

Oregon Revised Statutes – 2007

SCENIC WATERWAYS

390.805 Definitions for ORS 390.805 to 390.925. As used in ORS 390.805 to 390.925, unless the context requires otherwise:

(1) “Related adjacent land” means all land within one-fourth of one mile of the bank on the side of Waldo Lake, or a river or segment of river within a scenic waterway, except land that, in the State Parks and Recreation Department’s judgment, does not affect the view from the waters within a scenic waterway.

(2) “Scenic easement” means the right to control the use of related adjacent land, including air space above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner’s consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains the right to uses of the land not specifically restricted by the easement.

(3) “Scenic waterway” means Waldo Lake, or a river or segment of river that has been designated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes related adjacent land. [1971 c.1 §2; 1981 c.787 §55; 1983 c.334 §1; 1983 c.642 §10; 1989 c.904 §25; 1995 c.79 §203; 2001 c.104 §132]

390.815 Policy; establishment of system. The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeological, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state’s free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

390.825 [1971 c.1 §3; 1975 c.612 §1; 1977 c.671 §1; 1983 c.334 §3; 1985 c.781 §§1,2; 1987 c.291 §1; repealed by 1989 c.2 §1 (390.826 enacted in lieu of 390.825)]

390.826 Designated scenic waterways. The following lakes and rivers, or segments of rivers, and related adjacent land are designated as scenic waterways:

(1) The Metolius Scenic Waterway which includes the Metolius River from Metolius Springs downstream to its confluence with Candle Creek.

(2) The Klamath Scenic Waterway which includes the Klamath River from the John Boyle Dam powerhouse downstream to the Oregon-California border.

(3) The Clackamas Scenic Waterway which includes:

(a) The segments of the Clackamas River from the boundary of the Olallie Lake Scenic Area, as constituted on December 8, 1988, downstream to the North Fork Reservoir, and from immediately below the River Mill Dam downstream to the bridge at Carver;

(b) The South Fork Clackamas River from its confluence with an unnamed tributary near the western boundary of Section 7, Township 5 South, Range 5 East, Willamette Meridian, downstream to the confluence of the South Fork Clackamas River with the Clackamas River; and

(c) The North Fork Clackamas River from its source downstream to the North Fork Reservoir.

(4) The McKenzie Scenic Waterway which includes:

(a) The segments of the McKenzie River from Clear Lake downstream to Carmen Reservoir, from Tamolitch Falls downstream to Trail Bridge Reservoir and from Trail Bridge Dam downstream to Paradise Campground; and

(b) The segments of the South Fork McKenzie River from the boundary of the Three Sisters Wilderness, as constituted on December 8, 1988, downstream to Cougar Reservoir, and from immediately below Cougar Dam downstream to its confluence with the McKenzie River.

(5) The Deschutes Scenic Waterway which includes the segments of the Deschutes River from Little Lava Lake downstream to Crane Prairie Reservoir, from the gaging station immediately below Wickiup Dam downstream to General Patch Bridge, from Harper Bridge downstream to the Central Oregon Irrigation District's diversion structure (near river mile 171), from Robert Sawyer Park downstream to Tumalo State Park, from Deschutes Market Road Bridge downstream to Lake Billy Chinook Reservoir (excluding the Cline Falls hydroelectric facility near river mile 145), and from immediately below the existing Pelton reregulating dam downstream to the confluence of the Deschutes River with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(6) The Santiam Scenic Waterway which includes the Little North Fork of the Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the boundary of the Willamette National Forest, as constituted on September 20, 1985.

(7) The John Day Scenic Waterway which includes:

(a) The John Day River from its confluence with Parrish Creek downstream to Tumwater Falls;

(b) The North Fork John Day River from the boundary of the North Fork John Day Wilderness (near river mile 76), as constituted on December 8, 1988, downstream to the northern boundary of the south one-half of Section 20, Township 8 South, Range 28 East, Willamette Meridian;

(c) The Middle Fork John Day River from its confluence with Crawford Creek (near river mile 71) downstream to the confluence of the Middle Fork John Day River with the North Fork John Day River; and

(d) The South Fork John Day River from the Post-Paulina road crossing (near river mile 35) downstream to the northern boundary of the Murderer's Creek Wildlife Area, as constituted on December 8, 1988 (near river mile 6).

(8) The Illinois Scenic Waterway which includes the Illinois River from its confluence with Deer Creek downstream to its confluence with the Rogue River.

(9) The Rogue Scenic Waterway which includes the segments of the Rogue River from the boundary of Crater Lake National Park, as constituted on December 8, 1988, downstream to the boundary of the Rogue River National Forest, as constituted on December 8, 1988 (near river mile 173), and from the confluence of the Rogue River with the Applegate River downstream to Lobster Creek Bridge.

(10) The Umpqua Scenic Waterway which includes the segments of the North Umpqua River from the boundary of the Mt. Thielsen Wilderness, as constituted on December 8, 1988, downstream to Lemolo Reservoir, and from the Soda Springs Dam powerhouse downstream to its confluence with Rock Creek (near Idleld Park).

(11) The Nestucca Scenic Waterway which includes:

(a) The Nestucca River from immediately below the McGuire Dam downstream to its confluence with East Creek (near Blaine); and

(b) Walker Creek from its source downstream to its confluence with the Nestucca River.

(12) The Wallowa-Grande Ronde Scenic Waterway which includes:

(a) The Grande Ronde River from its confluence with the Wallowa River downstream to the Oregon-Washington border; and

(b) The Willowa River from its confluence with the Minam River downstream to the confluence of the Willowa River with the Grande Ronde River.

(13) The Minam Scenic Waterway which includes the Minam River from Minam Lake downstream to its confluence with the Willowa River.

(14) The Elk Scenic Waterway which includes:

(a) The Elk River from the confluence of the North Fork Elk River and South Fork Elk River downstream to the Elk River fish hatchery;

(b) The North Fork Elk River from its source downstream to its confluence with the South Fork Elk River; and

(c) The South Fork Elk River from its source downstream to its confluence with the North Fork Elk River.

(15) The Owyhee Scenic Waterway which includes:

(a) The South Fork Owyhee River from the Oregon-Idaho border downstream to Three Forks; and

(b) The Owyhee River from Crooked Creek (near river mile 118) downstream to the mouth of Birch Creek (near river mile 76).

(16) The North Fork of the Middle Fork Willamette Scenic Waterway which includes the North Fork of the Middle Fork Willamette River from Waldo Lake downstream to a point one mile upstream from the railroad bridge near the town of Westfir.

(17) The Waldo Lake Scenic Waterway which includes Waldo Lake in Lane County. [1989 c.2 §2 (enacted in lieu of 390.825)]

390.827 Effect of ORS 390.826 on rights of Indian tribes. Nothing in ORS 390.826 shall:

(1) Affect or modify any treaty or other rights of any Indian tribe; or

(2) Affect lands held in trust by the Secretary of the Interior for Indian tribes or individual members of Indian tribes or other lands acquired by the Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes and individual members of Indian tribes. [1989 c.2 §3]

Note: 390.827 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 390 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

390.835 Highest and best use of waters within scenic waterways; prohibitions; authority of various agencies; water rights; conditions; recreational prospecting; placer mining. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The

Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section shall not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director

based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) No placer mining shall be permitted on waters within scenic waterways other than recreational placer mining.

(15) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) No provision of this section shall be construed to exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining, other than recreational prospecting not requiring a permit, shall not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) “Wet perimeter” means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2; 1985 c.673 §177; 1989 c.320 §1; 1993 c.99 §1; 1995 c.223 §1; 1995 c.719 §1; 1997 c.223 §1; 1997 c.478 §1; 2001 c.499 §1]

Note: Operation of the amendments to 390.835 by section 8, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval is set forth for the user’s convenience.

390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water impoundment facility may not be constructed on waters within scenic waterways. A water diversion facility may not be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission’s duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section do not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain

the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) This subsection does not limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) Placer mining is not permitted on waters within scenic waterways, other than recreational placer mining.

(15) A person may not be required to obtain a permit for recreational prospecting or other nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) This section does not exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining may not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

390.845 Administration of scenic waterways and related adjacent lands; limitations on use; condemnation; rules. (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the State Parks and Recreation Department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the aesthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture and the affected counties and with the concurrence of the Water Resources Commission, the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS chapter 183. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the aesthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules of the department, of the related adjacent land or unless department approval of such use is obtained as provided in subsection (4) or (5) of this section. The department wherever practicable shall require the sharing of land and air space by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway;

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless the department's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the department written notice of such proposed use at least one year prior thereto and has submitted to the department with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the department under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the department shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the department determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land that the owner may immediately proceed with the proposed use as described to the department. If the department determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the department. During such period:

(a) The department and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the department impair substantially the natural beauty of the scenic waterway; or

(b) The department may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The department, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the department or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the department and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the department or the owner.

(6) With the concurrence of the Water Resources Commission, the department may institute condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the department determines would, if carried out, impair substantially the natural beauty

of a scenic waterway unless the department and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the department of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the rules of the department or any agreement entered into by the department pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the department, impairs substantially the natural beauty of a scenic waterway, if the department has not been given at least one year's advance written notice of such use and if there is not in effect department approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after December 3, 1970, unless the department has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the department has given approval for such improvement under subsection (4) or (5) of this section. If the person owned the land on December 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person shall receive no less for the land than its value on December 3, 1970. The department shall not acquire by condemnation a scenic easement in land. When the department acquires any related adjacent land that is located between a lake or river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the lake or river necessary to use, store or divert such waters as the owner has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the department, shall be provided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805 to 390.925.

(9) The department shall furnish to any member of the public upon written request and at expense of the member a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United States, another state agency or local governmental agency, the department may enter into agreement with the tribe or the federal, state or local agency for the administration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to 390.925. [1971 c.1 §5; 1971 c.459 §1; 1973 c.756 §2; 1981 c.236 §3; 1983 c.334 §4]

390.848 Passes for use of parts of Deschutes River; rules; fee; exemption from fee; disposition of moneys. (1) The State Parks and Recreation Department shall establish, by rule, a system for issuing passes necessary to comply with the requirements under ORS 390.851. The department shall establish a reasonable fee for issuance of a pass under this section. The department may establish any form of proof of payment of the user fees that it deems appropriate.

(2) The system for issuance of passes established by the department under this section may include issuance of the passes by governmental entities or private persons who have entered into appropriate agreements with the department for issuance of the passes. Agreements under this subsection may include, but are not limited to, terms providing for locations for the collection of fees, methods the department determines appropriate to assure payment of moneys collected and provisions for the distribution of river-user information.

(3) The department shall issue, without charge, annual passes to comply with the requirements under ORS 390.851 to persons who own ranch, farm or residential property immediately abutting those

portions of the Deschutes River designated as scenic waterways under ORS 390.826 and to members of the immediate family of such persons. This subsection does not authorize the issuance without charge of passes to persons holding less than a majority interest in a firm, corporation or cooperative organization which owns land immediately abutting the Deschutes River designated as scenic waterways under ORS 390.826.

(4) Moneys collected under this section shall be deposited in the separate fund established for the State Parks and Recreation Department under ORS 366.512 and, subject to the limitations under subsection (5) of this section, are continually appropriated to that department to be used:

(a) For operation of the pass system established under this section;

(b) For providing river-user oriented law enforcement services;

(c) For providing river recreation information and education;

(d) For developing and maintaining river oriented recreation facilities; and

(e) For any other purposes the department considers appropriate for the maintenance, enhancement or protection of the natural and scenic beauty of the scenic waterway consistent with ORS 390.805 to 390.925.

(5) The use of moneys for purposes described under subsection (4) of this section is limited to the performance of those purposes for areas of the Deschutes River designated as scenic waterways under ORS 390.826. [1981 c.798 §2; 1985 c.606 §4; 1987 c.291 §2; 1987 c.624 §15]

390.851 Activities prohibited on parts of Deschutes River without pass; exceptions. (1) Unless the person has an appropriate pass issued under ORS 390.848, no person shall launch, operate or ride in any boat or engage in any camping, fishing or other activity in connection with being transported by a boat on those portions of the Deschutes River designated as scenic waterways under ORS 390.826.

(2) This section does not apply to:

(a) Peace officers, members or employees of a governmental body or their agents while engaged in the discharge of official duties; or

(b) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

(3) A person who violates this section commits a Class C violation. [1981 c.798 §3; 1987 c.291 §3; 1999 c.1051 §99]

390.855 Designation of additional scenic waterways. The State Parks and Recreation Department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Resources Commission, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 to 390.925. Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 to 390.925. The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Department of State Lands, and such other persons or agencies as it considers appropriate. The State Parks and Recreation Department shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

390.865 Authority of legislature over designation of additional scenic waterways. The designation of a river or segment of a river and related adjacent land, pursuant to ORS 390.855, shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly by joint resolution may disapprove any such designation or a part thereof, and in that event the designation, or part thereof so disapproved, shall not become effective. [1971 c.1 §7]

390.875 Transfer of public lands in scenic waterways to department; administration of nontransferred lands. Any public land within or adjacent to a scenic waterway, with the consent of the governing body having jurisdiction thereof, may be transferred to the jurisdiction of the State Parks and Recreation Department with or without compensation. Any land so transferred shall become state recreational land and shall be administered as a part of the scenic waterway. Any such land within a scenic waterway which is not transferred to the jurisdiction of the department, to the fullest extent consistent with the purposes for which the land is held, shall be administered by the body having jurisdiction thereof in accordance with the provisions of ORS 390.805 to 390.925. [1971 c.1 §8]

390.885 Exchange of property within scenic waterway for property outside waterway. In acquiring related adjacent land by exchange, the State Parks and Recreation Department may accept title to any property within a scenic waterway, and in exchange therefor, may convey to the grantor of such property any property under its jurisdiction that the department is not otherwise restricted from exchanging. In so far as practicable, the properties so exchanged shall be of approximately equal fair market value. If they are not of approximately equal fair market value, the department may accept cash or property from, or pay cash or grant property to, the grantor in order to equalize the values of the properties exchanged. [1971 c.1 §9]

390.895 Use of federal funds. In addition to State of Oregon funds available for the purposes of ORS 390.805 to 390.925, the State Parks and Recreation Department shall use such portion of moneys made available to it by the Bureau of Outdoor Recreation and other federal agencies, including matching funds, as the department determines are necessary and available to carry out the purposes of ORS 390.805 to 390.925. [1971 c.1 §10]

390.905 Effect of ORS 390.805 to 390.925 on other state agencies. Nothing in ORS 390.805 to 390.925 affects the jurisdiction or responsibility of other state agencies with respect to boating, fishing, hunting, water pollution, health or fire control; except that such state agencies shall endeavor to perform their responsibilities in a manner consistent with the purposes of ORS 390.805 to 390.925. [1971 c.1 §11]

390.910 Intergovernmental cooperation; county representative on management advisory committee. In carrying out the provisions of ORS 390.805 to 390.925, the State Parks and Recreation Department may enter into intergovernmental agreements to form committees to advise the various governmental agencies involved regarding management of the scenic waterways. Each such agreement must provide for membership on the committee of a representative of one of the governing bodies of the counties through which the scenic waterway flows. The county representative shall be chosen by the Governor from among those individuals recommended to the Governor by the county governing bodies. [1981 c.236 §2]

390.915 Determination of value of scenic easement for tax purposes; easement exempt. For ad valorem tax purposes, real property that is subject to a scenic easement shall be valued at its real market value, less any reduction in value caused by the scenic easement, and assessed in accordance with ORS 308.232. The easement shall be exempt from assessment and taxation the same as any other property owned by the state. [1971 c.1 §12; 1981 c.804 §99; 1991 c.459 §394]

390.925 Enforcement. In addition to any other penalties provided by law for violation of ORS 390.805 to 390.925 or rules adopted thereunder, the State Parks and Recreation Department is vested with power to obtain injunctions and other appropriate relief against violations of any provisions of ORS 390.805 to 390.925 and any rules adopted under ORS 390.805 to 390.925 and agreements made under ORS 390.805 to 390.925. [1971 c.1 §13; 1981 c.798 §6]

DESCHUTES RIVER SCENIC WATERWAY RECREATION AREA

390.930 Definitions for ORS 390.930 to 390.940. As used in ORS 390.930 to 390.940:

(1) "Managing agencies" includes:

- (a) State Parks and Recreation Department;
- (b) State Department of Fish and Wildlife;
- (c) Confederated Tribes of the Warm Springs Indian Reservation;
- (d) State Marine Board;
- (e) Sherman, Wasco and Jefferson Counties;
- (f) Oregon State Police;
- (g) United States Bureau of Land Management;
- (h) United States Bureau of Indian Affairs; and
- (i) The City of Maupin.

(2) "Recreation area" means the Deschutes River Scenic Waterway Recreation Area created under ORS 390.932. [1987 c.624 §§1,18; 1989 c.904 §26; 2001 c.104 §133]

390.932 Creation of Deschutes River Scenic Waterway Recreation Area. There is created the Deschutes River Scenic Waterway Recreation Area consisting of the segment of the Deschutes River scenic waterway under ORS 390.825 that is designated as the segment from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977. [1987 c.624 §17]

390.934 Management of Deschutes River Scenic Waterway Recreation Area; plan; rules; budget. (1) The State Parks and Recreation Department shall have primary management responsibility for the State of Oregon to manage the Deschutes River Scenic Waterway Recreation Area. In managing the recreation area, the department shall cooperate with other managing agencies having jurisdiction to manage all or part of the recreational area.

(2) The department shall adopt a management plan by rule. The department shall implement the plan and shall prepare a budget for implementation taking into consideration the provisions of the management plan. [1987 c.624 §§3,19]

390.936 Rules. In accordance with applicable provisions of ORS chapter 183, the State Parks and Recreation Department shall adopt rules necessary to carry out those provisions of ORS 390.930 to 390.940 that the department is charged with administering. [1987 c.624 §§12,22]

390.938 Guidelines for management and development. The Deschutes River Scenic Waterway Recreation Area shall be managed and developed in accordance with the following guidelines:

(1) To the extent allowed under ORS 390.805 to 390.925, the recreational area shall be administered to allow continuance of compatible existing uses, while allowing a wide range of compatible river-oriented public outdoor recreation opportunities, to the extent that these do not impair substantially the natural beauty of the scenic waterway or diminish its aesthetic, fish and wildlife, scientific and recreational values.

(2) The management plan shall stress a segment by segment design and shall include provisions for the development of appropriate facilities and services in the recreation area to meet resource needs for protection and preservation and user needs. This development may include but need not be limited to:

- (a) River and car camp development;
- (b) Sanitation stations for human waste and garbage;
- (c) Parking and access road improvement;
- (d) Signs indicating land ownership;
- (e) Tree and riparian zone protection and restoration;
- (f) Educational programs; and
- (g) Initiation of additional volunteer programs.

(3) Before restricting access through the use of a permit system, all other management options shall be considered.

(4) Special emphasis shall be placed on protecting the recreation area and all adjacent property from recreationist-caused wildfires. This goal shall be equal in priority to the other primary goals set forth in this section. This protection shall include but not be limited to:

(a) Permanent adoption of a fire rule that provides the same protection as the fire rule in force during the 1986 fire season.

(b) Requiring boater passes to include the name of the group leader, date and section of river used.

(c) The establishment of information centers near major points of entry into the recreation area to provide users with information and education regarding the fire rules and general rules of the river.

(d) Conducting cadet patrols at the levels considered necessary to facilitate reasonable compliance with recreation area rules. [1987 c.624 §§4,20]

390.940 Relationship to other laws. The State Parks and Recreation Department and state and local managing agencies shall manage the Deschutes River Scenic Waterway Recreation Area according to the provisions of ORS 390.805 to 390.925 and 390.930 to 390.940 and rules adopted under ORS 390.805 to 390.925 and 390.930 to 390.940. Federal and tribal managing agencies with jurisdiction over their respective lands and waters shall be encouraged to manage their lands and waters in a manner consistent with the provisions of ORS 390.805 to 390.925 and 390.930 to 390.940. [1987 c.624 §§5,21]