

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

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ARCHIVES DIVISION  
SECRETARY OF STATE

Water Resources Department  
Agency and Division

690  
Administrative Rules Chapter Number

Classifying the Groundwater and Surface Waters of the Smith River Watershed in Curry County.

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

In the Matter of:

Amending Oregon Administrative Rules 690, Division 517 to classify the waters within the Smith River watershed to limit the types of uses allowed for new appropriations of water.

**Statutory Authority:**

ORS 183 and ORS 536

**Other Authority:**

OAR 690, Divisions 400, 410 and 500

**Statutes Implemented:**

ORS 536.340, ORS 536.300, ORS 536.310 and ORS 536.220

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

The Water Resources Commission received a petition to withdraw all of the unappropriated waters of the Smith River watershed, including groundwater and surface water, from further appropriations including exempt uses, except for instream. The Smith River watershed in Oregon was designated as a key watershed under the Northwest Forest Plan to maintain and recover anadromous fisheries, and a portion of the watershed is designated as critical habitat for ESA-listed threatened coho salmon. Thirteen miles of the North Fork Smith River is a federally designated Wild and Scenic River for its fisheries, water quality, and scenery. Eighty-eight percent of the watershed is within the Kalmiopsis Wilderness and the South Kalmiopsis and Packsaddle Inventoried Roadless Areas. Potential fisheries in the watershed include Chinook salmon, coho salmon, steelhead, anadromous cutthroat trout, resident rainbow and resident cutthroat trout; the area is critical habitat for Coho. The area is also known for Darlingtonia wetlands, which support rare plant species. Although use in the area is low due to limited access, recreational uses include fishing, swimming, hiking, hunting, camping, kayaking and rafting. OAR 690-410-0070 provides that the Commission may limit new out-of-stream allocations to protect public uses, where instream flow needs are not protected by instream water rights. Petitioners asserted that conserving the waters for instream uses is the maximum beneficial use of the waters. While recognizing the important instream public uses of the watershed, instead of undertaking a withdrawal of the waters, the Water Resources Commission directed the Department to begin a basin program amendment to classify the waters in the area of interest for instream purposes.

The Water Resources Commission is charged with developing basin program rules with consideration to the multiple aspects of the beneficial use and control of such water resources to best protect and promote the public welfare of Oregon's citizens generally. Current classified uses in the South Coast Basin Program for the Smith River watershed include domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife, and fish life uses. These rules propose to classify the surface waters in the Smith River watershed for human consumption, livestock, and instream public uses including pollution abatement, fish life, wildlife, and recreation, and classifies the groundwater within the watershed for exempt uses that are outlined in ORS 537.545. Classification of sources of water has the effect of restricting the uses allowed for new water right applications to those that are specified by the classification; no other uses are allowed, except water uses that do not require a water right (for example, see ORS 537.141), alternative reservoirs (i.e., ORS 537.409), and other uses as allowed by law or approved by the Commission (for example, see ORS 536.295).

This rulemaking will ensure the maximum beneficial use of the waters of the Smith River watershed by maintaining the current public uses of the Smith River watershed, including the habitat, recreational, scenic, and fishery values; protecting the state's preference and interest in maintaining adequate supplies for human consumption and livestock; protecting and preserving the principle of the sovereignty of this state over all the waters within the state; fostering streamflows to support aquatic life, minimize pollution, and maintain recreation values; and recognizing the economic and recreational asset of fisheries to the state. The Water Resources Commission has the authority to reclassify these uses should it determine in the future that the maximum beneficial use and control of these resources would be attained by modifying the authorized uses.

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

U.S. Forest Service, 2003, "North Fork Smith Wild and Scenic River Management Plan," Siskiyou National Forest. Available at: [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5315366.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5315366.pdf)

U.S. Forest Service, 2015 SW Oregon Mineral Withdrawal Environmental Assessment. Available at: <http://www.fs.usda.gov/project/?project=47877&exp=overview>

Petition for Withdrawal from Appropriations (2015). On file at the Oregon Water Resources Department.

U.S. Forest Service, 2015. Suction Dredging and High Banking Operations for Notices of Intent within the Rogue River-Siskiyou National Forest Biological Assessment [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd496876.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd496876.pdf)

### **Fiscal and Economic Impact:**

The land is publicly owned by the US Forest Service and a small portion by the Oregon Department of State Lands. The Oregon Water Resources Department cannot estimate the future fiscal or economic impact of this rule because it cannot predict whether there will be future interest in developing water in the watershed, and whether such use would be affected by the classification or could be obtained in a manner that is not restricted by the classifications (for example, see ORS 536.141, ORS 536.695, etc.). Water could also potentially be transported in to meet the desired need.

This rule would not limit future livestock water use, and it is expected that logging operations, if they were to occur, would not be affected by this rule as they do not generally require water rights. There are no municipal water needs in the area, nor are the lands in the area practical for agricultural use. In regards to mining activity, some lands are already withdrawn from mineral entry, while the rest of the USFS lands are currently segregated from new mining activity, except for existing valid claims. Furthermore, although there are existing active claims on the USFS land; there are currently no valid claims. In addition, portions of the area are under the state moratorium on motorized suction dredge mining through 2021. The Department cannot predict whether any existing claims will be validated, whether all Federal lands will continue to be under mineral withdrawal, or whether the State of Oregon's moratorium will remain in effect. Regardless, according to the USFS, given the low activity and use of the area, the impacts of mineral withdrawal would be low and immeasurable - potentially impacting Red Flat Nickel Corporation's Cleopatra site and reducing associated revenues in Josephine and Curry Counties; similar fiscal impacts could be expected from this rule proposal. The Department cannot determine the longer-term fiscal or economic impact of this rule if a claim were to be validated and the site was considered for full development as this is too speculative to assess: until minerals are identified, it is not possible to estimate the economic value. Existing uses of the watershed and its waters that would continue include: instream public uses of the water for its recreational, scenic, botanical, and fisheries values, which support recreation and tourism activities including camping, hiking, local off-highway jeep trips, fishing, kayaking, and rafting, and the associated economic benefits from tourism at nearby restaurants and stores.

In summary, some uses may be allowed that are not limited by the classifications; however, there are no anticipated needs for water for agricultural use, power development, irrigation, industrial, or municipal uses. Mining uses are expected to be limited in the near-term due to current state and federal actions; particularly since no claims have been validated. Therefore, the fiscal and economic impact of this rule is likely to be low.

### **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 any additional costs of compliance by state and local government and the public.

#### **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:**

This rule would limit the types of uses for new water rights, but does not affect new exempt uses. This rule limits the uses of surface water to human consumption, livestock, instream public uses including pollution abatement, fish life, wildlife, and recreation, and the uses of groundwater to exempt uses; therefore, any other out-of-stream uses or groundwater withdrawals that require a water right would be limited. Industries affected could include mining and well drilling. Aside from recreational outfitters and two mining associations along with a corporation holding active claims in the watershed that have not been validated, the Department is not aware of other businesses operating in this area. If the USFS lands are not withdrawn from mineral entry, this rule could affect any potential new mining businesses in the area.

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

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

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

The Department cannot predict whether there will be action to withdraw the USFS lands from mineral entry; the area is currently segregated from new mining activity through June 2017, and existing claims, if determined to be valid, would likely be unable to withdraw surface or groundwater except to the extent allowed under exempt uses or if authorized under ORS 536.295. The ability of the mining operation to continue and obtain water, and the associated costs, cannot be estimated because it would depend on the specific proposal. This may mean that water needs are met through transporting water in; the Department cannot estimate the cost of this activity, because the Department does not know how much water would be required, the distance of such transport, or the method of transport. In addition, since new non-exempt wells would be limited, well-drilling businesses would not be authorized to drill new non-exempt wells. The impacts on well-drilling businesses;

however, are unlikely as there are no active water rights in this region, or exempt wells on record.

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

The Rules Advisory Committee (RAC) included representatives from the Oregon Mining Association and the Oregon Farm Bureau, as well as a certified water rights examiner, a fishing guide and representative of Trout Unlimited, and kayaking guide. These individuals and organizations represent the potential large and small business types that could be affected by changes in the rules. In addition, the Department met with the Groundwater Advisory Committee, which includes well drillers who represent the well drilling industry.

**Administrative Rule Advisory Committee consulted?: Yes  
If not, why?:**

<u>09-30-2016 5:00 p.m.</u>	<u>Diana Enright</u>	<u>diana.m.enright@wrд.state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address