

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules
accompanies this form

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Water Resources Department
Agency and Division

690
Administrative Rules Chapter Number

Temporary rule establishing procedures to consider pending applications to extend Burnt River Reservations.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Establishing procedures to consider pending applications to extend Burnt River reservations.

Statutory Authority:

ORS 537.249

Other Authority:

OAR 690-509-0100

Statutes Implemented:

ORS 537.249

Need for the Temporary Rule(s):

Reservations of specific quantities of water for future economic development have been adopted in rule to accommodate future economic needs in specific basins. According to the Commission's Oregon Administrative Rules (OAR) 690, Division 509, the Burnt River reservations in the Powder Basin are set to expire in March 2016 unless extended in rule by the Commission. However, the existing OAR 690, Division 79 rules, which outline procedures to process requests to extend reservations are inconsistent with the statutes governing reservations. This is because the statutes governing reservations were amended in 1995 and 1997, but the Division 79 rules implementing the reservation statutes were not amended. The Division 79 rules were last amended in 1992 and 1993. As a consequence, provisions of the Division 79 rules governing the processing of extension requests are inconsistent with statute, and also refer to rules that have since been repealed. The Commission received requests from the Oregon Department of Agriculture to extend the Burnt River Reservations; however, the Department has been unable to process the requests until the procedures for processing those requests are defined. These temporary rules address how these requests will be processed.

Documents Relied Upon, and where they are available:

Status of Reservations and Adoption of Temporary Rules,
Report to the Nov. 19, 2015 Water Resources Commission meeting
http://apps.wrd.state.or.us/apps/misc/vault/vault.aspx?Type=WrdNotice¬ice_item_id=6542

Justification of Temporary Rule(s):

Failure to adopt temporary rules that specify a process for extending reservations consistent with current statutes will result in serious prejudice to the Oregon Department of Agriculture, the Burnt River Irrigation District, individuals seeking to utilize or benefit from the storage of water under the Burnt River reservations in the Powder Basin, and individuals or organizations seeking to provide input on the possible extension of these reservations.

Specifically, failure to immediately adopt rules for the processing of requests to extend reservations that are set to expire in March 2016 will result in expiration of reservations of water. Since these reservations must be extended by rule, counting backward from March 2016 and allowing for necessary timelines for notice and comment on the permanent Division 509 rules to consider extending the Burnt River Reservations, requires that the Division 79 rules be immediately amended to allow for timely processing of the currently pending requests.

Adopting temporary and immediate amendments to the rules governing the processing of extension requests and applying such rules retroactively will allow the Department to process currently pending requests consistently with statutes and with the requirements of proper notification, and opportunity for comment. Adopting these changes to the Division 79 rules according to the timelines for permanent rulemaking would result in applications not being timely processed before the expiration of the Burnt River reservations in March 2016.

The Commission intends to initiate a permanent rulemaking to address the more general needs of amending Division 79, so that it is consistent with statutes governing reservations. However, failure to immediately adopt revisions to provisions of Division 79 governing processing of requests to extend a reservation will result in irreparable and irreversible harm to those in the Powder Basin relying on reservations of water for future economic needs.

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