

Oregon Parks and Recreation Commission

June 25, 2014

Agenda Item: 12a

Action

Topic: Request to adopt OAR 736-040, Scenic Waterway Rules

Presented by: Richard Walkoski

Background:

The Commission granted approval to begin rulemaking to modify OAR 736-040 at its May 8, 2013 meeting. Portions of the John Day Scenic Waterway are designated as a federal Wild and Scenic River, managed by the Bureau of Land Management (BLM). The BLM has asked OPRD to adopt public use regulations within the state scenic waterway that mirror existing federal laws. These laws include boater permit requirements, carrying and use of approved personal flotation devices, carrying portable toilets, campfire restrictions and prohibition of littering.

The federal recreation regulations for the John Day River are not enforceable by the Oregon State Police (OSP). Once OPRD adopts these regulations through administrative rule, OSP and local law enforcement officials are able to support the BLM in their law enforcement efforts. OPRD has worked with the BLM to draft rule language that mirrors the federal rules.

While working with the BLM on John Day rules OPRD was asked to make two changes to the Deschutes River rules: removing a reference to camping stay limits at Deschutes State Park which created a conflict with camping limits on the river; and adding regulations regarding seasonal limitations of motor boats on the Deschutes, which are included in existing BLM rules. Those requested revisions have been included in Deschutes section (736-040-0070) of the Scenic Waterway rules.

Notice of rulemaking was posted in the May Secretary of State's bulletin and comments were accepted through 5:00 PM on May 30, 2014. No public comments were received. All proposed rule changes have been reviewed for legal sufficiency by Steven Shipsey, Assistant Attorney General.

Prior Action by Commission: On May 8, 2013, the Commission approved a staff request to begin rulemaking for OAR 736-040-0055 to add regulations matching federal wild and scenic regulations.

Action Requested:

Staff requests adoption of the permanent modifications to OAR 736-040 outlined above and included in attachments A and B.

Attachments: Attachment A - OAR 736-040 revisions (markup); Attachment B - OAR 736-040 revisions (clean)

Prepared by: Richard Walkoski

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

736-040-0065

John Day River Scenic Waterway

(1) Natural River Area:

(a) That segment of the scenic waterway beginning at the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, thence downstream approximately 51.7 miles to the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3, is classified as a Natural River Area;

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(a)(C). In addition to these standards, all new development in resource zones (i.e. farm-related dwellings) shall comply with Gilliam County or Sherman County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography, ~~and/or~~ vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "total screening," as used in Section section (1) of this rule, shall consist of adequate topography, ~~and/or~~ density and mixture of native evergreen and deciduous vegetation, or a combination thereof to totally obscure (~~100.%~~ percent) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, ~~and/or~~ vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography, ~~and/or~~ vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

of "substantial screening," as used in ~~Section~~section (1) of this rule, shall consist of adequate topography, ~~and/or~~ density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least ~~75%~~percent) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be ~~permitted~~allowed. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (a) through (j) of this rule, are more restrictive than the Gilliam and Sherman County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(2) Scenic River Areas: Two segments of the John Day River main stem are designated as Scenic River Areas:

(a) That segment of scenic waterway beginning at the confluence of Service Creek at about river mile 157.4 and extending downstream approximately 62.4 miles to the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, is classified as a Scenic River Area;

(b) That segment of scenic waterway beginning at the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3 and extending approximately 33.3 miles downstream to Tumwater Falls, at about river mile 10, is classified as a Scenic River Area.

(c) These Scenic River Areas shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm related dwellings) shall comply with Sherman County, Gilliam County, Wasco County, Wheeler County, or Jefferson County land use regulations, whichever applies.

(d) New structures and associated improvements shall be substantially screened by topography, ~~and/or~~ native vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except for

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "substantial screening," as used in ~~Section-section~~ (2) of this rule, shall consist of adequate topography, ~~and/or~~ density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 ~~percent~~%) the viewed structure or improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography ~~and/or~~, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of "total screening," as used in ~~Section-section~~ (2) of this rule, shall consist of adequate topography ~~and/or~~, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to totally obscure (100% ~~percent~~) the subject improvement.

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be ~~permitted~~allowed. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (2), subsections (a) through (k) of this rule are more restrictive than the applicable County Land Use Development Ordinances, the above Oregon Administrative ~~rules~~ Rules shall apply.

(3) Recreational River Area:

(a) That segment of scenic waterway beginning at the confluence of Parrish Creek, at about river mile 168.7, about one mile west of Spray and extending downstream approximately 11.3 miles to the confluence of Service Creek, at about river mile 157.4, is classified as a Recreational River Area.

(b) The department shall administer ~~This this~~ Recreational River Area ~~shall be administered~~ consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (*i.e.* farm and forest related dwellings) shall comply with Wheeler County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography, ~~and/or~~ vegetation, or a combination thereof, except as provided by OAR 736-040-0030(5) and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "moderate screening," as used in ~~Section section~~ (3) of this rule, shall consist of adequate topography; ~~and/or~~ density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to moderately obscure (at least 50 percent%) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, ~~and/or~~ vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of "total screening," as used in section (3) of this rule, shall consist of adequate topography; ~~and/or~~ density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to totally obscure (100 percent%) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with ~~vegetation and/or~~ topography, or a combination thereof. If ~~existing inadequate~~ is inadequate topographic or vegetative screening ~~exists~~, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4–5 years).

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4–5 years). The condition of "partial screening," as used in section (3) of this rule shall consist of adequate topography; ~~and/or~~ density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to partially obscure (at least 30 ~~percent~~%) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetative management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (3), subsections (c) through (j) of this rule are more restrictive than Wheeler County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(4) Public Use of the John Day River Scenic Waterway

(a) Policy: The Commission finds that in order to protect and enhance the John Day River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment of river to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, persons using the John Day River Scenic Waterway for recreation purposes shall comply with these rules. These rules are in addition to other rules of the Commission adopted for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

general rules 'except in the instance of private property owners where only OAR 736 -040-0035 (Rules for Land Management) or this rule shall apply.

(b) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Approved portable toilet system" means a non-biodegradable, rigid, durable container designed to receive and hold human waste in any container position without leaking, or human waste bags.

(B) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(C) "Camping" means erecting a tent or creating a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer, or mooring a boat, or other action for the apparent purpose of overnight occupancy.

(D) "Developed Recreation Area/Developed Recreation Site" means an area or site that contains structures or capital improvements primarily used by the public for recreational purposes. These may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; grills or fire rings; tables; or controlled access.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the State of Oregon.

(F) "Display Intent To Remain Overnight" means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(G) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

(H) "Group" means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

(I) "Group Size Limit" means the maximum number of persons a boating group may have with while together within the John Day River Scenic Waterway, regardless of the number of persons covered by each boater registration form or required permit possessed by members of the group.

(J) "Human Waste Bag" means a commercially available sanitary bag designed to securely contain human waste and odor. The bag contains enzymes to break down waste into a deodorized gel and is approved by the Department of Environmental Quality for deposit into a landfill.

(K) "John Day River Scenic Waterway" means that portion of the John Day River designated in ORS 390.826(7) as a State Scenic Waterway. The portion of the John Day River Scenic Waterway that is affected

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

by this rule (OAR 736-040-0065) covers the section from Parrish Creek downstream to Tumwater Falls. The Scenic Waterway also includes all water and lands within 1.4 mile of the bank on either side of the river.

(L) "Personal Watercraft" means a motorboat, less than 16 feet, propelled by machinery which:

(1i) Uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power; and

(2ii) is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(M) "Refuse" means, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, charcoal, ash, cigarette butts, or burned debris.

(N) "Vehicle" means a motor-propelled means of transportation across land usually wheeled meant to carry one or more human being(s) regardless of design, including Off-Road Vehicles.

(d) Permits:

(A) Every boater or boating group shall obtain a John Day River boater permit prior to launching. The permit shall be carried by the boater, or group leader, and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the form or permit shall be signed by the permit holder in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(B) Every person landing, operating or riding in a boat or engaging in any camping, fishing or other activity in connection with being transported by a boat on any portion of the John Day River Scenic Waterway where a Bureau of Land Management permit is required, shall display his/her individual or group registration permit upon the demand of any law enforcement officer, Bureau of Land Management or department employee who is authorized to enforce these rules.

(e) Campfires, Fuel, Firepans and Smoking:

(A) Building, igniting, maintaining, using, tending a fire, or being within 20 feet of an illegal campfire, charcoal fire, portable propane campfire device or any other type of open flame is prohibited June 1 through September 30. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns. Are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g. propane) or liquid gas. Such stove or lanterns shall be operated in a responsible manner at all times.

(C) A person may not chop, saw, break, cut, burn or gather wood or other combustible material from any live or standing tree.

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquettes, and burned refuse shall be taken out of the scenic

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(E) Smoking shall be limited to non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(f) Camping:

(A) A person may not leave camping equipment or personal property overnight at or in an unoccupied, public campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(B) A person may not pay for a public campsite, which is not to be occupied by that same person, as a means to claim, hold, reserve or secure the site for subsequent occupancy by their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(C) Groups occupying any campsite may not exceed the maximum number of persons or vehicles allowed for that campsite.

(D) Every person or group occupying a campsite shall display his/her individual or group camping permit upon the demand of any law enforcement officer, Bureau of Land Management or Oregon Parks and Recreation Department employee who is authorized to enforce these rules.

(E) Occupants shall not dig or otherwise level the ground within public campsites.

(F) No person shall possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(g) Firearms: The discharge of firearms is prohibited within the John Day River Scenic Waterway except with a valid Oregon hunting license and tag during authorized hunting seasons. The discharge of firearms is prohibited within the John Day River Scenic Waterway at any time within a developed recreation area.

(h) Litter and Personal Sanitation:

(A) All persons shall place refuse in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse or similar materials shall be buried, abandoned, or burned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway for proper disposal.

(B) All persons shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by boating individuals and groups within the John Day River Scenic Waterway.

(C) All persons shall use either an approved portable toilet, which includes the use of human waste bags, or developed toilet facility to contain all human solid waste.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(D) All persons who remain, intend to remain, or display intent to remain overnight in a boat in camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied.

(E) No person shall leave, deposit, or scatter human waste, toilet paper, or items used at toilet paper, on the ground within the John Day River Scenic Waterway.

(F) While within the John Day River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Used human waste bags must be carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions.

(G) A person may not wash dishes or use soap in the river or any tributaries or less than fifty feet from any natural water source.

(H) Vehicle Restrictions:

(i) a person may not ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bedrails of a pickup truck, or properly secured as above on the bed of a flatbed motor vehicle. A person may not ride on the exterior portion of any motor vehicle within the John Day River Scenic Waterway.

(ii) A person may not operate a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

Stat. Auth.: [ORS 390.124](#); ORS 390.845(2)

Stats. Implemented: ORS 390.845(2); [ORS 390.826\(7\)](#).

736-040-0070

Deschutes River Scenic Waterway

(1) Deschutes River Scenic Waterway Recreation Area:

(a) ORS 390.932 creates the Deschutes River Scenic Waterway Recreation Area. ORS 390.934 directs the Department to adopt a management plan by rule to administer the Deschutes River Scenic Waterway Recreation Area. ORS 390.124 authorizes the Commission to adopt rules to carry out the duties, functions and powers imposed by law upon the Commission and the Department.

(b) Pursuant to ORS 390.934, the Commission adopts by reference the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1 (January 1993), and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System, (June 1997) as the management plan for the Deschutes River Scenic Waterway Recreation Area. Copies of the Lower Deschutes River Management Plan and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System are available from the Oregon Parks and Recreation Department, 725 Summer St N.E., Suite C, Salem, OR 97301.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(c) The state managing agencies, including the Department, Department of Fish and Wildlife, Oregon State Marine Board, and Oregon State Police and the local managing agencies, including Sherman, Wasco and Jefferson Counties and the City of Maupin shall perform their management responsibilities relating to the Deschutes River Scenic Waterway Recreation area according to the management plan adopted by this rule and ORS 390.805 to 390.925 and 390.930 to 390.940.

(d) The Confederated Tribes of Warm Springs and the Bureau of Land Management are encouraged to exercise their jurisdiction and to manage their lands in a manner consistent with the management plan adopted by section (3) of this rule and with ORS 390.805 to 390.925 and 390.930 to 390.940.

(2) Recreational River Area:

(a) The segment of the scenic waterway extending from the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian, (T 9S, R 13E, W.M.), Jefferson County, downstream approximately 96 miles to the Columbia River, but excluding the right bank shoreline (as seen when facing downstream) and adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is classified as a Recreational River Area.

(b) Within the Recreation River Area described in subsection (2)(a), the Department may not permit any new structures or improvements which are visible from the river, other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection.

(c) Additional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges which are visible from the river, will not be permitted.

(3) River Community Areas:

(a) The segment of the scenic waterway extending from Pelton Re-Regulating Dam downstream approximately four miles to the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian (T 9S, R 13E, W.M.), Jefferson County, is classified as a River Community Area. The shoreline and related adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is likewise classified as a River Community Area.

(b) Within the River Community Areas described in subsection (3)(a), when consistent with Jefferson County and Wasco County zoning ordinances, the Department may permit uses and structures including agriculture, single-family and multiple-family dwellings, churches, lodges, resorts, motels, transient public trailer parks, and necessary public service facilities. The Commission may establish ~~permitted~~ allowed densities of improvements and structures which are visible from the river after consultation with the appropriate county planning commission, the State Fish and Wildlife Commission, the U.S. Bureau of Land Management, the City of Maupin or the Warm Springs Confederated Tribes and such other persons and agencies as the Commission may select.

(4) Public use of the Deschutes River Scenic Waterway:

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(a) Policy: The Commission finds that in order to protect and enhance the Deschutes River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, the following rules shall be adhered to by persons using the Deschutes River Scenic Waterway for recreation purposes. These rules are in addition to other rules of the Commission promulgated for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules except in the instance of private property owners where only OAR 736-040-0035 (Rules for Land Management) or this rule shall apply.

(b) Restricted Areas:

(A) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon have closed all Reservation lands to public use except by permit. This closure, enacted by the Confederated Tribes, also affects all islands west of the middle of the river between the Pelton re-regulating dam and the north boundary of the Reservation near Two Springs Ranch at the power boat deadline.

(B) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon own the east and west banks of the Deschutes River between Sandy Beach and the State Route 16 bridge crossing downstream from Sherars Falls. Sandy Beach shall be the last designated boat take out upstream from Sherars Falls. The banks of the Deschutes River from Sandy Beach downstream to the State Route 16 bridge crossing, including the former take out on the west bank of the Deschutes River immediately upstream from Sherars Falls, shall be closed to boat put in or take out. Plan at page 74.

(C) All persons using the Deschutes River Scenic Waterway shall be advised that the Deschutes River from the upstream end of Rattlesnake Rapids at about river mile 2.5 and extending downstream to the no wake zone at the downstream end of Moody Rapids at about river mile .5 is a pass through zone. All floating craft, except float tubes, shall pass through this segment of river and shall not stop along or tie up to the riverbank except in the event of an emergency. Plan at pages 58-60.

(D) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Camping" means overnight occupation within the Deschutes River Scenic Waterway.

(B) "Day Use" means human presence within the Deschutes River Scenic Waterway between the hours of one hour before sunrise to 10:00 PM.

(C) "Designated Non-Fee Site" means a marked and designated campsite for which no fee is charged. The Deschutes River Managers shall designate river segments or zones where non-fee camping is allowed only in designated sites.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(D) "Fee Sites" means a marked and designated drive-in or developed camp site for which a fee is charged. Any reference in this rule, or OAR 736-040-0071, to drive-in or developed sites shall have the same meaning as Fee Site.

(E) "Group" as used in this rule means a party of two or more persons while present within the Deschutes River Scenic Waterway.

(F) "Group Site" as used in this rule means a fee site, designated non-fee site, or any other site designated by the Managing Agencies as a group site. Group sites shall be designated for use by nine persons or more, up to the maximum site capacity as designated by the Managing Agencies. Where no maximum capacity is designated, the maximum capacity shall be the maximum group size for the river segment.

(G) "Non-Fee Site" means a campsite for which a fee is not charged. As used in this rule, all references to undeveloped campsites or undeveloped sites have the same meaning as non-fee sites.

(H) "Occupied Non-Designated and/or Designated Non-Fee Boat-In Campsite" as used in this rule means the presence of at least one person for each campsite, who, if not physically present within the campsite, prominently displays in a readily legible manner, within the campsite, the person's name and boater pass number, or if the person is covered under a group pass, the person's name and the name and boater pass number of the group leader.

(I) "Overnight Occupation" means human presence between the hours of 10:00 PM and one hour before sunrise.

(J) "Recreation Site" means a marked and designated, general camping or activity area as designated by the Deschutes River Scenic Waterway Managers, or a public agency or political subdivision of the state. A recreation site shall generally contain individual campsites or a day use area.

(K) "Unoccupied" as used in this rule means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(L) "Walk-In Fee Site" means a marked and designated fee site in which the main recreation site is designated to be accessed by vehicle or boat. The individual campsite is generally a satellite campsite accessed on a walk-in basis from the main recreation site. Vehicle access is prohibited.

(d) Camping:

(A) Overnight camping is prohibited on all islands. Plan at page 63.

(B) Overnight camping length of stay shall be limited to:

(i) Four nights in undeveloped sites. Plan at page 63;

(ii) Fourteen nights in developed sites ~~except at Deschutes State Park where the camping limit shall be ten days out of 14~~. Plan at page 63;

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(iii) Nine nights for motorized boats between May 15 and October 15 in those areas where they are allowed. Plan at page 63.

(iii) Any camp established through the use of a motorized boat between June 15th and September 30th shall be entirely removed from the river along with the motorized boat during those periods of time that motorized boat use is restricted under OAR 250-030-0030 (See Lower Deschutes River Motor Boat Closure Schedule)

(C) No person shall leave camping equipment or personal property overnight at or in an unoccupied, public, non-fee, campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(D) At the end of a consecutive four night, overnight camping length of stay specified in subparagraph (4)(~~ed~~)(B)(i) of this rule, all camping equipment and personal property shall be removed from the area and cannot be relocated within 1/4-mile of the same site for a period of at least 14 nights. Plan at page 63.

(E) Between May 15 and October 15, whenever motorized boaters vacate a campsite and it will be unoccupied as that term is defined in paragraph (4)(~~ed~~)(C) of this rule, all camping and personal property shall be removed from the area and cannot be relocated within 1/4 mile of the same site for a period of at least 14 nights.

(F) Group size within the Deschutes River Scenic Waterway will be limited to 16 persons in segments 1, 3 and 4, and 24 persons in segment 2.

(G) Overnight camping group size shall be determined by the size and capability of the site. In no case shall group size exceed 16 people per site in Segments 1, 3 or 4 and 24 in Segment 2. Plan at page 63.

(H) Overnight occupancy in vehicle accessible public areas of the Deschutes Scenic Waterway will be allowed within designated fee sites only.

(I) Overnight occupancy within river areas that are managed as designated non-fee camping zones will be permitted only within designated and marked non-fee sites. Non-fee areas of river segment 1 are designated non-fee zones.

(J) Any group occupying fee or designated non-fee sites is required to abide by the designated capacity of the site. No group leader shall allow violation of this rule by any member of his/her group.

(K) Any group occupying fee or designated non-fee sites shall be required to contain all group and personal equipment within the site. Where a site boundary is marked, all group and personal equipment shall be contained within those boundaries. Where no site boundary is provided, all group and personal equipment shall be contained within a line 1/2 the distance between site designation markers. As far as is practical, all camping equipment such as tents and ~~for~~ tables shall be erected or used within the most impacted core area of the site.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(L) Groups shall, as far as practical, occupy fee and designated non-fee sites that display a capacity that generally corresponds with the size of the group. As far as practical, small groups shall not occupy large capacity sites.

(M) Groups of eight persons or less, except in an emergency, are prohibited from occupying designated group sites.

(N) All non-designated and ~~or~~ designated non-fee boat-in campsites within the Deschutes River Scenic Waterway shall be occupied on a first come first serve basis. Campsites may not be reserved or held for later occupation. One person may occupy and thereby hold only one campsite. Placing group or personal property in a campsite not occupied by at least one person, for the purpose of holding or reserving the site for later occupation is prohibited

(e) Campfires, Fuel, Firepans, Smoking:

(A) Open fires and charcoal ~~shall be~~ are prohibited from June 1 to October 15. [The Oregon Department of Forestry may extend p](#)eriods of fire closure ~~may be extended~~ if conditions warrant. Plan at page 77. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (e.g., propane) or liquid gas. Such stoves or lanterns shall be operated in a responsible manner at all times.

(C) Burning of any living, dead or down vegetation within the Lower Deschutes River Management Plan area shall be prohibited. Plan at page 77.

(D) Every overnight camp, overnight hiking party or person using fire or operating a motor driven vehicle or boat within the Deschutes River Scenic Waterway designated by ORS 390.826, shall carry and keep reasonably accessible one bucket of at least one gallon capacity and one spade or shovel.

(E) No person shall leave a fire unattended.

(F) All fires shall be completely extinguished after use. The extinguished remains shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(G) Smoking shall be limited to buildings, closed vehicles, boats on the water or while standing in the water. Plan at page 77.

(f) Firearms: The discharge of firearms is prohibited within the Lower Deschutes River planning area boundaries from the third Saturday in May through August 31 of each year. Plan at page 77.

(g) Water cannons: The use of motorized/mechanized water cannons is prohibited. No person shall use manual water cannons, hydro sticks, water balloons/water balloon launchers, or other water projectile device in any way that creates a hazardous or physically offensive condition or that causes personal or public alarm, nuisance, jeopardy, or violence. Plan at page 59.

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

(h) Litter and Personal Sanitation:

(A) Persons using the Deschutes River Scenic Waterway for recreational purposes shall place refuse, scrap, trash and garbage in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse, litter, garbage or similar materials shall be buried, abandoned or burned and buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway area for disposal. Plan at page 62.

(B) All persons using the Deschutes River Scenic Waterway for recreational purposes shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by overnight boating groups (1 to 16 persons in segments 1, 3 and 4; 1 to 24 persons in segment 2) that remain, intend to remain, or display intent to remain overnight within the Deschutes River Scenic Waterway, except that this requirement shall not apply to overnight kayak trips that are entirely self-contained and not supported by other craft carrying gear. While present within the Deschutes River Scenic Waterway on an overnight boating basis, all persons shall, whenever practical, use either an approved portable toilet or an agency provided toilet facility for all solid human waste. All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Deschutes River Scenic Waterway. While within the Deschutes River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Plan at page 62. Where toilets are not provided, and the situation makes it impractical to use a portable toilet, persons shall bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil and at least 50 feet from the edge of the river or any other water source. For purposes of this paragraph, the following definitions shall apply:

(i) "Approved portable toilet" is any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied and rinsed into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage or human exposure to human waste.

(ii) "Remain overnight" means human presence in the Deschutes River Scenic Waterway on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

(iii) "Display intent to remain overnight" while within the Deschutes River Scenic Waterway on a boat-in basis includes, but is not limited to, any off-loading onto the river bank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(iv) "Developed camp site" means a motor vehicle accessible, fee site.

(i) No person shall use fireworks within the Deschutes River Scenic Waterway: Defined as any combustible or explosive composition or substance or any combination of any such compositions or substances or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents, or any other article of like

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

construction or any article containing any explosive or inflammable compound or any tablets or other device containing any explosive substance or inflammable compound.

(j) Vehicle restrictions: The limitations set forth in paragraphs (A) through (B) of this subsection shall apply to all vehicles, operators and passengers on the following roads within the Deschutes River Scenic Waterway: Mecca Flat Road; Trout Creek Road; BLM Upper River Access Road-Maupin to Locked Gate; BLM Middle River Access Road-Bakeoven Road to Highway 216; and BLM Lower River Access Road-Highway 216 to Macks Canyon.

(A) No person shall operate a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than two persons) plus one driver and/or a total vehicle length greater than 28 feet. Plan at page 71.

(B) No person shall ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bed rails of a pickup truck, or properly secured as above on the bed of a flat bed motor vehicle. No person will be allowed to ride on the exterior portion of any motor vehicle within the Deschutes River Scenic Waterway.

(k) Inner tubes, float tubes, boogie boards:

(A) Swimming or floating with or without a floatation device and/or the use of inner tubes, float tubes, boogie boards, surf boards and other similar water toys used for transport of persons or property is prohibited in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of the Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed under the regulations of the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right-of-way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are approaching close enough to create a hazard.

(B) It is unlawful to secure any person(s), inner tube, float tube, boogie board, surf board or other similar water toys used for transport of persons or property, in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

(C) It is unlawful to secure any cable, rope, line or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management and Oregon State Police.

(D) The cables presently in place across the Deschutes River at Dant and the upstream area (approximately river mile 52) of the City of Maupin are exempt from this rule. Any permanent device, as described in this

Item 12a - Attachment A - OAR 736-040, Scenic Waterway Revisions (markup)

paragraph, will require approval from the Scenic Waterways Program of the Oregon Parks and Recreation Department in accordance with ORS 390.845 and OAR 736-040-0030 and [736-040-0035](#).

(E) The rules set forth in this rule shall not be applicable to the Deschutes River State Recreation Area Campground, the use of which shall instead be governed by general park area rules and the authority and discretion of the park manager.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.934(2) & 390.938(3)

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

736-040-0065

John Day River Scenic Waterway

(1) Natural River Area:

(a) That segment of the scenic waterway beginning at the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, thence downstream approximately 51.7 miles to the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3, is classified as a Natural River Area;

(b) This Natural River Area shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(a)(C). In addition to these standards, all new development in resource zones (i.e. farm-related dwellings) shall comply with Gilliam County or Sherman County land use regulations.

(c) New structures and associated improvements shall be totally screened from view from the river by topography, vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on the site, the structure or improvement may be permitted if native vegetation can be established to provide total screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "total screening," as used in section (1) of this rule, shall consist of adequate topography, density and mixture of native evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed mining site, the mining operation may be permitted if native vegetation can be established to provide total screening of the proposed mining site within a reasonable time (4–5 years).

(f) New roads may be permitted only when totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(g) Where existing roads are visible from the river, major extensions, realignments, or upgrades to existing roads shall not be permitted. Necessary minor road improvements shall be substantially screened from view from the river. If inadequate topography or vegetation exists to substantially screen the road improvement, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the road improvement within a reasonable time (4–5 years). The condition of "substantial screening," as used in section (1) of this rule, shall consist of adequate topography, density

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the subject improvement. When an existing road is regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be permitted provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5–10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (1), subsections (a) through (j) of this rule, are more restrictive than the Gilliam and Sherman County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(2) Scenic River Areas: Two segments of the John Day River main stem are designated as Scenic River Areas:

(a) That segment of scenic waterway beginning at the confluence of Service Creek at about river mile 157.4 and extending downstream approximately 62.4 miles to the intersection of the John Day River with the township line between Township 5 South and Township 6 South, Willamette Meridian, at about river mile 95, is classified as a Scenic River Area;

(b) That segment of scenic waterway beginning at the intersection of the John Day River with the southern section line of Section 30, Township 1 South, Range 19 East, Willamette Meridian, (Section 30, T 1S, R 19E, W.M.) at about river mile 43.3 and extending approximately 33.3 miles downstream to Tumwater Falls, at about river mile 10, is classified as a Scenic River Area.

(c) These Scenic River Areas shall be administered consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(b)(B). In addition to these standards, all new development in resource zones (i.e. farm related dwellings) shall comply with Sherman County, Gilliam County, Wasco County, Wheeler County, or Jefferson County land use regulations, whichever applies.

(d) New structures and associated improvements shall be substantially screened by topography, native vegetation, or a combination thereof, except as provided under OAR 736-040-0030(5), and except for those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide substantial screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "substantial screening," as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to substantially obscure (at least 75 percent) the viewed structure or improvement.

(e) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(f) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of "total screening," as used in section (2) of this rule, shall consist of adequate topography, density and mixture of native, evergreen and deciduous vegetation, or a combination thereof to totally obscure (100 percent) the subject improvement.

(g) New roads may be permitted only when totally screened from view from the river by topography and/or vegetation. If inadequate topographic or vegetative screening exists to totally screen the proposed road, the road may be permitted if acceptable topography can be created or road design techniques used to totally screen the road at the time of construction or native vegetation can be established to provide total screening of the proposed road within a reasonable time (4–5 years).

(h) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when substantially screened from view from the river. If inadequate topography or vegetation exists to provide substantial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to substantially screen the road at the time of construction or native vegetation can be established to provide substantial screening of the subject improvement within a reasonable time (4–5 years). When an existing road is improved or regraded, no side cast into or visible from the river shall be allowed. Excess material shall be hauled to locations out of view from the river.

(i) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetation management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(j) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(k) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(l) Whenever the standards of OAR 736-040-0035 and section (2), subsections (a) through (k) of this rule are more restrictive than the applicable County Land Use Development Ordinances, the above Oregon Administrative Rules shall apply.

(3) Recreational River Area:

(a) That segment of scenic waterway beginning at the confluence of Parrish Creek, at about river mile 168.7, about one mile west of Spray and extending downstream approximately 11.3 miles to the confluence of Service Creek, at about river mile 157.4, is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area consistent with the standards set by OAR 736-040-0035 and OAR 736-040-0040(1)(c)(B). In addition to these standards, all new development in resource zones (*i.e.* farm and forest related dwellings) shall comply with Wheeler County land use regulations.

(c) New structures and associated improvements shall be moderately screened from view from the river by topography, vegetation, or a combination thereof, except as provided by OAR 736-040-0030(5) and except those minimal facilities needed for public outdoor recreation or resource protection. If inadequate topographic or vegetative screening exists on a site, the structure or improvement may be permitted if native vegetation can be established to provide moderate screening of the proposed structure or improvement within a reasonable time (4–5 years). The condition of "moderate screening," as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to moderately obscure (at least 50 percent) the viewed improvement or structure.

(d) Commercial public service facilities, including resorts and motels, lodges and trailer parks which are visible from the river, shall not be permitted.

(e) New mining operations, except recreational placer mining and recreational prospecting, as those terms are defined and used in ORS 390.835, and similar improvements, shall be permitted only when they are totally screened from view from the river by topography, vegetation, or a combination thereof. If inadequate topographic or vegetative screening exists on a site, mining and similar forms of development may be permitted if native vegetation can be established to provide total screening of the affected area within a reasonable time (4–5 years). The condition of "total screening," as used in section (3) of this rule, shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to totally obscure (100 percent) the altered improvement site.

(f) New roads constructed for agricultural use, mining or residential use shall be moderately screened with vegetation, topography, or a combination thereof. If existing topographic or vegetative screening is inadequate, the road may be permitted if acceptable topography can be created or road design techniques used to moderately screen the road at the time of construction or native vegetation can be established to provide moderate screening of the road within a reasonable time (4–5 years).

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(g) Where existing roads are visible from the river, extensions, realignments, upgrades, or other improvements, shall only be permitted when partially screened from view from the river. If inadequate topography or vegetation exists to provide partial screening, the road improvement may be permitted if acceptable topography can be created or road design techniques used to partially screen the road at the time of construction or native vegetation can be established to provide partial screening of the subject improvement within a reasonable time (4–5 years). The condition of "partial screening," as used in section (3) of this rule shall consist of adequate topography; density and mixture of native, evergreen and deciduous vegetation; or a combination thereof to partially obscure (at least 30 percent) views of the road improvement. When an existing road is improved or regraded, no side cast into or visible from the river shall be permitted. Excess material shall be hauled to locations out of view from the river.

(h) Visible tree harvest or other vegetation management may be allowed provided that:

(A) The operation complies with the relevant Forest Practices Act rules;

(B) Harvest and management methods with low visual impact are used;

(C) The harvest or vegetation management does not degrade the riparian buffer of any waterway; and

(D) The harvest or vegetative management is designed to enhance the scenic view within a reasonable time (5-10 years). For the purposes of this paragraph, "enhance" means to benefit forest ecosystem function and vegetative health by optimizing forest stand densities and vegetative composition, fostering forest landscape diversity and promoting sustainable forest values.

(i) Improvements needed for public recreation use or resource protection may be visible from the river, but shall be primitive in character and designed to blend with the natural character of the landscape.

(j) Proposed utility facilities shall share existing utility corridors, minimize any ground and vegetation disturbance, and employ non-visible alternatives when reasonably possible.

(k) Whenever the standards of OAR 736-040-0035 and section (3), subsections (c) through (j) of this rule are more restrictive than Wheeler County Land Use and Development Ordinances, the above Oregon Administrative Rules shall apply.

(4) Public Use of the John Day River Scenic Waterway

(a) Policy: The Commission finds that in order to protect and enhance the John Day River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment of river to be designated by the people of Oregon as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, persons using the John Day River Scenic Waterway for recreation purposes shall comply with these rules. These rules are in addition to other rules of the Commission adopted for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules except in the instance of private property owners where only OAR 736 -040-0035 (Rules for Land Management) or this rule shall apply.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(b) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Approved portable toilet system" means a non-biodegradable, rigid, durable container designed to receive and hold human waste in any container position without leaking, or human waste bags.

(B) "Boat" means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(C) "Camping" means erecting a tent or creating a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer, or mooring a boat, or other action for the apparent purpose of overnight occupancy.

(D) "Developed Recreation Area/Developed Recreation Site" means an area or site that contains structures or capital improvements primarily used by the public for recreational purposes. These may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; grills or fire rings; tables; or controlled access.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the State of Oregon.

(F) "Display Intent To Remain Overnight" means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(G) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

(H) "Group" means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

(I) "Group Size Limit" means the maximum number of persons a boating group may have with while together within the John Day River Scenic Waterway, regardless of the number of persons covered by each boater registration form or required permit possessed by members of the group.

(J) "Human Waste Bag" means a commercially available sanitary bag designed to securely contain human waste and odor. The bag contains enzymes to break down waste into a deodorized gel and is approved by the Department of Environmental Quality for deposit into a landfill.

(K) "John Day River Scenic Waterway" means that portion of the John Day River designated in ORS 390.826(7) as a State Scenic Waterway. The portion of the John Day River Scenic Waterway that is affected by this rule (OAR 736-040-0065) covers the section from Parrish Creek downstream to Tumwater Falls. The Scenic Waterway also includes all water and lands within 1.4 mile of the bank on either side of the river.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(L) "Personal Watercraft" means a motorboat, less than 16 feet, propelled by machinery which:

- (i) Uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power; and
- (ii) Is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(M) "Refuse" means, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, charcoal, ash, cigarette butts, or burned debris.

(N) "Vehicle" means a motor-propelled means of transportation across land usually wheeled meant to carry one or more human being(s) regardless of design, including Off-Road Vehicles.

(d) Permits:

(A) Every boater or boating group shall obtain a John Day River boater permit prior to launching. The permit shall be carried by the boater, or group leader, and shall be readily available for inspection upon request by authorized agency and law enforcement personnel. Information requested on the permit shall be completely and accurately filled out and the form or permit shall be signed by the permit holder in order to be valid. Permit holders shall abide by the requirements of the permit and the permit stipulations.

(B) Every person landing, operating or riding in a boat or engaging in any camping, fishing or other activity in connection with being transported by a boat on any portion of the John Day River Scenic Waterway where a Bureau of Land Management permit is required, shall display his/her individual or group registration permit upon the demand of any law enforcement officer, Bureau of Land Management or department employee who is authorized to enforce these rules.

(e) Campfires, Fuel, Firepans and Smoking:

(A) Building, igniting, maintaining, using, tending a fire, or being within 20 feet of an illegal campfire, charcoal fire, portable propane campfire device or any other type of open flame is prohibited June 1 through September 30. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns. Are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (*e.g.* propane) or liquid gas. Such stove or lanterns shall be operated in a responsible manner at all times.

(C) A person may not chop, saw, break, cut, burn or gather wood or other combustible material from any live or standing tree.

(D) All fires shall be completely extinguished after use. The extinguished remains, including all ash, wood or charcoal residue, partially consumed briquettes, and burned refuse shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(E) Smoking shall be limited to non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(f) Camping:

(A) A person may not leave camping equipment or personal property overnight at or in an unoccupied, public campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(B) A person may not pay for a public campsite, which is not to be occupied by that same person, as a means to claim, hold, reserve or secure the site for subsequent occupancy by their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(C) Groups occupying any campsite may not exceed the maximum number of persons or vehicles allowed for that campsite.

(D) Every person or group occupying a campsite shall display his/her individual or group camping permit upon the demand of any law enforcement officer, Bureau of Land Management or Oregon Parks and Recreation Department employee who is authorized to enforce these rules.

(E) Occupants shall not dig or otherwise level the ground within public campsites.

(F) No person shall possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(g) Firearms: The discharge of firearms is prohibited within the John Day River Scenic Waterway except with a valid Oregon hunting license and tag during authorized hunting seasons. The discharge of firearms is prohibited within the John Day River Scenic Waterway at any time within a developed recreation area.

(h) Litter and Personal Sanitation:

(A) All persons shall place refuse in proper receptacles provided for that purpose at maintained recreation sites or litter collection stations. No such refuse or similar materials shall be buried, abandoned, or burned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway for proper disposal.

(B) All persons shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by boating individuals and groups within the John Day River Scenic Waterway.

(C) All persons shall use either an approved portable toilet, which includes the use of human waste bags, or developed toilet facility to contain all human solid waste.

(D) All persons who remain, intend to remain, or display intent to remain overnight in a boat in camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(E) No person shall leave, deposit, or scatter human waste, toilet paper, or items used at toilet paper, on the ground within the John Day River Scenic Waterway.

(F) While within the John Day River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Used human waste bags must be carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions.

(G) A person may not wash dishes or use soap in the river or any tributaries or less than fifty feet from any natural water source.

(H) Vehicle Restrictions:

(i) a person may not ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bedrails of a pickup truck, or properly secured as above on the bed of a flatbed motor vehicle. A person may not ride on the exterior portion of any motor vehicle within the John Day River Scenic Waterway.

(ii) A person may not operate a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

Stat. Auth.: ORS 390.124; ORS 390.845(2)

Stats. Implemented: ORS 390.845(2); ORS 390.826(7).

736-040-0070

Deschutes River Scenic Waterway

(1) Deschutes River Scenic Waterway Recreation Area:

(a) ORS 390.932 creates the Deschutes River Scenic Waterway Recreation Area. ORS 390.934 directs the Department to adopt a management plan by rule to administer the Deschutes River Scenic Waterway Recreation Area. ORS 390.124 authorizes the Commission to adopt rules to carry out the duties, functions and powers imposed by law upon the Commission and the Department.

(b) Pursuant to ORS 390.934, the Commission adopts by reference the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1 (January 1993), and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System, (June 1997) as the management plan for the Deschutes River Scenic Waterway Recreation Area. Copies of the Lower Deschutes River Management Plan and the Supplement to the Lower Deschutes River Management Plan, Final Decision, Lower Deschutes River Allocation System are available from the Oregon Parks and Recreation Department, 725 Summer St N.E., Suite C, Salem, OR 97301.

(c) The state managing agencies, including the Department, Department of Fish and Wildlife, Oregon State Marine Board, and Oregon State Police and the local managing agencies, including Sherman, Wasco and Jefferson Counties and the City of Maupin shall perform their management responsibilities relating to the

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

Deschutes River Scenic Waterway Recreation area according to the management plan adopted by this rule and ORS 390.805 to 390.925 and 390.930 to 390.940.

(d) The Confederated Tribes of Warm Springs and the Bureau of Land Management are encouraged to exercise their jurisdiction and to manage their lands in a manner consistent with the management plan adopted by section (3) of this rule and with ORS 390.805 to 390.925 and 390.930 to 390.940.

(2) Recreational River Area:

(a) The segment of the scenic waterway extending from the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian, (T 9S, R 13E, W.M.), Jefferson County, downstream approximately 96 miles to the Columbia River, but excluding the right bank shoreline (as seen when facing downstream) and adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is classified as a Recreational River Area.

(b) Within the Recreation River Area described in subsection (2)(a), the Department may not permit any new structures or improvements which are visible from the river, other than those erected or made in connection with compatible existing uses, or those needed for public outdoor recreation or resource protection.

(c) Additional dwellings, other than those necessary to existing agricultural uses, and commercial public service facilities, including resorts and motels and lodges which are visible from the river, will not be permitted.

(3) River Community Areas:

(a) The segment of the scenic waterway extending from Pelton Re-Regulating Dam downstream approximately four miles to the Deschutes River intersection with the northerly extension of the common section line of Section 29 and Section 30, Township 9 South, Range 13 East, of the Willamette Meridian (T 9S, R 13E, W.M.), Jefferson County, is classified as a River Community Area. The shoreline and related adjacent lands opposite the City of Maupin, as its boundaries were established on December 3, 1970, is likewise classified as a River Community Area.

(b) Within the River Community Areas described in subsection (3)(a), when consistent with Jefferson County and Wasco County zoning ordinances, the Department may permit uses and structures including agriculture, single-family and multiple-family dwellings, churches, lodges, resorts, motels, transient public trailer parks, and necessary public service facilities. The Commission may establish allowed densities of improvements and structures which are visible from the river after consultation with the appropriate county planning commission, the State Fish and Wildlife Commission, the U.S. Bureau of Land Management, the City of Maupin or the Warm Springs Confederated Tribes and such other persons and agencies as the Commission may select.

(4) Public use of the Deschutes River Scenic Waterway:

(a) Policy: The Commission finds that in order to protect and enhance the Deschutes River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused this river segment to be designated by the people of Oregon

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

as a scenic waterway, it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area. These rules have as their basis the need to protect and preserve the waterway's outstanding scenic beauty and natural features while maintaining the river's wide range of recreational opportunities. Therefore, in accordance with the management requirements of ORS 390.845, the following rules shall be adhered to by persons using the Deschutes River Scenic Waterway for recreation purposes. These rules are in addition to other rules of the Commission promulgated for the management of all scenic waterways. Where more restrictive or specific than the general rules, these rules will prevail over the general rules except in the instance of private property owners where only OAR 736-040-0035 (Rules for Land Management) or this rule shall apply.

(b) Restricted Areas:

(A) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon have closed all Reservation lands to public use except by permit. This closure, enacted by the Confederated Tribes, also affects all islands west of the middle of the river between the Pelton re-regulating dam and the north boundary of the Reservation near Two Springs Ranch at the power boat deadline.

(B) All persons using the Deschutes River Scenic Waterway shall be advised that the Confederated Tribes of the Warm Springs Reservation of Oregon own the east and west banks of the Deschutes River between Sandy Beach and the State Route 16 bridge crossing downstream from Sherars Falls. Sandy Beach shall be the last designated boat take out upstream from Sherars Falls. The banks of the Deschutes River from Sandy Beach downstream to the State Route 16 bridge crossing, including the former take out on the west bank of the Deschutes River immediately upstream from Sherars Falls, shall be closed to boat put in or take out. Plan at page 74.

(C) All persons using the Deschutes River Scenic Waterway shall be advised that the Deschutes River from the upstream end of Rattlesnake Rapids at about river mile 2.5 and extending downstream to the no wake zone at the downstream end of Moody Rapids at about river mile .5 is a pass through zone. All floating craft, except float tubes, shall pass through this segment of river and shall not stop along or tie up to the riverbank except in the event of an emergency. Plan at pages 58-60.

(D) Nothing in these rules gives to any person any right to trespass on the private property of others or in any way alters the rights of private property owners in regards to trespass.

(c) Definitions: For purposes of this rule, the following definitions shall apply:

(A) "Camping" means overnight occupation within the Deschutes River Scenic Waterway.

(B) "Day Use" means human presence within the Deschutes River Scenic Waterway between the hours of one hour before sunrise to 10:00 PM.

(C) "Designated Non-Fee Site" means a marked and designated campsite for which no fee is charged. The Deschutes River Managers shall designate river segments or zones where non-fee camping is allowed only in designated sites.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(D) "Fee Sites" means a marked and designated drive-in or developed camp site for which a fee is charged. Any reference in this rule, or OAR 736-040-0071, to drive-in or developed sites shall have the same meaning as Fee Site.

(E) "Group" as used in this rule means a party of two or more persons while present within the Deschutes River Scenic Waterway.

(F) "Group Site" as used in this rule means a fee site, designated non-fee site, or any other site designated by the Managing Agencies as a group site. Group sites shall be designated for use by nine persons or more, up to the maximum site capacity as designated by the Managing Agencies. Where no maximum capacity is designated, the maximum capacity shall be the maximum group size for the river segment.

(G) "Non-Fee Site" means a campsite for which a fee is not charged. As used in this rule, all references to undeveloped campsites or undeveloped sites have the same meaning as non-fee sites.

(H) "Occupied Non-Designated and/or Designated Non-Fee Boat-In Campsite" as used in this rule means the presence of at least one person for each campsite, who, if not physically present within the campsite, prominently displays in a readily legible manner, within the campsite, the person's name and boater pass number, or if the person is covered under a group pass, the person's name and the name and boater pass number of the group leader.

(I) "Overnight Occupation" means human presence between the hours of 10:00 PM and one hour before sunrise.

(J) "Recreation Site" means a marked and designated, general camping or activity area as designated by the Deschutes River Scenic Waterway Managers, or a public agency or political subdivision of the state. A recreation site shall generally contain individual campsites or a day use area.

(K) "Unoccupied" as used in this rule means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(L) "Walk-In Fee Site" means a marked and designated fee site in which the main recreation site is designated to be accessed by vehicle or boat. The individual campsite is generally a satellite campsite accessed on a walk-in basis from the main recreation site. Vehicle access is prohibited.

(d) Camping:

(A) Overnight camping is prohibited on all islands. Plan at page 63.

(B) Overnight camping length of stay shall be limited to:

(i) Four nights in undeveloped sites. Plan at page 63;

(ii) Fourteen nights in developed sites. Plan at page 63;

(iii) Nine nights for motorized boats between May 15 and October 15 in those areas where they are allowed. Plan at page 63.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(iii) Any camp established through the use of a motorized boat between June 15th and September 30th shall be entirely removed from the river along with the motorized boat during those periods of time that motorized boat use is restricted under OAR 250-030-0030 (See Lower Deschutes River Motor Boat Closure Schedule)

(C) No person shall leave camping equipment or personal property overnight at or in an unoccupied, public, non-fee, campsite as a means to claim, hold, reserve or secure the site for subsequent occupancy by the same person, or their friends, clients, business associates, or clients of business associates. For the purposes of this paragraph, unoccupied means the absence of human presence during the period one hour after legal sunset to one hour before legal sunrise.

(D) At the end of a consecutive four night, overnight camping length of stay specified in subparagraph (4)(d)(B)(i) of this rule, all camping equipment and personal property shall be removed from the area and cannot be relocated within 1/4-mile of the same site for a period of at least 14 nights. Plan at page 63.

(E) Between May 15 and October 15, whenever motorized boaters vacate a campsite and it will be unoccupied as that term is defined in paragraph (4)(d)(C) of this rule, all camping and personal property shall be removed from the area and cannot be relocated within 1/4 mile of the same site for a period of at least 14 nights.

(F) Group size within the Deschutes River Scenic Waterway will be limited to 16 persons in segments 1, 3 and 4, and 24 persons in segment 2.

(G) Overnight camping group size shall be determined by the size and capability of the site. In no case shall group size exceed 16 people per site in Segments 1, 3 or 4 and 24 in Segment 2. Plan at page 63.

(H) Overnight occupancy in vehicle accessible public areas of the Deschutes Scenic Waterway will be allowed within designated fee sites only.

(I) Overnight occupancy within river areas that are managed as designated non-fee camping zones will be permitted only within designated and marked non-fee sites. Non-fee areas of river segment 1 are designated non-fee zones.

(J) Any group occupying fee or designated non-fee sites is required to abide by the designated capacity of the site. No group leader shall allow violation of this rule by any member of his/her group.

(K) Any group occupying fee or designated non-fee sites shall be required to contain all group and personal equipment within the site. Where a site boundary is marked, all group and personal equipment shall be contained within those boundaries. Where no site boundary is provided, all group and personal equipment shall be contained within a line 1/2 the distance between site designation markers. As far as is practical, all camping equipment such as tents and tables shall be erected or used within the most impacted core area of the site.

(L) Groups shall, as far as practical, occupy fee and designated non-fee sites that display a capacity that generally corresponds with the size of the group. As far as practical, small groups shall not occupy large capacity sites.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(M) Groups of eight persons or less, except in an emergency, are prohibited from occupying designated group sites.

(N) All non-designated and designated non-fee boat-in campsites within the Deschutes River Scenic Waterway shall be occupied on a first come first serve basis. Campsites may not be reserved or held for later occupation. One person may occupy and thereby hold only one campsite. Placing group or personal property in a campsite not occupied by at least one person, for the purpose of holding or reserving the site for later occupation is prohibited

(e) Campfires, Fuel, Firepans, Smoking:

(A) Open fires and charcoal are prohibited from June 1 to October 15. The Oregon Department of Forestry may extend periods of fire closure if conditions warrant. Plan at page 77. When not prohibited, fire shall be contained in a firepan or similar device of metal. A firepan is a metal container with sides at least two inches high to prevent ashes or burning material from spilling onto the ground.

(B) Commercially manufactured metal camp stoves and lanterns are permissible for outdoor use only when fueled with bottled liquefied petroleum gas (*e.g.*, propane) or liquid gas. Such stoves or lanterns shall be operated in a responsible manner at all times.

(C) Burning of any living, dead or down vegetation within the Lower Deschutes River Management Plan area shall be prohibited. Plan at page 77.

(D) Every overnight camp, overnight hiking party or person using fire or operating a motor driven vehicle or boat within the Deschutes River Scenic Waterway designated by ORS 390.826, shall carry and keep reasonably accessible one bucket of at least one gallon capacity and one spade or shovel.

(E) No person shall leave a fire unattended.

(F) All fires shall be completely extinguished after use. The extinguished remains shall be taken out of the scenic waterway for disposal or deposited in a proper garbage receptacle provided at recreation sites or litter collection stations.

(G) Smoking shall be limited to buildings, closed vehicles, boats on the water or while standing in the water. Plan at page 77.

(f) Firearms: The discharge of firearms is prohibited within the Lower Deschutes River planning area boundaries from the third Saturday in May through August 31 of each year. Plan at page 77.

(g) Water cannons: The use of motorized/mechanized water cannons is prohibited. No person shall use manual water cannons, hydro sticks, water balloons/water balloon launchers, or other water projectile device in any way that creates a hazardous or physically offensive condition or that causes personal or public alarm, nuisance, jeopardy, or violence. Plan at page 59.

(h) Litter and Personal Sanitation:

(A) Persons using the Deschutes River Scenic Waterway for recreational purposes shall place refuse, scrap, trash and garbage in proper receptacles provided for that purpose at maintained recreation sites or litter

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

collection stations. No such refuse, litter, garbage or similar materials shall be buried, abandoned or burned and buried or abandoned. When no approved receptacle or container is available, the material shall be taken out of the scenic waterway area for disposal. Plan at page 62.

(B) All persons using the Deschutes River Scenic Waterway for recreational purposes shall use the developed toilet facilities provided at public recreation sites. An approved portable toilet shall be carried and used by overnight boating groups (1 to 16 persons in segments 1, 3 and 4; 1 to 24 persons in segment 2) that remain, intend to remain, or display intent to remain overnight within the Deschutes River Scenic Waterway, except that this requirement shall not apply to overnight kayak trips that are entirely self-contained and not supported by other craft carrying gear. While present within the Deschutes River Scenic Waterway on an overnight boating basis, all persons shall, whenever practical, use either an approved portable toilet or an agency provided toilet facility for all solid human waste. All persons who remain, intend to remain, or display intent to remain overnight in an undeveloped camp site shall set up an approved portable toilet, ready for use, as soon as practical upon landing at the camping site to be occupied. No person shall leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Deschutes River Scenic Waterway. While within the Deschutes River Scenic Waterway, portable toilets shall only be dumped at facilities developed and identified especially for that purpose. Plan at page 62. Where toilets are not provided, and the situation makes it impractical to use a portable toilet, persons shall bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil and at least 50 feet from the edge of the river or any other water source. For purposes of this paragraph, the following definitions shall apply:

(i) "Approved portable toilet" is any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied and rinsed into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage or human exposure to human waste.

(ii) "Remain overnight" means human presence in the Deschutes River Scenic Waterway on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

(iii) "Display intent to remain overnight" while within the Deschutes River Scenic Waterway on a boat-in basis includes, but is not limited to, any off-loading onto the river bank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

(iv) "Developed camp site" means a motor vehicle accessible, fee site.

(i) No person shall use fireworks within the Deschutes River Scenic Waterway: Defined as any combustible or explosive composition or substance or any combination of any such compositions or substances or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents, or any other article of like construction or any article containing any explosive or inflammable compound or any tablets or other device containing any explosive substance or inflammable compound.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(j) Vehicle restrictions: The limitations set forth in paragraphs (A) through (B) of this subsection shall apply to all vehicles, operators and passengers on the following roads within the Deschutes River Scenic Waterway: Mecca Flat Road; Trout Creek Road; BLM Upper River Access Road-Maupin to Locked Gate; BLM Middle River Access Road-Bakeoven Road to Highway 216; and BLM Lower River Access Road-Highway 216 to Macks Canyon.

(A) No person shall operate a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than two persons) plus one driver and/or a total vehicle length greater than 28 feet. Plan at page 71.

(B) No person shall ride or allow another person to ride in or on top of a boat or boats within or on the back of any open bed motor vehicle, or on a boat or boats loaded on the top of any other motor vehicle. A person or persons may ride within a single boat that is properly secured by ropes or straps within the bed rails of a pickup truck, or properly secured as above on the bed of a flat bed motor vehicle. No person will be allowed to ride on the exterior portion of any motor vehicle within the Deschutes River Scenic Waterway.

(k) Inner tubes, float tubes, boogie boards:

(A) Swimming or floating with or without a floatation device and/or the use of inner tubes, float tubes, boogie boards, surf boards and other similar water toys used for transport of persons or property is prohibited in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of the Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed under the regulations of the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right-of-way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are approaching close enough to create a hazard.

(B) It is unlawful to secure any person(s), inner tube, float tube, boogie board, surf board or other similar water toys used for transport of persons or property, in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

(C) It is unlawful to secure any cable, rope, line or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management and Oregon State Police.

(D) The cables presently in place across the Deschutes River at Dant and the upstream area (approximately river mile 52) of the City of Maupin are exempt from this rule. Any permanent device, as described in this paragraph, will require approval from the Scenic Waterways Program of the Oregon Parks and Recreation Department in accordance with ORS 390.845 and OAR 736-040-0030 and 736-040-0035.

Item 12a - Attachment B - OAR 736-040, Scenic Waterway Revisions (clean)

(E) The rules set forth in this rule shall not be applicable to the Deschutes River State Recreation Area Campground, the use of which shall instead be governed by general park area rules and the authority and discretion of the park manager.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.934(2) & 390.938(3)