

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF CROOK

UPPER CROOKED RIVER
CONSERVATIONISTS, an Oregon
nonprofit corporation; and SHOTGUN
RANCH, L.L.C., an Oregon limited liability
company,

Plaintiffs/Petitioners,

v.

WATER RESOURCES DEPARTMENT of
the State of Oregon and WATER
RESOURCES COMMISSION of the State of
Oregon,

Defendants/Respondents.

Case No. 23CV46779

**DECLARATION OF KIMBERLEY
PRIESTLEY IN SUPPORT OF
WATERWATCH OF OREGON'S
MOTION TO INTERVENE**

[Case involves water rights]

I, Kimberley Priestley, declare as follows:

1. I am over the age of 18, have personal knowledge of the following, and could competently testify if called as a witness in this legal action.

2. I serve as the Senior Policy Analyst for WaterWatch of Oregon ("WaterWatch"). I have worked for WaterWatch since 1993. My principal place of business is the main office of WaterWatch, located at 213 SW Ash Street, Suite 208, Portland, OR 97204. I received a J.D. in 1992 and an L.L.M. in international environmental law in 1993 from the University of Washington. Prior to my legal education, I earned a B.S. from the University of California at Berkeley. I reside in Portland, Multnomah County, Oregon.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WaterWatch’s Work in General

3. WaterWatch is a nonprofit river conservation organization, incorporated in Oregon and founded in 1985. WaterWatch is tax exempt under Section 501(c)(3) of the Internal Revenue Code. The purposes of the Organization, as stated in Article II of its amended bylaws, are:

- a. To promote water policies for Oregon and the West that provide the quantity and quality of water necessary to support fish, wildlife, recreation, ecological values, and a sound economy.
- b. To protect and restore instream flows for the benefit of important fishery resources, wildlife, recreation, ecological values, aesthetics, and pollution abatement.
- c. To promote water conservation and efficient use of water.
- d. To ensure that Oregon state laws relating to water are properly enforced and implemented.
- e. To carry out these purposes through public education and through available legislative, administrative, and judicial processes.

4. WaterWatch works to protect and restore instream flows in Oregon’s rivers and streams—through collaboration, advocacy, and, when necessary, litigation—for the benefit of fish, wildlife, recreation, and people who enjoy and depend on healthy rivers and streams. WaterWatch also promotes sound management of Oregon’s surface and ground water resources generally and works to protect and restore the free-flowing character of Oregon’s rivers and streams. WaterWatch employs a staff of eleven, including seven people who work full-time. WaterWatch also uses contractors, interns, externs, and volunteers to carry out its mission. WaterWatch has received funding and other forms of support from thousands of individual supporters and numerous foundations.

1 **WaterWatch’s Interests in Protecting Flows in the Crooked River**

2 5. WaterWatch has many members across Oregon who care about the health of
3 streams, rivers, aquifers, fish, and wildlife in the Deschutes Basin, including in the Crooked
4 River Basin, and who invest in the organization to support WaterWatch’s work advocating
5 for these interests.

6 6. WaterWatch has been working in the Deschutes Basin, including the Crooked
7 River Basin, for more than 30 years. I have personally been involved in all of WaterWatch’s
8 Deschutes Basin work since 1999. Some highlights of that work include helping develop the
9 groundwater mitigation program for the Deschutes Basin Study Area as part of the Oregon
10 Water Resources Department’s (“OWRD”) Deschutes Basin Steering Committee; filing
11 comments and/or protests on many water rights applications; and serving on the Steering
12 Committee of the Basin Study Work Group, which produced the Upper Deschutes River
13 Basin Study with funding from the U.S. Bureau of Reclamation (“Reclamation”) and
14 OWRD.

15 7. WaterWatch was a principal negotiator of the Crooked River Collaborative
16 Water Security and Jobs Act of 2014 (“Crooked River Act”). WaterWatch attended
17 negotiations over a two-year span with Senator Merkley and/or his staff, American Rivers,
18 Trout Unlimited, the Confederated Tribes of the Warm Springs Reservation, irrigation
19 districts, the City of Prineville, and, at times, state agencies and/or the Governor’s office.
20 WaterWatch helped to draft language specific to instream flows, edited/commented on
21 numerous iterations of the bill, and participated in several meetings with Senator Merkley’s
22 staff on language/intent.

23 8. Since the passage of the Crooked River Act, WaterWatch has worked on a
24 number of fronts to ensure implementation of the Act. WaterWatch was a party to the
25 settlement agreement that resulted in the transfer of more than 68,000 acre-feet of the
26 Reclamation storage right in Prineville Reservoir from irrigation use to fish and wildlife use.

1 WaterWatch advocated for the procurement of a secondary water right to protect water in-
2 stream as part of the Deschutes Basin Habitat Conservation Plan. WaterWatch has
3 participated in numerous meetings with state and federal agencies, the Confederated Tribes
4 of the Warm Springs Reservation, and conservation groups to discuss the process to achieve
5 storage, release, and use of water for fish as directed by the Crooked River Act. Finally,
6 WaterWatch submitted lengthy comments supporting the issuance of the secondary water
7 right at issue here (Permit S-55394). In those comments, WaterWatch explained that
8 obtaining a secondary permit to protect water released from Bowman Dam into the Crooked
9 River from Bowman Dam to Lake Billy Chinook was essential to the implementation of the
10 Crooked River Act. OWRD ultimately granted Reclamation’s application and issued Permit
11 S-55394 on September 15, 2023.

12 9. WaterWatch and its members thus have a documented and well-established
13 interest in protecting flows in the Crooked River. In particular, WaterWatch and its members
14 have an interest in defending the legality of Permit S-55394, which (at long last) ensures that
15 water released by the Bureau of Reclamation from Prineville Reservoir can be protected for
16 fish and wildlife purposes.

17 10. This litigation threatens to undermine the hard work—the time, money, and
18 other resources—that WaterWatch has put into securing adequate, legally protected flows for
19 fish and wildlife in the Crooked River. Petitioners are seeking to set aside the Final Order
20 granting Permit S-55394, which would invalidate that permit, frustrating the implementation
21 of the Crooked River Act and making it harder to protect flows released from Bowman Dam
22 in the Crooked River. Because of the significant time and resources that WaterWatch has
23 invested over the years in trying to protect flows for fish and wildlife in the Crooked River,
24 including WaterWatch’s work on the Crooked River Act, WaterWatch has an institutional
25 interest in defending the legality of Permit S-55394. Moreover, many of WaterWatch’s
26 members, who have recreational and aesthetic interests in the Crooked River and the fish and

1 wildlife that live there, are at risk of having those interests impaired by this litigation,
2 because invaliding Permit S-55394 could very well lead to a decrease in flows for fish and
3 wildlife below Prineville Reservoir.

4

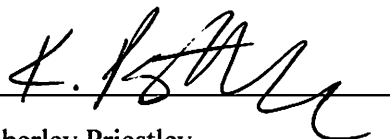
5 **I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE**
6 **BEST OF MY KNOWLEDGE AND BELIEF AND THAT I UNDERSTAND IT IS**
7 **MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR**
8 **PERJURY.**

9

10 Dated: *3/26/2024*

11

12

By: 
Kimberley Priestley

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on March 26th, 2024, I served the foregoing declaration of Kimberley Priestley in support of WaterWatch of Oregon’s motion to intervene upon the parties to this case by email. Service was accomplished at the following email addresses:

Petitioners:

Respondents:

Sarah R. Liljefelt
Kevin T. Sasse
Dunn Carney LLP
851 SW 6th Ave., Ste. 1500
Portland, OR 97204
sliljefelt@dunncarney.com
KSasse@dunncarney.com

Shaunee Morgan
YoungWoo Joh
Department of Justice
100 SW Market St.
Portland, OR 97201
shaunee.morgan@doj.state.or.us
youngwoo.joh@doj.state.or.us

Dated: March 26th, 2024

/s/ Andrew R. Missel
Andrew R. Missel (# 181793)
ADVOCATES FOR THE WEST
3701 SE Milwaukie Ave., Ste. B
Portland, OR 97202
(503) 914-6388

Attorney for WaterWatch of Oregon