

Program Amendments
Division 508: Grande Ronde Basin
Division 510: Malheur Basin
Division 511: Owyhee Basin



October 2016

Agenda Item L

Water Resources Commission Meeting

Brenda Bateman, TSD Administrator

Overview



- **Background**
- **Rule-Making Process**
- **Public Comment and Department Response**
- **Request for Action**

Background



- **Reservation** – sets aside unappropriated water for future economic development in a basin; assigns priority date. Reservations are for storage of water; in this case ag.
- **Permit** – required to actually store the reserved water.
- **Reservations in are set to expire in three basins unless extended by the Commission:**
 - **Division 508** – Grande Ronde Basin (expires Jan. 7, 2017)
 - **Division 510** – Malheur Basin (expires Feb. 7, 2017)
 - **Division 511** – Owyhee Basin (expire Feb. 7, 2017)
- **See Division 79 rules (modified 4/16) for process standards.**
- **This agenda item seeks Commission action to extend.**

Background



Adopt proposed amendments*:

- **Extend reservations 20 years to 2037**
- **Modify reporting requirements for WRD and ODA.**
- **Expand classified uses of water (to include agricultural, commercial, and flow augmentation)**
- **Correct language to correct inconsistencies**
- **Include an already-existing withdrawal in the Owyhee.**

(*See Attach. 2 for full text of Proposed Final Rules)

2016 Rulemaking Process



- **May 24-26:** Rules Advisory Committees convened (Attachment 3 lists attendees).
- **July 1-29:** Written public comment accepted (Attachment 4 contains written comments).
- **July 27-28:** Public hearings held
Commissioner Corn, presiding (Attachment 5 provides transcripts).
- **Oct. 14:** Commission action requested.

Public Comment & Department Response



- **Comments from Oregon Farm Bureau and Oregon Water Resources Congress**
(Note: numbering refers to hearing draft).
 - Support reservation extensions.
 - Suggest inserting the phrase “where necessary” into paragraph 0100(8) of all three basin programs. Comment is focused on the subsequent permitting stage.

Department Response: made no change; Department will use current practices and will properly process water right permit applications.

Public Comment & Department Response



- **Comments from WaterWatch of Oregon:**

- Suggest expanding list of classified uses to include pollution abatement and scenic value.

Department Response: Flow augmentation encompasses both; list maintains consistency with other basin programs moving through this process. No further change proposed.

- Suggest keeping the phrase “and subject to the provisions of section (7)” in paragraph 0100(6).

Department Response: This is part of the text clean up. Para 6 focuses on water availability; para 7 focuses on the permitting process. Applicants are still subject to para 7. No change.

Public Comment & Department Response



- **Comments from WaterWatch of Oregon, continued:**

- **Request that paragraph 0100(6) not be deleted.**

Department Response: Paragraph 0100(6) has been moved into previous paragraph, retaining original intent and approach. No further change proposed.

- **Suggest tying consultation with ODA found in OAR 690-504-0100(7a) to purpose of the reservation, which is economic development found in OAR 690-504-0100(1).**

Department Response: Paragraphs are to be read in concert; no change proposed.

Public Comment & Department Response



- **Comments from WaterWatch of Oregon, continued:**
 - Suggest keeping the phrase “automatically repealed” in OAR 690-504-0100(9a).

Department Response: staff proposed the phrase “shall be effective until,” to make text consistent with language in Div. 504 and 509 (Hood River and Burnt River), adopted by the Commission earlier this year. No further change proposed.

- Oppose reservation extension, due to lack of reporting.

Department Response: WRC had previously determined that faulty reporting was not a fatal flaw in the extension of reservations. No change proposed.

Public Comment & Department Response



- Comments from WaterWatch of Oregon, continued:
 - Owyhee-specific request related to “structures or works” in 0100(3) of Malheur Basin Program. Retain similar paragraph for Owyhee as well.

Department Response: Pulled apart these Basin Programs in 1977, with paragraphs 1, a, and b going to Owyhee Basin and paragraphs 2 and 3 going to Malheur. No change proposed.

- Grande-Ronde specific request is to include reference to ORS 537 in 0100(7), so it is consistent with other basin programs.

Department Response: Yes, that reference should be in there. This was an oversight; propose to include.

2 Edits Made to Hearing Draft



- **In Grande Ronde’s OAR 690-508-0100(7) add reference to “ORS 537.”**
- **In Owyhee’s 690-511-0100, fix numbering for (9) and (10).**

Request for Commission Action



The Commission may consider the following alternatives:

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

Request for Commission Action



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

Thank You



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