



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### MEMORANDUM

TO: Water Resources Commission

FROM: Jon Unger, Water Supply Development Coordinator

SUBJECT: Agenda Item M, August 22, 2014  
Water Resources Commission Meeting

### **Reservations of Water for Future Economic Development**

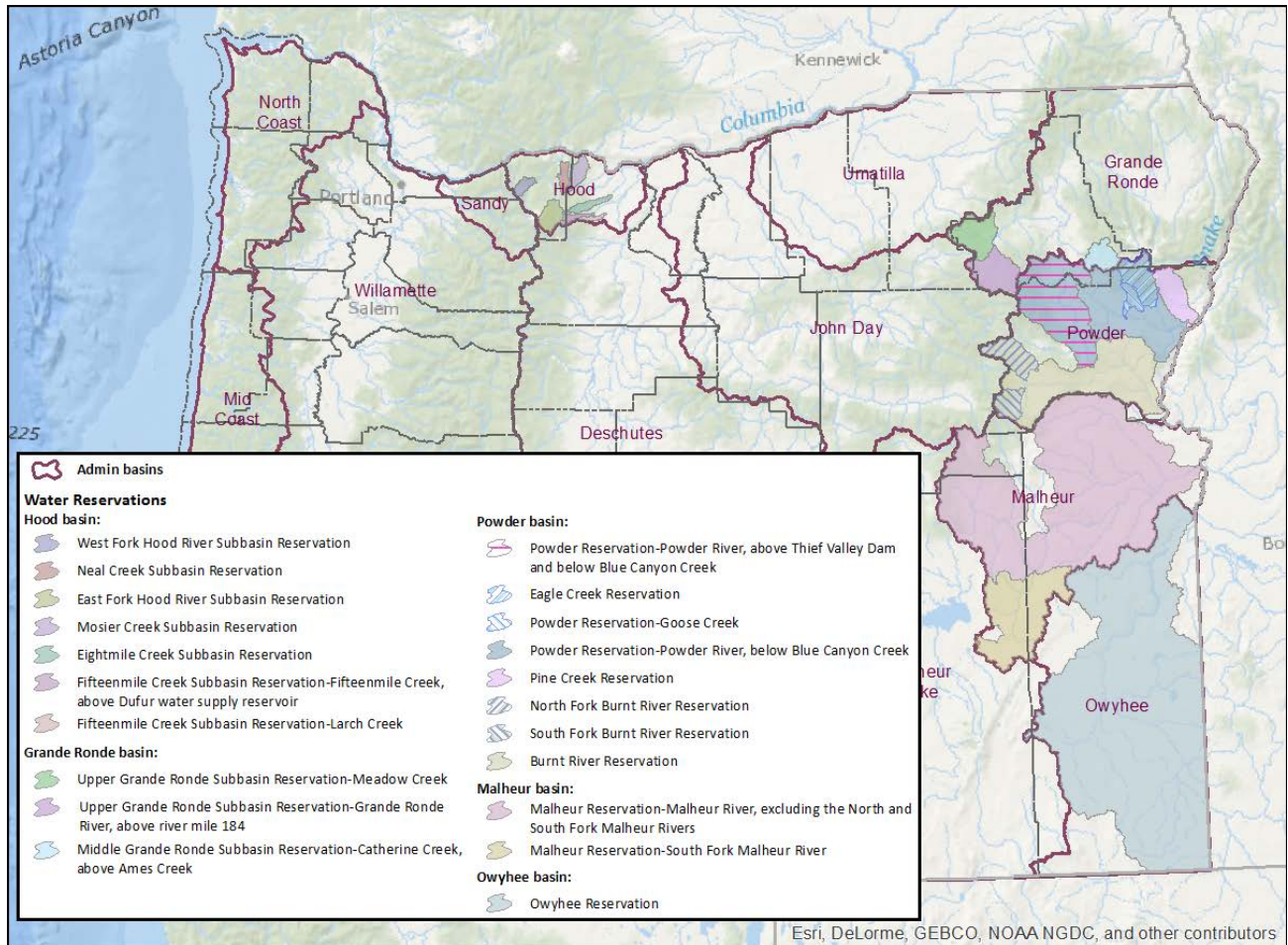
#### **I. Issue Statement and Background**

Senate Bill 140, which took effect September 27, 1987, established provisions regarding the reservation of water for economic development (ORS 537.356 and 537.358). The purpose of reservations of water for economic development is to provide a mechanism to protect water for future needs and encourage sound water supply planning and management. Reservations set aside a quantity of water for future multipurpose storage with a priority date that corresponds with the date in which the reservation was filed.

In accordance with the bill, the Commission adopted rules (Division 79) to define how the reservations process would be implemented. In order to establish or extend a reservation, a contested case proceeding must be held, followed by rulemaking and amendment of the basin program.

Previous reservation requests by the Oregon Department of Agriculture (ODA), resulted in the adoption of reservations in five basin plans (see Figure 1 and Attachment 1). Beginning in 2016, these reservations of water will be automatically repealed, unless extended by rulemaking of the Water Resources Commission. ODA has indicated an interest in requesting to initiate extension proceedings in the future. This report provides an overview of requirements related to: how an applicant can access a reservation of water, and the process for establishing or extending reservations.

Figure 1 - Oregon Department of Agriculture Reservations



## II. Discussion

### A. Applicant Utilization of a Reservation

*Application for a Permit to Store Reserved Water* - Application for the use of reserved water must comply with and be processed consistent with water right application processing rules (OAR Chapter 690, Division 310). In addition OAR 690-079-0150 requires that an application for use of reserved water include a statement from the agency that requested the reservation certifying that the proposed use is consistent with the reservation.

Further requirements are identified in the basin plans in which the reservations are described. These include requirements to consult with the Oregon Department of Fish and Wildlife and assess the effects of the proposed reservoir on fish and wildlife, as well as consult with the Oregon Department of Environmental Quality and an assess the effects of the proposed reservoir

on water quality. In addition the applicant must analyze alternatives to the proposed reservoir and describe how the project would enhance instream values, including instream flows.

*Processing of Application* - Upon OWRD acceptance of an application, an initial review is performed. Next a 30-day public comment period takes place followed by a proposed final order. The proposed final order is followed by a 45-day protest period. Assuming a favorable outcome, a final order and accompanying water right permit is issued. The priority date for a storage right that uses the reserved water is the date of the reservation (ORS 537.358(2)).

Basin plans specify that to issue a permit, the Department must find that the proposed reservoir to store reserved water: (1) is consistent with the purpose of the reservation; and (2) will enhance instream values, including but not limited to instream flows. In addition, the Department must determine what storage season is appropriate and whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.

## **B. Review Process for Initial Reservations and Extensions**

Reservations of water can be approved for up to 20 years. Prior to end of the reservation term, the applicant may apply for a time extension of up to 20 years. Extensions are subject to all requirements governing review of initial reservations; however, they retain the priority date of the original reservation. (See OAR 690-079-0050). The process for establishing or extending a reservation of water for economic development is outlined below.

*Application and Information Requirements* - The Division 79 rules identify the steps a state agency must follow in order to establish or extend a reservation. The first step to request or extend a reservation is submittal of a "Reservation of Water for Economic Development Application and Extension" form. See Attachment 3 for information that the requesting agency must submit as part of the application.

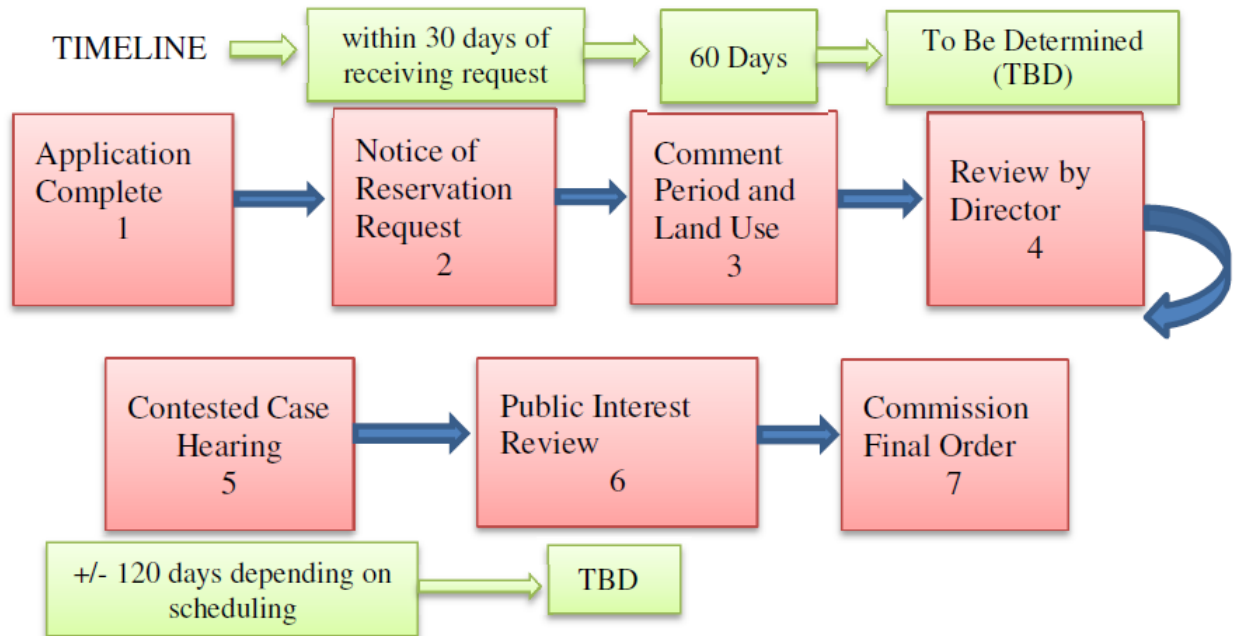
*Public Comment* - Within 30 days of receiving a request for reservation that is deemed complete, the Director is required to notify certain state, federal and local government agencies, as well as affected tribes and persons on the Department's mailing list. The Department must provide a 60-day comment period.

*Review by Director* - The Director must reject the reservation request if the application does not contain all required information, or if the Department concludes the reservation would impair or be detrimental to the public interest based on public interest review standards (OAR 690-079-0100). If the request is rejected, the agency requesting the reservation may appeal to the Commission for review by filing a request within 60 days of being notified.

*Contested Case Proceeding* – If the Director does not find that the requested reservation will impair or be detrimental to the public interest, or if the Commission reverses the Director's rejection of the request, the Director must then initiate a contested case hearing, notifying the requesting agency and parties that submitted public comments.

*Recommendation to the Commission* - The final step in the reservation process is the Director preparing findings and a recommendation to the Commission on the requested reservation. The Commission can then issue the proposed order, hear exceptions, and issue the final order on all reservations on which a contested case hearing is held.

Figure 2 – Reservation Review Process Summary

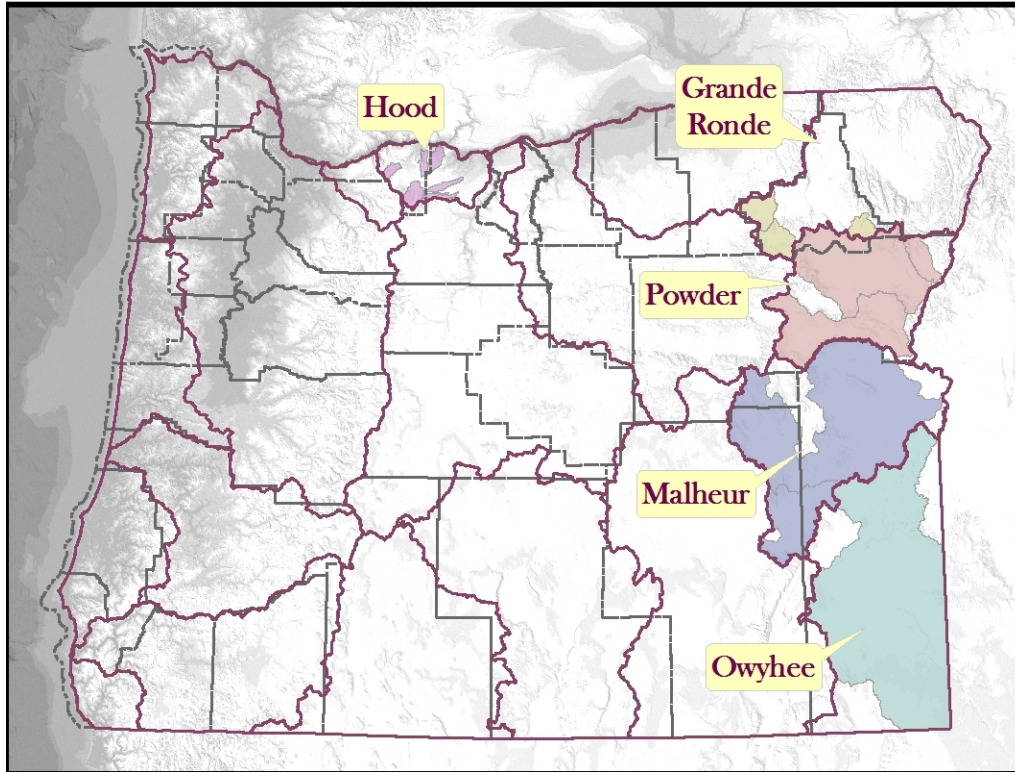


### III. Conclusion

Reservations of water for economic development can provide a way for communities to meet future water needs through multipurpose storage. Starting in 2016, reservations of water made by ODA will be automatically repealed if extension requests or applications for the full quantity of reserved water are not received. The Department will continue to work with ODA and keep the Commission apprised of future activities regarding reservations of water for economic development.

- Attachment 1:** Adopted Oregon Department of Agriculture Reservations
- Attachment 2:** Report to the Water Resources Commission on the Reservations of Water for Future Economic Development in Agriculture
- Attachment 3:** Information Requesting Agency Must Submit to Apply for Reservation or Extension

**Attachment 1 - Adopted Oregon Department of Agriculture Reservations**



**Hood Basin Program (OAR Division 504)**

**Expiration: October 17, 2016**

**Reservation**

**Quantity (acre-feet)**

West Fork Hood River Subbasin (690-504-0110)	9,000
East Fork Hood River Subbasin (690-504-0120)	50,000
Neal Creek Subbasin (690-504-0130)	5,000
Mosier Creek Subbasin (690-504-0140)	6,400
Eightmile Creek Subbasin (690-504-0150)	4,000
Fifteenmile Creek Subbasin (690-504-0160)	8,500

- (1) Fifteenmile Creek or tributaries upstream of City of Dufur water supply reservoir (5,000 acre-feet)
- (2) Larch Creek or its tributaries (3,500 acre-feet)

**Total**

**82,900 acre-feet**

**Powder Basin (OAR Division 509)****Expiration: March 8, 2016 (0110-0130)  
May 26, 2020 (0140-0160)****Reservation****Quantity (acre-feet)**

South Fork Burnt River	(690-509-0110)	17,800
North Fork Burnt River	(690-509-0120)	6,500
Burnt River Subbasin	(690-509-0130)	2,000
Pine Creek Subbasin	(690-509-0140)	10,000
Eagle Creek Subbasin	(690-509-0150)	4,300
Powder River Subbasin	(690-509-0160)	33,890

- (1) Goose Creek and Tributaries upstream of the mouth, tributary to the Powder River east of Keating (3,990 acre-feet);
- (2) Powder River and tributaries upstream of Thief Valley Dam and below the confluence of Blue Canyon Creek (27,000 acre-feet);
- (3) Powder River and tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek (2,900 acre-feet).

**Total****74,490 acre-feet****Grande Ronde Basin (OAR Division 508)****Expiration: February 7, 2017****Reservation****Quantity (acre-feet)**

Upper Grande Ronde Subbasin	(690-508-0110)	26,900
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- (1) Meadows Creek and tributaries (14,900 acre-feet);
- (2) Grande Ronde River and tributaries including Fly Creek and tributaries, upstream of river mile 184 (in NE ¼ Sec. 14, T4S, R35E) (12,000 acre-feet).

Middle Grande Ronde Subbasin	(690-508-0120)	9,000
(Catherine Creek and tributaries above Ames Creek)		

**Total****35,900 acre-feet**

**Malheur Basin (OAR Division 510)****Expiration: January 7, 2017****Malheur Reservations (690-510-0110)****Quantity (acre-feet)**

1. Malheur River and tributaries, excluding the North Fork and South Fork Malheur Rivers and tributaries	35,000
2. South Fork Malheur River and tributaries	13,200
<b>Total</b>	<b>48,200 acre-feet</b>

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**Owyhee Basin (OAR Division 511)****Expiration: January 7, 2017****Owyhee Reservations (690-511-0110)****Quantity (acre-feet)**

Owyhee River and tributaries	60,000
<b>Total</b>	<b>60,000 acre-feet</b>



**MEMORANDUM**

**TO:** Water Resources Commission

**FROM:** Katy Coba, Director, Oregon Department of Agriculture (ODA)  
Margaret Matter, Water Resources Specialist, ODA

**SUBJECT:** Agenda Item M, August 22, 2014  
Water Resources Commission Meeting

**Report from ODA on the Reservations of Water for Future Economic Development in Agriculture**

**Status of Reservations**

During the 1990s, pursuant to Oregon Revised Statutes (ORS) 537.249 and 537.356, the Oregon Department of Agriculture (ODA) requested reservations of water for future economic development in agriculture. The Oregon Water Resources Commission approved the requested reservations in the Hood, Grande Ronde, Powder, Malheur and Owyhee basins. The lifespan of the reservations is 20 years, and most of the approved reservations requested by ODA will expire in two to three years. However, interest in and support for extending the reservations of water has increased significantly.

Reasons for interest in and support for the reservations include flexibility in how the water may be stored and used. Although the reservations allocated unappropriated surface water for storage in multipurpose reservoirs for future economic development, the definition of "multipurpose" reservoir evolved through public input and legal review (Memorandum, Oregon Department of Justice, General Counsel; April 20, 1999; Definition of "multipurpose" reservoir), and is recorded in administrative basin plans. A **multipurpose reservoir** stores water to serve multiple beneficial uses such as irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes. Types of multipurpose reservoirs include:

- Open or enclosed surface impoundments;
- Off-channel or other;
- Subsurface containments or aquifer storage; or
- Infiltration and diversion ponds.

Other options involve existing facilities, such as raising the height of a dam to increase reservoir capacity, or using available reservoir storage capacity to store reservation water. **Economic development** may include, but is not limited to, production of agriculturally related goods and services, and management of natural resources that contribute economic







Since early spring, ODA has conducted outreach to identify and contact agricultural water users interested in storage water, and to remind or inform water users of the reservations of water for agriculture. We have learned that agricultural water users in several regions, including the following, are interested in using the reservations to meet future needs.



- (1) In the Hood River Basin, a study determined that water from the Neal Creek subbasin reservation could be stored in a reservoir to meet future irrigation and instream flow needs.
- (2) In the Powder/Burnt River Basin, (a) the Burnt River Irrigation District is interested in building a reservoir to store water from the South Fork Burnt River reservation; (b) a farm/ranch has applied for an OWRD feasibility grant to investigate storing water from the Burnt River Subbasin reservation; and (c) agricultural water users in the Powder River Basin are collaborating with USBR to evaluate options to store water from the Powder River reservation.
- (3) Existing capacity in Owyhee Reservoir may be used to store water from the Owyhee River Basin reservation.
- (4) In the Malheur Basin, a farm operation is considering storing water from the Malheur Basin reservation in a proposed multipurpose reservoir.

Table 1 lists the Oregon Water Resources Department (OWRD) administrative basins and subbasins, the reservations of water for agricultural uses, and corresponding expiration dates. The box outlined in red encompasses reservations that expire in two to three years. At the bottom of Table 1 is a subset of reservations in the Powder River administrative basin that expire in 2020.

### **Initiating the Process to Extend the Reservations**

As knowledge of and interest in accessing the reservations has increased, so has support for extending the reservations of water for agriculture. For these reasons, the Oregon Department of Agriculture will soon formally request that the Water Resources Commission (WRC) extend the reservations for another 20 years. The additional time will allow time for the following activities:

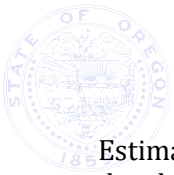
- ODA will conduct more extensive outreach to agricultural water users in regard to availability and accessing the reservations of water.
- Agricultural water users may identify future irrigation needs, and evaluate how reservations may help meet those needs and other beneficial uses.
- ODA, agricultural water users, and other partners will work together to secure project funding.

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ODA is assembling the necessary information to formally request extension of the approved reservations, including developing estimates of agricultural water demand for each administrative basin with an approved reservation of water.

We developed a draft plan to estimate agricultural water demand and presented the draft to representatives of the agricultural community for review and input. The draft plan was approved with an inclusion that would improve the economic assessment.

As part of the plan, we will estimate water demands and economic benefits for both current conditions and potential future conditions. Current agricultural water demand estimates will be based on agricultural lands with associated water rights; nursery operations and crop types.



Estimating potential agricultural water demand will answer the question, “What agricultural development is possible?” The overall approach will examine agricultural demand when irrigation is expanded from current conditions to:

- a) Crops that are not currently irrigated;
- b) Lands with Class 1 and Class 2 soils zoned for agriculture that are not currently farmed and have no associated water rights; and
- c) Land with Class 3 and Class 4 soils that may be productive if irrigated.



The analysis will also consider the months during which reserved water is available, the costs of any conveyance systems needed to transport water to areas with potential for agricultural development, and the effects of climate variability and change to future agricultural water demand.

The analysis will allow us to compare current and potential agricultural water demand estimates, and gauge possible economic benefits to agriculture from additional water. Possible benefits include preserving or increasing productive agricultural land, helping to extend the irrigation season; and enabling farmers to raise higher value irrigated crops.

The analysis will also identify agricultural water users in the five administrative basins with approved reservations who are actually interested in accessing the reservations for agricultural economic development. Authentic interest in accessing reservations for economic development will determine reservations for which ODA will request extensions.

ODA will also request at subsequent meetings that the WRC: (a) extend the approved reservations in the Powder River basin that expire in six years (2020); and (b) approve pending reservations in the Willamette and John Day basins.

We have greatly appreciated the support and cooperative relationship with OWRD staff and the Commission as we have learned about the reservations and drafted our proposed analysis. We look forward to continued collaboration as we move forward with the analysis in earnest, and welcome the Commission’s questions and feedback about this process.

**Table 1. Administrative Basins with Reservations of Water for Future Economic Development in Agricultural**

<b>Administrative Basins and Subbasins</b>	<b>Expiration Date</b>
<b>Powder River Basin (part 1)</b>	
(a) North Fork Burnt River Subbasin	(a) Mar 8, 2016
(b) South Fork Burnt River Subbasin	(b) Mar 8, 2016
• Burnt River Irrigation District	
(c) Burnt River Subbasin	(c) Mar 8, 2016
<b>Hood River Basin</b>	
(a) West Fork Hood River Subbasin	(a) Oct 17, 2016
(b) East For Hood River Subbasin	(b) Oct 17, 2016
(c) Neal Creek River Subbasin	(c) Oct 17, 2016
(d) Mosier Creek River Subbasin	(d) Oct 17, 2016
(e) Eightmile Creek River Subbasin	(e) Oct 17, 2016





(f) Fifteenmile Creek River Subbasin (f) Oct 17, 2016

**Malheur River Basin**

(a) Malheur River, excluding the North & South Forks & tributaries (a) Jan 7, 2017

(b) South Fork Malheur River and Tributaries (b) Jan 7, 2017

**Owyhee River Basin**

(a) Owyhee River and tributaries (a) Jan 7, 2017

**Grande Ronde River Basin**

(a) Upper Grande Ronde River Subbasin (a) Feb 7, 2017

(b) Middle Grande Ronde River Subbasin (b) Feb 7, 2017

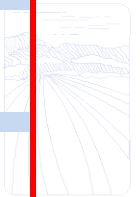
**Powder River Basin (part 2)**

(d) Pine Creek Subbasin (d) May 26, 2020

(e) Eagle Creek Subbasin (e) May 26, 2020

(f) Powder River Subbasin (f) May 26, 2020

- Goose Creek & tributaries
- Powder River & tributaries upstream of Thief Valley Dam
- Powder River & tributaries below confluence of Blue Canyon Creek including Blue Canyon Creek



### **Attachment 3: Information Requesting Agency Must Submit to Apply for Reservation or Extension**

As provided in OAR 690-079-0060, the requesting agency must provide the following information when requesting a new reservation of water or extension on an existing reservation:

- (1) Agency name and address;
- (2) Purpose of reservation;
- (3) Amount of water proposed to be reserved and evidence of water availability;
- (4) Source(s) of water to supply the reservation;
- (5) If the reservation is to be provided by existing storage, agreement to the proposed reservation by the party in charge of disposition of the stored water or evidence of authorization or allocation consistent with the proposed reservation;
- (6) If the proposal is to reserve water to be stored in a new facility, evidence that sites for the storage facility can be developed and that water is available for storage;
- (7) Approximate season(s) of use;
- (8) Approximate location(s) of use;
- (9) Evidence that the proposal is compatible with overall basin program goals and policies;
- (10) Identification of affected local governments and copies of letters notifying each local government of the intent to file a reservation request accompanied by a description of the reservation proposal;
- (11) Intended types of use(s) of the reserved water;
- (12) Expected duration of the reservation prior to application for use of the water;
- (13) Economic benefits provided;
- (14) Water sources alternatives;
- (15) Evidence that the proposal does not conflict with Scenic Waterway flow requirements;
- (16) Evidence that the proposed reservation and water use(s) will promote the beneficial use of the water without waste; and
- (17) Potential adverse impacts on water resources.