



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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MEMORANDUM

TO: Water Resources Commission

FROM: Thomas M. Byler, Director

SUBJECT: Agenda Item A, April 13, 2018
Water Resources Commission Meeting

Klamath Drought Emergency Temporary Rulemaking

I. Introduction

In this agenda item, the Commission is asked to consider temporary rules in Klamath County that would authorize a preference for uses of water for human consumption and stock water use.

II. Background

Governor Brown declared a drought emergency in Klamath County under Executive Order No. 18-02 on March 13, 2018 (Attachment 1). The City of Chiloquin submitted a request to the Commission, dated March 16, 2018, requesting a preference for use of the City's well for human consumption (Attachment 2). Don Gentry, Chairman of the Klamath Tribes, submitted a letter on April 2, 2018, with comments regarding the granting of a drought preference and emergency rules (Attachment 3). In addition, the Commission received a request from the Sprague River Water Resource Foundation on April 6, 2018, for a preference for stock water in the Sprague and Williamson River drainages (Attachment 4). The Department received a request from Modoc Point Irrigation District on April 9, 2018, for a preference for stock water for landowners within the irrigation district (Attachment 5).

Many of the water rights and determined claims in the Klamath Basin include domestic and stock water along with irrigation. Under ORS 536.750(1)(c), the Commission may grant a preference for water for stock and human consumption, when the Governor declares a state of drought emergency in an area. In 2013, 2014, and 2015, the Commission adopted administrative rules granting a preference for water for human consumption and livestock in Klamath County in response to Governor-declared drought emergencies. There were no drought declarations issued in Klamath County in 2016 and 2017.

Since regulation is relatively new in the Klamath Basin, the Department recognizes that drought tools, such as the preference for water for livestock and human consumption, can offer a critical, immediate option to help water users make it through a difficult water year. However, water used under the preference reduces the quantity of water available to senior water right holders. This is not a desirable or sustainable solution for long-term water management. For that reason, the Commission and Department have strongly encouraged Klamath Basin water users to develop alternative approaches and water delivery systems to better meet their needs in dry years, so that a preference will not be necessary in the future.

Water users have begun work to obtain more secure sources of water to meet stock water and human consumption needs. Since January 1, 2013, landowners in Klamath County have drilled 132 wells for stock watering, making them much more resilient to drought and calls on surface water by senior water right holders. Crater Lake National Park had requested a preference in prior years; however, they have since drilled a well to supplement their supply when surface water is regulated.

The City of Chiloquin has purchased a parcel of land to install a new municipal well that will not be subject to regulation. The City anticipates project completion by the end of 2018, but the well and infrastructure will not be completed for the 2018 water year. The Department anticipates that the City will need to exercise the preference beyond the temporary rules, through December 2018. Staff are working to identify options for addressing their longer-term needs.

III. Discussion of OAR 690-022-0060 to OAR 690-022-0063

The Commission is asked to consider adoption of the temporary rules OAR 690-022-0060 to OAR 690-022-0063 (Attachment 6). The rules will allow holders of water rights for stock water in the Williamson River Basin (including the Sprague River, Sycan River and all tributaries) and holders of water rights for human consumption uses in Klamath County to continue use of that water for those purposes during regulation for a call by a senior water right holder. These uses would otherwise be shut off to meet the call by a senior water user. The rules being proposed for adoption are included in Attachment 6. A summary of the rules is provided below.

Limitations on Use of the Preference: As explained in the attached letters requesting the preference, for some water users there are no readily available alternative sources of water for stock water or human consumption uses. At the same time, senior water users, such as the Klamath Tribes (see Attachment 3) have expressed concerns about the impacts of the preference on their ability to exercise their water rights. As a result, if the Commission authorizes the preference, it is important for water right holders exercising the preference to use only the minimum amount necessary and as efficiently as possible.

To try to address the need and the concerns, the Department has included the following provisions in the draft proposed rules:

- (1) Before exercising the preference, the proposed rules require that water right holders provide notice to the watermaster of the intent to utilize the preference on a form developed by the Department (See Draft Forms in Attachments 7 and 8). This will assist with management of the preferences, facilitate compliance checks, and help the Department better understand the needs in the community.
- (2) For the human consumption water preference, the water right holder must: (a) use the most efficient means of delivery available to them, (b) curtail all other water uses unrelated to human consumption and (c) allow the watermaster access to confirm compliance.
- (3) For the stock watering preference, the water right holder: (a) must curtail all other water uses, (b) allow the watermaster access to confirm compliance, (c) limit diversion of water for stock to an amount specified in the rule, (d) prevent dewatering of the stream (no less than 2 cubic feet per second streamflow, (e) record information as specified in the rule and provide it to the Department upon request.

Effective Date: By law temporary rules may only be in effect for 180 days. In addition, the preference may only occur while a Governor's drought declaration is in effect. As a result, the duration of the preference under these rules is the period of the drought declaration in Klamath County pursuant to Executive Order 18-02, or 180 days after the effective date of the rules, whichever is sooner.

IV. Suspension of OAR 690-022-020 to 690-022-030

In 2014, the Commission adopted temporary rules to provide a preference for stock water and human consumption uses. Due to the anticipated need for the rules to extend beyond the 180 days that are allowed for temporary rules, the Commission also adopted "permanent" rules to allow the preference to continue through December 31, 2014 (see staff report for Agenda Item A, September 2014). As specified in OAR 690-022-020 and the staff report to the Commission, the rules were repealed and in effect through December 31, 2014. However, in order to remove them from the Secretary of State's website, the Commission will need to undertake another permanent rulemaking process to clean up the record. In order to avoid confusion during the 2018 declared drought, the proposed action before the Commission proposes to suspend OAR 690-022-020 to 690-022-030 (striketthrough in Attachment 6) through this temporary rulemaking.

V. Conclusion

The Department will continue working with water users in the basin to eliminate the need for a preference in the future. Implementing alternative sources of supply and efficient water delivery systems will limit the need for water users to seek the preference in the future, and align the Klamath basin with other basins in the state that have longer

experience under a regulated system. For 2018, the Department recommends adopting the preference for water for human consumption and stock watering as provided in the rules.

VI. Alternatives

The Commission may consider the following alternatives:

1. Adopt administrative temporary rules OAR 690-022-0060 to OAR 690-022-0063, and suspend OAR 690-022-020 to OAR 690-022-030, as proposed in Attachment 6.
2. Modify proposed rules in Attachment 6 to adopt temporary administrative rules under OAR 690-022-0060 to OAR 690-022-0063 and suspend OAR 690-022-020 to OAR 690-022-030.
3. Do not adopt the rules.

VII. Recommendation

The Director recommends Alternative 1.

Attachments

1. Executive Order No. 18-02 - Governor Brown drought emergency declaration in Klamath County
2. March 16, 2018 letter from the City of Chiloquin
3. April 2, 2018 letter from the Klamath Tribes
4. April 6, 2018 letter from the Sprague River Water Resource Foundation
5. April 9, 2018 letter from Modoc Point Irrigation District
6. Final Proposed Rules - Division 22 Klamath Drought Emergency Rules 2018
7. Draft Stock Water Preference Notice Form
8. Draft Human Consumption Preference Notice Form

Ivan Gall
503-986-0847

**EXECUTIVE ORDER NO. 18-02****DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN
KLAMATH COUNTY DUE TO LOW SNOWPACK, PRECIPITATION,
AND STREAMFLOW, AND WARMER THAN NORMAL
TEMPERATURES**

Pursuant to ORS 536.740, I find that the continuing low snowpack, lack of precipitation, low streamflows, and warmer than normal temperatures are likely to cause natural and economic disaster conditions in Klamath County, resulting in a severe, continuing drought emergency in that county during 2018.

Forecasted water conditions are not expected to improve, and drought is likely to have significant economic impacts on agricultural, livestock, and natural resources in Klamath County. Dry conditions will place agricultural and livestock investments at risk; threaten natural resources, and recreational and tourism activities; and subject the regional economy to widespread and severe damage.

Conditions are being monitored and analyzed by the state's natural resource and public safety agencies, including the Oregon Water Resources Department and the Oregon Office of Emergency Management.

Preparation and timely response to drought are vital to the safety of persons, property, and the economic security of the citizens and businesses of Klamath County. I therefore declare that a severe, continuing drought emergency exists in Klamath County.

NOW, THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

- I.** The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources to mitigate drought conditions and to assist in agricultural recovery in Klamath County.
- II.** The Oregon Water Resources Department and the Water Resources Commission are directed to coordinate and provide assistance to water users in Klamath County as the Department and Commission determine is necessary and appropriate in accordance with ORS 536.700 to 536.780.



EXECUTIVE ORDER NO. 18-02
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- III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in Klamath County.
- IV. All other state agencies are directed to coordinate with the above agencies and to provide appropriate state resources as needed to assist affected political subdivisions and water users in Klamath County.
- V. This Executive Order expires on December 31, 2018.

Done at Klamath Falls, Oregon, this 13th day of ^{March} ~~February~~, 2018.



Kate Brown
GOVERNOR

ATTEST:

Dennis Richardson
SECRETARY OF STATE



City of Chiloquin

INCORPORATED 1926

P.O. Box 196
Chiloquin, OR 97624
(541) 783-2717
Fax (541) 783-2035

From the Desk of
Mark Cobb
Mayor, City of Chiloquin

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

Re. Chiloquin Community Well

March 16, 2018

Director Tom Byler,

The State of Oregon, Governor Kate Brown has declared a drought in Klamath County on March 13, 2018. Under the drought declaration there are provisions allowing for The State Water Resource Board to establish a preference of use for the city's well.

So, I am hereby, on behalf of the City of Chiloquin, requesting the Drought Commission and/or The State Water Resource Board to grant to Chiloquin's water well (water system 4100184) an elevated level of preference of use for human consumption as allowed under the State's drought provisions.

Sincerely,

Mayor Mark Cobb
541/591-0949
markcobb @centurylink.net



April 2, 2018

Oregon Water Resources Commission
Attn: Cindy Smith
725 Summer St. NE
Suite A
Salem, OR 97301

The Klamath Tribes Tribal Council

By Email to Cindy.s.smith@oregon.gov
And to Thomas.j.paul@oregon.gov

Dear Commissioners:

The Klamath Tribes understand that, in the wake of Governor Brown's recent drought declaration, the Oregon Water Resources Commission ("Commission") is considering promulgating temporary "emergency" rules that would prioritize water rights for human and stock water consumption above water rights for all other purposes, including the Tribes' time immemorial instream flow claims. The Tribes have previously expressed to the Commission the Tribes' concerns that such rules come directly at the expense of the Tribes' senior water rights, and risk unacceptable impacts to essential Tribal treaty resources and federally listed critically endangered C'waam (Lost River Sucker) and Koptu (Shortnose Sucker). We continue to have those concerns now, and are submitting these comments and proposed modifications to the 2015 temporary rules to avoid these impacts.

Perhaps most seriously, as we articulated in our comments regarding your Klamath County-focused rulemaking processes in 2014 and 2015, by subordinating the Tribes' senior water rights to "preferred" domestic and stock uses, these preference rules run contrary to the federal reserved water rights doctrine, and that the State of Oregon lacks the legal authority to supersede the Tribes' water rights in this manner. Nevertheless, and without contradicting or compromising this principal, the Tribes will continue to work constructively with the Commission, the Oregon Water Resources Department (OWRD), and our neighbors in the Klamath Basin to develop reasonable emergency rules for this low water year that do not force us into a more adversarial posture.

We appreciate that the Commission took some of our comments into account in its development of the 2015 temporary rules (OAR 690-022-0050, *et seq.*), such as the importance of promulgating separate rules for human and stock consumption and the inclusion of the requirement that streams may not be dewatered under those rules. Yet those 2015 rules still raise serious issues that can be avoided. To that end, we submit in this letter both general comments and specific language suggestions that provide greater clarity and certainty for all water rights holders in the Klamath Basin and better meet the legislative and administrative goals and objectives of temporary drought rules pursuant to ORS 536.700-536.780 and OAR 690-019-0700.



Content of Proposed Rules

Quantitative Limits. The 2015 rules impose only narrative limitations on the amount of water that may be used under their exceptions. OAR §§ 690-022-0054(4); 690-022-0055(3). Any new rule should impose quantitative limits on the maximum amount of water, on a per capita per day basis, that is authorized for use under the rules. As the Klamath Tribes – and other senior water rights holders – are the ones being deprived of the water that will be used pursuant to these rules, it is essential to impose stringent limits on the amount of water the Tribes and other senior water rights holders are being forced to contribute. The 2015 rules’ narrative limitations allow too much room for “business as usual” water consumption, where emergency drought rules that reallocate water away from senior water rights holders should instead be crafted and implemented to require heightened conservation and efficiency.

No expansion of stock demand. The Klamath Tribes and other senior water right holders should not have their senior water rights diminished to satisfy the needs of livestock that other water rights holders voluntarily chose to bring into the Klamath Basin from elsewhere this year. Therefore, stock use under any new rule should be limited both by a per-head volume (as stated above) and also based on the number of animals that were in fact present in the Klamath Basin as of the date of publication of the proposed rules, or no later than April 15, 2018.

Efficiency. The 2015 rules allow for the delivery of stock water by any means, with no limitation on the use of long, potentially leaky or otherwise inefficient canals or ditches. Any new rule should require the efficient delivery of stock water by either closed piping or truck and preclude the use of open ditches. Along with being a sound water conservation measure, this requirement would also reduce the risk of “inadvertent” irrigation occurring along the course of a long open ditch – which we trust is not a practice the Commission intends to condone but the risk of which remained too large under the 2015 rules. While this requirement may impose some burden on certain stock water users, it is important to bear in mind that the Tribes and other senior water right holders bear the brunt of these rules, inverting the prior appropriation doctrine. The Commission should strive to minimize this inversion to the greatest extent possible, and propose reasonable efficiency requirements that are directly and closely related to this important goal.

Measurement and Reporting. This is at least the third time in the past five years that rules prioritizing domestic and stock uses in the Klamath Basin are being considered due to poor water conditions. To allow for better planning to address future drought conditions, and to understand the magnitude of the impacts such rules impose on the Klamath Tribes and other senior water right holders, all users of water under any new rule should be required to measure those uses of water, and to file a report with OWRD no later than 45 days after the rules’ expiration inventorying the quantity and timing of their uses while the rules were in effect. While this requirement, too, may impose some burden on junior water users, it is an eminently reasonable and appropriate condition when laid against the tremendous benefit that the rules’ preference confers on those users at the expense of senior water right holders like the Tribes.

Stream Dewatering. While the narrative requirement in the 2015 rules that stock water users may not completely dewater a stream is a step in the right direction, it is not sufficiently protective to ensure that privileged stock uses under the rule do not pose grave risks federally endangered aquatic species. The Klamath Tribes therefore propose that the requirement be strengthened to preclude any diversion for stock use that would have the effect of reducing live stream flow below 2 cubic feet per second in any reach where the proposed stock water diversion would take place.

Penalties for Abuse. Since the proposed rules invite junior water right holders to use water they otherwise would not be entitled to use, the rules should also contain meaningful disincentives for abuse. A penalty provision is particularly important because of the limitations inherent in trying to rely on real-time enforcement of dispersed stock and human consumption uses to ensure water user compliance with these rules. Despite the Klamath Tribes having raised this issue then, the 2015 rules were disappointingly silent on this front.

Specific Language Changes

The proposed changes set forth below use the language of the 2015 rules as their starting point (additions are underlined; deletions are in strike-through). They are intended to capture the minimum improvements the Klamath Tribes wish to see in any new set of rules and are not intended to be an endorsement of either the 2015 rules or any prospective rules for 2018 or future years.

Rule 690-022-0054:

Amend subsection (4) as follows:

“Water diverted for stock water is limited to the amount appropriate for the specific number of livestock it serves, up to a maximum of two gallons per hundred pounds of bodyweight per animal per day, and only for livestock physically present in the Klamath Basin no later than April 15, 2018. Water used under this subsection and shall be delivered only through covered piping or by truck. Conveyance of water through open canals, ditches or similar methods of conveyance is not allowed under this rule ~~only the conveyance amount necessary to provide water to the place of use.”¹~~

Amend subsection (5) as follows:

“The diversion of water under the stock water preference is not allowed if the diversion will result in the flow of the reach where the diversion would occur to fall below 2 cfs ~~shall not result in the complete dewatering of a stream.”~~

New Section:

“Measurement and Reporting.

“(1) Every person diverting water pursuant to the stock water preference of these rules shall meter or otherwise measure their diversions on both a daily and a cumulative basis.

¹ This change would also require the modification of OWRD’s draft 2018 Stock Water Preference Notice to remove the options of “Open Canal” and “Other” under the “Water Delivery Method” section on page 2 of that form.

“(2) Within 45 days of the conclusion of the effective period for the temporary preference as set forth in [OAR 690-022-0050(3)], every person diverting water pursuant to the stock water preference of these rules shall file with the Department a report, on a form prescribed by the Department, concerning their water use under these rules.”²

New Section:

“Violations and Penalties.

“(1) Any violation of the terms of these rules constitutes a Major Class I violation under [OAR 690-260-0040].


“(2) Civil penalty assessments shall be imposed for violations of these rules on the terms and pursuant to the process set forth in [OAR 690 Division 260].”

Conclusion

The Klamath Tribes are disappointed to find ourselves again in a situation where the provision of emergency relief is being contemplated at the expense of the Tribes’ water rights and treaty resources. The Klamath Basin needs to arrive as a sustainable level of water demand that recognizes the priority of the Tribes’ time immemorial instream flows to protect its invaluable treaty resources, and the repeated promulgation of “emergency” rules is delaying this effort. The Tribes strongly urge the Commission to make clear that long-term planning that includes all stakeholders is needed to equitably account for recurring drought and changing climatic conditions, and that future requests to rely on temporary rules will be looked on very unfavorably, particularly when it comes to exceptions for stock water use. The Tribes are forced to plan on an annual basis for the protection of our treaty resources under actual water conditions. Stock growers should be expected to do nothing less, and without recourse to water that rightfully should go to the Tribes in the first instance. At a bare minimum, the provisions we identified in this letter should be included in any new rules.

Thank you for your consideration of these comments and recommendations. Please do not hesitate to contact the Klamath Tribes’ legal counsel (Douglas MacCourt at dmaccourt@rosettela.com or Jay Weiner at jweiner@rosettela.com) for any questions or clarifications in this letter.

Regards,



Donald C. Gentry
Chairman, The Klamath Tribes

² This form should require, at a minimum, the name and address of the diverter, the water use authorization under which they claim the right to use water, and the inclusion of both the daily and cumulative use information. In the event that the stock water rule form identified in 690-022-0054(3) remains substantially the same as the draft that was shared with the Tribes on March 26, 2018, that could be sufficient information for stock water uses. For human consumption uses, the form contemplated by subsection (2) of the Measurement and Reporting provision should also the point(s) of diversion, the water delivery method, and the steps being taken to secure alternate supplies to meet future needs without recourse to temporary emergency preference rules.

Sprague River Water Resource Foundation

PO Box 6

Beatty, Oregon 97621

April 6, 2018

Dear Oregon Water Resource Commission,

The Sprague River Water Resource Foundation (SRWRF) is requesting temporary rules for the use of surface water for stock water in the Sprague and Williamson River drainages of Klamath County. We are asking that this usage be granted for a period of 180 days during the 2018 declared drought.

The members of SRWRF have been diligently developing stock water wells for the last four years, with assistance from both state and federal entities. There have been 18 livestock wells developed in Klamath County and in use since January 2017, and 132 since January 2013. However, because of limited storage capacity and its associated costs, some surface water will be necessary to augment the livestock watering needs.

Thank you for your time and consideration. If you have any questions or concerns, please don't hesitate to contact Garrett Roseberry, telephone (541) 891-4451.

Sincerely,

Sprague River Water Resource Foundation

Thomas Byler
724 Summer Street NE, Suite A
Salem, OR 97301-1266

Dear Mr. Byler and Committee Members

Modoc Point Irrigation District needs livestock watering delivered in our ditches. We are located in Northern Klamath County, above the Klamath Lake. We were notified that the Klamath Tribes have once again made a call on all our irrigation water and to not expect irrigation deliveries for the entire summer. Because Gov. Brown has declared us in a drought, we are exercising our emergency right to this livestock drinking water. Last year we didn't get the livestock water and our irrigation district only got to irrigate part of June and part of July. The inability to get livestock drinking water caused a lot of hardship on our members.

MPID is a small district, just over 4000 acres with around 68 members to date. There are many pastures where drinking water is not available for cattle/sheep to water from. We fully understand that the drinking water is strictly that, not for irrigation. We have a full time ditch rider that would make sure the water is only being accessed for drinking water for the animals and not spread on anybody's land.

I did a quick tally of our members and have come up with how many beef cattle we run. My informal poll came out with 3865 head of cattle (calves are not counted) for this District and 600 sheep in the District as well. Again this was an informal poll if we did a formal poll of every landowner those numbers would increase. Again we are a small district with small time ranchers, no huge numbers here. The members do rely on their stock and the water as income and need it desperately.

I look forward to hearing from you in a positive way if you need any more information please contact me so that I can provide what you need. Again, thanks for your time and consideration.

Sincerely

Cindy Combs
Vice President of Modoc Point Irrigation District
541-891-3580
ccombsforsale@gmail.com

FINAL PROPOSED RULES FOR COMMISSION CONSIDERATION

**OREGON ADMINISTRATIVE RULES
CHAPTER 690 DIVISION 22
EMERGENCY WATER PROVISIONS – KLAMATH COUNTY**

Temporary Rules Proposed for Adoption

690-022-0060

Purpose and Authority

- (1) Notwithstanding OAR 690-019-0070, the purpose of OAR 690-022-060 to OAR 690-022-063 is to implement ORS 536.750(1)(c), which authorizes the Commission, pursuant to a gubernatorial declaration that a severe, continuing drought exists, to grant a temporary preference to water rights allowing water for human consumption or stock watering use over other water uses regardless of priority date.
- (2) These rules address an immediate threat to the health and welfare of the people of Oregon that would otherwise occur if regulation for senior water rights in Klamath County curtailed or prohibited use of water rights for human consumption and stock watering.
- (3) OAR 690-022-060 to OAR 690-022-063 become effective upon filing. During the effective period of these rules, not to exceed 180 days, and pursuant to Executive Order 18-02 declaring a severe, continuing drought emergency in Klamath County, and pursuant to ORS 536.750(1)(c), the Commission grants a preference of use for water rights for human consumption or stock watering as provided in these rules.
- (4) The preferences established under these rules do not authorize a water right holder exercising the preference to make a call for water.
- (5) For the purposes of these rules, a water right allowing for human consumption may include, but is not limited to, water rights for municipal, commercial, industrial, quasi-municipal, and domestic uses.
- (6) The temporary preference provided by these rules shall remain in effect only during the effective time period of the Governor's Executive Order no. 18-02, or 180 days from the effective date of this rule, whichever is shorter.

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

690-022-0061

Definitions

Unless the context requires otherwise, the words and phrases used in OAR 690-022-0060 to OAR 690-022-0063 have the following meaning:

- (1) "Commission" means the Oregon Water Resources Commission.
- (2) "Department" means the Oregon Water Resources Department.
- (3) "Human consumption" means the use of water for the purposes of drinking, cooking, and sanitation.
- (4) "Stock watering" or "stock water" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.
- (5) "Water right" means a water use established by:

- (a) An adjudication under ORS chapter 539 as evidenced by a determined claim as provided in the Amended and Corrected Findings of Fact and Order of Determination entered in the Klamath County Circuit Court on February 28, 2014;
- (b) An adjudication under ORS chapter 539 as evidenced by a court decree;
- (c) A water right certificate;
- (d) A water use permit;
- (e) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission.

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

690-022-0062

Applicability of Preference for Stock Watering in the Williamson River Basin

During the effective period of these rules and a drought declaration under Executive Order 18-02 in Klamath County, and notwithstanding any provision of ORS 536 to ORS 543A to the contrary, the Commission grants a temporary preference for stock watering as follows:

- (1) The stock water preference applies only to the diversion or use of water under a water right within Klamath County for the Williamson River basin, including the Sprague River, Sycan River and all tributaries.
- (2) Uses of water for stock watering, to the extent authorized under a water right, are granted a preference over other water uses regardless of the priority date of the water right for stock watering.
- (3) Water right holders in Klamath County who want to exercise the stock water preference shall provide a notice to the watermaster on a form provided by the Department. .
- (4) Upon receipt of the notice and verification that the notice is consistent with the terms of the water right and with these rules, the water right holder may exercise the preference as directed by the watermaster provided that:
 - (a) Water diverted for stock water is limited to an amount not to exceed one-tenth of one cubic foot per second, equivalent to 45 gallons per minute, per thousand head of stock as measured at the surface water point of diversion or at the well.
 - (b) The diversion of water under the stock water preference may not result in the depletion of a stream to less than 2 cubic feet per second.
 - (c) The water right holder curtails all other water uses unrelated to stock water and allows the watermaster access to confirm compliance.
 - (d) The water right holder records information on the number of days stock water is diverted, the diversion rate, and how many stock were served.
- (5) Exercise of the stock water preference only applies to a water right holder that is regulated by the watermaster in order to satisfy a senior water right.
- (6) Water right holders exercising the preference shall provide the information in subsection 4(d) to the Department upon request.

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

690-022-0063

Applicability of Preference for Human Consumption in Klamath County

During the effective period of these rules and a drought declaration under Executive Order 18-02 in Klamath County, and notwithstanding any provision of ORS 536 to ORS 543A to the contrary, the Commission grants a temporary preference for water for human consumption as follows:

- (1) Water right holders in Klamath County who want to exercise the human consumption preference shall provide a notice to the Watermaster on a form prescribed by the Department.
- (2) Upon receipt of the notice and verification that the notice is consistent with the terms of the water right and with these rules, the water right holder may exercise the preference as directed by the watermaster, provided that the water right holder exercising the human consumption preference shall:
 - (a) Use the most efficient means of delivery available to them to divert the minimum amount necessary to meet human consumption water needs
 - (b) Curtail all other water uses unrelated to human consumption; and
 - (c) Allow the watermaster access to confirm compliance.
- (3) The option for a water right holder to exercise the human consumption preference only applies to a water right holder that is regulated by the watermaster in order to satisfy a senior water right.

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

Old Rules Proposed for Suspension [Strikethrough]

~~690-022-0020~~

~~Purpose and Statutory Authority~~

- ~~(1) The purpose of these rules is to implement ORS 536.750(1)(c), which authorizes the Commission, pursuant to a gubernatorial declaration that a severe, continuing drought exists, to grant a temporary preference to water rights for human consumption or stock watering use over other water uses regardless of priority date.~~
- ~~(2) These rules, pursuant to the Governor's Executive Order no.14-01, dated February 13, 2014, are effective upon filing, and shall remain effective until December 31, 2014. During the effective period of these rules and a drought declaration under ORS 536.740 in Klamath County, the Commission grants a preference in Klamath County of use for water rights for human consumption or stock watering as provided in this rule. The temporary preference of use shall only apply to Klamath County and shall remain in effect only during the effective time period of the Governor's drought declaration in Klamath County while these rules are in effect.~~
- ~~(3) These rules are repealed on December 31, 2014.~~

690-022-0025

Definitions

~~Unless the context requires otherwise, the words and phrases used in division 22 have the following meaning:~~

- ~~(1) “Commission” means the Oregon Water Resources Commission.~~
- ~~(2) “Department” means the Oregon Water Resources Department.~~
- ~~(3) “Human Consumption” means the use of water for the purposes of drinking, cooking, and sanitation.~~
- ~~(4) “Stock Watering” means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.~~

690-022-0030

Applicability and Preference

~~During the effective period of a drought declaration under ORS 536.740 in Klamath County, and notwithstanding any provision of law to the contrary, the Commission grants a temporary preference for human consumption and/or stock watering as follows:~~

- ~~(1) The preference described in these rules applies only to the diversion or use of water within Klamath County.~~
- ~~(2) Uses of water for human consumption and stock watering, to the extent authorized under a water right certificate, permit, decree, or findings of fact and order of determination issued in an adjudication subject to ORS Chapter 539, are granted a preference over all other water uses regardless of the priority date of the water right for stock watering or human consumption.~~
- ~~(3) The Department will regulate water rights in Klamath County in accordance with the preference for water rights for human consumption and stock watering use as provided in subsection (2) of this section.~~
- ~~(4) Water right holders exercising the human consumption or stock water preferences established in this rule shall assure curtailment of water uses unrelated to the preference.~~
- ~~(5) This preference does not authorize a water right holder exercising the preference to make a call for water.~~
- ~~(6) The option for a water right holder to exercise the preference only applies to a water right holder being regulated by the watermaster in order to satisfy a senior water right.~~



2018 Stock Water Preference Notice - DRAFT

Oregon Revised Statute 536.750(1)(c) authorizes the Water Resources Commission to grant a preference of use to rights for human consumption or stock watering. Governor Kate Brown declared a drought in Klamath County under Executive Order No. 18-02 on March 13, 2018. The Water Resources Commission adopted temporary emergency administrative rules, OAR 690-022-0060 to OAR 690-022-0063, on April 13, 2018, effective XXX date through XXX date.

The stock water use preference applies when a water right authorizing stock watering is regulated off by the Watermaster in response to a call for water by a senior water user. Use of the stock water preference means that the quantity of water diverted under the preference is not available to the senior water user. This is not a desired or sustainable result. For this reason, you are encouraged to develop alternative supplies to meet your stock water needs in the future without a preference.

This preference only allows for use of stock water under a water right during a call, preventing the stock water use from being regulated off. All other use will be regulated off when required by the Watermaster. The water user is expected to take all measures available to minimize the quantity of water diverted to meet the stock water use. Measures such as piping or trucking the water to stock water troughs or tanks are preferred methods.

The temporary rules grant a preference of use for water rights for stock water in Klamath County in the Williamson River Basin (including the Sprague River, Sycan River and all tributaries) provided that the water right holder: (a) must curtail all other water uses, (b) allow the watermaster access to confirm compliance, (c) limit diversion of water for stock to an amount specified in the rule, (d) prevent dewatering of the stream (no less than 2 cubic feet per second streamflow, (e) record information as specified in the rule and provide it to the Department upon request.

The temporary rules require water users wishing to utilize the stock water preference to provide notice to the Klamath Basin Watermaster, prior to exercising the preference. Submission of this form to the Watermaster satisfies that notice requirement.

CONTACT INFORMATION

- **NAME OF WATER USER:** _____
- **ADDRESS:** _____
- **CONTACT TELEPHONE NUMBER:** _____

WATER USE AUTHORIZATION (List only the stock water use authorization being used)

- **WATER RIGHT PERMIT No.:** _____
- **WATER RIGHT CERTIFICATE No.:** _____
- **WATER RIGHT TRANSFER No.:** _____
- **CLAIM No. OF CLAIM INCLUDED IN ORDER OF DETERMINATION FILED WITH KLAMATH COUNTY CIRCUIT COURT ON MARCH 7, 2013:** _____

WATER USE AUTHORIZATION DETAILED INFORMATION

- **AUTHORIZED SOURCE OF WATER:** _____
- **POINT OF DIVERSION(S) TO BE USED TO MEET STOCK NEED:**

- **NUMBER OF STOCK TO BE SERVED:** _____
- **ESTIMATED DATE WHEN STOCK ARE TO BE MOVED:** _____
- **DESCRIPTION OF STOCK TO BE SERVED:** _____

WATER DELIVERY METHOD

When exercising the preference, water diverted for stock water is limited to an amount not to exceed one-tenth of one cubic foot per second, equivalent to 45 gallons per minute, per thousand head of stock as measured at the surface water point of diversion or at the well.

- ☐ **CLOSED PIPELINE FROM WATER SOURCE TO STOCK TANK OR TROUGH**
- ☐ **TRUCK AND HAUL TO STOCK TANK OR TROUGH**
- ☐ **OPEN CANAL**
- ☐ **OTHER (EXPLAIN):**

(CONTINUED ON NEXT PAGE)

STEPS BEING TAKEN TO SECURE ALTERNATE STOCK WATER SUPPLY TO MEET FUTURE NEEDS:
(Such as: construction of a well or filing of water right application for stock water pond)

UNDERSTANDING OF REQUIREMENTS TO USE THE STOCK WATER PREFERENCE

I understand that I, as the water right holder, I may exercise the preference during a call as directed by the watermaster provided that *(sign initials below)*:

_____ Water diverted for stock water is limited to an amount not to exceed one-tenth of one cubic foot per second, equivalent to 45 gallons per minute, per thousand head of stock as measured at the surface water point of diversion or at the well.

_____ The diversion of water under the stock water preference may not result in the depletion of a stream to less than 2 cubic feet per second.

_____ I must curtail all other water uses unrelated to stock water and allow the watermaster access to confirm compliance.

_____ I must record information on the number of days stock water is diverted, the diversion rate, and how many stock were served. I will provide this information to the Department upon request.

Printed Name: _____

Signature: _____ Date: _____

Submit Form to: Dani Watson – District 17 Watermaster
 305 Main Street
 Klamath Falls, OR 97601



2018 Human Consumption Preference Notice DRAFT

Oregon Revised Statute 536.750(1)(c) authorizes the Water Resources Commission to grant a preference of use to rights for human consumption or stock watering. Governor Kate Brown declared a drought in Klamath County under Executive Order No. 18-02 on March 13, 2018. The Water Resources Commission adopted temporary emergency administrative rules, OAR 690-022-0060 to OAR 690-022-0063, on April 13, 2018, effective XXX date through XXX date.

The temporary rules grant a preference of use for water for human consumption.

Water for human consumption means the use of water for the purposes of drinking, cooking, and sanitation. The preference for water use for human consumption applies when a water right authorizing domestic, commercial, industrial, municipal, quasi-municipal use, or other use that may allow water for human consumption, is regulated off by the Watermaster in response to a call for water by a senior water right holder. Using water under the preference means that that quantity of water used is not available to the senior water user. This is not a desired or sustainable result. For this reason, you are encouraged to develop alternative options to meet your human consumption needs to prevent the need for a preference in the future.

Only that quantity of water required to meet the human consumption component of a water right may be appropriated. All other authorized use is regulated off when required by the Watermaster. The water user is expected to take all measures available to minimize the quantity of water needed to meet the human consumption needs. The rules require the water right holder exercising the preference to:

- (a) Use the most efficient means of delivery available to them to divert the minimum amount necessary to meet human consumption water needs,
- (b) Curtail all other water uses unrelated to human consumption; and
- (c) Allow the watermaster access to confirm compliance.

The temporary rules require water right holders wishing to utilize the stock water or human consumption preference to provide notice to the Klamath Basin Watermaster. Submission of this form to the Watermaster satisfies that notice requirement.

Submit Form to: **Dani Watson – District 17 Watermaster**
 305 Main Street
 Klamath Falls, OR 97601

CONTACT INFORMATION

- NAME OF WATER USER: _____
- ADDRESS: _____
- CONTACT TELEPHONE NUMBER: _____

WATER USE AUTHORIZATION (List only the human consumption use authorization being used)

- WATER RIGHT PERMIT No.: _____
- WATER RIGHT CERTIFICATE No.: _____
- WATER RIGHT TRANSFER No.: _____
- CLAIM No. OF CLAIM INCLUDED IN ORDER OF DETERMINATION FILED WITH KLAMATH COUNTY CIRCUIT COURT ON MARCH 7, 2013: _____

WATER USE AUTHORIZATION DETAILED INFORMATION

- AUTHORIZED SOURCE OF WATER: _____
- POINT OF DIVERSION(S) or APPROPRIATION TO BE USED TO MEET HUMAN CONSUMPTION NEED: _____

- NUMBER OF PERSONS (POPULATION) TO BE SERVED: _____

ESTIMATED WATER NEEDED TO MEET HUMAN CONSUMPTION (CFS)

_____ FOR MUNICIPAL OR QUASI-MUNICIPAL USE (WINTER CFS USE)

_____ FOR DOMESTIC USE (CFS INDICATED ON THE WATER PERMIT/CERTIFICATE

STEPS BEING TAKEN TO SECURE ALTERNATE SUPPLY TO MEET FUTURE NEEDS:

UNDERSTANDING OF RULES:

The water right holder exercising the preference must (a) Use the most efficient means of delivery available to them to divert the minimum amount necessary to meet human consumption water needs, (b) Curtail all other water uses unrelated to human consumption; and (c) Allow the watermaster access to confirm compliance. Initial Here: _____

Name: _____

Signature: _____ Date: _____