

WATER RESOURCES DEPARTMENT

DIVISION 512

MALHEUR LAKE BASIN PROGRAM PROVISION

690-512-0040

Water Availability

(1) Except as provided in section (3) of this rule, the Department shall not accept an application for permit, or issue a permit, for any use of surface water, or of groundwater the use of which has the potential to substantially interfere with surface water, in the Malheur Lake Basin unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:

(a) Streamflow measurements of gage records from the source or, for use of groundwater, the stream in hydraulic connection with the source; or

(b) An estimate of water availability from the source or, for use of groundwater, the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other, similar streams and considers current demands for water affecting the streamflows.

(2) The criteria used in determining if the use of groundwater has the potential to substantially interfere with surface water shall be those established in OAR chapter 690, division 9.

(3) This rule shall not apply to issuance of:

(a) Instream water rights;

(b) Permits for storage of water between March 1 and May 31; or

(c) Permits for use of water legally stored.

(d) Permits for Multipurpose Storage under OAR 690-512-0100.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: WRD 3-1985, f. & cert. ef. 3-28-85; WRD 23-1990, f. & cert. ef. 12-14-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0120; WRD 2-2009, f. 6-18-09, cert. ef. 7-1-09

690-512-0100

Home Creek Reservations

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 economic benefits through both instream and out-of-stream uses of water. 4,550 acre-feet of unappropriated water in Home Creek and tributaries are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of February 25, 2009.

(2) "Multipurpose reservoir", as used in OAR 690-512-0100 means a reservoir storing water to serve more than two potential beneficial uses including but not limited to irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development allocate surface water for storage in multipurpose reservoirs.

(4) For the purposes of review of applications to store reserved water under OAR chapter 690, division 310, and subject to the provisions of section (6), the reserved quantities of water listed in OAR 690-512-0100(1) are available for appropriation.

(5) The determination of water availability under section (4) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR chapter 690, division 310.

(6) In addition to the requirements of ORS Chapter 537 and applicable rules, the Department will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:

(a) The proposed reservoir and any water rights secondary with the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;

(b) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with Department of Fish and Wildlife and Department of Environmental Quality; and

(c) Whether minimum bypass flows are required.

(7) In addition to the requirements of ORS Chapter 537 and applicable rules, any final order approving an application for a permit to store water and any order for water rights secondary with the storage right under the Home Creek Reservation shall contain the findings required in (6)(a)–(c) above, and will also contain conditions that:

(a) Set the appropriate storage season,

(b) Ensure no injury to senior water rights, including instream water rights,

(c) Protect instream values; and

(d) Set minimum bypass flows if identified under (6)(c) above.

(8) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by July 1, 2014, the Department shall provide the Parties involved in the Home Creek Settlement Agreement with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved by July 1, 2029, applications for remaining quantities of unallocated water under OAR 690-0512-0100(1) may not be accepted after July 1, 2029, unless this deadline is extended through rulemaking by the Water Resources Commission.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358
Hist.: WRD 2-2009, f. 6-18-09, cert. ef. 7-1-09

