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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 10/14/2016 by the
Water Resources Department 690

Agency and Division Administrative Rules Chapter Number
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To become effective Upon filing. Rulemaking Notice was published in the July 2016 Oregon Bulletin.

RULE CAPTION

Updates to Malheur Basin Program and Extension of Reservations

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

690-510-0010, 690-510-0020, 690-510-0100, 690-510-0110

REPEAL:

690-510-0000

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 536 & 537

Other Authority:

Statutes Implemented:

ORS 536.220, 536.300, 536.310, 537.249, & 537.358

RULE SUMMARY

A reservation of water for future economic development sets aside a quantity of water for storage to meet future needs. The rules establishing the Malheur Basin reservations of water are set to expire on January 7, 2017, unless extended by rule by the Water Resources Commission. This rule would extend reservations of water for future economic development for the three Malheur Reservations of the Malheur Basin for an additional 20 years, and changes reporting requirements. Without these rules, the Malheur Basin reservations will expire. In addition, the rules include expansion of classified uses to clarify that the allowable uses include agricultural, commercial, and flow augmentation for instream use, and to address inconsistencies in terminology

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**WATER RESOURCES DEPARTMENT
DIVISION 510
MALHEUR BASIN PROGRAM**

NOTE: The Malheur Basin is delineated on agency [Map No. 10.6, dated January 1, 1983](#).

690-510-0010

Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Malheur 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, and fish life uses, and the waters of the Malheur Basin are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Malheur 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 the natural lakes of the Malheur Basin are hereby so classified.

(b) Stored water may be used for any beneficial purpose.

(c) Storage, of up to 1000 acre-feet of water in the Malheur Basin, for domestic or livestock purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt from regulation for storage of water reserved under OAR 690-510-0110 through 0120.

(2) The maximum economic development of this state, the attainment of the highest and best use of 1,454,000 acre-feet annually of natural flows of the Snake River, 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, and irrigation uses, and the 1,454,000 acre-feet annually of natural flows of the Snake River are hereby so classified.

(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 applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Note: These rules were filed with the Office of the Secretary of State and took effect on 10/18/2016. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State.

Stat. Auth.: ORS 536
Stats. Implemented: ORS 536.220 & ORS 536.310
Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

690-510-0020

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 44, f. 10-29-70; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 2-1985, f. & cert. ef. 3-28-85; WRD 2-1986, f. & cert. ef. 2-20-86; Administrative Renumbering 1-1993, Renumbered from 690-080-0100

690-510-0100

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) "Multipurpose reservoir", as used in OAR 690-510-0100 and 0110, means a reservoir storing water to serve multiple potential beneficial uses such as, but not limited to irrigation, commercial, agriculture, power generation, municipal, recreation, and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-511-0110 reserve surface water for future storage in multipurpose reservoirs.

(4) Permits to store reserved water shall receive the priority date of the reservation. The priority date for reservations under OAR 690-510-0110 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 water reserved under 690-511-0110 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;

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- (b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;
 - (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.
- (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 690-510-0110 are available for appropriation. However, the determination that water is available under OAR 690-510-0110 shall not substitute for consideration during the public interest review of site-specific information as required under OAR Chapter 690, Division 310 and applicable statutes or rules. Because the finding that water is available in OAR-510-0110 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 ORS Chapter 537, OAR 690, Division 310, and applicable rules and prior to issuance of a permit for a proposed project storing water reserved under 690-510-0110, 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 flows are required.
- (8) The Department shall determine, and impose as a condition, an appropriate storage season, and shall include other conditions to ensure no injury to senior water rights and to protect instream values.
- (9) Progress Reports: Until the Department has issued permits for reservoirs for the full quantity of reserved water under OAR 690-510-0110, 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 Department of Agriculture on the continued interest in the reservation, efforts undertaken to develop the reservation, and any challenges to developing the reservation.
- (10) Effective date of rules:
- (a) OAR 690-510-0110 shall be effective until January 7, 2037, unless effective date has been extended by further rulemaking of the Water Resources Commission.

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(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 2-1997, f. & cert. ef. 2-25-97

690-510-0110

Malheur Reservations

Unappropriated water is reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservations is November 6, 1992. The quantity and source of reserved water is as follows:

(1) Thirty five thousand (35,000) acre-feet of the Malheur River and tributaries, excluding the North Fork and South Fork Malheur Rivers and tributaries;

(2) Thirteen thousand two hundred (13,200) acre-feet of the South Fork Malheur River and tributaries.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & ORS 537.356

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97