



Oregon

Kate Brown, Governor

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MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item A, April 13, 2018
Water Resources Commission Meeting

Klamath Drought Emergency Temporary Rulemaking

I. Introduction

In this agenda item, the Commission is asked to consider temporary rules in Klamath County that would authorize a preference for uses of water for human consumption and stock water use.

II. Background

Governor Brown declared a drought emergency in Klamath County under Executive Order No. 18-02 on March 13, 2018 (Attachment 1). The City of Chiloquin submitted a request to the Commission, dated March 16, 2018, requesting a preference for use of the City's well for human consumption (Attachment 2). Don Gentry, Chairman of the Klamath Tribes, submitted a letter on April 2, 2018, with comments regarding the granting of a drought preference and emergency rules (Attachment 3). In addition, the Commission received a request from the Sprague River Water Resource Foundation on April 6, 2018, for a preference for stock water in the Sprague and Williamson River drainages (Attachment 4). The Department received a request from Modoc Point Irrigation District on April 9, 2018, for a preference for stock water for landowners within the irrigation district (Attachment 5).

Many of the water rights and determined claims in the Klamath Basin include domestic and stock water along with irrigation. Under ORS 536.750(1)(c), the Commission may grant a preference for water for stock and human consumption, when the Governor declares a state of drought emergency in an area. In 2013, 2014, and 2015, the Commission adopted administrative rules granting a preference for water for human consumption and livestock in Klamath County in response to Governor-declared drought emergencies. There were no drought declarations issued in Klamath County in 2016 and 2017.

Since regulation is relatively new in the Klamath Basin, the Department recognizes that drought tools, such as the preference for water for livestock and human consumption, can offer a critical, immediate option to help water users make it through a difficult water year. However, water used under the preference reduces the quantity of water available to senior water right holders. This is not a desirable or sustainable solution for long-term water management. For that reason, the Commission and Department have strongly encouraged Klamath Basin water users to develop alternative approaches and water delivery systems to better meet their needs in dry years, so that a preference will not be necessary in the future.

Water users have begun work to obtain more secure sources of water to meet stock water and human consumption needs. Since January 1, 2013, landowners in Klamath County have drilled 132 wells for stock watering, making them much more resilient to drought and calls on surface water by senior water right holders. Crater Lake National Park had requested a preference in prior years; however, they have since drilled a well to supplement their supply when surface water is regulated.

The City of Chiloquin has purchased a parcel of land to install a new municipal well that will not be subject to regulation. The City anticipates project completion by the end of 2018, but the well and infrastructure will not be completed for the 2018 water year. The Department anticipates that the City will need to exercise the preference beyond the temporary rules, through December 2018. Staff are working to identify options for addressing their longer-term needs.

III. Discussion of OAR 690-022-0060 to OAR 690-022-0063

The Commission is asked to consider adoption of the temporary rules OAR 690-022-0060 to OAR 690-022-0063 (Attachment 6). The rules will allow holders of water rights for stock water in the Williamson River Basin (including the Sprague River, Sycan River and all tributaries) and holders of water rights for human consumption uses in Klamath County to continue use of that water for those purposes during regulation for a call by a senior water right holder. These uses would otherwise be shut off to meet the call by a senior water user. The rules being proposed for adoption are included in Attachment 6. A summary of the rules is provided below.

Limitations on Use of the Preference: As explained in the attached letters requesting the preference, for some water users there are no readily available alternative sources of water for stock water or human consumption uses. At the same time, senior water users, such as the Klamath Tribes (see Attachment 3) have expressed concerns about the impacts of the preference on their ability to exercise their water rights. As a result, if the Commission authorizes the preference, it is important for water right holders exercising the preference to use only the minimum amount necessary and as efficiently as possible.

To try to address the need and the concerns, the Department has included the following provisions in the draft proposed rules:

- (1) Before exercising the preference, the proposed rules require that water right holders provide notice to the watermaster of the intent to utilize the preference on a form developed by the Department (See Draft Forms in Attachments 7 and 8). This will assist with management of the preferences, facilitate compliance checks, and help the Department better understand the needs in the community.
- (2) For the human consumption water preference, the water right holder must: (a) use the most efficient means of delivery available to them, (b) curtail all other water uses unrelated to human consumption and (c) allow the watermaster access to confirm compliance.
- (3) For the stock watering preference, the water right holder: (a) must curtail all other water uses, (b) allow the watermaster access to confirm compliance, (c) limit diversion of water for stock to an amount specified in the rule, (d) prevent dewatering of the stream (no less than 2 cubic feet per second streamflow, (e) record information as specified in the rule and provide it to the Department upon request.

Effective Date: By law temporary rules may only be in effect for 180 days. In addition, the preference may only occur while a Governor's drought declaration is in effect. As a result, the duration of the preference under these rules is the period of the drought declaration in Klamath County pursuant to Executive Order 18-02, or 180 days after the effective date of the rules, whichever is sooner.

IV. Suspension of OAR 690-022-020 to 690-022-030

In 2014, the Commission adopted temporary rules to provide a preference for stock water and human consumption uses. Due to the anticipated need for the rules to extend beyond the 180 days that are allowed for temporary rules, the Commission also adopted "permanent" rules to allow the preference to continue through December 31, 2014 (see staff report for Agenda Item A, September 2014). As specified in OAR 690-022-020 and the staff report to the Commission, the rules were repealed and in effect through December 31, 2014. However, in order to remove them from the Secretary of State's website, the Commission will need to undertake another permanent rulemaking process to clean up the record. In order to avoid confusion during the 2018 declared drought, the proposed action before the Commission proposes to suspend OAR 690-022-020 to 690-022-030 (strikethrough in Attachment 6) through this temporary rulemaking.

V. Conclusion

The Department will continue working with water users in the basin to eliminate the need for a preference in the future. Implementing alternative sources of supply and efficient water delivery systems will limit the need for water users to seek the preference in the future, and align the Klamath basin with other basins in the state that have longer

experience under a regulated system. For 2018, the Department recommends adopting the preference for water for human consumption and stock watering as provided in the rules.

VI. Alternatives

The Commission may consider the following alternatives:

1. Adopt administrative temporary rules OAR 690-022-0060 to OAR 690-022-0063, and suspend OAR 690-022-020 to OAR 690-022-030, as proposed in Attachment 6.
2. Modify proposed rules in Attachment 6 to adopt temporary administrative rules under OAR 690-022-0060 to OAR 690-022-0063 and suspend OAR 690-022-020 to OAR 690-022-030.
3. Do not adopt the rules.

VII. Recommendation

The Director recommends Alternative 1.

Attachments

1. Executive Order No. 18-02 - Governor Brown drought emergency declaration in Klamath County
2. March 16, 2018 letter from the City of Chiloquin
3. April 2, 2018 letter from the Klamath Tribes
4. April 6, 2018 letter from the Sprague River Water Resource Foundation
5. April 9, 2018 letter from Modoc Point Irrigation District
6. Final Proposed Rules - Division 22 Klamath Drought Emergency Rules 2018
7. Draft Stock Water Preference Notice Form
8. Draft Human Consumption Preference Notice Form

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