



Lisa Brown
WaterWatch of Oregon
213 SW Ash St., STE 208
Portland, OR 97204

May 14, 2015

Cindy Smith
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

RE: Proposed Rulemaking, OAR 690, Division 22, Klamath Basin
SENT: VIA email to cindy.s.smith@state.or.us

Dear Ms. Smith:

We received notice May 13, 2015 of the May 15, 2015 WRC telephone conference to consider adoption of Klamath Basin rules giving preference for stock watering and human consumption. We are attaching our July 29, 2014 comments regarding draft rules on the same topic, along with the attachment to those comments.

We share the concerns raised in the Klamath Tribes' May 11, 2015 letter and urge that any rules adopted by the Commission be carefully crafted to address those concerns.

In light of instream rights and values, we reiterate that any stock watering exception should be limited to the amount of water needed for the animals (see attached letter for additional discussion and citations on this point). The rules should clearly require stock water to be conveyed and stored in a manner that limits diversions to the water actually needed for consumption—not additional and often very significant amounts lost to conveyance. Further, the need for the Department to communicate and enforce penalties for abuses of any emergency exceptions established is critical.

Thank you for the opportunity to comment.

Sincerely,

Lisa A. Brown

Attachment: WaterWatch July 29, 2014 comments RE: Proposed Rulemaking, OAR 690, Division 22 with attachment.



July 29, 2014

Rules Coordinator
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

RE: Proposed Rulemaking, OAR 690, Division 22

Dear Rules Coordinator,

Thank you for the opportunity to comment on the WRD's draft rules proposing to prioritize stock and human consumption water rights over other water rights whenever there is a Governor declared drought in Klamath County. WaterWatch of Oregon is a river conservation group that works to restore and protect flows necessary for fish and wildlife, recreation, clean rivers and other instream needs.

While we understand the need to provide water to serve basic human and livestock consumption needs, WaterWatch has four recommendations to ensure that these emergency drought rules for Klamath County limit the impact that this exception would have on other water right holders and scenic waterway flows.

1. Insert limits on the amount that can be diverted and/or appropriated to serve human and livestock consumption needs. As written, the rules offer no limit as to how much can be appropriated to serve human consumption or livestock needs. This oversight could lead to abuse of this exception to the detriment of senior water right holders and scenic waterway flows.

The Oregon Legislature has already determined the minimum amounts needed to serve these uses in the context of the scenic waterways. ORS 390.835(6) limits these uses to:

- Human consumption shall not exceed .005 cfs per household
- Livestock consumption shall not exceed 1/10th of 1 cfs per 1,000 head of livestock.

Groundwaters and surface waters of the Klamath basin feed the Klamath state scenic waterway. While ORS 536.750 allows the WRC to grant preference to water rights for human and livestock consumption notwithstanding the priority of other water rights, the statute does not provide an exemption to scenic waterway protections. To protect itself from potential liabilities, the WRD should restrict use to that provided for these uses under the Scenic Waterway Act. Inserting these limitations will not only minimize impacts on scenic waterway flows but will protect the limited water supplies during drought for other water right holders

Inserting limits as to the amounts allowed under the exception is also necessary to protect against abuses under the rule. For instance, the attached article notes that Modoc Point Irrigation District diversion for stock watering amounted to "four or five cubic foot per second, what's been deemed just enough to provide drinking water to the 3,000 stock animals within the district". At 5 cfs for 3,000 stock animals, that amounts to 1,077 gallons per stock animal per day. That is more water than a stock animal drinks in a day whose

documented water needs range between 2 and 30 gallons per day. See attached, Livestock Daily Water Needs, NCAT & ATTRA . Under the applicable scenic waterway limits, 3000 cows are eligible to 3/10th of 1 cfs. Clearly, unlimited withdrawals to serve human and livestock consumption have serious impacts on other water rights and scenic waterway flows.

2. Clarify that conveyance water is not included in this exception: The statute only allows for exemptions for human and livestock consumption. ORS 536.750. The statute does not allow an exemption for conveyance water. We note this because in the attached Modoc Point Irrigation District article the district manager noted that the water had to go down five miles of ditch, with accompanying evaporation and loss of water via leaky dirt ditches. The water lost to leaky ditches and evaporation is not captured under the drought exemption statutes. In other words, the drought statutes do not allow exceptions for conveyance losses. Drought in the Klamath basin, unfortunately, is likely the new normal. Water users who will be utilizing this exception need to have the appropriate infrastructure in place (or need to truck water from the diversion point to the watering tank), so as to stay within the statutory limitation of human and livestock consumption only. This should be clarified in the rule, as well as adding limits to human and livestock consumption uses.
3. Require the water right holder to certify amount to be used and a commitment to stay within required limits: To aid the WRD in water management under this statute, the WRD should require anyone using this exemption to submit to the WRD a curtailment certification form (similar to that that is required in California, see attached). This document will inform the water master as to the use of the exemption and will also put the water right user on clear notice as to what the limits of use for human and livestock consumption are. The rules already require that “water right holders exercising the human consumption or stock water preferences established in this rule shall assure curtailment of water uses unrelated to the preference”. This form is a tool to ensure compliance and will help alleviate work required of the already overstretched Klamath basin water masters.
4. Clarifying edits: A couple of words in the proposed rules should be narrowed so as to ensure that the rules are consistent both with the intent as articulated in the notice or rulemaking. These small changes are highlighted in the attached redline.

Thank you for this opportunity to comment. If you have any questions please do not hesitate to contact me.

Sincerely,



Kimberley Priestley
Sr. Policy Analyst

Attachments



Our Klamath Basin Water Crisis
Upholding rural Americans' rights to grow food,
own property, and caretake our wildlife and natural resources.

<http://pioneer.olympicsoftware.com/Olive/ODE/heraldandnews/default.aspx>

Modoc Point Irrigation District: Trading a dam for a pump station

by SAMANTHA TIPLER, Herald and News 7/21/13

[HERE for KBC 'Chiloquin Dam Page'](#)



Ed Combs discusses the pumping process for stock water, even though the rest of it has been shut off. H&N photo by Steven Siton

According to the gauge at the Modoc Point Irrigation District pump house on the Williamson River, the river's water level has not changed since the district had to shut off irrigation water on June 26.

On Wednesday plant manager and ditch rider Ed Combs checked the gauge.

"When they did the shutoff it was just about where it is now," he said. "It's about the same. When they say we're short, it's hard for me to get that when my measure says right here it's not."

The Modoc Point Irrigation District, like other upper Klamath Basin irrigators, had to stop pumping water from the river after the Klamath Tribes made a call for water on June 10.

Under Klamath County's new adjudication law, the Tribes' time immemorial right comes before even the Modoc Point's 1864 right, the oldest a non-native person can have according to district president Linda Long.

The Klamath Project irrigators also made a call for water, but they are downstream from Modoc Point. The Project call only applies to those junior to the Project's 1905 right, and downstream from Upper Klamath Lake, according to the Oregon Water Resources Department.

Long and other Modoc Point irrigators had thought they may be safe from water calls not only because of their early priority date, but also because of a stipulated agreement with the Tribes and the federal government that resulted in the construction of the pump station on the Williamson.

Trading a dam for a pump

In 2008 the Chiloquin Dam, which sat on the Sprague River, was removed. That was the place where the Modoc Point Irrigation District originally got its water.

The dam was built in 1914 and ownership went to the irrigation district when the Klamath Tribe was terminated.

The dam included a fish ladder, but in the mid-2000s government studies showed fish species – including the listed Lost River and shortnose suckers – had trouble bypassing the dam for upriver habitat.

An agreement between the irrigation district, the Bureau of Indian Affairs, the Oregon Water Resources Department, the Klamath Tribes and others enacted a plan to remove the dam on the Sprague River and install the pumping station on the Williamson River. The agreement included the BIA provides \$2.4 million to Modoc Point for upkeep of the pump and paying a plant manager.

Previous Herald and News stories said building the new pump station cost about \$9 million. Construction started in 2007.

Removing the dam opened up 80 miles of habitat, including spawning ground, previous newspaper stories said.

The negotiation included lowering the amount of water the district removed from the river from 3.5 acre feet to about 2.5 acre feet, Long said.

The district chose not to get involved with legal injunctions some upper Basin ranchers have filed against the water shutoffs because of the agreement, Long said. She thought the agreement would keep the district safe from adjudication shutoffs.

"We felt like we had an agreement with the Tribes," Long said. "We didn't think they would call on our water. But we were wrong."

The pump station today

Even though irrigation water has been curtailed for the Modoc Point Irrigation District, there is still a little water being pumped from the Williamson River to the district's ditches.

It amounts to four or five cubic feet per second, what's been deemed just enough to provide drinking water to the 3,000 stock animals within the district.

In a normal year, before adjudication and without a drought, the district would pump about 15 cubic feet per second for irrigation, Combs said. Pumping could start as early as May 15 and run through Oct. 15.

"Some years we don't need to start that early because it's a wet spring," Long said. "We don't just turn them on at a certain date. We assess the situation."

Now Combs must make sure the four cubic feet per second pumped gets to the properties it needs to within the district.

"There's several ditches it has to get down," he said. "The farthest ditch is five miles down. It has to go five miles. With evaporation and loss of water just in the dirt ditches – it's hard to get there."

stipler@heraldandnews.com : @TiplerHN

Livestock Daily Water Needs

- 1000 lb dairy cow - 30 gallons
- Dry beef cow - 22 gallons
- Beef cow-calf pair - 20 gallons
- 600 lb beef heifer – 12 gallons
- 2000 lb beef bull - 19 gallons
- Sheep or goat - 2 gallons



CURTAILMENT CERTIFICATION FORM

Please return within 7 days of receipt of the Notice of Curtailment of Water Diversion to:

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95814-2000

Email completed Curtailment Certification form to:
SWRCB-curtailment-certification@waterboards.ca.gov

Fax: 916-341-5400

WATER RIGHT SUBJECT TO THE 2014 WATER DIVERSION CURTAILMENT:

Please update Water Right Owner Information (if different from addressed):

Water Right Application or Statement No(s): _____
Owner: _____
Address: _____
City: _____ State: _____ Zip: _____

CURTAILMENT CERTIFICATION

Please check the applicable boxes below:

- NO DIVERSION** – I hereby certify that I will not be diverting any water under the above specified water right during the 2014 water diversion curtailment period.
- ALTERNATE SOURCE** – I hereby certify that I will not be diverting any water under the specified water right during the 2014 curtailment period. However, I will be serving all or a portion of its place of use with my alternate source(s) of water, as specified below:
- Ground (well) water
 - Senior Post-1914 Appropriative Water Right (specify Permit/License No.): _____
 - Riparian water right(s) and/or pre-1914 appropriative water right(s)*
 - Water use is reported under Statement of Water Diversion and Use No(s): _____.
 - My use is excluded from filing a Statement of Water Diversion and Use under California Water Code section 5101 (generally, because the use included in other sufficient reports, or is from a spring that does not flow off your property).
 - None of the above.
 - Contract (purchased) water from _____
 - Will serve the place of use by withdrawing water stored under Permit/License No. ____ prior to start of this curtailment period.
 - Other source (specify) _____
- SOLE SOURCE OF WATER FOR HUMAN HEALTH & SAFETY** –
- I hereby certify that the water right being curtailed is the only source of water available for human health & safety needs.
 - I also certify that I have looked into alternative water supplies from the following:
 - Groundwater Well
 - Bottled Water
 - Purchase Supply
 - Other _____
- HYDROELECTRIC POWER GENERATION** – I hereby certify that I am directly diverting water for hydroelectric power generation or other non-consumptive use and all water diverted is returned to the stream.
- OTHER** – I have attached an additional sheet explaining how much water I am diverting, the use of that water, the measures being undertaken to reduce use, and the basis on which I contend that the diversion and use is legally authorized notwithstanding the very limited amounts of water available during this drought emergency. _____

* Please note that only limited natural or abandoned water is available during a curtailment period. Water released from upstream storage projects is not available to divert under a riparian or pre-1914 right.

I declare that the information in this certification is true to the best of my knowledge.

Name: _____	Phone No.: _____
Signature: _____	Email: _____
	Date: _____

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 22
EMERGENCY WATER PROVISIONS – KLAMATH COUNTY**

690-022-0020

Purpose and Statutory Authority

- (1) The purpose of these rules is to implement ORS 536.750(1)(e), which authorizes the Commission, pursuant to a gubernatorial declaration 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. These rules address an immediate threat to the health and welfare of the people of Oregon that would otherwise occur if regulation of senior water rights in Klamath County curtailed or prohibited use of surface water for human consumption and stock watering as defined in these rules.
- (2) ~~Executive Order No. 14-01: Determination of a State of Drought Emergency in Harney, Klamath, Lake and Malheur Counties Due to Drought and Low Water Conditions, was signed by Governor John A. Kitzhaber, M.D., on February 13, 2014.~~
- (3) ~~These rules become effective on April 1, 2014 and will remain in effect for 180 days from the effective date or for the term of Oregon Governor Kitzhaber's Executive Order No. 14-01, whichever is shorter.~~
- (2) These rules become applicable upon declaration by the Governor of a severe, continuing drought in Klamath County. During the effective time period of a drought declaration under ORS 536.740 in Klamath County, the Commission grants a preference of use for water rights for human consumption and/or stock watering as provided in this rule. The temporary preference of use shall only apply to Klamath County and shall remain in effect only during the effective time period of the Governor's drought declaration in Klamath County.

Stat. Auth.: ORS 536.025; 536.027; 536.750
Stats. Implemented: ORS 536.750

690-022-0025

Definitions

TheUnless the context requires otherwise, the words and phrases used in Division 22 have the following meaning:

- (1) "Commission" means the Oregon Water Resources Commission.
- (2) "Department" means the Oregon Water Resources Department.
- (3) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.
- (4) "Stock Watering ~~Use~~" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

Stat. Auth.: ORS 536.025; 536.027; 536.750
Stats. Implemented: ORS 536.750

