



November 16, 2015

Rule Coordinator
Oregon Water Resources Department
725 Summer Street NE Suite A
Salem, OR 97301-1271

Re: Establishing Procedures to Consider Pending Applications to Extend Burnt River Reservations—Amending OAR Division 079 and Adding New Provisions

Dear Ms. Rancier:

The Oregon Water Resources Congress (OWRC) is submitting comments on the “**Establishing Procedures to Consider Pending Applications to Extend Burnt River Reservations—Amending OAR Division 079 and Adding New Provisions,**” released on November 12, 2015. OWRC is highly supportive of the agricultural reservation program and wants to ensure that the foresight of the Oregon Legislature in setting aside water for storage for future economic development is preserved. While we appreciate the effort in drafting the temporary rules under such a short timeframe, as drafted the rules do not completely reflect the importance of the program and would allow for an overly subjective approach to approving an extension of a reservation. A slight language change would better clarify that the Water Resources Commission (WRC) will rely on the presumption that there *shall* be an extension so long as the reservation remains consistent with the program and rules of the Commission. While the rules before the Commission are temporary and apply only to the Burnt River reservation, it would be beneficial to have clear language to use as the basis for the upcoming permanent rulemaking process for extending agricultural reservations.

OWRC is a nonprofit association representing irrigation districts, water control districts, improvement districts, drainage districts and other local government entities delivering agricultural water supplies. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower production, and deliver water to roughly 1/3 of all irrigated land in Oregon. OWRC has been promoting the protection and use of water rights and the wise stewardship of water resources on behalf of agricultural water suppliers for over 100 years.

We suggest that the proposed rule language be modified slightly to clarify that the presumption is that the reservation of water continues to be consistent with the legislative intent under which it was created and remains an important piece of Oregon’s water supply future. When the Legislature created the agricultural water reservation program, they did not place expiration dates on the reservations of the water; the expiration date, and now the extension provisions, are a creation of a complex and often outdated set of administrative rules. If the reservations must go through an application for extension process, that process should be clear and

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.

objective. It should not be a venue to argue the validity of the original reservation or reevaluation of “public interest;” those pieces were hashed out during the legislative process. It is no accident that agricultural reservations were developed alongside the instream water right program and as such should be considered as an equally important component to a balanced water program in Oregon. Additionally, when someone does apply for a permit to utilize the reservation of water, at that time, the reserved water will undergo extensive water right permitting review and other requirements under Oregon law, including a public interest review.

Specifically, OWRC would prefer 690-079-0169(7) to read:

“In considering an application to extend a reservation, the Commission shall review information in the application, comments received, and the recommendations of the Department. The Department **shall** extend the reservation, unless the Commission determines the reservation is no longer consistent with ORS 536.310 or with the rules of the Commission.”

The inclusion of the word “shall” rather than the current proposed term “may,” provides greater consistency with the original legislative intent that these reservations remain until such time they are needed for economic development, and also provides some certainty for a potential applicant to rely on possibility of the reservation of water as a component of a water project. As you are aware, the development of a water storage project takes years and if the reservation of water is nearing a point where it will be up for an extension, infusing uncertainty that the Commission may not extend the reservation could derail a potentially beneficial project from being funded or moving to the next phase of feasibility.

Finally, we would like to point out that there is no harm in extending agricultural reservations. Today, all of the water reserved under this program is protected instream as it is not available for appropriation. Until such time that an innovative project comes to fruition, with adequate funding and ability to meet complex permitting requirements, this water will remain instream, benefitting the environment. As we look to the future and the water investment programs Oregon Water Resources Department now operates, these reservations could play a hugely important role in meeting Oregon’s diverse water needs. Agricultural reservations present a unique opportunity that several communities could utilize as part of Place-based planning discussions, creating ideas that can be refined using feasibility funding, and then implemented using funds from the new SB 839 program. The challenge of meeting Oregon’s current and future water needs necessitates a long-term strategy and the reservations of water set aside by the legislature 20 years ago will continue to be an important part of that strategy.

Thank you for the opportunity to comment on the draft rules for “Establishing Procedures to Consider Pending Applications to Extend Burnt River Reservations—Amending OAR Division 079 and Adding New Provisions.” Adopting clear and objective rules for the extension of this and other reservations will preserve the legislative intent that the reservations remain in place, as well as the vast potential benefits the applications of the reserved of water have to Oregon’s economy, environment and rural communities. Please do not hesitate to contact me if you have any questions about our comments or would like to discuss this issue further.

Sincerely,
April Snell
Executive Director