

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
12-15-14 5:06 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Water Resources Department  
Agency and Division

690  
Administrative Rules Chapter Number

Local rules governing control of well use in the Off-Project Area in the Klamath Basin.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The Adoption of Division 025 in Chapter 690 of the Oregon Administrative Rules

**Statutory Authority:**

ORS 537.505 - 537.795, ORS 540.045

**Other Authority:**

OAR 690-009

**Statutes Implemented:**

ORS 537.505 - 537.795, ORS 540.045

**Need for the Rule(s):**

The proposed adoption of Division 025 is needed to establish procedures in the Klamath Basin for the control of groundwater uses in the Off-Project Area for the benefit of senior surface water rights. The proposed rules provide more certainty to both surface water users in the Klamath Basin and groundwater users in the Off-Project Area. These rules are being proposed in accordance with the Upper Klamath Basin Comprehensive Agreement.

**Documents Relied Upon, and where they are available:**

Upper Klamath Basin Comprehensive Agreement, available at: <http://www.oregon.gov/gov/GNRO/Pages/Final-Upper-Klamath-Basin-Comprehensive-Agreement.aspx>

**Fiscal and Economic Impact:**

[ See attached document. ]

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

[ See attached document. ]

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

[ See attached document. ]

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

[ See attached document. ]

**c. Equipment, supplies, labor and increased administration required for compliance:**

[ See attached document. ]

**How were small businesses involved in the development of this rule?**

[ See attached document. ]

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

02-17-2015 5:00 p.m. Joshua Spansail joshua.a.spansail@wrdd.state.or.us  
Last Day (m/d/yyyy) and Time Printed Name Email Address  
for public comment

## **OAR 690-025-0010 - FISCAL IMPACT STATEMENT**

### **Fiscal and Economic Impact**

A fiscal impact statement addresses the fiscal impact of a proposed rule as compared to the current regulatory status quo. OAR Chapter 690, Division 009 is the current regulatory status quo for the regulation of groundwater as a result of interference with surface water in Oregon. In general, OAR Chapter 690, Division 009 provides that the Department shall control the use of a well in response to a valid call by a senior surface water user after determining that (1) the use has the potential for substantial interference with surface water, and (2) control of the use will provide relief to the surface water supply in an effective and timely manner. The proposed rules do not change the general approach to control of well use. The proposed rules do provide a detailed process for determining whether control of the use of a well in the Off-Project Area will provide relief to the surface water supply in an effective and timely manner and, therefore, whether the Department will control the use.

### **Statement of Cost of Compliance**

#### **1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The proposed rules are not expected to impose additional costs on state agencies, units of local government, or the general public as compared to the current regulatory status quo. The primary state agency affected by the rule is the Oregon Water Resources Department, which is charged with regulating the use of water according to law. Because the proposed rules do not expand the scope of the Department's regulatory authority, the proposed rules are not expected to increase regulatory costs for the agency.

The Department also holds certain instream water rights in the Klamath Basin. Other state agencies and local governments also hold surface water rights in the Klamath Basin that may be affected by the Department's decision to control or not control the use of a well based on the criteria in the proposed rules.

Similarly, the proposed rules could affect any member of the public that holds a surface water right in the Klamath Basin to the extent that they would be in a position to make a valid call for water that could include groundwater used by a well in the Off-Project Area.

Oregon allocates water use according to the prior appropriation doctrine. Every water right is assigned a priority date. In times of shortage, the Department may curtail the use of water by junior water right holders in favor of senior water right holders. Any time the Department controls the use of either groundwater or surface water in response to a valid call made by a senior water right holder, the Department's control

can have a negative fiscal impact on the regulated user and a positive fiscal impact on the calling user. The proposed rules do not change these fundamental principles. The proposed rules do, however, provide more certainty to both surface water users in the Klamath Basin and groundwater users in the Off-Project Area as to when wells in the Off-Project Area may be controlled to benefit a senior surface water right. Based on comments from the Upper Klamath Landowners Corporation (one of the rulemaking advisory committee members), this increased certainty is likely to create a positive fiscal impact by creating a more stable environment for businesses' investment and operations decisions.

In addition, these rules are being proposed as a component of the Upper Klamath Basin Comprehensive Agreement ("Agreement"). Based on comments from the Upper Klamath Landowners Corporation, the Agreement will have positive fiscal impacts on agricultural industry in the Off-Project Area of the Klamath Basin, and these rules facilitate those positive impacts.

The Department does not have quantitative data concerning the positive fiscal impacts of the rules, and is therefore unable to make a quantitative estimate of the impacts.

- 2. Cost of compliance effect on small business (ORS 183.336):**
  - a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule**

The proposed rules affect the use of wells in the Off-Project Area in the Klamath Basin. Many of the affected wells are operated by small businesses, the vast majority of which are agricultural operations. The proposed rules also affect surface water right holders in the Klamath Basin to the extent that they would be in a position to make a valid call for water that could include groundwater used by a well in the Off-Project Area. Many of the surface water right holders are small businesses. Many of the small businesses are agricultural operations, although some are also industrial or commercial operations. The Department estimates that roughly 1700 small businesses will be affected by the proposed rules. This includes well users in the Off-Project Area as well as surface water users in the Klamath Basin.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services**

The proposed rules do not impose additional reporting, recordkeeping, or other administrative activities on small businesses affected by the rule as compared to the current regulatory status quo (OAR Chapter 690, Division 009).
  - c. Equipment, supplies, labor and increased administration required for compliance:**

The proposed rules do not require additional equipment, supplies, labor, or increased administration for small businesses affected by the rule as compared to the current regulatory status quo (OAR Chapter 690, Division 009).

**How were small businesses involved in the development of this rule?**

The rules advisory committee included representatives of groups and entities that either are or represent small business and that are expected to be affected by the program, including the Upper Klamath Landowners Corporation, Fort Klamath Critical Habitat Landowners, Sprague River Water Resource Foundation, Resource Conservancy, Klamath Water Users Association, Upper Klamath Water Users Association, Klamath Allottee Water Users Association, Modoc Point Irrigation District, and Water for Life. The Department consulted the rules advisory committee concerning drafting of the rules and the fiscal impact of the proposed rule.