

Oregon Parks and Recreation Commission

November 16, 2016

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| Agenda Item: | 11a | Action |
| Topic: | Request to adopt OAR 736-040-0100 Chetco State Scenic Waterway | |
| Presented by: | Richard Walkoski | |

Background: Portions of the Chetco and Molalla Rivers were designated as State Scenic Waterways (SSW) by Governor Brown who issued an Executive Order as the 2016 legislative session began. The legislature did not override her order with a joint resolution, so the designations took effect the day after the legislature adjourned. Upon designation the general management rules for management of a SSW applied to those newly designated rivers. In addition to the general waterway rules, additional river specific administrative rules are used to divide each scenic waterway into specific classifications which provide more detailed guidance on management. The river specific rules can add more details on acceptable screening methods and other site specific issues. Those rules add to the general rules which still apply to all the rivers designated as a SSW.

A management plan was developed for the newly designated rivers using an advisory group as part of the process leading up to designation. The advisory group represented landowners, business concerns and public agencies. Those management plans formed the basis for a first draft of river specific rules. Those rules were reviewed by a rules advisory committee, made up from many of the same people who served on the advisory group. Their suggestions were incorporated into the draft rules. OPRD held a public hearing for each river and accepted comments through September 2016.

The public hearing in Brookings for the Chetco had no one attend other than OPRD staff. At the Molalla hearing five members of the public attended but only one made a comment, which was supportive of the rules but urged OPRD to monitor how the designation changes use and associated problems like garbage and vandalism. Five written comments were received through e-mail, all in support. These proposed rules have been reviewed by Assistant Attorney General Steve Shipsey.

There is a statutory requirement that OPRD get concurrence of the Water Resources Commission on SSW rules. OPRD has made that request to the Water Resources Department but the meeting of their commission is scheduled after the OPRD Commission meeting in November.

Prior Action by Commission: approve State Scenic Waterway recommendations, Nov. 2014, amended Apr. 2015; receive draft management reports, Nov. 2015; approve rulemaking for SSW, Apr. 2016.

Action Requested: Staff requests the commission approve OAR 736-040-0100 in Attachment A.

Attachments: Attachment A– OAR 736-040-0100 Chetco State Scenic Waterway (marked copy), Attachment B – Hearing Officer Report.

Prepared by: Richard Walkoski

736-040-0100

Chetco River Scenic Waterway

(1) Accessible Natural River Area:

(a) That segment of the Chetco River from the Steel Bridge to Eagle Creek is classified as an Accessible Natural River Area.

(b) The department shall administer this Accessible Natural River Area consistent with the provisions of OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition, all improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new improvements that are visible from the river other than those erected or made in connection with a compatible existing use will be allowed to proceed. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(d) Any new improvement allowed to proceed should be primitive in character and include screening by topography so it is not visible from the river.

(e) New roads may be allowed to proceed only when not visible from the river. Screening may be provided by topography, vegetation, or both.

(f) Major extensions, realignments, or upgrades to existing roads that are visible from the river shall be totally screened from view. Screening may be provided by topography, vegetation, or both.

(2) Scenic River Area:

(a) That segment of the Chetco River from Eagle Creek to the South Fork Confluence is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be

visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(3) Recreational River Area:

(a) That segment of the Chetco River from the South Fork Confluence to the southern boundary of Alfred A. Loeb State Park is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(e) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(f) New roads and similar forms of development shall be set back from the river consistent with Curry County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - ORS 390.925



Nature
HISTORY
Discovery

OPRD Public Comments
Division 40, State Scenic Waterways
Chetco and Molalla

5 comments received through e-mail

Comment Period Ending: September 30, 2016

From: [Mary Anne Nash](#)
To: [PUBLICCOMMENT * OPRD](#)
Subject: Molalla and Chetco river comments
Date: Friday, September 30, 2016 4:45:19 PM
Attachments: [Molalla and Chetco river comments.pdf](#)

Good afternoon,

Attached please find comments on the proposed scenic waterway rulemaking.

Thanks,

Mary Anne

Mary Anne Nash | Public Policy Counsel

Oregon Farm Bureau

1320 Capitol St. NE, Suite 200, Salem, OR 97301

M: 541.740.4062 • **O:** 503.399.1701 x. 306 • **F:** 503.399.8082

maryanne@oregonfb.org • oregonfb.org



September 28, 2016

Oregon Parks and Recreation Department
Attn.: Richard Walkoski
725 Summer Street NE, Suite C
Salem, Oregon 97301-1271
OPRD.publiccomment@oregon.gov

RE: Molalla and Chetco Rivers Scenic Waterways management

Thank you for the opportunity to submit comments on the Department's proposed rule designating portions of the Molalla and Chetco Rivers as State Scenic Waterways. This letter is submitted on behalf of Oregon Farm Bureau (OFB) to reaffirm our concerns regarding the process in which this new State Scenic Waterways designation has been conducted, and the failure of the Oregon Parks and Recreation Department (OPRD) to include or consider comments made by Oregon Farm Bureau on the draft rules.

By way of background, the 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. Coos-Curry Farm Bureau is the voice of farmers and ranchers in Coos and Curry County.

Oregon Farm Bureau remains very concerned about the lack of landowner involvement and support on the committees formed to review and recommend designation of state scenic waterways. In both the Molalla and Chetco processes, the OPRD failed to reach out to and engage a broad group of stakeholders in the review and recommendation process, instead focusing primarily on the recreation community. This resulted in the agricultural community not

learning about the proposed designations until just before they were recommended to the legislature, and well after the time for meaningful involvement had passed. We strongly encourage you to reach out to both state and local natural resources stakeholders much earlier on in the designation process, and in time for the community to have a meaningful opportunity to comment on the proposal.

In the future, we also would like ensure that OPRD formally consults with the Oregon Department of Agriculture or ODF regarding potential impacts to livestock grazing and forestry practices within the proposed area before submitting a formal recommendation to the Governor so that the proposal was comprehensively vetted. Under Oregon law “[t]he 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.” ORS 390.855. This consultation should occur throughout the process, and these agencies should be part of any rulemakings associated with a designation.

Thank you for the opportunity to comment on these rules, and please do not hesitate to contact me if you have any questions.

Sincerely,



Mary Anne Nash

Oregon Farm Bureau Federation

maryanne@oregonfb.org

(541) 740-4062

From: ORPrdSupport@egov.com
To: [PUBLICCOMMENT * OPRD](#)
Subject: Input Received: State Scenic Waterways, Division 40 rulemaking
Date: Saturday, September 17, 2016 8:41:25 AM
Attachments: [State Scenic Waterways, Division 40 rulemaking - Entries.csv](#)

State Scenic Waterways, Division 40 rulemaking

Submitted: 9/17/2016 8:41:17 AM

Comment Visited and Kayaked in Oregon for the first time this summer (2016). I am impressed with the natural beauty and environmental awareness of your citizens in Oregon. As a visitor , I seek out areas that are pristine in nature especially in a river ecosystem. Please protect these scenic resources for my and all future generations.

Name John Kulka

Email chiefk55@yahoo.com

From: [Bryan Tooley](#)
To: [PUBLICCOMMENT * OPRD](#)
Subject: Chetco Scenic Waterway Rules
Date: Saturday, September 17, 2016 6:39:58 AM

I had the opportunity to be in the first kayaking group to paddle the Chetco river in the early 90's at normal spring flows. A 6+ mile hike in revealed a river whose water was the cleanest I have ever seen. I have had the opportunity to paddle around the country and around the world, and it's my opinion that this is the cleanest river I've ever paddled on. This water shed needs to be protected. Clear pools where one can see steelhead 20' down is unique to Oregon, the US, and the world!

Help protect Oregon's last wild places,
Bryan Tooley
2110 NE Knott St
Portland, Or 97212
tooleybryan@gmail.com

From: [kayaker buford](#)
To: [PUBLICCOMMENT * OPRD](#)
Subject: Public comment on Chetco and Mollala rule making
Date: Friday, September 16, 2016 6:39:28 PM

I am in general support of efforts to protect a treasured resource such as our rivers. I would like to see the Chetco receive national wild and scenic protection. As a paddler I would like to see access (boat ramps) maintained but spaced at least several miles apart. Roads should be located on the outsides of the floodplain, and I would prefer natural buffers over man made water quality BMPs (structures such as bioretention basins). As a hydraulic engineer employed by a government agency I understand the difficulties you face in balancing competing objectives of access and preservation and I wish you success in this effort.

Sincerely,

Brad McManus
3516 Autumn Farm Terrace
Buford, GA

From: [Al Elkins](#)
To: [MORGAN Holly * OPRD](#)
Cc: [PUBLICCOMMENT * OPRD](#)
Subject: Re: State Scenic Waterway Rulemaking - Chetco and Molalla
Date: Friday, September 09, 2016 3:53:56 PM

Thank you. Ae

Sent from my iPhone

On Sep 9, 2016, at 2:49 PM, MORGAN Holly * OPRD <Holly.Morgan@oregon.gov> wrote:

All,

The Oregon Parks and Recreation Department is seeking public comment on rules governing management of two new rivers designated as State Scenic Waterways, the Chetco and the Molalla. The rules focus on classification of river sections and specific management practices to maintain the character of the river in those sections.

Comments can be made in person at two scheduled hearings: September 19th at 6:00 PM in Brookings at the Public Library, 405 Alder Street; and September 27th at 6:00 PM in Molalla at the Public Library, 201 E 5th St. Comments will also be accepted in writing until 5:00 PM on September 30th and should be sent to: Oregon Parks and Recreation Department, attn.: Richard Walkoski, 725 Summer St NE, Suite C, Salem OR 97301; or e-mailed to OPRD.publiccomment@oregon.gov

Holly Morgan
Communications & Research Division
Oregon Parks & Recreation Dept.
725 Summer St. NE Suite C
Salem, OR 97301
503-986-0803
holly.morgan@oregon.gov

<OAR 736-040 Molalla Rules - Comment Draft 9-6-2016.docx>

<OAR 736-040 Chetco Rules - Comment Draft 9-6-2016.docx>

<736-2016815Notice.pdf>

<736-2016815Fiscal.pdf>

Oregon Parks and Recreation Commission

November 16, 2016

| | | |
|---------------|---|---------------|
| Agenda Item: | 11b | Action |
| Topic: | Request to adopt OAR 736-040-0110 Molalla State Scenic Waterway | |
| Presented by: | Richard Walkoski | |

Background: Portions of the Chetco and Molalla Rivers were designated as State Scenic Waterways (SSW) by Governor Brown who issued an Executive Order as the 2016 legislative session began. The legislature did not override her order with a joint resolution, so the designations took effect the day after the legislature adjourned. Upon designation the general management rules for management of a SSW applied to those newly designated rivers. In addition to the general waterway rules, additional river specific administrative rules are used to divide each scenic waterway into specific classifications which provide more detailed guidance on management. The river specific rules can add more details on acceptable screening methods and other site specific issues. Those rules add to the general rules which still apply to all the rivers designated as a SSW.

A management plan was developed for the newly designated rivers using an advisory group as part of the process leading up to designation. The advisory group represented landowners, business concerns and public agencies. Those management plans formed the basis for a first draft of river specific rules. Those rules were reviewed by a rules advisory committee, made up from many of the same people who served on the advisory group. Their suggestions were incorporated into the draft rules. OPRD held a public hearing for each river and accepted comments through September 2016.

The public hearing in Brookings for the Chetco had no one attend other than OPRD staff. At the Molalla hearing five members of the public attended but only one made a comment, which was supportive of the rules but urged OPRD to monitor how the designation changes use and associated problems like garbage and vandalism. Five written comments were received through e-mail, all in support. These proposed rules have been reviewed by Assistant Attorney General Steve Shipsey.

There is a statutory requirement that OPRD get concurrence of the Water Resources Commission on SSW rules. OPRD has made that request to the Water Resources Department but the meeting of their commission is scheduled after the OPRD Commission meeting in November.

Prior Action by Commission: approve State Scenic Waterway recommendations, Nov. 2014, amended Apr. 2015; receive draft management reports, Nov. 2015; approve rulemaking for SSW, Apr. 2016.

Action Requested: Staff requests the commission approve OAR 736-040-0110 in Attachment A.

Attachments: Attachment A– OAR 736-040-0110 Molalla State Scenic Waterway (marked copy), Attachment B – Written Comments Received (**See Attachment B for Item 11a**)

Prepared by: Richard Walkoski

736-040-0110

Molalla River Scenic Waterway

(1) Scenic River Area:

(a) That segment of the Molalla River from the Confluence with the Table Rock Fork to Pine Creek is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Clackamas County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(2) Recreational River Area:

(a) That segment of the Molalla River from the Pine Creek Confluence to Trout Creek is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

(c) Natural evergreen vegetation shall be maintained between improvements and the river unless removal does not impact the view as seen from the river.

(d) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(f) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(g) New roads, mines and similar forms of development shall be set back from the river consistent with Clackamas County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

(3) River Community Area:

(a) That segment of the Molalla River from the Confluence with Trout Creek to the Glen Avon Bridge is classified as a River Community Area.

(b) Lands located north of the Glen Avon Bridge, and north of Dickey Prairie Road west of the Glen Avon Bridge, do not affect the view from the waters within the scenic waterway and are not regulated as related adjacent land under this division.

(c) The department shall administer this River Community Area as provided in OAR 736-040-0035 and 736-040-0040(1)(f). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 - ORS 390.925