



Oregon

Kate Brown, Governor

Water Resources Department

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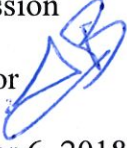
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MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director 

SUBJECT: Agenda Item C, September 6, 2018
Water Resources Commission Meeting

Klamath Drought Preference Delegation of Authority

I. Introduction

During this agenda item, the Commission is asked to consider delegation of authority to the Director through December 2018 to issue orders that would authorize a preference for uses of water for human consumption and stock water use in Klamath County.

II. Background

Under ORS 536.750(1)(c), the Commission may grant a preference of use for water for stock and human consumption, while a Governor's drought declaration is in effect. Governor Brown declared a drought emergency in Klamath County under Executive Order No. 18-02 on March 13, 2018. On April 13, 2018, the Water Resources Commission adopted temporary administrative rules (OAR 690-022) granting water rights preferences for uses of water for human consumption in Klamath County and stock water in the Williamson River Basin. The preference allows holders of water rights for stock water and human consumption use 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 temporary rules will remain in effect through October 13, 2018. Temporary rules can only be in effect for 180 days and cannot be extended.

As of August 2018, four requests for water for human consumption (City of Chiloquin, City of Klamath Falls, Jeld Wen Door Manufacturing, and Bly) have been received, and 13 requests for stock water have been received. The City of Chiloquin and Bly are working on options so that they will not need to rely on a preference for human consumption use in the future. However, these options will not be complete before the expiration of the temporary rules. Similarly, the stock water users have signaled a need for the preference.

III. Discussion of OAR 690-019

The Department anticipates that there will be a need to exercise the human consumption and stock preference beyond the sunset of the temporary rules. In the past, the Commission has adopted temporary rules in order to allow the drought preference for areas of the Klamath Basin, and in one year went through the permanent rulemaking process to adopt a temporary preference when the preference was needed longer than the 180 days allowed for temporary rules. The Commission also has authority to allow a drought preference by Order of the Commission pursuant to Oregon Administrative Rule 690-019-0070. OAR 690-019-0070 outlines the criteria for issuing a drought preference via order. Currently, the rules provide that the Commission may issue the order granting the preference.

The temporary rulemaking approach to the drought preference is problematic in years where the drought preference is needed longer than 180 days. The process outlined in the Division 19 rules is also problematic, because the order must be issued to a named person, and the Department does not often know who will need to exercise the drought preference. However, this year, because of the initial adoption of the temporary drought preference and the requirement that all using the preference submit notice to the watermaster has allowed the Department to generate a list of water right holders that may need to exercise the preference through the remainder of the year, or a portion thereof. As a result, the Department is proposing to utilize and test the approach outlined in the Division 19 rules to allow the preference for the remainder of the year.

ORS 536.025, states that the Commission may delegate to the Director the exercise or discharge of any power, duty or function vested or imposed by law upon the Commission except for adoption of rules. As such, the Commission may delegate to the Director the authority to issue orders of the Commission to grant a drought preference.

The Department is requesting that the Commission delegate to the Director, the authority to issue orders to grant a preference for stock water use and human consumption use in Klamath Basin through December 2018.

IV. Conclusion

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, which is not a desirable or sustainable long-term solution. For that reason, the Commission and Department have strongly encouraged Klamath Basin water users to develop alternative approaches to better meet their needs, so that a preference will not be necessary in the future. In the meantime, the Department is recommending a delegation of authority to issue orders granting a preference for human consumption or stock watering for the remainder of 2018.

V. Alternatives

The Commission may consider the following alternatives:

1. Delegate to the Director, the authority to issue orders granting a preference for human consumption and stock water use under ORS 536.740(1)(c) and OAR 690-019-0070 in Klamath County through December 2018.
2. Deny the request to delegate the authority to the Director.
3. Request that staff return at a future meeting with other alternatives.

VI. Recommendation

The Director recommends Alternative 1.

Attachments:

1. OAR 690-019-0070
2. Delegation of Commission Authority for Chair Signature

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690-019-0070

Preference of Use, Human Consumption and Livestock

(1) When the Governor declares that a severe, continuing drought exists, the Commission may grant a temporary preference of use to water rights for human consumption and/or stock watering. The temporary preference of use shall be by order of the Commission and shall apply only to designated drought areas. Temporary preference may be given over other water uses regardless of priority date.

(2) Applications for preference for human consumption and/or stock water shall be submitted on a form provided by the Department.

(3) In considering designation of an area for preferential use, the Commission may review recommendations from the Drought Council, recommendations from the Water Availability Committee, recommendations from county government officials within a designated drought area, and any other available information.

(4) Before issuing an order granting a temporary preference of use the Commission shall determine that the order is necessary to protect the health and welfare of the people of Oregon. Any order issued by the Commission for preference of use shall include:

(a) The expiration date for the temporary preference of use granted under the terms of this rule which shall not exceed the term of the Governor's declared drought;

(b) The geographic area specified for the temporary preference of use which shall be within a designated drought area;

(c) A general statement outlining which water uses have been designated temporarily inferior;

(d) A statement that there is an immediate threat to the health and welfare of the people of Oregon; and

(e) A requirement that political subdivisions within the designated drought area submit water conservation or curtailment plans for the Director's approval.

(5) Upon issuance of the order the watermaster within the designated drought area shall be notified of the temporary preference of use.

Statutory/Other Authority: ORS 536.700 & 536.780

Statutes/Other Implemented: ORS 536.700 - 536.780

History:

WRD 6-2001, f. & cert. ef. 10-8-01

WRD 8-1994, f. & cert. ef. 8-2-94

WRD 7-1990, f. & cert. ef. 6-25-90



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OREGON WATER RESOURCES COMMISSION DELEGATION OF COMMISSION AUTHORITY

Pursuant to the Water Resources Commission's authority under ORS 536.025 to delegate the exercise, in the Commission's name, authority vested in the Commission by law, the Commission hereby delegates to the Water Resources Director, the authority granted by ORS 536.740(1)(c) and OAR 690-019-0070, to issue orders granting a preference for human consumption and stock water use. The delegation of authority is limited to the issuance of orders granting a preference in Klamath County.

This delegation is pursuant to action taken by a vote of the Commission during its regularly scheduled Commission meeting on September 6, 2018.

This delegation of authority is in effect through December 2018 and expires January 1, 2019.

Signed: _____

Date: _____

Meg Reeves, Chair
Oregon Water Resources Commission

DRAFT