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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

WRD 2-2018

CHAPTER 690
WATER RESOURCES DEPARTMENT

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Water Use Preference for Human Consumption in Klamath County and Stock in Williamson River Basin

EFFECTIVE DATE: 04/17/2018 THROUGH 10/13/2018

AGENCY APPROVED DATE: 04/13/2018

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NEED FOR THE RULE(S):

The Governor issued Executive Order No. 18-02, declaring “a state of drought emergency” in Klamath County. The combination of drought conditions and regulation of water in favor of senior water right holders will preclude junior water right holders from using water for stock watering or human consumption. ORS 536.750 provides specific statutory authority for the Commission to grant a preference for these uses when, as is presently the case in Klamath County, the Governor has declared the existence of a severe, continuing drought.

The temporary rules are needed by junior water right holders to allow the continued use of water for stock watering in the Williamson River Basin and human consumption in Klamath County, who may otherwise be regulated off beginning in April, in order to meet the call of senior surface water rights in the Klamath Basin.

The temporary rules allow holders of water rights for stock watering in the Williamson River or human consumption in Klamath County under a junior priority date to continue using water for these purposes notwithstanding regulation in favor of senior water rights. Failure of the Commission to timely act will result in serious prejudice to the junior water users who would not, but for this temporary rule, have access to water for human consumption or stock watering uses.

JUSTIFICATION OF TEMPORARY FILING:

The Oregon Water Resources Commission finds that the failure to act promptly in adopting the temporary rules will result in serious prejudice to junior water right holders for human consumption in Klamath County and stock water in the Williamson River Basin who would not otherwise be able to exercise their rights. Specifically, the combination of the declared drought and calls for water by senior water right holders in the Klamath Basin would preclude junior water right holders for stock watering in the Williamson River Basin and human consumption in Klamath County from accessing surface water they would otherwise be able to access. A lack of water for human consumption and stock watering uses in these areas would have significant negative health and welfare consequences for the affected junior

water users.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

All documents are available online at:
https://apps.wrd.state.or.us/apps/misc/wrd_notice_view/Default.aspx?notice_id=41

1. Executive Order No. 18-02 - Governor Brown drought emergency declaration in Klamath County
2. March 16, 2018 letter from the City of Chiloquin
3. April 2, 2018 letter from the Klamath Tribes
4. April 6, 2018 letter from the Sprague River Water Resource Foundation
5. April 9, 2018 letter from Modoc Point Irrigation District

RULES:
690-022-0020, 690-022-0025, 690-022-0030, 690-022-0060, 690-022-0061, 690-022-0062, 690-022-0063

SUSPEND: 690-022-0020

RULE TITLE: Purpose and Statutory Authority

RULE SUMMARY: OAR 690-022-0020 to 0030 implemented a drought preference in 2014, which was in effect through December 2014.

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

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

SUSPEND: 690-022-0025

RULE TITLE: Definitions

RULE SUMMARY: OAR 690-022-0020 to 0030 implemented a drought preference in 2014, which was in effect through December 2014.

RULE TEXT:

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

(1) “Commission” means the Oregon Water Resources Commission.

(2) “Department” means the Oregon Water Resources Department.

(3) “Human Consumption” means the use of water for the purposes of drinking, cooking, and sanitation.

(4) “Stock Watering” means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

SUSPEND: 690-022-0030

RULE TITLE: Applicability and Preference

RULE SUMMARY: OAR 690-022-0020 to 0030 implemented a drought preference in 2014, which was in effect through December 2014.

RULE TEXT:

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

(1) The preference described in these rules applies only to the diversion or use of water within Klamath County.

(2) Uses of water for human consumption and stock watering, to the extent authorized under a water right certificate, permit, decree, or findings of fact and order of determination issued in an adjudication subject to ORS Chapter 539, are granted a preference over all other water uses regardless of the priority date of the water right for stock watering or human consumption.

(3) The Department will regulate water rights in Klamath County in accordance with the preference for water rights for human consumption and stock watering use as provided in subsection (2) of this section.

(4) Water right holders exercising the human consumption or stock water preferences established in this rule shall assure curtailment of water uses unrelated to the preference.

(5) This preference does not authorize a water right holder exercising the preference to make a call for water.

(6) The option for a water right holder to exercise the preference only applies to a water right holder being regulated by the watermaster in order to satisfy a senior water right.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

ADOPT: 690-022-0060

RULE TITLE: Purpose and Authority

RULE SUMMARY: This rule identifies the authorities and effective period for the rules authorizing a preference of water use for stock in the Williamson River Basin and human consumption uses in Klamath County.

RULE TEXT:

(1) Notwithstanding OAR 690-019-0070, the purpose of OAR 690-022-060 to OAR 690-022-063 is to implement ORS 536.750(1)(c), which authorizes the Commission, pursuant to a gubernatorial declaration that a severe, continuing drought exists, to grant a temporary preference to water rights allowing water for human consumption or stock watering use over other water uses regardless of priority date.

(2) These rules address an immediate threat to the health and welfare of the people of Oregon that would otherwise occur if regulation for senior water rights in Klamath County curtailed or prohibited use of water rights for human consumption and stock watering.

(3) OAR 690-022-060 to OAR 690-022-063 become effective upon filing. During the effective period of these rules, not to exceed 180 days, and pursuant to Executive Order 18-02 declaring a severe, continuing drought emergency in Klamath County, and pursuant to ORS 536.750(1)(c), the Commission grants a preference of use for water rights for human consumption or stock watering as provided in these rules.

(4) The preferences established under these rules do not authorize a water right holder exercising the preference to make a call for water.

(5) For the purposes of these rules, a water right allowing for human consumption may include, but is not limited to, water rights for municipal, commercial, industrial, quasi-municipal, and domestic uses.

(6) The temporary preference provided by these rules shall remain in effect only during the effective time period of the Governor's Executive Order no. 18-02, or 180 days from the effective date of this rule, whichever is shorter.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

ADOPT: 690-022-0061

RULE TITLE: Definitions

RULE SUMMARY: This rule defines the meaning of words and phrases used throughout the rules.

RULE TEXT:

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

(1) “Commission” means the Oregon Water Resources Commission.

(2) “Department” means the Oregon Water Resources Department.

(3) “Human consumption” means the use of water for the purposes of drinking, cooking, and sanitation.

(4) “Stock watering” or “stock water” means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

(5) “Water right” means a water use established by:

(a) An adjudication under ORS chapter 539 as evidenced by a determined claim as provided in the Amended and Corrected Findings of Fact and Order of Determination entered in the Klamath County Circuit Court on February 28, 2014;

(b) An adjudication under ORS chapter 539 as evidenced by a court decree;

(c) A water right certificate;

(d) A water use permit;

(e) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

ADOPT: 690-022-0062

RULE TITLE: Applicability of Preference for Stock Watering in the Williamson River Basin

RULE SUMMARY: This section provides a temporary preference for the use of water for stock watering in the Williamson River Basin, including the Sprague River, Sycan River and all tributaries. It establishes the procedures and standards to exercise the preference.

RULE TEXT:

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

(1) The stock water preference applies only to the diversion or use of water under a water right within Klamath County for the Williamson River basin, including the Sprague River, Sycan River and all tributaries.

(2) Uses of water for stock watering, to the extent authorized under a water right, are granted a preference over other water uses regardless of the priority date of the water right for stock watering.

(3) Water right holders in Klamath County who want to exercise the stock water preference shall provide a notice to the watermaster on a form provided by the Department. .

(4) Upon receipt of the notice and verification that the notice is consistent with the terms of the water right and with these rules, the water right holder may exercise the preference as directed by the watermaster provided that:

(a) Water diverted for stock water is limited to the amount appropriate for the specific number of stock it serves, not to exceed one-tenth of one cubic foot per second, equivalent to 45 gallons per minute, per thousand head of stock as measured at the surface water point of diversion or at the well.

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

(c) The water right holder curtails all other water uses unrelated to stock water and allows the watermaster access to confirm compliance.

(d) The water right holder records information on the number of days stock water is diverted, the diversion rate, and how many stock were served.

(5) Exercise of the stock water preference only applies to a water right holder that is regulated by the watermaster in order to satisfy a senior water right.

(6) Water right holders exercising the preference shall provide the information in subsection 4(d) to the Department no later than December 1, 2018.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750

ADOPT: 690-022-0063

RULE TITLE: Applicability of Preference for Human Consumption in Klamath County

RULE SUMMARY: This section provides a temporary preference for use of water for human consumption in Klamath County. It establishes the procedures and standards to exercise the preference.

RULE TEXT:

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

(1) Water right holders in Klamath County who want to exercise the human consumption preference shall provide a notice to the Watermaster on a form prescribed by the Department.

(2) Upon receipt of the notice and verification that the notice is consistent with the terms of the water right and with these rules, the water right holder may exercise the preference as directed by the watermaster, provided that the water right holder exercising the human consumption preference shall:

(a) Use the most efficient means of delivery available to them to divert the minimum amount necessary to meet human consumption water needs

(b) Curtail all other water uses unrelated to human consumption; and

(c) Allow the watermaster access to confirm compliance.

(3) The option for a water right holder to exercise the human consumption preference only applies to a water right holder that is regulated by the watermaster in order to satisfy a senior water right.

STATUTORY/OTHER AUTHORITY: ORS 536.025; 536.027; 536.750

STATUTES/OTHER IMPLEMENTED: ORS 536.750