



Oregon

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Oregon Water Resources Department Announces Extension of Public Comment Deadline and Scheduling of Second Public Hearing on Drought Rules for Klamath County

Under Oregon Law, the Water Resources Commission may grant a preference to water rights for stock water and human consumption, when the Governor declares a drought emergency in an area. This preference means that holders of water rights for stock water and human consumption uses – that would otherwise be shut off during a call by a senior water user – would be allowed to continue use of that water for those purposes. Before the preference can take effect in an area, the Commission must adopt rules granting the preference in the region.

In 2013, and again in 2014, the Governor declared a drought emergency in Klamath County. In order to assure that animals would have access to water for drinking, and that people would have access to water for drinking, cooking, and sanitation, the Water Resources Commission adopted temporary rules in 2013, and yet again in 2014. The temporary rules allowed water rights for stock and human consumption to receive a preference, so that these types of uses would not be regulated off upon receipt of a call by a senior water user. Stock water and water for human consumption are often included together with irrigation in older water rights. Human consumption use is included within municipal water right uses.

The existing rules are temporary and can only be in effect for 180 days, expiring September 27, 2014. The temporary rules cannot be extended without undertaking the rulemaking process for permanent rules. Therefore, the Department began the permanent rulemaking process in July, holding a public hearing in Klamath Falls on July 24th and accepting public comments.

In reviewing the feedback received, the Department believes that there are misconceptions about this rule. The rule does not address, impact, or modify how the department determines whether groundwater and surface water are connected for the purposes of regulation. It does not define how the Department proves that a well substantially interferes with surface water. These topics are to be the subject of a future rulemaking as required by the Upper Klamath Comprehensive Agreement, but are not addressed by these rules.

These rules specifically pertain to providing water for human consumption and stock during a drought for those water rights that would have otherwise been regulated off were these rules not in place. This means that during a Governor's declared drought, water rights that include human consumption and stock water uses – that are being regulated to satisfy senior water right holders – may continue those uses when other types of uses under the water right are regulated off. For example, without these rules, a water right that includes the uses of irrigation, human consumption, and stock would be

regulated off to satisfy a valid call by a senior water right holder. With these rules in place, water used under the water right for the purposes of human consumption, as well as for stock water would not be regulated off during the Governor's drought declaration.

The Department received feedback that additional notice should be provided to the community and that the public comment period should be extended to provide the opportunity for further comment. The Department values public input in the rulemaking process. As a result, the Department is undertaking efforts to further engage the community in the rulemaking process, so that the Department can understand the full spectrum of opinions about the rules.

The Department is extending the public comment deadline to September 19, 2014. It will also hold another public hearing to accept public comment on the proposed rules on September 18, 2014. The hearing will be held at the Oregon Institute of Technology from 6:00 pm-7:00 pm in the Mt. Mazama Room.

The Department requests that individuals interested in these rules provide comment. Further information about the rules is available on the Department's website.

Frequently Asked Questions

Why does this apply only in Klamath County?

Other areas of the state have had a long history of regulation under the doctrine of prior appropriation. Other basins across the state, therefore, already have infrastructure and systems in place to address human consumption and stock water needs during a call by senior users. The Klamath Basin is unique in that regulation began for the first time in 2013 in most of the basin, as a result of the completion of the first phase of the Klamath Adjudication. This meant that senior pre-1909 water users could begin to request enforcement of their water rights. In the Klamath Basin, stock owners and cities have not been faced with regulation in the past and drought has exacerbated the potential for impacts. Therefore, systems are not fully in place to ensure that both people and stock have access to water outside of systems used under their existing water rights.

Does this rule change how groundwater is regulated?

In reviewing the feedback received, the Department believes that there are misconceptions about the effects of this rule. This rulemaking process does not address, impact or modify how the department determines whether groundwater and surface water are connected for the purposes of regulation. It does not define how the Department determines that a well substantially interferes with surface water. These topics are to be the subject of a future rulemaking as required by the Upper Klamath Comprehensive Agreement. This is not the objective of this particular rulemaking, which specifically pertains to providing water for human consumption and stock during a drought for those water rights that would have otherwise been regulated off.

Why doesn't the Commission provide a preference to other types of uses?

The Oregon Legislature, recognizing the potential impacts to human and animal welfare during a drought, authorized the Commission, pursuant to a declaration by the Governor that a severe, continuing drought exists, to grant a temporary preference to water rights for human consumption or stock watering use over other water uses regardless of priority date (see ORS 536.750(1)(c)). The Department has no authority to grant a preference to other uses or rights. Its authority is limited to human consumption and stock water.

What uses are included in human consumption and stock water?

“Human Consumption,” as defined in the rules, means the use of water for the purposes of drinking, cooking, and sanitation. “Stock Watering,” as defined in the rules, means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

Why can't the Department just extend the temporary rules and consider this later?

The existing rules are temporary and can only be in effect for 180 days, expiring September 27, 2014. The temporary rules cannot be extended without undertaking the rulemaking process for permanent rules – even if the Department decides to only make these rules effective through the end of the year. Therefore, the Department plans to call a Water Resources Commission meeting at the end of September to consider adoption of these rules.

In addition, instead of making this a permanent rule, the Department is considering having these rules in effect through December 2014. This will allow the Department and community to further assess solutions to water needs and determine whether these rules are needed in future years. Public comment will assist the department in determining whether these rules should sunset at the end of the year.

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