

## WATER RESOURCES DEPARTMENT

## DIVISION 512

## MALHEUR LAKE BASIN PROGRAM PROVISION

690-512-0040

## Water Availability

(1) Except as provided in section (3) of this rule, shall not accept an application for permit, or issue a permit, for any use of surface water, or of groundwater the use of which has the potential to substantially interfere with surface water, in the Malheur Lake Basin unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:

(a) Streamflow measurements of gage records from the source or, for use of groundwater, the stream in hydraulic connection with the source; or

(b) An estimate of water availability from the source or, for use of groundwater, the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other, similar streams and considers current demands for water affecting the streamflows.

(2) The criteria used in determining if the use of groundwater has the potential to substantially interfere with surface water shall be those established in OAR Chapter 690, Division 9.

(3) This rule shall not apply to issuance of:

(a) Instream water rights;

(b) Permits for storage of water between March 1 and May 31 ~~if the application is not required to be referred to the Commission under OAR 690-011-0080(2)(a)(C); or~~

(c) Permits for use of water legally stored.

~~[(d) Permits for Multipurpose Storage under OAR 690-512-110]~~

Stat. Auth.: ORS 536.300 & [ORS 536.340](#)

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Stats. Implemented:

Hist.: WRD 3-1985, f. & cert. ef. 3-28-85; WRD 23-1990, f. & cert. ef. 12-14-90;  
Administrative Renumbering 1-1993, Renumbered from 690-080-0120

**690-512-0100**

**Home Creek Reservations**

**(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 ~~[to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water].~~ 4,550 acre-feet of unappropriated water in Home Creek and tributaries are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of February 25, 2009.**

**(2) "Multipurpose reservoir", as used in OAR 690-512-0100~~[-and 0110,]~~ means a reservoir storing water to serve more than two potential beneficial uses including but not limited to irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.**

**(3) Reservations of water for future economic development ~~[in OAR 690-512-0110]~~ allocate surface water for storage in multipurpose reservoirs.**

**~~[(4) In addition to the requirements of OAR Chapter 690, Division 310, an application for a permit to store reserved water shall include:~~**

**~~(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;~~**

**~~(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;~~**

**~~(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and~~**

**~~(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.]~~**

**~~[(5)] (4) For the purposes of review of applications to store reserved water under OAR Chapter 690, Division 310, and subject to the provisions of section ~~[(7)](6)~~, the reserved quantities of water listed in OAR 690-512-~~[0110]~~ 0100 (1) are available for appropriation.~~**

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~~[(6)]~~**(5)** The determination of water availability under section ~~[(5)]~~ **(4)** shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR Chapter 690, Division 310.

~~[(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, Division 310, and prior to issuance of a permit for a proposed project storing water reserved under 690-512-0110 shall also find:~~

~~(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with Harney County;~~

~~(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and~~

~~(c) What storage season is appropriate and whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.]~~

**(6) In addition to the requirements of ORS chapter 537 and applicable rules, the Department will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:**

**(a) The proposed reservoir and any order for water rights secondary with the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;**

**(b) The proposed reservoir and any water rights secondary to the storage right will protect and enhance instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with Department of Fish and Wildlife and Department of Environmental Quality; and**

**(c) Whether minimum bypass flows are required.**

**(7) In addition to the requirements of ORS chapter 537 and applicable rules, any final order approving an application for a permit to store water and any order for water rights secondary with the storage right under the Home Creek Reservation shall contain the findings required in (6)(a)-(c) above, and will also contain conditions that:**

**(a) Set the appropriate storage season,**

**(b) Ensure no injury to senior water rights, including instream water rights,**

**(c) Protect and enhance instream values, and**

**(d) Set minimum bypass flows if identified under (6)(c) above.**

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~~[(8) Permits to store reserved water shall receive the priority date of the reservation.]~~

~~[(9)]~~ **(7)** If has not received applications for multipurpose reservoir permits for the full quantity of reserved water by June 5, 2014, shall provide the Parties involved in the Home Creek Settlement Agreement with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. shall continue to provide progress reports at five year intervals while these rules are in effect unless receives applications for multipurpose reservoir permits for the full quantity of reserved water.

~~[(10)]~~ **(8)** If has not received applications for multipurpose reservoir permits for the full quantity of water reserved by~~[,]~~ June 5, 2019, ~~[reservation of water]~~ applications for remaining quantities of unallocated water under OAR 690-0512-~~[0110]~~ 100 (1) ~~[shall automatically be repealed on]~~ may not be accepted after June 5, 2019, unless this deadline is extended ~~[by further]~~ through rulemaking ~~[of]~~ by the Water Resources Commission.

Stat. Auth.: ORS 536 & [ORS 537](#)

Stats. Implemented: [ORS 536.310](#), [ORS 537.249](#), [ORS 537.356](#) & ORS 537.358

~~[690-512-0110]~~

### ~~Malheur Lake Basin Reservations~~

~~(1) Four thousand five hundred fifty (4,550) acre-feet of unappropriated water of Home Creek and tributaries are reserved for storage in multipurpose reservoirs to be constructed in the future.~~

~~(2) The priority date of permits issued under the reservation is February 25, 2009.~~

~~(3) Water availability for applications shall be calculated based on the percentage of the drainage area above the point of appropriation not to exceed the amount proportional to the total and any quantity of previously issued permits subtracted from the remaining reserved water if these applications are above the proposed point of diversion.~~

Stat. Auth.: ORS 537

Stats. Implemented: [ORS 537.249](#) & [ORS 537.356](#)

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