

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

**FILED**  
2-12-16 1:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Water Resources Department  
Agency and Division

690  
Administrative Rules Chapter Number

Malheur Lake Basin Program Provisions

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

In the Matter of:

Proposed modification to OAR Chapter 690, Division 512 Malheur Lake Basin Program Provisions

**Statutory Authority:**

ORS 536 and 537

**Other Authority:**

ORS 536.340(1)(a); 537.525(3), (5), (7) and (8); 537.621(2); 537.777(1); 537.780(1) and (1)(h)

**Statutes Implemented:**

ORS 536.310; 537.249; 537.356; 537.358

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

Available groundwater data show that water is not available for new groundwater use in parts of the Malheur Lake Basin. The Department is proposing to establish the Greater Harney Valley Groundwater Area of Concern in this part of the Malheur Lake Basin, which will allow some pending applications to be approved if offset water can be provided, and limit future applications from being approved while a groundwater study is completed. Exempt uses will not be limited. The Department is also proposing to repeal OAR 690-512-0040, which required applicants to demonstrate that water was available for their new application. This section of rules is obsolete. In addition, the Water Resources Commission in 1992 issued an order to withdraw two creeks from further appropriation. This withdrawal is proposed to be added to these rules.

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

Piper, A.M., Robison, T.W., and Park C.F. 1939. Geology and Ground Water Resources of the Harney Basin, Oregon. USGS Water Supply Paper 841.

Robison, J.H. 1968. Estimated Existing and Potential Ground-Water Storage in Major Drainage Basins in Oregon. USGS Open file Report 68 -232.

Waring, G.A. 1909. Geology and Water Resources of Harney Basin Region, Oregon. USGS Water Supply Paper 231.

**Fiscal and Economic Impact:**

Recently, the Department has been unable to issue new groundwater permits in parts of the Malheur Lake Basin based on a determination that groundwater is not available and the need to protect senior water rights. This is viewed by the local community as a negative economic impact because of the inability to grow the economy through the expansion of farming in the area. These rules will allow some permits to be issued, which provides for a positive economic impact to the area even though each new permit holder will be required to drill one observation well to monitor the impact, if any, of their pumping on the groundwater resource.

**Statement of Cost of Compliance:**

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

The Department does not anticipate additional costs of compliance by state and local government and the public. The rules require the Oregon Water Resources Department to report to an advisory committee on the progress of the study, to report yearly to the Oregon Water Resources Commission and to keep track of existing groundwater rights and applications in the study area. These actions were going to take place even without the rulemaking.

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

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

The Department does not have specific information regarding the number of small businesses and types of business and industries with small businesses that may be subject to these rules. However, the Department does anticipate that small businesses or business and industries with small businesses may be among the entities affected by this rulemaking. The Department estimates that as few as six and as many as 20

new groundwater permits will be issued under the rules that would not have been issued if not for the rules. The Department has identified that these rules will help protect water rights currently held by small businesses. In addition, the rules may cause some small businesses to be established but may also result in some small businesses being unable to expand or start.

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

The Department does not anticipate significant additional costs associated with reporting and other administrative activities.

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

To help insure that the Department understands the impact of the new permitted uses, the Department is requiring new permits issued in accordance with this rulemaking to drill an observation well.

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

The Department has reached out to the local community to build awareness of the groundwater limitations, seeking their input, and initiating a collaborative effort to address the long-term water needs for the area. The interests of small businesses were represented on the rules advisory committee formed by the Department in the development of these rules. The rules advisory committee has met five times as of February 12, 2016.

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

**If not, why?:**

<u>03-30-2016 5:00 p.m.</u>	<u>Diana Enright</u>	<u>diana.m.enright@wrd.state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address