



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item F, August 18, 2016
Water Resources Commission Meeting

OAR Chapter 690, Division 504 – Request for Adoption of Rules to Extend Reservations and Make Other Modifications to the Hood River Basin Program

I. Introduction

This agenda item seeks Commission action to extend reservations in the Hood Basin Program and change related reporting and consultation requirements, as well as update rule language, and expand classified uses of water.

II. Background

A reservation of water for future economic development sets aside a quantity of water for storage to meet future needs. The rules establishing reservations in the West Fork Hood River Subbasin, East Fork Hood River Subbasin, Neal Creek Subbasin, Mosier Creek Subbasin, Eightmile Creek Subbasin, and Fifteenmile Creek Subbasin in Hood Basin are set to expire; these reservations will automatically sunset on October 17, 2016, unless extended in rule by the Commission. The reservations currently in place are set forth in Attachment 1. During the February 2016 meeting, Commission members adopted similar amendments for Division 509, the Burnt River Reservation in the Powder Basin Program.

In conducting a basin program rulemaking, ORS 536.310 requires the Commission to take into consideration 536.220 and the declarations of policy in ORS 536.310. ORS 536.220 directs the Department to “encourage, promote and secure maximum beneficial use and control” of water resources, and that the Departments’ basin programs for development of additional supplies “shall give proper and adequate consideration to the multiple aspects of the beneficial use of such water resources.”

The policies in ORS 536.310 include: (1) protecting existing rights; (2) “integration and coordination of uses of water” and “augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development” for the state; (3) adequate supplies for human consumption; (4) “multiple-purpose impoundment structures are to be preferred over

single-purpose structures” and the construction of impoundments should consider the importance of the fishery resource; (5) “competitive exploitation of water resources of this state for single-purpose uses is to be discouraged”; and (8) “watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses”. The policies in ORS 536.310 (6), (7), (9), (10), (11), (12), and (13) are not relevant to the reservations discussion.

III. Purpose of Rule Updates

The proposed modifications to the rules are in Attachment 2. The modifications to the rules are intended to:

1. Extend reservations of water for future economic development for the West Fork Hood River Subbasin, East Fork Hood River Subbasin, Neal Creek Subbasin, Mosier Creek Subbasin, Eightmile Creek Subbasin, and Fifteenmile Creek Subbasin of the Hood Basin for an additional 20 years.
2. Change reporting requirements that apply to the Department of Agriculture and Oregon Water Resources Department.
3. Correct language to address inconsistencies in terminology.
4. Expand classified uses to clarify that the allowable uses include agricultural, commercial, and flow augmentation for instream uses.
5. Include already-existing withdrawals in the basin program; this provides additional transparency for applicants who may be interested in filing a water right permit application.
6. Include definitions for “Indian Tribe and “Consultation”.
7. Include in the application to use the reserved water, a requirement that the applicant shall consult with any affected Indian Tribe(s), including the Confederated Tribes of the Warm Springs Reservation.

The Department convened a Rules Advisory Committee on April 19, 2016. See list of attendees in Attachment 3. Representatives included: the Confederated Tribes of the Warm Springs Reservation, county staff and elected officials, Department of Agriculture, Department of Environmental Quality, Department of Fish and Wildlife, irrigation districts, landowners and orchardists, Oregon Farm Bureau, Oregon Water Resources Congress, and WaterWatch of Oregon. The hearing draft was crafted using input from this committee.

III. Public Comment and Department Response

The Department held a public hearing on June 22, 2016, in Hood River, Oregon, with Commissioner Bob Baumgartner as the hearing officer. The Department also accepted written public comments from June 1, 2016 to June 30, 2016.

Attachment 4 provides the text of two written public comments. A third set of written comments was received after the close of the comment period and is not included here. Pursuant to the Administrative Procedures Act, comments received after the close of the comment period cannot be considered unless the comment period is extended for everyone. Attachment 5 provides a transcript of the two verbal comments received during the public hearing; both were supportive.

CTWS Comment and Response. Written public comments from the Confederated Tribes of the Warm Springs Reservation (CTWSR) called for more stringent requirements in the consultation between Water Resources Department and CTWSR. Representatives from CTWSR, including legal representation, attended the Rules Advisory Committee meeting on April 19, 2016.

Their comments during the RAC meeting were carefully considered and helped to shape the language in the proposed rules. Staff believes that the consultation language in the proposed rules is inclusive and responsive, without giving up the Commission's decision-making role in extending reservations or processing subsequent water right permit applications; therefore, the Department proposes no changes as a result of comments.

CTWSR also requests additional levels of protection for the environment and for tribal water rights. The comments note that the environmental review standards of new water right applications are not included in the reservations rules. This is because the reservations are not a water right. To use water reserved requires an application for a water right. This involves the Department's standard water right application review process with its associated environmental review standards. Tribal water rights that have been quantified are already taken into consideration in the Department's water availability calculation.

Comment and Response to WaterWatch of Oregon. Written comments from WaterWatch of Oregon requested that the Commission not approve the extension of reservations in the Hood Basin. The letter notes that neither the Department of Agriculture nor Hood Basin stakeholders reported progress during the past 20 years, as required. As stated during previous rulemakings, the Department disagrees that non-compliance is a fatal flaw in extending the reservation.

The letter also suggests modifications to the text of the rules, should the Commission prefer to adopt reservation extensions. These modifications were discussed with WaterWatch during the April 19, 2016 Rules Advisory Committee, and proposed language was kept in place for consistency with previously approved rules in the Powder Basin. Staff believes that the proposed language makes clear that reservations will sunset on the specified date (October 17, 2036), unless extended by the Commission through rulemaking.

Staff proposes no modifications to the hearing draft as a result of public comment.

IV. Conclusion

The Department finds the reservations continue to be consistent with ORS 536.220 and ORS 536.310, as they:

- Provide a mechanism for supporting water resources development in the basin to ensure the maximum economic development for the state.
- Demonstrate the state's preference for multipurpose reservoirs by reserving significantly more water for multipurpose reservoirs, while allowing a small amount for single-purpose reservoirs in recognition of local needs and the need to balance the different uses in the basin.
- Retain requirements to consult with the Oregon Department of Fish and Wildlife prior to applying to use the water in order to help protect the fishery resource.

- Allow for multiple-purpose uses, which may include water to benefit instream values such as fisheries, pollution abatement, and recreation.
- Benefit existing water rights by increasing the likelihood that irrigators' will receive their full-duty, while also potentially increasing the amount of land that can be irrigated in the basin.

The Department proposes that the Commission adopt the proposed rules to modify Division 504, Hood Basin Program, in order to extend reservations for an additional 20 years and clean up rule language as described above.

V. Alternatives

The Commission may consider the following alternatives:

1. Adopt the proposed rules in Attachment 2.
2. Adopt the proposed rules as modified by the Commission.
3. Not adopt the rules and provide the Department with further direction.

VI. Director's Recommendation

The Director recommends Alternative #1 to adopt the proposed rules.

Attachments:

Attachment 1 – Reservations in Hood Basin

Attachment 2 – Proposed Final Rules

Attachment 3 – Rules Advisory Committee Members

Attachment 4 – Written Public Comments

Attachment 5 – Verbal Public Comments

Attachment 6 – Oregon Dept. of Agriculture Applications to Extend Hood Basin Reservations
(On-line only due to length)

Machelle Bamberger
(503) 986-0812

Brenda Bateman
(503) 986-0879

Current Reservations

Attachment 1

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

**Expiration: October 17, 2016
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**

DIVISION 504 HOOD BASIN PROGRAM

~~{NOTE: The Hood Basin is delineated on State Water Resources Board agency Map File No. 4.6, available from the agency dated January 1, 1975.}~~

690-504-0000

Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, flow augmentation, commercial agriculture, power development, industrial, mining, recreation, wildlife, fish life, pollution abatement use, and the waters of the Hood Basin are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, and the attainment of the highest and best use of the waters of Dog River above its point of diversion at Water Resources Department -- U.S. Geological Survey Gage 14113400, ~~as shown on State Water Resource Board Map 4.6,~~ and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for municipal use, and the waters of Dog River above ~~its point of diversion at Water Resources Department -- U.S. Geological Survey Gage 1134, as shown on State Water Resources Board Map 4.6,~~ that point are hereby so classified;

(b) The maximum economic development of this state, and the attainment of the highest and best use of the waters of the natural lakes of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of natural lakes of the basin are hereby so classified.

~~(2) Applications for the use of these specified waters of the Hood Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.~~

~~(3)~~ Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any

such structures or work are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(3) Pursuant to ORS 538.200, the following streams forming waterfalls near the Columbia River Highway and flowing directly into the Columbia River shall not be diverted or interrupted for any purposes, except as provided in ORS 538.210:

- (A) Summit Creek – Forming Camp Benson Falls;
- (B) Wonder Creek also known as Spring Creek – Forming Lancaster Falls;
- (C) Warren Creek;
- (D) Phelps Creek;
- (E) Perham Creek;
- (F) Lindsey Creek – Forming Lindsey Falls;
- (G) Herman Creek;
- (H) Harphan Creek;
- (I) Grays Creek;
- (J) Gorton Creek – Forming Gorton Creek Falls;
- (K) Eagle Creek;
- (L) Cabin Creek;
- (M) Ruckles Creek, also known as Deadman’s creek;
- (N) Starvation Creek – Forming Starvation Falls;
- (O) Viento Creek.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88; Administrative Renumbering 1-1993, Renumbered from 690-080-0040

690-504-0005

Definitions

“Indian Tribe” as defined by ORS 182.162, which defines a tribe as a federally recognized Indian tribe in Oregon.

“Consultation”, for the purpose of this rule “consultation” means a dialogue for the purpose of obtaining information or advice.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

690-504-0020**Water Quality**

Rights to use of water for industrial or mining purposes ~~granted by any state agency~~ shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88; Administrative Renumbering 1-1993, Renumbered from 690-080-0040

690-504-0100**Reservations Application Process to Store Reserved Water**

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

~~(2) Notwithstanding OAR 690-504-0000, stored water may be used for any beneficial purpose.~~

(32) "Multipurpose reservoir," as used in OAR 690-504-0100 through 01670, means a reservoir storing water to serve multiple potential beneficial uses such as, but not limited to irrigation, commercial, agriculture, power development-generation, ~~municipal water supply~~, recreation, and flow augmentation for instream purposes.

(43) Reservations of water for future economic development in OAR 690-504-0110 through 01670 ~~allocate reserve~~ surface water for future storage in multipurpose reservoirs. The storage of up to 2,000 acre-feet of water for livestock or domestic purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt from regulation for storage of water reserved under OAR 690-504-0110 through 01760.

(4) Permits to store reserved water shall receive the priority date of the reservation. The priority date for reservations under OAR 690-504-0110 through 0160 shall be November 6, 1992.

(5) In addition to the requirements of ORS Chapter 537, OAR Chapter 690, Division 310, and any other applicable rules, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) Consultation with any affected Indian Tribe(s), including the Confederated Tribes of Warm Springs Reservation.

(ed) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(de) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(6) For the purposes of review of water right permit applications to store reserved water under OAR Chapter 690, Division 310, the reserved quantities of water listed in OAR 690-504-0110 through 01670 are available for appropriation. However, the determination that water is available under OAR 690-504-0110 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under OAR Chapter 690, Division 310 and any other applicable statutes or rules. Because the finding that water is available in OAR 690-504-0110 through 0160 is a water availability determination for a sub-basin, analysis of water availability at the specific location shall be conducted at the time of permit application review.

(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, Division 310; and applicable rules, and prior to issuance of a permit for a proposed project storing water reserved under 690-504-0110 through 01670, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies;

(b) The proposed reservoir will enhance instream values; including but not limited to instream flows; and

(c) Whether minimum bypass flow are required.

(8e) The Department shall determine, and impose as a condition, an appropriate What-storage season, and shall include other conditions to -is appropriate a whether minimum bypass flows or other conditions should be included in the permit to insure no harm-injury to senior water rights and to protect instream values.

(8) Permits to store reserved water shall receive the priority date of the reservation

(98) Progress Reports: Until If the Department has not received applications issued permits for multipurpose reservoirs permits for the full quantity of reserved water under OAR 690-504-0110

~~through 0160, five years after the adoption of these rules, the Department shall biennially report to the Water Resources Commission on the amount of water available under the reservation, and the quantity allocated under the reservation. The Department or Commission may require periodic reports from the Oregon Department of Agriculture on continued interest in the reservation, efforts undertaken to develop the reservation, and any challenges to developing the reservation. of Agriculture shall provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.~~

~~(409) Effective date of rules:~~

~~(a) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved twenty years after October 17, 1996, OAR 690-504-0110 through 0160 0170 shall be effective until automatically be repealed on October 17, 201636, unless the effective date has been extended by further rulemaking of the Water Resources Commission.~~

~~(b) The expiration of these reservation rules shall not affect pending applications that have been received and deemed complete and not defective by the Water Resources Department pursuant to ORS 537.150(2), prior to the expiration date of the rules.~~

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented: ORS 536.310, ORS 537.249, ORS 537.356 & ORS 537.358

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0110

West Fork Hood River Subbasin Reservation

Nine thousand (9,000) acre-feet of unappropriated water of the Lake Branch of the West Fork Hood River or its tributaries upstream of the confluence with the West Fork Hood River are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0120

East Fork Hood River Subbasin Reservation

Fifty Thousand (50,000) acre-feet of unappropriated water of the East Fork Hood River or its tributaries upstream of the confluence of the Dog River with the East Fork Hood River are

reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0130

Neal Creek Subbasin Reservation

Five thousand (5,000) acre-feet of unappropriated water of Neal Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0140

Mosier Creek Subbasin Reservation

Six thousand four hundred (6,400) acre-feet of unappropriated water of Mosier Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0150

Eightmile Creek Subbasin Reservation

Four thousand (4,000) acre-feet of unappropriated water of Eightmile Creek or its tributaries upstream of the confluence of Pine Hollow with Eightmile Creek are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0160

Fifteenmile Creek Subbasin Reservation

Unappropriated water in the Fifteenmile Creek subbasin is reserved as follows:

(1) Five thousand (5,000) acre-feet of unappropriated water of Fifteenmile Creek or its tributaries upstream of the City of Dufur water supply reservoir are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

(2) Three thousand five hundred (3,500) acre-feet of unappropriated water of Larch Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

Rulemaking for Hood Basin Program Oregon Administrative Rule 690-504
Rules Advisory Committee Roster
April 19, 2016

Name	Affiliation
Craig Dehart	Middle Fork Irrigation District
Margaret Matter	Oregon Department of Agriculture
Lauren Smith	Oregon Water Resources Congress
Smita Mehta	Department of Environmental Quality
Chris Brun	Confederated Tribes of Warm Springs
Kimberly Priestley	Waterwatch
Adam McCarthy	Trout Creek Orchard
Jim Wells	Walter Wells & Sons Company/Orchardist
Rod French	Oregon Department of Fish and Wildlife
Mary Anne Nash	Oregon Farm Bureau
Erick Von Lubken	Farmers Irrigation District / Oregon Farm Bureau/Von Lubken Orchards
Les Perkins	Hood River County Commissioner/Farmers Irrigation District
Brian Nakamura	Nakamura Orchards/ Hood River Soil Water Conservation/East Fork Irrigation District
Reed Marbut	Attorney Confederated Tribes of Warm Springs
Kelly Howsley-Glover	Wasco County Planning- Long Range Planner
John Buckley	East Fork Irrigation District
Dean McAllister	McAllister Orchard & Vineyard
Danette Faucera	Oregon Department of Fish and Wildlife
STAFF	
Brenda Bateman	Oregon Water Resources Department
Machelle Bamberger	Oregon Water Resources Department
Robert Wood	Oregon Water Resources Department

June 27, 2016

Diana Enright
Rules Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

RE: Comment on Proposed Amendments to Hood River Basin Program, and
Extension of Reservation of Water for Economic Development

Dear Ms. Enright:

We represent the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes). The Tribes' technical and legal staffs have reviewed the proposed amendments to the Oregon Water Resources Department's Hood River Basin Program (Oregon Administrative Rule Division 690, Chapter 504). It is our understanding that the Department is accepting comments on this rulemaking through June 30, 2016. This letter is submitted on behalf of the Tribes. We respectfully request that the Tribes be included in the Department's record for this matter.

OAR 690, Chapter 504 is the Department's Hood River Basin Program. This Program includes reservation of water for economic development established pursuant to Oregon Revised Statutes 537.249 and 537.356. Under said reservations, water was reserved for storage in multipurpose reservoirs in several tributaries of the Hood River.¹ The storage reservations allow individuals to file applications to impound the reserved water in reservoirs. The priority date of such reservoir water rights will be November 6, 1992. The reservation rules are effective until October 17, 2016. Pursuant to OAR 690-504-0100(10), since no applications to store water under the reservations have been received by the Department, the reservations established under the Program will be automatically repealed on October 17, 2016, unless extended further by rulemaking. The amendments to OAR 690, Chapter 504 proposed by the Commission will extend the 1992 reservations for an additional 20 years, to October 17, 2036.

When the Commission promulgated the Hood River Basin Program in November of 1992 it allocated 64,000 acre feet of Hood River water for twenty years with a priority date of November 6, 1992. This 64,000 acre feet of water was effectively removed from the natural flow of the Hood River with minimal environmental assessment. The Commission's decision to limit the reservation of this water to twenty years was in part based upon the assumption that environmental conditions affecting water allocation could change significantly in twenty years. This assumption has proven to be accurate.

Since 1992, consumptive uses of Hood River water have grown significantly, climate change has (and will) drastically affect streamflow levels and patterns, and Hood River salmon, steelhead and bull trout have been listed as threatened under the federal Endangered Species Act. None of these

¹ The three tributaries of the Hood River are the West Fork, East Fork and Neal Creek. Mosier, Eightmile and Fifteenmile Creeks are also included in the reservation, however, they are not tributaries of the Hood River.

Diana Enright
Oregon Water Resources Department
June 22, 2016
Page Two

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

environmental factors were considered at the time the Commission made its allocation decisions in the 1992 Hood River Basin Program, including the decision to set aside 64,000 acre feet of water for future storage projects.

With over 60% of the summer flows currently withdrawn for the Hood River and its tributaries, it is not surprising that NOAA and the Oregon Fish and Wildlife Department have identified flow restoration as the primary recovery action for listed fish stocks in the Hood Basin.² The recently completed Hood River Basin Study concluded that the Basin's existing water needs could be met with conservation rather than increased storage.³ In fact, there are no feasible sites within the Basin for construction of additional storage of any meaningful amount.

The proposed amendments extending the reservations do not include any of the environmental review standards currently applied to new water right applications, including the standards for the protection of ESA listed species. A parallel example illustrates how current environmental standards can be applied to the review of water allocation decisions made before fish and other species were determined threatened or endangered. Unused portions of water right permits issued to municipalities prior to 1998 must now be conditioned to protect ESA listed species. This example clearly demonstrates the public policy imperative to update water allocation decisions to meet current environmental conditions. The Commission will be in violation of its environmental mandate if it does not condition the twenty-year extension of the Hood River Basin Program in the same manner the Legislature conditioned twenty-year-old municipal permits.

The Tribes have significant interests in the Hood River Basin and how its waters are managed and regulated, including fishing, hunting and gathering rights reserved by the Tribes' 1855 Treaty. The entire Hood River Basin lies within the aboriginal territory of the Tribes and, as such, falls within the scope of these Treaty rights. The Tribes' interests in the Hood River Basin continue to this day. Since 1998, the Tribes have arranged, supervised and participated in stream flow enhancement and riparian restoration projects throughout the Basin. The Water Resources Commission's decision to engage in rulemaking to extend the Hood River Basin reservations for an additional twenty years could have significant impacts on the Tribes treaty rights.

On April 22, 2016, the Tribes provided proposed amendments to the Department.⁴ The Tribes' proposed amendments included suggestions to require an assessment of the impact on ESA listed species of future impoundment of water under the 1992 reservations. In addition, the Tribes' proposed amendments provided suggestions for the Department to include current water right application review standards, including water availability determination. Lastly, the Tribes

² *ODFW 2010, Lower Columbia River Conservation and Recovery Plan for Oregon Populations of Salmon and Steelhead*. Oregon Department of Fish and Wildlife, Salem, OR.

³ U.S. Bureau of Reclamation Draft Final Hood River Basin Study, June 2014.

⁴ A copy of the Tribes' proposed amendments is attached to this comment.

Diana Enright
Oregon Water Resources Department
June 22, 2016
Page Three

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

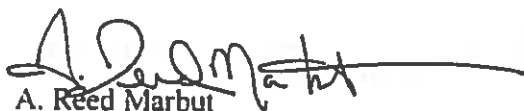
proposed amendments suggested that consultation with the Tribes be required before the Department issues new water right permits to store water in the Hood River Basin with 1992 priority dates. The Tribes proposed amendments received only token recognition with minor revisions in the draft rules.

The requirement that the Tribes be consulted is clearly mandated by Governor's Executive Order Number EO-96-30 setting forth the obligation for state agencies to consult with affected tribal governments.⁵ Given the Tribes interests and Treaty rights, it is essential that OAR 690. Chapter 504 include a requirement for tribal consultation. Although the Department's proposed amendments include a requirement that "... an application for a permit to store reserved water shall include; (c) Consultation with any affected Indian Tribe(s), including the Confederated Tribes of the Warm Springs Reservation." the Department's definition of "consultation" only includes "dialogue for the purpose of obtaining information and advice." The mandate of Executive Order Number EO-96-30 requires more than dialogue for obtaining information and advice. Such consultation must include recognition of the Tribes' Treaty rights, identification of measures to protect those rights and procedures for incorporation of such protective measures in the amended rules.

The Tribes do not support the proposed 20-year extension unless environmental safeguards are included in the amended Basin Program. Such safeguards must include provisions to protect the Tribes' Treaty rights, including conditions for streamflow enhancement and protection of ESA listed species.

Thank you for the opportunity to submit this Comment. If you have questions, please feel free to talk with Chris Brun or me. Mr. Brun can be reached at (541) 352-3548. My telephone number is (503) 363-2121.

Sincerely,



A. Reed Marbut
Attorney for the Confederated Tribes of the Warm Springs Reservation

Enclosures

cc: Chris Brun, CTWS
John Ogan, Karnopp Petersen

⁵ A copy of Executive Order Number EO-96-30 is enclosed.

DIVISION 504 HOOD BASIN PROGRAM

NOTE: The Hood Basin is delineated on agency Map No. 4.6, dated January 1, 1975.

690-504-0000

Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, flow augmentation, commercial, agriculture, power development, industrial, mining, recreation, wildlife, fish life, pollution abatement use, and the waters of the Hood Basin are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, and the attainment of the highest and best use of the waters of Dog River above its point of diversion at Water Resources Department -- U.S. Geological Survey Gage 1134, as shown on Agency Map No. 4.6, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for municipal use, and the waters of Dog River above that point are hereby so classified;

(b) The maximum economic development of this state, and the attainment of the highest and best use of the waters of the natural lakes of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of natural lakes of the basin are hereby so classified.

(2) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or work are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(3) By act of the Oregon Legislature, the following streams forming waterfalls near the Columbia River Highway and flowing directly into the Columbia River shall not be diverted or interrupted for any purposes (ORS 538.200), except as provided in ORS 538.210:

- (A) Summit Creek – Forming Camp Benson Falls;
- (B) Wonder Creek also known as Spring Creek – Forming Lancaster Falls;
- (C) Warren Creek;
- (D) Phelps Creek;
- (E) Perham Creek;
- (F) Lindsey Creek – Forming Lindsey Falls;
- (G) Herman Creek;
- (H) Harphan Creek;
- (I) Grays Creek;

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

- (J) Gorton Creek – Forming Gorton Creek Falls;
- (K) Eagle Creek;
- (L) Cabin Creek;
- (M) Ruckles Creek, also known as Deadman's creek;
- (N) Starvation Creek – Forming Starvation Falls;
- (O) Viento Creek.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88; Administrative Renumbering 1-1993, Renumbered from 690-080-0040

690-504-0020

Water Quality

Rights to use of water for industrial or mining purposes shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88; Administrative Renumbering 1-1993, Renumbered from 690-080-0040

690-504-0100

Reservations Application Process

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-504-0100 through 0160, means a reservoir storing water to serve multiple-potential beneficial uses including such as irrigation, commercial, agriculture, hydropower generation development, municipal, recreation, and flow augmentation for instream purposes, including protection of fish species listed under the Oregon and Federal Endangered Species Acts or identified as culturally significant by the Confederated Tribes of the Warm Springs.

(3) Reservations of water for future economic development under ORS 537.249 and 537.356 and 358, as tabulated in OAR 690-504-0110 through 0160, reserve unappropriated surface water for multipurpose future storage for future economic development. The Applications for storage of up to 2,000 acre-feet of water for livestock or domestic purposes authorized under water rights with priority dates after November 6, 1992, applications shall be processed under ORS 537.150 through 537.211.

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

(4) Permits to store reserved water shall receive the priority date of the reservation. The priority date for reservations under OAR 690-504-0110 through 0160 shall be November 6, 1992.

(5) In addition to the requirements of ORS Chapter 537.150 and OAR 690-310-0040 and 0050 Chapter 690, ~~Division 310~~, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife and affected Indian tribes, including the Confederated Tribes of the Warm Springs Reservation;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality and affected Indian tribes, including the Confederated Tribes of the Warm Springs Reservation;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to, instream flows and protection of fish species listed under the Oregon and Federal Endangered Species Acts or identified as culturally significant by the Confederated Tribes of the Warm Springs.

(6) For the purposes of review of applications to store reserved water under OAR Chapter 690, Division 310, the reserved quantities of water listed in OAR 690-504-0110 through 0160 are available for appropriation. Because the finding that water is available in OAR 690-504-0110 through 0160 is a water availability determination for a sub-basin, the analysis of water availability at the specific location shall be conducted at the time of permit application review. Notwithstanding the determination that water was available on the date OAR 690, Chapter 504 was first adopted with the November 6, 1992, reservation priority date, the Department shall conduct a site-specific public interest review of applications to store said reserved water under OAR 690-504-0100 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under ORS Chapter 537, 153 through 537.211 and their applicable rules, including OAR 310-0070 through 0120 and OAR Chapter 690, Division 33.

(7) In addition to any other findings required for issuance of a reservoir permit under ORS Chapter 537 ~~and~~ applicable rules, and prior to issuance of a permit for a proposed project storing water reserved under 690-504-0110 through 0160, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture, ~~and other state agencies~~ and affected Indian tribes, including The Confederated Tribes of the Warm Springs Reservation;

(b) The proposed reservoir will enhance instream values; including but not limited to instream flows; and

(c) ~~That the~~ What storage season is appropriate and that whether minimum bypass flows or other conditions ~~are~~ should be included in the permit to ensure no injury to senior water rights and to protect instream values, including protection of fish species listed under the Oregon and Federal Endangered Species Acts or identified as culturally significant by the Confederated Tribes of the Warm Springs.

(8) Progress Reports:

(a) Until the Department has received applications for reservoir permits for the full quantity of reserved water under OAR 690-504-0110 through 0160, the Department shall biennially report to the Water

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

Resources Commission on the amount of water available under the reservation, and the quantity allocated under the reservation. The Department or Commission may require periodic reports from the Oregon Department of Agriculture on continued interest in the reservation, efforts undertaken to develop reservoirs under the reservations, and any challenges to developing thesuch reservoirs reservation.

(b) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water under OAR 690-504-110 through 0160 by October 17, 2016, the Department of Agriculture shall provide the Commission with a progress report on development of reservoirs under the reservations. Progress reports shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives application for multipurpose reservoir permits for the full quantity of reserved water.

(9) Effective date of rules:

(a) OAR 690-504-0110 through 0160 shall be effective until October 17, 2036, unless the effective date has been extended by further rulemaking of the Water Resources Commission.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented: ORS 536.310, ORS 537.249, ORS 537.356 & ORS 537.358

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0110

West Fork Hood River Subbasin Reservation

Nine thousand (9,000) acre-feet of unappropriated water of the Lake Branch of the West Fork Hood River or its tributaries upstream of the confluence with the West Fork Hood River are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0120

East Fork Hood River Subbasin Reservation

Fifty Thousand (50,000) acre-feet of unappropriated water of the East Fork Hood River or its tributaries upstream of the confluence of the Dog River with the East Fork Hood River are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0130

Neal Creek Subbasin Reservation

Five thousand (5,000) acre-feet of unappropriated water of Neal Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0140

Mosier Creek Subbasin Reservation

Six thousand four hundred (6,400) acre-feet of unappropriated water of Mosier Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0150

Eightmile Creek Subbasin Reservation

Four thousand (4,000) acre-feet of unappropriated water of Eightmile Creek or its tributaries upstream of the confluence of Pine Hollow with Eightmile Creek are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

690-504-0160

Fifteenmile Creek Subbasin Reservation

Unappropriated water in the Fifteenmile Creek subbasin is reserved as follows:

(1) Five thousand (5,000) acre-feet of unappropriated water of Fifteenmile Creek or its tributaries upstream of the City of Dufur water supply reservoir are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

(2) Three thousand five hundred (3,500) acre-feet of unappropriated water of Larch Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

RECEIVED

JUN 27 2016

**WATER RESOURCES DEPT
SALEM, OREGON**

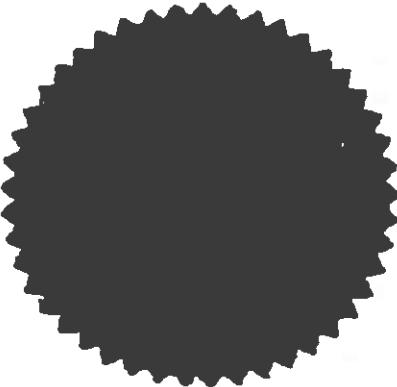



EXECUTIVE ORDER NO EO - 96 - 30

Page Four

This document has been adopted for the sole purpose of enhancing communication and mutual cooperation between the State of Oregon and the tribal governments and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable by a party against the State of Oregon, its agencies or instrumentality's, its officers or employees, its subdivisions or any other persons.

Done at Salem, Oregon this 22 day of May 1996.




GOVERNOR

Attest.


SECRETARY OF STATE

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON



EXECUTIVE ORDER NO EO - 96 - 10

Page Three

4. That each department shall recognize the opportunity to use a number of tools to achieve mutual cooperation including but not limited to use of cooperative agreements with Indian tribal governments as provided for in ORS 190.110 when it is appropriate to do so.
5. That each department shall provide key managers with periodic training which enables them to better recognize Indian issues and to understand and respect the legal status of tribal governments and of American Indians as citizens of Oregon who also have their own unique and distinct culture. It is important as well for the tribes to develop tribal training so its members will better understand the workings and process of state government. It is the hope of the state that these training's will enable the tribes and the state to learn about each other's cultures and improve our mutual ability to communicate our interests more clearly. The key contact and designated tribal representatives shall consult on the scope and content of training as well as the coverage of its cost.
6. That the departments shall work cooperatively to accomplish the goals of this order.

It is the hope of the state and the tribes that this executive order will result in improving the quality of communication between our sovereign governments. The tribes and the state recognize that this order cannot and is not intended to create a forum for resolution of all issues between the tribes and the state. Nor is it meant to replace presently existing lines of communications. Both the tribes and the state recognize that issues that are the subject of litigation or that are likely to become the subject of litigation are inappropriate for discussion in this process.

Nothing in this order shall require the state or any of its agencies to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law including but not limited to state Public Records laws, Public Meetings laws and provisions of the state Administrative Procedures Act.

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON



EXECUTIVE ORDER NO. EO - 96 - 30

Page Two

2. That the head of each Cabinet level department who is either appointed by the Governor or who reports to gubernatorial appointees and is made subject to this Order by the Governor (hereinafter "department") shall be accountable to the Governor's office for adopting a departmental State/Tribal Government statement that:
 - a. Recognizes that Oregon Indian tribal governments are interested in the development of state policy that affects tribal interests (hereinafter "state policy") and recognizes the desirability of dialogue between tribal governments and the state, with regard to those state policies;
 - b. Identifies key personnel of the department as a "key contact[s]" responsible for coordination with tribal governments;
 - c. Establishes a process for the identification of those state policies by designated tribal representatives and key contacts ;
 - d. promotes dialogue between Oregon departments and tribal governments on those state policies ; and
 - e. That advances the government-to-government relationship by notifying staff and employees of this Executive Order.
3. Through the process established under this Executive Order the key contacts and designated tribal representatives shall identify issues of mutual concern arising from state policy. The departments and each tribal government shall make reasonable efforts to design solutions and develop programs to achieve mutual goals in relation to state policy.

RECEIVED

JUN 27 2016

**WATER RESOURCES DEPT
SALEM, OREGON**



EXECUTIVE ORDER NO. EO - 96 - 10

STATE/TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS

There are nine federally recognized Indian tribal governments located in the State of Oregon. These Indian tribes were in existence prior to the formation of the United States of America, and thus retain a unique legal status. The importance of recognizing the relationship that exists between the tribes and state government can not be underestimated.

As sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties. The relationships between our governmental structures can only be built through trust and mutual respect .

The purpose of formalizing the government-to-government relationship that exists between Oregon's Indian tribes and the State is to establish a process which can assist in resolving potential conflicts, maximize key inter-governmental relations and enhance an exchange of ideas and resources for the greater good of all of Oregon's citizens, whether tribal members or not.

IT IS ORDERED AND DIRECTED:

1. That the Governor's Legal Counsel, or such other person as the Governor may from time to time designate, shall be accountable to the Governor for the implementation of this Executive Order and be responsible for convening an annual meeting where representatives of the State and the nine federally recognized Oregon tribal governments will work together to achieve mutual goals.

RECEIVED

JUN 27 2016

WATER RESOURCES DEPT
SALEM, OREGON



June 27, 2016

Oregon Water Resources Department, attention: Rules Coordinator
Oregon Water Resources Commission
725 Summer Street NE, Suite A
Salem, Or 97301

Re: Comments, Extension Hood River Reservation for Future Economic Development, Division 504 rules

Dear Rules Coordinator and WRC Commissioners,

Thank you for the opportunity to comment on the proposed twenty year extension of the Hood River Reservation for Future Economic Development. WaterWatch does not support the extension of the reservations with a 1992 priority date. No projects were built under the existing reservation, and the Department of Agriculture failed to meet the standards of the rules. Moreover, carrying forward a 1992 priority date for yet undeveloped projects puts instream values at serious risk.

Please consider the following comments:

(1) Proposed changes to specific rule language:

OAR 690-504-0100(4)(c): We support the proposed additional language regarding consultation with affected Indian Tribes, including the Confederated Tribes of the Warm Springs Indian Reservation.

OAR 690-504-0100(5): We support the additional language with regards to “any other applicable rules”. Processing of applications for storage projects that seek to utilize reserved water are still subject to all WRD permitting rules, in addition to those specific to the reservation itself, including, specifically, Division 33. The proposed language helps to clarify this.

OAR 690-504-0100(6): We support the additional language pertaining to site specific water availability analysis.

OAR 690-504-0100(7)(a) Purpose of the reservation and agency consultation: We would suggest that this section be amended so that the “purpose of the reservation” is clearly tied to OAR 690-504-0100(1). We would also ask that the WRD put into the staff report, for the record, the explanation of the adoption of this language in the first instance in 1996. The

WRC, in adopting reservations in 1996, was very clear that DOA does not get veto power over any request. Instead, WRD consults with DOA, along with ODFW and DEQ, and other relevant state agencies for consistency with the reservation purpose. The primary purpose of the reservation is future economic development, both instream and out-of-stream, as noted in (7)(a). This should be clear in the rules.

OAR 690-504-0100(9) Effective Date of the Rules: The original WRC approval was very purposeful in stating that if the water reservation were not put to use with twenty years, it would expire. It could be extended, but absent that, it would expire. The WRD is proposing to change this automatic expiration after twenty years to state that the rules are “effective until October 17, 2036, unless the effective date has been extended by further rulemaking of the Commission.” The draft rule language contains no directive that the extension take place prior to October 17, 2036.

By taking out the automatic expiration and not directing an extension request before the ending of the “effective date”, one plausible consequence is that the effective date could lapse but the Commission could come in at any time in the future (beyond twenty years) to extend. In other words, as proposed, it would simply mean the rules are still in existence but not necessarily in effect. The rules are not repealed. Under the proposed construct, the “effective date” could come and go and then ten, twenty, thirty years later the Commission would still be allowed to extend, and the reservation would still enjoy the 1992 priority date. While likely not the WRD’s intent, that is what this language would allow. To be consistent with the purpose of this reservation rulemaking, which is to extend the date, the only thing that should change in this subsection is the date—2016 should change to 2036. The remainder of this subsection should remain unchanged in whole.

- (2) **Consistency with the Division 79 rules governing extensions:** The newly adopted Division 79 rules, effective April 19, 2016, are clear that the WRC cannot extend the reservation if the reservation is inconsistent with the rules of the Commission. OAR 690-0790160(6).

The Department of Agriculture failed to provide progress reports to the WRD as required by rule. Inclusion of progress reports was a much discussed topic in the adoption of the original rules, the result being that the 1996 Commissioners deliberately included the following language in the rules to ensure periodic review of the reservation throughout its original 20 year life:

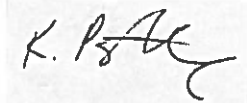
OAR 690-504-0100(9) Progress Reports:

If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water five years after the adoption of these rules [2001], the Department of Agriculture shall provide the Commission with a progress report on the development of the reservations. The report shall provide information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

Non-compliance with the governing rules is a fatal flaw in extending the reservation. The newly adopted Division 79 rules are clear that the WRC cannot extend the reservation if the reservation is inconsistent with the rules of the Commission. OAR 690-0790160(6). The existing Hood River Reservation is an existing rule of the Commission. The Hood River Reservation rules required progress reports. DOA failed to provide them. Thus, the reservation is not in compliance with the rules of the Commission. This cannot be cured by adopting the new reservation language.

Conclusion: WaterWatch would urge the Commission to reject the reservation.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Priestley", is written over a light gray rectangular background.

Kimberley Priestley
Sr. Policy Analyst

Verbal Comments Received during June 22, 2016 Division 504 Public Hearing

Dean McAllister:

My name is Dean McAllister and I am a grower of wine grapes in The Dalles in the Hood Basin. I am also on the Oregon Farm Bureau Board of Directors, representing Hood River and Wasco Counties. Both Hood River and Wasco Counties are very supportive of extending the reservations with the Hood Basin. We understand that Oregon Legislature authorized the creation of water reservations for future economic development in 1987 as a corollary to instream water rights, and that water reservations were designed to ensure that water was reserved for future growth when permanent instream water rights were created.

In recent years, the availability of water for future economic development has been a great concern to the agricultural community, and one which has occupied the thoughts of many, particularly in this part of the state.

The applications provide detail on the long-standing need for the development of additional water supply in the area. Accounts from our members in the Basin echo the need outlined in the application, and evidence the continuing need for this reserved water in the basin. We are hopeful that Oregon's recent investment water supply development projects will help make development of new water supply a possibility in the state. However, there are still significant economic and environmental hurdles to water supply development that necessitate planning for water supply projects on a multi-year timeframe.

We urge the Commission to adopt the rules and extend the Extensions for the Hood Basin. The applications submitted by the Oregon Department of Agriculture provide great detail on the efforts undertaken to develop the reservations, the continued need for the reservation and the importance of the reservation to the local community. In the last twenty years, local farmers and ranchers have seen reduction in the amount of water available for irrigation, while their need for reliable irrigation sources has only increased. With projected increased in temperatures in the next several years, combined with increased demand on water resources, the need for additional for farming and ranching will only continue to grow. The importance of these reservations will only continue to grow, and we urge their extension.

Thank you

Brian Nakamura:

I am Brian Nakamura. I am a grower here in Hood River County. I have cherries and pears. I am also the Board Chair of East Fork Irrigation District and Board Chair for Hood River County Soil and Water Conservation District.

First off, I would like to send out my appreciation to the Oregon Department of Agriculture and Water Resources Department for their efforts in renewing these reservations and all their efforts for that. It is important not only for myself but the ag community as Dean mentioned, especially for the East Fork Irrigation, where we have no storage at this time, on stream or off stream storage. We rely completely on snow pack for our water supply.

So the importance of the reservation for the ability to pursue potential storage projects is very important and that would help with our late season water supply, which at this time in last year's drought was very, very difficult to provide water to all our Patrons. Last year, and potentially the same thing this year [we had] lower snow pack. This has been an obvious change in the way the snowpack is kept on the mountain with the warmer temperatures and more rainfall in the spring and so that really impacts our ability to provide water to our patrons. Again I would like to thank OWRD and ODA for the opportunity to speak today.