



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690
WATER RESOURCES DEPARTMENT

FILED
01/28/2020 10:30 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Extending Reservations of Water for Economic Development: Pine Creek, Eagle Creek, and Powder River Subbasins

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/06/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/27/2020

TIME: 2:00 PM - 3:30 PM

OFFICER: Bruce Corn

ADDRESS: Baker County Commission
Chambers

1995 3rd Street

Baker City, OR 97814

SPECIAL INSTRUCTIONS:

Individuals wanting to testify, must sign up no later than 2:30 pm. The hearing will close no later than 3:30 pm, but may close as early as 3:00 pm if all individuals that have signed up to testify have had the opportunity to enter their comments into the record.

NEED FOR THE RULE(S):

A reservation of water for future economic development sets aside a quantity of water for multipurpose storage to meet future needs. The rules establishing the Powder River reservations of water are set to expire on May 26, 2020, unless extended by rule by the Water Resources Commission. This rule would extend reservations of water for future economic development for the Eagle Creek, Pine Creek, and Powder Subbasin reservations of the Powder River Basin for an additional 20 years, to 2040, and changes reporting requirements. Without these rules, these reservations will expire, and water will not be set aside for future economic development. Rule changes also include minor corrections to the spelling of multipurpose for consistency across rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Consideration of Adoption of Oregon Administrative Rules 690, Division 79: Procedures for Extending Reservations
April 13, 2016 Water Resources Commission meeting staff report:

https://apps.wrd.state.or.us/apps/misc/vault/vault.aspx?Type=WrdNotice¬ice_item_id=6641

Applications from the Oregon Department of Agriculture Requesting Extension and Reservations of Water for Economic Development:

Available upon request from the Oregon Water Resources Department.

FISCAL AND ECONOMIC IMPACT:

A reservation of water for future economic development sets aside a quantity of water for storage for future use. This rule extends existing reservations that are set to expire and changes certain reporting requirements. The reporting requirements apply to the Water Resources Department ("Department") and may apply to the Oregon Department of Agriculture at the request of the Department or Commission. Impacts on other entities to comply with the reporting requirements will only be incurred to the extent the Department of Agriculture seeks information to include in their reports. The Department expects that its own costs to comply with the requirements of the rule will be no more than three hours of staff time per biennium to compile the reports for the Water Resource Commission ("Commission"). The Department cannot estimate the costs that will be incurred by the Department of Agriculture or other entities, because the Department does not know if or how frequent such reports will be required by the Department or the Commission. A reservation of water does not in itself provide economic benefits to a community; however, it does provide the opportunity to develop water for economic development in the future. Therefore, if these reservations were to expire, future opportunity to develop water under the reservation would be foreclosed. Extension of the reservation, however, does not mean that the water will actually be developed. If the reservations are developed, the Department would expect economic benefits resulting from activities such as improved agricultural production, power generation, recreation, and possibly other uses. Agriculture is the primary industry that is interested in developing water. Development of water can provide a significant economic benefit to an area, including supporting small businesses that provide services for agricultural producers and the surrounding community. These economic benefits cannot be estimated until an actual project is proposed, as the Department would need to know how much water will be available from the storage project, whether the water would be for new agricultural lands, or to enhance and build resilience of existing agricultural production, whether the project resulted in positive or negative impacts to recreational fisheries, to what extent the project would be open for and cater to recreation, and whether the reservoir would supply water to other uses.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The rules require the Oregon Water Resources Department to provide biennial reports to the Water Resources Commission on how much water has been utilized under the reservations. The Department expects that this will take minimal time for staff to compile, likely no more than three hours per biennium. The rules also require the Oregon

Department of Agriculture to provide periodic updates on the reservations. The Department believes that this will minimize the impact on all entities involved, except for the Water Resources Department. Prior rules required five-year updates to the Commission by the Department of Agriculture, which would have required time and resources to compile. These rules provide authority to the Department and Commission to request progress reports, but do not mandate reporting. The Department cannot estimate the cost of the reporting requirement because it is unclear if or how many times a report will be required to be submitted over the course of the reservation. In addition, the amount of time needed to prepare the reports will be based on whether or not the Department of Agriculture, local Soil and Water Conservation Districts, Powder Basin Watershed Council, Lower Powder River Irrigation District, Powder Valley Water Control District, the Baker Valley Irrigation District, and any other entities continue to track their own progress on developing the reservations.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

These rules do not regulate businesses, but rather set aside a quantity of water for multipurpose storage for future economic development. The tracking requirements are for the Oregon Department of Agriculture (ODA), which may in turn ask for information from parties, including small businesses, about efforts to develop water under the reservations. The Department cannot estimate the number of small businesses that may be subject to these rules because these rules reserve a quantity of water for future multipurpose storage and the Department cannot predict how many small business may develop and use the reserved water. Potential businesses that would seek to use the water include, but are not limited to agriculture, industry, and recreation.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Should businesses be asked for information to assist ODA in their report, the time to prepare that information likely would require no more than a few hours, if at all, with the costs depending on the amount per hour the business pays their employee. The reporting requirements of Department of Agriculture are the only potential identified impacts to small business. These impacts are expected to be minimal, but cannot be quantified because it is unclear how many businesses will actually take steps to seek development of water under the reservation. Regardless, the reporting requirements should not require more than a few hours of work per year, if at all. In contrast, development of water is an economic benefit to businesses and communities. Efforts to undertake water development under the reservations are voluntary and not mandatory. Aside from the cost of tracking efforts to develop the reservations, there are no other costs expected.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Department does not expect any costs to business as a result of this rule, other than the potential reporting

requirements above.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department sought input from its rules advisory committee, which included representatives from Oregon Cattleman's Association, Oregon Water Resources Congress, local Soil and Water Conservation Districts, Powder Basin Watershed Council, Lower Powder River Irrigation District, Powder Valley Water Control District, Powder River Irrigation District, and Oregon Farm Bureau. These organizations represent agricultural businesses. Individual members of these organizations include small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

690-509-0100, 690-509-0140, 690-509-0150, 690-509-0160

AMEND: 690-509-0100

RULE SUMMARY: This rule explains reservations of water for economic development, as well as identifies procedures for applying to use reserved water, reporting on reservation progress, and sunset dates on rules reserving water.

CHANGES TO RULE:

690-509-0100

Reservation Applications and Process ¶¶

- (1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient 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 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of stored water such as, but not limited to, irrigation, power development, municipal, recreation, pollution abatement, and flow augmentation for instream purposes.¶¶
- (3) Reservations of water for future economic development in OAR 690-509-0110 through 0160 allocate and reserve surface water for storage for the period of the reservation.¶¶
- (4) Permits to store reserved water shall receive the priority date of the reservation.¶¶
- (5) In addition to the requirements of ORS Chapter 537 and OAR Chapter 690, Division 310, an application for a permit to store water reserved under 690-509-0110 through 0160 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;¶¶
 - (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, Divisions 310, the reserved quantities of water listed in OAR 690-509-0110 through 0160 are available for appropriation. However, the determination that water is available under OAR 690-509-0110 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under

ORS Chapter 537, OAR Chapter 690 or any other applicable statutes or rules. Because the finding that water is available in OAR 690-509-0110 through 0160 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 or applicable rules, and prior to issuance for a proposed project storing water reserved under 690-509-0110 through 0160, the Department shall also find:¶

(a) The proposed reservoir is consistent with the purpose and intent of the reservation following consultation with the Department of Agriculture;¶

(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 insure no injury to senior water rights and to protect instream values.¶

(9) Progress Reports:¶

~~(a)~~ Until the Department has received applications for reservoir permits for the full quantity of reserved water under OAR 690-509-0110 through 01360, 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 Oregon Department of Agriculture on continued interest in the reservation, efforts undertaken to develop the reservation, and any challenges to developing the reservation.¶

~~(b)~~ If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water under OAR 690-509-0140 through 0160 by May 26, 2005, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations. Progress reports shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture 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.¶

(10) Effective date of rules:¶

(a) OAR 690-509-0110 through 0130 shall be effective until March 8, 2036 unless the effective date has been extended by further rulemaking of the Water Resources Commission.¶

(b) OAR 690-509-0140 through 0160 shall be effective until May 26, 2040, unless the effective date has been extended by further rulemaking of the Water Resources Commission.¶

(c) 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.

Statutory/Other Authority: ORS 536.537.027, ORS 537.249

Statutes/Other Implemented: ORS 536.310,00, ORS 536.310, ORS 537.249, ORS 537.356, ORS 537.358

AMEND: 690-509-0140

RULE SUMMARY: Reserves water and establishes priority date of the reserved water in the Pine Creek subbasin.

CHANGES TO RULE:

690-509-0140

Pine Creek Subbasin Reservation ¶

Ten thousand (10,000) acre-feet of unappropriated water of Pine Creek and tributaries above Long Branch, tributary to the Snake River, are reserved for multi-purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Statutory/Other Authority: ~~ORS 536.0257, 536.027, 536.300~~ ORS 537.249

Statutes/Other Implemented: ORS 537.358, 536.300, ORS 536.310, ORS 537.249, ORS 537.356

AMEND: 690-509-0150

RULE SUMMARY: Reserves water and establishes priority date of the reserved water in the Eagle Creek subbasin.

CHANGES TO RULE:

690-509-0150

Eagle Creek Subbasin Reservation ¶

Four thousand three hundred (4,300) acre feet of unappropriated water of Eagle Creek and tributaries upstream of gage 13288200 at Skull Creek are reserved for multi-purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Statutory/Other Authority: ORS 536.025, 536.027, 536.300, ORS 537.249

Statutes/Other Implemented: ORS 537.358, ORS 536.300, ORS 536.310, ORS 537.249, ORS 537.356

AMEND: 690-509-0160

RULE SUMMARY: Reserves water and establishes priority date of the reserved water in the Powder River subbasin.

CHANGES TO RULE:

690-509-0160

Powder River Subbasin Reservation ¶¶

Unappropriated water is reserved for multi-purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992. The quantity and source of reserved water is as follows:¶¶

(1) Three thousand nine hundred and ninety (3,990) acre feet of Goose Creek and tributaries upstream of the mouth, tributary to the Powder River east of Keating.¶¶

(2) Twenty seven thousand (27,000) acre feet of the Powder River and tributaries upstream of Thief Valley Dam and below the confluence of Blue Canyon Creek¶¶

(3) Two thousand nine hundred (2,900) acre feet of water of the Powder River and tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek.

Statutory/Other Authority: ~~ORS 536.025, 536.027, 536.300, 536.307, ORS 537.249~~

Statutes/Other Implemented: ~~ORS 536.310, 58, ORS 536.300, ORS 536.310, ORS 537.249, ORS 537.356~~