



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Brenda Bateman, Technical Services Division Administrator  
Ken Stahr, Hydrographics Section Manager  
Rachel LovellFord, Hydrologist

**SUBJECT:** Agenda Item C, March 12, 2015  
Water Resources Commission Meeting

### Scenic Waterway Flow Methods

#### I. Introduction

This informational report describes methods used previously to set Oregon Scenic Waterway flows and describes a proposed framework for setting new Scenic Waterway flows. The Water Resources Commission (Commission) will be asked to provide input on the proposed framework, specifically, the Water Resources Department's (Department) recommended methods for setting scenic waterway flows.

#### II. Background

The Commission heard presentations during 2014 about the history of scenic waterways in Oregon, and some of the current thinking around scenic waterway designations. (See August 2014 Agenda Item E and November 2014 Agenda Item F). This report addresses the assessment and process of designating Scenic Waterway flows.

The Scenic Waterways Act of 1970 statute requires the "free-flowing character of these [scenic] waters to be maintained in quantities necessary for recreation, fish, and wildlife uses" ([ORS 390.835](#)). The State Supreme Court (*Diack v. City of Portland, 1988*) further directed the Department to consider scenic waterway flow needs before approving water right permits that might affect scenic waterways.

During the late 1980s / early 1990s, before the development of many of the Department's current water availability tools, the Commission asked the Department to develop flow levels for all designated Scenic Waterways. The Department, in partnership with the Oregon Parks and Recreation Department (OPRD) and Oregon Department of Fish and Wildlife (ODFW),

conducted a series of public meetings and interviewed tour guides, boaters, fishers, and members of the public to help determine recommended flow levels for the designated reaches. Results from these efforts were combined with additional research to arrive at recommendations for scenic waterway flow levels. These recommendations were compiled into “Scenic Waterway Flow Assessment” reports and submitted for review and approval by the Commission. The last time the Department established scenic waterway flows using this process was in 1992. The Integrated Water Resources Strategy (IWRS), adopted in 2012, includes a recommended action to develop additional instream protections. Use of the state’s Scenic Waterway Program can help meet the IWRS goals and objectives.

In 2013, the Governor asked OPRD to recommend new river stretches for scenic waterway status. OPRD began the process of selecting these river stretches through a series of studies and public meetings.

During 2015, the Water Resources Commission will be asked to consider two proposed river stretches for scenic waterway designation—on the Molalla and Chetco Rivers—and to recommend flows for each waterway. The Department has begun preparing flow recommendations for the Commission to consider later this year.

### **III. Proposed Framework and Timeline for Setting Scenic Waterway Flows**

There is an opportunity to modernize Oregon’s approach to setting scenic waterway flows. The Department proposes to use a method that is in alignment with the Department’s practice of setting instream flows, meaning that the calculation methods are similar and that the water availability model would incorporate these flows, when calculating water available for future allocations. This approach comports with the structure of the scenic waterway legislation, while also utilizing input from OPRD, stakeholders, partners, and public comment.

The Department proposes to use OPRD’s Scenic Waterway Classifications (Attachment 1) to determine the range of flows available for allocation in each scenic waterway (see Attachment 2, column 3). The proposed ranges of flows are based on a percent of the monthly median flow, commonly referred to as 50 percent exceedance natural stream flow. The more pristine an area is, the greater the percent of water that would be allocated instream.

From April through August 2015, OPRD will convene a series of Advisory Committee meetings for each of the two proposed scenic waterways. These advisory committees will consist of key stakeholders (e.g., property owners, recreation guides, business owners, interested organizations, and tribal, federal, and county partners). Agency staff from OPRD and WRD will facilitate and participate as technical guides. The goal for each advisory committee is to reach consensus around a draft management plan for the scenic waterway.

In June, OPRD, with assistance from WRD staff, will hold a public workshop for each proposed scenic waterway, focused on reviewing: the scenic waterway classification, the

flow recommendation, and a proposed management plan for each. Results will be passed on to the Advisory Committees. The Department will consider input received during these meetings to develop recommended scenic waterway flows.

Following the public comment period (30 days), OPRD staff will present the draft management plans at county commission meetings and will request resolutions in support of the designation. After local approval, all comments will be assimilated into a final report and presented to the OPRD and WRD Commissions (likely November 2015) for review and approval.

Following these Commission decisions, the agencies would plan to present recommendations to the Governor's office by year's end.

#### **IV. Next Steps**

WRD staff proposes to update the Commission in September 2015, bringing a summary of "What We Heard" from the Advisory Committee meetings and public workshops. At that meeting, WRD staff would present information on any outstanding issues or questions, seeking guidance from the Commission. This would be in preparation for the November 2015 meeting when the Commission would be asked to vote on two new scenic waterways and their flows.

Rachel LovellFord  
503-986-0836

Attachment 1: OAR 736-040-0040 Classification of Scenic Waterways  
Attachment 2: Draft Proposed Scenic Waterway Flow Levels

**736-040-0040 Classification of Scenic Waterways and Segments Thereof**

(1) OAR 736-040-0040 through 736-040-0075 supplement, but in no way alter, other provisions of these rules and regulations. Notification procedures set forth in OAR 736-040-0030, 736-040-0035 and 736-040-0080, relating to Land Management, are applicable to these rules. In order to establish varying intensities of protection or development based on special attributes of each area within the scenic waterways, the following classifications are established:

(a) Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are generally inaccessible except by trail or the river, with related adjacent lands and shorelines essentially primitive. These represent vestiges of primitive America;

(B) Natural River Areas may include an occasional lightly traveled road, airstrip, habitation or other kind of improvement already established, provided the effects are limited to the immediate vicinity;

(C) Natural River Areas will be administered to preserve their natural, wild and primitive condition, essentially unaltered by the effects of man, while allowing compatible recreational uses, other compatible existing uses and protection of fish and wildlife habitat.

(b) Scenic River Areas:

(A) Those designated scenic waterways or segments thereof with related adjacent lands and shorelines still largely primitive and largely undeveloped, except for agriculture and grazing, but accessible in places by roads. Scenic River Areas may not include long stretches of conspicuous or well-traveled roads paralleling the river in close proximity, but may include extensive areas in agricultural use;

(B) Scenic Areas will be administered to maintain or enhance their high scenic quality, recreational value, fishery and wildlife habitat, while preserving their largely undeveloped character and allowing continuing agricultural uses.

(c) Recreational River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad, that may have some development along their shorelines and related adjacent lands, and that may have undergone some impoundment or diversion in the past;

(B) Recreational River Areas will be administered to allow continuance of compatible existing uses, while allowing a wide range of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its esthetic, fish and wildlife, scientific and recreational values.

(d) Natural Scenic View Areas:

(A) Those designated shorelines and related adjacent lands, lying along only one bank of a river within a scenic waterway, which possess the qualities of a Natural or Scenic River Area except that the opposite shoreline and related adjacent land, by reason of accessibility, or development, qualifies only for a less restrictive classification;

(B) Natural Scenic View Areas will be administered to preserve or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreational use.

(e) Accessible Natural River Areas:

(A) Those designated scenic waterways or segments thereof that are readily accessible by road or railroad but otherwise possess the qualities of a Natural or Scenic River Area;

(B) Accessible Natural River Areas will be administered to protect or enhance their essentially primitive scenic character, while allowing compatible public outdoor recreation use.

(f) River Community Areas -- Those designated areas of a scenic waterway, perhaps on only one bank of the river, where density of structures or other developments, already existing or provided for precludes application of a more restrictive classification.

(2)(a) Within the general framework of these classifications, the Commission will further consider the nature and extent of existing land uses and developments, the scenic qualities and the esthetic, fish and wildlife, scientific and recreational values of each classified area within the scenic waterways in determining whether, in its judgment, proposals for changes of land use or improvements are compatible with the Act;

(b) Because of the individual character of each scenic waterway, administrative criteria within each of the six classifications may vary from one scenic waterway to another.

Stat. Auth.:

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72

**Draft Proposed Scenic Waterway Flow Levels**  
**Based on OPRD’s Scenic Waterway Classifications and the Department’s Water Availability Model**  
**(monthly, median natural streamflow)**

<b>OPRD Scenic Waterway Classification</b>	<b>Description of Scenic Waterway Classification</b> (taken from <a href="#">OAR 736-040-0040</a> )	<b>OWRD Recommended Scenic Waterway Allocation*</b>
Natural River Area	A Natural River Area is undeveloped, and pristine or near pristine. It is accessible only by trail, boat or airplane. While the landscape of a Natural River Area can vary from steep-walled canyons to forested foothills, its character is consistent: primitive, very scenic, and conveying a sense of solitude. Evidence of human use in a Natural River Area is usually limited and any structures or indication of settlement are rare or scattered.	100% of the monthly, median natural streamflow
Accessible Natural River Area	An Accessible Natural River Area is similar to a Natural River Area in character and lack of development, but an Accessible Natural River Area can be usually reached by road. Typically, the access road is unpaved and passable only during warm, dry seasons.	95-100% of the monthly, median natural streamflow
Scenic River Area	A Scenic River Area may have nearby development, but for the most part is undeveloped and natural appearing. The dominant human influences in a Scenic River Area agriculture and grazing. Roads may be nearby, but are lightly traveled and not easily seen from the waterway.	90-100% of the monthly, median natural streamflow
Natural Scenic View Area	A Natural Scenic View Area contains one undeveloped and largely pristine riverbank while the opposite bank is more developed.	85-100% of the monthly, median natural streamflow
Recreational River Area	A Recreational River Area contains mixed agricultural, residential and commercial development along the shore and adjacent lands. A Recreational River Area is often rural or pastoral in character and easily accessible from local roads. A Recreational River Area is managed to protect the view from the river, allow development consistent with existing land uses and provide for a wide range of recreational activities within the scenic waterway	80-100% of the monthly, median natural streamflow
River Community Area	A River Community Area is a densely developed area, such as a residential tract or platted subdivision. A River Community Area is managed to allow development compatible with local zoning, and must blend into the natural character of the surrounding landscape. This also means protecting existing riparian vegetation, and encouraging activities that protect the resources or improve the landscape.	75-100% of the monthly, median natural streamflow

\* Does not consider already-existing allocations.