); implementation of Ballot Measure 66, the Parks and Salmon Initiative (HB 3225), and passage of a state Community Right to Know law (HB 2431).

Attached is a preliminary list of bills affecting DEQ that were passed or considered during the 1999 legislative session. Some of these bills have been signed by the Governor. The Governor has 30 days from the end of the session to decide whether to sign or veto several of the bills on this list. After mid-September, a final list of new laws will be available on DEQ's web site at <http://www.deq.state.or.us>, or by calling or writing DEQ.

The attached list is limited to bills that in some way pertain to DEQ's clean air, clean water and waste management work, or that affect how DEQ conducts its work. It does not include bills that address other agencies' work (e.g., pesticide use reporting for Department of Agriculture or water supply legislation for the Water Resources Department).

A brief description and some explanation is provided for each bill. This is intended to convey the main points of the bill. However, the explanation may not mention or describe all the provisions in a particular bill.

You may obtain any of these bills either by accessing the legislative web site at <http://www.leg.state.or.us>, or by calling the legislative publication office at (503) 986-1190. If you would like additional information about this list, please call Lauri Aunan at (503) 229-5327, or email: aunan.lauri@deq.state.or.us.

Preliminary Summary of 1999 Legislation

1. DEQ Bills Introduced

DEQ Bills Passed

Update On-site Sewage Program, SB 335 – Properly installed and maintained septic systems protect people and the environment from exposure to sewage on the ground and in water. DEQ regulates the installation, repair and pumping of septic systems in 14 counties; counties manage the program in 22 counties. SB 335 allows DEQ to enter into agreements with counties as contract agents to administer the program, give local governments flexibility to set fees that vary from fees adopted by the Environmental Quality Commission, address licensing requirements, and allow inspection of pre-1974 septic systems to ensure they still protect land and water from exposure to sewage. **Governor signed.**

Representational Standing for Title V Air Permits, HB 2180 - The Environmental Protection Agency (EPA) has approved Oregon's administration of federal Clean Air Act, Clean Water Act and RCRA (waste) laws. Without this "delegation," the EPA would administer these programs in Oregon. In 1998 EPA issued a Notice of Deficiency for Oregon's Title V clean air permit program, indicating that Oregon's program is deficient and at risk because Oregon law does not allow third parties to legally challenge DEQ action on these federally delegated permits. HB 2180 provides standing to third parties for the issuance of federally delegated air quality permits, in order for Oregon to continue administering the Title V federal permit program. **Governor signed.**

Convert Petroleum Load Fee to General Fund, HB 2183 – The petroleum load fee was paid to the Department of Revenue each time a petroleum tanker truck loaded at an oil terminal. The fee was established by the Oregon Legislature in 1989 to pay for DEQ's hazardous substance and spill response, cleanup of orphan sites and assistance for underground tank owners. The 1993 Legislature restructured the fee to ensure compliance with the State Constitutional provision requiring motor vehicle fuel fees to be used for highway related purposes. HB 2183 "clears the books" on petroleum load fees collected before 1993 (but not spent) by converting the moneys to the General Fund. **Governor signed.**

Underground Tank Leak Prevention, HB 2186 – To protect groundwater from pollution, federal law requires regulated underground storage tanks (not heating oil tanks) to be upgraded or replaced by December 22, 1998. HB 2186 provides a two-year, \$60 per tank fee to maintain a level of effort to ensure that 1) newly installed tanks operate properly and continue to prevent leaks and spills to soil and groundwater and 2) tanks being taken out of service are properly decommissioned to avoid future leaks that could contaminate soil and groundwater. The \$60 per tank fee reverts to \$35 per tank after two years. The level of effort and funding needed for this program will be reviewed by DEQ and the Legislature in the 2001 session based on work accomplished in the next two years and the program needs. **Governor signed.**

DEQ Bills Not Passed

Verifying Solid Waste Tonnage Reporting, SB 336 - Solid waste disposal sites operate under permits issued by DEQ. Fees for the solid waste permit program are paid based on tons of solid waste disposed at the sites. The law prohibits access to financial records to verify tons disposed. As a result, DEQ cannot verify tonnage reported by the permit holders. SB 336 would have allowed DEQ access to certain financial records of solid waste disposal site permit holders to verify accuracy and completeness of solid waste tonnage reporting. Access to records of revenues collected or received would allow DEQ to more efficiently and accurately determine if fee reporting was complete. DEQ will work with the solid waste disposal industry during the interim to determine if a solution can be found.

Clarify Authority to Regulate 4th Priority Agricultural Burning, SB 337 – “4th priority agricultural burning” refers to open agricultural burning in the Willamette Valley, other than field burning. The current statutes are not clear with respect to authority to regulate open agricultural burning other than field burning. SB 337 would have clarified the authority of DEQ and the Department of Agriculture to regulate open agricultural burning to protect air quality. This bill did not get a hearing. Willamette Valley Christmas tree farmers “gutted and stuffed” the bill to provide a partial exemption for open burning of Christmas trees outside of field burning season. This bill passed and was signed by the Governor based on DEQ's assessment that open burning of Christmas trees is not a significant air quality concern. DEQ will be tracking any problems that may arise from this legislation.

Rulemaking Hearings, SB 338 – Under the Oregon Administrative Procedure Act, agencies are required to hold public hearings on rule changes when 10 or more persons request a hearing. The DEQ's enabling statutes require DEQ to hold hearings on every proposed rule change, no matter how minor. SB 338 would have brought DEQ statutes into line with the Administrative Procedures Act. DEQ would still be required to take written public comments on all rule changes and be required to hold a hearing when 10 or more persons request a hearing. This bill did not receive a hearing.

Expand Pollution Prevention Tax Credits, SB 339 - The 1995 Legislature approved a pilot program and allocated \$5.2 million to encourage certain businesses to install pollution prevention equipment. To date, about 20 businesses have received tax credits. The \$5.2 million cap has not been reached; about \$3 million remains. SB 339 would have expanded the program, allowing more businesses to receive a tax credit for pollution prevention equipment, including technologies that (1) eliminate hazardous wastewater discharges through wastewater reuse or recycling; (2) eliminate use of certain hazardous air pollutants; (3) provide space for recycling at commercial and multi-family buildings; and (4) provide for improved resource efficiency at facilities. This bill did not receive a hearing.

Update Pollution Control Tax Credits, HB 2181 – Since 1967, this program has provided a tax credit of 50% of the cost of facilities required to comply with environmental laws. For 1997-99, Oregon's estimated biennial tax loss under this program is \$25 million. DEQ's bill is intended to start a policy discussion about the pollution control tax credit. The bill would have limited the

tax credit to pollution control facilities required to meet compliance standards that are more stringent than federal requirements and required to meet future, new federal requirements more stringent than existing federal requirements. The bill had one hearing during which Associated Oregon Industries and other business groups opposed the bill. Later, the Oregon Farm Bureau "gutted and stuffed" the bill to remove everything in the bill except language recognizing that non-point source pollution control facilities are eligible for the tax credit. As amended, this bill passed the Legislature and was signed by the Governor.

Tying Fees to the Consumer Price Index, HB 2182 – The amount of General Fund DEQ receives has decreased over the years. Currently, General Fund covers about 17% of DEQ's costs. Most of DEQ's environmental work is funded through fees. There is no mechanism for these fees to keep pace with the cost of living and, in the past, resulted in DEQ asking for big fee increases every several years just to cover existing costs. HB 2182 sought a way to cover cost increases due to inflation by automatically adjusting certain fees based on the Consumer Price Index. This bill was opposed by feepayers groups and did not receive a hearing.

Homeowners' Heating Oil Tanks Assistance, HB 2184 and 2185 – DEQ receives thousands of requests each year to assist homeowners and prospective buyers of homes who are concerned about potential leaks from heating oil tanks on their property. DEQ has two concepts that address heating oil tanks. One concept switches the collection of the surcharge on heating oil to the Department of Revenue. These funds would pay for DEQ assistance to homeowners and provide grants for closing out tanks in an environmentally sound manner. Another concept would require a heating oil tank to be emptied of oil to prevent future leaks that could contaminate soil and groundwater. An optional fee is provided for DEQ to review this process and provide a written record that it was done. These bills did not receive a hearing. Instead, DEQ worked with the petroleum industry and interested legislators on a compromise set of bills, HB 3107 and SB 542 (see below). Neither bill provides funds for assistance to homeowners.

Keeping Track of Hazardous Waste, HB 2187 – To safeguard people's health and the environment, DEQ tracks the management of hazardous waste "from cradle to Grave" (generation, transportation, disposal). Statutory authority for DEQ to require documentation of hazardous waste transport is clear for air and water transporters. However, there is no clear statutory authority for DEQ to require documentation from land transporters (e.g., trucks, trains carrying hazardous waste). HB 2187 would have clarified that DEQ has the authority to require land transporters of hazardous waste to provide documentation of the handling and disposal of hazardous waste. This bill did not receive a hearing. DEQ will work with the Oregon Trucking Association during the interim to pursue a solution before the 2001 session.

2. Bills Passed Affecting DEQ

Water Quality

HB 2162 – Establishes an annual fee for hydroelectric projects and project-specific fees to compensate state agencies for work during reauthorization, relicensing. Portion of fees collected by Water Resources Dept. for DEQ work. Requires Water Resources Director to appoint a

review panel, including DEQ, to review the amount of the annual fee in 2003 and 2009.

Governor signed.

HB 2881 – Directs interim legislative committee to study issues related to management of stormwater and sediment control. Directs all state agencies to provide assistance upon request.

Governor signed.

HB 3225 - Implements Ballot Measure 66, the Parks and Salmon Initiative. Creates new state agency, the Oregon Watershed Enhancement Board, to coordinate the Oregon Plan for Salmon and Watersheds and oversee grants to local projects. 11 voting members, including EQC representative. Five non-voting members representing federal agencies. 50% of funding to Parks Subaccount and 50% to Restoration and Protection Subaccount. 65% of the funding in the Restoration subaccount must be used for capital expenditures. Allows state and federal agencies to apply for funding only as co-applicant with eligible entity. Provides for appointment of executive director by Governor, subject to Senate confirmation. Requires OWEB to report biennially to the Legislature on grants awarded and information about the use of moneys received and distributed by OWEB.

SB 132 – Changes membership of Healthy Streams Partnership. The Governor, the President of the Senate and the Speaker of the House of Representatives appoint Healthy Streams Partnership of 21 members:

- (a) Seven members representing watershed groups or soil and water conservation districts;
- (b) One member representing tribal governments, who lives east of the Cascade Mountains;
- (c) One member representing tribal governments, who lives west of the Cascade Mountains;
- (d) Two members representing environmental or wildlife conservation groups; and
- (e) Ten members representing in-stream and out-of-stream beneficial uses of water, including but not limited to agricultural, recreational, industrial, municipal and silvacultural uses.

Governor signed.

SB 133 – Expands the scope of the Joint Legislative Committee on Stream Restoration and Species Recovery to consider issues related to the Oregon Plan and other issues related to water quality, stream restoration and species recovery generally. **Governor signed.**

SB 657 – Requires Environmental Quality Commission to establish program to regulate collection, storage, transportation, treatment and disposal of septage upon request of county. Authorizes DEQ to recover costs from county.

SB 1152 – Section 3 requires any rule pertaining to recreational or small scale mining adopted after the effective date of the bill to be adopted “in consultation with affected parties.” Bill also creates new violation for trespass and vandalism of mining sites. **Governor signed.**

SB 1189 – Requires DEQ to provide a new public process for enforcement of water quality violations at the request of a person who has received a notice of civil penalty or formal enforcement action. If the new public process is found to be “comparable” with the federal Clean Water Act enforcement structure, use of this new public process may shield a party from

third party lawsuits for the violation.

Vetoed Water Quality Bills

HB 2652 – Eliminated DEQ authority to require permits for agriculture return flows, unless permits required by federal law. (Note: DEQ does not currently require permits for agricultural return flows).

SB 675 - Required DEQ to waive 401 certification for projects on federal land and attempted to give Oregon Department of Agriculture exclusive authority to regulate water quality on farm land.

SB 1166 - Restricted DEQ authority to designate outstanding resource waters.

Air Quality

HB 2637 – Requires DEQ to exempt from pollution testing vehicles registered in Yamhill and Columbia counties, where owners sign statement that vehicle is not used to commute to Portland metro area.

HB 3455 – Requires DEQ to provide extended evening hours at Portland-area vehicle pollution testing stations. **Governor signed.**

SB 337 – Exempts burning of residue from Christmas tree farms from open burning regulation during part of the year. **Governor signed.**

Waste Management and Cleanup

HB 2431 -- Creates a Community Right to Know Technical Committee including the Department of Agriculture, DEQ, State Fire Marshal, Health Division, Department of Transportation, and the Governor. Requires the Committee to develop a plan to enhance and improve public access to public records pertaining to hazardous and toxic substance data. Requires report to the 71st Legislative Assembly. Requires the Director of DEQ to establish a governmental policy group to explore options for enhancing statewide hazardous and toxic substance reporting and data collection. Requires report to the Governor and the 71st Legislative Assembly. Sets conditions for local “community right to know” laws.

HB 2800 – Extends temporary schedule for monthly hazardous waste fees paid to DEQ to December 31, 2001. Adds hazardous waste management fee for certain emission control dust of sludge from certain steel production, provided that the facility has a plan and schedule for treatment of such waste approved by DEQ. **Governor signed.**

HB 3107 – Requires the EQC to adopt rules for a heating oil tank program to regulate the decommissioning of heating oil tanks and corrective action of soil contamination resulting from heating oil tank leaks. The program shall include a procedure to license contractors who show DEQ they can provide heating oil tank services, an educational pamphlet on proper

decommissioning of tanks, and a certification program that allows DEQ to certify voluntary decommissioning of tanks or approve a cleanup of contamination. Provides for annual license fee for licensed contractors. Requires person who is converting from heating oil to different heating source to ensure that the tank is emptied of oil.

HB 3201 – Allows a local citizens advisory committee for solid waste issues to fulfill duties of a regional disposal site advisory committee. **Governor signed.**

HB 3456 – Requires DEQ to implement independent cleanup program for contaminated sites. Creates Governor-appointed, Senate-confirmed panel to hear property owner appeals of DEQ cleanup requirements for independent cleanup sites. Allows independent cleanup sites to avoid cleanup or treatment of “hot spots” – the most toxic areas -- of contamination.

HB 3616 – Modifies cleanup law to allow “excavation and off-site disposal” to be equivalent to treatment when choosing the remedy for “hot spots” cleanup. Requires DEQ Director to consider the method and distance of transportation when approving “excavation and off-site disposal.” Allows DEQ to include a hazardous waste recycling operation in an existing hazardous waste permit. Removes legitimate hazardous waste recycling operations from hazardous waste facility siting law. Defines which requirements of the hazardous waste facility siting law apply to renewals of hazardous waste permits, clarifying questions about existing rules. Requires disposal fees paid to DEQ to be considered when DEQ considers bids or proposals to clean up contaminated sites. **Governor signed**

SB 542 - Eliminates the Oil Heat Commission, including the 1997 law that would have provided grants to homeowners with heating oil tank problems. Requires pumpout of tanks when taken out of service. Requires formation of an advisory committee to investigate ways to lower cleanup costs. HB 3107 is a related bill that partially replaces programs eliminated by SB 542 by changing DEQ’s role to overseeing contractors, instead of each tank project, and utilizing contractor certifications to ensure the work is performed correctly. Neither SB 542 nor HB 3107 provide financial assistance for homeowners. **Governor signed.**

SB 940 – Changes existing law that requires glass container manufacturers to use recycled glass in new containers when they sell them to Oregon packagers. Limits the requirement to use 35% recycled glass to plants within 750 miles of Oregon’s borders. This covers the dozen glass plants on the West Coast and they primarily serve the Oregon market. Requires glass plants beyond 750 miles to report to DEQ if annual sales exceed 1000 tons. Postpones implementation of the 50% recycled glass requirement until 2003. (Note: there is a glass plant in Seattle that can’t make the 35% requirement. The Department will use a consent order to put that plant on a schedule to comply.

SB 1089 – Changes existing law regarding administration of funding for “self-insurance” by dry cleaners for cleanup of contamination from dry cleaning chemicals. Requires dry cleaners to display a certificate that the dry cleaner fee has been paid, and requires the Dept. of Revenue to annually make available a list of who has paid the fees. No changes were made to the fee structure.

SB 1205 – Provides for changes in Oregon law as applied to insurance coverage for cleanup of environmental contamination. The bill provides that 1) Oregon law applies to claims when cleanup of contaminated sites occur in Oregon, unless the policy provides that the laws of other states apply; 2) cleanup agreements with DEQ and EPA are equivalent to lawsuits when those terms are used in insurance policies; and 3) fees and costs under voluntary cleanup agreements and consent orders with DEQ or EPA are not considered voluntary payments when insurance claims are made. **Governor signed.**

SB 5544 – Authorizes funding, passed through DEQ, to upgrade underground storage tanks at 10 rural gas stations. The bill appropriated 97-99 funds. All grant projects were completed by 6/30/99. **Governor signed.**

SB 1113 - Allows use of the Orphan Site Account (state funds used for cleanup of “orphan site” contaminated sites) for cleanup of submerged lands (e.g. Coos Bay, Portland Harbor). **Governor signed.**

Laboratory

HB 2177 – Allows the Oregon Health Division, DEQ and Department of Agriculture to develop standards for any laboratory that voluntarily seeks accreditation and performs environmental testing for a fee or for determining compliance with environmental law. Health Division to adopt rules to implement the environmental laboratory accreditation program.

Tax Credits

HB 2181 – Amends existing pollution control tax credit statute to specify that nonpoint source pollution control facilities are eligible for pollution control tax credits. DEQ believes this does not change existing law, but emphasizes the eligibility of nonpoint source pollution control facilities. **Governor signed; law is effective October 23, 1999.**

HB 3202 – Extends sunset date for pollution control tax credit statute to 2009.

HB 3606 – Provides that certain pulp and paper mills can transfer pollution control tax credit to lender/contract buyer.

General/Admin/Agency Management

HB 2378 – Requires state agencies to submit a copy of adopted rules to Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State. **Governor signed**

HB 2525 – Creates pilot program for central hearing coordination for state agencies, through the Employment Department. Hearings officers will be assigned through the central pool. After two years, hearings officers must meet new standards and training qualifications. Hearings must be held under the new standards in two years. **Governor signed.**

HB 3035 – Before the adoption, amendment or repeal of any rule, state agencies shall give notice of its intended action:

- (a) In the manner established by rule adopted by the agency under ORS 183.341 (4);
- (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date; and
- (c) At least 28 days before the effective date, to persons who have requested notice; and
- (d) At least 49 days before the effective date, to specified legislators and legislative committees.

Governor signed.

HB 3174 – Removes authority for state agencies to introduce legislation to Legislative Counsel. Allows DAS to file legislation to implement Governor's budget recommendations; allows Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of BOLI and Superintendent of Public Instruction to file legislation. Allows state agencies to file legislation through a member or committee of the Legislative Assembly.

HB 3182 – Requires Governor to prepare alternative budget plan for state agencies that provides 90 percent of amounts proposed in actual budget. Requires alternative plan to describe programs and activities that would not be undertaken under alternative budget. Requires such programs and activities to be ranked in order of importance and priority. Creates pilot program to study performance-based budgets; sunsets pilot program 12/31/2001.

HB 3509 – Requires state agencies to submit by October 1 each year a report to the Legislative Fiscal Office describing the status of the agency's liquidated and delinquent accounts and efforts made to collect the accounts. With some exceptions, state agencies shall offer for assignment every liquidated and delinquent account to a private collection agency.

SB 671 - A state agency that enters into an agreement under ORS 190.110, 190.420 or 190.485 on or after the effective date of this 1999 Act shall submit a summary of the agreement to the Oregon Department of Administrative Services within the 30 days after the effective date of the agreement. A state agency that, before the effective date of this 1999 Act, entered into an agreement under ORS 190.110, 190.420 or 190.485 that will be in effect 90 days after the effective date of this 1999 Act shall submit a summary of the agreement to DAS within 90 days after the effective date of this 1999 Act.

SB 774 – Extends sunset of DEQ green permits program to December 31, 2003. **Governor signed.**

SB 1320 - Creates new legislative office of natural resources. The President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives, shall select the Natural Resources Policy Administrator by unanimous agreement.

8/5/99

Options for HB 2431 Implementation

Background:

HB 2431 requires Department work in two areas: section 2 where we are involved with the Technical Community Right to Know Committee (Fire Marshal committee); and Section 4, where we establish and lead a high-level policy group (Lang's group).

The bill gives us these resources to do the work:

18 months NRS 5 for Lang's group

18 months NRS 4 for both Fire Marshal committee and Lang group

12 months OS2 half time for Lang's group

\$25,000 contract \$\$

Lang's Group is a high level policy group, likely with some members from out of state, to explore options/develop recommendations for enhancing statewide hazardous and toxic substance reporting and data collection, including results of local reporting (the Eugene law and any others). The group is established by the DEQ director and staffed by DEQ.

The Fire Marshal committee consists of reps from Dept. of Ag, DEQ, Health Div., ODOT, Fire Marshal and the Governor and is to develop a plan to enhance and improve public access to records pertaining to hazardous substance and toxic substance data. The committee is chaired and staffed by the Fire Marshal.

A related Issue is the PBT exec order. This order directs DEQ to work to eliminate the releases of PBTs into Oregon's environment. No resources are given to DEQ to do this.

Intent and Discussions so far. The fiscal impact for HB 2431 was discussed in detail with the Legislature's Fiscal Office, Representative King, and lobbyists Ledger and Craven. There is a clear expectation that we need all of the resources we listed in our fiscal (and then some) to implement the bill. Our work will be watched, and we must be careful to utilize these resources for the tasks for which they were given to us.

Organizational options for doing the work.

These options were considered:

- 1) All in Director's office (under Burnet?)
- 2) All in WMC (under Price? also under Anderson?)
- 3) Split: Lang group FTE in Director's Office
Fire Marshal FTE in WMC
- 4) Split: Lang's Group FTE in Director's Office
Fire Marshal FTE in Info systems

- 5) Split: Lang's Group, done by a consultant (FTE converted to contract) with oversight from Director's office or WMC, and Fire Marshal FTE in WMC
- 6) Split with Fire Marshal FTE going to IS. (Note: After working with the Fire Marshal in the past on this subject, and recognizing his group will be developing a plan, and not implementing, I concluded that a policy, not technical, person is needed.)

Two primary options to offer/discuss:

- 3) Split: Lang group FTE in Director's Office
Fire Marshal FTE in WMC
- 5) Split: Lang's Group, done by a consultant (FTE converted to contract) with oversight from Director's office or WMC, and Fire Marshal FTE in WMC

Both of the above have the Fire Marshal FTE in WMC. The first focus of the discussions will likely be the Fire Marshal data, our TUR data, and the TRI data, which the Fire Marshal receives but we are more likely to use. This points to WMC. Also, WMC's work on the toxic task force means that WMC can pick up where the task force's discussions left off. Finally, this FTE will be needed to provide program help to the Lang's group FTE.

The question then becomes where to locate the Lang's group FTE. The primary options are the Director's office (Paul Burnet's group?), WMC (HW?), or use of a consultant with oversight from one of the two. The use of a consultant experienced in high-level policy groups seems appealing. (I can envision the excellent job Bill Ross would do.)

Timing

The Fire Marshal plans to move quickly to convene his group. Meanwhile, there are high expectations/visibility for Lang's group and much groundwork to get done. So, decisions where to locate staff, and then hiring, should proceed as quickly as possible.

How would it work in WMC?



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

Department of Environmental Quality Memorandum

DATE: August 11, 1999
TO: Environmental Quality Commission
FROM: Langdon Marsh
RE: Director's Report

Legislative Update:

The 70th Oregon Legislative Assembly concluded on July 24. As in 1997, funding for Oregon schools and transportation was a major focus. The major environmental bills passed this session were a new law to track pesticide use (HB 3602); implementation of Ballot Measure 66, the Parks and Salmon Initiative (HB 3225), and a state Community Right to Know law (HB 2431). The Right to Know bill includes new policy development work for DEQ around public access to information about hazardous substances. The major legislative issues for DEQ were a proposed bill to revise Oregon's cleanup law (HB 3456) and funding for wastewater permitting and air quality work. HB 3456 passed, but we anticipate a veto by Governor Kitzhaber. Funding for natural resource agencies was a priority for the Governor, whose support provided end-of-session funding that substantially covered budget shortfalls in wastewater and air quality.

DEQ budget, strategic planning efforts

During the final days of the legislative session, the legislature added \$2.8 million to DEQ's budget to fill water quality and air quality permitting program holes and to fund an expanded effort to develop TMDLs for the Willamette River. The funding was the result of efforts of the Governor on DEQ's behalf.

The Department is presently examining the details of the budget, calculating how much employee salary increases will cost and what the effects will be on staffing. The budget system provides limitation for salary increases, but revenue from fees and federal grants does not increase, so these costs must be absorbed.

DEQ will begin to tie its strategic planning efforts and budget realities together when we revisit our strategic plan beginning this fall. We expect to establish priorities which we will review with the EQC.

Portland Harbor Cleanup Update

The June 29 EPA regional decision team meeting was canceled, allowing DEQ to focus on two outstanding issues for deferral: coordination with natural resource

trustees and tribes. The natural resource trustee agencies including NOAA and USFW, are concerned that without signed tolling agreements, the statute of limitations runs out on their ability to file natural resource damage claims. The Governor has stated that if signed tolling agreements are not obtained within 8 months, then the state will support a NPL listing for the harbor.

DEQ continues to schedule meetings with the six tribes interested in the Harbor. The Director has met with two tribes, and the goal is to schedule the remaining visits by mid September. In order to support a state led cleanup in the Harbor, the tribes need to be assured of involvement throughout the cleanup. The governor is planning a meeting with the Chairs of all of the six tribes next month, and will emphasize the state's commitment to tribal involvement and an appropriate government to government process.

DEQ continues to proceed with task as outlined in the Portland Harbor Sediment Management Plan, including tribal coordination, public outreach, including community interviews, site assessment work and developing a programmatic workplace.

Assorted Kudos

From Jack Akin, President of EMC and ESL, Inc:

I wish to express appreciation for the effective way that DEQ has performed these past several years. DEQ officers always return calls, are informed and knowledgeable and have helped me, my companies and clients considerably. We give you an A+!

From Thomas Fahey, Executive Director, Western States Project:

I am writing to thank you on behalf of all the members of the Western States Project for the financial contribution received as a result of the Crystal Ocean case successfully completed by [DEQ]. Your willingness and ability to direct settlement funds to the Project has significantly helped us provide the enforcement training and case support services so needed by our state and local members. I would especially like to recognize Elliot Zais from [DEQ].

From Alan Burns, Mayor, Florence Oregon

...Although many entities look upon dealings with regulatory agencies such as DEQ with angst, our experience throughout [building a wastewater treatment facility] has been one of a partnership working toward a common goal.

From Hal Schick, Board Chair, Neskowin Regional Sanitary Authority

The purpose of this letter is to thank DEQ for the professional and sincere service [re extension of a construction loan, unusual for DEQ].... We feel DEQ did its very best for a small community. We often hear criticism of state and federal bureaus, but we want to thank you for a good operation and the personnel to carry out the work of keeping Oregon a clean environment.

**Addendum to Director's Report to the Environmental Quality Commission
August 13, 1999**

Court Ruling on New Ozone and Particulate Standards

As you know, in May the circuit court invalidated EPA's authority to enforce the ozone and particulate standards adopted in 1997. The effect of the court's decision is that EPA cannot enforce Clean Air Act requirements related to the 8-hour ozone standard or the PM_{2.5} standard. The United States Justice Department has filed an appeal on behalf of EPA. The circuit court, in a two-to-one vote, called into question the constitutionality of the Clean Air Act to set air quality standards. The circuit court did not question the science and process conducted by EPA justifying the setting of new, more protective standards.

Oregon DEQ is continuing its work to meet the new air quality standards for ozone and fine particulate matter as directed by the Environmental Protection Agency. We have and will continue to support the new clean air standards to protect public health and the environment. We are continuing to plan and implement pollution prevention strategies to ensure that Oregon communities meet these standards. In fact, at your next meeting you will be asked to consider a rulemaking directed at PM_{2.5} pollution prevention in the Grants Pass area. Similar efforts are underway in Medford and Klamath Falls, in addition to efforts in the Portland and Medford areas to address the 8-hour ozone standard.