



## **PUBLIC NOTICE**

For informational purposes only:

On Wednesday, October 12, 2016, at 10:00 A.M. in the Board of Commissioners' Hearing Room, Courthouse Annex, located at 94235 Moore Street, Gold Beach Oregon 97444, the Board of Commissioners will have a Workshop. The purpose of this meeting is to discuss the Smith River Rulemaking Follow Up. Other topics may be addressed.

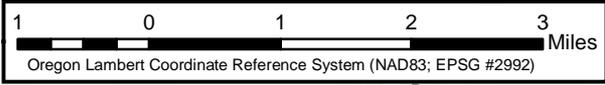
The public is welcome to attend.

For questions, please contact [BOC\\_Office@co.curry.or.us](mailto:BOC_Office@co.curry.or.us) or 541-247-3296.

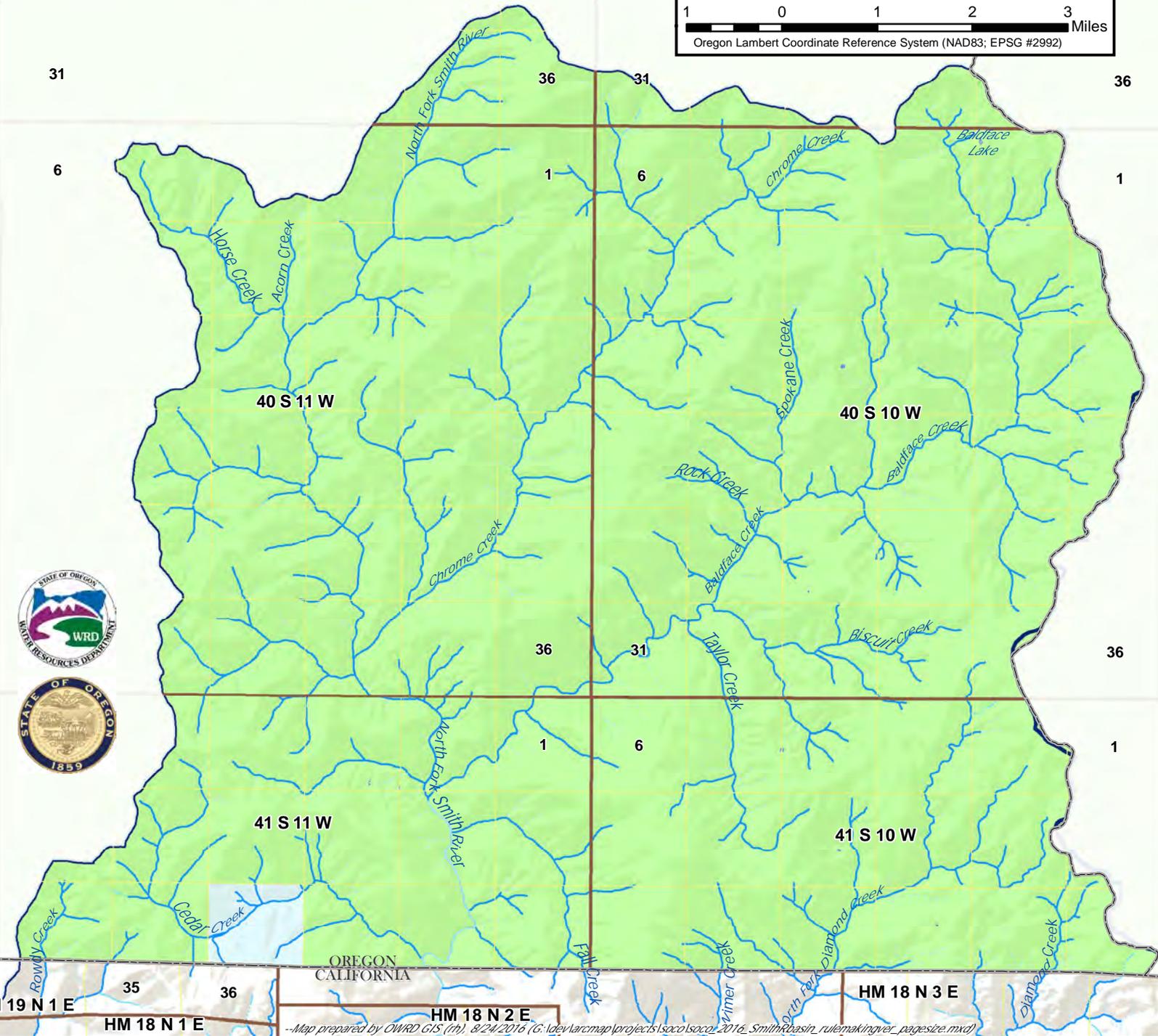
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*Curry County does not discriminate against individuals with disabilities and all public meetings are held in accessible locations. Auxiliary aids will be provided upon request with 48 hours advance notification. Please call 541-247-3296 if you have questions regarding this notice.*

# OAR 690-517-000 EXHIBIT 1 SMITH RIVER WATERSHED IN CURRY COUNTY



U.S. Forest Service  
 State of Oregon



**DISCLAIMER**  
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
8-15-16 4:38 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Water Resources Department  
Agency and Division

690  
Administrative Rules Chapter Number

Classifying the Groundwater and Surface Waters of the Smith River Watershed in Curry County.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending Oregon Administrative Rules 690, Division 517 to classify the waters within the Smith River watershed to limit the types of uses allowed for new appropriations of water.

**Statutory Authority:**

ORS 183 and ORS 536

**Other Authority:**

OAR 690, Divisions 400, 410 and 500

**Statutes Implemented:**

ORS 536.340, ORS 536.300, ORS 536.310 and ORS 536.220

**Need for the Rule(s):**

The Water Resources Commission received a petition to withdraw all of the unappropriated waters of the Smith River watershed, including groundwater and surface water, from further appropriations including exempt uses, except for instream. The Smith River watershed in Oregon was designated as a key watershed under the Northwest Forest Plan to maintain and recover anadromous fisheries, and a portion of the watershed is designated as critical habitat for ESA-listed threatened coho salmon. Thirteen miles of the North Fork Smith River is a federally designated Wild and Scenic River for its fisheries, water quality, and scenery. Eighty-eight percent of the watershed is within the Kalmiopsis Wilderness and the South Kalmiopsis and Packsaddle Inventoried Roadless Areas. Potential fisheries in the watershed include Chinook salmon, coho salmon, steelhead, anadromous cutthroat trout, resident rainbow and resident cutthroat trout; the area is critical habitat for Coho. The area is also known for Darlingtonia wetlands, which support rare plant species. Although use in the area is low due to limited access, recreational uses include fishing, swimming, hiking, hunting, camping, kayaking and rafting. OAR 690-410-0070 provides that the Commission may limit new out-of-stream allocations to protect public uses, where instream flow needs are not protected by instream water rights. Petitioners asserted that conserving the waters for instream uses is the maximum beneficial use of the waters. While recognizing the important instream public uses of the watershed, instead of undertaking a withdrawal of the waters, the Water Resources Commission directed the Department to begin a basin program amendment to classify the waters in the area of interest for instream purposes.

The Water Resources Commission is charged with developing basin program rules with consideration to the multiple aspects of the beneficial use and control of such water resources to best protect and promote the public welfare of Oregon's citizens generally. Current classified uses in the South Coast Basin Program for the Smith River watershed include domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife, and fish life uses. These rules propose to classify the surface waters in the Smith River watershed for human consumption, livestock, and instream public uses including pollution abatement, fish life, wildlife, and recreation, and classifies the groundwater within the watershed for exempt uses that are outlined in ORS 537.545. Classification of sources of water has the effect of restricting the uses allowed for new water right applications to those that are specified by the classification; no other uses are allowed, except water uses that do not require a water right (for example, see ORS 537.141), alternative reservoirs (i.e., ORS 537.409), and other uses as allowed by law or approved by the Commission (for example, see ORS 536.295).

This rulemaking will ensure the maximum beneficial use of the waters of the Smith River watershed by maintaining the current public uses of the Smith River watershed, including the habitat, recreational, scenic, and fishery values; protecting the state's preference and interest in maintaining adequate supplies for human consumption and livestock; protecting and preserving the principle of the sovereignty of this state over all the waters within the state; fostering streamflows to support aquatic life, minimize pollution, and maintain recreation values; and recognizing the economic and recreational asset of fisheries to the state. The Water Resources Commission has the authority to reclassify these uses should it determine in the future that the maximum beneficial use and control of these resources would be attained by modifying the authorized uses.

**Documents Relied Upon, and where they are available:**

U.S. Forest Service, 2003, "North Fork Smith Wild and Scenic River Management Plan," Siskiyou National Forest. Available at: [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5315366.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5315366.pdf)

U.S. Forest Service, 2015 SW Oregon Mineral Withdrawal Environmental Assessment. Available at: <http://www.fs.usda.gov/project/?project=47877&exp=overview>

Petition for Withdrawal from Appropriations (2015). On file at the Oregon Water Resources Department.

U.S. Forest Service, 2015. Suction Dredging and High Banking Operations for Notices of Intent within the Rogue River-Siskiyou National Forest Biological Assessment [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd496876.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd496876.pdf)

### **Fiscal and Economic Impact:**

The land is publicly owned by the US Forest Service and a small portion by the Oregon Department of State Lands. The Oregon Water Resources Department cannot estimate the future fiscal or economic impact of this rule because it cannot predict whether there will be future interest in developing water in the watershed, and whether such use would be affected by the classification or could be obtained in a manner that is not restricted by the classifications (for example, see ORS 536.141, ORS 536.695, etc.). Water could also potentially be transported in to meet the desired need.

This rule would not limit future livestock water use, and it is expected that logging operations, if they were to occur, would not be affected by this rule as they do not generally require water rights. There are no municipal water needs in the area, nor are the lands in the area practical for agricultural use. In regards to mining activity, some lands are already withdrawn from mineral entry, while the rest of the USFS lands are currently segregated from new mining activity, except for existing valid claims. Furthermore, although there are existing active claims on the USFS land; there are currently no valid claims. In addition, portions of the area are under the state moratorium on motorized suction dredge mining through 2021. The Department cannot predict whether any existing claims will be validated, whether all Federal lands will continue to be under mineral withdrawal, or whether the State of Oregon's moratorium will remain in effect. Regardless, according to the USFS, given the low activity and use of the area, the impacts of mineral withdrawal would be low and immeasurable - potentially impacting Red Flat Nickel Corporation's Cleopatra site and reducing associated revenues in Josephine and Curry Counties; similar fiscal impacts could be expected from this rule proposal. The Department cannot determine the longer-term fiscal or economic impact of this rule if a claim were to be validated and the site was considered for full development as this is too speculative to assess: until minerals are identified, it is not possible to estimate the economic value. Existing uses of the watershed and its waters that would continue include: instream public uses of the water for its recreational, scenic, botanical, and fisheries values, which support recreation and tourism activities including camping, hiking, local off-highway jeep trips, fishing, kayaking, and rafting, and the associated economic benefits from tourism at nearby restaurants and stores.

In summary, some uses may be allowed that are not limited by the classifications; however, there are no anticipated needs for water for agricultural use, power development, irrigation, industrial, or municipal uses. Mining uses are expected to be limited in the near-term due to current state and federal actions; particularly since no claims have been validated. Therefore, the fiscal and economic impact of this rule is likely to be low.

### **Statement of Cost of Compliance:**

#### **1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The Department does not anticipate any additional costs of compliance by state and local government and the public.

#### **2. Cost of compliance effect on small business (ORS 183.336):**

##### **a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

This rule would limit the types of uses for new water rights, but does not affect new exempt uses. This rule limits the uses of surface water to human consumption, livestock, instream public uses including pollution abatement, fish life, wildlife, and recreation, and the uses of groundwater to exempt uses; therefore, any other out-of-stream uses or groundwater withdrawals that require a water right would be limited. Industries affected could include mining and well drilling. Aside from recreational outfitters and two mining associations along with a corporation holding active claims in the watershed that have not been validated, the Department is not aware of other businesses operating in this area. If the USFS lands are not withdrawn from mineral entry, this rule could affect any potential new mining businesses in the area.

##### **b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

The Department does not anticipate additional costs associated with reporting and other administrative activities.

##### **c. Equipment, supplies, labor and increased administration required for compliance:**

The Department cannot predict whether there will be action to withdraw the USFS lands from mineral entry; the area is currently segregated from new mining activity through June 2017, and existing claims, if determined to be valid, would likely be unable to withdraw surface or groundwater except to the extent allowed under exempt uses or if authorized under ORS 536.295. The ability of the mining operation to continue and obtain water, and the associated costs, cannot be estimated because it would depend on the specific proposal. This may mean that water needs are met through transporting water in; the Department cannot estimate the cost of this activity, because the Department does not know how much water would be required, the distance of such transport, or the method of transport. In addition, since new non-exempt wells would be limited, well-drilling businesses would not be authorized to drill new non-exempt wells. The impacts on well-drilling businesses;

however, are unlikely as there are no active water rights in this region, or exempt wells on record.

**How were small businesses involved in the development of this rule?**

The Rules Advisory Committee (RAC) included representatives from the Oregon Mining Association and the Oregon Farm Bureau, as well as a certified water rights examiner, a fishing guide and representative of Trout Unlimited, and kayaking guide. These individuals and organizations represent the potential large and small business types that could be affected by changes in the rules. In addition, the Department met with the Groundwater Advisory Committee, which includes well drillers who represent the well drilling industry.

**Administrative Rule Advisory Committee consulted?: Yes  
If not, why?:**

<u>09-30-2016 5:00 p.m.</u>	<u>Diana Enright</u>	<u>diana.m.enright@wrд.state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
8-15-16 4:38 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Water Resources Department  
Agency and Division  
Diana Enright  
Rules Coordinator  
Water Resources Department, 725 Summer St. NE, Salem, OR 97301  
Address

690  
Administrative Rules Chapter Number  
(503) 986-0874  
Telephone

**RULE CAPTION**

Classifying the Groundwater and Surface Waters of the Smith River Watershed in Curry County.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
9-29-16	5:00 p.m.	Chetco Community Public Library, 405 Alder St., Brookings, OR 97415	John Roberts

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

690-517-0000

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 183 and ORS 536

**Other Authority:**

OAR 690, Divisions 400, 410 and 500

**Statutes Implemented:**

ORS 536.340, ORS 536.300, ORS 536.310 and ORS 536.220

**RULE SUMMARY**

The Water Resources Commission is charged with developing basin program rules with consideration to the multiple aspects of the beneficial use and control of such water resources to best protect and promote the public welfare of Oregon's citizens generally. Current classified uses in the South Coast Basin Program for the Smith River watershed include domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife, and fish life uses. These rules classify the surface waters in the Smith River Watershed for human consumption, livestock, and instream public uses including pollution abatement, fish life, wildlife, and recreation, and classifies the groundwater within the watershed for exempt uses that are outlined in ORS 537.545. Classification of sources of water has the effect of restricting the new uses allowed for new water rights to those that are specified by the classification; no other uses are allowed, except water uses that do not require a water right (for example, see ORS 537.141), alternative reservoirs (i.e., ORS 537.409), and other uses as allowed by law or approved by the Commission (for example, see ORS 536.295).

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.

09-30-2016 5:00 p.m.  
Last Day (m/d/yyyy) and Time  
for public comment

Diana Enright  
Rules Coordinator Name

diana.m.enright@ wrd.state.or.us  
Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.



**PUBLIC HEARING DRAFT OF PROPOSED RULES**

**DIVISION 517**

**SOUTH COAST BASIN PROGRAM**

**NOTE:** The South Coast Basin is delineated on agency Map, File No. 17.6, available from the agency dated January 1, 1971.

**690-517-0000**

**Classifications**

(1) ~~Ground water~~ Groundwater resources in sections or the portions of Sections 13, 14, 22, 23, 26, 27, 32, 33 and 34 of Township 23 South, Range 13 West, Willamette Meridian; 2, 3, 4, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34 of Township 24 South, Range 13 West, Willamette Meridian; and 3, 4, 5 and 6 of Township 25 South, Range 13 West, Willamette Meridian, bounded on the north by Tenmile Creek, on the west by the Pacific Ocean, on the south by Coos Bay and on the east by Highway 101 are hereby classified for single or group domestic, livestock, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, and any single industrial or commercial use not exceeding 5,000 gallons per day.

(2) The waters of the following lakes are classified for domestic, livestock, municipal, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, and in lake use for recreation, fish life, and wildlife. The Director of the Water Resources Department may place specific limits on municipal appropriations from the lakes, or require outlet control structures to protect recreation, fish life and wildlife uses:

(a) Bradley Lake;

(b) Eel Lake;

(c) Garrison Lake.

(3) All other natural lakes are classified for domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, and in lake use for recreation, fish life and wildlife.

(4) The waters of Glenn Creek (tributary to the East Fork, Millicoma River) and its tributaries are classified for domestic and livestock uses irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, fire control and instream use for recreation, fish life and wildlife;

(5) The waters of the Middle Fork of the Coquille River and tributaries upstream from the confluence with Holmes Creek are classified for domestic, livestock irrigation of lawns and noncommercial gardens not exceeding one-half acre in area and instream use for recreation, fish life, and wildlife during the period from July 1 to September 30 of every year. Water diverted for storage between October 1 and June 30 may be used for any purpose specified in section ~~44~~ 12 of this rule.

(6) The waters of the West Fork Millicoma River and tributaries above Stall Falls are classified for municipal, domestic and livestock uses, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, and instream use for recreation, fish life and wildlife.

## DRAFT PROPOSED RULES FOR PUBLIC COMMENT

Draft Dated 8.25.2016

(7) The waters of Pony Creek above lower Pony Creek Dam and Ferry and Geiger Creeks above the Ferry Creek — Geiger Creek confluence are classified for municipal use.

(8) In accordance with ORS 538.120, the waters of Brush Creek (Brushes Creek) and its tributaries are withdrawn from further appropriation or condemnation, and shall not be diverted or interrupted for any purpose except for use in state parks or as otherwise prescribed by ORS 538.120.

(9) The waters of Clear Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg. 504).

(10) The waters of Edna Lake are withdrawn from further appropriation by order of the State Engineer dated October 4, 1940 (Special Order Vol 3, Pg. 504).

(11) The surface waters of the Smith River watershed in Curry County (Exhibit 1) are classified for human consumption, livestock, and instream public uses including recreation, pollution abatement, fish life, and wildlife uses. Groundwater within the boundaries of the Smith River watershed in Curry County is classified for exempt groundwater uses authorized under ORS 537.545. Limited Licenses may be allowed only as consistent with the classifications in this subsection.

~~(412)~~ All other surface and ground-water resources are classified for domestic, livestock, municipal, industrial, fire control, irrigation, agricultural use, mining, power development, recreation, wildlife\_fish life uses.

~~(4213)~~ The planning, construction and operation of any structures or works for the utilization of water in accordance with the aforementioned classifications are to conform with the applicable provisions of ORS 536.310, including but not restricted to the recommendation of the multiple-purpose concept.

[ED. NOTE: Tables and exhibits referenced are not included in rule text. [Click here for PDF copy of table\(s\) and exhibits.](#)]

### **690-517-0010**

#### **Reservations**

Water in the amounts specified is reserved in the following streams for municipal use:

(1) Chetco River — three cfs, downstream from the confluence with the North Fork Chetco River.

(2) Winchuck River — one cfs, downstream from the confluence with Bear Creek.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170

### **690-517-0020**

#### **Minimum Perennial Streamflows**

(1) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses and irrigation of noncommercial gardens not

## DRAFT PROPOSED RULES FOR PUBLIC COMMENT

*Draft Dated 8.25.2016*

exceeding one-half acre in area shall be allowed for waters of the streams and tributaries listed in Table 1 when flows are below the specified levels.

(2) The Water Resources Commission requests the opportunity to review applications for an allowed beneficial use that has traditionally been identified as nonconsumptive or take-and-put, such as fish hatcheries, hydroelectric facilities, municipal or water process industries that could potentially impact, in an adverse way, the Commission's minimum flow regime or the public interest. The Water Resources Commission intends to continue to protect, in its entirety, that portion of the stream system on which any minimum streamflow has been established. Permitting procedures and water use regulation should reflect that objective as far as possible under the law. The Commission solicits the advice or complaints of any party who is aware that the objectives are not being met.

(3) Minimum flows established in the Water Resource Program for the South Coast Basin dated May 22, 1964 (Table 2), shall remain in full force and effect except as follows:

(a) The minimum perennial streamflow for the Elk River above U.S. Highway 101 crossing (45 cfs) is rescinded;

(b) The minimum perennial streamflow for the Coquille River Middle Fork above Bear Creek (4 cfs) is rescinded;

(c) The minimum perennial streamflow for the Sixes River above the U.S. Highway 101 crossing is reduced to 25 cfs during the period from August 1 to September 30;

(d) The minimum perennial streamflow for the South Fork Coquille River near Powers is reduced to 15 cfs during the period from June 16 to September 30.

(4) For purposes of distributing water, minimum flows established in 1964 shall be considered part of and not in addition to revised minimum flow regimes.

(5) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of the Coquille River and tributaries when flows are below the specified levels in Table 2. This limitation shall not apply to:

(a) Domestic and livestock uses and irrigation of non-commercial gardens not exceeding 1/2 acre in area;

(b) Water legally released from storage.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

**690-517-0030**

### **Storage**

## DRAFT PROPOSED RULES FOR PUBLIC COMMENT

*Draft Dated 8.25.2016*

The following reservoir sites should be protected through the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed:

- (1) West Fork of the Millicoma River, site 223;
- (2) South Fork of Coquille River at Eden Ridge, site 430;
- (3) North Fork Coquille River, site 146A;
- (4) Rock Creek at Rasler Creek, site 201;
- (5) Catching Creek, site 101;
- (6) Fourmile Creek, site 158;
- (7) North Fork Floras Creek at Okietown, site 435;
- (8) North Fork Chetco River, site 239;
- (9) Wheeler Creek, site 241;
- (10) East Fork Winchuck River, site 243;
- (11) Joe Ney Slough.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12

### **690-517-0040**

#### **Out-of-Basin Appropriations**

No out-of-basin diversion of South Coast Basin water shall be granted without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 24, f. 12-16-63; WRB f. 6-2-64; WRD 4, f. 5-6-77; WRD 6, f. 7-5-77; WRD 1-1979, f. & cert. ef. 2-1-79; WRD 6-1980, f. & cert. ef. 4-11-80; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 5-1984, f. & cert. ef. 10-30-84; Administrative Renumbering 1-1993, Renumbered from 690-080-0170; WRD 3-2012, f. & cert. ef. 12-12-12