



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Water Resources Commission Meeting
Agenda Item F, February 25, 2009

Reservation Request - Chapter 690, Division 512

I. Issue Statement

On October 6, 2008, the Oregon Water Resources Department (OWRD) received a request from Harney County for a reservation of 4,550 acre feet of unappropriated water for multipurpose storage for future economic development on Home Creek, tributary to the Catlow Valley in the Malheur Lakes Basin. The Commission is asked to authorize the Department to initiate a formal rulemaking process to modify the Malheur Lakes Basin Program (OAR Chapter 690, Division 512) pursuant to ORS 537.356 in response to the reservation.

II. Background

Reservation requests are processed as amendments to basin program rules through the rulemaking process. Reservations of water for multipurpose storage for future economic development are allowed by ORS 537.356. Any local government, local watershed council, or state agency or any other individual cooperating jointly with a local government, local watershed council, or state agency may request the Commission to reserve unappropriated water for multipurpose storage for future economic development.

Reservations affect several things:

Priority Date - Establish a priority date for reservation water. The priority date for a reservation is the date the Commission takes action to initiate the rulemaking process under ORS 537.356(3).

Type of Use - Establish a limited classification of use for water under the reservation. Water right applications to appropriate reserved water may only request to use such water for multi-purpose storage for future economic development as allowed under ORS 537.356(1).

Water Availability - Reservations are reflected in the Department's water availability model.

A reservation is not the same thing as a water right application or permit. For example, approval of a reservation does not mean that any water right application will be approved, or that a reservoir may be constructed. Rather, a reservation merely sets aside water for a certain use, with a specific priority date. If a water user wishes to appropriate reserved water, they must submit a water right application to the Department. The Department would then review that water right application based on the applicable public interest review standards.

The Department received a reservation request from Harney County on October 6, 2008 (Attachment 1). The area involved in the reservation request is depicted in Attachment 2. Harney County's reservation request stems from a "Settlement Agreement" resolving a number of water right protests concerning instream water right applications and storage and use of stored water. The instream water right applications (IS 84562 & IS 84563) were on Home Creek and Three Mile Creek. The applications for storage and use of stored water (R 84576 and S 84577) are on Home Creek. The parties included in the Settlement Agreement are the Department, Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department (OPRD), US Bureau of Land Management, Harney County, WaterWatch of Oregon, and Roaring Springs Ranch. The Settlement Agreement is included in the reservation request as an attachment.

The Settlement Agreement included several items. OPRD agreed to certain conditions related to the instream water rights and to adjust procedures in their instream water right application process. Harney County agreed to submit a reservation request for multi-purpose storage. The Department agreed to recommend that the Commission initiate the reservation process when requested by Harney County. Roaring Springs Ranch agreed to withdraw pending applications for storage and secondary diversion of stored water on Home Creek if the proposed reservation is approved as requested. This will effectively terminate any pending contested case hearings on those applications, and thereby resolve a number of additional protests.

III. Discussion

In the Settlement Agreement, the Department identified quantities of unappropriated water that are available for the reservations through a model from the Natural Resources and Conservation Service.

On October 16, 2008, the Department issued a public notice to local governments and watershed councils within the geographic area or basin affected by the request (Attachment 3). This public notice is required under ORS 537.356(2) of the reservation process. The public comment period closed on February 17, 2009. The Director's report for the November 2008 Commission meeting contained an item on Harney County's Reservation Request and the notice to affected local governments and watershed councils. If comments are received after the mailing of the staff report, they will be presented at the Commission meeting.

The authority to approve the reservation request lies with the Commission. As party to the agreement, the Department agreed to recommend that the Commission initiate a rulemaking as requested by Harney County. In undertaking that obligation, the Department has made specific commitments regarding the rulemaking process, or restricted its ability to consider all public comments.

The Department now fulfills its obligation under the Settlement Agreement by recommending that the Commission initiate the reservations as requested by Harney County. If a formal rulemaking is authorized by the Commission, the Department will carry out the regular rulemaking process to modify the Malheur Lakes Basin Program (OAR Chapter 690, Division 512). This process will fully consider all comments, and provide a final recommendation to the Commission based on consideration of all available information.

If the Commission authorizes initiation of a rulemaking process, a number of actions will be undertaken, including:

- Notice in the Secretary of State's monthly bulletin
- Newspaper notice in Harney County once per week for four consecutive weeks
- Notice to Legislators
- Notice to parties on the Department's rulemaking list
- Notice to local governments, known interested parties, settlement and commenting parties
- Hearing draft of rules posted on the Department's web page
- A public hearing in the basin with a Commissioner serving as the hearing officer.

IV. Alternatives

The Commission may consider the following alternatives:

1. Authorize initiation of a formal rulemaking process to modify the Malheur Lakes Basin Program (OAR Chapter 690, Division 512) as requested by Harney County.
2. Not authorize initiation of a formal rulemaking process to modify the Malheur Lakes Basin Program (OAR Chapter 690, Division 512) as requested by Harney County.
3. Defer action and direct staff to report back with additional information.

IV. Summary

The question before the Commission is currently limited to whether to authorize initiation of a formal rulemaking process concerning the reservation requested by Harney County. If a rulemaking is authorized by the Commission, The Department will carry out the regular rulemaking process for basin program amendments, continue to consider all comments, and provide a final recommendation to the Commission based on consideration of all available information.

The Director recommends Alternative 1, that the Commission authorize initiation of a formal rulemaking process to modify the Malheur Lakes Basin Program (OAR Chapter 690, Division 512) as requested by Harney County.

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Attachments:

1. Harney County's Reservation Request and Settlement Agreement
2. Geographic Reference Map
3. Notice to Local Governments and Watershed Councils

Bill Fujii

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