



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item L, November 16, 2012
Water Resources Commission Meeting

Proposed Revision of Coastal Basin Programs (OAR 501, 515, 516, 517, 518)

I. Issue Statement & Synopsis of Proposed Rule Changes

Basin programs are basin-specific administrative rules authorized by ORS 536.300(2) that govern the allocation of unallocated public waters. The programs for the five coastal basins were written several decades ago, and are overdue for modernization for reasons detailed below.

The purpose of this rulemaking is four-fold: First, the department proposes deletion of rules and language that have been rendered obsolete by subsequent legislation. Second, to incorporate certain orders of withdrawal into the classifications of allowable uses. Third, proposing language to clarify the distinction between the timing of diversion for storage and that of storage *per se*, and fourth, proposing various non-substantive technical changes.

The rulemaking effort included multiple internal discussions regarding the relative importance and feasibility of certain revisions. A Rules Advisory Committee¹ met on July 13, 2012. The Committee was very helpful in defining the appropriate scope of the rulemaking and ensuring that all facets of each proposed revision were considered. Public hearings were held in each basin between September 25 and October 3, 2012 with Commissioners LeJeune, Roberts, and Whipple serving as hearings officers. Public comments received in writing by the October 10, 2012 deadline were also considered in the final proposed rules under consideration by the Commission.

¹ Rules Advisory Committee membership: Tim Gross, City of Newport; Bob Jones, Medford Water Commission; Shirley Kalkhoven, Mayor of Nehalem; Rick Kepler, Oregon Department of Fish and Wildlife; Helen Moore, Water For Life; Kimberley Priestley, WaterWatch; Rob Schab, Coos Bay-North Bend Water Board; Don Yon, Department of Environmental Quality.

II. Summary & Staff Analysis of Global Changes to Coastal Basin Programs

A. Removing the requirement for WRC review of certain applications for storage

Four of the coastal basin programs contain a rule² that requires review by the Commission of storage applications impounding more than 3 million gallons of water. These rules were adopted prior to the passage of the Instream Water Right Act in 1987, which changed the statutory process for protecting instream values through the establishment of instream water rights. They were also created prior to repeal of ORS 536.325 in 1997, which removed the Commission's authority to establish or modify minimum perennial streamflows. For these reasons, the Department proposes that these rules be deleted.

B. Removing the prohibition on acceptance of applications for non-classified uses

These rules³ were superseded by legislation in 1989 that created ORS 536.295, which describes the process for requesting Departmental and Commission review of a proposed non-classified use. The rules also imply that other state agencies may accept or approve applications for beneficial use of public waters, which is no longer the case under ORS 536.220(2)(a).

Rules that are not being deleted in their entirety are being edited for two reasons. First, applications must be accepted before they can be evaluated, and therefore "accepted" is being changed to "approved". Secondly, the Department proposes removing the reference to other state agencies as described above.

C. Including withdrawn sources that were not included previously

A number of surface-water sources have been withdrawn from further appropriation over the years. These withdrawals have been by the Legislature, orders of the State Engineer, orders of the Water Resources Commission or its predecessor (Water Policy Review Board), or the Director. It is desirable to have classification of allowable uses available in one place (i.e., the basin program). Orders used as the basis for new rule language in these basin programs are available upon request from Tim Wallin: timothy.wallin@state.or.us or 503.986.0891.

D. Distinction between allowable period of diversion for storage from storage *per se*

Some coastal basin programs contains rules⁴ with language that confuses the allowable period of diversion for storage with the period during which water may be stored. In each instance, the

² OAR Chapter 690: Division 501-0020, 515-0000(3)(a), 515-0020(4)(b), 515-0030(2)(a), 515-0040(2)(a), 515-0050(2)(a), 516-0020, 518-0040.

³ OAR Chapter 690: Division 501-0005(2), 515-0000(1)(b), 515-0010(1)(b), 515-0020(1)(a), 515-0030(1)(b), 515-0040(1)(b), 515-0050(1)(b), 515-0060(1)(b).

⁴ OAR Chapter 690: Division 501-0005(1)(g)(C)(viii); Division 515-0005(1)(a)(B), 515-0030(1)(a)(A), 515-0030(1)(a)(A) and (B); 515-0040(1)(a)(C) through (F), 515-0050(1)(a)(B) and (C) and (E).

language is revised to make that distinction clearly because it is significant from a legal perspective (e.g., water typically can be stored indefinitely, whereas allowable periods of diversion for storage are specific and may be quite short). Where it occurs, the phrase “of any year” is deleted because it is superfluous.

E. Minor clerical revisions

Other minor clerical revisions that occur sporadically include:

1. Shortening and simplifying language, deleting repetitive language.
2. With the exception of those instances referring to orders of the Board, converting references from “Water Policy Review Board” to “Water Resources Commission”.
3. Correcting miscellaneous typographical or grammatical errors, instances of which should be self-evident.

III. Summary & Staff Analysis of Basin-Specific Changes to Coastal Basin Programs

In the summary, only those proposed changes that are basin-specific and require additional discussion are addressed. Otherwise, the rationale for the proposed changes is described in Section II above.

1. North Coast Basin Program

- a. In 690-501-0005(1)(b), the language proposed for deletion is unnecessary in that rules may not contradict statute.

2. Mid-Coast Basin Program

- a. none

3. Umpqua Basin Program

- a. none

4. Rogue Basin Program

- a. The Rogue Basin Program contains rules⁵ stating that existing rights are not affected by the program. Basin-program rules concern the allocation of unallocated water, and are therefore not retroactive; in other words, they cannot pertain to existing rights.
- b. In 690-515-0020((1)(a), “accepted or issued” is being changed to “approved” to allow for evaluation of incoming applications. The phrase “appropriations for” is being deleted because it is superfluous.
- c. In 690-515-0030(1)(a)(A), the phrase “at any time” is being removed because Departmental practice is to allow out-of-reservoir use of stored water whenever necessary under an appropriate secondary permit, provided such use is not

⁵ OAR Chapter 690: Division 515-0000(5), 515-0010(4), 515-0020(5), 515-0030(5), 515-0040(5), 515-0050((5), 515-0060(4).

otherwise proscribed (for example, irrigation occurs only during the irrigation season). Leaving such language in place contradicts period-of-use limitations that often must be included on permits.

- d. In 690-515-0030(2)(b), the phrase “land-use” is inserted for specificity and clarity.
- e. In 690-515-0050(1)(a)(D), the language is proposed for deletion because preliminary permits expire after 2 to 3 years, thus it is not possible for any such permits to be in effect.

5. *South Coast Basin Program*

- a. There are no deletions in the classifications under 690-517-0000. That section has been re-organized to present the information more clearly and add missing restrictive classifications resulting from various orders that had not been captured previously in the basin program.
- b. In 690-517-0000(5), the word “any” was missing.
- c. In 690-517-0000(9), the entire provision requires deletion for several reasons. The first is the global change described above regarding application acceptance versus approval. Secondly, the remainder of the rule has been superseded by ORS 536.295, which prescribes the process for obtaining an exception to the basin-program classification of allowable uses; thus no such notification is necessary.

IV. Alternatives

The Commission may consider the following alternatives with regard to the proposed revision of OAR Chapter 690, Divisions 501, 515, 516, 517, and 518.

1. Adopt the final proposed rules as set forth in Attachment 2.
2. Adopt modified final proposed rules.
3. Decline to adopt the proposed rule revisions and request that the Department further evaluate the issues.

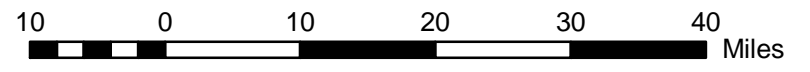
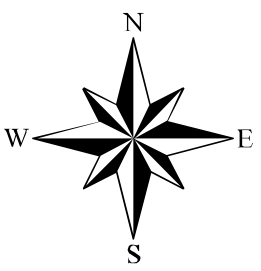
V. Recommendation

The Director recommends the Commission adopt Alternative 1 and adopt the final proposed rules as set forth in Attachment 2.

Attachments:

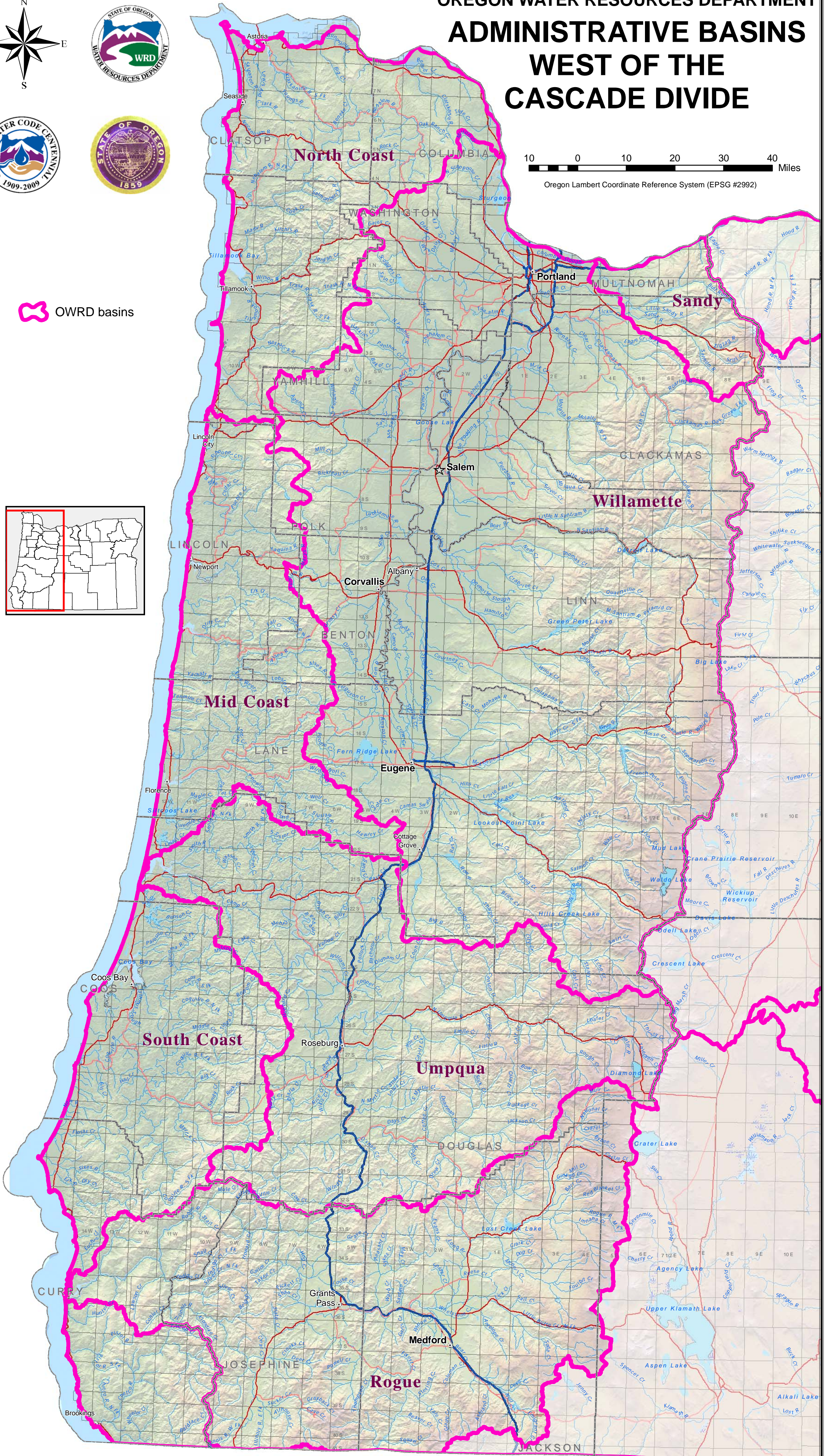
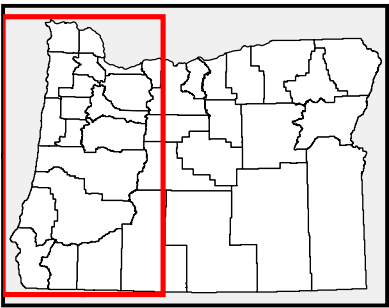
1. Map of Coastal Basins
2. Final Proposed Rules
3. Public Comments Received
4. Departmental Response to Comments
5. Text of ORS 536.325 (repealed)

ADMINISTRATIVE BASINS WEST OF THE CASCADE DIVIDE



Oregon Lambert Coordinate Reference System (EPSG #2992)

OWRD basins



WATER RESOURCES DEPARTMENT

DIVISION 501

NORTH COAST BASIN PROGRAM

[NOTE: The North Coast Basin is delineated on the agency Map 1.6, dated 1972.]

690-501-0005

Classifications

(1) *[The maximum economic development of this state, the attainment of the highest and best use of the waters of the North Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only]* **In accordance with ORS 536.220, the waters of the North Coast Basin are classified** for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life, *[uses, and the waters of the North Coast Basin are hereby so classified]* with the following exceptions:

(a) The waters of the natural lakes of the North Coast Basin are classified *[only]* for utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(b) The attainment of the highest and best use of the waters of Clatskanie and Klaskanine Rivers and their tributaries, Lewis and Clark River and Tillasqua Creek (Big Creek), has been determined through legislative withdrawal by ORS 538.251 to be for the protection of fish life. ORS 538.260 states that ORS 538.251 shall not affect any existing rights or prevent appropriation for domestic, stock, municipal, fish culture, esthetic, recreational, or public park purposes; *[No classifications within this program are intended to contradict the intent of this statute;]*

(c) The waters of the Columbia River creating a tidal influence in the mouths of the tributaries to the Columbia River within the Columbia Subbasin are classified *[only]* for utilization of water for domestic, livestock, municipal, irrigation, industrial, recreation, wildlife, and fish life purposes;

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(d) The waters of all streams tributary to Sand Lake are classified only for utilization for domestic, livestock, use in dairies, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, power development and instream use for recreation, fish life and wildlife purposes;

(e) The waters of Jetty Creek and its tributaries are classified [*only*] for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife and fish life purposes. In addition, up to one cubic foot per second of the waters of Jetty Creek is reserved for municipal use;

(f) The waters of Heitmiller Creek are classified [*only*] for utilization of water for human consumption, livestock consumption, and instream uses for recreation, wildlife and fish life purposes;

(g) The waters of the following streams are classified [*only*] for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Tillamook Subbasin:

(i) All streams tributary to Daley Lake;

(ii) All streams tributary to Netarts Bay;

(iii) Coleman Creek and its tributaries;

(iv) Vaughn Creek and its tributaries;

(v) Douhty Creek and its tributaries;

(vi) Patterson Creek and its tributaries;

(vii) Larson Creek and its tributaries;

(viii) All streams tributary to Lake Lytle.

(B) Nehalem Subbasin:

(i) Salmonberry River and its tributaries;

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(ii) Rock Creek and its tributaries.

(C) Columbia Subbasin:

(i) Short Sand Creek and its tributaries;

(ii) Arch Cape Creek and its tributaries;

(iii) Cullaby Creek and its tributaries;

(iv) John Day River and its tributaries;

(v) Gnat Creek and its tributaries;

(vi) All tributaries to Westport Slough, except Plympton Creek. In addition to uses in subsection (g) of this section, permits may also be used to collect and divert polluted industrial site runoff, before entering OK Creek, for pollution abatement purposes. This use shall be allowed only on the condition that all applicable requirements of other agencies are met;

(vii) Tide Creek and its tributaries, except that water from the main stem Tide Creek from the falls near river mile 3 to the mouth may be used for gravel washing, provided that such use shall not diminish the flow in Tide Creek below 2.5 cfs;

(viii) Goble Creek and its tributaries, except that surface water legally stored and released from storage may be used for any beneficial purpose. **Diversion for** storage shall be limited to the period December 1 to February 28 [*of each year*].

[(2) Applications for the use of the waters of the North Coast Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other uses would be contrary to this water use program.]

(2) [(3)] Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept, are further declared to be prejudicial to the public interest.

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Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

690-501-0010

Minimum Perennial Streamflows

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption, and waters legally released from storage shall be [*made or*] granted [*by any state agency or public corporation of the state*] for the waters of the following streams and their tributaries for flows below the amounts specified in **Table 1**.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

[690-501-0020

Storage

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010]

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690-501-0030

Out-of-Basin Appropriations

To support present and proposed North Coast Basin water resource development, no out-of-basin appropriation of the waters of the North Coast Basin shall be [*made or*] granted [*by any state agency or public corporation of the state*] without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

690-501-0040

Water Quality

Rights to use of water grant by any state agency in accordance with this water use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

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WATER RESOURCES DEPARTMENT

DIVISION 515

ROGUE BASIN PROGRAM

690-515-0000

Upper Rogue Basin

(1) Classifications:

(a) *[The maximum economic development of this state, the attainment of the highest and best use of the waters of the upper Rogue River Basin and the attainment of an integrated, coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and]* **In accordance with ORS 536.220**, the waters of the upper Rogue River Basin are *[hereby so]* classified **for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life** with the following exceptions:

[(A) Those waters on which development is further restricted by ORS 538.220, 538.270, 538.430 and 542.210;]

(A) Those waters on which development is further restricted by ORS 542.210;

(B) In accordance with ORS 538.220, the waters of Barr Creek (beginning in Section 1, T32S, R3E, W.M. and in Section 6 and Section 7, T32S, R4E, W.M. running thence in a general southwesterly direction through T32S, R3E, W.M. to a junction with the Rogue River in Section 32, T32S, R3E, W.M.) and its tributaries are withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife;

(C) In accordance with ORS 536.220, the waters of Mill Creek and its tributaries (beginning in Section 22, T31S, R4E, W.M., running thence southwesterly through T31S, R3E, W.M. and T32S, R3E, W.M., to a junction with the Rogue River in Section 32, T32S, R3E, W.M.) are withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife (ODFW), and the development of hydroelectric power not to

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exceed one megawatt if: 1) the hydroelectric project is located on Mill Creek at a point at least two miles above the confluence of Mill Creek and the Rogue River, 2) all water appropriated from the stream is returned to the stream at a point at least one-half mile above the confluence of Mill Creek and the Rogue River, and 3) the hydroelectric project was constructed and operated in compliance with ODFW concerning fish conservation, including streamflow requirements based upon biological criteria;

(D) [In accordance with ORS 538.430, the waters of Big Butte Creek including its tributaries and springs at the head which form the creek are withdrawn from further appropriation for any purpose except municipal use by the City of Medford; the use of up to 100 cubic feet per second (CFS) from an additional point of diversion located below the diversion point authorized under Permit S-6396, in use as of April 1, 1953 for irrigation use by Eagle Point Irrigation District; and the use of up to 100 CFS using the diversion point authorized under Permit S-6396 as of April 1, 1953 by the Eagle Point Irrigation District for the purpose of generating electric energy;] In accordance with ORS 538.430, the waters of Big Butte Creek, including its tributaries and springs at the head which form the creek, are withdrawn from further appropriation for any purpose except municipal use by the City of Medford, with the exceptions for Eagle Point Irrigation District as provided in ORS 538.430;

(E) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(F) (B) The waters of Indian Creek, Evergreen Creek, Reese Creek, Trail Creek and Elk Creek and tributaries are classified [only] for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [stored] diverted for storage between November 1 and March 31 may be used [at any time] for purposes specified in subsection (a) of this section;

(G) (C) To protect, maintain and perpetuate the resident fish habitat, the recreational value, and the cultural resources of the Upper Rogue Basin, the waters of the following streams and natural lakes shall not be diverted, interrupted or appropriated for power development purposes:

(i) All natural lakes in the Upper Rogue Basin;

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in response to comment on proposed changes to existing rule in the public hearing draft.

(ii) The Rogue River from the origin near the intersection with the south line of Section 4, Township 29 South, Range 5 East, downstream to USGS stream gage 14328000 (Township 32 South, Range 3 East, Section 19) excluding existing projects;

(iii) Union Creek and tributaries;

(iv) Abbott Creek and tributaries.

[(b) Applications for the use of the waters of the Upper Rogue River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(b) [(c)] Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of the Rogue River or tributaries above river mile 164 when the combined flow measured at stream gages 14330000, Rogue River below Prospect (Township 33 South, Range 3 East, Section 6), and 14334700, South Fork Rogue River, South of Prospect (Township 33 South, Range 3 East, Section 7) is below 835 cubic feet per second except that this limitations shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(C) Appropriation of water for power development at or near gage 14330000 provided that alternative provisions for flow measurements are included in any permit or license issued for the project.

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(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of Reese Creek and tributaries when flows are below the specified levels in **Table 1, Section B**. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to section (3) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Storage:

(a) *[All applications for appropriations of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.]* Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive **land-use** planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following site: Elk Creek (SW 1/4 SW 1/4, Section 20, Township 33 South, Range 1 East).

(4) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreation, fish life or other beneficial uses of water.

[(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.]

NOTE: The Upper Rogue Basin includes all of the drainage area of the Rogue River and its tributaries above river mile 133 at the south line of Section 31, Township 35 South, Range 1 West, Willamette Meridian.

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Copies are available from the agency.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0010

Little Butte Creek Basin

(1) Classifications:

(a) *[The maximum economic development of this state and the attainment of the highest and best use of waters of the Little Butte Creek Basin and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation, agricultural use, power development, recreation, wildlife, and fish life purposes and]* **In accordance with ORS 536.220, [T] the waters of the Little Butte Creek Basin are [hereby so] classified for domestic, livestock, irrigation, agricultural use, power development, recreation, wildlife, and fish life purposes,** except for water administratively withdrawn from appropriation.

(b) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Antelope Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water.

[(b) Applications for the use of the waters of the Little Butte Creek Basin shall not be accepted by any state agency for any purpose other than those specified in subsection (a) of this section and the granting of such applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other

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uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(c) Structures or works of the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be *[made or]* granted *[by any state agency or public corporation of the state]*, except that this limitation shall not apply to water legally stored or legally released from storage subject to the provisions of Section D for the waters of the streams listed in **Table 2** when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens.

(3) Storage:

(a) Potential *[R]*reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Lake Creek (E 1/2, Section 30, Township 36 South, Range 2 East);

(B) South Fork Little Butte Creek (SE 1/4 SE 1/4, Section 29, Township 36 South, Range 2 East).

(b) *[All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.]* Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

[(4) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.]

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[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0020

Bear Creek Basin

(1) Classifications:

(a) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Bear Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water;

(b) [(a)] No applications for appropriation of water shall be [accepted or issued] **approved** [by any state agency] except for [appropriations for] beneficial uses involving water legally stored in excess of the amount necessary for existing rights;

(c) [(b)] Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

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(3) Power Development: Rights to use of water for power development purposes [*granted by any state agency*] shall be issued only on the condition, as demonstrated by the applicant, that any dams, diversions, generating facility, or return flows shall not significantly interfere with recreational, fish life or other beneficial uses of water.

(4) Storage:

(a) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Walker Creek, NE 1/4 Section 12, Township 39 South, Range 1 East, Willamette Meridian;

(B) West Fork Ashland Creek (Winburn site), NE 1/4 Section 32, Township 39 South, Range 1 East, Willamette Meridian;

(C) West Fork Ashland Creek (Ranger site), SW 1/4 Section 28, Township 39 South, Range 1 East, Willamette Meridian.

(b) [*All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.*] Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

[(5) *Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.*]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte

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Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66);
Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0030

Applegate River Basin

(1) Classifications:

(a) *[The maximum economic development of this state and the attainment of the highest and best use of the waters of the Applegate River Basin and the attainment of an integrated and coordinated program for the benefit of the state will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife, and fish life purposes and]* **In accordance with ORS 536.220, [T] the waters of the Applegate River Basin are [hereby so] classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life,** with the following exceptions:

(A) The waters of the following streams and tributaries are classified *[only]* for domestic, livestock, power development except for those streams listed in paragraph (C) of this subsection, irrigation of noncommercial gardens not to exceed 1/2 acre in area, and instream use for recreation, fish life and wildlife, except for the use of stored water. Water *[stored]* **diverted for storage** between November 1 and March 31 *[of any year]* may be used for any purpose specified in subsection (a) of this section:

- (i) Palmer Creek;
- (ii) Beaver Creek;
- (iii) Little Applegate River;
- (iv) Forest Creek;
- (v) Williams Creek;
- (vi) Cheney Creek;
- (vii) Slate Creek.

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(B) The waters of Thompson Creek and tributaries are classified [*only*] for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [*stored*] **diverted for storage** between November 1 and March 31 may be used [*at any time*] for purposes specified in subsection (a) of this section;

(C) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Palmer Creek from the confluence with Bailey Gulch downstream to the mouth;

(ii) Beaver Creek from the intersection with the east line of Section 11, Township 40 South, Range 3 West, Willamette Meridian, to the mouth;

(iii) Little Applegate River Subbasin:

(I) Little Applegate River from the confluence with Lake Creek downstream to the mouth;

(II) Glade Creek from the confluence with Mule Gulch downstream to the mouth;

(III) Yale Creek from the intersection with the east line of Section 22, Township 40 South, Range 2 West, Willamette Meridian, to the mouth;

(IV) Sterling Creek from the intersection with the east line of Section 8, Township 39 South, Range 2 West, Willamette Meridian, to the mouth.

(iv) Forest Creek from the intersection with the north line of Section 15, Township 38 South, Range 3 West, Willamette Meridian, to the mouth;

(v) Thompson Creek from the intersection with the south line of Section 24, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Ninemile Creek from the intersection with the east line of Section 30, Township 39 South, Range 4 West, Willamette Meridian, to the mouth;

(vi) Williams Creek Subbasin:

(I) Williams Creek from the confluence with the East Fork and West Fork of Williams Creek downstream to the mouth;

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(II) East Fork Williams Creek from the first intersection with the east line of Section 26, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Rock Creek from the confluence with Horsetail Creek downstream to the mouth;

(III) West Fork Williams Creek from the confluence with Right Hand Fork of the West For, Williams Creek downstream to the mouth;

(IV) Right Hand Fork of the West Fork Williams Creek from the intersection with the south line of Section 13, Township 39 South, Range 6 West, Willamette Meridian, to the confluence of the West Fork Williams Creek;

(V) Bill Creek from the confluence with Bear Wallow Creek downstream to the mouth;

(VI) Munger Creek from the confluence with North Fork Munger Creek downstream to the mouth;

(VII) Powell Creek from the intersection with the west line of Section 167, Township 38 South, Range 5 West, Willamette Meridian, to the mouth.

(vii) Cheney Creek from the intersection with the south line of Section 22, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of Little Cheney Creek from the intersection with the south line of Section 18, Township 37 South, Range 6 West, Willamette Meridian, to the mouth;

(viii) Slate Creek Subbasin:

(I) Slate Creek from the intersection with the north line of Section 1, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(II) Ramsey Creek from the intersection with the north line of Section 13, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Butcherknife Creek from the intersection with the west line of Section 18, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(IV) Waters Creek from the intersection with the west line of Section 32, Township 36 South, Range 7 West, Willamette Meridian, to the mouth;

(V) The entire length of Bear Creek;

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(VI) Salt Creek from the intersection with the north line of Section 8, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Elliott Creek from the intersection with the south line of Section 15, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Round Prairie Creek from the intersection with the north line of Section 3, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of South Fork Round Prairie Creek from the intersection with the west line of Section 2, Township 37 South, Range 7 West, Willamette Meridian, to the mouth.

[(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(b) *[(c)]* Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) *[All applications for storage in excess of 3,000,000 gallons utilizing the streams listed in paragraph (1)(a)(A) or tributaries shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Board may establish minimum perennial streamflows for the natural flow of the affected stream or streams if deemed necessary to support aquatic life.]* Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Reservoir sites should be protected through the comprehensive **land-use** planning process for possible further development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites as delineated on Water Resources Department map file number 15B.4, Plate 4:

(A) Little Applegate River, site 26;

(B) Waters Creek, site 112;

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(C) Elliott Creek, site 110.

(3) Minimum Perennials Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic, livestock and irrigation of noncommercial gardens not to exceed 1/2 acre in area or waters legally released from storage shall be [*made or*] granted [*by any state agency or public corporation*] for the waters of the Applegate River or its tributaries for flows below the specified levels in **Table 3, Section A**;

(b)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be [*made or*] granted [*by any state agency or public corporation of the state*] for the waters of Williams Creek and Thompson Creek and tributaries for flows below the specified levels in **Table 3, Section B**. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to paragraph (1)(a)(C) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

[(5) Existing Rights: Water rights and permits issued prior to the effective date of this program shall not be affected.]

[ED. NOTE: The Tables referenced are available from the agency.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64;

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WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0040

Middle Rogue Basin

(1) Classifications:

(a) *[The maximum economic development of this state, the attainment of the highest and best use of the waters of the Middle Rogue River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and]* **In accordance with ORS 536.220, [T] the waters of the Middle Rogue River are [hereby so] classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life,** with the following exceptions:

(A) The *[maximum economic development of this state, the attainment of the highest and best use of]* waters within the Rogue River Scenic Waterway from the confluence with the Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 *[and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only]* **are classified** for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life, *[and the aforementioned waters of the Rogue River Scenic Waterway are hereby so classified]*;

(B) Those waters on which development is further restricted by ORS 542.210;

(C) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

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(D) [(C)] The waters of the following streams and tributaries are classified only for domestic use, livestock consumption and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [stored] **diverted for storage** between November 1 and March 31 [of any year] may be used for any purpose specified in subsection (a) of this section. Domestic use does not include irrigation of lawns and gardens:

- (i) Galls Creek;
- (ii) Foots Creek;
- (iii) Birdseye Creek;
- (iv) Sardine Creek;
- (v) Same Creek;
- (vi) Kane Creek;
- (vii) Fruitdale Creek;
- (viii) Ward Creek;
- (ix) Gilbert Creek;
- (x) Jones Creek;
- (xi) Savage Creek.

(E) [(D)] The waters of the following streams and tributaries, are classified only for domestic, livestock and irrigation of one-half acre noncommercial garden and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [stored] **diverted for storage** between November 1 and March 31 [of any year] may be used for any purpose specified in subsection (a) of this section:

- (i) Pickett Creek;
- (ii) Limpy Creek;
- (iii) Snider Creek;

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(iv) Shan Creek.

(F) [(E)] The waters of the following streams and tributaries, are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [stored] **diverted for storage** between November 1 and March 31 [of any year] may be used for any purpose specified in subsection (a) of this section:

(i) Grave Creek;

(ii) Evans Creek.

(G) [(F)] The waters of Jumpoff Joe Creek and tributaries are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, industrial, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water [stored] **diverted for storage** between November 1 and March 31 [of any year] may be used for any purpose specified in subsection (a) of this section;

(H) [(G)] To protect, maintain and perpetuate anadromous fish habitat and propagation within the Middle Rogue Basin, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Galice Creek from the intersection with the south line of Section 10, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(ii) North Fork Galice Creek from the intersection with the west line of Section 5, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iii) Taylor Creek from the intersection with the east line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iv) South Fork Taylor Creek from the intersection with the south line of Section 28, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(v) Lone Tree Creek from the intersection with the north line of Section 32, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

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(vi) Minnow Creek from the intersection with the south line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth.

[(b) Applications for the use of the waters of the Middle Rogue River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(b) *[(c)]* Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) *[All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.]* Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Grave Creek, SE 1/4, Section 6, Township 34 South, Range 4 West, Willamette Meridian;

(B) Jumpoff Joe Creek, NE 1/4, Section 36, Township 34 South, Range 6 West, Willamette Meridian;

(C) Evans Creek, SE 1/4, Section 19, Township 34 South, Range 2 West, Willamette Meridian;

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(D) West Fork Evans Creek, SE 1/4 Section 32, Township 33 South, Range 3 West, Willamette Meridian.

(3) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of the Rogue River or tributaries above Raygold for flows of the Rogue River below 1200 cubic feet per second, except that this limitation shall not apply to:

(A) Waters legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(b) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of the Rogue River or tributaries above Savage Rapids Dam for flows of the Rogue River below 1,200 cubic feet per second, except that this limitation shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(c) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be *[made or]* granted *[by any state agency or public corporation of the state]*, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Rogue River tributaries listed in **Table 4, Section B** when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens;

(d)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796 *[k]*, Oregon Laws 1983, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of the Rogue River tributaries listed in Table 4, Section C when flows are below the levels specified. This limitation shall not apply to:

Text in bold and underlined...**example**...is proposed new text to existing rule text.

Italicized text in brackets...*[example]*...is existing rule text proposed to be removed.

Text in bold and underlined in brackets...**example**...is new text to existing rule proposed in the public hearing draft subsequently removed in response to comment.

Text in bold and double underlined...**example**...is proposed new text subsequently added in response to comment on proposed changes to existing rule in the public hearing draft.

(i) Domestic and livestock uses. Domestic use does not include the irrigation of lawns and gardens;

(ii) Water legally stored or released from storage subject to the provisions of subsection (2)(a) of this rule.

(B) Attainment of the specified [b]flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life or other beneficial uses of water.

[(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.]

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0050

Illinois Basin

(1) Classifications:

(a) *[The maximum economic development of this state and the attainment of the highest and best use of the waters of the Illinois River and the attainment of an integrated and*

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Text in bold and underlined in brackets...**[example]**...is new text to existing rule

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coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses including propagation and **In accordance with ORS 536.220, [T] the waters of the Illinois River Basin are [hereby so] classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses including propagation,** with the following exceptions:

(A) The *[maximum economic development of this state, the attainment of the highest and best use of]* waters within the Illinois River Scenic Waterway from the confluence with Deer Creek near river mile 47 to the confluence with the Rogue River *[and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters]* **are classified** only for domestic and livestock uses and instream use for recreation, wildlife and fish life;

(B) The waters of the following streams and all tributaries are classified only for domestic, livestock, agricultural use, municipal, industrial, power development except for those streams listed in paragraph (C) of this subsection, mining use during the period November 1 to May 1, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area, and instream use for recreation, fish life and wildlife. Water *[stored]* **diverted for storage** between November 1 and March 1 may be used *[at any time]* for purposes specified in subsection (a) of this section:

(i) Deer Creek;

(ii) East Fork Illinois River, except Althouse and Sucker Creeks and their tributaries;

(iii) West Fork Illinois River.

(C) The waters of Althouse and Sucker Creeks and tributaries are classified only for domestic, livestock and non-consumptive instream uses for fish life, wildlife and recreation between May 1 and November 30 *[of each year]*. Althouse and Sucker Creeks and tributaries are classified for domestic, livestock, mining (subject to *[d]*Division 51 restrictions and except for those streams listed in paragraph (D) of this subsection), storage, and instream uses for fish life, wildlife and recreation between December 1 and April 30 *[of each year]*. Water *[stored]* **diverted for storage** between December 1 and April 30 may be used for any beneficial purpose. Permits shall be conditioned to prevent obstacles to fish migration and degradation of rearing or spawning habitat;

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(D) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes. [*All preliminary permit applications on file with the Water Resources Department prior to October 14, 1983, will not be affected by this provision*] :

(i) West Fork Illinois River Subbasin:

(I) West Fork Illinois River from the confluence with Whiskey Creek downstream to the mouth;

(II) Whiskey Creek from the intersection with the west line of Section 8, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(III) Elk Creek from the Oregon-California border downstream to the mouth;

(IV) Trapper Gulch from the intersection with the east line of Section 13, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(V) Dwight Creek from the Oregon-California border downstream to the mouth;

(VI) Wood Creek from the potential reservoir site in SE 1/4 of NW 1/4 of Section 32, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Fry Gulch from the intersection with the east line of Section 29, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Rough and Ready Creek from the confluence with the North and South forks downstream to the mouth;

(VIII) North Fork Rough and Ready Creek from the intersection with the west line of Section 8, Township 40 South, Range 9 West, Willamette Meridian, to the mouth;

(IX) South Fork Rough and Ready Creek from the intersection with the west line of Section 20, Township 40 South, Range 9 West, Willamette Meridian, to the mouth.

(X) Mendenhall Creek from the intersection with the west line of Section 6, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Parker Creek from the intersection with the west line of Section 7, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

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(XI) Woodcock Creek from the intersection with the west line of Section 32, Township 39 South, Range 8 West, Willamette Meridian, to the mouth.

(ii) East Fork Illinois River Subbasin:

(I) East Fork Illinois River from the Oregon-California border downstream to the mouth;

(II) Page Creek from the intersection with the east line of Section 2, Township 41 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Elder Creek from the intersection with the east line of Section 26, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(IV) Althouse Creek from the potential reservoir site in SW 1/4 of SW 1/4 of Section 4, Township 40 South, Range 7 West, Willamette Meridian, to the mouth;

(V) Sucker Creek from the potential reservoir site in NE 1/4 of Section 25, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VI) Little Grayback Creek from the intersection with the south line of Section 13, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Bear Creek from the intersection with the north line of Section 21, Township 39 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Chapman Creek from the confluence with East Fork Chapman Creek downstream to the mouth.

(iii) Holton Creek from the intersection with the east line of Section 10, Township 39 South, Range 8 West, Willamette Meridian, to the mouth;

(iv) Reeves Creek from the intersection with the east line of Section 34, Township 38 South, Range 8 West, Willamette Meridian, to the mouth;

(v) Josephine Creek from the intersection with the west line of Section 26, Township 39 South, Range 9 West, Willamette Meridian, to the mouth and the tributary of Canyon Creek from the confluence with Sebastopol Creek downstream to the mouth;

(vi) Deer Creek Subbasin:

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- (I) Deer Creek from the confluence with North Fork and South Fork Deer Creek downstream to the mouth;
- (II) South Fork Deer Creek from the intersection with the south line of Section 29, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;
- (III) North Fork Deer Creek from the intersection with the north line of Section 18, Township 38 South, Range 6 West, Willamette Meridian, to the mouth;
- (IV) White Creek from the intersection with the south line of Section 13, Township 38 South, Range 7 West, Willamette Meridian, to the mouth;
- (V) Crooks Creek from the intersection with the east line of Section 34, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;
- (VI) Thompson Creek from the confluence with Haven Creek downstream to the mouth;
- (VII) Draper Creek from the intersection with the east line of Section 31, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;
- (VIII) Clear Creek from the intersection with the west line of Section 23, Township 37 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Anderson Creek from the intersection with the north line of Section 35, Township 37 South, Range 8 West, Willamette Meridian, to the mouth.
- (vii) Sixmile Creek from the intersection with the north line of Section 25, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;
- (viii) Fall Creek from the intersection with the south line of Section 4, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;
- (ix) Rancherie Creek from the intersection with the west line of Section 17, Township 38 South, Range 9 West, Willamette Meridian, to the mouth;
- (x) Dailey Creek from the intersection with the west line of Section 31, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;
- (xi) Briggs Creek Subbasin:

(I) The entire mainstem of Briggs Creek;

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(II) Horse Creek from the intersection with the east line of Section 8, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Myers Creek from the confluence with Dutchy Creek downstream to the mouth and the tributary of Dutchy Creek from the intersection with the north line of Section 7, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(IV) Brush Creek from the intersection with the north line of Section 18, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(V) Secret Creek from the intersection with the east line of Section 16, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(VI) Onion Creek from the intersection with the south line of Section 29, Township 36 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Swede Creek from the intersection with the east line of Section 1, Township 37 South, Range 9 West, Willamette Meridian, to the mouth;

(VIII) Soldier Creek from the confluence with Horse Creek downstream to the mouth and the tributary of Horse Creek from the intersection with the east line of Section 11, Township 37 South, Range 9 West, Willamette Meridian, to the mouth.

(xii) Panther Creek from the intersection with the north line of Section 31, Township 36 South, Range 9 West, Willamette Meridian, to the mouth;

(xiii) Labrador Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xiv) Nome Creek from the intersection with the south line of Section 12, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xv) Clear Creek from the intersection with the east line of Section 35, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(xvi) Pine Creek from the first intersection with the east line of Section 27, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(xvii) Klondike Creek from the intersection with the south line of Section 10, Township 36 South, Range 10 West, Willamette Meridian, to the mouth and the tributary of Yukon

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Creek from the intersection with the south line of Section 5, Township 37 South, Range 10 West, Willamette Meridian, to the mouth;

(xviii) Collier Creek from the intersection with the west line of Section 7, Township 37 South, Range 11 West (projected), Willamette Meridian, to the mouth;

(xix) Silver Creek Subbasin:

(I) Silver Creek from the confluence with South Fork Silver Creek downstream to the mouth;

(II) South Fork Silver Creek from the intersection with the east line of Section 21, Township 36 South, Range 10 West, Willamette Meridian, to the mouth;

(III) North Fork Silver Creek from the intersection with the east line of Section 18, Township 35 South, Range 9 West, Willamette Meridian, to the mouth.

(xx) Indigo Creek from the intersection with the east line of Section 31, Township 35 South, Range 10-1/2 West, Willamette Meridian, to the mouth and the tributary of North Fork Indigo Creek from the intersection with the north line of Section 34, Township 35 South, Range 11 West, Willamette Meridian, to the mouth;

(xxi) Horse Sign Creek from the intersection with the south line of Section 7, Township 36 South, Range 11 West, Willamette Meridian, to the mouth;

(xxii) Lawson Creek from the intersection with the west line of Section 2, Township 36 South, Range 12 West (projected), Willamette Meridian, to the mouth;

(xxiii) Fox Creek from the intersection with the south line of Section 19, Township 35 South, Range 11 West, Willamette Meridian, to the mouth.

(E) The waters of the mainstem Illinois River from the confluence of the East and West Forks Illinois River downstream to the confluence with Deer Creek near river mile 47 are classified only for domestic, livestock and agricultural uses, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife during the period July 1 to October 31 [*of every year*]. Water [*stored*] **diverted for storage** between November 1 and March 31 may be used [*at any time*] for purposes specified in subsection (a) of this section.

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[(b) Applications for the use of the waters of the Illinois River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications of such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(b) *[(c)]* Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) *[All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.]* Storage projects consistent with the purposes of minimum flows shall be encouraged;

(b) Potential reservoir sites should be identified through the comprehensive **land-use** planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites:

(A) Wood Creek, SE 1/4 NW 1/4 Section 32, Township 40 South, Range 8 West, Willamette Meridian;

(B) Sucker Creek, NE 1/4 Section 25, Township 39 South, Range 7 West, Willamette Meridian;

(C) Upper Althouse Creek, SW 1/4 SW 1/4 Section 4, Township 40 South, Range 7 West, Willamette Meridian.

(3) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic and

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livestock use shall be *[made or]* granted *[by any state agency or public corporation of the state]*, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Illinois River or the tributaries above the confluence with the Rogue River for flows of the Illinois River at the mouth below 80 cubic feet per second and when flows are below the specified levels listed in **Table 5, Section A**.

Domestic use does not include irrigation of lawn and garden;

(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]*, for the waters of the following Illinois River tributaries listed in **Table 5, Section B** when flows are below the specified levels. This limitation shall not apply to:

(i) Domestic and livestock use. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage subject to provisions of section A5.

(B) Attainment of the specified flow levels during some portion of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

[(5) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.]

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte

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Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66);
Administrative Renumbering 1-1993, Renumbered from 690-080-0150

690-515-0060

Lower Rogue Basin

(1) Classifications:

(a) *[The maximum economic development of this state, the attainment of the highest and best use of the waters of the Lower Rogue River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses and]* **In accordance with ORS 536.220, [T] the waters of the Lower Rogue River Basin are [hereby so] classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life,** with the following exceptions:

(A) *[The maximum economic development of this state, the attainment of the highest and best use of]* The waters within the Rogue River Scenic Waterway from the confluence with Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 **are classified for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life** *[and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life uses and the aforementioned waters of the Rogue River Scenic Waterway are hereby so classified];*

[(B) Those waters on which further development is restricted by [ORS 538.270](#) and [542.210](#);

(B) Those waters on which development is further restricted by ORS 542.210;

(C) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

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proposed in the public hearing draft subsequently removed in response to comment.

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(D) [(C)] To protect, maintain and perpetuate anadromous fish habitat and propagation within the Lower Rogue Basin, the waters of the following stream reaches of tributaries to the Rogue River shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Lobster Creek from the confluence of the North and South Forks of Lobster Creek, downstream to the mouth;

(ii) North Fork Lobster Creek from the intersection with the east line of Section 15, Township 34 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(iii) South Fork Lobster Creek from the intersection with the east line of Section 30, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(iv) Shasta Costa Creek from the intersection with the east line of Section 35, Township 34 South, Range 11 West, Willamette Meridian, downstream to the mouth;

(v) Foster Creek from the intersection with the west line of Section 12, Township 34 South, Range 12 West, Willamette Meridian, downstream to the mouth;

(vi) Quosatana Creek from the intersection with the projected south line of Section 23, Township 36 South, Range 13 West, Willamette Meridian, downstream to the mouth;

(vii) Jim Hunt Creek from the intersection with the south line of Section 14, Township 36 South, Range 14 West, Willamette Meridian, **[D]**downstream to the mouth;

(viii) Mule Creek from the intersection with the east line of Section 26, Township 32 South, Range 10 West, Willamette Meridian, downstream to the mouth.

[(b) Applications for the use of the waters of the Lower Rogue River Basin shall not be accepted by any state agency for any other purpose than those specified in subsection (a) of this section and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state;]

(b) [(c)] Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of

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ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial[s] Streamflows: For the purpose of maintaining minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be *[made or]* granted *[by any state agency or public corporation of the state]* for the waters of the Rogue River or the tributaries above the mouth for flows of the Rogue River at the mouth below 935 cubic feet per second, except that this limitation shall not apply to:

(a) Water legally stored or legally released from storage;

(b) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(3) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

[(4) Existing Rights: This program does not modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.]

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

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150.

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WATER RESOURCES DEPARTMENT

DIVISION 516

UMPQUA BASIN PROGRAM

[NOTE: The Umpqua River Basin is delineated on State Water Resources Board Map 16.6, dated 1969, available from the agency.]

690-516-0005

Classifications

(1) *[The maximum economic development of this state, the attainment of the highest and best use of the waters of the Umpqua River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters]* **In accordance with ORS 536.220, the waters of the Umpqua River Basin are classified** *[only]* for domestic, livestock, municipal, irrigation, temperature control, power development, industrial, mining, recreation, wildlife, and fish life, *[uses and the waters of the Umpqua River Basin are hereby so classified]* with the following exceptions:

(a) Preference shall be given to human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area for all the waters of the Umpqua River Basin over any other beneficial uses;

(b) The waters of the natural lakes of the Umpqua River Basin are classified *[only]* for the utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(c) The waters of Roberts Creek and its tributaries were withdrawn by Water Resources Commission's Order of Withdrawal on October 4, 1991;

(d) The unappropriated waters of Lookingglass Creek and tributaries are withdrawn from further appropriation except for domestic and livestock watering uses under 5,000 gallons per day per appropriation and water legally stored and released from storage from June 1 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 3, 1983.

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(e) The unappropriated waters of the South Umpqua River and tributaries, excluding Lookingglass and Roberts Creeks, are withdrawn from further appropriation except for human consumption, livestock consumption, irrigation of up to 1/2-acre non-commercial garden and water legally released from storage from July 15 through September 30 of each year, by the Water Policy Review Board's Order of Withdrawal dated April 29, 1985. This limitation shall not affect the withdrawals previously enacted by the Board for the waters of Roberts and Lookingglass Creeks.

(f) [In accordance with ORS 538.140, the waters of Diamond Lake and tributaries are withdrawn from further appropriation except for domestic use on contiguous and surrounding land or other water uses necessary to maintain, increase and perpetuate game fish and game fish propagation in Diamond Lake and its tributaries.] In accordance with ORS 538.140, the waters of Diamond Lake and tributaries shall not be diverted or interrupted for any purpose and are withdrawn from further appropriation, except for domestic use on contiguous and surrounding land or other water uses necessary to maintain, increase and perpetuate game fish and game fish propagation in Diamond Lake and its tributaries.

[(2) Applications for the use of the waters of the Umpqua River Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other use would be contrary to this water-use program.]

[(3)] **(2)** Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

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690-516-0010

Minimum Perennial Streamflows

(1) For the purpose of maintaining minimum perennial streamflows sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption and irrigation of non-commercial gardens not to exceed one-half acre in area and waters legally released from storage shall be [*made or*] granted [*by any state agency or public corporation of the state*] for [*the*] waters of the following streams when flows are at or below the levels specified in **Table 1**.

(2) The minimum perennial streamflows established by the October 24, 1958, Umpqua Basin program shall remain in effect over appropriations issued from October 24, 1958 to March 26, 1974.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

[**690-516-0020**

Storage

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review, the Water Policy Review Board may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

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Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160]

690-516-0030

Out-of-Basin Appropriations

To support present and proposed Umpqua River Basin water resource development, no out-of-basin appropriation of the waters of the Umpqua River Basin shall be [*made or*] granted [*by any state agency or public corporation of the state*] without the prior approval of, and following a public hearing by, the Water [Policy Review Board] **Resources Commission**.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

690-516-0040

Water Quality

Rights to use of water granted by any state agency in accordance with this water-use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536.300, ORS 536.340 & ORS 536.410

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Stats. Implemented:

Hist.: (WRB 9, f. 4-21-59; WRB 11, f. 10-31-60; WRB 22, f. 11-16-62; WRB 27, 5-11-64; WRB 58, f. 4-15-74; WRD 8(Temp), f. 7-22-77; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 6-1981(Temp), f. & cert. ef. 8-25-81; WRD 8-1982, f. & cert. ef. 7-1-82; WRD 7-1984, f. & cert. ef. 12-27-84; WRD 4-1985, f. & cert. ef. 5-15-85; WRD 8-1985, f. & cert. ef. 8-2-85; WRD 9-1985, f. 8-2-85; South Umpqua WRB 22, f. 11-16-62; Main Stem-Umpqua System, WRB 27, f. 5-11-64) WRD 8-1991, f. & cert. ef. 11-7-91, Renumbered from 690-080-0160

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WATER RESOURCES DEPARTMENT

DIVISION 517

SOUTH COAST BASIN PROGRAM

[NOTE: The South Coast Basin is delineated on agency Map, File 17.6, available from the agency.]

690-517-0000

Classifications

(1) Ground water resources in sections or the portions of Sections 13, 14, 22, 23, 26, 27, 32, 33 and 34 of Township 23 South, Range 13 West; 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34 of Township 24 South, Range 13 West; and 3, 4, 5 and 6 of Township 25 South, Range 13 West, bounded on the north by Tenmile Creek, on the west by the Pacific Ocean, on the south by Coos Bay and on the east by Highway 101 are [*hereby*] classified for single or group domestic, livestock, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and any single industrial or commercial use not exceeding 5,000 gallons per day.

(2) The waters of the following lakes are classified [*only*] for domestic, livestock, municipal, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife. The Director of the Water Resources Department may place specific limits on municipal appropriations from the lakes, or require outlet control structures to protect recreation, fish life and wildlife uses:

(a) Bradley Lake;

(b) Eel Lake;

(c) Garrison Lake.

(3) All other natural lakes are classified [*only*] for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and in-lake use for recreation, fish life and wildlife.

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[(4) Waters of the following streams and all tributaries are classified only for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife:

(a) Glenn Creek (tributary to the East Fork Millicoma River);

(b) Brush Creek.]

(4) The waters of Glenn Creek (tributary to the East Fork Millicoma River) and its tributaries are classified for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife;

(5) The waters of the Middle Fork of the Coquille River and tributaries upstream from the confluence with Holmes Creek are classified [only] for domestic, livestock and irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, and instream use for recreation, fish life and wildlife during the period from July 1 to September 30 of every year. Water [stored] **diverted for storage** between October 1 and June 30 may be used [at any time] for **any** purpose specified in section **11** [(8)] of this rule.

(6) The waters of the West Fork Millicoma River and tributaries above Stall Falls are classified for municipal, domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life and wildlife.

(7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek -- Geiger Creek confluence are classified for municipal use.

(8) [In accordance with ORS 538.120, the waters of Brush Creek (Brushes Creek) and its tributaries are withdrawn from further appropriation for any purpose except use in state parks.] In accordance with ORS 538.120, the waters of Brush Creek (Brushes Creek) and its tributaries are withdrawn from further appropriation or condemnation, and shall not be diverted or interrupted for any purpose except for use in state parks or as otherwise prescribed by ORS 538.120.

(9) The waters of Clear Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg 504).

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(10) The waters of Edna Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg 504).

(11) [(8)] All other surface and ground water resources are [*hereby*] classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife and fish life uses.

[(9) *Applications for the use of water for any purposes contrary to classifications specified in the basin program shall not be accepted or granted except as provided by law. The Director shall notify the Board and other interested individuals or agencies of the intent to accept an application for use in conflict with the adopted program in accordance with ORS 536.380 if the proposed use will not have a significant impact on any other water use as provided in sections (1) through (8) of this rule and in OAR 690-517-0010 through 690-517-0020.*]

(12) [(10)] The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

690-517-0010

Reservations

Water in the amounts specified is reserved in the following streams for municipal use:

(1) Chetco River -- three cfs, downstream from the confluence with the North Fork Chetco River.

(2) Winchuck River -- one cfs, downstream from the confluence with Bear Creek.

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Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

690-517-0020

Minimum Perennial Streamflows

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not exceeding one-half acre in area shall be allowed for [*the*] waters of the streams and tributaries listed in **Table 1** when flows are below the specified levels.

(2) The Water **Resources Commission** [*Policy Review Board*] requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as non-consumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the **Commission's** [*Board's*] minimum flow regime or the public interest. The Water **Resources Commission** [*Policy Review Board*] intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water-use regulation should reflect that objective as far as possible under the law. The **Commission** [*Board*] solicits the advice or complaints of any party who is aware that the objectives are not being met.

(3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22, 1964 (**Table 2**), shall remain in full force and effect except as follows:

(a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded;

(b) The minimum perennial streamflow for the Coquille River Middle Fork above Bear Creek (4 cfs) is rescinded;

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(c) The minimum perennial streamflow for the Sixes River above the U.S. Highway 101 crossing is reduced to 25 cfs during the period from August 1 to September 30;

(d) The minimum perennial streamflow for the South Fork Coquille River near Powers is reduced to 15 cfs during the period from June 16 to September 30.

(4) For purposes of distributing water, minimum flows established in 1964 shall be considered part of and not in addition to revised minimum flow regimes.

(5) To support **aquatic** [*aquative*] life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be [*made or*] granted [*by any state agency or public corporation of the state*] for [*the*] waters of the Coquille River and tributaries when flows are below the specified levels in **Table 2**. This limitation shall not apply to:

(a) Domestic and livestock uses and irrigation of non-commercial gardens not exceeding 1/2 acre in area;

(b) Water legally released from storage.

[ED. NOTE: The Tables referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

[**690-517-0030**

Storage

(1) All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Policy Review Board prior to approval. During the review the Water Policy Review Board may

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establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.]

[(2)] The following reservoir sites should be protected through the comprehensive **land-use** planning process for possible future development, or until alternative methods of meeting water needs have been developed:

- (a) West Fork of the Millicoma River, site 223;
- (b) South Fork of Coquille River at Eden Ridge, site 430;
- (c) North Fork Coquille River, site 146A;
- (d) Rock Creek at Rasler Creek, site 201;
- (e) Catching Creek, site 101;
- (f) Fourmile Creek, site 158;
- (g) North Fork Floras Creek at Okietown, sit 435;
- (h) North Fork Chetco River, site 239;
- (i) Wheeler Creek, site 241;
- (j) East Fork Winchuck River, site 243;
- (k) Joe Ney Slough.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

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690-517-0040

Out-of-Basin Appropriations

No out-of-basin diversion of South Coast Basin water shall be [*made or*] granted [*by any state agency or public corporation of the state*] without the prior approval of, and following a public hearing by, the Water **Resources Commission** [*Policy Review Board*].

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

[690-517-0050

Existing Rights

Water rights and permits issued prior to the effective date of this program shall not be affected except as provided in OAR 690-517-0020 and 690-517-0030(1).

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170]

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WATER RESOURCES DEPARTMENT

DIVISION 518

MID-COAST BASIN PROGRAM

[NOTE: The Mid-Coast Basin is delineated on State Water Resources Board Map 18.6, dated 1964, available from the agency.]

690-518-0010

Classifications

(1) *[The maximum economic development of this state, the attainment or the highest and best use of the waters of the Mid-Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters]* **In accordance with ORS 536.220, the waters of the Mid-Coast Basin are classified** *[only]* for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life, with preference given to human consumption and livestock consumption over any other beneficial uses. *[. The waters of the Mid-Coast Basin are hereby so classified]* with the following exceptions:

(a) The waters of the following natural lakes of the Mid-Coast Basin are classified *[only]* for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes: Devils, Triangle, Lily, Sutton, Mercer, Collard, Munsel, Cleawox, Carter, Lost, Elbow, Clear, Woahink, Siltcoos, Tahkenitch, and Threemile;

(b) The waters of Clear Lake are classified for municipal use in addition to the uses specified in subsection (a) of this section;

(c) The waters of the following streams and their tributaries are classified *[only]* for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Schoolhouse Creek (Mouth in Township 8 South);

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- (B) Fogarty Creek;
- (C) Deadhorse Creek;
- (D) Canal Creek of Alsea Bay;
- (E) Cummins Creek;
- (F) Bob Creek;
- (G) Tenmile Creek;
- (H) Big Creek at Roosevelt Beach;
- (I) Cape Creek at Heceta Head;
- (J) Quarry Creek;
- (K) Knowles Creek of Siuslaw River;
- (L) Hadsall Creek of Siuslaw River;
- (M) Woahink Creek;
- (N) Siltcoos River;
- (O) Tahkenitch Creek; and
- (P) Threemile Creek.

(d) The waters of the following streams and their tributaries are classified [*only*] for utilization of water for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

- (A) Salmon River;
- (B) Schooner Creek of Siletz Bay upstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7 South, Range 10 West, WM;

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- (C) Drift Creek of Siletz Bay;
- (D) Tributaries to Depoe Bay;
- (E) Rocky Creek;
- (F) Spencer Creek;
- (G) Moolack Creek;
- (H) Big Creek near Newport;
- (I) Henderson Creek (Mouth in Township 11 South);
- (J) Beaver Creek (Mouth in Township 12 South);
- (K) Big Creek at San Marine;
- (L) Vingie Creek;
- (M) Starr Creek;
- (N) Sutton Creek; and
- (O) Munsel Creek.

(e) The waters of Olalla Creek and its tributaries are classified for human consumption, livestock consumption, industrial, and instream uses for recreation, wildlife, and fish life purposes;

(f) The waters of Schooner Creek and its tributaries downstream from the intersection of Schooner Creek and the section line between Section 25, Township 7 South, Range 11 West, WM, and Section 30, Township 7 South, Range 10 West, WM, are classified for domestic, livestock, municipal, irrigation and frost control not to exceed an additional total appropriation of 2.5 cfs, power development and instream uses for recreation, wildlife, and fish life purposes;

(g) The waters of Thiel Creek are classified for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power

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development, aesthetics and in-lake and instream uses for recreation, fish life and wildlife purposes;

(h) The waters of Little Creek, a tributary of the Pacific Ocean, and its tributaries located within Sections 22, 27, 28, 29, 32, and 33, Township 10 South, Range 11 West, W.M., are withdrawn from further appropriation by order of the State Engineer dated June 7, 1960 (Special Order Vol 10, Pg 397) except for municipal use by Agate Beach Water District;

(i) The waters of Mill Creek, a tributary of Yaquina River, and its tributaries located within Sections 22, 23, 26, 27, 28, 32, 33, 34, and 35, Township 11 South, Range 10 West, W.M., and Sections 2, 3, 4, 9, and 10, Township 12 South, Range 10 West, W.M., are withdrawn from further appropriation by order of the State Engineer dated December 7, 1959 (Special Order Vol 10, Pg 246); and

(j) The waters of Rock Creek (also known as Little Rock Creek or South Fork Rock Creek), a tributary of Siletz River, and its tributaries above the north line of the SW 1/4 of the NE 1/4, Section 7, Township 10 South, Range 8 West, W.M., during the months of July, August, and September are withdrawn from further appropriation of direct flow and for storage by order of the State Engineer dated July 22 1960 (Special Order Vol 10, Pg 459).

[(2) Applications for the use of the waters of the Mid-Coast Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other uses would be contrary to this water use program.]

(2) [(3)] Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

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690-518-0020

Reservations

(1) In addition to the uses specified in subsection (1)(a) of OAR 690-518-0010, 1.5 cfs of the water of Woahink Lake are reserved for municipal purposes and 0.75 cfs for public park purposes.

(2) The waters of the following streams are reserved for municipal purposes in the amounts specified:

(a) Alesa River below stream mile 25 -- 5 cfs.

(b) Yachats River below stream mile 5 -- 1 cfs.

(3) The waters of the following streams are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of May 5, 2006:

(a) A reservation of 374 acre-feet of unappropriated water in Rock Creek, tributary to Devil's Lake,

(b) A reservation of 1,250 acre-feet of unappropriated water from Treat River, tributary to Salmon River,

(c) A reservation of 1,350 acre-feet of unappropriated water from an unnamed stream (locally referred to as "Side Creek"), tributary to Devil's Lake, for future application exclusively by the City of Lincoln City.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180; WRD 1-2007, f. & cert. ef. 1-5-07

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690-518-0030

Minimum Perennial Streamflows

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and recreation, no appropriations of water except for reservations in OAR 690-518-0020, human consumption, livestock consumption, or waters legally released from storage shall be [*made or*] granted [*by any state agency or public corporation of the state*] for the waters of the following streams and their tributaries for flows below the amounts specified in **Table 1**.

(2)(a) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be [*made or*] granted [*by any state agency or public corporation of the state*] for waters of the streams and tributaries listed in **Table 2** when flows are below the specified levels. This limitation shall not apply to:

(A) Human and livestock consumption; and

(B) Water legally released from storage.

(b) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) The minimum perennial streamflows established by the July 12, 1966 Mid-Coast Basin Program shall remain in effect over appropriations issued from July 12, 1966 to March 26, 1974.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

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[**690-518-0040**

Storage

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallons of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flow of the stream to support aquatic life or minimize pollution.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180]

690-518-0050

Out-of-Basin Appropriations

To support present and proposed Mid-Coast Basin water resource development, no out-of-basin appropriation of the waters of the Mid-Coast Basin shall be [*made or*] granted [*by any state agency or public corporation of the state*] without prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

690-518-0060

Water Quality

Rights to use of water granted by any state agency in accordance with this water use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

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Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180

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October 9, 2012

Tim Wallin
Oregon Water Resources Department
725 Summer Street NE, Ste A
Salem, OR 97301

Re: Comments, Proposed Coastal Basin Program Rule Amendments, OAR 690, Divisions 501, 505, 516, 517 and 518

Dear Mr. Wallin,

Thank you for the opportunity to comment on the WRD's draft rules proposing modifications to Oregon's five coastal basin programs. We very much appreciate that many of the changes that were proposed during the last rulemaking that would have undercut existing streamflow protections were not brought forth in this iteration. That said, we still do have a few comments as outlined below. We focus first on changes that are uniform to all five basin plans, and then address specific points as they relate to individual basin plans only.

Proposed changes to the rules that are uniform to all five Basin Plans (OAR 690, Divisions 501, 515, 516, 517 and 518):

1. Review of Storage Projects over 3,000,000 gallons: The WRD is proposing that the following section be struck from all five basin plans:

All applications for appropriation of water for storage in structures impounding more than 3,000,000 gallon of water shall be reviewed by the Water Resources Commission prior to approval. During the review the Water Resources Commission may establish additional minimum flows on the natural flows of the stream to support aquatic life or minimize pollution.

WaterWatch objects to the deletion of this section as it takes away from existing instream flow protections. As we understand it, the WRD's rationale in deleting this provision includes: 1) this provision causes problems with "timeliness" of processing water right applications, 2) regardless of the basin plan, ODFW has the opportunity to review storage projects under its Division 33 rules so this section is not needed, and 3) there is no longer statutory authority to set Minimum Perennial Streamflows (MPS). In the RAC both WaterWatch and ODFW stated we did not want to see this section removed.

As to WRD rationale, our response is the following: First, with regards to the timeliness argument, WaterWatch recognizes that in the cases where ODFW, or any other party, does not in fact want to request bypass flows, taking a storage water right application to the Commission for review does take considerable staff and Commission time that might not be worth the effort.

That said, this in and of itself, does not justify deleting this section of the rule. If the WRC feels that the timeliness issue is something it wants to address, an alternate solution would be to amend the rules so that after a reasonable public notice/comment period that specifically identifies the application as subject to the basin plan provision, the issue would only go to the Commission for review if ODFW and/or any other party requests that the Commission set minimum bypass flows. If no one submits a public comment requesting the protection of additional minimum flows then it would not go to the Commission. This alternative would both retain existing Commission authority to protect bypass flows, and retain the streamflow protection measures afforded by this section of rule. Another alternative would be to delegate the authority to the Department. The provision we do not want lost is clear authority to set bypass flows, we are flexible on the process surrounding this.

As to the argument that ODFW can request the protection of bypass flows in its Division 33 review and this somehow trumps the necessity of retaining this section, we do not agree for four reasons. First, the Division 33 rules allow for an exemption for multipurpose storage projects, so ODFW might in fact not be able to rely on them to request bypass flows. This section of the basin plan allows for additional and distinct protection than the protections afforded by the Division 33 rules. Second, ODFW's Division 33 review is limited in the cases of "alternative reservoirs". Essentially, in the case of alternative reservoirs, ODFW is limited to commenting on issues that "pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife." The basin plan language is not so limited. Third, Division 33 review is limited to DEQ and ODFW. Other state or federal agencies, tribes and/or third parties cannot utilize Division 33 in a manner that they can this existing basin plan protection. The basin plans are much broader in application. And fourth, Division 33 review is limited to evaluating whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened or endangered fish species. The basin plan, on the other hand, also allows the Commission to adopt additional protective flows (i.e. bypass flows) to "minimize pollution" regardless of the presence of fish.

And third, with regard to the position that the statute that allows for the setting of new MPS has been removed from the Oregon Water Code and thus there is no authority to retain this rule language, we disagree with the WRD's interpretation. The rules do not in fact specify that this section is about setting MPS. The phrase "minimum perennial streamflow" is not found in the rule sections addressed. In fact, both ODFW and WaterWatch (in the RAC meeting) made clear to WRD that our reading of the language is that it allows WRD to set bypass flows. This means that any diversion for a said storage project would be subject to a bypass flow at the point of diversion, this does not mean that that flow would then be protected downstream under an MPS. The rule is in no way limited to the setting of MPS, nor is it tied directly to the MPS statute as WRD asserts. The statutory authority for this section of rule is set forth as ORS 536 and 537. These statutes offer broad authority to the WRD to protect the public interest. The provision that allows for bypass flows clearly falls within the many statutory authorities found in ORS 536 and 537.

2. Inclusion of specific withdrawals: WaterWatch very much supports the WRD's proposed addition of specific withdrawals as they exist in existing statute or Order of the State Engineer. Including all closures, withdrawals and other restrictions in one place will certainly lead to efficiencies within the WRD.

That said, we would suggest that the WRD incorporate the exact limitations in the statutory and/or Engineer Order restrictions in all cases. For instance, in the South Coast Basin Plan, under OAR 690-517-0000(8) the WRD proposes the following language:

In accordance with ORS 538.120, the waters of Brush Creek (Brushes Creek) and its tributaries are withdrawn from further appropriation for any purpose except use in state parks.

However, the restrictions in ORS 538.120 go beyond just withdrawing the creek from further appropriation. In addition to being withdrawn from appropriation, the statute explicitly states that the waters of this creek shall not be diverted or interrupted for any purpose whatsoever. A strict reading of the statute means that non-consumptive uses that do in fact "interrupt" the waters of Brush Creek are prohibited, including uses such as hydro.¹ To make sure the intent of the statute is clear, all prohibitions should be carried over to the rules even if they might at first glance appear to be superfluous. In addition to the South Coast Basin Plan, this includes, but is not limited to the Umpqua Basin Plan, which prohibits any diversion, appropriation and/or interruption whatsoever of Diamond Lake and its tributaries, except for domestic. See ORS 538.140. As we do not have access to the Engineers Orders it is unclear to us if these are the only examples. To that end, we would we would ask that the WRD review all engineer orders referenced to ensure that all prohibitions are adequately captured. Again, we do agree with the WRD's intent in this section we just want to ensure all prohibitions, nuanced or not, are carried forward.

3. Deletions of introductory language: In each basin plan the WRD is proposing to delete the introductory language that states:

The maximum economic development of this state, the attainment of the highest and best use of the waters of the North Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through the utilization of the aforementioned waters for.....

The WRD is proposing to cut this language and replace with:

In accordance with ORS 536.220, the waters of the XXX basin are classified for....

WaterWatch understands that the WRD is recommending this not as a policy change, but simply as a streamlining measure. That said, we did want to flag to the Commission that the existing language captures the intent of ORS 536.220, ORS 536.300, ORS 536.310 and ORS 536.340

¹ Increasingly we have seen the WRC and WRD determine that hydroelectric use, even ones that physically remove water from a stream for a set distance and return it downstream at some point, are non-consumptive and thus do not constitute an "appropriation" under Oregon water law.

which, together, reflects the Legislature's directives governing the purpose and intent of basin programs. Basin programs are, by statute, supposed to consider the purposes and declarations that the WRD is now proposing to delete. We raise this as a concern because in recent years, certain interests have been pushing to revoke and/or lessen the influence of basin programs, especially with regards to the limits they place on permitting activities. While we would prefer that the language remain, if the Commission does move forward with this streamlining measure we would request that the language be amended to include reference to ORS 536.300, ORS 536.310 and 536.340 (in addition to the proposed ORS 536.220) so that it is clear moving forward that the existing rules are basin plans as contemplated by these statutes.

4. Deletion of the word "only" in classification designations: Throughout all five basin plans, the WRD has proposed to delete the word "only" before listing the uses for which identified basin streams are classified. The use of the word "only" makes clear the statutory directive of classifications, namely that the effect of a classification is to restrict the use to the uses specified in the classification, and that no other uses are to be allowed. ORS 536.340 (1)(a). To ensure ease of interpretation of caseworkers who may not be intimate with the underlying statutes, we think that retaining the word "only" makes the meaning of the classification clearer. Thus, we would request that the WRC reject the suggestion that the word "only" be struck from all classification sections.

5. Deletion of reference to "any state agency or public corporation of this state": The WRD is proposing to delete reference throughout the basin plans reference to "any state agency or public corporation of this state." This language is found in every section on minimum perennial streamflows where the rules (with proposed deletions in italics) state:

For the purposes of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall *[be made or]* granted *[by any state agency or public corporation of the state]* for the waters of.....

We understand that the WRD is proposing this because as a practical, and legal, matter it is the WRD authorizes water use. While WaterWatch does not disagree, we did want to point out that the Oregon Water Code still includes provisions that allows for "exercise of power" by any state agency or public corporation of this state over water resources if a certain process is followed. This raises questions in our mind as to possible downsides of deleting the rule language that would limit the ability of these entities to make use of water as it relates to minimum perennial streamflows. Again, we do not object per se but would appreciate an explanation from the WRD as to its intentions with regards to the outdated statutes. We would recommend the WRD seek to have ORS 536.370 through 536.390 deleted so that entities (especially any "public corporation of the state") will not have a legal avenue to try to wrest control from the WRD, whether in the newly evolving "place based planning" or otherwise.

Comments specific to individual basin plans:

South Coast Basin Plan, OAR 690-517

OAR 690-517-0010, Reservations: The Oregon Water Code allows for “reservations for future economic development”. See ORS 537.358. This law is limited to multipurpose storage projects. There is no authority under Oregon law to set “reservations” for municipal use. The reservation found in this section of the rules for municipal use of waters of the Chetco and Winchuck Rivers do not have the force of law and should be struck from the rules. It is unclear why the WRD did not propose this deletion.

Mid Coast Basin Plan, OAR 690-518

OAR 690-518-0020(1)-(2)(b), Reservations for Municipal Use: Similar to the South Coast Basin, the reservations contained in this basin plan that are specific to municipal use are not supported by statute. Thus, the rule provisions reserving the waters of Woahink Lake and the Aleasa and Yachats Rivers in specific amounts should be struck.

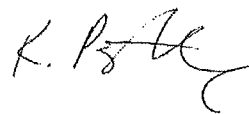
North Coast Basin Plan, OAR 690-501

OAR 690-501-0005(1)(e), Reservation for Municipal Use on Jetty Creek: Similar to the South and Mid Coast comments, the reservation for municipal use is not supported by statute. In this instance, it appears that the WRD wanted to limit the use on this creek by municipalities to 1 cfs. To be consistent with state law, we’d suggest the following:

The waters of Jetty Creek and its tributaries are classified only for the utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife and fish purposes. In addition, up to one cubic foot per second of the waters of Jetty Creek is ~~reserved~~ classified for municipal use.

Conclusion: We appreciate this opportunity to comment and also appreciate the WRD’s efforts to reach out to interested stakeholders via the Rules Advisory Committee. That said, we still have a few concerns regarding the proposed rule changes as noted in these comments. We urge the Department and Commission to address these limited concerns in the final version of the rules.

Sincerely,



Kimberley Priestley
Senior Policy Analyst

Written Testimony Prepared in Response to the Water Resources Department
Request for Public Comment Regarding Proposed Changes to
OAR Chapter 690, Division 518, Mid-Coast Basin Program

By
John Stead
jstead@winfinity.com

ATTN: Rule Coordinator (rule-coordinator@wrd.state.or.us)

This letter supplements presentations made by members of the Woahink Lake Association at the Department's Rulemaking Hearing in Lincoln City on October 3, 2012.

Recommendation 1: Remove the first sentence of OAR 690-518-0010 (1) and replace it with the proposed new text¹ as this action superimposes Oregon's general water resources policies on the Basin Plan and will promote efficiency in basin management.

Recommendation 2: Retain the word "only" in OAR 690-518-0010 (1), (a)², (c)³, and (d)⁴ as it requires that Department stipulations of water uses be limited to classified purposes only. It creates measurable standards, the use of which can enhance consistency, stability and efficiency during the preparation and subsequent processing of applications and certificates. The removal of "only" will decrease program clarity and dismantle the meanings of specific basin requirements.

Recommendation 3: OAR 690-518-0010(2)⁵ must be retained as it clearly and unequivocally assures entities and persons of the Program's integrity. By consistently exercising OAR 690-518-0010(2), the Department's efficiency and transparency will be maintained while ensuring public confidence in the decision making process. Removal of this stipulation could signal that the unbridled, individualized use of personal opinions in the processing of applications, permits and certificates may continue.

These recommendations can best be understood by reviewing portions of the Basin Program and associated permits, certificates and activities.

The Basin Program classifies the waters of Cleawox and Woahink Lakes “ . . . only for utilization of water for domestic livestock, and in-lake uses for recreation, wildlife, and fish life purposes”⁶ and the waters of Woahink Creek and its “ . . . tributaries are classified only for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:”⁷

The permits and certificates cited below appear to be representative of the 28 permits and 18 certificates between the dates of April 26, 1996 and January 13, 2011 that were found and examined.

1. The first permit, specifies, “Purpose or Use: Domestic Use for Sixteen Households . . . Period of Allowed Use: December 1, through March 31 for Domestic: April 1 through November 30, Human Consumption Only”⁸ — It appears to be out of compliance with the Program.
2. The fifth and sixth permits and accompanying certificates, require Human Consumption Year Round⁹ — These Permits and Certificates are out-of-compliance with the Program.
3. The last five permits specify, “Purpose Or Use: Human Consumption (Indoor Use Only: Cooking, Drinking, And Sanitation) For One Household. . . Period of Use: Year Round”.¹⁰ The source of water for this permit is “Two Unnamed Streams” — These permits are out-of-compliance with the Program. See OAR 690-518-0010 (1) (c) (M)¹¹ and OAR 690-518-0010(2) cited earlier.
4. Of the certificates issued March 15, 2002, four specify Human Consumption all year¹² and seven specify, “Domestic Use For One Household . . . Limited to Human Consumption Only April 1 Through November 30 of Each Year”¹³ and one specifies, “Domestic Use For One Household . . . Limited to Human Consumption Only April 1 Through April 30 and June 1 Through November 30 of Each Year”¹⁴ — All of these certificates, issued on the same date, are out-of-compliance with the Program.

The limitations on water use frustrated homeowners, realtors, builders and developers and discouraged out-of-compliance water users from seeking permits and certificates.

To circumvent these issues the Department discontinued acceptance of applications and delegated the management of Woahink Lake to Dunes City sans considerations of ORS 536.220 (1) (b), and ORS 536.220 (2) (a)¹⁵.

Residents signed contracts for use of the City's Permit for Domestic Use¹⁶. Contracts documenting the availability of water are \$50 each. Contracts authorizing use of water are \$600 each plus an annual fee of \$150, later reduced to \$100. The Department issued a Transfer Permit verifying 211 points of diversion (135 water use) and conditioned that water use not result in injury to other water rights¹⁷.

As Dunes City continues to authorize use Woahink Lake waters for domestic purposes, the Department faces potential losses of \$147,700, at \$700 per application, and mounting.

END NOTES

¹ OAR 690-518-0010 (1) [*The maximum economic development of this state, the attainment or the highest and best use of the waters of the Mid-Coast Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters*] **In accordance with ORS 536.220, the waters of the Mid-Coast Basin are classified** [*only*] for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life, with preference given to human consumption and livestock consumption over any other beneficial uses, [*The waters of the Mid-Coast Basin are hereby so classified*] with the following exceptions:

² OAR 690-518-0010 (1) (a) The waters of the following natural lakes of the Mid-Coast Basin are classified [*only*] for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes: Devils, Triangle, Lily, Sutton, Mercer, Collard, Munsel, Cleawox, Carter, Lost, Elbow, Clear, Woahink, Siltcoos, Tahkenitch, and Threemile;

³ OAR 690-518-0010 (1), (c) The waters of the following streams and their tributaries are classified [*only*] for utilization of water for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes: (M) Woahink Creek;

⁴ OAR 690-518-0010 (1), (d) The waters of the following streams and their tributaries are classified [*only*] for utilization of water for domestic, livestock, municipal, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development and instream uses for recreation, wildlife, and fish life purposes:

⁵ OAR 690-518-0010(2) Applications for the use of the waters of the Mid-Coast Basin shall not be accepted by any state agency for any purposes contrary to the classifications herein specified, and the granting of applications for such other purposes is declared to be prejudicial to the public interest, and the granting of applications for such other uses would be contrary to this water use program.

⁶ OAR 690-518-0010 (1) (a) — See Endnote Number 2.

⁷ OAR 690-518-0010 (1) (c) (M)

⁸ Permit 52093, issued April 26, 1996, Source of Water: Cleawox Lake,

⁹ Permits 52330 and 52332, issued May 28, 1996; Source of Water: Woahink Lake

¹⁰ Permits 54686, issued December 16, 2010; 54687, 54688, 54689, issued December 16, 2010; and 54694, issued January 13, 2011. Source of water: Two unnamed streams, tributary to Little Woahink Lake, [an artificial lake, tributary to Woahink Lake
NOTE: The points of diversion are in Little Woahink Lake.

¹¹ OAR 690-518-0010 (1) (c) — See Endnote Number 3.

¹² Certificates 79253, 79256, 79257, 79258; all issued March 15, 2002
Source of Water: Woahink Lake

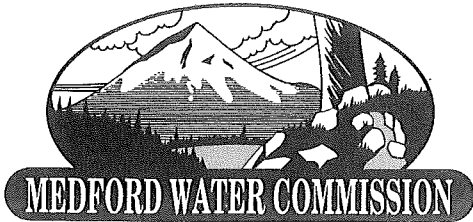
¹³ Certificates 79249, 79251, 79252, 79254, 79255, 79259, 79275; all issued March 15, 2002; Source of Water: Woahink Lake

¹⁴ Certificate 79260, Issued March 15, 2002, Source of Water: Woahink Lake

¹⁵ ORS 536.220 (1) (b) and ORS 536.220 (2) (a) instruct that management of the Program be, "... carried out by a single state agency..."

¹⁶ Permit 33923, Issued April 9, 1969, Water Use: Domestic Supplies, Source: Woahink Lake

¹⁷ Transfer Permit T-9854, Issued December 2, 2005, requires that the permit not result in injury to other water rights (Page 9)



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October 8, 2012

Ruben Ochoa
Oregon Water Resources Department
725 NE Summer St, Ste A
Salem, OR 97301

RE: Comments on Public Hearing Draft – Division 515 rules

Dear Mr. Ochoa;

On behalf of the Medford Water Commission (MWC), I am providing the following comments on the Public Hearing Draft of the Oregon Water Resources Department's (OWRD) Division 515 rules. These comments specifically address the proposed language in OAR 690-515-000(1)(a)(D), which pertains to the legislative withdrawal for the City of Medford.

I understand that the OWRD is seeking to incorporate legislative withdrawals of water into the applicable basin program, so that these administrative rules provide a comprehensive summary of limitations on water use within each basin. Further, I support OWRD's effort to prevent future confusion about the legislative withdrawal of water in Big Butte Creek for the benefit of the City of Medford. I am concerned, however, that the proposed language in OAR 690-515-000(1)(a)(D) is confusing and does not accurately reflect the provisions of ORS 538.430. Accordingly, I am providing two revisions (Options #1 and #2) to this rule section (See enclosure). I believe Option #1 meets OWRD's goals without adding unnecessary complexity by referring back to ORS 538.430, and I would request that OWRD replace the existing text in 690-515-000(1)(a)(D) with this language. If the agency feels it is necessary to provide more information in the rule, then I am providing alternative language in Option #2.

I appreciate the opportunity to comment on OWRD's draft rules.

Sincerely,

Larry Rains, P.E.
Manager, Medford Water Commission

Enclosure

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OCT 10 2012

SALEM, OR

Alternative rule language for OAR 690-515-000(1)(a)(D) in Public Hearing Draft

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Option #1

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(D) In accordance with ORS 538.430, the waters of Big Butte Creek, including its tributaries and springs at the head which form the creek, are withdrawn from further appropriation for any purpose except municipal use by the City of Medford, either within or outside the City limits, with the exceptions for Eagle Point Irrigation District as provided in ORS 538.430;

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Option #2

(D) In accordance with ORS 538.430, the waters of Big Butte Creek including its tributaries and springs at the head which form the creek are withdrawn from further appropriation for any purpose except municipal use by the City of Medford, either within or outside the City limits. This withdrawal does not preclude Eagle Point Irrigation District from:

Deleted: the use of up to 100 cubic feet per second (CFS) from an additional point of diversion located below the diversion point authorized under Permit S-6396, in use as of April 1, 1953 for irrigation use by Eagle Point Irrigation District; and the use of up to 100 CFS using the diversion point authorized under Permit S-6396 as of April 1, 1953 by the Eagle Point Irrigation District for the purpose of generating electric energy;

(i) Establishing an additional point of diversion located downstream from the diversion point in use as of April 1, 1953 under Permit S-6396 and

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(ii) Diverting up to 100 CFS using its diversion point, as of April 1, 1953 for the purpose of generating electric energy, provided at least 10 cfs is permitted to bypass the diversion;

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Deleted: the use of up to 100 cubic feet per second (CFS) from

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Additions and deletions reflect changes to language as provided in Public Hearing Draft of Division 515 rules

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Departmental Response to Comments

WaterWatch (October 9, 2012):

1. ***Review of Proposed Storage:*** Despite legislative repeal of the Commission's authority to act under the rule in question, WaterWatch maintains that the storage review rules should remain. The suggestion that the Commission review reservoir applications for some unspecified administrative purpose is counter to the policy-setting, as opposed to administrative, role of the Commission. The important point, however, is that the Department and the Commission can only do what they have statutory authority to do, and legislative repeal of the very specific authority for the Commission to create minimum flows precludes action under the rule, thus it is proposed for deletion.

Note: ODFW did express an interest in preserving these rules during the RAC meeting, however once presented with more specific information regarding the repeal of ORS 536.325, ODFW agreed in September that the entire rule should be deleted. Following comment by WatchWatch indicating that ODFW did not support removal of said rules, ODFW confirmed that perspective.

2. ***Withdrawals:*** WaterWatch asked that the Department consider strengthening the proposed language abstracted from legislative withdrawals in statute. The Department agrees to modify proposed language in the public-hearing draft for several legislative withdrawals to more thoroughly reflect statute, and that change has been made in the final rules under consideration for adoption.
3. ***Deletions of Introductory Language:*** In order to make the basin-programs more readable and easier to use, the Department proposed deletion of florid introductory language that repeats statute unnecessarily. At the RAC meeting and in written comment, WatchWatch objected to that proposed revision, and to accommodate that concern the Department is proposing use of phrases that reference the statutes where such language occurs. The Department believes that is a reasonable compromise because administrative rules are crafted to implement statute, not to repeat it.
4. ***Deletion of the word "only" in classification designations:*** The Department proposed removing the word "only" not for any policy reason, but because it is superfluous. WaterWatch objected to removal of the word "only" because they believe it would result in a more permissive allocation policy. That view reflects a lack of understanding about how the classifications are used. The classifications are exclusive (i.e., the uses listed are the only ones allowable). The Department's usage of a classification is identical with or without the word "only", thus it is proposed for removal to simplify the language.
5. ***Deletion of references to "any state agency or public corporation of the state":*** WaterWatch does not disagree with the proposed deletion, but instead raised a similar concern regarding statutes unrelated to this rulemaking. The Department

will respond to WaterWatch's question separately as it is outside the scope of this rulemaking.

6. **Reservations:** The reservations in rule described by WaterWatch were not part of the revisions proposed in the public-hearing draft, and thus cannot be considered further in this rulemaking.

Medford Water Commission (October 8, 2012)

Larry Rains, manager of the Medford Water Commission, proposed alternative language pertaining to the legislative withdrawal of Big Butte Creek, arguing that it was clearer and more concise. The Department concurs, and has revised the final proposed language accordingly.

John Stead (October 10, 2012)

Mr. Stead testified at the public hearing and also submitted his comments in writing. He identified three rule-related items. Two of them were mentioned by WaterWatch and the Departmental response described above, namely 1) deletions of introductory language, and 2) deletion of the word "only" in classification designations. He also objected to deletion of 690-518-0010(2) because he perceives that said deletion would result in a more permissive allocation policy. However, as described in Item B above, deletion of the rule is necessary due to the subsequent creation of ORS 536.295; allocations would not be more permissive unless the Commission saw fit to make them so by approving a particular basin-program exception request. He also discussed various permits and certificates, as well as aspects of the administration of a Dunes City municipal right, that do not pertain specifically to the proposed rule revisions.

(12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances; and

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum stream flows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordinance restricting use of the water so obtained to direct human consumption uses. [1955 c.707 §10(3); 1979 c.170 §1; 1987 c.546 §1]

Note: The Legislative Counsel has not, pursuant to ORS 173.160, undertaken to substitute specific ORS references for the words "chapter 707, Oregon Laws 1955," in ORS chapter 536. Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located in volume 15 of Oregon Revised Statutes.

536.315 Designation of exact land areas included within auxiliary lands. As part of the water resources policy statement authorized under ORS 536.300, the Water Resources Commission may designate the exact land areas included within the auxiliary lands described in ORS 536.007. [1965 c.355 §4; 1985 c.673 §179; 1987 c.158 §114]

536.320 Limitation of powers of commission. The commission shall not have power:

(1) To interfere with, supervise or control the internal affairs of any state agency or public corporation;

(2) To modify, set aside or alter any existing right to use water or the priority of such use established under existing laws; or

(3) To modify or amend any standard or policy as prescribed in ORS 536.310 nor to adopt any rule or regulation in conflict therewith. [1955 c.707 §10(4)]

536.325 Establishment of minimum stream flows; application for minimum stream flow by state agencies; action on application; time limit; findings. (1) The Department of Environmental Quality or the State Department of Fish and Wildlife may submit to the Water Resources Commission applications for the establishment of minimum perennial stream flows. The applications shall be in a form specified by the commission and shall include data on the

quantities of water necessary to support fish life or to minimize pollution and other information specified by the commission.

(2) The commission, on its own initiative or in response to applications filed under subsection (1) of this section, may establish or modify minimum perennial stream flows. The commission may establish or modify such minimum perennial stream flows without adopting a new basin program or a comprehensive update of an existing basin program for the affected river basin:

(a) After considering Water Resources Department staff recommendations;

(b) After an opportunity to be heard has been given to all other state agencies which may be concerned;

(c) After considering the provisions of ORS 536.220, 536.300 (1) and 536.310; and

(d) After holding at least one public hearing in the affected river basin.

(3) Minimum perennial stream flows shall become effective upon adoption by the Water Resources Commission. Notwithstanding ORS 536.320 (2) or any other provision of law, minimum perennial stream flows shall have as a priority date the date the application for the minimum perennial stream flow was filed, or, if no application has been filed, the date the commission initiated action to consider the minimum perennial stream flow.

(4) Within one year of the date an application recommending a minimum perennial stream flow is submitted to the Water Resources Commission, the commission shall:

(a) Adopt the recommended minimum perennial stream flow;

(b) Adopt a minimum perennial stream flow at some other rate after making a finding that the other rate is more appropriate for supporting aquatic life and minimizing pollution; or

(c) Reject the recommended minimum perennial stream flow after making a finding that establishment of a minimum flow is of lesser importance than other uses of the waters of the particular stream.

(5) Any action taken by the Water Resources Commission under this section shall be accompanied by a statement of specific findings and reasons for the action.

(6) The Governor shall guide and assist the Water Resources Director and the Water Resources Commission in performing duties under this section to insure compliance with the time limitation provided in this section for taking action on minimum perennial stream flows.

(7) Except as provided in section 3, chapter 796, Oregon Laws 1983, no applications

for minimum perennial stream flows shall be submitted to the Water Resources Commission before January 1, 1986.

(8) Nothing in this section is intended to affect the priority of any permit or certificate issued as the result of an application filed on or before August 8, 1983. [1979 c.319 §2; 1983 c.796 §4; 1985 c.673 §15]

536.330 Water Resources Act as supplemental to and including existing statutes. Chapter 707, Oregon Laws 1955, shall be construed by the commission as supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by chapter 707, Oregon Laws 1955. ORS 536.220 to 536.540 and the authority of the department thereunder shall include all laws now existing or hereinafter enacted that relate to or affect the use and control of the water resources of this state. [1955 c.707 §10(5); 1963 c.415 §1; 1975 c.581 §24; 1985 c.673 §180]

Note: See note under 536.310.

536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses. Subject at all times to existing rights and priorities to use waters of this state, the commission:

(1) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in the subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this section shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.

(2) Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and un-

used amounts may be made available for appropriation and beneficial use by the

(3) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.300 (12), prescribe preferences for the future particular uses and quantities of uses of waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantity of use thereof. In prescribing such preferences the commission shall give effect to due regard to the natural characteristics of such sources of water supply, the topography, the economy of such sources of water supply, the economy of the area, seasonal requirements of various uses of such waters, the type of proposed uses between consumptive and nonconsumptive uses and other pertinent data. [1955 c.707 §10(6); 1963 c.414 §1; 1989 c.9 §2; 1989 c.833 §54]

536.350 Delivery of water resources statement to certain public bodies.

The Water Resources Commission shall deliver a copy of each water resources statement referred to in ORS 536.300 (2) to each state agency or public corporation of this state which may be concerned with the use or control of the water resources of this state. Each state agency or public corporation of this state which receives a water resources statement shall give to the commission a receipt for the water resources statement. A copy of any such receipt duly certified by the director to be true and correct copy shall be admissible in evidence in any court in the state. This section shall not apply to a certificate recites that a copy of the water resources statement was delivered to a particular state agency or public corporation of this state shall be presumed that the same was delivered as stated in the certificate. [1955 c.707 §10(7); 1985 c.673 §16]

536.360 State agencies and public corporations to conform to state water resources policy.

In the exercise of any power, duty or privilege conferred upon the water resources of this state, any state agency or public corporation of this state shall give due regard to the state water resources policy and shall conform to the exercise of any such power, duty or privilege by any such state agency or public corporation which would tend to derogate or interfere with the state water resources policy shall be lawful. [1955 c.707 §11]

536.370 Exercise of power with state water resources policy effective until approved by commission.

No exercise by any state agency or public corporation of this state which would be in violation of a copy of a state water resources