Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
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MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item D, May 1, 2020
Water Resources Commission Meeting

Request for Adoption of Amendments to Rules – OAR Chapter 690, Division 509, Extending Reservations of Water for Economic Development in the Powder Basin Program

I. Introduction

The Commission will be asked to adopt amendments to Oregon Administrative Rules (OAR) Chapter 690, Division 509 to extend reservations in the Powder Basin Program, change related reporting requirements, and correct spelling.

II. Background

A reservation of water for future economic development sets aside a quantity of water for multipurpose storage to meet future needs. In the 1990's, the Water Resources Commission adopted reservations in multiple basin programs. The rules were set to sunset within 20 years, unless extended by the Commission. The first of the reservations were set to expire in 2016, resulting in a series of rulemakings to update the rules to extend the reservations by 20 years (see staff reports from 2016 for reference). The final reservations (see Table 1 on next page) set to expire are within the Powder Basin Program. The reservations expire on May 26, 2020, unless extended in rule by the Water Resources Commission.

OAR 690-079-0160 and OAR 690-079-0170 identify procedures for extending reservations, specifying that the Commission may extend the reservation up to 20 years unless the Commission determines the reservation is no longer consistent with ORS 536.310 or with rules of the Commission. In conducting a basin program rulemaking, ORS 536.310 requires the Commission to take into consideration ORS 536.220 and the policy declarations in ORS 536.310. ORS 536.220 directs the Department to "encourage, promote and secure maximum beneficial use and control" of water resources, and that basin programs for development of additional supplies "shall give proper and adequate consideration to the multiple aspects of the beneficial use of such water resources."

The policies in ORS 536.310 include: (1) protection of existing rights; (2) "integration and coordination of uses of water" and "augmentation of existing supplies for all beneficial purposes…for the maximum economic development" for the state; (3) adequate supplies for human consumption; (4) "multiple-purpose impoundment structures are to be preferred over single-purpose structures" and the construction of impoundments should consider the importance of the fishery resource; (5) "competitive exploitation of water resources of this state for single-purpose uses is to be discouraged"; and (8) "watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses". The policies in ORS 536.310 (6), (7), (9), (10), (11), (12), and (13) are not relevant to the reservations discussion.

Table 1: Reservations in the Powder Basin expiring May 26, 2020

Reservation	**Quantity** *(acre-feet)*
Pine Creek Subbasin (690-509-0140)	
Pine Creek and tributaries above Long Branch, Tributary to the Snake River	10,000
Eagle Creek Subbasin (690-509-0150)	
Eagle Creek and tributaries upstream of gage 13288200 at Skull Creek	4,300
Powder River Subbasin (690-509-0160)	
Goose Creek and tributaries upstream of the mouth, tributary to the Powder River east of Keating	3,990
Powder River and tributaries upstream of Thief Valley Dam and below the confluence of Blue Canyon Creek	27,000
Powder River and tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek	2,900
TOTAL	*33,890*

III. Rulemaking Process

In October 2019, the Oregon Department of Agriculture submitted applications requesting extension of the Powder Basin Program reservations set to sunset in May 2020 (see Attachment 1). The Department convened a Rules Advisory Committee on November 26, 2019, consisting of the following members:

- Lyle Umpleby, Powder Valley Water Control District
- Fredrick Phillips, Lower Powder (Thief Valley) Baker and Keating Valley
- Whitney Collins, Soil and Water Conservation District
- Tom Huff, Richland (Eagle) and Halfway (Pine) Valley
- Mark Jackson, Richland (Eagle) and Halfway (Pine) Valley
- Brent Kerns, West Hills and Rock Creek
- Jarrod Maxwell, Oregon Farm Bureau
- April Snell, Oregon Water Resources Congress
- Bill Harvey, Baker County

The notice of proposed rulemaking, including a statement of need and fiscal impact, was filed with the Secretary of State on January 28, 2020. The notice, including modifications to the Division 509 rules, is in Attachment 2. As identified in the notice, the purposes of the rulemaking are to:

1. Extend reservations of water for future economic development for the Eagle Creek, Pine Creek, and Powder Subbasins for an additional 20 years to May 26, 2040.
2. Change reporting requirements that apply to the Department of Agriculture and Oregon Water Resources Department.
3. Correct the spelling of multipurpose storage.

IV. Public Comment and Department Response

The Department accepted written public comments from February 1, 2020 to March 6, 2020. Copies of each comment submitted can be found in Attachment 3. The Department also held a public hearing on February 27, 2020, in Baker City, Oregon, with Commissioner Bruce Corn as the hearing officer. The transcript of the hearing with verbal public comment is in Attachment 4. Two commenters suggested changes to the rules: Steve Kaser and WaterWatch. Three commenters submitted comments in support of the rulemaking and suggested no changes: Oregon Farm Bureau and Baker County Farm Bureau (submitted jointly), Whitney Collins on behalf of Baker County Soil and Water Conservation District, and Lyle Umpleby, Powder Valley Water Control District Manager.

A summary of requested changes and the Department's responses to the suggested changes are included below. No changes were made to the proposed rules.

A. Written Comments from Steve Kaser, water well constructor.

It is a good thing to set aside our natural resources for future use. However, I question the suggested rule change of setting it aside for a 20 year period. I think extending the set aside for ten years is much more sensible given the overall uncertainty of climate change and the unknown positive or negative affect it might have on our ground water.

Department Response: The Oregon Department of Agriculture requested a 20-year extension of the reservation in their application. The Department agrees that 20 years is an appropriate amount of time to extend the surface water reservations for multipurpose storage. In addition, all other reservations extended prior to this were extended for 20 years. No change from the hearing draft is recommended.

B. Written Comments from WaterWatch of Oregon.

WaterWatch opposes the proposed 20-year extension upon the following grounds:

1. The Baker Valley and Pine Valley Irrigation Districts have stalled adoption of new instream water rights on the Powder River and Pine Creek for over two decades.

2. Since establishment of the reservation in 1992, Bull Trout have been listed as threatened under the Federal Endangered Species Act (1999). This changed circumstance should be considered by the Commission in extending the reservation.

WaterWatch urges the Commission to limit the extension to 3 years in order to encourage resolution of the instream water right protests, to make the priority date of the extension 2020 instead of 1992, and/or use authority granted to the Commission to explicitly condition the reservations to be subordinate to instream water rights.

Department response: The Department would like to see a resolution of the instream water rights disputes, and there are mechanisms to do that through a contested case hearing if a settlement cannot be reached. Limited Department resources limit the number of contested cases that can be held. Any impacts on Bull Trout would be addressed during the water right permitting process, if a reservoir were developed. OAR 690-079-0160 states that the priority date of the reservation shall be retained, and also allows for reservations to be modified or conditioned. The Department believes that discussion of subordination is more properly addressed through the water right application process. In addition, all other reservations extended prior to this were extended for 20 years.

C. Written Comments from WaterWatch of Oregon:

WaterWatch also submitted four suggested rule changes below if the reservation deadline is to be extended:

1. OAR 690-509-0100(3) notes that reservations allocate and reserve surface water for "storage"; this should be changed to "multipurpose storage" to ensure that any reservations are consistent with statute.

2. OAR 690-509-0100(5) fails to include "any other applicable rules". To be consistent with both the permitting process and also other reservation rules, this section should be amended to read: In addition to the requirements of ORS Chapter 537, and OAR Chapter 690, Division 310, and any other applicable rules, an application for a permit to store….

3. OAR 690-509-0100(5) fails to include a requirement of documentation of consultation with affected Indian Tribes. We would suggest mirroring the Hood River Reservation template, see OAR 690-504-0100(5)(c).

4. OAR 690-509-0100(7) limits consultation as to the purpose and intent of the reservation to consultation with the Department of Agriculture. This should be amended so that it reads "The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies." This would make it consistent with other updated reservations (Hood, Grande Ronde, etc.).

Department Response: The Department agrees with the proposed changes; however, in reviewing the rulemaking notice the Department has determined that the proposed changes are outside of the scope of the rulemaking notice. Modification of proposed rule rules must be within the scope of the subject matter of the notification. As a result, the changes cannot be included. For clarity, the Department's position is that the reservations are for multipurpose storage: the individual reservations rules (-0140, -0150, -0160) refer to multipurpose storage. ORS Chapter 537 directs the Department to consider other rules of the Commission in evaluating water right applications, and as such water right applications seeking to use the extensions would still be subject to review pursuant to "any other applicable rules."

V. Conclusion

The Department finds the reservations continue to be consistent with ORS 536.220 and ORS 536.310, as they:

- Provide a mechanism for supporting multipurpose water resources development in the basin to ensure the maximum economic development for the state.
- Demonstrate the state's preference for multipurpose reservoirs by reserving significantly more water for multipurpose reservoirs, while allowing a small amount for single-purpose reservoirs in recognition of local needs and the need to balance the different uses in the basin.
- Retain requirements to consult with the Oregon Department of Fish and Wildlife prior to applying to use the water in order to help protect the fishery resource.
- Allow for multipurpose uses, which may include water to benefit instream values such as fisheries, pollution abatement, and recreation.
- Benefit existing water rights by increasing the likelihood that irrigators' will receive their full duty, while also potentially increasing the amount of land that can be irrigated in the basin.

The Department proposes that the Commission adopt the proposed rules in Attachment 5 to modify Division 509, Powder Basin Program, in order to extend the three reservations for an additional 20 years and update rule language as described above.

VI. Alternatives

The Commission may consider the following alternatives:

1. Adopt the proposed rules in Attachment 5.
2. Adopt the proposed rules as modified by the Commission.
3. Not adopt the rules and provide the Department with further direction.

VII. Director's Recommendation

The Director recommends Alternative 1 to adopt the proposed rules in Attachment 5.

Attachments:
1. Applications for Extensions
2. Notice and Public Comment Draft of Rules
3. Written Public Comments
4. Public Hearing Comments
5. Final Proposed Rules

Oregon
Kate Brown, Governor

Department of Agriculture
635 Capitol St NE
Salem, OR 97301-2532

October 11, 2019

Tom Byler, Director
Oregon Water Resources Department
725 Summer Street NE; Suite A
Salem, Oregon 97301

Dear Director Byler,

In accordance with OAR 690-079-0160 and OAR 690-079-0060, the Department of Agriculture (ODA) requests 20-year extensions of the terms for the following reservations of unappropriated water for future economic development in agriculture in the Powder Basin:

1. **Pine Creek Subbasin Reservation (OAR 690-509-0140)**
   Ten thousand (10,000) acre-feet of unappropriated water of Pine Creek and tributaries above Long Branch, tributary to the Snake River;
2. **Eagle Creek Subbasin Reservation (OAR 690-509-0150)**
   Four thousand (4,000) acre-feet of unappropriated water of Eagle Creek and tributaries upstream of gage 13288200 at Skull Creek;
3. **Powder River Subbasin Reservation (OAR 690-509-0160)**
   Unappropriated water is reserved for future multi-purpose reservoirs. 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.

The original opportunity to reserve unappropriated water for future economic opportunity was granted in the early 1990's. Since that time, the following changes in Oregon have improved the likelihood of completing water resources projects.

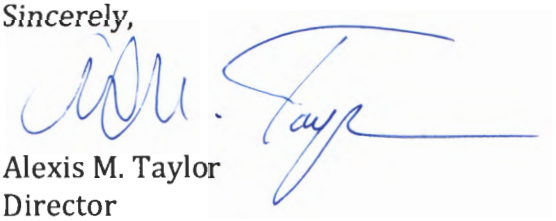
- New public and private programs have been established for planning, technical assistance, and funding for water resources projects.
- Biological opinions and conservation plans have been completed for anadromous fish.
- Nearly two decades of prevailing dry conditions, extreme drought, and climate change have highlighted the need for storage to help mitigate effects of more intense dry conditions and droughts as well as floods.

- With additional staff, ODA has been actively engaged in informing and reminding agricultural communities about their reservations of unappropriated water and associated potential opportunities.

Because of these changes, ODA believes that it is likely that water users will apply for water resources projects to use the reservations. The 20-year extensions of the reservation terms would provide agricultural water users time to thoughtfully plan, advance, and complete vital multi-purpose water resources projects.

ODA coordinated with and appreciated the invaluable assistance from Racquel Rancier, Senior Policy Coordinator at OWRD, and Whitney Collins, Districts Manager of the Baker County SWCDs, in the extension application process. Information specified in OAR 690-079-0060, Information Requirements, is provided in separate applications for each of the three reservations. Please contact Margaret Matter if additional information is needed for consideration of the requests for extension of terms of reservations in the Powder Basin.

Sincerely,



Alexis M. Taylor
Director

Request for Extension of Terms for
Reservations of Water for Economic Development
Pine Creek Subbasin Reservation

Date: October 3, 2019

(1) Requestor Name and Address

Oregon Department of Agriculture
635 Capitol Street NE
Salem, OR 97301

Contact: Margaret Matter, Water Resource Specialist
Phone: (503) 986-4561
Email: mmatter@oda.state.or.us

(2) Description of Existing Reservation and Applicable Rule Reference:

Unappropriated water in the Pine Creek Subbasin (OAR 690-509-0140) is reserved for multipurpose reservoirs to be constructed in the future. The original priority date of the Pine Creek Subbasin reservations is November 6, 1992. The quantity and source of reserved water is as follows:

1) 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 multipurpose reservoirs to be constructed in the future.

"Multipurpose reservoir" as used in OAR 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of the stored water such as, but not limited to, irrigation, power development, municipal, recreational, pollution abatement, and flow augmentation for instream purposes.

As documented in the archived notes of discussions held during stakeholder meetings leading up to the original applications to reserve unappropriated water for future economic opportunity in agriculture, stakeholders envisioned broader definitions of "reservoir" that included not only in-channel impoundments, but also:

- Landscape storage (e.g., ponds, wetlands);
- Structures placed in-channel to slow water, thereby promoting infiltration in the floodplain and within the channel; and
- Underground storage (e.g., in an aquifer or a large constructed tank).

More storage options may increase the number of uses (i.e., purposes) of the reserved water, as well as potentially improving efficiency and effectiveness in how water is used.

The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder Basin, and attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, with exceptions (OAR 690-509-000).

(3) Discussion of the Continued Current and Future Need for the Reservation:

Current needs for water have been identified and remain similar to the needs originally identified in 1992. The Pine Creek Subbasin unappropriated water reservations are intended for future economic development in Baker County, and offer several opportunities to meet these water needs, such as:

- Stockwater Use (OAR 690-300(46)) -the use of water for consumption by domesticated animals and held in captivity as pets or for profit. Wildlife such as deer and elk also utilize stockwater.
- Irrigation (OAR 690-300(26)) -the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants.
- Agricultural Water Use (OAR 690-300 (2)) -the use of water related to the production of agricultural products.
- Aquatic Life Water Use (OAR 690-300 (3)) -the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.
- Improve water supply reliability during extended dry and drought periods. The Western US, including Eastern Oregon, have experienced prevailing dry and drought conditions since about the late 1990s/2000.
- More recently, stakeholder concerns have risen regarding effects of changing temperature and precipitation conditions on reliability of groundwater resources and surface water flows in the late summer. As precipitation and snowmelt shift more into winter months, capturing and storing flows when the water is available, and/or slowing flows to promote infiltration will become increasingly important.

Baker County's customs, culture and economy are based on careful land stewardship, stemming from early western settlers and their dependence on the area's rich natural

resources. The first wagon trains on the Oregon Trail began in 1843, and passed through what would later become Baker County. The settlement of the west brought people whose livelihoods were associated with working directly on the land, including miners, loggers, trappers and livestock producers, who thrived and enjoyed the natural beauty of the landscape, abundant clean water, clear skies, and space to call their own.

Over time, large mining operations closed, and forest policy was drastically altered; these once booming industries began to disappear, dealing a major economic blow to Baker County. However, agriculture has remained the mainstay throughout the decades, and a shift in focus to tourism has helped to stabilize the impact of the loss of mining and timber. To this day, Baker County citizens and businesses understand the importance of agriculture in the community; economic opportunities will continue to be realized through sound land stewardship and the concept of multiple uses of our county's precious natural resources.

Small grains, hay, potatoes, mint, corn, grapes and grass seed make up the bulk of cash crops in the area, with livestock production being a significant contributor to the economic stability of Baker County; with over $40 million in annual sales, livestock production totals about 63% of all ag sales in the county (*Baker County Natural Resources Plan*). Agriculture in Baker County is not slowing down either; as of 2017 there were over 700 farms in the county, totaling over 754,580 acres; almost all of which are family owned and operated. This is a 9% increase in farm ownership since 2012, and a 6% increase in total farmland. Over 10% of the producers in Baker County are under the age of 35 *(2017 Census of Agriculture*), and are very involved in the community; for example, Millennial Generation producers have positions on the Baker County Farm Bureau, the Baker County Soil and Water Conservation Districts, and the local Cattlemen's Association, to name a few. This new generation of farmers and ranchers are driven and dedicated; as well as business and technology savvy, moving the ag-world forward by applying their creative thinking and innovative ideas to old-standing problems.

If there is a lifeblood of the agriculture industry, it is water. However, access to water is not as simple as it once was. Oregon Water Resources Department uses their Water Availability Reporting System to account for the various uses of water, and to estimate amounts of water available for new water rights filings. Since the Pine Creek Subbasin is an arid to semi-arid environment with short growing and grazing seasons, and changing climate patterns, it is vital to make the most efficient use of limited and changing water resources in the basin.

Drought conditions continue to have significant impacts on agriculture and natural resources in the basin. In 2015, the Oregon Drought Council and the Governor of Oregon, after weighing current water conditions with future forecasts, declared Oregon to be in its fourth consecutive year of drought. These conditions aren't going away. Just last year, in 2018, Baker County was specifically designated as a primary natural disaster

area by the Secretary of the U.S. Department of Agriculture due to drought, low snow pack levels, and low water conditions. Crop quality and yield were severely impacted by drought, but it doesn't end there. Producers were forced to haul water for livestock and/or rotate off-schedule due to lack of water, and federal grazing allotments were even cut short. In the event that federal grazing is temporarily suspended due to drought or fire, it recommences on a case by case basis with monitoring and site specific determinations (e.g., adequate water supply), as opposed to a predetermined timeline. (*Bureau of Land Management*) This can very easily put producers in an unforeseeable bind. Many producers have looked to alternative watering options, such as drilling wells, which is positive but not always feasible or even possible due to limitations and/or challenges of a location; not to mention quite costly. There are also many secondary ag businesses in Baker County that are negatively impacted through the domino effect of low precipitation and warm temperatures associated with drought, and lack of available stored water; for example, sprinkler and pipe distributors, tractor and equipment sales, farm supply stores, and consultants and contractors all feel the economic strain during these conditions.

Another major drought-related concern is wildfire. In 2018, Oregon had 1,880 fires that burned 846,411 acres- an area larger than the state of Rhode Island. Oregon also reached an all-time high in wildfire fighting costs in 2018, spending $514.6 million (*Northwest Interagency Coordination Center*). In the summer of 2015, Baker County experienced a devastating wildfire season, with the Cornet-Windy Ridge fire alone burning over 103,000 acres of range and forestland. Watersheds are significantly altered after such an event; lands affected by fire are at a much higher risk for flash flooding and landslides because the burned, bare soil does not have the same holding capacity. Erosion causes a multitude of new issues; it redistributes top soil which can lead to less desirable vegetation (noxious weeds), and causes major sedimentation in rivers and streams, affecting water quality and fish habitat.

Water quality goes hand in hand with beneficial water use; Pine Creek is listed on Department of Environmental Quality's 303d List for, among other things, sedimentation, habitat modification and dissolved oxygen. Algal growth and excess sediment cloud the stream, potentially raising water temperatures, disrupting natural vegetation, altering river flows and even rendering water unsuitable for consumption or recreation. As algae die and decompose, the process consumes dissolved oxygen; this can result in insufficient amounts of dissolved oxygen available for survival of fish and aquatic species (*Thief Valley Dam Feasibility Study*). Coupling increased efficiency of on-farm watering/irrigation systems with using available reserved water to store in multipurpose storage systems, such as underground storage and retrieval is a strategy that will reduce water diverted per acre for on-farm use, and in turn:

- Reduce erosion,
- Increase production, and

- Improve flows instream flows that will help prevent excessive algal growth and enhance aquatic habitat.

The unappropriated water reservations in the Pine Creek Subbasin offer opportunities to combat and/or prevent all of the resource concerns discussed above, while promoting economic resilience through robust agriculture. Efficient irrigation system upgrades, such as converting from flood to center pivot offers substantial water savings. For example, application efficiency rate for a well-managed flood irrigation field is around 60%, where efficiency for a center pivot, regardless of soil type, is 85% or above (*Flood vs. Pivot for Forage Crops, P. Brown*). Efficient irrigation systems allow producers to better-control soil moisture, raise high value crops, prevent runoff into streams, increase productivity, and improve the consistency of local water supplies. Reliable livestock watering systems allow producers to raise larger, healthier herds, as well as better-manage their grazing rotations. Managed livestock grazing is extremely beneficial for fire fuels control, noxious weed control, and wildlife habitat enhancement, all of which are essential for sustaining a healthy watershed.

Growing populations and expanding economies, coupled with declining ground water tables and decreasing surface water quality highlight the importance of the storage of water in reservoirs (*The Importance of Reservoirs for Water Supply and Power Generation, Nestmann and Stelzer*). Reservoirs (including subsurface ground storage) can be effective in recharging the aquifer, combatting effects of drought, and can even be used to aid in firefighting efforts. In 2015, several landowners allowed Oregon Department of Forestry to draw from their private storage reservoirs in order to fight the Cornet-Windy Ridge fire. Reservoirs are also essential in flood control, which are not uncommon in Baker County. For example, a 100-year flood event took place in 2010 on Eagle Creek, causing severe damage to streambanks, diversion structures, equipment, and homes.

Municipalities and agriculture keep in close coordination in Baker County, because they truly go hand-in-hand. Local government continually supports the improvement of delivery systems, and encourages water rights holders to improve water quality and water use efficiency to provide additional water for economic development and to enhance instream flows where possible (*Baker County Natural Resources Plan*).

(4) Description of Actions Taken to Advance Development of the Reservation

Natural resource conservation in Baker County is a priority, and businesses, agencies and producers take a collaborative approach. The Pine Creek Subbasin water reservations, with an original priority date of 1992, continue to be a major focus for the Powder Brownlee Local Advisory Committee, a multitude of local ditch companies in the Pine Valley area, as well as the Baker County Soil and Water Conservation Districts, who have taken an active role in extending these reservations. In the last 27 years, large

strides have been made in the way of water use efficiency, and a multitude of grants, feasibility studies, and restoration projects have been implemented in the Pine Creek Basin. Key initiatives include:

1) Pine Creek Assessment- This Stakeholder Engagement project, whose partners include Idaho Power Company, Oregon Water Resources Department, Eagle Valley Soil and Water Conservation District, Natural Resources Conservation District and Oregon Watershed Enhancement Board, will complete a comprehensive assessment of water diversion and delivery systems that divert 5 cfs or greater within the Pine Creek Watershed. Many diversion structures in the Pine Creek system create seasonal passage barriers and impede connectivity for fish, cause dewatering of streams, and are difficult to maintain, particularly after high water events.

The information gathered throughout the Pine Creek Assessment Project will be used as a valuable resource to evaluate future point of diversion consolidation and ditch piping projects in the Pine Creek Basin.

2) Oregon Watershed Enhancement Board (OWEB) – The Baker County Soil and Water Conservation Districts, consisting of Baker Valley, Keating, Eagle Valley and Burnt River, have implemented dozens of on-the-ground conservation projects in the Pine Creek Subbasin, most of which directly affect the Snake River or its tributaries, and have a heavy focus on water use efficiency. Since 1999, OWEB has contributed $11 million in restoration, technical assistance and outreach grant funds in Baker County alone. Examples of key OWEB projects in the Pine Creek Basin include: Whitnah Irrigation #219-5032; Dry Creek Irrigation #217-5008; Thad Leep Diversion #217-5029; and East Pine Fish Passage Project #218-5028.

3) Lower Powder Strategic Implementation Area (SIA) – The Baker County Soil and Water Conservation Districts, in conjunction with Oregon Department of Agriculture, selected an area within the County to address water quality concerns. This specific SIA contains four drainages and 75,415 acres and tributary streams to the Powder River. The hope is that strategic, focused, and systematic delivery of outreach and technical assistance will lead to greater program effectiveness and allow agencies and landowners to make better use of limited natural resources. The Keating Soil and Water Conservation District will coordinate technical assistance partnerships, implement landowner outreach strategies, and help landowners to implement projects for the improvement of water quality. Funds are set aside specifically for engineering designs, as well as a full monitoring component. Baseline water quality data will be collected, and then monitored for an additional five years under this project.

4) Lower Powder Focus Area- Similar to the SIA, a Focus Area is a small watershed within an Ag Water Quality Management Area that is selected based on a need for continued resource improvements and uplift. This particular Focus Area is approximately 55,296 acres and includes 77 intermittent stream miles, 59 perennial stream miles, and 60 ditch miles in the Powder River Basin. The Baker County Soil and Water Conservation Districts are working with private landowners to implement projects that will improve streamside vegetation, and address water availability concerns as well as water quality concerns.

(5) Discussion of Challenges to Developing the Reservation

Challenges to developing the unappropriated water reservations for the Pine Creek Subbasin begin with regulatory changes that have been implemented throughout the decades. The original reservations for the Powder River Subbasin were made in 1992; this is before Oregon Legislature passed the Agriculture Water Quality Management Act which brought along many big changes and challenges for producers and conservation districts in the state. Aside from changing environmental policy and requirements, a key constraint in developing reservations and water use projects is a lack of adequate funding for such projects. At the same time, the agricultural industry has grown, and the Western US, including Oregon, has experienced nearly 20 years of prolonged dry and drought conditions, creating a back-log in demand for water projects. In the past five years, the state Water Projects Grants and Loans Program was funded, and under the authority of Watershed Protection and Flood Prevention Act (PL-566), funds were made available to fund water projects, due in part to the leadership of the Oregon congressional delegation. Competition has been high for the recently available funds, and securing funding, when possible, takes a substantial amount of time. Since the demand for additional water supply is high, it is fundamentally important to renew the term of the reserved unappropriated water as a potential option for water projects.

(6) Description of Actions that will Need to be Undertaken in the Future in Order to Develop the Reservation

In 1992, the opportunity to reserve unappropriated water to be stored in multipurpose reservoirs for future economic development was granted. Since that time, changes in Oregon have improved the likelihood of completing water resources projects, for example:

- New public and private programs established for planning, technical assistance and funding for water resources projects;
- Biological opinions and conservation plans completed for anadromous fish;
- Nearly two decades of prevailing dry conditions and extreme drought, and effects of climate change have highlighted the need for additional and innovatively design in storage to help mitigate effects of more intense dry conditions and droughts as well as floods; and

- With additional staff, ODA has been actively engaged in informing and reminding agricultural communities about their reservations of unappropriated water and associated potential opportunities.

The 20-year extension of the reservation term would provide agricultural water users time to thoughtfully plan, advance and complete vital multipurpose water resources projects.

In order to develop the Pine Creek Subbasin's water reservations, Baker County government, local and federal agencies, and agriculture producers and businesses must continue to:

- Collaborate and coordinate their efforts and keep efficient water use as top policy priorities;
- Identify water resources supply, quality and instream issues; and
- Secure sufficient funding for studies to identify viable sites for groundwater recharge and storage; and for building the necessary projects.

(7) Information on How the Proposal is Compatible with Overall Basin Program Goals and Policies

The proposal to extend the reservations of unappropriated water in the Pine Creek Subbasin align with the goals and objectives for efficient and beneficial water use on the local, regional, and state levels. The Powder Brownlee Agricultural Water Quality Management Plan, developed by Oregon Department of Agriculture, Powder Brownlee Local Advisory Committee, and with support from the Baker County Soil and Water Conservation Districts, specifically discusses the unappropriated water reservations in Section 2.3.3 History of Natural Resource Management in the Management Area. The Ag Water Quality Plan states that water quality standards are established to protect beneficial uses of Oregon's waters, as defined in OAR 304-041-0002 (17), and lists irrigation, livestock watering and municipal use as beneficial uses of reserved water.

The Oregon Integrated Water Resources Strategy, which was adopted by Oregon Water Resources Department 2012, is a collaborative state policy that "encourages participation from all water users to work toward the common purpose of maintaining healthy water resources to meet the needs of Oregonians." The overall goal is to manage water supplies and increase utilization of existing supplies, such as the development of new water storage or recharge projects, including irrigation and habitat enhancement projects.

At the local level, the Baker County Natural Resource Management Plan specifically lists the unappropriated water reservations (i.e., page 40) under the Water and Water Rights Section. This section states that if public funds are used for the construction of a water storage project under the Water Supply Development Program, 25% of water must go

to instream flows for fish. The Natural Resources Plan reiterates the objectives of this water reservation proposal throughout the document, stating "it is the County's policy to encourage wise management and use of the County's surface and groundwater resources to sustain economic development and to maintain and improve instream, floodplain, wetland, and groundwater functions. Also, to encourage and allow consumptive water rights owners to improve water quality and water use efficiency to provide additional water for economic development and, where possible, to enhance instream flow during low water flow periods."

(8) Identification of Affected Local Governments

The Baker County Soil and Water Conservation Districts worked with Oregon Department of Agriculture, as well as with local water management districts and companies to compile a list of local governments who would possibly be affected by the extension of unappropriated water reservations in the Powder River Basin. Oregon Department of Agriculture notified the local governments on July 29, 2019 by the U.S. Postal Service, and a copy of the notification letters will be retained by ODA as well as the Baker County Soil and Water Conservation Districts.

(9) Copies of Letters

Copies of letters notifying each potentially affected local government of the intent to file an extension request that includes: (a) a description of the reservation; and (b) a statement that an opportunity to provide comment will be provided at a future date, will be maintained on file at ODA and are provided to OWRD in Appendix A of this application.

(10) Description of Expected Economic Benefits

The economic success of Baker County remains directly tied to agriculture, with the market value of products sold in 2017 totaling $79,205,000. This is significant in a community of roughly 16,000 people, especially when compared to the rest of the state. Baker County ranks in the top 10 for market value of agriculture products sold in several categories; seventh in the state for cattle production, eighth in the state for potatoes, and ninth in the state for grain production. Reliable water supplies allow local ag producers to remain competitive across the region and prepare for the future by expanding their businesses and investing in new programs, projects and technologies.

Beneficial water projects that focus on irrigation and livestock watering efficiency, expanding existing water storage, and addressing groundwater recharge will have positive effects, both short term and long term, on Baker County's economy. Local contractors and engineers have the opportunity to publicly bid on conservation projects, and then work with local distributors to acquire needed supplies such as pipe, watering troughs, pivots, wheel lines, fish screens, data collection, and much more. The Baker

County Soil and Water Conservation Districts, for example, were able to hire a part-time employee to implement the Tributary Riparian Revegetation Program, which focuses on resource improvements specifically within the Powder River Basin. When producers and conservation agencies have a reliable water supply, they are able to hire and retain local labor, particularly during irrigation and harvest seasons; thus expanding their operations, adding more jobs to the local market, and most importantly supporting their families and livelihoods.

Reliable water supplies mean greater opportunity in many capacities. In 2017, when the latest agriculture census was conducted, there were 563 female producers in Baker County, a tremendous leap from the 101 female producers just five years prior, in 2012. There were 313 new and beginning farmers in the County in 2017, and an obvious increase in young producers who are under the age of 35. Baker County's overall population is steadily growing too, bringing folks from across the country to this little piece of paradise. A diverse market means differing experiences and new, innovative ideas brought to the table, but it also reinforces the need for a stable water supply that benefits irrigators, livestock producers, and municipalities while continuing to enhance streamflow conditions and healthy watershed characteristics.

(11) Information on Whether the Reservation Exists Above or Within a Scenic Waterway

The Pine Creek Subbasin water reservations do not exist within or near a scenic waterway.

(12) Statement that Explains How the Reservation and Proposed Water Uses will Promote the Beneficial Use of the Water Without Waste

Sufficient water storage, groundwater recharge and irrigation/stockwater efficiency will be central initiatives moving forward in developing water use practices; and agricultural producers, conservation agencies, and local governments will continue to stay committed to managing the wise use of the County's natural resources, and to meet water supply challenges without waste.

Upgrading irrigation and stockwater systems is a tried and true method for substantial water savings, as well as improved water quality and increased instream flows. Beneficial activities include converting from flood to sprinkler irrigation, developing springs for stockwater systems, piping ditches to combat leaching and leaking, installing water measuring devices, and installing fish friendly diversion structures. Conservation agencies in the County will continue to reach out to landowners, secure funding for these beneficial water-use projects, and implement studies aimed at regaining lost storage capacity as well as developing new water storage sites.

Securing the extension for unappropriated water reservations in the Pine Creek Subbasin is a remarkable opportunity for the agriculture community, municipalities, and

local conservation districts, and is fundamental to the economic resilience of Baker County and its citizens.

Appendix A

Copies of the List of Unaffected Local Governments and the Letter of Intent to Apply for Extension of the Eagle Creek Subbasin Reservation

Letter of Intent to Apply for Extension of the Pine Creek Subbasin Reservation

Oregon
Kate Brown, Governor

Department of Agriculture
635 Capitol St NE Ste 100
Salem, OR 97301-2532

Public Notice of Applications for Extensions of Term of Reservations of Water for Future Economic Development in Agriculture

Date: July 29, 2019

Summary: In accordance with OAR 690-079-0060 (10), this notice is to inform affected local governments that Oregon Department of Agriculture (ODA) is applying to extend the terms of reservations of unappropriated water in Pine Creek (10,000 acre-feet), Eagle Creek (4,300 acre-feet) and the Powder River system above Thief Valley Dam (33,890 acre-feet) that will expire in May 2020 if the terms are not extended. Extending the terms of the reservations for an additional 20 years may provide agricultural water users with greater certainty and time to plan, advance, and complete vital multipurpose water resources projects for the agricultural community.

Action: No actions or comments are requested at this time. A public meeting will be announced at a later date.

The Subject: Reservations of water in the Powder River were granted in 2000 and recorded in the Powder Basin Program (OAR 690-509-0140 to 690-509-0160). The unappropriated water was reserved for 20 years with the possibility of extending the term up to an additional 20 years. Demand for the reserved water has increased for irrigation, livestock and other uses, including recreation, augmenting streamflow, and wildlife.

ODA recently applied to extend the 20-year terms of reservations of unappropriated water in the following basins: (a) Burnt; (b) Hood; (c) Grande Ronde; (d) Owyhee; and (e) Malheur Basin. Extending the time available to access and develop the reserved water supplies would provide agricultural water users with opportunity and time to identify, plan, and complete vital multipurpose water resources projects.

Contact For Information: Margaret Matter, Oregon Department of Agriculture

a) Office Phone: 503-986-4561
b) Email: mmatter@oda.state.or.us

Copies of the applications for extension of terms of the reservations in the Powder River basin are available upon request.

List of Unaffected Local Governments

List of Affected Local Governments-Baker County, Powder River Reservations

1. Baker County
Baker County Commissioners
1995 3rd St.
Baker City 97814

Phone:(541) 523-8200 (County Commissioners)

Phone: 541-523-8203 (General);
Email-General: ccarpenter@bakercounty.org

2. City of Sumpter
PO Box 68, 240 N Mill St.
Sumpter, OR 97877

Phone: 541-894-2314
Email: cityofsumpter@qwestoffice.net

3. Baker County SWCDs
3990 Midway Drive
Baker City, OR 97814

Whitney.collins@bakercountyswcds.com

4. Oregon Water Resources Congress
795 Winter St. NE
Salem, Oregon 97301

Aprils@owrc.org

5. City of Baker City, OR
PO Box 650
1655 First St.
Baker City, OR 97814

Phone: 541-523-6541
Fax: 541-524-2049
Web: www.bakercity.com

6. City of Haines, OR
PO Box 208
819 Front St.
Haines, OR 97833

Phone: 541-856-3366

Fax: 541-856-3812
Web: www.cityofhainesor.org

7. City of Halfway, OR
PO Box 738
Halfway, OR 97834-0738

Phone: 541-742-4741
Fax: 541-742-4742
Email: halfwaycity@gmail.com
Web: www.hellscanyonchamber.com

8. City of Richland, OR

PO Box 266
89 Main St.
Richland, OR 97870

Phone: 541-893-6141
Fax: 541-893-6267
Email: richcity@eagletelephone.com

Request for Extension of Terms for
Reservations of Water for Economic Development
Eagle Creek Subbasin Reservation

Date: October 3, 2019

(1) Requestor Name and Address

Oregon Department of Agriculture
635 Capitol Street NE
Salem, OR 97301

Contact: Margaret Matter, Water Resource Specialist
Phone: (503) 986-4561
Email: mmatter@oda.state.or.us

(2) Description of Existing Reservation and Applicable Rule Reference:

This reservation is for unappropriated water in the Eagle Creek Subbasin (OAR 690-509-0150) that may be used for future economic development in agriculture, and will be stored in multipurpose reservoirs. to be constructed in the future. The original priority date of the Eagle Creek Subbasin reservations is November 6, 1992. The quantity and source of reserved water is as follows:

1) 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 multipurpose reservoirs to be constructed in the future.

"Multipurpose reservoir," as used in OAR 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of the stored water such as, but not limited to, irrigation, power development, municipal, recreational, pollution abatement, and flow augmentation for instream purposes.

As documented in the archived notes of discussions held during stakeholder meetings leading up to the original applications to reserve unappropriated water for future economic opportunity in agriculture, stakeholders envisioned broader definitions of "reservoir" that included not only in-channel impoundments, but also:

- Landscape storage (e.g., ponds, wetlands);
- Structures placed in-channel to slow water, thereby promoting infiltration in the floodplain and within the channel; and
- Underground storage (e.g., in an aquifer or a large constructed tank).

More storage options may increase the number of uses (i.e., purposes) of the reserved water, as well as potentially improving efficiency and effectiveness in how water is used.

The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder Basin, and attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, with exceptions (OAR 690-509-000).

(3) Discussion of the Continued Current and Future Need for the Reservation:

Current needs for water have been identified and remain similar to the needs originally identified in 1992. The Eagle Creek Subbasin unappropriated water reservations are intended for future economic development in Baker County, and offer several opportunities to meet these water needs, such as:

- Stockwater Use (OAR 690-300(46)) -the use of water for consumption by domesticated animals and held in captivity as pets or for profit. Wildlife such as deer and elk also utilize stockwater.

- Irrigation (OAR 690-300(26)) -the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants.

- Agricultural Water Use (OAR 690-300 (2)) -the use of water related to the production of agricultural products.

- Aquatic Life Water Use (OAR 690-300 (3)) -the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

- Improve water supply reliability during extended dry and drought periods. The Western US, including Eastern Oregon, have experienced prevailing dry and drought conditions since about the late 1990s/2000.

- More recently, stakeholder concern had increased about effects of changing temperature and precipitation conditions on reliability of groundwater resources and surface water flows in the late summer. As precipitation and snowmelt shift more into winter months, capturing and storing flows when the water is available, and/or slowing flows to promote infiltration will become increasingly important.

Reserving water was intended to support future water resource development associated with cultivating economic opportunity. Up until the 21st Century, demand for additional water supplies for agriculture was limited for reasons including:

- Uncertainty associated with developing endangered fish management plans;
- Growth in agriculture was low;
- Prevailing hydrology and climate conditions appeared fairly supportive of agricultural production; and
- Traditional federal funding sources (e.g., U.S. Bureau of Reclamation) contracted as a consequence of change in agency mission from water supply to water management.

The concept of reserving water for future economic opportunities is in contrast to the prevailing culture that evolved with prior appropriation to encourage using available water resources before another entity laid claim to the "available" water. Stakeholders also envisioned that the Powder Basin reservations would not be fully developed within the first 20-year term. In some respects, it was fortunate that the reservations were not fully developed over that time. As recent place-based water resources pilot projects have demonstrated, it takes time to conduct thoughtful community-based, integrated water resources planning.

Since the Powder Basin reservations were approved in 2000, changes have occurred in the economy, funding opportunities; hydrologic and climate conditions, and the basin has realized growth in agriculture (i.e., primarily family owned/operated). In addition, the public has been informed of the approved reservations of unappropriated water in the Powder Basin. Important advances in science and understanding about the drivers of and differences between actual water availability and the water availability established for water resources and administration and water rights have spurred re-thinking about what a "reservoir" may be in the 21st Century, and the multiple objectives that may be met by stored water. These factors have helped contribute to increased interest in re-evaluating Powder Basin water supplies and long-term water resources planning. For example, the Powder River Subbasin reservation, beginning above Thief Valley Dam extending to the Blue Canyon Creek confluence, is being considered for an aquifer storage and retrieval project that has the potential to meet several economic, environmental and social needs and beneficial uses.

More recently, stakeholder concern has increased regarding effects of changing temperature and precipitation conditions on reliability of groundwater resources and surface water flows in the late summer. As precipitation and snowmelt shift more into winter months, capturing and storing higher flows when the water is available, and/or slowing flows to promote flow into the flood plain and infiltration will become increasingly important for water resources and economic reliability, sustainability and resilience.

Baker County's customs, culture and economy are based on careful land stewardship, stemming from early western settlers and their dependence on the area's rich natural resources. The first wagon trains on the Oregon Trail began in 1843, and passed through what would later become Baker County. The settlement of the west brought folks whose livelihoods came from working directly on the land, including miners, loggers, trappers and livestock producers, who thrived and enjoyed the natural beauty of the landscape, with an abundance of clean water, clear skies, and space to call their own.

Over time, large mining operations closed, and forest policy was drastically altered; these once booming industries began to disappear, dealing a major economic blow to Baker County. However, agriculture has remained the mainstay throughout the decades, and a shift in focus to tourism has helped to stabilize the impact of the loss of mining and timber. To this day, Baker County citizens and businesses understand the importance of agriculture in the community; economic opportunities will continue to be realized through sound land stewardship and the concept of multiple uses of our county's precious natural resources.

Small grains, hay, potatoes, mint, corn, grapes and grass seed make up the bulk of cash crops in the area, with livestock production being a significant contributor to the economic stability of Baker County; with over $40 million in annual sales, livestock production totals about 63% of all ag sales in the county (*Baker County Natural Resources Plan*). Agriculture in Baker County is not slowing down either; as of 2017 there were over 700 farms in the county, totaling over 754,580 acres; almost all of which are family owned and operated. This is a 9% increase in farm ownership since 2012, and a 6% increase in total farmland. Over 10% of the producers in Baker County are under the age of 35 *(USDA 2017 Census of Agriculture*), and are very involved in the community; for example, Millennial Generation producers have positions on the Baker County Farm Bureau, the Baker County Soil and Water Conservation Districts, and the local Cattlemen's Association, to name a few. This new generation of farmers and ranchers are driven and dedicated; as well as business and technology savvy, moving the ag-world forward by applying their creative thinking and innovative ideas to old-standing problems.

If there is a lifeblood of the agriculture industry, it is water. However, access to water is not as simple as it once was. Oregon Water Resources Department uses their Water Availability Reporting System to account for the various uses of water, and to estimate amounts of water available for new water rights filings. Since the Eagle Creek Subbasin is an arid to semi-arid environment with short growing and grazing seasons, and changing climate patterns, it is vital to make the most efficient use of limited and changing water resources in the basin.

Drought conditions continue to have significant impacts on agriculture and natural resources in the basin. In 2015, the Oregon Drought Council and the Governor of

Oregon, after weighing current water conditions with future forecasts, declared Oregon to be in its fourth consecutive year of drought. These conditions aren't going away. Just last year, in 2018, Baker County was specifically designated as a primary natural disaster area by the Secretary of the U.S. Department of Agriculture due to drought, low snow pack levels, and low water conditions. Crop quality and yield were severely impacted by drought, but it doesn't end there. Producers were forced to haul water for livestock and/or rotate off-schedule due to lack of water, and federal grazing allotments were even cut short. In the event that federal grazing is temporarily suspended due to drought or fire, it recommences on a case by case basis with monitoring and site - specific determinations (e.g., adequate water supply), as opposed to a predetermined timeline (U.S. *Bureau of Land Management*). This can very easily put producers in an unforeseeable bind. Many producers have looked to alternative watering options, such as drilling wells, which is positive but not always feasible or even possible due to limitations and/or challenges of a location; not to mention quite costly. There are also many secondary ag businesses in Baker County that are negatively impacted through the domino effect of low precipitation and warm temperatures associated with drought, and lack of available stored water; for example, sprinkler and pipe distributors, tractor and equipment sales, farm supply stores, and consultants and contractors all feel the economic strain during these conditions.

Another major drought-related concern is wildfire. In 2018, Oregon had 1,880 fires that burned 846,411 acres- an area larger than the state of Rhode Island. Oregon also reached an all-time high in wildfire fighting costs in 2018, spending $514.6 million (*Northwest Interagency Coordination Center*). In the summer of 2015, Baker County experienced a devastating wildfire season, with the Cornet-Windy Ridge fire alone burning over 103,000 acres of range and forestland. Watersheds are significantly altered after such an event; lands affected by fire are at a much higher risk for flash flooding and landslides because the burned, bare soil does not have the same holding capacity. Erosion causes a multitude of new issues; it redistributes top soil which can lead to less desirable vegetation (noxious weeds), and causes major sedimentation in rivers and streams, affecting water quality and fish habitat.

Water quality goes hand in hand with beneficial water use; Eagle Creek is listed on Department of Environmental Quality's 303d List for, among other things, sedimentation, habitat modification and dissolved oxygen. Algal growth and excess sediment cloud the stream, potentially raising water temperatures, disrupting natural vegetation, altering river flows and even rendering water unsuitable for consumption or recreation. As algae die and decompose, the process consumes dissolved oxygen; this can result in insufficient amounts of dissolved oxygen available for survival of fish and aquatic species (*Thief Valley Dam Feasibility Study*). Coupling increased efficiency of on-farm watering/irrigation systems with using available reserved water to store in multipurpose storage systems, such as underground storage and retrieval is a strategy that will reduce water diverted per acre for on-farm use as well as:

- Reduce erosion,
- Increase production, and
- Improve flows instream that will help prevent excessive algal growth and enhance aquatic habitat.

The unappropriated water reservations in the Eagle Creek Subbasin offer opportunities to address all of the resource concerns discussed above, while promoting economic resilience through robust agriculture. Efficient irrigation system upgrades, such as converting from flood to center pivot offers substantial water savings. For example, application efficiency rate for a well-managed flood irrigation field is around 60%, where efficiency for a center pivot, regardless of soil type, is 85% or above (*Flood vs. Pivot for Forage Crops, P. Brown*). Efficient irrigation systems allow producers to better-control soil moisture, raise high value crops, prevent runoff into streams, increase productivity, and improve the consistency of local water supplies. Reliable livestock watering systems allow producers to raise larger, healthier herds, as well as better-manage their grazing rotations. Managed livestock grazing is extremely beneficial for fire fuels control, noxious weed control, and wildlife habitat enhancement, all of which are essential for sustaining a healthy watershed.

Growing populations and expanding economies, coupled with declining ground water tables and decreasing surface water quality highlight the importance of the storage of water in reservoirs (*The Importance of Reservoirs for Water Supply and Power Generation, Nestmann and Stelzer*). Reservoirs (including subsurface groundwater storage) can be effective in recharging the aquifer, combatting effects of drought, and can even be used to aid in firefighting efforts. In 2015, several landowners allowed Oregon Department of Forestry to draw from their private storage reservoirs in order to fight the Cornet-Windy Ridge fire. Reservoirs are also essential in flood control, which are not uncommon in Baker County. For example, a 100-year flood event took place in 2010 on Eagle Creek, causing severe damage to streambanks, diversion structures, equipment, and homes.

Municipalities and agriculture keep in close coordination in Baker County, because they truly go hand-in-hand. Local government continually supports the improvement of delivery systems, and encourages water rights holders to improve water quality and water use efficiency to provide additional water for economic development and to enhance instream flows where possible (*Baker County Natural Resources Plan*).

(4) Description of Actions Taken to Advance Development of the Reservation

Natural resource conservation in Baker County is a priority, and businesses, agencies and producers take a collaborative approach. The Eagle Creek Subbasin water reservations, with an original priority date of 1992, continue to be a major focus for the Powder Brownlee Local Advisory Committee, a multitude of local ditch companies in the

Eagle Valley area, as well as the Baker County Soil and Water Conservation Districts, who have taken an active role in extending these reservations. In the last 27 years, large strides have been made in ~~the way of~~ increasing water use efficiency, and a multitude of grants, feasibility studies, and restoration projects have been implemented in the Eagle Creek Basin. Key initiatives include:

1) Oregon Watershed Enhancement Board (OWEB) – The Baker County Soil and Water Conservation Districts, consisting of Baker Valley, Keating, Eagle Valley and Burnt River, have implemented dozens of on-the-ground conservation projects in the Eagle Creek Subbasin, most of which directly affect the Powder and Snake Rivers or its tributaries, and have a heavy focus on water use efficiency. Since 1999, OWEB has contributed $11 million in restoration, technical assistance and outreach grant funds in Baker County alone. Examples of key OWEB projects in the Eagle Creek Basin include: Eagle Creek Irrigation #220-5015; Newt Young Diversion Design #217-5021; Holstein Moody Diversion Replacement #216-5047; Eagle Creek Restoration #208-5115; and Eagle Creek Restoration Phase II #209-5096.

2) Lower Powder Strategic Implementation Area (SIA) – The Baker County Soil and Water Conservation Districts, in conjunction with Oregon Department of Agriculture, selected an area within the County to address water quality concerns. This specific SIA contains four drainages and 75,415 acres and tributary streams to the Powder River. The hope is that strategic, focused, and systematic delivery of outreach and technical assistance will lead to greater program effectiveness and allow agencies and landowners to make better use of limited natural resources. The Keating Soil and Water Conservation District will coordinate technical assistance partnerships, implement landowner outreach strategies, and help landowners to implement projects for the improvement of water quality. Funds are set aside specifically for engineering designs, as well as a full monitoring component. Baseline water quality data will be collected, and then monitored for an additional five years under this project.

3) Lower Powder Focus Area- Similar to the SIA, a Focus Area is a small watershed within an Ag Water Quality Management Area that is selected based on a need for continued resource improvements and uplift. This particular Focus Area is approximately 55,296 acres and includes 77 intermittent stream miles, 59 perennial stream miles, and 60 ditch miles in the Powder River Basin. The Baker County Soil and Water Conservation Districts are working with private landowners to implement projects that will improve streamside vegetation, and address water availability concerns as well as water quality concerns.

(5) Discussion of Challenges to Developing the Reservation

Challenges to developing the unappropriated water reservations for the Eagle Creek Subbasin begin with regulatory changes that have been implemented throughout the decades. The original reservations for the Eagle Creek Subbasin were made in 1992 (approved in 2000); this is before Oregon Legislature passed the Agriculture Water Quality Management Act which brought along many big changes for producers and conservation districts in the state. Aside from changing environmental policy and requirements, a key constraint in developing reservations and water use projects is a lack of adequate funding for such projects. At the same time, the agricultural industry has grown, and the Western US, including Oregon, has experienced nearly 20 years of prolonged dry and drought conditions, creating a back-log in demand for water projects. In the past five years, the state Water Projects Grants and Loans Program was funded, and under the authority of Watershed Protection and Flood Prevention Act (PL-566), additional federal funds were made available to fund water projects, due in part to the leadership of the Oregon congressional delegation. Competition has been high for the recently available funds, and securing funding, when possible, takes a substantial amount of time. Since the demand for additional water supply is high, it is fundamentally important to renew the term of the reserved unappropriated water as a potential option for water projects.

(6) Description of Actions that will Need to be Undertaken in the Future in Order to Develop the Reservation

In 1992, the opportunity to reserve unappropriated water to be stored in multipurpose reservoirs for future economic development was granted. Since that time, changes in Oregon have improved the likelihood of completing water resources projects, for example:

- New public and private programs established for planning, technical assistance and funding for water resources projects;
- Biological opinions and conservation plans completed for anadromous fish;
- Nearly two decades of prevailing dry conditions and extreme drought, and effects of climate change have highlighted the need for additional and innovatively design in storage to help mitigate effects of more intense dry conditions and droughts as well as floods; and
- With additional staff, ODA has been actively engaged in informing and reminding agricultural communities about their reservations of unappropriated water and associated potential opportunities.

The 20-year extension of the reservation term would provide agricultural water users time to thoughtfully plan, advance and complete vital multipurpose water resources projects.

In 2000, the Eagle Creek Subbasin reservation of unappropriated water was approved for a 20-year term, and because of the more recent changes, support and opportunities in Oregon, stakeholders believe that the first step is to renew the term of the reservation for at least another 20 years. In order to develop the Eagle Creek Subbasin's water reservations, Baker County government, local and federal agencies, and agriculture producers and businesses must continue to:

- Collaborate and coordinate their efforts and keep efficient water use as top policy priorities;
- Identify water resources supply, quality and instream issues; and
- Secure sufficient funding for studies to identify viable sites for groundwater recharge and storage; and for building the necessary projects.

(7) Information on How the Proposal is Compatible with Overall Basin Program Goals and Policies

The proposal to extend the reservations of unappropriated water in the Eagle Creek Subbasin align with the goals and objectives for efficient and beneficial water use on the local, regional, and state levels. The Powder Brownlee Agricultural Water Quality Management Plan, developed by Oregon Department of Agriculture, Powder Brownlee Local Advisory Committee, and with support from the Baker County Soil and Water Conservation Districts, specifically discusses the unappropriated water reservations in Section 2.3.3 History of Natural Resource Management in the Management Area. The Ag Water Quality Plan states that water quality standards are established to protect beneficial uses of Oregon's waters, as defined in OAR 304-041-0002 (17), and lists irrigation, livestock watering and municipal use as beneficial uses of reserved water. The plan goals include achieving state water quality standards; multipurpose projects that provide additional water flow during low flow seasons may provide water quality benefits that support these goals.

The Oregon Integrated Water Resources Strategy, which was adopted by Oregon Water Resources Department 2012, is a collaborative state policy that "encourages participation from all water users to work toward the common purpose of maintaining healthy water resources to meet the needs of Oregonians." The overall goal is to manage water supplies and increase utilization of existing supplies, such through development of new water storage or recharge projects, and implementing irrigation and habitat enhancement projects.

At the local level, the Baker County Natural Resource Management Plan specifically lists the unappropriated water reservations (i.e., page 40) under the Water and Water Rights Section. This section states that if public funds are used for the construction of a water storage project under the Water Supply Development Program, 25% of water must go to instream flows for fish. The Natural Resources Plan reiterates the objectives of this water reservation proposal throughout the document, stating "it is the County's policy

to encourage wise management and use of the County's surface and groundwater resources to sustain economic development and to maintain and improve instream, floodplain, wetland, and groundwater functions. Also, to encourage and allow consumptive water rights owners to improve water quality and water use efficiency to provide additional water for economic development and, where possible, to enhance instream flow during low water flow periods."

(8) Identification of Affected Local Governments

The Baker County Soil and Water Conservation Districts worked with Oregon Department of Agriculture, as well as with local water management districts and companies to compile a list of local governments who would possibly be affected by the extension of unappropriated water reservations in the Powder River Basin. Oregon Department of Agriculture notified the local governments on July 29, 2019 by the U.S. Postal Service, and a copy of the notification letters will be retained by ODA as well as the Baker County Soil and Water Conservation Districts.

(9) Copies of Letters

Copies of letters notifying each potentially affected local government of the intent to file an extension request that includes: (a) a description of the reservation; and (b) a statement that an opportunity to provide comment will be provided at a future date, will be maintained on file at ODA and are provided to OWRD in Appendix A of this application.

(10) Description of Expected Economic Benefits

The economic success of Baker County remains directly tied to agriculture, with the market value of products sold in 2017 totaling $79,205,000. This is significant in a community of roughly 16,000 people, especially when compared to the rest of the state. Baker County ranks in the top 10 for market value of agriculture products sold in several categories; seventh in the state for cattle production, eighth in the state for potatoes, and ninth in the state for grain production. Reliable water supplies allow local ag producers to remain competitive across the region and prepare for the future by expanding their businesses and investing in new programs, projects and technologies. In addition, water helps maintain and enhance cropping and livestock management options for farmers and ranchers, and adds a great deal of harvested value per acre.

Beneficial water projects that focus on irrigation and livestock watering efficiency, expanding existing water storage, and addressing groundwater recharge will have positive effects, both short term and long term, on Baker County's economy. Local contractors and engineers have the opportunity to publicly bid on conservation projects, and then work with local distributors to acquire needed supplies such as pipe, watering troughs, pivots, wheel lines, fish screens, data collection, and much more. The Baker

County Soil and Water Conservation Districts, for example, were able to hire a part-time employee to implement the Tributary Riparian Revegetation Program, which focuses on resource improvements specifically within the Powder Basin. When producers and conservation agencies have a reliable water supply, they are able to hire and retain local labor, particularly during irrigation and harvest seasons; thus expanding their operations, adding more jobs to the local market, and most importantly supporting their families and livelihoods.

Reliable water supplies mean greater opportunity in many capacities. In 2017, when the latest agriculture census was conducted, there were 563 female producers in Baker County, a tremendous leap from the 101 female producers just five years prior, in 2012. There were 313 new and beginning farmers in the County in 2017, and an obvious increase in young producers who are under the age of 35. Baker County's overall population is steadily growing too, bringing folks from across the country to this little piece of paradise. A diverse market means differing experiences and new, innovative ideas brought to the table, but it also reinforces the need for a stable water supply that benefits irrigators, livestock producers, and municipalities while continuing to enhance streamflow conditions and healthy watershed characteristics.

(11) Information on Whether the Reservation Exists Above or Within a Scenic Waterway

As of October 28, 1988, 10.5 miles of Eagle Creek, from its headwaters below Eagle Lake to the Wallowa Whitman National Forest Boundary at Skull Creek is classified as Wild and Scenic, with an additional 18.4 miles classified as Recreational. The Eagle Creek Subbasin unappropriated water reservation exists within the scenic waterway.

(12) Statement that Explains How the Reservation and Proposed Water Uses will Promote the Beneficial Use of the Water Without Waste

Sufficient water storage, groundwater recharge and irrigation/stockwater efficiency will be central initiatives moving forward in developing water use practices; and agricultural producers, conservation agencies, and local governments will continue to stay committed to managing the wise use of the County's natural resources, and to meet water supply challenges without waste.

Upgrading irrigation and stockwater systems is a tried and true method for substantial water savings, as well as improved water quality and increased instream flows. Beneficial activities include converting from flood to sprinkler irrigation, developing springs for stockwater systems, piping ditches to combat leaching and leaking, installing water measuring devices, and installing fish friendly diversion structures. Conservation agencies in the County will continue to reach out to landowners, secure funding for these beneficial water-use projects, and implement studies aimed at regaining lost storage capacity as well as developing new water storage sites.

Securing the extension for unappropriated water reservations in the Eagle Creek Subbasin is a remarkable opportunity for the agriculture community, municipalities, and local conservation districts, and is fundamental to the economic resilience of Baker County and its citizens.

Appendix A

Copies of the List of Unaffected Local Governments and the Letter of Intent to Apply for Extension of the Eagle Creek Subbasin Reservation

Letter of Intent to Apply for Extension of the Eagle Creek Subbasin Reservation

Oregon
Kate Brown, Governor

Department of Agriculture
635 Capitol St NE Ste 100
Salem, OR 97301-2532

Public Notice of Applications for Extensions of Term of Reservations of Water for Future Economic Development in Agriculture

Date: July 29, 2019

Summary: In accordance with OAR 690-079-0060 (10), this notice is to inform affected local governments that Oregon Department of Agriculture (ODA) is applying to extend the terms of reservations of unappropriated water in Pine Creek (10,000 acre-feet), Eagle Creek (4,300 acre-feet) and the Powder River system above Thief Valley Dam (33,890 acre-feet) that will expire in May 2020 if the terms are not extended. Extending the terms of the reservations for an additional 20 years may provide agricultural water users with greater certainty and time to plan, advance, and complete vital multipurpose water resources projects for the agricultural community.

Action: No actions or comments are requested at this time. A public meeting will be announced at a later date.

The Subject: Reservations of water in the Powder River were granted in 2000 and recorded in the Powder Basin Program (OAR 690-509-0140 to 690-509-0160). The unappropriated water was reserved for 20 years with the possibility of extending the term up to an additional 20 years. Demand for the reserved water has increased for irrigation, livestock and other uses, including recreation, augmenting streamflow, and wildlife.

ODA recently applied to extend the 20-year terms of reservations of unappropriated water in the following basins: (a) Burnt; (b) Hood; (c) Grande Ronde; (d) Owyhee; and (e) Malheur Basin. Extending the time available to access and develop the reserved water supplies would provide agricultural water users with opportunity and time to identify, plan, and complete vital multipurpose water resources projects.

Contact For Information: Margaret Matter, Oregon Department of Agriculture

a) Office Phone: 503-986-4561
b) Email: mmatter@oda.state.or.us

Copies of the applications for extension of terms of the reservations in the Powder River basin are available upon request.

List of Unaffected Local Governments

List of Affected Local Governments-Baker County, Powder River Reservations

1. Baker County
Baker County Commissioners
1995 3rd St.
Baker City 97814

Phone:(541) 523-8200 (County Commissioners)

Phone: 541-523-8203 (General);
Email-General: ccarpenter@bakercounty.org

2. City of Sumpter
PO Box 68, 240 N Mill St.
Sumpter, OR 97877

Phone: 541-894-2314
Email: cityofsumpter@qwestoffice.net

3. Baker County SWCDs
3990 Midway Drive
Baker City, OR 97814

Whitney.collins@bakercountyswcds.com

4. Oregon Water Resources Congress
795 Winter St. NE
Salem, Oregon 97301

Aprils@owrc.org

5. City of Baker City, OR
PO Box 650
1655 First St.
Baker City, OR 97814

Phone: 541-523-6541
Fax: 541-524-2049
Web: www.bakercity.com

6. City of Haines, OR
PO Box 208
819 Front St.
Haines, OR 97833

Phone: 541-856-3366

Fax: 541-856-3812
Web: www.cityofhainesor.org

7. City of Halfway, OR
PO Box 738
Halfway, OR 97834-0738

Phone: 541-742-4741
Fax: 541-742-4742
Email. halfwaycity@gmail.com
Web: www.hellscanyonchamber.com

8. City of Richland. OR

PO Box 266
89 Main St.
Richland, OR 97870

Phone· 541-893-6141
Fax· 541-893-6267
Email: richcity@eagletelephone.com

Request for Extension of Terms for
Reservations of Water for Economic Development
Powder River Subbasin Reservation

Date: October 3, 2019

(1) Requestor Name and Address

Oregon Department of Agriculture
635 Capitol Street NE
Salem, OR 97301

Contact: Margaret Matter, Water Resource Specialist
Phone: (503) 986-4561
Email: mmatter@oda.state.or.us

(2) Description of Existing Reservation and Applicable Rule Reference:

Unappropriated water in the Powder River Subbasin (OAR 690-509-0160) is reserved for multipurpose reservoirs to be constructed in the future. The original priority date of the Powder River Subbasin reservations 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 the Powder River tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek.

"Multipurpose reservoir" as used in OAR 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of the stored water such as, but not limited to, irrigation, power development, municipal, recreational, pollution abatement, and flow augmentation for instream purposes.

As documented in the archived notes of discussions held during stakeholder meetings leading up to the original applications to reserve unappropriated water for future economic opportunity in agriculture, stakeholders envisioned broader definitions of "reservoir" that included not only in-channel impoundments, but also:

- Landscape storage (e.g., ponds, wetlands);

- Structures placed in-channel to slow water, thereby promoting infiltration in the floodplain and within the channel; and
- Underground storage (e.g., in an aquifer or a large constructed tank).

More storage options may increase the number of uses (i.e., purposes) of the reserved water, as well as potentially improving efficiency and effectiveness in how water is used.

The maximum economic development of this state, the attainment of the highest and best use of the water of the Powder Basin, and attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, with exceptions (OAR 690-509-000).

(3) Discussion of the Continued Current and Future Need for the Reservation:

Current needs for water have been identified and remain similar to the needs originally identified in 1992. The Powder River Subbasin unappropriated water reservations are intended for future economic development in Baker County, and offer several opportunities to meet water needs, such as:

- Stockwater Use (OAR 690-300(46)) - the use of water for consumption by domesticated animals and held in captivity as pets or for profit. Wildlife such as deer and elk also utilize stockwater.
- Irrigation (OAR 690-300(26)) - the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants.
- Agricultural Water Use (OAR 690-300 (2)) - the use of water related to the production of agricultural products.
- Aquatic Life Water Use (OAR 690-300 (3)) -the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.
- Improve water supply reliability during extended dry and drought periods. The Western US, including Eastern Oregon, have experienced prevailing dry and drought conditions since about the late 1990s/2000.

More recently, stakeholder concern has increased about effects of changing temperature and precipitation conditions on reliability of groundwater resources and surface water flows in the late summer. As precipitation and snowmelt shift more into winter months, capturing and storing flows when the water is available, and/or slowing flows to promote infiltration will become increasingly important.

Baker County's customs and culture are based on land stewardship, stemming from early western settlers and their dependence on the area's rich natural resources. The first wagon trains on the Oregon Trail began in 1843, and passed through what would

later become Baker County. The settlement of the west attracted people whose livelihoods were connected to working directly on the land; miners, loggers, trappers and livestock producers who thrived in the natural beauty of the landscape with abundant clean water, clear skies, and space to call their own.

Over time, large mining operations closed, and forest policy was substantially altered; these once booming industries began to disappear, dealing a major economic blow to Baker County. However, agriculture has remained the mainstay throughout the decades, and a shift in focus to tourism has helped to stabilize the impact of the loss of mining and timber. To this day, Baker County citizens and businesses understand the importance of agriculture in the community; and economic opportunities will continue to be realized through sound land stewardship and the concept of multiple uses of our county's precious natural resources.

Small grains, hay, potatoes, mint, corn, grapes and grass seed make up the bulk of cash crops in the area, with livestock production being a significant contributor to the economic stability of Baker County; with over $40 million in annual sales, livestock production totals about 63% of all ag sales in the county (*Baker County Natural Resources Plan*). Agriculture in Baker County is not slowing down either. As of 2017, there were over 700 farms in the county, totaling over 754,580 acres; almost all of which are family owned and operated. This is a 9% increase in farm ownership since 2012, and a 6% increase in total farmland. Over 10% of the producers in Baker County are under the age of 35 *(2017 Census of Agriculture*), and are very involved in the community; millennial producers have positions on the Baker County Farm Bureau, the Baker County Soil and Water Conservation Districts, and the local Cattlemen's Association, to name a few. This new generation of farmers and ranchers are driven and dedicated; as well as business and technology savvy, moving the ag-world forward by applying their creative thinking and innovative ideas to old-standing problems.

Reliable water supply is the lifeblood of the agricultural industry. However, access to water is not as simple as it once was understood. Oregon Water Resources Department uses their Water Availability Reporting System to account for the various uses of water, and to estimate amounts of water available for new water right applications. Since the Powder Basin is an arid to semi-arid environment with short growing and grazing seasons, and changing climate patterns, it is vital to make the most efficient use of limited and changing water resources in the basin.

Drought conditions continue to have significant impacts on agriculture and natural resources in the basin. In 2015, the Oregon Drought Council and the Governor of Oregon, after weighing current water conditions with future forecasts, declared Oregon to be in its fourth consecutive year of drought. These conditions aren't going away. Just last year, in 2018, Baker County was specifically designated as a primary natural disaster area by the Secretary of the U.S. Department of Agriculture due to drought, low snow pack levels, and low water conditions. Crop quality and yield were severely impacted by

drought, but it doesn't end there. Producers were forced to haul water for livestock and/or rotate off-schedule due to lack of water, and federal grazing allotments were even cut short. In the event that federal grazing is temporarily suspended due to drought or fire, it recommences on a case by case basis with monitoring and site-specific determinations (e.g., adequate water supply), as opposed to a predetermined timeline (*Bureau of Land Management*). This can very easily put producers in an unforeseeable bind. Many producers have looked to alternative watering options, such as drilling wells, which is positive but not always feasible or even possible due to limitations and/or challenges of a location; not to mention quite costly. There are also many secondary ag businesses in Baker County that are negatively impacted through the domino effect of low precipitation and warm temperatures associated with drought, and lack of available stored water; for example, sprinkler and pipe distributors, tractor and equipment sales, farm supply stores, and consultants and contractors all feel the economic strain during these conditions.

Another major drought-related concern is wildfire. In 2018, Oregon had 1,880 fires that burned 846,411 acres- an area larger than the state of Rhode Island. Oregon also reached an all-time high in wildfire fighting costs in 2018, spending $514.6 million (*Northwest Interagency Coordination Center*). In the summer of 2015, Baker County experienced a devastating wildfire season, with the Cornet-Windy Ridge fire alone burning over 103,000 acres of range and forestland. Watersheds are significantly altered after such an event; lands affected by fire are at a much higher risk for flash flooding and landslides because the burned, bare soil does not have the same holding capacity. Erosion causes a multitude of new issues; it redistributes top soil which can lead to less desirable vegetation (noxious weeds), and causes major sedimentation in rivers and streams, affecting water quality and fish habitat.

Water quality goes hand in hand with beneficial water use. The Powder River is listed on Department of Environmental Quality's 303d List for, among other things, sedimentation and phosphorous, which can cause excessive algae growth. Algal growth and excess sediment input to the stream, potentially raising water temperatures, disrupting natural vegetation, and even altering river flows. As algae die and decompose, the process consumes dissolved oxygen; this can result in insufficient amounts of dissolved oxygen available for survival of fish and aquatic species (*Thief Valley Dam Feasibility Study*). Coupling increased efficiency of on-farm watering/irrigation systems with using available reserved water to store in multipurpose storage systems, such as underground storage and retrieval, is a strategy that will reduce water diverted per acre for on-farm use, and in turn, may help:

- Reduce erosion,
- Increase production, and
- Improve flows instream flows that will help prevent excessive algae growth and enhance aquatic habitat.

The unappropriated water reservations in the Powder River Subbasin offer opportunities to combat and/or prevent all of the resource concerns discussed above, while promoting economic resilience through robust agriculture. Efficient irrigation system upgrades, such as converting from flood irrigation to center pivot offers substantial water savings. For example, application efficiency for a well-managed flood irrigation field is around 60%, where efficiency for a center pivot, regardless of soil type, is 85% or above (*Flood vs. Pivot for Forage Crops, P. Brown*). Efficient irrigation systems allow producers to better-control soil moisture, raise high value crops, prevent runoff into streams, increase productivity, and improve the consistency of local water supplies. Reliable livestock watering systems allow producers to raise larger, healthier herds, as well as better-manage their grazing rotations. Managed livestock grazing is extremely beneficial for fire fuels control, noxious weed control, improving soil health and soil moisture, and wildlife habitat enhancement, all of which are essential for sustaining a healthy watershed.

Growing populations and expanding economies, coupled with declining ground water tables and decreasing surface water quality highlight the importance of the storage of water in reservoirs (*The Importance of Reservoirs for Water Supply and Power Generation, Nestmann and Stelzer*). Reservoirs (including subsurface ground storage) can be effective in recharging the aquifer, combatting effects of drought, and can even be used to aid in firefighting efforts. In 2015, several landowners allowed Oregon Department of Forestry to draw from their private storage reservoirs in order to fight the Cornet-Windy Ridge fire. Reservoirs are also essential in flood control, which are not uncommon in Baker County. For example, a 100-year flood event took place in 2010 on Eagle Creek, causing severe damage to streambanks, diversion structures, equipment, and homes.

Municipalities and agriculture keep in close coordination in Baker County, because they truly go hand-in-hand. Local government continually supports the improvement of delivery systems, and encourages water rights holders to improve water quality and water use efficiency to provide additional water for economic development and to enhance instream flows where possible (*Baker County Natural Resources Plan*).

(4) Description of Actions Taken to Advance Development of the Reservation

Natural resource conservation in Baker County is a priority, and businesses, agencies and producers take a collaborative approach. The Powder River Subbasin water reservations, with an original priority date of 1992, continue to be a major focus for the Powder Brownlee Local Advisory Committee, the Baker Valley Irrigation District, the Lower Powder Irrigation District, the Powder Valley Water Control District, as well as the Baker County Soil and Water Conservation Districts, who have taken an active role in extending these reservations. In the last 27 years, large strides have been made in the way of water use efficiency, and a multitude of grants, feasibility studies, and

restoration projects have been implemented in the Powder Basin. Key initiatives include:

1) Thief Valley Reservoir Feasibility Study - The Lower Powder Irrigation District partnered with the Keating Soil and Water Conservation District to apply for and receive funds through Oregon Water Resources Department's Water Conservation, Reuse and Storage Feasibility Study Grant Program. The goal of the study is to explore all possible avenues of restoring the lost water storage capacity of Thief Valley Reservoir (on the Powder River). Pacific Northwest Region, U.S. Bureau of Reclamation (BOR) was heavily involved with this study and provided project match. BOR completed several studies in the Powder River Basin in conjunction with the Thief Valley Feasibility Study, including a Bladder Dam Study; OWRD Storage-Specific Study; Regulatory Compliance Study; Estimated Capacity Lost to Sedimentation Report; and the IPaC Trust Resources Report, which was prepared by US Fish and Wildlife Service.

2) Lower Powder Strategic Implementation Area (SIA) – The Baker County Soil and Water Conservation Districts, in conjunction with Oregon Department of Agriculture, selected an area within the County to address water quality concerns. This specific SIA contains four drainages and 75,415 acres and tributary streams to the Powder River. The hope is that strategic, focused, and systematic delivery of outreach and technical assistance will lead to greater program effectiveness and allow agencies and landowners to make better use of limited natural resources. The Keating Soil and Water Conservation District will coordinate technical assistance partnerships, implement landowner outreach strategies, and help landowners to implement projects for the improvement of water quality. Funds are set aside specifically for engineering designs, as well as a full monitoring component. Baseline water quality data will be collected, and then monitored for an additional five years under this project.

3) Lower Powder Focus Area- Similar to the SIA, a Focus Area is a small watershed within an Ag Water Quality Management Area that is selected based on a need for continued resource improvements and uplift. This particular Focus Area is approximately 55,296 acres and includes 77 intermittent stream miles, 59 perennial stream miles, and 60 ditch miles in the Powder River Basin. The Baker County Soil and Water Conservation Districts are working with private landowners to implement projects that will improve streamside vegetation, and address water availability and water quality concerns.

4) Oregon Watershed Enhancement Board (OWEB) – The Baker County Soil and Water Conservation Districts, consisting of Baker Valley, Keating, Eagle Valley and Burnt River, have implemented dozens of on-the-ground conservation projects in the Powder Basin, most of which directly affect the Powder River or its tributaries, and have a heavy focus on water use efficiency. Since 1999,

OWEB has contributed $11 million in restoration, technical assistance and outreach grant funds in Baker County alone. Examples of key OWEB projects in the Powder Basin include: Crop Circle Irrigation (#219-5001); Cusick Creek Restoration (#212-5002); Powder River Riparian Restoration (#214-5062); Powder Valley Connector Technical Assistance (#215-5004); Old Settlers Slough Irrigation (#28-16-019); and Getting Groused on Goose Creek (#214-5010).

(5) Discussion of Challenges to Developing the Reservation

Challenges to developing the unappropriated water reservations for the Powder River Subbasin begin with regulatory changes that have been implemented throughout the decades. The original reservations for the Powder River Subbasin were made in 1992; this is before Oregon Legislature passed the Agriculture Water Quality Management Act which brought along many big changes and challenges for producers and conservation districts in the state. Aside from changing environmental policy and requirements, a key constraint in developing reservations and water use projects is a lack of adequate funding for such projects. At the same time, the agricultural industry has grown, and the Western US, including Oregon, has experienced nearly 20 years of prolonged dry and drought conditions, creating a back-log in demand for water projects. In the past five years, the state Water Projects Grants and Loans Program was funded, and under the authority of Watershed Protection and Flood Prevention Act (PL-566), funds were made available to fund water projects, due in part to the leadership of the Oregon congressional delegation. Competition has been high for the recently available funds, and securing funding, when possible, takes a substantial amount of time. Since the demand for additional water supply is high, it is fundamentally important to renew the term of the reserved unappropriated water as a potential option for water projects.

(6) Description of Actions that will Need to be Undertaken in the Future in Order to Develop the Reservation

The original opportunity to reserve unappropriated water for future economic opportunity was granted in the early 1990's, and since that time, changes in Oregon have improved the likelihood of completing water resources projects, for example:

- New public and private programs established for planning, technical assistance and funding for water resources projects;
- Biological opinions and conservation plans completed for anadromous fish;
- Nearly two decades of prevailing dry conditions and extreme drought, and effects of climate change have highlighted the need for additional and innovatively design in storage to help mitigate effects of more intense dry conditions and droughts as well as floods; and
- With additional staff, ODA has been actively engaged in informing and reminding agricultural communities about their reservations of unappropriated water and associated potential opportunities.

The 20-year extension of the reservation term would provide agricultural water users time to thoughtfully plan, advance and complete vital multipurpose water resources projects.

In order to develop the Powder River Subbasin's water reservations, Baker County government, local and federal agencies, and agriculture producers and businesses must continue to:

- Collaborate and coordinate their efforts and keep efficient water use as top policy priorities;
- Identify water resources supply, quality and instream issues; and
- Secure sufficient funding for studies to identify viable sites for groundwater recharge and storage; and for building the necessary projects.

(7) Information on How the Proposal is Compatible with Overall Basin Program Goals and Policies

The proposal to extend the reservations of unappropriated water in the Powder River Subbasin align with the goals and objectives for efficient and beneficial water use on the local, regional, and state levels. The Powder Brownlee Agricultural Water Quality Management Plan, developed by Oregon Department of Agriculture, Powder Brownlee Local Advisory Committee, and with support from the Baker County Soil and Water Conservation Districts, specifically discusses the unappropriated water reservations in Section 2.3.3 History of Natural Resource Management in the Management Area. The Ag Water Quality Plan states that water quality standards are established to protect beneficial uses of Oregon's waters, as defined in OAR 304-041-0002 (17), and lists irrigation, livestock watering and municipal use as beneficial uses of reserved water.

The Oregon Integrated Water Resources Strategy, which was adopted by Oregon Water Resources Department 2012, is a collaborative state policy that "encourages participation from all water users to work toward the common purpose of maintaining healthy water resources to meet the needs of Oregonians." The overall goal is to manage water supplies and increase utilization of existing supplies, such as the development of new water storage or recharge projects, including irrigation and habitat enhancement projects.

At the local level, the Baker County Natural Resource Management Plan specifically lists the unappropriated water reservations (i.e., page 40) under the Water and Water Rights Section. This section states that if public funds are used for the construction of a water storage project under the Water Supply Development Program, 25% of water must go to instream flows for fish. The Natural Resources Plan reiterates the objectives of this water reservation proposal throughout the document, stating "it is the County's policy to encourage wise management and use of the County's surface and groundwater resources to sustain economic development and to maintain and improve instream, floodplain, wetland, and groundwater functions. Also, to encourage and allow

consumptive water rights owners to improve water quality and water use efficiency to provide additional water for economic development and, where possible, to enhance instream flow during low water flow periods."

(8) Identification of Affected Local Governments

The Baker County Soil and Water Conservation Districts worked with Oregon Department of Agriculture, as well as with local water management districts and companies to compile a list of local governments who would possibly be affected by the extension of unappropriated water reservations in the Powder River Basin. Oregon Department of Agriculture notified the local governments on July 29, 2019 by the U.S. Postal Service, and a copy of the notification letters will be retained by ODA as well as the Baker County Soil and Water Conservation Districts.

(9) Copies of Letters

Copies of letters notifying each potentially affected local government of the intent to file an extension request that includes: (a) a description of the reservation; and (b) a statement that an opportunity to provide comment will be provided at a future date, will be maintained on file at ODA and are provided to OWRD in Appendix A of this application.

(10) Description of Expected Economic Benefits

The economic success of Baker County remains directly tied to agriculture, with the market value of products sold in 2017 totaling $79,205,000. This is significant in a community of roughly 16,000 people, especially when compared to the rest of the state. Baker County ranks in the top 10 for market value of agriculture products sold in several categories; seventh in the state for cattle production, eighth in the state for potatoes, and ninth in the state for grain production. Reliable water supplies allow local ag producers to remain competitive across the region and prepare for the future by expanding their businesses and investing in new programs, projects and technologies.

Beneficial water projects that focus on irrigation and livestock watering efficiency, expanding existing water storage, and addressing groundwater recharge will have positive effects, both short term and long term, on Baker County's economy. Local contractors and engineers have the opportunity to publicly bid on conservation projects, and then work with local distributors to acquire needed supplies such as pipe, watering troughs, pivots, wheel lines, fish screens, data collection, and much more. The Baker County Soil and Water Conservation Districts, for example, were able to hire a part-time employee to implement the Tributary Riparian Revegetation Program, which focuses on resource improvements specifically within the Powder River Basin. When producers and conservation agencies have a reliable water supply, they are able to hire and retain local labor, particularly during irrigation and harvest seasons; thus expanding their

operations, adding more jobs to the local market, and most importantly supporting their families and livelihoods.

Reliable water supplies mean greater opportunity in many capacities. In 2017, when the latest agriculture census was conducted, there were 563 female producers in Baker County, a tremendous leap from the 101 female producers just five years prior, in 2012. There were 313 new and beginning farmers in the County in 2017, and an obvious increase in young producers who are under the age of 35. Baker County's overall population is steadily growing too, bringing folks from across the country to this little piece of paradise. A diverse market means differing experiences and new, innovative ideas brought to the table, but it also reinforces the need for a stable water supply that benefits irrigators, livestock producers, and municipalities while continuing to enhance streamflow conditions and healthy watershed characteristics.

(11) Information on Whether the Reservation Exists Above or Within a Scenic Waterway

As of October 1988, 11.7 miles of the Powder River were designated as Wild and Scenic, from Thief Valley Dam to the Highway 203 Bridge. Current water reservations exist upstream from Thief Valley Dam, below the confluence of Blue Canyon Creek.

(12) Statement that Explains How the Reservation and Proposed Water Uses will Promote the Beneficial Use of the Water Without Waste

Sufficient water storage, groundwater recharge and irrigation/stockwater efficiency will be central initiatives moving forward in developing water resources; and agricultural producers, conservation agencies, and local governments will continue to stay committed to wise use and management of the County's natural resources, and to addressing water supply challenges without waste.

Upgrading irrigation and stockwater systems is a tried and true method for substantial water savings, as well as improved water quality and increased instream flows. Beneficial activities include converting from flood to sprinkler irrigation, developing springs for stockwater systems, piping ditches to combat leaching and leaking, installing water measuring devices, and installing fish friendly diversion structures. Conservation agencies in the County will continue to reach out to landowners, secure funding for these beneficial water-use projects, and implement studies aimed at regaining lost storage capacity as well as developing new water storage sites.

Securing the extension for unappropriated water reservations in the Powder River Subbasin is a remarkable opportunity for the agriculture community, municipalities, and local conservation districts, and is fundamental to the economic resilience of Baker County and its citizens.

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Letter of Intent to Apply for Extension of the Powder Subbasin Reservation

Oregon
Kate Brown, Governor

Department of Agriculture
635 Capitol St NE Ste 100
Salem, OR 97301-2532

Public Notice of Applications for Extensions of Term of Reservations of Water for Future Economic Development in Agriculture

Date: July 29, 2019

Summary: In accordance with OAR 690-079-0060 (10), this notice is to inform affected local governments that Oregon Department of Agriculture (ODA) is applying to extend the terms of reservations of unappropriated water in Pine Creek (10,000 acre-feet), Eagle Creek (4,300 acre-feet) and the Powder River system above Thief Valley Dam (33,890 acre-feet) that will expire in May 2020 if the terms are not extended. Extending the terms of the reservations for an additional 20 years may provide agricultural water users with greater certainty and time to plan, advance, and complete vital multipurpose water resources projects for the agricultural community.

Action: No actions or comments are requested at this time A public meeting will be announced at a later date.

The Subject: Reservations of water in the Powder River were granted in 2000 and recorded in the Powder Basin Program (OAR 690-509-0140 to 690-509-0160). The unappropriated water was reserved for 20 years with the possibility of extending the term up to an additional 20 years. Demand for the reserved water has increased for irrigation, livestock and other uses, including recreation, augmenting streamflow, and wildlife.

ODA recently applied to extend the 20-year terms of reservations of unappropriated water in the following basins: (a) Burnt; (b) Hood; (c) Grande Ronde; (d) Owyhee; and (e) Malheur Basin. Extending the time available to access and develop the reserved water supplies would provide agricultural water users with opportunity and time to identify, plan, and complete vital multipurpose water resources projects.

Contact For Information: Margaret Matter, Oregon Department of Agriculture
a) Office Phone: 503-986-4561
b) Email: mmatter@oda.state.or.us

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1995 3rd St.
Baker City 97814

Phone:(541) 523-8200 (County Commissioners)

Phone: 541-523-8203 (General);
Email-General: ccarpenter@bakercounty.org

2. City of Sumpter
PO Box 68, 240 N Mill St.
Sumpter, OR 97877

Phone: 541-894-2314
Email: cityofsumpter@qwestoffice.net

3. Baker County SWCDs
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OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

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SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 690
WATER RESOURCES DEPARTMENT

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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.

CONTACT: Racquel Rancier
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725 Summer Street NE
Salem,OR 97301

Filed By:
Racquel Rancier
Rules Coordinator

HEARING(S)

Auxilary 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&notice_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 01~~3~~60, 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, 20~~2~~40, 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 536.3~~10~~,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~~ 536.025~~7~~, ~~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~~7, 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 536.02~~5, 536.027, 536.300~~7, ORS 537.249
Statutes/Other Implemented: ORS 536.3~~10,~~58, ORS 536.300, ORS 536.310, ORS 537.249, ORS 537.356

WRITTEN PUBLIC COMMENT

3.6.20

Good afternoon,

It is a good thing to set aside our natural resources for future use. However, I question the suggested rule change of setting it aside for a 20 year period. I think extending the set side for ten years is much more sensible given the overall uncertainty of climate change and the unknown positive or negative affect it might have on our ground water.

Thank you

Steve Kaser
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Oregon WWC #1962

OREGON FARM BUREAU

Locally Grown and GROWING STRONG

March 6, 2020

Raquel Rancier
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301
Racquael.r.rancier@oregon.gov

Re: Comments on Division 509 Rulemaking – Powder River Basin

Ms. Rancier,

Thank you for the opportunity to comment on the changes to the Division 509 rules to extend the water reservations in the Powder River Basin. This letter is submitted jointly on behalf of the Oregon Farm Bureau and the Baker County Farm Bureau to express strong support the extensions of the water reservations in the Powder River Basin, and to urge the Water Resources Commission (Commission) to adopt the changes to the Division 509 rules.

Introduction to Agricultural Organizations

By way of background, OFB is a voluntary, grassroots, nonprofit organization representing Oregon's farmers and ranchers in the public and policymaking arenas. As Oregon's largest general farm organization, its primary goal is to promote educational improvement, economic opportunity, and social advancement for its members and the farming, ranching, and natural resources industry as a whole. Today, OFB represents over 7,000 member families professionally engaged in the industry and has a total membership of over 60,000 Oregon families. The Baker County Farm Bureau is the voice of farmers and ranchers in Baker County.

The availability of water for future economic needs, including agriculture, has long been at the forefront of our members' thoughts. With long-term projections of drought, the need to ensure a reliable water supply to help feed our growing nation and growing world has never been more critical. With a total value of over $4.5 billion in annual farm gate sales, Oregon agriculture is the state's second largest industry sector. Oregon agriculture is also among the nation's most diverse sectors, with over 220 different commercial commodities grown in the state. About 80% of Oregon's agricultural production leaves the state, and about 40% is exported internationally. Roughly 12% of all jobs in Oregon are directly or indirectly connected to farming and ranching. Agriculture represents a vital part

of Oregon's economy, and it is critically important that we ensure long-term availability of water so Oregon's second largest industry sector can continue producing food and fiber.

Background on Powder River Water Reservations

In 1987, the Oregon legislature authorized the Commission to reserve water for future economic development. The creation of water reservations was part of the same legislation allowing for the establishment of instream water rights. *See* ORS 537.356-537.358. Reservations of water for economic development were intended to be a corollary to instream water rights, and were designed to ensure that water was reserved for future growth when permanent instream water rights were created. The statute allows for any local government, local watershed council, or state agency to request that the Commission reserve unappropriated water for multipurpose storage for future economic development. In this case, the reservations for the Powder River Basin were created by the Oregon Department of Agriculture to support future economic development in the region.

In recent years, the availability of water for future economic development has been a great concern to the agricultural community, and one which has occupied the thoughts of many, particularly in North East Oregon. For the last several years, the local community has been working diligently to identify and develop additional opportunities for storage and water supply development. The applications provide great detail on the efforts undertaken by the community to identify opportunities for water supply development and the longstanding need for the development of additional water supply in the area. The accounts from our members in the Powder River Basin echo the need outlined in the application, and evidence the continuing need for this reserved water in the basin. We are hopeful that Oregon's recent investment water supply development projects will help make development of new water supply a possibility in this state, especially when paired with the ongoing work associated with the 100 year water vision and its focus on infrastructure investment. However, there are still significant economic and environmental hurdles to water supply development that necessitate planning for water supply projects on a multi-year timeframe.

The Commission Should Adopt the Amendments to the Division 509 Rules and Extend the Powder River Basin Reservations

We urge the Commission to adopt the Division 509 rules and extend the Powder Rivers Basin Reservations. The applications submitted by the Oregon Department of Agriculture provide great detail on the extensive efforts undertaken to develop additional water supply in the basin, the continued need for the reservation, and the importance of the reservation to the local community. Since the reservation was created, several local entities have undertaken studies In developing the reservation, the community will ensure that the reserved water will be developed and available for future use, benefiting the local economic base and providing benefits to the local community, fish and wildlife, and other local values. The local community needs this water for future economic development. In the last twenty years, local farmers and ranchers have seen reductions in the amount of water available for irrigation, while their need for reliable irrigation sources has only increased. With projected increases in temperatures in the next several years, combined with increased demand on water resources, the need for additional water for farming and ranching will only continue to grow. As such, we urge you to adopt the Division 509 rules and extend the water reservations.

Thank you again for the opportunity to comment on the Division 509 rules.

Sincerely,

Mary Anne Cooper
Oregon Farm Bureau Federation
maryanne@oregonfb.org
(541) 740-4062

Jarrod Maxwell
President
Baker County Farm Bureau

WaterWatch of Oregon
Protecting Natural Flows In Oregon Rivers

March 6, 2020

Oregon Water Resources Department,
Racquel Rancier, Rules Coordinator
725 Summer Street NE, Suite A
Salem, Or 97301

Re: Comments, Extension of Powder River, Pine Creek and Eagle Creek Reservations for Future Economic Development, Division 509 rules

Dear Racquel,

Thank you for the opportunity to comment on the proposed twenty year extension of the Powder River, Pine Creek and Eagle Creek Reservations for Future Economic Development.

The proposed 509 rules are missing some important language that exists in other recent reservation rulemakings (see e.g. Division 508 Grande Ronde Reservations, Division 504 Hood River Reservations). Including:

- OAR 690-509-0100(3) notes that reservations allocate and reserve surface water for "storage"; this should be changed to "multipurpose storage" to ensure that any reservations are consistent with statute.
- OAR 690-509-0100(5) fails to include "any other applicable rules". To be consistent with both the permitting process and also other reservation rules, this section should be amended to read: In addition to the requirements of ORS Chapter 537, ~~and~~ OAR Chapter 690, Division 310, and any other applicable rules, an application for a permit to store….
- OAR 690-509-0100(5) fails to include a requirement of documentation of consultation with affected Indian Tribes. We would suggest mirroring the Hood River Reservation template, see OAR 690-504-0100(5)(c).
- OAR 690-509-0100(7) limits consultation as to the purpose and intent of the reservation to consultation with the Department of Agriculture. This should be amended so that it reads "The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies." This would make it consistent with other updated reservations (Hood, Grande Ronde, etc).

If the reservation is extended, these aforementioned omissions should be corrected.

That said, WaterWatch opposes the proposed twenty year extension upon the following grounds:

(1) The Baker Valley Irrigation District and Pine Valley Irrigation District have stalled adoption of new instream water rights on the Powder River and Pine Creek for over two decades[1]. Until instream water right protests in the Powder River basin are resolved, WaterWatch objects to the extension of the reservation.

In past reservation rulemakings, consumptive water users posited that the legislature adopted the reservation statutes as a counter balance to the Instream Water Right Act. While that might appear to be a sound interpretation in the abstract, in this particular basin, where most if not all instream water right applications have been protested, extending the reservation can hardly be characterized as a quid pro quo. It is the policy of the state of Oregon to establish instream water rights on every stream, river and lake which can provide significant public benefits. OAR 690-410-030(1). The state's attempt to achieve this has been stalled in the Powder River Basin. We believe that extending the reservation absent resolution of the instream water right protests is short sighted and will do nothing to help expedite resolution, and in fact could have the opposite effect[2]. At the very least, we would urge the Commission limit the extension for a short period (no longer than two years), with a longer term extension pending resolution of the protested instream water rights applications

(2) **Changed circumstances:** Since establishment of the reservations in 1992, Bull Trout have been listed as threatened under the Federal Endangered Species Act (1999). This is a changed circumstance that should be considered by the Commission in extending the reservation.

Related, as noted in the 2016 reservation extension discussions, the Department of Agriculture failed to submit progress reports on reservations as required by rule. According to staff reports on the early reservation rulemakings, the purpose of the progress reports was to allow a five year Commission review of the reservation, which would include an assessment of not only whether progress was being made on the reservation, but if it was in the public interest to continue the reservation. See e.g. Staff Report, WRC Meeting Agenda Item D, 3/8/1996, pg. 3. Changed circumstances, such as the listing of Bull Trout under the ESA would certainly have been part of that assessment. But the assessments never happened because the Department of Agriculture failed to submit the required reports. In the 2016 reservation extension rulemakings, WaterWatch asserted that it was a fatal flaw to the reservation extension that the Department of Agriculture failed to submit progress reports as required by rule. This failure to follow rule deprived the OWRC of the chance to do the five year reviews, including whether it was in the public interest to continue the reservations. Relevant to this extension request, rule history supports the supposition that the Commission should do a wholesale review of whether it is in the public interest to extend the reservation, and consider also changed circumstances, such as the listing of fish, climate change, etc.

Conclusion: The Division 79 rules are permissive. The Commission "may" extend the reservation but it does not have to. Moreover, in considering a reservation, 20 years is the

[1] See Attached, Powder Instream Water Right Protests
[2] See Attached, Oregon Consensus, Powder-Brownlee Collaborative Water Process Assessment, 5/9/17

maximum allowed; the Commission may choose to extend for less time than requested. The Commission also has authority to modify or condition the reservation to ensure consistency with ORS 536.310 or rules of the commission. Rules of the Commission include Division 33, Division 77, Division 400 and Division 410 rules. We would also note that while the new Division 79 rules state that a time extension will retain the priority date of the reservation; there is nothing in statute that directs this. In fact, there in nothing in statute that contemplates an extension of time at all. If the Commission does in fact extend these we would urge it to limit the extension to three years in order to encourage resolution of the instream water right protests, make the date of the reservation 2020 and/or use authority granted to it to explicitly condition the reservations to be subordinate to instream water rights.

Thank you for your consideration of our comments.

Sincerely,

Kimberley Priestley
Sr. Policy Analyst

APP #	COUNTY	STREAM	SYSTEM	PROTESTANT	STANDING
72191	Baker	POWDER R	SNAKE R	Baker Valley Irrigation	
72168	Baker	BURNT R	SNAKE R	Burnt River Irrigation	WATERWATCH
72169	Baker	BURNT R	SNAKE R	Burnt River Irrigation	WATERWATCH
72186	Baker	N FK BURNT R	SNAKE R	Burnt River Irrigation	
72179	Baker	Lake FK CR	SNAKE R	Fish Lake Improvement	
72180	Baker	Lake FK CR	SNAKE R	Fish Lake Improvement	
70863	Baker	PINE CR	SNAKE R	Pine Valley Irrigation	
70864	Baker	PINE CR	SNAKE R	Pine Valley Irrigation	
70870	Baker	E PINE CR	SNAKE R	Pine Valley Irrigation	
72170	Baker	CLEAR CR	SNAKE R	Pine Valley Irrigation	
72187	Baker	N POWDER R	POWDER R	Powder Valley Water Co	
72163	Union	WOLF CR	POWDER R	Powder Valley Water Co	
72188	Baker	N POWDER R	POWDER R	Powder Valley Water Co	
72194	Baker	ROCK CR	SNAKE R	Powder Valley Water Co	

OREGON CONSENSUS

NATIONAL POLICY CONSENSUS CENTER
Hatfield School Of Government

Powder-Brownlee Collaborative Water Process Assessment
Summary Document (05/09/17)

Background

In early winter of 2016, local irrigation district leadership and Oregon Department of Fish & Wildlife (ODFW) contacted Oregon Consensus (OC) related to the potential for a water-based effort to address management, supply, conservation and other interests in the area of Baker County. OC recommended that a convening assessment be conducted to better understand, among other things, the range of topics and interests that could be addressed through a collaborative process, challenges to addressing these topics, and the ripeness or commitment of participation from the necessary parties. Between January and March 2017, OC conducted 22 separate interviews (see *Appendix A* for a list of interviewees). The following is a summary of what we heard as well an assessment of a number of key factors for parties to consider in determining whether or how to move forward with a water-based collaborative process in the Powder-Brownlee Basin area. The interviewees were selected to provide representative perspectives on the topics but were not intended to be exhaustive of all perspectives on these topics. It is also worth noting that the interview list is not intended to reflect the complete range of interests or entities, or the specific individuals or parties, that would be relevant as participants in a collaborative effort should one move forward.

About Oregon Consensus

Oregon Consensus was established by state statute as the State of Oregon's program for public policy conflict resolution and collaborative governance. The program provides mediation and other services to public bodies and stakeholders who are seeking new or different approaches to challenging public issues across the State. OC conducts assessments and, where appropriate, designs, facilitates and manages impartial and transparent collaborative processes that foster balanced participation and durable agreements. Our program is housed in the National Policy Consensus Center (NPCC) at the Hatfield School of Government at Portland State University. (http://oregonconsensus.org/)

Key Themes

Interviews were based on a series of questions developed by OC, with discussion often flowing across and between areas raised in the questions. The interviews were candid and collectively revealed a significant amount of information. Details from the interviews, however, are intentionally not captured in this document because (a) an effort has been made to promote focus related to next steps by compiling information into themes and crystalizing areas of needed consideration (as opposed to diving into particulars), and (b) interviews proceeded in a private manner to ensure results revealed in this summary would not compromise individual interests in any future discussions or be attributed to particular interviewees. What follows, therefore, is a summary of key themes that Oregon Consensus has condensed from the sum of interviews.

- *Support for a collaborative process*: Nearly all interviewees expressed support for a collaborative process to address water topics in the basin and a willingness to engage, often conditioned

upon capacity concerns and the desire for clarity as to the scope and issues that would be addressed. Interviewees shared a disinterest in an open-ended process that is loose on target outcomes and runs an indefinite time. Parties believe there are both challenges that could be overcome through a collaborative process and opportunities to work together to achieve mutually beneficial outcomes, with some level of skepticism over how a process would arrive at mutually-supported solutions to challenges identified by interviewees.

- *Recognition for work completed:* Many water users expressed an interest in recognition for work already completed or underway that they view as positive for water conservation, fish and wildlife habitat, and water quality, or conversely, frustration that such work has not been recognized. While recognition of potential additional opportunities for work relevant to water quality, habitat, or irrigation infrastructure often existed, there was some feeling of endless pressure or failure to give credit where credit is due. This at times tied into perspectives over the condition of streams in the geographic area prior to irrigation and concerns over the nature or quality of data used to support notions of what stream reaches could be in the future. Perspectives between interviewees differ, but this underlying dynamic exists.

- *Role of in-stream filings:* Even when couched in the context of a broader conversation over water management and opportunities in Baker County, many interviewees honed in on the existence of and challenges associated with the twenty-plus year old Instream Water Right (ISWR) state filings and related formal protests. Some felt any rights would be junior and therefore of little tangible consequence. Yet, most agreed the ongoing and unresolved presence of the ISWR filings creates tension among actors in the basin and ultimately limits the potential for productive relationships. The ISWR filings also create tension amongst those outside of the basin related to the legal and administrative processes associated with these filings and the overall state role in filings elsewhere. Most interviewees suggested the ISWR filings and protests would need to be addressed directly in any broader collaborative process. While others suggested resolving the ISWR filing dynamics might be best addressed through a non-collaborative forum such as a contested case hearing. Regardless, the filings may prove to be a critical factor in motivating and keeping parties engaged in a potential collaborative process. Absent discussions about the filings, there are likely still productive conversations and activities that parties could address together, but there may not be sufficient energy or motivation to sustain a full collaborative process over time.

- *Common understanding and shared information are needed:* Many interviewees suggested there is relevant and available information regarding water (i.e. quantity, temperature, quality, etc.) in the basin. However, it was also noted that numerous parties hold this information, that it has been compiled at different points in time and is often relevant to specific places, and that certain gaps may exist. Agreement seems to exist that there would be value in sharing and/or compiling or overlaying information to gain a more comprehensive understanding of the state of knowledge and potential data gaps. As noted above, some interviewees suggested there is limited knowledge among some parties about work already completed by

water users in the area. Others suggested a water budget would be valuable for parties to understand the state of water or related limitations and opportunities in the basin.

- *Trust and foundation for collaboration:* Many interviewees expressed an interest or curiosity in what other parties were thinking related to water issues or what they wanted out of a potential process. This dynamic, along with other information gleaned during interviews, reveals the existence of entities that may not commonly interact or that are not accustomed to interacting or communicating at a common table. There was some feeling that entities understand and work within their own programs or silos while perhaps not fully understanding or appreciating the work, obligations, or space of others, thus limiting common understanding over what other entities have done, are doing, believe should be done, or may be willing to do related to issues in the basin. That said, opinions and assumptions exist about the motivations of others, including distrust. Interviewees revealed a general desire to understand what would be involved in any process (i.e., what issues would be sought to be negotiated) and, for some, an openness to testing or verifying their assumptions about others. It appears there has been a lack of a common space to have done so to date.

- *Prioritization:* Numerous interviewees suggested that for a collaborative process to move forward successfully, it would be necessary for ODFW to identify and openly describe the areas (e.g. streams reaches) and actions it considers the highest priority for fish and wildlife restoration. This seemed in part based on the thinking that if everything is a priority, nothing really stands out as a way to focus potential work. An overlay of these identified priorities with areas other agencies view as water quality priorities would also be important, as well as an assessment and overlay of areas where the greatest desire or opportunities exist for water conservation, management efficiencies, or other infrastructure work. This relates to the amount, location, and quality of existing data to inform these considerations, as well as an understanding from agency and non-agency stakeholders of how (and thus where) they would prioritize. Some also noted that there may be non-aquatic values / partners to be considered in such a prioritization, and some suggested a prioritization effort should be part of the broader collaborative process.

Key Considerations:
Nearly all interviewees suggested collaboration would be worthwhile, with some noting it seemed like the best way to work through the issues and others expressing skepticism but recognizing it may provide a better or worthwhile path to explore as compared to the status quo or other options. While OC believes collaboration has the potential to help address the identified issues or challenges and ensure all perspectives are given equitable consideration, we have identified a number of key factors that should be considered and addressed prior to advancing a collaborative process. None of these factors alone indicate a collaborative process would likely fail. However, taken together, OC believes they warrant thoughtful attention before initiating a collaborative process.

- ***Resources:*** Interviewees discussed numerous potential activities they view as holding opportunity to benefit both water users and wildlife/fish and water quality. Many of these

activities or potential projects, however, are large and would require significant financial investment. A number of interviewees noted that the lack of anadromous fish in the basin reduces access to some significant funding opportunities. And, it is unclear to what degree USDA / NRCS funds or other sources (e.g., Idaho Power Co., OWEB, etc.) would be ripe for potential future projects. Farmer's Conservation Alliance (FCA) was seen by some as a key partner to help advance water-related conversations, assemble relevant data, and identify potential funders. Regardless of FCA's involvement on the front end, however, uncertainty remains over the potential to acquire the necessary funds to implement large infrastructure projects in the basin. This affects not just the potential timing for projects of mutual benefit but the dynamics related to resolving policy disputes over water quality, instream flow, and habitat (see below). In addition, there is uncertainty that needs resolution prior to a process related to the level of agency staff support as well as resources available to fund a collaborative process and support associated technical work.

- ***Timing:*** As discussed above, many projects likely to be considered by parties as potential outcomes of a collaborative effort are large-scale and multi-year. This has implications related to resources and timing as well as solution-space. From a timing perspective, parties must consider the potential that agreements may be reached on which geographic areas and projects should receive focus but that tangible on-the-ground work (and associated instream benefits) may not be realized quickly. From the perspective of solution-space, it is possible that agreements could be reached on projects or a combination of actions that would result in eventual desirable outcomes for irrigators, water quality, instream flow and habitat interests, but given that realization of those outcomes (through implementation) would likely depend on future funding and project work over many years, parties need to consider how such agreements would be structured if they are expected to result in "credit" or resolution of disputes related to ISWR's, water quality, water management or habitat. Consideration is needed regarding how such agreements would be structured and the extent to which certain actions are necessary contingencies of other actions.

- ***Forces compelling a resolution or outcome are unclear:*** As discussed above, a clear driver may be necessary to motivate parties to stay at a table and incent them to find mutually agreeable solutions through a collaborative process. Many parties felt such a driver could be found by including discussion of ODFW's ISWR filings and related protests directly in the collaborative process, however, parties have not yet agreed that a collaborative process is the forum to address this topic. Other potential regulatory drivers related to water quality compliance / enforcement (ODA / DEQ) or the Endangered Species Act or other laws (e.g., bull trout, redband trout) may exist and merit further discussion but, as compared to the IWRS filings and protests, were not identified by interviewees as major drivers at present.

  Other potential drivers include money, namely in the form of funding opportunities related to capital / infrastructure projects that benefit irrigation efficiency, water storage, renewable energy, instream flows, water quality, or other conservation outcomes. Such a nexus with funding, however, is not immediately apparent, including the lack of current

connection to OWRD's place-based planning process. Idaho Power Company's Hells Canyon Complex re-licensing effort and related agreements or obligations is a potential opportunity, but additional information is needed as to the extent to which nexus points exist, how they would relate to resolution of other issues, as well as the timing, amount and geographic focus (basins or reaches) of future funding. Overall, consideration is warranted as to what the relevant drivers of potential collaborative agreements or outcomes would be, and whether they would be significant enough to compel parties to remain at a table and work for something different than the status quo or resolution of issues through non-collaborative venues.

- ***Participation and Capacity:*** All parties interviewed described a willingness to participate in a collaborative process should one move forward, however, a number of parties expressed concern about their ability to participate in a meaningful way given limited capacity. Of particular concern in this regard is participation by (a) key agencies and (b) the environmental or conservation community. On the former, local agency staff have limited capacity and would need support in their respective work plans from agency leadership for meaningful engagement in a collaborative process. These staff represent needed capacity related to technical info / data needs, prioritization efforts, and reaching potential solutions. In addition, engagement of agency leadership would be needed at some level to assure decision space as well as support for reaching potential agreements. On the latter, a number of conservation groups are interested in a potential collaborative process. At present, however, no entity has a staff member dedicated to activities in the area. That said, some groups have current direct engagement—and a direct "stake"—in issues likely related to any collaborative effort and are likely to affect any collaborative process (e.g., IWRS filings, IPC relicensing and related efforts). OC believes that for a collaborative process to succeed or for solutions to be durable, meaningful engagement in some form from the full range of interested parties will be necessary.

  In addition, while irrigation district leadership expressed willingness to engage in a collaborative process, consideration is needed over the scope of their representation as well as how best to ensure representatives in any process have buy-in from the broader district patrons / members and are communicating back and forth with them as to interests being discussed and potential solution development. A number of interviewees also raised questions related to future implementation and the ability of local entities--such as the SWCD or Watershed Council—to advance potentially sizeable projects that may result from a water focused collaborative effort given current capacity, program commitments, and roles. Finally, as mentioned at the outset of this document, there are parties / entities beyond the scope of the OC interview list for this assessment that may have interest in and/or knowledge concerning the topics under consideration. If a collaborative effort moves forward, additional consideration should be given to this matter.

- ***Data Gaps:*** Overall, interviewees expressed a sense that the level of information and data related to water in the basin is high enough to support a collaborative process (i.e., waiting to start a process until more data exists was not their conclusion). However, technical or data-related needs remain and would need to be addressed as part of process design. As

noted above in "prioritization", most interviewees indicated ODFW's prioritization of areas most relevant to benefitting fish or habitat remains an unknown and needed element for a collaborative effort to be successful. At present it appears the agency lacks dedicated resources to conduct such a prioritization effort internally or via contract. In addition, a number of parties suggested a comprehensive inventory and/or water budget for the basin would be helpful in advancing a collaborative process to address water-related topics and associated potential opportunities. FCA was suggested as a potential source of resources and information to achieve this outcome. As part of any future work to prioritize or focus work efforts, it should be noted that data relevant to water conservation, irrigation efficiencies, return flows / hydrology, energy or storage opportunities is a distinct and different type of data-type and need than information relevant to fish/species-based water needs, current conditions, and related hydrology. Overlays of water quantity, water quality, and habitat data as well as water infrastructure studies were also suggested as technical needs.

- ***Ripeness for change:*** The interviews revealed tensions between those who seek irrigation-benefitting outcomes from any process and others who seek environment-benefitting outcomes (e.g., instream flow, water quality, habitat). While this was anticipated, and while such outcomes are not mutually exclusive, OC notes the following for consideration. Some wish to receive "credit" for past work that may have benefited instream flows and/or fish and wildlife, but that expectation or focus is unlikely to address the primary interests of certain other entities. And likewise, others wish to see regulatory decisions that mandate enhanced environmental outcomes based on the specifics of past filings or past perceived harms, but that expectation or focus is unlikely to address the primary interests of certain other entities. For a collaborative process to succeed, the focus would likely need to be predominately on what the future holds (or should look like) and thoughtful evaluation by <u>all</u> interests of (a) the likely outcomes of the status quo or turning to other venues than a collaborative table to address the various issues at hand, and (b) whether a potentially more desirable alternative or set of outcomes might be achieved for <u>their</u> respective interests through a collaborative process that includes parties and discussions that are not likely to occur in other venues.

  Part of the purpose of OC's assessment was to explore this dynamic. While it does appear potential projects or agreements that address a spectrum of interests could exist, such a process would involve consideration of change and compromise. Actors would need to see value in change for the sake of advancing <u>their own</u> interests (versus the perception of change as something being pushed on them by others). Further, it involves parties considering whether advancing their interests may be better served by working with other interests (e.g., in seeking funding for projects, agreements over management, etc.) as compared to the status quo or through other venues for addressing key issues (e.g., contested case hearings, the legislature, or narrower discussions with less diversity of interests involved). It is OC's assessment that key parties would benefit from additional "internal" analysis to better understand commitment to a collaborative process versus alternative venues.

Process Insights and Recommendations:
Once the above factors have been considered and addressed, there are a number of key elements that are important to ensure a successful outcome for a collaborative process. The following list briefly describes OC's recommendations:

- *Communicate a clear scope and charge*. If a collaborative effort is pursued, the issues to be addressed, the level of influence stakeholders will have on the process, and a clear timeline and work plan will all be necessary to help ensure success of the process.

- *Use a neutral process manager and facilitator*. OC recommends the use of a neutral third party facilitator to support any collaborative process, maintain structure at each meeting, and provide a balanced participatory process. Many interviewees also recommended this as valuable or necessary support to a potential process.

- *Convener*. If a collaborative process is pursued, OC believes that a convening entity or entities may be beneficial if appropriate convener(s) are identified.

- *Engage a stepwise approach to a longer process*. Given the complexity of potential issues, geographic scope of the area being considered, and related questions at hand, OC recommends using a stepwise approach to collaboration, based on our finding that common understanding and shared information are needed. We recommend a collaborative process begin with:

  (1) inviting a balanced group of participants who will engage in good faith;

  (2) jointly defining the scope of what the collaborative effort would aim to solve or achieve as an outcome(s), which also involves developing a mutual understanding of stakeholder interests and various entities identifying the zones of outcomes that could satisfy their interests

  (3) taking stock of what is needed in order to establish a common base of information, including drawing from existing data and identifying what additional information or analysis is needed; and

  (4) taking a break from meeting while that common base of information is developed. Only after that common base of understanding is established would OC recommend moving into an agreement-seeking step that would address both resource and user needs.

OREGON CONSENSUS

NATIONAL POLICY CONSENSUS CENTER
Hatfield School Of Government

Appendix A: OC Assessment Interviewee List (in alphabetical order)

> ****NOTE**:** *The following list only represents entities and/or individuals interviewed as part of OC's assessment. It* ***is not*** *intended to represent or imply that these entities / individuals would be the specific invitees or participants in any future potential collaborative process table. Further, several entities and/or individuals with relevant knowledge and interests tied to water management in the Powder-Brownlee basin were not interviewed as part of OC's assessment due to time and budget constraints, and their engagement and input should be considered with respect to consideration of any next steps.*

Baker County Commissioner: Mark Bennett

Baker Valley Soil and Water Conservation District: Whitney Collins

Burnt River Irrigation District: Wes Morgan, Lynn Shumway

Baker Valley Irrigation: Jeff Colton, George Chanler

Farmers Conservation Alliance: Julie O'Shea

Idaho Power Company: Steve Brink

Oregon Department of Agriculture: Tom Demianew

Oregon Department of Environmental Quality: Smita Mehta, John Dadoly

Oregon Department of Fish and Wildlife: Anna Pakenham Stevenson, Danette Faucera, Ed Bowles, Nick Myatt, Tim Bailey

Oregon Watershed Enhancement Board: Meta Loftsgaarden, Karen Leindecker

Oregon Water Resources Department: Jason Spriet, Rick Lusk, Steven Parrett, Patricia McCarty

Pine Valley Irrigation Association: George L. Gover, Gordon Krook

Powder Valley Water Control District: Drew Martin, Curtis Martin, Lyle Umpleby, Jerry Gray

Regional Solutions: Scott Fairley

The Freshwater Trust: Aaron Maxwell

Trout Unlimited: Nicole Sullivan

Water Watch: John DeVoe, Kimberley Priestley, Lisa Brown, Brian Pozewitz

Oregon

WATER
RESOURCES
DEPARTMENT

MEMORANDUM

TO: Water Resources Commission

FROM: Director

SUBJECT: Addendum to Agenda Item D, March 8, 1996
Water Resources Commission Meeting

Request for Adoption of Burnt River Reservations and Other Powder Basin Program Amendments (OAR Chapter 690, Division 509)

I. Issue Statement

Because of recent weather conditions, the comment period on proposed Powder Basin program amendments was extended from February 9, 1996, to February 23, 1996. This addendum to Agenda Item D reviews comments received by the Department during the extension of the comment period. Staff are proposing minor modifications to the rules based on the additional comments, and request adoption of amendments to the Powder Basin program as shown in Attachment 1.

II. Discussion and Evaluation

Five additional comments were received and are included as Attachment 2. Based on a review of the comments, staff identified the following new policy issues.

1. Public Interest in Reserving Water

A key issue of this rulemaking is whether it is in the public interest to allocate much of the remaining unappropriated water in the subbasin for storage purposes. Staff evaluated and discussed this in the original staff report. A related issue is whether the correct standards are being used to consider the public interest when allocating, or reserving water as proposed in the basin program amendments.

ORS 537.249 provides that a public interest review under ORS 537.170 is not applicable to the establishment of reservations through rulemaking. The proposed reservations are consistent with the policies to be considered when formulating water resources programs under ORS 536.220 and 536.310.

ORS 536.220 and 536.310 call in part for:
- Promoting the maximum beneficial use and control of water resources in ways that best protect and promote the public welfare;
- Developing additional water supplies while considering multiple uses;
- Integrating and coordinating the uses of water;

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- Augmenting existing supplies for all beneficial purposes for the maximum economic development and benefit of the state;
- Preserving and protecting safe supplies for human consumption while conserving maximum supplies for other beneficial uses;
- Preferring multipurpose storage over single-purpose storage;
- Protecting fishery resources when planning and constructing impoundments;
- Discouraging single-purpose uses when other feasible uses are in the general public interest; and
- Maintaining instream flows sufficient to support aquatic life, minimize pollution, and maintain recreation values if existing rights and priorities will permit.

In keeping with the policies enumerated in ORS 536.220 and 536.310, reserving unappropriated water as proposed serves to protect and promote the public welfare. The development of multipurpose storage under the reservation offers potential opportunities to maximize public benefits in this semi-arid region by augmenting streamflows for water quality and fisheries purposes while also providing additional sources of supply for human consumption and other beneficial uses. Because of water availability constraints, both instream and out-of-stream uses will be dependent on stored water during the low-flow season. There is sufficient unappropriated water available during the non low-flow period to meet both instream water rights applications and the reservations.

Reserving the unappropriated water would aid the planning and financing of multipurpose storage projects. The proposed rules are intended to ensure that any reservoirs constructed to store water under the South and North Fork reservations will provide an opportunity to accommodate a range of potential future uses. Therefore, the proposed rules are consistent not only with policy guidance for formulating basin programs, but also with other state policies encouraging the appropriate development of storage to meet future needs (ORS 536.238 and OAR 690-410-080).

2. Priority Date of Permits to Use Reserved Water

At issue is whether the law supports granting the priority date of the reservation to permits making use of the reserved water. Water use applications generally receive the priority date of when they are filed with the Department. However, Counsel advised staff the approach taken in this rule is legally permissible.

In the case of the Burnt River subbasin reservations, priority dates are less significant since the rules address intervening water use applications. Although future water uses will be limited by water availability, granting permits to store water the priority date of the reservation is consistent with the concept that water is being set aside now for use at a later date. In the absence of rules specifically

precluding other future water use applications, the priority date will help protect the reserved water from incremental diminishment.

3. State Agency Roles

An issue discussed in the original staff report was the role of the requesting state agency in determining whether a use of reserved water is consistent with the purposes of the reservation. The reliance on the requesting state agency for an evaluation of the consistency of an application with a reservation is contemplated under the Division 79 reservation rules. Staff are discussing with the Department of Agriculture opportunities for participation by other agencies in the assessment of consistency with the purposes of the reservations and the development of criteria to provide for the broad range of uses. Since those discussions are continuing, staff and the Department of Agriculture will elaborate on them during consideration of this agenda item.

Other state agencies must be involved in the preparation and evaluation of applications to store reserved water. The Department of Fish and Wildlife recommends that a series of studies be conducted prior to the issuance of permits to store reserved water. Similarly, the Department of Environmental Quality notes proposed projects will need to address water quality standards. Assessing the environmental affects of planned reservoirs is consistent with the assertion of supporters that reserving water will aid in determining the feasibility of a project. Therefore, staff have modified the proposed rules to require applicants to consult with the Departments of Fish and Wildlife and Environmental Quality about necessary studies (See OAR 690-509-110[2] and 690-509-120[2]). The rules also require applicants to include in a water use application information which addresses the environmental concerns identified through consultation with agencies.

4. Term of Reservations and Periodic Review

Comments suggest the criteria for the periodic review of reservations is inadequate, and time extensions should be limited to one term if at all. Without rulemaking action by the Commission, the term of reservation automatically expires at the end of 20 years. During a five-year review of the reservation, the Commission shall assess whether progress is being made on the reservation and whether it is in the public interest to continue the reservation (See OAR 690-509-100[6]).

The new rule language is intended to provide guidance to the Department of Agriculture in preparing the five-year progress reports. The reports will provide information on the continued need for the reservations, the quantities of water allocated to each type of use, and a description of why the reservations continue to be in the public interest.

5. Water Availability

Only unappropriated water may be reserved for future economic development. Staff reviewed data under different scenarios to determine how much unappropriated water was available to use as live-flow and to store. Under present conditions, there is not live-flow available in July and August to satisfy pending instream water right applications. However, the analyses showed that there was water available for storage and instream flows during the non low-flow period. The methodology took into account the desired instream flow levels. Staff also assumed that the 17,800 acre-feet proposed to be reserved in the South Fork Burnt River drainage would take precedence over instream water rights as provided by statute.

In summary, water is unavailable during the low-flow season to fully meet desired instream flow levels. Under the Commission's water allocation policy, storage permits are not subject to the 80 percent exceedance standard. The Department applies a 50 percent exceedance standard to the processing of storage applications. Because multipurpose projects in the South Fork Burnt River drainage will have precedence over instream water rights, that presumption was applied to the analysis of water availability for the reservations. Water is available for both instream water rights and the reservations on a 50 percent exceedance basis during the non low-flow period. Permits to store water are conditioned according to water availability so as not to over-appropriate the resource. Thus, the storage season set in OAR 690-509-110(3) and 690-509-120(3) is consistent with the months in which unappropriated water is available to store.

6. Precedence of Permit to Store Water Under the Reservation

In 1987, the legislature authorized the establishment of instream water rights, and simultaneously, the reservation of water for future economic development. The statutes allow any state agency to request the Commission to reserve unappropriated water for future economic development (ORS 537.356), and require the Commission to adopt rules for reserving water (ORS 537.358). The latter statute also required the rules to provide for a public interest review under ORS 537.170 at the time water is reserved and at the time reserved water is applied to beneficial use. This was interpreted by the Attorney General's Office to require issuance of an order which would likely prompt a contested case hearing. As a result, both the initial administrative rules governing the reservation of water and subsequent revisions relied upon a contested case hearing to determine the public interest when reserving water.

The rules for establishing reservations in effect at the time the South Fork Burnt River request was submitted required both a basin program amendment and a contested case hearing. Under those rules, the priority date accorded a reservation was the date of basin program amendment. The rulemaking hearing and contested

case hearing were postponed to consider amendments to the reservation rules. During the period between when the hearing was to be held and adoption of new reservations rules, instream water right applications were submitted. This resulted in the instream water right applications receiving a tentative priority date senior to the reservation request.

The legislature responded to the delay in acting on the reservation request and the resultant issue of the priority date for the South Fork Burnt River reservation request by requiring that a reservoir permit issued for multipurpose storage using water reserved under the request be given precedence over instream water rights (ORS 537.249). The proposed rules recognize the statutory requirement that permits to store reserved water in the South Fork Burnt River be granted the preference.

7. Consideration of Municipal Needs

ORS 537.249(5), adopted in the last legislative session, requires any new reservation requests submitted by the Department of Agriculture to consider municipal needs. Although the Burnt River subbasin reservation requests predate the statutory change, the multipurpose storage provisions included in the rules could accommodate future municipal uses. The Oregon Department of Agriculture has indicated that a Memorandum of Understanding to be developed with the Water Resources Department on how to process applications to use reserved water will address not only potential municipal uses but other uses as well.

8. Economic Benefits

Concerns were raised that the economic benefits from the protection of instream uses and management of natural resources were not recognized by the rules. Wording in OAR 690-509-100[2] was revised to address that concern.

9. Sensitive, Threatened and Endangered Fish Species

Comments expressed concern about the consistency of these proposed rules with the Department's existing and proposed rules covering fish recovery efforts in the Columbia Basin (OAR chapter 690, Division 33). The existing Division 33 rules allow the Commission to issue water use permits for multipurpose storage, projects that provide net benefits to native and anadromous fish, and domestic use. Water use applications to use reserved water will be subject to all rules governing the issuance of water use permits, including those addressing fish recovery in the Columbia Basin.

Although reservations are not water use applications subject to a review under the Division 33 rules, the proposed reservations are consistent with the intent of the

rules because they contemplate multipurpose storage, and storage projects that accommodate potential net benefits to fish.

III. Summary

Five comments were received during the extended comment period. Based on a review of these comments, staff propose modifications to the Powder Basin program that: 1) define the term economic development; 2) describe the five-year review process to examine progress towards developing use under the reservations; 3) describe the consultation and information requirements necessary for the Department to process applications to store reserved water under the North Fork and South Fork Burnt River reservations; and 4) set storage seasons.

The reservations are consistent with the policy direction of ORS 536.310. Reserving the unappropriated water will aid in the planning and financing of multipurpose storage projects. At the same time, the proposed rules recognize concerns that will have to be addressed at the time application is made to store reserved water. The rules generally describe the kinds of water quality and fish and wildlife studies applicants will have to undertake in consultation with state agencies issues prior to submitting an application. In addition, comments on this rulemaking supply additional guidance to prospective applicants about issues that may arise during review of an application.

IV. Recommended Action

Staff recommend the Commission adopt the revised Powder Basin program included as Attachment 1.

Attachments:

1. Proposed Powder Basin Program, OAR Chapter 690, Division 509
2. Written Comments

Oregon Administrative Rules
Chapter 690, Division 509
Public Hearing Comments
February 27, 2020

Bruce Corn served as the public hearing officer.

Whitney Collins, district manager of the Baker County Soil and Water Conservation districts:

"We have been working with Oregon Department of Agriculture for the last 5 years to ensure these water reservations stay for future economic opportunity and resilience in agriculture. We've been working with private land owner who is willing to put up funds on their own to implement the project, which would sit within the rules. We've also been working with an engineer and other partners to implement the project rather quickly so they don't sit going unused for another 20 years. I've been working actively with Dwight French on coming up with an application process to use the water reservations for the purpose of storage of water in a reservoir other than a surface reservoir, which we feel may incur environmental impact through increased loss of water through evaporation. Our districts believes these reservations should be extended and used for their original purpose, discussed and refined by basic stakeholders. We are committed to seeing this process through."

Lyle Umpleby, manager of the Powder Valley Water Control District:

"I'd like to encourage an option in the proposed rules for a 20 year extension. I was at the La Grande Ronde watershed 50 year planning meeting last night and with the new developments in technology for underground and above ground storage, we need the extension of time to look into these different opportunities and what is available to store water. Not just for agriculture but for business and municipal use. Locating these suitable water storage locations takes a lot time. As technology develops other means of storage, underground such as good aquifers can take 5 or 6 years to identify and study as well as finding locations for above ground storage. A twenty year extension to the district is not unreasonable and would probably take most of that time to develop any storage. The Powder Valley Water Control District would like to encourage the adoption of the rules."

Division 509
POWDER BASIN PROGRAM

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: Until the Department has received applications for reservoir permits for the full quantity of reserved water under OAR 690-509-0110 through 0160, 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.

(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 536.3~~10,~~00, ORS 536.310, ORS 537.249, ORS 537.356, ORS 537.358

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 multipurpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Statutory/Other Authority: ~~ORS~~ 536.02~~5~~7, ~~536.027, 536.300~~ORS 537.249

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

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 multipurpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Statutory/Other Authority: ORS 536.02~~5, 536.027, 536.300~~7, ORS 537.249
Statutes/Other Implemented: ORS 537.358, ORS 536.300, ORS 536.310, ORS 537.249, ORS 537.356

690-509-0160
Powder River Subbasin Reservation

Unappropriated water is reserved for multipurpose 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 536.02~~5, 536.027, 536.300~~7, ORS 537.249
Statutes/Other Implemented: ORS 536.3~~10,~~58, ORS 536.300, ORS 536.310, ORS 537.249, ORS 537.356