



MEMORANDUM

TO: Water Resources Commission

FROM: Racquel Rancier, Policy Manager *RR*

SUBJECT: Agenda Item D, February 13, 2020
Water Resources Commission Meeting

Preview of Rulemaking

I. Introduction

During this informational report, staff will provide an overview of interim work on administrative rulemakings.

II. Rulemaking

The following table highlights the Department's current rulemaking efforts, which the Department anticipates will be before the Commission for consideration during the next two Commission meetings.

<i>Division(s)</i>	20	200/205/240	522	509
<i>Subject Matter</i>	Dam Safety	Well Constructor Licensing / Armed Forces Spouses	Deschutes Basin Water Management	Powder Basin Reservation
<i>Purpose</i>	Implementation of House Bill 2085 (2019)	Compliance with House Bill 3030 and Senate Bill 668 (2019)	Changing mitigation water developed under a mitigation project into mitigation credits. Municipal incremental development plans	Extend reservations of water for economic development that sunset in May 2020
<i>Public Comment</i>	March 2020	April 2020	January 2020	February 2020
<i>Commission Decision</i>	June	June	April	April

The Commission will be briefed on the Divisions 20, 200, 205, and 240 rulemakings in more detail during the April meeting.

Division 522:

OAR Chapter 690, Division 522, is used in conjunction with the Deschutes Basin Groundwater Mitigation Rules in Division 505, and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules in Division 521. Division 522 clarifies how the Department counts new, reduced, cancelled and partially cancelled groundwater permits under the allocation cap; allows unused permanent mitigation credits to be reassigned; and clarifies how municipal and quasi-municipal permit holders can provide mitigation under incremental development plans. The rules also allow a mitigation project to provide direct mitigation for a specific groundwater application, which is called “mitigation water.” Mitigation water, is defined as water that is legally protected for instream use from implementation of a mitigation project.

The proposed rulemaking makes changes to the Division 522 rules to include provisions that would allow the Department to change mitigation water developed under a mitigation project prior to the adoption of these rules into mitigation credits. Currently if a permit holder that has mitigation water does not prove up on the entirety of their permit, the mitigation water is lost and not able to be used for any other mitigation obligation. With these proposed rules, if the permit holder is allowed to change the approved mitigation water to mitigation credit and does not prove up on the entirety of their permit, the credits would then be able to be used to satisfy another mitigation obligation through the existing rule OAR 690-522-0050. This proposed change could be the first step in making more mitigation credits available in zones that are currently lacking in availability.

This rulemaking also proposes to amend OAR 690-522-0050(1)(g) so that the permit holder that holds a municipal or quasi-municipal permit issued under OAR 690-505-0620 would have the ability to re-assign mitigation credits to another existing permit, even if they do not hold the permit. This change has the potential to allow municipal and quasi-municipal permit holders to work together and re-assign mitigation credits where credits were not currently available

Division 509:

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.

III. Conclusion

The Department anticipates bringing forward several rulemakings for consideration by the Commission during the April and June Water Resources Commission meetings.

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