




Oregon

Kate Brown, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director 

SUBJECT: Agenda Item F, January 26, 2017
Water Resources Commission Meeting

Request for Concurrence with Oregon Parks and Recreation on the Adoption of Management Rules for the Chetco and Molalla Scenic Waterways

I. Introduction

During this agenda item, the Water Resources Commission will be asked to concur with the Oregon Parks and Recreation Commission's (OPRC) decision to approve the final text of management rules for the Chetco and Molalla State Scenic Waterways, as part of permanent adoption.

II. Background

In November 2015, the Oregon Water Resources Commission concurred with OPRC in recommending to the Governor the designation of segments of the Chetco and Molalla Rivers as State Scenic Waterways. The Commission also approved the scenic waterway flows that would become effective upon designation. In January 2016, Governor Brown issued Executive Order 16-04, designating portions of the Chetco and Molalla Rivers as State Scenic Waterways prior to the beginning of the 2016 Legislative session. The Oregon Legislature did not override the order and the designations took effect the day after the 2016 Legislative Session adjourned. Upon designation, OPRC's general management rules for State Scenic Waterways applied to these two newly designated rivers.

In addition to the general management rules, OPRC uses river-specific administrative rules to divide each scenic waterway into specific "classifications," which provide more detailed guidance on management. Classification is an important component of a Scenic Waterway Management Plan. Each designated waterway is given one (or possibly more, if the river is long or complex) of six classifications, which describe the general appearance of the landscape along the river as well as the amount and type of development. The classifications are shown in Attachment 1. These classifications reflect a range of river environments and a variety of land uses and development densities for that environment. As shown in Attachment 2, the Water Resources Department used these classifications as guidelines in recommending what the level of flows should be in each Scenic Waterway section.

The classifications are also guidelines for OPRD and other agencies to evaluate how well new development blends into the existing landscape. What is allowed varies from classification to classification, depending on what is compatible with the existing scene that is viewed from the river. For example, uses that fit into a more densely developed residential area will not necessarily blend into an agricultural or forested setting.

The river-specific rules can add more details on acceptable screening methods and other site specific issues. Those rules add to the general rules which still apply to all of the rivers designated as a State Scenic Waterway.

For the Molalla and Chetco Rivers, an advisory group representing landowners, business concerns, and public agencies helped OPRD draft river-specific rules, which were reviewed by a rules advisory committee. Resulting suggestions were incorporated into the draft rules. OPRD held a public hearing for each river and accepted comments through September 2016.

The public hearing in Brookings for the Chetco had no one attend other than OPRD staff. At the Molalla hearing five members of the public attended but only one made a comment, which was supportive of the rules but urged OPRD to monitor how the designation affects use and associated problems like garbage and vandalism. Five written comments were received through e-mail, all in support.

ORS 390.845 (2) provides that “*with the concurrence of the Water Resources Commission, the Oregon Parks and Recreation Department shall adopt rules governing the management of related adjacent land.*” The proposed management rules are included in Attachments 3 and 4. The classification of each section of the designated rivers are the same as what was originally proposed when the Commission determined the scenic waterway flows, using the classifications as a basis for flow amounts. Since the classifications have not been modified, staff believe that the rules are consistent with the Department’s flow designations and recommends concurrence with adoption of the rules.

III. Alternatives

The Commission may consider the following alternatives:

1. Concur with OPRD on the adoption of management rules for both Chetco and Molalla Scenic Waterways.
2. Concur with OPRD on the adoption of management rules for Chetco Scenic Waterway but not Molalla Scenic Waterway.
3. Concur with OPRD on the adoption of management rules for Molalla Scenic Waterway but not Chetco Scenic Waterway.
4. Do not concur with OPRD on the adoption of management rules for either Chetco or Molalla Scenic Waterways.

IV. Recommendation

The Director recommends that the Commission select Alternative 1 and concur with OPRD on the adoption of management rules for both Chetco and Molalla Scenic Waterways.

Attachments:

1. River Classifications
2. Draft Proposed Scenic Waterway Flow Levels
3. Request to adopt Chetco (with rules)
4. Request to adopt Molalla (with rules)

Ken Stahr
503-986-0838

Scenic Waterway Flows Set by the Commission based on River Classification

Table 1. Scenic Waterway Flows for the Proposed Chetco River Scenic Waterway³

Month	Recommended Scenic Flow (% of median, natural streamflow to protect)		
	Upper Segment Steel Bridge to Eagle Creek <i>Accessible Natural River</i> <i>Entirely Public Lands</i>	Middle Segment Eagle Creek to South Fork Chetco Confluence <i>Scenic River</i> <i>Majority Public Lands</i>	Lower Segment South Fork Chetco Confluence to Alfred A. Loeb State Park <i>Recreational River</i> <i>Majority Public Lands</i>
January-March	100% of the median natural flow: No new allocations of water within or above the scenic waterway		95% of the median natural flow: Approximately 27,100 acre-feet of water available to divert for storage
April - December			100% of the median natural flow: No new allocations of water within or above the scenic waterway

Table 2. Scenic Waterway Flows for the Proposed Molalla Scenic Waterway⁴

Month	Recommended Scenic Flow (% of median, natural streamflow to protect)		
	Upper Segment Table Rock to Pine Creek <i>Scenic River</i> <i>Almost Entirely Public Lands</i>	Middle Segment Pine Creek to Trout Creek <i>Recreational River</i> <i>Mostly Public Lands</i>	Lower Segment Trout Creek to Glen Avon Bridge <i>River Community</i> <i>No Public Lands</i>
November - June	90% of the median natural flow: Water available to allocate for storage		85% of the median natural flow: Up to approximately 49,600 acre-feet of water available to allocate for storage
July - October	100% of the median natural flow: No water available to allocate for storage		

**Draft Proposed Scenic Waterway Flow Levels
Based on OPRD’s Scenic Waterway Classifications and the Department’s Water Availability Model
(monthly, median natural streamflow)**

OPRD Scenic Waterway Classification	Description of Scenic Waterway Classification (taken from <u>OAR 736-040-0040</u>)	OWRD Recommended Scenic Waterway Allocation*
Natural River Area	A Natural River Area is undeveloped, and pristine or near pristine. It is accessible only by trail, boat or airplane. While the landscape of a Natural River Area can vary from steep-walled canyons to forested foothills, its character is consistent: primitive, very scenic, and conveying a sense of solitude. Evidence of human use in a Natural River Area is usually limited and any structures or indication of settlement are rare or scattered.	100% of the monthly, median natural streamflow
Accessible Natural River Area	An Accessible Natural River Area is similar to a Natural River Area in character and lack of development, but an Accessible Natural River Area can be usually reached by road. Typically, the access road is unpaved and passable only during warm, dry seasons.	95-100% of the monthly, median natural streamflow
Scenic River Area	A Scenic River Area may have nearby development, but for the most part is undeveloped and natural appearing. The dominant human influences in a Scenic River Area agriculture and grazing. Roads may be nearby, but are lightly traveled and not easily seen from the waterway.	90-100% of the monthly, median natural streamflow
Natural Scenic View Area	A Natural Scenic View Area contains one undeveloped and largely pristine riverbank while the opposite bank is more developed.	85-100% of the monthly, median natural streamflow
Recreational River Area	A Recreational River Area contains mixed agricultural, residential and commercial development along the shore and adjacent lands. A Recreational River Area is often rural or pastoral in character and easily accessible from local roads. A Recreational River Area is managed to protect the view from the river, allow development consistent with existing land uses and provide for a wide range of recreational activities within the scenic waterway	80-100% of the monthly, median natural streamflow
River Community Area	A River Community Area is a densely developed area, such as a residential tract or platted subdivision. A River Community Area is managed to allow development compatible with local zoning, and must blend into the natural character of the surrounding landscape. This also means protecting existing riparian vegetation, and encouraging activities that protect the resources or improve the landscape.	75-100% of the monthly, median natural streamflow

* Does not consider already-existing allocations.

Oregon Parks and Recreation Commission

November 16, 2016

Agenda Item:	11a	Action
Topic:	Request to adopt OAR 736-040-0100 Chetco State Scenic Waterway	
Presented by:	Richard Walkoski	

Background: Portions of the Chetco and Molalla Rivers were designated as State Scenic Waterways (SSW) by Governor Brown who issued an Executive Order as the 2016 legislative session began. The legislature did not override her order with a joint resolution, so the designations took effect the day after the legislature adjourned. Upon designation the general management rules for management of a SSW applied to those newly designated rivers. In addition to the general waterway rules, additional river specific administrative rules are used to divide each scenic waterway into specific classifications which provide more detailed guidance on management. The river specific rules can add more details on acceptable screening methods and other site specific issues. Those rules add to the general rules which still apply to all the rivers designated as a SSW.

A management plan was developed for the newly designated rivers using an advisory group as part of the process leading up to designation. The advisory group represented landowners, business concerns and public agencies. Those management plans formed the basis for a first draft of river specific rules. Those rules were reviewed by a rules advisory committee, made up from many of the same people who served on the advisory group. Their suggestions were incorporated into the draft rules. OPRD held a public hearing for each river and accepted comments through September 2016.

The public hearing in Brookings for the Chetco had no one attend other than OPRD staff. At the Molalla hearing five members of the public attended but only one made a comment, which was supportive of the rules but urged OPRD to monitor how the designation changes use and associated problems like garbage and vandalism. Five written comments were received through e-mail, all in support. These proposed rules have been reviewed by Assistant Attorney General Steve Shipsey.

There is a statutory requirement that OPRD get concurrence of the Water Resources Commission on SSW rules. OPRD has made that request to the Water Resources Department but the meeting of their commission is scheduled after the OPRD Commission meeting in November.

Prior Action by Commission: approve State Scenic Waterway recommendations, Nov. 2014, amended Apr. 2015; receive draft management reports, Nov. 2015; approve rulemaking for SSW, Apr. 2016.

Action Requested: Staff requests the commission approve OAR 736-040-0100 in Attachment A.

Attachments: Attachment A– OAR 736-040-0100 Chetco State Scenic Waterway (marked copy), Attachment B – Hearing Officer Report.

Prepared by: Richard Walkoski

Chetco River Scenic Waterway rules - Commission Draft 10/20/2016

736-040-0100

Chetco River Scenic Waterway

(1) Accessible Natural River Area:

(a) That segment of the Chetco River from the Steel Bridge to Eagle Creek is classified as an Accessible Natural River Area.

(b) The department shall administer this Accessible Natural River Area consistent with the provisions of OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition, all improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new improvements that are visible from the river other than those erected or made in connection with a compatible existing use will be allowed to proceed. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(d) Any new improvement allowed to proceed should be primitive in character and include screening by topography so it is not visible from the river.

(e) New roads may be allowed to proceed only when not visible from the river. Screening may be provided by topography, vegetation, or both.

(f) Major extensions, realignments, or upgrades to existing roads that are visible from the river shall be totally screened from view. Screening may be provided by topography, vegetation, or both.

(2) Scenic River Area:

(a) That segment of the Chetco River from Eagle Creek to the South Fork Confluence is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be

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visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(3) Recreational River Area:

(a) That segment of the Chetco River from the South Fork Confluence to the southern boundary of Alfred A. Loeb State Park is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(e) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(f) New roads and similar forms of development shall be set back from the river consistent with Curry County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - ORS 390.925

Oregon Parks and Recreation Commission

November 16, 2016

Agenda Item:	11b	Action
Topic:	Request to adopt OAR 736-040-0110 Molalla State Scenic Waterway	
Presented by:	Richard Walkoski	

Background: Portions of the Chetco and Molalla Rivers were designated as State Scenic Waterways (SSW) by Governor Brown who issued an Executive Order as the 2016 legislative session began. The legislature did not override her order with a joint resolution, so the designations took effect the day after the legislature adjourned. Upon designation the general management rules for management of a SSW applied to those newly designated rivers. In addition to the general waterway rules, additional river specific administrative rules are used to divide each scenic waterway into specific classifications which provide more detailed guidance on management. The river specific rules can add more details on acceptable screening methods and other site specific issues. Those rules add to the general rules which still apply to all the rivers designated as a SSW.

A management plan was developed for the newly designated rivers using an advisory group as part of the process leading up to designation. The advisory group represented landowners, business concerns and public agencies. Those management plans formed the basis for a first draft of river specific rules. Those rules were reviewed by a rules advisory committee, made up from many of the same people who served on the advisory group. Their suggestions were incorporated into the draft rules. OPRD held a public hearing for each river and accepted comments through September 2016.

The public hearing in Brookings for the Chetco had no one attend other than OPRD staff. At the Molalla hearing five members of the public attended but only one made a comment, which was supportive of the rules but urged OPRD to monitor how the designation changes use and associated problems like garbage and vandalism. Five written comments were received through e-mail, all in support. These proposed rules have been reviewed by Assistant Attorney General Steve Shipsey.

There is a statutory requirement that OPRD get concurrence of the Water Resources Commission on SSW rules. OPRD has made that request to the Water Resources Department but the meeting of their commission is scheduled after the OPRD Commission meeting in November.

Prior Action by Commission: approve State Scenic Waterway recommendations, Nov. 2014, amended Apr. 2015; receive draft management reports, Nov. 2015; approve rulemaking for SSW, Apr. 2016.

Action Requested: Staff requests the commission approve OAR 736-040-0110 in Attachment A.

Attachments: Attachment A– OAR 736-040-0110 Molalla State Scenic Waterway (marked copy), Attachment B – Written Comments Received (See Attachment B for Item 11a)

Prepared by: Richard Walkoski

Item 11b Attachment A - Molalla River Scenic Waterway rules - Commission Draft 10/20/2016

736-040-0110

Molalla River Scenic Waterway

(1) Scenic River Area:

(a) That segment of the Molalla River from the Confluence with the Table Rock Fork to Pine Creek is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Clackamas County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(2) Recreational River Area:

(a) That segment of the Molalla River from the Pine Creek Confluence to Trout Creek is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

(c) Natural evergreen vegetation shall be maintained between improvements and the river unless removal does not impact the view as seen from the river.

(d) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

Item 11b Attachment A - Molalla River Scenic Waterway rules - Commission Draft 10/20/2016

(e) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(f) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(g) New roads, mines and similar forms of development shall be set back from the river consistent with Clackamas County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

(3) River Community Area:

(a) That segment of the Molalla River from the Confluence with Trout Creek to the Glen Avon Bridge is classified as a River Community Area.

(b) Lands located north of the Glen Avon Bridge, and north of Dickey Prairie Road west of the Glen Avon Bridge, do not affect the view from the waters within the scenic waterway and are not regulated as related adjacent land under this division.

(c) The department shall administer this River Community Area as provided in OAR 736-040-0035 and 736-040-0040(1)(f). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - ORS 390.925