

## Chapter 690 Water Resources Department

### DIVISION 1

#### RULEMAKING; ATTORNEY GENERAL'S MODEL RULES

- 690-001-0000 Notice  
690-001-0005 Uniform and Model Rules of Procedure, Adoption

### DIVISION 2

#### PROTESTS AND CONTESTED CASES

- 690-002-0000 Scope and Purpose  
690-002-0010 Definitions  
690-002-0020 Authorized Non-Attorney Representation  
690-002-0023 Agency Representation by Officer or Employee  
690-002-0025 Time for Filing Protests or Requests for Hearing  
690-002-0030 Form and Content of Protest  
690-002-0035 Requests for Standing in Matters Involving Applications Made Under ORS Chapter 537  
690-002-0075 Scope of Hearing  
690-002-0105 Participation in Hearings for Persons Who Previously Obtained Standing Pursuant to ORS 537.170 or 537.622  
690-002-0175 Exceptions to Proposed Orders  
690-002-0190 Exceptions to Final Orders

### DIVISION 3

#### PUBLIC RECORDS ACCESS AND REPRODUCTION

- 690-003-0100 Purpose  
690-003-0120 Scope  
690-003-0140 Requests to Review or Obtain Copies of Public Records  
690-003-0160 Costs for Public Record Review and Copying  
690-003-0180 Department Response to Public Records Requests  
690-003-0200 Certification of Copies of Records  
690-003-0220 Fee Waivers and Reductions  
690-003-0240 Exempt Public Records

### DIVISION 4

#### PROCEDURAL RULES FOR MEDIATION COMMUNICATIONS

- 690-004-0010 Confidentiality and Inadmissibility of Mediation Communications  
690-004-0020 Applicability of Rules and Inadmissibility of Certain Mediation Communications in Large, Multi-Party Mediation  
690-004-0030 Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

### DIVISION 5

#### COMPLIANCE WITH STATEWIDE PLANNING GOALS, COMPATIBILITY WITH COMPREHENSIVE PLANS, AND COORDINATION ON LAND USE MATTERS

- 690-005-0010 Purpose  
690-005-0015 Definitions  
690-005-0020 Policy  
690-005-0025 Applicability  
690-005-0030 Compliance with Statewide Planning Goals  
690-005-0035 Compatibility with Acknowledged Comprehensive Plans  
690-005-0040 Resolution of Land Use Disputes  
690-005-0045 Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans  
690-005-0050 Assuring Goal Compliance and Acknowledged Plan Compatibility for New or Amended Land Use Programs

- 690-005-0055 Land Use Program Coordination with State and Federal Agencies and Special Districts  
690-005-0060 Cooperation with and Technical Assistance to Local Governments

### DIVISION 8

#### STATUTORY GROUNDWATER TERMS

- 690-008-0001 Definition and Policy Statements

### DIVISION 9

#### GROUNDWATER INTERFERENCE WITH SURFACE WATER

- 690-009-0010 Basis for Regulatory Authority and Purpose  
690-009-0020 Definitions  
690-009-0030 General Policy  
690-009-0040 Determination of Hydraulic Connection and Potential for Substantial Interference  
690-009-0050 Groundwater Controls

### DIVISION 10

#### APPROPRIATION AND USE OF GROUNDWATER

- 690-010-0045 Hearings and Protests  
690-010-0050 Notification  
690-010-0053 Process Options  
690-010-0054 Public Hearing Requirements  
690-010-0070 Local Government Coordination

### DIVISION 12

#### OUT-OF-BASIN DIVERSION

- 690-012-0010 Purpose  
690-012-0020 Definitions  
690-012-0030 General Provisions  
690-012-0040 Standards and Information Requirements  
690-012-0050 Fees

### DIVISION 13

#### PETITION TO CHANGE DEPARTMENT RECORDS WITHIN WATER DISTRICTS

- 690-013-0005 Introduction  
690-013-0010 Definitions  
690-013-0030 Eligibility to Petition  
690-013-0050 Individual Applications  
690-013-0070 Interim Transfers  
690-013-0100 District Petitions  
690-013-0110 Requests for Additional Information  
690-013-0120 Supplemental Permits  
690-013-0150 District Shall Certify Petition  
690-013-0200 Mapping Requirements  
690-013-0310 Processing of Petition  
690-013-0350 Field Verification of the Petition and Map  
690-013-0500 Penalty for Knowingly Misrepresenting Information

### DIVISION 14

#### CERTIFIED WATER RIGHT EXAMINERS

- 690-014-0005 Introduction  
690-014-0020 Definitions  
690-014-0030 Certified Water Right Examiner Required  
690-014-0050 Certification of Water Right Examiners  
690-014-0080 Revocation of Certified Water Right Examiner's Certificate  
690-014-0090 Maps for Transfer Applications

## Chapter 690 Water Resources Department

<b>690-014-0100</b>	Minimum Requirements for Claims of Beneficial Use for Permits and Transfer Final Orders
<b>690-014-0110</b>	Claim of Beneficial Use: General Standards
<b>690-014-0170</b>	Maps for Permit or Transfer Claims of Beneficial Use
<b>690-014-0190</b>	Time Limit for Filing Claim of Beneficial Use
<b>690-014-0220</b>	Time Limit to Cure Defects in a Claim of Beneficial Use

### DIVISION 17

#### CANCELLATION OF PERFECTED WATER RIGHTS

<b>690-017-0005</b>	Introduction
<b>690-017-0010</b>	Definitions
<b>690-017-0100</b>	Cancellation Authorized by Record Owner
<b>690-017-0200</b>	Watermaster Affidavit of Inability to Appropriately or Beneficially Use Water
<b>690-017-0300</b>	Notice of Watermaster Affidavit to Record Owner
<b>690-017-0400</b>	Cancellation Initiated by Department
<b>690-017-0500</b>	Cancellation Not Protested
<b>690-017-0600</b>	Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture
<b>690-017-0700</b>	Cancellation Hearing
<b>690-017-0800</b>	Grounds for an Manner of Rebutting a Presumption of Forfeiture
<b>690-017-0900</b>	Time Period of Non-Use

### DIVISION 18

#### ALLOCATION OF CONSERVED WATER

<b>690-018-0010</b>	Purpose and Applicability
<b>690-018-0012</b>	Allocation Formula and Process
<b>690-018-0014</b>	Timing of Applications
<b>690-018-0020</b>	Definitions
<b>690-018-0025</b>	District Requirements
<b>690-018-0040</b>	Application Requirements
<b>690-018-0050</b>	Processing a Conservation Application
<b>690-018-0062</b>	Completion of Conservation Project
<b>690-018-0080</b>	Management of Conserved Water
<b>690-018-0090</b>	Change in Use of Conserved Water

### DIVISION 19

#### DROUGHT MITIGATION

<b>690-019-0010</b>	Purpose of Rules
<b>690-019-0020</b>	Definitions
<b>690-019-0030</b>	Duration of Drought Declaration
<b>690-019-0040</b>	Emergency Water Use Permit
<b>690-019-0050</b>	Incomplete Applications
<b>690-019-0055</b>	Temporary Drought Transfers
<b>690-019-0058</b>	Temporary Drought Instream Leases
<b>690-019-0059</b>	Temporary Substitution of Supplemental Ground Water Right for Surface Water Primary Right
<b>690-019-0060</b>	Potential Liability
<b>690-019-0070</b>	Preference of Use, Human Consumption and Livestock
<b>690-019-0080</b>	Option or Agreement for Use of Existing Right
<b>690-019-0085</b>	Renewal Process for Drought Water Use Authorizations
<b>690-019-0090</b>	Requirement for Conservation and Curtailment Plans
<b>690-019-0100</b>	Schedule of Fees
<b>690-019-0105</b>	Fee Refund

### DIVISION 20

#### DAM SAFETY

<b>690-020-0000</b>	Purpose and Applicability
<b>690-020-0022</b>	Definitions

<b>690-020-0023</b>	Dam Safety Process Requirements for Construction of Dams
<b>690-020-0025</b>	General Requirements
<b>690-020-0029</b>	Recommendations for Dams Under 10 Feet High or Storing less than 9.2 Acre-feet
<b>690-020-0035</b>	Minimum Engineering Design Requirements
<b>690-020-0036</b>	Site Suitability and/or Geotechnical Evaluation
<b>690-020-0037</b>	Hydrology and Inflow Design Flood
<b>690-020-0038</b>	Embankment Dam Structures
<b>690-020-0041</b>	Concrete Dam Structures
<b>690-020-0042</b>	Spillways
<b>690-020-0043</b>	Penetrating Conduit (s) and Control of Flow Through Conduits
<b>690-020-0044</b>	Monitoring and Instrumentation
<b>690-020-0047</b>	Geosynthetics
<b>690-020-0048</b>	Modification of Standard Design Requirements
<b>690-020-0050</b>	Enforcement Procedures
<b>690-020-0060</b>	Construction Specifications
<b>690-020-0065</b>	Dam Construction
<b>690-020-0070</b>	Submittals and Notifications by the Engineer of Record
<b>690-020-0080</b>	Written Approval by State Engineer
<b>690-020-0100</b>	Hazard Rating of Dams
<b>690-020-0120</b>	Dam Breach Inundation Analysis
<b>690-020-0150</b>	Routine Inspection of Dams
<b>690-020-0200</b>	Fees for Dams
<b>690-020-0250</b>	Maintenance of Dams
<b>690-020-0300</b>	Modification of Dams Requiring Notification and/or Approval
<b>690-020-0350</b>	Operations and Maintenance Plans
<b>690-020-0400</b>	Emergency Action Plans (EAP) and Emergencies
<b>690-020-0500</b>	Enforcement

### DIVISION 22

#### EMERGENCY WATER PROVISIONS — KLAMATH COUNTY

<b>690-022-0020</b>	Purpose and Statutory Authority
<b>690-022-0025</b>	Definitions
<b>690-022-0030</b>	Applicability and Preference

### DIVISION 25

#### REGULATION OF GROUNDWATER IN THE OFF-PROJECT AREA DURING THE IRRIGATION SEASON FOR SENIOR SURFACE RIGHTS IN THE KLAMATH BASIN

<b>690-025-0010</b>	Untitled
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### DIVISION 28

#### SURFACE WATER REGISTRATIONS AND THE ADJUDICATION PROCESS

<b>690-028-0005</b>	Purpose
<b>690-028-0010</b>	Definitions

#### Surface Water Registration Process

<b>690-028-0015</b>	Notice of Need to Register Claims
<b>690-028-0020</b>	Previously Adjudicated Streams

#### Filing to Divert Water for a Beneficial Use or for Storage in a Reservoir

<b>690-028-0025</b>	General Instructions for Registration Statements and Statements of Claim
<b>690-028-0026</b>	Filings for Practicably Irrigable Acreage
<b>690-028-0027</b>	Filings for Federal Reserved Instream Water Rights
<b>690-028-0028</b>	Fees and Late Registration or Claims

## Chapter 690 Water Resources Department

<b>690-028-0029</b>	Review of Registration Statements and Orders of Registration
<b>690-028-0040</b>	Standards to Evaluate Claims
<b>690-028-0045</b>	Reasonable Diligence
<b>690-028-0055</b>	Amendments to Registration Orders
<b>690-028-0060</b>	Beginning the Adjudication Process
<b>690-028-0065</b>	Time for Filing Claims and Documentation
<b>690-028-0070</b>	Summary of Claims
<b>690-028-0075</b>	Filing Contests of Claims of Others
<b>690-028-0080</b>	Responsibilities to Circuit Court

### DIVISION 29

#### WARM SPRINGS WATER RIGHTS NEGOTIATIONS

<b>690-029-0005</b>	Purpose
<b>690-029-0010</b>	Notice
<b>690-029-0015</b>	Public Comment

### DIVISION 30

#### CONTESTS IN THE ADJUDICATION OF WATER RIGHTS

<b>690-030-0005</b>	Rules of the Water Resources Director
<b>690-030-0010</b>	Statement of Contest, When to Be Filed
<b>690-030-0015</b>	Contents and Form of the Statement of Contest
<b>690-030-0020</b>	Service to Be Made on Contestee
<b>690-030-0025</b>	Answers
<b>690-030-0030</b>	Answers, When to Be Served
<b>690-030-0035</b>	Amendment of Statement of Contest
<b>690-030-0040</b>	Service of Amended Statement
<b>690-030-0045</b>	Hearing of Contest
<b>690-030-0050</b>	Procedure on Hearing
<b>690-030-0055</b>	Arguments and Briefs
<b>690-030-0060</b>	Postponement of Proceedings
<b>690-030-0065</b>	Subpoenas
<b>690-030-0070</b>	Notice of Hearing
<b>690-030-0075</b>	Joining Parties Contestant and Contestee
<b>690-030-0080</b>	Practice in Suits in Equity Governs Taking of Testimony
<b>690-030-0085</b>	Amendment or Alteration of Claim
<b>690-030-0090</b>	Withdrawing Original Testimony

### DIVISION 33

#### ADDITIONAL PUBLIC INTEREST STANDARDS FOR NEW APPROPRIATIONS

<b>690-033-0000</b>	Purpose
<b>690-033-0010</b>	Definitions for the Purposes of Chapter 690, Division 33

#### Upper Columbia Rules (Above Bonneville Dam)

<b>690-033-0115</b>	Geographic Scope
<b>690-033-0120</b>	Determination of Consistency With the Fish and Wildlife Program
<b>690-033-0130</b>	Flow Management
<b>690-033-0140</b>	Exemptions

#### Lower Columbia Rules (Below Bonneville Dam)

<b>690-033-0210</b>	Geographic Scope
<b>690-033-0220</b>	Evaluation Criteria
<b>690-033-0230</b>	Flow Management

#### Statewide Rules

<b>690-033-0310</b>	Geographic Scope
<b>690-033-0320</b>	Rule Review
<b>690-033-0330</b>	Review of Proposed Water Use
<b>690-033-0340</b>	Public Interest Review Presumption

### DIVISION 40

#### ADMINISTRATION OF THE CAREY ACT

<b>690-040-0000</b>	Reclamation of Lands Under Provisions of the Carey Act
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### DIVISION 51

#### APPROPRIATION AND USE OF WATER FOR HYDROELECTRIC POWER AND STANDARDS FOR HYDROELECTRIC APPLICATIONS

<b>690-051-0000</b>	Purpose
<b>690-051-0010</b>	Definitions
<b>690-051-0020</b>	Projects to be Considered by the Commission
<b>690-051-0030</b>	Restrictions on Filing
<b>690-051-0040</b>	Preliminary Permit not Required
<b>690-051-0050</b>	Applications: Filing Procedure
<b>690-051-0060</b>	Consultation
<b>690-051-0070</b>	Applications for Preliminary Permits: Contents and Scope of Evaluation
<b>690-051-0080</b>	Application of Standards to Preliminary Permits
<b>690-051-0090</b>	Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards
<b>690-051-0095</b>	Applications for Major Projects: Scope of Evaluation and Application of Standards
<b>690-051-0100</b>	Application for Major License or Permit: Contents, Scope of Evaluation
<b>690-051-0130</b>	Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings
<b>690-051-0140</b>	Time and Place of Hearings
<b>690-051-0150</b>	Filing of Protest and Remonstrances
<b>690-051-0160</b>	Standards for Evaluation
<b>690-051-0170</b>	Protection of Designated Resource Areas and Special Management Areas
<b>690-051-0180</b>	Mitigation, No Net Loss
<b>690-051-0190</b>	Water Resources
<b>690-051-0200</b>	Fish Resources
<b>690-051-0210</b>	Wildlife
<b>690-051-0220</b>	Plant Life
<b>690-051-0230</b>	Recreation
<b>690-051-0240</b>	Historic, Cultural and Archaeological Resources
<b>690-051-0250</b>	Land Resources
<b>690-051-0260</b>	Land Use
<b>690-051-0270</b>	Economics
<b>690-051-0280</b>	Need for Power
<b>690-051-0290</b>	Consolidated Review
<b>690-051-0300</b>	Interim Orders
<b>690-051-0310</b>	Record of Expenditures Under Preliminary Permits
<b>690-051-0320</b>	Competing Applications
<b>690-051-0330</b>	System of Accounts for Public Utilities
<b>690-051-0340</b>	Accounts When the Licensee is Not a Public Utility
<b>690-051-0350</b>	Minor Projects, Waiver of Provisions of Act Where the Licensee is Not a Public Utility
<b>690-051-0360</b>	Minor Project by Public Utility
<b>690-051-0370</b>	Transfer of Project to Public Utility
<b>690-051-0380</b>	Water Rights
<b>690-051-0390</b>	Failure to Construct Project or Utilize Water
<b>690-051-0400</b>	Fees: Filing and Annual
<b>690-051-0410</b>	Agreements Between Municipal and Private Applicants

### DIVISION 52

#### DECOMMISSIONING RULES FOR NON-FERC PROJECTS

<b>690-052-0000</b>	Purpose
<b>690-052-0010</b>	Definitions
<b>690-052-0020</b>	Initiation of Decommissioning Process

## Chapter 690 Water Resources Department

690-052-0030	Public Notice and Comment
690-052-0040	Process Determination
690-052-0050	Expedited Process
690-052-0060	Standard Process; Decommissioning Application Review Team
690-052-0070	Decommissioning Plan; Standard for Review
690-052-0080	Agency Comments
690-052-0090	Draft Decommissioning Plan
690-052-0100	Public Notice and Comment for Draft Decommissioning Plan
690-052-0110	Proposed Final Order: Findings and Criteria; Protests
690-052-0120	Contested Case Hearings
690-052-0130	Exceptions to the Proposed Final Order; Final Order
690-052-0140	Final Order Needed to Decommission
690-052-0150	Disposition of the Water Right
690-052-0160	Modification of Time Limits

### DIVISION 53

#### HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

690-053-0001	Purpose
690-053-0005	Definitions
690-053-0010	Amendment Application Form
690-053-0015	Notice Requirements
690-053-0020	Amendment Criteria
690-053-0025	Types of Amendments that Will Be Considered Under These Rules
690-053-0030	Public Hearing
690-053-0035	Issuance of Amendment Order
690-053-0040	Protests
690-053-0045	Contested Case Hearings
690-053-0050	Final Order

### DIVISION 76

#### ESTABLISHMENT OF MINIMUM PERENNIAL STREAMFLOWS

690-076-0005	Purpose
690-076-0010	Definitions
690-076-0015	Effect of Minimum Perennial Streamflows
690-076-0018	Application Standards for Minimum Perennial Streamflows
690-076-0020	Review Process for Applications
690-076-0025	Information Base
690-076-0030	Review Standards
690-076-0035	General Provisions and Policies

### DIVISION 77

#### INSTREAM WATER RIGHTS

690-077-0000	Purpose
690-077-0010	Definitions
690-077-0015	General Statements

#### State Agency Instream Water Right Applications

690-077-0019	Process for Instream Water Right Certificate Requests
690-077-0020	Application Requirements, Completion of Application Review and Additional Information

#### Application Processing

690-077-0027	Completeness Review
690-077-0029	Initial Review
690-077-0031	Public Notice and Comments
690-077-0033	Public Interest Presumption

690-077-0037	Public Interest Review
690-077-0039	Proposed Final Order
690-077-0043	Protests and Standing
690-077-0046	Determination to Hold a Contested Case Hearing
690-077-0047	Final Orders
690-077-0048	Final Determination of Whether Proposed Use Would Impair or be Detrimental to the Public Interest
690-077-0049	Requirement of Statement of Findings
690-077-0051	Contested Case Hearing on Final Order
690-077-0052	Time Requirements
690-077-0053	Issuance of Instream Water Right Certificate

### Minimum Perennial Streamflows

690-077-0054	Conversion of Minimum Perennial Streamflows to Instream Water Rights
690-077-0055	Disposition of Minimum Perennial Streamflows

### Instream Transfers and Leases

690-077-0065	General Provisions
690-077-0070	Application for Instream Transfer
690-077-0075	Processing an Instream Transfer Application
690-077-0076	Application for an Instream Lease
690-077-0077	Processing an Instream Lease Application
690-077-0079	Split Season Use Instream Leasing

### Miscellaneous Provisions

690-077-0080	Cancellation or Waiving of an Instream Water Right
690-077-0090	Drought Emergency Provisions
690-077-0100	Precedence of Future Uses

### DIVISION 78

#### APPLICATIONS AND PERMITS FOR CHEMICAL PROCESS MINING

690-078-0000	Purpose
690-078-0010	Definitions
690-078-0020	Water Use Permit Applications for Chemical Process Mining
690-078-0030	Information Required to File a Water Use Permit Application for Chemical Process Mining
690-078-0040	Information Required to Process a Water Use Permit Application for Chemical Process Mining
690-078-0050	Information Required to Process an Application for Storing Water and Constructing a Reservoir for Chemical Process Mining
690-078-0060	Processing Incomplete Applications for Chemical Process Mining
690-078-0070	Process for Amending Applications for Chemical Process Mining
690-078-0080	Map to Accompany an Application for Water Use Permit for Chemical Process Mining
690-078-0090	Processing an Application for Use of Water in Chemical Process Mining
690-078-0100	Modification of a Permit for Use of Water for Chemical Process Mining
690-078-0110	Miscellaneous Provisions

### DIVISION 79

#### RESERVATIONS OF WATER FOR FUTURE ECONOMIC DEVELOPMENT

690-079-0010	Purpose
690-079-0020	Definitions
690-079-0030	Request for Reservation
690-079-0040	Priority Date
690-079-0050	Term of Reservation and Extensions

## Chapter 690 Water Resources Department

<b>690-079-0060</b>	Information Requirements
<b>690-079-0070</b>	Notice of Reservation Request
<b>690-079-0080</b>	Copies of Reservation Request
<b>690-079-0090</b>	Comment Period and Land Use Compatibility
<b>690-079-0100</b>	Review by Director
<b>690-079-0110</b>	Appeal of Director's Decision
<b>690-079-0120</b>	Contested Case Proceeding
<b>690-079-0130</b>	Public Interest Review
<b>690-079-0140</b>	Conditions on a Reservation
<b>690-079-0150</b>	Applications for Use of Reserved Water

### DIVISION 80

#### PROGRAMS FOR AND WITHDRAWAL FROM CONTROL AND USE OF STATE'S WATER RESOURCES

<b>690-080-0010</b>	Resume of Withdrawals by the Water Resources Commission of Unappropriated Water from Future Appropriation
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### DIVISION 82

#### ACCEPTANCE OF APPLICATIONS FOR WATER USES IN ADDITION TO CLASSIFIED USES

<b>690-082-0010</b>	Purpose
<b>690-082-0020</b>	Definitions
<b>690-082-0030</b>	Application Filing
<b>690-082-0040</b>	Special Application Process
<b>690-082-0050</b>	Acceptance of Application
<b>690-082-0060</b>	Priority Date
<b>690-082-0070</b>	Normal Application Process
<b>690-082-0080</b>	Right to Petition

### DIVISION 85

#### ANNUAL REPORTS AND SERIOUS WATER MANAGEMENT PROBLEM AREAS

<b>690-085-0005</b>	Purpose
<b>690-085-0008</b>	Definitions
<b>690-085-0010</b>	Governmental Entities to Submit Annual Water Use Reports
<b>690-085-0015</b>	Methods for Measuring and Computing Water Use
<b>690-085-0020</b>	Serious Water Management Problem Areas
<b>690-085-0030</b>	Failure to Report

### DIVISION 86

#### WATER MANAGEMENT AND CONSERVATION PLANS

<b>690-086-0010</b>	Purpose
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#### Definitions

<b>690-086-0020</b>	General Definitions
<b>690-086-0030</b>	Definitions for Municipal Water Suppliers
<b>690-086-0040</b>	Definitions for Agricultural Water Suppliers

#### Municipal Water Management and Conservation Plans

<b>690-086-0100</b>	Applicability
<b>690-086-0120</b>	General Provisions
<b>690-086-0125</b>	Municipal Water Supplier Plan Elements
<b>690-086-0130</b>	Criteria for Approval of a Plan Submitted by a Municipal Water Supplier
<b>690-086-0140</b>	Municipal Water Supplier Description
<b>690-086-0150</b>	Municipal Water Conservation Element
<b>690-086-0160</b>	Municipal Water Curtailment Element
<b>690-086-0170</b>	Municipal Water Supply Element

#### Agricultural Water Supplier Water Management and Conservation Plans

<b>690-086-0220</b>	General Provisions
<b>690-086-0225</b>	Agricultural Water Supplier Plan Elements
<b>690-086-0240</b>	Agricultural Water System Description
<b>690-086-0250</b>	Agricultural Water Conservation Element
<b>690-086-0260</b>	Agricultural Water Allocation/Curtailment Element
<b>690-086-0270</b>	Agricultural Water Supply Element

#### Water Management and Conservation Plan Review and Enforcement

<b>690-086-0900</b>	Water Management and Conservation Plan Review, Approval and Enforcement
<b>690-086-0905</b>	Notice of Submittal of a Draft Plan or Updated Plan
<b>690-086-0910</b>	Preliminary Review of Draft Plans
<b>690-086-0915</b>	Final Review of Plans
<b>690-086-0920</b>	Enforcement

### DIVISION 90

#### WATER DEVELOPMENT LOAN FUND

<b>690-090-0005</b>	Purpose
<b>690-090-0010</b>	Definitions
<b>690-090-0015</b>	Eligibility
<b>690-090-0016</b>	Eligible Costs
<b>690-090-0017</b>	Preferences
<b>690-090-0018</b>	Authority of Director
<b>690-090-0019</b>	Loan Advisory Board
<b>690-090-0020</b>	Application Procedure
<b>690-090-0025</b>	Criteria for Granting Loan
<b>690-090-0030</b>	Loan Security
<b>690-090-0035</b>	Notice and Hearings
<b>690-090-0036</b>	Fees and Charges
<b>690-090-0038</b>	Appeal Process
<b>690-090-0040</b>	Closing of the Loan
<b>690-090-0045</b>	Issuance of Bonds
<b>690-090-0050</b>	Loan Servicing
<b>690-090-0055</b>	Collection of Delinquencies
<b>690-090-0060</b>	Property Management

### DIVISION 93

#### WATER SUPPLY DEVELOPMENT GRANT AND LOAN PROGRAM

<b>690-093-0010</b>	Purpose
<b>690-093-0020</b>	Definitions
<b>690-093-0030</b>	Authorized Use of Funds
<b>690-093-0040</b>	Loan and Grant Applicant Eligibility
<b>690-093-0050</b>	Pre-Application Conferences
<b>690-093-0060</b>	Application Submission Periods
<b>690-093-0070</b>	Application Requirements
<b>690-093-0080</b>	Public Comment
<b>690-093-0090</b>	Scoring and Ranking; Funding Decisions
<b>690-093-0100</b>	Project Selection
<b>690-093-0110</b>	Water Dedicated Instream for Certain Above- Ground Storage Facilities
<b>690-093-0120</b>	Demonstration of Public Benefits of Project
<b>690-093-0130</b>	Seasonally Varying Flows
<b>690-093-0150</b>	Agreements and Conditions
<b>690-093-0160</b>	Authority of the Director
<b>690-093-0170</b>	Loan Interest Rates and Terms
<b>690-093-0180</b>	Loan Closing
<b>690-093-0190</b>	Standards for Security of Loans
<b>690-093-0200</b>	Program Review

## Chapter 690 Water Resources Department

### DIVISION 95

#### COLUMBIA RIVER BASIN WATER DEVELOPMENT LOAN PROGRAM

690-095-0005	Purpose, Statutory Authorization
690-095-0010	Definitions
690-095-0015	Eligibility: Applicant and Project
690-095-0020	Eligible Costs
690-095-0025	Ineligible Costs
690-095-0030	Authority of Director
690-095-0035	Loan Advisory Board
690-095-0040	Application
690-095-0045	Public Notice and Review Period
690-095-0050	Criteria for Granting a Loan
690-095-0055	Appeal Process
690-095-0060	Loan Security
690-095-0065	Interest Rates
690-095-0070	Loan Contract
690-095-0075	Conditions to Disbursement of Loan Funds
690-095-0080	Fees and Charges
690-095-0085	Issuance of Bonds
690-095-0090	Loan Servicing
690-095-0095	Collection of Delinquencies
690-095-0100	Property Management

### DIVISION 100

#### PAYMENT FOR PUBLIC BENEFITS IN WATER PROJECTS

690-100-0005	Purpose
690-100-0010	Definitions
690-100-0015	Eligibility
690-100-0020	Application Procedure
690-100-0025	Criteria and Procedure for Determining Public Benefit
690-100-0030	Commission's Recommendation
690-100-0035	Disbursement of Funds
690-100-0040	Compliance Agreement
690-100-0045	Public Disclosure

### DIVISION 190

#### EXEMPT GROUNDWATER USE RECORDING REQUIREMENTS

690-190-0005	Purpose and Applicability
690-190-0010	Definitions
690-190-0100	Recording Requirements
690-190-0200	Compliance and Enforcement

### DIVISION 200

#### WATER SUPPLY WELL CONSTRUCTION STANDARDS INTRODUCTION, GENERAL STANDARDS AND DEFINITIONS

690-200-0005	Basis for Regulatory Authority
690-200-0020	General Statement About the Standards
690-200-0021	Special Standards
690-200-0025	Special Area Standards
690-200-0027	Restrictions on Water Supply Well Construction and Use in Critical Groundwater Areas or Areas Withdrawn by Commission Order
690-200-0028	Designated Special Area Standards
690-200-0030	Public Safety
690-200-0040	Wells Cannot be Used for Disposal of Contaminants
690-200-0041	Water Used Must be Potable
690-200-0042	Organic Materials
690-200-0043	Commingle of Waters
690-200-0046	Perched Groundwater

690-200-0047	Unattended Wells
690-200-0048	Label Well Identification
690-200-0050	Definitions

### DIVISION 205

#### WATER SUPPLY WELL CONSTRUCTION STANDARDS; LICENSING

690-205-0005	License or Permit Required to Construct Water Supply Wells
690-205-0010	Water Supply Well Constructor License Examination
690-205-0020	Water Well Constructor License, Experience Requirements and Trainee Card
690-205-0025	Term of Water Well Constructor License and License Fees
690-205-0035	Continuing Education Committee
690-205-0045	Continuing Education Requirement
690-205-0055	Documentation
690-205-0075	Approved Course List/Course Approval and Assignment of CECs
690-205-0085	Course Sponsor Requirements
690-205-0095	Loss of Approval
690-205-0110	Courses Taken Without Prior Approval
690-205-0120	Waivers
690-205-0145	Contracting for Services
690-205-0155	Water Supply Well Constructor and Landowner Well Bonds or Letters of Credit
690-205-0175	Landowner Well Construction Permit, Fee and Bond
690-205-0185	Water Supply Well Drilling Machines
690-205-0200	Water Supply Well Construction Notice Required (Start Card)
690-205-0205	Start Card Reporting Requirements
690-205-0210	Well Report Required (Water Supply Well Log)

### DIVISION 210

#### WELL CONSTRUCTION STANDARDS

690-210-0005	Standards Apply to all Methods of Well Construction
690-210-0030	Placement of Water Supply Wells
690-210-0060	Explosives
690-210-0065	Hydrofracturing
690-210-0070	Injection Wells
690-210-0100	Mineralized or Contaminated Groundwater
690-210-0130	Sealing of Water Supply Wells in Unconsolidated Formations Without Significant Clay Beds
690-210-0140	Sealing of Water Supply Wells in Unconsolidated Formations with Significant Clay Beds
690-210-0150	Sealing of Water Supply Wells in Consolidated Formations
690-210-0155	Additional Standards for Artesian Wells
690-210-0160	Additional Standards for Filter Pack Wells with Surface Casing
690-210-0170	Additional Standards for Filter Pack Wells Without Surface Casing
690-210-0180	Additional Standards for Driven or Jetted Wells
690-210-0190	Steel Casing
690-210-0200	Steel Casing Joints
690-210-0210	Plastic Casing
690-210-0220	Plastic Casing Joints
690-210-0230	Inner Casing
690-210-0240	Casing Shall be Centered
690-210-0250	Top Terminal Height
690-210-0260	Openings in the Casing
690-210-0270	Pitless Well Adapters and Units
690-210-0280	Access Ports and Airlines
690-210-0290	Liner Pipe
690-210-0300	Drill Cuttings or Chips

## Chapter 690 Water Resources Department

<b>690-210-0310</b>	Cement Grout
<b>690-210-0315</b>	Concrete
<b>690-210-0320</b>	Methods of Placement of Cement Grout or Concrete
<b>690-210-0330</b>	Unhydrated Bentonite
<b>690-210-0340</b>	Method of Placement of Unhydrated Bentonite
<b>690-210-0350</b>	Resumption of Construction Following Placement of Cement Grout
<b>690-210-0360</b>	Movement of Casing After Cement Grouting
<b>690-210-0370</b>	Well Test
<b>690-210-0380</b>	Disinfection of a Well
<b>690-210-0390</b>	Completion of Wells
<b>690-210-0400</b>	Construction of Dug Wells
<b>690-210-0410</b>	Buried Slab Construction
<b>690-210-0420</b>	Surface Curbing

### DIVISION 215

#### MAINTENANCE, REPAIR AND DEEPENING OF WATER SUPPLY WELLS

<b>690-215-0005</b>	Prevention of Groundwater Contamination, Health Hazard, and Waste
<b>690-215-0006</b>	Well Alterations
<b>690-215-0010</b>	Maintenance of an Existing Well Following Construction of Replacement Well
<b>690-215-0016</b>	Maintaining Well Setback Requirements
<b>690-215-0017</b>	Down Well Continuous Water Treatment and Back-Siphon Prevention Devices
<b>690-215-0020</b>	Valves And Casing on Artesian Wells
<b>690-215-0025</b>	Sealing Pitless Adapter and Pitless Units
<b>690-215-0030</b>	Casing and Casing Extensions
<b>690-215-0035</b>	Liner Pipe
<b>690-215-0040</b>	Casing and Sealing Wells after Disturbance
<b>690-215-0045</b>	Deepening of Wells
<b>690-215-0050</b>	Well Cover
<b>690-215-0055</b>	Well Identification Label Maintenance
<b>690-215-0060</b>	Access Ports, Dedicated Measuring Tubes or Airlines
<b>690-215-0070</b>	Pressure Gauge
<b>690-215-0080</b>	Flowmeters and Dedicated Measuring Tubes
<b>690-215-0090</b>	Conversion to an Artesian Well
<b>690-215-0100</b>	Drilling in a Dug Well
<b>690-215-0200</b>	Dedicated Measuring Tube

### DIVISION 217

#### REQUIREMENT FOR PUMP TESTING OF NONEXEMPT WELLS

<b>690-217-0005</b>	Purpose and Basis for Authority
<b>690-217-0010</b>	Definitions
<b>690-217-0015</b>	Policy Statement
<b>690-217-0020</b>	Requirements for Pump Tests
<b>690-217-0025</b>	Pump Test Specifications for Wells Other than Flowing Artesian Wells
<b>690-217-0030</b>	Pump Test Specifications for Flowing Artesian Wells with Pumps
<b>690-217-0035</b>	Pump Test Specifications for Flowing Artesian Wells without Pumps
<b>690-217-0040</b>	Nearby Wells and Streams
<b>690-217-0045</b>	Acceptable Techniques for Measurement of Water Level and Discharge
<b>690-217-0050</b>	Qualifications for Conducting Pump Tests
<b>690-217-0055</b>	Pump Test Reports

### DIVISION 220

#### ABANDONMENT OF WATER SUPPLY WELLS

<b>690-220-0005</b>	Temporary Abandonment
<b>690-220-0030</b>	Permanent Abandonment

<b>690-220-0035</b>	Abandonment of an Existing Water Well After Replacement
<b>690-220-0040</b>	Abandonment of Cased Wells
<b>690-220-0050</b>	Abandonment of Uncased Wells
<b>690-220-0070</b>	Abandonment of Artesian Wells
<b>690-220-0080</b>	Abandonment of Driven and Jetted Wells
<b>690-220-0090</b>	Abandonment of Filter or Gravel Pack Wells
<b>690-220-0095</b>	Abandonment of Dug Wells
<b>690-220-0100</b>	Obstructions and Possible Contaminants
<b>690-220-0110</b>	Removal of Well Casing During Abandonment
<b>690-220-0115</b>	Unhydrated Bentonite and Method of Placement
<b>690-220-0120</b>	Cement Grout
<b>690-220-0130</b>	Concrete
<b>690-220-0140</b>	Method of Placement of Concrete or Cement Grout

### DIVISION 225

#### ENFORCEMENT (SEE FIGURE 225-1)

<b>690-225-0020</b>	Investigation of Alleged Violations
<b>690-225-0030</b>	Enforcement Actions
<b>690-225-0040</b>	Multiple Violations and Consolidation of Proceedings
<b>690-225-0050</b>	Factors Affecting Selection of Type and Degree of Enforcement
<b>690-225-0060</b>	Change in Enforcement Statu

#### Civil Penalties

<b>690-225-0100</b>	Assessment of Civil Penalties
<b>690-225-0110</b>	Schedule of Civil Penalties

### DIVISION 230

#### STANDARDS AND PROCEDURES FOR LOW-TEMPERATURE GEOTHERMAL PRODUCTION AND INJECTION WELLS AND EFFLUENT DISPOSAL SYSTEMS

<b>690-230-0005</b>	Policy and Purpose
<b>690-230-0020</b>	Definitions

#### Well Construction Standards

<b>690-230-0030</b>	Construction of Low-Temperature Geothermal Production and Injection Wells
<b>690-230-0040</b>	Location of Low-Temperature Geothermal Injection Wells Not Exceeding 15,000 Gallons Per Day
<b>690-230-0045</b>	Location of Low-Temperature Geothermal Injection Wells Exceeding 15,000 Gallons Per Day
<b>690-230-0050</b>	Description of Proposed Well Use (Start Card)
<b>690-230-0060</b>	Identification of Intended Well Use (Well Log)
<b>690-230-0070</b>	Well-Head Protection Equipment
<b>690-230-0075</b>	Disposal of Low-Temperature Geothermal Fluids Produced During Drilling and Testing
<b>690-230-0080</b>	Pump Testing of Low-Temperature Geothermal Injection Wells with an Anticipated Injection Rate of Less than 15,000 Gallons Per Day
<b>690-230-0085</b>	Pump Testing of Low-Temperature Geothermal Injection Wells with an Anticipated Injection Rate Exceeding 15,000 Gallons Per Day
<b>690-230-0090</b>	Water Temperature Measurement
<b>690-230-0100</b>	Additional Standards for Low-Temperature Geothermal Injection Wells

#### Low-Temperature Geothermal Effluent Disposal

<b>690-230-0110</b>	Injection Plan for Wells with an Anticipated Injection Rate not Exceeding 15,000 Gallons Per Day
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## Chapter 690 Water Resources Department

**690-230-0115** Injection Plan for Wells with an Anticipated Injection Rate Exceeding 15,000 Gallons Per Day

### Water Rights Procedure

**690-230-0120** Processing of Applications  
**690-230-0130** Exemption from Water Right Permit Application/Use of Low-Temperature Geothermal Fluid  
**690-230-0140** Water Right Limitation for Non-standard Effluent Disposal Systems

### DIVISION 235

#### GROUNDWATER ADVISORY COMMITTEE

**690-235-0005** Groundwater Advisory Committee: Appointment, Terms, and Qualifications  
**690-235-0020** Groundwater Advisory Committee Duties

### DIVISION 240

#### CONSTRUCTION, MAINTENANCE, ALTERATION, CONVERSION AND ABANDONMENT OF MONITORING WELLS, GEOTECHNICAL HOLES AND OTHER HOLES IN OREGON

**690-240-0005** Introduction  
**690-240-0006** Special Standards  
**690-240-0007** Special Area Standards  
**690-240-0010** Definitions  
**690-240-0011** Organic Materials  
**690-240-0012** Public Safety  
**690-240-0013** Wells Cannot be Used for Disposal of Contaminants  
**690-240-0014** Water Used Must be Potable  
**690-240-0015** Delegation of Responsibility for Monitoring Wells, Geotechnical Holes and Other Holes  
**690-240-0016** Unattended Wells  
**690-240-0020** Delegation Conditions  
**690-240-0024** Well Identification Label  
**690-240-0026** Well Identification Label Maintenance  
**690-240-0030** Other Holes; General Performance and Responsibility Requirements  
**690-240-0035** Geotechnical Holes: General Performance and Responsibility Requirements  
**690-240-0040** Closed Loop Ground Source Heat Pump Boring – General Requirements  
**690-240-0043** Construction Standards  
**690-240-0046** Grouting of Uncased Boring  
**690-240-0049** Reporting Requirements  
**690-240-0055** License Required to Construct Monitoring Wells  
**690-240-0060** Monitoring Well Constructor License Examination  
**690-240-0065** Monitoring Well Constructor License, Experience Requirements and Trainee Card  
**690-240-0070** Terms of Monitoring Well Constructor License and License Fees  
**690-240-0200** Continuing Education Committee  
**690-240-0210** Continuing Education Requirement  
**690-240-0220** Documentation  
**690-240-0240** Approved Course List/Course Approval and Assignment of CECs  
**690-240-0250** Course Sponsor Requirements  
**690-240-0260** Loss of Approval  
**690-240-0270** Courses Taken Without Prior Approval  
**690-240-0280** Waivers  
**690-240-0320** Contracting for Services  
**690-240-0330** Monitoring Well Constructor and Landowner Well Bonds or Letters of Credit  
**690-240-0340** Landowner Well Construction Permit, Fee and Bond  
**690-240-0355** Monitoring Well Drilling Machines

**690-240-0375** Monitoring Well Construction Notice Required (Start Card)  
**690-240-0385** Start Card Reporting Requirements  
**690-240-0395** Monitoring Well Report Required (Monitoring Well Log)  
**690-240-0410** Monitoring Well Construction: General  
**690-240-0420** Well Protection  
**690-240-0430** Casing  
**690-240-0440** Additional Standards for Artesian Monitoring Wells  
**690-240-0450** Cleaning  
**690-240-0460** Monitoring Well Screen, Filter Pack, and Filter Pack Seal  
**690-240-0475** Well Seals  
**690-240-0485** Monitoring Well Development  
**690-240-0500** Completion of Monitoring Wells  
**690-240-0510** Abandonment of Monitoring Wells  
**690-240-0525** Piezometers  
**690-240-0540** Direct Push Monitoring Wells and Piezometers  
**690-240-0550** Evidence of Failure  
**690-240-0560** Investigation of Alleged Violations  
**690-240-0580** Enforcement Actions  
**690-240-0590** Multiple Violations and Consolidation of Proceedings  
**690-240-0600** Factors Affecting Selection of Type and Degree of Enforcement  
**690-240-0610** Change in Enforcement Status  
**690-240-0630** Assessment of Civil Penalties  
**690-240-0640** Schedule of Civil Penalties

### DIVISION 250

#### WATER DISTRIBUTION

**690-250-0005** Purpose of Rules  
**690-250-0010** Definitions  
**690-250-0020** Futile Calls  
**690-250-0030** Appropriator Obligated to Maintain a Functional Point of Diversion  
**690-250-0040** Protection of Water Involved in a Transfer of Point of Diversion  
**690-250-0050** Controlling Waste and Unlawful Use of Water  
**690-250-0060** Diversion Works and Measuring Device  
Installation Notices for Surface Water and Groundwater  
**690-250-0070** Irrigation Seasons  
**690-250-0080** Water Rotation Agreements  
**690-250-0090** Entry on Private Property  
**690-250-0100** Regulation of Surface Water  
**690-250-0110** Regulation of Groundwater  
**690-250-0120** Regulation of Groundwater/Surface Water  
**690-250-0130** Regulation of Exempt Groundwater Uses Under ORS 537.545  
**690-250-0140** Special Problem Area Regulation  
**690-250-0150** Management of Stored Water  
**690-250-0160** Collections Authority

### DIVISION 260

#### CIVIL PENALTY ASSESSMENT FOR OTHER THAN WELL CONSTRUCTORS

**690-260-0005** Purpose of Rules  
**690-260-0010** Definitions  
**690-260-0020** Violation Policy  
**690-260-0030** Notice of Violation  
**690-260-0040** Classification of Violations  
**690-260-0050** Reasonable Time for Correction of Violation  
**690-260-0055** Repeat Violations and Continuing Notice of Violation  
**690-260-0060** Notice of Assessment of Civil Penalty  
**690-260-0070** Schedule of Civil Penalties

## Chapter 690 Water Resources Department

**690-260-0080** Adjustments to Schedule of Civil Penalties  
**690-260-0090** Opportunity for Hearing  
**690-260-0100** Liability for Damages Related to Enforcement  
**690-260-0110** Notice of Violation to Water Providing Organizations

### DIVISION 300

### DEFINITIONS

**690-300-0010** Definitions

### DIVISION 310

### WATER RIGHT APPLICATION PROCESSING

**690-310-0000** Purpose  
**690-310-0005** Determination of Appropriate Step in Process for Applications Pending on June 30, 1995  
**690-310-0010** Application Processing Rules Control General Administrative Procedures Act Provisions  
**690-310-0020** Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work  
**690-310-0030** Grounds for Refusal to Issue or Cancellation of Permit  
**690-310-0040** Application Requirements  
**690-310-0050** Map to Accompany Application for Water Use Permit  
**690-310-0060** Permits for Livestock Watering Outside of Riparian Areas (SB 150, 1989); Fees  
**690-310-0070** Completeness Review  
**690-310-0080** Initial Review  
**690-310-0090** Public Notice and Comments  
**690-310-0100** Completion of Application Review; Additional Information and Proposed Final Order  
**690-310-0110** Public Interest Presumption; Surface Water  
**690-310-0120** Public Interest Review; Surface Water  
**690-310-0130** Public Interest Presumption; Groundwater  
**690-310-0140** Public Interest Review; Groundwater  
**690-310-0150** Proposed Final Order  
**690-310-0160** Protests and Standing to Participate in Further Proceedings  
**690-310-0170** Determination of Director to Refer Application for Contested Case Hearing, Final Order of Director  
**690-310-0180** Conduct of Contested Case  
**690-310-0190** Final Order for Proposed Use of Surface Water  
**690-310-0200** Final Order for Proposed Use of Groundwater  
**690-310-0210** Contested Case Hearing on Final Order  
**690-310-0220** Final Determination of Whether Proposed Use of Surface Water Would Impair or Be Detrimental to Public Interest or Whether Proposed Use of Ground Water Would Preserve the Public Welfare, Safety and Health  
**690-310-0230** Exceptions  
**690-310-0240** Approval, Condition or Rejection of Permit Application Generally  
**690-310-0250** Permit Conditions Related to Well Construction and Maintenance  
**690-310-0260** Water Rights Within or Above State Scenic Waterways  
**690-310-0270** Timelines  
**690-310-0275** Applicability of Mandatory Timelines  
**690-310-0280** Assignment of Application

### DIVISION 315

### WATER RIGHT PERMIT EXTENSIONS

**690-315-0010** Purpose  
**690-315-0020** Application for Extension of Time for Other Than Municipal and Quasi-Municipal Water Use Permits

**690-315-0030** Application for Extension of Time to Begin Construction on Storage Projects  
**690-315-0040** Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits  
**690-315-0050** Department Action on Extension Applications  
**690-315-0060** Proposed Final Order Hearing Rights  
**690-315-0070** Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits  
**690-315-0080** Criteria for Department Review of Extension Applications for Municipal and Quasi-Municipal Water Use Permits  
**690-315-0090** Time of Extensions and Additional Development of Municipal and Quasi-Municipal Water Use Permits  
**690-315-0100** Department Action on Extension Applications by Holders of Municipal Water Supply Permits

### DIVISION 320

### WATER RIGHT PERMIT

**690-320-0010** Extension of Time Limits  
**690-320-0020** Cancellation of Permit  
**690-320-0030** Claims of Beneficial Use for Applications Filed After June 30, 1987  
**690-320-0040** Incremental Perfection of a Municipal Water Right  
**690-320-0050** Temperature Control  
**690-320-0060** Assignment or Change of Ownership of a Permit or Groundwater Registration  
**690-320-0070** Primary and Supplemental Rights

### DIVISION 325

### ASSIGNMENT OF A WATER RIGHT PERMIT AND REQUEST FOR ISSUANCE OF REPLACEMENT PERMITS

**690-325-0010** Purpose  
**690-325-0020** Applicability  
**690-325-0030** Definitions  
**690-325-0040** Application Requirements  
**690-325-0050** Map Requirements  
**690-325-0060** Receipt of Application; Fees  
**690-325-0070** Technical Review and Issuance of Draft Documents  
**690-325-0080** Public Notice and Request for Comments  
**690-325-0090** Proposed Final Order; Public Notice  
**690-325-0100** Protests  
**690-325-0110** Final Order and Replacement Water Right Permits

### DIVISION 330

### WATER RIGHT CERTIFICATES

**690-330-0010** Proof of Appropriation  
**690-330-0020** Request for Reconsideration of the Contents of a Proposed Certificate  
**690-330-0030** Temperature Control  
**690-330-0040** Primary and Supplemental Rights

### DIVISION 340

### WATER USE AUTHORIZATIONS

**690-340-0010** Exempt Uses  
**690-340-0020** Ponds in Existence Prior to January 1, 1993 (HB 2153, 1993)  
**690-340-0030** Limited License  
**690-340-0040** Registration of Water Use for Road Maintenance and Construction

## Chapter 690 Water Resources Department

**690-340-0060** Expedited Review Process for Applications to Use Stored Water Exclusively

### DIVISION 350

#### AQUIFER STORAGE AND RECOVERY (ASR) AND ARTIFICIAL GROUNDWATER RECHARGE

##### Aquifer Storage and Recovery (ASR)

**690-350-0010** ASR General Provisions  
**690-350-0020** ASR Testing Under Limited License  
**690-350-0030** ASR Under ASR Permit

##### Artificial Groundwater Recharge

**690-350-0110** Definitions  
**690-350-0120** Groundwater Recharge Applications — Supplemental Information Requirements; Permit Conditions  
**690-350-0130** Secondary Groundwater Permits for Use of Artificially Recharged Waters; Supplemental Information Requirements; Limitations; Conditions

### DIVISION 380

#### WATER RIGHT TRANSFERS

##### General Provisions

**690-380-0010** Purpose  
**690-380-0090** Applicability  
**690-380-0100** Definitions  
**690-380-2000** Types of Permanent Transfers  
**690-380-2110** Change in Point of Diversion or Point of Appropriation  
**690-380-2120** Change in Point of Diversion to Reflect Historical Use  
**690-380-2130** Change from a Surface Water Point of Diversion to a Groundwater Appropriation  
**690-380-2200** Changes in Place of Use  
**690-380-2240** Layered Water Rights and Certificates of Registration  
**690-380-2250** Transfer of Supplemental Water Right or Permit  
**690-380-2260** Exchanges of Water  
**690-380-2300** Changes in Character of Use  
**690-380-2320** Transfer from Supplemental Use to Primary Use  
**690-380-2330** Substitution of Supplemental Ground Water Right for Primary Surface Water Right  
**690-380-2340** Specific-to-General Industrial Water Use Change  
**690-380-2410** Municipal Water Rights  
**690-380-2420** Notice of Merger, Consolidation or Formation of a Water Authority  
**690-380-2430** Acquisition of Water Rights by a Water Authority

##### Transfer Applications

**690-380-3000** Application for Transfer  
**690-380-3050** Additional Application Requirements  
**690-380-3100** Map Requirements  
**690-380-3200** District May Submit Application for Water Users  
**690-380-3220** Separate Application Required for Each Water Right  
**690-380-3400** Waiver of Fees  
**690-380-3410** Waiver of Mapping Requirements

##### Application Notice and Review

**690-380-4000** Request for Comments  
**690-380-4010** Preliminary Determination  
**690-380-4020** Notice of Preliminary Determination  
**690-380-4030** Protests and Requests for Hearings  
**690-380-4200** Hearings

#### Final Orders

**690-380-5000** Approval of Transfers  
**690-380-5030** Approval of Injurious Transfers  
**690-380-5040** Affidavits of Consent  
**690-380-5050** Consent to Injury of Instream Water Rights  
**690-380-5060** Fish Screening and By-Pass Devices  
**690-380-5100** Compatibility with Acknowledged Comprehensive Plans

#### Miscellaneous Provisions

**690-380-5110** Original Right Terminated  
**690-380-5120** Multiple Primary Water Rights on the Same Lands  
**690-380-5130** Assignment or Change of Ownership  
**690-380-5140** Time for Completion

#### Perfection of Transferred Rights

**690-380-6010** Failure to Complete a Transfer as Grounds for Cancellation  
**690-380-6020** Extension of Time  
**690-380-6030** Proof Of Use; Noncompliance  
**690-380-6040** Proof of Completion of Change  
**690-380-6050** Waiver of Proof of Completion  
**690-380-6060** Petition for Reconsideration

#### Temporary Transfers

**690-380-8000** Temporary Transfers  
**690-380-8002** Temporary Transfer Applications under OAR 690-380-8000(1)  
**690-380-8004** Temporary Transfer Applications under OAR 690-380-8000(2)

#### Miscellaneous Provisions

**690-380-8010** Seasonal Use  
**690-380-8020** Supplemental Water Rights  
**690-380-9000** Clarification of Water Rights

### DIVISION 382

#### GROUND WATER REGISTRATION MODIFICATIONS

**690-382-0010** Purpose  
**690-382-0100** Definitions  
**690-382-0200** Layered Water Rights and Certificates of Registration  
**690-382-0300** Modification of Certificates of Registrations  
**690-382-0400** Application for Modification of Certificate of Registration  
**690-382-0450** Existing Documentation of Modifications  
**690-382-0500** Fee Refunds  
**690-382-0600** Request for Comments  
**690-382-0700** Preliminary Determination  
**690-382-0800** Notice of Preliminary Determination  
**690-382-0900** Protests and Requests for Hearings  
**690-382-1000** Recognition of Modifications  
**690-382-1100** Hearings  
**690-382-1200** Compatibility with Acknowledged Comprehensive Plans

### DIVISION 385

#### DISTRICT WATER RIGHT TRANSFERS

##### General Provisions

**690-385-0010** Purpose  
**690-385-0100** Definitions

## Chapter 690 Water Resources Department

### Standard Transfer Application Requirements

**690-385-2000** Application for Transfer

#### Standard Map Requirements

**690-385-2200** Map Requirements

#### District Temporary Transfers

**690-385-3000** District Temporary Transfer Criteria Renumbered from 690-021-0020

**690-385-3100** Types of District Temporary Transfers

**690-385-3110** Temporary Change in Place of Use

**690-385-3120** Temporary Change in Type of Use of a Water Right to Store Water

**690-385-3130** Temporary Change in Type of Use from a Primary Right to a Supplemental Right

**690-385-3140** Temporary Change in Point of Diversion or Appropriation

**690-385-3145** Temporary Change in Point of Diversion in Response to an Emergency

**690-385-3150** Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation

**690-385-3200** District Temporary Transfer Applications

**690-385-3300** District Temporary Transfer Application Map Requirements

**690-385-3400** District Temporary Transfer Application Notice and Review

**690-385-3500** District Temporary Transfer Approval and Final Orders

**690-385-3520** Fish Screening Devices

**690-385-3600** Appeal of a Final Order Approving a District Temporary Transfer

#### District Permanent Transfers

**690-385-4000** District Permanent Transfer Criteria

**690-385-4100** Notice of District Permanent Transfer

**690-385-4200** District Permanent Transfer Applications

**690-385-4300** District Permanent Transfer Application Map Requirements

**690-385-4400** District Permanent Transfer Application Notice and Review

**690-385-4500** District Permanent Transfer Approval and Final Orders

**690-385-4580** Original Right Terminated by Final Order

**690-385-4600** Protests and Requests for Hearings

**690-385-4700** Hearings

#### District Permanent Transfers of Water Right for Nonuse

**690-385-5000** District Permanent Transfer Criteria

**690-385-5100** Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572

**690-385-5200** District Permanent Transfer of Water Right for Nonuse Applications

**690-385-5300** District Permanent Transfer of Water Right for Nonuse Application Map Requirements

**690-385-5400** Notice of Filing District Permanent Transfer of Water Right for Nonuse Application

**690-385-5500** District Permanent Transfer of Water Right for Nonuse Application Notice and Review

**690-385-5600** District Permanent Transfer of Water Right for Nonuse Approval and Final Orders

**690-385-5680** Original Right Terminated by Final Order

**690-385-5700** Protests and Requests for Hearings

**690-385-5800** Hearings

**690-385-5900** Time Period to Process Permanent Transfer Application Exempt from Forfeiture

### Miscellaneous Provisions

**690-385-6000** Multiple Primary Water Rights on the Same Lands

#### Completion and Perfection of Transferred Rights

**690-385-7000** Time for Completion

**690-385-7100** Failure to Complete a Transfer as Grounds for Cancellation

**690-385-7200** Extension of the Time Limits

**690-385-7400** Proof of Use; Noncompliance

**690-385-7600** Proof of Completion of Change

**690-385-7800** Request for Reconsideration

### DIVISION 400

#### STATE WATER RESOURCES POLICY

**690-400-0000** Purpose and Authorization

**690-400-0010** Definitions

### DIVISION 410

#### STATEWIDE WATER RESOURCE MANAGEMENT

**690-410-0010** Groundwater Management

**690-410-0020** Hydroelectric Power Development

**690-410-0030** Instream Flow Protection

**690-410-0040** Interstate Cooperation

**690-410-0050** Water Resources Protection on Public Riparian Lands

**690-410-0060** Conservation and Efficient Water Use

**690-410-0070** Water Allocation

**690-410-0080** Water Storage

### DIVISION 500

#### BASIN PROGRAMS

**690-500-0010** Basin Programs Preamble

**690-500-0020** Definitions

### DIVISION 501

#### NORTH COAST BASIN PROGRAM

**690-501-0005** Classifications

**690-501-0010** Minimum Perennial Streamflows

**690-501-0020** Storage

**690-501-0030** Out-of-Basin Appropriations

**690-501-0040** Water Quality

### DIVISION 502

#### WILLAMETTE BASIN PROGRAM

**690-502-0010** Definitions

**690-502-0020** Policies

**690-502-0030** Objectives

**690-502-0040** General Provisions

**690-502-0050** Main Stem Willamette River Subbasin

**690-502-0060** Middle Fork Willamette River Subbasin

**690-502-0070** Coast Fork Willamette River Subbasin

**690-502-0080** McKenzie River Subbasin

**690-502-0090** Long Tom River Subbasin

**690-502-0100** Coast Range Subbasin

**690-502-0110** Santiam River-Calapooia River Subbasin

**690-502-0120** Molalla River-Pudding River Subbasin

**690-502-0130** Tualatin River Subbasin

**690-502-0140** Clackamas River Subbasin

**690-502-0150** Columbia Subbasin

**690-502-0160** Groundwater Classifications and Conditions

**690-502-0170** Sandy-Boring Ground Water Limited Area

## Chapter 690 Water Resources Department

<b>690-502-0180</b>	Damascus, Glad Tidings, Kingston, Mt. Angel, Parrett Mountain, and Stayton-Sublimity Ground Water Limited Areas
<b>690-502-0190</b>	Sherwood-Damascus-Wilsonville Ground Water Limited Area
<b>690-502-0200</b>	Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Areas
<b>690-502-0210</b>	Amity Hills/Walnut Hill Ground Water Limited Area
<b>690-502-0215</b>	Five-Year Limited Permits
<b>690-502-0240</b>	Groundwater-Surface Water Hydraulic Connection
<b>690-502-0250</b>	Special Columbia River Basalt Group Aquifer Permit Conditions
<b>690-502-0260</b>	Special Permit Conditions

### DIVISION 503

#### SANDY BASIN PROGRAM

<b>690-503-0010</b>	Definitions
<b>690-503-0020</b>	Policies
<b>690-503-0030</b>	Objectives
<b>690-503-0040</b>	Surface Water Classifications
<b>690-503-0050</b>	Groundwater Classification
<b>690-503-0060</b>	Special Permit Conditions

### DIVISION 504

#### HOOD RIVER BASIN PROGRAM

<b>690-504-0000</b>	Classifications
<b>690-504-0020</b>	Water Quality
<b>690-504-0100</b>	Reservations
<b>690-504-0110</b>	West Fork Hood River Subbasin Reservation
<b>690-504-0120</b>	East Fork Hood River Subbasin Reservation
<b>690-504-0130</b>	Neal Creek Subbasin Reservation
<b>690-504-0140</b>	Mosier Creek Subbasin Reservation
<b>690-504-0150</b>	Eightmile Creek Subbasin Reservation
<b>690-504-0160</b>	Fifteenmile Creek Subbasin Reservation

### DIVISION 505

#### DESCHUTES BASIN PROGRAM

<b>690-505-0000</b>	Upper Deschutes Basin
<b>690-505-0010</b>	Middle Deschutes River Basin
<b>690-505-0020</b>	Lower Deschutes River Basin
<b>690-505-0030</b>	Upper Crooked River Basin
<b>690-505-0040</b>	Lower Crooked River Basin
<b>690-505-0050</b>	Lower Main Stem Deschutes River
<b>690-505-0400</b>	Ground Water Classification
<b>690-505-0500</b>	Ground Water Appropriations within the Deschutes Ground Water Study Area

#### Deschutes Basin Ground Water Mitigation Rules

<b>690-505-0600</b>	Purpose and Applicability of Ground Water Mitigation Rules
<b>690-505-0605</b>	Definitions
<b>690-505-0610</b>	Mitigation Obligation and Mitigation Standards
<b>690-505-0615</b>	Notice of Mitigation Obligation
<b>690-505-0620</b>	Ground Water Permit and Final Order Conditions
<b>690-505-0625</b>	Municipal and Quasi-municipal Ground Water Permit Applications
<b>690-505-0630</b>	Additional Findings of Department When Mitigation is Provided

### DIVISION 506

#### JOHN DAY BASIN PROGRAM

<b>690-506-0010</b>	Definitions and Procedures
<b>690-506-0020</b>	Policies

<b>690-506-0030</b>	Objectives
<b>690-506-0040</b>	Classifications
<b>690-506-0050</b>	Minimum Perennial Streamflows
<b>690-506-0060</b>	Reservations
<b>690-506-0070</b>	Water Quality Control
<b>690-506-0080</b>	Storage of Water

### DIVISION 507

#### UMATILLA BASIN PROGRAM

<b>690-507-0010</b>	Definitions
<b>690-507-0020</b>	Policies
<b>690-507-0030</b>	Walla Walla River Subbasin
<b>690-507-0040</b>	Wildhorse Creek Subbasin
<b>690-507-0050</b>	Upper Umatilla River Subbasin
<b>690-507-0060</b>	Birch and McKay Creeks Subbasin
<b>690-507-0070</b>	Columbia-Umatilla Plateau Subbasin
<b>690-507-0080</b>	Butter Creek Subbasin
<b>690-507-0090</b>	Willow Creek Subbasin
<b>690-507-0610</b>	Purpose
<b>690-507-0620</b>	Definitions
<b>690-507-0630</b>	General Requirements
<b>690-507-0635</b>	Water Users Exempt from Division Requirements
<b>690-507-0640</b>	Duties of Water Users
<b>690-507-0645</b>	Flow Meter Specifications and Installation Guidelines
<b>690-507-0647</b>	New Subarea Boundaries
<b>690-507-0650</b>	Sustainable Annual Yield
<b>690-507-0660</b>	Method for Determining the Sustainable Annual Yield
<b>690-507-0670</b>	Distribution of Sustainable Annual Yield
<b>690-507-0680</b>	Process of Periodic Review of Sustainable Annual Yield
<b>690-507-0690</b>	Annual Reporting
<b>690-507-0700</b>	Violation Policy

#### Methods for Determining and Distributing the Sustainable Annual Yield of the Basalt Groundwater Reservoir by Subarea for the Stage Gulch Critical Groundwater Area

<b>690-507-0750</b>	Purpose
<b>690-507-0760</b>	Definitions
<b>690-507-0770</b>	General Requirements
<b>690-507-0775</b>	Water Users Exempt from Division Requirements
<b>690-507-0780</b>	Duties of Water Users
<b>690-507-0785</b>	Flow Meter Specifications and Installation Guidelines
<b>690-507-0790</b>	Sustainable Annual Yield
<b>690-507-0800</b>	Method for Determining the Sustainable Annual Yield
<b>690-507-0810</b>	Distribution of Sustainable Annual Yield
<b>690-507-0820</b>	Process of Periodic Review of Sustainable Annual Yield
<b>690-507-0830</b>	Annual Reporting
<b>690-507-0840</b>	Violation Policy

### DIVISION 508

#### GRANDE RONDE BASIN PROGRAM

<b>690-508-0000</b>	General Classifications
<b>690-508-0010</b>	Upper Grande Ronde Subbasin
<b>690-508-0020</b>	Middle Grande Ronde Subbasin
<b>690-508-0030</b>	Lower Grande Ronde Subbasin
<b>690-508-0040</b>	Wallowa River Subbasin
<b>690-508-0050</b>	Imnaha River Subbasin
<b>690-508-0100</b>	Reservations
<b>690-508-0110</b>	Upper Grande Ronde Subbasin Reservation
<b>690-508-0120</b>	Middle Grande Ronde Subbasin Reservation

**DIVISION 509**

**POWDER BASIN PROGRAM**

<b>690-509-0000</b>	Classifications
<b>690-509-0010</b>	Out-of-Basin Appropriations
<b>690-509-0030</b>	Water Quality
<b>690-509-0100</b>	Reservation Applications and Process
<b>690-509-0110</b>	South Fork Burnt River Reservation
<b>690-509-0120</b>	North Fork Burnt River Reservation
<b>690-509-0130</b>	Burnt River Subbasin Reservation
<b>690-509-0140</b>	Pine Creek Subbasin Reservation
<b>690-509-0150</b>	Eagle Creek Subbasin Reservation
<b>690-509-0160</b>	Powder River Subbasin Reservation

**DIVISION 510**

**MALHEUR BASIN PROGRAM**

<b>690-510-0000</b>	Classifications
<b>690-510-0010</b>	Classifications
<b>690-510-0020</b>	Water Quality
<b>690-510-0100</b>	Reservations
<b>690-510-0110</b>	Malheur Reservations

**DIVISION 511**

**OWYHEE BASIN PROGRAM**

<b>690-511-0010</b>	Classifications
<b>690-511-0020</b>	Water Quality
<b>690-511-0100</b>	Reservations
<b>690-511-0110</b>	Owyhee Reservations

**DIVISION 512**

**MALHEUR LAKE BASIN PROGRAM PROVISION**

<b>690-512-0040</b>	Water Availability
<b>690-512-0100</b>	Home Creek Reservations

**DIVISION 513**

**GOOSE AND SUMMER LAKES BASIN PROGRAM**

<b>690-513-0010</b>	Definitions
<b>690-513-0020</b>	Policies
<b>690-513-0030</b>	Goose Lake Subbasin
<b>690-513-0040</b>	Warner Lakes Subbasin
<b>690-513-0050</b>	Chewaucan Subbasin
<b>690-513-0060</b>	Summer Lake Subbasin

**DIVISION 515**

**ROGUE BASIN PROGRAM**

<b>690-515-0000</b>	Upper Rogue Basin
<b>690-515-0010</b>	Little Butte Creek Basin
<b>690-515-0020</b>	Bear Creek Basin
<b>690-515-0030</b>	Applegate River Basin
<b>690-515-0040</b>	Middle Rogue Basin
<b>690-515-0050</b>	Illinois Basin
<b>690-515-0060</b>	Lower Rogue Basin

**DIVISION 516**

**UMPQUA BASIN PROGRAM**

<b>690-516-0005</b>	Classifications
<b>690-516-0010</b>	Minimum Perennial Streamflows
<b>690-516-0020</b>	Storage
<b>690-516-0030</b>	Out-of-Basin Appropriations
<b>690-516-0040</b>	Water Quality

**DIVISION 517**

**SOUTH COAST BASIN PROGRAM**

<b>690-517-0000</b>	Classification
<b>690-517-0010</b>	Reservations
<b>690-517-0020</b>	Minimum Perennial Streamflows
<b>690-517-0030</b>	Storage
<b>690-517-0040</b>	Out-of-Basin Appropriations
<b>690-517-0050</b>	Existing Rights

**DIVISION 518**

**MID-COAST BASIN PROGRAM**

<b>690-518-0010</b>	Classifications
<b>690-518-0020</b>	Reservations
<b>690-518-0030</b>	Minimum Perennial Streamflows
<b>690-518-0040</b>	Storage
<b>690-518-0050</b>	Out-of-Basin Appropriations
<b>690-518-0060</b>	Water Quality

**DIVISION 519**

**COLUMBIA RIVER BASIN PROGRAM**

<b>690-519-0000</b>	Classifications
<b>690-519-0010</b>	Power Operations
<b>690-519-0020</b>	Out-of-State Appropriations
<b>690-519-0030</b>	Resource Management
<b>690-519-0040</b>	Water Quality
<b>690-519-0050</b>	Existing Rights

**DIVISION 520**

**MIDDLE SNAKE RIVER BASIN PROGRAM**

<b>690-520-0000</b>	Classifications
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**DIVISION 521**

**DESCHUTES BASIN MITIGATION BANK AND  
MITIGATION CREDIT RULES**

<b>690-521-0100</b>	Purpose of Mitigation Bank and Mitigation Credit Rules
<b>690-521-0200</b>	Definitions
<b>690-521-0300</b>	Establishing Mitigation Credits
<b>690-521-0400</b>	Award and Validity of Mitigation Credits
<b>690-521-0500</b>	Mitigation Banks
<b>690-521-0600</b>	Department Mitigation Credit Oversight Account

**DIVISION 522**

**DESCHUTES BASIN WATER MANAGEMENT**

<b>690-522-0010</b>	Introduction
<b>690-522-0020</b>	Applicability
<b>690-522-0030</b>	Ground Water Appropriations within the Deschutes Ground Water Study Area
<b>690-522-0040</b>	Incremental Development in the Deschutes Ground Water Study Area
<b>690-522-0050</b>	Reassignment of Permanent Mitigation Credits

**DIVISION 600**

**WATER CONSERVATION,  
REUSE AND STORAGE GRANT PROGRAM**

<b>690-600-0000</b>	Purpose
<b>690-600-0010</b>	Definitions
<b>690-600-0020</b>	Application Requirements
<b>690-600-0030</b>	Application Process
<b>690-600-0040</b>	Grant Agreement and Conditions
<b>690-600-0050</b>	Eligible Project Planning Studies
<b>690-600-0060</b>	Public Notice and Comment
<b>690-600-0070</b>	Distribution of Funds

**DIVISION 1**

**RULEMAKING; ATTORNEY GENERAL'S  
MODEL RULES**

**690-001-0000**

**Notice**

Prior to the adoption, amendment, or repeal of any permanent rule by the Water Resources Commission or the Water Resources Department, the Department must give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(2) By mailing or electronic mailing a copy of the notice and a copy of the rule or an explanation of how the person or organization may acquire a copy of the rule to persons and organizations on the Water Resources Department's mailing list established pursuant to ORS 183.335(8) at least 28 days prior to the effective date;

(3) By mailing or electronic mailing to the persons specified in ORS 183.335(15) at least 49 days before the effective date; and

(4) By mailing or electronic mailing a copy of the notice to the following persons, organizations, or publications at least 28 days before the effective date:

(a) Associated Press;

(b) Persons and organizations that filed a written request for such notice with the Department; and

(c) Cities, counties, and local planning agencies likely to be directly affected by the proposed rule.

(5) In lieu of providing a copy of the rule or rules as proposed, the Department may provide a summary of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the Department posts the rule or rules on a web site, the Department must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link in the rule summary will not affect the validity of any rule.

(6) Persons who have requested from the Department notices of proposed rulemakings may choose to receive notices by mail rather than receive the notices electronically.

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.335, 183.341

Hist.: WRD 1, f. & ef. 11-25-75; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 2-1994, f. & cert. ef. 3-4-94; PAR 9-2006, f. & cert. ef. 10-9-06; WRD 6-2006, f. & cert. ef. 10-6-06

**690-001-0005**

**Uniform and Model Rules of Procedure, Adoption**

The Water Resources Commission adopted the January 1, 2006 edition of the Attorney General's Uniform and Model Rules of Procedure. The Water Resources Department and the Water Resources Commission must follow the Uniform and Model Rules in all matters, except where a different procedure is prescribed by statute.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the agency.]

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.341

Hist.: WRD 3, f. & ef. 2-18-77; WRD 2-1978, f. & ef. 5-1-78; WRD 8-1978, f. & ef. 10-18-78; WRD 1-1980, f. & ef. 1-9-80; WRD 2-1982, f. & ef. 1-22-82; WRD 1-1984, f. & ef. 2-1-84; WRD 6-1986, f. & ef. 11-12-86; WRD 9-1988, f. & cert. ef. 8-5-88; WRD 15-1990, f. & cert. ef. 8-23-90; WRD 2-1992, f. & cert. ef. 2-10-92; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1994, f. & cert. ef. 1-14-94; WRD 1-1999, f. & cert. ef. 2-5-99; WRD 6-2006, f. & cert. ef. 10-6-06

**DIVISION 2**

**PROTESTS AND CONTESTED CASES**

**690-002-0000**

**Scope and Purpose**

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of

Procedure). The rules in this Division (division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR chapter 690 and statutory provisions govern entitlement to a contested case hearing.

Stat. Auth.: ORS 183, 536.027 & 536.029

Stats. Implemented: ORS 183, 536.027 & 536.029

Hist.: WRD 4-1983, f. & ef. 8-10-83; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-075-0000; WRD 6-2006, f. & cert. ef. 10-6-06

**690-002-0010**

**Definitions**

The following definitions apply to OAR chapter 690, division 002:

(1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Water Resources Department.

(5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and the address to which the document was mailed.

(6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing. Where provided or required by applicable law, a "protest" may include a request for contested case hearing. Except as provided in ORS 543.230, a protest must be in writing.

(7) "Protestant" means any person filing a protest against an action or proposed action.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.310 - 183.497 & 536 - 543

Hist.: WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

**690-002-0020**

**Authorized Non-Attorney Representation**

A party or limited party participating in a contested case hearing may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-003-0555 of the Attorney General's Model Rules.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341 & 183.457

Hist.: WRD 8-1987(Temp), f. 8-27-87, ef. 8-25-87; WRD 1-1988, f. 1-19-88, cert. ef. 2-23-88; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-002-0001; WRD 6-2006, f. & cert. ef. 10-6-06

**690-002-0023**

**Agency Representation by Officer or Employee**

As authorized by the Attorney General pursuant to ORS 183.452, Department officers and employees may appear and participate on behalf of the Department and Commission in the following types of contested case hearings:

(1) Civil penalty hearings under ORS 537.792 and OAR chapter 690 division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;

(2) Civil penalty hearings under ORS 536.900 and OAR chapter 690 division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;

(3) Protested water use applications under ORS 537.170 or 537.622 and OAR chapter 690 divisions 77 or 310;

(4) Protested conversions of minimum perennial streamflows to instream water rights under OAR chapter 690 division 77;

(5) Requests for reservations of water for future economic development under OAR chapter 690 division 79;

(6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;

(7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;

(8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;

(9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under 537.211;

(10) Non-FERC hydro projects under OAR 690 division 51 and ORS chapters 543 and 543A;

(11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;

(12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and

(13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 183.452 & 536 - 543

Hist.: WRD 7-1996, f. & cert. ef. 7-23-96; WRD 2-2000, f. & cert. ef. 5-26-00;

WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0025

#### Time for Filing Protests or Requests for Hearing

(1) Pursuant to the Model Rules of Procedure, a protest is timely filed only if:

(a) The protest is filed by the applicable deadline as described in OAR 137-003-0520(8); and

(b) The protest includes any statutorily required fees.

(2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a request for hearing is considered filed only when actually received by the Department.

(3) A person may not file a protest or request for hearing by electronic mail.

Stat. Auth.: ORS 183.341, 536.025, 536.027

Stats. Implemented: ORS 183.341 & 536 - 543

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0030

#### Form and Content of Protest

(1) Except as otherwise provided in ORS Chapter 537 and OAR 690 divisions 77 and 310 relating to applications for water rights, in ORS Chapter 543 relating to hydroelectric projects, and in OAR 690, division 17 relating to cancellation of perfected and developed water rights, a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, and include any statutory filing fee. A protest must contain a detailed statement of:

(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;

(b) The specific relief or action requested;

(c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; and

(d) Citation of legal authority or basis for the claim or relief asserted or requested.

(2) Proof of service upon the person or persons whose rights or application are protested shall be attached to the original protest, unless the protestant is the sole applicant for or holder of the right.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 536 - 543

Hist.: WRD 4-1978, f. & ef. 5-22-78; WRD 8-1978, f. & ef. 10-18-78; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-001-0010; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0035

#### Requests for Standing in Matters Involving Applications Made under ORS Chapter 537

(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing by complying with OAR 690-310-0160.

(2) Any person who has filed a request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(3) If no protest is filed, and the department does not change the proposed final order, the director must refund the standing fee.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0075

#### Scope of Hearing

The issues to be considered in a contested case hearing are limited to issues timely raised by the parties in any protests, requests for hearing or requests for standing, and as identified by the administrative law judge as allowed by applicable law.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 536 - 543

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0105

#### Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622

(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6), and OAR 690-002-0035 may file a request to participate as parties or limited parties in the contested case hearing in which standing was obtained following the procedures in OAR 137-003-0535.

(2) In contested cases conducted pursuant to ORS 537.170 or 537.622, the Administrative Law Judge may only allow persons who have timely filed a request for standing to intervene in the case pursuant to OAR 137-003-0535.

Stat. Auth.: ORS 183, 341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 537.170, 537.622

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0175

#### Exceptions to Proposed Orders

(1) If the recommended action in the proposed order is adverse to any party or the Department, the party or Department may file exceptions and present argument to the Department. Exceptions must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission policies to which modifications are sought.

(2) Parties must file their exceptions with the Department at its Salem offices, by any method allowed in the notice of appeal rights provided in the proposed order.

(3) A party must file any exceptions within 30 days following the date of service of the proposed order on the parties to the contested case proceeding.

(4) Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order.

(5) If the applicable law provides for the Commission to review any exceptions or issue the final order, the Commission may form a subcommittee to review the exceptions and provide a report prior to the Commission issuing a final order.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 183.470 & 536 - 543

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 2-2000, f. & cert. ef. 5-26-00; WRD 6-2006, f. & cert. ef. 10-6-06

### 690-002-0190

#### Exceptions to Final Orders

(1) Any party to a contested case hearing held pursuant to ORS 537.170 or 537.622 may file exceptions to a final order.

(a) Parties must file their exceptions with the Department at its Salem offices, by any method allowed in the notice of appeal rights provided in the final order.

(b) The party must file any exceptions within 20 days following the date of service of the final order on the parties to the contested case proceeding.

(2)(a) If a party files an exception to a final order, the Department must refer the exceptions to the Commission.

(b) The Commission must consider the party's arguments contained in its exceptions filed pursuant to subsection (a), and may allow and consider oral arguments by all parties to the contested case hearing, prior to issuing a final order on exceptions.

(c) The Commission may form a subcommittee to review the exceptions and provide a report to the Commission.

(3) Where exceptions are timely filed to the final order, within 60 days from the close of the exception period, the Commission must either issue a modified final order or deny the exceptions and affirm the final order.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 537.173 & 537.626

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

### DIVISION 3

#### PUBLIC RECORDS ACCESS AND REPRODUCTION

##### 690-003-0100

###### Purpose

Increased public involvement in and awareness of water resource issues have placed greater demands on viewing and copying Department records. These rules guide Department implementation of the public records law, ORS 192.410 to 192.505, including Department recovery of its actual costs of making public records available and copying services under 192.440. Furthermore, these rules serve to ensure that all Department public records remain available for viewing and intact for future use.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.410 - 192.505, 536.040 & 536.480

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

##### 690-003-0120

###### Scope

(1) With some exceptions prescribed by law, every person has the right to inspect public records of a state agency, including the Department. The Department may take reasonable measures to ensure the integrity of public records and to maintain office efficiency. Public access to view and copy public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule.

(2) These rules do not apply to a person who obtains Department public records by using a Department computer, or any other computer, to download public records from the Department's web page.

Stat. Auth.: ORS 183.341, 536.025 & 536.027

Stats. Implemented: ORS 183.341, 537.173 & 537.626

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

##### 690-003-0140

###### Requests to Review or Obtain Copies of Public Records

(1) The right to review public records includes the right to review the original public record where practicable. The requestor does not have a right to personally locate the public record or to review portions of the public record that are exempt from disclosure pursuant to ORS 192.501 to 192.505.

(2) Requests for Department public records should be as specific as possible including, as appropriate, the type, number, subject matter and approximate date of the public record. If the public records request is unclear, the Department may request further clarification of the request. If the Department cannot identify specific public records responsive to a public records request, the Department may provide general files or distinct sections of public records that are likely to contain the requested public records.

(3) The Department may require a person making a public records request to submit the request in writing, which may be satisfied by submitting the request by electronic mail.

(4) All requests to inspect or copy records other than maps, well logs or water right information available through the Depart-

ment's web page must be made to the public records officer in the headquarters office.

(5) As appropriate, staff at the Department's field offices will provide public records to a requestor in response to a public records request, unless the volume of the request exceeds the office's capacity to provide public records in a timely manner. If a field office is unable to provide requested public records in a timely manner, the Salem office will provide the public records in response to the public records request.

(6) The Department will accommodate public records requests as follows:

(a) The Department will establish hours during which the public may review the Department's public records.

(b) Pursuant to ORS 192.430(1) and this rule, the Department will designate and provide a supervised space, if available, for viewing public records. This space will accommodate at least one reviewer at a time.

(c) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(d) The Department's ability to accommodate in-person public requests may be limited by staff and equipment availability. Additionally, prior to making public records available for public review, the Department will ascertain whether the public record requested is exempt from public disclosure under ORS chapter 192 and other applicable law. Based on these limitations, Department staff may require appointments to view and copy public records.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.420, 192.430, 536.040 & 536.480

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

##### 690-003-0160

###### Costs for Public Record Review and Copying

(1) The Department may charge a fee for copies of requested public records and certifying public records. The fee will be the fees required by ORS 536.050, or for any copying fees not identified in 536.050, the Department will establish and charge a fee reasonably calculated to reimburse the Department for the actual costs of providing copies of the public records.

(2) An hourly rate may be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to exclude exempt material, supervising the inspection of records, certifying records, mailing records or otherwise responding to the public records request. An hourly rate will not exceed the actual hourly compensation and other payroll expenses of the person performing the tasks for which the rate is charged. The Department may charge for the cost of searching for public records regardless of whether the Department was able to locate the requested public record.

(3) If necessary to respond to a public records request, the Department may request the Department of Justice Attorney General review the public records to exclude material exempt from disclosure. The Department will assess a charge for this process at the hourly rate charged by the Department of Justice.

(4) Payment for public records requests may be made in the form of cash, check, or money order. Make checks and money orders payable to "Oregon Water Resources Department-Public Records Request." Persons may pay fees for public records requests by credit card, if that service becomes available.

Stat. Auth.: ORS 192.430, 536.025 & 536.027

Stats. Implemented: ORS 192.440, 536.050 & 536.480

Hist.: WRD 6-2006, f. & cert. ef. 10-6-06

##### 690-003-0180

###### Department Response to Public Records Requests

(1) Prior to responding to a public records request, the Department will provide the requestor with a written estimation of the fee for responding to the request. The Department may provide the estimation by electronic mail. If the estimated fee exceeds \$25, the Department will not continue to process the public records request until it has received a confirmation in writing or by electronic mail to proceed with the response.

(2) The Department may require prepayment of the estimated charges. If the actual charges are less than the prepayment, the overpayment will be refunded to the requestor. If the actual charges are more than the prepayment, the Department will require payment of the additional charges before providing the requested public records. If the Department determines that the actual charge will exceed the estimated charge by more than \$25, the Department will notify the requestor before completing the response.

(3) Whenever feasible, the Department will provide double-sided copies of requested public records, and the fee for a double-sided copy will be the same as the cost of a single page.

(4) Copies of requested electronic public records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of public records. Public access to Department computer terminals is allowed where such terminals are available; however, the public may not access Department databases in any manner that may allow the databases or records in the databases to be modified or deleted.

(5) The Department will respond to a public records request within 15 working days after receiving a written request in its Salem office, unless the volume of public records requested, staff availability to respond to the public record request, the difficulty in determining whether any of the public records are exempt from disclosure, or the necessity of consulting with legal counsel make this deadline unreasonable. If the Department determines that it will require more than 15 working days to respond to a public records request, it will inform the requestor of the estimated time necessary to comply with the public records request.

(6) In order to protect the integrity of Department public records, the Department will not allow public records to be loaned or taken off-premises by any person, except Department staff, to fulfill a public records request.

Stat. Auth.: ORS 192.430, 536.025 & 536.027  
Stats. Implemented: ORS 192.440, 536.050 & 536.480  
Hist: WRD 6-2006, f. & cert. ef. 10-6-06

### 690-003-0200

#### Certification of Copies of Records

Certification of both hard copies and electronic copies of records will be provided for the fee identified in ORS 536.050. The Department will certify only that on the date copied, the copy was a true and correct copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

Stat. Auth.: ORS 192.430, 536.025 & 536.027  
Stats. Implemented: ORS 192.440 & 536.480  
Hist: WRD 6-2006, f. & cert. ef. 10-6-06

### 690-003-0220

#### Fee Waivers and Reductions

(1) There will be no charge for one copy of a public record:

(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice of a meeting; or

(b) When the material requested has been distributed through mass mailing and is readily available to the Department at the time of request.

(2) There may be no charge for Department responses to public records requests made by a local, state, or federal governmental entity or a representative of a governmental entity acting in a public function or capacity unless any of the following factors apply:

(a) Fulfilling the request will cause financial hardship on the Department;

(b) The time or expense will interfere with the Department's regular business;

(c) The Department determines the volume of the public records requested is excessive; or

(d) The public records request will require the Department to segregate exempt from non-exempt public records.

(3) The Department may grant a request for a waiver or reduction of public records review or reproduction charges in some cir-

cumstances. A person making a public records request may submit a written request for a waiver or reduction of the charges. The request must demonstrate that the public records request is in the public interest because making the public record available primarily benefits the general public.

(a) If the Department finds the request satisfies the public interest test, it will determine whether to deny or grant the fee waiver or reduction, either in whole or in part.

(b) If the Department denies a request for a fee waiver or reduction, the requestor may petition the Attorney General or district attorney under the process provided under ORS 192.410 to 192.505.

Stat. Auth.: ORS 192.430, 536.025 & 536.027  
Stats. Implemented: ORS 192.440 & 536.480  
Hist: WRD 6-2006, f. & cert. ef. 10-6-06

### 690-003-0240

#### Exempt Public Records

All records prepared, owned, used or retained by the Department are public records subject to disclosure unless exempt from disclosure under ORS Chapter 192 or other applicable law. If the Department determines that all or part of a requested public record is exempt from disclosure, the Department will notify the requestor in writing and will state the reasons why the Department considers the public record exempt from disclosure.

Stat. Auth.: ORS 192.430, 536.025 & 536.027  
Stats. Implemented: ORS 192.445 - 192.502  
Hist: WRD 6-2006, f. & cert. ef. 10-6-06

## DIVISION 4

### PROCEDURAL RULES FOR MEDIATION COMMUNICATIONS

### 690-004-0010

#### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director of the Water Resources Department determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communica-

tion is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & 536.027

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: WRD 1-1998(Temp), f. & cert. ef. 5-11-98 thru 11-6-98; WRD 3-1998, f. & cert. ef. 11-2-98; WRD 3-1999, f. & cert. ef. 3-23-99

#### 690-004-0020

#### Applicability of Rules and Inadmissibility of Certain Mediation Communications in Large, Multi-Party Mediation

(1) Except as provided in this rule, or in other rules adopted by this agency pursuant to Oregon Laws 1997, chapter 670, section 3, or by other state or federal law, mediation communications in a mediation session may not be disclosed in any subsequent administrative, judicial or arbitration proceeding or introduced into evidence in any subsequent proceeding so long as:

(a) The mediation is one for which:

(A) The agency is a party as defined in Oregon Laws 1997, chapter 670, section 11, or is mediating a dispute as to which the agency has regulatory authority;

(B) A mediator is assisting and facilitating the parties to reach a mutually acceptable resolution of the issues in controversy;

(C) There are 15 or more parties to the mediation, regardless of whether or not all the parties participate in each mediation session; and

(D) The agency designates in writing that this rule may apply and provides a copy of the designation along with a copy of this rule to the mediator and to those parties to the mediation that are known to the agency. The designation required by this section must contain sufficient information to identify the mediation, including a brief description of the dispute or issues to be resolved, and the names of those parties to the mediation that are known to the agency; and

(b) The specific mediation session is one for which:

(A) The agency or the mediator and at least one party other than the agency are present;

(B) A party to the mediation or the mediator requests that this rule apply; and

(C) If present, the agency agrees to have this rule apply; and

(c) The agency or the mediator notifies all persons in attendance at the beginning of the mediation session that the session is being conducted under OAR 690-004-0020 and that any communications in the session may not be disclosed or introduced as evidence in any subsequent proceeding except as otherwise provided by 690-004-0020 or by other rules adopted by the agency pursuant to Oregon Laws 1997, chapter 670 or by other state or federal law.

(2) The agency may declare that certain mediation communications are not subject to the inadmissibility or non-disclosure provided by this rule. This declaration must:

(a) Be included in the designation provided in paragraph (1)(a)(D), or in an amendment to the declaration in which case the agency must mail or deliver a copy of the designation to all parties listed in the original designation and any other parties that are known to the agency; and

(b) Identify the mediation communications that, pursuant to this section, may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding.

(3) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408).

(4) Nothing in this rule affects any confidentiality created by other law.

(5) The words and phrases used in this rule have the same meaning as given to them in Oregon Laws 1997, chapter 670, section 11.

(6) Any statements, memoranda, work products, documents and other materials otherwise subject to discovery that were not prepared specifically for use in the mediation may be disclosed and may be introduced as evidence in a subsequent proceeding.

(7) Any mediation communications that are public records as defined in ORS 192.410(4) and were not specifically prepared for use in the mediation may be disclosed in a subsequent proceeding and may be introduced into evidence unless the substance of the communication is confidential under state or federal law.

(8) A party may disclose confidential mediation communications that were made in a mediation session covered by this rule in a subsequent proceeding if all the parties to the mediation session agree in writing to the disclosure. A communication that has been disclosed may be introduced into evidence in a subsequent proceeding.

(9) A mediator may disclose confidential mediation communications that were made in a mediation session covered by this rule in any subsequent proceeding if all the parties to the mediation session and the mediator agree in writing to the disclosure. A communication that has been disclosed may be introduced into evidence in subsequent proceedings.

(10) A mediation communication may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(11) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule may be disclosed to the extent necessary to make such a report. A communication that has been disclosed may be introduced as evidence in a subsequent proceeding.

(12) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation session may disclose mediation communications, and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(13) In an action for damages or other relief between a party to the mediation session and a mediator or mediation program, mediation communications may be disclosed in a subsequent proceeding and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(14) A written mediation communication may be disclosed in a subsequent proceeding and may be introduced as evidence by the party who prepared the communication so long as it does not contain information from another party to the mediation session or the mediator, or information that is otherwise confidential under state or federal law.

(15) When the only parties to the mediation session are public bodies, mediation communications and mediation agreements are not confidential except to the extent those communications or agreements are exempt from disclosure under ORS 192.410 to 192.505.

(16) When the parties to the mediation session include a private party and two or more public bodies, mediation communications may be disclosed and may be introduced as evidence in a subsequent proceeding if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation session are not confidential.

(17) The terms of any mediation agreement may be disclosed and may be introduced as evidence in a subsequent proceeding.

(18) When a person acts as the mediator in the mediation session and also acts as the hearing officer in a contested case involving some or all of the same matters, the communications in the mediation session may be disclosed and may be introduced as evidence in a subsequent proceeding.

(19) Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth.: ORS 36.224 & 539.005(2)

Stats. Implemented: ORS 36.224(4) & 539.010 - 539.220

Hist.: WRD 1-1998(Temp), f. & cert. ef. 5-11-98 thru 11-6-98; WRD 3-1998, f. & cert. ef. 11-2-98

#### 690-004-0030

#### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee

counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224 & 536.027

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: WRD 3-1999, f. & cert. ef. 3-23-99

### DIVISION 5

#### COMPLIANCE WITH STATEWIDE PLANNING GOALS, COMPATIBILITY WITH COMPREHENSIVE PLANS, AND COORDINATION ON LAND USE MATTERS

##### 690-005-0010

###### Purpose

As required by ORS 197.180, this rule establishes policies and procedures for: assuring agency compliance with statewide planning goals; assuring compatibility with local comprehensive land use plans; coordinating with local, state, and federal governments and special districts in land use matters; and resolving land use disputes.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

##### 690-005-0015

###### Definitions

For the purposes of OAR 690-005-0010 through 690-005-0060:

(1) “Affected Local Government” means a local government, as defined in section (9) of this rule, which is directly impacted by and specified in a proposed Department action; meanings specific to programs identified in OAR 690-005-0025 are defined in the rule divisions for those programs.

(2) “Commission” means the Water Resources Commission.

(3) “Department” means the Water Resources Department.

(4) “Director” means the Director of the Water Resources Department.

(5) “Land Use Approval” means a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired.

(6) “Land Use Dispute” means a disagreement between the Department and a local government regarding plans, programs, policies, actions, or other matters relating to land use which exists after the Department has:

(a) Applied appropriate provisions of:

(A) OAR 690-005-0030 (Compliance with Statewide Planning Goals);

(B) OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans); and

(C) Rules identified in OAR 690-005-0025.

(b) Been informed by the planning director, other planning official or governing body of a local government, that the adoption, amendment, or implementation of a proposed Department land use program activity would not be allowable under, or would conflict with the policies or provisions of an acknowledged comprehensive plan; or

(c) Determined that the adoption, amendment, or implementation of a local government comprehensive plan does not conform to the Commission’s state water resources policy, would harm existing rights, or would otherwise impair the public interest in water resources.

(7) “Land Use Planning Procedures Guide” means the non-rule text submitted by the Department as part of its SAC Program. This guide establishes criteria for the determination of land use programs and procedures for assuring comprehensive plan compatibility and coordinating with local governments.

(8) “Land Use Program” means an agency rule or program affecting land use, as defined by OAR 660-030-0005(2) and 660-031-0012(2)(f), and determined using criteria established in the Department’s certified state agency coordination program.

(9) “Local Government” means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(10) “Planning Department” means a local government department responsible for land use planning and the preparation, maintenance, and implementation of comprehensive plans.

(11) “Planning Director” means the director of a local government planning department, an appropriate designee, or other local government official responsible for carrying out land use planning functions.

(12) “Special Districts” means any unit of local government, other than a city, county, metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190 authorized and regulated by statute and includes, but is not limited to: Water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts. For the purposes of this rule, water use authorities formed under ORS 450.660 are considered special districts.

(13) “State Agency Coordination Program” means the submittal made by the Department to the Department of Land Conservation and Development pursuant to ORS 197.180(2)(a)–(d) and OAR 660, division 30. The Commission’s state agency coordination program consists of:

(a) Rules in this division;

(b) Rules identified or pertaining to programs listed in OAR 690-005-0025 and adopted pursuant to ORS 197.180; and

(c) The Department’s Land Use Planning Procedures Guide.

(14) “Statewide Planning Goals” or “Goals” means the mandatory statewide standards adopted by the Land Conservation and Development Commission pursuant to ORS Chapters 196 and 197.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

##### 690-005-0020

###### Policy

(1) Land use and water management are integrally related. Statewide planning goals require comprehensive plans to include inventories of, and mechanisms to protect, important local water resources. State water laws require the Commission to protect the public interest in all waters of the state. Recognizing the responsibilities vested in both state and local government to manage and protect water resources, the Commission places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans.

(2) In any action pursuant to a program identified in OAR 690-005-0025, the Commission and Department shall comply with the goals and be compatible with local comprehensive plans to the greatest extent possible, as required by and consistent with the full range of statutes governing land use and water management and as set forth in OAR 690-005-0030 (Compliance with Statewide Planning Goals) and 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

**690-005-0025**

**Applicability**

The provisions of OAR 690-005-0010 through 690-005-0060 apply to actions taken by the Department pursuant to the following land use programs:

- (1) Applications and Permits (OAR 690, divisions 310–340).
- (2) Appropriation and Use of Water for Hydroelectric Power Projects (OAR 690, division 51).
- (3) Water Right Transfers (OAR 690, division 15) except for those:
  - (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;
  - (b) Which involve changes in place of use only;
  - (c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and
  - (d) Which involve irrigation water uses only.
- (5) Applications for Uses in Addition to Classified Use (division 82).
- (6) Use of Conserved Water (division 18).
- (7) Instream Water Rights and Reservations of Water for Economic Development (OAR 690, division 77).
- (8) Review of Applications for Minimum Perennial Stream-flows (OAR 690, division 76).
- (9) Initiation of Proceedings for Determination of a Critical Ground Water Area (OAR 690, division 10).
- (10) Withdrawal of Water from Further Appropriation.
- (11) Statewide Policy Formulation.
- (12) Basin Planning.
- (13) Payment for Public Benefits in Water Projects (OAR 690, division 100).
- (14) Water Development Loan Fund (OAR 690, division 90).
- (15) Scenic Waterway Coordination.
- (16) Any future Department program or activity which may reasonably be expected to significantly affect land use as prescribed by ORS 197.180, OAR chapter 660, divisions 30 and 31, and OAR 690, division 5.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

**690-005-0030**

**Compliance with Statewide Planning Goals**

- (1) All Commission and Department actions pursuant to a program identified in OAR 690-005-0025 shall comply with the statewide planning goals.
- (2) Except as provided in section (3) of this rule, the Commission and Department shall comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans, as required by OAR 660-030-0065(3) and provided in 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).
- (3) The Commission and Department shall achieve goal compliance directly by satisfying the requirements of section (4) of this rule and by adopting written findings as provided in OAR 690-005-0040(4)(c), when one or more of the following situations, or other situations identified in 660-030-0065(3), exists:
  - (a) An acknowledged comprehensive plan does not contain:
    - (A) Requirements or conditions specifically applicable to a Commission or Department action; or
    - (B) General provisions, purposes, or objectives which would be substantially affected by the action.
  - (b) The Commission or Department takes an action that is not compatible with an acknowledged comprehensive plan after implementing all applicable measures described in OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).
  - (c) Prior to taking action pursuant to subsection (3)(a) of this rule, the Commission or Department shall notify the planning department of the affected local government:

(a) That, in the Department's assessment, the acknowledged comprehensive plan does not contain:

- (A) Requirements or conditions specifically applicable to a Commission or Department action; or
- (B) General provisions, purposes, or objectives which would be substantially affected by the action.

(b) That the Department intends to achieve goal compliance directly, not through compatibility with the applicable comprehensive plan; and

(c) That the planning department shall have 30 days to respond to the notification with a request to initiate dispute resolution procedures as described in OAR 690-005-0040.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

**690-005-0035**

**Compatibility with Acknowledged Comprehensive Plans**

(1) Except as provided in section (5) of this rule, Commission or Department actions taken pursuant to a program identified in OAR 690-005-0025 shall be compatible with acknowledged comprehensive plans.

(2) The Department shall satisfy section (1) of this rule by applying:

- (a) Provisions in the rule divisions identified in OAR 690-005-0025;
- (b) Provisions of OAR 660-030-0070;
- (c) Provisions of OAR 660-031-0026 and 660-031-0035; or
- (d) Procedures of the Department's Land Use Planning Procedures Guide.

(3) For water use approvals identified in OAR 690-005-0025(1) through (6), the Commission or Department shall satisfy compatibility requirements of ORS 197.180 by informing applicants that:

- (a) The Department's issuance of a permit or other approval is not a finding of land use compatibility; and
- (b) A land use approval may be required from the affected local government.

(4) In processing water use approvals in OAR 690-005-0025(1) through (6), the Department or Commission shall:

- (a) Require land use information be submitted with applications or requests, or as otherwise specified prior to taking action on the water use approval. The information shall be sufficient to assess compatibility as specified on forms contained in the department's Land Use Planning Procedures Guide;
- (b) Except as provided in subsection (4)(c) of this rule, the Department or Commission shall only approve the proposed water use if:

- (A) All requirements of statutes and rules governing Commission and Department actions are met;
- (B) The land use served by the proposed water use is allowed outright or does not require discretionary land use approvals under the applicable comprehensive plan; or
- (C) The applicant has already received necessary land use approvals for the land use served by the proposed water use.

(c) If local land use approvals are pending, place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals. The approval is allowed only if the use meets requirements in paragraph (4)(b)(A) of this rule. The Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department's needs; and

(d) Not issue water use approvals, except when taking action pursuant to section (5) of this rule if:

- (A) The land use served by the proposed water use is not allowed by the comprehensive plan and the applicant is not pursuing necessary local land use approvals to the satisfaction of the planning department of the affected local government; or

(B) The land use served by the proposed water use is not allowed by the comprehensive plan and local approvals have already been denied.

(5) If the Commission or Department finds it necessary to take an action which is incompatible with an acknowledged comprehensive plan in order to meet statutory obligations, the dispute resolution procedures identified in OAR 690-005-0040 shall be implemented prior to taking such action.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-005-0040

##### Resolution of Land Use Disputes

(1) The Department shall attempt to prevent disputes over land-use-related issues through early and frequent coordination with local governments.

(2) Land use disputes as described in OAR 690-005-0015(6)(b) which involve water use approvals identified in OAR 690-005-0025(1) and (7) shall be:

(a) Recognized through the information submittal requirements and comment and protest opportunities of ORS Chapter 537; and

(b) Subject to the procedures of section (3) through (7) of this rule to the extent practical under the timelines and processes established in ORS Chapter 537.

(3) Except as described in section (2) of this rule, for any other land use dispute as described in OAR 690-005-0015(6)(b), the Department shall notify any affected Department applicant of the dispute and provide the following in writing to the planning director, other planning official, or the governing body of the affected local government:

(a) Reasons for the Department's proposed action;

(b) Those statutes, rules or land use planning goals authorizing the Department's action;

(c) Alternatives to the Department's action or modifications of the proposed action, if any, which would result in compatibility;

(d) A proposal to discuss and resolve the dispute; and

(e) A request that the planning director, other planning official, or the governing body of the affected local government provide the Department with written information relating to the land use dispute. The written information shall be submitted to the Department within 30 days, unless otherwise specified by the Director, and shall describe:

(A) The specific Department action which would not be compatible with an acknowledged comprehensive plan;

(B) Comprehensive plan policies or provisions, or land use regulations which the planning director, other planning official, or the local governing body believe specifically apply to and preclude the Department action;

(C) General provisions, purposes, or objectives in the comprehensive plan which would be substantially affected by the Department action; and

(D) Changes or alternatives to the Department's action that would result in compatibility.

(4) Based on the results of activities described in sections (1) and (2) of this rule, the Department shall consider, and undertake as appropriate, one or more of the following to satisfy compatibility requirements and the Department's statutory mandates:

(a) Select an alternative action, including taking no action;

(b) Modify the proposed action to achieve compatibility;

(c) Apply for local land use approvals, including plan and land use regulation amendments, and explain why periodic review is not available to or sufficient for the Department in proposing the action;

(d) Appeal denial of local land use approvals to the appropriate bodies;

(e) Request necessary comprehensive plan amendments during periodic review;

(f) Request informal LCDC mediation, if subsections (3)(a) through (e) of this rule do not resolve the dispute; or

(g) Request formal LCDC determination of compatibility as provided in OAR 660-030-0070(7), if subsections (3)(a) through (e) of this rule do not resolve the dispute.

(5) If actions described in section (3) of this rule do not resolve the dispute, the Commission shall:

(a) Select an alternative action, including taking no action;

(b) Modify the action to achieve compatibility;

(c) Proceed with the action, adopting written findings which include the following:

(A) A description of the dispute and measures taken in attempting to resolve the dispute;

(B) A citation of those statutes and specific statewide planning goal requirements compelling the Department to take the disputed action; and

(C) A statement explaining how the action fulfills statutory obligations and complies with statewide land use planning goals.

(d) Inform the affected local government, any affected Department applicant, and the Department of Land Conservation and Development of the action taken, transmitting copies of any findings made under section (4)(c) of this rule.

(6) In the event of a land use dispute as provided in OAR 690-0050-015(6)(c), the Department shall:

(a) Notify the planning departments of affected local governments in writing of the conflict between a local action and Department policies, plans, or programs; and

(b) Cite the statutes and rules which apply to, or are substantially affected by, the local action;

(c) Suggest modifications or alternatives to the local action which would conform to Department policies, plans, or programs; and

(d) Offer to schedule discussions with the appropriate local planning official to resolve the dispute.

(7) If procedures described in section (5) of this rule do not resolve the dispute, the Department may:

(a) Request LCDC mediation or enforcement;

(b) Pursue local government conformance with Department policies, plans, or programs by:

(A) Applying for comprehensive plan amendments;

(B) Participating in periodic review; or

(C) Applying the provisions of ORS 536.360 through 536.400.

Stat. Auth.: ORS 197.180, 536.025 & 536.027

Stats. Implemented: ORS 197 & 536 - 543

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-005-0045

##### Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans

The Department has fulfilled its goal compliance and comprehensive plan compatibility obligations required by ORS 197.180 when it has:

(1) Applied the provisions of OAR 690-005-0035 (Compatibility with Acknowledged Comprehensive Plans).

(2) Applied provisions of rules identified or pertaining to programs listed in OAR 690-005-0025.

(3) Followed compatibility procedures in its Land Use Planning Procedures Guide.

(4) Taken action to comply directly with statewide planning goals, as necessary and as prescribed in OAR 690-005-0030.

(5) Followed the dispute resolution procedures of OAR 690-005-0040, if necessary.

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-005-0050

##### Assuring Goal Compliance and Acknowledged Plan Compatibility for New or Amended Land Use Programs

(1) Except as provided in section (2) of this rule, the Department shall assure that new rules and programs which qualify as land use programs, or amendments to existing land use programs, comply with the statewide planning goals and are compatible with acknowledged comprehensive plans.

(2) The Commission may choose not to apply this rule to the adoption of temporary rules and programs.

(3) The Department shall examine new rules or programs to determine if they qualify as land use programs as defined by OAR 660-030-0005(2) and using criteria established in the Department's **Land Use Planning Procedures Guide**.

(4) If new rules or programs are found to be land use programs, the Department or Commission shall amend OAR 690-005-0025, other sections of existing rule divisions pertinent to the program, and the Department's Land Use Planning Procedures Guide as needed to assure goal compliance and compatibility with acknowledged comprehensive plans.

(5) Amendments to existing land use programs shall be examined to determine if:

(a) They affect land use as determined by the criteria established in the Department's Land Use Planning Procedures Guide;

(b) Provisions of OAR 690, division 5 or the Department's Land Use Planning Procedures Guide are sufficient for assuring that actions allowed by the amendments comply with the goals and are compatible with comprehensive plans; or

(c) They modify the program so that it no longer qualifies as a land use program.

(6) If needed as determined after completing the examination prescribed in section (5) of this rule, the Department or Commission shall amend administrative rules and the Department's Land Use Planning Procedures Guide to assure goal compliance and compatibility with acknowledged comprehensive plans. If needed, considering the provisions of subsection (4)(c) of this rule, the program shall be deleted from OAR 690-005-0025 and the Department's Land Use Planning Procedures Guide amended accordingly.

(7) The Department shall provide written notice of any new rule or amendment determined to be a new land use program or affect the land use status of an existing land use program to the Department of Land Conservation and Development, persons on any Department mailing lists established for land use coordination purposes, and any local governments relying on the Department for goal compliance as described in OAR 660-030-0085. The notice shall include:

(a) The date, time, and location of the Department's proposed action;

(b) The manner in which written and oral comment on the proposed action can be submitted to the Department;

(c) An explanation of how the new rule or amendment qualifies as, or affects the land use status of, a land use program; and

(d) A description of any actions taken, or to be taken, pursuant to sections (3) through (6) of this rule.

(8) If no comment is received from the Department of Land Conservation and Development within the period specified in the notice described in section (7) of this rule, the Department may presume that the Department of Land Conservation and Development finds the new or amended rule or program to have satisfied requirements of ORS 197.180 and OAR 660, divisions 30 and 31.

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

Stat. Auth.: ORS 197.180, 536.025 & 536.027

Stats. Implemented: ORS 197 & 536 - 543

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 1-1996, f. & cert. ef. 1-31-96

### 690-005-0055

#### Land Use Program Coordination with State and Federal Agencies and Special Districts

(1) The Department shall coordinate activities related to the programs identified in OAR 690-005-0025 with affected state and federal agencies and affected special districts by taking actions described in its **Land Use Planning Procedures Guide**.

(2) Beginning July 1, 1991, the Director shall transmit a report each biennium to the Water Resources Commission and the Director of the Department of Land Conservation and Development which includes:

(a) An assessment of the effectiveness of the Departments state agency coordination program during the preceding biennium;

(b) Recommendations for changes in Water Resources Department or Department of Land Conservation and Development rules and procedures to improve coordination between agencies and local governments;

(c) The status of any tasks identified for implementation in the certified state agency coordination program; or

(d) Discussion of any other subject relating to water resource management and land use.

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

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

### 690-005-0060

#### Cooperation With and Technical Assistance to Local Governments

(1) The Commission and Department place a high priority on cooperating with and providing technical assistance to local governments.

(2) Cooperation with local governments shall include:

(a) Informing planning departments or Department activities and local water resources issues;

(b) Participating in periodic review;

(c) Reviewing or pursuing comprehensive plan amendments; and

(d) Reviewing project proposals.

(3) Technical assistance shall include:

(a) Providing existing water resources data and studies;

(b) Assisting local governments in interpreting water resources data and studies; and

(c) Responding to questions, or undertaking research or monitoring projects, as requested by planning departments, as Department resources allow.

(4) Cooperation with and technical assistance to local governments and planning departments pursuant to sections (2) and (3) of this rule shall be guided and supplemented by procedures described in the Department's **Land Use Planning Procedures Guide**.

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

Stat. Auth.: ORS 197 & 536

Stats. Implemented: ORS 197 & 536

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

## DIVISION 8

### STATUTORY GROUND WATER TERMS

#### 690-008-0001

##### Definition and Policy Statements

A number of terms are used in the statutes, ORS 537.505–537.795, prescribing the management of ground water in Oregon. These rules define terms to qualify and clarify the statutes. In all statutes and rules employed in the management of ground water by the Water Resources Department and Commission, the following definitions shall apply, unless the context requires otherwise:

(1) "Aquifer" means a water-bearing body of naturally occurring earth materials that is sufficiently permeable to yield useable quantities of water to wells and/or springs.

(2) "Critical Ground Water Area Boundary" means a line established in a critical ground water area order on a map that surrounds an area in which one or more of the statutory criteria for critical area declaration are met and which is located either:

(a) Physically by coincidence with natural features such as ground water reservoir boundaries, hydrologic barriers, or recharge or discharge boundaries; or

(b) Administratively by surrounding an affected area when that area does not coincide with an area bounded by natural features.

(3) "Customary Quantity" means the rate or annual amount of appropriation or diversion of water ordinarily used by an appropriator within the terms of that appropriator's water right.

(4) "Declined Excessively" means any cumulative lowering of the water levels in a ground water reservoir or a part thereof which:

(a) Precludes, or could preclude, the perpetual use of the reservoir; or

(b) Exceeds the economic pumping level; or

(c) Constitutes a decline determined to be interfering with:

(A) A surface water diversion having a priority date senior to the priority dates of the causative ground water appropriations; or

(B) A surface water body that has been administratively withdrawn with an effective date senior to the priority dates of the causative ground water appropriations unless the causative ground water appropriations are for uses that are exceptions to the withdrawals; or

(C) An adopted minimum stream flow or instream water right, or closure having an effective date senior to the priority dates of the causative ground water appropriations; or

(D) A surface water body which has a classification that is senior to the priority date of the causative ground water appropriation(s) and the use or uses to which the ground water is being put are not included in the classification.

(d) Constitutes a lowering of the annual high water level within a ground water reservoir, or part thereof, greater than 50 feet below the highest known water level; or

(e) Results in ground water pollution; or

(f) Constitutes a lowering of the annual high water level greater than 15% of the greatest known saturated thickness of the ground water reservoir. the saturated thickness shall be calculated using pre-development water levels and the bottom of the ground water reservoir, or the economic pumping level, whichever is shallower.

(5) "Economic Pumping Level" means the level below land surface at which the per-acre cost of pumping equals 70 percent of the net increase in annual per-acre value derived by irrigating. (The value is to be calculated on a five year running average of the per-acre value of the three, if there are that many, prevalent irrigated crops in the region minus the five year running average of the per-acre value of the three, if there are that many, prevalent regional non-irrigated crops.)

(6) "Excessively Declining Water Levels" (Note: "Excessively" as used in ORS 537.730(1)(a) is taken to modify both "are declining" and "have declined") means any ongoing lowering of the water level in a ground water reservoir or part thereof which:

(a) Precludes, or could preclude, the perpetual use of the reservoir; or

(b) Represents an average downward trend of three or more feet per year for at least 10 years; or

(c) Represents, over a five year period, an average annual lowering of the water level by 1% or more of the initial saturated thickness as determined by observation or investigation in the affected area; or

(d) Results in water quality deterioration.

(7) "Overdraw" means to artificially produce water, in any one-year period, from a ground water reservoir, or part thereof, at an annual rate that:

(a) Exceeds the average annual recharge to that ground water supply over the period of record; or,

(b) Reduces surface water availability resulting in:

(A) One or more senior appropriators being unable to use either their permitted or customary quantity of surface water, whichever is less; or

(B) Failure to satisfy an adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s).

(c) Reduces the availability of surface waters that have been:

(A) Withdrawn with an effective date senior to the priority dates of the causative ground water appropriations; or

(B) Restrictively classified with an effective date senior to the priority date(s) of the causative ground water appropriations.

(8) "Substantial or Undue Interference" means the spreading of the cone of depression of a well to intersect a surface water body or another well, or the reduction of the ground water gradient and flow as a result of pumping, which contributes to:

(a) A reduction in surface water availability to an extent that:

(A) One or more senior surface water appropriators are unable to use either their permitted or customary quantity of water, whichever is less; or

(B) An adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s) cannot be satisfied.

(b) The ground water level being drawn down to the economic level of the senior appropriator(s); or

(c) One or more of the senior ground water appropriators being unable to obtain either the permitted or the customary quantity of ground water, whichever is less, from a reasonably efficient well that fully penetrates the aquifer where the aquifer is relatively uniformly permeable. However, in aquifers where flow is predominantly through fractures, full penetration may not be required as a condition of substantial or undue interference.

(9) "Substantial Thermal Alteration" means any change in water temperature of a groundwater reservoir, or a part thereof, which:

(a) Precludes, or could preclude, the perpetual heating or cooling use of the groundwater reservoir; or

(b) Constitutes a change in the mean annual temperature within a groundwater reservoir, or part thereof, greater than 25 percent of the highest recorded naturally occurring Celsius (C) temperature.

(10) "Substantial Thermal Interference" means the spreading of the radius of thermal impact of a low-temperature geothermal production well or low-temperature geothermal injection well to intersect a surface water body or another well, or the reduction of temperature or heat flow as a result of pumping or injection, which contributes to change in groundwater or surface water temperature to an extent that one or more senior appropriators of the low-temperature resource are unable to use water for the purpose(s) designated in the associated water right.

(11) "Wasteful Use (of ground water)" means any artificial discharge or withdrawal of ground water from an aquifer that is not put to a beneficial use described in a permit or water right, including leakage from one aquifer to another aquifer within a well bore.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 21-1988, f. & cert. ef. 12-14-88; WRD 18-1990, f. & cert. ef. 12-14-90

## DIVISION 9

### GROUND WATER INTERFERENCE WITH SURFACE WATER

#### 690-009-0010

##### Basis for Regulatory Authority and Purpose

The right to reasonable control of the ground waters of the State of Oregon has been declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with administration of the rights of appropriation and use of the ground water resources of the state. These rules govern the use of ground waters, pursuant to 537.730 and 537.775, where the ground water is hydraulically connected to, and the use interferes with, surface waters.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 17-1988, f. & cert. ef. 11-4-88

#### 690-009-0020

##### Definitions

(1) "Confined Aquifer" means an aquifer in which ground water is under sufficient hydrostatic head to rise above the bottom of the overlying confining bed, whether or not the water rises above land surface.

(2) "Commission" means the Water Resources Commission.

(3) "Confining Bed": means a layer of low permeability material immediately overlying a confined aquifer.

(4) "Department" means the Water Resources Department, and consists of the Director of the Department and all personnel employed in the Department including but not limited to all water-masters appointed under ORS 540.020 (536.039).

(5) "Director" means the Water Resources Director.

(6) "Hydraulic Connection" means that water can move between a surface water source and an adjacent aquifer.

(7) "Unconfined Aquifer" means an aquifer in which the hydrostatic head at the upper surface of the ground water is atmospheric.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 17-1988, f. & cert. ef. 11-4-88

#### 690-009-0030

##### General Policy

The following rules establish criteria to guide the Department in making determinations whether wells have the potential to cause substantial interference with surface water supplies and in controlling such interference. The rules apply to all wells, as defined in ORS 537.515 (7), and to all existing and proposed appropriations of ground water except the exempt uses under 537.545. The authority under these rules may be locally superseded where more specific direction is provided by the Commission after the effective date of adoption of these rules.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 17-1988, f. & cert. ef. 11-4-88

#### 690-009-0040

##### Determination of Hydraulic Connection and Potential for Substantial Interference

For the purposes of permitting and distributing ground water, the potential for substantial interference with surface water supplies shall be determined by the Department.

(1) The Department shall determine whether wells produce water from an unconfined or confined aquifer. Except for wells that satisfy the conditions in section (2) of this rule the Department shall further determine whether the aquifer is hydraulically connected to the surface water source. The basis of the determination shall be information provided on the Water Well Report for any well in question. If there is no Water Well Report available or if the information provided is inadequate, the Department shall make the determination on the basis of the best available information. Such information may include other Water Well Reports, topographic maps, hydrogeologic maps or reports, water level and other pertinent data collected during a field inspection, or any other available data or information that is appropriate, including any that is provided by potentially affected parties.

(2) All wells located a horizontal distance less than one-fourth mile from a surface water source that produce water from an unconfined aquifer shall be assumed to be hydraulically connected to the surface water source, unless the applicant or appropriator provides satisfactory information or demonstration to the contrary. Department staff may provide reasonable assistance to the applicant or appropriator in acquiring the satisfactory information.

(3) The Department shall determine the horizontal distance between any well in question and the nearest surface water source on the basis of the edge of the surface water source as also determined by the Department.

(4) All wells that produce water from an aquifer that is determined to be hydraulically connected to a surface water source shall be assumed to have the potential to cause substantial interference with the surface water source if the existing or proposed ground water appropriation is within one of the following categories:

(a) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source; or

(b) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source; or

(c) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source; or

(d) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source. Using the best available information, stream depletion shall be determined or estimated by the Department, employing at least one of the following methods:

(A) Suitable equations and graphical techniques that are described in pertinent publications (such as "Computation of Rate and Volume of Stream Depletion by Wells," by C.T. Jenkins, in *Techniques of Water-Resources Investigations of the United States Geological Survey*: Book 4, Chapter D1);

(B) A computer program or ground water model that is based on such or similar equations or techniques.

(5) Any wells, other than those covered in section (4) of this rule, that produce water from an aquifer that is determined to be hydraulically connected to the surface water source may be determined by the Department to have the potential to cause substantial interference with the surface water source. In making this determination, the Department shall consider at least the following factors:

(a) The potential for a reduction in streamflow or surface water supply; or

(b) The potential to impair or detrimentally affect the public interest as expressed by an applicable closure on surface water appropriation, minimum perennial streamflow, or instream water right with a senior priority date; or

(c) The percentage of the ground water appropriation that was, or would have become, surface water; or

(d) Whether the potential interference would be immediate or delayed; or

(e) The potential for a cumulative adverse impact on streamflow or surface water supply.

(6) All wells that produce water from an aquifer that is not hydraulically connected to a surface water source shall be assumed not to interfere with the surface water source.

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

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 17-1988, f. & cert. ef. 11-4-88

#### 690-009-0050

##### Ground Water Controls

(1) The Department shall review existing ground water appropriations to determine the potential to cause substantial interference with a surface water source on a case-by-case basis, in accordance with OAR 690-009-0040, whenever substantial interference with a surface water source is suspected to exist by the Department.

(2) Whenever the Department determines that substantial interference with a surface water supply exists, the Department shall control those groundwater appropriations that have been determined under section (1) of this rule to have the potential to cause substantial interference. The controls shall be similar to or compatible with, but not more restrictive than controls on the affected surface water source, in accordance with the relative dates of priorities of the ground water and surface water appropriations:

(a) Prior to controlling the use of any well greater than 500 feet from a surface water source, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner. The Department shall make the determination on the basis of the best available information, employing at least one of the methods set forth in OAR 690-009-0040(4)(d);

(b) The Department shall control the use of wells greater than one mile from a surface water source only through a critical ground water area determination in accordance with ORS 537.730 through 537.740.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 17-1988, f. & cert. ef. 11-4-88

DIVISION 10

APPROPRIATION AND USE OF GROUND WATER

690-010-0045

Hearings and Protests

Rules and regulations governing the filing of protests or petitions and procedures to be followed in hearings as required by ORS Chapter 183 and division 1.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

Initiation of Proceeding for Determination  
of a Critical Ground Water Area

690-010-0050

Notification

(1) A proceeding for the determination of a critical ground water area shall be initiated by a Notification from the Water Resources Director.

(2) The Notification shall include:

(a) A description of the proposed exterior boundaries of the area for which, the proceeding is initiated, referenced to the **U.S. Public Lands Survey**;

(b) Citation to the specific statutory provision or provisions under which the proceeding is brought;

(c) The preliminary findings indicating why the area described may be a critical ground water area;

(d) A general description of the nature of the ground water reservoir which is the subject of the determination;

(e) The effective date and duration of the Notification. In no case shall the Notification have a duration greater than 270 days;

(f) A statement concerning applications in the area and reservoir in question which were filed in the Water Resources Department prior to the effective date of the Notification, but which had not received permits prior to that date. Such statement shall explain the applicants' options which include:

(A) Withdrawing the application with refund of any submitted recording fees; or

(B) Requesting deferral of action on the application until a determination of a critical ground water area; or

(C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.

(g) A statement concerning applications in the area and reservoir in question which are submitted on or after the effective date of the Notification. The statement shall explain the applicants' options which include:

(A) Withdrawing the application with refund of all related fees; or

(B) Requesting deferral of permit action until a determination of a critical ground water area; or

(C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.

(h) Upon receipt of a request for hearing under subsection (2)(f) or (g) of this rule, the Director shall schedule and conduct the hearing.

(3) The Notification shall be distributed by:

(a) Publication at least once each week for two consecutive weeks in a newspaper having general circulation in the area in question;

(b) Mailing by regular or certified mail to each legal claimant or appropriator of ground water in the area in question;

(c) Mailing by regular or certified mail to each applicant for a permit to appropriate water from the ground water reservoir and area in question;

(d) Mailing by regular or certified mail to the governing body and planning department(s) of the affected local governments within which all or part of the area in question is located;

(e) Mailing by regular or certified mail to each licensed water well constructor licensed to construct wells in the State of Oregon;

(f) Mailing by regular or certified mail to the state legislative delegates representing the people of the area in question.

(4) The Notification initiating a proceeding for determination of a critical ground water area shall be recorded in the Special Order Record of the Water Resources Director.

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

Stat. Auth.: ORS 183, 197, 536 & 537

Stats. Implemented:

Hist.: WRD 2-1983, f. & ef. 3-25-83; WRD 10-1986, f. & ef. 9-3-86; WRD 12-1990, f. & cert. ef. 8-8-90

690-010-0053

Process Options

Within 270 days of the issuance of Notification, the Commission shall:

(1) Determine that a critical ground water area is not warranted and inform those parties who received the Notification of the Commission's determination.

(2) Conduct a public hearing to withdraw the ground water from further appropriation as authorized by ORS 536.410.

(3) Conduct a public hearing to amend the appropriate basin program to classify the ground water in question as authorized by ORS 536.310 and 536.340.

(4) Complete sections 2 and/or 3 of this rule and proceed at some future date with additional hearings necessary to fulfill the requirements of ORS 537.730 and issue a critical ground water area order.

(5) Conduct a public hearing and issue a critical ground water area order and/or adopt rules.

Stat. Auth.: ORS 197 & 536

Stats. Implemented:

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

690-010-0054

Public Hearing Requirements

(1) At least one public hearing shall be held within or near the proposed critical ground water area.

(2) Notice of any hearing associated with critical ground water area proceedings shall be distributed as provided in OAR 690-010-0050(3).

Stat. Auth.: ORS 197 & 536

Stats. Implemented:

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

**690-010-0070**

**Local Government Coordination**

(1) Proceedings for the determination of a critical ground water area include Notification, rulemaking, the issuance or modification of an order, or other related activities.

(2) The Director and Commission shall assure that proceedings for the determination of a critical ground water area meet the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Comprehensive Plans). Further, the Commission shall:

(a) Upon notification, request the planning director of affected local governments to submit applicable policies, provisions, or procedures from acknowledged comprehensive plans which address and provide guidance for mitigating ground water problems;

(b) Accommodate comprehensive plans (i.e., areas of planned growth and priority land uses) to the extent possible within the physical constraints of the ground water resource and the Commission's responsibilities under ORS 537.525, in adopting rules or issuing orders to manage or control water use in established or potential critical ground water area;

(c) Instruct the planning directors of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended to:

(A) Reflect the physical constraints of ground water resources in the critical area;

(B) Ensure compliance with restrictions in the Notification, withdrawal order, classification, or critical ground water area order; and

(C) Reduce the potential for future ground water problems within affected localities.

(d) Consider how local government participation could enhance the effectiveness of managing the area;

(e) Distribute the final critical ground water area rule and/or order to the county clerk and the planning director(s) of affected local governments.

(3) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director and Commission shall follow procedures in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 197 & 536

Stats. Implemented:

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90

**DIVISION 12**

**OUT-OF-BASIN DIVERSION**

**690-012-0010**

**Purpose**

These rules prescribe the definitions, standards, information requirements, and fees for processing an application proposing an out-of-basin diversion of water. The Water Resources Commission shall use these rules to evaluate the merits of applications to divert water from one basin to another.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537

Hist.: WRD 2-1991, f. & cert. ef. 2-8-91

**690-012-0020**

**Definitions**

As used in these rules, the following terms shall have the indicated meanings.

(1) "Basin" means one of the river basins within this state as defined by Water Resources Department map number 0.2, dated 1987, and entitled "Oregon Drainage Basins," unless the context requires otherwise.

(2) "Basin of origin" means the basin in which surface or groundwater that is the subject of an application under ORS 537.211, 537.400, 537.620, 540.520, 543.210, or 543.290 is located.

(3) "Commission" means Water Resources Commission.

(4) "Department" means the Water Resources Department.

(5) "Director" means Water Resources Director.

(6) "Harm" means to waste or use water inefficiently, deplete water supplies to the detriment of existing right holders or public uses, overdraft groundwater supplies or degrade the quality of surface or groundwater.

(7) "Historically Transported" means the exercise of a valid water right, within the last five years, in a manner that is beneficial and lawful.

(8) "Out-of-Basin-Diversion Application" means either:

(a) An application for a new use of water that proposes to divert water for use outside the basin of origin; or

(b) An application to change the place of use of an existing right to a place outside the basin of origin.

(9) "Planned Uses or Development" means a proposed use of water for which a permit has been issued or an application has been received by the Department.

(10) "Regional Municipal Water Service" means regular service of water for municipal purposes in accordance with the provisions of ORS 540.510, 540.530, and ORS Chapter 450, or such water service to multiple jurisdictions through one or more providers and systems.

(11) "Return Flow" means water that returns to a stream either uncontrolled or by controlled conveyance following its diversion and use from a surface or groundwater source.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537

Hist.: WRD 2-1991, f. & cert. ef. 2-8-91

**690-012-0030**

**General Provisions**

The following general provisions shall apply to out-of-basin-diversion applications:

(1) These rules shall apply to all out-of-basin-diversion applications subject to ORS 537.803 proposing to divert 0.5 cubic feet per second or more of either surface water, groundwater or both.

(2) Out-of-basin-diversion applications for new uses processed under these rules shall also comply with all other applicable provisions of OAR 690, division 11.

(3) Out-of-basin-diversion applications to change the place of use processed under these rules shall also comply with all other applicable provisions of OAR 690, division 15.

(4) No out-of-basin-diversion application subject to ORS 537.803 shall be accepted by the Department until it addresses each of the information requirements described in OAR 690-012-0040.

(5) No out-of-basin-diversion application subject to ORS 537.803 shall be approved unless the Commission has reserved water to meet future needs, including economic development and public uses in the basin of origin.

(6) All out-of-basin-diversion applications subject to ORS 537.803 proposing to divert 50 cfs or more shall require the consent of the Legislative Assembly.

(7) All out-of-basin-diversion applications subject to ORS 537.803 shall be the subject of one or more public hearings, at least one of which shall be held in the basin of origin.

(8) These rules shall not apply to applications to exchange water involving transfer of water out of the basin of origin.

(9) These rules shall not apply to applications by cities to facilitate regional municipal water service if the city has historically transported water between the basin of origin and the proposed receiving basin.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537

Hist.: WRD 2-1991, f. & cert. ef. 2-8-91

**690-012-0040**

**Standards and Information Requirements**

In order for an out-of-basin-diversion application to be approved, the standards and requirements in sections (1) through (8) of this rule shall be met to the Commission's satisfaction. The Commission shall decide if each standard is met based on information provided in the application, during the public hearing and in written comments received within 20 days after the date of the final public hearing. Information required in the application shall

include, at a minimum, those items listed for each standard in sections (1) through (8) of this rule. Except where the rules specify otherwise, this information shall address conditions for the basin of origin as a whole and for the specific surface or groundwater source proposed for diversion. Information for the basin of origin as a whole may be general in content. Information for the specific surface or groundwater source affected shall be detailed. In applying the standards, the Commission may make allowances where existing information is incomplete, does not exist, or is inadequate to clearly meet the standard. The information required under this rule is in addition to any other information required on applications under the Commission's rules on Applications and Permits, OAR 690, division 11 and Water Right Transfers, OAR 690, division 15.

(1) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, the amount of water in the basin of origin available for future appropriation in the basin of origin and for the proposed use. In demonstrating water availability, the application shall include an analysis of:

(a) Annual and monthly discharge for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include at least the 80 percent frequency discharges and reflect both natural (without storage or diversion) and regulated conditions at the mouth and the point of diversion. Discharge shall be expressed in units of cubic feet per second and acre feet;

(b) Groundwater in storage and amount of annual recharge for the basin as a whole and for the specific groundwater source proposed for diversion. The evaluation shall indicate whether the recharge is natural or artificial. If groundwater recharge is artificial, the source of the recharge water shall be identified. Volumes of water shall be expressed in units of acre feet;

(c) Existing water rights for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Separate summaries shall be prepared for surface water and groundwater rights. Each summary shall provide a breakdown of water rights by use category, quantity of rights in terms of cfs, and by season of use (irrigation season). The summary shall include minimum streamflows, instream water rights and reservations of water;

(d) Water use for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include an evaluation of water use based on actual measurements, water use reports and estimates. The evaluation shall cover all major water use (beneficial use) categories, both consumptive and nonconsumptive. For each water use category, the analysis shall indicate the amount of water used annually and monthly. Water use shall be expressed in terms of cubic feet per second and acre feet. If the evaluation of water use is based on measurements or reported data, the analysis shall describe the measurement techniques and cite the sources of the reported data. If water use is estimated, the analysis shall describe the information used and all assumptions made in enough detail to permit the Department to verify the accuracy of the estimate;

(e) Water availability for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Water shall be considered available for any given period of time only if the flow that occurs four out of five years (80% frequency) during the period exceeds expected water use by all water rights. An analysis of water availability shall be based on the information required in subsections (a) through (d) of this section. The analysis shall include a statement of water available on an annual and monthly basis. Available water shall be stated in terms of cubic feet per second and acre feet;

(f) Legislative and administrative restrictions on water use for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include determinations of flow and water volume contributed by surface or groundwater sources protected from appropriation by legislation or Gubernatorial designation. Elements included in this analysis shall include:

(A) Legislative withdrawals and grants;

(B) State scenic waterways;

(C) State Engineer withdrawals;

(D) Commission withdrawals.

(2) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not use water necessary to meet projected future water needs in the basin of origin. In describing projected water needs, the application shall include an analysis of:

(a) Existing population, demographic trends and growth projections. Growth projections shall extend at least 20 years into the future. In providing this analysis, the applicant shall consult with the Center for Population Research and Census at Portland State University and the individual city and county planned departments for the counties included in the basin of origin;

(b) Projected water demand by major use category. This evaluation shall cover at least the categories of municipal, industrial, agricultural and instream water demands. For each major use category, the evaluation shall state the relative percent of projected demand allocated to surface water and groundwater. At a minimum, information supplied to meet this requirement shall reflect:

(A) Facilities plans applicable within an urban growth boundary containing a population greater than 2,500;

(B) Economic Development Department economic strategies, plans or prospects for individual cities, counties, or regions in the basin of origin;

(C) Department of Agriculture and Oregon State University Extension Service Inventories and projections for irrigated agriculture in the basin or origin;

(D) The pertinent management plans for fish, wildlife, habitat, water quality, recreation, or other area of responsibility of the agencies listed in paragraphs (7)(a)(A) through (E) of this rule.

(e) Economic factors affecting water use in the basin of origin.

(3) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not harm return flows that benefit water users in the basin of origin. At a minimum, the analysis shall include:

(a) An evaluation of existing and prospective water use by major use category on the proposed diversion source upstream from the proposed point of diversion;

(b) An estimate of the existing and prospective amounts of water that return to the proposed source of diversion upstream from the proposed point of diversion;

(c) An evaluation of existing water rights issued specifically on return flows, effluent discharge, wasteways or recycled water originating upstream and passing the point of diversion for use downstream.

(4) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not harm supplies of surface or groundwater in the basin of origin. The application shall describe the relationship between surface and groundwater and, at a minimum, shall include:

(a) An identification and discussion of groundwater recharge and discharge zones and how surface water and groundwater affect each other in these zones;

(b) An identification of areas where groundwater and surface water are or may be hydraulically interconnected and a discussion of annual and seasonal exchange between these resources;

(c) An evaluation of the relationship between water quantity and quality for both surface water and groundwater and how conditions present in one resource affect conditions in the other;

(d) An evaluation of whether the proposed project will occur in an area of groundwater-surface water hydraulic interconnection and if so, a discussion of the potential and expected impacts of the proposed project on the quantity or quality of either;

(e) In responding to subsections (a) through (d) of this section, any assumptions relied upon or modeling conducted by the applicant shall first be reviewed and approved by the Department.

(5) In order to be approved, an out-of-basin diversion application shall demonstrate to the Commission's satisfaction, that it will not injure or interfere with existing water rights or planned uses or

developments within the basin or origin. At a minimum, the analysis shall include:

(a) A summary of the water rights by type of use, quantity of diversion and characteristics of use, that occur on the stream or in the stream system from which the proposed project will divert water. The same information shall be supplied for each aquifer affected if groundwater is proposed as the source of diversion;

(b) A description of all proposed diversion and transmission works and their physical and geographical proximity to existing diversion and transmission facilities. The description shall include a discussion of potential impacts of the proposed project works on existing facilities and the means and methods of avoiding such impacts;

(c) A description of planned uses and development covering the same points as in subsection (b) of this section;

(d) A description of the type, frequency, period and extent of water rights regulation on the proposed surface or groundwater source of diversion. The description shall include an explanation of the resource problem(s) requiring regulatory measures.

(6) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not adversely affect the quantity or quality of water available for municipal or domestic use in the basin or origin. The analysis shall include:

(a) A description of existing municipal and domestic water rights relying on the same stream or aquifer proposed for the out-of-basin diversion. The description shall include estimated or reported water use by individual municipalities;

(b) A description of any municipal or domestic water storage facilities or reservations of water for municipal or domestic use affecting the proposed source of diversion;

(c) An evaluation of ambient water quality in the stream or stream system affected by the proposed diversion. This evaluation shall be based either on data and analysis by the Department of Environmental Quality (DEQ) or water quality data gathered and analyzed in accordance with DEQ specifications;

(d) A description of construction and operation practices proposed to prevent water quality standards violations or impacts to designated beneficial uses.

(7) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that public uses in the basin of origin will not be harmed. An analysis of the proposed project impacts on public uses shall include:

(a) A statement of public uses existing in the basin and on the proposed source of diversion. This statement shall include public uses covered by existing water rights as well as those public uses which derive from the presence of live flow. In determining the presence of public uses, the applicant shall consult with the state agencies listed in paragraphs (A) through (E) of this subsection. Evidence of consultation with these agencies shall be included with the application:

- (A) Water Resources Department;
- (B) Department of Fish and Wildlife;
- (C) Department of Environmental Quality;
- (D) Department of Parks and Recreation;
- (E) Division of State Lands.

(b) A statement of flows or quantities of water needed to maintain public uses. This statement shall reflect existing water rights for such purposes or projected water needs as recommended for such purposes by the agencies listed in paragraphs (7)(a)(A) through (E) of this rule. If water rights do not exist for public uses, the agencies recommendations shall specify flow levels by month necessary for public uses. If no flow information is available, the applicant shall determine the necessary flows based on methods of determining instream water rights approved by administrative rules prepared by the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation as required in OAR 690-077-0020(3);

(c) A statement of how the size, placement, design, shape, color and other physical features of the proposed diversion will

affect public uses. This statement shall include comments from the agencies listed in subsection (a) of this section.

(8) In order to be approved, an out-of-basin transfer application shall demonstrate to the Commission's satisfaction, that suitable alternative sources of water, including conservation, within the proposed basin of use are not available for the proposed use.

Stat. Auth.: ORS 537  
Stats. Implemented: ORS 537  
Hist.: WRD 2-1991, f. & cert. ef. 2-8-91

#### 690-012-0050

##### Fees

(1) The applicant shall bear all costs to the State of Oregon for processing an application for an out-of-basin diversion. An application for an out-of-basin diversion shall be accompanied by the following fees:

- (a) An examination fee of \$1,500;
- (b) A publication of analysis fee of \$1,000; and
- (c) A hearing fee of \$1,200.

(2) The Department shall maintain an accounting of all costs incurred in review of the application. The Department shall bill the applicant quarterly for all costs incurred in excess of the examination, publication and hearing fee amounts listed in section (1) of this rule. The first billing shall be made at the end of the calendar quarter in which the application is received. Additional billings shall be made at the close of each quarter thereafter until the application is approved or rejected. If the applicant fails to pay the Department within 30 days of billing, the Department shall suspend review until payment is made. If the applicant refuses to pay any billing, the Department shall halt further review and take steps to reject the application. Expenses for the following items shall be completely reimbursed by the applicant:

(a) Staff time spent in review, analysis, consultation, public hearings, report preparation, and presentation to the Commission;

(b) Staff and Commissioner's travel expenses, including mileage, meals and lodging, incurred in travel to and from and conduct of public hearing(s) on the proposed application;

(c) Public notice and publication expenses, including reproduction and printing costs, newspaper and other publishing fees, and postage;

(d) Hearing expenses, including rental of a hearing facility, audio and visual equipment, and professional transcription fees; and

(e) Such other expenses as may be incurred in the processing of the application, including the reasonable expenses of any state agency incurred for any of the items listed in subsections (a) through (d) of this section in providing services requested by the Department or Commission. Any request for services made by the Department or Commission shall be in writing and shall specify the particular service(s) being requested.

(3) Time spent by state agencies in consultation with the applicant as required in OAR 690-012-0040(7)(a)(A) through (E), shall not be at the applicant's expense.

Stat. Auth.: ORS 537  
Stats. Implemented: ORS 537  
Hist.: WRD 2-1991, f. & cert. ef. 2-8-91

#### DIVISION 13

#### PETITION TO CHANGE DEPARTMENT RECORDS WITHIN WATER DISTRICTS

#### 690-013-0005

##### Introduction

The purpose of these rules is to establish the criteria for filing petitions to adjust the water right record to match the actual use of the water within districts. Such petitions were authorized by ORS 541.325-541.333, 536.050, and 540.520 as modified by Chapter 818, Oregon Laws 1993. This process cannot enlarge the original right or injure existing rights. The rules also define the standards for petitions and maps submitted by districts and for individual applications.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 1-1993, f. & cert. ef. 2-3-93;  
 WRD 4-1994, f. & cert. ef. 3-25-94

## 690-013-0010

### Definitions

(1) "Altered by the Petition or Proposed Order": A water right is altered by the petition or proposed order if its defining parameters would be changed if the petition or proposed order were approved. The defining parameters include, among others, the place of use, rate, duty, and limitations.

(2) "Application" means a written request by individuals to change or transfer a water right. See the definition of "petition."

(3) "Commission" means the Water Resources Commission.

(4) "Department" means the Water Resources Department.

(5) "Director" means the Director of the Department.

(6) "General Description" means the location of property or district by government subdivision, metes and bounds or tax lot.

(7) "Interim Transfer" means a change in use or place of use of those rights eligible under OAR 690, division 13, made during the preparation of a petition, and prior to the submission of that petition to the Water Resources Department.

(8) "Owned or Controlled" means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(9) "Perfected Water Right" means a water right confirmed by a court decree, water right certificates or transfers recognized as complete by the Department.

(10) "Petition" means a written request by a district for a new water right certificate which will include changes within districts. See the definition of "application."

(11) "Transfer" means a formal change of use or place of use of a perfected water right, pursuant to OAR 690, division 15.

(12) "User" means an owner of land with an appurtenant water right pursuant to current state records or proposed to be recognized as a result of a petition; and subject either previously or currently, to assessment by a district and which right would be altered by the petition and map filed by a district.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94

## 690-013-0030

### Eligibility to Petition

(1) The following types of water rights are eligible to petition:

(a) A perfected water right which has been assessed by a district in at least one of the last five years. It is not necessary for the water right to be in the name of the district;

(b) An approved transfer of water rights to lands which have been assessed by a district in at least one of the last five years but are not certified by the Department; and

(c) A permit for supplemental supply which moves with the perfected primary right.

(2) The following are not eligible to petition:

(a) A permit which is a primary supply of water; and

(b) A request for point of diversion change.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94

## 690-013-0050

### Individual Applications

(1) If the district fails or refuses to file a petition, an owner may file an application affecting only the owner's land. The application shall be on the form provided by the Department. Division 15 transfer rules shall apply except that the applicant shall not be obliged to hire a Certified Water Right Examiner to prepare the application map and claim of beneficial use. Fees for those applications shall be as specified in ORS 536.050.

(2) Several owners within a section quarter-quarter may file as a group. The application shall comply with division 15 rules except that the applicant shall not be obliged to hire a Certified Water

Right Examiner to prepare the application map and claim of beneficial use. There are no fees required by these applications.

(3) Applications under this section will adhere to the timing and verification procedures found in OAR 690-013-0300 and 690-013-0350.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94

## 690-013-0070

### Interim Transfers

Water right changes inside districts made prior to July 1, 1993, may comply with the following:

(1) Where the change is to occur prior to the District submitting its petition which will include this change, the district may submit a notice to the Department. This notice requires no fee, but shall include:

(a) A statement that the district intends to file a petition including this change; and

(b) A completed interim transfer notice on a form provided by the Department.

(2) If a more formal record of a change is desired by a user prior to the district submitting its petition, the user may submit a transfer application in compliance with division 15 rules and ORS 536.050 and 540.510 to 540.530.

(3) For a change after a district has submitted its petition, a landowner must submit a transfer application in compliance with division 15 rules and ORS 536.050 and 540.510 to 540.530.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 1-1993, f. & cert. ef. 2-3-93;  
 WRD 4-1994, f. & cert. ef. 3-25-94

## 690-013-0100

### District Petitions

The district petition shall include:

(1) A listing of:

(a) All of the applicable water rights on lands within the district boundaries;

(b) Only the lands where water use changes have occurred. If the change involves part of a section quarter-quarter, all water rights in the quarter-quarter must be requested; or

(c) A portion of the district to provide a clear record of the water rights. If a portion involves part of a section quarter-quarter, the entire quarter-quarter must be requested. Any part of the district that no longer matches the Department map or certificate should be included in the petition.

(2) A listing of all completed transfers appurtenant to the lands listed.

(3) A map meeting the requirements of OAR 690-013-0200.

(4) A description of the land to which each water right is appurtenant, including the township, range, section, quarter-quarter and assessor's tax lot number. The water right shall be described by the number of acres within each quarter-quarter, the use and the user's name. If a tax lot covers more than one quarter-quarter, it shall be listed in each quarter-quarter.

(5) A description of the district's legal boundaries.

(6) A description of the type(s) of use made on each parcel listed in the petition.

(7) A list containing the total number of acres:

(a) Contained in the petition;

(b) Assessed by the district as of July 1, 1989; and

(c) Assessed by the district as of July 1, 1993.

(8) A statement of whether the U.S. Secretary of the Interior must assent to inclusion of lands within the district's boundaries. If the Secretary's assent is required but has not yet been given, the petition must include a copy of the district's request for the Secretary's assent.

Stat. Auth.: ORS 541.325 - 541.333  
 Stats. Implemented: ORS 537.325 - 541.333  
 Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94;  
 WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

### 690-013-0110

#### Requests for Additional Information

(1) Pursuant to ORS 541.329(6), the Director may require additional information if the Director determines it is needed to evaluate the petition.

(2) If the Director returns a petition or map to a district for correction or additional information, the Director shall prescribe a reasonable deadline for the petitioner to provide additional information or correct the petition and map. If the petitioner fails to meet the deadline prescribed by the Director, the Director may deny the petition.

Stat. Auth.: ORS 541.325 - 541.333

Stats. Implemented: ORS 537.325 - 541.333

Hist.: WRD 4-1994, f. & cert. ef. 3-25-94

### 690-013-0120

#### Supplemental Permits

When supplemental permits apply to lands having perfected water rights, the supplemental permit shall be appurtenant to the land listed in the petition.

Stat. Auth.: Ch. 1000, OL 1989

Stats. Implemented: Ch. 1000, OL 1989

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90

### 690-013-0150

#### District Shall Certify Petition

(1) The petitioner or petitioner's authorized representative shall certify that the information contained in the petition and attached exhibits is true and accurate to the best knowledge of the petitioner.

(2) The petitioner shall certify that notice was sent by certified mail to the user of every parcel whose right of record, as evidenced by the district's records, is to be altered by the petition. The certification shall state that the notice was sent to the last known address of the user with a return receipt requested and include:

(a) The number of acres of land or its equivalent for which the user is being assessed;

(b) A general description or tax lot number of the land to which the water is assigned;

(c) A description of the use; and

(d) A request that the user confirm that the information in the notice is correct.

Stat. Auth.: ORS 541.325 - 541.333

Stats. Implemented: ORS 537.325 - 541.333

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94

### 690-013-0200

#### Mapping Requirements

The map submitted with a district petition or individual application shall meet the following criteria:

(1) The preferred map size is 8-1/2" by 11"; the maximum size shall be 30" x 30" unless prior approval is obtained from the Department. Standard map symbols shall be used as provided by the Department.

(2) The map shall be drawn in ink on permanent quality tracing linen or 0.003-inch mylar with sufficient clarity so as to be easily reproduced. It shall be drawn to one of the following scales:

(a) One inch equals 1,320 feet;

(b) One inch equals 400 feet;

(c) The assessor's scale if larger than one inch equals 1,320 feet; or

(d) A combination of these scales if using map inserts.

(3) The map shall show the following for parcels of more than five acres:

(a) The location of diversions, canals, ditches, pipelines or flumes;

(b) The location of the place where water is used. If for irrigation, the area irrigated in each section quarter-quarter shall be indicated by shading or hachuring and the number of acres in each section quarter-quarter indicated; and

(c) The scale to which the map is drawn, the section number, township, range, a north directional symbol and property boundaries.

(4) When the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for the identification of the place of use and the extent of use. A portion of a tax map may be included as part of the map submitted.

(5) More than one water right or type of use may be entered on the same map if clearly identified by different hachuring.

Stat. Auth.: Ch. 1000, OL 1989

Stats. Implemented: Ch. 1000, OL 1989

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90

### 690-013-0310

#### Processing of Petition

(1) When the Department receives a petition and map the Director shall examine the petition and map under OAR 690-013-0350. If, after the petitioner has had an opportunity to correct identified deficiencies, this examination shows that the district has met the requirements of ORS 541.325 to 541.333 and that the proposed changes would not result in injury to existing water rights, the Director shall issue a proposed order approving the petition as submitted or as modified. If the Director proposes to deny a petition, the Commission shall hold a hearing as described in section (5) of this rule.

(2) The Director shall provide public notice of all proposed orders through publication in the Department's Weekly Summary of Applications Filed. The Director shall also mail a summary of the proposed order to the planning department of each affected local government, to a newspaper of general circulation within the affected area, to any person who has requested notification of proposals and any other parties the Director determines should be notified. These notice requirements shall not affect petitioner's notice responsibilities under ORS 541.329.

(3) Within 30 days after a proposed order is issued the petitioner shall provide notice to the owners of all lands whose rights, as recorded in the state's records or in the district's records, would be altered by the proposed order. This notice shall be sent to the last-known address of the landowner, with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the landowner is being assessed, if any, a general description or tax lot number of the land whose right will be altered, and a description of the use. In addition to the notice of the proposed order sent to the landowners, for proposed orders issued by the Department prior to February 1, 2012, the petitioner shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks, but for proposed orders issued on or after February 1, 2012, for a period of at least two weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive;

(b) That the proposed map and order are available for inspection at the office of the petitioner during normal business hours for a period of 120 days from the date of first publication;

(c) That 120 days after the date of first publication, the Commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of ORS 541.325 to 541.333; and

(d) That a landowner whose right of record is to be altered by the proposed order has the right to protest the proposed order and map.

(4) Any landowner or user whose rights, as recorded in either the state's records or the district's records, would be altered by the petition may file with the Water Resources Commission, within 120 days after the date of first newspaper publication, as provided in section (3) of this rule, a protest against a proposed order approving the petition. Any person may file comments on the proposed order within 120 days of the date of first newspaper publication. The Director may work with any person or agency submitting protests or comments and the petitioner to determine whether the issues can be resolved through mutually agreeable conditions, or by modifications to the proposal. Whenever a timely protest cannot

be resolved, the Commission shall schedule a hearing to consider the protest. The Commission shall also schedule a hearing whenever, in its opinion, considering timely comments received, it is necessary to determine:

(a) If the petitioner has met the requirements of ORS 541.325 to 541.333;

(b) If the petition may result in injury to existing water rights. The hearing shall be conducted according to the provisions of ORS 183.310 to 183.550 applicable to contested cases.

(5) If after examination or hearing, the Commission finds that:

(a) The petitioner has met the requirements of ORS 541.325 to 541.333; and

(b) That the changes described in the proposed order would not result in injury to existing rights; then

(c) The Commission shall issue a final order approving the petition and map as described in the proposed order. If the Commission cannot make the findings in subsections (a) and (b) of this section then the final order may modify or deny the petition, and may include conditions, as necessary to ensure that existing water rights are not injured. However, no final order denying a petition shall be issued before holding a hearing on the denial. If a final order approving a petition is issued, and if a water right has been issued previously, the Commission shall cancel the previous certificate and issue a new certificate that conforms to the final order and map and retains the original priority date.

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

Stat. Auth.: ORS 541.325 - 541.333

Stats. Implemented: ORS 537.325 - 541.333

Hist.: WRD 4-1994, f. & cert. ef. 3-25-94; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

#### 690-013-0350

##### Field Verification of the Petition and Map

(1) The Director shall examine the petition and maps that are filed. The examination may include a site inspection to verify the accuracy of the petition, maps and addenda; to verify whether the application of water is to an allowed beneficial use; or to determine whether an existing water right may be injured. The Director may use statistical sampling methods in lieu of examining the entire acreage in the petition.

(2) The examination shall consider the following requirements:

(a) Evidence of a method to control and deliver the water;

(b) Evidence of cultivation of the lands described under the petition, if for irrigation; and

(c) Evidence of beneficial use of the water; and

(d) Evidence of potential injury to existing water rights.

Stat. Auth.: ORS 541.325 - 541.333

Stats. Implemented: ORS 537.325 - 541.333

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; WRD 4-1994, f. & cert. ef. 3-25-94

#### 690-013-0500

##### Penalty for Knowingly Misrepresenting Information

The Director may assess penalties of up to \$1,000 for knowingly misrepresenting information within a petition or map. The following factors shall be considered when prescribing a penalty:

(1) Whether the petitioner made a material misstatement of omission of fact.

(2) The amount of land and/or volume of water in evidence in the misrepresentation in relation to the amount of land or volume of water in the whole petition.

(3) Whether the petitioner has cooperated in correcting the misrepresentation or omission in a timely fashion.

(4) The cost to the Department after the initial field examination, including travel costs to obtain and verify corrections to the petition.

(5) Any other relevant factors.

Stat. Auth.: Ch. 1000, OL 1989

Stats. Implemented: Ch. 1000, OL 1989

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90

## DIVISION 14

### CERTIFIED WATER RIGHT EXAMINERS

#### 690-014-0005

##### Introduction

(1) The purpose of these rules is to establish the criteria for certification of Water Right Examiners. They also define the minimum standards and criteria under which Certified Water Right Examiners shall conduct surveys to describe the extent of appropriation for beneficial use of public waters. The rules also describe the information required and procedure for preparing maps to accompany transfer applications. These rules are in addition to OAR 690, divisions 020, 051, 300, 310 and 380.

(2) These rules shall not deprive or limit the Director of the Water Resources Department or the Water Resources Commission from exercising powers or duties bestowed by law. Nor shall they limit or restrict the information the Director or Commission may require from any water user or authorized agent to determine satisfactory proof.

(3) The authority for these rules are found in ORS Chapters 183, 536, 537, and 540, and in particular ORS 537.797 to 537.799.

(4) These rules shall apply to Claims of Beneficial Use submitted on or after July 1, 2004. Claims of Beneficial Use submitted before this date shall be subject to the rules in effect at the time of submittal.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0020

##### Definitions

The definitions found in Oregon Administrative Rules chapter 690, divisions 300 and 380, apply. The following definitions also apply:

(1) "Acre-Foot (AF)" means the equivalent volume of one acre covered with one foot of water (325,851 gallons).

(2) "Certified Water Right Examiner" or "CWRE" means any individual certified by OSBEELS to collect and report data and conduct surveys to describe the extent of appropriation for Claims of Beneficial Use, and also to prepare maps for transfer applications.

(3) "Claim of Beneficial Use" means documents submitted to the Department requesting a certificate of water right be issued for the authorized use or uses made. These documents shall include the report of the site inspection, calculations for the rate of flow, and the map illustrating the location of beneficial use made within the terms of the permit or transfer final order.

(4) "Commission" means the Water Resources Commission.

(5) "Cubic Foot per Second (cfs)" means a rate of water flow, equal to 448.83 gallons of water per minute.

(6) "Department" means the Water Resources Department.

(7) "Director" means the Director of the Department or the Director's authorized deputies or officers.

(8) "Measuring Device" means a structure or apparatus such as a weir, meter, or flume to determine rate of flow or volume of water.

(9) "OAR" means Oregon Administrative Rules.

(10) "ORS" means Oregon Revised Statutes.

(11) "OSBEELS" means Oregon State Board of Examiners for Engineering and Land Surveying.

(12) "Rate and Duty of Water" means the flow of water expressed in cfs or gallons per minute (instantaneous rate) and the volume of water expressed in AF (duty) as allowed in the permit or transfer final order.

(13) "Spring" means a place where water naturally emerges from the ground.

(14) "Source" means the surface or ground water body for each point of diversion or point of appropriation involved in a permit or transfer final order.

(15) "Survey of Appropriation" means the field inspection and document preparation performed by a CWRE to obtain the data necessary to support the Claim of Beneficial Use.

(16) "Water Rights Act" means the same as defined by ORS 537.010.

(17) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0030

##### Certified Water Right Examiner Required

The water user or person responsible for a permit, transfer application, or transfer final order must have a CWRE prepare:

(1) The map for a transfer application.

(2) The Claim of Beneficial Use if the permit or transfer application was filed after July 9, 1987.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0050

##### Certification of Water Right Examiners

CWREs shall be certified by OSBEELS. In addition to these rules, OSBEELS rules found in OAR 820 apply.

(1) CWRE applicants shall be registered in Oregon as a professional engineer, professional land surveyor or registered geologist.

(2) To become a CWRE, an applicant shall pass a written examination administered by OSBEELS and approved by the Department to determine the applicant's ability to properly perform the surveying, mapping, hydraulic computations, and information gathering duties required by ORS 537.798.

(3) All documents, drawings, or narratives required by these rules shall be prepared by or under the direct supervision of a CWRE. These items shall bear the seal and original signature of the CWRE.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0080

##### Revocation of Certified Water Right Examiner's Certificate

CWREs may be decertified by OSBEELS for violation of OAR 690, division 014 rules or violation of OAR 820 rules.

(1) Any violation of these rules by a CWRE and brought to the attention of the Director by Department staff, the public, or other means may be submitted to OSBEELS. A material misstatement of fact shall be referred to OSBEELS for disciplinary action.

(2) Revocation of the CWRE's certificate does not in itself cause forfeiture of that person's other professional licenses or credentials.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0090

##### Maps for Transfer Applications

Application maps for transfer shall comply with ORS Chapters 536, 537, and 540, and OAR 690, divisions 020 and 380.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

#### 690-014-0100

##### Minimum Requirements for Claims of Beneficial Use for Permits and Transfer Final Orders

(1) The CWRE shall prepare a report, using a form or format provided by the Department, which describes the status of conditions and limitations in permits and transfer final orders such as:

- (a) Type of use;
- (b) Period of use;
- (c) Place of use;
- (d) Extent of use;
- (e) Location of point of diversion or point of appropriation;
- (f) Source of water;
- (g) Rate;
- (h) Installation of measuring device;
- (i) Water use reporting;
- (j) Water level reporting;
- (k) Fish screening;
- (l) The date of the inspection; and
- (m) All other conditions or limitations.

(2) The CWRE shall provide the Department with sufficient information for the Director to determine the extent of beneficial use developed within the conditions or limits of the permit or transfer final order, including any specified development time limits.

(3) Uses partially developed by the water user shall be described. Uses or areas which were not developed shall be noted. Uses determined to exist which are not authorized by the permit or transfer final order being examined shall also be noted in the report but not included as part of the Claim of Beneficial Use. All uses shown on the map must be described in the report.

(4) The diversion works shall be accurately described by the map and report. A general narrative description of the distribution works shall be given. This description must trace the water system from the point(s) of diversion or appropriation to, and include the place of use. The description shall also include the return to public waters when required by the permit or transfer final order, such as fish propagation, mining and power facilities. The make, capacity, serial number and description of all pumps and measuring devices shall, if available, be described in the report. If the make, capacity, serial number and description of any pumps and measuring devices are not available, the report must specify why.

(5) Other water right permits, certificates, transfer final orders, or other conveyance systems connected to the system being examined shall be described in the report. Any reservoir, diversion dam, headgate, well, canal, flume, pump, and other related structures shall be described.

(6) The crops raised or other beneficial use made of the water shall be identified.

(7) The diversion rate shall be determined for each use and source when more than one use or source is involved.

(8) The maximum rate of use shall be determined by actual measurement when possible. Water measurements may be made by weir, meter, rated flume, reservoir capacity table or other method of measurement acceptable to the Department. The report shall describe the method used in making the measurement, the date made and a description of the location where the measurement was taken. It shall contain sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case.

(9) Computations for the maximum capacity of the system shall be submitted for all claims. These computations may suffice to determine the maximum rate of application if the system was not operating when the inspection was conducted.

(10) The amount of water shall be limited by the Department to the lesser of: the authorized amount, the capacity of the delivery system, or the amount of actual beneficial use. The Claim of Beneficial Use shall include sufficient information to make the determination.

(11) Claims of Beneficial Use for reservoir permits, for storage of less than 9.2 acre-feet of water or with a dam less than 10 feet in height, that do not require approved as-built plans and specifications be on file with the Department, shall also include the following:

(a) A drawing showing the cross section of the dam at maximum section showing complete details and dimensions. The drawing should be drawn at a standard scale. Normally this measurement is taken from the deepest part of the channel to the top of the embankment. Vertical accuracy is required to 0.25 feet for the purpose of this measurement;

(b) A description of the outlet works; and

(c) A description of the emergency spillway.

(12) The rate of flow shall be determined to three significant figures with reporting necessary only to thousandths. Examples are: 4,560 cfs; 456 cfs; 45.6 cfs; 4.56 cfs; 0.456 cfs; 0.046 cfs; and 0.005 cfs.

(13) When computing the storage capacity of reservoirs, the volume of water shall be determined to three significant figures with reporting, for the purpose of the Claim of Beneficial Use, necessary only to tenths. Examples are: 4,560 af; 456 af; 45.6 af; 4.6 af; and 0.5 af.

(14) The following statement, signed by the CWRE, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge."

(15) The following statement, signed or acknowledged by the permittee or transferee, shall appear at the end of the Claim of Beneficial Use: "The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate."

(16) A CWRE may make a written request to the Director for a waiver of one or more of the Claim of Beneficial Use standards. Waivers cannot be requested for elements relating to conditions or other limitations of the permit or transfer final order. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 9-1987(Temp), f. & ef. 9-1-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0110

##### Claim of Beneficial Use: General Standards

The Claim of Beneficial Use shall be prepared by a CWRE and submitted by the holder of the permit or transfer final order or by an authorized agent.

(1) In addition to the rules of professional conduct found in OAR 820, CWREs should be aware of the public interest regarding Examiners' investigations of water use. Uses not authorized or not completed within the terms of the permit or transfer final order, or water not beneficially used, shall not be included in the Claim of Beneficial Use. Claims of Beneficial Use shall not violate any of the provisions of the Water Rights Act or these rules.

(2) All Claims of Beneficial Use shall be made to match with existing water rights of record, unless an error in the original location is identified. If an error in an existing water right record is found, then evidence of the correct location as it pertains to the current claim shall be submitted to the Department as part of the Claim of Beneficial Use.

(3) The Director may refuse to accept Claims of Beneficial Use which do not conform to these rules and regulations.

(4) The form or format provided by the Department for Claim of Beneficial Use shall question whether beneficial use was made. If the permittee or transferee claims that beneficial use was made, the claim must be supported with a sufficient description of the use prepared by the CWRE to enable the Department to decide if beneficial use was made under the terms and conditions of a permit or transfer final order.

(5) Follow up inspections may be made by the Department.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0170

##### Minimum Requirements for Maps for Permit or Transfer Final Order Claims of Beneficial Use

(1) Maps submitted as part of the Claim of Beneficial Use shall be drawn in ink on at least 0.003-inch polyester film and otherwise conform to all the requirements for application maps as noted in OAR 690-310-0050. If for irrigation, the area cross-hatched shall not exceed the total acreage authorized in the permit or transfer final order involved. More than one permit or transfer may be entered on the same map if clearly identified by different cross-hatching. The map scale shall be 1" = 1320', 1" = 400', or the original full-size scale of the county assessor map for the location. The preferred map size is 8 1/2" x 11". The maximum size shall be 30" x 30" unless prior approval is obtained from the Department. Standard symbols shall be used as indicated in Department handouts.

(2) Horizontal accuracy is required only to ten feet for the purpose of locating and quantifying water rights. Maps shall be developed from any standard survey method. Traverse closures are not required.

(3) Maps shall clearly designate the place of use and point of diversion or appropriation for each source and use. Maps for permits or transfer final orders involving surface water must illustrate the source.

(4) The map shall indicate by description, in relation to the point of diversion or appropriation, the location of any fish screens, by-pass devices, and measuring devices required by the permit or transfer final order.

(5) The following statement shall be placed on the map: "This map is not intended to provide legal dimensions or locations of property ownership lines."

(6) Maps depicting municipal place of use need only show the township, range, section, and quarter-quarter sections where use has occurred under the subject permit. The scale for a municipal place of use map should be sufficient to identify the quarter-quarters involved in the place of use.

(7) A CWRE may make a written request to the Director for a waiver of one or more mapping standards. The Director will determine whether the waiver shall be allowed and will respond to such requests in writing.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0190

##### Time Limit for Filing Claim of Beneficial Use

The Claim of Beneficial Use shall be submitted to the Department within one year after the use was reported to the Department as being complete or the beneficial use date allowed in the permit or transfer final order, whichever occurs first. Failure to comply with this section shall cause the Director to initiate permit cancellation proceedings as provided by ORS 537.260.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

#### 690-014-0220

##### Time Limit to Cure Defects in a Claim of Beneficial Use

A Claim of Beneficial Use which needs corrections or additions shall be returned to the CWRE to correct the deficiencies. The corrected claim shall be returned to the Department within the written time limit allowed. The time allowed will be determined by the Director, but shall not be less than 30 days. Any claims not returned within the specified time may result in the Director submitting the name and certificate number of the CWRE involved to OSBEELS for disciplinary action.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 3-2004, f. 6-15-04, cert. ef. 7-1-04

DIVISION 17

CANCELLATION OF PERFECTED WATER RIGHTS

**690-017-0005**

**Introduction**

These rules define the process the Water Resources Department will follow when cancelling a perfected water right. The action to cancel the perfected water right can be initiated as the result of a request by the record owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non-use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

**690-017-0010**

**Definitions**

(1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.

(2) "Affiant" means the individual completing, swearing to and signing an affidavit.

(3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.

(4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.

(5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.

(6) "District" has the meaning of the term as defined in ORS 540.505

(7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.

(8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years.

(9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.

(10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.

(11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.

(12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years.

(13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.

(14) "Rebuttable Presumption" means a presumption which, by statute, may be overcome by evidence sufficient to explain or disprove the presumption.

(15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

**690-017-0100**

**Cancellation Authorized by Record Owner**

(1) Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of the land to which the water right in question is appurtenant.

(2) The affidavit shall contain, at a minimum, the following:

(a) A statement that the affiant is the record owner of the lands associated with the water right in question;

(b) The certificate number of the water right;

(c) A statement that the affiant has abandoned any and all interest in and to all or a specified portion of the water right;

(d) Where only part of the right has been abandoned, a description of the specific place of use by quarter-quarter section and acres on which the right has been abandoned, with information sufficient to determine the lands on which the right is not to be cancelled; and

(e) A request that all or part of the certificate be cancelled.

(f) A statement of whether, to the best of the affiant's knowledge, the subject water right is within the boundaries of a district or federal reclamation project.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, provide the district and the United States Bureau of Reclamation notice of the water right cancellation request.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

**690-017-0200**

**Watermaster Affidavit of Inability to Appropriately or Beneficially Use Water**

(1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable, the watermaster shall file an affidavit with the Water Resources Director.

(2) The affidavit shall state:

(a) The date and time the land or diversion mechanism or other evidence was inspected by the watermaster;

(b) The names of all record owners of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records; and

(c) The watermaster's findings during the inspection that indicate the water right cannot be exercised.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

**690-017-0300**

**Notice of Watermaster Affidavit to Record Owner**

(1) The Water Resources Department shall notify each record owner of the land described by an affidavit submitted by a watermaster under ORS 540.660 in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner;

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100; and

(c) If the land is within the boundaries of an irrigation district, the Department shall mail a copy of the affidavit to the irrigation district.

(2) The record owner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate.

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Department shall initiate proceedings under ORS 540.631 to cancel the water right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

### 690-017-0400

#### Cancellation Initiated by Department

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears that a right has been forfeited as provided in 540.610. The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e).

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following:

(a) Name, address and telephone number of affiant;

(b) Page number of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate;

(c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant;

(d) The use for which the water right was issued;

(e) The source of water to be used as provided in the certificate;

(f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge;

(g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given;

(h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610;

(i) A copy of the county tax plat map illustrating the lands to which the subject water right is appurtenant, and if applicable, the location of the portion of the water right asserted to have been forfeited;

(j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary;

(k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and

(l) Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice of receipt of affidavits submitted under this rule, as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding.

(4) Where the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all information described in section (2) of this rule. In addition, the affidavit shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, maps, or other relevant data covering each year of the period of alleged nonuse.

(5) The Department shall initiate proceedings to cancel a water right under ORS 540.631 within 180 days of receiving the evidence required under sections (1) and (2) of this rule.

(6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation. Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

(a) A description of the water right and the land to which the water right is appurtenant;

(b) A statement that the information before the Director creates a rebuttal presumption of forfeiture;

(c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;

(d) Notice that if the record owner intends to rebut the presumption of forfeiture, the protest shall include a statement of the grounds for rebuttal relied upon, and shall be accompanied by appropriate supporting documentation; and

(e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted, a contested case hearing will be scheduled.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

### 690-017-0500

#### Cancellation Not Protested

If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water within the 60-day period prescribed in the notice, the Water Resources Department shall enter an order cancelling the water right as provided in ORS 540.641.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

### 690-017-0600

#### Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture

(1) A protest submitted to the Water Resources Department by the record owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include the following:

(a) A written statement citing the reasons the record owner or occupant believes the water right has not been forfeited by nonuse; and

(b) The statutory fee for filing the protest.

(2)(a) Where the record owner or occupant intends to rebut the presumption of forfeiture by claiming one or more of the grounds for rebuttal established in ORS 540.610(2) and as further defined in OAR 690-017-0800, grounds claimed for rebuttal shall be stated in the protest;

(b) Where applicable, documentary evidence in support of the rebuttal as described in OAR 690-017-0800(3) shall be submitted with the protest.

(3)(a) On receipt of a protest claiming rebuttal and supporting documentary evidence, a determination shall be made whether the presumption of forfeiture has been rebutted;

(b) Where rebuttal is found to have been made, the matter shall be closed and no further action taken to cancel the water right;

(c) Where it is determined that the presumption of forfeiture has not been rebutted, the Department shall initiate proceedings to cancel the right as provided in OAR 690-017-0700.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

#### 690-017-0700

##### Cancellation Hearing

(1) If the Department receives a protest to the proposed cancellation of a water right within the prescribed 60-day period, a hearing on the protest shall be scheduled. The protestant shall be given not less than 10 days notice of the hearing time and place.

(2) The hearing shall be held by the Department's Hearings Referee, and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases.

(3) In contested case hearings where the initial determination was made that the presumption of forfeiture had not been rebutted, the owner may offer additional evidence in support of rebuttal.

(4) After the hearing the Hearings Referee shall enter a proposed order:

(a) Cancelling the water right;

(b) Cancelling in part or modifying the water right; or

(c) Declaring that the water right shall not be cancelled or modified.

(5) If no exceptions or objections to the proposed order are filed within the time allowed, the Hearings Referee shall issue a final order.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

#### 690-017-0800

##### Grounds for and Manner of Rebutting a Presumption of Forfeiture

(1) Any record owner or occupant rebutting a presumption of forfeiture for nonuse of water under ORS 540.610(2), as provided in these rules, shall provide evidence that rebuts the presumption of forfeiture.

(2) A presumption of forfeiture may be rebutted by showing one or more of the following:

(a) The water right is for reasonable and usual municipal use of water;

(b) A finding of forfeiture would impair the rights of cities and towns to the use of water, whether acquired by appropriation or purchase, or previously recognized by legislative act, or which may be acquired in the future;

(c) The owner of the property was unable to use the water due to economic hardship as defined in section (3) of this rule;

(d) The period of nonuse occurred during a period of time within which land was withdrawn from use under the Federal Soil Bank Program or the Federal Conservation Reserve Program;

(e) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted or cancellation proceedings were initiated under ORS 540.631, whichever occurs first; and

(f) The owner of the property to which the water right is appurtenant is unable to use the water because the use of water under the right is discontinued by an order of the Commission under ORS 537.775 (wasteful or defective wells).

(3) An economic hardship exists only during the following periods of time:

(a) During a bankruptcy action initiated by or for the record owner or principal farm operator;

(b) During a foreclosure of real or personal property of the record owner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question;

(c) During the redemption periods as provided in ORS 23.530 to 23.600;

(d) Three calendar years following the expiration of redemptions as provided in ORS 23.530 to 23.600; or, three years from the date of recording of a deed in lieu of foreclosure tendered by the record owner or principal farm operator in payment of debt owed; and

(e) The time during which judicial actions limit or prohibit the record owner's or principal farm operator's use of the water in question;

(f) The time during which a natural disaster would limit or prohibit the record owner's or principal farm operator's use of the water in question.

(4) Documentation supporting rebuttal based on enrollment in a federal program, bankruptcy, foreclosure or foreclosure redemption, natural disaster, or the 15-year statute of limitations on cancellation as provided for in ORS 540.610(2) may include, but is not limited to, the following items:

(a) The enrollment contract or agreement between the record owner, occupant, or principal farm operator and the appropriate federal jurisdiction;

(b) Affidavits by knowledgeable parties such as employees administering the federal programs;

(c) Court pleadings, filings or other legal documentation of bankruptcy or foreclosure;

(d) Documents from financial, mortgage, lending or title institutions; and

(e) Sworn statements by a watermaster, soil scientist, or insurance claim adjuster.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

#### 690-017-0900

##### Time Period of Non-Use

Where the rebutted nonuse occurs as an intervening period within an unrebuted period of nonuse totally five or more years, the remaining unrebuted years of nonuse will be treated as consecutive and cancellation will be initiated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610 - 540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

## DIVISION 18

### ALLOCATION OF CONSERVED WATER

#### 690-018-0010

##### Purpose and Applicability

(1) These rules describe the voluntary program under which a water right holder may benefit from an allocation of conserved water. Under the program, a portion of any water conserved may be used on additional lands, be put to a different use, or be leased or sold to another user.

(2) This program is intended to promote the conservation of water, maximize beneficial use and enhance streamflows pursuant to the statutory authority in ORS 537.455 to 537.500 and 540.510(2) and (3).

(3) These rules establish the process for review and evaluation of the merits and impacts of applications for allocation of conserved water. After a sufficient number of applications are submitted, these rules shall be reviewed and revised, as necessary, to further promote the allocation of conserved water and to provide criteria for determining requirements for mitigation and the establishment of instream water rights.

(4) The rules in this division apply to applications submitted after November 5, 2004.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

**690-018-0012**

**Allocation Formula and Process**

(1) Pursuant to ORS 537.470(3), after determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the Commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the Commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(2) A water right affected by an allocation of conserved water under this program shall retain its original priority date. The priority date of the conserved water rights shall be either the same as or one minute after that of the original right.

(3) Many water users have expressed concern about the effects of an allocation of conserved water on the continued use of water under the original water right. These rules allow for a period of up to five years after implementation of a conservation project to confirm that the project is performing as expected. This will allow water right holders to better determine the adequacy of the quantity of water allocated to the original right. However, no out-of-stream uses may be made of the conserved water until after final completion of the project and issuance of the new certificates.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

**690-018-0014**

**Timing of applications**

(1) Applications for allocation of conserved water should be submitted prior to implementation of conservation measures. Project sponsors are encouraged to consult with the Department and other natural resource agencies and to submit applications early in the process of project development. The Department will work with applicants to identify and resolve any concerns of local water right holders, governmental entities, or other organizations.

(2) Notwithstanding section (1) of this rule, applications for allocation of conserved water may be submitted for projects in which all or a significant portion of the project costs have already been incurred. However, these project sponsors must consult with other water right holders in the area, governmental entities, and other organizations who have asked to be consulted prior to submittal of an application to identify and resolve any concerns regarding the application. Conserved water shall not be allocated pursuant to an application under these rules if the application is filed more than five years after the conservation measure was implemented.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

**690-018-0020**

**Definitions**

The following definitions apply in OAR 690, division 18 and to any applications submitted or certificates issued under these rules.

(1) "Affected local government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved order allocating conserved water.

(2) "Commission" means the Water Resources Commission.

(3) "Conservation" means the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either

by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.

(4) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.

(5) "Conserved Water Right" means any water right established by allocation of a quantity of water, that results from the savings of a conservation measure pursuant to OAR 690-018-0010 to 690-018-0090.

(6) "Department" means the Water Resources Department.

(7) "Director" means the Water Resources Director.

(8) "Instream Water Right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water instream for public use.

(9) "Project costs" means the estimated total projected expenditures and in-kind contributions for a conservation project including but not limited to the costs of engineering, constructing, and monitoring the project and the present value of the incremental change in costs for up to 20 years of operations and maintenance that would not be incurred or realized in the absence of the project.

(10) "Water use subject to transfer" means a water use established by:

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

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

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

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

**690-018-0025**

**District Requirements**

(1) Any district intending to seek allocations of conserved water pursuant to ORS 537.455 to 537.500 shall, after providing public notice and holding a public meeting, adopt a policy that a minimum shall:

(a) Describe how water saved by conservation measures will be allocated by the district;

(b) Describe how the district will address the allocation of conserved water percentages under ORS 537.470;

(c) Provide district patrons the opportunity to fund a share of the conservation project that is proportionate to the patron's share of the water rights involved in the allocation of conserved water and to receive a corresponding share of the conserved water;

(d) Provide district patrons an opportunity to petition for a vote by all district patrons on the policy pursuant to applicable statutes governing elections or recalls in the subject district; and

(e) Provide district patrons an opportunity to appeal a proposed district conservation project to the district board of directors for failure to follow the district's policy.

(2) The adopted policy under section (1) of this rule shall be reviewed and updated by the board of directors of the district at least once every five years and may be reviewed and updated more frequently at the discretion of the board of directors of the district. Review and update of the adopted policy must comply with the process and provisions under section (1) of this rule.

(3) This rule applies only to applications for allocations of conserved water filed by a district after November 5, 2004. This rule does not apply to applications for allocations of conserved water filed by individuals, including district patrons.

(4) For the purposes of this rule, "district" means an irrigation district organized under ORS Chapter 545 or a water control district organized under ORS Chapter 553.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 7-2004, f. & cert. ef. 11-5-04

### 690-018-0040

#### Application Requirements

Applicants for allocation of conserved water shall provide to the Department the information described in this rule in substantially the same order as listed. The information shall include:

(1) The name of the applicant(s), mailing address(es) and telephone number(s);

(2) The certificate, permit, or transfer numbers or the name of the decree, if appropriate, of each water use subject to transfer that will be modified by the proposed allocation of conserved water;

(3) The date of priority and source of water for each water right identified in section (2) of this rule;

(4) The amount of water that may be used under the original rights expressed as the maximum rate and annual volume (duty) of water that may be diverted as stated on the water use subject to transfer.

(5) A description of the diversion facilities in sufficient detail for the Department to determine the capacity of the system. The description shall include:

(a) For a project that has not been completed, a description of the existing diversion facilities, including diversion structures, pumps, conveyance facilities, an estimate of the amount of water that can be diverted at the existing facilities stated as a rate of diversion, and application methods that will be affected by the proposed project; or

(b) For a project that has already been completed, a description of the diversion facilities before the conservation measure was implemented, including diversion structures, pumps, conveyance facilities, the amount of water that was diverted at the facilities stated as a rate of diversion before the conservation measure was implemented, and application methods that will be affected by the project.

(6) A description of the proposed changes to be made in the physical system and operations that will result in the conservation of water.

(7) The amount of water needed to meet the beneficial use currently authorized after implementation of the conservation measures described as a maximum rate and annual volume (duty) of water;

(8) The amount of water conserved by implementing the conservation measure calculated as the amount of water identified in section (4) or section (5) whichever is less, minus the amount of water identified in section (7), expressed as a maximum rate and annual volume (duty) of water;

(9) The proposed percentages and quantities of conserved water to be allocated to the applicants and to the state and the proposed use of any conserved water allocated to the applicant;

(10) The applicant's choice of priority date for the conserved water, being either the same as or one minute after that of the original right.

(11) For a project that has not been completed, the date on which the applicant intends to:

(a) Begin construction of the conservation project;

(b) Complete construction and file notice of project completion pursuant to OAR 690-018-0062(1); and

(c) Request that the allocation be finalized pursuant to OAR 690-018-0062(3).

(12) For a project that has already been completed:

(a) Evidence that the measure was implemented within five years prior to the date of filing the application; and

(b) The date on which the applicant intends to request that the allocation be finalized pursuant to OAR 690-018-0062(3).

(13) A description of any expected effects of the proposed allocation of conserved water on other appropriators that identifies what presently happens to the water that the applicant is proposing to conserve;

(14) A description of any mitigation or other measures planned to avoid harm to other water rights;

(15) A description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants' conserved water right would be located;

(16) To the extent possible, identification of the stream reach for which the conserved water should be managed under an instream water right and any reservations or dedications of the water to instream use;

(17) A map with sufficient detail to locate and describe the facilities and areas affected by the conservation measures;

(18) Identification of any federal or state public sources of project funds and, if federal or state public funds that are not subject to repayment will be used in the project, information showing the estimated project costs and anticipated sources of funds for the project including:

(a) The total cost for project engineering and construction;

(b) The present value of any incremental changes in the costs of operations and maintenance that are directly attributable to the project that would not be incurred or realized in the absence of the project;

(c) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental changes in the costs of operations and maintenance to be provided from federal or state public funds that are not subject to repayment; and

(d) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental change since costs of operations and maintenance to be provided from other funds.

(19) If construction of the project has begun or been completed and if more than 25 percent of the project costs have been expended before applying for allocation of conserved water, evidence that the applicant has attempted to identify and resolve the concerns of water right holders in the area, governmental entities, or other organizations who have asked to be consulted regarding the allocation of conserved water;

(20) A letter showing irrigation district or water control district approval if the conservation project is within the boundaries of the district;

(21) For applications submitted by irrigation districts or water controls districts, evidence of an adopted policy consistent with the requirements of OAR 690-018-0030.

(22) Land use information outlined in the Department's Land Use Planning Procedures Guide; and

(23) Other information the Department or Commission deems necessary and appropriate to aid in the evaluation of the application.

(24) The appropriate fee as required under ORS 536.050.

(25) The Director shall waive the application fee based on the percent of conserved water allocated to the state for instream use, not to exceed 50 percent of the application fee, if the instream allocation is:

(a) To establish an instream water right pursuant to ORS 537.348;

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(c) Determined and endorsed in writing by Oregon Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90;

WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94;

WRD 7-2004, f. & cert. ef. 11-5-04

**690-018-0050**

**Processing a Conservation Application**

(1) When the Department receives an application for allocation of conserved water, the Director shall provide public notice of the application through:

(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the application are located, for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week; and

(b) Concurrent with the date of first publication pursuant to subsection (a) of this section, mailing to individuals, organizations and agencies including the Indian tribes and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the Director determines should be notified.

(2) As provided in ORS 540.520(5), the cost of the publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and the indirect costs which may not exceed twenty (20) percent of the direct costs.

(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specified in the notice shall provide at least 20 days after the date of last publication pursuant to subsection (1)(a) of this rule for the submittal of comments.

(4) The Department shall review the application and consider any comments received under section (3) of this rule to determine:

(a) If the proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights;

(b) If the proposed allocation of conserved water will harm existing water rights;

(c) If the application is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);

(d) The quantity of conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water that may be allocated;

(e) The new rate and duty for the existing water rights held by the applicant and for any out-of-stream use of the conserved water rights;

(f) In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, if conserved water is needed to support instream uses;

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3);

(h) The areas within which the conserved water may be used for out-of-stream purposes and the stream reaches to which the conserved water may be dedicated for instream purposes;

(i) The periods to be allowed for the applicants to file a notice of completion of the conservation measures and to request that the allocation be finalized pursuant to OAR 690-018-0062. The time allowed between filing the notice of completion of the conservation measures and requesting that the allocation be finalized shall not exceed five years; and

(j) Any other conditions or limitations to be included in the new water rights, including conditions or limitations to prevent or mitigate for harm to existing water rights.

(5) The Department shall provide notice of the determination under section (4) of this rule to the applicant and to each person who commented on the application for allocation of conserved water in response to the public notice under section (3) of this rule.

(6) If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the determination provided pursuant to section (5) of this rule, the Director may work with the applicant and any protestant to

determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application

(7) If no protests are received or if the protests are resolved pursuant to section (6) of this rule, the Director shall issue an order consistent with the determination and including any agreed-upon conditions. An order approving an application shall provide for issuance of a certificate superseding the original certificate at the reduced rate and duty and for allocation of the conserved water, contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062.

(8) If protests are received raising issues that cannot be resolved pursuant to section (6) of this rule, the Director shall present the application, all protests and a recommendation for action to the Commission for review and action.

(9) The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and 690, divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with these rules, the Commission may authorize the Director to issue an order approving the application.

(10) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

**690-018-0062**

**Completion of Conservation Project**

(1) If the order approving the application for allocation of conserved water allows a time period for finalizing the allocations water prior to certification, upon notice from the applicant that the project has been completed, the Director shall issue an order:

(a) Canceling the water right held by the applicants that are modified by the allocation of conserved water;

(b) Allowing the continued use of water for the purposes and at the locations described in the original water right certificates at the rate and duty prescribed under OAR 690-018-0050(4)(e); and

(c) Allowing the use and management of the conserved water as a dedication of the water instream.

(2) Consistent with the order approving the allocation of conserved water and at the request of the applicants within the period allowed under the order under OAR 690-018-0050(4)(i), the Director may increase the amount of water to be used pursuant to subsection (1)(b) of this rule and decrease by a like amount the conserved water to be allocated pursuant to 690-018-0050(4)(d) if the Director finds that the changes are necessary because the conservation project has not performed as expected and that the applicants' use of additional water would not be wasteful. A request for additional water submitted under this section shall include sufficient information to demonstrate that:

(a) The project is less effective than was expected when the order approving the allocation of conserved water was issued;

(b) The lack of performance is not caused by the applicants' failure to maintain the project; and

(c) The amount of water remaining for use under the original water rights is insufficient to satisfy the beneficial uses.

(3) Prior to the expiration of the time allowed under OAR 690-018-0050(4)(i), the applicant may request that an allocation of conserved water be finalized. The request shall include:

(a) If all or part of the applicants' portion of the conserved water is to be used for an out-of-stream use at an identified location, the following information:

- (A) The name and address of the person using the water;
- (B) A description of the type of beneficial use of the water;
- (C) A legal description of the place of use; and
- (D) A map that meets the standards in OAR 690-310-0050;

and

(b) If all or part of the applicants' portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right.

(4) Upon receipt of a request that an allocation of conserved water be finalized or upon the expiration of the time allowed under OAR 690-018-0050(4)(i), the Director shall issue:

(a) A superseding certificate as provided for in the order approving the allocation of conserved water;

(b) A certificate for an instream water right for the state's portion of the conserved water if required under OAR 690-018-0050(4)(g); and

(c) An order allowing:

(A) The use of any portion of the conserved water allocated to the applicants, at the location and for the type of use identified pursuant to subsection (3)(a) of this rule;

(B) The use and management as an instream water right of any conserved water that is being leased, dedicated or temporarily reserved instream.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

#### 690-018-0080

##### Management of Conserved Water

(1) The Department shall manage any conserved water allocated to instream use under the rules established to implement ORS 537.332 to 537.360 pertaining to instream water rights.

(2) A conserved water right reserved instream for future out of stream use shall be managed to carry the water through the stream reach described in the order issued pursuant to OAR 690-018-0050. Any conserved water reserved instream shall maintain its priority date and will not be subject to abandonment under ORS 540.610 to 540.670.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88

#### 690-018-0090

##### Change in Use of Conserved Water

(1) Any person or agency entitled to the use of conserved water shall notify the Director of any change in the type of use, place of use or point of diversion. The notice must be submitted 60 days before the actual change and must include the information requested in OAR 690-018-0062(3)(a).

(2) The Director shall approve a change in the type of use, place of use, or point of diversion for conserved water if:

(a) The proposed new use is within the area described under OAR 690-018-0050(4)(h);

(b) The proposed change would not constitute an expansion of the right; and

(c) The approval is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(3) A change in the dispensation of the use of a conserved water right may be initiated 60 days after the notice prescribed in section (1) of this rule if the Director takes no action within that period.

(4) When a right to the use of conserved water is sold or given to an agency or political subdivision of the state or to a person:

(a) The right shall become appurtenant to the premises upon which use is made;

(b) A certificate of water right shall be issued upon satisfactory proof of use; and

(c) Unless dedicated to instream use, the right shall be subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.

(5) Upon approval of a change in the use or point of diversion proposed under this rule, the Director shall issue a new order to allow the new use of the conserved water.

(6) Any changes in the type of use, place of use, or point of diversion that are not provided for under this rule shall only be made after compliance with the transfer rules in OAR 690, division 380.

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455 - 537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

## DIVISION 19

### DROUGHT MITIGATION

#### 690-019-0010

##### Purpose of Rules

(1) The following OARs apply to drought mitigation activities. The mitigation activities were authorized by the 1989 legislature, amended by the 1993 and 2001 legislatures, and are codified at ORS 536.700–536.780 “Emergency Water Shortage Powers.”

(2) These rules provide for action available to the Governor and the Water Resources Commission. They become operative only during extraordinary drought situations. Action within these rules is intended to mitigate problems which may develop during years when water supplies are inadequate.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 6-2001, f. & cert. ef. 10-8-01

#### 690-019-0020

##### Definitions

The following definitions apply in OAR 690, division 19:

(1) “Agreement” means a contractual arrangement specifying an understanding or arrangement for one party to temporarily make use of valid permit or water right held by another party.

(2) “Commission” means the Water Resources Commission.

(3) “Department” means the Water Resources Department.

(4) “Director” means the Director of the Water Resources Department.

(5) “Designated Drought Area” means a specific area within the state so designated by the Governor.

(6) “Emergency Use Permit” means a temporary permit for use of water.

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

(8) “Local Government” means any governmental entity authorized by the laws of this state.

(9) “Option” means a contractual arrangement for a specified consideration for the use of a valid permit or water right.

(10) “Political Subdivision” means any local government unit including a county, city, town, or district established under the laws of Oregon.

(11) “Public corporation” means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government.

(12) “Scenic waterway flows” mean flows acknowledged by the Water Resources Commission pursuant to ORS 390.835.

(13) “Temporary drought transfer” means a temporary change in use, change in place of use, or change in point of diversion authorized pursuant to ORS 536.750.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

**690-019-0030**

**Duration of Drought Declaration**

(1) During the effective time period of a drought declaration under ORS 536.740 in accordance with these rules, the Commission or the Director may take the following actions:

- (a) Allow emergency water use under the terms of emergency use permits without first conducting a hearing under ORS 537.170;
- (b) Waive the notice requirements under 537.753 and the report required under ORS 537.762 pertaining to water well construction;
- (c) Allow a temporary exchange of water as allowed under ORS 540.533 without first giving notice as required under 540.535;
- (d) Grant preference of use for human consumption, and/or stock watering; or
- (e) Allow a temporary change in use, place of use or point of diversion of water under the terms of an emergency use permit without complying with the notice and waiting requirements under ORS 540.520.

(2) Termination of a declaration of drought shall be by order of the Governor.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 6-2001, f. & cert. ef. 10-8-01

**690-019-0040**

**Emergency Water Use Permit**

(1) After the Governor declares that a severe, continuing drought exists, the Director may approve applications for emergency use permits. Emergency use permits shall allow use of water to replace water not available under an existing right because of the drought. Each application must be for use within a designated drought area. All fees required by OAR 690-019-0100 shall accompany the application. Application forms may be obtained from the Department.

(2) An emergency water use permit applicant shall submit sufficient information to establish that:

- (a) Drought conditions have created an inability on the part of the applicant to obtain water under an existing right; and
- (b) Use is proposed in a designated drought area;
- (c) Additionally, the Director may require the applicant to submit a plan and evidence showing conservation and water use curtailment measures have been taken before use is made of an emergency use permit.

(3) The Director shall approve an application for emergency water use upon findings that the proposed use will not cause injury to existing water rights and will not impair or be detrimental to the public interest. In evaluating whether the proposed use will impair or be detrimental to the public interest, the Director shall consider the factors described in OAR 690-310-0120 and 690-310-0130; and:

- (a) The need for water because of the drought emergency; and
- (b) The short-term nature of the proposed emergency use.

(4) An emergency use permit may be issued upon approval by the Director. No hearing under ORS 537.170 is required:

- (a) Public notice of receipt of emergency use applications or approval of such applications will be included in the Department's regular public notice of applications;
- (b) The Director will consider all comments received concerning the use, or proposed use, under the emergency use permit throughout the life of the permit.

(c) Use of water under the emergency use permit may be regulated at any time in accordance with the terms and conditions of the permit;

(5) Emergency use permits issued by the Director shall include the following conditions or limitations:

- (a) Use of water is subject to prior water right permits, certificates, decreed rights, scenic waterway flows and minimum stream flows;
- (b) A specified duration of use, not to exceed one year, unless renewed pursuant to OAR 690-019-0085;

(c) Rate, volume, and season limitations which shall not exceed the limitations of the underlying water right, including a condition that permits granted pursuant to this section shall not extend the season beyond historic use;

(d) The expiration date for the permit granted pursuant to this section which shall not exceed the term of the Governor's declared drought;

(e) If use of water under the emergency use permit causes injury to an existing water right, the permit shall be revoked unless the injury is mitigated to the satisfaction of the Director and injured water right holder; and

(f) Any other conditions the Director deems appropriate, including but not limited to water use conservation, measurement and water curtailment measures.

(6) An emergency use permit issued to a state agency or political subdivision shall require:

- (a) Submission of a water conservation or curtailment plan for approval by the Director; or
- (b) Implementation of an approved water conservation or curtailment plan when directed by the Governor.

(7) A previously submitted conservation or curtailment plan may be submitted in lieu of the requirement for submittal in subsection (6)(a) of this rule.

(8) If an application fails to meet any requirement of these rules the application shall not be filed and shall be returned to the applicant.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

**690-019-0050**

**Incomplete Applications**

When an application does not contain all the information and supporting material required by the application form and these rules, the application shall be declared incomplete. The applicant shall be notified. Additionally, the application or a portion of the application may be returned to the applicant. A request for additional information will be made of the applicant who shall have 30 days to complete the application. If the applicant fails to complete the application within 30 days, the application shall be rejected.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

**690-019-0055**

**Temporary Drought Transfers**

(1) After the Governor declares that a severe, continuing drought exists, any person holding a water right permit, certificate, decree or claim to a right under ORS Chapter 539 who because of the effects of the drought is unable to use water, may apply to the Director for a temporary change in use, place of use, or point of diversion of water from another water use subject to transfer, or a claim to a right under ORS Chapter 539, without complying with the notice and waiting requirements of ORS 540.520. The Director shall approve such temporary drought transfer, with any appropriate conditions, including water use conservation, measurement and water curtailment measures, if:

(a) The temporary drought transfer will not result in injury to an existing right; and

(b) Total water use at the receiving location does not exceed the maximum rate and duty for the receiving location.

(2) The full value of a right may be transferred. However, if a right proposed for transfer is for irrigation purposes and the transfer is made after the beginning of an irrigation season, only that portion of the right available for use during the rest of that irrigation season may be used at the new place of use.

(3) A temporary drought transfer approved under this rule shall include a condition to require the Director may to revoke the temporary drought transfer order if injury to existing water rights is

shown and cannot be mitigated to the satisfaction of the Director and injured parties.

(4) The expiration date for the temporary drought transfer granted pursuant to this rule shall not exceed one year or the term of the Governor's declared drought, whichever is shorter, unless otherwise renewed pursuant to OAR 690-019-0085.

(5) Public notice of a temporary drought transfer application or approval of such application shall be included in the Department's weekly notice.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 8-2994, f. & cert. ef. 8-2-94; WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

#### 690-019-0058

##### Temporary Drought Instream Leases

(1) Notwithstanding the requirements of OAR 690-077-0077, after the Governor declares that a severe, continuing drought exists, any person holding a water use subject to transfer may enter into a temporary drought instream lease agreement to convert a water right or a portion of a water right to an instream water right. The Director shall approve a temporary drought instream lease provided:

(a) The temporary drought instream lease will not result in injury to an existing right; and

(b) Total water use for the proposed instream lease will not exceed the amount in the leased right.

(2) The full value of a right may be leased. However, if a right proposed for lease is for irrigation purposes and the lease is made after the beginning of an irrigation season, only that portion of the right available for use during the remainder of that irrigation season may be used for the instream water right.

(3) A temporary drought instream lease approved under this rule shall include a condition to require the Director to revoke the temporary drought instream lease order if injury to existing water rights is shown and cannot be mitigated to the satisfaction of the Director and injured parties.

(4) The expiration date for the temporary drought instream lease granted pursuant to this rule shall not exceed one year or the term of the Governor's declared drought, whichever is shorter, unless otherwise renewed pursuant to OAR 690-019-0085.

(5) Public notice of a temporary drought instream lease application or approval of such application shall be included in the Department's weekly notice.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

#### 690-019-0059

##### Temporary Substitution of Supplemental Ground Water Right for Surface Water Primary Right

(1) After the Governor declares that a severe, continuing drought exists, any person holding both a primary water right originating from a surface water source and a supplemental water right from a ground water source may apply to the Director to temporarily substitute the use of the supplemental right for the primary right. Applications must be for use in a designated drought area. The fee required under OAR 690-019-0100(4) shall accompany the application. Application forms may be obtained from the Department.

(2) The Department shall expedite the notice and waiting requirements of ORS 540.524. Upon receiving a completed application under section (1) of this rule, notice of the proposed temporary substitution application, or proposed approval of the application shall be included in the weekly notice published by the Department.

(3) Within 10 days after publication of the notice under section (2) of this rule, any person may file with the Department a protest against approval of the application. If a timely protest is filed, the Department shall hold a hearing on the matter pursuant to ORS 540.520(7).

(4) The Director shall approve a temporary substitution, with any appropriate conditions, including water use conservation, mea-

surement, and water curtailment measures, provided the proposed substitution will not result in injury to other water rights. The Director may condition the approval of a temporary substitution to avoid or mitigate injury.

(5) A temporary substitution approved under this rule shall include a condition to require the Director to revoke the temporary substitution order if injury to existing water rights is shown and cannot be mitigated to the satisfaction of the Director and the injured parties.

(6) The expiration of a temporary substitution granted under this rule shall not exceed one year or the term of the Governor's declared drought, whichever is shorter, unless otherwise renewed pursuant to OAR 690-019-0085.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 6-2001, f. & cert. ef. 10-8-01

#### 690-019-0060

##### Potential Liability

Issuance of an emergency use permit, temporary drought transfer or a grant of preference of use by order of the Commission may not protect the person receiving the permit, transfer or grant of preference from liability for improper use of the water under the permit, transfer or grant of preference.

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

#### 690-019-0070

##### Preference of Use, Human Consumption and Livestock

(1) When the Governor declares that a severe, continuing drought exists, the Commission may grant a temporary preference of use to water rights for human consumption and/or stock watering. The temporary preference of use shall be by order of the Commission and shall apply only to designated drought areas. Temporary preference may be given over other water uses regardless of priority date.

(2) Applications for preference for human consumption and/or stock water shall be submitted on a form provided by the Department.

(3) In considering designation of an area for preferential use, the Commission may review recommendations from the Drought Council, recommendations from the Water Availability Committee, recommendations from county government officials within a designated drought area, and any other available information.

(4) Before issuing an order granting a temporary preference of use the Commission shall determine that the order is necessary to protect the health and welfare of the people of Oregon. Any order issued by the Commission for preference of use shall include:

(a) The expiration date for the temporary preference of use granted under the terms of this rule which shall not exceed the term of the Governor's declared drought;

(b) The geographic area specified for the temporary preference of use which shall be within a designated drought area;

(c) A general statement outlining which water uses have been designated temporarily inferior;

(d) A statement that there is an immediate threat to the health and welfare of the people of Oregon; and

(e) A requirement that political subdivisions within the designated drought area submit water conservation or curtailment plans for the Director's approval.

(5) Upon issuance of the order the watermaster within the designated drought area shall be notified of the temporary preference of use.

Stat. Auth.: ORS 536.700 & 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 6-2001, f. & cert. ef. 10-8-01

690-019-0080

**Option or Agreement for Use of Existing Right**

(1) In order to plan for and mitigate the effects of severe, continuing drought, a local government, public corporation, or water right holder may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area. If approved as provided in sections (2) to (6) of this rule, an option or agreement may be exercised during a period of declared drought after the parties to the option or agreement notify the Department.

(2) Water used under the terms of an approved option or agreement may be used at locations, at points of diversion and for beneficial uses other than those described in the water right.

(3) The holder of the option or agreement is not required to construct any diversion or other appropriation facilities or works.

(4)(a) An option or agreement proposed under section (1) of this rule shall be subject to approval of the Director or Commission. The Director must find that the use of water under the proposed option or agreement will not cause injury to existing water rights and will not impair or be detrimental to the public interest;

(b) A local government, public corporation, or water right holder proposing an option or agreement shall submit an application to the Director. The application shall be accompanied by the fee set forth in ORS 536.050(1)(a). The application shall include the following information:

(A) The name of the local government, public corporation, or water right holder applying for approval of the option or agreement;

(B) The name of the holder of the permitted, certificated, or decreed water right that will be affected by the option or agreement;

(C) A copy of the water right permit, certificate or decree that shall be affected by the option or agreement;

(D) A copy of the proposed option or agreement;

(E) A statement that the water is intended for in-stream use, or a description of the lands on which the water is currently used, and a description of the lands on which the water shall be used under the option or agreement;

(F) Evidence that the water to be used under the option or agreement has been used over the past five years according to the terms and conditions of the owner's permitted, certificated, or decreed water right.

(G) If not intended for in-stream use, evidence that the water shall be used to supplement an existing water right held by the local government, public corporation, or water right holder and that water is not available under the existing right.

(5) Upon receipt of an application for an option or agreement, the Director will provide notice in the regular weekly notice of the Department pertaining to applications received and by publication once a week for at least two successive weeks in a newspaper having general circulation in the area in which the water supply for the permitted, certificated or decreed water right is located and in which the option or agreement shall be exercised. The Director shall not take action on an application until at least 20 days after the last date the notice appeared in the newspaper.

(6) Any person whose use of water under an existing water right may be affected by the option or agreement, or any person who represents a public interest that may be affected by the option or agreement, may file a protest against approval of the application with the Department. The protest shall be filed with the Department within 30 days from the date of the first publication. If the petitioner seeks to protect a use of water under an existing water right, the protest shall contain a detailed statement of the petitioner's water use and how the use may be affected by approval of the option or agreement. If the petitioner represents a public interest, the protest shall contain a detailed statement of such public interest and the manner in which the public interest shall be affected by the option or agreement.

(7) Whenever a timely protest is filed or in the opinion of the Director a hearing is necessary to determine whether the exercise of a proposed option or agreement will result in injury to an existing water right or may impair or be detrimental to the public interest, the Director shall schedule a hearing and refer the matter

to the Commission for final determination. Notice and conduct of the hearing shall be in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases, and the hearing shall be held in the area where the underlying water rights that are subject to the proposed option or agreement are located unless all parties agree to a different location.

(8) If, after a hearing by the Commission or examination by the Director, it is found that the option or agreement can be implemented without injury to existing water rights or impairment or detriment to the public interest, the Director shall issue an order approving the option or agreement. The order shall:

(a) Contain conditions describing the period of time in which use may occur and include a limitation that use may occur under the option or agreement only after a declaration of severe, continuing drought has been made by the Governor, and use may not continue after the drought declaration has been rescinded;

(b) Include any other conditions the Director deems appropriate, including but not limited to water use conservation, measurement and curtailment measures; and

(c) Remain in effect until terminated by the parties to the option or agreement or by order of the Commission or Director.

(9) The Director may review any order issued under subsection (8) of this section to determine whether the order shall be continued in effect, modified or terminated in order to insure protection of other existing water rights and the public interest. Before making such determination the Director shall provide notice and an opportunity for hearing in the manner described in subsections (2) to (6) of this section.

(10) Any proposed change to a previously-approved option or agreement shall be submitted to the Director for approval before the changes may be implemented. Upon receipt of any proposed change, the Director shall proceed as described in subsection (5) of this section. If the Director determines that the proposed change substantially alters the previously-approved option or agreement, the Director may request additional information to review the proposed change. Prior to the date the Director may take action on the change, any person wishing to protest may proceed as allowed under subsection (6) of this section. Only the proposed change may be addressed in the process. The Director shall then proceed as per subsections (5), (6), (7) and (8) of this section.

(11) The Commission may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area during the time in which a severe, continuing drought is declared to exist. Water used under the terms of an approved option or agreement may be used at locations, at points of diversion, and for beneficial uses other than those described in the water right. The total use of water by the water right holder and the Commission must be within the rate, volume and seasonal limits of the water right, and must not cause injury to any other water right.

(12) When the Governor declares that a severe, continuing drought exists, the Commission, a local government, a public corporation, or water right holder may proceed with the terms of an approved option or agreement. In addition to the conditions in the agreement, the terms of the use shall be as follows:

(a) Use may begin at any time, but the total use shall be limited to the rate, volume, acreage, time and other limits of the existing water right; and

(b) The local watermaster shall be given written, advance notice of intent to proceed;

(c) Measuring and reporting requirements may be a condition of use required by the Director.

(13) Use or nonuse of water under the terms of an approved option or agreement shall not be considered by the Department in a determination of abandonment of a perfected and developed water right under ORS 540.610(1).

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-1995, f. & cert. ef. 6-14-95; WRD 6-2001, f. & cert. ef. 10-8-01; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

**690-019-0085**

**Renewal Process for Drought Water Use Authorizations**

(1) This rule section applies only to persons that received Department approval for a drought water use authorization for:

(a) An emergency water use permit under OAR 690-019-0040;

(b) A temporary drought transfer under OAR 690-019-0055;

(c) A temporary drought instream lease under OAR 690-019-0058; or

(d) A temporary substitution under OAR 690-019-0059.

(2) If a drought declaration continues for consecutive years, a person that meets the requirement of subsection (1) of this section may request renewal of the drought water use authorization by letter to the Department. The renewal request shall:

(a) State the water use authorization number for the previously-approved drought water use; and

(b) Identify any proposed changes that are not consistent with the previously-approved drought water use authorization.

(3) The Department shall review the renewal request in accordance with the process and standards provided in OAR 690-019-0040, 690-019-0055, 690-019-0058 or 690-019-0060.

(4) The Department may request additional information to process the renewal request.

(5) If the Department determines that the renewal request proposes to substantially alter the previously-approved drought water use authorization, the Department may require the filing of a new application.

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 6-2001, f. & cert. ef. 10-8-01

**690-019-0090**

**Requirement for Conservation and Curtailment Plans**

(1) When the Commission declares that a severe or continuing drought is likely to occur, it may order state agencies and political subdivisions to develop and file with the Director conservation or curtailment plans:

(a) The Commission's order shall require development of the plan within 30 days from the date of the order; and

(b) If a state agency or political subdivision fails to comply with the order to provide plans that are acceptable to the Director, or fails to implement approved plans when directed by the Governor, the Director may do any or all of the following:

(A) Delay approval of an emergency use permit requested by a state agency or political subdivision;

(B) Suspend use under an existing emergency use permit held by a state agency or political subdivision;

(C) Offer evidence of the failure to comply by a political subdivision to the Commission when the Commission is considering designating an area for preference of use for livestock and human consumption; and

(D) Develop an appropriate plan for the state agency or political subdivision. Plans developed by the Director shall be implemented by the state agency or political subdivision when directed by the Governor.

(2) Following a declaration by the Governor that a severe, continuing drought exists or is likely to exist, the Governor may direct state agencies and political subdivisions to implement water conservation or curtailment plans, as approved by the Director:

(a) Water conservation plans shall include procedures to:

(A) Reduce usage of water resources for non-essential public purposes;

(B) Undertake activities consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources; and

(C) Establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water.

(b) Water curtailment plans shall be developed to provide water necessary for human and livestock consumption during a severe, continuing drought. The plans shall specify procedures:

(A) To curtail, adjust or allocate the supply of water resources for domestic, municipal and industrial use; and

(B) To regulate the times and manner in which water resources are consumed.

(c) Approval by the Director of a water conservation plan or a water curtailment plan is contingent on the Director finding that the plan satisfactorily promotes uniformity in water conservation or curtailment practices and that there is consideration given to local conditions in providing coordination of usage regulation.

Stat. Auth.: ORS 536.720 - 536.780

Stats. Implemented: ORS 536.720 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

**690-019-0100**

**Schedule of Fees**

The following is a schedule of fees for administrative work performed by the Department:

(1) Emergency water use permit:

(a) Examination fee = \$200 plus;

(b) Recording fee = \$400 for first cubic-foot/second or fraction thereof; \$100 for each additional cubic-foot/second or fraction thereafter.

(2) Temporary drought transfer:

(a) Examination fee = \$100 plus;

(b) Recording fee = \$100 for first cubic-foot/second or fraction thereof; \$50 for each additional cubic-foot/second or fraction thereafter.

(3) Option or Agreement: Application fee = \$200.

(4) Temporary substitution: Application fee = \$100.

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-1995, f. & cert. ef. 6-14-95; WRD 3-2001(Temp), f. & cert. ef. 4-16-01 thru 10-12-01; WRD 6-2001, f. & cert. ef. 10-8-01

**690-019-0105**

**Fee Refund**

The Director may refund all or part of any fee submitted to the Department pursuant to OAR 690-019-0100.

Stat. Auth.: ORS 536.700 - 536.780

Stats. Implemented: ORS 536.700 - 536.780

Hist.: WRD 6-2001, f. & cert. ef. 10-8-01

**DIVISION 20**

**DAM SAFETY**

**690-020-0000**

**Purpose and Applicability**

(1) The purpose of these rules is to implement ORS 537.400(4) and ORS 540.350 through ORS 540.390 with actions that are intended to ensure the safety of the dams insofar as dams may affect possible damage to life or property. The Department is authorized to review design and specifications for dam construction and modification, to conduct routine inspections, and to take enforcement actions on dams that do not ensure the safety of life and property.

(2) These rules apply to dams that are subject to ORS 540.350 through 540.390 and which exceed the height and storage limits described in ORS 540.400.

(3) These rules do not apply to:

(a) Dams that are less than ten feet high or that store less than 3 million gallons (9.2 acre feet), except for general guidance and permit requirements described in OAR 690-020-0029; or

(b) Water storage tanks or various types of tanks that are part of water treatment facilities.

(4) The dam safety fee authorized by ORS 536.050(2) shall be used to support the dam safety program as described in OAR 690-020-0200.

(5) The State Engineer may delegate dam safety duties to a dam safety engineer working for the Department for the purposes of ORS 540.350 through 540.390.

Stat. Auth.: ORS 540.350 - 540.400, 536.050

Stats. Implemented: ORS 183, 540, 536  
 Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94;  
 Renumbered from 690-020-0021, WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10;  
 WRD 2-2015, f. & cert. ef. 3-17-15

### 690-020-0022

#### Definitions

Unless the context requires otherwise, the following definitions apply in OAR 690, division 20:

- (1) "Abutment" means a natural valley or canyon side against which the dam is built;
- (2) "Acre-foot" means the equivalent volume of one acre covered with one foot of water (325,900 gallons);
- (3) "Annual Exceedance Probability Flood" means the likelihood of specific flood flow being equaled to or exceeded in any given year at that specific location, expressed as a percentage;
- (4) "As-built drawing" means an engineering drawing of a dam as it was actually constructed, noting all differences between original design and actual constructed condition;
- (5) "Conduit" means a closed conveyance used to release water through a dam;
- (6) "Core" means a soil of low permeability within an embankment dam;
- (7) "Cutoff Trench" means a trench excavated beneath the dam foundation and backfilled with low permeability material to retard water seepage;
- (8) "Dam" means a hydraulic structure built above the natural ground grade line that is used to impound water. Dams include all appurtenant structures, and together are sometimes referred to as "the works." Dams include wastewater lagoons and other hydraulic structures that store water, attenuate floods, and divert water into canals;
- (9) "Dam Crest" means the top of the dam;
- (10) "Dam Height" means the maximum height of the dam as measured at the maximum section along the dam's longitudinal axis;
- (11) "Department" means the Oregon Water Resources Department;
- (12) "Director" means the Director of the Oregon Water Resources Department;
- (13) "Embankment" means an engineered earth fill;
- (14) "Emergency Action Plan" (EAP) means a plan that assists the dam owner or operator and local emergency manager perform actions that ensure the safety of people in the event of a potential or actual dam failure or in the event of a sudden release of water;
- (15) "Engineer of Record" means the professional engineer registered in Oregon working for the dam owner to design the dam to current safety standards and is responsible to oversee safe construction of the dam;
- (16) "Foundation" means the ground surface upon which a dam is constructed;
- (17) "Freeboard" means the vertical distance between the high-water level in the reservoir and the dam crest;
- (18) "Gate" or "Valve" means a permanent device for regulating water flow through the dam;
- (19) "Hazard Rating" means the rating established by the Department of the potential damage to life and property downstream of a dam in the event of a dam failure;
- (20) "High Hazard Rating" means that if a dam were to fail, loss of human life would be expected;
- (21) "Inflow Design Flood" (IDF) means a volume and peak flood flow that the engineer of record will design to safely pass over or through the spillway;
- (22) "Low Hazard Rating" means that if a dam were to fail, loss of life would be unlikely and damage to property would not be extensive;
- (23) "Pressurized Conduit" means any pipe that penetrates into a dam that may have a gate, valve, or irrigation pipe placed in the dam or at the outlet so that all or a portion of the pipe within the dam is under hydrostatic pressure when the valve is closed;

(24) "Probable Maximum Flood" (PMF) is the largest flood that could occur at a specific location, determined by the most severe set of atmospheric, soil moisture and snowpack conditions that are reasonably possible at that location;

(25) "Significant Hazard Rating" means that if a dam were to fail, loss of life would be unlikely but damage to property would be extensive;

(26) "Soil Filter" means soil with a gradation designed to inhibit movement of adjacent, finer grained soils;

(27) "Spillway" means a structure constructed to bypass flood water and prevent water overtopping the dam crest. Dams may have two or more spillways.

(28) "State Engineer" means a registered professional engineer working for the Department, and may be either the Director or a principal assistant working for the Director as described in ORS 536.032.

(29) "Tank" means a fully-enclosed (bottom and sides) hydraulic structure made from metal, reinforced concrete, rigid fiberglass, or plastic that provides its own water-sealing and structural stability.

(30) "Toe Drain" is a drainage structure designed to collect and remove seepage water from the toe of the dam and to discharge this water in a manner where it can be measured;

(31) "Zoned Embankment" means an embankment dam with a core of low permeability materials, soil filter materials, drainage and other materials placed to improve performance and safety of the dam.

Stat. Auth.: ORS 183 & 540

Stats. Implemented: ORS 183 & 540, 536

Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; WRD 2-2015, f. & cert. ef. 3-17-15

### 690-020-0023

#### Dam Safety Process Requirements for Construction of Dams

(1) Dam safety requirements shall be based on the hazard rating of the dam, in order to efficiently protect life and property.

(2) Any person, corporation, association, firm, partnership, limited liability company, joint stock company, unit of local government as defined in ORS 190.003, or State agency must, before beginning any construction on a dam, secure the services of a qualified engineer to design the dam and also to provide information on the dam as it was actually constructed. This engineer shall be deemed the engineer of record for the purposes of these rules.

(3) The engineer of record shall design the dam and develop plans and specifications consistent with these rules.

(4) Prior to beginning construction on any dam subject to these rules, written approval of dam designs, drawings and specifications must be obtained from the State Engineer as described in OAR 690-020-0080.

(5) The engineer of record must oversee construction of the dam consistent with rules governing administration of dam construction in OAR 690-020-0065 to evaluate whether the dam is constructed consistently with approved plans and specifications. Any essential design changes must be described and justified in a letter sent to the State Engineer with the "as-built" drawings.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 543

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

### 690-020-0025

#### General Requirements

(1) The Director may require additional information or data beyond that specified in these rules to determine the safety of a proposed dam.

(2) The Director may include, as part of any permit to construct a dam, limitations and conditions that pertain to construction, operation, maintenance, and the protection of lives and property. These limitations and conditions become, by reference, part of the water right certificate and remain in effect throughout the life of the water right.

(3) Approved plans and specifications for construction are, by reference, considered limitations and conditions placed on the water right permit and water right certificate. The Director retains

the authority to place additional limitations and conditions on the water right relative to operation and maintenance.

(4) Dams constructed or operated in violation of limitations and conditions included in the water right permit or certificate are subject to restricted use. The certificate affirms the applicant's right to store water subject to the limitations and conditions therein.

(5) For new dams on stream channels, an outlet conduit must be installed to permit drainage of all or most of the reservoir and for passage of flow to downstream, instream and out of stream water right holders or instream minimum releases unless the engineer of record provides another alternative and demonstrates the safety and efficacy of this alternative to the State Engineer.

(6) The Department shall determine water impoundment volumes in acre-feet as follows:

(a) For dams impounding water for an authorized beneficial use, the impoundment volume indicated in the area-capacity curve as measured from the bottom of the reservoir to the spillway crest. For dams with multiple spillways, 'spillway crest' is referring to the crest of the lower elevation spillway.

(b) For wastewater treatment lagoons, the impoundment volume is that indicated in the wastewater lagoon plans and specifications.

(c) For diversion or flood control dams, the impoundment volume is that calculated at full reservoir at the dam highest elevation spillway crest level.

(7) The State Engineer may approve final designs, drawings and specifications for water storage reservoirs after a water storage application and a draft final order for that application have been issued by the Department.

(8) Any person, firm or private or municipal corporation must provide to the State Engineer an evaluation of whether the dam includes measures that make it readily adaptable to power generation for any new dam over 25 feet high on a stream with average annual flow over 2 cubic feet per second, unless exempted from this requirement as provided in ORS 540.350(3).

(9) For any dam rated high hazard, the Department must review and approve an Emergency Action Plan prior to filling the reservoir.

(10) For any dam rated high or significant hazard, the Department must review and approve an operations and maintenance manual prior to construction on the dam.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 543

Hist.: WRD 3, f. & ef. 2-18-77; WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0029**

#### **Recommendations for Dams Under 10 Feet High or Storing less than 9.2 Acre-feet**

(1) Persons constructing or designing dams under ten feet high or storing less than 9.2 acre feet may be subject to requirements for use of registered engineers as specified in ORS 672.002 through 672.091.

(2) The Department is authorized to provide guidance for the construction of dams requiring a water right permit but not requiring State Engineer review and approval of designs, plans and specifications.

(3) Potential dam owners are advised that even small dams, should they fail, may cause injury to people and property. Dam owners should consider designs and inundation analysis methods described in OAR 690-020-0035 through 690-020-0065, 690-020-0100, and 690-020-0120.

(4) Persons proposing to build a dam under 10 feet high or storing less than 9.2 acre-feet must comply with all the requirements for a storage permit in ORS 537.409 and in OAR 690-020-0310.

Stat. Auth.: ORS 183 & 540

Stats. Implemented: ORS 183 & 540

Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0035**

#### **Minimum Engineering Design Requirements**

(1) A design report or multiple design reports must be submitted with the drawings and specifications by the engineer of record for all new dam construction. Design reports may be completed by other engineers registered to practice in Oregon.

(2) The design report(s) for new dam construction must include the following elements:

(a) Site suitability evaluation as provided in OAR 690-020-0036;

(b) Hydrology and inflow design flood as provided in OAR 690-020-0037;

(c) Dam structure design (embankment, concrete or other) as applicable and as provided in OAR 690-020-0038 – 690-020-0041;

(d) Spillway design as provided in OAR 690-020-0042;

(e) Design for penetrating conduit(s) as provided in OAR 690-020-0043; and

(f) Methods for determining whether a dam is operating properly based on the hazard rating of the dam as provided in OAR 690-020-0044 (monitoring and instrumentation).

(3) If multiple reports are submitted, each must be stamped by the engineer who prepared the report and the engineer of record must compile and understand reports for preparation of drawings and specifications.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0050 [Renumbered to 690-020-0500]**

#### **690-020-0036**

#### **Site Suitability and/or Geotechnical Evaluation**

The design for new dam construction shall characterize the soil and rock at and around the dam site and shall include the following elements:

(1) A description of the general and local geology and geomorphology at and around the dam and reservoir. Field investigation by a geotechnical engineer and/or engineering geologist is required for all high hazard dams and also for significant hazard dams where landslides, faults, dispersive soils or liquefiable soils could reasonably be expected near the dam site. All such features shall be shown on a map of the dam site, and described as necessary for design of the dam. For dams on rock, mapping of discontinuities relevant to safety of the dam and evaluation of the need for grouting is required.

(2) Subsurface investigation to determine distribution of relevant earth materials. This investigation shall include borings or test pits; identification of springs, seeps and groundwater encountered at the dam site; and evaluation of the potential for landslides into the dam or reservoir.

(a) All materials shall be logged by the Unified Soil Classification System; blow counts (for borings only); and description of samples taken for testing.

(b) Subsurface investigations for High Hazard dams shall include drilling to a minimum depth 1.5 times the height of the dam or at least 10 feet into bedrock, whichever is less.

(3) Soil and or rock evaluation and testing of relevant materials. This evaluation may include: proctor compaction testing from all borrow areas; estimation or testing the permeability of soils to be used in dam construction; and an assessment for the presence of dispersive soils.

(a) An analysis of materials in the foundation and proposed embankment shall be completed if materials are prone to liquefaction or significant settlement.

(b) Where suitable materials can be collected, strength tests shall be required for all high hazard dams, and may be required by the State Engineer for significant hazard dams.

(c) Testing of dynamic soil properties may be required for high hazard dams in areas with large ground acceleration potential from earthquake loading.

(4) Borrow area locations. Areas proposed for borrow shall be identified and shown on the drawings.

(5) Earthquake considerations. Seismic site characterization is required for high hazard dams, and may be required for significant hazard dams. A seismic site characterization shall include earthquake sources, ground motion hazard, peak ground acceleration, and recommended ground motions (time histories).

(6) Site preparation criteria. The site evaluation shall recommend a depth of stripping unsuitable materials, and also a minimum, and where necessary, maximum depth for the cutoff trench.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0037

##### Hydrology and Inflow Design Flood

The design shall characterize flow into and through the reservoir and dam and shall include the following elements:

(1) A topographic map delineating the drainage area contributing to the dam, with the drainage area size labeled in square miles and showing the specific location of the proposed dam.

(2) For dams on stream channels, the name of the stream where the dam is located, the name of the principal watershed, and a determination of average annual inflow into reservoir and potential to fill the reservoir.

(3) Dam failure inundation analysis is required for any dam that might be high or significant hazard. The inundation analysis shall comply with OAR 690-020-0120.

(4) The inflow design flood that is the basis of hydraulic design for the dam shall be determined based on the hazard rating of the dam.

(a) The inflow design flood for a high hazard dam is the Probable Maximum Flood (PMF).

(b) The minimum inflow design flood for a significant hazard dam is the 0.2 percent annual exceedance probability flow.

(c) The minimum inflow design flood for a low hazard dam is a 1.0 percent annual exceedance probability flow.

(d) The inflow design flood for a lagoon or off channel reservoir is the maximum capacity of inflow pumps, ditches plus the maximum local storm precipitation over the lagoon.

(e) For watersheds under 30 square miles, the engineer may consider just the 24-hour storm to help determine the PMF, while for larger basins the engineer shall utilize at least a 72-hour storm for calculating the PMF for a general storm.

(5) For a high hazard dam, the engineer of record may also propose to determine an inflow design flood based on a quantitative analysis of risk to people and property.

(6) Designs shall include a description of all hydrologic parameters and the method used to determine the inflow design flood hydrograph and the volume of the inflow design flood, which is to be determined considering basin size and other factors as appropriate to the watershed above the dam.

(7) The design report must include the information used to develop the stage and storage capacity curve for the reservoir, including the capacity with and without excavation for construction.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0038

##### Embankment Dam Structures

Designs for Embankment (soil and or rock) dams shall include the following elements:

(1) A determination of embankment stability and stable embankment slope angles.

(a) Embankment dams shall be designed to have stable slopes during construction, and under all conditions of reservoir operation.

(b) Standard slopes of 3:1 upstream and 2:1 downstream may be used at the discretion of the engineer of record for low and significant hazard dams as long as low strength materials are not used

in the embankment and conditions leading to elevated pore water pressures are not present.

(c) Dams that are rated high hazard must be designed as zoned embankment dams and/or include a chimney drain designed also as a filter.

(d) High hazard dams shall be analyzed for static and seismic slope stability, and also for deformation analysis. The State Engineer may require static and or seismic slope stability analysis for significant hazard dams. At a minimum, seismic analysis shall be based on full reservoir under steady state seepage conditions. Factors of safety shall be evaluated by slope stability analyses using appropriate strength parameters based on laboratory or insitu testing. For materials that can be reasonably tested either on site or in a laboratory, soil strength values may not be based on assumptions and must be made on strength testing of the appropriate soil or rock units.

(e) High Hazard dams shall be designed for the maximum credible earthquake. If the State Engineer requires seismic analysis of a significant hazard dam, deformation analysis shall be designed for the 0.2 percent annual exceedance probability earthquake.

(f) Abrupt changes in depth of compressible foundation material shall be identified and where present, the design shall prevent significant differential settlement.

(2) Analysis of seepage and leakage expected through the dam and design of measures to prevent internal erosion and excess leakage.

(a) Steady state seepage and internal drainage conditions beneath, around and through the dam shall be quantified for all high hazard dams, and may be required by the State Engineer for significant hazard dams.

(b) A core of low permeability material protected by a soil filter is required for all high hazard dams. A core and soil filter is required for any significant hazard dams where the engineer of record or State Engineer determines piping could potentially occur. All core and filter zones must be of a configuration with dimensions that can be readily constructed.

(c) Internal drains and/or soil filters shall be used as needed to drain water and prevent internal erosion of the dam. Toe drains shall be standard design practice for water storage facilities, but not for most wastewater lagoons.

(d) Internal drain pipes to collect and distribute seepage flows from internal filters and drains shall be comprised of material that is non-corrodible, designed to carry the overburden load, and be no smaller than 6 inches in diameter.

(3) A safe and accessible dam crest.

(a) The dam crest shall be of sufficient width to be accessible by equipment and vehicles for emergency operations and maintenance, and shall have a road to allow crest access during periods when the spillway is flowing.

(b) The crest shall have a camber sufficient to maintain the design freeboard, based on the anticipated crest settlement, and in no case shall the camber be less than 0.5 feet.

(c) Roads located on the dam crest shall have appropriate surfacing to provide a stable base that resists rutting and provides adequate traction for access and safety in wet conditions.

(d) The crest shall have adequate cross slopes to prevent ponding.

(4) Measures to control wave and surface erosion as needed.

(a) For reservoirs large enough to generate significant waves, the design shall include a determination of minimum freeboard based on expected waves. The design shall also include slope protection for wave action if significant waves are likely.

(b) The downstream slope shall be provided with a well maintained cover of non-woody vegetative cover, or a gravel or rock surface, to prevent surface erosion. No woody vegetation shall be planted on the dam during the life of the structure unless specifically designed by the engineer of record, by demonstrating that cover plants will not affect critical dam functions.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0041**

**Concrete Dam Structures**

Designs for concrete mass dams must be prepared by a structural engineer and a geotechnical engineer and/or engineering geologist. This rule does not apply to concrete flashboard dams. Designs for all other concrete dams shall include the following elements:

(1) Concrete dams shall be specified as gravity, arch, arch-gravity, or buttress. Gravity dams can be of conventional mass concrete or roller compacted concrete.

(2) Dams shall be designed to be stable during construction and under all conditions of reservoir operation.

(a) Headwater and tailwater elevations pertinent to the design shall be described with respect to both static and dynamic loading.

(b) Uplift pressure distributions assumed for design shall be provided.

(c) When foundation drains are used to reduce uplift, the assumed drain efficiency shall be indicated and permanent access shall be provided at the project to inspect and maintain the drains.

(3) Sliding stability shall be evaluated at lift joint surfaces, at the dam foundation interface, and at discontinuities in the foundation materials beneath the dam and abutments.

(a) Factors of safety shall be based on limit equilibrium methods.

(b) For earthquake loadings, the critical acceleration (acceleration required to initiate sliding) may be less than the peak ground acceleration of the design earthquake. In such cases a permanent sliding displacement shall be determined in lieu of a sliding factor of safety.

(c) Overturning of the dam on its foundation shall be evaluated for static and seismic loading.

(4) Seismic stability analysis is required for certain concrete dams and shall demonstrate the dam can withstand the design earthquake without loss of life or damage to property.

(a) High hazard dams shall be designed for the maximum credible earthquake based on current information from the US Geological Survey or a site specific seismic evaluation. A dynamic stress analysis that considers the dynamic characteristics of the dam and the ground motions of the design earthquake shall be provided for high hazard dams.

(b) Where the State Engineer requires seismic analysis on significant hazard dams, they shall be designed for the 0.2 percent annual probability of exceedance earthquake. The Department may require a dynamic stress analysis for significant hazard dams.

(5) When foundation grouting is needed, the design for the grout curtain and/or consolidation grouting of the foundation shall be required.

(6) Specific properties of mass concrete that can be important to design and construction include the compressive strength (at 28 days and one-year), modulus of elasticity, Poisson's ratio, shear strength, tensile strength, volume change during drying, thermal coefficient of expansion, specific heat, thermal conductivity, permeability and durability.

(a) As a minimum for static loadings, the assumed compressive and shear strengths for the parent concrete, lift joint surfaces, and the dam-foundation contact shall be provided.

(b) In addition, tensile strength assumptions for the aforementioned regions for dynamic loadings (seismic) shall also be provided.

(c) Air entraining agents shall be provided in the concrete mix to provide freeze-thaw protection and to improve the workability of lean mass concrete mixes. The quantity of air entrained in mass concrete shall be in the order of 5 percent.

(7) Mix design and construction methods used to minimize cracking due to temperature gradients between interior regions subject to heat of hydration effects and surfaces exposed to ambient temperatures shall be specified. Treatment of lift joint surfaces to achieve desired shear and tensile strengths shall be indicated. Treatment of contraction joints to prevent leakage and/or to transfer load between adjacent monoliths shall be described.

(8) When reinforcing steel is used, the strength properties of the reinforcement shall be provided and contract drawings shall clearly indicate the size, location, spacing, and cover requirements.

(9) The minimum crest width must be 15 feet unless otherwise approved. The dam crest and appurtenant structures shall be accessible by equipment and vehicles for emergency operations and maintenance.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0042**

**Spillways**

All dams must have a spillway. Spillway(s) design shall include the following minimum elements:

(1) Utilization of inflow design flood. Determination of inflow design flood as described in OAR 690-020-0037 is required to determine the required spillway capacity.

(2) Hydraulic evaluation of flow through control section. Flood flow through the control section must be calculated and the minimum freeboard at the inflow design flood must be 1 foot for high hazard dams and 2 feet for significant and low hazard dams.

(3) Optional low elevation spillway. An interior spillway connected to the low level conduit may be used for low and significant hazard dams, and for high hazard dams only with specific approval by the State Engineer. The capacity of the low elevation spillway may be considered in design of the overflow spillway.

(4) Stable spillway control section. The spillway control section must be hydraulically and structurally stable for the inflow design flood and have permanent features so that the control section is identifiable for re-measurement of cross section during routine inspections.

(5) Spillway channel stability. Spillways shall be designed to be structurally adequate and stable under all conditions of reservoir operation. Spillway structures of high hazard dams shall be designed for earthquake ground motions per OAR 690-020-0036.

(6) Reinforced concrete specifications. Structural elements of reinforced concrete shall be designed for both strength and serviceability. The 28 day strength of structural concrete shall be provided. The strength properties of the reinforcing materials shall also be provided and contract drawings shall clearly indicate the size, location, spacing, and cover requirements. Treatment of construction joints and contraction/expansion joints shall be described and special provisions for strength transfer and leakage prevention identified. Air entrainment shall be provided in cast-in-place concrete if needed for freeze-thaw protection, durability, and workability.

(7) Debris booms. For high and significant hazard dams, debris or log booms may be required. Where required, they shall be designed for the spillway approach where logs and other debris may block or damage the spillway structure. The design shall specify the necessary anchor capacity, and the design of the anchors.

(8) Gates and Flashboards. Detailed drawings and specifications are required for spillway gate structures or flashboards, if present on the proposed dam. Operations and maintenance manuals are required for any dam with a gated spillway, or where flashboards or stop-logs are used in the spillway.

(9) Energy dissipation. The design of stilling basins for high hazard dams, and where required by the State Engineer for significant hazard dams, shall be based on calculated hydraulic forces and designed to dissipate energy from the inflow design flood.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0043**

**Penetrating Conduit (s) and Control of Flow Through Conduits**

All new dams on stream channels must have a low level conduit. All other dams must have a low level conduit or other means to safely drain the reservoir. The conduit and related control structures must be designed to meet the following criteria:

(1) Ability to lower the reservoir. The minimum diameter of the conduit should be determined through analysis of the time required to drain the dam at average inflow.

(a) The conduits for high hazard dams shall be capable of releasing the top five feet of the reservoir in five days.

(b) The conduits for significant and low hazard dams must be able to release the top five feet of the reservoir in ten days.

(c) All conduits must be of sufficient size to allow passage of inflows as needed.

(d) In no case shall conduits be smaller than 8 inches in diameter.

(2) Durable and water-tight conduits. Conduits must be made of medium to heavy gage durable materials. Pipe joints must be designed to seal and prevent leakage. Corrugated metal culverts are only acceptable for low hazard dams, and only when the conduits are encased in concrete. Encasement of conduits in concrete may be used to assist in the design of a durable conduit and to reduce the potential for seepage and erosion adjacent to the conduit.

(a) Diaphragms using materials designed as an effective soil filter are required for any conduits not designed as encased in concrete, and are required regardless of encasement for all high hazard dams.

(b) Seepage collars may not be used in any dam.

(3) Control Mechanisms. The design for the control mechanism must be sturdy, durable, allow for air venting when needed, and allow manual operation to drain the reservoir if hydraulic or other power controls are inoperable. Hydraulic controls must have redundancy if control relies on any submerged hydraulic hoses. Intake structures for outlet works must have trash racks unless the engineer of record shows trash racks are unnecessary, or unsafe to construct due to conditions at the dam site. For high and significant hazard dams, measures to prevent unauthorized use of the control mechanism must be included in this design.

(4) Outlet structure. The outlet structure must not be submerged when the inlet control gate or valve is fully closed. The outlet structure must be designed to protect the conduit from mechanical damage and convey water to the stream channel without channel erosion and cavitation near the gate structure.

(5) Pressurized operation. Conduits must be specified as suitable for pressurized operation if they are to be operated with controls other than at the inlet of the conduit. Conduits for dams with pressurized conduits shall have a guard gate installed at the upstream end of the conduit. Operations and maintenance manuals are required for any dam designed for pressurized operation, and the plans must include procedures for periodic inspections of the interior of any pressurized pipes.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0044

##### Monitoring and Instrumentation

Designs must include methods for determining if the dam is operating properly based on the hazard rating of the dam, and include:

(1) Staff gage near controls for the conduit. The staff gage shall be clearly marked in feet and tenths of feet, and extend to within one foot of the crest of the dam. Markings and numbers on the gage rod shall be of sufficient size to be easily readable from the crest of the dam.

(2) Multiple and easily accessible outlets of all toe drains. Toe drains shall be designed to discharge into locations where flows can be evaluated and monitored. Multiple discharge points are required in order to isolate seepage to various sections of the dam and foundation. Discharge points must be located where routine dam maintenance is not likely to damage the drains.

(a) For high hazard dams, drains must have a measuring weir or other device, and a basin for settling drainage water so that internal erosion can be identified.

(b) Where drainage galleries are provided for concrete dams, seepage measuring devices should be provided and accessible for making the necessary readings.

(3) Unique Identification. All instrumentation and exterior drains shall be labeled with a unique identifying marker designed for durability and to withstand maintenance activities.

(4) All high hazard and where required by the engineer of record or State Engineer, significant hazard dams shall have the following instrumentation:

(a) Monuments that allow measurement of the horizontal and vertical movements of the dam. Control or benchmark monuments shall be placed in areas not subject to movement;

(b) Piezometers to allow monitoring of the phreatic surface within the dam or for concrete dams, to determine uplift pressures.

(c) Instrumentation to measure strong ground motions for dams in locations where the peak ground acceleration in the 0.2 percent annual probability of exceedance earthquake is greater than 0.4g.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0047

##### Geosynthetics

Geosynthetics shall not be used as the sole element employed to perform an essential dam safety function. Redundant design features are required whenever geosynthetics are used for essential dam safety functions.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0048

##### Modification of Standard Design Requirements

Exceptions to design standards may only be obtained with written approval from the State Engineer. Where the engineer of record requests design exceptions, the request must be in writing, be affixed with the engineer of record's professional stamp, and include a report describing why design standards are inapplicable to the safety of the dam.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0055

##### Design Drawings

The engineer of record shall submit applicable drawings when the engineer believes the design is ready for review and approval by the State Engineer.

(1) Drawings must accurately portray the work to be accomplished and be of sufficient detail to clearly define all features of the project. After all changes required by the State Engineer are made, final design drawings must be neatly and accurately drawn to a scale sufficiently large for the drawings to be readily interpreted.

(2) Drawings must be uncluttered and easy to understand for determination of design compliance by the contractor, the engineer of record, and the State Engineer.

(3) Drawings must be no larger than 24" X 36". Other acceptable sizes for drawings are 17" X 22" and 22" X 34". All drawings must have a graphic scale bar so that scale can be determined after enlargement or reduction. Each sheet shall be numbered sequentially with the first sheet being sheet number one along with the total number of sheets; e.g., 1 of 6.

(4) Drawings shall include the following information:

(a) An official dam name, which must not have already been used for a dam as indicated in the Oregon dam safety database. This unique name must be affixed on each drawing;

(b) The first drawing must include a location map with the drainage basin, the dam and reservoir, streams within the drainage area, and the location of the nearest access highway. This drawing must include legal location of the dam (Section, Township and Range), and the location of the survey reference point with latitude, longitude, elevation, and datum elevation (NAVD1988);

(c) A contour map of the reservoir site showing the legal location of the dam with a contour interval no greater than 5 feet. A

plan of the dam should be superimposed on this map. If scale permits, this drawing should show the location of the spillway(s), conduit inlet and outlet, and the location, distance and direction to a government land corner or other permanent survey marker;

(d) Area and storage capacity curves and information on the hydrology of the proposed reservoir drainage area in square miles;

(e) A profile of the dam site at the center of the dam;

(f) A cross section of the dam at maximum section;

(g) Plan view(s) of dam at maximum section, and other sections as needed;

(h) Cross section(s) of dam, including the maximum section with the official dam height;

(i) Spillway details, spillway approach control discharge, and energy dissipation;

(j) Low level conduit details, including diameter, material, encasement; and

(k) Slide gate or valve details including the trash rack, control stem, pedestal and wheel, or other control details, and air vent.

(5) Elevations must be clearly labeled on applicable drawings and include the:

(a) Base of dam and official height of dam;

(b) Dam crest;

(c) Spillway control section;

(d) Base of spillway discharge; and

(e) Invert of the conduit at both the inlet and outlet.

(6) All drawings must be dated and have sufficient space for State Engineer's approval stamp, at least 3" x 3" near the lower right hand corner of the drawing.

(7) Drawings must be designated as final design drawing or as-built drawings.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0060

##### Construction Specifications

All drawings for dams must be accompanied by construction and material specifications that include the following:

(1) Construction conditions. Specifications must include the construction period based on typical weather for that location and in-stream work periods if applicable, and may include a process for the engineer of record to modify the construction period.

(2) Clearing of the dam site and reservoir. Specifications must include the area to be submerged by the new or enlarged reservoir and specify that the submerged area shall be cleared of logs and debris prior to filling the reservoir. The specifications must require that the footprint of the dam shall be cleared of all soils containing organic materials, and that this material may not be used for dam construction.

(3) Cutoff trench requirements. Specifications must include the minimum trench depth, width at base of the trench, and maximum side slope steepness. These specifications shall be based on the subsurface investigations and direct that the cutoff trench may not be filled if it contains standing water. A requirement not to begin filling the cutoff trench until approved by engineer of record, and where specified, by State Engineer or Dam Safety Engineer, must also be included in the specifications.

(4) Material specification standards. The specifications shall include material and testing specifications for dam materials, conduits, control structures, and other appurtenant structures, using an ASTM standard methodology if available.

(5) Soil Compaction. The typical compaction specification is 95 percent of standard proctor density, though the engineer of record may use a different compaction standard. Specifications shall include the types of acceptable compaction equipment, by material source if necessary. Specifications shall also include maximum lift thickness. To reduce potential for leakage around the conduit, specifications shall prohibit soil compaction dry of optimum moisture content for materials placed immediately above or adjacent to the conduit. Specifications must also include verification testing of soils, with representative samples selected for testing by the engineer of record and not the contractor.

(6) Concrete placement. Specifications shall include means to prevent separation of aggregate and cement, air entrainment requirements if needed, methods for placement and vibration of concrete, required minimum 28 day strength, slump, moisture and temperature requirements for curing. Alkali reactive aggregate shall not be used in the concrete.

(7) Conduit specifications. Specifications must include the material, diameter, and thickness of the conduit, and the length of conduit required for the project. Methods for sealing joints must be specific. Specifications must require that all materials from a manufacture are certified to meet this test, or that the engineer of record has tested the materials directly.

(8) Accepting and Rejecting Materials. Specifications must include tolerances for acceptable departure from material specifications and a process for rejection of defective materials or workmanship.

(9) Notification by the engineer of record to the State Engineer of changed conditions critical to the safety or operations of the dam. Specifications shall include State Engineer notification if previously unidentified springs, slope movement or sand lenses are identified, or if storm or other damage occurs during construction.

(10) The specifications must require supervision by the engineer of record during construction and for inspection by the Director or Director's authorized representative at any time during the construction period.

(11) The specifications must also contain a provision to the effect that plans or specifications shall not be altered or changed without the written approval of the State Engineer.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### 690-020-0065

##### Dam Construction

The Engineer of record shall submit plans for administering the construction of the dam to the State Engineer for approval. Construction plans must include the following:

(1) Construction of the dam shall be observed and documented by the engineer of record and employees working for the engineer of record as applicable.

(2) The engineer of record or an inspector working for the engineer of record shall be on-site as needed for instructions to the contractor, approval of initial excavation, acceptance of materials, and general project administration.

(3) The dam owner shall cease construction activity if the engineer of record is no longer employed or for any reason cannot complete necessary construction administration activities. Construction may resume when a new engineer of record is employed, the State Engineer has been notified of the new engineer of record, and both engineers have discussed the project.

(4) The engineer of record shall observe the construction of the dam. It is the engineer of record's responsibility to make periodic inspections to evaluate whether the construction is proceeding in accordance with the approved plans and specifications. The engineer of record shall endeavor to prevent defects and deficiencies in the construction of the dam and appurtenant structures, and shall disapprove or reject work identified that fails to conform to the approved plans and specifications.

(5) The engineer of record shall confirm foundation design assumptions once surface materials have been stripped and the cutoff trench excavated. Changes in actual foundation conditions from assumptions made in the initial site evaluation shall be communicated to the Department.

(6) The engineer of record shall maintain a record of construction that shall include:

(a) Logs of construction inspections whenever such inspections are made by the engineer or the engineer's employee;

(b) All test results pertaining to construction;

(c) Photographs; and

(d) Construction problems and remedies.

(7) The engineer of record shall complete as-built drawings and a final construction report, including statements that the observations are either consistent or inconsistent with the design drawings and specifications. If key elements of construction were not observed, the construction report shall detail those specific elements that were not observed.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

### 690-020-0070

#### Submittals and Notifications by the Engineer of Record

(1) When necessary, the engineer of record must include an inundation analysis that complies with OAR 690-020-0120 prior to submitting the design report, plans and specifications, so that the Department can determine the hazard rating of the dam.

(2) All final designs, drawings and specifications submitted to the State Engineer for approval must be prepared and stamped by a professional engineer licensed to practice in the State of Oregon. The first page of the drawings, the specifications, and the construction administration plan must be stamped by the engineer of record. All submitted materials must be addressed directly to the State Engineer and labeled as a dam safety submission.

(3) Final drawings shall be submitted on full size paper. The design reports and specifications must be submitted as packaged 8.5 x 11 inch bound documents, with essential maps folded within.

(4) A schedule of construction will be provided to the State Engineer prior to initiating construction of any significant or high hazard dam.

(5) Prior to completion of the cutoff trench and all stripping of foundation and embankments the engineer of record shall notify the State Engineer to allow for State Engineer inspection of the excavation. The required notice to the State Engineer is as follows:

(a) 48-hours for a low hazard dam;

(b) 120-hours for a significant hazard dam; and

(c) for high hazard dams, 240-hours or the time specified in the approval, whichever is longer.

(6) Any changes made to the designed location, height or width of the dam, or to materials used in dam construction shall be reported in writing immediately to the State Engineer.

(7) If any slope instability is observed during construction in the embankment or adjacent to the dam or into reservoir, it shall immediately be reported to the State Engineer by phone.

(8) If for any reason the engineer of record ceases construction administration work, the engineer of record must immediately notify the State Engineer of the situation, by phone and in writing.

(9) For high hazard rated dams, the final emergency action plan and any additional inundation analysis required for the EAP as described in OAR 690-020-0400 must be submitted by the engineer of record prior to or concurrent with submission of the as-built drawings and the project completion report.

(10) The engineer of record must submit as-built drawings and a project completion report. A project completion report must include the following:

(a) As-built drawings, if possible on the same sheet as the initial design drawings. As-built drawings shall be submitted in the form of electronic copies of all applicable drawings;

(b) A completion report stating either that the dam has been built according to the drawings with changes to improve safety as documented in the as-built drawings, or that essential safety functions are unknown;

(c) A list of the days the engineer of record was on site, the number and location of material tests, and observations of all changed conditions;

(d) Test results (compaction, strength, permeability) must be summarized in the completion report;

(e) The completion report must document the observations and decisions made and communicated to the contractor or dam owner. Photographs of key stages of construction, including but not limited to photographs of the cutoff trench, borrow pit development, trenching and placement of the conduit, the spillway before and after placement of concrete; and

(f) The project completion report shall be stamped by the engineer of record.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

### 690-020-0080

#### Written Approval by State Engineer

(1) Prior to commencing construction activity, all design reports, drawings of the dam and critical appurtenant structures, specifications, and plans for construction administration must be approved by the State Engineer as indicated by the State Engineer's stamp and a written letter of approval from the State Engineer.

(2) The State Engineer's approval of design plans and specifications shall be valid only for five years. Upon request, written requests for time extensions may be granted in writing by the State Engineer.

(3) The following activities which involve the construction or operation of an existing permitted dam that may impair the safety of the dam require State Engineer approval of engineered designs:

(a) Any changes that affect storage capacity of the dam or increase dam height above that in the approved drawings for the dam, including all dam rises other than adding fill to restore crest height lost to settlement or erosion;

(b) Any changes to or near the spillway that may affect spillway capacity or ability to pass flows safely;

(c) Installation of any valve or gate on the downstream side of the dam;

(d) Removing and replacing or otherwise excavating into or near the dam to place or replace any conduit or utility in the dam;

(e) Replacement of the conduit control structure;

(f) Installation of any valve on the downstream side of the low level conduit, or directly connecting irrigation pipe to the low level conduit;

(g) Repair of damage which has already significantly weakened the dam;

(h) Any activity where at least 30 percent of fill material in the dam is impacted by that activity; and

(i) Any other change to the dam that affects its safety as determined by the State Engineer.

(4) Prior written approval will not be required for replacement or lining of toe drains, relining of conduits of low hazard dams, and for specific actions required in a safety emergency. As-built drawings may be sent to the State Engineer after completion of such projects to show these projects have been completed in a safe manner.

(5) For pre-existing dams without a valid storage permit, the State Engineer may approve plans and specifications so that a permit may be issued only if the engineer of record provides the following:

(a) Drawings of the dam as it exists during the engineer's evaluation and survey of the dam. These drawings should include all the critical features as described in OAR 690-020-0035, except for those elements that cannot be evaluated such as the cutoff trench;

(b) Evaluation of any embankment distress, including erosion, seepage or leakage;

(c) Condition and function of the conduit and its controls, capacity and stability of the spillway;

(d) Any other safety information needed as determined by the State Engineer;

(e) Designs as needed to bring the dam up to the current standards based on the hazard classification of that dam;

(f) As improved drawings of the dam showing that all necessary modifications have been made with a report from the engineer describing the necessary work that was completed; and

(g) The source of all information used to develop the as-improved drawings must be documented in a report submitted by the engineer. This includes but is not limited to the engineer's mea-

surements, engineer's observations, a photographic record, and testimony of individuals.

(6) No newly constructed dam may store water until final written approval of necessary plans, specifications or other information is received from the Department.

(a) Final approval may be obtained only after construction has been completed and as-built drawings and a satisfactory project completion report have been submitted to and approved by the State Engineer.

(b) The State Engineer shall notify the engineer of record and dam owner in writing when final documents have been approved.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0100**

##### **Hazard Rating of Dams**

(1) Dams shall be assigned a hazard rating of high, significant, or low.

(2) The Department shall utilize dam breach inundation analysis as a primary factor to determine the hazard rating of dams as described in OAR 690-020-0120.

(3) Using the dam breach inundation analysis described in OAR 690-020-0120, the Department shall make the final determination of any hazard rating using the following criteria:

(a) An inundation depth of flowing water of at least two feet over the finished floors of dwellings, other frequently occupied buildings, or road surfaces where a vehicle is likely to be present establishes a "high hazard" rating.

(b) Any inundation depth of water over the floorboards of structural buildings establishes a "significant hazard" rating.

(c) For other roads and vulnerable utilities, an inundation depth of two feet or evidence of depth and velocity capable of creating damage establishes a "significant hazard" rating.

(d) Wherever heavy recreational or other frequent use occurs downstream a "high hazard" rating shall be established to prevent probable loss of life. Such designation shall not depend on the presence of downstream infrastructure.

(e) For water depths close to those listed in the subsections (a) and (c), the Department may also consider water velocity in its determination of hazard rating.

(4) The hazard rating of a dam shall remain in effect until the rating is revised by the Department using the procedures described in OAR 690-020-0120. A dam owner may request that the Department revise a hazard rating. The owner must provide information in support of the request and prepared by an engineer licensed in Oregon and familiar with hydraulic and hydrologic calculations and using the procedures described in OAR 690-020-0120.

Stat. Auth.: ORS 183 & 540

Stats. Implemented: ORS 183 & 536, 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0120**

##### **Dam Breach Inundation Analysis**

(1) A dam breach inundation analysis must be submitted with the design for any new dam, except only for dams in a remote location far enough from buildings, high use recreation sites or high use public roads so that damage or fatalities from a dam breach would be very unlikely as determined by the State Engineer.

(2) A dam breach inundation analysis is required to change the hazard rating of an existing dam.

(3) The dam breach inundation analysis must use a breach time based on dam materials and thickness and other factors that would influence the time it would take for the dam to breach from internal erosion, overtopping, or displacement.

(4) Any simplified and conservative hydraulic model may be used to show that a dam should be rated low hazard. The State Engineer may determine if the model was used appropriately and conservatively.

(5) Accepted and hydraulically consistent models must be used to conduct the inundation analysis for significant and high hazard dams, as these will be used in the event of an emergency at

the dam. Models developed by the US Army Corps of Engineers including HEC-RAS are the preferred methods of analysis. Other models that use hydrodynamic equations checked for minimum tolerances such as FLO 2D are also acceptable for conducting dam breach inundation analysis. Information on the specific model used for analysis, dam breach parameters and justification, and all assumptions made for the analysis must be included in the documentation for the inundation analysis.

(6) Inundation analysis for hazard rating of high and significant hazard dams must be conducted with the reservoir at full pool and inflow equal to the 0.2 percent annual exceedance probability flood flow. The analysis must show on a map areas inundated, areas inundated by greater than 2 feet, and all frequently occupied structures.

(7) The following additional information shall also be required for newly constructed or modified high hazard rated dams.

(a) A sunny day and a PMF inflow analysis as part of the emergency action plan.

(b) The inundation mapping must include cross sections with depth and times to flood wave arrival, and must be extended downstream to a location where no significant property damage exists.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0150**

##### **Routine Inspection of Dams**

(1) The Department shall maintain a program of inspecting dams and may conduct routine safety inspections of dams with an inspection frequency based on the hazard rating of the dam and may specify modifications necessary to insure the safety of the works to prevent possible damage to life or property.

(2) The frequency of inspections may be based on the hazard classification of the dam. Inspections may occur as follows:

(a) Inspections for high hazard dams may be scheduled on an annual basis;

(b) Inspections for significant hazard dams may be scheduled every three years; and

(c) Inspections for low hazard dams may be scheduled every six years.

(3) Expedited inspections may be conducted if an urgent dam safety issue is identified or if there is a potential change in hazard classification.

(4) Following an inspection, the Department shall provide to dam owners a letter with the inspection observations and recommendations that assist the dam owner to ensure the safety of the dam.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

#### **690-020-0200**

##### **Fees for Dams**

(1) Dam owners subject to dam safety regulations shall submit to the Department an annual fee on the basis established under ORS 536.050(2).

(2) Dam owners who fail to pay an annual fee on or before six months after the billing date may be required to pay a late fee of \$100.

(3) If a dam owner fails to pay the annual fee or late fee charged by the Department, the Department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

(4) Multiple large dams connected together and separated only by embankments or other manmade materials (common with sewage lagoons) will count as one dam for fee purposes.

(5) The Department may use the dam safety fee to support dam safety inspections; conduct dam breach inundation analysis for existing dams; help dam owners complete emergency action plans for existing dams; conduct or support the technical analysis of the safety of specific dams; and other actions as needed to support the dam safety program.

Stat. Auth.: ORS 536.050  
 Stats. Implemented: ORS 536.050  
 Hist.: WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0250**

**Maintenance of Dams**

(1) When inspecting dams to insure the safety of the dam, the Department may consider whether the dam owner has conducted routine maintenance on dams as follows:

- (a) Whether brush and trees have been removed and whether vegetation on the embankment or spillway has been mowed;
  - (b) Whether burrowing animals are controlled and animal burrows are filled;
  - (c) Whether surface erosion is effectively controlled;
  - (d) Whether freeboard and adequate crest width have been maintained;
  - (e) Whether the spillway is functioning correctly and that its capacity has not been reduced;
  - (f) Whether mechanical equipment has been properly cycled and lubricated;
  - (g) Whether cracked concrete structures have been properly patched, sealed, caulked or replaced to prevent deterioration;
  - (h) Whether debris, rock, or earth have been removed from outlet conduits, outlet channels or spillway channels;
  - (i) Whether worn or damaged parts of conduits, outlet valves or controls are in need of repair or replacement;
  - (j) Any other condition or activity that might affect safety of the dam.
- (2) The Department may find that a dam is not safe if large trees or large woody vegetation exists on the dam.
- (3) Maintenance deficiencies observed during periodic dam safety inspections shall be described in an inspection letter provided to the dam owner.

Stat. Auth.: ORS 540.350 - 540.400  
 Stats. Implemented: ORS 183, 536 & 540  
 Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0300**

**Modification of Dams Requiring Notification and/or Approval**

- (1) The activities described in OAR 690-020-0080(3) are considered such significant modification of the dam so as to constitute new construction requiring approval of engineered designs prior to initiating these activities.
- (2) Any activity that will increase the volume or rate of water released during failure requires a new inundation analysis using methods described in OAR 690-020-0120 unless the dam is in a remote area with no downstream development or high recreational use areas that might be affected by a dam breach flood.
- (3) Certain repairs that may affect the safety of the dam require on site analysis by an engineer during the actual repair process in order to determine the specific repairs needed. Prior approval of drawings for these repairs will not be required, as conditions encountered on site are likely to deviate from plans. Therefore, submission of an as-built drawing by the engineer of record of the following repairs indicating the repairs have been made correctly may be deemed as evidence of the safety of the dam:

- (a) Slip lining of existing conduits that does not involve excavation into the dam and does not result in a significant reduction in the time required for the conduit to empty the reservoir;
- (b) Replacement of toe drains; and
- (c) Any other such repairs as determined by the State Engineer.

Stat. Auth.: ORS 540.350 - 540.400  
 Stats. Implemented: ORS 183, 536 & 540  
 Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0350**

**Operations and Maintenance Plans**

(1) As part of the plans submitted with the design, the engineer of record shall provide to the Department operations and maintenance plans for new significant and high hazard dams, and for any new dam with a gate or flashboard as part of the spillway.

The dam owner shall be responsible for implementation of operations and maintenance plans, and compliance with these may be reviewed during dam safety inspections.

(2) Operations and maintenance plans may include but are not limited to:

- (a) Procedures for operation of all gates and valves;
- (b) Specified frequency for cycling of the slide gate and/or valves;
- (c) The time of year flashboards are allowed in the spillway;
- (d) Removal of trees and shrubs, and mowing other vegetation as needed;
- (e) Routine inspections, including evaluation of seepage flow, and visual identification of any turbid seepage;
- (f) Water release plan in the event of a flood forecast when reservoir is above a certain level; and
- (g) Measurement frequency for all monitoring instrumentation installed at the dam.

Stat. Auth.: ORS 540.350 - 540.400  
 Stats. Implemented: ORS 183, 536 & 540  
 Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0400**

**Emergency Action Plans (EAP) and Emergencies**

(1) Draft Emergency Action Plans are required prior to completion of new dam construction or modification as described in OAR 690-020-0300(1), and final EAP's must be submitted prior to filling the reservoir. The final emergency action plan must be reviewed and approved by the State Engineer. EAPs for dams constructed after March 2015 must be updated at least once every two years, including but not limited to ensuring all notification contacts are current.

(2) Dam owners are encouraged to complete emergency action plans for their existing high hazard dams.

(3) An EAP shall contain, as a minimum, the following key elements:

- (a) Emergency condition detection;
  - (b) Emergency level determination;
  - (c) Notification and communication lists applicable to each of the emergency levels;
  - (d) Expected actions to prevent a dam failure incident or to help reduce the effects of a dam failure and facilitate response to an emergency;
  - (e) Inundation mapping that normally includes both a sunny day and a probable maximum flood failure; and
  - (f) Procedures for termination of the emergency.
- (4) Dam owners of high or significant hazard dams shall immediately notify the State Engineer of potential or actual dam failure situations.

(5) Dam owners shall notify the State Engineer of any breach of any dam subject to these regulations.

(6) If the Department observes evidence of a dam at risk of imminent failure and a risk to life or property, local public safety officials shall be notified of the situation.

Stat. Auth.: ORS 540.350 - 540.400  
 Stats. Implemented: ORS 183, 536 & 540  
 Hist.: WRD 2-2015, f. & cert. ef. 3-17-15

**690-020-0500**

**Enforcement**

(1) When any dam is found to be in violation of the terms and conditions of the water right permit or certificate, or directly threatens life or property, or when any structure is found where lack of maintenance or unauthorized alterations could lead to a direct threat to life or property, the Department shall notify the owner in writing of the violation and the action necessary and specified time allowed to bring the structure up to design, operation, or maintenance standards.

(2) Failure by the owner to perform the required action may result in proceedings for one or more of the following:

- (a) Notice and opportunity for a contested case hearing as provided for in ORS 540.350(5).

(b) Posting of the structure to prevent storage or to limit operation until the owner has complied with the requested action required to fulfill conditions of the permit or certificate.

(c) Instituting legal action by the District Attorney or Attorney General to have the facility declared a public nuisance.

(d) Issuance of an order to prevent storage or to breach the embankment as provided for in ORS 540.370.

(e) Any other enforcement action permitted by law.

(3) Engineering work that is inconsistent with any rules in this Division may be referred to the Oregon State Board of Examiners for Engineering and Land Surveying, for appropriate actions.

Stat. Auth.: ORS 540.350 - 540.400

Stats. Implemented: ORS 183, 536 & 540

Hist.: WRD 12-1986, f. & ef. 10-3-86; Renumbered from 690-020-0039, WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10; Renumbered from 690-020-0050, WRD 2-2015, f. & cert. ef. 3-17-15

## DIVISION 22

### EMERGENCY WATER PROVISIONS — KLAMATH COUNTY

#### 690-022-0020

##### Purpose and Statutory Authority

(1) The purpose of these rules is to implement ORS 536.750(1)(c), which authorizes the Commission, pursuant to a gubernatorial declaration that a severe, continuing drought exists, to grant a temporary preference to water rights for human consumption or stock watering use over other water uses regardless of priority date.

(2) These rules, pursuant to the Governor's Executive Order no.14-01, dated February 13, 2014, are effective upon filing, and shall remain effective until December 31, 2014. During the effective period of these rules and a drought declaration under ORS 536.740 in Klamath County, the Commission grants a preference in Klamath County of use for water rights for human consumption or stock watering as provided in this rule. The temporary preference of use shall only apply to Klamath County and shall remain in effect only during the effective time period of the Governor's drought declaration in Klamath County while these rules are in effect.

(3) These rules are repealed on December 31, 2014.

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

Hist.: WRD 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-27-14; WRD 2-2014, f. & cert. ef. 9-26-14

#### 690-022-0025

##### Definitions

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

(1) "Commission" means the Oregon Water Resources Commission.

(2) "Department" means the Oregon Water Resources Department.

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

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

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

Hist.: WRD 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-27-14; WRD 2-2014, f. & cert. ef. 9-26-14

#### 690-022-0030

##### Applicability and Preference

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025; 536.027; 536.750

Stats. Implemented: ORS 536.750

Hist.: WRD 1-2014(Temp), f. 3-25-14, cert. ef. 4-1-14 thru 9-27-14; WRD 2-2014, f. & cert. ef. 9-26-14

## DIVISION 25

### REGULATION OF GROUNDWATER IN THE OFF-PROJECT AREA DURING THE IRRIGATION SEASON FOR SENIOR SURFACE RIGHTS IN THE KLAMATH BASIN

#### 690-025-0010

##### Untitled

(1) The following definitions apply solely to OAR 690-025-0010:

(a) "Call Threshold" means the instream flow threshold associated with a Primary or Secondary SIF Measurement Location, to which the Klamath Tribes and the United States Bureau of Indian Affairs may call for regulation of junior water rights under the terms of the Settlement Agreement. The terms "Primary SIF Measurement Location" and "Secondary SIF Measurement Location" have the meanings given in Section 15 of the Settlement Agreement.

(b) "Gaining Reach" means a reach of a perennial stream where streamflow is increasing as a result of groundwater discharge to the stream, as shown in the Upper Basin Wells and Gaining Reaches Map (included as Attachment A to these rules), except that the Department may modify the location of a Gaining Reach for the purposes of OAR 690-025-0010 based on the best available information.

(c) "Irrigation Season" means the period from March 1 to October 31 of every year.

(d) "Off-Project Area" means the area by that name shown in the WUP Regions Map (included as Attachment B to these rules).

(e) "Rate" means the amount of water as expressed in cubic feet per second (cfs).

(f) "Scenic Waterways Act" means ORS 390.805 to 380.925.

(g) "Settlement Agreement" means the Upper Klamath Basin Comprehensive Agreement that took effect April 18, 2014.

(2) OAR 690-025-0010 implements Sections 3.11.3 through 3.11.9 of the Settlement Agreement, which address control of well use in the Off-Project Area when such use affects surface water supplies in the Klamath Basin.

(3) OAR 690-025-0010 only governs the Department's control of well use in the Off-Project Area when the Department determines such use has the potential to cause substantial interference with surface water. OAR 690-025-0010 does not govern:

(a) Applications for the use of groundwater;

(b) Control of well use as a result of interference with another well;

(c) Control of well use in any other part of the Klamath Basin or the state;

(d) Control of well use pursuant to the Scenic Waterways Act or the Department's rules implementing the Scenic Waterways Act, or the enforcement of water permit conditions pertaining to the Scenic Waterways Act; or

(e) Use of wells in the Off-Project Area outside the Irrigation Season.

(4) OAR 690-009 also governs the Department's control of well use that affects surface water supplies. 690-009 applies statewide, but 690-009-0030 authorizes the Oregon Water Resources Commission to adopt local rules governing control of well use when such use has the potential to cause substantial interference with surface water. OAR 690-025-0010 is a local rule adopted pursuant to this authority and to existing statutes governing the control of groundwater.

(5) As a local rule, OAR 690-025-0010 both works in conjunction with and supersedes some parts of OAR 690-009. OAR 690-009 provides a two-step process for control of well use that affects surface water supplies. First, the Department must determine that well use has the potential for substantial interference with a surface water source. OAR 690-009-0040 provides the process for making this determination. OAR 690-025-0010 does not modify this step. Second, if the well is greater than 500 feet from a surface water source, the Department must determine that control of the well would provide relief to the surface water supply in an effective and timely manner. OAR 690-025-0010 supersedes this step with respect to the control of well use in the Off-Project Area during the Irrigation Season by providing a detailed process for evaluating whether control of a well in the Off-Project Area will provide relief to the surface water supply in an effective and timely manner. Specifically, 690-025-0010 supersedes 690-009-0050(2). The following sections provide the process for making the effective and timely determination.

(6) The Department shall control the use of wells greater than one mile from a surface water source only through a critical ground water area determination in accordance with ORS 537.730 through 537.740.

(7) Notwithstanding section (5), the Department shall control the use of a well in the Off-Project Area that is no more than 500 feet from a Gaining Reach in a manner consistent with OAR 690-009.

(8) The Department shall control the use of a well in the Off-Project Area that is greater than 500 feet and less than or equal to one mile from a Gaining Reach if and only if control is allowed by both sections (9) through (12) and by section (13). Sections (9) through (12) describe criteria for control that are based on the distance from a well to the nearest Gaining Reach. Section (13) requires the Department to calculate the relief to the stream from control of the well use. Section (13) also provides a rate of relief to the stream that must be met or exceeded prior to control of the well use.

(9) The Department shall control the use of a well that is greater than 500 feet and less than one-quarter mile from a Gaining Reach in favor of senior surface water rights, provided that control is allowed pursuant to section (13).

(10) The Department shall control the use of a well that is between one-quarter mile and one mile of a Gaining Reach in favor of senior surface water rights as described in this section, provided that control is allowed pursuant to section (13):

(a) The Department shall control wells between one-quarter mile and one-half mile of a Gaining Reach, provided:

(A) A valid call is made by a senior surface water right holder; and

(B) The rate of the shortfall of water validly called is equal to or greater than 5% of the amount of the senior water right call or the Call Threshold (as applicable); and

(C) The first valid call based on a specific senior water right or Call Threshold (as applicable) is made on or before August 31. If the first valid call based on a specific senior water right or Call Threshold (as applicable) is made after August 31, the Department shall not control the use of a well that is between one-quarter mile and one-half mile of a Gaining Reach during that Irrigation Season.

For example, if a senior user makes a valid call on July 15th based on a water right or Call Threshold, as applicable, of 100 cfs, and the Watermaster determines the flow (measured at the appropriate location) is 93 cfs, then the shortfall is 7 cfs. This equates to a 7% shortfall, which under this provision has the result that wells between one-quarter mile and one-half mile of a Gaining Reach shall be controlled to satisfy the call. (In this scenario wells less than one-quarter mile from a Gaining Reach would also be controlled, pursuant to sections (7) and (9)).

(b) The Department shall control the use of a well that is greater than one-half mile and up to and including one mile of a Gaining Reach, provided:

(A) A valid call is made by a senior surface water right holder; and

(B) The rate of the shortfall of water validly called is greater than 10% of the amount of the senior water right call or the Call Threshold (as applicable); and

(C) The first valid call based on a specific senior water right or Call Threshold (as applicable) is made on or before July 31. If the first valid call based on a specific senior water right or Call Threshold (as applicable) is made after July 31, the Department shall not control the use of a well that is between one-half mile and one mile of a Gaining Reach during that Irrigation Season. For example, if a senior user makes a valid call on July 15th based on a water right or Call Threshold, as applicable, of 100 cfs, and the Watermaster determines the flow (measured at the appropriate location) is 87 cfs, then the shortfall is 13 cfs. This equates to a 13% shortfall, which under this provision has the result that wells between one-half mile and one mile of a Gaining Reach shall be controlled to satisfy the call. (In this scenario wells less than one-half mile from a Gaining Reach would also be controlled, pursuant to sections (7), (9), and (10)(a)).

(c) Notwithstanding sections (10)(a) and (10)(b), if a valid call is made by a senior surface water right holder, and the Department determines that the rate of the shortfall of water validly called has been greater than 5% of the amount of the senior water right call or the Call Threshold (as applicable) for more than thirty-one days within a contiguous forty-five day period, then the Department shall control the use of a well that is between one-quarter mile and one mile of a Gaining Reach.

(11) Notwithstanding section (10), if a valid call is made to a Call Threshold after the 25th day of a month, the Department may not control the use of a well that is between one-quarter mile and one mile of a Gaining Reach for the remainder of the month, unless the Department determines that the rate of the shortfall of water validly called is greater than 10% of the amount of the Call Threshold.

(12) For the purposes of section (10):

(a) Wells located between one-quarter and one-half mile of a Gaining Reach that are continuously cased and continuously sealed to a minimum depth of 500 feet below land surface will be regulated as if they are located between one-half mile and one mile of a Gaining Reach; and

(b) Wells located greater than one-half mile from a Gaining Reach that are continuously cased and continuously sealed to a minimum depth of 500 feet below land surface will be regulated as if they are located greater than one mile from a Gaining Reach, and will not be subject to regulation in the absence of a critical ground-water determination.

(13) If one or more of the criteria for control of a well in sections (9) through (12) are met, then prior to controlling the use of any well in the Off-Project Area that is greater than 500 feet and less than or equal to one mile from a Gaining Reach, the Department shall calculate (using an analytical test) the relief to a stream from control of a given well based on a calculated 30-day pumping cycle followed by a 90-day idle period. The calculation shall be based on the best available information, including historical pumping rates for a well (measured or estimated), and employ analytical or numerical methods. The Department shall control the use of the well if and only if the relief to the stream at the conclusion of the 90-day idle period is equal to or greater than 0.10 cubic feet per second. Relief to a stream is calculated as the streamflow reduction after the 30-day calculated pumping period of a well minus the

remaining streamflow reduction after the 90-day idle period that followed. For example, if calculated use of a well reduces streamflow by 0.40 cfs after 30 days, and the streamflow reduction after the 90-day idle period that followed was 0.15 cfs, then the relief to the stream would be 0.25 cfs (0.40 minus 0.15 cfs) and the well would be subject to control under sections (9) through (12). The Department shall periodically update the stream relief calculations for individual wells based on the best available information.

(14) Notwithstanding the requirements of sections (6) through (13), following a valid call made by a senior surface water right holder:

(a) The Department shall control a well located within one mile of a spring or stream if use of the well would result in depletion of the flow of a Gaining Reach at a rate greater than 25 percent of the rate of appropriation within 30 days of pumping.

(b) The Department shall control wells located within a one-mile radius of a particular spring if the combined use of these wells would result in depletion of the spring flow rate in an amount that is greater than 20 percent within 30 days of pumping.

(c) The Department shall make the determinations described in subsections (14)(a) and (14)(b) based on the best available information, which could include employing at least one of the methods set forth in OAR 690-009-0040(4)(d). Prior to making such a determination, the Department shall notify the water right holder(s) subject to the call and the party or parties making the call, and provide them with an opportunity to submit additional information to the Department.

(15) For the purposes of OAR 690-025-0010, distances from individual wells to springs, streams, or Gaining Reaches, as applicable, will initially be determined based on the location of individual wells as shown in Exhibit F to the Settlement Agreement, relative to the location of the spring or the nearest edge of the water visible in the National Agricultural Inventory Program (NAIP) imagery for July 15–August 1, 2012, subject to the provisions regarding such distances in subsections (a) through (e), below. If a well subject to 690-025-0010 is not shown in Exhibit F to the Settlement Agreement, the Department will determine the location of the well based on the best available information. The Department shall correct any errors in well location based on the best available information. For the purposes of measuring distances from individual wells to springs, streams, or Gaining Reaches, as applicable, resulting from the changes described in subsections (a) through (e), the Department will use the most current year of NAIP imagery.

(a) If a replacement or additional well under an existing registration, permit, or certificate is located at a distance greater than one mile from a surface water source, the well may not be regulated without a critical groundwater area determination.

(b) If a riparian restoration action results in movement of the nearest edge of a surface water body to a well to an extent that would change how a well is regulated based on the distance measurement criteria in sections (6) through (14), then for the purposes of sections (6) through (14), the distance prior to the restoration action will continue to apply for that well.

(c) A replacement or additional well under an existing registration, permit, or certificate shall be evaluated for the purposes of sections (6) through (14) based on the distance criterion applicable to the original well; except that for the purpose of the stream relief calculation described in section (13), the replacement or additional well's measured distance, according to the applicable criterion, shall be used.

(d) The Department may determine, based on the best available information, whether a natural change in stream location has caused a material change in the distance of a well to a Gaining Reach or stream. If the Department determines that a material change has occurred, then for the purposes of sections (6) through (14), the new distance shall apply. If the Department determines that there is a material change, the Department shall notify affected persons.

(e) The Department may modify the location of a Gaining Reach for the purposes of OAR 690-025-0010 based on the best available information. The Department shall notify affected persons

of a proposed modification and of the Department's decision on the proposed modification.

(16) If the Settlement Agreement terminates, groundwater regulation in the Off-Project Area will be in accordance with OAR 690-009.

Stat. Auth.: ORS 537.505 - 537.795, 540.045

Stats. Implemented: ORS 537.505 - 537.795, 540.045

Hist.: WRD 1-2015, f. & cert. ef. 3-16-15

## DIVISION 28

### SURFACE WATER REGISTRATIONS AND THE ADJUDICATION PROCESS

#### 690-028-0005

##### Purpose

These rules provide for the filing of registration statements for pre-1909 uses of water in areas not yet adjudicated, and federal and Indian reserved rights. They explain the process by which the Director will make determinations on surface water registrations, federal reserved water rights, and spring registrations. These rules also explain the adjudication process for making final determinations of the water rights.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

#### 690-028-0010

##### Definitions

The following definitions apply in OAR 690, division 28:

(1) "Adjudication Process" is the process for making final determinations of the extent of vested water rights and federal reserved rights within a stream basin as set out in ORS Chapter 539.

(2) "Beneficial Uses" are as defined under OAR 690, division 11.

(3) "Claim" means a completed statement and proof of claim concerning a pre-1909 vested water right, or a federal reserved water right as described in ORS Chapter 539, or a right to the use of spring waters under ORS 537.599.

(4) "Claimant" means any person asserting ownership of rights to the use of surface or spring waters of the State of Oregon or on whose behalf ownership of rights to the use of water is asserted. The rights asserted shall be undetermined vested or spring rights not evidenced by a court decree issued pursuant to ORS Chapter 539, or be federal reserved rights. "Claimant" includes, but is not limited to, registrants, an individual Indian or Indian Tribe, or the federal government acting on its own behalf or on the behalf of an Indian Tribe or an individual Indian.

(5) "Department" means the Oregon Water Resources Department.

(6) "Director" means the Water Resources Director.

(7) "Documentation" includes but is not limited to:

(a) Statements of persons having knowledge of historical use of water;

(b) A true copy of the original land patent taking the land in question from the public domain;

(c) A true copy of the original government land office survey map;

(d) A document that substantiates the time the project was initiated or constructed;

(e) Contracts, agreements or stipulations between water users that define rotation agreements, uses along a common ditch, or other conditions to reduce conflicts among users;

(f) A true copy of Congressional Legislation, Presidential Order, Indian Treaty, or Court Order setting aside lands as a federal reservation; or

(g) Other relevant documents or information tending to establish the water right.

(8) "Federal Reserved Water Right" means the right for a quantity of water necessary to satisfy the primary purpose or pur-

poses of lands set aside by the United States government as a federal reservation, or a right derived from such rights. The reservation shall be documented in an original Congressional Act, Presidential Order, Indian Treaty, or Court Order.

(9) "Final Order of Registration" means the final order which contains the Director's findings of fact and determines the rights to the use of water for a particular registration. This order is valid from the time it is entered into the records of the Department until an order of determination is submitted to the Circuit Court.

(10) "Inchoate Right" means a right to the use of water that began prior to February 24, 1909, or as part of a federal reserved right that has passed into non-federal ownership, or as part of an Indian reserved right for practicably irrigable acreage that has passed into non-Indian ownership. The right must be put to full beneficial use and perfected with reasonable diligence.

(11) "Indian" means any federally recognized tribe of Indians or any enrolled member of such tribe.

(12) "Instream" means within the stream channel, lake bed or place where water naturally flows or occurs. An instream water right does not require a diversion or any other means of physical control over the water.

(13) "Instream Flow Requirement" means the amount of water required for aquatic life, fish life, wildlife, fish and wildlife habitat, or other federal reserved water right for which there is no diversion from a stream.

(14) "Order of Determination" means the final summary document submitted to the Circuit Court which contains the Director's findings of fact and establishes all of the vested and reserved rights to the waters within the general stream basin being adjudicated.

(15) "Party" includes all claimants and all holders of permitted, certificated, or decreed water rights on a stream subject to the adjudication.

(16) "Person" means any individual, partnership, corporation, association, governmental subdivision, private organization of any character, the State of Oregon or any political subdivision thereof, the United States, an Indian Tribe, or any state or federal agency.

(17) "Practicably Irrigable Acreage" means lands that were set aside as part of an Indian treaty or which derived from Indian treaty rights for the purpose of developing agricultural benefits. The lands shall be capable of being identified as agricultural lands. Agricultural lands in general are lands which with water applied without waste in amounts common to current reasonable farming practices, can produce specific crops suited to the local climate. The land must be capable of sustaining production for a reasonable number of years to offset the initial investment of farm improvements. The land shall have been part of an Indian reservation, continuously under Indian ownership and need not be irrigated now.

(18) "Proposed Order of Registration" means a proposed order containing the Director's findings of fact and determines the right to the use of waters for a particular registration. If the registrant does not request a hearing on this order it becomes a final order of registration.

(19) "Registrant" means any person who has filed a registration statement under ORS 539.240 or 537.800, or any person or owner on whose behalf a registration statement is filed.

(20) "Registration Statement" means a completed form in writing making claim to an undetermined vested right to appropriate surface water under ORS 539.010, or to a federal reserved right under 539.230 and 539.240, or a right to the use of spring waters under 537.800.

(21) "Statement and Proof of Claim" means a completed form in writing, under oath to be submitted at the time of the taking of testimony pursuant to ORS 539.070.

(22) "Testimony" means oral or written statements under oath provided to support the previously filed registration statement or statement and proof of claim.

(23) "Undetermined Vested Right" means any right to the use of waters of the State of Oregon initiated prior to February 24, 1909, under state common law or statute, or a federal reserved right which is not evidenced by any decree issued pursuant to ORS Chapter 539.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

### Surface Water Registration Process

#### 690-028-0015

##### Notice of Need to Register Claims

In addition to publishing notice as required by ORS 539.230(2), the Director shall provide notice of the need to register all claims to undetermined vested water rights and federal reserved rights by:

(1) Holding public meetings within the county/counties in which the stream or river system to be adjudicated is located.

(2) Publishing announcements in applicable trade or organization newsletters.

(3) Submitting public service announcements on local radio stations.

(4) Submitting of notice for posting in appropriate post offices.

(5) Informing the following:

(a) State watermasters;

(b) County extension agents;

(c) Soil and water conservation districts;

(d) County livestock association;

(e) County wheat league;

(f) County historical society;

(g) County dairymen's association;

(h) Affected Indian tribes and government agencies;

(i) County courts and county commissioners; and

(j) Certified water right examiners.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

#### 690-028-0020

##### Previously Adjudicated Streams

(1) In an area where a general stream adjudication has been completed only claimants for federal reserved rights, or persons claiming a right to the use of spring waters which originally stayed all on one property, or persons who were not or whose predecessors were not served notice of the original adjudication may file a registration statement of claim under these rules.

(2) A registration statement for a federal reserved right in an area where a general stream adjudication has been completed shall be indorsed with the date of receipt. The registration shall not be affirmed until the status of the filing has been determined with respect to the original and any supplemental decrees.

(3) A person having an undetermined vested water right in an area where a general stream adjudication has been completed may file a petition for a supplemental adjudication with the court where the original decree was entered if the person documents the owner of the land was not given required notice at the time of initiation of the original proceeding.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

### Filings to Divert Water for a Beneficial Use or for Storage in a Reservoir

#### 690-028-0025

##### General Instructions for Registration Statements and Statements of Claim

For purposes of filing registration statements and statements and proofs of claim in an adjudication:

(1) Each registration statement or statement and proof of claim shall be neatly printed in ink or typewritten on a form or in a format approved by the Department. The registration statement shall be verified as accurate by the registrant and notarized.

(2) One registration statement or statement and proof of claim may include multiple uses with one common date of priority for

parcels of contiguous land. Separate statements shall be registered for non-contiguous properties or different priority dates.

(3) Each item on the form shall be completed. If the answer to a question is not available a statement to that effect shall be made for each such entry.

(4) The required map shall be prepared by a certified water right examiner. The certified water right examiner shall confirm the map by an on-site inspection. Maps submitted become a part of the registration. The survey and map standards shall be the same as OAR 690-011 and 690-014-0170. In addition the map shall include:

- (a) The date the survey was performed;
- (b) The point of beginning and the referenced land survey corner of the deed, if applicable;
- (c) The dimensions and the capacity of any existing diversion systems; and
- (d) The number of acres irrigated in each quarter-quarter shall be shown to the nearest tenth of an acre.

(5) Any person or agency claiming a federal or Indian reserved water right shall also identify the reservation upon which the claimed rights are made. They shall state the primary purpose or purposes of the reservation, the date of the reservation, and attach copies of the reservation documents. The Director may request additional documentation of Indian allotments and chain of title to the time the lands may have passed out of Indian ownership, if appropriate.

(6) Forms prepared by the Department for filing registration statements shall be provided upon request. Forms shall be available at all state watermaster offices. The completed statement shall be filed with the required map, fees and supporting documentation, in the office of the Department in Salem, Oregon.

(7) Requests for exceptions to the mapping standards or for modification of the application form shall be requested in advance of filing. The request may be approved at the discretion of the Director.

(8) Pursuant to ORS 539.040(3)(a) and 539.240(10), the Director may authorize waivers of the requirements of these rules, so long as substantially the same information required by ORS 539.240(2) is provided. Requests for waivers shall be submitted to the Director in writing no less than 30 days prior to filing of a registration statement or statement and proof of claim. The Director may approve a waiver only upon a finding that the waiver does not diminish the Department's ability to evaluate the registration statement or statement and proof of claim. The Director's decision as to whether to grant or deny a waiver shall be made in a timely manner, shall be in writing and shall become a part of the record of the adjudication.

Stat. Auth.: ORS 539.005(2)

Stats. Implemented: ORS 539.040 & 539.240

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90; WRD 1-1997, f. & cert. ef. 2-26-97

#### 690-028-0026

##### Filings for Practicably Irrigable Acreage

(1) Any Indian or Indian tribe claiming a right for practicably irrigable acreage shall, in addition to OAR 690-028-0025, establish that the land for which the right is claimed is arable. The claimant must show that it is technically and economically possible to develop an irrigation system to serve the land. Factors that shall be considered include but are not limited to:

- (a) Source and availability of water;
- (b) Soils type and classification;
- (c) Slope of the land;
- (d) Elevation above sea level;
- (e) Growing season (degree days);
- (f) Natural precipitation;
- (g) Crop types that could be grown;
- (h) Description of the proposed irrigation system; and
- (i) Estimated costs of developing the irrigation system.

(2) A claimant for practicably irrigable acreage shall identify and map all acres that are or are proposed to be irrigated. The

claimant shall show existing points of diversion or storage reservoirs, as appropriate.

(3) A claimant shall document through a chain of title statement that the lands have never had more than five consecutive years of non-Indian ownership since the date of the reservation.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

#### 690-028-0027

##### Filings for Federal Reserved Instream Water Rights

(1) Any Indian tribe or federal agency claiming an instream federal reserved right shall provide the information in OAR 690-028-0025(3) and (5) for each stream reach for which a right is being claimed. A separate registration form shall be filed for each stream reach in which an instream reserved right is being claimed. Each stream reach or lake shall be identified on a Department basin map. The upstream and downstream locations of the reach shall be identified according to the public lands survey system. The purpose or purposes of the instream flow shall be given. If applicable, the species of fish or wildlife to be supported must be identified. Flows requested shall be specified by month in cubic feet per second, elevation of lake surface, or other measurable units as appropriate.

(2) A claimant shall provide supporting documentation of the methods used to estimate water quantities needed to satisfy the purpose or purposes of the reservation. Accepted methodologies for determining habitat needs include, but are not limited to:

(a) Instream Flow Incremental Methodology habitat suitability curves published in a series of technical reports by the U.S. Fish and Wildlife Service;

(b) The Oregon Method developed by the Oregon State Game Commission (Thompson, K.E., 1972, determining streamflows for fish life, pp. 31–50, in *Proceedings of the Instream Flow Requirement Workshops*, Pacific N.W. River Basins Commission, Portland, OR);

(c) Forest Service Method developed by the Pacific Northwest Region USDA Forest Service, (Swank, G.W. and Phillips, R.W. 1976, Instream Flow Methodology for the Forest Service in the Pacific Northwest Region, pp. 334–343, in *Proceedings of Symposium and Special Conference on Instream Flow Needs*, Orsborn, J.F. and O.H. Allman, eds. Vol. II, American Fisheries Society, Bethesda, MD); and

(d) Environmental Basin Investigation Reports conducted by the Oregon State Game Commission between the mid-1960s and the mid-1970s.

(3) The claimant may propose for the Department's consideration:

(a) A means and location for measuring the instream water right;

(b) A strategy and responsibility for monitoring flows for the instream right; and

(c) Any provisions needed for managing the water right to protect the reserved claim.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

#### 690-028-0028

##### Fees and Late Registration or Claims

(1) Minimum fees required by ORS 539.081 shall be paid at the time a registration or claim is submitted. Persons filing after December 31, 1992, shall pay one and one-half times the fees required for a timely filing.

(2) A person filing for practicably irrigable acreage or for other federal reserved rights may request additional time to provide support materials. The request for additional time shall state when interim data will be available and when the final claim is to be made. The Director may approve a time extension based on the progress of the general stream adjudication in question. The final claim shall detail the exact acreages or quantities of water for which the claim is being made. All fees shall be paid at the time the exact quantity of water is requested. Persons are encouraged to file early on practicably irrigable acreage and instream water rights so

the Department can aid in determining how to obtain additional supporting documentation.

(3) Fees for instream water rights shall be based on the month of the year having the highest quantity of water requested for the stream reach.

(4) Fees shall not apply to any federally recognized Indian tribe, or to the United States acting as trustee for such a tribe, claiming an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted instream use to satisfy tribal hunting, fishing, or gathering rights.

(5) After December 31, 1992, a petition filed for late registration shall include a sworn statement detailing the good cause for failing to file the registration on time. The petition shall include a brief summary of the claim to be filed. The Director shall decide each case on its own merits.

(6) For purposes of ORS 539.240(4), good cause for not filing a registration statement by December 31, 1992, includes, but is not limited to that:

(a) Recent acquisition of lands made filing by the deadline impracticable; or

(b) Other circumstances made filing on time impossible.

(7) To rebut the presumption that a person has abandoned a claim because of a late filing a person must:

(a) Show there has been a continuous use of water from before February 24, 1909;

(b) State the registration is for a future use of a federal reserved right; or

(c) Claim an exemption based on economic hardship as allowed under OAR 690-017-0800.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

### 690-028-0029

#### Review of Registration Statements and Orders of Registration

(1) When a registration statement is received in acceptable form by the Department, the Department shall indorse on the registration the date it was received. The statement shall be filed and an acknowledgement letter sent to the registrant. A copy of the claim shall be sent to the watermaster.

(2) Notice of each registration shall be published in the Department's public notice of applications. Notice may also be published in a newspaper within the general area of the claim.

(3) The Department shall review each registration to identify new or conflicting uses of water and those persons that may be impacted by enforcement of the claim. If two or more persons are impacted by the registration, then an informational public hearing may be scheduled to determine the extent of the problem. Additional information may be requested of the registrant. Persons may meet at their own discretion to stipulate agreements for the Director to review. A field inspection may be made of any registration.

(4) The Director shall prepare a proposed order of registration for each registration. If the registration is affirmed or modified the Director shall identify:

(a) The name and mailing address of the claimant;

(b) The claimed beneficial use of the water and the amount allowed;

(c) The stream from which the water is diverted or in which the instream right is reserved;

(d) The tentative priority date of the claimed use of water;

(e) The period of the year during which the claimed use of water is allowed;

(f) Location of the claim within the township and range, by quarter-quarter section, Donated Land Claim, or Government Lot;

(g) The location of the diversion point by reference to an established public land survey corner;

(h) The location of the place of use, and if for irrigation, the area irrigated in each quarter-quarter section; and

(i) Any conditions or stipulation that have been added to the registration, such as flow monitoring requirements.

(5) If the registration is rejected the Director shall state the basis for the rejection.

(6) Upon completion of the review, the Director shall mail a copy of the proposed order of registration to the registrant. The registrant may petition for a hearing within 20 days under ORS 183.415 to 183.470. If no hearing is requested the proposed order of registration becomes a final order of registration. The final order of registration shall be entered into the records of the Department and mailed to the registrant and the watermaster.

(7) A registrant may modify a claim prior to the final order of registration being entered. All modifications are subject to review under this rule, and no refunds of fees shall be awarded based on any modification.

(8) Upon entry of the Director's final order of registration the registrant is prima facie entitled to appropriate the water to the extent and in the manner disclosed in the recorded registration statement and final order of registration.

(9) No registration statement recorded under this chapter or affirmed or modified by a final order of registration under OAR 690-028-0029 shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate surface or spring water under a recorded registration statement is subject to a determination under ORS 539.010 to 539.240, and is not final or conclusive until so determined.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

### 690-028-0040

#### Standards to Evaluate Claims

(1) Each claim or registration statement for existing beneficial uses shall be compared to all information submitted for consistency regarding settlement of the area and general development of projects. The burden of proof to establish a claim by a preponderance of relevant evidence rests on the claimant.

(2) Lands identified as practicably irrigable acreage shall be evaluated based on the physical characteristics as they compare to lands commonly identified with growing a particular crop. The Department may consult with federal or state agricultural agencies, or any other person with appropriate expertise to verify factors for determining arable lands.

(3) For any river basin or subbasin the Director may propose rates and duties of water to be allowed per acre of irrigated lands and of practicably irrigable acreage. The Director may schedule a public hearing to accept information and testimony about the appropriateness of those limitations.

(4) The Director may propose rates and duties for watering stock from streams, for lands that are naturally flooded, or for other beneficial uses as appropriate. The Director may schedule a public hearing to accept information and testimony about the appropriateness of those limitations.

(5) Instream flow requirements shall be based on hydrological estimates or gaging data that can be obtained for the particular stream reach. The Department shall prepare an estimate of natural flows that would be available in the stream reach. The water availability estimate shall account for current usage of the water resource. The Director may require additional documentation of instream flow requirements if the claim is greater than the estimated average natural flow or level for the stream reach. If the physical conditions of a waterway have changed since the reservation lands were established then the Department may consult with federal or state fisheries agencies, or any other person with appropriate expertise to aid in determining natural flows necessary to maintain the primary purpose or purposes of the reservation.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0045**

**Reasonable Diligence**

(1) The complete beneficial use of all the water for a proposed purpose does not have to be made in its entirety prior to February 24, 1909, to claim a vested water right. All persons, including persons who acquire formerly reserved land shall be allowed to develop their claim with reasonable diligence.

(2) Reasonable diligence in the construction of the system of works necessary to fully accomplish appropriation of the water does not require unusual or extraordinary effort. Reasonable diligence is that which is usual and ordinary with persons performing similar projects. The water user must demonstrate a genuine intent to complete the appropriation in a timely manner. The question is one of fact, to be determined from the circumstances on case-by-case basis.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0055**

**Amendments to Registration Orders**

(1) When any amendment in ownership, point of diversion, place of use, or type of use is necessary within a right defined by a registration statement then the amendment shall be submitted in writing to the Department. The request shall include documentation that the water has been used over the past five years in accordance with the terms and conditions of the registration. The request shall state the reasons for the change.

(2) When any change in point of diversion, place of use, or type of use is received by the Department a notice of the change shall be published in the Department's public notice of applications.

(3) The Director shall review each amendment to determine that the change will not result in injury to other water rights holders, or a net loss of water available to downstream users or an expansion of the right under the original registration.

(4) The Director may accept the amendment to the registration statement and include it as part of the records of the Department. No amendment to a registration shall be construed as final or conclusive until it is determined under an adjudication proceeding under ORS 539.010 to 539.240.

(5) When lands are sold a registration is to be assigned in whole or in part from an Indian reserved right of practicably irrigable acreage to a non-Indian, the assignment must be filed with the Department. The Director shall cancel the initial order for the federal reserved right and issue an order confirming an inchoate right for the undeveloped uses. The inchoate right shall be put to full beneficial use within five years of issuance of the order unless an extension is granted by the Director. The Director shall also issue a remaining right order for the part of the federal reserved right not assigned.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0060**

**Beginning the Adjudication Process**

(1) Any water right holder may petition the Director to begin a general stream adjudication. The petitioner may be a registrant or the holder of a right to appropriate water from the subject stream system. The petition may be signed by more than one registrant or permitted or certificated water right owner.

(2) At the start of a general stream adjudication the Director shall send in person, or by registered or certified return receipt mail to each claimant and all holders of permitted or certificated water rights on the stream the notice required by ORS 539.030. The Director shall include a form for any party to file who wishes to be included in the adjudication solely to contest the claims of others.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0065**

**Time for Filing Claims and Documentation**

The notice of taking of testimony issued by the Director pursuant to ORS 539.040 shall state:

(1) All claimants shall file a statement and proof of claim, including persons who have already filed a registration statement. The claim shall contain the same information as required under OAR 690-028-0025, 690-028-0026, or 690-028-0027 as appropriate. If the claimant agreed with data collected and mapped by the Department or if the map submitted with the original registration is still valid, then an additional map is not required. For purposes of the Klamath Basin adjudication a person may submit an updated map prepared by a certified water right examiner, or a registered engineer or surveyor.

(2) Any person who does not file a registration statement within the time required by ORS 539.240 may not file a statement and proof of claim to an undetermined vested right to water.

(3) Director shall set a time certain for filing statements and proofs of claim and notify all registrants by certified return receipt mail when and how the statement and proof of claim shall be filed. The Director may set separate times for accepting claims for consumptive uses, practicably irrigable acreage and instream reserved rights.

(4) Claimants may be required to provide information in addition to that on their registration statement, including, but not limited to additional information that was not available at time of registration such as:

(a) New maps showing changes in use; or

(b) Documentation of chain of title to the current owner.

(5) For purposes of the Klamath Basin adjudication fees required by ORS 539.081 shall be paid at the time a claim is filed. Fees shall be processed as provided in OAR 690-028-0028.

(6) Each claim shall be evaluated on the same basis as surface water registrations as stated in OAR 690-028-0040.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0070**

**Summary of Claims**

The Director shall identify for all claimants in a summary document:

(1) The name and mailing address of the claimant.

(2) The claimed beneficial use of the water and the amount allowed.

(3) The stream from which the water is diverted or in which the instream right is reserved.

(4) The priority date of the claimed use of water.

(5) The period of the year during which the claimed use of water is allowed.

(6) Location of the claim within the township and range, by quarter-quarter section, Donation Lane Claim, or Government Lot.

(7) The location of the diversion point by reference to an established public land survey corner.

(8) The location of the place of use, if for irrigation, the area irrigated in each quarter-quarter section.

(9) Any conditions or stipulations that have been added to the claim.

Stat. Auth.: ORS 539

Stats. Implemented:

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

**690-028-0075**

**Filing Contests of Claims of Others**

(1) After all claims, documentation and supporting materials have been filed the Director shall schedule an open inspection period. All parties shall receive notice as provided in ORS 539.090 of the times to inspect the claims and evidence. All contests of claims shall be filed in accordance with the requirements of OAR 690, division 30 within 15 days of the closing date for public inspection. The Director may extend this time by 20 days if requested by a party to the proceeding showing good reason for the extension.

(2) A person who does not claim a pre-1909 vested right but has interest in a stream by holding a valid water right period or certificate may enter the proceeding solely for contesting claims made by others pursuant to OAR 690-030.

(3) Contestants shall state with reasonable certainty the ground for the contest. Reasons for contest include, but are not limited to:

- (a) Claiming a wrong priority date;
- (b) Claiming a wrong quantity of water;
- (c) Claiming a wrong area of use;
- (d) Claiming a use started after February 24, 1909, except on federal reserved rights or spring registration;
- (e) Claiming a use that had been forfeited by five or more consecutive years of non-use less than fifteen years previously; and
- (f) Claiming a use that has been intentionally abandoned.

(4) The contestant shall serve notice on contestee by certified mail with return receipt and shall submit proof of service to the Director. The Director shall set a date for hearing if the parties involved cannot settle the contest by stipulation as provided in OAR 690-030.

Stat. Auth.: ORS 539  
Stats. Implemented:  
Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

#### **690-028-0080**

##### **Responsibilities to Circuit Court**

(1) The Director shall prepare findings of fact and an order of determination of all of the claims within the general stream basin. The original documentation and certified copies of the observations, measurements, and maps shall be submitted to the Circuit Court with the findings of fact and order of determination.

(2) The Director shall send a notice of the Court hearing date to all parties as provided in ORS 539.130.

(3) The Director shall participate in the hearings on the findings and in hearings on exceptions to the findings, if any. If the findings are remanded to the Department, the Director shall collect such additional documentation as is necessary to establish the facts or to resolve conflicts. The Director may amend the findings and shall submit the amended findings and order of determination back to the Court for reconsideration.

(4) After the court has affirmed or modified the findings of fact and order of determination of the Director and the Director has received a certified copy of the decree, the watermasters shall enforce the rights as evidenced in the decree.

(5) The Director shall allow a six-month period to pass to allow for appeal of the Court's decision. When all appeals have been resolved the Director shall issue a certificate to each water right holder as provided in the decree or as modified in the appeals process.

Stat. Auth.: ORS 539  
Stats. Implemented:  
Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

### **DIVISION 29**

#### **WARM SPRINGS WATER RIGHTS NEGOTIATIONS**

##### **690-029-0005**

###### **Purpose**

This rule establishes the methods by which the Water Resources Department (Department) provides opportunity for public notice and comment regarding negotiations between the Director of the Water Resources Department (Director) and the representatives for the Warm Springs Tribes and federal government, as trustee for the tribes, held to establish the scope and attributes of the water right claimed by the tribes, pursuant to ORS 539.300, et seq.

Stat. Auth.: ORS 539  
Stats. Implemented:  
Hist.: WRD 23-1988, f. & cert. ef. 12-14-88

##### **690-029-0010**

###### **Notice**

(1) Persons interested in these negotiations shall request, in writing, to have their names placed on a mailing list the Department shall prepare for the purpose of carrying out this rule.

(2) The Director shall mail notice by first class mail to all parties on the mailing list 20 days prior to any negotiating session. The notice shall specify the time, place and subject matter of the negotiating session, a summary of prior negotiating sessions, if any, and explain the manner, described in OAR 690-028-0070, by which the Director may receive public input on the negotiations. At the conclusion of the negotiations, persons on the mailing list shall receive a summary of the agreement reached, and an explanation of how the agreement is to be submitted to a court, pursuant to ORS 539.320.

Stat. Auth.: ORS 539  
Stats. Implemented:  
Hist.: WRD 23-1988, f. & cert. ef. 12-14-88

##### **690-029-0015**

###### **Public Comment**

(1) Persons who wish the Director to consider concerns they may have with regard to the negotiations may submit an explanation, factual background evidence and a proposed position or solution and other relevant material to the Director. Such comments shall be in writing and submitted to the Director at least 10 days prior to the negotiating session to be fully considered.

(2) Members of the public are entitled to attend the negotiating sessions, but are not entitled to present testimony at those sessions.

Stat. Auth.: ORS 539  
Stats. Implemented:  
Hist.: WRD 23-1988, f. & cert. ef. 12-14-88

### **DIVISION 30**

#### **CONTESTS IN THE ADJUDICATION OF WATER RIGHTS**

##### **690-030-0005**

###### **Rules of the Water Resources Director**

The following rules, OAR 690-030-0005 to 690-030-0090, have been adopted by the Water Resources Director to govern the practice and procedure relative to contests before him. A substantial compliance with the rules is required.

Stat. Auth.: ORS 536 & 543  
Stats. Implemented:  
Hist.: WRD 3, f. & ef. 2-18-77

##### **690-030-0010**

###### **Statement of Contest, When to Be Filed**

Every statement of contest must be filed within the period prescribed by statute; and no statement of contest will be received or considered which is not filed with the Water Resources Director within the time permitted by law.

Stat. Auth.: ORS 536 & 543  
Stats. Implemented:  
Hist.: WRD 3, f. & ef. 2-18-77

##### **690-030-0015**

###### **Contents and Form of the Statement of Contest**

(1) The statement of contest shall be as nearly as may be in the following form:

Before the Water Resources Director of the State of Oregon.

\_\_\_\_\_ County.

In the Matter of the Determination of the Relative Rights to the Waters of \_\_\_\_\_, a Tributary of \_\_\_\_\_ A. B. (or A. B. and C. D.),

\_\_\_\_\_ Contestants, Statement of Contest.

v.s.

\_\_\_\_\_ E.F., Contestee.

To \_\_\_\_\_, Water Resources Director and to the above-named contestant \_\_\_\_\_ hereby contests the right claimed by the above-named contestee \_\_\_\_\_, to the waters of \_\_\_\_\_, a tributary of \_\_\_\_\_, in the above entitled proceedings, and for statement of contest, said contestant \_\_\_\_\_ alleges:

1. That said contestant \_\_\_\_\_ claims an interest in the waters of the said stream, as follows, to wit: (Here set forth the nature of the rights claimed by the contestant or contestants briefly and within reasonable certainty).

2. That said contestee \_\_\_\_\_ are claiming (Here set forth the nature of the claims made by the contestees with reasonable certainty).

3. That said contestant \_\_\_\_\_ contests the rights claimed by the contestee for the following reasons: (Here set forth, with reasonable certainty, the ground of the proposed contest).

Wherefore, contestant demands that a hearing of said contest be had, and testimony taken therein, and that it be determined by the Water Resources Director in the above-entitled proceeding that (Here set forth the extent of the rights to which contestant claims said contestee is entitled, and the extent to which the same should be determined).

Service of notice of hearing, or answers or other papers may be made upon (Contestant, agent or attorney, as the case may be), whose post office address is: \_\_\_\_\_.

(2) This statement of contest must be verified in substantially the following form:

STATE OF OREGON, )

) ss.

County of \_\_\_\_\_ )

I, A. B., being first duly sworn, depose and say: That I am (a or the) \_\_\_\_\_, contestant (or agent or attorney for contestant or contestants, as the case may be) in the above-entitled statement of contest; that I have read the foregoing statement of contest, and that the same is true, as I verily believe.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_

\_\_\_\_\_

Notary Public of Oregon.

(3) In accordance with the provisions of law permitting the filing of contests, no statement of contest will be received or filed which does not state with reasonable certainty the grounds of the proposed contest, or which is not verified by a contestant, his agent, or attorney.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0020**

##### **Service to Be Made on Contestee**

Upon filing of a statement of contest, service thereof shall be made by the contestant upon the contestee, by registered mail, as provided by the statute.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0025**

##### **Answers**

Answers on the part of contestees are not required by the statute; and the contest is deemed at issue upon the filing of the statement of contest, the statement and proof of contestee being deemed as put in issue by the contest to the extent as shown by the allegations in the statement of contest; contestees may, however, set up by way of answer, any new matter; service of such answer shall be made on the opposing party, his agent or attorney, conformably to the rules of practice in suits in equity in the Circuit Court, and no answer will be received or filed until such service is made.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0030**

##### **Answers, When to Be Served**

Answers shall be filed at least five days prior to the day set for hearing of contest, with due proof of service on the opposing party indorsed thereon.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0035**

##### **Amendment of Statement of Contest**

The statement of contest may be amended, prior to the date fixed for the hearing, by the filing of such amended statement of contest with the Water Resources Director at least 10 days prior to the date fixed for the hearing of said contest.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0040**

##### **Service of Amended Statement**

Service of such amended statement of contest shall be made on the contestee, his agent or attorney, prior to the filing of the same with the Water Resources Director and no amendment of the statement of contest will be received or filed which does not bear an endorsement thereon of service upon said contestee, his agent, or attorney.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

#### **690-030-0045**

##### **Hearing of Contest**

(1) Upon the day named in the notice of hearing, as the same shall be fixed by the Water Resources Director therein, said contest will be heard by said Water Resources Director, or his authorized assistant.

(2) Department officers and employees may appear and participate on behalf of the Water Resources Director in contests before the Water Resources Director or his authorized assistant. The Department representative shall only represent the Water Resources Director in the manner described in OAR 137-003-0545(3).

Stat. Auth.: ORS 536 & 543

Stats. Implemented: ORS 183.413 - 183.470 & 539

Hist.: WRD 3, f. & ef. 2-18-77; WRD 5-2001, f. & cert. ef. 6-6-01

**690-030-0050**

**Procedure on Hearing**

Upon the hearing of any contest, except when the parties have agreed otherwise, such contest will be considered as putting the claimant or claimants so contested upon proof, and such contestee or contestees shall first produce witnesses for examination, and the testimony adduced shall be in support of the allegations or statements in such contestees' statements and proofs of claims as have been contested. The contestant shall then produce his witnesses. Such variations in this order of procedure, however, as may be deemed necessary for the convenience of witnesses or other considerations, may be made by the Water Resources Director or his authorized assistant.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0055**

**Arguments and Briefs**

Upon application therefor, made to the Water Resources Director upon the close of the testimony in any contest, the parties thereto may submit briefs, in support of their respective contentions within a time to be fixed by the Water Resources Director and the Water Resources Director will, upon application, fix a time and place for such oral argument as the parties may desire to make prior to the entry of the final order of determination.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0060**

**Postponement of Proceedings**

The taking of testimony in any contest shall not be postponed, except for good cause shown, and upon notice to all parties, and after opportunity has been given said parties to be heard; and adjournments shall be taken only upon notice to all parties, at the time of the taking of testimony, and then only to a time and place certain, and upon good cause being shown; excepting however, that adjournments upon the conclusion of one day's testimony, to the next day, and over Sundays and legal holidays shall be taken as a matter of course; and except as otherwise ordered by the Water Resources Director, when the taking of testimony shall have been commenced, the same shall be continued from day to day, commencing at the hour of 9 a.m. until 12 p.m., and from 1:30 p.m. until 5 p.m. of each day.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0065**

**Subpoenas**

Subpoenas to require the attendance of witnesses will be issued by the Water Resources Director in any contest, upon the application to him therefore, to either party; which subpoenas shall be served in the same manner as subpoenas issued out of the Circuit Courts of the state; and said witnesses shall receive fees as in civil cases, but the parties to contests, to whom subpoenas are issued, will be required to attend to the service thereof, and to pay the fees therefore to said witnesses, and said subpoenas will not be served, or the fees due said witnesses paid, by or through the Water Resources Director. As to service of subpoenas, see ORS 539.110.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0070**

**Notice of Hearing**

The notice of the time and place fixed for the hearing of a contest is served upon the party or parties contested by registered mail; and said notice will be prepared and delivered for service by the Water Resources Director; and the Water Resources Director shall cause notice of the said time and place of hearing to be served upon each of the parties contestant, or his agent or attorney, if he appear by agent or attorney, by depositing such copy of such notice in the

post office as registered mail, properly addressed to said contestant, or his agent or attorney, as the case may be; and the said contestant shall be required, in his statement of contest, to set forth his post office address, or the post office address of his agent or attorney upon whom he desires service of such notice to be made; also the address, or place, where each of such contestees may be found for service, so far as he can ascertain.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0075**

**Joining Parties Contestant and Contestee**

Any number of persons, firms, or corporations, jointly interested in the subjects enumerated in the notice of contest may appear as parties contestant therein; and any number of persons, corporations, or associations claiming interest adversely to the rights claimed by said contestants, and who shall have submitted proof of their claim to the Water Resources Director, may be joined as parties contestee, in the statement of contest.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0080**

**Practice in Suits in Equity Governs Taking of Testimony**

The practice in the Circuit Courts of the state governing the taking of testimony in suits in equity, in so far as applicable, shall govern the taking of testimony on the hearing of said contest; but the evidence shall be confined to the subjects enumerated in the statement of contest; and the Water Resources Director or his authorized assistant may, in their discretion, reject testimony and evidence offered, which is not so confined.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

**690-030-0085**

**Amendment or Alteration of Claim**

(1) Except as provided in Sections (2) through (12) of this rule, the Water Resources Director (Director) may not permit any alteration or amendment of the original claim after the period for inspection has commenced; but any new matter that the claimant may wish to set forth must be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Director prior to the close of the period for public inspection.

(2) A claimant may add to the claim additional point(s) of diversion or change the location of the point(s) of diversion as described in the claim, as long as the following conditions are satisfied:

(a) The claimant must file the request for the proposed additional or relocated point(s) of diversion with the Director before diverting water from the additional or relocated point(s) of diversion. The request must include the number of the claim for which the requested additional or relocated point(s) of diversion is being made. The request must be set forth in a verified affidavit. For each point of diversion included in the requested amended claim, whether additional, relocated, or previously claimed, the request must also identify for each type of use claimed, the rate of diversion and the number of acres served within each quarter/quarter section.

(b) At the time the claimant files a request as specified in Section (2)(a), the claimant must provide a map prepared by a Certified Water Rights Examiner showing the original point(s) of diversion and all additional or relocated point(s) of diversion proposed in the request. If the request proposes more than one point of diversion serving the claim, the map must identify which lands or uses are served by each diversion point. The map must conform to the standards set forth in OAR 690-014-0170.

(c) The additional or relocated point(s) of diversion may not be upstream from the point(s) of diversion described in the claim.

(d) Use of water from the additional or relocated point(s) diversion must not increase the total claimed rate, duty, acreage benefited, or season of use.

(e) The amount of water to be diverted from all points of diversion included in the requested amended claim is limited to no more than the rate and duty of water that was previously claimed and is lawfully available for use by the claimant at the original point of diversion.

(f) The additional or relocated point(s) of diversion may not be located on a different source than the source identified in the original claim. For the purposes of 690-030-0085, a downstream source does not constitute a different source, even where the source has a different name at the downstream location, if the source of the original diversion is on the mainstem of or a tributary to the source for the additional or relocated downstream point(s) of diversion.

(3) If the claimant's request meets the requirements in Section (2) and the claimant has prepaid the estimated cost of the notice in accordance with Section (4), the Director must give notice of the proposed additional or relocated point(s) of diversion as follows:

(a) By regular mail to all those identified in the Department's files whose points of diversion lie between the point of diversion as claimed and the proposed additional or relocated points of diversion furthest downstream from the point of diversion as claimed, specifically:

- (A) Claimants and contestants to any claim;
- (B) Holders of existing water use permits;
- (C) Holders of water rights under certificates; and
- (D) Holders of water rights established by court decree; and

(b) By publication in a newspaper having general circulation in the area in which the claim is located, not less than once each week for three consecutive weeks; and

(c) By publication in the Director's weekly notice.

(d) Each notice must include the date on which claims of injury under Section (5) must be filed with the Director.

(4) If the claimant's request meets the requirements under Section 2, the Director must provide the claimant an estimate of the actual cost of providing the notice described in Section (3). The actual cost is the total cost of publishing the notice in the newspaper, plus the paper, postage and staff time involved to prepare and mail the notice. The claimant must prepay the estimated cost before the Director provides notice of the proposed point of diversion changes. If the actual cost exceeds the estimated cost, the claimant must pay the difference by a date certain provided by the Director, or the Director or the Director's delegated Adjudicator shall not consider the amendment in the Findings of Fact and Order of Determination.

(5) Any adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree claiming injury as a result of the proposed additional or relocated point(s) of diversion must file a written claim of injury with the Director on or before the date specified in the Notice. An existing contestant to the claimant's claim need not file a claim of injury, but must comply with the provisions of Section (8). For purposes of OAR 690-030-0085, an adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree filing a claim of injury pursuant to this Section is referred to as the "petitioner." All claims of injury must be received in the office of the Director by the date specified. For claims of injury under this Section, the postmarked date will not be deemed the filing date. An injury claim must:

(a) Provide a description of the claimed injury; and

(b) Identify the number of the adjudication claim, permit, or certificate, or identify the water right established by court decree that would allegedly be injured.

(6) If, based upon the information provided in Section (5), the Director determines that the petitioner has demonstrated a personal interest that could reasonably be affected by the outcome of the

proceeding, the Director must name the petitioner to be a limited party to the contested case hearing for the sole purpose of contesting the proposed additional or relocated point(s) of diversion.

(7) If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, at the time of a ruling under Section (6) allowing participation, the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings, for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(8) If an existing contestant to the claimant's claim wishes to contest the proposed additional or relocated point(s) of diversion, the existing contestant must notify the Director in writing on or before the date specified in the Notice. The existing contestant's notification must be received in the office of the Director by the date specified. If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, upon timely receipt of the existing contestant's notification the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(9) The Director's ruling under Section (6) must be by written order and served promptly on the petitioner, all parties to the contested case, and the Office of Administrative Hearings or assigned administrative law judge. If participation in the contested case hearing is allowed, the agency must provide the participant with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

(10) A petitioner or party to the contested case adversely affected by the Director's ruling under Section (6) may file a notice of intent to oppose the ruling within 30 days of the date of the order. Such notice shall be filed with the Director and the Office of Administrative Hearings or assigned administrative law judge, and must be served upon the petitioner and all parties to the contested case hearing. Any opposition to the Director's ruling under Section (6) must be heard by the Office of Administrative Hearings as part of the contested case hearing, and the administrative law judge's findings must be incorporated into the administrative law judge's proposed order in the contested case. If the record has closed in the contested case hearing, the Director must request the administrative law judge to re-open the record for the purpose of hearing opposition to the Director's ruling.

(11) The administrative law judge's findings on the issue of the proposed additional or relocated point(s) of diversion must be incorporated into the administrative law judge's proposed order in the contested case.

(12) For purposes of the Klamath Basin Adjudication, the last day to request additional or relocated points of diversion pursuant to Sections (2) through (11) is December 1, 2006. For other general stream adjudications, any request by a claimant for additional or relocated point(s) of diversion pursuant to Sections (2) through (11) must be made on or before the date specified by the Director as adopted by rule.

(13) Sections (2) through (12) create the process to amend claims under ORS Chapter 539 following the commencement of the period for inspection and have no effect on the permissibility of a change in point of diversion under other provisions of law.

Stat. Auth.: ORS 536 & 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 1-2006, f. & cert. ef. 1-30-06

## 690-030-0090

### Withdrawing Original Testimony

From and after the beginning of the inspection period, the original testimony shall remain in the custody of the Water Resources Director or his authorized assistant, and shall not be withdrawn therefrom.

Stat. Auth.: ORS 536 & 543  
 Stats. Implemented:  
 Hist.: WRD 3, f. & ef. 2-18-77

### DIVISION 33

#### ADDITIONAL PUBLIC INTEREST STANDARDS FOR NEW APPROPRIATIONS

##### 690-033-0000

###### Purpose

(1) The purpose of OAR 690, division 33 is to establish definitions, additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

(2) These rules apply to the following types of applications for permits:

(a) To appropriate surface water;  
 (b) To appropriate hydraulically connected groundwater with potential for substantial interference as listed in OAR 690, division 009, section 40;

(c) To appropriate water for the purpose of groundwater recharge; and

(d) To store water or construct a reservoir.

(3) These definitions, standards and procedures are in addition to, not in lieu of, existing rules and laws.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94; WRD 4-1995, f. & cert. ef. 6-16-95, Renumbered from 690-033-0100; WRD 6-1996, f. & cert. ef. 7-11-96

##### 690-033-0010

###### Definitions for the purposes of Chapter 690, Division 33

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Department.

(4) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(5) "Interagency Review Team" means a team comprised of staff from the Departments of Agriculture, Environmental Quality, Fish and Wildlife, Water Resources and other state natural resource agencies as appropriate.

(6) "Fish and Wildlife Program" means the **Columbia River Basin Fish and Wildlife Program** adopted by the Northwest Power Planning Council in February 1994; document number 94-2.

(7) "Human Consumption" means the use of water for purposes of drinking, cooking and sanitation.

(8) "Threatened or Endangered" means fish species listed by Oregon Department of Fish and Wildlife (ODFW) under OAR 635-100-0100 to 635-100-0130; or listed under the federal Endangered Species Act.

(9) "Sensitive" means fish species classified as either critical, vulnerable, or peripheral on the ODFW sensitive species list established under OAR 635-100-0040.

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

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94; WRD 4-1995, f. & cert. ef. 6-16-95, Renumbered from 690-033-0110; WRD 6-1996, f. & cert. ef. 7-11-96

###### Upper Columbia Rules (Above Bonneville Dam)

##### 690-033-0115

###### Geographic Scope

(1) These rules, OAR 690-033-0115 through 690-033-0140, apply to applications filed after July 17, 1992, upstream from Bonneville Dam in the Columbia-Snake Basin in the areas listed below for which no permit has been granted, or on which no contested case has been ordered:

(a) Hood Basin;

(b) Deschutes Basin;

(c) John Day Basin;

(d) Umatilla Basin;

(e) Grande Ronde Basin;

(f) Powder Basin;

(g) Malheur Basin;

(h) Owyhee Basin;

(i) Mainstem Columbia River above Bonneville Dam; and

(j) Mainstem Snake River.

(2) These rules, OAR 690-033-0115 through 690-033-0140, will be reviewed and may be revised as additional information becomes available concerning the recovery of threatened or endangered fish stocks in the Columbia/Snake Basin.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.170

Hist.: WRD 4-1995, f. & cert. ef. 6-16-95; WRD 6-1996, f. & cert. ef. 7-11-96

##### 690-033-0120

###### Determination of Consistency With the Fish and Wildlife Program

(1) To determine whether a proposed use is consistent with the Fish and Wildlife Program, the Department shall consult with the Northwest Power and Conservation Council, ODFW, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Indian tribes and appropriate local governments. If the Department determines that a proposed use of water is inconsistent with the Fish and Wildlife Program and cannot be conditioned to achieve consistency, the application shall be presumed to impair or be detrimental to the public interest.

(2) The applicant shall provide information to show compliance with the following standards which will form the basis for permit conditions:

(a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140;

(b) The proposed use does not involve hydraulically connected groundwater with potential for substantial interference as listed in OAR 690-009 (division 9 of this Chapter) during the time period of April 15 to September 30, except that which is artificially recharged or as otherwise provided in OAR 690-033-0140;

(c) The proposed use complies with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;

(d) The proposed use complies with existing state and federal water quality standards; and

(e) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Based on the consultation in section (1) of this rule, the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(4) If a proposed use is not consistent with the Fish and Wildlife Program, the applicant may propose mitigation compatible with sections (2) and (3) of this rule. The Director shall determine if the proposed use with mitigation is consistent with the Fish and Wildlife Program. For purposes of mitigation, the ODFW rules regarding Implementation of Department Habitat Mitigation Recommendations, OAR 635-415-0025 adopted April 21, 2000 and effective May 1, 2000 shall be followed.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94; WRD 5-2014, f. & cert. ef. 11-25-14

##### 690-033-0130

###### Flow Management

If the flow management objectives cannot be achieved because of differing requirements between fish species in the management area, the Department shall consult with the affected fish and wildlife agencies and the appropriate Indian tribes to assist in resolving the flow management conflicts.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94

**690-033-0140**

**Exemptions**

Notwithstanding OAR 690-033-0120(2)(a) and (b), the Department may approve a water right permit for:

- (1) Domestic water use;
- (2) Projects that provide net benefits for native resident and native anadromous fish recovery. For example, these projects may include, but are not limited to, livestock watering away from water courses which results in improved riparian areas;
- (3) Emergency use necessary for public health and safety;
- (4) Existing water uses covered under House Bill 2153 (Oregon Legislature 1993); or
- (5) Multipurpose storage projects or other projects with measurable public benefits.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94; WRD 6-1996, f. & cert. ef. 7-11-96

**Lower Columbia Rules (Below Bonneville Dam)**

**690-033-0210**

**Geographic Scope**

(1) These rules, OAR 690-033-0210 through 690-033-0230, apply to applications filed after April 8, 1994, in the areas listed below for which no permit has been granted, or on which no contested case has been ordered as of the effective date of these rules:

(a) Portions of the North Coast Basin which drain into the Columbia River; and

(b) Clackamas Subbasin of the Willamette Basin.

(2) These rules, OAR 690-033-0210 through 690-033-0230, apply to applications filed after June 3, 1994, in the areas listed below for which no permit has been granted, or on which no contested case has been ordered as of the effective date of these rules:

(a) Sandy Basin;

(b) Willamette Basin, excluding the Clackamas Subbasin; and

(c) Mainstem Columbia River below Bonneville Dam.

(3) These rules, OAR 690-033-0210 through 690-033-0230, shall be reviewed and may be revised when:

(a) A final National Marine Fisheries Service Recovery Plan for Snake River salmon is promulgated, or the Northwest Power Planning Council Fish and Wildlife Program is revised after the effective date of these rules providing additional information concerning the recovery of threatened or endangered fish stocks in the Lower Columbia Basin; or

(b) 300 cfs of additional water rights have been issued from the Mainstem Columbia River below Bonneville Dam since June 3, 1994; or

(c) An additional fish species has been listed as threatened or endangered in the area listed in OAR 690-033-0210(1) or (2).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 4-1995, f. & cert. ef. 6-16-95; WRD 6-1996, f. & cert. ef. 7-11-96

**690-033-0220**

**Evaluation Criteria**

(1) If the Department determines that a proposed use of water is detrimental to the protection or recovery of a threatened or endangered species and cannot be conditioned or mitigated to avoid the detriment, the applications shall be presumed to impair or be detrimental to the public interest. The Department shall review recovery plans, the Fish and Wildlife Program, and regional restoration programs applicable to threatened or endangered species in evaluating whether a proposed use is detrimental to the protection or recovery of a threatened or endangered species.

(2) The proposed use shall comply with the following standards which will form the basis for permit conditions:

(a) The proposed use complies with screen design, installation, operation (including provisions for maintenance) specifications and passage requirements as listed in ORS 498.248 through 498.268 and 509.600 through 509.630;

(b) The proposed use complies with existing state and federal water quality standards; and

(c) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Any application for more than one cubic foot per second not subject to the requirements of OAR 690, division 86, shall contain a description of the measures to be taken to assure reasonably efficient water use.

(4) Based on the determination under section (1) of this rule, the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(5) If a proposed use is determined to be detrimental to the protection or recovery of a threatened or endangered species, the applicant may propose mitigation compatible with sections (2), (3) and (4) of this rule. The Director shall determine if the proposed use with mitigation offsets the detriment. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635, division 415, Section 030 adopted November 13, 1991, shall be followed.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Stats. Implemented:

Hist.: WRD 4-1995, f. & cert. ef. 6-16-95

**690-033-0230**

**Flow Management**

The Department shall consult with the affected fish and wildlife agencies and the appropriate Indian tribes to assist in resolving the flow management conflicts, if the flow management objectives for protection of threatened and endangered fish species cannot be achieved because of differing requirements between fish species in the management area.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Stats. Implemented:

Hist.: WRD 4-1995, f. & cert. ef. 6-16-95

**Statewide Rules**

**690-033-0310**

**Geographic Scope**

(1) These rules, OAR 690-033-0310 through 690-033-0340, apply to:

(a) Applications filed after June 3, 1994, for which no permit has been granted, or on which no contested case has been ordered as of the effective date of these rules; and

(b) Requests for limited licenses except those:

(A) for less than 120 days; or

(B) issued in conjunction with an enforcement order of the Department.

(2) These rules, OAR 690-033-0310 through 690-033-0340, apply to the following geographic areas:

(a) Waterways of the state where sensitive fish species are located;

(b) Waterways of the state, outside the Columbia Basin (OAR 690-033-0115(1) and 690-033-0210(1) and (2)), where threatened or endangered fish species are located.

(3) For purposes of making a preliminary determination of the presence of sensitive, threatened or endangered species, the Department may rely primarily on information provided by ODFW, but may also rely on information provided by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate Indian tribes.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 6-1996, f. & cert. ef. 7-11-96

**690-033-0320**

**Rule Review**

These rules, OAR 690-033-0310 through 690-033-0340, shall be reviewed and may be revised when:

(1) Additional species are listed as sensitive, threatened, or endangered; or

(2) Basin programs are revised by the Department.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 6-1996, f. & cert. ef. 7-11-96

**690-033-0330**

**Review of Proposed Water Use**

(1) If the Department concludes during the initial review that a proposed water use will occur in an area that may affect the habitat of sensitive, threatened or endangered fish species, the Department shall:

(a) Notify the applicant that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied.

(b) Notify the interagency review team that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species.

(2) The interagency review team shall be convened, as needed, to review applications which the Department determines may affect sensitive, threatened or endangered fish species. Participating agencies may also request interagency review of specific applications. When reviewing applications, the interagency review team shall apply the following standards:

(a) In areas of the state outside of the Columbia Basin where threatened and endangered fish species are located, no loss of essential habitat as defined in OAR 635-415-0005(4).

(b) In all areas of the state where sensitive species are located, no net loss of essential habitat as defined in OAR 635-415-0005(4).

(3) The interagency review team, whenever possible, will recommend conditions to the application necessary to achieve the standards listed in 690-033-0330(2)(a) and (b).

(4) If the interagency review team cannot identify conditions that meet the standards listed in 690-033-0330(2)(a) and (b), the interagency review team shall recommend denial of the application unless it concludes that the proposed use would not harm the species.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 6-1996, f. & cert. ef. 7-11-96

**690-033-0340**

**Public Interest Review Presumption**

(1) Nothing in these rules delegates the authority of the Department to make final decisions on permit applications.

(2) Consistent with 690-033-0340(1), the Department shall follow the recommendations of the interagency review team in determining whether the presumption is established pursuant to OAR 690-310-0110 or 690-310-0130. In completing the remainder of the public interest determination under 690-310-0120 or 690-310-0140, the Department shall follow the recommendations of the interagency review team unless it finds:

(a) The proposed use provides significant basin wide public benefits beyond the benefits to the applicant;

(b) There are no other reasonable and prudent alternatives to the proposed use;

(c) The benefits of the proposed use to the public under ORS 537.170(8) outweigh the benefits of the alternatives that would conserve the species; and

(d) All reasonable mitigation measures necessary to minimize the effect of the proposed use on the species have been implemented; or

(e) A specific basin program has been amended significantly to protect sensitive, threatened or endangered fish species and allows the proposed use.

(3) The Department shall include its findings and conclusions in the proposed final order.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.140 - 537.190

Hist.: WRD 6-1996, f. & cert. ef. 7-11-96

**DIVISION 40**

**ADMINISTRATION OF THE CAREY ACT**

**690-040-0000**

**Reclamation of Lands under Provisions of the Carey Act**

(1) Rules pertaining to the reclamation of lands accepted by the State of Oregon under the provisions of the Carey Act were promulgated by the State Reclamation Commission, now under the administration of the Water Resources Director, March 8, 1944, and filed with the Secretary of State July 31, 1947, as Administrative Order 2RC 1.

(2) Pursuant to ORS 183.360(3), these rules are not published in the Oregon Administrative Rules Compilation. Copies may be obtained from the Secretary of State as provided by 183.060.

Stat. Auth.:

Stats. Implemented:

Hist.: 2RD 1, f. 7-31-47

**DIVISION 51**

**APPROPRIATION AND USE OF WATER FOR  
HYDROELECTRIC POWER AND STANDARDS  
FOR HYDROELECTRIC APPLICATIONS**

**690-051-0000**

**Purpose**

These rules establish definitions, information requirements, filing procedures, hearing requirements, fees, and standards for hydroelectric development. The Water Resources Commission shall use these rules to process applications for permits to appropriate water for hydroelectric projects, Preliminary Permits and hydroelectric licenses under ORS Chapters 537 and 543.

Stat. Auth.: ORS 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

**690-051-0010**

**Definitions**

Terms used in ORS 537.170, 543.015, 543.017, 543.220, 543.225, 543.255, 543.257 and in these rules are given the following meanings:

(1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the use of water for hydroelectric purposes, or the construction of all or part of proposed or existing project facilities would be located.

(2) "Anadromous Salmon and Steelhead" means an individual fish, or a run, stock, or population of any species of salmon or any steelhead trout that:

(a) Is naturally or hatchery spawned in freshwater;

(b) Spends a portion of its life in the ocean; and

(c) Returns to fresh water to spawn.

(3) "Approved Project" means a Permit application filed under ORS Chapter 537 or a Preliminary Permit or License application filed under ORS Chapter 543 which has been approved by the Water Resources Commission.

(4) "Available Water" means water not subject to statutory limits on use and which would not interfere with amounts needed for existing water permits, rights and minimum perennial stream-flows. Available water shall be based on stream gage records or, if stream gage records are not available, flow estimates using generally accepted methods of hydrologic analysis.

(5) "Commission" means Water Resources Commission.

(6) "Compensate" means to recover, replace, or substitute for loss from unavoidable or unforeseen adverse impacts of an action.

(7) "Cumulative Impact" means the collective effect resulting from incremental actions of past, present, or pending projects, developments or facilities.

(8) "Director" means the Water Resources Director or staff authorized by the Director to administer these rules.

(9) "Enhance" means to improve natural resource conditions over pre-project levels.

(10) "Existing Facility" means any permanent physical structure for the division, conveyance, control, or use of water, whether or not in current use.

(11) "Governmental Entity" means any state agency and local government as defined in ORS 294.004, irrigation district formed under ORS Chapter 545 and a water control district formed under ORS Chapter 553.

(12) "Hydro Task Force" (HTF) representatives of the following state agencies, and other agencies as necessary, appointed by the Strategic Water Management Group pursuant to ORS 536.145 and chaired by the Water Resources Department:

- (a) Department of Agriculture;
  - (b) Water Resources Department;
  - (c) Department of Environmental Quality;
  - (d) Department of Energy;
  - (e) Department of Fish and Wildlife;
  - (f) Department of Forestry;
  - (g) Division of State Lands;
  - (h) Parks and Recreation Department;
  - (i) Department of Land Conservation and Development.
- (13) "Improve" means to enhance.

(14) "License" means a hydroelectric license issued to non-municipal applicants as provided in ORS 543.210–543.320.

(15) "Major Hydroelectric Project" means any hydroelectric project greater than 100 theoretical horsepower.

(16) "Minor Hydroelectric Project" means any hydroelectric project less than or equal to 100 theoretical horsepower.

(17) "Maximum Economic Development" means achievement of the greatest net practical economic gain to the people of the state.

(18) "Minimum Perennial Streamflow," also minimum streamflow, means an administrative rule established to support aquatic life or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur.

(19) "Mitigation" means taking action or measures that avoid, minimize, rectify, reduce or compensate for impact.

(20) "Modify" means to alter the appearance, character, structure, function or operation of an existing facility.

(21) "Net Loss" means that the magnitude, quality or type of natural resource lost, exceeds the magnitude, quality or type of natural resource provided by mitigation, restoration or enhancement.

(22) "Permit" means a Permit to appropriate water for hydroelectric development issued to municipal corporations as provided in ORS Chapter 537.

(23) "Preliminary Permit" means a Preliminary Permit issued to nonmunicipal hydroelectric applicants as provided in ORS 543.210–543.320.

(24) "Project" means any hydroelectric power project as defined in ORS 543.010.

(25) "Project Facilities" means all parts of the project necessary for or related to power generation. Project facilities shall include, dams, diversion structures, reservoirs, forebays, conveyance structures, penstocks, turbines, tailraces, navigation locks, fish ladders, fish screens, recreation facilities, tunnels, transmission lines, substations, buildings, structures and other such works necessary or related to the project.

(26) "Project Vicinity" means:

- (a) All lands and waters required for project facilities; and
- (b) All lands and waters which project construction or operation could reasonably be expected to affect.

(27) "Proposed Project" means a project for which an application has been received but not acted on by the Commission or Director.

(28) "Protected Area" means an area where the Northwest Power Planning Council believes hydroelectric development would have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity or their habitat as designated in the Columbia Basin Fish and Wildlife Program (1987); Northwest

Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying Protected Areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(29) "Public Facilities" means private and public lands and structures that provide for transportation, power, communication, water supply, waste treatment, drainage, flood control, recreation and community services to meet public needs for health, safety and welfare.

(30) "Public Utility" means a utility regulated by the Public Utility Commissioner, under ORS Chapter 757, that provides electric power to consumers.

(31) "Restoration" means to return the condition of a natural resource to its pre-project state.

(32) "River Basin" means:

- (a) A subbasin designated by the Commission; or
- (b) A major river drainage not otherwise divided by the Commission.

(33) "Significant" means having importance in terms of the context and intensity of an action and its result.

(34) "Study Plan" means a document prepared by or on the behalf of the applicant which provides detailed descriptions of proposed methods for evaluating project impacts and effectiveness of potential mitigation measures.

(35) "THP" means theoretical horsepower, computed by multiplying the flow in cubic feet per second by the amount of fall in feet and dividing the product by 8.8.

(36) "Wasteful, Uneconomic, Impracticable or Unreasonable" as used in ORS 537.170 and 543.225 shall have the following meanings:

- (a) A use of water in greater quantities or at greater rates than necessary to achieve proposed project purposes;
- (b) A use of water for which quantifiable public and private economic costs exceed quantifiable public and private economic benefits over the life of the project as demonstrated in the record;
- (c) A use of water which could not reasonably be developed with the available means or methods;
- (d) A use of water which would preclude present beneficial uses or other uses with a reasonable expectation of being developed during the proposed life of the project, which have a greater value to the public.

(37) "Water-Dependent Recreational Opportunity" means a recreational opportunity that can occur only on or in water, such as swimming, boating, water skiing, and fishing.

(38) "Water-Dependent Recreational Opportunity of Statewide Significance" means a recreation opportunity that, combined with natural qualities of the water resource involved, has exceptional value. Factors that may contribute to statewide significance include special designation, high demand, uniqueness, outstanding or unusual natural surroundings, irreplaceable qualities or relatively limited availability. Recreation opportunities readily available on other waters shall not be considered of statewide significance.

(39) "Wild Game Fish" means any fish, run, stock or population of fish belonging to a family of fish listed in ORS 496.009 and which is sustained through natural reproduction.

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

## 690-051-0020

### Projects to be Considered by the Commission

(1) The Commission or Director where designated by these rules or separate order, shall consider projects for which applications for Permits to appropriate water for hydroelectric purposes under ORS 537.140 and applications for Preliminary Permits or Licenses under 543.010 to 543.620 have been filed.

(2) Projects shall be further classified as minor and major projects. For the purpose of these rules, a minor project shall be any project proposing to develop 100 THP or less. All other shall be major projects.

(3) Except as provided by Section 27, Chapter 569, Oregon Laws (OL) 1985, these rules shall apply to any application for

which the hearing record was not closed prior to the effective date of these rules. Projects to which Chapter 569, Oregon Laws 1985 do not apply, shall be subject to the provisions of OAR 690, divisions 50 and 74.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0030

##### Restriction on Filing

(1) No application shall be accepted by the Commission or Water Resources Department for a project in any of the following designated resource areas:

- (a) National parks;
- (b) National monuments;
- (c) Wilderness areas established by federal law;
- (d) Bureau of Land Management areas of critical environmental concern established under federal law;
- (e) Wild and scenic rivers established by federal law;
- (f) Estuarine sanctuaries established under Public Law 92-583;
- (g) Federal research natural areas established under federal regulation;

- (h) State parks and waysides;
- (i) Scenic waterways designated under ORS Chapter 390;
- (j) State wildlife refuges; or
- (k) State dedicated natural heritage areas established under ORS Chapter 273.

(2) An application is exempt from the restrictions of section (1) of this rule, provided:

- (a) The application was filed prior to April 9, 1980;
- (b) The application was filed under ORS Chapter 537; and
- (c) The applicant has a valid lease from the agency managing the designated resource area.

Stat. Auth.: ORS 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

#### 690-051-0040

##### Preliminary Permit not Required

No License or Permit shall be issued within six months of either approving the Preliminary Permit or acceptance of the License or Permit application. A Preliminary Permit is unnecessary where the project is a minor project.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0050

##### Applications: Filing Procedure

(1) All applications to use water for hydroelectric purposes shall be filed with the Director at Salem, Oregon. Applications shall be typed so that the paragraphs and headings correspond with the information required. All applications shall be accompanied by the documents specified in OAR 690-051-0070, or 690-051-0100, and shall be dated and designated as "Exhibit A," "Exhibit B," etc.

(2) If the information required by these rules does not apply to the proposed project, it shall be noted on the application with a brief statement why the information does not apply.

(3) Information required to file an application is listed in the rules reference in section (1) of this rule. At any time, the Director may require additional information from the applicant.

(4) Applications filed before October 1, 1985, and on which no hearing has been held, shall meet all the filing requirements in these rules. Applicants shall be required to comply with these rules and will have 120 days from the date of notice to provide additional information. Failure to supply the required information may result in rejection of the application as incomplete. If more time is needed, a request must be made before the 120 days expires. Requests filed timely and showing good cause will be granted.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0060

##### Consultation

All applicants shall consult with appropriate public and private agencies. Consultation shall occur before an application for a License or Permit is filed. The first consultation may occur with the Hydro Task Force after the Preliminary Permit application has been accepted. Evidence of the consultation shall be filed with the License or Permit application. At a minimum, applicants shall consult with the affected local governments and the agencies under each heading listed below:

- (1) Fish and Wildlife Resources:
  - (a) Oregon Department of Fish and Wildlife (ODFW);
  - (b) U.S. Fish and Wildlife Service (USF&WS);
  - (c) National Marine Fisheries Service (NMFS);
  - (d) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian services; and
  - (e) Northwest Power Planning Council (NPPC), if the proposed project is within a Protected Area designated by the Columbia River Basin Fish and Wildlife Program (1987); Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying Protected Areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(2) Water Quality: Department of Environmental Quality (DEQ).

(3) Historic, Cultural and Archaeological Resources:

- (a) State Historic Preservation Officer (SHPO); and
- (b) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian Services.

(4) Forestlands:

- (a) U.S. Forest Service;
- (b) Bureau of Land Management; and
- (c) State Forestry Department.

(5) Wetlands:

- (a) Division of State Lands (DSL);
- (b) The Natural Heritage Advisory Council; and
- (c) Corps of Engineers.

(6) Scenic — Aesthetic Resources:

- (a) Planning department of each affected local government;
- (b) DEQ (re noise standards);
- (c) Federal managing agency, if public land; and
- (d) Oregon Parks and Recreation Department.

(7) Recreation Resources:

- (a) Oregon Parks and Recreation Department;
- (b) Federal managing agency, if public land; and
- (c) Planning department of each affected local government.

(8) Land Use and Access:

- (a) Planning department of each affected local government;
- (b) Appropriate state land management agencies;
- (c) Federal managing agency, if public land; and
- (d) Landowner(s), if private land.

(9) Threatened and Endangered Species:

- (a) ODFW;
- (b) USF&WS;
- (c) NMFS; and
- (d) Oregon Natural Heritage Data Base (The Natural Heritage Advisory Council).

(10) Natural Communities and Geological Features: Oregon Natural Heritage Data Base (The Natural Heritage Advisory Council).

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0070

##### Applications for Preliminary Permits: Contents and Scope of Evaluation

All applications for Preliminary Permits shall include information described in this rule. The applicant shall supply the information in sufficient detail to evaluate the potential for cumulative

impacts with other proposed, approved and existing projects in the river basin. Information shall also be sufficient to identify interests, issues and areas of concern that require detailed assessment in the application for a License for hydroelectric development. An application shall be deemed incomplete and shall not be accepted for filing if it lacks any of the following required information.

(1) The name and address of the applicant including every person, association of persons, domestic corporation or municipality that has any proprietary right or interest in the project. If the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or any such other appropriate legal authority, evidencing that the municipality is authorized under such laws to engage in the business of development, transmitting, or distributing power.

(2) A description of the location of the project, giving the county or counties within which located and stream or streams from which water is to be appropriated.

(3) The quantity of water to be appropriated.

(4) If a reservoir is to be used in connection with the project, the application shall state the quantity of water to be stored, the maximum surface area in acres, the name of the stream(s) on which the reservoir is to be located or the name of the stream(s) or aquifer from which the stored water is to be collected or both.

(5) The head to be utilized and the number of THP to be developed. The number of THP shall be determined by multiplying the quantity of water to be diverted in cubic feet per second by the vertical head in feet and dividing the product by 8.8.

(6) The approximate location of the point(s) of diversion and the quantity of water to be taken at each point.

(7) The approximate length of the proposed canal, pipeline or other conduit, the approximate location of the proposed power plant and the point where water will be returned to some natural stream.

(8) The approximate height of diversion or storage dams and the material from which they will be constructed.

(9) A legible map to be prepared on U.S. Geological Survey topographic quadrangle sheets showing the general location of the project including all dams, reservoirs, canals, pipelines, forebays, power plants, and streams, and the location of such data shall be given with respect to township and section lines. If on unsurveyed land, the location shall be with respect to projections of township and section lines.

(10) A statement describing the proposed use or market for the power to be developed.

(11) The name and mailing address of all property owners:

(a) Within 300 feet of the project boundary if the project is within an urban growth boundary; or

(b) Within 1,000 feet if the project is outside of an urban growth boundary giving also the amount of land under the adjacent property owners ownership in acres or hectares.

(12) The length of time for which a Preliminary Permit is desired. A Preliminary Permit may be issued for a period not exceeding two years. This period may be extended by order of the Director. An extension may not exceed one year.

(13) An exhibit, the application must contain a description of the proposed project, specifying and including, to the extent possible:

(a) The number, physical composition, dimensions, general configuration and, where applicable, age and condition, of any dams, spillways, penstocks, powerhouses, tailraces, or other structures, whether existing or proposed, that would be part of the project;

(b) The total estimated average annual energy production and installed capacity (provide only one energy and capacity value), the estimated number, rated capacity, and, where applicable, the age and condition, of any turbines and generator, whether existing or proposed, that would be part of the project works.

**NOTE:** The energy production figures submitted with the Preliminary Permit are recognized as estimates. The actual values will be established in the draft License application.

(c) Any other information demonstrating how the proposed project would develop, conserve, and utilize in the public interest the water resources of the state.

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0080

#### Application of Standards to Preliminary Permits

(1) Preliminary Permit applications shall be approved unless the Director finds the proposed project would not be in the public interest because of significant adverse impacts on natural resources or other uses of the water involved. The Commission shall act on all Preliminary Permits proposed in a designated Protected Area.

(2) Information in the application and hearing record will be used to assess the public interest and to form conditions to be included in the Commission or Director's order on the application. Approval of a Preliminary Permit application shall not convey the right to construct any project facilities. Issuance of a Preliminary Permit shall not constitute approval or assurance of approval for any subsequent application for hydroelectric license for the project. Failure to comply with conditions in the approval order may result in the cancellation of the Preliminary Permit.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0090

#### Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards

(1) Under ORS 543.300(7), the Commission may waive any or all procedural requirements but not substantive standards for a minor License or Permit. The term of a License and annual fees cannot be waived. The Commission's waiver authority is delegated to the Director.

(2) An application shall be filed for each minor License or Permit. Contents of the application shall be prescribed by the Director. No application shall be filed for a project in a designated resource area described in OAR 690-051-0030.

(3) A public hearing shall be held only if the Director, or Commission in the case where a protest has been referred to the Commission pursuant to paragraph (f)(E) of this section deems it in the public interest to do so. The hearing may be limited to specific issues. Upon acceptance of a minor hydroelectric application, the following public notice, technical review, filing of objection and public hearing process shall apply:

(a) Upon filing of a minor hydroelectric application, the Director shall notify the following groups and individuals of the information described in subsection (b) of this section:

(A) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(B) Property owners within 300 feet of the proposed powerhouse;

(C) Affected Indian tribes; and

(D) All persons on the Department's weekly mailing list.

(b) The notice shall include but is not limited to the following information:

(A) Application file number;

(B) Applicant name and address;

(C) Amount of proposed water use;

(D) Common name of water source;

(E) Location of the proposed point of diversion and point of power generation;

(F) Purpose for which the power would be used;

(G) Total amount of power to be developed.

(c) A 30-day comment period shall commence on the day the Department mails the notice. The notice shall state the date comments must be received by the Department;

(d) Following the comment period, the Department shall develop a technical report on the acceptability of the project considering the basin plan, scenic waterway flow requirements, potential conflict with existing water rights, and the resource protection standards in OAR 690-051-0160 through 690-051-0270.

The technical review shall include the action proposed to be taken on the minor hydroelectric application;

(e) The technical report shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. The report shall state the date by which objections must be received by the Director (60 days from the date of mailing);

(f) Comments or objections must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the technical report. Upon receiving an objection, the Director shall:

(A) Transmit the objection to the applicant and all objectors, and commentors;

(B) Base upon the objection, determine if the technical report was in error and, if so, issue a revised technical report or portion thereof. Any new technical report revisions shall be disseminated and reviewed as described above;

(C) If the objection is not considered valid by the Director, the objector shall be notified within 30 days;

(D) The objector shall be allowed 30 days from the date of mailing of their denial to submit a protest. The form and content of the protest along with the filing and service procedure shall be in accordance with the standards set forth in OAR 690-002-0030 through 690-002-0080;

(E) If a protest is timely filed, the Director shall refer the application, with accompanying objection and protest, to the Commission for review.

(4) Any minor project that would violate the standards in OAR 690-051-0190 through 690-051-0260 shall be proposed for rejection. The applicant shall be given the opportunity to request a contested case hearing. Notice of filing a request for a contested case hearing shall be distributed to interested parties, commentors and objectors.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0095

#### Applications for Major Projects: Scope of Evaluation and Application of Standards

This rule establishes the process the applicant, the Department and those participating in the process must follow and defines the stages of application review and processing as required by ORS 543.280(4). The fee for each stage must be paid at the beginning of each stage of project review. If an applicant submits an application in any stage other than stage one, the total fees due up to an including that stage will be due upon submittal. Municipal corporations and utility districts follow the consultation requirements described however, no Preliminary Permit is required.

(1) Stage One — 20 Percent of Fee: Preliminary Permit and Consultation:

(a) The Department shall receive the application together with the filing fee and date stamp the application which will thereafter serve as the priority date of the application (if the application is for an area withdrawn from hydroelectric development by the Commission the application and filing fee will be returned):

(A) The application shall be returned for correction or completion if defective. Additional information may be requested;

(B) Notice of the application shall be printed in the Department weekly notice.

(b) The Department shall distribute copies of the application to the Hydro Task Force (HTF). The Department shall set a meeting date with the applicant to appear before the HTF to give a presentation of the project;

(c) The applicant shall prepare a draft study plan for the project and distribute it to the appropriate agencies listed in OAR 690-051-0060 as applicable. For each of the resources that may be impacted, the written study plan should include the following major study elements and phases:

(A) Objectives;

(B) Resource background;

(C) Rationale or justification for proposed approach;

(D) Study area;

(E) Methodology;

(F) Sampling location and number, frequency and timing of sampling;

(G) Data treatment and analysis;

(H) Report preparation;

(I) Schedule; and

(J) Review of draft and final technical reports by resource agencies.

(d) The Department shall schedule a site visit and a public hearing for the purpose of providing information and receiving public questions and comment on the proposed project. Notice of the public hearing shall conform to OAR 690-051-0130;

(e) The Department shall establish a comment period during which the HTF, other affected agencies or the public shall review and comment on the draft study plan supplied by the applicant;

(f) The Director or Commission shall issue an order to modify, approve or reject the Preliminary Permit application based upon the standard set out at OAR 690-051-0080;

(g) The Preliminary Permit is denied or issued by the Director.

(2) Stage Two — 30 Percent of Fee: Study and Draft Application:

(a) The applicant shall modify the study plan based upon the requirements imposed by the Preliminary Permit and submit it to the agencies and the Director for approval. Notice of submittal shall appear in the Department weekly notice;

(b) An agency, tribe or the public may file a request with the Director for additional specific studies within 30 days of receipt of the final study plan;

(c) The applicant must file a response to a study request within 30 days of receiving notice from the Director of the request;

(d) The Commission shall resolve any dispute and inform all participants to the dispute accordingly;

(e) The applicant shall conduct the studies in coordination with state and federal agencies;

(f) The applicant shall prepare a draft License or Permit application which it submits to the state and federal agencies and Indian tribes and makes available for public review. Notice of the opportunity to review the draft application shall be posted in the Department's weekly newsletter;

(g) Comments on the studies and draft License or Permit application shall be submitted within a time certain to the Director who shall forward collated responses to the HTF and the applicant.

(3) Stage Three — 30 Percent of Fee: Application and Cumulative Impact Review and Determination:

(a) The applicant shall file the License or Permit application with the Water Resources Department. The Department shall distribute the application to the appropriate consultation agencies. The Department shall mail notice of its availability and of the filing to the local planning authority, affected property owners and public interest groups on record at the Water Resources Department as requesting such notices. The application shall be made available to the public by the developer and the Department;

(b) An agency, Indian tribe or member of the public who requests additional information shall notify the Director within 60 days after the application is so filed;

(c) The applicant shall file a response to additional information request(s) within 30 days of receiving notice from the Director of the request;

(d) The Commission shall either accept or reject the applicant's position on additional studies and notify the affected parties accordingly;

(e) Once the application issues are resolved, a "ready for final review" notice shall be sent to agencies and interested parties by the Director (comments must be submitted within 60 days of the final review notice);

(f) The Director shall prepare an order on the potential the proposed project may contribute to cumulative impacts with other existing, proposed or approved hydroelectric projects in the same river basin and distribute it to state and federal agencies, Indian tribes and other participants;

(g) If a determination is made that there is no potential for cumulative impacts the Director shall conduct a contested case hearing on the public interest issues of the application, i.e., on the merits of the application. A proposed order is issued by the Referee. If no exceptions are filed to the proposed order within 30 days, the proposed order becomes final and is signed by the Director;

(h) If the Director determines that there is potential for cumulative impacts with other existing or pending projects in the same river basin, the Director shall conduct a consolidated review. The review shall be in the form of a contested case hearing. A proposed order shall be issued by the Referee. If no exceptions are filed to the proposed order within 30 days, the order becomes final and is signed by the Director;

(i) If exceptions are filed to the final order, the Commission shall review/hear argument (written or oral, at its discretion) and make the final determination for the final order.

(4) Stage Four — 20 Percent of Fee: Final Plan Review and Inspection:

(a) The License or Permit shall be issued or denied with conditions that the Director or Commission, in cases where the final order is issued by the Commission, deems necessary;

(b) The applicant shall submit construction specifications to the Director:

(A) The Director shall distribute the plans and specification to appropriate agencies and collate issues to be addressed by the applicant;

(B) The plans shall be approved by the Director or modified by the applicant and approved or denied.

(c) The applicant shall submit a construction schedule to the Director and construction bond documentation;

(d) The Director shall issue a Notice to Proceed;

(e) The applicant shall notify the Director of the beginning of construction;

(f) The Director shall conduct a final inspection or final proof survey.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented:

Hist.: WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0100

#### Application for Major License or Permit: Contents, Scope of Evaluation

All applications for major Licenses or major Permits shall include the information described in this rule. The applicant shall supply the information in sufficient detail which also evaluates the potential for cumulative impacts with other proposed, approved and existing projects in the same river basin. An application shall be deemed incomplete and shall not be accepted for filing if it lacks any of the following information as it may apply to the project. Major projects which are of a size that an extraordinary financial burden is imposed by providing specific information required in this section may seek a waiver of the specific requirement from the Director by describing the specific nature of the hardship. The request for waiver shall be made at the time of application. The application shall contain:

(1) The name of the applicant and the name of the project. (Specify any previous FERC project number designation);

(2) The location of the proposed project, including — County; township or nearby town; Stream or other body of water.

(3) The exact name, business address, and telephone number of the applicant.

(4) Proof that the applicant is a citizen of the United States, association of citizens of the United States, domestic corporation or municipality. If the applicant is a corporation, it shall give the date and place of incorporation with the full name and official designation of each of the principal officers and of the directors of said corporation with their respective addresses. If the applicant is an association of citizens, each member shall make an affidavit of citizenship and the association shall submit its articles of association. If there are no articles of incorporation, the fact shall be stated over the signature of each member.

(5) Proof that the applicant complies with the statutory or regulatory requirements of the state with respect to the applicants right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the License (provide citation and brief identification of the nature of each requirement; if the applicant is a municipality, the applicant must submit copies of applicable state or local laws or municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of developing, transmitting, utilizing, or distributing power, and, the steps which the applicant has taken, or plans to take, to comply with each of the laws cited above).

(6) An **Exhibit A** which shall be a description of the project. If the project includes more than one dam with associated facilities, each dam and the associated component parts must be described together as a discrete development. The description for each development must contain:

(a) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, powerhouses, tailraces or other structures proposed to be included as part of the project;

(b) The normal maximum water surface area and normal maximum water surface elevation (mean sea level); gross storage capacity of any impoundments to be included as part of the project;

(c) The number, type and rated capacity of any proposed turbines or generators to be included as part of the project;

(d) The number, length, voltage and interconnections of any primary transmission lines proposed to be included as part of the project;

(e) The description of any additional mechanical, electrical, and transmission equipment appurtenant to the project; and

(f) A list of property owners within 300 feet of the project boundary if the project is within an urban growth boundary or within 1,000 feet if the project is outside of an urban growth boundary giving their name, address and the amount of land under their ownership in acres or hectares.

(7) An **Exhibit B** which shall be a statement of project operation and resource utilization. If the project includes more than one dam with associated facilities, the information must be provided separately for each discrete development. The exhibit must contain:

(a) A description of each alternative site considered in selecting the proposed site;

(b) A description of any alternative facility designs, processes, and operations that were considered;

(c) A statement as to whether operation of the power plant will be manual or automatic, an estimate of the annual plant factor, and a statement of how the project will be operated during adverse, mean, and high water years; and

(d) An estimate of the dependable and average annual energy production in kilowatt-hours (or mechanical equivalent), supported by the following data:

(A) The minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, with a specification of any adjustment made for evaporation, leakage, minimum flow releases (including duration of releases) or other reductions in available flow; a flow duration curve indicating the period of record and the gauging stations used in deriving the curve; and a specification of the critical streamflow used to determine the dependable capacity;

(B) An area-capacity curve showing the gross storage capacity and usable storage capacity of the impoundment, with a rule curve showing the proposed operation of the impoundment and how the usable storage capacity is to be utilized;

(C) The estimated hydraulic capacity of the powerplant in terms of flow and efficiency (cubic feet per second and one-half, full and best gate), and the corresponding generator output in kilowatts;

(D) A tailwater rating curve; and

(E) A curve showing powerplant capability versus head and specifying maximum, normal, and minimum heads.

(8) A statement of system and regional power needs and the manner in which the power generated at the project is to be utilized including the amount of power to be used onsite, if any, supported by the following data:

- (a) Load curves and tabular data, if appropriate;
- (b) Details of conservation and rate design programs and their historic and projected impacts on system loads; and
- (c) The amount of power to be sold and the identity of proposed purchaser(s).

(9) A statement of the applicant's plans for future development of the project or of any other existing or proposed water power project on the affected stream or other body of water, indicating the approximate location and estimated installed capacity of the proposed development.

(10) An **Exhibit C** which shall be a proposed construction schedule for the project. The information required may be supplemented with a bar chart. The construction schedule must contain:

- (a) The proposed commencement and completion dates of any new construction, modification, or repair of major project works;
- (b) The proposed commencement date of first commercial operation of each new major facility and generating unit; and
- (c) If any portion of the proposed project consists of previously constructed, Licensed or unlicensed water power structures or facilities, a chronology of original completion dates of those structures or facilities specifying dates (approximate dates must be identified as such) of:

- (A) Commencement and completion of construction or installation;
- (B) Commencement of first commercial operation; and
- (C) Any additions or modifications other than routine maintenance.

(11) An **Exhibit D** which shall be a statement of project costs and financing. The exhibit must contain:

- (a) A statement of estimated costs of any new construction, modification, or repair, including:
  - (A) The cost of any land or water rights necessary to the development;
  - (B) The total cost of all major project works;
  - (C) Indirect construction costs such as costs of construction equipment, camps, and commissaries;
  - (D) Interest during construction; and
  - (E) Overhead, construction, legal expenses, and contingencies.

(b) If any portion of the proposed project consists of previously constructed, Licensed or unlicensed water power structures or facilities, a statement of the original cost of those structures or facilities specifying for each, to the extent possible, the actual or approximate total costs (approximate cost must be identified as such) of:

- (A) Any land or water rights necessary to the existing project works;
- (B) All major project works; and
- (C) Any additions or modifications other than routine maintenance.

(c) A statement of the estimated average annual cost of the total project as proposed, specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

- (A) Cost of capital (equity and debt);
- (B) Local, state, and federal taxes;
- (C) Depreciation or amortization, a definitive amortization schedule; and
- (D) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies;

(d) A statement of the estimated annual value of project power based on a showing of the contract price for sale of power or the estimated average annual cost of obtaining an equivalent amount of power (capacity and energy) from the lowest cost alternative source of power, specifying any projected changes in the costs (life-cycle costs) of power from that source over the estimated

financing or licensing period if the applicant takes such changes into account.

(12) A statement and evaluation of the power consequences of denial of the License or Permit application and a brief perspective of what future use would be made of the proposed site if the proposed project were not constructed; and

(13) A statement specifying the source and extend of financing and annual revenues available to the applicant to meet the costs identified in section (11) of this rule.

(14) **Exhibit E** shall be an Environmental Report. Information provided in the report must be organized and referenced according to the itemized paragraphs below. See OAR 690-551-0060 for consultation requirements. See OAR 690-051-0170 through 690-051-0280 for a description of resource standards. **Exhibit E** must include a list of all publication, reports, and other literature which were cited or otherwise utilized in the preparation of any part of the environmental report. The Environmental Report must contain the following information:

(a) A General description of the locale. The applicant must provide a general description of the environment of the proposed project and its immediate vicinity. The description must include location and general information helpful to an understanding of the environmental setting.

(b) A report on water use and quality. The report must discuss water quality and flows and contain baseline data sufficient to determine the normal and seasonal variability, the impacts expected during construction and operation, and any mitigative, enhancement, and protective measures proposed by the applicant. The report must be prepared in consultation with the state and federal agencies with responsibility for management of water quality and quantity in the affected stream or other body of water. The report must include:

(A) A description of existing instream flow uses of streams in the project area that would be affected by construction and operation; estimated quantities of water discharged from the proposed project for power production; and any existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes;

(B) A description of the seasonal variation of existing water quality for any stream, lake, or reservoir that would be affected by the proposed project, including (as appropriate) measurements of: Significant ions, chlorophyll a, nutrients, specific conductance, pH, total dissolved solids, total alkalinity, total hardness, dissolved oxygen, bacteria, temperature, suspended sediments, turbidity and vertical illumination;

(C) A description of any existing lake or reservoir and any of the propose project reservoirs including surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate classification, and gradient for streams directly affected by the proposed project;

(D) A quantification of the anticipated impacts of the proposed construction and operation of project facilities on water quality and downstream flows, such as temperature, turbidity and nutrients;

(E) A description of measures recommended by local governments, federal and state agencies and the applicant for the purpose of protecting or improving water quality, stream flows, riparian areas, and wetlands during project construction and operation; an explanation of why the applicant has rejected any measures recommended by any agency; and a description of the applicant's alternative measures to protect or improve water quality stream flow;

(F) A description of groundwater in the vicinity of the proposed project, including water table and artesian conditions, the hydraulic gradient, the degree to which groundwater and surface water are hydraulically connected, aquifers and their use as water supply, and the location of springs, wells, artesian flows and disappearing streams; a description of anticipated impacts on groundwater and measures proposed by the applicant and others for the mitigation of impacts on groundwater; and

(c) A report on fish, wildlife, and botanical resources. The applicant must provide a report that describes the fish, wildlife, and botanical resources in the vicinity of the proposed project; expected

impacts of the project on these resources; and mitigation, enhancement, or protection measures proposed by the applicant. The report must be prepared in consultation with the state agency or agencies with responsibility for these resources, including the Oregon Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, The National Marine Fisheries Service (if proposed project may affect anadromous, estuarine, or marine fish resources), and any local government, state or federal agency with managerial authority over any part of the proposed project lands. The report must contain:

(A) A description of existing fish, wildlife, and plant communities of the proposed project area and its vicinity, including any downstream areas that may be affected by the proposed project and within the transmission line corridor or right-of-way. A map of vegetation types shall be included in the description. For species considered important because of their commercial or recreational value, the information provided should include temporal and spatial distributions and densities of such species. Any fish, wildlife, or plant species proposed or listed as threatened or endangered by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Fish and Wildlife or Department of Agriculture must be identified;

(B) A description of the anticipated impacts on fish and wildlife and botanical resources of the proposed construction and operation of project facilities, including possible changes in size, distribution, and reproduction of essential population of these resources and any impacts on human utilization of these resources;

(C) A description of any measures or facilities recommended by state or federal agencies for the mitigation of impacts on fish, wildlife, and botanical resources, or for the protection or enhancement of these resources, the impact on threatened or endangered species, and an explanation of why the applicant has determined any measures or facilities recommended by an agency are inappropriate as well as a description of alternative measures proposed by the applicant to protect fish and wildlife and botanical resources; and

(D) The following materials and information regarding any mitigation measures or facilities, identified under the clause in paragraph (C) of this subsection, proposed for implementation or construction:

- (i) Functional design drawings;
- (ii) A description of proposed operation and maintenance procedures for any proposed measures or facilities;
- (iii) An implementation, construction and operation schedule for any proposed measures or facilities;
- (iv) An estimate of the costs of construction, operation, and maintenance of any proposed facilities or implementation of any measures;

(v) A statement of the sources and amount of financing for mitigation measures or facilities; and

(vi) A map or drawing showing, by the use of shading, crosshatching or other symbols, the identity and location of any proposed measures or facilities.

(d) A report on historical and archaeological resources. The application must provide a report that discusses any historical and archaeological resources in the proposed project area, the impact of the proposed project on those resources and the avoidance, mitigation, and protection measures proposed by the applicant. The report must be prepared in consultation with the State Historical Preservation Office (SHPO) and National Park Service of the U.S. Department of Interior. The report must contain:

(A) A description of any discovery measures, such as surveys, inventories and limited subsurface testing work recommended by the specified state and federal agencies for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that would be affected by construction and operation of the proposed project, together with a statement of the applicant's position regarding the acceptability of the recommendations;

(B) The results of surveys, inventories, and subsurface testing work recommended by the state and federal agencies listed above,

together with an explanation by the applicant of any variations from the survey, inventory, or testing procedures recommended;

(C) An identification (without providing specific site or property locations) of any historic or archaeological site in the proposed project area, with particular emphasis on sites or properties either listed in the affected local government(s) comprehensive plan, or recommended by the SHPO for inclusion in, the National Register of Historic Places that would be affected by the construction of the proposed project;

(D) A description of the likely direct and indirect impacts of proposed project construction or operation on sites or properties either listed in, or recommended as eligible for, the National Register of Historic Places;

(E) A management plan for the avoidance of, or mitigation of, impacts on historic or archaeological sites and resources based upon the recommendations of the local government, state and federal agencies listed above and containing the applicant's explanation of variations from those recommendations; and

(F) The following materials and information regarding the mitigation measures described under paragraph (14)(d)(E) of this rule:

- (i) A schedule for implementing the mitigation proposals;
- (ii) An estimate of the cost of the measures; and
- (iii) A statement of the sources and extent of financing;
- (iv) The applicant must provide five copies of any survey, inventory, or subsurface testing reports containing specific site and property information, and including maps and photographs showing the location and any required alteration of historic and archaeological resources in relation to proposed project facilities.

(e) A report on socio-economic impacts. The applicant must provide a report which identifies and quantifies the impacts of constructing and operating the proposed project on employment, population, housing, personal income, local governmental services, local tax revenues and other factors within the cities and counties in the vicinity of the proposed project. The report must include:

- (A) A description of the socio-economic impact area;
- (B) A description of employment, population and personal income trends in the impact area;

(C) An evaluation of the impact of any substantial immigration of people on the impact area's governmental facilities and services, such as police, fire, health and educational facilities and programs;

(D) The onsite personnel requirements and payroll during and after project construction, including a projection of total onsite employment and construction payroll provided by month;

- (E) The numbers of project construction personnel who:
  - (i) Currently reside within the impact area;
  - (ii) Would commute daily to the construction site from places situated outside the impact area; and
  - (iii) Would relocate on a temporary basis within the impact area.

(F) A determination of whether the existing supply of available housing within the impact area is sufficient to meet the needs of the additional population;

(G) Numbers and types of residences and business establishments that would be displaced by the proposed project, procedures to be utilized to acquire these properties, and types and amounts of relocation assistance payments that would be paid to the affected property owners and businesses; and

(H) A fiscal impact analysis evaluating the incremental local government expenditures in relation to the incremental local government revenues that would result from the construction of the proposed project. Incremental expenditures may include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(f) A report on geological and soil resources. The applicant must provide a report on the geological and soil resources in the proposed project area and other lands that would be directly or indirectly affected by the proposed action and the impacts of the proposed project on those resources. The information required may be supplemented with maps showing the location and description of conditions. The report must be prepared in consultation with the

Oregon Department of Geology and Mineral Industries. The report must contain:

(A) A detailed description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources;

(B) A detailed description of the soils, including the types, occurrences, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description showing the location of existing and potential geological and soil hazards and problems, including earthquake faults, seepage, subsidence solution cavities, active and abandoned mines, erosion, and mass soil movement and an identification of any large landslides or potentially unstable soil masses which could be aggravated by reservoir fluctuation;

(D) A description of the anticipated erosion, mass soil movement and other impacts on the geological and soil resources due to construction and operation of the proposed project; and

(E) A description of any proposed measures or facilities for the mitigation of impacts on soils.

(g) A report on recreational resources. The applicant must prepare a report containing a proposed recreation plan describing utilization, design and development of project recreational facilities, and public access to the project area. Development of the plan should include consideration of the needs of the physically handicapped. Public and private recreational facilities provided by others that would abut the project should be noted in the report. The report must be prepared in consultation with appropriate local, regional state and federal recreation agencies and planning commissions, and any other agency with managerial responsibility for any part of the project lands. The report must contain:

(A) A description of any areas within or in the vicinity of the proposed boundary that are included in, or have been designated for study for inclusion in:

- (i) The National Wild and Scenic Rivers Systems;
- (ii) The Oregon Scenic Waterway Program;
- (iii) The National Trails System; or
- (iv) The Oregon Recreation Trails System Act of 1971;
- (v) Oregon Natural Heritage Conservation Areas;
- (vi) A wilderness area designated under the Wilderness Act;

(B) A detailed description of existing recreational facilities within the project vicinity, and the public recreational facilities which are to be provided by the applicant at its sole cost or in cooperation with others no later than three years from the date of the first commercial operation of the proposed project and those recreation facilities planned for future development based on anticipated demand. When public recreation facilities are to be provided by other entities, the applicant and those entities shall enter into an agreement on the type of facilities to be provided and the method of operation. Copies of agreements with cooperating entities are to be appended to the plan;

(C) A provision for a shoreline buffer zone that must be within the project boundary, above the normal maximum surface elevation of the project reservoir, and of sufficient width to allow public access to project lands and waters and to protect the scenic, public recreational, cultural and other environmental values of the reservoir shoreline;

(D) Estimates of existing and future recreational use at the project, in daytime and overnight visitation (recreation days), with a description of the methodology used in developing these data;

(E) A development schedule and cost estimates of the construction, operation, and maintenance of existing initial and future public recreational facilities, including a statement of the source and extend of financing for such facilities;

(F) A description of any measures or facilities recommended by the agencies consulted for the purpose of creating, preserving, or enhancing recreational opportunities at the proposed project, and for the purpose of ensuring the safety of the public in its use of project lands and waters, including an explanation of why the applicant has rejected any measures or facilities recommended by an agency; and

(G) A drawing or drawings, one of which describes the entire project area clearly showing:

(i) The location of project lands and the types and number of existing recreational facilities and those proposed for initial development, including access roads and trails, and facilities for camping, picnicking, swimming, boat docking and launching, fishing and hunting, as well as provisions for sanitation and waste disposal;

(ii) The location of project lands and the type and number of recreational facilities planned for future development;

(iii) The location of all project lands reserved for recreational uses other than those included in subparagraphs (g)(G)(i) and (ii) of this section; and

(iv) The project boundary (excluding surveying details) of all areas designated for recreational development, sufficiently referenced to the appropriate **Exhibit G** drawings to show that all lands reserved for existing and future public recreational development and the shoreline buffer zone are included within the project boundary.

(h) A report on aesthetic resources. The applicant must provide a report that describes the aesthetic resources of the proposed project area, the expected impacts of the project on these resources, and the mitigation enhancement or protection measures proposed. The report must be prepared following consultation with federal, state, and local agencies having managerial responsibility for any part of the proposed project lands or lands abutting those lands. The report must contain:

(A) A description of the aesthetic character of lands and waters directly and indirectly affected by the proposed project facilities;

(B) A description of the anticipated impacts on aesthetic resources from construction activity and related equipment and material, and the subsequent presence of proposed project facilities in the landscape;

(C) A description of mitigative measures proposed by the applicant, including architectural design, landscaping, and other reasonable treatment to be given project works to preserve and enhance aesthetic and related resources during construction and operation of proposed project facilities; and

(D) Maps, drawings and photographs sufficient to provide an understanding of the information required under this paragraph. Maps or drawings may be consolidated with other maps or drawings required in this exhibit.

(i) A report on land use. The applicant must provide a report that describes the existing uses of the proposed project lands and adjacent property, and those land uses which would occur if the project is constructed. The report may reference the discussions of land uses in other sections of this exhibit. The report must be prepared following consultation with local planning and land management authorities, and any federal or state agency with managerial responsibility for the proposed project or abutting lands. The report must include:

(A) A description of existing land use in the proposed project area, including identification of wetlands, floodlands, and high value or important farm land identified pursuant to OAR 660, division 33 and the coastal zone described in the Oregon Coastal Zone Management Program, and, land owned or subject to control by government agencies;

(B) A description of the proposed land uses within and abutting the project boundary that would occur as a result of development and operation of the project; and

(C) Aerial photographs, maps, drawings or other graphics sufficient to show location, extent and nature of the land uses referred to in this section.

(j) Alternative locations, designs, and energy sources. The applicant must provide an environmental assessment of the following:

(A) Alternative sites considered in arriving at the selection of the proposed project site;

(B) Alternative facility designs, processes, and operations that were considered and the reasons for their rejection;

(C) Alternative electrical energy sources, such as gas, oil, coal, and nuclear-fueled power plants, purchased power or diversity exchange, and other conventional and pumped-storage hydroelectric plants; and

(D) The overall consequences if the License application is denied.

(15) **Exhibit F** consists of general design drawings of the principal project works described under **Exhibit A** and supporting information used as the basis of design. If the **Exhibit F** submitted with the application is preliminary in nature, applicant must so state in the application. The exhibit must consist of ink drawings, or drawings of similar quality, on sheets no smaller than 8-1/2 inches by 11 inches, drawn to a scale no smaller than one inch equals 50 feet for plans, elevations, and profiles, and one inch equals 10 feet for sections.

(a) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

- (A) Plans (overhead view);
- (B) Elevations (front view);
- (C) Profiles (side view); and
- (D) Sections.

(b) The applicant may submit preliminary design drawings with the application. The final **Exhibit F** may be submitted during or after the licensing process and must show the precise plans and specifications for proposed structures. If the project is Licensed on the basis of preliminary designs, the applicant must submit a final **Exhibit F** for Department approval prior to commencement of any construction of the project;

(c) Supporting design report. The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed. The report must include:

(A) An assessment of the suitability of the site and the reservoir rim stability based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type of dam structure suitable for the site;

(B) Copies of boring logs, geology reports and laboratory test reports;

(C) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;

(D) Stability and stress analyses for all major structures and critical abutment slopes under all probable loading conditions, including seismic and hydrostatic forces induced by water loads up to the Probable Maximum Flood as appropriate; and

(E) The base for determination of seismic loading and the Spillway Design Flood in sufficient detail to permit independent staff evaluation.

(d) The applicant must submit five copies of this part of the supporting design report described in subsection (15)(c) of this rule at the time preliminary and final design drawings are submitted to the Director for review. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report."

(16) **Exhibit G** shall be a map of the project. All maps, plans, and drawings are required to be certified by a professional engineer registered by the Board of Engineering Examiners of Oregon as required by ORS 672.010 to 672.340 and shall bear the date and number of the certificate of registration of the professional engineer. The map must consist of ink drawings or drawings of similar quality on sheets no smaller than 8-1/2 inches by 11 inches and no larger than 24 inches by 36 inches, drawn to a scale no smaller than one inch equals 1,000 feet. If more than one sheet is used, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicating that portion of the project depicted on that sheet. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within a reasonable period following the

completion of project construction, a final **Exhibit G** showing the extent of such changes. The map must show:

(a) Location of the project and principal features. The map must show the location of the project as a whole with reference to the affected stream or other body of water and, if possible, to a nearby town or any other permanent monuments or objects, such as roads, transmission lines or other structures, that can be noted on the map and recognized in the field. The map must also show the relative locations and physical interrelationships of the principal project works and other features described under **Exhibit A**;

(b) Project boundary. The map must show a project boundary enclosing all project works and other features described under **Exhibit A** that are to be Licensed. If accurate survey information is not available at the time the License application is filed, the applicant must so state, and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control or protection of environmental resources (**Exhibit E**). Existing residential, commercial, or other structures may be inclined within the boundary only to the extent that underlying lands are needed for project purposes (e.g., for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(c) Impoundments. The boundary around a project impoundment must be described by one of the following:

- (A) Contour lines, including the contour elevation (preferred method);
- (B) Specified courses and distances (metes and bounds);
- (C) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or
- (D) Any combination of the above methods.

(d) Continuous features. The boundary around linear ("continuous") project features such as access roads, transmission lines, and conduits may be described by specified distances from center lines or offset lines of survey. The width of such corridors must not exceed 200 feet unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet with information showing the sequence of contiguous sections;

(e) Noncontinuous features:

(A) The boundary around noncontinuous project works such as dams, spillways, and powerhouses must be described by one of the following:

- (i) Contour lines;
- (ii) Specified courses and distances;
- (iii) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or
- (iv) Any combination of the above methods.

(B) The boundary must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project or for other specified project purposes, such as public recreation or protection of environmental resources.

(f) Ownership of property (keyed to the ownership information in **Exhibit A**), including all federal, state and private ownership, must be identified as such on the map by:

(A) Legal subdivisions of a public land survey of the affected area (a protraction of identified township and section lines is sufficient for this purpose); and

(B) In the absence of a public land survey, the location of the ownerships according to the distances and directions from fixed monuments or physical features. When a federal survey monument or federal bench mark will be destroyed or rendered unusable by the construction of project works, at least two permanent, marked witness monuments or bench marks must be established at

accessible points. The maps show the location (and elevation, for bench marks) of the survey monument or bench mark which will be destroyed or rendered unusable, as well as of the witness monuments or bench marks. Connecting courses and distances from the witness monuments or bench marks to the original must also be shown.

(g) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired for easement or lease;

(h) Provisions for protection of special management areas as defined in OAR 690-051-0170(2) or areas otherwise restricted from development within the project vicinity.

(17) **Exhibit H** shall be a technical evaluation subject to Director approval of the potential for cumulative impacts on the natural resources listed in OAR 690-051-0190 through 690-051-0250 resulting from the proposed project when considered with other existing, approved and proposed hydroelectric projects in the river basin.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0130

#### Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings

(1) A contested case hearing shall be held on any License or Permit application in excess of 100 THP, and on any application for 100 THP or less, as determined necessary pursuant to OAR 690-051-0090 for which the Commission determines it is in the public interest.

(2) A public hearing shall be held on each application for a Preliminary Permit. The public hearing shall be held in a community near the proposed project with notice provided pursuant to section (3) of this rule

(3) Notice of hearing shall be given to:

(a) The applicant;

(b) Interested parties;

(c) Property owners within the project vicinity;

(d) The affected tribe(s) as identified by the Legislative Commission on Indian Services;

(e) The governing body(ies) of any affected county(ies) or city(ies); and

(f) The planning department(s) of the affected county(ies) or city(ies) as provided by ORS Chapters 183, 537, and 543.

(4) The Director, through press releases or additional notices, also shall endeavor to provide general notice to individuals or organizations who have expressed an interest in the outcome of the proceedings.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0140

#### Time and Place of Hearings

The time and place for holding hearings shall be fixed by the Director. In case no protest or objection against an application is filed by the time announced in the hearing notice, the contested case hearing may be heard at the Director's office in Salem.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0150

#### Filing of Protest and Remonstrances

All protest and objections must be filed with the Director within the time specified in the notice:

**NOTE:** Rules Pertaining to Preparation, filing and service of protests are found at OAR 690-002-0030 to 690-002-0050.

Stat. Auth.: ORS 536.027, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86 WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0160

#### Standards for Evaluation

The standards in OAR 690-051-0170 to 690-051-0290 implement the provisions of ORS 537.160, 537.170, 543.017, 543.225 and 543.255 for the review of all hydroelectric applications. To be approved, a project must meet the general and resource specific standards in OAR 690-051-0170 to 690-051-0260. Economic and need for power standards in 690-051-0270 and 690-051-0280 must be met as well. When required, a project must also be reviewed with other projects pursuant to 690-051-0290.

Stat. Auth.: ORS 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

### 690-051-0170

#### Protection of Designated Resource Areas and Special Management Areas

(1) Proposed projects having effects on a designated resource area listed in OAR 690-051-0030(1) or a special management area listed in section (2) of this rule, shall be consistent with the authorized use of the area. The Director, or Commission in actions where exceptions have been filed to the Director's proposed order requiring Commission action, shall decide if a project is consistent only after review of input from the managing agency. If the Director or Commission approves a project that is not consistent, findings that support the action shall be made.

(2) Section (1) of this rule applies to the following special management areas:

(a) National wildlife refuges;

(b) National recreation areas;

(c) State wildlife management areas;

(d) State forests;

(e) County parks;

(f) City parks;

(g) Special district parks;

(h) Sites listed in or determined eligible for inclusion on the National Register of Historic Places;

(i) Areas managed by federal agencies for study, inclusion or designation as a Protected Area under federal law or regulation; and

(j) Areas under study by state agencies for inclusion in or designation as a Protected Area under state statute or regulation.

(k) Protected areas designated by the Columbia River Basin Fish and Wildlife Program (1987); Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying Protected Areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(3) All applications for projects in or affecting the Columbia Gorge as designated in ORS 390.460 shall be consistent with the policy in ORS 390.415 as determined by the Commission after considering the recommendation of the Oregon Columbia River Gorge Commission.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0180

#### Mitigation, No Net Loss

(1) The following standards on mitigation and no net loss are minimums. They apply to all natural resources in general. Resource specific rules may impose stricter standards. In order to approve an application, the Director, or Commission when exceptions have been filed to the Director's proposed order on the License or Permit, shall have due regard for and enter appropriate findings on the following standards:

(a) Proposed mitigation must be in the project vicinity;

(b) Proposed mitigation must be acceptable to the Director or Commission;

(c) All mitigation measures which reasonably can, shall be fully functional when the project begins operation; and

(d) The Collective benefits of all mitigation measures must equal or exceed the collective adverse impacts on natural resources so there is no net loss of natural resources.

(2) In applying the standards in section (1) of this rule, the Commission or Director shall:

(a) Consult with federal, state, and local resource agencies, and the appropriate affected tribe(s); and

(b) Prefer mitigation that benefits the natural resource(s) affected, over mitigation that benefits some other natural resource(s). If mitigation that benefits the affected natural resource(s) is unacceptable or not possible, mitigation that benefits some other natural resource(s) may be considered.

(3) The standards in section (1) of this rule shall apply to the following natural resources: Water quality; wildlife; scenic and aesthetic resources; historic, cultural, and archaeological; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Director's discretion, or the Commission's discretion in the case where an exception has been filed to the Director's proposed order, the standards in section (1) of this rule may apply to natural resource(s) not identified in section (3) of this rule that an applicant or interested party can demonstrate to be of value to the public. Anyone making a showing of value for a natural resource not listed in section (3) of this rule shall also propose, for consideration, a standard for the protection of the natural resource. If agreed by the Director, or Commission in cases where an exception has been filed to the Director's proposed order, and upon acceptable showing of public value, an applicant may propose enhancement or other mitigation of an unlisted natural resource to offset impacts on natural resources listed in section (3) of this rule.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0190

##### Water Resources

The Director and Commission shall have due regard for water resources. In order to approve an application, the Director, or in cases where the final order is issued by the Commission, the Commission, shall enter appropriate findings on the following standards:

(1) There is available water to provide for reasonable operation of the proposed project.

(2) The proposed use will not preclude or interfere with any existing rights or permits for the use of water.

(3) The proposed use is consistent with the applicable State Water Resources Policies in OAR 690, divisions 400, 410 and the Basin Program in OAR 690, divisions 500 through 520 or, in the absence of a policy, the proposed use is consistent with the policies set forth in ORS 536.300 through 536.350.

(4) The project is consistent with achieving maximum economic development of the waters involved.

(5) The project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity.

(6) The project will not constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(7) The project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes.

(8) The project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control.

(9) Construction and operation of the proposed project shall comply with water quality standards established in OAR 340, division 41. Exceptions to this standard may be allowed if permitted by division 41 rules, granted by the DEQ and approved by the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0200

##### Fish Resources

(1) The Director and Commission shall have due regard for fish resources in general. In order to approve an application, the

Director, or in cases where exceptions have been filed to the Director's proposed order, the Commission, shall enter appropriate findings on the following standards:

(a) Project facilities and operations will not have significant adverse impacts on fish populations;

(b) Project facilities and operations will not unreasonably interfere with upstream and downstream passage of fish through the project vicinity. The Director, or in cases where the final order is approved by the Commission, the Commission may make exceptions to this standard in special cases where fish populations have been significantly damaged by past activities and the proposed single- or multiple-purpose project development will improve existing fish populations;

(c) Project facilities and operation have been designed to mitigate, to the greatest extent practicable, adverse impacts upon spawning, rearing or other habitat areas necessary to maintain the levels and existing diversity of fish species;

(d) Unavoidable adverse impacts on fish or to fish management programs will be mitigated;

(e) Project construction, timing and procedures are designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbances;

(f) All fishery protective measures and scheduled to be fully functional when the project commences operations; and

(g) The proposed project is consistent with ODFW management programs in force on the effective date of these rules.

(2) The Director and Commission shall have due regard for wild game fish. No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the Director, or in cases where exceptions have been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(a) A project, any part of which is located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish, shall include mitigation measures which:

(A) Are located in the project vicinity;

(B) Are in effect at the time of adverse impact or start of project operation, whichever comes first;

(C) Will prevent a net loss to individual species of wild game fish;

(D) Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource;

(E) Are consistent with ODFW management plans and programs in force on the effective date of these rules; and

(F) Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource(s).

(3) The Director and Commission shall have due regard for salmon and steelhead fish and habitat. No project shall be approved that may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission, shall enter appropriate findings on the following standards:

(a) If proposed at an undeveloped site, it is not reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat; and

(b) Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include measures that:

(A) Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river;

(B) Comply with wild game fish standards in paragraphs (2)(a)(C) and (D) of this rule if the affected salmon or steelhead populations contain wild fish;

(C) Are consistent with ODFW Fishery management plans and programs in force on the effective date of these rules;

(D) Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project; and

(E) Are in effect at the time of adverse impact or start of project operation, whichever comes first.

(4) In order to approve an application for a project within the Columbia River Basin, the Director, or in cases where exceptions have been filed on the proposed order, the Commission shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the NPPC's Columbia River Basin Fish and Wildlife Program. Certification of compliance by the NPPC shall satisfy this standard.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. 3f. 5-19-93

#### 690-051-0210

##### Wildlife

The Director and Commission shall have due regard for wildlife. In order to approve an application, Director, or in cases where an exception has been filed on the proposed order, the Commission shall enter appropriate findings on the following standards:

(1) The location, design, construction or operation of the proposed project shall not jeopardize the continued existence of animal species which have been:

(a) Designated, or officially proposed by the USF&WS, or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973;

(b) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon; or

(c) Identified by the Oregon Fish and Wildlife Commission as threatened or endangered in Oregon.

(2) The location, design, construction and operation of project facilities will minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes.

(3) Project construction methods and scheduling will minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity.

(4) Unavoidable adverse impacts on wildlife or wildlife habitat will be mitigated in the project vicinity by methods such as replacement of vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights.

(5) The project is consistent with applicable ODFW management programs in force on the effective date of these rules.

(6) If, within the Columbia River Basin, the project is consistent with the provisions of the NPPC's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan. Certification of compliance by the NPPC shall satisfy this standard.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0220

##### Plant Life

The Director and Commission shall have due regard for plant life. In order to approve an application, the Director, or the Commission in cases where an exception has been filed to the Director's proposed order, shall find that the location, design, construction or operation of the proposed project shall not jeopardize the continued existence of plant species which are:

(1) Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973.

(2) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0230

##### Recreation

The Director and Commission shall have due regard for recreation. No project may be approved that would result in a net loss of recreation opportunities. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(1) Project facilities will be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities or opportunities.

(2) The proposed project will not reduce the abundance or variety of recreational facilities or opportunities available in the project vicinity.

(3) Unavoidable adverse impacts on non water-dependent recreation facilities, activities or opportunities will be mitigated in the project vicinity by providing replacement facilities or opportunities of the same or similar nature and abundance.

(4) The project will not have significant adverse impacts on any unique, unusual or distinct natural feature which provides the focus or attraction for non water-dependent recreational facilities or activities.

(5) Unavoidable adverse impacts on any water-dependent recreational opportunity will be mitigated with replacement by or enhancement or another water-dependent recreational opportunity available in the project vicinity.

(6) The proposed project will not cause the loss of or significant adverse impact to any water-dependent recreational opportunities of statewide significance.

(7) Adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water-dependent recreational opportunity of statewide significance, will be offset by enhancement to other element(s) of the same water-dependent recreational opportunity in the project vicinity.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0240

##### Historic, Cultural and Archaeological Resources

(1) The Director and Commission shall have due regard for historic, cultural, and archaeological resources. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(a) The project will not result in significant adverse impact(s) on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places;

(b) The project will comply with state laws to protect Indian graves (ORS 97.740-97.760), historical materials (273.705-273.711) and archaeological objects and sites (358.905-358.955);

(c) Unavoidable adverse impacts on historic, cultural and archaeological resources will be mitigated in accordance with generally accepted professional standards; and

(d) Archaeological data of significance associated with a site not eligible for inclusion in the National Register of Historic Places will be recovered in accordance with generally accepted professional standards.

(2) Before filing an application for a License or Permit, developers shall consult with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate tribes about Indian historic and cultural resources in the project vicinity.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0250**

**Land Resources**

The Director and Commission shall have due regard for land resources. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(1) Adverse impacts on high value or important farmlands or agricultural land as identified in OAR 660, division 33, shall be avoided, minimized or offset by acceptable mitigation.

(2) Adverse impacts on prime forestlands as defined by the city or county and by the Oregon Forestry Department shall be avoided, minimized, or offset by acceptable mitigation.

(3) Adverse impacts on wetlands as defined by OAR 141-085-0010(20) or identified by the Oregon Natural Heritage Data Base will be avoided, minimized, or offset by acceptable mitigation.

(4) Project facilities shall be designed and located to avoid or minimize adverse impacts on:

(a) Outstanding scenic and aesthetic views and sights inventoried in city and county comprehensive plans as required by Statewide Planning Goal 5; and

(b) Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection.

(5) Project facilities will be designed and located to blend with adjacent features.

(6) Mechanical noise caused by the project complies with applicable noise standards in OAR 340, division 35.

(7) The location, design, construction or operation of the project will not:

(a) Disturb fragile or unstable soils; or

(b) Cause soil erosion which would impair other water uses.

(8) Design, location, construction and operation of the proposed project will avoid or minimize adverse impacts on natural communities or geological features identified by the Oregon Natural Heritage Data Base as threatened or endangered in Oregon.

(9) Project facilities located in geologically unstable areas are designed with appropriate safeguards.

(10) Project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation are designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0260**

**Land Use**

(1) The Director or Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and compatibility with Acknowledged Comprehensive Plans) in evaluating, or taking action on, a Permit or License for hydroelectric use.

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0270**

**Economics**

The Director and Commission shall have due regard for project economics. In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission shall find that the applicant, along with all co-owners, possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction, maintenance, operating, mitigation and compensation costs.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0280**

**Need for Power**

In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission shall find:

(1) There is a need for project power based upon:

(a) The forecasts of the Regional Conservation and Electric Power Plan of the NPPC or state energy demands; or

(b) Evidence of a contract for the sale of power.

(2) Section (1) of this rule shall not apply to applications for the following types of projects:

(a) Small facilities intended to supply power for on-site uses;

(b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;

(c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or

(d) Projects by public or municipal utilities which will serve only the applicant utility's customers.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

**690-051-0290**

**Consolidated Review**

(1) The Director shall enter an order on the potential that the proposed project may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the same river basin. It is presumed that if there are other existing, approved or proposed projects, in the same river basin, there is a potential for cumulative impacts. This presumption may be rebutted by showing the impacts of the proposed project are so small in extent, short-termed or localized that there is no reasonable likelihood of cumulative impacts. The Director shall consult with the agencies listed in OAR 690-051-0060 on cumulative impacts. Natural resources on which the potential for cumulative impacts will be considered are listed in OAR 690-051-0190 through 690-051-0250.

(2) If the Director determines the proposed project may have unacceptable cumulative impacts, a consolidated review shall be conducted. The review will cover all existing, approved and proposed projects in the same river basin. Existing and approved projects shall not be subject to any action by the Director or the Commission resulting from the consolidated review. If an applicant for a proposed project does not wish to be included in the consolidated review, the application may be withdrawn and refiled at a later date. The application may be subject to a later consolidated review if refiled.

(3) If two or more of the applications are competing for the same site, only one will be chosen to proceed in the consolidated review. Preference will be given to the project best suited to the site. Suitability shall be based on the criteria in OAR 690-051-0320.

(4) The consolidated review shall be conducted as a contested case hearing. Applicants and owners of all existing, approved and proposed projects in the affected basin will be advised of the need for a consolidated review contested case hearing. Applicants and owners shall be advised not less than 90 days before the hearing so they may prepare. Notice advising of the need for a consolidated review shall be sent by registered or certified mail. Separate notice will be given when the hearing actually is to take place. This notice will be as provided in OAR 690-051-0130 and required by ORS 183.415.

(5) The consolidated review shall include a study of the individual and cumulative impacts each project would cause on the natural resources discussed in ORS 690-051-0190 through 690-051-0250. Cumulative impacts on any given natural resource shall be considered unacceptable if the level of impact would exceed any

of the natural resource standards set forth in OAR 690-051-0190 through 690-051-0250.

(6) The purpose of the consolidated review will be to determine if the individual and cumulative impacts of proposed projects meet the natural resource standards in OAR 690-051-0190 through 690-051-0250. If the individual impacts of the applicant's project would exceed any of the resource standards, the application shall be rejected. When cumulative impacts on a natural resource would violate the natural resource standards, proposed projects in the consolidated review will be chosen for further consideration on the basis of the following criteria:

(a) Contribution to cumulative impact(s) — Projects exhibiting lesser potential contribution to cumulative impact(s) will be preferred over projects exhibiting greater potential contribution to cumulative impact(s);

(b) Individual impacts on natural resources — Projects potentially causing impact on a lesser number of natural resources and/or having a lesser degree of impact on a given resource shall be preferred over projects potentially affecting a greater number of natural resources or having a greater degree of impact on a given resource;

(c) Project suitability — Projects making more efficient use of water, developing more capacity, having greater annual output or producing more revenue will be preferred over projects that are less efficient, develop less capacity, have less annual output or produce less revenue;

(d) Mitigation — Projects proposing more desirable mitigation in terms of restoration, improvement or enhancement will be preferred over projects proposing less desirable mitigation; and

(e) If no distinction can be made on the criteria in subsections (a) through (d) of this section, the final basis of decision will be priority of filing.

(7) Following the conclusion of the consolidated review contested case hearing, the Director will enter an order stating the findings on each proposed project included in the review. Applications for projects not selected for further consideration on the basis of criteria in section (5) of this rule, shall be rejected.

(8) Any application not filed in time to be included in the notice of contested case hearing for a consolidated review shall not be reviewed until after the Director, or in cases where an exception has been filed to the proposed order, the Commission, has entered the final order on the proceeding.

(9) If there is only one proposed project in the river basin, the Director may initiate consolidated review proceedings at the applicant's request.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0300

#### Interim Orders

If, after reviewing an application for a Permit under ORS 537.170, the Director determines there is insufficient information to address the standards of OAR 690-051-0170 to 690-051-0280, the Director may either enter an order rejecting the application without prejudice or enter an interim order continuing the hearing and specifying the nature of any studies or information necessary to complete the assessment. An interim order may also contain provisions for coordination or consultation with applicable federal, state or local governmental resource agencies and owners of all lands in the project area.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0310

#### Record of Expenditures Under Preliminary Permits

Each permittee shall keep an accurate and dependable record of all expenditures made under the Permit. If a License is issued for a project covered in whole or in part by a Permit, any and all items properly includible in the actual legitimate cost of the project representing expenditures made under the Permit and before the date of the License shall be supported by proper vouchers or other

records, in the same manner required of a Licensee when no Permit has been issued; and any vouchers or records, or certified copies in support of an item properly includible in the cost of the project shall become a part of the records of the project and shall be kept and retained by the Licensee in the manner required by the Commission or Director. Records kept by standard accounting methods are acceptable.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

### 690-051-0320

#### Competing Applications

(1) When filed with the Director, a notice of competing application shall also be served on other applicants for the same site.

(2) A competing application shall be filed with the Director within 180 days of the time the original application is filed. If a hearing notice for the original application has been published before 180 days have passed, a notice of intent to file a competing application shall be filed. The notice of intent shall be filed prior to the closing date for comments as stated in the hearing notice. The competing application itself shall be filed within 60 days of the comment closing date.

(3) When determining which competing application should be given preference, the Director, or in cases where the Commission approves the final order in the contested case hearing, the Commission shall consider:

(a) Conservation of the waterpower involved including:

(A) Efficiency within the system;

(B) Effect on instream fisheries;

(C) Water quality; and

(D) Other factors as the Director, or the Commission in cases where the Commission approves the final order, the Commission may deem appropriate.

(b) Use of the waterpower involved including:

(A) Availability of water;

(B) Existing rights;

(C) Development of the available hydroelectric potential; and

(D) Other factors as the Director, or the Commission in cases where the Commission approves the final order, the Commission may deem appropriate.

(4) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and are equal in every other way, preference shall be given to the application with the earliest filing date.

(5) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is a municipal corporation and the other is a private developer, preference shall be given to the municipal corporation.

(6) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is the holder of a valid Preliminary Permit and has priority under ORS 543.250, preference shall be given to the holder of the Preliminary Permit.

(7) Where one application is determined to be best adapted to conserve and utilize the water-power involved and the other applicant is either a municipal corporation or has priority as the holder of a Preliminary Permit, the municipal corporation or holder of the Preliminary Permit shall be informed of specific reasons why its application is not as well adapted and shall be afforded a reasonable period of time to amend its application to be at least as well adapted as the competing application. If its application is amended to be at least as well adapted within the time allowed, preference will be given to the municipal corporation or holder of the Preliminary Permit.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0330

##### System of Accounts for Public Utilities

Each License issued by the Director, or in cases where an exception is filed to the proposed order, the Commission, where the applicant is a public utility, shall be conditioned upon the establishment by the Licensee of a system of accounts in conformity with the Uniform Classification of Accounts for Electrical Utilities as prescribed and required by the Public Utility Commissioner of the State of Oregon. The Licensee shall be required to file with the Director one copy of all of its accounts as filed with the Public Utility Commissioner, duly certified, and such other statements, accounts, or records as the Director, or in cases where the Commission approves the final order, the Commission may require in order to furnish a full and complete knowledge of the facts necessary to carry out the provisions of ORS 543.010 to 543.620.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0340

##### Accounts When the Licensee is Not a Public Utility

When the applicant for a License is not a public utility, the Director, or the Commission in cases where the Commission approves the final order, will not require the establishment and maintenance of a system of accounts as prescribed for public utilities. The Licensee shall be required to keep and maintain books, records, accounts, and/or memoranda which will show the actual legitimate cost of construction of the project or any improvement. The Licensee shall file with the Director, under oath, when called for by the Director, or the Commission in cases where the Commission approves the final order, a statement of costs, except that a cooperative electric association shall establish a system of accounts as may be required by the Director, or the Commission in cases where the Commission approves the final order. A cooperative electric association shall file with the Director each year, one or more copies of the accounts duly certified and other statement, accounts, or records as required for a full and complete knowledge of facts necessary to carry out the provisions of ORS 543.010 to 543.620.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0350

##### Minor Projects, Waiver of Provisions of Act Where the Licensee is Not a Public Utility

For minor projects of not more than 100 THP, where the applicant for License is not a public utility, the Director, or in cases where a protest has been referred to the Commission, the Commission, in issuing Licenses, will waive the following conditions, provisions, and requirements of ORS Chapter 543:

(1) ORS 543.510 which requires the Licensee to establish and maintain amortization reserves to be applied in reduction of the net investment.

(2) ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.

(3) ORS 543.520 which provides that on amortization of the net investment the project shall become the property of the State of Oregon.

(4) ORS 543.550 relating to liens against the project and providing that any sale shall be of the whole property embraced in the project unless a partial sale is approved by the Director.

(5) ORS 543.560 which requires the Licensee to execute to the State of Oregon a bond to the effect that the Licensee shall promptly make payment to all persons supplying labor, material, machinery, etc.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0360

##### Minor Project by Public Utility

Where the applicant for License for a minor project of not more than 100 THP is a public utility, the Director will treat the application the same as an application for a major project and may waive the requirements of the Act identified in OAR 690-051-0350.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86 ; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0370

##### Transfer of Project to Public Utility

Whenever a project, or any part thereof, covered by a License issued to a Licensee who is not a public utility, is transferred or conveyed to a public utility and becomes the property of the utility, or whenever a Licensee who is not a public utility changes status to that of a public utility by the sale of electricity to the public, the License issued shall terminate. In such a case, the Commission may issue a new License with provisions necessary to carry out the intents and purposes of ORS 543.010 to 543.620.

Stat. Auth.: ORS 536, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86

#### 690-051-0380

##### Water Rights

The right to the use of the waters of the State of Oregon in connection with the development of any water power project for the generation of electricity under a License issued by the Director, or in cases where the Commission approved the final order, the Commission, shall be vested in the Licensee while the License or any lawful extension is in force. Each License will be conditioned so the right to use water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the License, the right to use water shall revert to the public. In case a project is taken over by the state or a municipality under the provisions of ORS 543.610, the right to use the waters previously used by the project shall continue in the state or the municipality until lawfully terminated or transferred. In case of a project falling to the state by amortization under 543.520, the right to use the waters previously used by the project shall continue in the state until lawfully terminated or transferred.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86 ; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0390

##### Failure to Construct Project or Utilize Water

(1) When starting construction, a Licensee must notify the Director using the form attached to the License. Similar notice must be sent to the Director when the project is completed.

(2) Whenever a Licensee fails to begin or complete construction work within the time fixed in the License or as lawfully extended or fails to proceed with construction with due diligence, or, after completing the work, fails to use or operate the project for any period of five consecutive years, the Director shall, after due notice given, terminate the License by a written order. If, after two years' nonuse of the Licensed project there is a conflicting application for or claim to use of the water, the Licensee may be required by the Director to show why the conflicting application should not be granted and the License in question terminated.

(3) The holder of a Preliminary Permit may request an extension of time to complete feasibility studies and prepare a License application. A Licensee may request an extension of time to begin or complete construction under a hydroelectric license. Extension requests shall be made on forms provided by the Director or on an acceptable substitute prepared by the applicant.

(4) Applications for extensions of time must contain the following information:

(a) Name, address and telephone number of the applicant;

(b) File number and type of Permit or License;

- (c) Length of extension requested; and
- (d) Work previously completed.
- (5) In considering applications for extension of time, the Director shall consider:
  - (a) Preliminary Permits (additional one-year maximum) including:
    - (A) Adequacy and timeliness of required six-month reports; and
    - (B) Studies completed within the term of Permit.
  - (b) Beginning of construction under License (one extension for maximum of two additional years); and
  - (c) Time to completion of construction (no statutory limit) including:
    - (A) Whether an extension is in the public interest; and
    - (B) Whether construction has been carried on in good faith and with reasonable diligence.
  - (6) No legally allowable request for extension of time shall be denied if the reasons for delay are litigation or required actions by other state and federal agencies.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0400

##### Fees: Filing and Annual

(1) An applicant for a Preliminary Permit or License for a project or for a Permit to appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a Permit should be granted.

(2) The amount of the total project fee required under section (1) of this rule shall be:

(a) For a project of less than 100 theoretical horsepower, \$1,000;

(b) For any project of 100 theoretical horsepower or more, an amount equal to \$5,000 plus \$1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of \$100,000;

(3) The project fee shall be payable in advance of each of four stages of project review as described in OAR 690-051-0095 as follows:

(a) For minor projects less than 100 theoretical horsepower, fifty percent of the fee at the time the application is filed and the fifty percent remaining fee charge when the License is issued;

(b) For major projects, the fee shall be collected as follows:

(A) Stage One — 20 percent; not to exceed \$2,500;

(B) Stage Two — 30 percent;

(C) Stage Three — 30 percent;

(D) Stage Four — 20 percent.

(c) If any stage is skipped, the fee at the time of submittal shall be the total application fee due up to and including the stage of current application review.

(4) In addition to the project fee required under this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(5) An annual fee as described in ORS 543.710 shall be required for each Permit issued under ORS Chapter 537.

(6) Each License issued shall be conditioned to require the payment of an annual fee as follows:

(a) For the first 25 THP or fraction thereof, \$1 per THP; and

(b) For each THP in excess of 25, 20 cents.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

#### 690-051-0410

##### Agreements Between Municipal and Private Applicants

(1) A district or municipal applicant and a private applicant may contract together for the purpose of developing hydroelectric

power. The joint project may receive the benefit of municipal preference and proceed under the municipal application process if the benefit, interest and control retained by the district or municipal corporation is as follows:

(a) A minimum of 10 percent of the gross or 30 percent of the net project income annually, at the option of the applicant, unless excepted by the Commission;

(b) The proprietary interest in the project lands; and

(c) Control over the operation of the project to the extent the district or municipal corporation can assure:

(A) Compliance with all regulations conditions and orders of the Director, or in cases where the final order is approved by the Commission, the Commission, affecting the project;

(B) Maintenance of flow, fish passage facilities, screening devices and other structural facilities and operational measures required by the Director, or in cases where the final order is approved by the Commission, the Commission or the Oregon Department of Fish and Wildlife; and

(C) Payment of annual fees required by ORS 543.710 and 543.720 and expenses required by any agreement developed under ORS 543.265.

(2) Any changes in the terms of a contract between a district/municipal corporation and private applicant that affect section (1) of this rule, shall first be approved by the Director.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543

Stats. Implemented:

Hist.: RD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93

## DIVISION 52

### DECOMMISSIONING RULES FOR NON-FERC PROJECTS

#### 690-052-0000

##### Purpose

(1) The purpose of this division is to establish a process, create definitions, standards, procedures, filing requirements, and appeal rights for the decommissioning of hydroelectric projects operating solely under state authority and not under the authority of the Federal Energy Regulatory Commission.

(2) These rules apply to projects where the holder of a license, certificate, or claim, operating solely under state authority:

(a) Voluntarily requests to decommission; or

(b) Fails to advise the Department regarding project reauthorization, according to ORS 543A.300.

(3) These rules do not apply to projects that voluntarily requested license cancellation prior to June 30, 1997, the effective date of Oregon Laws 1997, Chapter 449.

(4) Other rule divisions and statutory chapters may also apply to the decommissioning of a hydroelectric project subject to these rules.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0010

##### Definitions

As used in OAR 690-052-0020 to 690-052-0160:

(1) "Dam" means an artificial barrier constructed above ground to impound or divert the natural flow of water in a river, stream or intermittent drainage, or to otherwise create by artificial barrier constructed above ground a pool for storage of water regardless of purpose or intent in creating the artificial barrier.

(2) "Director" means the Director of the Water Resources Department.

(3) "Injury" has the meaning given in OAR 690-015-0005(5).

(4) "Instream water right" has the meaning given that term in ORS 537.332.

(5) "Operator" means a person who owns or operates a hydroelectric project under the authority of a time-limited water right or a certified water right, including a registered claim for hydroelectric purposes that has a pre-1909 priority date.

(6) "Project" has the meaning given that term in ORS 543.010(2).

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0020

##### Initiation of Decommissioning Process

(1) If an operator does not submit a notice of intent to reauthorize under ORS 543A.030, the Department shall within 60 days after the deadline for filing the Notice of Intent, request from the operator information regarding the decommissioning of the project pursuant to 543A.030(2), if the information has not already been filed. If the Department is unable to contact the operator, the Department may proceed with the decommissioning process, complying with the provisions of this chapter, as practical, in the absence of the operator.

(2) The Department does not have to initiate the decommissioning process upon receipt of the information requested in subsection (1) of this section. However, the Department shall initiate the decommissioning process at least one year prior to the expiration of the project's license.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0030

##### Public Notice and Comment

(1) After contacting the operator pursuant to OAR 690-052-0020 above, or if the Department is unable to contact the operator, the Department shall cause to be issued, a public notice of the decommissioning of the project.

(a) The public notice shall include:

(A) The name of the operator;

(B) The county, basin and stream, and the township, range and section, within which the project is located;

(C) The license number of the project;

(D) A brief description of the project and the action prompting the decommissioning; and

(E) Information on submitting comments and on receiving notices in the future.

(b) The public notice shall be provided to:

(A) The operator, who will cause it to be published in a newspaper having general circulation in the community where the project is located;

(B) The Department's weekly bulletin;

(C) The watermaster's office in the district where the project is located; and

(D) Natural resource and other appropriate agencies.

(2) Publication of the notice, according to subsection (b)(A) of this section, shall be in a newspaper of general circulation in the area of the project, and shall be for a period of three consecutive weeks. A copy of the notice along with an affidavit of publication must be filed with the Department following completion of the notice period. The operator is responsible for the cost of publishing the notice in an appropriate newspaper.

(3) Within 60 days of the issuance of the public notice, any person interested in the decommissioning of the project may submit written comments to the Department and may request future notices about the project.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0040

##### Process Determination

(1) After the close of the comment period in OAR 690-052-0030, the Department shall determine whether the decommissioning plan will be developed through a standard or expedited process. In making the determination, the Department shall consider any information received from the operator, comments received from agencies and the public pursuant to 690-052-0030, and the following guidelines:

(a) The expedited process shall be used for projects without dams or other permanent structures in the stream, projects which use pipes or other easily removable works to divert or withdraw water from the stream.

(b) The standard process shall be used for projects using dams or other large permanent structures in the stream to create a reservoir or divert water.

(2) Notwithstanding subsection (1) of this section, upon good cause, the Department may deviate from the guidelines in subsection (1) of this section when determining which decommissioning process to use.

(3) The Department shall promptly notify the operator and any person who provided comments, of its process decision.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0050

##### Expedited Process

If the Department decides to conduct the decommissioning using the expedited process, within 120 days of making that decision, the Department shall develop an initial draft plan considering available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0060

##### Standard Process; Decommissioning Application Review Team

(1)(a) If the Department decides to conduct the decommissioning using the standard process, the Department shall establish a Decommissioning Application Review Team (DART). The Department shall participate in and invite to the DART, representatives of the Departments of Environmental Quality, Fish and Wildlife, and any other agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the project.

(b) Within 60 days of establishing the DART, the Department shall enter into an initial consultation with the operator and the DART to gain information about the project, evaluate possible decommissioning methods, and identify potential environmental impacts of a project decommissioning.

(2) Following the consultation, the Department shall develop an initial draft plan considering the information gathered during the consultation and any available information and comments received. Upon completion of the plan, the Department shall distribute the plan to state agencies for comment according to OAR 690-052-0080.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26  
Stats. Implemented: ORS 543.092, 543 & 543A  
Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0070

##### Decommissioning Plan; Standard for Review

(1) When developing an initial draft plan under OAR 690-052-0050 or 690-052-0060, or a draft decommissioning plan under 690-052-0090, the Department shall include terms and conditions in the plan to protect the public health and safety and the environment.

(2) In developing the terms and conditions of the decommissioning plan, the Department shall consider impacts to the items listed below if they are identified by comments or otherwise identified in the Department's record for the project:

(a) Fish and wildlife during and after decommissioning;

(b) Water quality;

(c) Water use and the disposition of the water right for the project;

(d) Wetlands;

(e) Geohazards;

(f) Dam safety, including the protection of the public health and safety from the failure of any hydraulic works during and after decommissioning;

(g) Other resources including recreation; scenic and aesthetic values; historic, cultural, and archaeological sites; and botanical resources; and

(h) Instream water rights.

(i) Federal and local plans, including the plans of local watershed councils;

(j) Economic costs to the operator;

(k) Local and community economics;

(l) Tribal issues; and

(m) Overall environmental impact.

(3) The Department shall consider all other relevant issues raised by comments received.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0080

##### Agency Comments

(1) Upon development of an initial draft plan under either OAR 690-052-0050 or 690-052-0060, the Department shall distribute the plan to the DART, if created, appropriate natural resource agencies, and any other agencies that provided comments under 690-052-0030, for a 60-day review and comment period.

(2) The Department shall consider all comments received under subsection (1) of this section and determine if the initial draft plan needs to be revised.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0090

##### Draft Decommissioning Plan

Upon completion of the agency review process and any revisions, the Department shall issue the plan, as a draft decommissioning plan, for public notice and comment according to OAR 690-052-0100. The terms and conditions of the plan shall satisfy the standard set forth in 690-052-0070.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0100

##### Public Notice and Comment for Draft Decommissioning Plan

(1) Department shall give public notice of the draft decommissioning plan in the weekly bulletin, and shall notify any person who requested notice under OAR 690-052-0030(3). The public notice shall include information on obtaining a copy of the draft decommissioning plan, on commenting on the draft plan, and on receiving notices in the future. The Department shall supply the operator, each member of the DART, and any agency supplying comments under 690-052-0080, with a copy of the draft decommissioning plan.

(2) Within 60 days after the public notice given under subsection (1) of this section, any person may submit written comments to the Department and may request future notices about the project.

(3) The Department shall consider any comments received under subsection (2) of this section and may revise the draft decommissioning plan.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0110

##### Proposed Final Order: Findings and Criteria; Protests

(1) Within 90 days of the close of the comment period in OAR 690-052-0100, a proposed final order, containing the draft decommissioning plan, shall be prepared by the Director. The plan shall comply with the standard set out in 690-052-0070.

(2) The proposed final order shall:

(a) Cite findings of fact and conclusions of law;

(b) Include a brief statement that explains the issues considered relevant to the development of the decommissioning plan; and

(c) Contain the date by which protests to the proposed final order must be received by the Department.

(3) The Department shall mail copies of the proposed final order to the operator, the DART if established, agencies providing comments, and to persons who have requested copies and paid the fee required under ORS 536.050(1)(e). The Department shall also give public notice of the proposed final order in the Department's weekly bulletin.

(4) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050(1)(j).

(5) Protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly bulletin published by the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050(1)(e), unless the person has previously requested copies and paid the required fee.

(6) Within 120 days after the close of the period for receiving protests, the director shall:

(a) Issue a final order as provided under OAR 690-052-0130; or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed decommissioning of the project; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.

(7) At the request of the applicant, the Department may extend the time periods set forth in subsection (6) of this section for a reasonable period of time.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0120

##### Contested Case Hearings

Contested case hearings will be conducted according to the terms and conditions set forth in Oregon Laws 1999, Chapter 849 (House Bill 2525), the rules adopted pursuant to that chapter, and any applicable Department rules.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

#### 690-052-0130

##### Exceptions to the Proposed Final Order; Final Order

(1) Any party may file exceptions and arguments with the Department within 20 days following the date of service of the proposed order on the parties to the contested case proceeding. Exceptions and arguments must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission statutes, rules, and policies to which modifications are sought in the exceptions.

(2) Where exceptions are timely filed to the proposed order, the Director shall either grant or deny the exceptions and issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

(3) Where no exceptions are filed within the time period allowed in the proposed order, the Director shall issue an order either affirming or modifying the proposed order, consistent with OAR 137-003-0655.

(4) If a contested case hearing is not held, the Director shall issue an order either affirming or modifying the proposed order.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

### 690-052-0140

#### Final Order Needed to Decommission

An operator of a hydroelectric project operating solely under the authority of the State of Oregon may not make physical changes to decommission the project except in accordance with a final order issued by the Water Resources Director under OAR 690-052-0130, and shall decommission the project according to such order. This section does not prohibit the operator from complying with the requirements of other state agencies.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

### 690-052-0150

#### Disposition of the Water Right

The hydroelectric water right for a project is subject to the provisions of ORS 543A.305 regarding the conversion of a hydroelectric water right to an instream right. Nothing in these rules or in 543A.305 prevents the operator from transferring a hydroelectric water right to an instream right according to 540.505 through 540.530, prior to conversion.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

### 690-052-0160

#### Modification of Time Limits

The Department, for good cause, may extend the time limits set forth in this division for a reasonable period of time.

Stat. Auth.: ORS 536.027, 543A.300(2) & OL 1999, Ch. 873, Sec. 26

Stats. Implemented: ORS 543.092, 543 & 543A

Hist.: WRD 4-2001, f. & cert. ef. 5-7-01

## DIVISION 53

### HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

### 690-053-0001

#### Purpose

(1) The purpose of this division is to establish procedures to be used by the Water Resources Department in evaluating applications for amendments to hydroelectric licenses, power claims or certificates. These rules do not apply to new project proposals. These rules describe the type of amendments that may be considered; the process that must be followed to approve amendments; and what steps must be taken to avoid injury to other water users, prevent undesirable impacts to natural resources, and to appeal Department decisions.

(2) These rules do not apply to:

(a) A change in point of diversion.

(b) A change in point of appropriation.

(c) New uses unrelated to the hydroelectric generation use.

(d) The construction of a new dam in a location where there is no existing dam or diversion.

(e) Any repair, modification, or reconstruction of an existing dam that would result in a significant change in the surface area or elevation of an existing impoundment.

(f) Any modification to an existing hydroelectric project (including the replacement of existing turbines) which would result in an increase in the maximum hydraulic capacity of the project of 15 percent or more or would result in an increase in the project's nameplate capacity of 2 megawatts or more as defined in regulations of the Federal Energy Regulatory Commission (FERC), 18 CFR 11.1(i).

(3) Meeting the terms and conditions of a hydroelectric license, water right permit or certificate is considered a beneficial use of water.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

### 690-053-0005

#### Definitions

The following definitions apply to the rules in this division:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the director of the Water Resources Department.

(4) "Augmentation of a hydroelectric water right" means diverting more water beyond the volume provided in the applicable hydroelectric water right over a calendar year. Augmentation does not include rescheduling or redistributing water use within a calendar year or installing more efficient generation equipment that allows the use of the same amount of water to produce more power.

(5) "Final Unified State Position" means the formal state comments described in ORS Chapter 543A.115 that are forwarded to the Federal Energy Regulatory Commission (FERC) by the Hydroelectric Application Review Team (HART) in response to an applicant's final license application with FERC.

(6) "Applicable hydroelectric water right" means a license issued under ORS Chapter 543, a power claim or certificate issued under Chapters 537 or 543A for the generation of hydroelectric power, a decreed right issued according to Chapter 539 or pre-1909 uncertificated claim.

(7) "Injury to an existing water right" means a situation where the holder of a valid water right is prevented from receiving the water to which he/she is legally entitled.

(8) "Redistribution" means varying the amount of water over the seasons of a calendar year but not exceeding the total amount allowed for the year. The total yearly amount is computed by multiplying the daily rate by 365 days.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

### 690-053-0010

#### Amendment Application Form

An amendment application shall be prepared in ink or type-written on forms provided by the Department. Applications shall contain the following information:

(1) Applicant's name, mailing address, and telephone number.

(2) Name appearing on permit, certificate or license, if different.

(3) Type of change proposed.

(4) Number of the permit, certificate or license.

(5) Source of water.

(6) Date of priority.

(7) The existing points of diversion and points of use located accurately on a map in reference to a public land survey corner.

(8) A general description of the current facilities, including capacity.

(9) A statement explaining the reason for the proposed amendment consistent with 690-053-0020 through 0030.

(10) Evidence that the water has been used within the past five years in accordance with the terms and conditions of the permit, certificate or license. The evidence may include:

(a) Affidavits from knowledgeable persons, such as the owner or operator, a neighbor, power purchaser.

(b) Receipts or expenditures related to the use of water.

(c) Other records such as dated photographs.

(11) If for a redistribution or augmentation of water use a letter from the affected wildlife and/or environmental quality agency endorsing the change.

(12) A listing of all affected local governments, including county, city, municipal corporations, and tribal governments.

(13) An oath that the information contained in the application is true and accurate.

(14) The signature of the applicant, and if an entity, the title of the authorized representative signing the form.

(15) The appropriate fee as required under ORS 536.050(h).

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

#### 690-053-0015

##### Notice Requirements

(1) The Department shall give notice of amendment applications received by publication in the Department's weekly notice "Public Notice of Water Use Requests." Any person interested in an amendment application shall submit written comments to the Department within 30 days of the weekly notice or the last day of the newspaper notice in 690-053-0015(2), whichever is later.

(2) After notice is published by the Department, the applicant shall arrange for publication of a notice provided by the Department in an appropriate newspaper having general circulation in the area in which the hydroelectric facility is located for a period of at least two weeks and not less than one publication each week. The applicant shall provide the Department with a certificate of publication.

(3) The notice must include the following information about the application:

(a) The application and project file number.

(b) The county of use.

(c) The type of amendment proposed.

(d) The applicants name and address.

(e) The date by which comments on the amendment application must be received by the Department.

(f) A statement that upon issuance of a draft proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality.

(4) The Department shall send notice of all amendment applications to the planning departments of affected local governments, Indian tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project. Agency comments must be received within 30 days after the last date of publication shown on the notice to file comments. Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

#### 690-053-0020

##### Amendment Criteria

Under ORS 543.092, upon the request of the hydroelectric water right, and the approval of the Department, a hydroelectric water right or certificate may be amended, provided that the amendment:

(1) Is consistent with the final unified state position for the project, if one exists;

(2) Is consistent with the requirements of ORS Chapter 543A;

(3) Causes no injury to other water rights that cannot be adequately mitigated as determined by the Water Resources Department; and

(4) Allows for public participation in the amendment process.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

#### 690-053-0025

##### Types of Amendments that Will Be Considered Under These Rules

All amendments allowed in this section must be consistent with the standards in 690-053-0020.

(1) Hydroelectric water right holders as defined in ORS 543.075(2) may submit amendment applications that allow augmentations or redistribution of the volume of water allowed for

diversion in the applicable hydroelectric water right only if the proposed amendments meet management goals of state wildlife or environmental quality agencies and are shown to restore, enhance or improve fish populations and/or water quality within the river systems. This includes:

(a) The rescheduling or redistributing of the total amount of water used over the year so that more water may be diverted during certain times of the year in exchange for reductions of water use during other times.

(b) Augmenting or increasing the total yearly amount of water provided that:

(A) The proposed augmentation does not require the construction of new facilities or change in the point of diversion or use.

(B) The proposed augmentation meets the resource protection standards in ORS Chapter 543A.025; and

(C) The proposed augmentation has water available from the proposed source during the times and in the amounts requested.

(D) Pursuant to ORS 543A.145(3), any augmentation will receive as a priority date the date of filing the amendment application.

(2) Hydroelectric water right holders may submit application amendments for the following:

(a) Adding fish protection and/or water quality as a beneficial use.

(b) Changing one or more items in the "water right conditions" section of the applicable hydroelectric water right provided that, after the application has been submitted, the affected state agencies have been consulted by the project owner and agree in writing that the amendment is needed.

(c) Hydroelectric water right holders may submit application amendments altering the date of expiration in the applicable hydroelectric water right to match the period granted by FERC.

(d) Clarifying language or correcting administrative errors.

(3) Other proposed amendments not identified in these rules may be considered by the Department provided that the proposed amendment meets the criteria in 690-053-0020.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

#### 690-053-0030

##### Public Hearing

(1) Based on review of the application, public comments received, the size of the project and other pertinent information, the Director will determine whether a public meeting and a request for additional studies or consultation will be required.

(2) The public meeting may be omitted under one or more of the following circumstances:

(a) The project generates less than 100 theoretical horsepower of electricity;

(b) The proposed amendment does not involve a change in the annual amount of water used; or

(c) The proposed amendment is one agreed upon by the Department and the affected resource agencies; or

(d) No public comments were received raising substantial issues.

(3) If the Director determines a public meeting is required, notice will be sent two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment process. Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

#### 690-053-0035

##### Issuance of Amendment Order

After the close of the public comment periods, or the public hearing if one is held, and upon a finding that the proposed amendment meets standards in OAR 690-053-0020, the Department shall issue a proposed order within 120 days.

(1) In developing the proposed order, the Department shall consider all comments received under OAR-690-053-0015 and 0030, but the proposed order need not separately address each comment received.

(2) The proposed order shall include findings of fact and conclusions of law that show the standards in OAR 690-053-0020 and 0025 are met.

(3) The Department shall send by regular mail, or with the consent of the recipient, by electronic means, copies of the proposed order to the applicant and to persons who have requested copies. Within 15 days after issuing the proposed order, the Department shall publish notice of the order in the weekly notice published by the Department.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

### 690-053-0040

#### Protests

(1) Any person may submit a protest against a proposed amendment order. A protest shall be in writing and include:

(a) The name, address and telephone number of the protestant.

(b) A description of the protestant's interest in the amendment and, if the protestant claims to represent the public interest, a precise statement of the public interest represented.

(c) A detailed description of how the action proposed in the amendment will be detrimental to the protestant's interest.

(d) A detailed description of how the amendment is in error or deficient and how to correct the alleged error or deficiency.

(e) Any citation of legal authority supporting the protest, if known.

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.

(3) Protests shall be submitted within 45 days after publication of the notice of the amendment in the weekly notice published by the Department.

(4) Within 10 days after the close of the filing period established under Section 3 of this rule, the Department shall send a copy of all protests to the applicant, and the protestant(s), if any.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

### 690-053-0045

#### Contested Case Hearings

(1) Within 30 days after the close of the period for receiving protests, the Director shall determine whether to issue a final order or schedule a contested case hearing.

(2) The determination of whether to conduct a contested case hearing will be made according to the provisions of OAR 690-310-0170.

(3) The contested case hearing will be conducted according to OAR 137, division 3.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

### 690-053-0050

#### Final Order

(1) If after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed amendment is consistent with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order approving the amendment. The approval shall be on such terms and conditions as are necessary to

ensure compliance with the amendment criteria in OAR 690-053-0020.

(2) If the Director finds the proposed amendment does not comply with the amendment criteria set forth in OAR 690-053-0020, the Director shall issue a final order rejecting the application.

Stat. Auth.: ORS 543.092 & 536.027

Stats. Implemented: ORS 543.092 & 543A

Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

## DIVISION 76

### ESTABLISHMENT OF MINIMUM PERENNIAL STREAMFLOWS

#### 690-076-0005

##### Purpose

Establishment of minimum perennial streamflows is a high priority of the Water Resources Commission and Water Resources Department. Minimum perennial streamflows are established as administrative rules to support fish and aquatic life or minimize pollution. Minimum streamflows are included in applicable basin program statements. These rules include the definitions, standards, process and criteria for the evaluation of minimum perennial streamflow applications submitted by the Department of Fish and Wildlife or the Department of Environmental Quality to the Water Resources Commission under the provisions of ORS 536.325.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

#### 690-076-0010

##### Definitions

The following definitions apply to OAR 690-076-0005 to 690-076-0035.

(1) "Affected Local Government" means any local government as defined in OAR 690-005-0015, within whose jurisdiction a minimum perennial streamflow is proposed or established.

(2) "Basin" means any one of the major drainage areas identified by the Commission for program planning and management purposes. Basin boundaries are identified on Water Resources Department map 0.6.

(3) "Classification" means the designation in basin programs of allowed and preferred beneficial uses of a specified water source as provided in ORS 536.340. A classification may also reserve quantities of water for preferred beneficial uses.

(4) "Commission" means Water Resources Commission.

(5) "Department" means Water Resources Department.

(6) "Director" means Water Resources Director.

(7) "Minimum Perennial Streamflow," also minimum streamflow, means an administrative rule that establishes a flow necessary to support aquatic life or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur. The Commission will assume minimum streamflow levels are most appropriate for support of aquatic life if the flows are the lowest level which, if maintained, would support a population of key fish species consistent with the management objectives of Oregon Department of Fish and Wildlife. The Commission will assume minimum streamflow levels are most appropriate for minimizing pollution if the flows are the lowest level which, if maintained, would assure that projected loading levels from adequately treated wastes and best management practices for non-point sources would not result in violation of water quality standards of the Department of Environmental Quality.

(8) "Planned" means a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction or application for a development permit from the private sector.

(9) "Potential" means an option which could reasonably occur in the future but is not planned. A feasibility determination may or may not have been completed, but the option has not been ruled out.

(10) "Subbasin" means any subarea of a basin defined by surface drainage patterns such as the drainage basin of any tributary, or the area draining to any point on a river, or draining between two points on a river.

(11) "Withdrawal" means an administrative rule prohibiting all new appropriations for particular uses from a source for part or all of the year as provided in ORS 536.410. A withdrawal can be set for a prescribed length of time or indefinitely until modified or revoked by the Commission.

Stat. Auth.: ORS 183, 197 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 7-1985, f. & ef. 7-10-85; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-076-0015

##### Effect of Minimum Perennial Streamflows

(1) Except for those uses exempted by a minimum streamflow, use of water under a permit or right with priority date later than the priority date of an established minimum streamflow will not be allowed when flows are below the minimum streamflow level. Use of water under rights and permits with priority dates earlier than the minimum streamflow is not affected. Nothing in these rules is intended to affect the preference for human and livestock consumption under ORS 536.310(12).

(2) The priority date of minimum streamflows established as the result of action on an application by Oregon Department of Fish and Wildlife or Oregon Department of Environmental Quality is the date of application. When an existing minimum streamflow is modified, the earlier minimum streamflow priority date remains in effect for the previous amount or the level of the modified minimum streamflow, whichever is less.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

#### 690-076-0018

##### Application Standards for Minimum Perennial Streamflows

(1) The Commission will accept applications for minimum perennial streamflows to support aquatic life or minimize pollution submitted by the Department of Fish and Wildlife or the Department of Environmental Quality on or after January 1, 1986.

(2) A complete application shall contain the following information:

- (a) Applicant;
- (b) Stream name;
- (c) The body of water to which the stream is tributary;
- (d) Name of major river basin;
- (e) Map with flow location;
- (f) Purpose(s) of flow;
- (g) Requested flow in cubic feet per second (cfs);
- (h) Method of determining requested minimum streamflow needs and date of study or evaluation;
- (i) Period of year, if any, when streamflow is believed to be frequently lower than requested levels;
- (j) Suggested long-range methods of achieving minimum streamflow objectives during any periods of shortage;
- (k) A completed land use coordination statement as provided in the Department's Land Use Planning Procedures Guide. At a minimum, the statement shall:
  - (A) Identify affected local government pursuant to OAR 690-076-0010;
  - (B) Explain the purpose of the minimum streamflow;
  - (C) Invite planning directors to identify and provide policies or provisions in comprehensive plans relating to instream flow protection or other uses of the waters under consideration; and

(D) Offer an opportunity for local government officials to discuss the proposed minimum streamflow with the applicant(s) and Department.

(I) Additional data identified in section (3) and/or (4) of this rule.

(3) Applications to support aquatic life shall also provide the following information:

- (a) Species of fish life used to determine flow requirements;
- (b) Other significant aquatic species supported;
- (c) Population estimates of significant species and historic levels and population trends, if available;
- (d) Activities and management plans for support of aquatic life in the stream subbasin;
- (e) Any significant changes in the physical habitat or aquatic species composition that has occurred since the date listed in subsection (2)(h) of this rule;

(f) Any other available reports for the same river which identify different minimum streamflows for support of aquatic life and the reasons why the requested flow is most appropriate;

(g) A preliminary indication from Department of Environmental Quality of whether requested flow levels are sufficient to minimize pollution.

(4) Applications to minimize pollution shall also provide the following information:

- (a) Sources of pollution to be minimized that were used to determine the flow requirements;
- (b) Other sources of pollution in the stream subbasin;
- (c) Beneficial water uses that are presently or potentially limited by water pollution;
- (d) Present water quality conditions in the stream;
- (e) Water quality management activities and programs in the subbasin;

(f) Any other available reports for the same river which identify different minimum streamflows to minimize pollution and the reasons why the requested flow is most appropriate;

(g) A preliminary indication from Oregon Department of Fish and Wildlife of whether the requested flow is sufficient for support of aquatic life;

(h) A statement showing why other means to abate pollution are not feasible.

(5) The applicant may include in the application a statement of values associated with the purpose of the minimum streamflow, such as recreational, scenic, scientific, environmental, economic, cultural or health and welfare factors. The statement will not be used to determine if the application is complete.

Stat. Auth.: ORS 183, 197 & 536

Stats. Implemented:

Hist.: WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-076-0020

##### Review Process for Applications

After receipt of an application for a minimum perennial streamflow, the Commission shall establish a schedule to complete a decision on the requested flow within one year. The schedule shall provide for the following review process:

(1) The Department will record the date an application is received. If the Department finds the application incomplete, it will be returned to the applicant with the return date noted. The application will retain the priority date if sufficient information is provided within 30 days from the return of the application.

(2) The Department will distribute initial information on the application under consideration and invite public comments on the requested minimum perennial streamflow and other water needs and problems within the stream subbasin. The application will be available for the public review. Public notice will be given to news media of the basin, state agencies, the planning departments of affected local governments, county commissioners, city council members and sent to the administrative rules mailing list. The Director may presume that the proposed minimum streamflow is compatible with the affected laws, regulations, and comprehensive plans of those agencies notified if no response is received within 60 days of the date shown on the notice. The Department will also

mail the land use coordination statement referenced in OAR 690-076-0018(2)(k) to the planning departments of affected local governments. In the event of a land use dispute, as defined in 690-005-0015 (Definitions), the Director or Commission shall follow procedures provided in 690-005-0040 (Resolution of Land Use Disputes). Interested persons may request written notification of the required public hearing.

(3) The department staff will analyze stream-flow and water use information and prepare a recommendation based on information listed in OAR 690-076-0025 and the review standards in 690-076-0030.

(4) The Commission will schedule a hearing on the minimum streamflow application. If more than one application is pending in the same basin, hearings may be consolidated. The hearing may also encompass any supplemental action proposed by the Commission. The following material shall be available for public review at the time notice of the public hearing is published with the Secretary of State:

(a) Minimum streamflow application(s);

(b) Preliminary findings and analysis of alternatives by the Department;

(c) Proposed action, including proposed findings and conclusions and a statement of reasons supporting the proposed action.

(5) At least one member of the Commission will hold a public hearing in the affected basin to consider the proposed action. The proposal will be to adopt a requested minimum perennial streamflow(s), adopt a more appropriate minimum perennial streamflow rate(s) or reject the application. In addition, the Commission may propose alternative minimum streamflows or supplemental actions. Interested persons, organizations, and local, state and federal agencies may speak at the hearing or provide written comments. The Commission will specify a period for written comments. If the Commission determines it is in the public interest, additional hearings may be held to consider proposed actions.

(6) The Commission may allow the applicant additional time to respond to evidence received at the hearing.

(7) The Commission will take final action after reviewing the hearing record and a final recommendation of the Department.

Stat. Auth.: ORS 183, 197, 536.025 & 536.027

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91

### 690-076-0025

#### Information Base

(1) The Department and Commission shall consider the following information to the extent available, when evaluating applications:

(a) Items of information listed in OAR 690-076-0018(2) through (5);

(b) Water permits and rights of record and information pertaining to actual use of water;

(c) Existing instream uses;

(d) Stream gage records or estimates of flow;

(e) Existing water supply and water quality problems;

(f) Water needs for existing and planned beneficial uses and seasonal characteristics of water demands;

(g) Sources of water supply in the subbasin considering: groundwater, surface water, planned actions or potential for developing storage sites, conserving water, enhancing riparian zones and enhancing watershed yield;

(h) Basin water use programs;

(i) Statutory and administrative restrictions on water use;

(j) Acknowledged comprehensive land use plans;

(k) Benefits and values from existing and planned uses of surface water in the subbasin;

(l) Benefits and values of potential water uses.

(2) The Department and Commission may make reasonable assumptions or estimates for information when specific data are not readily available. Any assumptions or estimates used shall be stated for public review and may include but shall not be limited to:

(a) Monthly and annual runoff characteristics;

(b) Major sources of inflow to the stream;

(c) Characteristics of existing water use including frequency of use, evaporation and transpiration, opportunity for conservation and effects of use on streamflows;

(d) Potential sources of water supply;

(e) Amounts of water needed to supply potential beneficial water uses;

(f) Impact of land use and development on streamflow.

(3) The Commission will determine the adequacy of water supply at a minimum flow location for satisfying existing, planned and potential instream and out-of-stream uses. The Commission will consider the existing streamflow pattern. If there are shortages, the Commission will consider the plans and potential for developing supplies for both instream and out-of-stream needs. The Commission will only consider ground water a separate source if use is not likely to affect streamflow levels and is not in a critical groundwater area. Interbasin transfers may be considered as an additional water supply only if a project has been planned or constructed. The Commission will consider whether planned or potential out-of-stream use could reasonably be served by sources other than natural flow during periods of shortage. If the uses require natural flow, the Commission will evaluate the importance of the planned uses and both the importance and likelihood of potential uses.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

### 690-076-0030

#### Review Standards

The Commission will apply the following standards when reviewing a minimum perennial streamflow application.

(1) The Commission will assume the purposes of the minimum streamflow are as important as other water uses and approve the requested minimum stream flow or a more appropriate level unless another use is found to be of greater importance.

(2) Minimum perennial streamflows may be established on streams where appropriations have depleted the flow below the proposed minimum perennial streamflow in some reaches for some period of time if the Commission concludes that the action will result in public benefit for support of aquatic life or minimizing pollution.

(3) The Commission may identify another use as being of greater importance than the purpose of the minimum flow and may reject an application from the Department of Fish and Wildlife or the Department of Environmental Quality if:

(a) Appropriations have depleted streamflows below the proposed minimum perennial streamflow during all or a part of the year and the need to protect water sources to supplement existing inadequately supplied water uses is of greater importance;

(b) Little potential exists for developing a water supply to meet the flow objectives in the future without causing a detrimental impact on more important existing and planned uses;

(c) A more important planned water use could be served by unappropriated streamflow which could not be served by an alternative source if the minimum streamflow were adopted;

(d) A more important use is identified based on state or federal statutory or administrative provisions or acknowledged local comprehensive land use plans that state a preference for another water use which could not be adequately served if the minimum flow application were approved; or

(e) The general economic, social and environmental benefits associated with a planned water use(s) are found to be of greater value than benefits and values identified in the application and hearing record from establishing the minimum streamflow.

(4) The Commission may reject a minimum perennial streamflow application after finding another use is of greater importance and set an alternative minimum streamflow during all or part of a year after reserving water for the more important use(s) or exempting use(s) from the minimum flow. The Commission must find that the alternative minimum streamflow is sufficient to

provide a public benefit for supporting aquatic life or minimizing pollution.

(5) The Commission shall assure that the adoption of minimum streamflows meets the requirements established in OAR 690-060-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(6) In determining whether a more appropriate streamflow should be adopted, the Commission shall consider the comments from the Departments of Fish and Wildlife and Environmental Quality, on any alternative streamflow and:

(a) Whether flow levels should be based on the requirements of other fish species, consistent with fishery management objectives of the Department of Fish and Wildlife;

(b) Whether the methods used for determining optional water requirements for support of aquatic life or minimizing pollution are appropriate and superior to those identified in the application;

(c) Whether levels based on minimizing pollution from difference sources or based on different methods of treatment or disposal of wastes would result in a greater public benefit;

(d) Whether streamflow analysis indicates a proposed flow deviates significantly from the natural runoff pattern of the stream and another level would better support the purposes of the minimum flow and reflect the natural streamflow pattern;

(e) Whether significant changes in stream channel configuration or aquatic habitat have occurred since the minimum streamflow study or evaluation was completed and optional levels identified are more appropriate under existing conditions; or

(f) Whether optional levels will be more appropriate considering both the need to support aquatic life and the need to minimize pollution.

Stat. Auth.: ORS 183, 197 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 7-1985, f. & ef. 7-10-85; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

#### **690-076-0035**

##### **General Provisions and Policies**

(1) The Commission may identify potential water storage sites needed to encourage, promote and secure the maximum beneficial uses and control of the water resources under consideration in the evaluation of a minimum perennial streamflow. The Commission may reserve by classification specific quantities of water to assure supplies sufficient to meet future storage development requirements and minimum streamflows.

(2) In addition to the proposed action on the minimum perennial streamflow application the Commission may propose and consider at the same hearing, classification or reclassification of streams, withdrawal of waters from further appropriation, or amending basin water use programs. The supplemental actions under consideration shall either contribute to the objectives of supporting aquatic life and minimizing pollution or preserving water supply for a use that is found to be more important than the purpose of the minimum streamflow.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

### **DIVISION 77**

#### **INSTREAM WATER RIGHTS**

#### **690-077-0000**

##### **Purpose**

(1) The purpose of this Division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights.

(2) This Division also provides for the conversion of existing minimum streamflows to instream water rights; for the instream transfer or lease of existing water rights for use as instream water rights; and for the enforcement of instream water rights which are

held in trust by the Water Resources Department to protect the public uses.

(3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission or by an order approving a time-limited instream transfer or lease, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18).

(4) In 2001, the Legislature authorized the split season use leasing of water rights for instream purposes. Under ORS 537.348(3), all or a portion of an existing water right may be used for the existing use and for instream use during the same year, provided that the uses are not concurrent and that the holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the instream water right.

(5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.

(6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

#### **690-077-0010**

##### **Definitions**

As used in this Division:

(1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.

(2) "Agency" means ODFW, DEQ and Parks.

(3) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(4) "Comment" means a written statement concerning a particular application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

(5) "Commission" means the Water Resources Commission

(6) "Contested Case" means a hearing as defined in ORS 183.310(2) and conducted according to the procedures described in ORS Chapter 537, 183.413 to 183.470 and OAR chapter 690, division 2.

(7) "DEQ" means the Department of Environmental Quality

(8) "Department" means the Water Resources Department

(9) "Director" means the director of the Water Resources Department.

(10) "Estimated Average Natural Flow" means average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrologic technology.

(11) "Held in Trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Department affecting instream water rights are limited by public trust obligations.

(12) "Instream" as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(13) "Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(14) "Instream lease" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right for a specified time-period as authorized by ORS 537.348(2).

(15) "Instream transfer" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1).

(16) "Instream Water Right" as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(17) "Minimum Streamflow" also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.

(18) "Multipurpose Storage Project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two beneficial uses and/or purposes.

(19) "ODFW" means the Oregon Department of Fish and Wildlife.

(20) "ODFW flow restoration priority watershed" means a geographic area identified by ODFW where there is a need for flow restoration during a specified season(s) to support fish recovery under the Oregon Plan for Salmon and Watersheds. The ODFW flow restoration priority watersheds are identified in Figures 1 to 18.

(21) "Parks" means the Oregon Parks and Recreation Department.

(22) "Planned" means a determination has been made for a specific course of action either by legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by the public or private sector.

(23) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this rule. Such uses include but are not limited to the policies, provisions, and maps contained in acknowledged city or county comprehensive plans and land use regulations.

(24) "Pollution Abatement" means the use of water to dilute, transport or prevent pollution.

(25) "Protest" means a written statement, filed in accordance with OAR chapter 690, division 2, and the applicable provisions of this division or division 380, expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing.

(26) "Public Benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(27) "Public Use," as defined in ORS 537.332, includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation.

(28) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(29) "Scenic Attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(30) "Split Season Use" means the exercise of a water right in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that water is not used for the existing purpose during the period in which the water is to be protected instream.

(31) "Time-Limited Instream Transfer," means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the water right will revert back to its original use:

(a) Without further action by the Department at the end of the period of time specified in the final order approving the instream transfer; or

(b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met.

(32) "Unappropriated Water Available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

(33) "Water Purveyor" means any entity formed for the purpose of delivering water supply to water right holders.

(34) "Water quality limited" has the meaning provided in the OAR 340-041.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.310, 536.332, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

## 690-077-0015

### General Statements

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

(5) Unless the Director determines otherwise, for instream water rights established through instream transfers, leases, or allocations of conserved water, it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant for the applied public use, if the criteria in Subsection (5)(a) and (b), or in Subsection (5)(a) and (c) are met:

(a) The flow does not exceed the maximum amount of any instream water right application applied for under OAR 690-077-0020 for the same reach or portion thereof, and for the same public use.

(b) For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed.

(c) The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality.

(6) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer,

the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(7) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(8) When instream water rights are established through instream transfers, leases, or allocations of conserved water of existing water rights, the order, and, where appropriate, the certificate shall define the appropriate point, reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream or for a point or shorter distance if needed to account for return flow or to prevent injury.

(9) Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses unless specifically withdrawn from appropriation for such use.

(10) Instream water rights shall be approved only if the amount, timing and location serve a public use or uses.

(11) The combination of instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with Sections (4), (5), and (6) of this rule.

(12) An instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies that it shall be subordinate to future uses or appropriations.

(13) An instream water right created through the conversion of a minimum perennial streamflow, which consists in whole or part of waters released from storage, is enforceable only as to the waters released to satisfy the instream water right.

(14) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 1-1989(Temp), f. & cert. ef. 1-24-89; WRD 4-1989, f. & cert. ef. 7-11-89; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 4-2006, f. & cert. ef. 10-2-06

### State Agency Instream Water Right Applications

#### 690-077-0019

##### Process for Instream Water Right Certificate Requests

(1) Except as provided in ORS 537.343, the Department shall process a request received under 537.336 for a certificate for an instream water right in accordance with the provisions for obtaining a permit to appropriate water under 537.140 to 537.250, and the policies under 537.332 to 537.360.

(2) Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in 183.310 to 183.550 conflicts with a provision in 537.120 to 537.360, the provisions in 537.120 to 537.360 shall control.

(3) Pursuant to Section 46, Chapter 416, Oregon Laws 1995, for each application described under OAR 690-077-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in Chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

Stat. Auth.: ORS 536.025, 536.027, 537.140 - 537.250 & 537.332 - 537.360

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0020

##### Application Requirements

(1) Only ODFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.

(2) To promote coordination, ODFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.

(3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.

(4) Applications to establish instream water rights shall be submitted in writing and shall include the following:

(a) The name(s) and address(es) of the agency(ies) applying;

(b) The public uses to be served by the requested instream water right and the flows necessary to support the public uses;

(c) Stream or lake name;

(d) If a stream, the reach delineated by river mile and stream to which it is tributary;

(e) The appropriate section of a Department basin map with the applicable lake or stream reach identified;

(f) The instream flow requested by month and year in cubic feet per second or acre-feet or lake elevation;

(g) A description of the technical data and methods used to determine the requested amounts;

(h) Evidence of notification of other qualified applicant agencies;

(i) If a multi-agency request, the amounts and times requested for each category of public use;

(j) Identification of affected local governments (pursuant to OAR 690-077-0010) and copies of letters notifying each affected local government of the intent to file the instream water right application;

(k) Written documentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.

(1) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(5) The applicant is encouraged to propose:

(a) A means and location for measuring the instream water right;

(b) The strategy and responsibility for monitoring flows for the instream right; and

(c) Any provisions needed for managing the water right to protect the public uses.

(6) Any request for an instream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request.

(7) Within 60 days after the Department proceeds with the application under OAR 690-077-0031, the Department shall complete the application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be

sent to the applicant by registered mail. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department mails the request to the applicant. If the Department does not receive the information or a request for a time extension under 690-077-0052(2) by the date specified in the request, the Department may reject the application. The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this Section.

Stat. Auth.: ORS 197, 536.025, 536.027, 537.153, 536.220, 536.300, 536.310, 537.336, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### Application Processing

#### 690-077-0027

##### Completeness Review

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-077-0020(4) and is complete and not defective. If the Department determines that the application is incomplete or defective, the Department shall return the application.

(2) Upon determining that an application contains the information listed under OAR 690-077-0020(4) and is complete and not defective, the Department shall endorse on the application the date upon which the application was received for filing at the Department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by ORS Chapter 538. If the proposed use is prohibited by ORS Chapter 538, the Department shall reject the application and return the application with an explanation of the statutory prohibition.

Stat. Auth.: ORS 537.150 & 538

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0029

##### Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-077-0027, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations and allow the applicant 14 days from the date the Department sends the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application. If the Department receives no timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.025, 536.027, 537.150 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-077-0031

##### Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-077-0029(2), the Department shall give public notice of the application in the weekly notice published by the Department. The weekly notice shall be sent to the following:

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(b) Affected Indian tribes; and

(c) All persons on the Department's weekly mailing list.

(2) The notice shall include a request for comments on the application, the date by which comments must be received by the Department, and information about how an interested person may obtain future notices about the application and a copy of the proposed final order. The notice also shall include the following information about the application:

(a) The name(s) and address(es) of the applicant agency(ies);

(b) County(ies) of water use;

(c) Application file number;

(d) Description of the characteristics and the purpose of the proposed instream water right;

(e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation;

(f) Common name of surface water source(s); and

(g) The stream reach by mile or geographic location.

(3) The notice shall be sent by regular United States mail, or with the consent of the recipient, by electronic means.

(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before the end of the 30-day comment period.

(5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 537.140 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-077-0033

##### Public Interest Presumption

(1) The Department shall presume that a proposed water use will not impair or be detrimental to the public interest if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The public interest presumption described in Section (1) of this rule is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(a) One or more of the criteria for establishing the public interest presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be

**690-077-0037**

**Public Interest Review**

(1) Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-077-0029, before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in 690-077-0033.

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8) and may either:

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the public interest presumption is established or that the proposed instream use can be modified or conditioned to meet the public interest presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the public interest presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(b) In making any determination or finding in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Threatened, endangered or sensitive species;

(B) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under Section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0002(42);

(C) Fish or wildlife;

(D) Recreation;

(E) Economic development; and

(F) Local comprehensive plans, including supporting provisions such as public facilities plans.

(c) In making any determination or finding in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of Section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-077-0043, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this Section and Sections (5)–(7) of this rule. The Department shall find that the public interest presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four public interest presumption criteria listed in OAR 690-077-0033(1)(a)–(d) are not met;

(b) The proposed use may impair or be detrimental to the public interest according to standards described in ORS 537.170(8), including:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

impaired or detrimentally affected.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 4-2006, f. & cert. ef. 10-2-06

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(5) If the Department finds that under Section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 denying the application unless the Department makes specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(8) the issuance of an instream water right certificate will not impair or be detrimental to the public interest.

(6) If the Department finds that under Section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 approving the application with any appropriate modifications or conditions.

(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-077-0043, the Director shall schedule a contested case hearing.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0039

#### Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-077-0031 and all findings of the Department, but the proposed final order need not separately address each comment received.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft certificate, including any proposed modifications, conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the Department.

(3) The Department shall send copies of the proposed final order to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send copies of the proposed final order by regular mail to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050.

(4) Within seven days after issuing the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-077-0031, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-077-0043(4).

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f. & cert. ef. 2-1-12

### 690-077-0043

#### Protests and Standing

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order, whether issued following a contested case hearing or where no contested case hearing is held.

(3) The request for standing must be in writing, signed by the requester, and include the following:

(a) The requester's name, mailing address and telephone number;

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

(4) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing, or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue, precludes judicial review based on that issue.

(5) Any person who has filed a timely request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.

(7) Within 10 days after the close of the filing period established under Section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0046

#### Determination to Hold a Contested Case Hearing

(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:

(a) Issue a final order as provided under ORS 537.170(6); or

(b) Schedule a contested case hearing.

(2) The Director:

(a) May schedule a contested case hearing if:

(A) A protest has been submitted; and

(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.

(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant

submits the information required for a protest under OAR 690-077-0043 and requests a contested case hearing.

(3) As soon as possible after making a determination under Section (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing, and describe the procedures each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered the scheduling of the contested case hearing for purposes of the running of the 45-day time period under Section (4) of this rule.

(4) Within 45 days after the Director schedules a contested case hearing under ORS 537.153(8), the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of 183.413 to 183.470 and OAR chapter 690, division 02. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(5) Notwithstanding the provisions of ORS 183.413 to 183.470 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this rule shall be limited to:

- (a) The applicant;
- (b) Any person who timely filed a protest; and
- (c) Any person who timely filed a request for standing under OAR 690-077-0043 and who requests to participate as a party or limited party in the contested case hearing prior to the start of the proceeding.

(6) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.413 to 183.470 except:

- (a) As provided in Sections (4) and (5) of this rule; and
- (b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.

(6) After the conclusion of a contested case hearing, any party may file exceptions to the hearing officer's proposed order in the manner described in OAR 690-002-0175.

Stat. Auth.: ORS 536.025, 536.027, 537.153, 537.170 & 537.338  
Stats. Implemented: ORS 537.332 - 537.360  
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0047

#### Final Orders

(1) In developing the final order, the Department shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

(2) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order rejecting the application or modifying or conditioning the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying or conditioning the proposed final order.

(3) A final order issued under Section (2) of this rule for an instream water right certificate may include any condition the Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The final order may:

- (a) Approve the instream water right application for the quantity of water requested;
  - (b) Approve the instream water right application for a lesser quantity of water; or
  - (c) Deny the instream water right application.
- (4) If the Director reduces the quantity of water requested, denies the instream water right application, or conditions the

instream water right, the Director shall include a statement of findings that sets forth the basis for the reduction, denial or conditions.

(5) Upon issuing a final order, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department shall also publish notice of the final order by publication in the weekly notice published by the Department.

Stat. Auth.: ORS 536.025, 536.027, 537.170, 537.343 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0048

#### Final Public Interest Determination

If the presumption of public interest under OAR 690-077-0033 is overcome in the manner described in 690-077-0037, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use, or the proposed use as modified or conditioned in the proposed final order, would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(8).

Stat. Auth.: ORS 536.025, 536.027, 537.170 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0049

#### Statement of Findings

Any order or proposed order by the Director or Commission that approves, reduces, conditions or denies an instream water right application shall include a statement or findings that sets forth the basis for the approval, reduction, conditioning or denial.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0040; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0044; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0051

#### Contested Case Hearing on Final Order

If a contested case hearing is not held prior to the issuance of the final order:

(1) Where the final order modifies or conditions the proposed final order, the applicant may request and the Director shall schedule a contested case hearing as provided under OAR 690-077-0046 by submitting the information required for a protest under 690-077-0043 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications or conditions to the proposed final order.

(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases.

Stat. Auth.: ORS 536.025, 536.027, 537.170 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### 690-077-0052

#### Time Requirements

(1) Except as provided in Section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.336 within 180 days after the Department proceeds with the application under OAR 690-077-0029(2).

(2) At the request of the applicant, the Department may extend the 180-day period set forth in Section (1) of this rule for a reasonable period of time. The extension shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary.

(3) If a contested case hearing is held, the Director shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the Department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings.

(4) If the applicant does not request an extension under Section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-077-0029(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Director to issue a final order or schedule a contested case hearing on an application for a water right.

(5) The mandatory timelines set forth in division 77 for the Department to process applications shall not apply to applications filed before October 31, 1996.

Stat. Auth.: ORS 536.025, 536.027, 537.175 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### **690-077-0053**

#### **Issuance of Instream Water Right Certificate**

After the Director issues a final order approving an instream water right, the Department shall issue a certificate for an instream water right according to the provisions of ORS 537.341. The instream water right shall date from the filing of the application with the Commission. The certificate shall be in the name of the Department as trustee for the people of the State of Oregon and shall be issued by the Commission according to the procedures established under ORS 537.338. The Commission shall forward a copy of each certificate issued under this rule to the state agency requesting the instream water right. A certificate for an instream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336.

Stat. Auth.: ORS 536.025, 536.027, 537.338 & 537.341

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### **Minimum Perennial Streamflows**

### **690-077-0054**

#### **Conversion of Minimum Perennial Streamflows to Instream Water Rights**

(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate Department mailing lists notice of proposed conversion, and a list of all existing minimum perennial streamflows established on any waters of this state prior to June 25, 1988 separated as follows:

(a) Those flows the Commission intends to convert without change to instream water rights;

(b) Those flows the Commission intends to condition with OAR 690-077-0015(12) and schedule a hearing before converting to instream water rights.

(2) Any person or agency, including the Department, may request a hearing on any of the conversions proposed within 60 days of publication in the Secretary of State's bulletin or the mailing of notice.

(3) Requests for hearings shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that:

(a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary;

(b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or

(c) The conversion from a minimum streamflow to an instream water right would not be in the public interest.

(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created.

(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission:

(a) To approve the conversion; or

(b) To conduct a hearing under ORS 537.170.

(6) The Commission shall act on the Director's recommendation in accordance with OAR 690-077-0046.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0050; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### **690-077-0055**

#### **Disposition of Minimum Perennial Stream-flows**

Following the conversion of a minimum streamflow, the Commission shall retain the original minimum streamflow until it determines through basin program amendment that no public benefit is derived by maintaining both an instream water right and a minimum streamflow.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88

### **Instream Transfers and Leases**

### **690-077-0065**

#### **General Provisions**

(1) The Department shall promote and facilitate potential instream transfers and leases under ORS 537.348 that would provide benefits for public uses.

(2) The Department encourages irrigation districts and other water purveyors to develop single lease applications that pool individual water rights and ownerships that are to be leased during the same term.

(3) Department personnel shall review all instream transfer or lease applications pursuant to OAR 690-077-0070 through 690-077-0079 to assure that they comply with these rules and, if possible, to develop conditions to prevent enlargement of the original right or injury to other water right owners.

(4) Completed lease applications submitted pursuant to OAR 690-077-0076, including signatures of lessor and lessee (if applicable), and all necessary attachments or exhibits, must be received by the Department's Salem office prior to July 1, or for year around uses, must be received prior to October 1. Completed lease applications received after this date shall be returned or, at the request of the applicant, be processed to be effective for the next calendar year. At the discretion of the Director, an application may be received and processed after this date during the current year.

(5) The Department may compile descriptive information to assist all parties in addressing technical issues related to instream transfers and leases, including but not limited to describing injury and enlargement issues, determining whether a proposed instream water right would support a public use, setting the location of a proposed instream water right and making agreements for measuring and monitoring the instream water right. The descriptive information shall not restrict new leases, but shall offer options that have been used in earlier leases to ensure compliance with OAR chapter 690, division 77.

(6) The Department may prepare lease application forms that include the requirements listed in OAR 690-077-0076(3) and any additional information the Department deems necessary to comply with the policies of OAR chapter 690, division 77 and to reflect the nature of the water rights subject to being leased instream. For

example, a special form could be prepared for an irrigation district to sponsor a single lease application that involved multiple water right owners.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01, Renumbered from 690-077-0078; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0070

##### Application for Instream Transfer

(1) As provided in ORS 537.348(1), any person may apply for an instream transfer, including a time-limited instream transfer.

(2) In addition to the transfer application requirements described in OAR 690-380-3000, an instream transfer application shall include the following information:

(a) Public use(s) for which the instream right is desired;

(b) Description of the time periods of the instream use and quantity of water to be transferred to instream use;

(c) The location of the proposed instream use. If a reach or lake level is requested, identify the upstream and downstream extent of the reach or the appropriate lake level;

(d) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right;

(f) For a time-limited instream transfer, the duration or number of years for which the time-limited instream transfer is being requested.

(3) The Department may require additional information needed to complete the evaluation of the proposed conversion.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0075

##### Processing an Instream Transfer Application

A proposed instream transfer, including a time-limited instream transfer, of a water use subject to transfer to an instream water right shall be processed pursuant to the water rights transfer rules in OAR chapter 690, division 380 and the following provisions:

(1) The Department shall provide notice of the proposed instream transfer pursuant to OAR 690-380-4000, and to affected Indian tribes.

(2) In addition to the assessment described in OAR 690-380-4010, the Department's preliminary determination shall include an assessment of whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and

(b) The proposed reach(es) is (are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion;

(B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream;

(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-077-0015(8);

(D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate

the reduced flows available, in accordance with paragraph (2)(c)(B) of this rule.

(c) The proposed flow(s) is (are) consistent with OAR 690-077-0015(7), (8) and (11), shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.

(3) An instream transfer shall be approved if the Department determines that the transfer is consistent with OAR 690-380-5000, and Section (2) of this rule.

(4) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 and Section (2) of this rule if no protests are received under 690-380-4030.

(5) Upon approval of an instream transfer, the Department shall issue a permanent instream water right certificate. However, upon approval of a time-limited instream transfer, the Department shall issue a final order with a specific date of expiration or other conditions for termination for the instream water right and suspend the use of the original right during the effective period of the instream water right. A copy of the certificate or final order shall be mailed to the applicant and as appropriate to affected Indian tribes, ODFW, DEQ and Parks. The Director shall also issue a new certificate for any remaining right for the existing use as appropriate.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0076

##### Application for an Instream Lease

(1) A holder of any of the following types of water rights may enter into a lease to convert all or a portion of a water right to an instream water right for a specified time period not to exceed five years:

(a) Surface water rights for beneficial use or storage established by a water right certificate or an adjudication under ORS Chapter 539 as evidenced by court decree; or

(b) A surface water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Director under 537.250, or transfer application for which an order has been issued under 540.530 approving the change and for which proper proof of completion of the change has been filed with the Commission;

(c) Secondary water rights for the use of stored water established by permit, certificate or court decree; or

(d) The conserver's portion of conserved water allocated under ORS 537.445 to 537.500.

(2) The parties to the lease application shall include but are not limited to:

(a) The holder(s) of the subject water right(s) as the lessor(s);

(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor, if applicable; and

(c) The lessee, if different than the Department.

(3) At a minimum, the lease application shall include:

(a) Names and signatures of the parties;

(b) A description of the water right(s) to be leased. If only a portion of a water right will be leased, a clear description, including maps if necessary, of the portion to be leased;

(c) Rate, total volume, timing and location of the instream right, including any necessary conditions to avoid enlargement of the original right or potential injury to other water right holders;

(d) A description of how the lease will serve a public use or uses;

(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed lease is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(f) Provision insuring the original use will be suspended;

(g) The term of the lease;

(h) A statement by the lessors verifying that the water rights described in Subsection (3)(b) of this rule have been used under the terms and conditions of the rights during the last five years, or as an instream water right, or an explanation why the water right is not subject to forfeiture under ORS 540.610. As an alternative, an irrigation district or other water purveyor may provide evidence for owners, verifying delivery of water for the lands appurtenant to the rights to be leased;

(i) If the lessor(s), as identified in Subsection (2)(a) of this rule, is not the deeded landowner to which the water right is appurtenant, sufficient documentation to demonstrate that the lessor(s) is authorized to pursue the instream lease. Such documentation shall include:

(A) A notarized statement from the landowner consenting to the lease and a copy of the recorded deed;

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner.

(j) The name and address of any water purveyor that conveys water to the water right(s) described in Subsection (3)(b) of this rule.

(4) Lease applications shall conform with applicable provisions of OAR 690-077-0015.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.332 – 537.360, 537.455 – 537.500

Hist.: WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0077

##### Processing an Instream Lease Application

(1) On receipt of a lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office.

(2) A written assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use and avoid injury or enlargement;

(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include but are not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the year leased; the role of return flows; conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and issues potentially arising from water users that share a conveyance system. Any allegations of injury to existing water rights or enlargement of the original water right that are received within 21 days of the date of mailing of the weekly public notice shall be reviewed by the parties to the lease before the Department issues an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.

(4) If the Department determines that the proposed lease may cause injury to existing water rights or enlargement of the original

right, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

(5) If a lease is for more than one year the parties shall review any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.

(6) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to continue.

(7) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(3)(c) shall conform to the provisions of 690-077-0015(7) and (8) and 690-077-0075(2).

(8) Except as provided in OAR 690-077-0079, a lease involving a water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the original water right or the instream right, not both, during any one season unless the source is from stored water.

(9) If the water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the original right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source.

(10) Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a lease when needed to establish an instream water right in a particular season or at a particular time. A renewal shall be subject to the provisions of this rule.

(11) Water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right.

(12) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

(13) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system.

(14) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered by OAR chapter 690 division 19.

(15) Except as provided in Sections (4) and (5) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01;

WRD 4-2006, f. & cert. ef. 10-2-06; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

#### 690-077-0079

##### Split Season Use Instream Leasing

(1) An applicant for a split season use lease of water shall provide the information and follow the lease process described under OAR 690-077-0076 and 690-077-0077.

(2) In addition to the application requirements described in OAR 690-077-0076, split season use leases applications shall:

(a) Be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose.

(b) Describe when the water will be used for the existing purpose and when the water will be used for the instream purpose.

(A) The existing water use and the instream use shall not be concurrent. However, a portion of a water right appurtenant to one piece of land may undergo split season use, while another portion appurtenant to a different piece of land may undergo only one type of use, or a different time period for split season use.

(B) The type of use under a split season use may be changed only once during a calendar year, except for full-year uses which may have a single instream use period and two existing use periods.

(3) The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Department, or provide for third party measurement and reporting to the satisfaction of the Department. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

(4) The water right lessor or lessee shall contact the watermaster or other Department field staff to determine the necessary measurement and reporting requirements associated with leasing a water right. The complete lease application shall include:

(a) Location(s) and type(s) of measuring device(s);

(b) Frequency of measurement;

(c) Parties responsible for the respective measurements; and

(d) Amount of water proposed to be used, listed by rate and duty for the existing purpose and the instream purpose, including monthly or partial season rate or duty limitations, if appropriate.

(5) The Commission shall review the split season use leasing program no later than the year 2014 to determine if any changes should be made in the program.

**NOTE:** ORS 537.348(3) sunsets on January 2, 2008.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

### Miscellaneous Provisions

#### 690-077-0080

##### Cancellation or Waiving of an Instream Water Right

(1) There is a rebuttable presumption that an instream water right, or a portion thereof, that has not been put to a public use for five successive years in which water was available is forfeited.

(2) Upon making a preliminary finding that the instream water right has been forfeited the Director shall notify DEQ, ODFW, Parks, and those persons and agencies on the Department's weekly mailing list of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks.

(3) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper.

(4) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(1).

(5) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(2).

(6) An instream water right established under ORS 537.336 through 537.338 (OAR 690-077-0020) may be canceled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in Section (2) of this rule.

(7) An instream water right shall not be subject to forfeiture due to non-use when water was not available.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

#### 690-077-0090

##### Drought Emergency Provisions

An instream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.730.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88

#### 690-077-0100

##### Precedence of Future Uses

(1) The applicants for a proposed multipurpose storage project may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(2) An applicant for a right to use water for municipal purposes may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition the Commission to establish precedence over an instream water right created through OAR 690-077-0020.

(4) Within six months of the receipt of the petition the Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and decision on precedence may occur before the final decision on the permit.

(5) After the public hearing the Commission shall enter an order to:

(a) Approve the requested precedence;

(b) Approve the requested precedence conditionally; or

(c) Deny the requested precedence.

(6) The Department shall also publish a statement of findings that explains the basis for the decision made in Section (5) of this rule.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536 & 537

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

## DIVISION 78

### APPLICATIONS AND PERMITS FOR CHEMICAL PROCESS MINING

#### 690-078-0000

##### Purpose

Chapter 735, 1991 Session Laws required the Department to adopt new rules or amend existing rules for the processing of water right applications for use of water for chemical process mining. The purpose of this chapter is to describe:

(1) The required contents of an application for a new water use permit for chemical process mining;

(2) Department and Commission procedures for reviewing, approving, conditioning or rejecting the application; and

(3) Procedures for the management of water use permits for chemical process mining, from approval through issuance of the confirming certificate of water right.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0010

##### Definitions

The following definitions apply in this division and to any permits or certificates issued under these rules:

(1) "Chemical Process Mining" means a mining and processing operation for metal bearing ores that uses chemicals to dissolve metals from ore.

(2) "Commission" means Oregon Water Resources Commission.

(3) "Consolidated Application" means the single application filed with the Department of Geology and Mineral Industries as required under Section 13, Chapter 735, 1991 Oregon Laws.

(4) “Cooperating Agency” means an agency that has statutory responsibility related to a chemical process mine but that does not issue a permit for the mining process.

(5) “Department” means Oregon Water Resources Department.

(6) “DOGAMI” means Department of Geology and Mineral Industries.

(7) “Environmental Evaluation” means an analysis of specific impacts of the chemical process mine operation that allow affected agencies to develop permit conditions.

(8) “Permitting Agency” means an agency that has a separate permitting authority for some element of a chemical process mine.

(9) “Project Coordinating Committee” means the interagency governmental committee that shares information and coordinates county, state and federal permitting requirements, facilitates the exchange of ideas, optimizes communication and avoids duplicate effort.

(10) “Suspension of Water Use Permit” means that water cannot be appropriated under a permit or certificate issued under these rules because the operator of the mine has not increased the bond to cover the additional reclamation costs. The suspension will be lifted when the operator posts the additional bond security.

(11) “Technical Review Team” means the interagency governmental committee that determines baseline data methodology guidelines and coordinates the use of the data.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0020

##### Water Use Permit Applications for Chemical Process Mining

(1) The State Department of Geology and Mineral Industries is responsible for coordinating the activities of affected agencies related to the consolidated application for chemical process mining.

(2) If a water use application for chemical process mining is submitted to the Department and such use is not clearly defined as an allowable use under the applicable basin program, the Director shall review the basin program policies and objectives and determine whether the proposed use is an allowable use within one of the allowed categories of use.

(3) If the Director is unable to make the necessary determination, or if the applicant is not satisfied with the Director’s determination, the question shall be referred to the Commission for determination.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0030

##### Information Required to File a Water Use Permit Application for Chemical Process Mining

The Department shall accept applications for filing and thereby establish a tentative date of priority to appropriate the waters of the State of Oregon for chemical process mining when the application is on forms provided or approved by the Department, is accompanied by the examination fee required by ORS 536.050, and contains or is accompanied by the following information:

(1) Name and mailing address of the applicant(s).

(2) Source(s) of the water from which use is proposed.

(3) Quantity of water to be appropriated.

(4) A map showing the location of the proposed water use, prepared by a certified water rights examiner, or such other information as may be necessary to establishing the location of the proposed point of diversion and place of use to the proper quarter-quarter section, township and range, prepared in manner described in OAR 690-078-0080.

(5) Nature of the use(s).

(6) Name and mailing address of the legal owner of the property upon which any portion of the proposed development will occur, if other than the applicant.

(7) An explanation of why the information listed in OAR 690-078-0040 for surface and groundwater applications or in OAR 690-

078-0050 for reservoir applications does not apply to the proposed use.

(8) Land use information as outlined in the Department’s **Land Use Planning Procedures Guide** or as a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning department.

(9) Signature of the applicant(s) and if the applicant is a public agency, corporation or business, the title or authority of the signatory.

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

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0040

##### Information Required to Process a Water Use Permit Application for Chemical Process Mining

Prior to processing, applications to appropriate surface waters or groundwaters of the State of Oregon for chemical process mining shall include:

(1) Proposed dates for the beginning of construction, completion of construction, and complete application of the water.

(2) A map of the proposed place of water use prepared by a certified water right examiner in accordance with OAR 690-014-0150 and 690-078-0080.

(3) A copy of the legal description of the property on which the water is to be used.

(4) A copy of the well constructor’s log, if available, for any well already constructed.

(5) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life, to prevent the discharge of contaminated water to a surface stream or to prevent damage to public uses of affected surface waters.

(6) The horizontal distance from the proposed point of groundwater appropriation to the nearest surface water source, if less than one mile, and the difference in land surface elevation between them.

(7) Land use information as outlined in the Department’s **Land Use Planning Procedures Guide**. If the land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-078-0030(8), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.

(8) A copy of written authorization or easement permitting access to land not owned by the applicant and crossed by the proposed ditch, canal or other work.

(9) A complete water balance for the project, including but not limited to estimates of evaporation, precipitation at the site, seepage, discharge and make-up water.

(10) Such other information as the Department or Commission deems necessary.

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

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0050

##### Information Required to Process an Application for Storing Water and Constructing a Reservoir for Chemical Process Mining

Information to accompany applications for chemical process mining proposing to store waters of the State of Oregon and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, shall include or be accompanied by:

(1) Proposed dates for the beginning and completion of construction of the reservoir.

(2) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-014-0150 and 690-078-0080.

(3) A copy of the legal description of the property upon which the water is to be stored.

(4) A description, including drawings if required by the Department, of the proposed means of diversion and operation of the appropriation works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life, or to prevent damage to public uses of affected surface waters.

(5) Plans, specifications and supporting information for the dam and impoundment area, as required in OAR 690, division 20.

(6) Land use information as outlined in the Department's **Land Use Planning Procedures Guide**. If the land use information is not post-marked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-078-0030(8), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.

(7) A copy of written authorization or easement permitting access to land not owned by the applicant and crossed by the proposed ditch, canal or other work.

(8) Such other information as the Department or Commission deems necessary.

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

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0060

##### Processing Incomplete Applications for Chemical Process Mining

(1) For any chemical process mining applications which do not fulfill the requirements of OAR 690-078-0040 and/or 690-078-0050, the Department shall:

(a) Return the application to the applicant for the curing of defects if the application form is incomplete; or

(b) Send a letter to the applicant or certified water right examiner, as identified by the applicant on the application form, describing any other deficiencies or additional data being requested.

(2) The Department's correspondence shall state a time within which the application or requested information must be returned to the Department. The time allowed shall not be less than 30 days nor more than 60 days from the date on the correspondence. Failure to return the application within the time specified shall result in the loss of the tentative priority date. Failure to return the application or the requested information may result in the rejection of the application.

(3) Upon written request of the applicant, the Department may grant an extension of time, up to one year, for the applicant to complete the application or supply the requested information:

(a) The request shall state the reasons for the proposed extension;

(b) The request shall indicate the amount of time needed to complete the application or supply the requested information.

(4) The Department shall respond within 10 working days to the request indicating if the extension has/has not been granted and the date the information is due.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0070

##### Process for Amending Applications for Chemical Process Mining

Chemical process mining applications may be replaced or amended without loss of the tentative priority date so long as the information provided in the application under OAR 690-078-0030(2) and (3) is not increased and (5) does not change. If the replacement or amendment proposes additions to or increases in items listed in 690-078-0030(2), (3), or (5), the original proposal

shall retain the original tentative priority date and the additions or increases shall be assigned a new tentative priority date, as of the date the amendment is received by the Department.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0080

##### Map to Accompany an Application for Water Use Permit for Chemical Process Mining

Maps submitted with applications for water use in chemical process mining shall be prepared by a certified water right examiner and meet the following criteria:

(1) The application map, which is made part of the record, shall be of permanent quality and drawn with sufficient clarity so as to be easily reproduced.

(2) Maps shall be drawn on tracing linen, tracing vellum or mylar except that maps measuring 11" x 17" or smaller may be prepared on good-quality paper. All maps shall be drawn to a standard, even scale of not less than 4 inches = one mile. Small area maps may be more easily and clearly drawn to a larger scale, such as one inch = 400 feet.

(3) Four permanent-quality prints of other maps, such as deed description survey maps or county assessor maps, may also be used if all the required information is clearly shown on each print. A single print of these may be used only if it is reproduced as a transparency, such as a sepia print or on mylar film.

(4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:

(a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);

(b) The location of all canals, ditches, pipelines, or flumes;

(c) The location of the place where water is to be used;

(d) The scale to which the map is drawn, the section number, township, and range, and a north directional symbol.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

#### 690-078-0090

##### Processing an Application for Use of Water in Chemical Process Mining

(1) The Director shall provide notice of all applications received for water use permits for chemical process mining on the Department's weekly mailing list pursuant to OAR 690-011-0080(1).

(2) The Department shall not begin deliberating on whether to issue a permit until DOGAMI receives a complete consolidated application and appropriate fee. All information required under OAR 690-078-0030 to 690-078-0080 shall be included as part of the consolidated application.

(3) DOGAMI is responsible for conducting a public hearing under Section 15(1) of Chapter 735, 1991 Session Laws, when the technical review team indicates that agencies are ready to begin preparing draft permits:

(a) At the conclusion of the public hearing, the Department shall assist DOGAMI in determining whether the consolidated application is complete;

(b) The Department shall begin the permitting process and preparation of draft permits when DOGAMI declares the consolidated application to be complete and issues a notice to proceed;

(c) If the applicant is not required by the Department to provide additional information as suggested at the public hearing or during the comment period on the consolidated application, the Department shall prepare a written response explaining why the additional information was not requested;

(d) The Department may continue to process the application while waiting for any required additional information.

(4) The Director shall review all applications for chemical process mining to determine if the proposed use:

(a) Complies with Water Resources Commission policies, rules and basin programs;

(b) Does not harm vested and inchoate rights;

(c) Appropriates waters likely to be available in the amount and at the times needed;

(d) Is not the subject of a request for review by a public agency or person;

(e) Is allowable under the comprehensive plans of affected local governments, and if applicable local land use approvals have been received or are pending based upon the land use information submitted pursuant to OAR 690-078-0040(7) and 690-078-0050(5), or other input from the affected jurisdiction(s);

(f) Does not raise any substantial public interest issues.

(5) If subsections (4)(a) through (f) of this rule are satisfied, the Director shall prepare a draft permit.

(6) If one or more of subsections (4)(a) through (f) of this rule is not satisfied, the Director shall work with the applicant and any person or agency raising the concern to determine whether the issues can be resolved through mutually agreeable conditions, provisions of the permit, or modifications of the application.

(7) If the issue cannot be resolved through negotiation, the Director shall prepare a denial document or draft a permit based on information in the file and the Department's policies, rules and basin programs.

(8) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Commission or Director shall follow procedures provided in 690-005-0040 (Resolution of Land Use Disputes).

(9) The Department shall provide a draft permit with conditions or a denial document to the Department of Geology and Mineral Industries within 225 days from the date the consolidated application and environmental evaluation is determined to be complete:

(a) The Department shall include a written explanation of any condition that is inconsistent with the environmental evaluation;

(b) The explanation shall set forth the findings of the agency that support the conditions set forth in the draft permit;

(c) The permit shall be conditioned such that additional conditions may be added when a water right certificate is issued.

(10) The Director and Commission shall address the requirements of OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on permit applications.

(11) Based upon information received at the consolidated public hearing held by DOGAMI (Section 19(2), Chapter 735, 1991 Session Laws), the Department shall, within 45 days after the hearing or any timeline set by a federal agency (whichever is earlier), approve, deny, or modify the permit with appropriate changes or conditions.

(12) The applicant or any person who testified at the consolidated public hearing may, within 30 days from the date the permit was issued, file with DOGAMI a written request for a contested case hearing:

(a) The water use permit shall be suspended until completion of the hearing process;

(b) Each permitting agency whose permit was appealed may appoint a hearings officer to participate in the hearing or with consent of all agencies, DOGAMI may appoint a single hearings officer;

(c) The appropriate hearings officer shall prepare a proposed order for each contested permit;

(d) A party may file with the Department written exceptions to a proposed order on a water use permit;

(e) If the Department determines that additional information may be included in the record, the proposed order shall be returned to the appropriate hearings officer for further consideration;

(f) After receiving exceptions and hearing argument on the exception, the appropriate hearings officer shall adopt as a final order the proposed order or issue a new order.

(13) Proceedings for review of the issuance or denial of a permit is with the Supreme Court. The petition shall be filed within 60 days following the date the permit is issued or denied. Filing the

petition for review shall stay the permit during judicial review for a period of up to six months. The Supreme Court can extend the stay.

(14) The Department shall take final action on the permit within one year from the date of the notice to proceed as referenced in OAR 690-011-0080(3)(b). This may be postponed with agreement of the applicant.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

### **690-078-0100**

#### **Modification of a Permit for Use of Water for Chemical Process Mining**

The permittee, the Department, or any other permitting agency or cooperating agency may request modification of a water use permit for chemical process mining:

(1) Chemical process mining permits may be modified without loss of the priority date so long as the information provided in the application under OAR 690-078-0030(2) does not change, (3) is not increased and (5) does not change. If the replacement or amendment proposes additions to or increases in items listed in 690-078-0030(2), (3), or (5), the original proposal shall retain the original priority date and the additions or increases shall be assigned a new tentative priority date, as of the date the modification is received by the Department.

(2) If the Department, permitting agency or cooperating agency determines that the permit modifications are significant under the terms of Sections 2 to 24a of Chapter 735, 1991 Session Laws, the Department shall notify DOGAMI.

(3) At DOGAMI's request, the Department shall assist DOGAMI in organizing and participating in a Project Coordinating Committee to review the proposed modifications and determine those portions of Sections 2 to 24a of Chapter 735, 1991 Session Laws with which the applicant must comply.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

### **690-078-0110**

#### **Miscellaneous Provisions**

(1) If the cost of reclamation will exceed the reclamation bond posted with DOGAMI and the operator does not increase the bond, the Department shall suspend the permit until the additional bond is posted.

(2) If DOGAMI seeks a lien for reclamation costs, the water use permit is suspended.

(3) All permits and certificates are subject to the provisions of OAR 690-011-0090 through 690-011-0120 which pertain to the following:

(a) Well construction;

(b) Potential regulation of a well if it interferes with surface water;

(c) Cancellation of primary rights;

(d) Diminution of a water right;

(e) Supplemental rights;

(f) Assignment or change of ownership of permit, groundwater registration or application;

(g) Extension of time limits;

(h) Cancellation of permit;

(i) Proof of appropriation;

(j) Request for reconsideration of the contents of a proposed certificate.

Stat. Auth.: OL 735, 1991

Stats. Implemented:

Hist.: WRD 1-1992, f. & cert. ef. 1-15-92

DIVISION 79

RESERVATIONS OF WATER FOR  
FUTURE ECONOMIC DEVELOPMENT

690-079-0010

**Purpose**

(1) This Division establishes the procedure for state agencies to request reservations of water for future economic development pursuant to ORS 537.356.

(2) These rules shall apply to all reservation requests received by the Department after June 30, 1989. Notwithstanding the provisions of OAR 690-079-0040 to 690-079-0150, any reservation for which a request is received by the Department prior to June 5, 1992, and which is approved under these rules, shall receive a priority date of June 5, 1992, provided information that conforms to the provision of OAR 690-079-0060 are received by the Department prior to January 1, 1995. For purposes of this rule, the request for a reservation of water in the Willamette Basin for municipal purposes and the request for a reservation of water in the Willamette Basin for agricultural purposes, both of which were referenced in the Commission's Willamette Basin Plan as adopted on January 31, 1992, shall be considered requests received by the Department prior to June 5, 1992.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.170, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 7-1993, f. & cert. ef. 11-30-93

690-079-0020

**Definitions**

As used in this Division:

(1) "Affected Local Government" means any local government, as defined in OAR 690-050-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.

(2) "Commission" means the Water Resources Commission.

(3) "Contested Case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS 183.413-183.497 and OAR 690, division 1.

(4) "Department" means the Water Resources Department.

(5) "Director" means the Director of the Water Resources Department.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0030

**Request for Reservation**

Any state agency may request that the Commission establish a reservation of unappropriated water for future economic development. A reservation shall be established by order. The reservation shall set aside a quantity of water for specified uses which shall, when developed, have priority over all other water rights, including instream water rights, from the same source that are filed subsequent to the date the request for reservation is filed with the Department.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0040

**Priority Date**

The order establishing the reservation shall fix the date on which the request for reservation was filed with the Department as the reservation priority date. A request for reservation will be deemed filed on the date it is received by the Department provided that either:

(1) The request contains all the information required under OAR 690-079-0060; or

(2) Any additional information the Department deems necessary to complete the application is received by the Department within 30 days of its request for additional information, or within such additional time as the Department provides, not to exceed one year.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0050

**Term of Reservation and Extensions**

The Commission may approve the reservation of water for up to 20 years. Prior to termination of the approved term of reservation, the applicant may apply for a time extension of up to 20 years. The proposed time extension shall be subject to all rule requirements and standards governing review of initial reservations. An approved time extension shall retain the priority date of the original reservation. The Commission also may require review of a reservation at specified time intervals during the approved reservation time period. For the purpose of that review, the Commission may require the applicant to provide evidence that the purpose, intent, and amount of the reservation still meet the public interest standards of OAR 690, division 11.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0060

**Information Requirements**

Requests for reservations of water for future economic development shall include the following information:

(1) Agency name and address;

(2) Purpose of the reservation;

(3) Amount of water proposed to be reserved and evidence of water availability;

(4) Source(s) of water to supply the reservation;

(5) If the reservation is to be provided by existing storage, agreement to the proposed reservation by the party in charge of disposition of the stored water or evidence of authorization or allocation consistent with the proposed reservation;

(6) If the proposal is to reserve water to be stored in a new facility, evidence that sites for the storage facility can be developed and that water is available for storage;

(7) Approximate season(s) of use;

(8) Approximate location(s) of use;

(9) Evidence that the proposal is compatible with overall basin program goals and policies;

(10) Identification of affected local governments and copies of letters notifying each local government of the intent to file a reservation request accompanied by a description of the reservation proposal;

(11) Intended types of use(s) of the reserved water;

(12) Expected duration of the reservation prior to application for use of the water;

(13) Economic benefits provided;

(14) Water sources alternatives;

(15) Evidence that the proposal does not conflict with Scenic Waterway flow requirements;

(16) Evidence that the proposed reservation and water use(s) will promote the beneficial use of the water without waste; and

(17) Potential adverse impacts on water resources.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0070

**Notice of Reservation Request**

Within 30 days of receiving a request for reservation that is deemed complete by the Director, the Director shall notify:

(1) The Department of Fish and Wildlife, Department of Environmental Quality, Parks and Recreation Department, Economic Development Department, other affected federal and state agencies and the planning department(s) of affected local governments;

(2) Affected Indian tribes; and

(3) All persons on the Department's weekly mail list and reservations mail list.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

#### 690-079-0080

##### Copies of Reservation Request

Upon request from any governmental entity or other party, the Department shall provide a complete copy of the request for reservation.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### 690-079-0090

##### Comment Period and Land Use Compatibility

(1) A 60-day comment period shall commence on the day the Department deposits the notice in the mail of the U.S. Postal Service. All comments must be received by the Department on or before the end of the 60-day comment period. The notice will state the date by which comments must be received by the Department.

(2) The Director may presume the proposed use is allowed by and compatible with the programs and plans of any agency or affected local government that does not respond within the comment period shown on the notice. In the event of a land use dispute as defined in OAR 690-005-0015 (Definitions), the Director or Commission shall follow procedures as provided in OAR 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

#### 690-079-0100

##### Review by Director

Following the comment period established by OAR 690-079-0090, the Department shall review the reservation request. The Director shall reject the reservation request if:

(1) The reservation request does not contain all the information required by OAR 690-079-0060 after the applicant has been given an opportunity to cure any defects in the request according to OAR 690-079-0040(2); or

(2) The Department concludes the reservation request would impair or be detrimental to the public interest based on the public interest review standards of OAR 690, division 11.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### 690-079-0110

##### Appeal of Director's Decision

The agency requesting the reservation may file a request for Commission review of the Director's rejection within 60 days of notification of rejection of a reservation request.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### 690-079-0120

##### Contested Case Proceeding

If, after the Department performs a review of the reservation request, the Director does not find that the requested reservation will impair or be detrimental to the public interest, or if the Commission reverses the Director's rejection of the reservation request,

the Director shall initiate a contested case hearing on the reservation request and shall so notify the agency requesting the reservation and any party which submitted comments during the 60-day comment period.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### 690-079-0130

##### Public Interest Review

The Director shall apply any applicable public interest standards set out in OAR 690, division 11 to the facts developed at the hearing. The Director shall prepare findings and a recommendation to the Commission on the requested reservation. The recommendation may be to issue an order:

(1) Approving the requested reservation;

(2) Approving a reservation for a lesser amount than requested because approval of a reservation in the amount requested would impair or be detrimental to the public interest; or

(3) Rejecting the requested reservation because it would impair or be detrimental to the public interest.

(4) Notwithstanding OAR 690-001-0045, the Commission shall issue the proposed order, hear exceptions, and issue the final order on all reservations on which a contested case hearing is held.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

#### 690-079-0140

##### Conditions on a Reservation

When approving a reservation, the Commission shall include any conditions deemed necessary to protect and promote the public interest.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

#### 690-079-0150

##### Applications for Use of Reserved Water

Applications for the use of reserved water shall comply with and be processed under provisions of OAR 690, division 11, governing applications and permits generally. In addition to any information required under division 11, an application for use of reserved water shall include a statement from the agency which requested the reservation that the proposed use is consistent with the reservation.

Stat. Auth.: ORS 197, 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

## DIVISION 80

### PROGRAMS FOR AND WITHDRAWALS FROM CONTROL AND USE OF STATE'S WATER RESOURCES

#### 690-080-0010

##### Resume of Withdrawals by the Water Resources Commission of Unappropriated Water From Future Appropriation

(1) Under the provisions of ORS 536.410, the Water Resources Commission may withdraw unappropriated waters from further appropriation. While an order of withdrawal is in effect, no applications for permits to appropriate the waters withdrawn may be received for filing by the Water Resources Director.

(2) The waters of the streams and lakes listed below have been withdrawn by order of the Water Resources Commission:

- (a) Church Lake: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; Rescinded by WRD 14-1988, f. 8-11-88;
  - (b) Deschutes River Basin — Trout Creek: WRD 8-1980, f. 11-24-80;
  - (c) Elk Creek: WRD 8-1985, f. 8-2-85;
  - (d) Fort Rock Basin: WRD 3-1987, f. 3-13-87; Repealed by WRD 2-1990, f. 2-23-90;
  - (e) Goose & Summer Lakes Basin — Dutchy Lake: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; Rescinded by WRD 14-1988, f. 8-11-88;
  - (f) Hood River Basin:
    - (A) Priest Rapids Aquifer: WRD 4-1988, f. 5-17-88;
    - (B) Pomona Aquifer: WRD 4-1988, f. 5-17-88.
  - (g) No Name Lake & Tributaries: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; Rescinded by WRD 14-1988, f. 8-11-88;
  - (h) Roberts Creek: WRD 8-1985, f. 8-2-85;
  - (i) Thomas Creek & Tributaries: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; Rescinded by WRD 14-1988, f. 8-11-88;
  - (j) Umpqua River Basin:
    - (A) South Umpqua River: WRD 4-1985, f. 5-15-85;
    - (B) Lookingglass Creek: WRD 9-1985, f. 8-2-85;
    - (C) Umatilla River: WRD 14-1985, f. 12-20-85.
  - (k) Walla Walla River: WRD 1-1986, f. 2-20-86;
  - (l) Willamette River System: WRB 32, f. 7-27-65.
- Stat. Auth.: ORS 536  
 Stats. Implemented:  
 Hist.: See 690-080-0010(2)(a)-(l).

## DIVISION 82

### ACCEPTANCE OF APPLICATIONS FOR WATER USES IN ADDITION TO CLASSIFIED USES

#### 690-082-0010

##### Purpose

These rules authorize the Director of the Water Resources Department to accept applications to appropriate water for a use in addition to the uses for which particular waters are classified in the applicable basin program. These rules apply in all basins for which the Water Resources Commission has adopted a basin program.

Stat. Auth.: ORS 183 & 536  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88

#### 690-082-0020

##### Definitions

The following definitions apply to OAR 690-082-0010 through 690-082-0080:

- (1) “Affected Local Government”: Any local government as defined in OAR 690-005-0015, within who jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit or certificate.
- (2) “Basin Program”: An administrative rule described in OAR 690-080-0000, adopted by the Water Resources Commission under ORS Chapter 536.
- (3) “Classified Uses”: Beneficial uses of water designated in the basin programs for which water use applications may be accepted.
- (4) “Commission”: The Water Resources Commission.
- (5) “Department”: The Water Resources Department.
- (6) “Director”: The Director of the Water Resources Department.

Stat. Auth.: ORS 183, 197 & 536  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-082-0030

##### Application Filing

- (1) An application for a permit to appropriate water under these rules must be accompanied by a letter to the Director showing:

- (a) The use will be of short duration during each year or for a continuous use period of no longer than five years; or

- (b) The use is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the Commission in adopting present basin classifications.

(2) The application must also include land use information as provided in the Department’s Land Use Planning Procedures Guide or a receipt signed and dated by a local government official as evidence that the request for land use information was received by the local planning department. If land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by a receipt, the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the permit.

Stat. Auth.: ORS 183, 197 & 536  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-082-0040

##### Special Application Process

When the Department receives a complete application form and letter under OAR 690-082-0030, notice that the Director proposes to accept the application under these rules shall be provided to the Commission, appropriate state and federal agencies, affected local government planning department, appropriate Indian Tribes, others believed to have any interest in the proposed use and anyone requesting notice. The notice shall set the time and manner for filing objections to the proposed use. Objections shall be filed within 60 days of the date of agency mailing of the notice unless otherwise specified. The Director may presume that the application is allowed by and compatible with the plans and regulations of notified agencies and tribes unless informed otherwise within the comment period specified in the notice except as provided to local governments under 690-082-0030(2). In the event of a land use dispute as defined in 690-005-0015 (Definitions), the Director shall follow procedures outlined in 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 183, 197, 536.025 & 536.027  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91

#### 690-082-0050

##### Acceptance of Application

The Director shall accept the application if after full consideration of all the comments and objections received within the prescribed period the Director concludes that:

- (1) Any valid objections to the proposed use could be fully satisfied by appropriate conditions on any permit or certificate issued.
- (2) The proposed use is unlikely to create adverse impacts on other water uses.
- (3) The proposed use is unlikely to adversely impact future appropriations for classified uses.
- (4) The proposed use has been evaluated in accordance with requirements established OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).
- (5) The source of water has not been withdrawn from further appropriation.

Stat. Auth.: ORS 183, 197 & 536  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-082-0060

##### Priority Date

The date of priority for all applications received under OAR 690-082-0040 shall be the date the application is accepted by the Director after review and approval of the proposed water use under 690-082-0050.

Stat. Auth.: ORS 183 & 536  
 Stats. Implemented:  
 Hist.: WRD 2-1988, f. & cert. ef. 1-19-88

### 690-082-0070

#### Normal Application Process

Any application accepted for filing under these rules shall be processed in the same manner as all other applications to appropriate water, as provided in OAR 690, divisions 1 and 11.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 2-1988, f. & cert. ef. 1-19-88

### 690-082-0080

#### Right to Petition

No action taken under these rules shall affect an applicant's right to petition the Commission under the provisions of OAR 137-001-0070 for a change in a basin program to allow specific water uses.

Stat. Auth.: ORS 183 & 536

Stats. Implemented:

Hist.: WRD 2-1988, f. & cert. ef. 1-19-88

## DIVISION 85

### ANNUAL REPORTS AND SERIOUS WATER MANAGEMENT PROBLEM AREAS

### 690-085-0005

#### Purpose

These rules establish procedures and requirements for the annual reporting of water use by governmental entities pursuant to ORS 537.099. These rules also establish procedures for designation of serious water management problem areas pursuant to ORS 540.435.

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 13-1988, f. & cert. ef. 8-10-88

### 690-085-0008

#### Definitions

As used in OAR 690-085-0010 and 690-085-0015:

(1) "Change in channel conditions" includes but is not limited to scour, siltation, accumulation of debris, accumulation of aquatic growth, and the removal of aquatic growth.

(2) "Commission" means the Water Resources Commission.

(3) "Control" means a natural constriction of the channel, a long reach of the channel, a stretch of rapids, or an artificial structure downstream from the gage that determines the stage-discharge relation at the gage.

(4) "Continuous stage recorder" means any device that accurately and continuously records the rise and fall of a water surface with respect to time.

(5) "Department" means the Oregon Water Resources Department.

(6) "Director" means the Director of the Water Resources Department.

(7) "Economic hardship" means a financial burden of an extraordinary nature. Examples of situations causing such a burden include, but are not limited to, the following: the entity is required to report on an unusually large number of diversions or locations, the costs of measuring and reporting for a diversion or location greatly exceed the normal costs associated with a similar volume of water, or the costs of measuring and reporting threaten the entity's fiscal ability to continue operating.

(8) "Flume" means a specially shaped open channel flow section which may be installed in a canal, lateral, or ditch to form a control.

(9) "Governmental entity" includes any state or federal agency, local government as defined in ORS 294.004, irrigation district formed under ORS Chapter 545, water control district formed under ORS Chapter 553, and any other special purpose district organized under state law.

(10) "Open channel flow measurement" means a series of velocity, depth, and width measurements taken across an open channel using a velocity meter and a calibrated tape measure as described in references listed in OAR 690-085-0015(4)(f).

(11) "Point of diversion" means the point at which water is appropriated from its source.

(12) "Shift" means a correction that is derived from a flow measurement and applied to the gage height to obtain a true flow or discharge throughout a specific time sequence.

(13) "Staff gage" means a device constructed for the measurement of water depth. It shall allow accurate reading to 1/100th of a foot.

(14) "Velocity meter" means a device designed and constructed to the specifications cited in the reference listed in OAR 690-085-0015(4)(f)(C) for measuring stream velocity in open channels.

(15) "Water use" means water diverted or pumped from the source, or in the case of non-diverted water, the water available to satisfy the right.

(16) "Weir" means an overflow structure built across an open channel to form a control.

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 7-1991, f. & cert. ef. 8-7-91

### 690-085-0010

#### Governmental Entities to Submit Annual Water-use Reports

(1) By December 31 of each year, any governmental entity holding water rights shall submit to the Department a report detailing monthly water use under the rights for each point of diversion. Reporting shall be for the previous water year (October 1 to September 30). A governmental entity shall not be required to submit a report under this rule for water rights held because of default in repayment of loans or other debts owed to the state.

(2) The report shall be submitted on forms supplied by, or in a format acceptable to the Department. It shall include:

(a) The name and address of the reporting entity;

(b) The monthly volume of water diverted or pumped from natural flow and/or stored water for each major category of use at each point of diversion listed on the water rights, except as noted in subsections (2)(c), (d), and (e) of this rule. The volume of water diverted or pumped shall be determined as prescribed in OAR 690-085-0015;

(c) For in-reservoir uses, the volume of water impounded on approximately the same day each month;

(d) For instream water rights, the monthly volume of water flowing through the channel for at least one point covered by the water right;

(e) For instream uses supplied from storage, the volume of stored water released every month.

(3) Except as provided in section (4) of this rule, the reported monthly volumes of water shall be accurate within plus or minus 15 percent by October 1992.

(4) The governmental entity may assume the volume of water used each month, if any, is the maximum quantity allowed under the right and report that volume if:

(a) The water right is for storage of less than 9.2 acre-feet of water for in-reservoir use or specifies a rate less than 0.1 cfs; or

(b) The Director has approved a time extension for compliance with section (3) of this rule or the Commission has waived compliance with any of the requirements of OAR 690-085-0015.

(5) The Director may grant a time extension for compliance with section (3) of this rule:

(a) To qualify for an extension, the governmental entity shall:

(A) Show that compliance with section (3) of this rule would cause an economic hardship;

(B) Show that an allowance of additional time would enable it to meet the accuracy standards prescribed in section (3) of this rule; and

(C) Submit a compliance schedule detailing the steps, including the implementation time of those steps, it will take to meet section (3) of this rule.

(b) Once the time extension is approved, the governmental entity shall submit a progress report on the compliance schedule in conjunction with each annual water use report;

(c) The Director may rescind his approval if the governmental entity fails to comply with the compliance schedule;

(d) The Director may modify the terms of any compliance schedule under this rule at the request of the governmental entity.

(6) The Commission may waive compliance with section (3) of this rule and/or any of the requirements of OAR 690-085-0015. The qualify for a waiver, the governmental entity shall show that:

(a) Complying with the rule(s) would cause an economic hardship on the governmental entity; and

(b) The information to be collected would not materially aid water management because:

(A) The regulation for or of the use is unlikely due to the absence of other water rights; or

(B) Use of water is unlikely to materially affect water availability from the source since the quantity of water allowed by the right in relation to the quantity of water available from the source is de minimis; or

(C) Another similar situation exists.

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 13-1988, f. & cert. ef. 8-10-88; WRD 7-1991, f. & cert. ef. 8-7-91

### 690-085-0015

#### Methods for Measuring and Computing Water Use

(1) Beginning October 1992, methods shall be approved in advance by the Department except those prescribed in sections (4) and (5) of this rule which are approved by the Department. The methods prescribed in sections (4) and (5) of this rule are designed to meet OAR 690-085-0010(3). Alternate methods will be accepted by the Department if the conditions specified in section (6) of this rule are met. Any method is subject to review by the Department.

(2) In Critical Groundwater and Serious Water Management Areas measuring requirements may be different. In such cases the more stringent measuring requirements will take precedence.

(3) Where practical, water use shall be measured at each point of diversion. However, measurements may be taken at a reasonable distance from the point of diversion if the following conditions are met:

(a) The measured flow shall be corrected to reflect the flow at the point of diversion. The correction will be based on periodic flow measurements at the point of diversion taken in conjunction with flow measurements at the usual measuring point;

(b) If the measured flow includes flow contributions from more than one point of diversion, the measured flow shall be proportioned to reflect the flow at each point of diversion using the method prescribed in subsection (a) of this section;

(c) A description of the correction method shall be submitted with the annual report the first time it is used and any time it is changed, or once every five years, whichever is shorter.

(4) Approved methods for measurements made in open channels are as follows:

(a) The following requirements apply for all approved methods of measurement in open channels:

(A) Copies of all measurement notes, rating curves, and calculations shall be retained for three years and made available to the Department upon request. For each method of measurement, installation, and measurement procedures shall be as described in the references listed in subsection (4)(f) of this rule;

(B) Channels shall be equipped with a staff gage and/or a continuous stage recorder which shall be installed in a location that provides an accurate reading of the control crest depth at all elevations and as described in the references listed in subsection (4)(f) of this rule. If only a staff gage is installed, an observer shall read the staff gage and record the reading at uniform intervals, and as close as practical before and after the time regulation of the diversion flow rate occurs. At no time shall the periodic interval be greater than three days. A continuous stage recorder may be used in lieu of periodic staff gage readings;

(C) The method of measurement shall conform with the U.S. Geological Survey method for velocity-area measurements as described in the references listed in subsection (4)(f) of this rule;

(D) Where practical, the rate of flow may be determined by measuring the amount of time needed to fill a container of known capacity;

(E) For very low flows that cannot be measured by any of the above methods, the rate of flow may be determined by setting a portable weir or flume in the channel. The weir or flume shall be installed as described in the references listed in subsection (4)(f) of this rule;

(F) Once a rating curve has been established, computation of reported monthly volume shall be as described by references listed in subsection (4)(f) of this rule with additional information available from the Department.

(b) The Velocity-area Method:

(A) A rating curve for the control shall be established and maintained as described in references listed in subsection (4)(f) of this rule. The distribution of open channel flow measurements shall be sufficient to establish a full range of values for the entire stage-discharge relation. Close attention shall be given to the upper end (high flows) and the lower end (low flows) of the curve;

(B) Open channel flow measurements shall be taken at least once every six weeks, and at any time there is a change in channel conditions which may alter flow conditions across the control;

(C) Readings taken from a staff gage shall be consistent with paragraph (4)(a)(B) of this rule.

(c) The Weir Method:

(A) A weir shall be installed and maintained as described in the references listed in subsection (4)(f) of this rule. Upstream from the weir a staff gage and/or continuous stage recorder shall be installed in a location that measures static head above the weir crest at all elevations and in accordance with the references listed in subsection (4)(f) of this rule;

(B) When only a staff gage is installed, reading of the staff gage shall be consistent with paragraph (4)(a)(B) of this rule;

(C) A rating curve shall be established for the weir as prescribed for the Velocity-area Method in paragraph (4)(b)(A) of this rule;

(D) Open channel flow measurements shall be taken at least once every eight weeks, and at any time there is a change in channel conditions which may alter flow conditions across the weir.

(d) The Flume Method:

(A) A flume shall be installed and maintained as described in the references listed in subsection (4)(f) of this rule. A staff gage and/or continuous stage recorder shall be installed upstream from the flume in a location that measures static head and in accordance with the references listed in subsection (4)(f) of this rule;

(B) When only a staff gage is installed reading of the staff gage shall be consistent with paragraph (4)(a)(B) of this rule;

(C) A rating curve shall be established for the flume as prescribed for the Velocity-area Method in paragraph (4)(b)(A) of this rule;

(D) Open channel flow measurements shall be taken at least once every eight weeks, and at any time there is a change in channel conditions which may alter flow conditions through the flume.

(e) For a diversion monitored by the Department or a U.S. Geological Survey gaging station, it is sufficient to report:

(A) The gaging station number if the station is at the point of diversion; or

(B) The gaging station number and the appropriate correction, per section (3) of this rule, for adjustment back to the point of diversion, if the station is a reasonable distance from the point of diversion;

(C) The current operation of any station by the Department or U.S. Geological Survey does not guarantee the continued operation or usage of the station for water use reporting purposes.

(f) The following references provide guidance and requirements for the methods and installations prescribed in this rule:

(A) "Measurement and Computation of Streamflow," Volumes 1 and 2, 1982, USGS WSP 2175;

(B) "Techniques of Water-Resources Investigations of the United States Geological Survey," Book 3, Chapters A6-A8, A10, A13, and A14;

(C) **Water Measurement Manual**, U.S. Department of the Interior, Bureau of Reclamation.

(5) Approved methods for measurements made in pipes are as follows:

(a) The Flow Meter Method:

(A) The flow meter shall be capable of recording cumulative volume;

(B) The flow meter shall be capable of measuring the full range of discharge from the source of water for which it is to be used;

(C) The flow meter shall be installed and maintained according to the manufacturer's specifications and in such a manner that there shall be a full pipe of water at all times during which water is being pumped;

(D) There shall be no diversions of water between the source of water and the flow meter installation;

(E) The manner in which the flow meter has been installed is subject to inspection and approval by the Director;

(F) In the case of flowing artesian wells with pumps, the flow meter shall be installed in a manner which will allow measurement of both pumped and flowing discharge.

(b) The Power Consumption Method:

(A) This method shall not be used for flowing artesian wells;

(B) A power meter shall be dedicated to one pump only;

(C) The ratio of electric power consumption per quantity of water pumped shall be determined annually by physically measuring the volume of water pumped during a two-hour test. The test shall be conducted under normal operating conditions;

(D) A record of the method and equipment used to determine the ratio of power consumption to volume of water pumped, and the monthly power readings for each well shall be retained for three years. The record shall be made available to the Department upon request.

(c) The Time of Operation Method:

(A) This method shall not be used for flowing artesian wells;

(B) A meter that accumulates operating time of the pump shall be installed and dedicated to one pump only;

(C) The volume of water pumped per unit time shall be determined annually by physically measuring the flow during a two-hour test. This test shall be conducted under normal operating conditions;

(D) A record of the method and equipment used to determine the volume of water pumped per unit time and the monthly accumulated operating times shall be retained for three years. The record shall be made available to the Department upon request.

(6) Alternate methods for reporting water use:

(a) An alternate method may be used if a registered professional engineer certifies to the Department that the method will report water use within an accuracy of plus or minus 15 percent. The governmental entity shall submit a description of the method and the certification by the registered professional engineer to the Department;

(b) The Department may review any alternate method at any time and may require modification to the method if the Department determines that the method does not accurately report water use as required in OAR 690-085-0010(3).

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

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 7-1991, f. & cert. ef. 8-7-91

## 690-085-0020

### Serious Water Management Problem Areas

(1) The Commission may adopt a rule to designate an area as having serious water management problems and may order any affected water right holders to submit annual water use reports if it finds that:

(a) Ground water decline in the area is of such magnitude that the aquifer does not recover annually;

(b) There are frequent water management disputes between water users in the area that cannot be privately resolved;

(c) Substantial interference exists between wells;

(d) The exercise of ground water rights interferes with flow of water in a nearby stream, to the detriment of senior surface water rights;

(e) The diversion of water from streams is in such quantities that interference with nearby wells occurs; or

(f) There are frequent occurrences of surface or ground water shortages caused by use of water from streams or wells. Shortages may be evidenced by complaints from water right holders, requests to regulate water use, degraded water quality, or failure to meet administrative restrictions or minimum streamflows.

(2) The Commission may direct that a hearing be held to determine if an area has serious water management problems upon receipt of a complete petition with sufficient evidence of a serious management problem from a water right holder in the area, or from the director of a state or federal agency. The Commission may also hold a hearing to determine if an area has serious water management problems on its own motion.

(3) A petition for hearing shall include recommended boundaries of the area proposed for designation, a description of the water management problems in the area, a summary of data on water availability and use for the area, and a proposed water management and annual water use reporting program. This proposed program should include a description of any measuring devices to be required, information which would be submitted on any annual water use reports and proposed procedures for regulation of water use. The Commission shall review the data and recommendations in the petition and determine if a hearing shall be held.

(4) The hearing shall be held in the area proposed for designation as having serious water management problems. Notice of the hearing shall be published in a local newspaper at least two weeks before the hearing. Additionally, the Department shall mail notice of the hearings to water rights holders in the area when feasible.

(5) Alternative proposals for measuring devices, methods of obtaining data, or formats for reporting data may be presented to the Department within 30 days after the hearing date.

(6) If the Commission determines there is a serious water management problem, it shall adopt a rule which specifies the nature of the problem, the boundaries of the area involved, who is required to install measuring devices, specifications for the types of measuring devices and annual reports, and timelines for implementation.

(7) The Commission may consider amendment of a rule designating a serious water management problem area upon receipt of a petition to initiate rulemaking or on the Commission's own motion.

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 13-1988, f. & cert. ef. 8-10-88

## 690-085-0030

### Failure to Report

(1) The Director may order regulation or termination of deliveries of water to and use of water by any water right holder who fails to satisfactorily install or maintain a measuring device or to submit a report required by OAR 690-085-0020. Notice of intended regulation shall be served on the person by certified mail, return receipt requested. Regulation shall become effective not earlier than 30 days after the date of mailing of the notice. Regulation shall not become effective if the person satisfactorily complies within 30 days from the date of mailing of the notice or if the person is granted an extension of time under section (2) of this rule.

(2) A water right holder required under OAR 690-085-0010 or 690-085-0020 to submit an annual water use report may request in writing a 60-day extension of time to submit the report. The Director may grant the extension upon finding that the additional time is needed by the person or government entity to compile and submit accurate and complete information.

Stat. Auth.: ORS 537 & 540

Stats. Implemented:

Hist.: WRD 13-1988, f. & cert. ef. 8-10-88

DIVISION 86

WATER MANAGEMENT AND CONSERVATION PLANS

690-086-0010

Purpose

(1) The Water Resources Commission has adopted a statewide policy on Conservation and Efficient Water Use (OAR 690-410-0060). The policy requires major water users and suppliers to prepare water management and conservation plans. These rules provide a process to ensure the efficient use of the state's water resources and to facilitate water supply planning consistent with water supplier and Department capabilities. The Commission shall evaluate implementation of these rules within three years and every three years thereafter.

(2) Many regions of Oregon face periodic and increasingly frequent water shortages during summer periods. Urbanization is resulting in a continually expanding need for municipal water supplies. In addition, many communities are faced with the need to reduce their impacts on the resource in response to state or federal listings of stream-flow dependant species as sensitive, threatened or endangered, water quality problem, and other flow issues. It is increasingly important to the state's economy to maintain adequate stream flows to support aquatic life, provide recreational opportunities and maintain water quality. The continued implementation of conservation measures can help restore streamflows, stabilize water supplies and provide for future needs for economic development and growth.

(3) Pursuant to ORS 540.610(3) the use of water at a rate or duty which is less than the maximum amount allowed under a water right that is achieved through improved water management practices is not a forfeiture under certain circumstances. However, conserved water may only be used on additional acres or for other purposes not included in the original right after allocation of conserved water under ORS 537.455 to 537.500 or under other specific statutory authorizations.

(4) Effective water management requires an evaluation of the adequacy of water supplies to meet current and future needs, identification of planned modifications in water systems, and development of new water supplies. However, the approval of a water management and conservation plan shall not substitute for compliance with Statewide Planning Goals or any other comprehensive land use planning requirement or constitute approval of applications for water rights, water reservations, water storage facilities, transfers, permit amendments, or extensions of time for permits.

(5) Water management and conservation plans will provide information important in water resources planning and management. In addition, the plans may provide support for applications for water use permits and water right transfers, permit amendments, and requests for extensions of permits, approvals of exchanges, and reservations of water. Due regard shall be given to any relevant approved water management and conservation plans during Department consideration of these applications and requests.

(6) Regional cooperation will improve water management and help to facilitate implementation of conservation measures. Water suppliers required under OAR 690-086-0010 to 690-086-0920 to prepare water management and conservation plans, and any other suppliers or users, may jointly submit a single plan that addresses the suppliers' conservation opportunities and water development needs.

(7) A water management and conservation plan that has been approved under these rules may, at the option of the water supplier, be used to satisfy a condition requiring preparation of a conservation plan in an emergency use permit issued pursuant to OAR 690-019-0040 and a requirement for submittal of a curtailment plan in times of a declared or likely drought under an order issued pursuant to ORS 536.780 and OAR 690-019-0090.

(8) Many water use permits that have been issued to water suppliers include conditions requiring preparation of water conservation, long-term water supply, and other water management plans. These rules provide standards for the preparation of such plans. Unless other more specific or stringent requirements are included

in a permit, water management and conservation plans that have been approved under OAR 690-086-0915 shall be deemed to meet the permit condition.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

Definitions

690-086-0020

General Definitions

As used in OAR 690-086-0010 to 690-086-0920:

(1) "Affected local governments" means any local government as defined in OAR 690-005-0015, within whose jurisdiction the diversion, conveyance, or use of water is established or proposed within the context of the water management and conservation plan.

(2) "Commission" means the Water Resources Commission.

(3) "Conservation" has the meaning provided in OAR 690-400-0010.

**NOTE:** OAR 690-400-0010(5) defines conservation as eliminating waste or otherwise improving efficiency in the use of water while satisfying beneficial uses by modifying the technology or method for diverting, transporting, applying or recovering the water; by changing management of water use; or by implementing other measures.

(4) "Department" means the Water Resources Department.

(5) "Director" means the Director of the Water Resources Department or designee.

(6) "Waste" has the meaning provided in OAR 690-400-0010.

**NOTE:** OAR 690-400-0010(16) defines waste as the continued use of more water than is needed to satisfy the specific beneficial uses for which a right was granted. The need for water shall be based on using the technology and management practices that provide for the efficient use of water considering:

(a) The economic feasibility of use of the technology and management practices by the water user;

(b) The environmental impacts of making modifications;

(c) The available proven technology;

(d) The time needed to make modifications;

(e) Local variations in soil type and weather; and

(f) Relevant water management plans and subbasin conservation plans.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

690-086-0030

Definitions for Municipal Water Suppliers

As used in OAR 690-086-0100 to 690-086-0170 and 690-086-0900 to 690-086-0920:

(1) "Authorized water uses" means all water uses known and approved by a municipal water supplier. These uses include all metered uses and any other approved uses such as fire-fighting, fire training, system operation needs, reuse, or miscellaneous uses.

(2) "Benchmark" means the specific incremental activities that a municipal water supplier plans to have completed in implementing conservation measures.

(3) "Extended permit" means a municipal or quasi-municipal water use permit conditioned by an extension order under OAR 690, division 315 or 320 to provide that diversion of water beyond the maximum rate diverted under the permit or previous extension(s) shall only be authorized upon issuance of a final order approving a water management and conservation plan.

(4) "Low water use landscaping" means conserving water through designing landscapes for low water use, irrigating efficiently, improving soil and planting low water use plants.

(5) "Metering" means using water meters or other continuous recording devices to measure and to maintain a record of all water diverted and delivered.

(6) "Municipal water supplier" means a publicly or privately owned water distribution system that delivers potable water for community needs, either to individual customers or another distribution system, or that delivers water primarily for commercial or industrial uses.

(7) "System leak detection" means a program to monitor leakage throughout the transmission and distribution systems of a municipal water supplier.

(8) "System leakage" means all water that is lost from a municipal water supply system, not including major breaks that are expeditiously repaired, and un-metered authorized or unauthorized uses.

(9) "Water audit" means an analysis of a municipal water supply system that includes a thorough accounting of all water into and out of the system to identify system leakage and metered or estimated use for authorized and unauthorized water uses. The audit also includes an analysis of the water supplier's own water use to identify alternatives to increase efficiency.

(10) "Water curtailment element" means a program to accomplish a specific reduction in the amount of water used or lost within a specific time in response to an emergency or other short-term shortage.

(11) "Water service connections" means water supply connections to the water delivery system, including the water supplier's own connections, but does not include connections for uses such as fire hydrants, fire sprinkler systems with flow alarms or detector-checks, water line blow-offs and drains, stand-by emergency interties, valve controlled drinking fountains or other similar intermittently used equipment or facilities.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0110

#### 690-086-0040

##### Definitions for Agricultural Water Suppliers

As used in OAR 690-086-0210 to 690-086-0920:

(1) "Agricultural water supplier" means any public or private organization, including but not limited to an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553, a corporation organized under ORS Chapter 554, an unincorporated private association or a ditch company, the primary purpose of which is to supply water to others for agricultural uses.

(2) "Agricultural water measurement" means using measuring devices, including but not limited to weirs, flumes, submerged orifices, gaging stations, and meters, to quantify the rate of flow and the volume of water in a water delivery system.

(3) "Water allocation/curtailment element" means a program to equitably allocate, under existing priorities, a reduced water supply among the water right holders dependent on the supply in response to an emergency or other short-term shortage.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0210

#### Municipal Water Management and Conservation Plans

#### 690-086-0100

##### Applicability

(1) Municipal water suppliers are encouraged to prepare water management and conservation plans, but are not required to do so unless a plan is prescribed by a condition of a water use permit; a permit extension; or another order or rule of the Commission.

(2) Water management and conservation plans submitted in order to comply with a permit extension order issued after November 1, 2002, are subject to the requirements of these rules.

(3) Until November 1, 2003, water management and conservation plans submitted for purposes other than to comply with a permit extension order issued after the effective date of these rules shall be reviewed under OAR 690, division 86 adopted by the Commission in 1994, unless the water supplier requests the Department to apply the standards in these rules. After November 1, 2003, all new and updated water management and conservation plans are subject to these rules.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0120

##### General Provisions

(1) Each municipal water supplier required to submit a water management and conservation plan shall exercise diligence in implementing the approved plan and shall update and resubmit a plan consistent with the requirements of these rules as prescribed during plan approval.

(2) Benchmarks and implementation schedules for conservation measures and other water supply development activities may be modified through the subsequent approval of an updated plan.

(3) Progress reports submitted by municipal water suppliers will be used in determining whether five-year benchmarks are being met, whether the Department will authorize additional diversion of water under extended permits, and/or if schedule changes proposed in updated plans are reasonable and appropriate.

(4) Progress reports submitted by municipal water suppliers shall include:

(a) A list of the benchmarks established under OAR 690-086-0150 and a description of the progress of the municipal water supplier in implementing the associated conservation or other measure;

(b) Average monthly and daily diversions under each right held by the water supplier for the previous five years;

(c) A description of the results of the annual water audit required under OAR 690-086-0150(4)(a); and

(d) A comparison of quantities of water used in each sector as identified and described in OAR 690-086-0140(6) with the quantities of water used in each sector for the previous five years.

(5) Upon receipt of a progress report the Department shall give public notice in the weekly notice published by the Department and provide an opportunity for written public comment. The Department shall provide copies of any comments received to the municipal water supplier.

(6) A master plan prepared under the requirements of the Department of Human Resources Health Division or the water supply element of a public facilities plan prepared under the requirements of the Department of Land Conservation and Development which substantially meets the requirements of OAR 690-086-0125 to 690-086-0170 may be submitted to meet the requirements of these rules.

(7) In the development of a water management and conservation plan, each municipal water supplier shall consult with the planning departments or appropriate officials of affected local governments to obtain information related to demand projections in comprehensive land use plans early in the development of the plan.

(8) At least 30 days prior to submitting a draft plan to the Department, a municipal water supplier shall make the draft plan available for review by each affected local government along with a request for comments relating to consistency with the local government's comprehensive land use plan.

(9) Each municipal water supplier preparing a water management and conservation plan is encouraged to develop and implement a program to involve the supplier's customers in the preparation of the plan. Recommendations include making the plan available for public inspection and conducting public meetings to provide information and gather input on the plan.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0125

##### Municipal Water Supplier Plan Elements

A water management and conservation plan submitted by a municipal water supplier shall include:

(1) A municipal water supplier description as described under OAR 690-086-0140;

(2) A municipal water conservation element as described under OAR 690-086-0150;

(3) A municipal water curtailment element as described under OAR 690-086-0160;

(4) A municipal water supply element as described under OAR 690-086-0170;

(5) A list of the affected local governments to whom the draft plan was made available pursuant to OAR 690-086-0120(6) and a copy of any comments on the plan provided by the local governments;

(6) A proposed date for submittal of an updated plan within no more than 10 years based on the proposed schedule for implementation of conservation measures, any relevant schedules for other community planning activities, and the rate of growth or other changes expected by the water supplier; or an explanation of why submittal of an updated plan is unnecessary and should not be required by the Department; and

(7) If the municipal water supplier is requesting additional time to implement metering as required under OAR 690-086-0150(4)(b) or a benchmark established in a previously approved plan, documentation showing additional time is necessary to avoid unreasonable and excessive costs.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

### 690-086-0130

#### Criteria for Approval of a Plan Submitted by a Municipal Water Supplier

In order to approve a plan by a municipal water supplier under OAR 690-086-0915, the Department must find that:

(1) The plan includes each of the required elements under OAR 690-086-0125;

(2) The projections of future water need in the water management and conservation plan are reasonable and consistent with available land use plans and the municipal water supplier has demonstrated a need for the quantity of water to be diverted during the next 20 years under each permit held by the supplier;

(3) For each of the water conservation measures required under OAR 690-086-0150(4) and, as applicable, 690-086-0150(5), the plan includes a reasonable and appropriate schedule with five year benchmarks for implementation of conservation activities;

(4) If applicable, for each of the water conservation measures required under OAR 690-086-0150(6), the plan includes:

(a) A reasonable and appropriate schedule with five year benchmarks for implementation of conservation activities; or

(b) Documentation to demonstrate that implementation of the measure is neither feasible nor appropriate to ensure efficient use of water and the prevention of waste and the supplier has used a suitable methodology in evaluating the measure;

(5) The identification of resource issues under OAR 690-086-0140(5)(i) is accurate and complete;

(6) The water curtailment element required under OAR 690-086-0160 satisfactorily promotes water curtailment practices and the coordination of usage regulation, taking into account state water law and local conditions, or is substantially the same as a curtailment plan prepared pursuant to ORS 536.780 and OAR 690-019-0090 and approved by the Department within the previous five years;

(7) If during the next 20 years the maximum rate of water diverted under an extended permit will be greater than the maximum rate authorized for diversion under the extension or previously approved water management and conservation plan;

(a) The plan includes a schedule for development of any conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources, unless the supplier has provided sufficient justification for the factors used in selecting other sources for development or the supplier serves a population of less than 1,000;

(b) Increased use from the source is the most feasible and appropriate water supply alternative available to the supplier; and

(c) If mitigation is legally required to address limitations or restrictions on the development of permits for which resource issues are identified under OAR 690-086-0140(5)(i), the plan contains documentation that the supplier is complying with the mitiga-

tion requirements. The Department may consult with federal and state agencies in making this determination; and

(8) After January 1, 2042, for review of water management and conservation plans that propose to increase the maximum rate of water diverted under an extended permit that the additional diversion of water will not impair or be detrimental to the public interest.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

### 690-086-0140

#### Municipal Water Supplier Description

The water supplier description element shall include at least the following information:

(1) A description of the supplier's source(s) of water; including diversion, storage and regulation facilities; exchange agreements; intergovernmental cooperation agreements; and water supply or delivery contracts;

(2) A delineation of the current service areas and an estimate of the population served and a description of the methodology(ies) used to make the estimate;

(3) An assessment of the adequacy and reliability of the existing water supply considering potential limitations on continued or expanded use under existing water rights resulting from existing and potential future restrictions on the community's water supply;

(4) A quantification of the water delivered by the water supplier that identifies current and available historic average annual water use, peak seasonal use, and average and peak day use;

(5) A tabular list of water rights held by the municipal water supplier that includes the following information:

(a) Application, permit, transfer, and certificate numbers (as applicable);

(b) Priority date(s);

(c) Source(s) of water;

(d) Type(s) of beneficial uses specified in the right;

(e) Maximum instantaneous and annual quantity of water allowed under each right;

(f) Maximum instantaneous and annual quantity of water diverted under each right to date;

(g) Average monthly and daily diversions under each right for the previous year, and if available for the previous five years;

(h) Currently authorized date for completion of development under each right; and

(i) Identification of any streamflow-dependent species listed by a state or federal agency as sensitive, threatened or endangered that are present in the source, any listing of the source as water quality limited and the water quality parameters for which the source was listed, and any designation of the source as being in a critical ground water area.

(6) A description of customers served including other water suppliers and the estimated numbers; general water use characteristics of residences, commercial and industrial facilities, and any other uses; and a comparison of the quantities of water used in each sector with the quantities reported in the water supplier's previously submitted water management and conservation plan and progress reports;

(7) Identification and description of interconnections with other municipal supply systems;

(8) A schematic of the system that shows the sources of water, storage facilities, treatment facilities, major transmission and distribution lines, pump stations, interconnections with other municipal supply systems, and the existing and planned future service area; and

(9) A quantification and description of system leakage that includes any available information regarding the locations of significant losses.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

**690-086-0150**

**Municipal Water Conservation Element**

The water conservation element shall include at least the following:

(1) A progress report on the conservation measures scheduled for implementation in a water management and conservation plan previously approved by the Department, if any;

(2) A description of the water supplier's water use measurement and reporting program and a statement that the program complies with the measurement standards in OAR 690, division 85, that a time extension or waiver has been granted, or that the standards are not applicable;

(3) A description of other conservation measures, if any, currently implemented by the water supplier, including any measures required under water supply contracts;

(4) A description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of each of the following conservation measures that are required of all municipal water suppliers:

(a) An annual water audit that includes a systematic and documented methodology for estimating any un-metered authorized and unauthorized uses;

(b) If the system is not fully metered, a program to install meters on all un-metered water service connections. The program shall start immediately after the plan is approved and shall identify the number of meters to be installed each year with full metering completed within five years of approval of the water management and conservation plan;

(c) A meter testing and maintenance program;

(d) A rate structure under which customers' bills are based, at least in part, on the quantity of water metered at the service connections;

(e) If the annual water audit indicates that system leakage exceeds 10 percent, a regularly scheduled and systematic program to detect leaks in the transmission and distribution system using methods and technology appropriate to the size and capabilities of the municipal water supplier; and

(f) A public education program to encourage efficient water use and the use of low water use landscaping that includes regular communication of the supplier's water conservation activities and schedule to customers;

(5) If the municipal water supplier proposes to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i), a description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of a system-wide leak repair or line replacement program to reduce system leakage to no more than 15 percent or sufficient information to demonstrate that system leakage currently is no more than 15 percent.

(6) If the municipal water supplier serves a population greater than 1,000 and proposes to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i), or if the municipal water supplier serves a population greater than 7,500, a description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of each of the following measures; or documentation showing that implementation of the measures is neither feasible nor appropriate for ensuring the efficient use of water and the prevention of waste:

(a) A system-wide leak repair program or line replacement to reduce system leakage to 15 percent, and if the reduction of system leakage to 15 percent is found to be feasible and appropriate, to reduce system leakage to 10 percent;

(b) Technical and financial assistance programs to encourage and aid residential, commercial and industrial customers in implementation of conservation measures;

(c) Supplier financed retrofitting or replacement of existing inefficient water using fixtures, including distribution of residential conservation kits and rebates for customer investments in water conservation;

(d) Adoption of rate structures, billing schedules, and other associated programs that support and encourage water conservation;

(e) Water reuse, recycling, and non-potable water opportunities; and

(f) Any other conservation measures identified by the water supplier that would improve water use efficiency.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0140(2)

**690-086-0160**

**Municipal Water Curtailment Element**

The water curtailment element shall include at least the following:

(1) A description of the type, frequency and magnitude of supply deficiencies within the past 10 years and current capacity limitation. The description shall include an assessment of the ability of the water supplier to maintain delivery during long-term drought or other source shortages caused by a natural disaster, source contamination, legal restrictions on water use, or other circumstances;

(2) A list of three or more stages of alert for potential shortage or water service difficulties. The stages shall range from a potential or mild alert, increasing through a serious situation to a critical emergency;

(3) A description of pre-determined levels of severity of shortage or water service difficulties that will trigger the curtailment actions under each stage of alert to provide the greatest assurance of maintaining potable supplies for human consumption; and

(4) A list of specific standby water use curtailment actions for each stage of alert ranging from notice to the public of a potential alert, increasing through limiting nonessential water use, to rationing and/or loss of service at the critical alert stage.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0140(3)

**690-086-0170**

**Municipal Water Supply Element**

The water supply element shall include at least the following:

(1) A delineation of the current and future service areas consistent with state land use law that includes available data on population projections and anticipated development consistent with relevant acknowledged comprehensive land use plans and urban service agreements or other relevant growth projections;

(2) An estimated schedule that identifies when the water supplier expects to fully exercise each of the water rights and water use permits currently held by the supplier;

(3) Based on the information provided in section (1) of this rule, an estimate of the water supplier's water demand projections for 10 and 20 years, and at the option of the municipal water supplier, longer periods;

(4) A comparison of the projected water needs and the sources of water currently available to the municipal water supplier and to any other suppliers to be served considering the reliability of existing sources;

(5) If any expansion or initial diversion of water allocated under existing permits is necessary to meet the needs shown in section (3) of this rule, an analysis of alternative sources of water that considers availability, reliability, feasibility and likely environmental impacts. The analysis shall consider the extent to which the projected water needs can be satisfied through:

(a) Implementation of conservation measures identified under OAR 690-086-0150;

(b) Interconnection with other municipal supply systems and cooperative regional water management; and

(c) Any other conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources.

(6) If any expansion or initial diversion of water allocated under existing permits is necessary to meet the needs shown in section (3) of this rule, an analysis of alternative sources of water that considers availability, reliability, feasibility and likely environmental impacts. The analysis shall consider the extent to which the projected water needs can be satisfied through:

tion (3) of this rule, a quantification of the maximum rate and monthly volume of water to be diverted under each of the permits;

(7) For any expansion or initial diversion of water under existing permits, a description of mitigation actions the water supplier is taking to comply with legal requirements including but not limited to the Endangered Species Act, Clean Water Act, Safe Drinking Water Act; and

(8) If acquisition of new water rights will be necessary within the next 20 years to meet the needs shown in section (3) of this rule, an analysis of alternative sources of the additional water that considers availability, reliability, feasibility and likely environmental impacts and a schedule for development of the new sources of water. The analysis shall consider the extent to which the need for new water rights can be eliminated through:

(a) Implementation of conservation measures identified under OAR 690-086-0150;

(b) Interconnection with other municipal supply systems and cooperative regional water management; and

(c) Any other conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0140(4)

### Agricultural Water Supplier Water Management and Conservation Plans

#### 690-086-0220

##### General Provisions

(1) Certain agricultural water suppliers must have approved conservation plans to transfer water rights within the boundaries of the districts to other land within the districts (ORS 540.572 to 540.578). These rules provide the standards for those conservation plans.

(2) Each agricultural water supplier required to submit a water management and conservation plan shall exercise diligence in implementing the approved plan and shall update and resubmit a plan consistent with the requirements of OAR 690, division 86 as prescribed during plan approval.

(3) Any agricultural water supplier participating in the water transfer provisions in ORS 540.572 to 540.578 and OAR 690-021-0070 to 690-021-0700 shall submit an annual report describing progress-to-date in implementing a water management and conservation plan.

(4) Water management and conservation plans submitted by agricultural water suppliers shall meet the requirements listed in OAR 690-086-0225 to 690-086-0270.

(5) A water conservation plan prepared in accordance with criteria of the Bureau of Reclamation and substantially meeting the requirements of OAR 690-086-0225 to 690-086-0270 may be submitted to meet the requirements of these rules.

(6) At least 30 days prior to submitting a draft plan to the Department, an agricultural water supplier shall make the draft plan available for review by each affected local government.

(7) Each agricultural water supplier preparing a water management and conservation plan is encouraged to develop and implement a program to involve the supplier's patrons in the preparation of the plan. Recommendations include making the plan available for public inspection and conducting public meetings to provide information and gather input on the plan.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0225

##### Agricultural Water Supplier Plan Elements

A water management and conservation plan submitted by an agricultural water supplier shall include:

(1) An agricultural water supplier description as described under OAR 690-086-0240;

(2) An agricultural water conservation element as described under OAR 690-086-0250;

(3) An agricultural water allocation/curtailment element as described under OAR 690-086-0260;

(4) An agricultural water supply element as required under OAR 690-086-0270;

(5) A list of the affected local governments to whom the draft plan was made available pursuant to OAR 690-086-0220(6) and a copy of any comments on the plan provided by the local governments;

(6) A proposed date for submittal of an updated plan based on the proposed schedule for implementation of conservation measures, any relevant schedules for other community planning activities, and the rate of growth of or other changes expected by the water supplier; or an explanation of why submittal of an updated plan is unnecessary and should not be required by the Department.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0240

##### Agricultural Water System Description

The description of the water system shall include at least the following information:

(1) General location of water right acreage, numbers of the associated water right certificates and permits and a description of relevant conditions of the water rights including the seasons of use and the uses of any other permitted withdrawals by the supplier;

(2) Source(s) of water; storage and regulation facilities; and a summary of any transfer, rotation, exchange or intergovernmental cooperation agreements;

(3) A schematic of the system showing storage and distribution facilities, drainage systems, measurement stations, generalized district boundaries, points of diversion and locations of major operational spills;

(4) Current water use, including peak and average annual diversions and, when available, water reuse and return flows;

(5) A summary of major classifications of user accounts showing water right acreages, the number of accounts of each classification, and the beneficial uses for which water is provided (irrigation, frost protection, temperature control, agricultural use, livestock, domestic, etc.);

(6) Types of on-farm irrigation systems common within the supplier's accounts;

(7) A general characterization of crops commonly grown and the estimated average and peak consumptive use of the crops; and

(8) A description of the operation and maintenance program.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0250

##### Agricultural Water Conservation Element

The water conservation element shall include at least the following:

(1) A progress report on the conservation measures scheduled for implementation in the water management and conservation plan previously approved by the Department, if any;

(2) A description of the water supplier's agricultural water measurement program and a statement that the program complies with the measurement and reporting standards in OAR 690, division 85, that a time extension or waiver has been granted, or that the standards are not applicable;

(3) A description of other conservation measures currently implemented by the water supplier;

(4) Short- and long-term goals of the water supplier to improve water management;

(5) An evaluation of the opportunities for improving water use efficiency which includes:

(a) A description of losses of water from canals, pipelines, and laterals, including any operational spills;

(b) An assessment of the extent to which water deliveries are insufficient to meet crop needs;

(c) A list of alternative conservation measures to reduce the losses of water identified in subsection (a) of this section and address any insufficiencies of water deliveries identified in subsection (b) of this section; and

(d) An assessment of existing and future alternatives to finance conservation measures including an analysis of the possibility of applying for the allocation of conserved water (OAR 690-018-0010 to 690-018-0090).

(6) For each of the following conservation measures not currently being implemented, and evaluation of whether implementation of the measure is feasible and appropriate for ensuring the efficient use of water and the prevention of waste:

(a) Promotion of energy audits offered through local electric utilities for district water users;

(b) Conversion to metered, pressurized deliveries to all parcels of one acre or less;

(c) Piping or lining earthen canals;

(d) Modifying distribution facilities and district policies to increase the flexibility of water deliveries;

(e) Provision of on-farm irrigation scheduling assistance;

(f) Construction of re-regulating reservoirs;

(g) Adoption of rate structures that support and encourage water conservation;

(h) Each of the conservation measures listed in OAR 690-086-0250(5)(c); and

(i) Any other conservation measures identified by the water supplier that would improve water use efficiency.

(7) A description and estimated schedule for implementation of each of the following conservation measures:

(a) An information and education program aimed at improving the efficiency of use of water delivered. The program should address all types of uses served and include voluntary water use audits; and

(b) Any other conservation measures identified as feasible and appropriate under section (6) of this rule.

(8) A program to monitor and evaluate the effectiveness of the conservation measures which are implemented.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0240(2)

#### 690-086-0260

##### Agricultural Water Allocation/Curtailment Element

The water allocation/curtailment element shall include at least the following:

(1) A description of the frequency and magnitude of past supply deficiencies and current capacity limitation. The description shall include an assessment of the ability of the water supplier to maintain delivery during drought or other source shortages.

(2) A description of the water supply situation(s) that cause the water allocation/curtailment element to be implemented, including identification of the supply situations which trigger warnings to users or public notice of impending shortage;

(3) A description of the procedure used to allocate water during water shortages.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0240(3)

#### 690-086-0270

##### Agricultural Water Supply Element

The long-range water supply element shall include at least the following:

(1) An estimate of the water supplier's long-range water demand projections for 20 years;

(2) A comparison of the projected water needs and the size and reliability of water rights permits or other current water supply contracts held by the water supplier;

(3) A list of potential sources of water, including conservation and reuse, to supply the long-range needs;

(4) A comparison among the potential sources of additional water considering costs, availability, reliability, and likely environmental impacts;

(5) An evaluation of the effects of the following factors on long-range water needs:

(a) Regional options for meeting future water needs;

(b) Urbanization and other land-use trends;

(c) Provisions in affected local governments' comprehensive plans relating to agricultural lands, urbanization, water resources, water supply, public facilities and services, and any other pertinent plan element or ordinance relating to uses or lands served, or proposed to be served, under the long-term water supply plan.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0240(4)

#### Water Management and Conservation Plan Review and Enforcement

#### 690-086-0900

##### Water Management and Conservation Plan Review, Approval and Enforcement

(1) The rules in OAR 690-086-0900 to 690-086-0920 set out the process and criteria for the Department's review, approval and enforcement of the water management and conservation plans submitted by agricultural and municipal water suppliers. The rules apply to the submittal and review of draft plans, proposed final plans, and subsequent updates.

(2) During the plan review and approval process, the Department may allow additional time for a municipal water supplier to implement water metering under OAR 690-086-0150(4)(b) or a benchmark established in a previously approved plan if the water supplier shows that additional time is necessary to avoid unreasonable and excessive costs.

(3) Notwithstanding any of the requirements of these rules, except OAR 690-086-0150(2) and 690-086-0250(2), the Department may approve a water management and conservation plan if the plan is generally consistent with the applicable criteria and includes a schedule for completion within five years of any additional work necessary to satisfy the requirements.

(4) Any plan approval that contains a requirement that a municipal water supplier complete additional work under section (3) of this rule shall preclude additional diversion of water under an extended permit beyond the need quantified for the next two years.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

#### 690-086-0905

##### Notice of Submittal of a Draft Plan or Updated Plan

(1) The Department shall notify affected local governments, affected Indian tribes, and all persons on the Department's weekly mailing list that a draft water management and conservation plan prepared under the requirements of OAR 690-086-0125 or 690-086-0225 has been submitted to the Department and is available for review.

(2) Any person may review and submit written comments on the draft plan within 30 days of the notification in section (1) of this rule. Written comments submitted under this subsection must cite specific provisions of concern in the draft plan, describe how each of the provisions cited do or do not satisfy the requirements of OAR 690, division 086, suggest any modification in each provision that would be necessary to satisfy the relevant requirement, and include information to support any suggested modifications.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0910(1) & (2)

#### 690-086-0910

##### Preliminary Review of Draft Plans

(1) The Department shall undertake a preliminary review of the draft plan and the comments received pursuant to OAR 690-

086-0905 to determine whether the plan includes the required elements of 690-086-0120 to 690-086-0170 or 690-086-0220 to 690-086-0270.

(2) For a plan submitted by a municipal water supplier, the Department shall review the plan to determine if the information and analyses in the plan are sufficient for the Department to make the determination required under OAR 690-086-0130.

(3) For a plan submitted by an agricultural water supplier the Department shall review the plan to determine whether:

(a) The plan includes the information required in OAR 690-086-0240;

(b) The water supplier has complied with the requirements of OAR 690-086-0250 and has included a description of the actions to be taken in the implementation of water conservation measures that are feasible and appropriate for ensuring the efficient use of water and the prevention of waste; considering:

(A) The economic feasibility of the measures for the water supplier;

(B) Any likely adverse environmental impacts of implementation of the measures;

(C) Whether the measures are available and proven;

(D) The time needed to implement the measures;

(E) The effects of local variations in soil type and weather on the potential for successful implementation of the measures; and

(F) Whether the measures are consistent with other relevant water management plans and subbasin conservation plans.

(c) The water allocation/curtailment element prepared under OAR 690-086-0260 satisfactorily promotes water curtailment practices and the coordination of usage regulation, taking into account state water law and local conditions, or is substantially the same as a curtailment plan prepared pursuant to ORS 536.780 and OAR 690-019-0090 and approved by the Department within the previous five years; and

(d) The water supplier has included the information required in OAR 690-086-0270, and, in the list of potential sources of water to meet projected demands, included the development of any conservation measures which are available at a cost which is lower than the cost of other identified sources or has provided sufficient justification for the factors used in selecting other sources for development.

(4) Upon completion of the preliminary review and no later than 90 days after receipt of a draft plan, the Department shall:

(a) After considering public comments, provide the Department's written comments on the plan to the water supplier and any person who submitted comments pursuant to OAR 690-086-0905; or

(b) After considering public comments if the Department determines that the draft plan includes the required plan elements under OAR 690-086-0125 or 690-086-0225, and for municipal water supply plans, that the plan meets the criteria under 690-086-0130, issue a final order approving the plan pursuant to 690-086-0915(4) or (5) and notify any person who submitted comments pursuant to 690-086-0905 of the issuance of the order.

(5) The Department shall include in its written comments prepared under section (4) of this rule:

(a) For each deficiency identified in the review, a citation of the relevant statute or rule;

(b) To the extent possible, identification of any constraints to implementation of the water management and conservation plan and recommendations on appropriate actions to secure any identified new sources of water;

(c) An evaluation of the extent to which a request for additional time under OAR 690-086-0900(2) satisfies the relevant requirements of the rules;

(d) A prescribed reasonable period of time of not less than 60 days, identified in consultation with the water supplier, for the water supplier to respond to the Department's review and to submit a proposed final plan; and

(e) Copies of any written comments received pursuant to OAR 690-086-0905.

(6) If the Department does not meet the 90-day deadline in section (4) of this rule:

(a) For purposes of ORS 540.572, a plan submitted by an agricultural water supplier after November 1, 2002, is deemed approved for the period from the expiration of the 90-day deadline until 120 days after the Department provides written comments under section (5) of this rule; and

(b) For municipal water suppliers whose additional diversion of water under an extended permit is only authorized upon issuance of a final order approving a water management and conservation plan, notwithstanding OAR 690, division 315, the Director may by order authorize diversion of an additional specified quantity of water as necessary to prevent harm to public welfare, safety and health.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02

### 690-086-0915

#### Final Review of Plans

(1) Upon receipt of a proposed final plan, the Department shall evaluate the plan to determine if it includes the required elements of OAR 690-086-0125 to 690-086-0170 for municipal water suppliers or 690-086-0225 to 690-086-0270 for agricultural water suppliers. The evaluation shall be limited to a review of modifications in the plan and issues that were identified in the Department's written comments provided under 690-086-0910 and, if any deficiencies are identified, the Department's review shall cite the relevant statute or rule.

(2) If the Department determines that the final plan does not include the required elements of OAR 690-086-0120 to 690-086-0170 or 690-086-0220 to 690-086-0270, the Department shall consult with the water supplier and may provide additional time to correct any discrepancies.

(3) For a water management and conservation plan submitted by a municipal water supplier, the Department shall review the plan to determine if the information and analyses in the plan are sufficient for the Department to make the determination required under OAR 690-086-0130.

(4) For a water management and conservation plan submitted by a municipal water supplier, if the Department determines that the proposed final plan includes the required elements under OAR 690-086-0120 to 690-086-0170 and meets the applicable criteria under OAR 690-086-0130, the Department shall issue a final order approving the plan and notify the water supplier and any person who submitted comments pursuant to OAR 690-086-0905 of the approval. The Department's order shall include the following:

(a) A quantification of the maximum amount of water to be diverted during the next 20 years under each extended permit, or for a longer period as specified for an extended reservoir permit;

(b) The date on which an updated plan shall be submitted to the Department. A municipal water supplier may submit an updated plan at any time prior to the date specified if necessary to accommodate unanticipated events, but the Department shall not require submittal of an updated plan earlier than five years after issuance of the order approving the plan; and

(c) A schedule for submittal of five-year progress reports on implementation of the water conservation and supply measures described in the plan.

(5) For a water management and conservation plan submitted by an agricultural water supplier, if the Department determines that the proposed final plan satisfies the relevant requirements or if the water supplier satisfactorily corrects any identified discrepancies, the Department shall issue a final order approving the plan and notify the water supplier and any person who submitted comments pursuant to OAR 690-086-0905 of the approval. The Department shall specify in the order approving the plan if an updated plan shall be required and, if so, the date on which the updated plan shall be submitted to the Department. The Department shall not require submittal of an updated plan earlier than five years after issuance of the order approving the plan.

(6) The Department shall issue a final order denying approval of the plan and notify the water supplier and any person who submitted comments pursuant to OAR 690-086-0905 of the issuance of the order if:

(a) The Department determines that the proposed final plan does not contain the plan elements required under OAR 690-086-0125 or 690-086-0225;

(b) For municipal water suppliers, the plan does not meet the criteria under OAR 690-086-0130;

(c) The municipal water supplier has failed to adequately justify a request for additional time to implement water metering under OAR 690-086-0150(4)(b) or a benchmark established in a previously approved plan; or

(d) The work plan submitted under OAR 690-086-0900(3) is insufficient for completing the additional work necessary to satisfy the requirements of these rules.

(7) The Department may deny approval of a water management and conservation plan if the water supplier fails to submit a final plan to the Department within 120 days after receipt of the Department's preliminary review.

(8) If the Department issues a final order denying approval of the plan, the water supplier may request that the Department reconsider the order and the Director appoint a five-member review board to review the plan. The board shall include at least two individuals from the basin in which the supplier is located who are engaged in similar uses of water, the local watermaster, and other individuals knowledgeable about water use practices and water conservation. After reviewing the plan and evaluating any additional information presented by the water supplier and the Department, the board may recommend that the Department:

(a) Reconsider the decision not to approve the plan;

(b) Reconsider the decision not to approve the plan contingent on the water supplier agreeing to specified modifications; or

(c) Reaffirm the original decision not to approve the plan.

(9) The Department shall notify the water supplier, the members of the review board, and any person who submitted comments pursuant to OAR 690-086-0905 of any action taken based on the board's recommendation.

(10) The water supplier or a person who has submitted comments pursuant to OAR 690-086-0905 may, within 30 days of a notification pursuant to OAR 690-086-0910(5)(b) or section (4), (5), (6), or (9) of this rule, appeal a decision by the Department to approve or to not approve a plan to the Commission. The Commission may deny the appeal or may accept the appeal and remand the plan to the Department to seek resolution of the issues identified in the appeal and, if the issues are not resolved, to initiate a contested case proceeding pursuant to ORS 183.413 and OAR 690, divisions 1 and 2.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 4 2002, f. & cert. ef. 11-1-02, Renumbered from 690-086-0910(7)

### 690-086-0920

#### Enforcement

If the Director determines that a water supplier has failed to submit a water management and conservation plan as required under OAR 690-086-0010 to 690-086-0270 or has failed to satisfactorily implement an approved water management and conservation plan, the Director may proceed with one or more of the following actions:

(1) Provide an additional, specified amount of time for remedy;

(2) Initiate an evaluation of the supplier's water management practices and facilities to determine if the use of water is wasteful;

(3) Initiate regulation of water use under OAR 690-250-0050 to eliminate waste;

(4) Rescind a previous approval of a water management and conservation plan; and

(5) If the submittal of the water management and conservation plan is required under a condition of a permit or an extension approved under OAR 690, division 315 or 320, assess a civil

penalty under OAR 690-260-0005 to 690-260-0110 or cancel the permit.

Stat. Auth.: ORS 536.027, 537.211 & 540.572

Stats. Implemented: ORS 537.230, 537.630 & 539.010

Hist.: WRD 11-1994, f. & cert. ef. 9-21-94; WRD 11-1994, f. & cert. ef. 9-21-94

## DIVISION 90

### WATER DEVELOPMENT LOAN FUND

#### 690-090-0005

##### Purpose

(1) The Water Development Fund, referred to in these rules as the Water Development Loan Fund, was created to provide loans to develop the water resources of the state. The fund was established in the Water Development Act, Chapter 246, 1977 Laws and approved by a general election in November, 1977. The Act was subsequently amended to authorize loans for community water supply projects which benefit communities of less than 30,000 population, fish protection projects, and watershed enhancement projects. The Act is codified in ORS 541.700 to 541.855.

(2) These rules provide instructions for the administration of the loan program.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.845

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

#### 690-090-0010

##### Definitions

As used in these rules and forms to be prepared by the Water Resources Commission, the following definitions apply:

(1) "Applicant" means a loan program applicant or borrower.

(2) "Commission" means the Water Resources Commission.

(3) "Community" means an incorporated or unincorporated town or locality with more than three service connections and a population of less than 30,000.

(4) "Community water supply project" means an undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, canal lining and restoration, ditches, revetments, and all other structures, facilities, real property and methods necessary or convenient for supplying water.

(5) "Department" means the Water Resources Department or its staff.

(6) "Director" means the director of the Water Resources Department or designee.

(7) "Drainage project" means facilities installed to provide for the removal of excess water and thereby increase soil versatility and productivity. These facilities may include ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods.

(8) "Family farm unit" means land devoted primarily to agriculture under the ownership of a resident Oregon family.

(9) "Fish protection project" means an undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways, passage, and all other structures and facilities necessary or convenient for providing fish protection.

(10) "Irrigation project" means facilities designed to provide water to land for the purpose of irrigation. Projects may include dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, canal lining and restoration, ditches, revetments and all other structures, facilities, real property and methods necessary or convenient for supplying lands with water for irrigation purposes.

(11) "Loan advisory board" means a board appointed by the director to review applications made under ORS 541.700 through 541.855 and make recommendations thereon to the director.

(12) “Loan contract” means the loan agreement, supplemental loan agreement, promissory note, mortgage and other documents relating to the construction, operation and maintenance of the project, and repayment of the loan.

(13) “Loan funds” means moneys loaned by the department to finance water development projects.

(14) “Multipurpose project” means a water development project in this state which provides more than one use. To be eligible for funding, the primary use of the project shall be irrigation, drainage, community water supply, fish protection or watershed enhancement projects. Secondary uses may include other water uses which are compatible with the primary use. Secondary uses are:

- (a) Any water-related recreational use;
- (b) Any wildlife or natural resource conservation use;
- (c) Municipal or industrial water uses with a water development project as the source;
- (d) Water quality enhancement directly related to the development of a new water development project;
- (e) Any flood control use;
- (f) Any power generation use;
- (g) Any water supply system utilized for the purpose of agricultural temperature control;
- (h) Any water supply system utilized for the maintenance of livestock;
- (i) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.

(15) “Personal property” means movable property or possessions not permanently affixed to and a part of the real estate.

(16) “Principal income” means a major source of income as stated in the applicant’s federal tax returns for the three years previous to filing the Water Development Loan Fund application or such other evidence acceptable to the director.

(17) “Real property” means land, buildings, and other permanent improvements to the land.

(18) “Resident” means an individual living in the State of Oregon for the six months immediately preceding the date of filing an application.

(19) “Water developer” means:

- (a) Any individual resident of this state;
- (b) Any profit-making partnership subject to the provisions of ORS Chapter 68 or 70 whose principal income is from farming in Oregon;
- (c) Any profit-making corporation subject to the provisions of ORS Chapter 60, whose principal income is from farming in Oregon;
- (d) Any nonprofit corporation subject to provisions of ORS Chapter 65, whose principal income is from farming in Oregon;
- (e) Any cooperative subject to the provisions of ORS Chapter 62, whose principal income is from farming in Oregon;
- (f) Any irrigation district organized under or subject to the Irrigation District Act, as defined in ORS Chapter 545;
- (g) Any water improvement district organized under ORS Chapter 552;
- (h) Any water control district organized under ORS Chapter 553;
- (i) Any irrigation or drainage corporation organized under or subject to ORS Chapter 554;
- (j) Any drainage district organized under ORS Chapter 547 or subject to all or part of ORS Chapter 545;
- (k) Any corporation, cooperative, company, or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;
- (l) Any port district organized under ORS Chapter 777.005 to 777.725, 777.915 to 777.953 and 777.990;
- (m) Any city or county;
- (n) Any organization formed for the purpose of distributing water for community water supply; or
- (o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(20) “Water development project” means an undertaking, in whole or in part, in Oregon with the primary purpose of irrigation, drainage, community water supply, fish protection, or watershed enhancement, including acquisition of water for instream flow.

(21) “Watershed enhancement project” means an undertaking, in whole or in part, in this state for the purpose of watershed enhancement including methods and materials to restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state’s river, lake and estuary systems.

Stat. Auth.: ORS 183, 197, 536 & 541

Stats. Implemented: ORS 541.700 - 541.855

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef. 4-15-97

## 690-090-0015

### Eligibility: Applicant and Project

(1) To be eligible, applicants shall meet the definition of water developer, as stated in OAR 690-090-0010.

(2) To be eligible, projects shall meet the definition of a drainage project, irrigation project, community water supply project, fish protection project, watershed enhancement project or multipurpose project, as defined in OAR 690-090-0010.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.700 - 541.855

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 3-1997, f. & cert. ef. 4-15-97

## 690-090-0016

### Eligible Costs

Subject to these rules, a loan may be approved to pay costs relating to the project including:

- (1) The costs of buying or otherwise acquiring, building, installing, rehabilitating or reconstructing a water development project as defined in OAR 690-090-0010;
- (2) Costs of obtaining a loan;
- (3) Design, engineering and license costs;
- (4) Reserves, interest costs relating to construction or interim financing, staff training, and site costs; and
- (5) Grant matching funds or other costs of funds needed for the project.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.700, 541.705, 541.750, 541.770 & 541.835

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

## 690-090-0017

### Preferences

To satisfy the preference set in ORS 541.703 and providing that the guidelines and criteria set forth in 541.700 through 541.855 and these rules are met, the director shall give priority to those projects required to be undertaken as a result of a proceeding under 222.840 to 222.915 or 431.705 to 431.760 to alleviate conditions constituting a danger to public health. Priority, as used here, shall mean moving such loan applications ahead of other applications that may have been previous in time and, to the extent funds are inadequate to meet demands of pending applications, priority in funding.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.703

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

## 690-090-0018

### Authority of Director

(1) The director is authorized by the commission to approve, deny, or amend loans, establish loan interest rates, and to execute bond and loan contracts. The director shall refer decisions on loan requests greater than three million dollars, or such other amount as may be established by order of the commission, to the commission with a written loan recommendation when discretionary authority allowed under OAR 690-090-0025 is exercised. The director may, at the director’s discretion, refer any loan decision to the commission along with a written loan recommendation.

(2) The director may:

(a) Contract with regulated lenders, state or federal agencies or others to provide services, subsidies or grants to the program.

(b) Take such steps as are needed to recover loan funds and prevent their misuse, or to prevent project funds from being diverted from the originally approved purpose.

(c) Delegate to staff, in writing, authority to approve, deny, or amend loans and to execute bond and loan contracts consistent with these rules.

(d) Take any action allowed by law to comply with federal codes and rules on bonding or to assure the payment of program bonds.

Stat. Auth.: ORS 536 & 541

Stats. Implemented: ORS 541.700 - 541.855

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

#### **690-090-0019**

##### **Loan Advisory Board**

(1) The director shall appoint a loan advisory board to review applications made under ORS 541.700 through 541.855 and pursuant to these rules and make recommendations thereon to the director. The members appointed to the board shall be subject to the approval of the commission.

(2) At least five but not more than seven members shall be appointed to the loan advisory board. The board shall be composed of individuals with expertise in and representing interests of one or more of the following: instream flow and watershed enhancement, finance or banking, project development, agriculture, and local government operations.

(3) Before appointing a member to the board, the director shall mail notice to all persons and organizations which have filed with the department a written request to be included on the mailing list maintained for the Water Development Loan Fund program.

(4) Appointments to the board are not limited to individuals submitted for consideration as a result of the solicitation process set forth in (3) above.

(5) Each member shall serve at the pleasure of the director and be appointed to serve a two-year term. The term may exceed two years, at the discretion of the director, until such time as a successor is appointed and qualified. The director may provide administrative facilities and services for the board.

(6) The director shall annually appoint a chair of the board. The chair or chair's designee shall preside over all board meetings. An affirmative act of the majority of the appointed members shall be required to act on a loan recommendation.

(7) The director shall select a department employee to serve as secretary to the board.

(8) The board shall hold public meetings at the call of the director. The chair and secretary shall set the date, time and place of meetings. The agenda for each meeting shall be prepared by the secretary and the chair and shall include all matters to come before the board at the meeting. The secretary shall send the agenda, the staff loan recommendation and any related material to members and the applicant at least one week prior to a meeting.

(9) Meetings may be run informally by the chair. The chair or chair's designee shall sign all board documents unless a member or the secretary is allowed by a board vote to do so.

(10) The director shall make public notice of each loan advisory board meeting as provided in OAR 690-090-0035.

(11) The board shall hear comments on any matter before it. The board may set time limits on comments.

(12) After its review, the board shall advise the director in writing whether the project complies with OAR 690, division 090 and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the board.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.700 - 541.855

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

#### **690-090-0020**

##### **Application Procedure**

(1) It is recommended that potential applicants contact the director for a pre-application conference prior to submitting an application. The director or delegated staff may advise applicants whether the project appears to comply with these rules, whether funds are available and which costs may be eligible. No advice, opinion or statements of any nature rendered pursuant to this subsection shall constitute a loan approval or any other form of representation or binding commitment.

(2) The application shall be made on forms and in a manner set by the director. Application forms shall be completed and filed with the director in order to be considered eligible for funds from the Water Development Loan Fund.

(3) The level of detail of the information provided in the application shall be commensurate with the size and scope of the project. The director may reject incomplete applications. All applications for water development projects shall:

(a) Describe the nature, purpose and location of the proposed water development project. The location shall be described in reference to the public land survey.

(b) State the amount and term of loan requested.

(c) Include a statement describing the need for the project.

(d) Include a statement describing the reason why the project would be in the public interest.

(e) Include information the applicant has that describes the effect, if any, of the proposed project on fish and wildlife, including endangered, threatened or sensitive species; water quality; water use conservation or efficiency; economic development; public uses of the affected surface waters, including recreation; and any other anticipated environmental impact.

(f) Provide the legal description of the real property to be used as security for the loan.

(g) Include a feasibility study for the construction, operation, and maintenance of the proposed water development project; cost estimates and material specifications; and construction schedule for completion of the project.

(h) State whether any moneys other than those in the Water Development Loan Fund are proposed to be used for the construction of the proposed water development project and whether any other moneys are available or have been sought for the construction.

(i) Show that the applicant holds or can acquire all real property and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.

(j) Include land use information as outlined in the department's Land Use Planning Procedures Guide.

(k) Provide a fiscal impact statement as to any impact that the proposed project may have on small businesses, including Oregon family farm units.

(l) Contain information demonstrating that the applicant is a qualified, creditworthy and responsible water developer who is willing and able to enter into a contract for loan repayment and who has financial resources adequate to operate and maintain the project including, but not limited to, an itemization of assets and liabilities and credit references.

(m) Include written consent from the applicant and guarantors allowing the department to complete a full credit investigation, including a credit report.

(n) Include evidence of sufficient income to meet loan repayment. This evidence may include, but is not limited to, the prior three years tax returns, audited financial statements, cash flow projections, current year budget information or other evidence deemed satisfactory by the director. The director may require such financial information dating back further than three years if, in the director's judgment, it is deemed necessary.

(o) Include a narrative description of the applicant's management personnel, board or council members and any contracted personnel. This information should include the names, titles, experience, specialized training and expertise of personnel that will be responsible for decision making, general management responsibilities,

technical responsibilities, and internal operations including fiscal and accounting responsibilities.

(p) Include a brief history of the applicant's business or operation, including the number of years in operation, population or customers served, economic trends and significant operational or management changes made in the last three years.

(q) Except for an individual or sole proprietorship, include evidence satisfactory to the director of legal authority to borrow and enter into a loan contract with the department.

(4) The director may require specific additional information be included with the application forms to determine that:

(a) The applicant is qualified to operate and maintain the project;

(b) The applicant has a history of responsible credit management;

(c) The applicant is willing and able to enter into a contract with the director for repayment of the loan; and

(d) The applicant's project is economically feasible in that income from the enterprise will support the loan payments.

(5) An application for irrigation or drainage projects shall also:

(a) State whether any purposes other than irrigation or drainage will be served by the proposed project and the nature of other such purposes;

(b) Include an evaluation of the agricultural potential of the land from any competent public agency;

(c) Contain an estimate of the total acreage to be served by the proposed project; and

(d) Include a statement from the applicant that the proposed project is, or will be built and operated in compliance with all state and federal, as applicable, laws and permitting requirements.

(6) An application for community water supply projects shall also:

(a) State whether any purposes other than supplying water for community use will be served by the proposed project and the nature of other such purposes;

(b) Include a schedule of the annual net revenues available to meet the debt servicing requirements of the loan; and

(c) Include a statement from the applicant that the proposed water project is, or will be, in compliance with all state and federal, as applicable, laws and permitting requirements, in addition to federal community water standards.

(7) An application for fish protection projects shall also:

(a) Include an assessment and a recommendation from the Oregon Department of Fish and Wildlife on the proposed project; and

(b) Include a statement from the applicant that the proposed project is, or will be built and operated, in compliance with all state and federal, as applicable, laws and permitting requirements.

(8) An application for a watershed enhancement project shall also:

(a) Include a recommendation from the Governor's Watershed Enhancement Board for the project;

(b) State whether any purposes other than watershed enhancement will be served by the proposed project and the nature of other such purposes; and

(c) Include a statement from the applicant that the proposed project is, or will be built and operated, in compliance with all state and federal, as applicable, laws and permitting requirements.

(9) All applications for water development projects shall include fees as set forth in OAR 690-090-0036.

(10) All applications for water development projects shall include an assessment and a recommendation from the Oregon Department of Fish and Wildlife on the proposed project.

Stat. Auth.: ORS 183, 197, 536 & 541

Stats. Implemented: ORS 541.705

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef. 4-15-97

## 690-090-0025

### Criteria For Granting a Loan

(1) No application for loan funds may be approved by the director unless the director makes findings required by ORS 541.720 and additional findings as follows:

(a) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

(b) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

(c) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

(d) The applicant is a qualified, credit-worthy and responsible water developer and is willing and able to enter into a contract with the commission for construction and repayment as provided in ORS 541.730;

(e) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

(f) There is a need for the proposed project;

(g) The proposed project is in the public interest;

(h) The applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project;

(i) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project;

(j) The project will not be in conflict with any state or federal agency statutes or administrative rules; and

(k) The project meets the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(2) The director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds.

(3) In order to maximize the number of users of the Water Development Loan Fund, the director may, at the director's discretion, deny a loan if granting the loan would deplete the Water Development Loan Fund and preclude the granting of loans to a greater number of borrowers.

(4) The director shall require the applicant to obtain insurance coverage adequate to protect the State's interest during and after construction of the project and for the life of the loan, in amounts and terms deemed satisfactory to the director.

(5) The director may require borrowers to submit audited financial statements or other annual financial information pertaining to the loan annually.

(6) For any water development project requiring the filing of a water right application, the director shall make any loan approval conditioned upon issuance of a permit or approved transfer in accordance with ORS Chapter 536, 537, and 540.

(7) For any community water supply project, the director shall make any loan approval conditioned upon the project complying with the standards of the Oregon Health Division.

(8) Unless the director finds financial factors warrant otherwise, an applicant that is a sole proprietorship, profit-making partnership, corporation or cooperative shall meet the following conditions:

(a) Have been in existence and operating for at least three years.

(b) Have made a profit after taxes for the last three years before loan application.

(c) Meet the following financial standards:

(A) Have a ratio of current assets to current debt of at least 1.75 to 1;

(B) Have a ratio of quick assets, consisting of cash, marketable securities, accounts and notes receivable, and other assets readily convertible to cash, to current debt of at least 1 to 1; and

(C) Have a ratio of total debt to owner's equity of no more than two to one.

(D) The director may exempt an applicant from this rule if the applicant shows that financially sound entities of the same type and

under similar size and circumstance do not normally meet these standards.

(d) Provide a personal or corporate guarantee or other acceptable credit enhancement satisfactory to the director.

(e) Demonstrate, to the director's satisfaction, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

(f) A publicly traded entity must demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.

(9) Unless the director finds financial factors warrant otherwise, an applicant that is a non-profit corporation or non-profit cooperative shall meet the following conditions:

(a) Have been in existence and operating for at least three years.

(b) Demonstrate adequate income to fund all expenses, debt obligations and a reserve for unforeseen contingencies, for at least the last three years before loan application;

(c) Meet the following financial standards:

(A) Have a ratio of current assets to current debt of at least 1.75 to 1;

(B) Have a ratio of quick assets, consisting of cash, marketable securities, accounts and notes receivable, and other assets readily convertible to cash, to current debt of at least 1 to 1; and

(C) Have a ratio of total debt to equity of no more than 2 to 1.

(D) The director may exempt an applicant from this rule if the applicant shows that financially sound entities of the same type and under similar size and circumstance do not normally meet these standards.

(d) Demonstrate, to the director's satisfaction, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

(e) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.

(f) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.

(10) An applicant that is an irrigation district, water improvement district, water control district, drainage district, or port district shall meet the following conditions:

(a) Unless the director finds financial factors warrant otherwise, have been in existence and operating for at least three years.

(b) Have a loan to value ratio of all real property within the district which is served by the water development project or which is served by a water source enhanced or restored by the water development project, including new debt and outstanding debt of the district, that does not exceed 1 to 10.

(c) Collect assessments or user charges which, together with other available funds on hand for each fiscal year, are sufficient to generate coverage by revenues net of operation and maintenance expenses of 125 percent of annual debt service from property owners. The director, at the director's discretion, may allow establishment of a rate or collection stabilization fund to satisfy this condition.

(d) Demonstrate, to the satisfaction of the director, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

(e) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, at the director's discretion, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.

(f) Demonstrate a percentage of collection of assessments or user charges that is satisfactory to the director and either have in place or adopt a standard package of delinquency and foreclosure policies acceptable to the director prior to receiving a loan.

(g) Districts with less than 100 members may be required to provide additional financial information, guarantees or other form of credit enhancement as required by the director.

(h) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.

(i) In any case of a loan to, or the purchase of bonds issued by, a district to which the judicial confirmation procedure authorized by ORS 548.105 is available and in which subject matter jurisdiction exists under 548.105, no loan agreement shall be executed unless the district first has delivered to the director a certified copy of the circuit court judgment confirming the regularity and legality of the proceedings and order or other determination providing for the issue of the district's bonds.

(11) An applicant that is a city or county shall meet the following conditions:

(a) Except when the city or county offers a general obligation, collect assessments or user charges which, together with other available funds on hand for each fiscal year, are sufficient to generate coverage by revenues net of operation and maintenance expenses of 125 percent of annual debt service from property owners. The director, at the director's discretion, may allow establishment of a rate or collection stabilization fund to satisfy this condition.

(b) Demonstrate, to the satisfaction of the director, compliance with all outstanding loan obligations and agreements in the last five years, all required reserve accounts are fully funded and all other loan covenants are being met.

(c) Demonstrate they have received unqualified audit opinions from their Certified Public Accountant, completed in accordance with Generally Accepted Auditing Standards, covering the last three years financial statements. The director may, in the director's judgment, accept a qualified audit opinion if the opinion does not indicate material deficiencies in the applicant's financial position, management or internal controls, or compliance with loan or bond obligations.

(d) Demonstrate a percentage of collection of assessments, user charges or other revenue pledged for repayment that is satisfactory to the director and either have in place or adopt a standard package of delinquency and foreclosure policies acceptable to the director prior to receiving a loan.

(e) Demonstrate there is professional management in place, including a manager with experience in water delivery systems, satisfactory to the director.

(12) The director may require applicants to establish a reserve fund, if not prohibited or unduly restricted by federal tax law as determined at the discretion of the director, up to the maximum annual debt service or maximum allowed by federal law, or pledge other reserve funds the director deems acceptable as loan security. The director shall establish conditions for use of the fund and its duration in the loan contract.

(13) The director may place additional conditions on the applicant in the loan contract limiting additional borrowing.

(14) Findings under this rule and ORS 541.720 are for lending purposes only. Such findings do not endorse the project, its design, or its parts and provide no assurances of any kind for any other purpose.

Stat. Auth.: ORS 183, 197, 536 & 541  
Stats. Implemented: ORS 541.710

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-

### 690-090-0030

#### Loan Security

(1) For individual residents, profit-making partnerships or corporations and non-profit corporations subject to ORS Chapter 65, whose principal income is from farming in Oregon, the security for the loans shall be a mortgage or security agreement upon real property of the water developer. Any personal property acquired with loan funds will also be held as security for the loan with the filing of the appropriate documents and security agreements. This property need not be directly benefited by the project. Existing liens shall be released or subordinated of record before any Water Development Fund loan proceeds will be advanced. The amount of security shall be sufficient to recover the amount of the loan. Unless the director finds financial factors warrant otherwise, the maximum amount of loan, including amounts loaned for reserves and loan fees, shall not exceed 60 percent of the current appraised value of the security for the loan. In no event shall the amount of loan exceed 70 percent of the appraised value of the security for the loan.

1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert.

(2) For water developers not covered by OAR 690-090-0030(1), security for the loan includes but is not limited to a first lien to the state of Oregon attached to the real property of the water developer, and the user charges owed to or received by the water developer. At the discretion of the director, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project. Except as otherwise provided in 690-090-0025(c) and (9)(a), the water developer shall enter into a written agreement with the director that assessments, user charges or other revenue pledged for repayment used for security shall be maintained at no less than 125 percent of the debt service on the loan.

(3) Real property used for securing the loan shall have been appraised by a licensed appraiser, county assessor, or department appraiser, at the discretion of the director, within six months prior to the date of the loan commitment.

(4) There will be no advance first lien documents required at the time of application. Applicants should consult anyone who holds an existing lien against property to be used as security for the loan to be sure that applicant can meet the first lien requirement.

ef. 9-20-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 3-1997, f. & cert. ef.

(5) Where the applicant is a water developer described in ORS 541.700(7)(e) through (o), the water developer shall represent and warrant in the loan agreement that it is fully authorized to, and does, grant the State of Oregon, the liens required under 541.740(1) and that the granting of a lien of the type required under 541.740 will not violate or conflict with any other agreement, pledge or contract to which the water developer is a party, or with any decree, order or judgment of any competent tribunal to which the water developer is subject.

(6) A partial release of lien may be granted by the director upon written request of an individual, partnership, or corporation borrower if the remaining property provides adequate security as required by law and these Administrative Rules.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.740 & 541.770

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-89; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0035

#### Notice and Public Meetings

(1) The director shall make public notice of each application within one week of receipt and at least 14 days prior to the public meeting as provided in OAR 690-090-0019. The notice shall contain a summary of the application including the names of the applicants, the location, nature and any new water appropriations required by the proposed project.

(2) The notice shall be mailed to all persons and organizations which have filed a written request for notices with the department and shall be posted at the department.

4-15-97

(3) Individuals or groups wishing to comment on an application shall do so to the director in writing within 14 days following the date of mailing the notice if they wish their comments to be considered.

(4)(a) The director shall call a public meeting on an application as provided in OAR 690-090-0019.

(b) Such meeting shall be conducted according to procedures described in ORS Chapter 192 and OAR 690-090-0019.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.700 - 541.855

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

#### 690-090-0036

##### Fees and Charges

In accordance with ORS 541.710(2) and 541.730(2), the applicant shall pay the commission for costs incurred in connection with the application and administrative expenses incurred in operating the loan program. Applicants shall pay the following charges:

(1) An application fee as fixed by statute. As used in this rule, "application" shall include requests to assume, transfer or increase an existing loan.

(2) A loan processing fee initially set at \$1,000 or one percent of the loan request, whichever is greater, up to \$10,000, or such other amount as may be established by order of the commission. The fee shall be used to reimburse the director for costs incurred in connection with processing the loan request but may not constitute the full amount due. Such costs shall include, but are not limited to, loan processing cost including staff time, credit reports, appraisal fees, technical reviews, expert advice, legal fees, inspections and disbursement costs. After the director has been reimbursed for all costs related to processing the loan, the applicant shall be reimbursed any funds remaining without interest. In the event the loan processing fee and the application fee referred to in this subsection are inadequate to cover the cost of processing the loan, the director shall advise the applicant of the additional amounts needed to complete loan processing and the applicant shall submit that amount at such time as the director specifies.

(3) Administrative expenses incurred in administering the loan, in excess of any fees and charges, shall be collected through interest and any other charges specified in the loan contract executed by the applicant and the director in accordance with ORS 541.730(2).

(4) The interest rate on a loan shall be that rate in effect for the type and size of loan on the date of the note or other evidence of indebtedness. However, an interest rate set in an executed loan commitment shall not be increased without either the applicant's consent or provisions therefore in the loan contract. Revolving loan contracts may provide for rates to be changed upon issue of permanent bonds.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.710 & 541.730

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

#### 690-090-0038

##### Appeal Process

(1) If the director rejects a loan application or approves a loan amount different than that requested by the applicant, the applicant may file an appeal to the commission. The commission may reverse, modify or affirm the director's action on the loan application.

(2) An appeal of the director's action shall be initiated by the applicant no later than 30 days after the applicant receives notice of the director's action under ORS 541.710 or 541.720.

Stat. Auth.: ORS 541

Stats. Implemented: ORS 541.710 & 541.720

Hist.: WRD 3-1997, f. & cert. ef. 4-15-97

#### 690-090-0040

##### Closing of the Loan

(1) Arrangements for repayment of a loan shall be made by the applicant and the director.

(2) The loan contract shall set forth the repayment schedule. The repayment schedule shall:

(a) Include the amortization of the principal plus interest and provide for full repayment of the loan within 30 years or the life of the project, from the date of the first payment, whichever occurs first; and

(b) Provide for commencement of repayment by the applicant of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the director may provide.

(3) The loan contract shall be a binding legal document between the applicant and the director stating the terms of the loan including:

(a) The purpose of the loan describing the project and location;

(b) The amount of the loan and payment schedule;

(c) The description of real property to serve as collateral for the loan; and

(d) A statement allowing the director to inspect the project to ensure that the developer complies with conditions for which the money was loaned. This shall remain in effect for the length of the contract.

(e) Agreement by the borrower to provide all information necessary to conform to the Federal Secondary Market Disclosure Rules or any other federal rules or regulations, including payment of any penalty for noncompliance, and to the full extent permitted by law, payment of compensation to the program for any costs, expenses or liability incurred by the program as a result of the borrower's noncompliance.

(4) In loans to irrigation districts that are effected through the department's purchase of bonds issued by a district, the loan contract shall:

(a) Contain a covenant that the district shall not redeem, call or otherwise retire the purchased bonds prior to the agreement date or dates of maturity without the prior written consent of the director, which the director may grant or withhold at the director's sole discretion.

(b) Contain a covenant by which the district agrees to make, levy and collect annual assessments under ORS 545.381 and other applicable law, and to charge and collect revenues, as applicable, sufficient to pay when due all indebtedness or obligations of the district, including those owed to the department.

(c) Require a written opinion of the irrigation district's legal counsel, addressed to the director, that the district is authorized to make covenants required by this subsection and that the covenants are valid obligations of the district, enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other laws generally affecting creditor's rights, by the application of judicial discretion and principles of equity in appropriate cases, and common law and statutes affecting the enforceability of contractual obligations generally.

(d) Contain a covenant by which the district expressly waives, as authorized with respect to bonds of the district by ORS 545.683, any requirement that the director shall submit to the district a voucher or accept any performance of the district's obligations that is different from that required under the bonds and loan contract.

(e) Provide that in the case of default or delinquency of the district in the performance of any of its obligations under the bonds and/or loan contract, the director need not make any claim or demand as a condition to the institution of appropriate enforcement proceedings and that the district shall submit to the jurisdiction of the circuit court for the County of Marion in any such action, including but not limited to any application for a writ of mandamus to require the district's board of directors to make, levy and collect sufficient annual assessments to satisfy the district's obligations.

(5) The loan contract shall include provisions for early repayment of the loan that are consistent with the terms of the bonds and related bond documents used to fund the loan, comply with the State Treasurer's debt management policies and do not expose the commission or program to undue risk of financial loss.

(6) If the water developer is unable to continue the existing loan contract due to temporary hardship, the director may agree to a modification of the loan contract, at the discretion of the director and within the limitations imposed by statute and bond issue documents.

(7) The ownership of a water development project shall not be assigned or transferred without the prior written approval of the director and the loan security filed pursuant to OAR 690-090-0030 shall remain in full force and effect notwithstanding any subsequent assignment or transfer without such prior written approval. The director may, in exchange for granting an assignment or transfer, increase the rate of interest charged on the loans as provided by ORS 541.730.

(8) The borrower may not, in any manner, assign, cancel or transfer any interest in any water right associated with the project without the written consent of the director.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.730 & 541.770

Hist.: WRD 1-1978, f. & ef. 2-13-78; WRD 1-1982, f. & ef. 1-11-82; WRD 9-1982, f. & ef. 8-9-82; WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0045

#### Issuance of Bonds

(1) Requests to issue bonds to finance water development loans may be made to the State Treasurer by the commission as the commission finds necessary.

(2) The director shall act on behalf of the commission at bond sales to accept or reject bid offerings on bonds to finance water development loans.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.780 - 541.815

Hist.: WRD 8-1986, f. & ef. 6-18-86; WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0050

#### Loan Servicing

(1) The director or the director's designee may conduct periodic inspections of water projects.

(2) The director shall issue to the borrower satisfactions of mortgage or liens as appropriate when the accounts or liens are paid in full.

(3) The director may negotiate for the release and exchange of security as required to maintain the solvency of the project and program.

(4) The director may purchase personal property insurance as needed to protect security and may add the cost of such insurance to the borrowers' account to the extent allowed in the loan documents.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.730 - 541.740

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0055

#### Collection of Delinquencies

The director may use any of the following methods to collect delinquent accounts, unless otherwise precluded by specific loan contract provisions:

(1) Establish and impose a late charge as provided for in the individual loan agreements, contracts, or as negotiated in extension agreements.

(2) Enter into extension agreements as allowed by the loan agreement, bond indentures, and opinions of the Attorney General.

(3) Issue a demand letter at default as determined by the loan agreement or the note and mortgage. At expiration of the demand letter the director may:

(a) Refer the file to the Oregon Department of Justice for legal action; and

(b) Accept an estoppel deed in lieu of foreclosure after determining that it is in the best interest of the State to do so.

(4) Enter bids at sheriff's sales to purchase real and personal property in order to protect the State's interest.

(5) Refer the account to the Oregon Department of Justice for action in bankruptcy proceedings.

(6) Enter into agreements for receivership as recommended by the Attorney General's Office.

(7) Assign to the Oregon Department of Justice the pursuit of a writ of mandamus requiring the borrower to increase assessments, user charges or other revenue pledged for repayment to adequately facilitate repayment of the loan or bond obligation.

(8) Nothing in this section shall limit the authority granted to the commission by ORS 541.740.

Stat. Auth.: ORS 183 & 541

Stats. Implemented: ORS 541.740

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88; WRD 3-1997, f. & cert. ef. 4-15-97

### 690-090-0060

#### Property Management

The Director may initiate any of the following actions in order to protect the State's interest in property owned by the Fund:

(1) Enter into service contracts to establish value of security for the management of farm operations, servicing, repairing and securing personal property.

(2) Enter into federal subsidy contract programs.

(3) Advertise state-owned property for sale in the appropriate media.

(4) Accept or reject offers to purchase property held by the Fund and extend counteroffers.

(5) Provide warranty deeds, bargain and sale deeds, or satisfactions of mortgage, as appropriate.

(6) Establish interest rates that will be required on contracts of sale of state-owned property.

(7) Negotiate Commodity Certificates issued by federal subsidy programs.

(8) Reserve mineral rights as defined in ORS 273.775(1) and geothermal rights as defined in 273.775(2).

(9) Make claims of risk management as appropriate for losses to state-owned property under Department of General Services guidelines.

(10) Enter into lease, lease purchase, or rent agreements.

(11) Sell or release property as necessary to provide for the solvency of the Fund.

(12) Apply for, transfer, abandon, or sell water rights on state-owned property as allowed by governing statutes and rules.

(13) Extend a grace period as appropriate for late payments.

Stat. Auth.: ORS 183 & 541

Stats. Implemented:

Hist.: WRD 15-1988, f. & cert. ef. 9-20-88

## DIVISION 93

### WATER SUPPLY DEVELOPMENT GRANT AND LOAN PROGRAM

### 690-093-0010

#### Purpose

The purpose of OAR 690-093 is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits. The rules establish procedures and requirements for the funding of water resources projects from the Water Supply Development Account established in ORS 541.656.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0020

#### Definitions

The following definitions apply to this division of the rules:

(1) "Collateral" means the security pledged for the payment of a loan.

(2) "Commission" means the Water Resources Commission.

(3) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.

(4) “Director” means the director of the Oregon Water Resources Department or the director’s designee.

(5) “Expanded Storage” means the quantity of water authorized by a new water storage permit that adds to the capacity of an already-existing storage facility.

(6) “Indian Tribe” as defined by ORS 391.802 means a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon.

(7) “Instream Use” means water that remains in or is released into the natural stream channel or lake bed or where water naturally flows or occurs that provides a benefit including but not limited to recreation, conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, pollution abatement or navigation.

(8) “Newly Developed Water” means the new increment of water:

(a) Stored for a project providing new or expanded storage;

(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or

(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.

(9) “Non-Profit Organizations” means an organization that uses surplus revenues to achieve its goals rather than distributing them as profit or dividends.

(10) “Perennial Stream” means a continuous stream flow year around.

(11) “Persons” as defined by ORS 536.007 means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(12) “Project Materials” means documents or media materials that are published or produced to describe or market the project.

(13) “Protected Instream” means water that remains in or is released into the natural channel and is legally protected by the state.

(14) “Seasonally Varying Flows” means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes.

(15) “Secondary Water Right” as used in OAR 690-093-0020 (8)(b) means a water right permit issued for the beneficial use of stored water.

(16) “Technical Review Team” means the group consisting of representatives from Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional experts as determined by the Water Resources Department.

(17) “Water Supply Development Account” is the account established in the State Treasury under ORS 541.656.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0030

#### Authorized Use of Funds

(1) The Department may expend moneys from the Water Supply Development Account for:

(a) Subject to subsection (3) of this section, making loans and grants to evaluate, plan and develop instream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:

(A) Repair or replace infrastructure to increase the efficiency of water use;

(B) Provide new or expanded water storage;

(C) Improve or alter operations of existing water storage facilities in connection with newly developed water;

(D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;

(E) Allocate federally stored water;

(F) Promote water reuse;

(G) Promote water conservation;

(H) Provide streamflow protection or restoration;

(I) Provide for water management or measurement in connection with newly developed water; and

(J) Determine seasonally varying flows in connection with newly developed water.

(b) Paying the necessary administrative and technical costs of the Department in carrying out OAR 690-093.

(2)(a) In addition to any other permissible uses of moneys in the account, the Department may expend moneys from the account to support:

(A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and

(B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.

(b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under this administrative rule.

(3) The Department may expend account moneys under subsection (1) of this section for loans and grants to develop instream and out-of-stream water development projects only if the Department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights.

(4) The Commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0040

#### Loan and Grant Applicant Eligibility

(1) Parties eligible for a loan or grant under these rules include persons, Indian tribes, and non-profit organizations.

(2) If an applicant is required to have a water management and conservation plan as prescribed by a condition of a water use permit; a permit extension; or another order or rule of the Commission, the plan must be submitted to the Water Resources Department and receive approval prior to Department acceptance of an application for a loan or grant from the account.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0050

#### Pre-Application Conferences

(1) A pre-application conference may be requested by prospective applicants.

(2) The Department may request, and the applicant must provide 14 days prior to the conference, adequate project information to prepare for the pre-application conference.

(3) At the pre-application conference, the Department shall inform the prospective applicant of:

(a) The procedural and substantive requirements of a loan or grant application;

(b) The scoring system used to evaluate loan and grant requests; and

(c) Any known issues associated with project eligibility for a loan or grant from the account.

(4) The prospective applicant may request additional pre-application consultation with the Department.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### **690-093-0060**

##### **Application Submission Periods**

(1) The Department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.

(2) The Department will conduct a preliminary review of the application for completeness, eligibility and for sufficiency of information to determine benefits and outcomes as listed in OAR 690-093-0090 Scoring and Ranking and OAR 690-093-0100 Project Selection.

(3) Applications not funded during one annual period may be resubmitted in a future period.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### **690-093-0070**

##### **Application Requirements**

(1) Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:

(a) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed;

(b) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project;

(c) Current contact information for the principal contact, fiscal officer and involved landowners;

(d) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record;

(e) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate;

(f) An itemized budget for the project, including fiscal and administrative costs;

(g) A description of funds, services or materials available to the project;

(h) A project schedule, including beginning and completion dates;

(i) Any conditions that may affect the completion of the project;

(j) A completed feasibility analysis if appropriate;

(k) Suggestions for interim and long-term project performance benchmarks;

(l) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account;

(m) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral;

(n) Letters of support for the proposed project;

(o) If required by the Department, a description of consultations with affected Indian tribes regarding the project; and

(p) Any other information required by the Department.

(2) Applications determined to be ineligible, incomplete or that provide insufficient information shall be returned to the applicant.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### **690-093-0080**

##### **Public Comment**

(1) The Department shall provide public notice and a 60-day period for public comment prior to initial scoring by the Technical Review Team by posting applications passing an initial review on the Department's website.

(2) Additional public comment will be sought by the Commission after rankings are published and prior to a final decision on an application.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### **690-093-0090**

##### **Scoring and Ranking; Funding Decisions**

(1) The primary elements in the process of scoring and ranking of applications include the following:

(a) Initial review for completeness by the Department;

(b) Public comment;

(c) The Technical Review Team conducts the initial scoring and ranking for the projects, considers comments from applicants and the public and makes loan and grant funding recommendations to the Commission; and

(d) The Commission determines the final scoring and ranking of projects, provides for additional public comment, and makes the final decision regarding which projects are awarded loans or grants from the account.

(2) The Technical Review Team scoring methodology shall rank applications based upon the public benefits of the project and additional considerations set forth in ORS 541.677 subsection (1)(b), (1)(d) and (1)(e). The Technical Review Team shall use a score sheet provided by the Department. Each of the three public benefit categories shall be given equal importance in the evaluation and will have scoring sublevels including but not limited to the following:

(a) The evaluation of economic benefits for a project based on the changes in economic conditions expected to result from the project related to:

(A) Job creation or retention;

(B) Increases in economic activity;

(C) Increases in efficiency or innovation;

(D) Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses;

(E) Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and

(F) Increases in irrigated land for agriculture.

(b) The evaluation of environmental benefits for a project based on the changes in environmental conditions expected to result from the project related to:

(A) A measurable improvement in protected streamflows that:

(i) Supports the natural hydrograph;

(ii) Improves floodplain function;

(iii) Supports state or federally listed sensitive, threatened or endangered fish species;

(iv) Supports native fish species of cultural importance to Indian tribes; or

(v) Supports riparian habitat important for wildlife;

(B) A measurable improvement in groundwater levels that enhances environmental conditions in groundwater restricted areas or other areas;

(C) A measurable improvement in the quality of surface water or groundwater;

(D) Water conservation;

(E) Increased ecosystem resiliency to climate change impacts;

and

(F) Improvements that address one or more limiting ecological factors in the project watershed.

(c) The evaluation of the social or cultural benefits for a project based on the changes in social or cultural conditions expected to result from the project related to:

(A) The promotion of public health and safety and of local food systems;

(B) A measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes;

(C) The promotion of recreation and scenic values;

(D) Contribution to the body of scientific data publicly available in this state;

(E) The promotion of state or local priorities, including but not limited to the restoration and protection of native fish species of cultural significance to Indian tribes; and

(F) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state Integrated Water Resources Strategy.

(3) Scoring sublevels shall have a numeric point scale that accounts for positive and negative effects of the project. Sublevel scores shall be summed to a public benefit category level. The Department shall set a minimum score for the application to proceed.

(4) The Technical Review Team will use the total score from the score sheet provided by the Department to rank all applications and make loan and grant funding recommendations to the Commission.

(5) The Commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account based on criteria in OAR 690-093-0100.

(6) The Department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the Commission have been published.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### 690-093-0100

##### Project Selection

(1) The Commission shall select projects for funding which have the greatest public benefit and will achieve the outcomes listed in subsection (3) of this section.

(2) Project evaluation shall include:

(a) The public benefit in three categories:

(A) Economic;

(B) Environmental; and

(C) Social or cultural.

(b) Equal importance of each of the three categories of public benefit; and

(c) Consideration of both positive and negative effects of the projects.

(3) The Commission will consider the following in its determination of eligible projects that will receive funding:

(a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in (2)(a) of this section;

(b) Preference for partnerships and collaborative projects;

(c) The funding of projects of diverse sizes, types and geographic locations;

(d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows; and

(e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### 690-093-0110

##### Water Dedicated Instream for Certain Above-Ground Storage Facilities

(1) For the purposes of this section “dedicated instream” has the same meaning as “protected instream” as defined in OAR 690-093-0020(13).

(2) The recipient of a grant for the development of a new or expanded above-ground storage facility (reservoir) that impounds surface water on a perennial stream; diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or diverts more than 500 acre-feet of water annually must dedicate 25 percent of the newly developed water to instream use.

(3) To meet the requirements of subsection (2) of this section, dedicated water from projects may come from any combination of newly developed water and other sources and may be released or transferred instream at other locations in the tributary if the Department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize instream benefits in a manner consistent with public health and safety.

(a) Other sources of water as identified in this subsection include but are not limited to water released from another reservoir and protected under a secondary water right for instream use or a water right transferred instream under OAR chapter 690 Division 77 through a permanent instream transfer or a time limited instream transfer that has a term that is consistent with subsection 3(c) of this section.

(b) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.

(c) Other sources of water to meet the requirement of subsection (2) of this section shall be legally protected instream for the life of the project for which grant funds were used.

(d) The Department shall protect water dedicated to instream use under this subsection consistent with the priority of the dedicated water source.

(4) A storage water right that is using stored water releases to meet the requirement of subsection (2) of this section, shall be conditioned to achieve the following:

(a) Meet the dedication requirement with stored water releases that are protected under a separate secondary water right;

(b) Annually report, on a schedule determined by the Department, the maximum volume of newly developed water stored in the funded reservoir, including newly developed water present in the reservoir during the immediate past storage season. Twenty-five percent of this volume equals the dedication requirement;

(c) If the dedication requirement is not fully met from other sources, the funded reservoir shall release and the Department shall protect the balance of the water necessary to meet the dedication requirement; and

(d) Demonstrate that the dedication requirement has been met.

(5) For an existing storage permit subject to the requirements of subsection (2) of this section, the grant agreement shall be conditioned to meet the requirements of subsections (3) and (4) of this section.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

#### 690-093-0120

##### Demonstration of Public Benefits of Project

(1) A project that receives a loan or grant from the Water Supply Development Account must:

(a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in OAR 690-093-0090; and

(b) Except as otherwise provided in ORS 541.681, demonstrate environmental benefits:

(A) By dedicating 25 percent of conserved water or newly developed water, that will be protected by the Department, to instream use; or

(B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in OAR 690-093-0090.

(2) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to instream use as a result of the conditions of federal, state or local permits for the project.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0130

#### Seasonally Varying Flows

(1) For the purposes of this section "sufficient" information means enough scientific information collected using standard biological, hydrologic, or hydraulic methods to develop the recommended flow prescription.

(2) The Department shall make a determination as provided under subsection (3) of this section if an application for a loan or grant is for a project that requires a water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of surface water from October 1 through September 30 of a given year.

(3) The Department shall review a completed application to determine whether the applicable seasonally varying flows have been established for the stream of interest. If the Department determines that the applicable seasonally varying flows have not been established, the Department shall establish the seasonally varying flows before issuing a loan or grant. The establishment of the seasonally varying flows by the Department shall occur after an application has been selected for funding based on the criteria of OAR 690-093-0100. The Department may use Water Supply Development Account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.

(4) The Department shall establish any seasonally varying flows under subsection (3) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Department shall determine the method for development of a seasonally varying flow prescription using the matrix provided in Appendix OAR 690-093.

(5) If the Department establishes applicable seasonally varying flows for the stream of interest, the Department shall make the seasonally varying flows a condition of:

(a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (2) of this section that receives a loan or grant from the account; and

(b) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any subsequent project that:

(A) Receives a loan or grant from the account;

(B) Is for the storage of water outside of the official irrigation season; and

(C) Has a diversion point that is subject to seasonally varying flows.

(6) The applicant for a permit or license described in subsection (5)(b) of this section may request that seasonally varying flows established under subsection (3) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable

seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by Commission rules.

(7) The Department shall condition a water storage permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (5) of this section to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

(8) For purposes of any project that receives a loan or grant and meets the other conditions described in subsection (5) of this section, the Department shall use the matrix provided in Appendix OAR 690-093 for determining the seasonally varying flow prescription.

(9) The matrix in Appendix OAR 690-093 contains the following considerations:

(a) The level of ecological impact of the proposed project including:

(A) Whether the project is diverting water from a stream supporting sensitive, threatened, or endangered species;

(B) Whether the impoundment is located in-channel;

(C) Whether the impoundment or proposed project has an impact on sensitive habitat/process;

(D) Whether the project is proposing to divert more than half of the remaining available water in the basin;

(E) Whether the majority of water is already developed in the basin.

(b) The type of information already available including:

(A) Whether there is sufficient long-term data to understand the natural hydrograph;

(B) Whether there is sufficient information to understand climate driven shifts to the flow regime;

(C) Whether there is sufficient information about water availability;

(D) Whether there is sufficient information about all species present at/below the point of diversion and their lifecycle needs;

(E) Whether there are habitat studies that provide sufficient information to understand the relationship between selected habitat features and streamflow;

(F) Whether there are geomorphological studies or data that provide sufficient information to understand the relationship between sediment transport and streamflow;

(G) Whether there is sufficient stream data available to describe stream complexity and floodplain connectivity; and

(H) Whether there is sufficient water quality data available, particularly related to temperature.

(10) Subsections (1) through (9) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0150

#### Agreements and Conditions

(1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits.

(2) Project materials must include a notation indicating that Water Resources Department funding was used for the project.

(3) The loans or grants may be conditioned to require that the recipient complete and operate the funded project as described in the loan or grant application. The Department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.

(4) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the Department

that describe the completed work, the public benefits achieved and project expenditures.

(5) The recipient must regularly measure and report the water diverted and used from the project. The Department shall make the final determination regarding the method, timing, frequency and location of measurement.

(6) The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the Department.

(7) The Department may impose other project specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.

(8) The Department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (7) of this section.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0160

#### Authority of the Director

(1) The Director is authorized by the Commission to enter into agreements with applicants who have been awarded a grant or loan by the Commission.

(2) The Director may:

(a) Contract with regulated lenders, state or federal agencies or others to provide services to the program.

(b) Take such steps as are needed to:

(A) Ensure repayment or recovery of loan funds; and

(B) Prevent project funds from being diverted from the originally approved purpose.

(c) Delegate to staff, in writing, authority to approve, deny, or amend agreements consistent with these rules.

(3) The Director or the Director's designee may conduct periodic inspections of water projects with reasonable notice.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0170

#### Loan Interest Rates and Terms

(1) Interest on loans shall be at reasonable rates as determined by the Commission.

(2) Loan repayment terms shall be for no more than 50 years and shall not exceed the estimated lifespan of the project.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0180

#### Loan Closing

(1) If the Commission approves a loan, the Department and the applicant or applicants shall enter into an agreement for repayment; arrangements for repayment shall be made by the applicant and the Director.

(2) The loan agreement shall set forth the repayment schedule. The repayment schedule shall:

(a) Include the amortization of the principal plus interest and provide for full repayment of the loan within 50 years or the life of the project, from the date of the first payment, whichever occurs first; and

(b) Provide for commencement of repayment by the applicant of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the Director may provide.

(3) The loan agreement shall be a binding legal document between the applicant and the Director stating the terms of the loan, including but not limited to:

(a) The purpose of the loan describing the project and location;

(b) The amount of the loan and payment schedule;

(c) The description of good and sufficient collateral for the loan; and

(d) A statement allowing the Director to inspect the project to ensure that the developer complies with conditions for which the money was loaned. This shall remain in effect for the length of the agreement.

(4) The loan agreement shall include provisions for early prepayment of the loan.

(5) The ownership of a project shall not be assigned or transferred during the term of the loan without the prior written approval of the Director; such approval shall not be unreasonably withheld.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0190

#### Standards for Security of Loans

Loans shall not be approved unless:

(1) The applicant demonstrates and the Department finds that the loan will comply with all requirements of the Department and any applicable federal and state requirements.

(2) The Director determines that the applicant meets the following standards:

(a) Demonstrated revenues or other resources available to:

(A) Repay the loan in accordance with its terms; and

(B) Provide for the continued operation and maintenance of the project.

(b) The applicant is qualified, credit-worthy and responsible as demonstrated by a satisfactory credit history or rating from a rating agency; or

(c) A first lien or other good and sufficient collateral is available to secure and provide repayment of the loan; and

(d) The project plan assures timely completion and includes schedules with measurable performance benchmarks.

(3) The application requirements and qualifications are met.

(4) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

### 690-093-0200

#### Program Review

(1) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in ORS 541.677 are being achieved, and shall report the review findings to the Water Resources Commission.

(2) The Commission shall modify the project selection process as necessary to better achieve the outcomes described in ORS 541.677.

Stat. Auth.: ORS 541.651 - 541.696

Stats. Implemented: ORS 541.651 - 541.696

Hist.: WRD 6-2015, f. & cert. ef. 7-2-15

## DIVISION 95

### COLUMBIA RIVER BASIN WATER DEVELOPMENT LOAN PROGRAM

### 690-095-0005

#### Purpose, Statutory Authorization

(1) The Water Development Fund [Article XI-I(1), Constitution of Oregon] provides financing for loans for the construction of water development projects for irrigation, drainage, fish protection, watershed restoration and municipal uses and for the acquisition of easements and rights of way for water development projects authorized by law.

(2) These rules establish procedures and standards for administration of the Columbia River Basin Water Development Loan Program to provide for loans that have a high probability of repayment and are adequately secured in the event of default. The Columbia River Basin Water Development Loan Program implements provisions of Chapter 907, Oregon Laws 2009 related to loans to finance water development projects in the Columbia River

Basin and various provisions of ORS Chapter 541, as amended by Chapter 907. These rules are authorized by ORS 541.646 and ORS Chapter 183.

Stat. Auth: ORS 536.027 & 541.646  
Stats. Implemented: ORS 541-600 - 541.646  
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0010

#### Definitions

The words and phrases used in these rules have the meaning given in ORS 541.600 and ORS 541.700, unless they are otherwise specifically defined in this division.

(1) "Adequate Security" means the pledge of real or personal property or a credit enhancement or other collateral of value authorized by the director to secure a loan against default.

(2) "Applicant" means a qualified water developer applying to borrow moneys through the loan program for a water development project in the Columbia River Basin.

(3) "Application" includes all documents and forms required by the department under these rules and pursuant to ORS 541.600 to 541.855.

(4) "Bonds" mean the State of Oregon general obligation bonds issued under Article XI-I(1) of the Oregon Constitution to fund the loan program.

(5) "Columbia River Basin" means the area of land comprising the drainage areas of all river basins within Oregon that drain directly to the Columbia River or Snake River and includes the main stem of the Columbia River.

(6) "Commission" means the Oregon Water Resources Commission.

(7) "Community" means an incorporated or unincorporated town or locality with more than three service connections.

(8) "Department" means the Oregon Water Resources Department.

(9) "Director" means the director of the Oregon Water Resources Department or the director's designee.

(10) "Federal Water Development Project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

(11) "Loan" means the moneys loaned by the department under the loan program to finance a water development project.

(12) "Loan Advisory Board" means a board appointed by the director to review applications made under Section 20 of chapter 907, Oregon Laws 2009 and make recommendations thereon to the director.

(13) "Loan Document" means the loan agreement, any supplemental loan agreement, promissory note, mortgage, security agreement and any related documents, including but not limited to any pledge of or lien against collateral, entered into by the department and an applicant related to a loan from the department to a borrower under the loan program, and any documentation required by the department to change a loan's terms and conditions.

(14) "Loan Program" means the Columbia River Basin Water Development Loan Program.

(15) "Provider of water for municipal purposes" means a public body as defined in ORS 174.109, a community or a private entity whose primary purpose is to operate a water distribution system that delivers potable water for community needs, either to individual customers or through another water distribution system.

(16) "Municipality" means a city as defined in ORS 174.100(2); includes any incorporated village or town.

(17) "Qualified Water Developer" means a "water developer" as defined in ORS 541.700 that is not a municipality, a community or a provider of water for municipal purposes.

(18) "Security Value" means the value assigned by the department to the project or other security.

(19) "Water Development Fund" means the fund created through the adoption of Article XI-I of the Constitution of Oregon by general election in November, 1977, as amended.

Stat. Auth: ORS 536.027 & 541.646  
Stats. Implemented: ORS 541-600 - 541.646  
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0015

#### Eligibility: Applicant and Project

(1) To be eligible, an applicant must be a qualified water developer seeking to finance a water development project in the Columbia River Basin under the loan program.

(2) To be eligible, projects shall meet the definition of a "water development project" as defined in ORS 541.600.

Stat. Auth: ORS 536.027 & 541.646  
Stats. Implemented: ORS 541-600 - 541.646  
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0020

#### Eligible Costs

The department shall determine the eligible costs during the pre-application conference or the loan review process. Subject to these rules, a loan may be approved to pay the "startup costs" relating to a water development project. "Startup costs" must be allowable as capital costs or reimbursable costs that may be financed with federally tax-exempt bonds under the Internal Revenue Code and may include, but are not limited to:

(1) The costs of buying or otherwise acquiring, constructing, installing, rehabilitating or reconstructing a water development project, including site costs and acquisition of water rights relevant to the project;

(2) The costs of obtaining a loan from the department under these rules;

(3) Design and engineering costs;

(4) The costs to acquire licenses and permits for a water development project;

(5) Reserves, interest costs related to construction or interim financing;

(6) Grant matching funds or other costs of funds needed for a water development project; and

(7) Costs for preparation of claim of beneficial use and costs incurred up to and including obtaining applicable water right certificates and limited licenses.

Stat. Auth: ORS 536.027 & 541.646  
Stats. Implemented: ORS 541-600 - 541.646  
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0025

#### Ineligible Costs

The director may not issue a loan to provide assistance for 'on-going' operation or maintenance costs of a water development project. A loan may not be used to pay any capital costs incurred prior to execution of the loan document without prior approval of the director.

Stat. Auth: ORS 536.027 & 541.646  
Stats. Implemented: ORS 541-600 - 541.646  
Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0030

#### Authority of Director

(1) Loans over three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules may only be approved by the commission.

(2) The director is authorized by the commission to approve loans under three million dollars that meet the statutory requirements of ORS 541.600 through 541.855 and these rules; approve, deny, amend, or set conditions of loans; establish loan interest rates; execute bond and loan documents; and sign all loan documents.

(3) The director shall:

(a) Give a periodic written report on all loan activity to the commission;

(b) Assess each project in consultation with the State Department of Fish and Wildlife, the State Parks and Recreation Department, the Department of Environmental Quality and affected tribal governments, and notify other interested parties who may be consulted, as deemed appropriate. If a project may affect agricultural use, the department shall also assess the project in consultation with the State Department of Agriculture; and

(c) Take such steps as are needed to recover loan funds and prevent their misuse, or to prevent loan funds from being diverted from the originally approved purpose.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0035

#### Loan Advisory Board

(1) The director may appoint a loan advisory board to review applications made under the loan program and pursuant to these rules make recommendations thereon to the director. The scope of application review shall be limited to the adequacy of security, the potential for repayment, and economic feasibility of the project. Members shall be knowledgeable and experienced in the fields of banking, finance, economics, or related field. The members appointed to the board shall be subject to the approval of the commission.

(2) After its review, the loan advisory board shall advise the director in writing and recommend the amount in which any loan should be made. The director may accept, modify or reject the recommendation of the loan advisory board.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0040

#### Application

(1) Applications for loans to fund water development projects in the Columbia River Basin shall be filed under these rules and pursuant to ORS 541.600 through 541.855. The terms used in the application shall have the meanings given in these rules, ORS 541.600 and 541.700.

(2) Loan applications shall be submitted in the manner and format and contain or be accompanied by any and all information as prescribed by the commission and required by the department.

(3) If an application submitted under this rule lacks any information required by the department, the department may reject the application or require the applicant to submit additional information.

(4) It is recommended that potential applicants contact the director for a pre-application conference prior to submitting an application. The director or designee may give advice on a loan before an application is submitted and may advise whether the proposed project appears to comply with these rules, whether funds are likely to be available under the loan program, and which costs may be eligible for financing through a loan. Any such advice, however, does not constitute a loan approval or any other binding commitment.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0045

#### Public Notice and Review Period

(1) Upon receipt of an application that the director determines is complete in accordance with these rules, the director will provide public notice of the application by posting it on the department website for 60 days beginning with the date the department determines the application is complete. The notice shall contain a summary of the application including the names of the applicant, the location, purpose of the loan, and other relevant information.

(2) The public may comment on the posted application by submitting comments as directed by the department on its website. The director need not respond to the commentator or the applicant in connection with any submitted comments. The director will determine the weight, if any, to be given to submitted comments in its evaluation of an application.

(3) The director shall begin review of a completed application no later than 60 days after receiving the completed application. The review shall comply with requirements of OAR 690-095-0050, these rules and any other requirements made by the department, and shall be done in a timely basis as determined by the director.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0050

#### Criteria for Granting a Loan

(1) Loans shall not be approved unless:

(a) The applicant demonstrates and the department finds that the loan will comply with the requirements of Article XI-I(1) of the Oregon Constitution, ORS 541.600 to 541.855, and any applicable federal and state requirement.

(b) The director determines that the applicant meets the following standards:

(A) Demonstrated revenues or other resources available to:

(i) Repay the loan in accordance with its terms, and

(ii) Provide for the continued operation and maintenance of the project.

(B) Satisfactory credit history or rating from a rating agency; or

(C) Good and sufficient collateral is available to secure and provide repayment of the loan, and

(D) The project plan assures timely completion and includes schedules with measurable performance benchmarks.

(c) The application requirements and qualifications are met.

(d) The commission finds that all conditions of ORS 541.720 are met.

(2) The director, under the authority of the commission, may issue an initial non-binding letter of intent to an applicant, indicating a present intention to approve a loan application in a specified amount but subject to:

(a) Receipt of certain additional and specified information in the letter,

(b) The director's review and approval of such additional information, or

(c) The applicant's receipt of any required permits or other regulatory licenses or approvals necessary to construct or operate the project.

(3) For application to fund a federal water development project, the director must determine that all required federal approval for funding and construction of the project has been obtained.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0055

#### Appeal Process

(1) If the director rejects an application or approves a loan amount different than that requested by the applicant, the applicant may file an appeal to the commission. The commission, upon making a finding, may reverse, modify or affirm the director's action on the application.

(2) An applicant must file a written request for an appeal of the director's action; the written request shall be received by the department on or before the thirtieth (30th) day after the date of the written notice to the applicant of the director's action on the application.

(3) An appeal of a decision of the commission as a final order of the agency as authorized under ORS Chapter 183.

Stat. Auth.: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

### 690-095-0060

#### Loan Security

(1) The director shall require repayment of an approved loan to be secured by a first priority lien or by other good and sufficient collateral as described in ORS 541.740, as applicable to the applicant. The director, in his or her discretion, using the information in an application and any other information available, will determine the security value of the collateral provided under the loan document.

(2) An applicant may demonstrate adequate security or good and sufficient collateral if:

(a) The applicant has ad valorem taxing power that it has exercised and pledged to secure the loan;

(b) The applicant is an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65 whose principal income is from farming in Oregon, the loan shall be secured by a mortgage or security agreement in the full amount of the loan and the loan amount does not exceed 70 percent of the appraised value of the security for the loan; or

(c) The applicant is a qualified water developer that is not an individual, profit-making partnership or corporation or non-profit corporation subject to ORS Chapter 65, security may include:

(A) First lien to the State of Oregon attached to the real property of the water developer, and the user charges owed to or received by the water developer;

(B) A lien attached to all real property whether owned by the water developer or others, which is served by the water development project or which is served by a water source enhanced or restored by the water development project; or

(C) An agreement entered into by the water developer wherein assessments, user charges or other revenue is pledged for security of loan repayment and that such revenue shall be maintained at no less than 125 percent of the debt service on the loan.

(d) The commission determines, in consultation with the State Treasurer, that such other good tendered as collateral by the applicant is "sufficient" collateral to secure the loan instead of, or in addition to, a lien.

(3) Real property used for securing the loan shall have been appraised by a licensed appraiser, county assessor, or department appraiser, at the discretion of the director, within six months prior to the date of the letter of intent or if there is no letter of intent, the loan document.

(4) Where the applicant is a water developer described in ORS 541.700(7)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien upon such real property of the water developer as the commission shall require for adequate security. The commission, in consultation with the State Treasurer, may accept other good and sufficient collateral to secure a loan instead of, or in addition to, a lien.

(5) A partial release of lien may be granted by the director upon written request of a borrower if the remaining property provides adequate security as required by law and these rules.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

#### **690-095-0065**

##### **Interest Rates**

(1) The director shall consult the State Treasurer before setting the interest rate on a loan in order to determine that the interest rate on the loan is sufficient to pay all costs associated with the bond issuance and expenses incurred in issuing the bonds.

(2) If the bonds have been sold, the director will set the interest rate paid under a loan document at a rate that is at least equal to the interest rate paid to bondholders and is sufficient to pay the State of Oregon for:

(a) The administrative expenses incurred by the department, the State Treasurer and any other agency of the state in connection with the issuance of the bonds and the loan program;

(b) Any costs related to administration of the bonds, including but not limited to the costs of any credit enhancement for the bonds and the establishment of the Water Development Administration and Bond Sinking Fund reserves; and

(c) An amount to be deposited to the Water Development Fund for the purpose of increasing the amount available for loans from that fund.

(3) If, after consultation with the State Treasurer, the director believes that a project is unlikely to produce a net profit for the borrower, the director may set the loan interest rate in a loan document

at a level that reduces or eliminates that portion of the loan rate above the bond interest rate.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

#### **690-095-0070**

##### **Loan Contract**

(1) The loan contract shall contain the provisions required by Section 26(3) and (4) of chapter 907, Oregon Laws 2009, any provisions the director considers necessary to ensure expenditure of the loan proceeds for the purposes set forth in the approved application and any other provisions required by law or that the director determines are necessary to ensure timely repayment of the loan.

(2) Where the applicant is a water developer described in ORS 541.700(7)(e) through (o), the water developer shall represent and warrant in the loan contract that it is fully authorized to, and does, grant the State of Oregon, the liens required under the loan program and that granting the lien will not violate or conflict with any other agreement, pledge or contract to which the water developer is a party, or with any decree, order or judgment of any competent tribunal to which the water developer is subject.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

#### **690-095-0075**

##### **Conditions to Disbursement of Loan Funds**

The director shall withhold payment of funds under a loan contract until any necessary federal and state environmental impact approval processes have been completed for the project and any relevant approvals and permits from any regulatory authority pertaining to the construction or operation of the project have been obtained.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

#### **690-095-0080**

##### **Fees and Charges**

(1) At the time an applicant first submits any part of an application with the department, the applicant must pay an application fee equal to the lesser of 0.10 percent of the requested loan amount or \$2,500.

(2) The director may require the applicant to pay for costs that exceed the initial application fee if the director determines that the costs are incurred solely in connection with processing the application. Before in-curring the additional costs, the director will advise the applicant of the additional costs to be paid by the applicant.

(3) An applicant seeking a loan for a qualified water development project that is for fish protection or for watershed enhancement may be assessed a reduced fee as determined by the director when the applicant first submits any part of an application with the department.

(4) In addition to any other fee or charge, the commission may charge a loan processing fee, not to exceed one percent of the loan amount.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

#### **690-095-0085**

##### **Issuance of Bonds**

Bonds may be issued at the request of the director and administered as provided in ORS chapter 286A and 541.780 to 541.840. Bonds may be issued prior to and after the execution of any loan contracts entered into with respect to the bonds.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

**690-095-0090****Loan Servicing**

The provisions of OAR 690-090-0050 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

**690-095-0095****Collection of Delinquencies**

The provisions of OAR 690-090-0055 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027 & 541.646

Stats. Implemented: ORS 541-600 - 541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

**690-095-0100****Property Management**

The provisions of OAR 690-090-0060 apply to loans and loan contracts entered into under the loan program and these rules.

Stat. Auth: ORS 536.027; ORS 541.646

Stats. Implemented: ORS 541-600-541.646

Hist.: WRD 2-2010, f. & cert. ef. 12-14-10

**DIVISION 100****PAYMENT FOR PUBLIC BENEFITS****IN WATER PROJECTS****690-100-0005****Purpose**

(1) ORS 541.830 and 542.075 authorize the Legislative Assembly to partially fund water development projects which afford public benefits, in proportion to those benefits. This legislation was enacted in 1981.

(2) These rules provide the procedure for determining eligibility, applying for payment, determining public benefits and for the Water Resources Commission's recommendation to the Governor and the Legislative Assembly.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

**690-100-0010****Definitions**

(1) "Affected local government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction water is or would be diverted, conveyed, or used in conjunction with a proposed or financed project.

(2) "Director" — The director of the Water Resources Department or in his absence or inability to act, his designee.

(3) "Legislative Assembly" — Regularly scheduled Legislative Assembly or the Emergency Board acting for the full assembly during interims between legislative sessions.

(4) "Significant Public Benefit" — Synonymous with Public Benefit.

(5) "Public Benefit" — The identifiable benefit of a water development project which contributes to the general well-being or enjoyment of the citizens of the State of Oregon, including, but not limited to, the maintenance or improvement of the following:

- (a) Aquatic life;
- (b) Wildlife;
- (c) Public recreation facilities;
- (d) Environmental enhancement;
- (e) Riparian (streamside) enhancement;
- (f) Flood control;
- (g) Pollution abatement;
- (h) Watershed management;
- (i) Esthetic enhancement;
- (j) Instream habitat improvement;
- (k) Streamflow augmentation;
- (l) Groundwater recharge.

(6) "Reimbursable Public Benefit" — A public benefit that is identified by purpose and cost in a water resources project and application for "Request for Public Benefit Repayment."

(7) "Partial Repayment" — The amount recommended to the Legislature by the Water Resource Commission to partially pay for projects affording public benefits. The amount of partial repayment shall not exceed the cost of providing the public benefit in the water development project.

(8) "Financed Projects" — Water development projects that will be financed under the Water Development Loan Program.

(9) "Proposed Projects" — Water development projects that will be financed from sources other than the Water Development Loan Program. A Proposed Project may also be an existing project that will provide a public benefit due to a change in the purpose for which the project was constructed or managed.

(10) "Environment Assessment" — A report, provided by the sponsor of a water development project, which identifies and evaluates the positive and negative impacts of the project as it relates to the public benefits defined in these Administrative Rules.

(11) "Commission" — The Water Resources Commission.

Stat. Auth.: ORS 197, 536, 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86; WRD 12-1990, f. & cert. ef. 8-8-90

**690-100-0015****Eligibility**

(1) To be eligible to apply for partial repayment of a project financed under the Water Development Loan Program, an applicant shall meet the definition of a Water Developer, as stated in ORS 541.700.

(2) Any sponsor of a Proposed Project as defined in these rules is eligible for partial repayment of a water development project affording a public benefit.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

**690-100-0020****Application Procedure**

Information required in the application shall be in the format specified by the Water Resources Commission. The application shall include, but not be limited to, the following:

(1) A description of the project, in summary form, which identifies each project purpose and the geographical location of the project.

(2) A map which shows the project in relation to the U.S. Public Land Survey as well as political boundaries such as cities and counties.

(3) An identification of the reimbursable public benefits requested for funding, stating the benefit and the dollar amount of its value, and description of methods used to compute the value.

(4) An allocation of all of the costs of the project by purpose.

(5) A feasibility study for the construction, operation and maintenance of the project.

(6) A financing plan which details project funding sources as well as repayment capability.

(7) An environmental assessment report which identifies and evaluates both the positive and negative impacts of the project as related to public benefits.

(8) Land use information as outlined in the Department's Land Use Planning Procedures Guide.

(9) Any other information or data required by the Commission.

Stat. Auth.: ORS 197, 536, 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-100-0025

##### Criteria and Procedure for Determining Public Benefit

(1) In determining public benefits, the Director, acting for the Commission, shall request data and information from appropriate others. The Director shall recommend to the Water Resources Commission the dollar amount of public benefit based on a comparison of the cost to provide the benefit and the value of the benefit.

(2) The amount of public benefit recommended for partial repayment to the project shall not exceed the cost of providing the benefit.

(a) Criteria for determining public benefit:

(A) The applicant shall submit to the Director a summary report of the water project which shall contain, but not be limited to, a description of the project and its operation, a breakdown of project costs by purpose, the dollar benefits of each project purpose, the source of funds for each project purpose and the dollar amount of the public benefits requested;

(B) All public benefits claimed in an application for payment shall be quantified;

(C) Public benefits for which payment is requested may be of local or statewide significance;

(D)(i) Payment for public benefits that have already occurred in a constructed project may be requested if the application is made within five years of the date of beginning of construction of the project;

(ii) Payment for public benefits planned in a proposed project may be requested if the application is made prior to the beginning date of construction of the project;

(iii) For projects planned or constructed after the effective date of these rules, public benefits shall be identified and applied for in advance of construction or within one year of the beginning of construction or within one year of the date of issuance of a water right permit required for the project.

(E)(i) Public benefits claimed for recreation facilities shall be evaluated taking into consideration the Statewide Comprehensive Outdoor Recreation Plan of the Department of Transportation;

(ii) If the Project providing public benefit requires a Federal Energy Regulatory Commission permit, only those recreation benefits over and above those required in the federal permit or license are eligible as a reimbursable public benefit.

(F) Pollution abatement in a stream at a specific treated waste discharge location is the responsibility of the individual discharger and is not eligible to be claimed as a public benefit for payment, even though water to meet the discharge standard is provided by the water project;

(G) Water released from a project to abate pollution at a downstream location may provide a public benefit in the stream reach between the project and the downstream location. If quantifi-

able, the dollar amount of such releases may be requested for payment;

(H) Water provided by a project to meet minimum streamflows for aquatic life adopted by the Commission or recommended for adoption by the Director, may be considered a public benefit and the dollar value of such water, if quantifiable, may be requested for payment.

(b) Procedure for determining public benefit:

(A) The Director shall circulate the applicant's summary report of the project which describes the project, the costs, benefits, source of funds and amount of payment requested to the following state agencies:

(i) Department of Human Resources, Health Division;

(ii) Department of Environmental Quality;

(iii) Department of Fish and Wildlife;

(iv) Department of Land Conservation and Development;

(v) Division of State Lands;

(vi) Department of Transportation, Parks and Recreation Division;

(vii) Department of Forestry;

(viii) Department of Geology and Mineral Industries;

(ix) Department of Agriculture;

(x) Department of Energy;

(xi) The planning department of each affected local government.

(B) The Director shall hold a meeting of the applicant and state natural resources and local planning departments listed in subsection (b)(A) of this section for the purpose of presenting the project and payment request to the agencies and for the applicant to respond to agency concerns and questions regarding the project;

(C) A public hearing shall be held in the vicinity of the water project for the purpose of taking public comments on the payment request;

(D) Following the public hearing, the state natural resources agencies shall develop findings, conclusions and recommendations on the payment request. The Director shall invite the planning directors of affected local governments to participate in the development of these findings, conclusions, and recommendation;

(E) The Director shall prepare a recommendation based on comments received at the public hearing and the findings, conclusions and recommendations of the state natural resources agencies and affected local governments for presentation to the Water Resources Commission;

(F) The Director shall assure that evaluation of the proposal for repayment meets requirements established in OAR 690-060-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);

(G) The Commission may accept the Director's recommendation, modify the recommendation, or prepare a different recommendation for submission to the Governor and Legislative Assembly;

(H) The Commission shall submit its recommendation to the Governor for approval.

Stat. Auth.: ORS 197, 536, 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86; WRD 12-1990, f. & cert. ef. 8-8-90

#### 690-100-0030

##### Commission's Recommendation

(1) The Commission, with the approval of the Governor, shall recommend to the Legislative Assembly funding of water development projects in proportion to the public benefits offered.

(2) The Commission's recommendation shall contain:

(a) A description of the water development project, including the location and all of the purposes served by the project;

(b) An identification of the public benefits afforded by the project, the dollar amount associated with those benefits and the cost of providing the public benefits;

(c) The amount of repayment recommended to the Legislative Assembly for funding;

(d) Any conditions placed on the project and project sponsors in exchange for funding by the State of Oregon;

(e) A compliance agreement which, upon legislative approval, binds project sponsors to the terms and conditions imposed by the Legislative Assembly.

(3) The Commission shall submit its recommendation within a reasonable time period after receipt of a complete application.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

#### 690-100-0035

##### Disbursement of Funds

(1) Any funds appropriated by the Legislative Assembly for partial repayment of a financed water development project shall be deposited in the Water Development Administration and Bond Sinking Fund. The Director shall, upon satisfactory completion of the project, disburse such funds to the project sponsor. The Commission shall be the final judge of satisfactory completion of the project.

(2) Any funds appropriated by the Legislative Assembly for the partial repayment of a proposed water development project shall be deposited in a separate account with the Water Resources Department. The Director shall, upon satisfactory completion of the project, disburse such funds to the project sponsor. The Commission shall be the final judge of satisfactory completion of the project.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

#### 690-100-0040

##### Compliance Agreement

(1) A compliance agreement, in preliminary form, shall be submitted to the Legislative Assembly as part of the Commission's Recommendation. The agreement shall, among other things, set forth the length of time the project is to be operated and maintained for public benefit. After approval by the Legislative Assembly, the compliance agreement shall be written in final form and executed by the project sponsor.

(2) The Director shall be responsible for administering the terms of the compliance agreement.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

#### 690-100-0045

##### Public Disclosure

(1) The Commission shall make public notice of each application for partial repayment of a project which shall contain a summary of the application including the names of the applicants, the location, nature of the project, and identify the public benefit claimed.

(2) The notice shall be mailed to all persons and organizations which have filed a written request for notices with the Department and shall be posted at the Water Resources Department.

(3) Individuals or groups wishing to comment on an application shall do so to the Commission in writing within 30 days following the date of mailing the notice.

(4) The Commission shall hold a public hearing on an application if requested to do so by 10 or more persons, or any organization with 10 or more members, or any state agency if written request is filed with the Director within 30 days from date of mailing notice. Hearings shall be conducted according to procedures described in ORS Chapter 183 and division 1 of the Water Resources Department's Administrative Rules.

Stat. Auth.: ORS 541 & 542

Stats. Implemented:

Hist.: WRD 5-1982, f. & ef. 6-1-82; WRD 9-1986, f. & ef. 7-22-86

## DIVISION 190

### EXEMPT GROUNDWATER USE RECORDING REQUIREMENTS

#### 690-190-0005

##### Purpose and Applicability

(1) These rules describe the requirements under which the Oregon Water Resources Department will administer and enforce the provisions of ORS 537.545 relating to the recording of exempt groundwater use. Moneys from fees collected and deposited to the credit of the Water Resources Department Water Right Operating Fund shall be used for the purpose of evaluating groundwater supplies, conducting groundwater studies, carrying out groundwater monitoring, processing groundwater data and the administration and enforcement of ORS 537.545 and these rules.

(2) These rules apply to:

(a) Any owner of land on which a well is completed after July 22, 2009 to allow groundwater use for purposes that are exempt under ORS 537.545.

(b) Each new well that is completed or existing well that is converted to allow groundwater use for purposes that are exempt under ORS 537.545. This includes wells that are drilled to replace an existing well.

(3) These rules do not apply to:

(a) A well that is repaired, deepened, or altered.

(b) A water supply well that is permanently abandoned pursuant to OAR 690-220 within 30 days of well completion.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.545

Hist.: WRD 6-2009, f. & cert. 11-23-09

#### 690-190-0010

##### Definitions

(1) "Converting" has the same meaning as defined in ORS 537.515(3).

(2) "Department" means the Oregon Water Resources Department.

(3) "Director" means the Director of the Oregon Water Resources Department.

(4) "Recording" means the filing of a map locating any new or converted well that is completed to allow groundwater use for purposes that are exempt under ORS 537.545, and the fee, in the amount established under 537.545, for each new or converted well that is completed.

(5) "Landowner" means the owner of land at the time a well(s) subject to these rules is completed.

(6) "Well Completion" means the end of construction date reported on the water supply well report.

(7) "Well Identification Number" means the stamped well number on the stainless steel label that is attached to the well.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.545

Hist.: WRD 6-2009, f. & cert. 11-23-09

#### 690-190-0100

##### Recording Requirements

The landowner shall submit the following to the Department no later than 30 days after well completion:

(1) A tax lot map showing the location of the completed well, that includes:

(a) A map reference number (Township, Range and Section).

(b) Location of the completed well with distances (north/south and east/west) indicated from an identified property boundary, property corner or survey corner. Multiple wells may be shown on one tax lot map.

(c) Location of well(s) in relation to nearest driveway, access road and permanent structures.

(d) The direction of north marked on the map.

(e) Well Identification Number for each completed well.

(f) Street address of the completed well if available.

(2) A map submitted under a Department-approved electronic mapping program satisfies the requirements under section (1).

(3) A recording fee in the amount established under ORS 537.545.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.545

Hist.: WRD 6-2009, f. & cert. 11-23-09

#### 690-190-0200

##### Compliance and Enforcement

(1) If the Department determines that a landowner has not met the requirements of these rules, the Department shall notify the landowner of the specific nature of the requirements that have not been met.

(2) The Department shall, within 60 days of receipt of the map and fee, notify the landowner of the recording requirements that have not been met.

(3) Failure to meet the requirements of these rules may result in formal enforcement action(s). This action(s) may include:

(a) Establishing a specified time for bringing the landowner into compliance,

(b) Assessment of a civil penalty following procedures outlined in OAR 690-260 rules. Violations under these rules are considered as Class III Minor violations, or

(c) Any other action authorized by law.

Stat. Auth.: ORS 536.027 & 536.900

Stats. Implemented: ORS 537.545

Hist.: WRD 6-2009, f. & cert. 11-23-09

### DIVISION 200

#### WATER SUPPLY WELL CONSTRUCTION STANDARDS INTRODUCTION, GENERAL STANDARDS AND DEFINITIONS

#### 690-200-0005

##### Basis for Regulatory Authority

(1) The right to reasonable control of the ground waters of the State of Oregon has been declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with the administration of the rights of appropriation and use of the ground water resources of the state and the prevention of waste and contamination of ground water. This is primarily accomplished by the licensing of well constructors and the promulgation of rules governing well construction, alteration, abandonment, conversion, maintenance, and use. Ultimately the landowner of the property where the well is constructed is responsible for the condition, use, maintenance of setbacks, and abandonment of the well.

(2) The following rules apply to all wells which are constructed for the purpose of locating or obtaining water as defined in ORS 537.515(9) with the following exceptions:

(a) The construction, maintenance, conversion, and abandonment of monitoring wells, geotechnical holes, and other holes are regulated under OAR 690-240;

(b) Holes constructed under ORS Chapters 517, 520, 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geologic and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources; and

(c) Underground Injection Systems, which are regulated by the Oregon Department of Environmental Quality under OAR 468B.

**NOTE:** Table 200-1 lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring. [Table not included. See ED. NOTE.]

(3) When natural flow of water occurs in holes not regulated under these rules, the Water Resources Commission may regulate under separate rules or statutes to protect the ground water from contamination or waste;

(4) In addition to regulating new well construction, alteration, abandonment, conversion, and maintenance actions, the Water Resources Commission may impose conditions upon the use of any

existing water supply well as may be necessary to prevent waste, undue interference with other wells or contamination. When necessary, the Commission may order discontinuance of use, repair, temporary, or permanent abandonment of any well to accomplish the same objectives.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, conversion, abandonment and maintenance of water supply wells in Oregon.

(7) The rules and regulations set forth herein shall become effective upon adoption by the Commission.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; Renumbered from 690-060-0005 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

#### 690-200-0020

##### General Statement About the Standards

(1) The rules and regulations set forth herein provide the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells. After the effective date of adoption of these rules and regulations, no water supply well shall be constructed, altered, converted, or abandoned contrary to the provisions of these rules and regulations without prior approval from the Water Resources Department. Violation of these standards may result in enforcement under OAR chapter 690, division 225, including suspension or revocation of a constructor's license, imposition of civil penalties on the landowner or constructor, action on a bond, or other sanctions authorized by law.

(2) Every well shall be designed and constructed to adapt to the existing local geologic and ground water conditions at the well site and shall fully utilize every natural protection to the ground water supply. If prior to or during construction the well constructor becomes aware that specific site conditions will not allow adherence to the following minimum well standards, the constructor shall request and obtain written approval from the Director to use alternative construction methods, materials or standards. The request shall be in writing and submitted to the Director as described in OAR 690-200-0021. Special standard approval from the Director must be obtained prior to completion of the well.

(3) Certain wells constructed under these rules may be suitable for use as public, community, municipal, or public utility supplies. Regulations administered by other agencies may apply in addition to those in this chapter (see Appendix 1).

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.027, ORS 536.090 & ORS 537.505 - ORS 537.795

Stats. Implemented: ORS 536.090 & ORS 537.505 - ORS 537.795

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; Renumbered from 690-060-0008 & 690-060-0040 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-200-0021

##### Special Standards

(1) Site conditions may require specific design, construction, and abandonment procedures to adapt to the existing local geologic and ground water conditions to fully utilize every natural protection

to the state's ground water. Specific site conditions may require different design, construction, setback, or abandonment standards than required by the Water Supply Well construction rules. Alternative technologies or methods not addressed in these rules may also exist which could be effectively utilized in the construction or abandonment of a water supply well. Prior to the completion of the well, a bonded constructor must request and receive approval from the Department to use methods or materials that do not meet the water supply well construction standards. The Department may approve such requests either orally or in writing. If oral approval is granted, the written request must be submitted to the Department within three working days of the date of the oral approval. Failure to submit a written request as described above may void the prior oral approval. The proposed methods or materials shall provide at least the same level of resource protection as that which is provided by these rules.

(2) The written request for special standards shall include:

(a) Name, license number and signature of the bonded well constructor;

(b) Location of the well by county, township, range, section, tax-lot (if assigned) and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system;

(c) Name and address of landowner;

(d) Address of the project/well site;

(e) Type of work;

(f) The distance to the nearest well and septic tank or drain-field;

(g) The reasons(s) that conformance to the rules and regulations for water supply wells cannot be met;

(h) A diagram and written description showing the proposed water supply well design, construction, or abandonment;

(i) A site map showing the relationship of the well to any existing septic systems, if the request is to place a well within the minimum setbacks described in OAR 690-210-0030;

(j) The well identification number, if assigned; and

(k) The start card number.

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; Renumbered from 690-210-0015 by WRD 7-2001, f. & cert. ef. 11-15-01

## 690-200-0025

### Special Area Standards

If at any time, the Commission finds that different or supplemental standards are required for the safe development of ground water from any aquifer or area, special area standards for the construction and maintenance of water supply wells within such areas may be adopted as rules by the Commission. In the absence of such special area standards, these rules constitute the sole administrative standards of the Water Resources Department governing construction, conversion, maintenance, alteration, and abandonment of water supply wells.

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9-1978, ef. 12-12-78, f. 1-1-79; Renumbered from 690-060-0045 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

## 690-200-0027

### Restrictions on Water Supply Well Construction and Use in Critical Groundwater Areas or Areas Withdrawn by Commission Order

(1) The use of ground water is restricted in Critical Ground Water Areas or Withdrawal Areas established by Commission Order, under ORS 537.735 and 536.410. Before constructing a water supply well, the constructor shall determine whether the proposed well site is within a Critical Ground Water or Withdrawal Area. (Refer to **Figure 200-1.**)

(2) If the water supply well is within a Critical Ground Water or Withdrawal Area, the constructor shall contact the watermaster for the county where the water supply well is to be constructed for more information. (Refer to **Table 200-2.**)

(3) Construction of water supply wells in violation of a critical ground water or withdrawal order are subject to enforcement action as described in OAR 690, division 225.

[ED. NOTE: Tables and Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

## 690-200-0028

### Designated Special Area Standards

(1) Special Area Standards for the Construction and Alteration of Water Supply Wells in the Lakeview Area.

(a) As used in this rule and illustrated in Figure 200-3, "The Lakeview Area" includes the area located in Sections 4, 5, 8 and 9 of Township 39 South, Range 20 East of the Willamette Meridian, Lake County, Oregon. Beginning at a point on the West line of Section 4, said point bears South 1 40' 45" East — 2245.31 feet from the Northwest Corner of Section 4; thence South 89 54' 45" East — 1907.04 feet to the West right of way line of the Fremont Logging Road; thence South 39 26' 40" East along the West right of way line of the Fremont Logging Road — 3095.16 feet; thence South 1 53' 14" East — 617.32 feet to the South line of Section 4; thence continuing in Section 9 — South 00 13' 8" West parallel to the North South centerline of Section 9 - 2649.14 feet to the East West centerline of Section 9; thence South 89 45' 31" West along the East West centerline of Section 9 — 3782.55 feet more or less to the West line of Section 9; thence West along the East West centerline of Section 8 — 1320.00 feet more or less to the center East 1/16 corner of Section 8; thence North 2640.00 feet more or less to the East 1/16 corner common to Sections 5 and 8; thence North 1 41' 33" West — 2630.48 feet more or less to the center East 1/16 corner of Section 5; thence North 1 40' 45" West — 410.32 feet; thence South 59 54' 45" East — 1307.02 feet more or less to the point of beginning.

(b) Any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall be cased and sealed according to OAR 690, division 210 with the following additional requirements:

(A) Unperforated casing and seal shall extend from land surface to a depth of 250 feet below land surface; and

(B) Perforated casing may extend below the seal.

(c) Liner installed in any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall not extend more than 10 feet above the bottom of the unperforated casing.

(d) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (1)(b) and (1)(c) above. Such alternatives require prior written approval by the Department and follow-up testing as may be required by the Department.

(e) Except as they may conflict with subsection (1)(b) and (1)(c), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(f) This rule is applicable to wells for which construction, alteration, deepening or conversion began on or after April 1, 2004.

(g) This special area standard may be revised at a future date when additional information and analysis is provided from other agencies including the Oregon Department of Environmental Quality.

(2) Special Area Standards for the Construction, Conversion and Maintenance of Water Supply Wells for the "Petes Mountain Area", Clackamas County.

(a) As used in this rule and illustrated in Figure 200-4, "The Petes Mountain Area" includes the area located in Sections 28, 29, 32, 33 and 34 Township 2 South, Range 1 East, Willamette Meridian; and Sections 2, 3, 4, 5, 9, 10, 11, 15 and 16, Township 3 South, Range 1 East, Willamette Meridian. Beginning at the intersection of SW Ek Road and SW Stafford Road (T.2 S., R.1 E., Sec. 29); thence southerly along SW Stafford Road to SW Mountain Road; thence southerly along SW Mountain Road to SW Hoffman

Road; thence easterly along SW Hoffman Road to the intersection of SW Hoffman Road, SW Petes Mountain Road and SW Riverwood Drive; thence due east to the Willamette River; thence northerly along the Willamette River to the mouth of the Tualatin River; thence northwesterly along the Tualatin River to SW Borland Road (a.k.a. Willamette Falls Drive); thence northwesterly along SW Borland Road to SW Ek Road; thence westerly along SW Ek Road to SW Stafford Road, to the point of beginning.

(b) All new, altered, deepened or converted wells constructed in the Petes Mountain Area shall be cased and sealed in accordance with OAR 690, Division 210 with the following additional requirements:

(A) All new wells shall have a nominal minimum well casing diameter of at least 6 inches.

(B) All wells shall have a minimum 3/4-inch diameter dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement (See Figure 200-5 and OAR 690-215-0200).

(C) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (2)(b) above. Such alternatives require prior written approval by the Department. In addition, follow-up testing may be required by the Department to insure the effectiveness of the alternative technique.

(D) Except as they may conflict with subsection (2)(b), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(E) This rule is applicable to wells for which pump installation, repair or replacement began on or after July 1, 2008.

(F) This special area standard may be revised at a future date when additional information and analysis is provided from other agencies including the Oregon Department of Environmental Quality.

(3) Special Area Standards for the Construction, Conversion and Maintenance of Water Supply Wells for the "Eola Hills Ground Water Limited Area," Polk and Yamhill Counties.

(a) As used in this rule and illustrated in Figure 200-7, "The Eola Hills Ground Water Limited Area" includes all or portions of Sections 4 through 9, 16 through 21, and 29 through 32, Township 6 South, Range 3 West, Willamette Meridian; Sections 3 through 10, 15 through 22, 28, 29 and 30, Township 7 South, Range 3 West, Willamette Meridian; Sections 1 through 5, 8 through 17, 20 through 29, and 32 through 36, Township 6 South, Range 4 West, Willamette Meridian; and Sections 1 through 30, Township 7 South, Range 4 West, Willamette Meridian. The boundary of the Eola Hills area is as follows: Beginning at the intersection of the south line of Township 5 South and U.S. Highway 99W, thence east along the township line to the Willamette River, thence southerly to Oregon State Highway 22, thence westerly to U.S. Highway 99W, thence northerly along Hwy 99W to the point of beginning.

(b) All new, altered, deepened or converted wells constructed in the Eola Hills Ground Water Limited Area shall be cased and sealed in accordance with OAR 690, Division 210 with the following additional requirements:

(A) All new wells shall have a nominal minimum well casing diameter of at least 6 inches.

(B) All wells, in all aquifers, shall have a minimum 3/4-inch diameter dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement (See Figure 200-5 and OAR 690-215-0200).

(C) All new and deepened wells developing water from basalt in the Eola Hills Ground Water Limited Area shall be limited to one aquifer and shall be continuously cased and continuously sealed to within 100 feet of the bottom of the hole.

(c) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (3)(b) above. Such alternatives require prior written approval by the Department. In addition, follow-up testing may be

required by the Department to insure the effectiveness of the alternative technique.

(d) Except as they may conflict with subsection (3)(b), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(e) This rule is applicable to wells for which pump installation, repair or replacement began on or after July 1, 2008.

(4) Special Area Standards for New, Altered, Deepened or Converted Water Supply Wells in the "Mosier Area," Wasco County.

(a) As used in this rule and illustrated in Figure 200-8, the "Mosier Area" includes the area located in Section 36 Township 3 North, Range 11 East, Willamette Meridian; and Sections 31, 32, 33 and 34 Township 3 North, Range 12 East, Willamette Meridian; and Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35 and 36 Township 2 North, Range 11 East, Willamette Meridian; and Sections 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32 and 33 Township 2 North, Range 12 East, Willamette Meridian. Beginning at a point of intersection of the Wasco County, Hood River County, State of Oregon and State of Washington lines; thence south along the Wasco and Hood River County line to the Southwest corner of Section 34, Township 2 North, Range 11 East of the Willamette Meridian; thence east to the Southeast corner of Section 32, Township 2 North, Range 12 East of the Willamette Meridian; thence north to the East 1/4 corner of Section 32; thence east to the Southeast corner of the SW1/4 of the NW1/4 of Section 33; thence north to the Southeast corner of the NW1/4 of the NW1/4 of Section 33; thence east to the Southeast corner of the NE1/4 of the NW1/4 of Section 33; thence north to the North 1/4 corner of Section 33; thence east to the Southeast corner of the SW1/4 of the SE1/4 of Section 28; thence north to the Southeast corner of the NW1/4 of the SE1/4 of Section 28; thence east to Southeast corner of the NW1/4 of the SW1/4 of the NW1/4 of Section 27; thence north to the Southeast corner of the SW1/4 of the NW1/4 of Section 27; thence east to the Center 1/4 corner of Section 27; thence north to Southeast corner of the NE1/4 of the NW1/4 of Section 27; thence east to the Southeast corner of the NW1/4 of the NE1/4 of Section 27; thence north to the Northeast corner of the NW1/4 of the NE1/4 of Section 27; thence east to the SE corner of section 22; thence north to the East 1/4 corner of Section 22; thence east to the Center 1/4 of Section 23; thence north to the Southeast corner of the NE1/4 of the NW1/4 of Section 23; thence east to the Southeast corner of the NE1/4 of the NE1/4 of Section 23; thence north to the Northwest corner of Section 24; thence east to the North 1/4 corner of Section 24; thence north to the North 1/4 corner of Section 13; thence west to the Northeast corner of Section 15; thence north to the Oregon and Washington State line; thence west along the Oregon-Washington State line to the point of beginning.

(b) Well constructors shall provide at least 10 calendar days notice to the Department prior to the start of construction, alteration, deepening or conversion on any new or existing well in the "Mosier Area", in one of two ways:

(A) A Start Card submitted electronically at least ten (10) calendar days prior to the start of construction, alteration, deepening or conversion; or

(B) A Start Card mailed, faxed or hand delivered and received by the Department in Salem at least ten (10) calendar days prior to the start of construction, alteration, deepening or conversion.

(c) In cases where the additional notice requirement cannot be met the well constructor shall notify the Department by fax, telephone or e-mail prior to the start of construction, alteration, deepening or conversion. Department approval is required to proceed. Approval shall be either, verbal, written or electronic.

(d) All new and deepened water supply wells developing water from the Columbia River Basalt Group in the "Mosier Area", as described in (a) above, shall be limited to one aquifer and shall be constructed in accordance with OAR 690, division 210 with the following additional requirements:

(A) All new wells shall have a nominal minimum well casing diameter of at least 6 inches.

(B) The well constructor shall provide the following information to the Department so that a case and seal depth can be determined. The well shall not be permanently cased and sealed prior to consultation with the Department:

(i) A rough log that describes the kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation, the thickness of aquifers and available static water level measurements; and

(ii) Such additional information as required by the Department.

(e) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in (d) above. Such alternatives require prior written approval by the Department. In addition, follow-up testing may be required by the Department to ensure the effectiveness of the alternative technique.

(f) All wells, in all aquifers, shall have a minimum 3/4-inch diameter dedicated measuring tube installed at the time of pump installation, pump repair or pump replacement (See Figure 200-5 and OAR 690-215-0200).

(g) Except as they may conflict with (d) above, all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183, 537.780, 536.027, 536.090, 540  
Stats. Implemented: ORS 183, 536, 537.505 - 537.795, 537.780(1) & 540  
Hist.: WRD 2-2004, f. & cert. ef. 4-1-04; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-200-0030

##### Public Safety

No water supply well shall be constructed, maintained, or abandoned in such a manner as to constitute a health threat, or health hazard or a menace to public safety.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-060-0010 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0040

##### Wells Cannot be Used for Disposal of Contaminants

No water supply well shall be used as a disposal pit for sewage, industrial waste, or other materials that could contaminate the ground water supply.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; Renumbered from 690-062-0025 by WRD 13-1983, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0041

##### Water Used Must be Potable

All water used in the construction, alteration, repair or abandonment of water supply wells shall be potable.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; Renumbered from 690-210-0040 by WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0042

##### Organic Materials

Organic materials which foster or promote undesired organic growth or have the potential to degrade water quality shall not be employed in the construction of a water supply well. This includes, but is not limited to, brans, hulls, grains, starches, and proteins.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0076; WRD 7-1988, f. & cert. ef. 6-29-88; Renumbered from 690-210-0050 by WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0043

##### Commingling of Waters

A water supply well shall not be constructed in a manner that allows commingling or leakage of ground water by gravity flow or

artesian pressure from one aquifer to another. See definition of aquifer.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
Stats. Implemented: ORS 536.090 & 537.505 - 537.795  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0061; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; Renumbered from 690-210-0080 by WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0046

##### Perched Ground Water

Wells drawing water from perched zones must be constructed to prevent the waste of this type of ground water. (See **Figure 200-2**)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0059; Renumbered from 690-210-0090 by WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0047

##### Unattended Wells

All wells, when unattended during construction, shall be covered to protect public health and safety.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0007; Renumbered from 690-210-0110 by WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0048

##### Label Well Identification

(1) Within 30 days of completion of well construction, conversion, or alteration, the constructor shall permanently affix a well identification label to the wellhead as described in **Appendix 200-2**. The identification number shall be recorded on the well report. The well identification label shall be attached in such a manner as to be easily readable upon inspection. Identification labels shall be furnished by the Department.

(2) If a well identification label is already affixed to an existing well that is being altered, converted, or abandoned, the constructor shall record the identification number on the well report.

(3) When a well that has a well identification label (tag) on it is permanently abandoned, the well identification tag shall be destroyed. The well identification tag shall not be reused.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-200-0050

##### Definitions

The Water Resources Commission uses the definitions of the words listed below in the administration and enforcement of Oregon's Ground Water Law and the Rules and Regulations for the Construction and Alteration of Wells. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove a well from service by completely filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing, is effectively and permanently prevented. If a portion of a well is to be abandoned in order to prevent commingling, waste, or loss of artesian pressure, the abandonment shall conform with the requirements of OAR chapter 690, division 220 for water supply wells. This term is synonymous with "decommission."

(2) "Abandonment, Temporary" means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) "Access Port" means a minimum 1/2-inch tapped hole and plug, a 1/2-inch capped pipe welded onto the casing in the upper portion of a water supply well, or a dedicated measuring tube to

permit unobstructed entry to determine the water level in the well at any time.

(4) “Air Gap” means a complete physical break between the outlet end of the discharge pipe or other conduit and the discharged substance. The break shall be at least twice the inside diameter of the pipe or conduit. (Back-siphon prevention)

(5) “Airline” means a water level measuring device consisting of a pressure gauge attached to an airtight line or pipe of known length, within the water supply well bore, extending from land surface to below the pumping level. The device will allow the water level to be computed by measuring the stable air pressure remaining in the line after completely purging water from within the line.

(6) “Air/Vacuum Relief Valve” means a device to automatically relieve or break vacuum. (Back-siphon prevention)

(7) “Altering a Well” means the deepening, hydrofracturing, re-casing, perforating, re-perforating, installation of packers or seals, and any other material change in the design or construction of a well. Material changes include but are not limited to casing installation or modification including casing extensions, installation or modification of liner pipe, reaming or under reaming of the borehole, pitless unit installation or re-sealing except for re-sealing performed during pitless adapter installation.

(8) “Annular Space” means the space between the drillhole wall and the outer well casing.

(9) “Aquifer” means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature (see Figure 200-2).

(10) “Artesian Aquifer” means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface, the well is a flowing artesian well (see Figure 200-2).

(11) “Artesian Water Supply Well” means a water supply well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian water supply well.

(12) “Automatic Low-Pressure Drain” means a self-activating device designed and constructed to intercept incidental leakage and drain that portion of an irrigation pipeline or any other method of conveyance whose contents could potentially enter the water supply when operation of the irrigation system pumping plant fails or is shut down. (Back-siphon prevention)

(13) “Back-Siphon Prevention Device” means a safety device used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals in the opposite direction of that intended. (Back-siphon prevention)

(14) “Bored Well” means a well constructed with the use of earth augers turned either by hand or by power equipment.

(15) “Buried Slab Type Well” means a dug well in which well casing is used to case the upper hole. A slab, sealed with cement grout, is placed between the upper hole and lower drillhole, and the remainder of the annulus is filled with concrete.

(16) “Casing” means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

(17) “Casing Seal” means the water tight seal established in the well bore between the well casing and the drillhole wall to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(18) “Check Valve” means a certified device designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (Back-siphon prevention)

(19) “Chemigation” means the method of applying agricultural chemicals and fertilizer through an irrigation system.

(20) “Clay” means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

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

(22) “Committee” means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(23) “Community Well” means a water supply well, whether publicly or privately owned, which serves or is intended to serve more than three connections for residences or other connections for the purpose of supplying water for drinking, culinary, or household uses.

(24) “Confined Animal Feeding or Holding Area” means the concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, swine, and dairy confinement areas, slaughterhouse or shipping terminal holding pens where the animal waste is allowed to build up on the ground. Pastures and areas adjacent to buildings where animals and animal waste is confined by a physical barrier such as concrete are exempt.

(25) “Confining Formation” means the “impermeable” stratum immediately overlying an artesian (confined) aquifer (see Figure 200-2).

(26) “Consolidated Formation” means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, such materials as basalt, sandstone, shale, hard claystone, and granite.

(27) “Contamination” means an impairment of water quality by chemicals, radionuclides, biologic organisms or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

(28) “Continuing Education” means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(29) “Continuing Education Committee” means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(30) “Continuing Education Course” means a formal offering of instruction or information to licensee’s that provides continuing education credits.

(31) “Continuing Education Credit” (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(32) “Converting” a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(33) “Deepening a well” means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

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

(35) “Director” means the Director of the Department or the Director’s authorized representatives.

(36) “Documentation of Completion” means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(37) “Domestic Well” means a water supply well used to serve no more than three residences for the purpose of supplying water for drinking, culinary, or household uses, and which is not used as a public water supply.

(38) “Drawdown” means the difference in vertical distance between the pumping level and the static water level in a well.

(39) "Drive Point Well" means a well constructed by driving into the ground a well-point fitted to the end of a pipe section or series of pipe sections.

(40) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(41) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(42) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(43) "Filter Pack Well" means a well in which the area immediately surrounding the well screen or perforated pipe within the water-producing zone is filled with graded granular material.

(44) "Geologic Formation" means an igneous, sedimentary, or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation."

(45) "Geologist" means an individual registered by the State of Oregon to practice geology.

(46) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(47) "Grout" means approved cement, concrete, or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(48) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(49) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(50) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(51) "Hazardous Waste" means a substance as defined by ORS 466.005.

(52) "Hazardous Waste Disposal Site" means a geographical site in which or upon which hazardous waste is disposed.

(53) "Hazardous Waste Storage Site" means the geographical site upon which hazardous waste is stored.

(54) "Hazardous Waste Treatment Site" means the geographical site upon which or a facility in which hazardous waste is treated.

(55) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include but are not limited to, naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(56) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a water supply well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, sanitary seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(57) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(58) "Hydrofracturing" means the use of high pressure liquid, sand, packers or other material to open or widen fractures in consolidated formations for the purpose of increasing well yield.

(59) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

(60) "Impermeable Sealing Material" means cement, concrete, or bentonite which is used to fill the open annulus between the lower and upper sealing intervals.

(61) "Inspection Port" means an orifice or other viewing device from which the low-pressure drain and check valve may be observed.

(62) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(63) "Leakage" means movement of surface and/ or subsurface water around the well casing or seal.

(64) "Liner Pipe" means the inner tubing, pipe, or conduit installed inside the well casing or lower well bore. The liner pipe is used to protect against caving formations and is not permanently affixed to the drillhole wall or casing.

(65) "Lower Drillhole" means that part of the well bore extending below the surface seal interval in a well.

(66) "Mineralized Water" means any naturally occurring ground water containing an amount of dissolved chemical constituents limiting the beneficial uses to which the water may be applied.

(67) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(68) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(69) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(70) "Municipal or Quasi-Municipal Well" means a water supply well owned by a municipality or nonprofit corporation that may be used as a community or public water supply.

(71) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(72) "Other Hole" means a hole other than a water supply well, a monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials, through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to these rules. Other holes are regulated under OAR 690-240. Examples of other holes are listed in 690-240-0030.

(73) "Perched Ground Water" means ground water held above the regional or main water table by a less permeable underlying earth or rock material (see Figure 200-2).

(74) "Permeability" means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(75) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(76) "Petcock Valve" is a valve used to contain pressure which when opened will drain the line or pipe.

(77) "Piezometer" means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with "observation well" (See OAR 690-240).

(78) "Pitless Adapter" means a commercially manufactured device designed for attachment to one or more openings through a well casing, which will permit water service pipes to pass through the wall of a well casing or extension thereof and prevent entrance of contaminants into the well or ground water. (Note: Unhydrated bentonite shall be installed at least one and one-half inches thick

around the casing in any disturbed seal interval during pitless adapter installation).

(79) "Pitless Unit" means a commercially manufactured assembly which extends the upper end of the well casing to above grade, constructed and installed so as to prevent the entrance of contaminants into the well and to protect the ground water supply, conduct water from the well, and provide full access to the well and water system parts therein. (Note: Unhydrated bentonite shall be installed at least one and one-half inches thick around the casing in any disturbed seal interval during pitless unit installation).

(80) "Porosity" means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(81) "Potable Water" means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(82) "Potentiometric Surface" means the level to which water will rise in tightly cased artesian wells (see Figure 200-2).

(83) "Pressure Grouting" means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(84) "Professional" means any person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering.

(85) "Public-at-Large" means a person not actively engaged in the well industry.

(86) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by ten or more individuals per day. Public water system also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community Water System," a "Transient Non-Community Water System," a "Non-Transient Non-Community Water System" or a "State Regulated Water System."

(87) "Public Well" means a water supply well, whether publicly or privately owned, other than a municipal well, where water is provided for or is available through the single user for public consumption. This includes, but is not limited to, a school, a farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel, or a group care home.

(88) "Pumping Level" means the level of the water surface in a well while it is being pumped or bailed.

(89) "Pump Test" means the procedure involving pumping water for a specified period of time to determine the yield characteristics of an aquifer.

(90) "Refusal to Renew" means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor's license, for a specified term not to exceed one year from the expiration date of the current license.

(91) "Remediation Well" means a well used for extracting contaminants and/or contaminated ground water from an aquifer. This term is synonymous with "extraction well" and "recovery well."

(92) "Respondent" means the person against whom an enforcement action is taken.

(93) "Responsible Party" means the person or agency that is in charge of construction or maintenance and is either in violation as specified in a notice of violation or who may benefit from that violation.

(94) "Rough Drilling Log" means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(95) "Revoke" means termination of a well constructor's license.

(96) "Sand" means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(97) "Sanitary Seal" means a tight fitting properly sized threaded, welded, or gasketed cap placed on the top of the permanent well casing to prevent entry of water and foreign material.

(98) "Sealant": See Grout

(99) "Silt" means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.002mm in diameter.

(100) "Slope Stability Geotechnical Hole" means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(101) "Sponsor" means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(102) "Static Water Level" means the stabilized level or elevation of water surface in a well not being pumped.

(103) "Stratum" means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(104) "Sump" means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.

(105) "Suspension" means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(106) "System Interlock" means an interlocking mechanism used to link irrigation pumps and chemical injection units, other pumps, or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the chemical injection units will occur. (Back-siphon prevention)

(107) "Unconsolidated Formation" means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(108) "Underground Injection" means the emplacement or discharge of fluids to the subsurface.

(109) "Underground Injection System" means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(110) "Upper Oversize Drillhole" means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(111) "Violation" means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(112) "Water Supply Well" means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground or surface water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(113) "Water Supply Well Constructor" means any person who has a current water well constructor's license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(114) "Water Supply Well Constructor's License" means a Water Well Constructor's License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(115) "Water Supply Well Drilling Machine" means any power-driven driving, jetting, percussion, rotary, boring, digging, augering machine, or other equipment used in the construction or alteration of water supply wells.

(116) "Water Table" means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at

which water stands in wells that penetrate the water body (see Figure 200-2).

(117) "Water Well Constructor's License" means a license to construct, alter, deepen, abandon or convert wells issued in accordance with ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert.

(118) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in 522.055 is regulated by the Department of Geology and Mineral Industries.

[ED. NOTE: Figures referenced are available from the agency]

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9, f. & ef. 12-9-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 12-1982, f. & ef. 12-14-82; Renumbered from 690-060-0050 & 690-064-0000 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. & cert. ef. 12-14-90; WRD 1-1991, f. & cert. ef. 2-8-91; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 5-2015, f. & cert. ef. 7-1-15

## DIVISION 205

### WATER SUPPLY WELL CONSTRUCTION STANDARDS; LICENSING

#### 690-205-0005

##### License or Permit Required to Construct Water Supply Wells

(1) Unless otherwise provided in these rules, any person who constructs, alters or abandons water supply wells for another person shall have a Water Supply Well Constructor's license or work under the supervision of a licensed Water Supply Well Constructor.

(2) If a person advertises services and/or enters into contracts for the construction, alteration or abandonment of water supply wells for another person, that person shall furnish a \$10,000 Water Well Constructor's Bond or Irrevocable Letter of Credit to the Water Resources Commission and must be a licensed Water Supply Well Constructor.

(3) A property owner who constructs, alters, or abandons a water supply well on their own property shall have a Landowner Well Permit as described in OAR 690-205-0175 for each water supply well on which work is done.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-205-0010

##### Water Supply Well Constructor License Examination

(1) The Water Resources Department administers the written examination required under ORS 537.747. Separate examinations are administered for each license endorsement. The Department schedules the examination on the second Monday during the months of January, April, July and October. Examinees must pay a \$20.00 exam fee. Special accommodations may be given to those individuals who cannot attend the regularly scheduled examination dates. Requests shall be considered on a case-by-case basis. The examination tests the applicant's knowledge of:

(a) Oregon laws and administrative rules on the use of ground water, water supply well constructor licensing requirements, the construction of water supply wells, and the preparing and filing of Start Cards and Water Supply Well Reports;

(b) Hydrogeology, the occurrence and movement of ground water, and the design, construction and development of water supply wells; and

(c) Types, uses, and maintenance of drilling tools and equipment, drilling problems and corrective procedures, repair of faulty water supply wells, sealing of water supply wells, and safety rules and practices.

(2) An applicant who fails to pass an endorsement examination may retake an examination for the same endorsement after three months and the payment of another examination fee.

(3) Passing examination scores are valid for three years from the date of the examination.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-205-0020

##### Water Supply Well Constructor's License, Experience Requirements and Trainee Card

(1) License. To qualify for a Water Supply Well Constructor's License, a person shall:

(a) Be at least 18 years old;

(b) Pass a written examination;

(c) Have a minimum of one year experience, during the previous 36 month period, in water supply well construction, conversion, alteration, or abandonment. This experience shall include the operation of well drilling machinery for water supply well construction, alteration, conversion, or abandonment on a minimum of fifteen water supply wells or a demonstration of equivalent experience in the operation of well drilling machinery. The following are acceptable as evidence of experience:

(A) Water supply well reports, or rough well logs with applicants' name entered, for each of the 15 wells. The name, address, and telephone number of the person responsible for the construction of each well shall be included on each report or log.

(B) Income tax returns showing source of drilling income for a period of time, or worker's compensation account information or the equivalent may be established to satisfy the one year of active construction requirement.

(C) Any other evidence the Director may deem suitable.

(D) A license held in another state shall not substitute for required evidence of experience.

(d) Pay a license fee.

(2) Trainee. If an applicant passes the written Water Supply Well Constructor's License examination, but cannot meet the experience requirement, the Commission may issue a trainee card. To qualify for a Water Supply Well Constructor Trainee Card, a person must:

(a) Be at least 18 years old;

(b) Pass a written examination; and

(c) Be supervised by a person who holds a valid Water Supply Well Constructor's License.

(3) Trainee card. A trainee card is valid for three (3) years from the date the examination was passed.

(4) Supervision. Supervision as it relates to any person who holds a Water Supply Well Constructor Trainee Card:

(a) A trainee may operate a cable tool drilling machine without a licensed Water Supply Well Constructor physically present at the well site only if:

(A) The licensed constructor can reach the well site within two hours if so requested by an authorized representative of the Department; and

(B) The licensed constructor has signed the rough drilling log within eight working hours prior to the representative's visit.

(b) A licensed Water Supply Well Constructor must physically be on the site at all times when a cable tool drilling machine is:

(A) Drilling within a flowing artesian well;

(B) Setting or advancing casing;

(C) Setting liner;

(D) Perforating casing;

(E) Setting well screens;

(F) Placing packers;

(G) Placing casing seals;

(c) A Water Supply Well Constructor trainee may operate a non-cable tool water supply well drilling machine without a licensed Water Supply Well Constructor physically present at the well site only during the following events:

(A) Air test or pump test of the well;

(B) Gravel packing operations;

(C) Developing a completed well;

(D) Removal of the drill stem from the well.

(d) Activities under subsection (4)(c)(A)–(D) of this rule shall proceed only if:

(A) The licensed Water Supply Well Constructor can reach the site within one hour if so requested by an authorized representative of the Department; and

(B) The licensed Water Supply Well Constructor has signed the rough drilling log within eight working hours prior to the representative's visit.

(e) An authorized representative of the Department in whose jurisdiction the water supply well is being constructed has the authority to:

(A) Grant an extension to the time limits stated above when a request, showing good cause, is received from the bonded constructor in advance for each particular well; and

(B) Place additional restrictions on the trainee, including requiring the constructor to be on the site at all times while the drilling machine is operating, when the authorized Department representative determines that either the drilling environment or the knowledge and/or experience of the trainee warrant closer supervision.

(f) For a Water Supply Well Constructor Trainee to operate a water supply well drilling machine without a licensed Water Supply Well Constructor present, the trainee's card must be endorsed with the name of the bonded Water Supply Well Constructor responsible for the construction of the water supply well.

(5) Other supervision requirements for persons not licensed or permitted to construct water supply wells, or who do not hold a Water Supply Well Constructor Trainee Card:

(a) Persons who are in the act of constructing, altering, converting or abandoning water supply wells must be supervised by a licensed Water Supply Well Constructor who is physically present at the well site at all times during construction, alteration, conversion, or abandonment activity.

(b) The supervising Water Supply Well Constructor is responsible for all applicable statutes and rules in construction, alteration, conversion, or abandonment of the water supply well.

(6) Persons who satisfy all requirements of ORS 537.747(3) shall be issued a Water Supply Well Constructor's License. The responsibilities for issuing and securing a Water Supply Well Constructor's License or trainee card are listed in subsections (a) and (b) of this section.

(a) The Water Supply Well Constructor's License applicant is responsible for:

(A) Completing an application or renewal form for a new or renewed license or trainee card;

(B) Submitting the application or renewal form to the Water Resources Department along with the required fees;

(C) Carrying the license or trainee card whenever constructing, altering, converting, or abandoning any water supply well; and

(D) Providing the Water Resources Department, within 30 days, notification of any change of mailing address.

(E) Providing the Water Resources Department documentation satisfying the continuing education requirements set forth in OAR 690-205-0035 through 690-205-0120.

(b) The Water Resources Department is responsible for:

(A) Designing and providing Water Supply Well Constructor license(s) and trainee cards;

(B) Designing and providing application forms and renewal forms for licenses and application forms for trainee cards;

(C) Processing applications and renewals for licenses and applications for trainee cards;

(D) Returning incomplete application and renewal forms to applicants for completion; and

(E) Sending new and renewed licenses to applicants who have completed the application or renewal form and submitted the required fee. This does not preclude refusal to renew as outlined in OAR 690-205-0025(4).

(7) Bonded Water Supply Well Constructor. For a person to possess a bonded Water Supply Well Constructor's License, the person must provide to the Department a properly executed Water Well Constructor's Bond or Irrevocable Letter of Credit. The Water Resources Department shall indicate on the constructor's license a bonded classification.

(8) Representatives of the Water Resources Department may ask anyone constructing, altering, or abandoning a water supply well to present their license or trainee card as proof of eligibility to construct, alter, convert, or abandon water supply wells in the State of Oregon. Licensed individuals shall display their license or trainee card and photo identification when they are requested to do so by Water Resources Department personnel.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

## 690-205-0025

### Term of Water Well Constructor License and License Fees

(1) The Department issues all Water Supply Well Constructor licenses. License fees are established by ORS 537.747. A penalty applies to late renewals.

(2) Fees for new licenses and renewal licenses are the same. The fee for a two year license is \$150. All licenses expire on June 30 of the second year.

(3) A \$100 penalty applies when a licensee renews a license within 12 months of the expiration date. There is no charge for a Trainee Card.

(4) Water Supply Well Constructors who have not made arrangements with the Water Resources Department to pay civil penalties which are assessed against them shall not be issued a license renewal or a new license until after arrangements for payment have been agreed to by the Department. Water Supply Well Constructors who have made arrangements for payment of civil penalties and have failed to meet the terms of the agreement, except in certain cases of bankruptcy, may not have their license renewed or a new license issued until all outstanding civil penalties owed to the Department have been paid.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0020; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

## 690-205-0035

### Continuing Education Committee

A Continuing Education Program and Continuing Education Committee are established under Chapter 496, Oregon Laws 2001 (ORS 537.765). The duties of the Well Constructors Continuing Education Committee are to review and approve continuing education courses and assign continuing education credits.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

## 690-205-0045

### Continuing Education Requirement

(1) As of June 30, 2005, each individual licensed under ORS 537.747 is required to obtain a minimum of 14 continuing education credits (CECs) during each licensing period regardless of the number of licenses or endorsements held. Continuing education credits may be obtained through clinics, schools, professional organizations, seminars, lectures or other continuing education courses that relate to the practice of well construction and are approved by the Continuing Education Committee.

(2) A minimum of two (2) CECs shall pertain to ground water and well construction statutes under ORS 537.505 to 537.795 and 537.992, and administrative rules under OAR 690-200 through 690-240 during each licensing period.

(3) A maximum of eight (8) CECs may be obtained through approved safety/first aid/CPR/Hazardous Materials courses during each licensing period. Of the eight (8) CECs, a maximum of four (4) CECs may be obtained through Hazardous Materials training courses and a maximum of four (4) CECs may be obtained through safety/first aid/CPR courses.

(4) Exhibitions shall count as one (1) CEC per approved exhibition attended and shall not exceed two (2) CECs per licensing period.

(5) Licensees may count approved CECs accumulated after January 1, 2002, for their first license renewal that requires CECs.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-205-0055

#### Documentation

(1) Each licensee is responsible for maintaining their own continuing education records. Except as provided in OAR 690-205-0110(2), each licensee shall provide the Department with evidence of compliance with the continuing education requirement on a form approved by the Continuing Education Committee prior to or at the time of license renewal.

(2) Licensees who do not provide documentation of completion of the continuing education requirement or receive a waiver shall not have their license(s), or appropriate endorsement(s), renewed until this requirement is satisfied.

(3) Licensees who provide documentation of completion of the continuing education requirement within the 12 months after their license expires may either pay the \$100 late penalty fee or requalify for a new Water Supply Well Constructor's License or endorsement in accordance with ORS 537.747(3). If a licensee fails to provide documentation of completion of the continuing education requirement within 12 months after expiration of their license or endorsement the person must comply with the requirements of ORS 537.747(3) for a new Water Supply Well Constructor's License or endorsement.

(4) CECs acquired during a renewal period in excess of the minimum CECs required may not be applied to future licensing periods.

(5) When an individual obtains a new Water Supply Well Constructor's License that expires within 14 months or less, the continuing education requirement shall be prorated such that only seven (7) CECs are required at the first renewal. Of the seven (7) required CECs:

(a) A maximum of two (2) CECs may be in Hazardous Materials training;

(b) A maximum of two (2) CECs may be in safety/first aid/CPR; and

(c) A minimum of one (1) CEC shall pertain to ground water and well construction statutes under ORS 537.505 to 537.795 and 537.992, and administrative rules under OAR 690-200 through 690-240.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

### 690-205-0075

#### Approved Course List/Course Approval and Assignment of CECs

(1) The Department shall maintain a Continuing Education Committee-approved list of courses. The list shall include, but not be limited to, the course title, class location and date, cost, (if applicable), and CECs assigned.

(2) The Continuing Education Committee shall evaluate all courses related to continuing education for well constructors and may assign CECs. The Continuing Education Committee shall notify the course sponsor in writing of the results of their

evaluation of the course material. The following criteria may be utilized to evaluate and assign CECs:

(a) Course agenda and how well the subject relates to water well construction and other borings regulated by the Department;

(b) Instructor qualifications;

(c) Subject difficulty;

(d) Student course evaluations, if applicable; and

(e) Other information as appropriate.

(3) A licensee who is also the instructor of an approved continuing education course shall be entitled to double CECs for that course. A licensee who is also the instructor of an approved course, shall receive CECs for the course once during a single renewal period, regardless of the number of times a course is presented.

(4) The following courses do not require pre-approval by the Continuing Education Committee:

(a) First Aid and CPR, provided the instructor is certified by the American Red Cross, or has certification accepted by the American Red Cross;

(b) Occupational Safety and Health Administration (OSHA) approved Hazardous Materials Training; and

(c) OSHA approved courses pertaining to the well construction industry.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-205-0085

#### Course Sponsor Requirements

(1) Course sponsors shall submit a completed application for approval to the Continuing Education Committee on a form(s) provided by the Department at least 45 days prior to the date the course is to be presented. Approved sponsors shall:

(a) Advertise the course to the satisfaction of the Continuing Education Committee;

(b) Provide the Department with a certified class roster within 30 days after completion of the course;

(c) Provide documentation of completion to each qualifying attendee that shall include at a minimum: course title, course date(s), number of approved credits, and instructor and/or sponsor signature; and

(d) Maintain the certified class roster for two years.

(2) All clinics, courses, classes, workshops, and seminars shall be open to anyone who wants to attend. This does not preclude a sponsor from imposing reasonable requirements for attendance such as fees, maximum occupancy limits, and requiring attendees to provide their own safety equipment.

(3) Course approval and assigned CECs shall be effective for two years as long as the course remains the same. The Continuing Education Committee shall be notified in writing by the course sponsor, 45 days in advance of each time an approved continuing education course is presented. Such notification shall include the course title, date, class location, cost (if applicable), number of credits assigned, and a statement that the program has not changed from the course previously approved by the Continuing Education Committee.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-205-0095

#### Loss of Approval

The Continuing Education Committee may withdraw or suspend approval of a course if it is determined that any of the following has occurred:

(1) The course content has changed without notice to the Continuing Education Committee;

(2) The course was not advertised to the satisfaction of the Continuing Education Committee;

(3) Documentation of completion has been issued to an individual who did not attend or complete the course in accordance with the provisions under which the course was approved;

(4) Documentation of completion was not given to all individuals who satisfactorily completed the course in accordance with the provisions under which the course was approved;

(5) A certified class roster was not maintained by the sponsor for two years;

(6) Fraud or misrepresentation has occurred with the application for course approval, maintenance of records, teaching method, course content, or issuance of certificates for a course; or

(7) Any other factor the Continuing Education Committee deems appropriate.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

#### **690-205-0110**

##### **Courses Taken Without Prior Approval**

(1) Except as provided in OAR 690-240-0210(5), a licensee may request that the Continuing Education Committee assign CECs for courses taken without prior approval within the current licensing period.

(2) The licensee shall supply verification of attendance, a course outline, and a written explanation as to why prior approval was not obtained. This information must be received in the Salem office of the Department no later than May 15 of the year that their license or appropriate endorsement expires.

(3) Courses taken without prior approval shall be evaluated by the Continuing Education Committee on a case-by-case basis using the criteria outlined in OAR 690-205-0075(2). This shall not apply to courses that do not require pre-approval under 690-205-0075(4).

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

#### **690-205-0120**

##### **Waivers**

(1) The Director may waive the continuing education requirements for a licensed Water Supply Well Constructor upon written request demonstrating inability to attend continuing education courses because of health, military duty or other circumstances beyond the control of the constructor.

(2) Licensees who are denied a waiver may appeal to the Commission by filing a written exception with the Department within 60 days of service of the Director's order.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-205-0145**

##### **Contracting for Services**

Only Oregon licensed and bonded Water Supply Well Constructors may advertise services or enter into a contract, either written or oral, to construct, alter, convert, or abandon a water supply well. Any written bid for a project which includes the construction, alteration, conversion, or abandonment of a water supply well must provide:

(1) A bid or estimate for the work associated with water supply well construction signed by a Water Supply Well Constructor, who is licensed and bonded in the State of Oregon; and

(2) A statement by the licensed and bonded Water Supply Well Constructor that the work will be completed in accordance with Oregon Ground Water Law (ORS Chapter 537) and the Rules and Regulations for the Construction, Maintenance, and Abandonment of Water Supply Wells in Oregon (OAR chapter 690, divisions 200–230).

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0030; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-205-0155**

##### **Water Supply Well Constructor and Landowner Well Bonds or Letters of Credit**

(1) The Water Resources Commission shall only accept bonds from corporations licensed by the Oregon Department of Insurance and Finance to issue fidelity and surety insurance. The Water Resources Department shall only accept irrevocable letters of credit from a bank as described in ORS 706.008.

(2) If the issuing corporation cancels a bond, the corporation shall provide notice of cancellation to the Water Resources Department by registered or certified mail. If the issuing bank cancels a letter of credit, the bank shall provide notice of cancellation to the Water Resources Department by registered or certified mail. The cancellation shall not take effect earlier than the 30th day after the date of mailing in accordance with ORS 742.366(2).

(3) When issuing a final enforcement order that may place a bond or irrevocable letter of credit in jeopardy, the Director may mail a copy of the order to the address of record of the surety company issuing the bond, or the bank issuing the irrevocable letter of credit.

(4) All wells shall be constructed under a bond or irrevocable letter of credit. The bond or letter of credit shall cover construction, alteration, conversion, or abandonment for each well under that bond or letter of credit for a period of three years after the date the well report is filed with the commission, whether or not the bond or letter of credit has been subsequently canceled.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0024; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0040; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-205-0175**

##### **Landowner Well Construction Permit, Fee and Bond**

(1) The Water Resources Commission requires a permit, permit fee, and bond or irrevocable letter of credit, for each water supply well constructed, altered, converted, or abandoned by a landowner, unless the landowner is a licensed and bonded Water Supply Well Constructor. The landowner permit and bond shall be obtained prior to beginning work on a well.

(2) To receive a Landowner Well permit, a person must submit the following to the Director:

(a) A completed application form provided by the Commission, containing:

(A) The property owner's name, address and telephone number;

(B) The surety company's name, address and telephone number;

(C) The proposed location of the well by township, range, section, tax-lot number if assigned, and street address;

(D) The proposed use of the water supply well; and

(E) The type of proposed work; and

(F) Well design plan on form approved by the Department.

(b) A properly executed Landowner's Water Well Bond or Irrevocable Letter of Credit for \$5,000 to the State of Oregon; and

(c) A \$25 permit fee.

(3) Only the owner of record, a member of the immediate family of the owner of record, or a full time employee of the owner of record, (whose main duties are other than the construction of wells), may operate a well drilling machine under a landowner's permit.

(4) A landowner permit issued pursuant to these rules shall expire six months from the date of issuance.

(a) A water well report shall be submitted within 30 days of expiration of the landowner permit, or within 30 days of completion of the well, whichever occurs first.

(5) If the landowner permit expires, a landowner may reapply for a new landowner permit by complying with the requirements described in sections (1), (2) and (3) of this rule.

(6) The Department may deny a landowner permit if it is determined that the construction, alteration, abandonment, or con-

version of the proposed well is a health threat, a health hazard, a source of contamination, or a source of waste of the ground water resource.

Stat. Auth.: ORS 183, 536, 537 & 540  
 Stats. Implemented: ORS 183, 536, 537 & 540  
 Hist.: WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0026; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0050; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-205-0185

##### Water Supply Well Drilling Machines

(1) All water supply well drilling machines being operated, other than under a landowner's permit, shall be plainly marked either with the bonded Water Supply Well Constructor's license number, the name of the bonded Water Supply Well Constructor, or the name of the well drilling business. The markings shall be permanently affixed on each side of the machine. Good quality paint or commercial decal numbers shall be used in placing the identification information on the drilling machine. In no case shall the constructor's license number, name, or business name, be inscribed with crayon, chalk, marking keel, pencil, or other temporary markings.

(2) In all cases, the license number, name, or business name, of the bonded Water Supply Well Constructor shall be removed from the drilling machine immediately upon change of ownership or change of control of the drilling machine.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
 Stats. Implemented: ORS 536.090 & 537.505 - 537.795  
 Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0030 & 690-060-0035; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0060; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-205-0200

##### Water Supply Well Construction Notice Required (Start Card)

(1) Each bonded Water Supply Well Constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any water supply well or conversion of any monitoring well, geotechnical hole, or other hole to a water supply well. The start card shall contain the following information:

- (a) Name and mailing address of the landowner;
- (b) Street address of the well;
- (c) The approximate location of the water supply well; and
- (d) The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) In addition to the information required pursuant to OAR 690-205-0200(1)(a)-(d), a start card may also contain information regarding the type of proposed alteration.

(3) Forms for making these reports and submitting fees shall be furnished by the Department.

(4) Landowners who construct, alter, convert, or abandon a water supply well shall also comply with OAR 690-205-0175.

[ED. NOTE: Tables and Figures referenced are available from the agency.]  
 Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
 Stats. Implemented: ORS 536.090 & 537.505 - 537.795  
 Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0035; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-1989(Temp), f. & cert. ef. 9-29-89; WRD 10-1989, f. & cert. ef. 11-20-89; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0070; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-205-0205

##### Start Card Reporting Requirements

(1) The start card notification required in ORS 537.762 shall be submitted to the Department's region office within which the water supply well is being constructed, altered converted or abandoned using one of the following methods:

(a) Start cards submitted electronically shall be transmitted by a Department-approved method and shall be submitted before beginning construction, alteration, conversion or abandonment work on any water supply well.

(b) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(c) By hand delivery, during regular office hours, before beginning the construction, alteration, conversion or abandonment work on any water supply well; or

(d) By facsimile transmission (FAX) before beginning the construction, alteration, conversion or abandonment work on any water supply well. If this method is used, a legible copy of the start card shall also be mailed, or delivered to the appropriate OWRD region office no later than the day work begins.

(2) The fee required under ORS 537.762(5) for the construction of a new well, deepening of an existing well, conversion of a monitoring well, geotechnical hole, or other hole shall be submitted to the Department's Salem office with a duplicate copy of the start card. A duplicate start card is not required if the start card fee is included with a start card submitted electronically under Section (1)(a) of this rule.

(3) If a start card has been filed under section (1) and (2) of this rule and additional wells are required on the same or contiguous tax lot and for the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(4) The Director or region office may provide an alternative means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the water supply well. A Water Supply Well Constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(5) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the water supply well report required by OAR 690-205-0210 is received, whichever is shorter.

(6) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
 Stats. Implemented: ORS 536.090 & 537.505 - 537.795  
 Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-205-0210

##### Well Report Required (Water Supply Well Log)

(1) A water well report (water well log) shall be prepared for each water supply well constructed, altered, converted, or abandoned. This requirement includes unsuccessful wells and wells exempt from appropriation permit requirements under ORS 537.545. The log shall be certified as correct by signature of the Water Supply Well Constructor constructing the water supply well. The completed log shall also be certified by the bonded Water Supply Well Constructor responsible for construction of the well. A water well report must be submitted by each bonded constructor (if drilling responsibility is shifted to a different bonded constructor), showing the work performed by each bonded constructor.

(2) The log shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the Water Supply Well Constructor, and the second copy shall be given to the customer who contracted for the construction of the water supply well.

(3) The bonded Water Supply Well Constructor shall file the water well log with the Director within 30 days after the completion of the construction, alteration, conversion or abandonment of the water supply well.

(4) The trainee or Water Supply Well Constructor operating the water supply well drilling machine shall maintain a rough log of all geologic strata encountered and all materials used in the construction of the water supply well. This log shall be available for

inspection by the Watermaster, or other authorized agent of the Water Resources Department at any time before the water well report is received by the Department. The rough drilling log shall be in handwritten or electronic form, or a voice recording.

(5) In the event a constructor leaves any drilling equipment or other tools in a water supply well, this fact shall be entered on the water well report.

(6) A copy of any special authorizations or special standards issued by the Director shall be attached to the water supply well report.

(7) The report of water well construction required in section (1) of this rule shall be recorded on a form provided or previously approved in writing by the Department. The form shall include, as a minimum, the following:

- (a) Name and Address of Landowner;
- (b) Started/Completed date;
- (c) Location of the well by county, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);
- (d) Start card number;
- (e) Well identification label number (well tag number);
- (f) Use of well;
- (g) Type of work;
- (h) Temperature of water; and
- (i) Such additional information as required by the Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-010-0040; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-205-0080; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

## DIVISION 210

### WELL CONSTRUCTION STANDARDS

#### 690-210-0005

##### Standards Apply to all Methods of Well Construction

(1) The following well construction standards apply to all methods of water supply well construction. The methods include, but are not limited to, drilling, driving, jetting, boring, and digging.

(2) Horizontal and Remediation wells shall be constructed under special standard approval only as described in OAR 690-200-0021.

(3) Additional standards will apply to some methods as specified in the following regulations.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0216; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0030

##### Placement of Water Supply Wells

(1) No person shall construct a water supply well:

- (a) Within 50 feet of any septic tank; or
- (b) Within 100 feet of a septic drainline or sewage disposal structure or facility; or
- (c) Within 50 feet of a closed sewage or storm drainage system (except those in or underneath a building); or
- (d) Within 50 feet of a confined animal feeding or holding area; or
- (e) Within 50 feet of any animal waste holding area such as a pond or lagoon; or
- (f) Within 100 feet of any sewage sludge disposal area; or
- (g) Within 5 feet from a permanent structure or the roof, eaves or overhangs of a permanent structure. This includes decks or other additions to the structure that may hinder the ability of a drilling

machine to get over the well. This does not include pump houses or other outbuildings that are easily moved; or

(h) Within 500 feet of a hazardous waste storage, disposal or treatment facility without written permission of the Director.

(2) A new water supply well may be constructed at the site of an abandoned septic tank or drain field one year after the septic tank or drain field is taken out of use. The abandoned septic tank shall be pumped by a DEQ licensed sewage disposal business to remove all contents. Following pumping, the tank shall be filled with reject sand, bar run gravel or other material approved by the on site sub-surface sewage permitting agent. The delivery line between the building and the tank shall be permanently capped or filled with cement grout. A water supply well shall not be constructed through an abandoned septic tank or septic drain line. The new water supply well shall be located to meet other setbacks as directed in section (1) of this rule.

(3) Rain water gutter downspouts and drains are exempt from the setback requirements.

(4) The constructor should consider whether greater setback distances are required for the protection of the ground water depending on the topography and local geology.

(5) Additional setback standards may apply to wells used for public water systems. See OAR 333-061-0050(2) or contact the Oregon Health Authority for more information.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-060-0015; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0060

##### Explosives

(1) If explosives are used in the construction of a water supply well, their use must be reported on the well report. The type and amount of explosive(s) used shall be reported.

(2) In no case shall explosives other than commercially developed gun perforators be detonated inside the well casing or liner pipe without written permission from the Director. The request shall include the type of explosive to be used, how it will be placed, and where it is to be placed. In no case shall an explosive charge be dropped down a well or used to sever installed well casing or liner pipe

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0066; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0065

##### Hydrofracturing

(1) If the water supply well is hydrofractured, the constructor shall so note on the well report. Information reported shall include methods and materials used, maximum pressure exerted on the formation, location of packers, initial and final static water level figures, as well as initial and final yield figures.

(2) In no case shall hydrofracturing allow commingling of waters within the well bore.

(3) The well shall not be hydrofractured within 20 feet of the bottom of the existing well casing.

(4) Clean sand or other materials (propping agents) approved by the Department may be injected into the well to hold the fractures open when the pressure is removed.

(5) All tools and propping agents shall be disinfected prior to placement into the well.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0070

##### Injection Wells

No water supply well subject to these rules shall be used for the injection of surface or ground waters, or chemically or thermally altered waters, unless the injection installation, well

design, and receiving formations are approved by the Water Resources Department. For additional regulations on the use of wells for injection purposes, contact the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-060-0030; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0100

##### Mineralized or Contaminated Groundwater

All formations which yield contaminated or mineralized water shall be adequately cased and sealed off to prevent contamination of the overlying or underlying water-bearing zones.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0056; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0130

##### Sealing of Wells in Unconsolidated Formations Without Significant Clay Beds

Water supply wells drilled into unconsolidated water-bearing strata overlain by unconsolidated materials, such as sand, silt, or gravel, without significant clay beds, shall have a watertight, unperforated well casing extending to a minimum of eighteen feet below land surface. An upper oversize drillhole, four inches greater in diameter than the nominal diameter of the casing, shall be constructed to a minimum depth of 18 feet. To prevent caving, a temporary surface casing, at least 18 feet in length, shall be used throughout the construction of the annular seal space. The annular space between the permanent well casing and the upper, oversize drillhole shall be completely full of grout in accordance with OAR 690-210-0310 thru 690-210-0360 after the permanent well casing is set into final position. The temporary surface casing shall be removed from the well as the annular space is filled. (See Figure 210-2)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0126; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0140

##### Sealing of Water Supply Wells in Unconsolidated Formations with Significant Clay Beds

Water supply wells drilled into water-bearing strata overlain by unconsolidated deposits of clay, or sand and gravel in which significant interbeds of clay are present, shall have a watertight, non-perforated, permanent well casing extending at least five feet into a clay or other impermeable stratum overlying the water-bearing zone. In all cases, an upper oversize drillhole, at least four inches greater in diameter than the nominal diameter of the permanent well casing shall be constructed to this same depth. In the event that the subsurface materials penetrated by the upper drillhole cave, or tend to cave, an outer, temporary surface casing shall be used to case out caving materials throughout the construction of the oversize drillhole. If the clay or other impermeable stratum is 13 feet or less below land surface, the watertight, nonperforated well casing and the upper, oversize drillhole shall extend to a minimum depth of 18 feet below land surface. If necessary to complete the well, the single, permanent well casing may be extended below the required sealing depth prior to sealing the well with grout. If preferred, a smaller diameter casing, liner, or well screen may be installed. The annular space between the permanent well casing and the upper, oversize drillhole shall be completely full of grout in accordance with OAR 690-210-0310 through 690-210-0360 after the permanent well casing is set into final position. The temporary surface casing shall be removed from the well as the annular space is filled. (See Figure 210-3).

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-061-0131; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0150

##### Sealing of Water Supply Wells in Consolidated Formations

(1) Water supply wells drilled into a water-bearing rock formation overlain by clay, silt, sand, gravel, or similar materials, shall be constructed in accordance with one of the following methods:

(a) Method 1 (Continuous Seal): An upper drillhole, four inches greater in diameter than the nominal diameter of the permanent well casing to be installed, shall extend from land surface to at least five feet into solid, uncreviced, consolidated rock overlying the water-bearing rock formation below a depth of 13 feet. Unperforated permanent well casing shall extend to this same depth. The annular space between the casing and the drillhole wall within the rock formation shall be filled with grout. The upper annular space between the casing and the drillhole wall shall be filled from land surface to at least five feet into an impermeable clay stratum below a depth of 13 feet. The annular space between the upper and lower sealing intervals shall be filled with an impermeable sealing material. If necessary to complete the well, a smaller diameter well casing, liner pipe, or well screen may be installed. If cement grout is placed by a suitable method from the bottom of the casing to land surface (Methods A, B, D, Appendix 210-3), the upper drillhole shall be at least two inches larger than the nominal diameter of the casing. (See Figure 210-4);

(b) Method 2 (Step-Down Casing): An upper drillhole, four inches greater in diameter than the permanent well casing to be installed, shall extend from land surface to at least five feet into an impermeable clay stratum below a depth of 13 feet. Unperforated, permanent well casing shall extend to, and be driven into, solid, uncreviced, consolidated rock overlying the water-bearing rock formation. A lower drillhole, equal in diameter to the inside diameter of the upper permanent well casing, shall be constructed at least five feet into solid uncreviced rock overlying the water-bearing formation. A smaller diameter casing, at least two inches smaller in diameter than the diameter of the upper permanent well casing, shall extend at least five feet into the lower drillhole and at least eight feet into the upper permanent well casing. The annular space between the upper oversize drillhole and the permanent well casing, and the annular space between the smaller diameter lower casing and the lower drillhole, shall be completely filled with grout in accordance with OAR 690-210-0310 through 690-210-0360 after the permanent well casing and the lower casing are set into final position. (See Figure 210-5);

(c) Method 3 (Under-Reaming): An upper drillhole, four inches greater in diameter than the permanent well casing to be installed, shall extend from land surface to at least five feet into an impermeable clay stratum below a depth of 13 feet. A lower drillhole, at least two inches greater in diameter than the diameter of the permanent well casing, shall be constructed at least five feet into solid, uncreviced, consolidated rock by under-reaming methods. Unperforated, permanent well casing shall extend to and be driven into solid, uncreviced, consolidated rock at the bottom of the under-reamed section following placement of the sealing material. The annular space between the upper oversize drillhole and the upper permanent well casing shall be filled with cement grout using Method C or bentonite. The annular space between the lower under-reamed drillhole wall and the permanent well casing shall be completely filled with grout applied under pressure in accordance with the appropriate Method A, B, or D, in Appendix 210-3. (See Figure 210-6).

(2) In all cases, (Methods 1, 2, or 3, above), if materials penetrated by the upper oversize drillhole cave, or tend to cave, an outer temporary surface casing shall be used to case out all caving material throughout construction of the oversize drillhole. The temporary surface casing shall be withdrawn as the annular space is filled with grout.

[ED. NOTE: Figures and Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0136; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0155

##### Additional Standards for Artesian Water Supply Wells

(1) Water supply wells penetrating into an artesian aquifer shall have an upper oversize drillhole four inches greater in diameter than the nominal diameter of the permanent well casing. Watertight unperforated casing shall extend and be sealed at least five feet into the confining formation immediately overlying the artesian water-bearing zone. In all cases, a minimum of 18 feet of casing and casing seal will be required. If cement grout is placed by a suitable method from the bottom of the casing (Methods A, B, and D, in Appendix 210-3 and Figure 210-1), the diameter of the upper drillhole shall be at least two inches larger than the nominal diameter of the casing.

(2) To complete the well, smaller diameter casing, perforated liner, or a well screen may be installed. When artesian pressures are encountered in the absence of a confining formation, casing and casing seal requirements shall be determined by the Director upon written application. In the alternative, the person constructing the well may construct the well in conformance with the minimum standards for artesian wells with a confining formation, set forth in section (1) of this rule.

(3) If an artesian water supply well flows at land surface, the well shall be equipped with a control valve and a watertight mechanical cap, threaded or welded, so that all flow of water from the well can be completely stopped.

(4) All flowing artesian wells shall be equipped with a pressure gauge placed on a dead-end line. A petcock valve shall be placed between the gauge and well casing. (See Figure 210-7).

(5) All flowing artesian water supply wells shall be tested for artesian shut-in pressure in pounds per square inch and rate of flow in cubic feet per second, or gallons per minute, under free discharge conditions. This data shall be reported on the well report.

[ED. NOTE: Figures & Appendices referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0156, 690-061-0161, 690-061-0166, 690-061-0171 & 690-061-0176; Renumbered from 690-210-0120 by WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0160

##### Additional Standards for Filter Pack Wells with Surface Casing

If a permanent surface casing is installed in the construction of a filter pack well, a watertight, welded, steel plate at least 3/16 of an inch in thickness shall be installed between the inner production casing and the outer surface casing at the well head. A watertight fill port with threaded cap may be installed for the purpose of placing additional filter pack material in the well. (See Figure 210-8.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0141; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0170

##### Additional Standards for Filter Pack Wells without Surface Casing

If a permanent surface casing is not installed in the construction of a filter pack well, and filler tubes are to be used, an oversize well bore having a nominal diameter of at least eight inches greater than the nominal diameter of the permanent well casing shall be constructed. If filler tubes are not to be used, an oversize well bore having a nominal diameter of at least four inches greater than the nominal diameter of the permanent well casing shall be constructed. A suitable plug shall be installed in the annular space between the filter pack material and the grout seal. A watertight fill pipe with

threaded cap may be installed for the purpose of placing additional filter pack material in the well. The outside diameter of the fill pipe shall not exceed one-half the thickness of the grout seal surrounding the permanent well casing and shall be centered in the annular space. (See Figure 210-9.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0146; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0180

##### Additional Standards for Driven or Jetted Wells

All drive point wells or jetted wells shall have nonperforated, watertight casing meeting the minimum specifications shown in Table 210-1 and extending a minimum distance of 18 feet below land surface. Drive casing greater than 3-1/2 inches shall comply with the minimum specifications in OAR 690-210-0190. An upper drillhole at least four inches greater in nominal diameter than the permanent casing shall extend at least 18 feet below land surface. The annular space shall be filled with grout. If temporary casing is used during construction, it must be removed during placement of the grout. (See Figure 210-10.)

[ED. NOTE: Tables and Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0186 & 690-061-0191; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0190

##### Steel Casing

(1) All steel casing installed shall be in new or like new condition, being free of pits or breaks, and shall meet or exceed the minimum American Society for Testing Materials (ASTM A-53A or B) specifications for steel pipe, for the sizes as set out in Table 210-2.

(2) All steel casing having a diameter larger than 20 inches shall have a wall thickness of at least 0.375 inch.

(3) Steel casing installed in a well greater than a nominal diameter of ten inches, having a wall thickness of 0.250 inch and meeting or exceeding ASTM A-53 A or B specifications must not exceed the following depth limitations (Diameter — Maximum Depth, respectively):

- (a) 12 inches — 500 feet;
- (b) 14 — 16 inches — 250 feet;
- (c) 18 — 20 inches — 100 feet.

(4) Steel casings of other ASTM specifications shall not be used without written permission of the Director. A written request to use casing of other specifications shall be submitted to the Director. This request shall include a description of the casing specifications and the reason for its use.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0006; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0200

##### Steel Casing Joints

All steel casing joints shall be welded or thread coupled and shall be water tight. If welded casing joints are used, the weld shall be a full penetrating weld at least equal in thickness to the wall thickness of the casing. Welded casing joints shall have a tensile strength equal to or greater than that of the casing.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0016; WRD 7-2001, f. & cert. ef. 11-15-01

**690-210-0210**

**Plastic Casing**

(1) Plastic casing shall not be driven and may only be installed in an oversized drillhole.

(2) Plastic casing may only be installed after drilling has been completed. No drilling is allowed inside plastic casing.

(3) Such casing shall be of polymerized vinyl chloride (PVC), type 1120 or 1220, SDR 21 (Class 200) or SDR 26 (Class 160) or greater wall thickness, meeting the standards of the "National Sanitation Foundation" and the specifications of **ASTM F-480** or **ASTMD-2241-73** and **D-1784-69**. The well casing must be clearly marked by the manufacturer showing: nominal size, type plastic material, Standard Dimension Ratio (SDR), ASTM designation, and National Sanitation Foundation seal of certified approval. The maximum depth to which this plastic casing may safely resist collapsing forces is a function of the "Standard Dimension Ratio" (SDR), i.e., the ratio of the outside diameter to the casing wall thickness. The maximum depths have been computed for readily available SDR and are cited as:

(a) SDR = 21 — Maximum Depth = 150 feet;

(b) SDR = 26 — Maximum Depth = 100 feet.

(4) If PVC casing is to be used, it shall be protected from physical and ultraviolet light damage using one of the following methods:

(a) By use of an upper protective steel casing meeting the requirements of OAR 690-210-0190. The protective steel casing shall be a minimum of 2" larger in diameter than the PVC casing and shall overlap the PVC casing. The protective steel casing shall extend at least six inches above the top of the plastic well casing and shall be sealed at least four feet into the ground within the annular seal and shall be fitted with a lid; or

(b) By use of a wellhead bunker. The bunker shall be made of concrete, hard plastic, fiberglass, wood or other structurally sound material that will protect the casing from both physical damage and ultraviolet light damage. The bunker shall completely surround the well and be fitted with a lid. The bunker shall be constructed so that access to the wellhead is maintained; or

(c) By other appropriate methods as approved in advance by the Water Resources Department.

(5) Pitless adaptors or units are not recommended in conjunction with PVC casing. If a pitless adaptor or unit is to be used, the constructor should take care that the weight of the pump and pump column do not exceed the strength of the casing.

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

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0031; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

**690-210-0220**

**Plastic Casing Joints**

All plastic casing joints shall be watertight. Either "bell" type, threaded, or coupling hubs are approved. Hub couplings shall be of material meeting the specifications for plastic casings as set forth in OAR 690-210-0210. Joints shall be made by solvent cement in accordance with manufacturer's directions. Newly assembled joints require careful handling until the initial set has taken place, which varies with the temperature and the pipe size. The recommended initial set times are from manufacturer's recommendations (See Table 210-4).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0036; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

**690-210-0230**

**Inner Casing**

Inner casing installed into a well must meet the minimum requirements of well casing (OAR 690-210-0190). The space between the two well casings shall be sealed so as to prevent the

movement of water between the two casings. Inner casing installed in a well shall extend or telescope at least eight feet into the lower end of the well casing. The inner casing must be centered and must be a minimum of one inch smaller in diameter than the outer casing if an under reaming method system is used. If other methods are used, the inner casing must be a minimum of two inches smaller in diameter than the outer casing. The grout must be placed in a positive manner in accordance with method A, B, D, or E (see Appendix 210-3).

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-02310; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 5-2015, f. & cert. ef. 7-1-15

**690-210-0240**

**Casing Shall be Centered**

In all instances, casings shall be centered in sealed intervals. Casing centralizers may be used to ensure centering. When sealing a well by Method E, casing centralizers shall be used. (See Figure 210-11, 1986)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01

**690-210-0250**

**Top Terminal Height**

(1) The casing head or pitless unit of any well shall extend a minimum of 12 inches above the finished ground surface or pump-house floor, and a minimum of 12 inches above the local surface runoff level. The ground surface immediately surrounding the top of the well casing or pitless unit should be graded so as to drain surface water away from the well. Without permission of the Director, no casing shall be cut off below land surface except to install a pitless unit or during permanent abandonment of a well.

(2) Application to the Director to reduce the top terminal height of casing shall include:

(a) A description of physical characteristics of the well site which make the requested change necessary; and

(b) A description of additional steps to be taken over and above the minimum standards in these rules which will assure adequate protection of the ground water resource.

(3) The Director may approve a reduction of the top terminal height of the casing only upon a determination that the additional precautions to be taken and specific physical characteristics of the site would prevent contamination of the ground water resource.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0041; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

**690-210-0260**

**Openings in the Casing**

There shall be no opening in the casing wall between the top of the casing and the bottom of the required casing seal except for pitless adapters, measurement access ports, and grout nipples installed in conformance with these standards. In no case shall holes be cut in the casing wall for the purpose of lifting or lowering casing into the well bore unless such holes are properly welded closed and watertight prior to placement into the well bore.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0046

**690-210-0270**

**Pitless Well Adapters and Units**

Surface seal requirements for well casing set forth herein shall also apply when a pitless adapter or unit is installed in a well. The seal shall cover that interval occupied by the pitless case from the point of casing connection to land surface. A cement grout seal

shall not be allowed within the pitless unit or pitless adaptor sealing interval. The pitless adaptor or unit sealing interval shall be sealed with unhydrated bentonite as described in OAR 690-210-0330 and 690-210-0340. The pitless adaptor or unit, including the cap or cover, pitless case and other attachments, shall be designed and constructed to be watertight to prevent the entrance of contaminants into the well from surface or near-surface sources. Pitless units shall be vented to the atmosphere. Refer to OAR 690-210-0210 if the pitless adaptor or unit is to be used in conjunction with PVC casing.

**NOTE:** Prior to installing pitless well adapters or units on public, community, municipal, or public utility water supply wells, contact the Department of Human Resources. (See references to Health Division regulation in Appendix 210-1).

[ED. NOTE: The Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-051; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

### 690-210-0280

#### Access Ports and Airlines

All water supply wells shall be equipped with a usable access port with a minimum diameter of 1/2 inch for the purpose of determining the water level in the well at any time. Dedicated measuring tubes are recommended to be installed on all wells at the time of pump installation. Where required, dedicated measuring tubes shall be a minimum of 3/4-inch schedule 40 PVC extending to the top of the pump (See Dedicated Measuring Tube Diagram and Specifications in Figure 200-5). An airline is not a substitute for a required dedicated measuring tube and, if installed, must enter the well in a location other than the access port. Access ports, dedicated measuring tubes or airlines shall be capped and be a minimum of twelve inches above finished ground surface or pumphouse floor (See **Figure 210-12**) (See **Figure 200-5**). The access port, airline and dedicated measuring tube on all water supply wells required by OAR 690-210-0280 shall be maintained in a condition that will prevent contamination of the ground water, and shall remain unobstructed and be maintained by the landowner so that the water level can be determined at any time.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

### 690-210-0290

#### Liner Pipe

Liner pipe installed through caving formations and installed without driving, may be of lighter weight than specified by **Table 210-2** under OAR 690-210-0190. Such lightweight pipe shall have a wall thickness equal to or greater than 0.188 inch. All liner pipe shall be of steel, in new or like new condition, being free of pits or breaks; or shall be of polymerized vinyl chloride (PVC) type 1220 or 1120 and SDR 26 (Class 160) or greater wall thickness. Liner pipe installed in a well shall extend or telescope at least eight feet into the lower end of the well casing. In the event that more than one string of liner pipe is installed, each string shall extend or telescope at least eight feet into the adjacent larger diameter liner pipe. Liner pipe shall be removable. Liner pipe may be welded or hooked onto the permanent well casing but shall not be permanently fixed to a well casing or borehole wall using packers or grout which would prohibit the liner's removal. (See Inner Casing, OAR 690-210-0230.)

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0011; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

### 690-210-0300

#### Drill Cuttings or Chips

In no case shall drill cuttings or drill chips be used or allowed to fill, partially fill, or fall into the required sealing interval of a well during the construction or the completion of a well.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-61-110

### 690-210-0310

#### Cement Grout

When using cement grout as the sealing material in a well, it must meet the following requirements:

(1) Cement grout used to seal a well shall be composed of a uniformly mixed slurry of Portland cement or High Early Strength Type III Portland cement and potable water, or High-alumina cement and potable water, mixed in the following proportions (Type of Cement — Gallons of Water Per Sack of Dry Cement, respectively):

(a) Portland Cement — 4-1/2 to 6;

(b) High Early Strength Type III Portland Cement — 5-1/2 to 6-1/2;

(c) High-alumina Cement — 4-1/2 to 6.

(2) Additives to increase fluidity, reduce shrinkage, or control time of set may be used in a cement grout mixture. Expanding agents such as aluminum powder may be used at a rate not exceeding 0.075 ounce (one level teaspoonful) per sack of dry cement. The powder shall not contain polishing agents. The addition of bentonite clay to a cement grout mixture is permissible but shall not in any case exceed five percent (5%) by weight of dry cement. Calcium chloride may be added to a Portland cement grout to accelerate the set but shall not exceed two pounds per sack of dry cement. High-alumina cement and Portland cement of any type shall not be mixed together for use in a well.

(3) Cement types other than those set forth herein shall not be used as a sealing material in a well except upon written approval of the Director of the Water Resources Department.

(4) In no case shall sand or aggregate be added to cement grout seal mixtures.

(5) The volume of sealing material required shall be calculated prior to seal installation. The calculated volume and actual volume used shall be reported on the water supply well report.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0086; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

### 690-210-0315

#### Concrete

Concrete for use in the construction of a dug well, or for filling the annular space or well bore of a well, shall consist of clean, hard, and durable aggregate, and not less than five sacks of Portland cement per cubic yard of concrete. Concrete will be allowed only when the oversize drill hole is a minimum of eight inches larger in diameter than the well casing used in construction of the well. The maximum diameter of aggregate particles shall not exceed 1-1/2 inches, but, in any case, shall not exceed 1/5 or 20 percent of the minimum width of the space to be filled. The ratio of coarse aggregate to fine aggregate (Passing No. 4, U.S. Standard Sieve) shall be approximately 1-1/2 to 1 by volume, but, in any case, shall not exceed 2 to 1 nor be less than 1 to 2.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0211; WRD 7-1988, f. & cert. ef. 6-29-88, Renumbered from 690-0210-0430

### 690-210-0320

#### Methods of Placement of Cement Grout or Concrete

Cement grout or concrete used as a sealing material in a well shall be placed or forced upward from the bottom to completely fill the annular space to be grouted and shall be placed in one

continuous operation without significant interruption. If temporary outer surface casing is used in the construction of the well, it shall be withdrawn as the grout or concrete is placed. (For acceptable methods of placement, see Appendix 210-3 and Figure 210-1, 1986).

[ED. NOTE: Figures and Appendices referenced are available from the agency.]  
Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0021 & 690-061-0096; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-210-0330

##### Unhydrated Bentonite

Unhydrated bentonite used in construction of casing seals for water supply wells shall be specifically designed for sealing wells and be within industry tolerances for dry western sodium bentonite. Bentonite shall be free of polymers that promote bacterial growth. Placement of the bentonite shall conform to the manufacturers specifications and result in a seal that is free of voids or bridges. Powdered bentonite and bentonite grout or slurry shall not be used as an annular seal material.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795  
Stats. Implemented:  
Hist.: WRD 12-1985, f. 12-6-85, ef. 12-7-85; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0087; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0340

##### Method of Placement of Unhydrated Bentonite

(1) An upper oversize drillhole, four inches greater than the nominal inside diameter of the permanent well casing, shall be constructed to a minimum depth of 18 feet below land surface. The use of unhydrated bentonite as a casing seal shall not be allowed deeper than 200 feet below land surface. In the event that the materials penetrated by the oversize drillhole cave, or tend to cave, an outer temporary surface casing shall be used to case out the caving materials during construction of the oversize drillhole. The outer temporary surface casing shall be removed during seal installation and before completion of the well.

(2) In the event groundwater is encountered during the construction of the oversize drillhole, only unhydrated bentonite chips manufactured to be 3/8 inch to 3/4 inch, pellets or tablets shall be allowed in the water-filled portion of the annulus. A maximum of 50 feet of water may be present in the sealing interval. Unhydrated bentonite shall be screened across a minimum 1/4 inch mesh screen prior to being placed in the water-filled portion of the annulus to minimize the introduction of bentonite dust into the seal interval. Unhydrated bentonite shall not be used:

- (a) In the water-filled portion of a temporary casing; or
- (b) If there is any uphole flow in the annular seal interval.

(3) Unhydrated bentonite may only be used as an annular seal material below the water level in a well when the groundwater it comes in contact with does not exceed 800 parts per million (ppm) total dissolved solids (TDS).

(a) Unhydrated bentonite may be used as an annular seal material in water supply wells exceeding 800 ppm TDS if the bentonite manufacturer provides documentation that their product can be used in water that exceeds 800 ppm TDS.

(A) Prior Department approval is required before placement.

(B) The bentonite manufacturer's documentation and Department approval shall be submitted with the Water Supply Well Report as required in OAR 690-205-0210.

(b) In all cases, the TDS shall be reported on the Water Supply Well Report as required in OAR 690-205-0210.

(c) Regardless of the reported TDS, the quality of the water in the well shall not interfere with the proper hydration of bentonite.

(4) After placement of the permanent casing, the annular space shall be filled to land surface with bentonite. The annular space shall be kept full of bentonite to land surface while drilling or driving casing. A calibrated sounding tape with weight shall be used continuously in the sealing interval during bentonite placement to measure fill rate and to check for and break up possible bridges.

(5) Placement of bentonite shall conform to the manufacturer's specifications and result in a seal that is free of voids or bridges. Care shall be taken to minimize the introduction of bentonite dust into the sealing interval.

(6) The volume of sealing material required shall be calculated prior to seal installation. The calculated volume and actual volume used shall be reported on the water supply well report.

(7) Unhydrated bentonite chip, pellet or tablet annular seals shall be hydrated from land surface with potable water prior to removing the drilling machine from the well site. The hydration shall begin once all of the bentonite annular seal material has been placed and shall end when the annular seal interval refuses to take more water or after at least one annular space volume of water has been placed.

(8) Granular bentonite may only be used as an annular seal material in a dry annular space above the interval where water was first encountered. Granular bentonite shall not be screened or hydrated during placement.

(9) Pour rate shall be two minutes or slower per 50 pound sack in the water-filled portion of the annulus.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 12-1985, f. 12-6-85, ef. 12-7-85; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0097; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

#### 690-210-0350

##### Resumption of Construction Following Placement of Cement Grout

The time needed for the final set of a cement grout mixture varies greatly in accordance with cement-water ratio and temperature. When cement grout is used to seal a well, construction should not resume until after the final set of the cement grout mixture. Performance of all cement grout seals shall be the responsibility of the person responsible for the construction of the well. Under no circumstances shall construction resume within six hours of the placement of the cement grout seal. Recommended periods of time for the final set are:

(1) If Portland Cement is used — 72 hours;

(2) If High Early Strength Type III Portland Cement is used — 48 hours;

(3) If High-alumina Cement is used — 6 hours.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0101; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-210-0360

##### Movement of Casing after Cement Grouting

In no case shall the permanent well casing be moved or driven following the placement and initial set of the cement grout.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0106

### 690-210-0370

#### Well Test

Upon completion, every well shall be tested for yield and drawdown either by bailing, pumping, or air testing for a period of not less than one hour. Any testing method that does not provide for drawdown measurements during testing is not an accurate or reliable test of yield.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0081; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

### 690-210-0380

#### Disinfection of a Well

Prior to or after being placed in the well, pumping equipment, sand, gravel and well casing shall be thoroughly hosed or sluiced with water, and shall be disinfected with a solution containing at least 50 parts per million chlorine. All water introduced into a well during construction shall be clean and potable. Upon completion, the well and its equipment, including the interior of the well casing, shall be thoroughly swabbed and cleaned to remove all of the oil, grease, and foreign substances. The well and its equipment shall be disinfected by thoroughly agitating and mixing in the well a solution containing enough chlorine to leave a residual of 25 parts per million throughout the well after a period of 24 hours. Disinfection should also occur following the installation of pumping equipment. (See Chart Recommendations for Disinfection of Wells, Appendix 210-2).

**NOTE:** Other public agencies may have jurisdiction over the discharge of chlorine in certain areas. The constructor should contact the Oregon Department of Environmental Quality or the appropriate city public works department for further information.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0116; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

### 690-210-0390

#### Completion of Wells

A well constructor or permitted landowner constructing their own well shall not remove the drilling machine from a well site, unless it is immediately replaced by another drilling machine in operating condition prior to completion or abandonment of the water supply well in compliance with OAR 690-210-0005 through 690-220-0140.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0121; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

### 690-210-0400

#### Construction of Dug Wells

Dug wells that are 21 feet or less in depth shall be sealed with grout from land surface to within three feet of the bottom of the well. Dug wells greater than 21 feet in depth shall be sealed with grout from land surface to a depth of at least 18 feet below land surface. In all cases a watertight surface curbing shall extend from a minimum of 12 inches above land surface and continue the entire length of the sealed interval. Open wells, sometimes called sumps, which exceed ten feet in average diameter and are dug to a depth of ten feet or less are exempt from these construction requirements, but are subject to all the requirements covering the use of ground water (water right application).

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0196; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

### 690-210-0410

#### Buried Slab Construction

In a buried slab type well, the slab shall be at least 18 feet below land surface and shall be at least three inches in thickness. The slab shall be reinforced to withstand all stresses. The slab shall be sealed with cement grout at least one foot thick, and the well bore backfilled with grout in accordance with OAR 690-210-0300 through 690-210-0360. (See Figure 210-13).

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0201; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

### 690-210-0420

#### Surface Curbing

(1) The surface curbing required in OAR 690-210-0400 shall be of concrete, concrete tile, or steel. If concrete is used, the concrete wall thickness shall not be less than six inches. In the case of buried slab type wells, well casing meeting the minimum specifications given in 690-210-0190 through 690-210-0220 shall be used. (See Figure 210-13.)

(2) If precast concrete tile or steel casing is used for the surface curbing, the well diameter to the bottom of the surface curbing shall be eight inches greater than the outside diameter of the tile or steel, and the annular space shall be completely filled with grout in accordance with OAR 690-210-0310 through 690-210-0340. (See Figure 210-13.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0201; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 5-2015, f. & cert. ef. 7-1-15

## DIVISION 215

### MAINTENANCE, REPAIR AND DEEPENING OF WATER SUPPLY WELLS

### 690-215-0005

#### Prevention of Groundwater Contamination, Health Hazard, and Waste

(1) The landowner of the property on which the water supply well is constructed is ultimately responsible for the maintenance and use of the water supply well. All water supply wells should be disinfected following the installation of pumping equipment. Refer to OAR 690-210-0380, **Appendix 2** for recommendations on well disinfection.

(2) The landowner shall maintain all water supply wells in a condition where they are not a health threat, a health hazard, a source of contamination or a source of waste of the ground water resource by allowing loss of artesian pressure or commingling of aquifers. A pitless adapter may be attached to the casing to transmit water from the well into the delivery pipeline. The pitless adapter shall be installed in such a manner as to prevent the contamination of the ground water resource. The landowner is responsible to assure that the space between the side of the well borehole and the well casing is sealed as required by OAR 690-215-0025.

(3) If, in the opinion of the Director, a water supply well is a health threat, a health hazard, a source of contamination, or a source of waste of the ground water resource, the Director may order discontinuance of, or impose conditions upon, the use of the water supply well. In addition, the Director may order that the well be repaired or permanently abandoned in accordance with OAR chapter 690, divisions 215 and 220 of the Standards for Construction and Maintenance of Water Supply Wells in the State of Oregon.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 3-1983, f. & ef. 4-28-83; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-062-0005; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 21-1990, f. &

cert. ef. 12-14-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-215-0006

##### Well Alterations

(1) Well alterations as defined in OAR 690-200-0050(7) shall be performed by a licensed Water Supply Well Constructor, or a landowner with a Landowner's Well Construction Permit and bond.

(2) Water Supply Well Constructors or a permitted and bonded landowner shall record the following data, if available, on the Water Supply Well Report as required under OAR 690-205-0210 before completing alteration work on a well:

- (a) Pre-alteration static water level and date taken.
- (b) Pre-alteration casing diameter.
- (c) Pre-alteration casing gauge.
- (d) Pre-alteration well depth.
- (e) Pre-alteration seal material.

(3) Well alteration work shall be completed in accordance with OAR 690-215. The Water Supply Well Constructor shall only be responsible for the alteration work they performed under OAR 690-215.

Stat. Auth.: ORS 536.090, 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-215-0010

##### Maintenance of an Existing Well Following Construction of Replacement Well

Any time a new water supply well is constructed to replace an existing well which is a source of contamination, or is wasting the ground water resource by allowing loss of artesian pressure or commingling of aquifers, the existing well shall be repaired in compliance with these rules or abandoned in accordance with OAR 690-220-0030 through 690-220-0140.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-215-0015

##### Accessibility to Well for Reconditioning, Repair or Abandonment

To enable drilling equipment future access to the water supply well for reconditioning, repair, or abandonment, the property owner should maintain a minimum five-foot separation distance between the well and any permanent structure.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-215-0016

##### Maintaining Well Setback Requirements

Within the boundaries of their own property, property owners are responsible for maintaining the applicable minimum setback distances for any well on their property. Refer to OAR 690-210-0030 for current minimum setback distances.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-215-0017

##### Down Well Continuous Water Treatment and Back-Siphon Prevention Devices

(1) If a chemical is used to treat well water, it shall not be allowed to come into contact with the inside of the well casing. Down well treatment of well water will only be allowed if a commercial water treatment system is used. Delivery pipes or tubes designed for use with the treatment chemicals shall be used to place the chemicals into the water in the well. This rule does not apply when disinfecting the well and the pumping equipment.

(2) In no event shall agricultural pesticides and fertilizers be allowed to enter a well.

(3) Back-siphon prevention equipment shall be installed on any irrigation system connected to a ground water source when fertilizers or any other chemicals are applied through the system. The landowner or other responsible parties shall be responsible for assuring that the back-siphon prevention equipment is installed and functions properly. (See **Figure 215-1**.) The landowner or other responsible parties shall inspect the device at least once per year, prior to the first use of the year, to ensure that the device is installed and functions properly.

(a) The irrigation system shall contain:

(A) An automatic low-pressure drain which shall:

(i) Be installed between the irrigation pump and the irrigation line check valve at the lowest point of the horizontal water supply pipeline;

(ii) Be designed to drain all incidental leakage from the check valve out of the irrigation pipeline before that leakage enters the water supply;

(iii) Be at least 3/4 inch in diameter with a closing pressure of not less than 5 psi;

(iv) Use a corrosion-resistant tube, pipe, or similar conduit to discharge the solution at least 20 feet away and down-slope from the irrigation water source and any other water sources. At the discharge point there shall be an air gap between the discharge pipe and the discharged solution;

(v) Not have any valves located on the outlet side of the drain tube; and

(vi) Have a dam or collection reservoir to prevent the discharged solution from pooling and draining back toward the water source.

(B) An inspection port which shall:

(i) Be located on top of the pipeline between the irrigation pump and the irrigation pipeline check valve, directly overhead of the low-pressure drain;

(ii) Have a minimum diameter opening of four inches from which the check valves and low-pressure drain shall be visible.

(C) An irrigation line check valve which shall:

(i) Consist of at least a single check valve;

(ii) Be located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline, and downstream from a vacuum relief valve and automatic low-pressure drain;

(iii) Be of heavy-duty construction with all materials resistant to corrosion or protected to resist corrosion;

(iv) Be spring-loaded and provide a watertight seal against reverse flow;

(v) Be labeled with the following information: manufacturer's name and model, working pressure in pounds per square inch (psi), maximum flow rate, and direction of flow;

(vi) Not consist of metal-to-metal seal surfaces; and

(vii) Be designed and rated for pressures expected to be encountered, including those caused by pumping, water hammers, back-pressure, or other sources. Installation shall be according to design and manufacturer's specifications and recommendations.

(D) An air/vacuum relief valve which shall:

(i) Be located on top of the horizontal irrigation pipeline between the irrigation pump and the irrigation line check valve; and

(ii) Have a total (individually or combined) orifice size of at least 3/4-inch diameter for a 4-inch pipe, a 1-inch diameter for a 5- to 8-inch pipe, a 2-inch diameter for 9- to 18-inch pipe, and a 3-inch diameter for a 19-inch and greater pipe.

(E) A chemical injection line check valve which shall:

(i) Be located between the chemical injection pump and the point of chemical injection into the irrigation line;

(ii) Be made of chemical-resistant material;

(iii) Prevent irrigation water under operating pressure from entering the chemical injection line; and

(iv) Prevent leakage from the chemical supply tank on system shutdown.

(F) A system interlock which shall: mechanically or electrically connect the water supply pump and the chemical injection unit for

the purpose of automatically shutting down the chemical injection unit in the event of water supply pump shutdown or failure.

(b) If modifications or changes in design, technology, irrigation practices, or other reasons warrant the use or placement of equipment in lieu of that specified herein, the Director may allow for such changes. Requests for modifications shall be in writing, detailing the existing system and uses, and shall include specifications on the proposed changes. The modification shall provide protection to the ground water resource that is equal to or greater than that provided by the equipment required in this regulation;

(c) These regulations are in addition to equipment requirements for pesticide application under the Federal Insecticide, Fungicide and Rodenticide Act, and are not intended to replace those regulations;

(d) Irrigation systems that are subject to OAR 690-215-0017(3) and are connected to a public water system, shall meet the cross-connection control requirements in OAR 333;

(e) Whenever the Director deems it appropriate, the Department may investigate alleged violation of statutes, standards or rules governing back-siphon prevention devices to determine whether a violation has occurred. Violations of OAR 690-215-0017 may be administered under ORS 536.900(1)(c), 537.990(3), or OAR 690, division 260, as appropriate to gain compliance.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 1-1991, f. & cert. ef. 2-8-91; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

#### **690-215-0020**

##### **Valves and Casing on Artesian Wells**

Valves and casing on all artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the water is not being put to beneficial use. All casing, liner pipe, and casing seals shall be maintained in a condition that will prevent surface or subsurface leakage of ground water. Valves shall be closed when water is not being put to beneficial use. During periods of subfreezing temperatures, a valve may be partially opened to prevent damage due to freezing.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-062-0010 by WRD

#### **690-215-0025**

##### **Sealing Pitless Adapter and Pitless Units**

The sealing area around pitless adapter or pitless unit installations shall be replaced with unhydrated bentonite as required by OAR 690-210-0330 and shall be at least one and one-half inches thick around the casing and pitless device.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### **690-215-0030**

##### **Casing and Casing Extensions**

(1) All well casing used to extend a well head above land surface or used in the alteration, repair or deepening of water supply wells shall meet the minimum standards in OAR 690-210.

(2) The annular space surrounding the well casing used to extend the well head shall be sealed as required by OAR 690-210 and shall be at least four inches greater than the nominal inside diameter of the permanent well casing.

**NOTE:** Prior to extending the casing on public, community, municipal, or public utility water supply wells, contact the Department of Human Services. Additional requirements may apply.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0221; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### **690-215-0035**

##### **Liner Pipe**

All liner pipe used in the alteration, repair or deepening of

water supply wells shall meet the minimum standards in OAR 690-

210-0290.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

**690-215-0040**

**Casing and Sealing Wells after Disturbance**

(1) If during the installation of casing, liner pipe, seals, packers, or during repair or deepening of a water supply well, the pre-existing casing is withdrawn, or moved as to compromise the annular seal, the well shall be cased and sealed in accordance with the rules set forth in OAR 690-210.

(2) If the annular seal is not compromised when cleaning out a water supply well or installing liner pipe, the water supply well shall not require re-casing or re-sealing.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0226; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

**690-215-0045**

**Deepening of Wells**

(1) Only the following wells may be deepened without an approved special standard:

(a) Wells with well reports that describe the original construction. The original well report must be:

(A) Referenced on the deepening well report; or

(B) Attached to the deepening well report.

(b) Wells that are recased and resealed to meet the current minimum well construction standards.

(2) The static water level shall be measured prior to and after deepening any well. Both readings shall be recorded on the well log.

(3) If the deepening of an existing well results in access to a new aquifer then prior to completion of deepening work all previous aquifers, including previous aquifers that have gone dry or are low-producing, shall be cased and sealed off using the methods described in OAR 690-210.

(4) The deepening of a water supply well shall not result in the commingling of aquifers.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

**690-215-0050**

**Well Cover**

All water supply wells shall be securely covered to prevent any foreign substance from entering the well, including any material which might contaminate the ground water. The well cover shall meet the requirements of OAR 690-220-0005.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01

**690-215-0055**

**Well Identification Label Maintenance**

The well label shall not be removed from the wellhead and shall be maintained by the landowner in an accessible location and in a readable condition. See OAR 690-200, **Appendix 200-2** for well identification label placement instructions.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-215-0060**

**Access Ports, Dedicated Measuring Tubes or Airlines**

All water supply wells shall be equipped with an unobstructed access port with a minimum diameter of 1/2 inch for the purpose of determining the water level in the well at any time. Dedicated measuring tubes are recommended to be installed on all wells at the time of pump installation. Where required, dedicated measuring tubes shall be a minimum of 3/4-inch diameter schedule 40 PVC and shall extend to the top of the pump. The dedicated measuring tube shall be vented above and below the well cap and shall be attached to the pump column at 10 foot intervals with 10 mil plastic tape. The lower five feet of the dedicated measuring tube shall be

either 0.020 inch machine slotted well screen or the lower 20 feet of the dedicated measuring tube shall be extensively perforated with 1/8 inch holes. The dedicated measuring tube shall be plugged or capped at the bottom (Figure 200-5). The dedicated measuring tube shall not be reduced in size over the length of the pipe and shall remain free from wire or other obstruction. An airline is not a substitute for a required dedicated measuring tube and, if installed, must enter the well in a location other than the access port. Access ports, dedicated measuring tubes or airlines shall be capped and a minimum of twelve inches above finished ground surface or pump-house floor. If the well has a pitless adaptor then the dedicated measuring tube shall terminate within six inches of the top of the well casing. The access port, airline and dedicated measuring tube on all water supply wells required by OAR 690-210-0280 shall be maintained in a condition that will prevent contamination of the ground water, and shall remain unobstructed and be maintained by the landowner so that the water level can be determined at any time.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-062-0015; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

**690-215-0070**

**Pressure Gauge**

The pressure gauge and petcock valve required by OAR 690-210-0155 shall be maintained so that the artesian pressure can be accurately determined at any time. (See **Figure 210-7**.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-062-0020; WRD 7-2001, f. & cert. ef. 11-15-01

**690-215-0080**

**Flowmeters and Dedicated Measuring Tubes**

The Director may require the landowner to install totalizing flowmeters or dedicated measuring tubes on any water supply well, either as a condition of a water right permit or at a later date as circumstances may warrant. The landowner may be required to install totalizing flowmeters or dedicated measuring tubes on existing permitted wells and on wells which are exempted by ORS 537.545.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08

**690-215-0090**

**Conversion to an Artesian Well**

If a water supply well becomes artesian upon deepening, the well shall be cased, sealed and completed in accordance with OAR 690-210-0155.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0236; WRD 7-2001, f. & cert. ef. 11-15-01

**690-215-0100**

**Drilling in a Dug Well**

In no case shall a dug well be deepened by drilling methods.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0241

**690-215-0200**

**Dedicated Measuring Tube**

A dedicated measuring tube as described in 690-215-0060 shall be installed in any water supply well at the time of pump installation, pump repair or pump replacement in the following areas (See Figures 200-4, 200-5, 200-7 and 200-8):

(1) Petes Mountain Area of Clackamas County (See OAR 690-200-0028(2));

(2) Eola Hills Ground Water Limited Area of Polk and Yamhill Counties (See OAR 690-200-0028(3);

(3) “Mosier Area” Special Area Standards area of Wasco County (See OAR 690-200-0028(4)).

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 2-2008, f. 6-18-08, cert. ef. 7-1-08; WRD 5-2015, f. & cert. ef. 7-1-15

## DIVISION 217

### REQUIREMENT FOR PUMP TESTING OF NONEXEMPT WELLS

#### 690-217-0005

##### Purpose and Basis for Authority

(1) ORS 537.772 states “The owner or operator of any well, except wells used for purposes listed in ORS 537.545, shall conduct a pump test at least once every 10 years and report the results of that test to the Water Resources Commission.”

(2) The purpose of these rules is to present standards and procedures for pump tests required by ORS 537.772.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0010

##### Definitions

The following definitions apply to OAR 690, division 217:

(1) “Air Line”: A tube or pipe installed in a well specifically for the purpose of determining the water level by measuring the air pressure required to purge it of water.

(2) “Commission”: Water Resources Commission.

(3) “Electric Water Level Measuring Tape”: A device manufactured specifically for measuring depth to water in wells and consisting of a reel, electric cable with permanent depth markings, and an indicating buzzer, light or meter.

(4) “Electronic Pressure Transducer”: A submersible electronic pressure sensing device designed and constructed specifically for measuring water levels, usually connected to an electronic device to display or record pressure data.

(5) “Flowing Artesian Well”: A well which penetrates an aquifer with sufficient pressure to cause water to flow from the well without pumping.

(6) “Pump Test”: A controlled procedure in which water is withdrawn from a well at a constant rate for a specified period of time and in which the water level in the well is measured at specified intervals before, during and after pumping.

(7) “Pump Test Report”: The form provided by the Water Resources Department for reporting the results of pump tests required by ORS 537.772.

(8) “Static Water Level”: The distance between the water level in a well and ground level when no water is being withdrawn from the well and the effects of previous withdrawals are no longer noticeable.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0015

##### Policy Statement

(1) The owner of a well which is the source of water listed on a water right permit or certificate shall conduct, or cause to be conducted, pump tests and report the results to the Water Resources Commission as outlined in OAR 690-217-0005 to 690-217-0055.

(2) The Water Resources Commission delegates to the Water Resources Director (the Director) all authority pertaining to implementation of these rules.

(3) If there is a reason why a pump test cannot be performed on a well, the owner may request from the Director an exemption from the pump test requirement. Requests shall be in writing and include the reason why a pump test cannot be performed. Exemptions, or conditioned exemptions, shall be granted if the reasons are found to be valid and eliminating the problem would place an unreasonable burden on the well owner. Exemptions shall be granted for public water supply wells if pump testing will cause interruption of service to customers.

(4) If there is a reason why a pump test cannot meet all of the specifications outlined in OAR 690-217-0005 to 690-217-0055, the well owner may request from the Director exceptions to the pump test requirements. Requests shall be in writing and include the reason why a pump test cannot meet the requirements. Exceptions, or conditioned exceptions, shall be granted if the reasons are found to be valid and meeting the full specifications would place an unreasonable burden on the well owner.

(5) The pump test requirement shall be waived, if requested, in situations where the water right is for land temporarily taken out of production under a government program.

(6) Pump tests shall not be required of wells with diameters greater than 36 inches and depths less than 30 feet.

(7) Pump tests shall not be required of collector-type wells or infiltration galleries.

(8) Transferring the point of diversion of a ground water right shall have no effect on the pump testing schedule unless specifically mentioned as a condition of the transfer.

(9) Pump tests are intended to provide aquifer and well information for ground water resource characterization and to help solve well problems.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0020

##### Requirements for Pump Tests

(1) For water right applications received on or after December 20, 1988, a pump test as described in OAR 690-217-0005 to 690-217-0055 is required before a certificate of water right will be issued. The results of the test shall be submitted on the pump test report form.

(2) For water right permits or certificates with priority dates before December 20, 1988, a pump test as described in OAR 690-217-0005 to 690-217-0055 and subsequent pump test requirements every ten years shall be waived unless required by the Director. The Director may require pump tests as provided in ORS 537.772 in specific cases or areas as determined to be necessary. Such areas may include, but are not limited to, critical ground water areas or serious water management problem areas as defined in OAR 690-085-0020.

(3) If a landowner owns multiple wells producing from the same aquifer and has tested one of those wells, he may request exemptions for all other of those wells which are within five miles of the tested well and which produce water from the same aquifer. If a well is more than five miles from the tested well, or produces from a different aquifer, it must be tested separately. Requests for exemptions shall be in writing and include water well reports or other documentation showing the water producing zones for each well.

(4) In cases where a well provides the source of water for more than one water right permit or certificate, it shall be indicated on the pump test report that the pump test applies to multiple water rights. The permit or certificate numbers of all the water rights the pump test applies to shall be listed on the pump test report.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88; WRD 3-2006, f. & cert. ef. 6-20-06

#### 690-217-0025

##### Pump Test Specifications for Wells Other than Flowing Artesian Wells

The pump tests for wells other than flowing artesian wells shall be conducted such that the following minimum specifications are met:

(1) The well shall be idle for a period of at least sixteen hours prior to the pump test.

(2) The static water level in the well shall be measured within the hour prior to the test at least three times no less than 10 minutes apart.

(3) The pumping phase of the test shall be at least four hours.

(4) The pump discharge shall be controlled as much as possible to maintain a constant rate during the test and shall be as close as reasonably possible to the anticipated pumping rate during normal use of the well. Discharge shall be recorded at the beginning of the test and once every hour thereafter.

(5) Water level measurements during the first 10 minutes of pumping shall be timed no more than two minutes apart. Water level measurements from 10 to 30 minutes of pumping shall be timed no more than five minutes apart. After 30 minutes of pumping, drawdown measurements shall be taken no more than 15 minutes apart for the duration of the test.

(6) After pumping stops, water level measurements shall be taken for four hours or until the well reaches 90 percent recovery from the maximum drawdown, whichever occurs first. Recovery water level measurements shall be taken on the same schedule as described in section (5) of this rule for drawdown measurements.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0030

##### Pump Test Specifications for Flowing Artesian Wells with Pumps

(1) Pump tests for flowing artesian wells with pumps shall be conducted such that the following minimum specifications are met.

(2) The well shall be shut in for at least sixteen hours prior to the test and the shut-in pressure recorded within the hour prior to the test at least three times no less than 20 minutes apart.

(3) The pump test shall be conducted in the same manner as outlined for non-flowing wells in OAR 690-217-0025 except that water levels above ground shall be determined by the use of a pressure gauge and reported as pounds per square inch (PSI). If at any time during the test the pressure drops below zero PSI, indicating the water level in the well has dropped below ground level, the water level shall be measured by a method listed in OAR 690-217-0045.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0035

##### Pump Test Specifications for Flowing Artesian Wells without Pumps

If a flowing artesian well is not fitted with a pump and is normally used in an open discharge fashion, the test shall be conducted in the following manner:

(1) The well shall be shut in for 16 hours prior to the test and the shut-in pressure recorded in the hour prior to the test.

(2) The well shall be allowed to flow for a measured period of time of at least four hours, during which time the flow rate is to be measured and kept as constant as possible.

(3) After the flowing period, the well shall be shut in and the pressure build-up recorded on the same schedule as described in OAR 690-217-0025(5) for water level recovery data collection in non-flowing well tests. Pressure build-up shall be recorded for four hours or until the pressure reaches 95 percent of the pretest shut-in pressure.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0040

##### Nearby Wells and Streams

(1) If the well to be tested is within one-quarter mile of a stream, lake or other surface water body, it shall be noted on the pump test report along with the distance between the well and that surface water body. The approximate elevation difference between the land surface at the well and the surface of the water body shall also be noted.

(2) In order for pump test information to be valid, the possible effects from pumping of nearby wells must be evaluated. If there are other wells not exempted under ORS 537.545 which are within 1000 feet of the well to be tested, and which were pumping for all or part of the pump test, the approximate distance to these wells and the approximate pumping rate of each shall be included on the pump test report. If pumping from a nearby well started or stopped during the test or within 24 hours prior to the test, the time the pumping started or stopped shall be included on the pump test report if known or available.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0045

##### Acceptable Techniques for Measurement of Water Level and Discharge

(1) Water level measurements shall be taken by one of the following methods:

(a) An electric water level measuring tape specifically designed for this purpose. Depth markings on the tape shall be no more than five feet apart, and shall be accurate to 0.5 percent. All water level measurements shall be reported to a precision of at least one-tenth of a foot;

(b) A calibrated electronic pressure transducer coupled with an appropriate output device or data logger. The accuracy and precision of the transducer and output device or data logger shall meet those outlined in subsection (1)(a) of this rule for electric water level measuring tapes. If an electronic pressure transducer is used for water level measurement, the manufacturer's name, the serial number and calibration date of the device must be supplied in the pump test report;

(c) An air line and pressure gauge. Air line measurements shall be accepted only where water levels deeper than 300 feet below ground level are encountered or expected. Air line accuracy shall be verified by at least one water level measurement with an electric water level measuring tape;

(d) An acoustic sounding device designed and manufactured specifically for measuring the depth to water in walls;

(e) The wetted steel tape method. This method may be used for static water level measurements only.

(2) Measurements of air line pressure of shut-in pressure of flowing artesian wells shall be with a calibrated pressure gauge with marked intervals of one PSI or less.

(3) Discharge from the pump shall be physically measured by a standard and acceptable method. In no case will visually estimated flow rates be accepted. Acceptable methods include:

(a) A properly installed flow meter which is functional and calibrated within reasonable limits;

(b) A properly installed weir or flume;

(c) A properly installed calibrated orifice plate and manometer;

(d) Known volume/time calculations (including calibrated bucket and stopwatch up to 60 gallons per minute); and

(e) Properly used ultrasonic flow measuring devices.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

#### 690-217-0050

##### Qualifications for Conducting Pump Tests

Only pump tests conducted by the well owner, a full-time employee of the well owner who routinely works with and is familiar with wells and pumps, or a qualified individual authorized by the well owner shall be accepted by the Director. Individuals in the following groups will be considered qualified and authorized provided they have significant experience conducting pump tests:

(1) Oregon licensed water well constructors.

(2) Oregon registered professional geologists or certified engineering geologists.

(3) Certified water rights examiners.

(4) Oregon registered professional engineers.

(5) Individuals whose primary occupation involves, wholly or

**690-217-0055**

**Pump Test Reports**

Results of pump tests shall be reported on the pump test report form supplied by the Water Resources Department. The person conducting the pump test shall be responsible for completing and certifying the pump test report. The well owner shall sign and submit the pump test report.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

**DIVISION 220**

**ABANDONMENT OF WATER SUPPLY WELLS**

**690-220-0005**

**Temporary Abandonment**

Any water supply well to be temporarily removed from service, temporarily abandoned due to a recess in construction, or temporarily abandoned before commencing service, shall be capped with a watertight seal, watertight welded steel cap, or threaded cap. In the event that temporary abandonment is to be of 90 days or less, the temporary steel cap may be welded to the well casing with a minimum of four separate welds, evenly spaced, each at least 3/16 of an inch in length. Steel or cast iron caps shall be at least 3/16 of an inch in thickness. Access ports and airlines, as described in OAR 690-210-0280, shall be maintained during the temporary abandonment. During the temporary abandonment, the well must be maintained to the standards prescribed in OAR 690-215.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0005; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01

**690-220-0030**

**Permanent Abandonment**

(1) Any water supply well that is to be permanently abandoned shall be completely filled in such a manner that vertical movement of water within the well bore, including vertical movement of water within the annular space surrounding the well casing, is effectively and permanently prevented. If a dry or non-producing water supply well is to be permanently abandoned, it shall be abandoned in accordance with these standards. Unless otherwise stated in these rules, all permanent water supply well abandonments shall be performed by a licensed Water Supply Well Constructor.

(2) The abandonment procedure shall be recorded on a form provided by or previously approved in writing by the Department. The form shall include, as a minimum, all the requirements as listed in OAR 690-205-0210, plus:

(a) Method of abandonment;

(b) If assigned, the well identification tag number, original start card number, and owner's well number of the abandoned well.

(3) When a well that has a well identification tag on it is permanently abandoned, the well identification tag shall be destroyed. The well identification tag shall not be reused.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0010; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

**690-220-0035**

**Abandonment of an Existing Water Well After Replacement**

A landowner who replaces an old well by drilling a new well shall permanently abandon the old well if the old well is within a setback as defined in OAR 690-210-0030. Permanent abandonment of a well located within a setback shall occur within one year after the function of the well is replaced or within one year after the water right, if applicable, is transferred to the new well, whichever is later.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

in significant part, pump installation, service or testing.

Stat. Auth.: ORS 537

Stats. Implemented:

Hist.: WRD 25-1988, f. & cert. ef. 12-20-88

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-220-0040

##### Abandonment of Cased Wells

(1) If all or a portion of the water supply well casing or the liner pipe is not removed during the abandonment of a well, the remaining casing or liner shall be thoroughly ripped or perforated. The number and size of perforations may vary, however, the perforations must be sufficient enough to allow grout to migrate outside the casing and effectively prevent the vertical movement of water. The annular space between the casing or liner and the drillhole wall shall be effectively and completely filled with cement grout applied under pressure.

(2) Perforations are not required in the sealed interval provided proof of the original seal can be verified with the original well report. The verified seal interval shall be filled with cement grout, concrete or unhydrated bentonite.

(3) Uncased portions of a cased well to be abandoned shall be filled in accordance with OAR 690-220-0030 through 690-220-0050.

(4) The well casing to be abandoned may be severed below land surface and removed. (See **Figure 220-3**.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-063-0011; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-220-0050

##### Abandonment of Uncased Wells

(1) Uncased portions of water supply wells to be permanently abandoned shall be completely filled with cement grout, concrete or unhydrated bentonite: (See **Figure 220-1**) (**Figure 220-2**)

(2) Uncased portions of water supply wells that penetrate a water-bearing formation may be abandoned with alternating layers of cement grout, concrete or unhydrated bentonite and clean gravel throughout the water-bearing zones in the following manner:

(a) In all cases, non water-bearing zones shall be filled with cement grout, concrete or unhydrated bentonite.

(b) Clean gravel may only be placed in the water-bearing zones verified by an original water supply well report or other documentation acceptable to the Department. A vertical column of gravel that exceeds a total length of 50 feet shall only be placed with prior Department approval. Non water-bearing portions shall be filled with a plug of cement grout, concrete or unhydrated bentonite. Gravel shall not exceed a maximum of 50% of well depth without prior Department approval. Gravel may be placed in multiple water-bearing zones, not to exceed 50 feet for each zone. In no case shall gravel be placed above 18 feet below land surface.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79, Renumbered from 690-063-0012; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-220-0070

##### Abandonment of Artesian Wells

In addition to OAR 690-220-0040 and 690-220-0050, the flow of artesian water supply wells to be abandoned shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden plug placed at the bottom of the confining formation immediately above the artesian water-bearing zone. Cement grout or concrete shall be used to effectively fill the well to land surface. (See **Figure 220-4**, 1986.)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0015; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-220-0080

##### Abandonment of Driven and Jetted Wells

Provided an annular seal meeting the requirements of OAR 690-210-0180 can be confirmed, a cement grout plug shall be placed by grout pipe opposite all perforations or openings in the water supply well casing. The remainder of the well shall be filled with cement grout. If no annular seal can be confirmed, the well shall be abandoned by removing the casing and filling the borehole with cement grout (see OAR 690-220-0120).

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0020; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-220-0090

##### Abandonment of Filter or Gravel Pack Wells

Filter or gravel pack water supply wells may only be abandoned under a special standard. Any method of abandonment proposed must ensure that all perforated sections of the casing will be pressure grouted throughout, and that the remainder of the well is filled with cement grout. (See definition of pressure grout in OAR 690-200)

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0016 & 690-063-0025; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-220-0095

##### Abandonment of Dug Wells

(1) Abandonment of a dug water supply well shall be approved by the Department before work is started. The Department shall be notified of the proposed abandonment. The notification shall include:

- (a) Location;
- (b) Name of the owner;
- (c) Well diameter;
- (d) Well depth;
- (e) Depth to water;
- (f) Type of well casing or liner material if any; and
- (g) The proposed method of abandonment.

(2) A method to be used in the abandonment will be approved by the Department if the method will adequately protect the ground water resource. Dug wells penetrating more than one water bearing zone shall be abandoned in a manner to eliminate the possibility of leakage from one water bearing zone to another.

(3) The well shall be abandoned by a licensed Water Supply Well Constructor, a landowner with a landowner well construction permit and bond, or by a landowner in the presence of the water-master or other Department representative.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-220-0100

##### Obstructions and Possible Contaminants

All obstructions or debris which may interfere with effective sealing operations shall be removed from the water supply well to be abandoned. Any foreign matter capable of causing ground water contamination shall be removed prior to placing any sealing material.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0026; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-220-0110

##### Removal of Well Casing During Abandonment

If the casing of a water supply well is removed during abandonment, the well shall be plugged and sealed in accordance with

OAR 690-220-0030 through 690-220-0050 and shall be filled with sealing materials as the casing is removed.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0021; WRD 7-2001, f. & cert. ef. 11-15-01

**690-220-0115**

**Unhydrated Bentonite and Method of Placement**

(1) When abandoning a pre-existing well with unhydrated bentonite the Water Supply Well Constructor shall provide additional notification to the Regional Well Inspector or the Well Construction Program Coordinator in Salem by fax, e-mail or telephone 72 hours prior to starting abandonment work.

(a) In case of an emergency, the additional notification is not required; however, the Water Supply Well Constructor shall notify the Department prior to beginning abandonment work as required in OAR 690-205-0200.

(2) Unhydrated bentonite used in the abandonment of water supply wells shall meet the following requirements:

(a) Specifically designed for use in water supply wells; and

(b) Within industry tolerance for dry western sodium bentonite; and

(c) Free of polymers that promote bacterial growth; and

(d) Manufactured to be 3/8-inch or 3/4-inch; and

(e) National Sanitation Foundation (NSF) approved or have a swell index greater than 15 milliliters (ml) per 2 grams (gm).

(3) Powdered bentonite, bentonite grout or bentonite slurry shall not be used to abandon water supply wells.

(4) Unhydrated bentonite shall only be used to abandon water supply wells when in contact with water having less than 800 parts per million (ppm) total dissolved solids (TDS).

(a) Unhydrated bentonite may be used to abandon water supply wells exceeding 800 ppm TDS if the bentonite manufacturer provides documentation that their product can be used in water that exceeds 800 ppm TDS.

(A) Prior Department approval is required before placement.

(B) The bentonite manufacturer's documentation and Department approval shall be submitted with the Water Supply Well Report as required in OAR 690-205-0210.

(b) In all cases, the TDS shall be reported on the Water Supply Well Report as required in OAR 690-205-0210.

(5) Water supply wells with casing that is at least four inches in diameter and less than eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 700 feet, if being placed through water. Unhydrated bentonite may be used deeper with prior Department approval.

(6) Water supply wells with casing that is at least four inches in diameter and less than eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1000 feet, if being placed through air. Unhydrated bentonite may be used deeper with prior Department approval.

(7) Water supply wells with casing that is at least eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1200 feet, if being placed through water. Unhydrated bentonite may be used deeper with prior Department approval.

(8) Water supply wells with casing that is at least eight inches in diameter may be abandoned with unhydrated bentonite to a maximum well depth of 1500 feet, if being placed through air. Unhydrated bentonite may be used deeper with prior Department approval.

(9) Unhydrated bentonite shall be screened across a minimum 1/4-inch mesh screen during placement to minimize the introduction of bentonite dust into the sealing interval. The resulting seal shall be free of voids or bridges.

(10) A sounding or tamping tool shall be used in the sealing interval during placement to measure the fill rate and to break up possible bridges or cake formations.

(11) Unhydrated bentonite shall be poured at the manufacturers recommended rate in the water- filled portion of the drillhole and shall not be less than two minutes per 50 pound sack.

(12) In a dry sealing interval, (above the water level), bentonite shall be hydrated from land surface to a minimum depth of 50 feet below land surface. Unhydrated bentonite shall be hydrated with potable water in maximum ten foot lifts to ensure activation.

(13) The estimated and actual volume of sealing material used shall be calculated and reported on the Water Supply Well Report as required by OAR 690-205-0210.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 5-2015, f. & cert. ef. 7-1-15

**690-220-0120**

**Cement Grout**

Cement grout for use in abandonment operations shall conform to the requirements of OAR 690-210-0310.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78; ef. 1-1-79, Renumbered from 690-63-031 by WRD 13-1986, f. 10-7-86, ef. 11-1-86

**690-220-0130**

**Concrete**

Concrete for use in abandonment operations shall conform to the requirements of OAR 690-210-0315.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0035; WRD 7-2001, f. & cert. ef. 11-15-01

**690-220-0140**

**Method of Placement of Concrete or Cement Grout**

Concrete or cement grout used as a sealing material in abandonment operations shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. All such sealing materials shall be placed by the use of a grout pipe or by dump bailer in order to avoid segregation or dilution of the sealing materials.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-063-0040 by WRD; WRD 7-2001, f. & cert. ef. 11-15-01

**DIVISION 225**

**ENFORCEMENT (SEE FIGURE 225-1)**

**690-225-0020**

**Investigation of Alleged Violations**

(1) The Water Resources Director, upon the Director's own initiative, or upon complaint alleging violation of statutes, standards or rules governing construction, alteration, or abandonment of wells may cause an investigation to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the Director shall notify the persons believed responsible for the violation including but not limited to:

(a) Any Water Supply Well Constructor involved; or

(b) The landowner, if the violation involves construction, alteration, operation, or abandonment of a well.

(2) Enforcement and civil penalty assessment for "other than well constructors" is described in OAR 690-260.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

**690-225-0030**

**Enforcement Actions**

(1) If, after notice and opportunity for hearing under ORS 183.310 to 183.550 the Director determines that one or more violations have occurred, the Director may impose one or more of the following:

- (a) Provide a specified time for remedy;
- (b) Assess a civil penalty in accordance with the schedule of civil penalties in OAR 690-225-0110;
- (c) Suspend, revoke, or refuse to renew the licenses when one or more persons responsible for the violation hold a Water Supply Well Constructor's License;
- (d) Require that a person whose license has been refused renewal pass the Water Supply Well Constructor's License examination before a new license is issued;
- (e) Impose any reasonable conditions on the Water Supply Well Constructor's License to insure correction of the violation and future compliance with the law. These conditions may include but are not limited to:

(A) Fulfilling any outstanding obligations which are the result of administrative action before the constructor can offer any services or construct, alter or abandon any well;

(B) Requiring additional advance notice to be given to the Department of construction, alteration or abandonment of any well;

(C) Requiring a seal placement notice be given to the Department 24 hours in advance of placing the seal; or

(D) Any other conditions the Director feels are appropriate.

(f) Order the landowner to repair or meet other conditions on use of the well, or order discontinuance of use and proper abandonment pursuant to ORS 537.775;

(g) Make demand on the Water Well Constructor's Bond or on the Landowner's Water Well Bond. This may occur only if the Director has given the notice required in OAR 690-225-0020 to the persons responsible for the violation within three years after the date the well report is filed with the Department. If no well report has been filed, the three year limitation shall not apply until such time as a well report is filed;

(h) Take any other action authorized by law.

(2) An order may specify a schedule of escalating or cumulative sanctions to be assessed on specified dates until satisfactory correction of the violation has been completed.

(3) Any Water Supply Well Constructor whose license is suspended or revoked shall not contract for well construction services or operate well drilling machines in the State of Oregon during the suspension or revocation period.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

**690-225-0040**

**Multiple Violations and Consolidation of Proceedings**

In cases of multiple or continuing violations, each occurrence of substantially the same activity and each days continuance of a violation after the responsible party has been notified is a separate and distinct violation. Administrative enforcement proceedings for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01

**690-225-0050**

**Factors Affecting Selection of Type and Degree of Enforcement**

In selecting the appropriate type and degree of enforcement, the Director may consider the following factors:

(1) Whether the constructor's file demonstrates a pattern of prior similar violations;

(2) Whether the respondent has cooperated in attempting correction of any violation in a timely fashion;

(3) The gravity and magnitude of the violation, including whether there is an immediate or long-term threat to human health or the ground water resource;

(4) Whether the damage to the ground water resource is reversible;

(5) Whether the violation in the instances cited was repeated or continuous;

(6) Whether a cause of the violation was an unavoidable accident;

(7) The opportunity and degree of difficulty to correct the violation;

(8) The cost to the Department, except for travel costs and the initial field investigation, in attempting to gain voluntary compliance of the cited violation. The costs may be considered until the Department receives respondent's answer to the written notice and opportunity for hearing; and

(9) Any other relevant factor.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01

**690-225-0060**

**Change in Enforcement Status**

(1) In the interest of achieving compliance, the Director at any time may reevaluate the status of the violations and take appropriate action, including reduction of the enforcement level or remission of all or part of any civil penalties assessed.

(2) The Director may terminate proceedings against a Water Supply Well Constructor if the constructor provides acceptable evidence that:

(a) The landowner does not permit the constructor to be present at any inspection made by the Director; or

(b) That the constructor is capable of complying with recommendations made by the Director, but the landowner does not permit the constructor to comply. In such cases, the landowner is responsible for bringing the well into compliance pursuant to ORS 537.535, and if the landowner was not a party to the original enforcement proceeding the Director may initiate a proceeding to ensure that the landowner does so.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

**Civil Penalties**

**690-225-0100**

**Assessment of Civil Penalties**

Under OAR 690-225-0030(1) the Director may at any time select the most appropriate enforcement tool, including assessment of civil penalties, to gain compliance. However, the Director shall not impose a civil penalty if compliance has been achieved in another manner prior to final decision in the proceeding.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86

**690-225-0110**

**Schedule of Civil Penalties**

(1) The amount of civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$25 nor more than \$250 for each occurrence defined in these rules as a minor violation;

(b) Not less than \$50 nor more than \$1,000 for each occurrence defined in these rules as a major violation;

(c) First occurrence, in a calendar year, of a missing or late start card fee shall be \$150;

(d) Second occurrence, in a calendar year, of a missing or late start card fee shall be \$250;

(e) Third, and each subsequent, occurrence, in a calendar year, of a missing or late start card fee shall be \$250 and may include suspension of the Water Supply Well Constructor's license, and any other action authorized by law.

(2) For purposes of assessing a civil penalty, the start card fee referred to in subsections (1)(c), (d), and (e) of this rule shall not be considered late if it is received in the Salem office of the Water Resources Department within five days of the receipt of the start card, provided the start card was submitted in a timely manner as described in OAR 690-205-0200.

(3) **Table 1** lists minor violations of well construction standards. All other violations are declared to be major.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 7-1989(Temp), f. & cert. ef. 9-29-89; WRD 10-1989, f. & cert. ef. 11-20-89; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

## DIVISION 230

### STANDARDS AND PROCEDURES FOR LOW-TEMPERATURE GEOTHERMAL PRODUCTION AND INJECTION WELLS AND EFFLUENT DISPOSAL SYSTEMS

#### 690-230-0005

##### Policy and Purpose

(1) All low-temperature geo-thermal fluids are part of the groundwater resources of the State of Oregon and shall be administered by the Water Resources Commission (Commission) under the provisions of ORS 537.010 to 537.796. The Commission recognizes that these fluids are developed primarily because of their thermal characteristics and that special management is necessary. Reservoir assessment of low-temperature geothermal fluids shall be conducted by the Commission in the same manner as groundwater investigations outlined in ORS 537.665 and 537.685.

(2) In areas where substantial thermal alteration exists, the Commission may declare a critical groundwater area, or may otherwise control use of groundwater, or order the discontinued use, repair or permanent abandonment of a well(s) causing substantial thermal alteration, in order to protect the thermal characteristics of the groundwater resource. The Commission may also regulate appropriations to limit thermal interference between wells. Low-temperature geothermal appropriations with a bottom hole temperature less than 60 degrees Fahrenheit (F) shall not be protected from thermal interference caused by groundwater appropriations for other purposes.

(3) The purpose of the following rules is to provide standards and procedures for the development, use and management of low-temperature geothermal fluids, while insuring proper management of all groundwater resources so maximum beneficial use of the resource will be most effectively attained.

(4) These rules supplement OAR 690-200-0005 to 690-225-0110.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 5-1986, f. 5-16-86, ef. 5-19-86; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0005; WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0020

##### Definitions

(1) "Bottom hole temperature" means the maximum temperature measured in the well or borehole. It is normally attained directly adjacent to the producing zone, commonly at or near the bottom of the borehole, and will in all cases be greater than or equal to the temperature of fluid produced from the borehole.

(2) "Low-temperature geothermal effluent" means the outflow, discharge or waste fluid, with its associated dissolved or suspended constituents (being original or introduced), that is produced by a low-temperature geothermal well and its utilization system.

(3) "Low-temperature geothermal fluid" means any groundwater used for its thermal characteristics that is encountered in a well with a bottom hole temperature of less than 250 degrees F, or any other fluid that is circulated within a well having a bottom hole

temperature of less than 250 degrees F and used for its thermal characteristics.

(4) "Low-temperature geothermal injection well" means any well as defined under ORS 537.515(9) that is constructed or used for returning low-temperature geothermal effluent to a groundwater reservoir.

(5) "Low-temperature geothermal production well" means any well as defined under ORS 537.515(9) with a bottom hole temperature of less than 250 degrees F that is constructed or used for the thermal characteristics of the fluid contained within.

(6) "Nonstandard low-temperature geothermal effluent disposal system" means any low-temperature geothermal effluent disposal system in which one or more of the following conditions are met:

(a) Any portion of the effluent is disposed of in a manner considered non-beneficial by the Director. This includes, but is not limited to, disposal via storm sewer, drainage hole or direct discharge to land surface or a surface water body;

(b) The effluent contains contaminants, other than heat, that have been added to the low-temperature geothermal fluid;

(c) The effluent is injected into a groundwater reservoir that is not considered suitable by the Director. Factors which may render a groundwater reservoir unsuitable include, but are not limited to, chemical or physical incompatibility of the fluids involved or adverse hydraulic characteristics of the receiving reservoir;

(d) There are other existing or potential site specific problems or conditions, that require the nonstandard designation of effluent disposal. Examples include, but are not limited to, instability of near-surface earth materials, undue alteration of thermal characteristics of groundwater, unreasonable head changes or leakage of effluent back to the surface.

(7) "Secondary use" means the consumption of low-temperature geothermal effluent for beneficial use including, but not limited to, domestic, irrigation, stock watering, commercial and industrial uses.

(8) "Standard low-temperature geothermal effluent disposal system" means any low-temperature geothermal effluent disposal system in which one or more of the following conditions are met:

(a) No contaminants other than heat, have been added to the low-temperature geothermal fluid and the effluent is put to a secondary use;

(b) No contaminants, other than heat, have been added to the low-temperature geothermal fluid and the effluent is returned to the producing groundwater reservoir or other suitable groundwater reservoir as determined by the Director. In addition there are no other existing or potential problems or special conditions as determined by the Director, that include, but are not limited to, those factors, problems and conditions listed in subsections (6)(c) and (d) of this rule.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 5-1986, f. 5-16-86, ef. 5-19-86; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0010; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90

## Well Construction Standards

#### 690-230-0030

##### Construction of Low-Temperature Geothermal Production and Injection Wells

(1) Low-temperature geothermal production and injection wells shall be constructed in conformance with applicable rules (OAR 690-200-0005 to 690-225-0110) with specific additions and modifications as described in OAR 690-230-0005 to 690-230-0140.

(2) Low-temperature geothermal production and low-temperature geothermal injection wells shall be constructed in a manner that protects groundwater from contamination, waste and loss of artesian pressure, and substantial thermal alteration.

(3) If utilization of the well causes heating or cooling of the casing resulting in thermal expansion or contraction of the casing to the point that adherence to the minimum well construction standards will not prevent or eliminate groundwater contamination,

groundwater waste, or loss of artesian pressure, or substantial thermal alteration, then the licensed well constructor shall submit a written request to the Director to use alternate construction methods and/or materials to prevent groundwater contamination, groundwater waste, loss of artesian pressure, and substantial thermal alteration. Written approval from the Director must be obtained prior to completion of the well.

(4) A well constructor or owner of a low-temperature geothermal production or injection well may submit well construction plans to the Department for assistance and review of construction details.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0015; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0040

##### Location of Low-Temperature Geothermal Injection Wells Not Exceeding 15,000 Gallons Per Day

(1) No low-temperature geothermal injection well with an anticipated injection rate of less than 15,000 gallons per day shall be located within 75 feet of any existing low-temperature geothermal production well utilizing the same groundwater reservoir without authorization from the Director, unless both the production and injection wells are owned or used by the same person.

(2) A request to construct a low-temperature geothermal injection well within 75 feet of a low-temperature geothermal production well shall be made in writing to the Director. The request shall list the names and addresses of the property owners, street addresses of the wells, and shall state the reason(s) for locating the injection well closer than 75 feet to the production well. The Director may approve construction of an injection well closer than 75 feet to a production well only if the Director determines that the hydrologic and thermal conditions described in OAR 690-230-0110(1) justify the closer spacing.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0020; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0045

##### Location of Low-Temperature Geothermal Injection Wells Exceeding 15,000 Gallons Per Day

The owner of any low-temperature geothermal injection well having an anticipated injection rate of greater than 15,000 gallons per day is required to have a separation distance between the low-temperature geothermal injection and production wells that is adequate to protect the production wells from substantial thermal interference. The Director shall make a decision on the proposed separation distance based on information supplied by the owner as per OAR 690-230-0115.

Stat. Auth.: ORS 537  
Stats. Implemented: ORS 537  
Hist.: WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0050

##### Description of Proposed Well Use (Start Card)

For any low-temperature geo-thermal production or injection well, the report required under ORS 537.762 prior to commencing well construction shall identify the intended use of the well, the owner's name and the owner's mailing address.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0025; WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0060

##### Identification of Intended Well Use (Well Log)

Any low-temperature geothermal production or injection well shall be clearly identified as such on the water supply well report filed with the Water Resources Department under ORS 537.765.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1989, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0025; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-230-0070

##### Well-Head Protection Equipment

Adequate well-head equipment to insure public safety and the protection of the groundwater resource shall be immediately installed on any low-temperature geothermal production well or low-temperature geothermal injection well when the temperature of the fluid being withdrawn from, being pumped from, or flowing from the well bore exceeds 65°C (150°F). A variance from the requirement for well-head protection equipment may be granted if a written request demonstrates that the equipment is not necessary to safely complete the well.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0035; WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0075

##### Disposal of Low-Temperature Geothermal Fluids Produced During Drilling and Testing

Low-temperature geothermal fluids produced during drilling or testing of a low-temperature geothermal production or injection well shall be disposed of in a manner that minimizes hazards. For additional requirements on the disposal of low-temperature geothermal fluids produced during well drilling or testing, contact the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 537  
Stats. Implemented: ORS 537  
Hist.: WRD 18-1990, f. & cert. ef. 12-14-90

#### 690-230-0080

##### Pump Testing of Low-Temperature Geothermal Injection Wells with an Anticipated Injection Rate of Less than 15,000 Gallons Per Day

(1) All low-temperature geothermal injection wells with an anticipated injection rate of less than 15,000 gallons per day shall be pump tested for a period of at least one hour. Test results must be recorded by the well constructor on the water supply well report. This minimum test shall be conducted as follows:

- (a) Prior to testing, the static water level in the well shall be measured and recorded;
- (b) The water shall be pumped into or from the well at a measured and steady rate. The pumping or withdrawal rate shall approximate the maximum anticipated injection rate;
- (c) For tests that withdraw water from the well, only bailing or pumping the well is acceptable; and
- (d) At a minimum the water level in the well shall be measured and recorded both at the end of pumping and after one hour of recovery.

(2) The Director may require the well owner to provide a more detailed test, separate from the water well report, that could include, but is not limited to, increased frequency of water level measurement, increased test duration and increased monitoring of observation wells. Such modifications will be required when possible impacts resulting from the development include, but are not limited to, thermal or hydrologic interference with existing water rights, water quality degradation or physical or mechanical failure of the well structure.

Stat. Auth.: ORS 183, 536, 537 & 540  
Stats. Implemented: ORS 183, 536, 537 & 540  
Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 5-1986, f. 5-16-86, ef. 5-19-86; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0040; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

#### 690-230-0085

##### Pump Testing of Low-Temperature Geothermal Injection Wells with an Anticipated Injection Rate Exceeding 15,000 Gallons Per Day

(1) Low-temperature geothermal injection wells (other than flowing artesian wells) with an anticipated injection rate of greater

than 15,000 gallons per day, shall be pump tested for a period of at least four hours. The pump test shall occur after the owner's pump test plan is approved by the Director, and prior to injecting into the well. The results of this test do not need to appear on the water well report. This test shall be in addition to the minimum one-hour test requirement under OAR 690-210-0370. Requirements for conducting the minimum four-hour pump test as discussed in this section (this type of test) are as follows:

(a) Prior to testing, the well shall be idle for a period of at least four hours;

(b) The static water level in the well shall be measured at least three times, no less than twenty minutes apart, during the hour prior to pumping the well;

(c) The water shall be pumped into or from the well at a measured and steady rate. The rate shall approximate the maximum anticipated injection rate;

(d) The pump discharge shall be controlled as much as possible to maintain a constant rate during the test. The discharge rate shall be as close as reasonably possible to the anticipated injection rate during normal use of the well. Discharge rate shall be recorded at the beginning of the test and once every hour thereafter;

(e) Water levels in the well shall be physically measured by a standard and acceptable method. Visual estimation of water level is not acceptable. Acceptable methods include:

(A) An electric water level measuring tape;

(B) An air line dedicated to the well;

(C) An acoustic sounder;

(D) An electronic pressure transducer; or

(E) Other water level measuring methods approved in advance by the Director.

(f) The water level measurements shall occur at least at the minimum frequency outlined below: Time period — Water level measurement schedule

(i) First 10 minutes — No more than 2 minutes apart.

(ii) 10 to 30 minutes — No more than 5 minutes apart.

(iii) 30 to 100 minutes — No more than 15 minutes apart.

(iv) 100 to 240 minutes — No more than 30 minutes apart.

(g) After pumping stops, water level measurements shall be collected for a time equal to that of the pumping period, or until the well reaches 90 percent recovery from the maximum drawdown, whichever occurs first. Recovery water level measurements shall be collected on the same time schedule as described in subsection (1)(f) of this rule;

(h) The pump discharge shall be physically measured by a standard and acceptable method. Visual estimation of flow rate is not acceptable. Acceptable methods include:

(A) A properly installed flow meter, designed for geothermal use, which is functional and calibrated within reasonable limits for the type of meter;

(B) A properly installed weir or flume;

(C) A properly installed and calibrated orifice plate and manometer;

(D) Known volume/time calculations (including calibrated bucket and stopwatch up to 60 gallons per minute);

(E) Properly installed and used ultrasonic flow measuring devices; or

(F) Other discharge methods approved in advance by the Director.

(2) The owner may consult with the Department before selecting representative nearby wells for monitoring during the pump test. If monitoring wells are selected in absence of specific instructions from the Department, the measurement of water levels in each well shall adhere to the schedule established in subsection (1)(f) of this rule.

(3) The Director may require the owner of the well to have a pump test performed that is more detailed than the test requirements described in sections (1) and (2) of this rule. This more detailed test could include, but is not limited to, increased frequency of water level measurements, increased test duration and increased monitoring of observation wells. Such modifications will be required when

possible impacts resulting from the proposed injection include, but are not limited to, thermal or hydrologic interference with existing water rights, water quality degradation or physical or mechanical failure of the well structure.

(4) For flowing artesian wells, pump test specifications shall be prescribed by the Department on a case-by-case basis.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537

Hist.: WRD 18-1990, f. & cert. ef. 12-14-90; Administrative Reformatting 1-13-98; WRD 7-2001, f. & cert. ef. 11-15-01

## 690-230-0090

### Water Temperature Measurement

The water supply well report prepared for any low-temperature geothermal well that is tested by pumping water from the well, shall include the temperature of the fluid as measured at the discharge point at the beginning and end of a timed production test as well as the maximum fluid temperature attained during the test. Bailing or pumping the well are acceptable methods of withdrawing water from the well during the test. Air testing is not acceptable.

(2) The well report prepared for any low-temperature geothermal well that is tested by pumping water into the well shall include the maximum temperature in the borehole and its corresponding depth.

(3) The well constructor is required to provide the temperature data on the water well report. The Director may use other temperature data in making the final determination of the bottom hole temperature.

Stat. Auth.: ORS 183, 536, 637 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 5-1986, f. 5-16-86, ef. 5-19-86; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0045; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 18-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

## 690-230-0100

### Additional Standards for Low-Temperature Geothermal Injection Wells

Procedures required to inject effluent into a low-temperature geothermal injection well shall not cause failure of the well casing and/or seal materials or other components of the well structure, including but not limited to, movement, displacement or fracturing of the overburden.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 5-1986, f. 5-16-86, ef. 5-19-86; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-065-0050; WRD 18-1990, f. & cert. ef. 12-14-90

### Low-Temperature Geothermal Effluent Disposal

## 690-230-0110

### Injection Plan for Wells with an Anticipated Injection Rate Not Exceeding 15,000 Gallons Per Day

No low-temperature geothermal injection well shall be used for injection without approval of the Director in accordance with OAR 690-210-0070. The injection plan for the proposed injection of less than 15,000 gallons per day to a low-temperature geothermal injection well will consist of a water well report for both the injection and production wells. These well reports shall be sent to the Director for review. If the injection well has not yet been constructed, or if a water supply well report is not available for the injection or production well, acceptable data that shall be submitted as part of the injection plan include, but are not limited to, the following: geological information of the area, depth of the well(s) in question, water well reports from nearby wells, static water level data or water quality data from the well(s) in question. After review of the well reports, or other acceptable data, the Director may require water quality testing, as per OAR 690-230-0115(1) and (2), if the Director deems it necessary. The water quality testing may be required in situations that include, but are not limited to, injection into a ground water reservoir that is different from the producing ground water reservoir, or when the well is of poor construction.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86,  
Renumbered from 690-065-0055; WRD 7-1988, f. & cert. ef. 6-29-88; WRD  
18-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

**690-230-0115**

**Injection Plan for Wells with an Anticipated Injection Rate Exceeding 15,000 Gallons Per Day**

No low-temperature geothermal injection well shall be used for injection without approval of the Director in accordance with OAR 690-210-0070. The injection plan for the proposed injection of greater than 15,000 gallons per day to a low-temperature geothermal injection well shall include, but is not limited to, the following:

(1) Details of well construction, including water supply well reports for the production well and the injection well.

(2) Description of the number and location of water bearing zones from both production and injection wells.

(3) Water temperature data from both the production and injection wells.

(4) Water level data from both the production and injection wells. If information from the well report is not sufficient to determine the effects of injection, the Director may require additional geologic or hydrologic information, including but not limited to, temperature/depth logs of the wells.

(5) Water quality information including analysis by a laboratory certified by the Oregon Health Division for drinking water standards for the following parameters: arsenic, boron, calcium, carbonate or bicarbonate, chloride, fluoride, iron, magnesium, manganese, pH, potassium, silica, sodium, specific conductance, sulfate, suspended solids, total dissolved solids, and total coliform bacteria. If the low-temperature geothermal effluent is suspected to be of poor water quality or to be otherwise incompatible with the water in the receiving zone in the injection well, the Director may require additional specific water quality data. If the information on the well reports for the wells involved is not sufficient to determine the effects of injection, the Director may require additional geologic or hydrologic information, including but not limited to, temperature/depth logs of the wells. The Director may waive the requirement for specific portions or all of the chemical analyses if the fluid quality is known to be suitable for the intended production and injection.

(6) A map indicating the location and elevation of both the production well and the injection well in accordance with OAR 690-230-0045. All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. Small area maps may be more easily and clearly drawn to a larger scale, such as 1 inch = 400 feet. The well owner shall submit injection plans to the Director indicating proposed separation distances between production and injection wells on the parcel of land on which the production well is located, on the parcel of land on which the injection well is located, and on all adjacent parcels of land, as well as land surface elevation at each well head.

(7) Any planned safeguards to prevent substantial thermal or hydrologic interference with existing rights to appropriate ground water and surface water and alteration of existing or potential drinking water supplies.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537

Hist.: WRD 18-1990, f. & cert. ef. 12-14-90; WRD 7-2001, f. & cert. ef. 11-15-01

**Water Rights Procedure**

**690-230-0120**

**Processing of Applications**

The appropriator shall make application for a water right to appropriate low-temperature geothermal fluid unless an exemption is provided for under ORS 537.545.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86,  
Renumbered from 690-065-0060; WRD 18-1990, f. & cert. ef. 12-14-90

**690-230-0130**

**Exemption from Water Right Permit Application/Use of Low-Temperature Geothermal Fluid**

(1) Low-temperature geothermal fluid appropriation for single industrial or commercial use including, but not limited to, electrical, agricultural, aquacultural, heating and/or cooling in an amount not exceeding 5,000 gallons per day shall be exempt from application for a water right as provided for under ORS 537.545.

(2) Low-temperature geothermal fluid appropriation for single or group domestic purposes including household heating and/or cooling shall be exempt from being required to apply for a water right as provided for under ORS 537.545 when the combined amount of groundwater for single or group domestic purposes, including household heating and/or cooling, does not exceed 15,000 gallons per day. Construction must comply with well construction and maintenance rules as per OAR 690-200-0230.

(3) The exemptions under sections (1) and (2) of this rule apply to the use of groundwater for any such purpose to the extent that it is beneficial and constitutes a right to appropriate groundwater equal to that established by a groundwater right certificate.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86,  
Renumbered from 690-065-0065; WRD 18-1990, f. & cert. ef. 12-14-90

**690-230-0140**

**Water Right Limitation for Nonstandard Effluent Disposal Systems**

If the low-temperature geothermal effluent is disposed of by way of a nonstandard low-temperature geothermal effluent disposal system, the right to appropriate the low-temperature geothermal fluid shall be inferior to all subsequent rights for beneficial consumptive use and/or to the rights of those appropriators who make use of a standard low-temperature geothermal effluent disposal system. If a nonstandard low-temperature geothermal effluent disposal system is upgraded to a standard low-temperature geothermal effluent disposal system the associated water right retains the priority date established upon initial filing.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 12-1982, f. & ef. 12-14-82; WRD 13-1986, f. 10-7-86, ef. 11-1-86,  
Renumbered from 690-065-0070; WRD 18-1990, f. & cert. ef. 12-14-90

**DIVISION 235**

**GROUND WATER ADVISORY COMMITTEE**

**690-235-0005**

**Ground Water Advisory Committee: Appointments, Terms, and Qualifications**

(1) There is created the Ground Water Advisory Committee consisting of nine members appointed by the Commission: Three of whom shall be individuals actively engaged in some aspect of the water supply or monitoring well drilling industry. Members shall be residents of Oregon.

(2) Each member shall be appointed for a term of up to three years. When a vacancy occurs before the expiration of a term, the vacancy shall be filled by appointment for the remainder of the unexpired term only. Terms shall be staggered. Three of the terms shall expire each year.

(3) The Commission shall consider geographic representation, population representation, as well as a range of interests and expertise in the selection of members. The committee shall be composed of individuals with expertise in and representing interests of one or more of the following: well drilling industry, hydrogeology, irrigation, local government, Indian Tribes, environment, public health, industry, commerce, water project development, watershed enhancement, instream flow, agriculture, well pump installation, exempt ground water users, any other category with a ground water interest. The Commission shall give consideration to individuals with multiple category backgrounds.

(4) Officers of Committee: The Committee shall select one of its members as Chair and another as Vice-Chair. Maximum terms of officers shall be two years for each position within six consecutive years.

(5) Meetings of the Committee: The Committee shall meet at least once every three months at locations specified by the Director.

(6) Members may receive travel expenses subject to ORS 292.495.

(7) The Department shall solicit candidates for the committee in anticipation of an appointment. The Department shall mail notice seeking candidates to all persons and organizations which have filed with the Department a written request to be included on the mailing list maintained for the Ground Water Advisory Committee. Appointments to the committee are not limited to individuals submitted for consideration as a result of the solicitation process set forth above.

Stat. Auth.: ORS 536.090

Stats. Implemented: ORS 536.090

Hist.: WRD 9, f. & ef. 12-9-77; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-064-0005; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 4-1997, f. & cert. ef. 8-29-97

## 690-235-0020

### Ground Water Advisory Committee Duties

The Committee shall consider and advise the Commission on all matters relating to:

(1) Rules, legislation, and public policy for the development, securing, use, and protection of groundwater.

(2) Licensing of well constructors, including the examination of such persons for license.

(3) Review the proposed expenditure of all revenues generated under ORS 537.762(5). At least once a year, and before the expenditure of such funds on new program activities, the Water Resources Department and the Committee shall develop jointly a proposed expenditure plan for concurrence by the Water Resources Commission. The plan may be modified, if necessary, upon the joint recommendation of the Department and the Committee with concurrence by the Commission.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 9, f. & ef. 12-9-77; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-064-0010; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94

## DIVISION 240

### CONSTRUCTION, MAINTENANCE, ALTERATION, CONVERSION AND ABANDONMENT OF MONITORING WELLS, GEOTECHNICAL HOLES AND OTHER HOLES IN OREGON

## 690-240-0005

### Introduction

(1) Monitoring wells and geotechnical holes drilled to allow ground water and geologic determinations are constructed in a variety of environments and under a variety of conditions. Improper construction, maintenance, operation, and abandonment can allow deterioration of ground water quality and supply. Although enforcement actions may be exercised against other parties, the landowner of the property where the monitoring well or geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, conversion, and abandonment of the monitoring well, or geotechnical hole.

(2) Holes other than monitoring wells, water supply wells, or geotechnical holes which are drilled, excavated, or otherwise constructed in the earth's surface can also provide an avenue for deterioration of ground water quality. Improper construction, maintenance, use, and abandonment of other holes can pose a significant risk to ground water. Table 240-1 lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring.

(3) Ground water problems are difficult, expensive, and time consuming to correct. The Water Resources Commission (Com-

mission) has been authorized to develop standards for wells drilled for the purpose of monitoring ground water in order to protect the state's ground waters. The Commission has also been authorized to develop standards for other holes through which ground water may become contaminated. The rules set forth herein are adopted to provide that protection. Their purpose is to prevent and eliminate ground water contamination, waste, and loss of artesian pressure.

(4) The Commission may develop additional rules as needed prescribing standards for the construction, operation, maintenance, and abandonment of other specific types of wells and holes to protect ground water.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, abandonment, conversion, and maintenance of monitoring wells in Oregon.

(7) Monitoring wells are wells as defined in ORS 537.515(9). A license and licensing fee, bond, examination, well report, and start card are required for construction, conversion, alteration, or abandonment of a monitoring well. In addition, a start card fee is required for new construction, deepening a well, and conversion.

(8) To protect the ground water resource, the Commission has the authority to regulate geotechnical holes under ORS 537.780(1)(c)(A). Construction of geotechnical holes requires either a Water Supply Well Constructor or Monitoring Well Constructor's License or Oregon registration as a geologist or civil engineer. If any one of the criteria in OAR 690-240-0035(2)(a)-(d) is met, a geotechnical hole report must be submitted.

(9) To protect the ground water resource, the Commission has the authority, under ORS 537.780(1)(c)(A), to regulate any hole through which ground water may be contaminated. Construction of holes other than water supply wells and monitoring wells does not require a license and licensing fee, bond, examination, well report, start card, and start card fee.

(10) Holes constructed under ORS Chapters 517, 520, and 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geology and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources.

(11) The rules and regulations set forth herein shall become effective upon adoption by the Water Resources Commission.

(12) Under no circumstances shall a monitoring well, piezometer, geotechnical hole, or other hole be constructed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. (See definition of aquifer.)

(13) The rules and regulations set forth herein provide the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of monitoring wells, geotechnical holes, and other holes. After the effective date of adoption of these rules and regulations, no monitoring well, geotechnical hole, or other hole shall be constructed, altered, converted, or abandoned contrary to the provisions of these rules and regulations without prior approval from the Water Resources Department. Violation of these standards may result in enforcement under OAR chapter 690, division 240, including suspension or revocation of a constructor's

license, imposition of civil penalties on the landowner or constructor, action on a bond, or other sanctions authorized by law.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2014, f. & cert. ef. 11-25-14; WRD 5-2015, f. & cert. ef. 7-1-15

## 690-240-0006

### Special Standards

(1) Site conditions may require specific design, construction, and abandonment procedures to adapt to the existing local geologic and ground water conditions to fully utilize every natural protection to the state's ground water. Specific site conditions may require different design, construction, setback, or abandonment standards than required by the Monitor Well or Geotechnical Hole construction rules. Alternative technologies or methods not addressed in these rules may also exist which could be effectively utilized in the construction or abandonment of a monitoring well or geotechnical hole. Prior to the completion of the well, a bonded constructor must request and receive approval from the Department to use methods or materials that do not meet the monitoring well or geotechnical hole construction standards. The Department may approve such requests either orally or in writing. If oral approval is granted, the written request must be submitted to the Department within three working days of the date of the oral approval. Failure to submit a written request as described above may void the prior oral approval. The proposed methods or materials shall provide at least the same level of resource protection as that which is provided by these rules.

(2) The written request for special standards shall include:

(a) Name, license number and signature of the bonded well constructor;

(b) Location of the well by county, township, range, section, tax-lot (if assigned) and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system;

(c) Name and address of landowner;

(d) Address of the project/well site;

(e) Type of work;

(f) The reasons(s) that conformance to the rules and regulations for monitoring wells or geotechnical holes cannot be met;

(g) A diagram and written description showing the proposed monitoring well or geotechnical hole's design, construction, or abandonment;

(h) The well identification number, if assigned; and

(i) The start card number.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; Renumbered from 690-240-0140 by WRD 7-2001, f. & cert. ef. 11-15-01

## 690-240-0007

### Special Area Standards

If at any time, the Commission finds that different or supplemental standards are required for the safe development of ground water from any aquifer or area, special area standards for the construction and maintenance of monitoring wells, geotechnical holes, or other holes within such areas may be adopted as rules by the Commission. In the absence of such special area standards, these rules constitute the sole administrative standards of the Water Resources Department governing construction, conversion, maintenance, alteration, and abandonment of monitoring wells, geotechnical holes and other holes.

Stat. Auth.: ORS 537.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01

## 690-240-0010

### Definitions

The following definitions apply to terms as used in monitoring well, geotechnical hole and other hole rules, OAR 690-240-0005 to 690-240-0640. No other definitions of these same words apply:

(1) "Abandonment, Permanent" means to remove all or any portion of a monitoring well from service by filling it in such a manner that vertical movement of water within the well bore and within the annular space surrounding the well casing is effectively and permanently prevented. This term is synonymous with "decommission".

(2) "Abandonment, Temporary" means to remove a drilling machine from a well site after completing or altering a well provided the well is not immediately put into service, or to remove a well from service with the intent of using it in the future.

(3) "Altering a Well" means the deepening, re-casing, perforating, re-perforating, installation of packers or seals, and other material changes in the design or construction of a well. Material changes include but are not limited to the installation or modification of well casing including casing extensions, or installation or modification of liner pipe, or under reaming of the borehole.

(4) "Annular Space" means the space between the drillhole wall and the outer well casing.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature. (**Figure 240-1**)

(6) "Area of Known or Reasonably Suspected Contamination" means a site that is currently under investigation by the Oregon Department of Environmental Quality, U.S. Environmental Protection Agency, or other state or federal agency for the presence of contaminants, or a site where a prudent person would suspect contamination after conducting an appropriate inquiry consistent with good commercial or customary practice as to the nature of the property.

(7) "Artesian Aquifer" means a confined aquifer in which ground water is under sufficient head to rise above the level at which it was first encountered whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian well. (**Figure 240-1**).

(8) "Artesian Monitoring Well" means a monitoring well in which ground water is under sufficient pressure to rise above the level at which it was first encountered, whether or not the water flows at land surface. If the water level stands above land surface the well is a flowing artesian monitoring well.

(9) "Bored Well" means a well constructed with the use of earth augers turned either by hand or by power equipment.

(10) "Casing" means the outer tubing, pipe, or conduit, welded or thread coupled, and installed in the borehole during or after drilling to support the sides of the well and prevent caving. Casing can be used, in conjunction with proper seal placement, to shut off water, gas, or contaminated fluids from entering the hole, and to prevent waste of ground water.

(11) "Casing Seal" means the water tight seal established in the well bore between the well casing and the drillhole wall, above the filter pack seal, to prevent the inflow and movement of surface water or shallow ground water in the well annulus, or to prevent the outflow or movement of water under artesian or hydrostatic pressures.

(12) "Civil Engineer" means an individual registered by the State of Oregon to practice civil engineering.

(13) "Clay" means a fine-grained, inorganic material having plastic properties and with a predominant grain size of less than 0.002 mm.

(14) "Closed Loop Ground Source Heat Pump Boring" means a geotechnical hole, cased or uncased, constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(15) "Commission" means the Oregon Water Resources Commission.

(16) "Committee" means the Oregon Ground Water Advisory Committee created by ORS 536.090.

(17) "Confining Formation" means the "impermeable" stratum immediately overlying an artesian (confined) aquifer. (Figure 240-1)

(18) "Consolidated Formation" means materials that have become firm through natural rock-forming processes. It includes, but is not limited to, materials such as basalt, sandstone, shale, hard claystone, and granite.

(19) "Contamination" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(20) "Continuing Education" means that education required as a condition of licensure under ORS 537.747, to maintain the skills necessary for the protection of ground water, the health and general welfare of the citizens of Oregon and the competent practice of the construction, alteration, abandonment, conversion, and maintenance of water supply wells, monitoring wells, and geotechnical holes.

(21) "Continuing Education Committee" means the Well Constructor Continuing Education Committee authorized under Chapter 496, Oregon Laws 2001 (ORS 537.765).

(22) "Continuing Education Course" means a formal offering of instruction or information to licensees that provides continuing education credits.

(23) "Continuing Education Credit" (CEC) means a minimum of 50 minutes of instruction or information approved by the Continuing Education Committee.

(24) "Converting" a well means changing the use of an existing well or hole not previously used to either withdraw or monitor water such that the well or hole can be used to either withdraw or monitor water.

(25) "Deepening a well" means extending the well bore of an existing well through previously undisturbed native material. Deepening is a type of alteration.

(26) "Department" means the Oregon Water Resources Department.

(27) "Director" means the Director of the Department or the Director's authorized representatives.

(28) "Documentation of Completion" means written evidence or documentation demonstrating attendance and completion of a continuing education course, including but not limited to: a certificate of completion, diploma, transcript, certified class roster, or other documentation as approved by the Continuing Education Committee.

(29) "Dug Well" means a well in which the excavation is made by the use of digging equipment such as backhoes, clam shell buckets, or sand buckets. (See Hand dug well)

(30) "Excavation" means a free-standing cavity with greater width than depth constructed in the earth's surface which has a primary purpose other than seeking water or water quality monitoring.

(31) "Figure", when used herein, refers to an illustration and is made a part of the primary article and section by reference.

(32) "Filter Pack" means the granular material placed in the annular space between the well screen and the borehole.

(33) "Filter Pack Seal" means the fine grained sand or dry bentonite which is placed in the annulus above the filter pack and prevents grout infiltration into the filter pack.

(34) "Geologic Formation" means an igneous, sedimentary or metamorphic material that is relatively homogeneous and is sufficiently recognized as to be distinguished from the adjacent material. The term is synonymous with "formation".

(35) "Geologist" means an individual registered by the State of Oregon to practice geology.

(36) "Geotechnical hole" means a hole constructed to collect or evaluate subsurface data or information, monitor movement of landslide features, or to stabilize or dewater landslide features. "Geotechnical hole" includes closed loop ground source heat pump

borings. Geotechnical holes are not monitoring wells or water supply wells as defined below. Various classes and examples of geotechnical holes are listed in OAR 690-240-0035(6)-(9).

(37) "Grout" means approved cement, concrete or bentonite sealing material used to fill an annular space of a well or to abandon a well.

(38) "Grout Pipe" means a pipe which is used to place grout at the bottom of the sealing interval of a well.

(39) "Hand dug well" means a well in which the excavation is only made by the use of picks, shovels, spades, or other similar hand operated implements. (See Dug Well)

(40) "Hazardous Materials Training" means training as defined by OAR 437-002-0100 Adoption by Reference Subdivision H Hazardous Materials 1910.120 Hazardous Waste Operations and Emergency Response.

(41) "Hazardous Waste" means a substance as defined by ORS 466.005.

(42) "Health Hazard" means a condition where there are sufficient concentrations of biological, chemical, or physical, including radiological, contaminants in the water that are likely to cause human illness, disorders, or disability. These include, but are not limited to naturally occurring substances, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes. Sufficient concentrations of a contaminant include but are not limited to contaminant levels set by the Oregon Department of Environmental Quality and Oregon Health Division.

(43) "Health Threat" means a condition where there is an impending health hazard. The threat may be posed by, but not limited to: a conduit for contamination, or a well affecting migration of a contaminant plume, or the use of contaminated water. A well in which the construction is not verified by a monitoring well report or geophysical techniques may be considered a conduit for contamination in certain circumstances. Those circumstances include, but are not limited to: an unused and neglected well or a well for which no surface seal was required. A well in which the casing seal, filter pack seal, or watertight cap has failed, or was inadequately installed may be considered a conduit for contamination.

(44) "Horizontal Well" means a well that intentionally deviates more than 20 degrees from true vertical at any point.

(45) "Hydrologic Cycle" is the general pattern of water movement by evaporation from sea to atmosphere, by precipitation onto land, and by return to sea under influence of gravity.

(46) "Impermeable Sealing Material" means cement or bentonite which is used to fill the open annulus.

(47) "Jetted Well" means a well in which the drillhole excavation is made by the use of a high velocity jet of water.

(48) "Leakage" means movement of surface and/or subsurface water around the well casing or seal.

(49) "Monitoring Well" means a well designed and constructed to determine the physical (including water level), chemical, biological, or radiological properties of ground water.

(50) "Monitoring Well Constructor" means any person who has a current water well constructor's license with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(51) "Monitoring Well Constructor's License" means a Water Well Constructor's License with a monitoring well endorsement issued in accordance with ORS 537.747(3).

(52) "Monitoring Well Drilling Machine" means any driving, jetting, percussion, rotary, boring, auguring, or other equipment used in the construction, alteration, or abandonment of monitoring wells.

(53) "Order" means any action satisfying the definition given in ORS Chapter 183 or any other action so designated in ORS 537.505 to 537.795.

(54) "Other Hole" means a hole other than a water supply well, monitoring well, or geotechnical hole, however constructed, in naturally occurring or artificially emplaced earth materials through which ground water can become contaminated. Holes constructed under ORS Chapters 517, 520, and 522 are not subject to

these rules. Examples of other holes are listed in OAR 690-240-0030.

(55) “Perched Ground Water” means ground water held above the regional or main water table by a less permeable underlying earth or rock material. (Figure 240-1)

(56) “Permeability” means the ability of material to transmit fluid, usually described in units of gallons per day per square foot of cross-section area. It is related to the effectiveness with which pore spaces transmit fluids.

(57) “Person” includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(58) “Petcock Valve” is a valve used to contain pressure which when opened will drain the line or pipe.

(59) “Piezometer” means a type of monitoring well designed solely to obtain ground water levels. Piezometers are prohibited in areas of known or reasonably suspected contamination. This term is synonymous with observation well.

(60) “Porosity” means the ratio of the volume of voids in the geologic formation being drilled to the overall volume of the material without regard to size, shape, interconnection, or arrangement of openings.

(61) “Potable Water” means water which is sufficiently free from biological, chemical, physical, or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects.

(62) “Potentiometric Surface” means the level to which water will rise in tightly cased wells. (Figure 240-1).

(63) “Pressure Grouting” means a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

(64) “Professional” means a person licensed or registered by the State of Oregon to construct monitoring wells, water supply wells, or practice geology or civil engineering. All licenses and registrations must be valid at the time of monitoring well, water supply well or geotechnical hole construction, alteration or abandonment as required by these rules.

(65) “Public-at-Large” means a person not actively engaged in the well industry.

(66) “Refusal to Renew” means a provision in an order, or as allowed by ORS 537.747, that prohibits renewal of a well constructor’s license, for a specified term not to exceed one year from the expiration date of the current license.

(67) “Remediation Well” means a well used for extracting contaminated ground water from an aquifer. This term is synonymous with “extraction well” and “recovery well”.

(68) “Respondent” means the person against whom an enforcement action is taken.

(69) “Responsible Party” means the person or agency that is in charge of construction or maintenance, or the landowner of record and is either in violation as specified in a notice of violation or who may benefit from that violation.

(70) “Rough Drilling Log” means a record kept on the well site of the information needed to complete the well report for the well being constructed.

(71) “Revoke” means termination of a well constructor’s license.

(72) “Sand” means a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

(73) “Silt” means an unconsolidated sediment composed predominantly of particles between 0.06 mm and 0.002 mm in diameter.

(74) “Slope Stability Geotechnical Hole” means a geotechnical hole excavated, drilled or bored for studying and/or monitoring movement of landslide features, including water levels, or other mass-wasting features to detect zones of movement and establish whether movement is constant, accelerating, or responding to

remedial measures. Hole(s) excavated, drilled or bored for the purpose of slope remediation or stabilization shall be considered a slope stability geotechnical hole. Slope stability geotechnical holes are not monitoring wells, piezometers, or water supply wells.

(75) “Sponsor” means an institution, professional organization, individual, or business that offers continuing education courses to licensees. This term is synonymous with provider.

(76) “Static Water Level” means the stabilized level or elevation of water surface in a well not being pumped.

(77) “Stratum” means a bed or layer of a formation that consists throughout of approximately the same type of consolidated or unconsolidated material.

(78) “Sump” means a hole dug to a depth of ten feet or less with a diameter greater than ten feet in which ground water is sought or encountered.

(79) “Suspension” means the temporary removal of the privilege to construct wells under an existing license for a period of time not to exceed one year.

(80) “Unconsolidated Formation” means naturally occurring, loosely cemented, or poorly indurated materials including clay, sand, silt, and gravel.

(81) “Underground Injection” means the emplacement or discharge of fluids to the subsurface.

(82) “Underground Injection System” means a well, improved sump, sewage drain hole, subsurface fluid distribution system, or other system or ground water point source used for the emplacement or discharge of fluids.

(83) “Upper Oversize Drillhole” means that part of the well bore extending from land surface to the bottom of the surface seal interval.

(84) “Violation” means an infraction of any statute, rule, standard, order, license, compliance schedule, or any part thereof and includes both acts and omissions.

(85) “Water Supply Well” means a well, other than a monitoring well, that is used to beneficially withdraw or beneficially inject ground water. Water supply wells include, but are not limited to, community, dewatering, domestic, irrigation, industrial, municipal, and aquifer storage and recovery wells.

(86) “Water Supply Well Constructor” means any person who has a current water well constructor’s license with a water supply well endorsement issued in accordance with ORS 537.747(3).

(87) “Water Supply Well Constructor’s License” means a Water Well Constructor’s License with a water supply well endorsement issued in accordance with ORS 537.747(3).

(88) “Water Table” means the upper surface of an unconfined water body, the surface of which is at atmospheric pressure and fluctuates seasonally. The water table is defined by the levels at which water stands in wells that penetrate the water body. (See Figure 240-1)

(89) “Water Well Constructor’s License” means a license to construct, alter, deepen, abandon or convert wells issued in accordance with ORS 537.747(3). Endorsements are issued to the license and are specific to the type of well a constructor is qualified to construct, alter, deepen, abandon or convert.

(90) “Well” means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure, or is artificially withdrawn or injected. This definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas. Prospecting or exploration for geothermal resources as defined in ORS 522.005 or production of geothermal resources derived from a depth greater than 2,000 feet as defined in ORS 522.055 is regulated by the Department of Geology and Mineral Industries.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-

15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 2-2012, f. & cert. ef. 2-2-12

**690-240-0011****Organic Materials**

Organic materials which foster or promote undesired organic growth or have the potential to degrade water quality shall not be employed in the construction of a well. This includes, but is not limited to, brans, hulls, grains, starches, and proteins.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0012****Public Safety**

No monitoring well, geotechnical hole, or other hole shall be constructed, maintained, or abandoned in such a manner as to constitute a health threat, or health hazard or a menace to public safety.

Stat. Auth.: ORS 737.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0013****Wells Cannot Be Used for Disposal of Contaminants**

No monitoring well, geotechnical hole, or other hole shall be used as a disposal pit for sewage, industrial waste, or other materials that could contaminate the ground water supply.

Stat. Auth.: ORS 537.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0014****Water Used Must be Potable**

All water used in the construction, alteration, repair or abandonment of monitoring wells and geotechnical holes shall be potable.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0015****Delegation of Responsibility for Monitoring Wells, Geotechnical Holes and Other Holes**

(1) The Director may, by memorandum of understanding, delegate to another state agency direct control and management of monitoring wells, geotechnical holes and other holes when the other state agency implements these standards, as a minimum, for the construction, operation, maintenance, and abandonment of monitoring wells, geotechnical holes and other holes.

(2) Such delegation shall be revoked at such time as the agency intentionally or repeatedly fails to enforce the standards.

(3) The Water Resources Department shall provide notice to all Oregon licensed Monitoring and Water Supply Well Constructors and professional geologists and civil engineers registered in Oregon whenever authority is delegated to or revoked from another state agency.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

**690-240-0016****Unattended Wells**

All wells, when unattended during construction, shall be covered to protect public health and safety.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0020****Delegation Conditions**

In order for the Director to delegate responsibility for monitoring wells, geotechnical holes and other holes to another agency, construction, operation or use, maintenance, and abandonment standards developed by that agency pursuant to OAR 690-240-0015 shall include, but not be limited to, provisions to address the following factors:

- (1) Reporting well or hole location.
- (2) Reporting intended use of the well or hole.
- (3) Reporting well or hole design or construction.
- (4) Assigning responsibility for compliance.
- (5) Protecting ground water through minimum standards for

the construction, operation or use, maintenance, and abandonment of the monitoring well, geotechnical hole or other hole that provide ground water protection equivalent to that provided by OAR 690-240-0005 to 690-240-0540.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03

**690-240-0024****Well Identification Label**

(1) Within 30 days of completion of well construction, conversion, or alteration, the constructor shall permanently affix a well identification label to the wellhead as described in **Appendix 240-1**. The identification number shall be recorded on the well report. The well identification label shall be attached in such a manner as to be easily readable upon inspection. Identification labels shall be furnished by the Department.

(2) If a well identification label is already affixed to an existing well that is being altered, converted, or abandoned, the constructor shall record the identification number on the well report.

(3) When a well that has a well identification label (tag) on it is permanently abandoned, the well identification tag shall be destroyed. The well identification tag shall not be reused.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0026**

**Well Identification Label Maintenance**

The well identification label shall not be removed from the wellhead and shall be maintained by the land owner in an accessible location and in a readable condition. See **Appendix 240-1** for well identification label placement instructions.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0030**

**Other Holes: General Performance and Responsibility Requirements**

(1)(a) Other holes are constructed for a variety of purposes which may or may not encounter ground water. Other holes are constructed using a wide variety of equipment and are not typically designed to access water in order to collect subsurface information. Other holes include but are not limited to: temporary (abandoned within 72 hours) wetland delineation holes, gravel pits, pits for removal of underground storage tanks (UST), pilings, tunnels, post holes, excavation and construction holes, elevator shafts, and trenches.

(b) Although enforcement actions may be exercised against other parties, the landowner of the property where the other hole is constructed is ultimately responsible for the condition and use of the other hole.

(2)(a) In order to protect ground water, all other holes shall be constructed, operated or used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water;

(b) In order to protect ground water, all other holes, when abandoned, shall be abandoned in such a manner that water cannot move vertically in them with any greater facility than in the undisturbed condition prior to construction of the other hole;

(c) Conversion of other holes to a water supply well, monitoring well, or geotechnical hole shall be considered by the Water Resources Department on a case-by-case basis;

(d) If the other hole is an excavation for removal of an underground storage tank, water samples may be taken without adhering to the licensing, start card/fee, monitoring well report and monitor well conversion requirements.

Stat. Auth.: ORS 537.780

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01

**690-240-0035**

**Geotechnical Holes: General Performance and Responsibility Requirements**

(1) A geotechnical hole is defined in OAR 690-240-0010(36). Geotechnical holes, cased or uncased, are generally constructed to evaluate subsurface data or information (geologic, hydrogeologic, chemical, or other physical characteristics). Geotechnical holes are divided into the following classifications:

(a) Temporary (abandoned within 72 hours) geotechnical holes;

(b) Cased permanent geotechnical holes;

(c) Uncased permanent geotechnical holes; or

(d) Slope stability geotechnical holes.

(2) A geotechnical hole report shall be signed by a professional and must be submitted to the department if the geotechnical hole is:

(a) Greater than 18 feet deep;

(b) Within 50 feet of a water supply or monitoring well;

(c) Used to make a determination of water quality; or

(d) Constructed in an area of known or reasonably suspected contamination.

(3) Geotechnical holes between ten and eighteen feet in depth that do not meet any of the criteria spelled out in OAR 690-240-0035(2) do not require a geotechnical hole report to be filed with the Department, but shall be required to have a professional as described in 690-240-0035(4)(c) be responsible for the construction and abandonment of the geotechnical hole.

(4)(a) Although enforcement actions may be exercised against other parties, the landowner of the property where the geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, and abandonment of the geotechnical hole;

(b) Conversion of a geotechnical hole to a water supply or monitoring well shall be considered by the Department on a case by case basis;

(c) When a geotechnical hole report is required, or if it is between 10' and 18' in depth, the professional responsible for the construction, alteration or abandonment of a geotechnical hole shall have one of the following certifications or licenses at the time the professional signs the geotechnical hole report:

(A) A valid Oregon Monitoring Well Constructor's License;

(B) A valid Oregon Water Supply Well Constructor's License;

(C) Valid certification by the State of Oregon as a Registered Geologist; or

(D) Valid certification by the State of Oregon as a Professional Engineer.

(d) The professional shall provide proof of license, certification or registration and photo identification to Department employees upon request.

(e) In order to protect the ground water resource, all geotechnical holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water, or loss of artesian pressure.

(f) If the geotechnical hole is completed above ground, it shall have a minimum casing height of one foot above finished grade and a lockable cap with lock shall be attached to the top of the casing. If a geotechnical hole, except a slope stability hole, is completed flush with the land surface, a lockable watertight cap with lock, shall be attached to the top of the casing. A vault or monument designed to be watertight, level with the ground surface, shall be installed to prevent the inflow of surface water. The cover must be designed to withstand the maximum expected loadings.

(5)(a) A 'Geotechnical Hole Report' shall be prepared for each geotechnical hole, including unsuccessful geotechnical holes, constructed, altered, converted, or abandoned if the hole meets any of the requirements of OAR 690-240-0035(2) above.

(b) The 'Geotechnical Hole Report' shall be filed with the Department within 30 days of the completion of the geotechnical hole;

(c) The report shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the professional, and the second copy shall be given to the landowner or customer who contracted for the construction of the geotechnical hole;

(d) In the event any drilling equipment or other tools are left in a geotechnical hole the professional shall enter this fact on the Geotechnical Hole Report;

(e) A copy of any special authorizations or special standards issued by the Director shall be attached to the Geotechnical Hole Report. See OAR 690-240-0006 for information concerning special standards;

(f) The report of geotechnical hole construction shall include, as a minimum, the following:

(A) Landowner name and address;

(B) Started/Completed date;

(C) Location of the geotechnical hole by County, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);

(D) Use of geotechnical hole;

(E) Type of geotechnical hole;

(F) Depth;

(G) Map showing location of geotechnical hole on site must be attached and shall include an approximate scale and a north arrow;

(H) General hydrologic and geologic information as indicated on the Geotechnical Hole Report; and

(I) Such additional information as required by the Department.

(6) Temporary geotechnical holes:

(a) Temporary geotechnical holes include but are not limited to: drive points, soil and rock borings, temporary sample holes, permeability test holes, and soil vapor holes;

(b) Temporary geotechnical holes shall be abandoned within 72 hours of initial construction;

(c) Any temporary casing that has been installed shall be removed as part of the abandonment.

(7) Cased permanent geotechnical holes:

(a) Cased permanent geotechnical holes include but are not limited to: gas migration holes, cathodic protection holes and vapor extraction holes;

(b) If permanent casing is installed in a geotechnical hole, it shall meet the casing requirements in OAR 690-240-0430, 690-210-0210, or 690-210-0190 and the sealing requirements in 690-240-0475.

(8) Uncased permanent geotechnical holes:

(a) Uncased permanent geotechnical holes include but are not limited to: pneumatic and electrical piezometers;

(b) Temporary casing can be used during the construction of the uncased permanent geotechnical hole but must be removed prior to completion. Surface casing (5 feet maximum) may be installed for placement of logging or recording equipment.

(9) Slope stability geotechnical holes.

(a) Slope stability geotechnical holes include but are not limited to: slope instrumentation holes such as slope inclinometers, and slope remedial holes.

(b) Slope stability geotechnical holes are defined in OAR 690-240-0010(74). Such holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water.

(c) When a Geotechnical Hole Report is required under OAR 690-240-0035(2) for a slope stability geotechnical hole that is constructed to facilitate water level measurements, an affidavit from an engineer or geologist qualified to perform geotechnical investigations shall be attached to the Geotechnical Hole Report. The affidavit shall have the qualified engineer or geologist's stamp on it and shall certify that the slope stability geotechnical hole is on a landslide or a mass-wasting feature.

(10) Geotechnical Holes abandonment:

(a) Geotechnical holes shall be abandoned so that they do not:

(A) Connect water bearing zones or aquifers;

(B) Allow water to move vertically with any greater facility than in the undisturbed condition prior to construction of the geotechnical hole; or

(C) Allow surface water to enter the hole.

(b) Temporary geotechnical holes constructed to collect a water quality sample shall be abandoned in accordance with OAR 690-240-0510.

Stat. Auth.: ORS 537.780

Stats. Implemented:

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 2-2012, f. & cert. ef. 2-2-12; WRD 3-2014, f. & cert. ef. 11-25-14

#### 690-240-0040

#### Closed Loop Ground Source Heat Pump Boring — General Requirements

(1) In addition to the requirements for cased permanent and uncased permanent geotechnical holes contained in 690-240-0035, a closed loop ground source heat pump boring greater than 18 feet deep shall meet the following requirements:

(a) Prior to installation, the professional responsible for the construction of the ground source heat pump boring is encouraged to notify the Department's regional office.

(b) Ground source heat pump borings shall not be used for any purpose other than heat exchange.

(c) After completion, ground source heat pump borings shall not be converted to a monitoring well or a water supply well without written approval by the Department.

(d) The professional shall ensure that the ground source heat pump boring is constructed in accordance with 690-240-0040 through 690-240-0049.

(2) A minimum setback of 50 feet is required from any potential source of groundwater contamination, including but not limited to, temporarily abandoned water supply wells, water wells, septic tanks, drain fields, fuel oil or other petroleum tanks, cesspools, chemical storage or preparation areas. Municipal sewer and storm water systems are excluded from the 50 feet setback.

(3) All fluids used in the construction of a closed loop ground source heat pump boring and associated ground source heat pump system shall meet International Groundwater Source Heat Pump Association standards in place at the time of construction and shall be handled, utilized, and installed in a manner that does not contaminate the groundwater resource.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

#### 690-240-0043

#### Construction Standards

(1) If permanent casing is needed in a ground source heat pump boring, it shall meet the standards set out in OAR 690-210-0190 through 690-210-0220 for steel and plastic.

(2) Site specific conditions shall be assessed to determine the best method and materials to be used for sealing the boring annulus to protect the groundwater resource and that method shall meet the standards set out in OAR 690-210-0300 through 690-210-0360 for sealing wells.

(3) The diameter of the borehole for cased and uncased ground source heat pump borings shall allow placement of the heat exchange loop and grout pipe to the bottom of the boring as follows:

(a) For installation of a 3/4 inch loop, the diameter of the borehole shall be a minimum of 4 inches;

(b) For installation of a 1 inch loop, the diameter of the borehole shall be a minimum of 4 1/2 inches; and

(c) For installation of a 1 1/4 inch loop, the diameter of the borehole shall be a minimum of 5 inches.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

#### 690-240-0046

#### Grouting of Uncased Boring

(1) Grouting of an uncased boring shall be completed after the heat exchange loop is installed. The boring shall be completed in a manner to allow ease in locating including but not limited to the use of marking or locating magnetic tape if maintenance or abandonment is necessary. The area near land surface where the ground source heat pump boring will be connected to a manifold or to the closed loop system may be filled with earth materials.

(2) Sealing shall be completed using active solids content bentonite grout slurry (minimum 20% active solids by weight) or high solids fluid mixture of cement. Controlled density fill (CDF), fly ash, drill cuttings or drilling fluids shall not be used in grouting the uncased boring.

(3) Mixes of bentonite or cement slurry shall be installed by pumping through a grout pipe in a continuous operation from the bottom of the boring upward. The grout pipe shall extend the full depth of the borehole before pumping begins. Minimum slurry volume used shall be equal to or exceed the calculated annulus volume in the borehole. Grouting material shall surround all pipes remaining in the borehole.

(4) The quality of the water in the boring shall not interfere with the proper hydration of bentonite.

Stat. Auth.: ORS 536.027 & 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12; WRD 3-2014, f. & cert. ef. 11-25-14

**690-240-0049**

**Reporting Requirements**

(1) The professional responsible for construction of the ground source heat pump boring(s) shall prepare a complete and certified boring log for each ground source heat pump boring.

(2) Boring logs shall be prepared in triplicate; an original and two copies. The original shall be submitted to the Department and contain a site map showing the location of each ground source heat pump boring. One copy shall be retained by the professional responsible for construction of the ground source heat pump boring and the second copy shall be provided to the customer/landowner who contracted for the construction of the ground source heat pump boring.

(3) The Professional shall file the boring log with the Department within 30 days after the completion of the ground source heat pump boring.

(4) The boring log required in section (2) of this rule shall be recorded on a form provided or previously approved in writing by the Department. The form shall include, as a minimum, the following:

- (a) Name and Address of Landowner;
- (b) Start/Completion date;
- (c) Location of the boring by county, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);
- (d) A description and depth of each change of formation;
- (e) Total depth and diameter of the completed closed loop heat pump boring
- (f) Depth of the surface seal, if any;
- (g) The nominal diameter and depth of the casing, if any;
- (h) The type and amount of grout material used;
- (i) The type of grout additives used;
- (j) The depth the borehole is grouted to; and
- (k) Such additional information as required by the Department.

Stat. Auth.: ORS 536.027, 537.780

Stats. Implemented:

Hist.: WRD 2-2012, f. & cert. ef. 2-2-12

**690-240-0055**

**License Required to Construct Monitoring Wells**

(1) Unless otherwise provided in these rules, any person who constructs, alters or abandons monitoring wells for another person shall have a Monitoring Well Constructor's License or work under the supervision of a licensed Monitoring Well Constructor.

(2) If a person advertises services or enters into contracts for the construction, alteration or abandonment of monitoring wells for another person, that person shall furnish a \$10,000 Water Well Constructor's Bond or Irrevocable Letter of Credit to the Water Resources Commission and must be a licensed Monitoring Well Constructor.

(3) A property owner who constructs, alters, or abandons a monitoring well on their own property shall have a Landowner Well Permit as described in OAR 690-240-0340 for each monitoring well on which work is done.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

**690-240-0060**

**Monitoring Well Constructor License Examination**

(1) The Water Resources Department administers the written examination required under ORS 537.747. Separate examinations are administered for each license endorsement. The Department schedules the examination on the second Monday during the months of January, April, July and October. Examinees must pay a \$20 exam fee. Special accommodations may be given to those individuals who cannot attend the regularly scheduled examination dates. Requests shall be considered on a case-by-case basis. The examination tests the applicant's knowledge of:

(a) Oregon laws and administrative rules on the use of ground water, monitoring well constructor licensing requirements, the construction of monitoring wells and/or geotechnical holes, and the preparing and filing of Start Cards and Monitoring Well Reports;

(b) Hydrogeology, the occurrence and movement of ground water and contaminants, and the design, construction and development of monitoring wells; and

(c) Types, uses, and maintenance of drilling tools and equipment, drilling problems and corrective procedures, repair of faulty monitoring wells, sealing of monitoring wells, and safety rules and practices.

(2) An applicant who fails to pass an endorsement examination may retake an examination for the same endorsement after three months and the payment of another examination fee.

(3) Passing examination scores are valid for three years from the date of the examination.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

**690-240-0065**

**Monitoring Well Constructor License, Experience Requirements and Trainee Card**

(1) License. To qualify for a Monitoring Well Constructor's License, a person shall:

(a) Be at least 18 years old;

(b) Pass a written examination;

(c) Have a minimum of one year experience, during the previous 36 month period, in monitoring well construction, alteration, or abandonment. This experience shall include the operation of well drilling machinery for monitoring well construction, alteration, conversion, or abandonment on a minimum of fifteen monitoring wells or a demonstration of equivalent experience in the operation of well drilling machinery. The following are acceptable as evidence of experience:

(A) Monitoring well reports or rough well logs with applicant's name entered for each of the 15 wells. The name, address and telephone number of the person responsible for the construction of each monitoring well shall be included on each report or log;

(B) Income tax returns showing source of drilling income for a period of time, or worker's compensation account information or the equivalent may be established to satisfy the one year of active construction requirement;

(C) Any other evidence the Director may deem suitable;

(D) A license held in another state shall not substitute for required evidence of experience.

(d) Pay a license fee.

(2) Trainee. If an applicant passes the written Monitoring Well Constructor's License examination, but cannot meet the experience requirement the Commission may issue a trainee card. To qualify for a Monitoring Well Constructor Trainee Card, a person must:

(a) Be at least 18 years old;

(b) Pass a written examination; and

(c) Be supervised by a person who holds a valid Monitoring Well Constructor's License.

(3) Trainee Card. A Trainee Card is valid for three (3) years from the date the examination was passed.

(4) Supervision. Supervision as it relates to any person who holds a Monitoring Well Constructor Trainee Card:

(a) A Trainee may operate a cable tool monitoring well drilling machine without a licensed Monitoring Well Constructor physically present at the well site only if:

(A) The licensed constructor can reach the well site within two hours if so requested by an authorized representative of the Department; and

(B) The licensed constructor has signed the rough drilling log within eight working hours prior to the representative's visit.

(b) A licensed Monitoring Well Constructor must physically be on the site at all times when a cable tool drilling machine is:

(A) Drilling within a flowing artesian well;

(B) Setting or advancing casing;

- (C) Setting liner;
- (D) Perforating casing;
- (E) Setting well screens;
- (F) Placing packers;
- (G) Drilling into, through, or below ground water suspected or known to be contaminated; and
- (H) Placing casing seals.

(c) A Monitoring Well Constructor trainee may operate a non-cable tool monitoring well drilling machine without a licensed Monitoring Well Constructor physically present at the well site only during removal of the drill stem from the monitoring well.

(d) Activities under subsection (3)(c) of this rule shall proceed only if:

(A) The licensed Monitoring Well Constructor can reach the site within one hour if so requested by an authorized representative of the Department; and

(B) The licensed Monitoring Well Constructor has signed the rough drilling log within eight working hours prior to the representative's visit.

(e) An authorized representative of the Department in whose jurisdiction the monitoring well is being constructed has the authority to:

(A) Grant an extension to the time limits stated above when a request, showing good cause, is received from the bonded constructor in advance for each particular well; and

(B) Place additional restrictions on the trainee, including requiring the constructor to be on the site at all times while the drilling machine is operating, when the Department representative determines that either the drilling environment or the knowledge and/or experience of the trainee warrant closer supervision.

(f) For a Monitoring Well Constructor trainee to operate a monitoring well drilling machine without a licensed Monitoring Well Constructor present, the trainee's card must be endorsed with the name of the bonded Monitoring Well Constructor responsible for the construction of the monitoring well.

(5) Other supervision requirements for persons not licensed or permitted to construct monitoring wells, or who do not hold a Monitoring Well Constructor trainee card:

(a) Persons who are in the act of constructing, altering, converting or abandoning monitoring wells must be supervised by a licensed Monitoring Well Constructor who is physically present at the well site at all times during construction, alteration, conversion, or abandonment activity.

(b) The supervising Monitoring Well Constructor is responsible for all applicable statutes and rules in construction, alteration, conversion, or abandonment of the monitoring well.

(6) Persons who satisfy all requirements of ORS 537.747(3) shall be issued a Monitoring Well Constructor's License. The responsibilities for issuing and securing a Monitoring Well Constructor's License or trainee card are listed in subsections (a) and (b) of this section.

(a) The Monitoring Well Constructor's License applicant is responsible for:

(A) Completing an application or renewal form for a new or renewed license or trainee card;

(B) Submitting the application or renewal form to the Water Resources Department along with the required fees;

(C) Carrying the license or trainee card whenever constructing, altering, converting, or abandoning any monitoring well; and

(D) Providing the Water Resources Department, within 30 days, notification of any change of mailing address.

(E) Providing the Water Resources Department documentation satisfying the continuing education requirements set forth in OAR 690-240-0200 through 690-240-0280.

(b) The Water Resources Department is responsible for:

(A) Designing and providing Monitoring Well Constructor license(s) and trainee cards;

(B) Designing and providing application forms and renewal forms for licenses and application forms for trainee cards;

(C) Processing applications and renewals for licenses and applications for trainee cards; and

(D) Returning incomplete application and renewal forms to applicants for completion.

(E) Sending new and renewed licenses to applicants who have completed the application or renewal form and submitted the required fee. This does not preclude refusal to renew as outlined in OAR 690-240-0070(4).

(7) Bonded Monitoring Well Constructor. For a person to possess a bonded Monitoring Well Constructor's License, the person shall provide to the Department a properly executed Water Well Constructor's Bond or Irrevocable Letter of Credit. The Water Resources Department shall indicate on the constructor's license a bonded classification.

(8) Representatives of the Water Resources Department may ask anyone constructing, altering, or abandoning a monitoring well to present their license or trainee card as proof of eligibility to construct, alter, convert, or abandon monitoring wells in the State of Oregon. Licensed individuals shall display their license or trainee card and photo identification when they are requested to do so by Water Resources Department personnel or other agency personnel to whom monitoring well regulation has been delegated.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0070

##### Terms of Monitoring Well Constructor License and License Fees

(1) The Department issues all Monitoring Well Constructor licenses. License fees are established by ORS 537.747. A penalty applies to late renewals.

(2) Fees for new licenses and renewal licenses are the same. The fee for a two year license is \$150. All licenses expire on June 30 of the second year.

(3) A \$100 penalty applies when a licensee renews a license within 12 months of the expiration date. There is no charge for a Trainee Card.

(4) Monitoring Well Constructors who have not made arrangements with the Water Resources Department to pay civil penalties which are assessed against them shall not be issued a license renewal or a new license until after arrangements for payment have been agreed to by the Department. Monitoring Well Constructors who have made arrangements for payment of civil penalties and have failed to meet the terms of the agreement, except in certain cases of bankruptcy, may not have their license renewed or a new license issued until all outstanding civil penalties owed to the Department have been paid.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0200

##### Continuing Education Committee

A Continuing Education Program and Continuing Education Committee are established under chapter 496, Oregon Laws 2001 (ORS 537.765). The duties of the Well Constructors Continuing Education Committee are to review and approve continuing education courses and assign continuing education credits.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

#### 690-240-0210

##### Continuing Education Requirement

(1) As of June 30, 2005, each individual licensed under ORS 537.747 is required to obtain a minimum of 14 continuing education credits (CECs) during each licensing period regardless of the number of licenses or endorsements held. Continuing education credits may be obtained through clinics, schools, professional organizations, seminars, lectures or other continuing education courses that relate to the practice of well construction and are approved by the Continuing Education Committee.

(2) A minimum of two (2) CECs shall pertain to ground water and well construction statutes under ORS 537.505 to 537.795 and 537.992, and administrative rules under OAR 690-200 through 690-240 during each licensing period.

(3) A maximum of eight (8) CECs may be obtained through approved safety/first aid/CPR/Hazardous Materials courses during each licensing period. Of the eight (8) CECs, a maximum of four (4) CECs may be obtained through Hazardous Materials training courses and a maximum of four (4) CECs may be obtained through safety/first aid/CPR courses.

(4) Exhibitions shall count as one (1) CEC per approved exhibition attended and shall not exceed two (2) CECs per licensing period.

(5) Licensees may count approved CECs accumulated after January 1, 2002, for their first license renewal that requires CECs.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-240-0220

#### Documentation

(1) Each licensee is responsible for maintaining their continuing education records. Except as provided in OAR 690-240-0270(2), each licensee shall provide the Department with evidence of compliance with the continuing education requirement on a form approved by the Continuing Education Committee prior to or at the time of license renewal.

(2) Licensees who do not provide documentation of completion of the continuing education requirement or receive a waiver shall not have their license(s), or appropriate endorsement(s), renewed until this requirement is satisfied.

(3) Licensees who provide documentation of completion of the continuing education requirement within the 12 months after their license expires may either pay the \$100 late penalty fee or requalify for a new Monitoring Well Constructor's License or endorsement in accordance with ORS 537.747(3). If a licensee fails to provide documentation of completion of the continuing education requirement within 12 months after expiration of their license or endorsement the person must comply with the requirements of ORS 537.747(3) for a new Monitoring Well Constructor's License or endorsement.

(4) CECs acquired during a renewal period in excess of the minimum CECs required may not be applied to future licensing periods.

(5) When an individual obtains a new Monitoring Well Constructor's License that expires within 14 months or less, the continuing education requirement shall be prorated such that only seven (7) CECs are required at the first renewal. Of the seven (7) required CECs:

(a) A maximum of two (2) CECs may be in Hazardous Materials training;

(b) A maximum of two (2) CECs may be in safety/first aid/CPR; and

(c) A minimum of one (1) CEC shall pertain to ground water and well construction statutes under ORS 537.505 to 537.795 and 537.992, and administrative rules under OAR 690-200 through 690-240.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

### 690-240-0240

#### Approved Course List/Course Approval and Assignment of CECs

(1) The Department shall maintain a Continuing Education Committee-approved list of courses. The list shall include, but not be limited to, the course title, class location and date, cost, (if applicable), and CECs assigned.

(2) The Continuing Education Committee shall evaluate all courses related to continuing education for well constructors and may assign CECs. The Continuing Education Committee shall notify the course sponsor in writing of the results of their

evaluation of the course material. The following criteria may be utilized to evaluate and assign CECs:

(a) Course agenda and how well the subject relates to monitoring well construction and other borings regulated by the Department;

(b) Instructor qualifications;

(c) Subject difficulty;

(d) Student course evaluations, if applicable; and

(e) Other information as appropriate.

(3) A licensee who is also the instructor of an approved continuing education course shall be entitled to double CECs for that course. A licensee who is also the instructor of an approved course, may only receive CECs for the course once during a single renewal period, regardless of the number of times a course is presented.

(4) The following courses do not require pre-approval by the Continuing Education Committee:

(a) First Aid and CPR, provided the instructor is certified by the American Red Cross, or has certification accepted by the American Red Cross;

(b) Occupational Safety and Health Administration (OSHA) approved Hazardous Materials Training; and

(c) OSHA approved courses pertaining to the well construction industry.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-240-0250

#### Course Sponsor Requirements

(1) Course sponsors shall submit a completed application for approval to the Continuing Education Committee on a form(s) provided by the Department at least 45 days prior to the date the course is to be presented. Approved sponsors shall:

(a) Advertise the course to the satisfaction of the Continuing Education Committee;

(b) Provide the Department with a certified class roster within 30 days after completion of the course;

(c) Provide documentation of completion to each qualifying attendee that shall include at a minimum: course title, course date(s), number of approved credits, and instructor and/or sponsor signature; and

(d) Maintain the certified class roster for two years.

(2) All clinics, courses, classes, workshops, and seminars shall be open to anyone who wants to attend. This does not preclude a sponsor from imposing reasonable requirements for attendance such as fees, maximum occupancy limits, and requiring attendees to provide their own safety equipment.

(3) Course approval and assigned CECs shall be effective for two years as long as the course remains the same. The Continuing Education Committee shall be notified in writing by the course sponsor, 45 days in advance of each time an approved continuing education course is presented. Such notification shall include the course title, date, class location, cost (if applicable), number of credits assigned, and a statement that the program has not changed from the course previously approved by the Continuing Education Committee.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

### 690-240-0260

#### Loss of Approval

The Continuing Education Committee may withdraw or suspend approval of a course if it is determined that any of the following has occurred:

(1) The course content has changed without notice to the Continuing Education Committee;

(2) The course was not advertised to the satisfaction of the Continuing Education Committee;

(3) Documentation of completion has been issued to an individual who did not attend or complete the course in accordance with the provisions under which the course was approved;

(4) Documentation of completion was not given to all individuals who satisfactorily completed the course in accordance with the provisions under which the course was approved;

(5) A certified class roster was not maintained by the sponsor for two years;

(6) Fraud or misrepresentation has occurred with the application for course approval, maintenance of records, teaching method, course content, or issuance of certificates for a course; or

(7) Any other factor the Continuing Education Committee deems appropriate.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

#### **690-240-0270**

##### **Courses Taken Without Prior Approval**

(1) Except as provided in OAR 690-240-0210(5), a licensee may request that the Continuing Education Committee assign CECs for courses taken without prior approval within the current licensing period.

(2) The licensee shall supply verification of attendance, a course outline, and a written explanation as to why prior approval was not obtained. This information must be received in the Salem office of the Department no later than May 15 of the year that their license or appropriate endorsement expires.

(3) Courses taken without prior approval shall be evaluated by the Continuing Education Committee on a case-by-case basis using the criteria outlined in OAR 690-240-0240(2). This shall not apply to courses that do not require pre-approval under OAR 690-240-0240(4).

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03

#### **690-240-0280**

##### **Waivers**

(1) The Director may waive the continuing education requirements for a licensed Monitoring Well Constructor upon written request demonstrating inability to attend continuing education courses because of health, military duty or other circumstances beyond the control of the constructor.

(2) Licensees who are denied a waiver may appeal to the Commission by filing a written exception with the Department within 60 days of service of the Director's order.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 1-2003, f. & cert. ef. 3-14-03; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-240-0320**

##### **Contracting for Services**

Only Oregon licensed and bonded Monitoring Well Constructors may advertise services or enter into a contract, either written or oral, to construct, alter, convert, or abandon a monitoring well. Any written bid for a project which includes the construction, alteration, conversion, or abandonment of a monitoring well must provide:

(1) A bid or estimate for the work associated with monitoring well construction signed by a Monitoring Well Constructor, who is licensed and bonded in the State of Oregon.

(2) A statement by the licensed and bonded Monitoring Well Constructor that the work will be completed in accordance with Oregon Ground Water Law (ORS Chapter 537) and the Rules for the Construction, Maintenance, Alteration, Conversion, and Abandonment of Monitoring Wells, Geotechnical Holes, and Other Holes in Oregon (OAR chapter 690, division 240).

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0075; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-240-0330**

##### **Monitoring Well Constructor and Landowner Well Bonds or Letters of Credit**

(1) The Water Resources Department shall accept bonds only from corporations licensed by the Oregon Department of Insurance and Finance to issue fidelity and surety insurance. The Water Resources Department shall accept irrevocable letters of credit only from a bank as described in ORS 706.008.

(2) If the issuing corporation cancels a bond, the corporation shall provide notice of cancellation to the Water Resources Department by registered or certified mail. If the issuing bank cancels a letter of credit, the bank shall provide notice of cancellation to the Water Resources Department by registered or certified mail. The cancellation shall not take effect earlier than the 30th day after the date of mailing in accordance with ORS 742.366(2).

(3) When issuing a final enforcement order that may place a bond or irrevocable letter of credit in jeopardy, the Director may mail a copy of the order to the address of record of the surety company issuing the bond, or the bank issuing the irrevocable letter of credit.

(4) All wells shall be constructed under a bond or irrevocable letter of credit. The bond or letter of credit shall cover construction, alteration, conversion, or abandonment for each well under that bond or letter of credit for a period of three years after the date the well report is filed with the commission, whether or not the bond or letter of credit has been subsequently canceled.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0080; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-240-0340**

##### **Landowner Well Construction Permit, Fee and Bond**

(1) The Water Resources Commission requires a permit, permit fee, and bond or irrevocable letter of credit, for each monitoring well constructed, altered, converted, or abandoned by a landowner, unless the landowner is a licensed and bonded Monitoring Well Constructor. The landowner permit and bond shall be obtained prior to beginning work on a well.

(2) To receive a Landowner Well permit, a person must submit the following to the Director:

(a) A completed application form provided by the Commission, containing, as a minimum:

(A) The property owner's name, address and telephone number;

(B) The surety company's name, address and telephone number;

(C) The proposed location of the well by township, range, section, tax-lot number if assigned, and street address;

(D) The proposed use of the monitor well; and

(E) The type of proposed work; and

(F) Well design plan on form approved by the Department.

(b) A properly executed Landowner's Water Well Bond or Irrevocable Letter of Credit for \$5,000 to the State of Oregon; and

(c) A \$25 permit fee.

(3) Only the owner of record, a member of the immediate family of the owner of record, or a full time employee of the owner of record, (whose main duties are other than the construction of wells), may operate a well drilling machine under a landowner's permit.

(4) A landowner permit issued pursuant to these rules shall expire six months from the date of issuance.

(a) A monitor well report shall be submitted within 30 days of expiration of the landowner permit, or within 30 days of completion of the well, whichever occurs first.

(5) If the landowner permit expires, a landowner may reapply for a new landowner permit by complying with the requirements described in sections (1), (2) and (3) of this rule.

(6) The Department may deny a landowner permit if it is determined that the construction, alteration, abandonment, or conversion of the proposed well is a health threat, a health hazard, a

source of contamination, or a source of waste of the ground water resource.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0082; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0355

##### Monitoring Well Drilling Machines

(1) All monitoring well drilling machines being operated, other than under a landowner's permit, shall be plainly marked either with the bonded Monitoring Well Constructor's license number, the name of the bonded Monitoring Well Constructor, or the name of the well drilling business. The markings shall be permanently affixed on each side of the machine. Good quality paint or commercial decal numbers shall be used in placing the identification information on the drilling machine. In no case shall the constructor's license number, name, or business name, be inscribed with crayon, chalk, marking keel, pencil, or other temporary markings.

(2) In all cases, the license number, name, or business name, of the bonded Monitoring Well Constructor shall be removed from the drilling machine immediately upon change of ownership or change of control of the drilling machine.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0085; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 5-2015, f. & cert. ef. 7-1-15

#### 690-240-0375

##### Monitoring Well Construction Notice Required (Start Card)

(1) Each bonded Monitoring Well Constructor licensed to operate in the State of Oregon and each landowner holding a landowner's permit shall provide notice as required in ORS 537.762 before commencing the construction, alteration, or abandonment of any monitoring well or conversion of any other hole, geotechnical hole, or water supply well to a monitoring well. The start card shall contain the following information:

- (a) Name and mailing address of the landowner;
- (b) Street address of the well;
- (c) The approximate location of the monitoring well; and
- (d) The proposed depth, diameter, and purpose or use if the well is new, altered, or converted.

(2) In addition to the information required pursuant to OAR 690-240-0375(1)(a)-(d), a start card may also contain information regarding the type of proposed alteration.

(3) Forms for making these reports and submitting fees shall be furnished by the Department.

(4) OAR 690-240-0340 shall apply to landowners who construct, alter, convert, or abandon a monitoring well.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 2-2002, f. & cert. ef. 9-6-02; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0090; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-240-0385

##### Start Card Reporting Requirements

(1) The start card notification required in ORS 537.762 shall be submitted to the Department's region office within which the monitor well is being constructed, altered converted or abandoned using one of the following methods:

(a) Start cards submitted electronically shall be transmitted by a Department-approved method and shall be submitted before beginning construction, alteration, conversion or abandonment work of any monitor well.

(b) By regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; or

(c) By hand delivery, during regular office hours, before beginning the construction, alteration, conversion or abandonment work on any monitoring well; or

(d) By facsimile transmission (FAX) before beginning the construction, alteration, conversion or abandonment work on any monitoring well. If this method is used, a legible copy of the start card shall also be mailed or delivered to the appropriate OWRD region office no later than the day work is commenced.

(2) The fee required under ORS 537.762(5) for the construction of a new well, deepening of an existing well, conversion of a water supply well, geotechnical hole or other hole shall be submitted to the Department's Salem office with a duplicate copy of the start card. A duplicate start card is not required if the start card fee is included with a start card submitted electronically under Section (1)(a) of this rule.

(3) If a start card has been filed under section (1) and (2) of this rule and additional wells are required on the same or contiguous tax lot and for the same landowner, then start cards for the additional wells shall be filed no later than the day work begins.

(4) The Director or region office may provide an alternate means of notification. If an alternative means of notification is used, the start card shall be mailed or delivered to the region office within one week of beginning work on the monitoring well. A Monitoring Well Constructor whose license has been restricted by order shall provide notice as stipulated in the order.

(5) Once received by the Department, the start card shall be confidential for a period of one year after it is received or until the monitoring well report required by OAR 690-240-0395 is received, whichever is shorter.

(6) The start card may be used in an administrative enforcement action at any time, including the period of confidentiality. Once the start card is used for enforcement reasons, it is no longer confidential.

**NOTE:** Region office fax and telephone numbers are listed in Table 240-2. Water Resources Department Regional boundaries are shown in Figure 240-2.

ED. NOTE: Tables and Figures referenced are available from the agency.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented

Hist.: WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09

#### 690-240-0395

##### Monitoring Well Report Required (Monitoring Well Log)

(1) A monitoring well report shall be prepared for each monitoring well constructed, altered, converted, or abandoned including unsuccessful monitoring wells. The log shall be certified as correct by signature of the Monitoring Well Constructor constructing the monitoring well. The completed log shall also be certified by the bonded Monitoring Well Constructor responsible for construction of the monitoring well. A monitoring well report must be submitted by each bonded constructor (if drilling responsibility is shifted to a different bonded constructor), showing the work performed by each bonded constructor.

(2) The log shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the Monitoring Well Constructor, and the second copy shall be given to the customer who contracted for the construction of the monitoring well.

(3) The bonded Monitoring Well Constructor shall file the monitoring well log with the Director within 30 days after the completion of the construction, alteration, conversion, or abandonment of the monitoring well.

(4) The trainee or Monitoring Well Constructor operating the monitoring well drilling machine shall maintain a rough log of all geologic strata encountered and all materials used in the construction of the monitoring well. This log shall be available for inspection by the Watermaster or other authorized agent of the Water Resources Department or other delegated agency representative at any time before the monitoring well report is received by the Department. The rough drilling log shall be in handwritten or electronic form, or a voice recording.

(5) In the event a constructor leaves any drilling equipment or other tools in a monitoring well this fact shall be entered on the monitoring well report.

(6) A copy of any special authorizations or special standards issued by the Director shall be attached to the monitoring well report.

(7) The report of monitoring well construction required in section (1) of this rule shall be recorded on a form provided or previously approved in writing by the Department. The form shall include, as a minimum, the following:

- (a) Name and Address of Landowner;
- (b) Started/Completed date;
- (c) Location of the well by county, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);
- (d) Start card number;
- (e) Well identification label number (well tag number);
- (f) Use of well;
- (g) Type of work;
- (h) Type and amount of sealant used and measured weight of the grout slurry as required in OAR 690-240-0475(2)(g);
- (i) Temperature of water;
- (j) Map showing location of monitoring well on site, must be attached and shall include an approximate scale and a north arrow;
- (k) Such additional information as required by the Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0095; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0410

##### Monitoring Well Construction: General

(1) Monitoring well components, including well screens, casings and annular sealant should be selected based on known site characteristics to ensure the well will last for the duration of the monitoring program.

(2) No monitoring well shall be used for domestic, public water supply, industrial, commercial, or agricultural purposes unless it meets the minimum construction standards for water supply wells, OAR 690-200 to 690-230.

(3) No completed monitoring well shall interconnect aquifers, including low yielding aquifers.

(4) The start card number shall be permanently attached, stamped or engraved on the outer well casing or permanent protective well cover, not on a removable cap.

(5) No monitoring well shall be constructed as a multiple completion well without prior special standard approval as specified in OAR 690-240-0006.

(6) Horizontal wells shall only be constructed with prior special standard approval only as specified in OAR 690-240-0006.

(7) The borehole diameter shall be at least four inches larger than the nominal casing diameter except as noted in OAR 690-240-0525 concerning piezometers. If the monitoring well is constructed using a hollow stem auger drilling machine, the inside diameter of the auger must be at least four inches larger than the nominal diameter of the casing to be installed, except as noted in OAR 690-240-0525 concerning piezometers.

(8) Materials which foster or promote undesirable organic growth or have the potential to degrade water quality shall not be employed in the construction of the monitoring well.

(9) After completion, the landowner is responsible for maintaining the well in an approved condition. If the well is damaged, the well protection system and casing shall be restored as prescribed by these rules. If the well is damaged beyond repair, the well shall be properly abandoned in accordance with OAR 690-240-0510.

(10) A well identification label shall be attached to every new well and to every altered or repaired well that does not already have a label. The label must be easily visible on the outside of the casing on an above grade completion and inside the vault of a flush grade monument. (See Appendix 1) In cases where a geotechnical hole or other hole is converted into a monitor well, a well identification

label must be attached to the completed well in the same fashion as required for a new or altered well.

(11) Any deviation from these rules requires special standard approval as specified under OAR 690-240-0006.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0100

#### 690-240-0420

##### Well Protection

(1) Every monitoring well shall be capped and protected using one of the following methods:

(a) If the well is cased with metal and completed above the ground surface, a lockable cap with lock shall be attached to the top of the casing;

(b) If the well is completed above the ground surface, and is not cased with metal, a metal protective casing shall be installed around the well. The protective casing shall extend at least six inches above the top of the well casing and at least two feet into the ground. A cap shall be attached to the top of the well casing and a lockable lid with lock shall be attached to the top of the protective casing; and

(c) If the well is completed below ground surface, a lockable, watertight cap with lock shall be attached to the top of the casing. A vault or monument, designed to be watertight, level with the ground surface, shall be installed to prevent the inflow of surface water. The cover must be designed to withstand the maximum expected loadings.

(2) All wells completed above ground shall have a minimum casing height of one foot above finished grade and shall be protected from damage by three metal posts at least three inches in diameter, set in and filled with concrete. The protective posts shall be installed in a triangular array around the casing and at least two feet from it. Each post shall extend at least three feet above and three feet below the ground surface.

(3) If the well is to be protected by other surface protection methods, the bonded constructor shall obtain special standards from the Department as specified in OAR 690-240-0006.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0110

#### 690-240-0430

##### Casing

(1) The constructor shall consider the following factors when selecting monitoring well casing:

(a) The casing installed shall not be readily reactive with the subsurface environment according to best available knowledge;

(b) The casing installed shall not adversely affect or interfere with the chemical, physical, radiological, or biological constituents of interest according to best available knowledge;

(c) The collapse strength of all casing used in monitoring well construction must be great enough to withstand the pressure exerted by the annular seal during seal placement, including heat of hydration.

(2) All monitoring well casing shall conform to at least 304 or 316 stainless steel, polytetrafluoroethylene PTFE, Schedule 40 PVC casing, or other casing materials rated and approved by ASTM for monitoring well construction.

(3) All casing installed shall be in new or like new condition, being free of pits or breaks, and shall be cleaned of foreign materials and contaminants prior to installation, unless removed from the manufacturer's packaging on site.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0115

**690-240-0440**

**Additional Standards for Artesian Monitoring Wells**

(1) Monitoring wells penetrating into an artesian aquifer shall have an upper oversize drillhole at least four inches greater in diameter than the nominal diameter of the permanent well casing except as noted in OAR 690-240-0525 concerning piezometers. Watertight unperforated casing shall extend and be sealed, according to OAR 690-240-0475, at least five feet into the confining formation immediately overlying the artesian water-bearing zone.

(2) If an artesian monitoring well flows at land surface, the well shall be equipped with a control valve and a watertight mechanical cap, threaded or welded, so that all flow of water from the well can be completely stopped.

(3) All flowing artesian monitoring wells shall be equipped with a pressure gauge placed on a dead-end line. A petcock valve shall be placed between the gauge and well casing.

(4) All flowing artesian monitoring wells shall be tested for artesian shut-in pressure in pounds per square inch and rate of flow in cubic feet per second, or gallons per minute, under free discharge conditions. This data shall be reported on the well report.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0118

**690-240-0450**

**Cleaning**

(1) All drill cuttings and fluids from drilling, cleaning and development shall be properly managed during construction, alteration or abandonment to protect ground water from contamination.

(2) The landowner or the landowner's agent is responsible for management of drill cuttings and fluids left on site after well construction, alteration or abandonment is completed.

(3) To prevent cross-contamination between wells, the drill rig and all drilling equipment shall be cleaned before and after well construction by one of the following methods:

(a) Detergent washing and rinsing with potable water;

(b) High pressure hot water cleaning;

(c) Steam cleaning; or

(d) Other methods as approved by the Water Resources Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0120

**690-240-0460**

**Monitoring Well Screen, Filter Pack, and Filter Pack Seal**

(1) The screen and filter pack, when properly designed and installed, allows a water quality sample to be collected that is representative of water in the formation.

(2) The well screen shall:

(a) Be commercially fabricated and constructed of material that is not knowingly readily reactive with the subsurface environment;

(b) Have a collapse strength great enough to withstand the pressures exerted during construction and development of the monitoring well;

(c) Be in new or like new condition, being free of pits or breaks;

(d) Be cleaned using methods outlined in OAR 690-240-0450(3); and

(e) Be centered in the borehole.

(3) The use of lead packers with the screen sections is prohibited.

(4) A bottom cap or end plug shall be attached to each well casing.

(5) The filter pack shall:

(a) Consist of clean, chemically inert, well rounded material;

(b) Not extend more than three feet above the top or one foot below the bottom of the well screen; and

(c) Be placed in such a manner as to ensure placement opposite the well screen without bridging or size segregation.

(6) The filter pack seal shall consist of:

(a) A two foot thick layer of fine grained sand above the filter pack if a grout or grout slurry is used; and/or

(b) A minimum of a three foot thick layer of dry bentonite. If a grout slurry is to be used as the annular seal, the bentonite shall be adequately hydrated prior to placement of the annular seal to prevent grout infiltration into the filter pack.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0126

**690-240-0475**

**Well Seals**

(1) Proper seal placement is essential to minimize the potential for movement of water and contaminants from the surface, or other waterbearing zones, into the monitoring well. Appropriate sealing materials may vary depending on the site characteristics and the substances being monitored. Well seals shall consist of a physically and chemically stable hydrated grout slurry composed of:

(a) Neat cement; or

(b) Sodium bentonite; or

(c) A cement-bentonite grout mixture containing no more than five percent bentonite by dry weight; or

(d) Sodium bentonite granules, pellets or chips placed in an unhydrated state, and subsequently hydrated downhole.

(2) Grout slurries shall be mixed in the proper proportions and placed in the bore hole in such a manner as to prevent excessive shrinkage, water loss, chemical breakdown, bridging or invasion into the filter pack. The following procedures shall be utilized if a grout slurry is to be the sealing material:

(a) Neat cement used for grouting shall be American Petroleum Institute Class A or B, or ASTM C-150 Type I or II neat cement with no additives, mixed in the proportion of 5.2 gallons of water per standard 94 pound sack and having a mud weight of approximately 15.6 pounds per gallon;

(b) Bentonite used as a slurry for grouting shall be a high solids granular sodium bentonite mixed according to the manufacturer's directions, having a minimum mud weight of at least 9.5 pounds per gallon, and containing at least 20 percent solids. Mixing methods should be used which prevent the slurry from being excessively lumpy;

(c) When a mixture of cement and bentonite is used as a slurry for grouting, the cement shall be American Petroleum Institute Class A or B, or ASTM C-150 Type I or II neat cement. The slurry shall be no more than five percent, by dry weight, of sodium bentonite gel powder (3.75 pounds of bentonite per sack of cement). For each pound of bentonite added, up to an additional 0.7 gallons of water shall be added to the original neat cement mix. The water and bentonite shall be mixed first, and then the cement added to the bentonite slurry. The cement-bentonite mixture shall have a mud weight of approximately 14.1 pounds per gallon;

(d) Prior to placing grout in the annular space, the grout slurry weight shall be measured by ASTM Test Method D-4380-84. Grout slurry shall not be placed in the annular space until the grout slurry weight is within ten percent of the weight specified in subsection (2)(a), (b) or (c) of this rule;

(e) Grout slurries shall be placed from the bottom of the annular space upward in such a manner as to completely fill the sealing interval. Grout slurries shall begin at the top of the filter pack seal overlying the filter pack and extend to the bottom of the surface seal. If the grout slurry is intended to serve as the surface seal, it shall extend to land surface;

(f) Grout slurries shall be placed through a side discharge grout pipe by gravity flow or by pumping to ensure positive placement without bridging or wash-out of previously placed annular materials. The discharge end of the grout pipe shall remain submerged in the grout throughout the sealing operation;

(g) Prior to discontinuing placement of grout in the annular space, grout slurry returns from the annular space shall be measured

by ASTM Test Method D-4380-84. Placement of grout slurry in the annular space shall continue until the returns are within ten percent of the weight specified in subsection (2)(a), (b) or (c) of this rule.

(3) Bentonite used in an unhydrated form shall be sodium bentonite granules, pellets or chips. Unhydrated bentonite shall be specifically designed for sealing wells and be within industry tolerances for dry western sodium bentonite. Bentonite shall be free of polymers that promote bacterial growth. The following procedures shall be adhered to if dry bentonite is used for sealing:

(a) Dry, poured bentonite seals shall only be used if the depth to the bottom of the seal is less than fifty feet and the standing water column in the bore hole or annular space is less than twenty-five feet deep at the time of seal placement. Only sodium bentonite chips manufactured to be greater than 1/4 inch or tablets shall be used below the water level in the sealing interval;

(b) Pour rate shall be three minutes or slower per 50 pound sack in the water-filled portion of the annulus;

(c) A sounding or tamping tool shall be used in the bore hole or annular space during pouring to measure fill rate and to break up possible bridges or cake formation;

(d) Care shall be taken to minimize the introduction of bentonite dust into the sealing interval;

(e) In a dry sealing interval, bentonite shall be hydrated with potable water in two foot lifts to ensure activation.

(4) The estimated and actual volume of sealing material used shall be calculated and reported to the Department.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0130; WRD 5-2015, f. & cert. ef. 7-1-15

#### **690-240-0485**

##### **Monitoring Well Development**

(1) The monitoring well development shall not affect the integrity of the casing or seal. Monitoring well development shall not occur prior to 24 hours after annular seal placement if cement grout or a bentonite grout slurry is used, or 12 hours after annular seal placement if dry bentonite is used. The well may be developed prior to placement of the annular sealing material.

(2) The monitoring well development should:

(a) Remove any water or drilling fluid introduced into the well during drilling;

(b) Stabilize the filter pack and formation materials opposite the well screen;

(c) Minimize the amount of fine-grained sediment entering the well; and

(d) Maximize well efficiency.

(3) As long as the well is not altered, the monitoring well development may be performed by other than a licensed and bonded Monitoring Well Constructor.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0131; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-240-0500**

##### **Completion of Monitoring Wells**

(1) A Monitoring Well Constructor or permitted landowner constructing their own well shall not remove the drilling machine from a monitoring well site, unless it is immediately replaced by another monitoring well drilling machine in operating condition, prior to completion or abandonment of the monitoring well in compliance with OAR 690-240-0005 through 690-240-0540.

(2) Installation of the protective metal posts does not require a Monitoring Well Constructor's License, providing the surface seal is not disturbed.

(3) Installation of the protective posts described in OAR 690-240-0420 shall be completed within one week of placement of the seal.

(4) If installation of the protective measures as described in OAR 690-240-0420 are not completed within 24 hours of seal placement, the monitoring well shall be marked using one of the following methods:

(a) Placement of three stakes around the well connected with fluorescent survey tape;

(b) Placement of construction barricades around the well; or

(c) Use of other protective measures as approved by the Water Resources Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0132; WRD 2-2006, f. & cert. ef. 6-20-06

#### **690-240-0510**

##### **Abandonment of Monitoring Wells**

Proper abandonment of monitoring wells will prevent both vertical movement of water within the well bore and infiltration of surface water into the well:

(1) In areas where ground water contamination has been identified, except as described in number (4) below, abandonment shall require the borehole to be completely redrilled to a minimum of the original diameter. All casing, screen, annular sealing material, drill cuttings, debris, and filter pack material shall be removed prior to sealing.

(2) In areas where ground water contamination has not been identified, if it can be verified that the monitoring well was constructed in accordance with these rules, it shall be abandoned by filling the well from the bottom up with an approved sealant as described in OAR 690-240-0475. The casing shall then be removed below grade, as compatible with local site conditions and land practices. The following are acceptable methods of original well construction verification:

(a) A well report in accordance with OAR 690-240-0395;

(b) Well construction information submitted to the Oregon Department of Environmental Quality;

(c) Information obtained through down-hole geophysical logging; or

(d) Other information as approved by the Water Resources Department.

(3) In areas where ground water contamination is not present, and if the monitoring well construction cannot be verified by means listed in section (2) of this rule, the well shall be abandoned according to section (1) of this rule.

(4) In contaminated areas where remediation has occurred, an approved special standard is required to abandon a well unless it is abandoned according to section (1) of this rule. Abandonment procedures will be considered on a case by case basis. The Department will consult with the state or federal agency that supervised the remediation in determining the appropriate abandonment method. In cases where there was no agency oversight, the Department will consider any information supplied by the licensed and bonded Monitoring Well Constructor in determining the appropriate abandonment procedure.

(5) Grout slurries shall be placed from the bottom up by a grout pipe to avoid segregation or dilution of the sealant. The discharge end of the grout pipe shall be submerged in the grout to avoid breaking the seal while filling the annular space. Grout slurries used to abandon monitoring wells shall conform to the requirements of OAR 690-240-0475.

(6) The abandonment procedure shall be recorded on a form provided by or previously approved in writing by the Department. The form shall include, as a minimum, all the requirements as listed in OAR 690-240-0395, plus:

(a) Method of abandonment;

(b) If assigned, the well identification number, original start card number, and owner's well number of the abandoned well.

(7) When abandoning artesian monitoring wells, in addition to sections (1)–(6) of this rule, the flow shall be confined or restricted by cement grout applied under pressure, or by the use of a suitable well packer, or a wooden plug placed at the bottom of the confining

formation immediately above the artesian water bearing zone. An approved sealant shall be used to fill the well to land surface as specified in OAR 690-240-0475.

(8) Monitoring wells that were constructed under special standards will require the abandonment method to be approved by the Department.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0135; WRD 2-2006, f. & cert. ef. 6-20-06

## 690-240-0525

### Piezometers

It is prohibited to construct a piezometer in an area of known or reasonably suspected contamination.

**NOTE:** The Water Resources Department and the Department of Environmental Quality have information sources to use in determining if contaminants are present. Customary drilling practice as conducted by licensed professional must be included as part of the appropriate inquiry to determine if contaminants are present or reasonably suspected.

(1) A piezometer is defined in OAR 690-240-0010(59). Piezometers are a type of monitoring well and shall meet current monitoring well rules except for the following:

(a) Borehole size with depth requirements:

(A) For piezometers with a sealing depth less than 50 feet deep, the borehole diameter shall be at least two and one half inches (2.5") larger than the nominal casing diameter. If the piezometer is constructed using a hollow stem auger drilling machine, the inside diameter of the auger must be at least 2.5 inches larger than the nominal diameter of the casing to be installed;

(B) For piezometers with a sealing depth greater than 50 feet deep, the borehole diameter shall be at least three inches larger than the nominal casing diameter. If the piezometer is constructed using a hollow stem auger drilling machine, the inside diameter of the auger must be at least 3 inches larger than the nominal diameter of the casing to be installed.

(b) Surface Completion:

(A) Piezometers shall be protected as described in OAR 690-240-0420 concerning monitoring wells.

(c) If an artesian piezometer flows at land surface, it shall be equipped with a control valve or a watertight mechanical cap, so that all flow of water from the well can be completely stopped. Flowing artesian piezometers are not required to be equipped with a pressure gauge placed on a dead-end line or a petcock valve;

(d) The special cleaning and drill cutting storage requirements in OAR 690-240-0450 shall not apply to piezometers because they may not be constructed in areas of known or reasonably suspected contamination. However, all equipment and materials used in the construction of a piezometer shall be free of foreign materials and contaminants prior to entry into the well;

(e) Use of commercially fabricated screens are not required for piezometers. The screens installed shall be in new or like new condition, being free of pits or breaks, and shall be free of foreign materials and contaminants prior to installation;

(f) The filter pack requirements of OAR 690-240-0460(5) shall not apply to piezometers because they are not constructed in areas of known or reasonably suspected contamination;

(g) A minimum three foot annular seal is required. If a grout slurry is used, the filter pack seal requirements of 690-240-0460(6) apply. If a piezometer is completed with a flush monument, the annular seal shall extend a minimum of three feet below the monument seal.

Stat. Auth.: ORS 537.780

Stats. Implemented: ORS 183, 536, 537 & 540

Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0137; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 5-2015, f. & cert. ef. 7-1-15

## 690-240-0540

### Direct Push Monitoring Wells and Piezometers

(1) Monitoring wells and piezometers that are installed using direct push technology shall comply with the applicable standards

in these rules for reporting, casing, screening, filter pack, filter pack placement, filter pack seal, development, surface seal, cleaning, protection, marking, and completion.

(2) Monitoring wells and piezometers that are installed using direct push technology shall also comply with the following standards:

(a) Only prepacked screens shall be used; and

(b) The outside diameter of the borehole shall be a minimum of one inch greater than the outside diameter of the well casing; and

(c) Granular bentonite shall not be used in the sealed interval below the static water level; and,

(d) Wells and piezometers shall not be constructed through more than one water bearing formation and shall not be greater than 50 feet in depth unless a special standard is obtained.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0139

## 690-240-0550

### Evidence of Failure

Evidence of failure to comply with the requirements of OAR 690-240, special standards as described in 690-240-0006, or those standards of a state agency to which the Director has delegated direct responsibility under 690-240-0016 shall include, but not be limited to, the following:

(1) A specific standard to which the Director has agreed is violated.

(2) Evidence that contamination is occurring as a result of a monitoring well, geotechnical hole, or other hole construction.

(3) Evidence that a monitoring well, geotechnical hole, or other hole, due to its construction, is causing or contributing to the loss of artesian pressure within an aquifer.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0145

## 690-240-0560

### Investigation of Alleged Violations

(1) The Water Resources Director, upon the Director's own initiative, or upon complaint alleging violation of statutes, standards or rules governing licensing of Monitoring Well Constructors and/or, construction, alteration, conversion, maintenance, or abandonment of monitoring wells, geotechnical holes or other holes may cause an investigation to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the Director shall notify the persons believed responsible for the violation including but not limited to:

(a) Any Monitoring Well Constructor involved;

(b) The landowner, if the violation involves construction, alteration, conversion, maintenance, operation or abandonment of a well, geotechnical hole, or other hole;

(c) The agency that has been delegated authority over a particular class of wells, geotechnical holes, or other holes and/or

(d) Any registered geologist or civil engineer in construction, alteration, or abandonment of a geotechnical hole.

(2) Enforcement and civil penalty assessment for "other than well constructors" is described in OAR 690-260.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0150; WRD 2-2006, f. & cert. ef. 6-20-06

## 690-240-0580

### Enforcement Actions

(1) If, after notice and opportunity for hearing under ORS 183.310 to 183.550 the Director determines that one or more violations have occurred, the Director may impose one or more of the following:

- (a) Provide a specified time for remedy;
- (b) Assess a civil penalty in accordance with the schedule of civil penalties in OAR 690-240-0640;
- (c) Suspend, revoke, or refuse to renew the license(s) when one or more persons responsible for the violation hold a Monitoring Well Constructor's License;
- (d) Require that a person whose license has been refused renewal pass the Monitoring Well Constructor's License examination before a new license is issued or the current license is renewed;
- (e) Impose any reasonable conditions on the Monitoring Well Constructor's License to ensure correction of the violation and future compliance with the law. These conditions may include but are not limited to:

(A) Fulfilling any outstanding obligations which are the result of administrative action before the constructor can offer any services or construct, alter, convert, or abandon any monitoring well;

(B) Requiring additional advance notice to be given to the Department of construction, alteration or abandonment of any monitoring well;

(C) Requiring a seal placement notice be given to the Department up to 72 hours in advance of placing the seal; or

(D) Any other conditions the Director deems appropriate.

(f) Order the landowner to repair or meet other conditions on use of the well, or order discontinuance of the use and order proper abandonment pursuant to ORS 537.775;

(g) Make demand on the Water Well Constructor's bond or the Landowner's Water Well Bond. This may occur only if the Director has given the notice required in OAR 690-240-0560 to the persons responsible for the violation within three years after the date the monitoring well report is filed with the Department. If no monitoring well report has been filed, the three year limitation shall not apply until such time as a well report is filed; or

(h) Take any other action authorized by law.

(2) An order may specify a schedule of escalating or cumulative sanctions to be assessed on specified dates until the violation has been satisfactorily corrected.

(3) Any Monitoring Well Constructor whose license is suspended or revoked shall not contract for well construction services or operate well drilling machines in the State of Oregon during the suspension or revocation period.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0155; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0590

##### Multiple Violations and Consolidation of Proceedings

In cases of multiple or continuing violations, each occurrence of substantially the same activity and each days continuance of a violation after the responsible party has been notified is a separate and distinct violation. Administrative enforcement proceedings for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0160

#### 690-240-0600

##### Factors Affecting Selection of Type and Degree of Enforcement

In selecting the appropriate type and degree of enforcement, the Director may consider the following factors:

(1) Whether the constructor's file demonstrates a pattern of prior similar violations;

(2) Whether the respondent has cooperated in attempting correction of any violation in a timely fashion;

(3) The gravity and magnitude of the violation, including whether there is an immediate or long-term threat to human health or the ground water resource;

(4) Whether the damage to the ground water resource is reversible;

(5) Whether the violation in the instances cited was repeated or continuous;

(6) Whether a cause of the violation was an unavoidable accident;

(7) The opportunity and degree of difficulty to correct the violation;

(8) The cost to the Department, except for travel costs and the initial field investigation, in attempting to gain voluntary compliance of the cited violation. The costs may be considered until the Department receives respondent's answer to the written notice and opportunity for hearing; and

(9) Any other relevant factor.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0165

#### 690-240-0610

##### Change in Enforcement Status

(1) In the interest of achieving compliance, the Director at any time may reevaluate the status of the violation(s) and take appropriate action, including reduction of the enforcement level or remission of all or part of any civil penalties assessed.

(2) The Director may terminate proceedings against a Monitoring Well Constructor if the constructor provides acceptable evidence that:

(a) The landowner does not permit the constructor to be present at any inspection made by the Director; or

(b) That the constructor is capable of complying with recommendations made by the Director, but the landowner does not permit the constructor to comply. In such cases, the landowner is responsible for bringing the well into compliance pursuant to ORS 537.535, and if the landowner was not a party to the original enforcement proceeding the Director may initiate a proceeding to ensure that the landowner does so.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0170; WRD 2-2006, f. & cert. ef. 6-20-06

#### 690-240-0630

##### Assessment of Civil Penalties

Under OAR 690-240-0580(1) the Director may at any time select the most appropriate enforcement tool, including assessment of civil penalties, to gain compliance. However, the Director shall not impose a civil penalty if compliance has been achieved in another manner prior to final decision in the proceeding.

Stat. Auth.: ORS 537 & 742

Stats. Implemented: ORS 537 & 742

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0175

#### 690-240-0640

##### Schedule of Civil Penalties

(1) The amount of civil penalty shall be determined consistent with the following schedule:

(a) Not less than \$25 nor more than \$250 for each occurrence defined in these rules as a minor violation;

(b) Not less than \$50 nor more than \$1,000 for each occurrence defined in these rules as a major violation;

(c) First occurrence, in a calendar year, of a missing or late start card fee shall be \$150;

(d) Second occurrence, in a calendar year, of a missing or late start card fee shall be \$250; and

(e) Third, and each subsequent, occurrence, in a calendar year, of a missing or late start card fee shall be \$250 and may include suspension of the Monitoring Well Constructor's License, and any other action authorized by law.

(2) For purposes of assessing a civil penalty, the start card fee referred to in subsections (1)(c), (d), and (e) of this rule shall not be considered late if it is received in the Salem office of the Water Resources Department within five days of the receipt of the start

card, provided the start card was submitted in a timely manner as defined in OAR 690-240-0375.

(3) Table 240-3 lists minor violations related to monitoring well construction and geotechnical holes. All other violations are declared to be major.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03, Renumbered from 690-240-0180; WRD 2-2006, f. & cert. ef. 6-20-06

### DIVISION 250

#### WATER DISTRIBUTION

##### 690-250-0005

###### Purpose of Rules

The purpose of these administrative rules is to give guidance in the administration of Oregon water laws. The rules provide instruction on how regulatory actions are to be done where statutes are unclear. Statutory authority to adopt administrative rules for water distribution is in ORS 540.145.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

##### 690-250-0010

###### Definitions

The following definitions apply in OAR 690, division 250.

(1) "Appropriator": Water user, trustee or agent in charge of the works.

(2) "Basin Program": A program adopted by the Water Resources Commission to establish water management policies and objectives for a specified basin. Basin programs establish rules for appropriation and use of surface and ground water within each river basin. Water use regulations include classification of surface and ground waters according to permitted uses, the withdrawal or surface and ground waters from further appropriation, the reservation of waters for specific future uses, and the establishment of minimum perennial streamflow requirements.

(3) "Beneficial Use": Reasonably efficient use of water without waste for a purpose consistent with the laws and the best interests of the people of the state.

(4) "Commission": Water Resources Commission.

(5) "Compensation": Salary and related payroll expenditures.

(6) "Enforceable Rotation Agreement": Written agreement between two or more appropriators to rotate the use of water, to bring about more economical use of the available supply to which they are collectively entitled.

(7) "Exempt Uses": Uses of water for which no registration, certificate of registration, application for a permit, permit, certificate of completion of water right certificate is required.

(8) "Expenses": Includes but is not limited to, lodging, meals, mileage, and supplies.

(9) "Irrigation Seasons": Time period(s) during the year when a water right for irrigation purposes can be legally used.

(10) "Legally Stored Water": Any water impounded in a reservoir under the provisions of an established right to store water.

(11) "Point of Diversion": For surface water, the point at which water is physically diverted from the natural source of man-made works for the beneficial use and, unless specified otherwise, includes point of appropriation as in a well or ground water development.

(12) "Rate and Duty of Water for Irrigation": Maximum quantity of water in cubic feet per second or gallons per minute (rate) and the total quantity of water in acre-feet per acre per year that may be diverted for irrigation (duty).

(13) "Reservoir": A natural or artificial lake or pond in which water is collected for beneficial use or purpose.

(14) "Substantial or undue interference": As defined in OAR 690-008-0001.

(15) "Transfer": Legal process for change of use, change in place of use, or change of point of diversion of a water right.

(16) "Wasteful Use of Ground Water": As defined in OAR 690-008-0001.

(17) "Water Right Subject to a Transfer": Right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not been issued.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

##### 690-250-0020

###### Futile Calls

(1) A call for distribution of surface water is futile when a junior appropriator has been denied the use of water and, in the judgement of the watermaster, an inadequate amount of water, or no water, reaches the senior appropriator or minimum flow point or reach or instream water right. Factors for consideration by the watermaster in making such a judgement may include, but are not limited to, the following:

(a) Soil moisture conditions;

(b) Temperature;

(c) Evaporation rate;

(d) Moisture condition of the stream channel;

(e) Conveyance characteristics of the stream channel; or

(f) Previous records that show the conveyance characteristics of the stream.

(2) Upon the judgement that water will not reach its destination, or that an inadequate amount of water will reach its destination, the watermaster may disregard the call of the senior downstream appropriator.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

##### 690-250-0030

###### Appropriator Obligated to Maintain a Functional Point of Diversion

The watermaster shall have no obligation to increase flows of surface water to reach the elevation of a diversion or to overcome friction losses caused by clogged diversion facilities of the person calling for water. The appropriator shall be responsible for diversion and conveyance of water from the natural source to the place of use.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

##### 690-250-0040

###### Protection of Water Involved in a Transfer of Point of Diversion

The quantity of water available under a right that has been transferred to a new point of diversion is protected only to the extent of the terms of the certificate for that right and the quantity available at the original point of diversion. The quantity of water does not include an allowance for losses or return flows in the stream channel between the original point of diversion and the new point of diversion. Transmission losses incurred in transporting stored water through a natural stream channel shall not be made up from natural flow. The watermaster may deny water to an appropriator using an unauthorized point of diversion.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

##### 690-250-0050

###### Controlling Waste and Unlawful Use of Water

(1) Unlawful use of water subject to corrective action by watermasters includes, but is not limited to, the following:

(a) Irrigating land without a right;

(b) Using water for a purpose not authorized in the right;

(c) Irrigating land or using water for a purpose with a priority different than the priority under which the water is diverted from the source; or

(d) Wasting water.

(2) If, after oral or written notice to the appropriator to stop unlawful use, the unlawful water use is continued, the watermaster or assistant watermaster may take control of the diversion works or controlling works of a well and reduce the amount of water diverted by the amount being wasted or unlawfully used. If such waste or unlawful use continues, the watermaster may further reduce the amount of water diverted by the amount wasted or unlawfully used, and so on until the unlawful use is eliminated. When taking control of the diversion works or controlling works of a well, the watermaster shall post a notice of control. Any person that interferes with the watermaster's regulation may be prosecuted under ORS 540.710.

(3) If wasteful use of groundwater is determined to occur, within an individual well, due to the nature of the construction of that well, the watermaster may post a notice of control and achieve compliance pursuant to OAR, division 225 (690-225-0030).

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

#### **690-250-0060**

##### **Diversion Works and Measuring Device Installation Notices for Surface Water and Ground Water**

(1) Water use controlling devices and/or measuring devices shall be required when necessary for regulation or management purposes. When, in the watermaster's judgement, it becomes necessary to require such devices, the watermaster shall use a notice form furnished by the Water Resources Department. For each water use control or measuring device installation, a separate form must be filled out completely for each appropriator and submitted in duplicate to the Director (these notices are not valid unless signed by the Director). The original signed notice shall be returned to the watermaster to be delivered in person with date of delivery entered on each notice. When it is impractical for the watermaster or the appointed representative to deliver the notice in person, it shall be sent by certified mail. The date of delivery shall be the date of mailing.

(2) All required water use controlling devices and measuring devices shall be approved by the watermaster prior to installation. If the appropriator refuses or neglects to construct and install the required water use control or measuring devices or have an approved construction schedule for such installation after 10 days notice, the watermaster may close the diversion (ORS 540.320) or open the reservoir outlet (ORS 540.330), or regulate the controlling works of a well. The appropriator may request an extension of time from the watermaster and submit another construction schedule.

(3) If the appropriator fails to meet an approved construction schedule, the watermaster may close the diversion or close the controlling works of the well.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

#### **690-250-0070**

##### **Irrigation Seasons**

(1) Whenever the dates or times of the year within which an irrigation right may be exercised are not specified in decree, permit, certificate, order or basin program, the watermaster shall recognize the entitlement of the permits and certificates on adjudicated streams to be exercised during the same season as adjudicated rights, and permits and certificates in unadjudicated areas to be exercised between March 1 and October 31.

(2) When adopting or amending a basin plan, the Commission may designate a different period of use for rights described in section (1) of this rule, after considering soils, climate, topography, crop patterns or other circumstances.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

#### **690-250-0080**

##### **Water Rotation Agreements**

(1) Appropriators may rotate use of the supply to which they may be collectively entitled. The nature of potential agreements are subject to the limitations in section (3) of this rule.

(2) An agreement shall identify the duration of the agreement which shall be no less than one irrigation season. The agreement shall not be terminated within an irrigation season, and the rotation agreement shall be signed by all participants and dated. A copy of the agreement shall be filed with the watermaster for the area. Unless the rotation agreement provides otherwise, any member of the agreement may notify the watermaster after the end of the irrigation season, and before the beginning of the next season's use, that they are terminating the agreement.

(3) A watermaster shall distribute water only under those enforceable agreements that include the provisions of section (2) of this rule. A watermaster shall not implement a rotation agreement that violates existing water statutes, court decrees, instream water rights, minimum flows, other rules of the Commission, or interferes with the rights of any appropriator not a member of such agreement. If distribution of water by the rotation agreement requires substantially more of the watermaster's time than distribution among the relative priorities, then the watermaster may require payment by the appropriators for an assistant watermaster, as described in ORS 540.100.

(4) The agreement may contain language describing how a call from an appropriator or minimum flow senior to one or more appropriators in the rotation will be honored.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

#### **690-250-0090**

##### **Entry on Private Property**

(1) ORS 536.037(1)(e) empowers the director to "enter upon any private property in the performance of the duties of the director, doing no unnecessary injury to the private property." The director may delegate authority to a watermaster or any other staff member. Authority to enter private property to inspect wells is granted in ORS 537.780(4).

(2) Entry as stated above is restricted to open areas and does not include entry into the house or immediate out buildings except with permission. If an owner or occupant refuses permission to enter or threatens physical harm or obstruction of the watermaster's performance of duties, the watermaster may seek a court order or an administrative search warrant with the aid of the district attorney or a police officer. If the owner or occupant refuses permission to enter, the watermaster may regulate a diversion that is not on the property if it is accessible.

(3) If a watermaster has reason to believe that water is being used illegally, the watermaster may enter private property to inspect, gather evidence, and/or post any unauthorized uses found, if the watermaster restricts entry to open areas. The watermaster may enter open areas of private property if there exists probably cause that the property contains evidence of a violation of the water laws and urgent circumstances justify warrantless entry. If the owner or occupant is present or has been contacted and refuses permission to enter, the watermaster may seek a search warrant or other court order to enter the property.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

#### **690-250-0100**

##### **Regulation of Surface Water**

(1) The watermaster shall investigate and respond to all complaints of water shortages or unlawful use based on a review of appropriate records and performance of field inspections, as judgement may require. The watermaster's response may be oral or written communication to appropriators involved in the complaint or shortages, or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster may begin regulation if investigation reveals a valid complaint of water shortage or unlawful use. Water shall be regulated in accordance with the relative rights or rotation agreements of the appropriators involved in the complaint or shortage.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

**690-250-0110****Regulation of Ground Water**

(1) The watermaster shall respond to complaints based on a review of appropriate records and performance of necessary field inspections as judgement may require. The watermaster may request the assistance of a ground water geologist. The watermaster's response may be by oral or written communication to appropriators involved in the complaint or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster shall distribute the ground water within the affected areas if substantial interference, or substantial thermal interference, is determined. Ground water shall be distributed in accordance with the relative rights or rotation agreements of the appropriators involved in the complaint. The watermaster may request the assistance of a ground water geologist during any phase of ground water distribution.

Stat. Auth.: ORS 537 & 540  
Stats. Implemented: ORS 537 & 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88; WRD 18-1990, f. & cert. ef. 12-14-90

**690-250-0120****Regulation of Ground Water/Surface Water**

(1) The watermaster shall respond to complaints based on a review of appropriate records and performance of necessary field inspections as judgement may require. The watermaster may request the assistance of a ground water geologist. The watermaster's response may be by oral or written communication to the ground water and surface appropriators involved in the complaint, or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster shall distribute the surface water and ground water by relative priority within the affected area if ground water and surface water connection and substantial interference are determined. The watermaster may request the assistance of a ground water geologist during any phase of ground water/surface water distribution.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

**690-250-0130****Regulation of Exempt Groundwater Uses under ORS 537.545**

(1) In addition to non-exempt uses, the watermaster may regulate exempt uses of groundwater based on the priority of the exempt uses. The priority date shall be the date the well was completed as shown on the well log.

(2) If no completion date is shown on the well log or if no well log is available for the well, the owner of the well may provide other documentation that shows when water use began, to establish the date of priority. Examples of such documentation include but are not limited to the following:

- (a) Copies of building permits for houses served by the well;
- (b) Records of power use to pump the well; and
- (c) Affidavits from people stating when water use began.

(3) If no completion date is shown on the well log or if no well log is available, the Director or Director's designee may interpret the documentation furnished by the well owner or obtained from Department records and determine a priority date. The watermaster shall use the priority date determined to regulate the exempt use.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88; WRD 4-1990, f. & cert. ef. 5-15-90

**690-250-0140****Special Problem Area Regulation**

The watermaster may prohibit the diversion or use of water by anyone who has failed to comply with a Commission rule or order pursuant to a declaration of a serious water management problem area under ORS 540.435.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

**690-250-0150****Management of Stored Water**

(1) Water which has been illegally stored is under the complete control of the watermaster. When water has been illegally stored, the watermaster shall notify the owner of the reservoir containing the illegally stored water of how much was illegally stored and how it is to be released. If necessary, the watermaster may take control of the outlet controls to effect the appropriate release. Such release shall be done in a manner which will make the most effective use of the water for downstream uses. Releases recommended by the Oregon Fish and Wildlife Department to prevent damage to fish and wildlife resources may be considered.

(2) Downstream storage right holders can demand water from upstream storage right holders when the actions of upstream storage right holders, junior in priority, have prevented the fulfillment of the downstream, senior storage rights. When storable water is made available to downstream storage interests, any of the storable water which they fail to store shall be deducted from the amount that could be demanded from the upstream rights holders. While downstream senior rights must be protected, they have a duty to store when it is available. The senior right holder's failure to do so shall not work to the disadvantage of an upstream junior right. When releases from upstream storage are made, the recommendations of the Department of Fish and Wildlife may be considered to prevent damage to fish and wildlife resources.

(3) When physical circumstances permit, and when all interests involved agree, the watermaster shall coordinate the storage and release of waters from multiple reservoirs in a manner which results in the most effective use of the storage space available. However, such action shall not deprive any water right holder of water to which the holder would otherwise have been entitled. The purpose of this section is to allow the watermaster to deviate from the storage program dictated by the storage right holders involved when such deviation would result in mutual benefits to all parties, including the public. Such deviations may include water exchanges between consenting storage interests. Releases recommended by the Oregon Fish and Wildlife Department to prevent damage to fish and wildlife resources may be considered.

(4) Use of legally stored water is governed by the water rights, if any, which call on that source of water. Any legally stored water released in excess of the needs of water rights calling on that source of water shall be considered natural flow, unless such release is part of a water exchange under the approval and control of the watermaster.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

**690-250-0160****Collections Authority**

(1) The Water Resources Department has collection authority through the provisions of ORS 540.080, 540.100 to 540.135, 540.220 to 540.260, and 540.410.

(2) The Director may bill for services where authorized by statute. With the exception of ORS 540.410 any billable activity shall be paid in advance by the user before services are rendered.

(3) When the demand for services exceeds the personnel available to provide the services requested, and county funds do not provide the funding for the assistant watermasters, the appropriators demanding the service may pay the assistant's compensation and expenses. If the users requesting the service pay the compensation and expenses of an assistant watermaster, payment shall be in

advance, based on an estimation of the compensation and expenses. If funding is provided, the services may be continued as long as the funding covers the earned compensation and expenses. If no funding is provided, the services requested may be provided by the watermaster or assistant watermaster as time is available.

(4) Upon a written request for the watermaster to distribute water on a private water delivery system, the watermaster shall prepare an estimate for expenses and compensation to do the distribution. The Director shall require the appropriators requesting the distribution to pay in advance the estimated compensation and expenses. It shall be the responsibility of the appropriators requesting the distribution to proportion the compensation and expenses, as described in ORS 540.100, to the users of the water delivery system.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 24-1988, f. & cert. ef. 12-14-88

## **DIVISION 260**

### **CIVIL PENALTY ASSESSMENT FOR OTHER THAN WELL CONSTRUCTORS**

#### **690-260-0005**

##### **Purpose of Rules**

(1) The purpose of these rules is to provide guidance for enforcement and assessment of civil penalties for violations of state water law. Notice requirements, classification of violations, a penalty schedule and a hearing process are described in the rules.

(2) These rules are intended to carry out authority granted to the Commission in ORS 536.900 to 536.935. Except as provided in OAR 690-262-0090, the Commission delegates to the Director the authority to implement the provisions of OAR 690-260. These rules are in addition to civil penalty rules authorized by the 1985 Legislature for violations by well constructors (OAR 690-225).

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

#### **690-260-0010**

##### **Definitions**

The following definitions apply in OAR 690, division 260.

(1) “Acceptable Schedule” means a compliance schedule that is acknowledged and signed by the Director.

(2) “Agency” means any state board, commission, department or division thereof, or any officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches of government.

(3) “Beneficial Use” means the reasonably efficient use of water without waste for a purpose consistent with the laws and the best interests of the people of the state.

(4) “Burden of Proof” means the necessity or duty of affirmatively proving a fact or facts in a dispute.

(5) “Commission” means the Water Resources Commission.

(6) “Corrective Action” means actions to be taken by the responsible party, as specified by the Director, to correct violations reflected in a notice of violation or notice of assessment of civil penalty.

(7) “Department” means the Water Resources Department.

(8) “Director” means the Director of the Water Resources Department.

(9) “Financial Gain” means the amount of economic gain realized by the responsible party from non-compliance with the state water law from the date specified in a notice of violation until corrective action is taken.

(10) “Hearing” means a contested case hearing as defined in the Oregon Administrative Procedure Act.

(11) “Notice of Assessment of Civil Penalty” means a written notice which includes a reference to the statute, rule, order, permit condition or standard involved; a statement of the matters asserted or charged; the amount of the penalty imposed; and a statement of the right of the person to request a hearing.

(12) “Notice of Violation” means a written notice which includes a reference to the statute, rule, order, permit condition or standard violated; the date of the violation; and the time specified for correction of the violation.

(13) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(14) “Responsible Party” means the person or agency that is in control and is either in violation as specified in a notice of violation or who may benefit from that violation.

(15) “Similar Violation” means a violation of a statute, rule, order, permit condition, or standards for which the person or agency has previously received a notice of violation.

(16) “Waste” means for purposes of assessing civil penalties, when the quantity of water diverted exceeds the quantity required to meet the beneficial use specified in a water right, not including reasonable system losses, return flows, or diversion rates of water allowed in a water right or a rotation agreement.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

#### **690-260-0020**

##### **Violation Policy**

(1) Upon the Director’s own initiative, or in response to a complaint alleging violation of certain statutes, rules, orders, permit conditions or standards, the Director may investigate to determine if a violation occurred.

(2) If the investigation indicates a violation is occurring, or has occurred, the Director, following appropriate notice, may impose a civil penalty against the responsible party for the violation. The Director bears the burden of proof to establish a violation. Assessment of a civil penalty shall not prevent the Director from taking other regulatory actions permitted by law.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0030**

**Notice of Violation**

The responsible party shall be notified of a violation within five days of confirmation by the Director of the violation. Notice of the violation occurs when the Department has either delivered the notice of violation in person or mailed the notice to the responsible party by certified or registered mail. Notice may be given, if reasonably possible, by personal delivery to the responsible party. The notice shall include the statute, rule, order, permit condition or standard violated; the date the violation occurred; and a specified time for correction. If the violation is not corrected within the time given in the notice, a civil penalty and damages related to enforcement may be imposed.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0040**

**Classification of Violations**

(1) Violations are classified as follows:

(a) Class I — Violations of the terms or conditions of a permit, certificate or license issued under ORS 536 to 543; Violation of ORS 537.130 or 537.535; Violation of ORS 540.045, 210, 320, 340, 435, 710, 720; or rules adopted under ORS 540.145;

(b) Class II — Violation of ORS 540.310, 330, and 730;

(c) Class III — Violation of any rule or order of the Water Resources Commission that pertains to well maintenance and violation of ORS 540.440.

(2) Violations shall be further divided into major, moderate, and minor categories as follows:

(a) MAJOR is when substantial harm to other water rights, minimum flows, instream water rights, the public health or safety, or other water-based resources is immediate or imminent;

(b) MODERATE is when substantial harm is not immediate or imminent, but could occur if left uncorrected;

(c) MINOR is when no substantial harm is apparent.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0050**

**Reasonable Time for Correction of Violation**

No civil penalty shall be assessed for a violation if the person or agency causing the violation, corrects the violation within the time given for correction in the notice of violation. Reasonable Time for Correction Guidelines:

(1) Class I:

(a) Major, same day;

(b) Moderate, 2 days;

(c) Minor, 10 days.

(2) Class II:

(a) Major, 5 days;

(b) Moderate, 10 days;

(c) Minor, acceptable correction schedule in 10 days and compliance within limits of schedule.

(3) Class III:

(a) Major, acceptable correction schedule in 5 days and compliance within limits of schedule;

(b) Moderate, acceptable correction schedule in 10 days and compliance within limits of schedule;

(c) Minor, acceptable correction schedule in 30 days and compliance within limits of schedule.

Stat. Auth.: ORS 540

Stats. Implemented:

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0055**

**Repeat Violations and Continuing Notice of Violation**

Any similar violation for which the person or agency responsible has received a notice of violation within the last three years is a repeat violation. Such notice shall serve as a continuing notice of the violation. In the case of repeat violations, a civil penalty may be imposed without providing additional time for correction.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0060**

**Notice of Assessment of Civil Penalty**

(1) Persons or agencies who have received a notice of violation, as prescribed in OAR 690-260-0030, and have not corrected the violation within the time specified in the notice or have been previously served a notice for a similar violation may be assessed a civil penalty. A notice of assessment of civil penalty shall be delivered either in person or sent by certified or registered mail to the responsible party.

(2) The notice shall include the following:

(a) A reference to the particular sections of the statute, rule, order, permit condition or standard involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right of the person to request a hearing.

(3) In cases of continuing violations, each occurrence of substantially the same activity and each day's continuance of a violation after the responsible party has been notified is a separate and distinct violation, but not for purposes of the five day notice requirement. A civil penalty may be imposed for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.710, 540.720, or 540.730. Such violations include, but are not limited to, the following:

(a) Using water without a water right permit, certificate, order or claim of appropriation;

(b) Failure to maintain a well and well equipment as required in OAR 690, division 215;

(c) Failure to maintain a headgate, valve or measuring device as required by the watermaster;

(d) Failure to install and maintain a measuring device(s) above and/or below a reservoir as required by the watermaster;

(e) Tampering with a headgate following regulation by the watermaster;

(f) Illegal or unauthorized use or storage of water; or

(g) Interfering with the diversion and distribution works of another.

Stat. Auth.: ORS 540

Stats. Implemented: ORS 540

Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0070**

**Schedule of Civil Penalties**

(1) Base penalties shall be determined through the use of the following matrix:

(a) Class I:

(A) Major, \$1000;

(B) Moderate, \$500;

(C) Minor, \$250.

(b) Class II:

(A) Major, \$500;

(B) Moderate, \$250;

(C) Minor, \$125.

(c) Class III:

(A) Major, \$200;

(B) Moderate, \$100;

(C) Minor, \$50.

(2) Penalty Formula:

$$P = BP \times R$$

(The formula may include adjustments as described in OAR 690-260-0080). Where P = Penalty in dollars

(a) BP = Base Penalty in dollars from matrix in section (1) of this rule;

(b) R = Repeat factor from numbers below:

(A) 1st Violation, R = 1;

(B) 2nd similar violation, R = 2;

(C) 3rd similar violation, R = 3;

(D) 4th similar violation, R = 4;

(E) 5th similar violation, R = 5.  
Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0080**

**Adjustments to Schedule of Civil Penalties**

(1) In addition to the repeat factor listed in OAR 690-260-0070(2), the Director shall consider:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules or orders pertaining to water use;

(c) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation; and

(d) The immediacy and extent to which the violation threatens other rights to the use of water or the public health or safety or the public interest in the waters of this state. The Director may consider any other relevant factor, when imposing a civil penalty.

(2) If the Director finds that the financial gain of non-compliance exceeds the dollar value of the penalty calculated from the formula, the Director may increase the penalty to equal the financial gain, as long as the increased penalty does not exceed \$5,000 for each violation.

(3) The Director may recommend that the Commission reduce or remit a civil penalty if appropriate and consistent with the protection of the public interest in the waters of this state.

(4) In any contested case proceeding or settlement in which a person or agency receiving a civil penalty has raised economic condition as a reason to reduce the penalty, the person or agency has the burden of proof to provide evidence concerning economic condition.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0090**

**Opportunity for Hearing**

(1) Persons or agencies receiving a notice imposing a civil penalty may request a hearing within 10 days from the date of mailing the notice. Notice may be served personally or by mail. In the case of service by mail, the date of mailing shall serve as the notice date. The request for hearing shall be considered made on the date that the request is postmarked.

(2) The Commission delegates to the Director the authority to schedule and conduct a contested hearing if one is requested. The Director may issue a proposed order following the hearing. If no exceptions are filed, the proposed order becomes final. If exceptions are filed to the proposed order, the Commission shall issue the final decision.

(3) The Director may recommend that the Commission reduce or remit the amount of the penalty if evidence, or negotiations presented in preparation for the hearing, indicates that the amount of the penalty was inappropriate. The following factors may be considered when reducing or remitting a civil penalty:

- (a) History of similar violations;
- (b) Willingness to comply;
- (c) impact on other water rights;
- (d) Economic gain resulting from the violation;
- (e) Financial ability of the violator to pay the penalty; and
- (f) Incorrect identification of the responsible party.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0100**

**Liability for Damages Related to Enforcement**

(1) Persons or agencies who have been ordered to take correction action by the Water Resources Commission, and who fail to do so without sufficient cause, are liable for damages. The calculation of damages may include all expenses incurred by the Department

after the time for corrective action specified in the notice of violation has passed, that are the result of the person's or agency's failure to act. The damages shall not exceed the amount of all expenses incurred by the Water Resources Department in carrying out enforcement duties related to the corrective action. Damages are in addition to the civil penalties assessed for violations.

(2) As used in this rule, "sufficient cause" includes, but is not limited to, the following:

(a) Failure of notice to be given to the appropriate person or agency through no fault of the person or agency; and

(b) Failure to take the corrective action because of conditions or circumstances outside the control of the person or agency.

(3) As used in this rule, "all expenses" include, but are not limited to, the following:

(a) That portion of the salaries and other personnel expenses of the watermaster, assistant watermaster, other Department employee, or fees or legal advisors for time spent on enforcement duties related to corrective action;

(b) The travel and equipment costs of the watermaster, assistant watermaster, other Department employee or legal advisor spent on enforcement duties directly related to corrective action;

(c) The court costs of the Department spent on enforcement duties related to correction action; and

(d) The notice, publishing, copying or other supplies and miscellaneous costs of the Department spent on enforcement duties related to corrective action.

(4) Notices of assessment of damages may be included with the notice of assessment of civil penalty, or be issued at any time after the time for correction has elapsed. A notice of assessment of damages shall be served in person or mailed to the person or agency who is liable for damages. The notice shall include the following:

(a) A reference to the statute, rule, order, permit condition or standard involved in the corrective action;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the damages imposed; and

(d) A statement of the right of the person or agency to request a hearing.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**690-260-0110**

**Notice of Violation to Water Providing Organizations**

(1) When a member of a water providing organization is notified of a violation, a duplicate notice of violation shall be served in person or by registered or certified mail on the organization.

(2) The purpose of notification to the organization is to encourage the organization to assist in obtaining compliance from the individual member.

Stat. Auth.: ORS 540  
Stats. Implemented: ORS 540  
Hist.: WRD 5-1990, f. & cert. ef. 5-15-90

**DIVISION 300**

**DEFINITIONS**

**690-300-0010**

**Definitions**

The following definitions apply in OAR chapter 690, divisions 15, 310, 320, 330, 340, and 350 and to any permits, certificates or transfers issued under these rules:

(1) "Affected Local Government" means any local government as defined in OAR 690-005-0015 within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit, water right transfer, or certificate.

(2) "Agricultural Water Use" means the use of water related to the production of agricultural products. These uses include, but are not limited to, construction, operation and maintenance of agricultural facilities and livestock sanitation at farms, ranches, dairies

and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, animal waste management, barn or farm sanitation, dairy operation, and fire control. Such use shall not include irrigation.

(3) "Aquatic Life Water Use" means the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

(4) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source.

(5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance.

(7) "Comment" means a written statement concerning a particular proposed water use. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

(8) "Commission" means the Water Resources Commission.

(9) "Contested Case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS Chapter 53, ORS 183.413 - 183.497 and OAR chapter 690, division 2.

(10) "Cranberry Use" means all necessary beneficial uses of water for growing, protecting and harvesting cranberries. Examples of these uses include, but are not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control.

(11) "Deficiency of Rate Right" means an additional right allowed from the same source for the same use at the same place of use when an earlier right does not allow a full duty or rate of flow of water.

(12) "Department" means the Water Resources Department.

(13) "Director" means the Director of the Department.

(14) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(15) "Domestic Use Expanded" means the use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or noncommercial garden.

(16) "Drainage Basin", as used in OAR 690-340-0020, 690-340-0030 and 690-340-0050, means hydrologic unit delineated as a cataloging unit by the US geological Survey Office of Water Data Coordination on the State Hydrologic Unit map.

(17) "Fire Protection Water Use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

(18) "Fish Bypass Structure", as used in OAR 690-340-0010, means any pipe, flume, open channel or other means of conveyance that transports fish that have entered a water diversion structure back to the body of water from which the fish were diverted.

(19) "Fish Screen", as used in OAR 690-340-0010, means a screen, bar, rack trap or other barrier at a water diversion to entrap or provide adequate protection for fish populations, including related improvements necessary to insure its effective operation.

(20) "Fishway", as used in OAR 690-340-0010, means any structure, facility or device used to facilitate upstream or downstream

passage of fish through, over or around any man-made or natural barrier to free movement.

(21) "Forestland and Rangeland Management," as used in Chapter 595, Oregon Laws 1993, means water used for operations conducted on or pertaining to forestlands and rangelands. Such uses may include, but are not limited to, reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation.

(22) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in ORS 537.515(5).

(23) "Group Domestic Water Use" means the use of water for domestic water use by more than one residence or dwelling unit.

(24) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

(25) "Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre. Notwithstanding this definition, exempt industrial water use under Division 340 does not include irrigation or landscape maintenance.

(26) "Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

(27) "Mining Water Use" means the use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control. Examples of mining include, but are not limited to, aggregate, hard rock, heap leach and placer mining.

(28) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses.

(29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power.

(30) "Nursery Operations Use" means the use of water for operation of a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities. The use of water within plant nursery operations constitutes a different use from field irrigation, although that may be a part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the defined agricultural irrigation season.

(31) "Off-Channel" means outside a natural waterway of perceptible extent which, during average water years, seasonally or continuously contains moving water that flows off the property owned by the applicant and has a definite bed and banks which serve to confine the water. "Off-channel" may include the collection of storm water run-off, snow melt or seepage which, during average water years, does not flow through a defined channel and does not flow off the property owned by the applicant.

(32) "Planned" means a determination has been made for a specific course of action either by a legislative, administrative or budgetary action of a public body, or by engineering, design work,

or other investment toward approved construction by both the public and private sector.

(33) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this section. Such uses include, but are not limited to, the uses approved in the policies, provisions, and maps contained in acknowledged city and county comprehensive plans and land use regulations.

(34) "Pollution Abatement or Pollution Prevention Water Use" means the use of water to dilute, transport or prevent pollution.

(35) "Power Development Water Use" means the use of the flow of water to develop electrical or mechanical power. Examples of these uses include, but are not limited to, the use of water for the operation of a hydraulic ram or water wheel and hydroelectric power production.

(36) "Primary Right" means the right to store water in a reservoir or the water right designated by the commission as the principle water supply for the authorized use, or if no designation has been made, the first in time or initial appropriation.

(37) "Proposed Certificate" means a draft version of a water right certificate describing the elements and extent of the water right developed under the terms of a permit or transfer approval order, as determined by field investigation.

(38) "Protest" means a written statement expressing disagreement with a proposed final order that is filed in the manner and has the content described in ORS 537.145 to 537.240.

(39) "Public Corporation" means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government.

(40) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program.

(41) "Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation.

(42) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge.

(43) "Recreation Water Use" means the use of water for play, relaxation or amusement. Examples of these uses include, but are not limited to boating, fishing, wading, swimming, and scenic values. (44) "Riparian Area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, or ephemeral, intermittent or perennial stream.

(45) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate.

(46) "Stockwater Use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

(47) "Storage" means the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits.

(48) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge.

(49) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge

activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses.

(50) "Storm Water Management Water Use" means the use or storage of water in any structure or drainage way that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement, flood control or property protection. It may also include, but is not limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as storm water quality facilities.

(51) "Stream or Riparian Area Enhancement Water Use" means the use of water to restore or enhance a stream or riparian area.

(52) "Supplemental Water Right or Supplemental Water Use Permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right.

(53) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.

(54) "Temperature Control" means the use of water to protect a growing crop from damage from extreme temperatures.

(55) "Transfer" means a change of use or place of use or point of diversion of a water right.

(56) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner or that right but has not yet returned to the channel of a natural stream. In an irrigation district, the wastewater of an individual user is not subject to appropriation until it leaves the boundaries of the district. Wastewater abandoned to the channel of a natural stream becomes a part of that stream and is subject to appropriation.

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(a) The requested source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or

(b) If the requested source is already over-appropriated for any portion of the period of use proposed in a new application:

(A) The applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated;

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source.

(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period.

(58) "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use.

(59) "Water Right Subject to a Transfer" means a right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued.

(60) "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(61) "Wetland Enhancement Water Use" means the use of water to restore, create, or enhance or maintain wetland resources.

(62) "Wildlife Water Use" means the use of water by or for sustaining wildlife species and their habitat.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 536, 537, 539, 540 & 541

Hist.: WRD 6-1987, f. & cert. ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 4-1993, f. & cert. ef. 10-7-93; WRD 6-1993, f. & cert. ef. 11-30-93; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 7-1994, f. & cert. ef. 6-14-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0010; WRD 3-1996, f. & cert. ef. 3-15-96; WRD 2-1998, f. & cert. ef. 10-13-98; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

## DIVISION 310

### WATER RIGHT APPLICATION PROCESSING

#### 690-310-0000

##### Purpose

(1) The purpose of this division is to establish information requirements, and procedures and standards which shall be applied by the Department in the evaluation of applications for a permit to appropriate surface water, ground water, to construct a reservoir and store water, to use reserved water or to use water stored in a reservoir.

(2) Applicants should be aware that other rule divisions apply to applications for instream water rights (OAR 690, division 77), reservations for economic development (OAR 690, division 79), water right transfers (OAR 690, division 15), use of conserved water (OAR 690, division 18), water use for chemical process mining (OAR 690, division 78), out-of-basin diversions (OAR 690, division 12), drought mitigation (OAR 690, division 19), claims for pre-1909 vested water rights (OAR 690, division 28), hydroelectric power generation (OAR 690, division 51), minimum perennial streamflows (OAR 690, division 76) and other uses of water not subject to permit or certificate requirements (OAR 690, division 340).

Stat. Auth.: ORS 536.027, 595 & 654

Stat.s Implemented: ORS 537.130 - 537.211

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0000

#### 690-310-0005

##### Determination of Appropriate Step in Process for Applications Pending on June 30, 1995

Pursuant to section 46, chapter 416, Oregon Laws 1995, for each application described under OAR 690-310-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

Stat. Auth.: ORS 536.027

Stats. Implemented: Sec. 46, Ch. 416, OL 1995

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-310-0010

##### Application Processing Rules Control General Administrative Procedures Act Provisions

Notwithstanding any provision of ORS 183.310 to 183.550, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360 or 537.505 to 537.795. Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent

that any provision in ORS 183.310 to 183.550 conflicts with a provision set forth in ORS 537.120 to 537.360 or 537.505 to 537.795, the provisions in ORS 537.120 to 537.360 or 537.505 to 537.795 shall control.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.140

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-310-0020

##### Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work

(1) The Department shall not issue a permit without notifying the owner, as identified in the application, of any land to be crossed by a proposed ditch, canal or other work as set forth in the application. The Department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(2) If more than 25 persons are identified in the application as required under OAR 690-310-0040(1)(a)(F), the Department may provide the notice required under section (1) of this rule by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the Department.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.130

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

#### 690-310-0030

##### Grounds for Refusal to Issue or Cancellation of Permit

(1) In addition to any other provision for refusal to issue a permit, the following shall be grounds for refusal to issue a permit:

(a) Failure of an applicant to comply with the requirements under OAR 690-310-0020; or

(b) Failure to obtain written authorization, obtain an easement or acquire ownership of the land if required by a condition of issuance.

(2) If an applicant makes a statement under OAR 690-310-0040(1)(a)(G) that falsely states that the applicant owns all lands crossed by a proposed ditch, canal or other work or that the applicant has obtained written authorization or an easement permitting access across such lands, any permit issued in response to the application shall be subject to cancellation.

(3) The Department is not required to mediate or arbitrate a dispute between a permittee and a landowner with respect to the provisions of ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305, and 772.310.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.130 & 537.139

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-310-0040

##### Application Requirements

(1)(a) Each application for a permit to appropriate water shall be made to the Department on a form prescribed by the Department and shall set forth:

(A) The name and mailing address of the applicant(s);

(B) The source(s) of water from which the water is proposed to be diverted or appropriated, including the name and mailing address of any owner of the land upon which the source of the water supply is located;

(C) The amount of water to be appropriated from each source;

(D) A map of the proposed water use as set forth in the mapping requirements in OAR 690-310-0050;

(E) The nature of the proposed use(s);

(F) The name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work even if the applicant has obtained written authorization or an easement from the owner.

(G) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work. This requirement shall not apply to

applications for irrigation or domestic use where the applicant would occupy state-owned submersible lands for the construction, maintenance, and operation of any structure or facility necessary for the use of water;

(H) Proposed dates for the beginning of construction, completion of construction, and complete application of the water to the proposed beneficial use;

(I) The legal description of:

(i) The property from which the water is to be diverted;

(ii) Any property crossed by the proposed ditch, canal or other work; and

(iii) Any property on which the water is to be used as depicted on the map.

(J) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters;

(K) Information the applicant has that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters;

(L) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning Department;

(M) Signature of the applicant(s), and, if the applicant is a public agency, corporation or business, the title or authority of the person who signs the application on behalf of the entity;

(N) An oath that the information contained in the application is true and accurate;

(O) The estimated capacity of each pump in gallons per minute, and the horsepower of each pump motor;

(P) All other data concerning the proposed project and the applicant's ability and intention to construct the project, as the Department considers necessary;

(Q) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements;

(R) If the requested water use is supplemental to an existing water use, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant that is primary to the supplemental use.

(b) If the application is for a permit to appropriate ground water, in addition to the information required under subsection (a) of this section, the application shall contain:

(A) For any well already constructed, a copy of the well constructor's log, if available. If a well log is not available, or if the well is not already constructed, the proposed total depth, depth of casing and seal, and the anticipated perforation and open intervals;

(B) The horizontal distance for each proposed point of ground water appropriation to the nearest surface water, if less than one mile, and the difference in land surface elevation between them;

(C) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision;

(D) The depth to the water table, if known;

(E) The location of each well with reference to government survey corners or monuments or corners of recorded plats;

(F) The estimated capacity of each well;

(G) If the ground water does not require pumping, the rate of flow in gallons in such manner as the Commission may prescribe.

(c) If the application is to store water and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, the application also shall include or be accompanied by:

(A) Preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area;

(B) Proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water;

(C) A legal description of the property upon which the water is to be stored;

(D) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-014-0150 unless the application is to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height, in which case the map need not be prepared by a certified water right examiner.

(d) If the application is to appropriate stored surface water, the application also shall include or be accompanied by documentary evidence that:

(A) The applicant has provided notice of the application to the operator of the reservoir, if other than the applicant. This requirement may be satisfied by providing a copy of written notice to the operator of the reservoir, or a notarized affidavit signed by the applicant stating that notice has been provided to the operator of the reservoir;

(B) An agreement has been entered into with the owner of the reservoir to provide enough water for the purposes set forth in the application. If the applicant is the reservoir owner, no such agreement is required. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance; and

(C) An agreement has been entered into with any entity delivering the stored water other than the applicant. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance.

(e) If for agricultural purposes, in addition to any other information required, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be;

(f) Except as otherwise provided in OAR 690, division 51, if for power purposes, in addition to any other information required, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied;

(g) If for municipal or quasi-municipal water supply, in addition to any other information required, the application shall give the already installed and available capacities to provide water service, present population to be served, and, as near as may be, the future requirements of the population served, and if known, the methods that may be used to meet such future requirements;

(h) If for mining purposes, in addition to any other information required, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050.

(3) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.987.

(4) If the department determines that the source of a proposed use of water is in or above a scenic waterway, in addition to any other information required, the applicant shall provide the information required under OAR 690-310-0260.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 390.835, 537.140 & 537.615

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0020; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

**690-310-0050**

**Map to Accompany Application for Water Use Permit**

(1) Each application shall be accompanied by a map or drawing which shall be considered a part of the application.

(2) Maps submitted with water use applications shall meet the following criteria:

(a) The application map, which is made part of the record, shall be of permanent quality and drawn in ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced;

(b) Maps shall be drawn on good-quality paper. If the map is larger than 11 inches by 17 inches, one additional copy must be submitted;

(c) All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. The map may be of another standard scale if the Department grants, by mail or electronic means, advance approval of the use of the scale. All maps must include the scale to which the map is drawn and a north directional symbol.

(3) A platted and recorded subdivision map, deed description survey map or county assessor may be submitted as the application map if all of the required information is clearly shown.

(4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:

(a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);

(b) The location of main canals, ditches, pipelines, or flumes;

(c) The location of the place where water is to be used identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. The Department also shall accept any locational coordinate information that the applicant may wish to provide, including latitude and longitude as established by a global positioning system. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatchuring and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.140 & 537.615

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0070; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

**690-310-0060**

**Permits for Livestock Watering Outside of Riparian Areas (SB 150, 1989); Fees**

(1) Applications for permits to use water exclusively for livestock watering outside of riparian areas are subject to the following reduced fees:

(a) For examining the application, \$40;

(b) For filing and recording the permit, \$10.

(2) Applications submitted under this rule shall in all other respects be subject to the usual requirements for application processing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0083; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-95, Renumbered from 690-011-0048; WRD 5-2004, f. & cert. ef. 6-15-04

**690-310-0070**

**Completeness Review**

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-310-0040 and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return all fees and the application.

(2) Upon determining that an application contains the required

information and is complete and not defective, the Department

shall indorse on the application the date upon which the application

was received for filing at the Department. All applications that

comply with the provisions of law shall be recorded in a suitable

book kept for that purpose.

(3) The priority date for use of water not previously reserved

under OAR 690, division 79 shall be the date the application was

received for filing by the Department.

(4) If an application is complete and not defective, the Depart-

ment shall determine whether the proposed use is prohibited by

ORS Chapter 538, if the proposed use is for surface water, or by

any statute, if the proposed use is for ground water. If the proposed

use is prohibited by statute, the Department shall reject the applica-

tion and return all fees to the applicant with an explanation of the

statutory prohibition.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.150 & 537.620

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0080**

**Initial Review**

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in 690-310-0070, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations. The applicant shall have 14 days from the date the Department sends the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application and all except \$225 of any fees paid by the applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.150 & 537.620

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

**690-310-0090**

**Public Notice and Comments**

(1) Within seven days after proceeding with the application under OAR 690-310-0080(2), the Department shall give public notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application. The notice also shall include the following information about the application:

- (a) Type of water use application;
- (b) County of water use;
- (c) Application file number;
- (d) Applicant name and address;
- (e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
- (f) Common name of surface water source(s) or basin;
- (g) Nature of use; and
- (h) Location of the proposed point of diversion by section quarter/quarter, township and range.

(2) The weekly notice shall be sent to the following:

(a) Affected local, state and federal agencies, including the planning Departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location;

(b) Property owners listed on an application pursuant to OAR 690-310-0040;

(c) Affected Indian tribes; and

(d) All persons on the Department's weekly mailing list.

(3) The notice shall be sent by regular United States mail or, with the consent of the recipient, by electronic means.

(4) Within 30 days after the public notice under section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who requests a copy of the Department's proposed final order shall submit to the Department a written request accompanied by the fee required under ORS 536.050(1). The 30-day comment period shall commence on the day the Department sends the notice. All comments must be

received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

(5) If the land use information required under OAR 690-310-0040(1)(a)(L) is not received by the Department within the 30-day comment period, the Department shall conclude that the requirement for obtaining land use information has been satisfied and may presume the proposed use is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.150, 537.620, 537.338 & 537.356 - 537.358

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0155; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

**690-310-0100**

**Completion of Application Review; Additional Information and Proposed Final Order**

Within 60 days after the Department proceeds with the application under OAR 690-310-0080(2), the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail, or with the consent of the recipient, by electronic means. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department sends the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-310-0260 by the date specified in the request, the Department may reject the application and may refund fees in accordance with ORS 536.050(3). The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this subsection.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

**690-310-0110**

**Public Interest Presumption; Surface Water**

(1) The Department shall presume that a proposed surface water use will not impair or be detrimental to the public interest if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The presumption described in section (1) of this rule is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0120**

**Public Interest Review; Surface Water**

(1) Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-310-0080, before issuing a proposed final order, the Department shall

determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-310-0110.

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(8) and may either:

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Water use efficiency and the avoidance of waste;

(B) Threatened, endangered or sensitive species;

(C) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0006(42);

(D) Fish or wildlife;

(E) Recreation;

(F) Economic development; and

(G) Local comprehensive plans, including supporting provisions such as public facilities plans.

(c) In making the determination in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)–(7) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four presumption criteria listed in OAR 690-310-0110(1)(a)–(d) are not met; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(5) If the Department finds that under section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application

unless the Department makes specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(8) the issuance of a permit will not impair or be detrimental to the public interest.

(6) If the Department finds that under section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.

(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-310-0160, the Director shall schedule a contested case hearing.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.170

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

### 690-310-0130

#### Public Interest Presumption; Groundwater

(1) The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The presumption described in subsection (1) of this section is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or detrimentally affected.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.525 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

### 690-310-0140

#### Public Interest Review; Groundwater

(1) Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-310-0080, before issuing a proposed final order, the Department shall determine whether the presumption under OAR 690-310-0130 is established for the proposed groundwater use, as described in OAR 690-310-0130.

(2) If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either:

(a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome.

The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will not ensure the preservation of the public welfare, safety, and health under ORS 537.525 as demonstrated in comments or a finding of the Department that shows:

(A) The specific aspect of the public welfare, safety, and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety, and health under ORS 537.525 would be impaired or adversely affected.

(b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Water use efficiency and the avoidance of waste;

(B) Threatened, endangered or sensitive species;

(C) Water quality;

(D) Fish or wildlife;

(E) Recreation;

(F) Economic development;

(G) Local comprehensive plans, including supporting provisions such as public facilities plans;

(H) Stability of groundwater levels; and

(I) Thermal characteristics of groundwater source.

(c) In making any determination or finding in subsection (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)–(7) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four presumption criteria listed in OAR 690-310-0130(1)(a)–(d) are not met; or

(b) The proposed use would not insure the preservation of the public welfare, safety and health, including:

(A) The specific aspect of the public welfare, safety and health that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health would be impaired or detrimentally affected.

(5) If the Department finds under section (4) of this rule that the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application unless the Department makes specific findings to demonstrate that the issuance of a permit will ensure the preservation of the public welfare, safety and health under ORS 537.525.

(6) If the Department finds under section (4) of this rule that the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.

(7) If the Director finds that a significant dispute about the proposed water use related to the public welfare, safety and health under ORS 537.525 exists and a protest has been filed under OAR 690-310-0160, the Director shall schedule a contested case hearing.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.525 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-310-0150

##### Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-310-0090(4),

but the proposed final order need not separately address each comment received.

(2) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability;

(d) The amount of water necessary for the proposed use;

(e) An assessment of whether the proposed use would result in injury to existing water rights;

(f) If the application is for the use of surface water, an assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(g) If the application is for the use of ground water, an assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;

(h) Whether the rebuttable presumption set forth in OAR 690-310-0110 or 690-310-0130 has been established;

(i) If the public interest presumption is established, the Department's determination as to whether the presumption is overcome.

(j) An assessment of the measures, if any, proposed by the applicant to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters;

(k) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(l) The date by which protests to the proposed final order and requests for standing must be received by the Department; and

(m) The date by which the applicant must request a contested case hearing under OAR 690-310-0170.

(3) The Department shall send copies of the proposed final order to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send copies of the proposed final order by regular mail to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050. Within seven days after issuing the proposed final order, the Department also shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-310-0090, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-310-0160(4).

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-310-0160

##### Protests and Standing to Participate in Further Proceedings

(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(2) Any person who supports the proposed final order may request standing for purposes of participating in any contested case

proceeding on the proposed final order or for judicial review of a final order.

(3) The request for standing must be in writing, signed by the requester, and include the following:

(a) The requester's name, mailing address and telephone number;

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

(4) Any person who has filed a timely request for standing may later file a petition for intervention in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes judicial review based on that issue.

(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.

(7) Within 10 days after the close of the filing period established under section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153, 537.170, 537.621 & 537.622

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

#### **690-310-0170**

##### **Determination of Director to Refer Application for Contested Case Hearing, Final Order of Director**

(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:

(a) Issue a final order as provided under OAR 690-310-0190 or 690-310-0200; or

(b) Schedule a contested case hearing.

(2) The Director:

(a) May schedule a contested case hearing if:

(A) A protest has been submitted; and

(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.

(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-310-0160 and requests a contested case hearing.

(3) As soon as possible after making a determination under subsection (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing and describe the procedure each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered to be the scheduling of the contested case hearing for purposes of the running of the 45-day time period under OAR 690-310-0180.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### **690-310-0180**

##### **Conduct of Contested Case**

(1) Within 45 days after the Director schedules a contested case hearing under OAR 690-310-0170, the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of OAR 690, division 2. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(2) The parties to any contested case hearing initiated under this section shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under OAR 690-310-0160, pays the fee required under ORS 536.050 for participating in the contested case hearing and requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:

(a) As provided in sections (1) and (2) of this rule; and

(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.170 & 537.622

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

#### **690-310-0190**

##### **Final Order for Proposed Use of Surface Water**

If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order rejecting the application or modifying the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.170

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### **690-310-0200**

##### **Final Order for Proposed Use of Ground Water**

If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of ground water does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order rejecting the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.625

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0210**

**Contested Case Hearing on Final Order**

If a contested case hearing is not held prior to the issuance of the final order:

(1) Where the final order modifies the proposed final order, the applicant may request and the Department shall schedule a contested case hearing as provided under OAR 690-310-0170 by submitting the information required for a protest under OAR 690-310-0160 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.170 & 537.625

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0220**

**Final Determination of Whether Proposed Use of Surface Water Would Impair or Be Detrimental to Public Interest or Whether Proposed Use of Ground Water Would Preserve the Public Welfare, Safety and Health**

(1) If the presumption of public interest under OAR 690-310-0110 or 690-310-0130 is overcome, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(8) or, if the application is for the use of ground water, whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering the factors set forth in ORS 537.

(2) In developing the final order, the Director shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

(3) Upon issuing a final order, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department also shall publish notice of the final order by publication in the weekly notice published by the Department.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.170 & 537.625

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

**690-310-0230**

**Exceptions**

Any party may file exceptions to the hearings referee's proposed order in the manner provided in OAR 690-002-0175.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.173 & 537.626

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0240**

**Approval, Condition or Rejection of Permit Application Generally**

(1) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, or that any proposed use or well will impair or substantially interfere with existing rights to appropriate ground water for the beneficial use of the water less than 250°F for its thermal characteristics, the Department may impose conditions or limitations in the permit to prevent the same or reject the application after hearing, or, in the Department's discretion, request the Water Resources Commission to initiate a rule-

making proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(2)(a) When an application discloses the probability that a proposed use or well will impair or interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250°F, the Department may:

(A) Approve the permit;

(B) Impose conditions or limitations in the permit to prevent the probable interference or impairment;

(C) After a hearing under ORS 537.622, reject the application; or

(D) Request the Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(b) In deciding whether to issue, deny or condition a permit under this subsection, the Department shall consider any orders or permits applicable to the ground water reservoir issued by the State Geologist or the governing board of the State Department of Geology and Mineral Industries under ORS Chapter 522.

(3) The Department may issue a permit for a water use that is conditioned or modified from the use originally proposed in the application only if the conditioned or modified use does not change the source of the water, increase the amount of land appurtenant to the water use or enlarge the proposed use of water in any way.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.190 & 537.629

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0250**

**Permit Conditions Related to Well Construction and Maintenance**

All permits for use of water from wells shall provide that the well shall be constructed in accordance with the Water Resources Department's General Standards for the Construction and Maintenance of Wells in Oregon. All permits shall further provide that the well may be controlled or shut off if a determination is made, in accordance with OAR 690-009, that it caused substantial interference with a surface water source.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.628, 537.629 & 537.780

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0260**

**Water Rights Within or Above State Scenic Waterways**

(1) Pursuant to the provisions of ORS 390.835, and these rules the Director is authorized to:

(a) Issue water rights within or above the designated reach of a scenic waterway provided the free-flowing character of the waterway is maintained in quantities necessary for recreation, fish and wildlife uses;

(b) Issue water rights for limited human consumption and livestock consumption uses within or above a designated reach of a scenic waterway when flows are less than quantities necessary for recreation, fish and wildlife.

(2) The Director may issue water rights under subsection (1)(b) of this rule for human consumption and livestock consumption uses upon the following findings:

(a) Issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife;

(b) Appropriation of water under the water right is consistent with the provisions of ORS Chapters 536 and 537 and OAR 690;

(c) Construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925;

(d) Water rights for human consumption shall not exceed .005 cubic feet per second per household; and

(e) Water rights for livestock consumption uses shall not exceed one-tenth of one cubic foot per second per 1,000 head of livestock.

(3) In addition to the requirements under OAR 690-310-0040, an application to appropriate water for human consumption or live-

stock consumption uses under subsection (1)(b) of this rule shall include:

(a) Information which identifies all potential alternate source(s) of water, if any, and describes why the applicant cannot reasonably obtain water from such sources;

(b) If the application proposes to appropriate water for human consumption, evidence that denial of the application will result in loss of reasonable expectations for use of the property; and

(c) If the application proposes to appropriate water for livestock consumption use, a description of how livestock will be excluded from the stream and its riparian zone and information that the water right is necessary to prevent the livestock from watering in or along the stream bed.

(4) In addition to the findings set out in section (2) of this rule, before a water right permit may be issued for human consumption or for livestock consumption uses under subsection (1)(b) of this rule the Director must find:

(a) The water right meets a need for a use which is given preference under ORS 536.310(12) when available supplies of water are insufficient to meet all uses;

(b) No alternate sources of water are reasonably available;

(c) For applications for human consumption, denial of the application will result in loss of reasonable expectations for use of the property;

(d) For applications for livestock consumption uses, the water right is necessary to prevent livestock from watering in or along the stream bed and the applicant has excluded livestock from the stream and its adjacent riparian zone; and

(e) Water is available within the combined cumulative total limitation described in section (5) of this rule.

(5) The Director shall limit the total water use authorized under subsection (1)(b) of this rule within or above each scenic waterway to no more than a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less. Such combined cumulative total may be exceeded if representatives of the Departments of Water Resources, Parks and Recreation, Fish and Wildlife, Environmental Quality and the Division of State Lands agree that exceeding the one percent or one cubic foot per second limit will not significantly impair the free-flowing character of the waters in quantities necessary for recreation, fish and wildlife.

(6) Water rights issued for human consumption shall contain measuring and reporting conditions which require permittees to install meters or other suitable measuring devices, to keep complete records of amounts of water used and to submit periodic reports to the Department as specified in the permits.

(7) Water rights issued for livestock consumption uses shall contain conditions that require permittees to exclude livestock from the stream and its adjacent riparian zone.

(8) The Department's proposed final order shall:

(a) Set forth a summary of the findings required under sections (2) and (4) of this rule;

(b) State that the applicant has submitted the information described in section (3) of this rule;

(c) Identify the maximum amount of water available within or above the applicable scenic water way in accordance with the limitations set out in section (5) of this rule; and

(d) State the residual amount of water available from the source for the proposed human consumption or livestock consumption use.

(9)(a) The provisions of this rule shall not apply to a water right application for the use of ground water except upon a finding by the Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife;

(b) The Department shall review every application for the use of ground water to determine whether to make the finding specified in subsection (a) of this section. The finding shall be based upon the application of generally accepted hydrogeologic methods using

relevant and available field information concerning the proposed use;

(c) In making the determination required by subsection (a) of this section, the Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows;

(d) If the Director makes the finding specified in subsection (a) of this section, the Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with provisions of ORS 390.835(9); or

(B) The applicant submits evidence to overcome the finding under subsection (a) of this section.

(e) Except as provided under section (12) of this rule, if the Director does not make the finding specified in subsection (a) of this section, the Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795 and rules adopted thereunder;

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water;

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced;

(h) Nothing in this section shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Commission and the Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) As used in this rule 'measurably reduce' means that the use authorized under section (9) of this rule will individually or cumulatively with other groundwater uses, reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow by month or one cubic foot per second, whichever is less, unless:

(a) The Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Division of State Lands unanimously agree to exceed that amount; and

(b) exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(12) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in section (11) of this rule, the Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS Chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835

Hist: WRD 14-1994, f. & cert. ef. 11-14-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0196

**690-310-0270**

**Timelines**

(1) Except as provided in section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2).

(2) At the request of the applicant, the Department may extend the 180-day period set forth in section (1) of this rule for a reasonable period of time. The extension shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary.

(3) If a contested case hearing is held, the Department shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the Department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings.

(4) If the applicant does not request an extension under section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Department to issue a final order or schedule a contested case hearing on an application for a water right. If the application is for an out-of-stream use or for the use of ground water, the writ of mandamus shall compel the Department to issue a water right permit, unless the Department shows by affidavit that to issue a permit may result in harm to an existing water right holder.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.175 & 537.627

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0275**

**Applicability of Mandatory Timelines**

The mandatory timelines set forth in division 310 for processing applications shall not apply to applications filed before October 31, 1996.

Stat. Auth.: ORS 536.027

Stats. Implemented: Sec. 46, Ch. 416, OL 1995

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-310-0280**

**Assignment of Application**

Assignment or change of ownership of application:

(1) When a change of interest or ownership occurs in lands covered by a pending application the record holder may request, in writing, the Director to record the assignment to the new owner;

(2) Should the record holder of the application be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the application. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

(a) A copy of the deed to the land;

(b) A copy of a land sales contract;

(c) A court order or decree; or

(d) Documentation of survivorship of property held jointly.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.220 & 537.635

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

**DIVISION 315**

**WATER RIGHT PERMIT EXTENSIONS**

**690-315-0010**

**Purpose**

(1) OAR 690-315-0010 through 690-315-0100 establish the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law; or

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.

(2) OAR 690-315-0010 through 690-315-0100 do not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) Except as provided in subsection (4) of this Section, these rules shall become effective July 1, 2001, superceding OAR 690-320-0010 and all applications requesting extensions of time to begin construction and perfect water rights permits filed with the Department on or after July 1, 2001 shall be governed by OAR 690-315-0010 through 690-315-0060.

(4) Notwithstanding subsection (3), all extension applications for municipal and quasi-municipal water use permits requesting additional time to complete construction and/or apply water to full beneficial use for which the Department has not issued a Proposed Final Order by November 1, 2002, shall be governed by 690-315-0070 through 690-315-0100.

(5) For the purpose of the rules in this Division "Protest" means a written statement expressing disagreement with a proposed final order issued under OAR 690-315-0050, filed in the manner and having the content as described in OAR 690-315-0060.

(6) For the purpose of the rules in 690-315-0070 through 690-315-0100:

(a) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power;

(b) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses except: an irrigation district organized under ORS Chapter 545, a drainage district organized under ORS Chapter 547, a water improvement district organized under ORS Chapter 552, or a water control district organized under ORS Chapter 553;

(c) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation, other than a public corporation, created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use;

(d) "Fish species listed as sensitive, threatened, or endangered under state or federal law" and "Listed fish species" means fish species listed as threatened or endangered under the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C.) or listed as sensitive, threatened or endangered by the Oregon State Fish and Wildlife Commission under ORS 496.172 to 496.176 and OAR chapter 635, division 100;

(e) "Use of the undeveloped portion of the permit" means the diversion of the undeveloped portion of a surface water permit or the impact on a stream from pumping the undeveloped portion of a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9;

(f) "Portions of waterways affected by water use under the permit" means those portions of the drainage basin at or below the

point of diversion for a surface water permit or the location of impact on a stream from a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9 downstream to the lower-most point within the applicable river basin as identified by the Department pursuant to its authority under ORS 536.700;

(g) "Undeveloped portion of the permit" means the portion of the permit that is the difference between the maximum rate, or duty if applicable, specified in the permit and the maximum rate, or duty if applicable, diverted for beneficial use before the extension; and

(h) "Water Management and Conservation Plan" means a Water Management and Conservation Plan pursuant to OAR chapter 690, division 86.

(7) By November 30, 2006, the Water Resources Commission shall evaluate implementation of rules related to applications for extension of time for municipal water use permits.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 1-2001, f. & cert. ef. 1-31-01; WRD 1-2002, f. & cert. ef. 4-30-02; WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

#### 690-315-0020

##### Application for Extension of Time for Other Than Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, water right permit holders for other than municipal or quasi-municipal uses may apply to the Department for extensions of time to complete construction and/or apply the water to the full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a water right permit holder shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water;

(d) Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

(e) Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to:

(A) The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied;

(B) The maximum rate, or duty if applicable, of diversion, if any, made to date; and

(C) If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.

(f) A description of financial expenditures made toward completion of the water development;

(g) An estimate of the cost to complete the water development;

(h) A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project which have significantly delayed completion of construction or perfection of the right;

(i) The date by which the water development will be completed and water put to full beneficial use;

(j) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(k) Justification of why the requested time in subsection (i) is needed to complete the project and/or apply the water to full beneficial use;

(l) A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs;

(m) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; and

(n) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application within 90 days after the required date of completion specified by the permit or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.260 or 537.410.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

#### 690-315-0030

##### Application for Extension of Time to Begin Construction on Storage Projects

(1) Counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 may apply for extensions of time to begin construction.

(2) To apply for an extension of time under this rule, a water right permit holder shall submit to the Department a completed application for extension of time. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application to begin construction must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) A summary of any unforeseen events which delayed the beginning of construction;

(d) The date by which the water development will be completed and water applied to the full beneficial use;

(e) A justification of why the requested time is needed to begin construction and fully apply water to beneficial use;

(f) Any additional information the applicant determines is relevant to evaluate the application in accordance with applicable statutory requirements and these rules; and

(g) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application 90 days after the required date specified by the permit to begin construction or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.410.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

**690-315-0040**

**Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits**

(1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:

(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;

(c) The applicant can complete the project within the time period requested for the extension; and

(d) There is good cause to approve the extension.

(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market for water or power to be supplied;

(e) The present demands for water or power to be supplied;

(f) The income or use that may be required to provide fair and reasonable returns on investment;

(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;

(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;

(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and

(j) Any other factors relevant to a determination of good cause.

(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:

(a) The amount of construction completed within the time allowed in the permit or previous extension;

(b) The amount of beneficial use made of the water during the permit or previous extension time limits;

(c) Water right permit holder conformance with the permit or previous extension conditions; and

(d) Financial investments made toward developing the beneficial water use.

(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;

(d) Economic investment in the project to date;

(e) Other economic interests dependent on completion of the project; and

(f) Other factors relevant to the determination of the market and present demand for water and power.

(5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.

(6) The Department may request additional information necessary to evaluate an application.

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

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

**690-315-0050**

**Department Action on Extension Applications**

If the Department finds an applicant has submitted a completed application as required in 690-315-0020 or 690-315-0030, the Department shall process the application as established in this rule.

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:

(a) Applicant name and address;

(b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;

(c) Common name of water source(s) listed in the permit;

(d) Permit number;

(e) Use allowed in the permit;

(f) Proposed extended date of completion; and

(g) A statement that copy fees are required to receive a proposed final order.

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may respond to the issue, if applicable and relevant to the decision, within the proposed final order.

(3) The Department shall send the proposed final order issued under subsection (2) of this rule to the applicant by regular mail, or with the consent of the recipient, by electronic means. The Department shall send a copy of the proposed final order by regular mail to any person other than the applicant who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(5) Extension orders may include, but are not limited to, any condition or provision needed to:

(a) Ensure future diligence;

(b) Mitigate the effects of the subsequent development on competing demands on the resource; and

(c) Periodically document the continued need for the permit.

(6) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further

condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports described in subsection (6)(a) of this rule in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-315-0060

##### Proposed Final Order Hearing Rights

(1) The applicant or any other person adversely affected or aggrieved by the proposed final order described in OAR 690-315-0050(2) may submit a written protest to the proposed final order. The written protest must be filed within 45 days from the date of publication of the proposed final order in the Department's weekly notice.

(2) A written protest shall include:

(a) The name, address and telephone number of the petitioner;

(b) A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the petitioner, if known;

(f) Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and

(g) The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.

(3) Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:

(a) Issue a final order on the extension request; or

(b) Schedule a contested case hearing if a protest has been submitted, and:

(A) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or

(B) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

#### 690-315-0070

##### Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, holders of municipal and quasi-municipal water use permits may apply to the Department for an extension of time to complete construction and/or apply the water to full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a holder of a municipal or quasi-municipal water use permit shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) For quasi-municipal water use permit holders, evidence of the actions taken to begin actual construction on the project, as

defined in 690-315-0020(3)(d), if required under the applicable statute;

(d) For municipal water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d);

(e) Evidence of actions taken to develop the right within the permitted time period and/or time period of the previous extension;

(f) Evidence of compliance with conditions contained in the permit and any previous extension(s) or the reason the condition was not satisfied;

(g) Evidence of the maximum rate, or duty if applicable, diverted for beneficial use, if any, made to date;

(h) An estimate of the population served and a description of the methodology(ies) used to make the estimate;

(i) A description of financial expenditures made toward completion of the water development;

(j) An estimate of the cost to complete the water development;

(k) A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right;

(l) An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. Extension requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.

(m) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(n) Justification for the time requested to complete the project and/or apply the water to full beneficial use;

(o) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules;

(p) Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements; and

(q) For municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, the completed application must include a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

#### 690-315-0080

##### Criteria for Department Review of Extension Applications for Municipal and Quasi-Municipal Water Use Permits

(1) In order to approve an application for an extension of time for municipal and quasi-municipal water use permits holders to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, the Department shall find:

(a) The application is complete, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) The applicant began actual construction on the project, as defined in 690-315-0020(3)(d), within the time period, if any, required under the applicable statute;

(c) The time requested to complete construction or apply water to full beneficial use is reasonable;

(d) The applicant can complete the project within the time period requested for the extension; and, if the request is for more than 50 years that the estimated demand projection is consistent

with the amount and types of lands and uses proposed to be served by the permit holder;

(e) There is good cause to approve the extension; and

(f) For the first extension issued after June 29, 2005 for municipal water use permits issued before November 2, 1998:

(A) There are agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

(B) It is determined that use of the undeveloped portion of the permit will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

(C) If it is determined that use of the undeveloped portion of the permit would not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, the undeveloped portion of the permit is conditioned to maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

(2) The Department's finding for municipal use permits under subsection (1)(f) of this rule shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The Department's finding shall be limited to impacts related to streamflow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that streamflow would be a limiting factor for the subject listed fish species.

(a) Except for municipal ground water permit extension applications where the Department has determined there is not the potential for substantial interference with surface water under OAR chapter 690 division 9, the Department shall notify ODFW of each pending municipal water use permit extension application that is subject to subsection (1)(f) of this rule and provide at least 60 days for ODFW to respond prior to issuing a proposed final order under 690-315-0050. The Department may issue a proposed final order prior to 60 days if comments are received from ODFW.

(b) Upon notifying ODFW under subsection (2)(a) of this rule, the Department shall also notify the applicant and, within 10 days, give public notice in the weekly notice published by the Department that the municipal permit extension application has been sent to ODFW for review.

(c) For ground water permits submitted to ODFW under this rule, the Department shall provide to ODFW and the applicant the Department's estimate of surface water impacts that would result from use of the undeveloped portion of the ground water permit.

(d) ODFW shall provide its written advice to the Department on the extension application within 60 days of the Department's notice in subsection (2)(a) of this rule or notify the Department that additional time, not to exceed 120 days unless the applicant consents to more time, will be needed to complete its evaluation.

(e) ODFW may recommend to the Department fishery resource protection conditions for inclusion in the proposed final order under OAR 690-315-0050 that would provide protection to maintain the persistence of listed fish species if its written advice to the Department indicates that:

(A) Use of the undeveloped portion of the permit would not maintain persistence in the portions of the waterways affected by water use under the permit; and

(B) As a result of the use of the undeveloped portion of the permit, streamflow would be a limiting factor for the listed fish species.

(f) Upon receiving ODFW's written advice, the Department shall notify the applicant and any persons that requested notification of any fishery resource protection conditions that may be proposed in the proposed final order under OAR 690-315-0050. The Department's notice shall also provide the applicant an opportunity to request the Department place the permit extension application on administrative hold.

(g) The Department may place fishery resource protection conditions on the undeveloped portion of the permit in the extension proposed and final order under 690-315-0050 if the

Department finds that, without such conditions, use of the undeveloped portion of the permit will not maintain, in the portions of waterway affected by water use under the permit, the persistence of listed fish species.

(3) The Department's determination of good cause shall consider:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market and present demands for water or power to be supplied;

(e) The income or use that may be required to provide fair and reasonable returns on investment;

(f) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right; and

(g) Any events over which the water right permit holder had no control and which delayed development under the permit.

(4) In determining reasonable diligence and good faith of the holder of a municipal or quasi-municipal water use permit, the Department shall consider activities associated with the development of the right that may include, but are not limited to: water management planning; conservation planning; development of a water master plan for the Oregon Health Division; planning of a diversion system; demand forecasting; flow or water quality monitoring; source evaluation; entry into intergovernmental agreements for water delivery; property acquisition; engagement in governmental permitting or project financing; procurement of planning, design, or construction services; surveying; and any physical work performed toward completion of the system and development of the right.

(5) For municipal and quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to subsection (3)(d) above, in addition to subsections (1)(a)–(e), (3), and (4) of this rule, the Department shall also consider, but is not limited to, the following factors:

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;

(d) Economic investment in the project to date;

(e) Other economic interests dependent on completion of the project; and

(f) Other factors relevant to the determination of the market and present demand for water and power.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

#### 690-315-0090

#### Time of Extensions and Additional Development of Municipal and Quasi-Municipal Water Use Permits

(1) Extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(2) A holder of a municipal or quasi-municipal water use permit is not precluded from seeking additional extensions of time as provided in OAR 690-315-0070 through 690-315-0100.

(3) Except as provided in subsection (4) and (5), any water right permit extended under OAR 690-315-0070 to 690-315-0100 shall be conditioned to provide that diversion of water beyond the maximum rate, or duty if applicable, diverted for beneficial use before the extension shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan.

The required Water Management and Conservation Plan shall be submitted within 3 years of an approved extension application.

(4) Quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary.

(5) Quasi-municipal water use permit holders that can reasonably demonstrate that fewer than 5 years is necessary to complete construction and apply the water to beneficial use are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary. Additional extensions that, together with the initial extension, exceed a cumulative total of 5 years will be subject to the requirements of subsection (3) above.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

### 690-315-0100

#### Department Action on Extension Applications by Holders of Municipal Water Supply Permits

If the Department finds an applicant has submitted a completed application as required under 690-315-0070, the Department shall process the application as established under 690-315-0050(1) through (5) and 690-315-0060.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02

## DIVISION 320

### WATER RIGHT PERMITS

#### 690-320-0010

##### Extension of Time Limits

(1) Effective until July 1, 2001, this rule establishes the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law; or

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.

(2) This rule does not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) After July 1, 2001, the permit extension application process rules shall be contained in OAR 690, division 315.

(4) A holder of a permit for municipal water use, as defined in OAR 690-300-0010, may apply for an extension under the rules in this division. However, the Department will convene a work group to address issues relating to water rights for municipal water uses. The work group will be asked to make recommendations for rules and/or legislation to address issues specific to water rights for municipal water uses, including extensions of such water rights. Until July 1, 2001, holders of municipal water use permits are not required to apply for a permit extension. During this time, the Department will not require submission of proof of completion for, attempt to cancel, or compel an application for an extension for a water right permit for municipal water uses. This time period is offered to allow the work group to develop recommendations. The Department may shorten the time limit if the working group develops recommendations and new rules are adopted before July 1, 2001.

(5) The time limit to begin construction of water use facilities shall not be extended except for municipal use of surface water by a municipality, permits involving Federal Energy Regulatory Commission projects, permits issued to irrigation districts for reclamation purposes, or county, municipality or district permits for new storage projects.

(6) The time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230, 537.248, 537.630, and 539.010(5).

(7) Time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

(8) Before taking final action on any request for an extension of time, the Director shall issue a proposed final order including any conditions necessary for approval of the extension. The Director shall provide public notice of the Department's proposed final order by means of publication in the Department's weekly notice. A period of 45 days shall be provided for the submission of a written comment or a written protest against a proposed final order. Protests shall include the fee as required under ORS 536.050. Each person submitting a protest shall raise all reasonably ascertainable issues and raise all reasonably available arguments supporting the person's position by the close of the comment period.

(9) If the Director determines that some progress has been made to complete the construction or use, but if diligence is questionable, the Director may issue a proposed final order to:

(a) Deny the request for more time;

(b) Grant the request for more time and notify the applicant that future requests for more time will not be granted; or

(c) Grant the request for more time by an order amending the permit to include any condition or provisions needed for determining future diligence. Such new provisions or conditions shall not apply to any portion of the right developed under the time limits previously granted.

(10) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings for the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250.

(b) The Department shall provide notice of receipt of progress reports described in subsection (10)(a) of this rule in its weekly notice and shall allow a 30-day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

(11) After the 45 day comment and protest period, the Director shall determine whether to:

(a) Issue a final order; or

(b) Schedule a contested case hearing if the Director finds that there are significant disputes related to the use of water.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0095; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0205; WRD 4-1998, f. & cert. ef. 11-2-98

#### 690-320-0020

##### Cancellation of Permit

When it appears from an onsite examination by the Water Resources Department that no appropriation has been made under the terms of the permit, or that use once made has undergone a period of five successive years of nonuse, a certified letter of intent to cancel the permit shall be sent to the permittee, allowing 60 days from the date of the letter for response. Failure to respond during the 60-day period shall result in cancellation of the permit.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.260, 537.410 - 537.450, 540 & 543  
 Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0100; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0210

**690-320-0030**

**Claims of Beneficial Use for Applications Filed After June 30, 1987**

Except for applications filed under the provisions of OAR 690-340-0220, all final proof surveys and claims of beneficial use for applications filed after July 9, 1987 shall be performed by Certified Water Right Examiners. Applicants prior to July 10, 1987, may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.

Stat. Auth.: ORS 536.027  
 Stats. Implemented: ORS 537.797, 537.798 & 537.799  
 Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0103; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0215

**690-320-0040**

**Incremental Perfection of a Municipal Water Right**

(1) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:

- (a) Any incorporated city, village, or town;
- (b) A port formed under ORS 777.005 to 777.725 and 777.915 to 777.953;
- (c) A domestic water supply district formed under ORS Chapter 264; or
- (d) A water supply authority formed under ORS Chapter 450.

(2) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-330-0010.

(3) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

(4) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:

- (a) The quantity of water diverted from each point of diversion, by month, for the preceding three years;
- (b) A plan of how the municipal supplier intends to develop successive increments of its water right; and
- (c) Maps that show where water will be put to use. Maps accompanying notification of intent to perfect an increment of a water right shall be prepared to the specifications described in OAR 690-310-0050, except that a standard even scale less than 4" = one mile may be used if appropriate.

(5) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-320-0010 governing extension of time limits applies to unperfected municipal water rights.

Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.260 & 540  
 Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0130; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0235

**690-320-0050**

**Temperature Control**

Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the

amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.

Stat. Auth.: ORS 536.027  
 Stats. Implemented: ORS 537.170, 537.250, 537.525 & 537.630  
 Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**690-320-0060**

**Assignment or Change of Ownership of a Permit or Groundwater Registration**

(1) When a change of interest or ownership occurs in lands covered by a permit or groundwater registration, the record holder may request, in writing, the Director to record the assignment of a new owner.

(2) Should the record holder of the permit or groundwater registration be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit or registration. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (a) A copy of the deed to the land;
- (b) A copy of a land sales contract;
- (c) A court order or decree; or
- (d) Documentation of survivorship of property held jointly.

Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 537.220 & 537.635  
 Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 4-1998, f. & cert. ef. 11-2-98

**690-320-0070**

**Primary and Supplemental Rights**

(1) Cancellation of primary rights:

(a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;

(b) If the primary right is determined to have been forfeited by non-use and the supplemental right is not determined also to have been forfeited by non-use, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become the primary right.

(2) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to a supplemental status to allow for a new primary right application from a more dependable source of water.

(3) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at time when water is available from the surface water supply.

Stat. Auth.: ORS 536.027  
 Stats. Implemented: ORS 540.610 - 540.650  
 Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

**DIVISION 325**

**ASSIGNMENT OF A WATER RIGHT PERMIT  
 AND REQUEST FOR ISSUANCE OF  
 REPLACEMENT PERMITS**

**690-325-0010**

**Purpose**

The rules in OAR chapter 690, division 325 establish requirements and procedures that shall be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering

or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders. These rules do not replace OAR chapter 690-320-0060.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

**690-325-0020**

**Applicability**

(1) The Department can only accept an application for assignment and request for issuance of replacement permits to reflect the assignment where the original water right is for irrigation, nursery, temperature control, stock watering or agricultural water use.

(2) The Department may not accept an application for assignment and request for issuance of replacement permits under the rules in OAR chapter 690, division 325 for municipal permits, quasi-municipal permits, or water right permits held by a unit of local government, including but not limited to water right permits held by a port, water authority, or a district.

(3) Any water right permit for the use(s) of irrigation, nursery, temperature control, stock watering, or agricultural purposes, with a completion date that has expired may not be assigned pursuant to ORS 537.225 or by the rules in OAR Chapter 690, division 325.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

**690-325-0030**

**Definitions**

The definitions in this rule, along with the definitions in OAR 690-300-0010 (Definitions) and OAR 690-380-0100 (Water Right Transfers), apply to the rules in OAR chapter 690, division 325. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Enlargement" means an expansion of a water right permit and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a permit;

(b) Increasing the acreage irrigated under a permit;

(2) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.

(3) "Injury" or "Injury to an existing water right" means a water right transaction that would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

**690-325-0040**

**Application Requirements**

(1) Each application shall be prepared in ink or typewritten on forms provided by the Department.

(2) The application shall contain the following information concerning the subject water right permit and assignment:

(a) The name, mailing address, e-mail address (if it exists), and telephone number of each applicant. Each applicant's name shall have an assigned alphabet letter or number that corresponds with the application map as required under OAR 690-325-0050(2)(e).

(b) Name(s) appearing on the water right permit.

(c) Water Right Permit number.

(d) Water Right Permit use. Must be one or more of the following uses approved for assignment under OAR 690-325-0010: irrigation, nursery, temperature control, stock watering or agricultural water use.

(e) A map meeting the criteria set forth in OAR 690-325-0050.

(f) A copy of the recorded deed showing the applicant is an owner of the land to which the water right permit is appurtenant.

(g) An affidavit certifying that the water right permit has not been conveyed or withheld, and remains appurtenant to the applicant's land and also certifying that the applicant has read the permit.

(h) A statement by the applicant that the most recent water use under the applicant's portion of the water right permit, if any, has been exercised within relevant terms and conditions of the permit.

(i) Agreements to the assignment and to the request of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or an assignment of interest and request for the issuance of replacement water right permits by one or more of the owners of land to which the water right permit is appurtenant and information identifying other landowners not participating in the assignment and request for issuance of replacement water right permit. Such information shall include:

(A) Landowner(s) name;

(B) Address;

(C) Description of the properties by public land survey and tax lot number.

(D) Number of acres and permit rate held by each landowner.

(j) A listing of the names and mailing addresses of any district within which the water right permit is located.

(k) The Department may require the applicant to provide any additional information the department deems appropriate in determining whether or not to approve the application.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

**690-325-0050**

**Map Requirements**

(1) A map shall be included with the application required under OAR 690-325-0040. The map shall meet the following criteria:

(a) The map shall be prepared by a certified water right examiner.

(b) The map shall be based upon the original water right application map or permit amendment map.

(c) The map shall not include:

(A) Any unauthorized change to the location of the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

(B) Any unauthorized change to the location of the point(s) of diversion/appropriation as exhibited on the original water right application map or approved permit amendment application map.

(d) The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(e) The preferred map size is 8-1/2" x 11" (letter). If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(f) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.

(g) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(D) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(h) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(i) The map shall be plotted to the accuracy consistent with the map scale.

(j) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42-1/4 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map shall include the following information:

(a) A north arrow, the scale, and a clear legend.

(b) The certified water rights examiner's stamp and signature. An electronically generated stamp or seal is acceptable, provided the signature is original.

(c) The place of use of each applicant's portion of the water right permit shall be clearly defined by outline and shaded or hachured and shall show the number of acres for each portion in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right permit has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.

(d) The place of use of any part of the water right permit not being assigned shall be clearly defined by outline and shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the portion of the water right permit not being assigned has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.

(e) Each applicant's portion of the water right permit shall be referenced, by either alphabet letter or number, to each assignee's listed in the application form under OAR 690-325-0040(2).

(f) The rate and any applicable acre-feet allowance of water use under the water right permit for each applicant's portion of the permit shall be clearly labeled on the map.

(g) The location of each authorized point of diversion or appropriation.

(h) The location of tax lot lines for all properties upon which the water right permit is located.

(i) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines.

(j) Notwithstanding the requirements of subsection (1)(i), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features.

(k) Notwithstanding the requirements of subsection (1)(i), the general location of physical features sufficient to assist in defining the location of the place of use of the water right permit. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### 690-325-0060

##### Receipt of Application; Fees

(1) The applicant is required to pay the Water Resources Department the full cost to the Department of processing the application.

(2) Within 15 days upon receipt of an application containing all the requirements described under OARs 690-325-0040 and 690-325-0050, the Department shall estimate the actual cost of work involved in processing the application.

(3) The Department shall notify the applicant of the estimate of the actual cost of work and provide a time period of:

(a) 30 days for the applicant to submit the appropriate fees covering the estimated actual cost of work, or

(b) Upon a written or e-mailed request from the applicant, a reasonable time period greater than 30 days to submit the appropriate fees.

(4) If the Department does not receive the appropriate fees after the expiration of the appropriate time period described in OAR 690-325-0060(3), the Department will send notice to the applicant that if the fees are not received by the Department within 10 days of the mailing of this notice, the Department will consider the application incomplete and will notify the applicant that the application is not properly filed and that the application will be of no further force or effect.

(5) All required fees must be received before the final assignment is made and replacement water right permits reflecting the assignment are issued. Excess fees will be returned after the final order is issued.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### 690-325-0070

##### Technical Review and Issuance of Draft Documents

(1) The Department's technical review of the application shall include:

(a) Verification of the mailing address of each owner of the authorized place of use identified on the map contained in the application.

(b) Verification that the deed(s) supplied with the application matches the properties proposed for the assignments.

(c) Verification that the most recent water use under the permit, if any, has been exercised within relevant terms and conditions of the water right permit.

(d) Assessment of the application for enlargement of the original water right permit and injury to other water right holders.

(2) Once the technical review described in OAR 690-325-0070(1) has been completed, the Department shall:

(a) Prepare a draft proposed final order to approve the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will not result in the enlargement of the original water right permit nor injury to other water right holders and that the water right permit has been exercised by the applicant in compliance within the terms and conditions of the water right permit, or

(b) Prepare a draft proposed final order to deny the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will result in the enlargement of the original permit and/or injury to other water right holders and/or that the water right permit has not been exercised by the applicant in compliance within its terms and conditions.

(c) Prepare drafts of the replacement water right permits if a draft proposed final order to approve the application under OAR 690-325-0070(2)(a) is prepared.

(3) Within 30 days after the appropriate fees have been received, the Department shall mail, or with consent of the applicant, send by electronic means, copies of the application, map, existing water right permit, draft proposed final order, and, if the requirement under OAR 690-325-0070(2)(a) is satisfied, draft replacement water right permits, to each owner of land upon which the water right permit is appurtenant.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### 690-325-0080

##### Public Notice and Request for Comments

(1) Within ten days of proceeding with the application under OAR 690-325-0070(3), the Department shall give notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which the comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed

final order and information about how an interested person may review the application or obtain a copy of the application.

(2) The notice shall include the following information about the application:

- (a) County of water use.
- (b) Permit number.
- (c) Authorized use and associated rate and/or duty.
- (d) Permit Completion Date.
- (e) Applicant name(s).
- (f) Number of acres, rate (or applicable acre-feet allowances),

allowed under the existing water right permit.

(g) Source(s).

(h) Location of the point(s) of diversion/appropriation by quarter-quarter, section, township and range.

(3) Within 30 days after the public notice under OAR 690-325-0080(1), any record landowner, applicant, assignee, affected water right permit holder, or other person interested in the application may submit written comments or request copies of the documents described in OAR 690-325-0070(3). All comments and requests for copies must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### **690-325-0090**

##### **Proposed Final Order; Public Notice**

(1) Within 30 days after the comment period closes under OAR 690-325-0080(3), the Department shall issue a proposed final order either approving or denying the application, taking into account comments received in response to the notice under 690-325-0080.

(2) The Department shall send copies of the proposed final order to each owner of land described in OAR 690-325-0070(3) by mail, or, with the consent of the applicant, send by electronic means, and to each person who submitted comments under 690-325-0080(3).

(3) Within seven days of issuance of the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. The notice shall give the date that protests must be received by the Department, no later than 45 days after the date the notice is published.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### **690-325-0100**

##### **Protests**

(1) A record landowner, an applicant, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right permit assignment under ORS 537.225. The protest must be in writing and received by the Department within the time provided under OAR 690-325-0090(3). The protest must be accompanied by the protest fee required under ORS 536.050 and include:

(a) The name, address, and telephone number of the person filing the protest; and

(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.

(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.

(3) If a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The Department may:

(a) Reissue a proposed final order;

(b) Issue a final order; or

(c) Refer the matter for a contested case hearing.

(4) If the Department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the Department an opportunity for response is not subject to review at the contested case hearing.

(5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:

(a) The applicant for the water right permit assignment; and

(b) Persons that timely filed a protest against the proposed order under (OAR 690-325-0090(3)).

Stat. Auth.:

Stats. Implemented: ORS 537.227

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

#### **690-325-0110**

##### **Final Order and Replacement Water Right Permits**

(1) Within 30 days of the end of the protest period described in OAR 690-325-0090(3) and if no protests were received, an application for assignments and issuance of replacement water right permits shall be approved by final order of the Department. The final order approving the assignment shall contain:

(a) Findings that the assignment and issuance of replacement water right permits do not enlarge the permit as defined in OAR 690-325-0030(1);

(b) Findings that the assignment and issuance of replacement water right permits do not injure other water rights as defined in OAR 690-325-0030(3).

(c) Findings that all other requirements for assignments and issuance of replacement water right permits are met, including, but not limited to the completion date of the water right permit.

(2) The replacement water right permits shall:

(a) Include the same conditions as the replaced water right permit, including, but not limited to priority date, source of water, and type of use;

(b) Identify the land to which the replacement water right permit is appurtenant and the owner(s) of that land;

(c) Apportion the rate and, if applicable, the duty, or, if applicable, the acre-foot allowance in proportion to the amount of land to which the replacement water right permits are appurtenant.

(3) The replacement water right permits shall not:

(a) Authorize any change to the authorized point(s) of diversion or appropriation, including the addition of a point of diversion or appropriation, and

(b) Authorize any change to the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

## DIVISION 330

### WATER RIGHT CERTIFICATES

#### 690-330-0010

##### Proof of Appropriation

(1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be sent by first class mail to the permittee at the last known address, or with the consent of the recipient, by electronic means together with notice that the permittee or landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630(4).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630 & 540 & 543

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0110; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0225; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-330-0020

##### Request for Reconsideration of the Contents of a Proposed Certificate

(1) A request for reconsideration of the contents of a proposed certificate may be prepared by the permittee or landowner and submitted to the Department. The requests shall describe any disagreement with the contents of the proposed certificate.

(2) The request for reconsideration may be in the form of a phone call or personal contact, unless the disagreement proposes a change to any of the following:

- (a) The source of water;
- (b) The purpose for which the water is used;
- (c) The quantity of water;
- (d) The location of the points of diversion;
- (e) The location of the use;
- (f) The extent of the use; and
- (g) Any conditions imposed upon the use.

(3) If the disagreement results in a change to any item listed in subsections (2)(a) through (g) of this rule, the request for reconsi-

deration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the final proof map, and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(4) The Director may allow reasonable time beyond the time limit set under OAR 690-330-0010(2) for a permittee or landowner to complete and submit a written request for reconsideration.

(5) Upon receipt of a request for reconsideration, the Director shall:

(a) Approve the request without verification and issue a certificate with the changes included;

(b) Schedule field verification of the requested changes; or

(c) Deny the request by letter from Department staff to the requesting party.

(6) If field verification is scheduled, a new proposed certificate shall be prepared and sent as prescribed by OAR 690-330-0010.

(7) A request for reconsideration resulting from section (6) of this rule shall be approved or denied. If denied, the denial shall be in the form of an Order of the Director. The order shall provide for either issuance of a certificate of water right in conformance with the Director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 2.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.220, 536.300, 536.310, 537.250, 537.338, 537.356 - 537.358, 537.630 & 540 & 543

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0120; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0230

#### 690-330-0030

##### Temperature Control

Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.170, 537.250, 537.525 & 537.630

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

#### 690-330-0040

##### Primary and Supplemental Rights

(1) Cancellation of primary rights:

(a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;

(b) If the primary right is determined to have been forfeited by non-use and the supplemental right is not determined also to have been forfeited by non-use, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become the primary right.

(2) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to a supplemental status to allow for a new primary right application from a more dependable source of water.

(3) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at time when water is available from the surface water supply.

Stat. Auth.: ORS 536.025

Stats. Implemented: ORS 540.610 - 540.650

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

DIVISION 340

WATER USE AUTHORIZATIONS

**690-340-0010**

**Exempt Uses**

The uses of water listed below do not require a water right permit under ORS 537.211 or a water right certificate under 537.250:

(1) The statutory exemptions from permit requirements for use of groundwater include watering any lawn or noncommercial garden not exceeding 1/2 acre in area. Not more than 1/2 acre of lawn and noncommercial garden in total area may be irrigated through a group delivery system under such exemption. The statutory exemptions from permit and certificate requirements for use of groundwater include:

(a) Stockwater use;

(b) Lawn or non-commercial garden watering of not more than 1/2 acre in total can be irrigated from any groundwater source under the exemptions listed in ORS 537.545(1)(b);

(c) Single or group domestic water uses of no more than 15,000 gallons per day;

(d) Industrial or commercial water uses not exceeding 5,000 gallons per day based on peak daily use. A commercial or industrial operation shall be allowed only one well system and exemption under ORS 537.545(1)(f) on each ownership or tax lot, whichever is larger.

(2) The statutory exemptions from permit and certificate requirements for use of surface water include:

(a) Use of waste, spring or seepage waters which are exempt under ORS 537.800;

(b) Water used for egg incubation projects under the Salmon and Trout Enhancement Program (STEP);

(c) Fish screens, fishways and fish by-pass structures. A fish screen, fish way or fish by-pass structure is an exempt use if it either:

(A) Is part of a hydroelectric project permitted or licensed by the Department; or

(B) Is found to not be harmful to fish or wildlife after consultation with the Oregon Department of Fish and Wildlife and causes no injury to existing water rights.

(d) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir;

(e) Reservoirs that store less than 9.2 acre feet of water or with a dam less than 10 feet in height; that are located off-channel and outside the immediate riparian area; that do not divert water directly from a natural stream, lake or other on-channel source; that were constructed before January 1, 1993; and for which a written notice is submitted under section (4) of this rule.

(3) Water used for emergency firefighting is exempt from permit and certificate requirements regardless of the source of water.

(4) To qualify as an exempt water use under subsection (2)(e) of this rule, the landowner shall provide written notice of the use to the Department on or before January 1, 1995. Such notice shall be on a form provided by the Department and signed and verified by the owner of the land or the owner's authorized agent upon which the reservoir is located. The notice shall include the following:

(a) The volume of water stored;

(b) The source of the water used to fill the reservoir;

(c) The height of the dam measured at its highest point above natural ground elevation;

(d) A U.S. Geological Survey topographic map or a tax lot map showing the location of the reservoir;

(e) Evidence that the reservoir existed on or before January 1, 1993 as described in OAR 690-340-0020; and

(f) A statement describing the off-channel nature of the reservoir.

(5) The Commission may require other information from the landowner regarding an exempt use including, but not limited to, estimates of the quantity of water used; diversion location; place of

use; or photographs showing the scale of the project and the immediate area above, below and surrounding a reservoir.

Stat. Auth.: ORS 536.027, 595 & 654

Stats. Implemented: ORS 537.141

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96,

Renumbered from 690-011-0014

**690-340-0020**

**Ponds in Existence Prior to January 1, 1993 (HB 2153, 1993)**

(1) A landowner with an unpermitted reservoir constructed before January 1, 1993 may apply for a water right permit and continue the use of water while a decision is pending on the application. The water right application, if approved in accordance with OAR 690-011-0155 through 690-011-0185 (dated 4-13-94), will receive a priority date of January 1, 1993. In order to qualify for these benefits, an application must be filed on or before January 1, 1995. In addition to the information and fees required under OAR 690-011-0020 and 690-011-0040 (dated 4-13-94), an application shall also be accompanied by evidence that the reservoir existed before January 1, 1993. Such evidence may include:

(a) A dated aerial photograph which shows the immediate area above, below and surrounding the reservoir;

(b) An affidavit signed by the landowner or other knowledgeable person;

(c) A dated map prepared by a local, state or federal agency showing the location of the reservoir; or

(d) Construction receipts or other forms of documentation.

(2) Notwithstanding the requirements for a survey set forth in ORS 537.230, no survey of the appropriation is required for a reservoir storing less than 9.2 acre feet or with a dam less than 10 feet in height. Maps submitted with the application shall be of sufficient quality and scale to establish the location of the reservoir to the nearest quarter-quarter section, township and range.

(3) Up to 10 reservoirs may be included in a single application if the reservoirs existed prior to January 1, 1993; have dams that are less than 10 feet in height or that store less than 9.2 acre-feet of water; are in the same drainage basin; and within the same ownership on contiguous property. For a rural fire protection district formed under ORS 478.010 or a forest protection district formed under ORS 477.225, up to 10 reservoirs may be included in a single application if all the reservoirs are within the boundaries of the district; are within the same drainage basin; and are an element of the district's fire protection system.

(4) A water right certificate under ORS 537.250 may be issued in lieu of a permit if:

(a) The reservoir existed before January 1, 1993;

(b) The records of the Department provide satisfactory documentation to describe the location and volume of storage;

(c) Modifications or alterations to the impoundment structure are not required; and

(d) The Commission determines under section (1) of this rule that the reservoir would qualify for issuance of a permit.

Stat. Auth.: ORS 536.027, 595 & 654

Stats. Implemented: ORS 595, OL 1993 & ORS 537.405 - 537.409

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96,

Renumbered from 690-011-0041

**690-340-0030**

**Limited License**

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

(a) The fee for examination and recording:

(A) \$1150 for a limited license filing requesting the use of water for Aquifer Storage and Recovery testing purposes.

(B) \$575 for renewal of a limited license for Aquifer Storage and Recovery testing purposes.

(C) \$575 for modification of a limited license for Aquifer Storage and Recovery testing purposes.

(D) \$1150 for a limited license filing requesting the use of water for Artificial Groundwater Recharge purposes.

(E) For limited license applications, \$280 for the first point of diversion plus \$30 for each additional point of diversion; and

(a) A completed water availability statement from the local watermaster on forms provided by the department; and

(b) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

(3) Each limited license shall be limited to an area within a single drainage basin.

(4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.

(5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.

(7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, 595 & 654

Stats. Implemented: ORS 537.143 & 537.144

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0082; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 9-2009, f. 12-8-09, cert. ef. 12-15-09; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

#### 690-340-0040

#### Registration of Water Use for Road Maintenance and Construction

(1) A request by a public agency to register water use for road and highway maintenance, construction and reconstruction shall be submitted on a form provided by the Water Resources Department and shall include at least the following:

(a) The name and authorized agent of the public agency;

(b) The address and telephone number of the agency's authorized agent;

(c) If the source of water to be used for the agency's road maintenance or construction program:

(A) Is groundwater, attach copy of well log or description of the well;

(B) Is surface water, identify the name of the source and the stream, or river the source is tributary to.

(d) The maximum amount of water to be used during the calendar year in gallons or acre-feet;

(e) The maximum amount of water to be used during any 24-hour period in gallons or acre-feet;

(f) A map indicating the location(s) of the point(s) of diversion of water to be used for road maintenance or construction (the map shall be of sufficient scale to establish the location(s) of the point(s) of diversion to the nearest quarter section, township and range);

(g) A fee in the amount of \$340 (more than one point of diversion may be identified per registration); and

(h) If water is obtained from a well, conveyance or storage facility that has a perfected or certificated water right:

(A) Provide the permit or certificate number or the court decree identification of the right; and

(B) Written authorization from the owner of the right that allows use of water from the well, conveyance or storage facility.

(2) The registrant may use either a county road map or a Water Resources Department basin map to indicate the location(s) of point(s) of diversion. Counties may submit one registration for all uses within the county. State-wide public agencies shall submit one registration for each of the agencies administrative units. (The Oregon Department of Transportation shall submit one registration for each of its Regions within which road construction or maintenance water is to be used). Federal agencies with jurisdiction over roads/highways shall submit one registration for each of their administrative units.

(3) An Oregon Department of Fish and Wildlife "Requirements for Small Pump Screen", Self-Certification form shall accompany the registration form.

(4) As used in this rule, public agency means:

(a) The State of Oregon or any agency of the State of Oregon;

(b) A county or a special road district of a county;

(c) A city, town or incorporated municipality; and

(d) Any federal agency that has jurisdiction over a roadway in this state.

(5) The registration is subject to the following terms:

(a) Water use authorized by the registration shall not have priority over any existing water right;

(b) Water use authorized by the registration shall be subordinate to all future permitted or certificated water rights;

(c) Water use authorized under the registration shall not exceed 50,000 gallons from a single source during any 24-hour period;

(d) The registration shall be valid until the public agency voluntarily withdraws the registration or the public agency fails to file the annual renewal statement as required under section (8) of this rule;

(e) No person may construct any dam, reservoir or other impoundment facility to divert water from within a designated scenic waterway;

(f) Under no circumstances may the registrant cause the water course to be dewatered to a degree that the live, continuous flow is obstructed;

(g) The department may require the public agency to cease diversion of water at any time the director has reason to believe use of water under the registration is causing a significant adverse impact upon:

(A) The affected watershed; or

(B) Any existing water right; and

(h) The registrant shall notify the watermaster for the district in which the water is to be diverted not fewer than 30 days nor more than 60 days prior to the date diversion under the registration is to be initiated. If the proposed diversion is within or above a designated scenic waterway, the registrant shall not withdraw water under the registration until the watermaster provides written findings that the proposed withdrawal will not interfere with the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife uses.

(6) The registrant may authorize any person(s) to divert, transport or apply water under the registration; however, the registrant is responsible for the acts of such person(s) as authorized by the registration and these rules.

(7) The registrant shall provide copies of its registration form and map to the local office of the Oregon Department of Fish and Wildlife (ODFW) at least 30 days before water use under the registration is initiated. If sensitive, threatened or endangered aquatic species are present in the stream(s) proposed as a source(s) of water under the registration and such species may be adversely affected by withdrawal of water by the registrant, ODFW shall advise the watermaster to direct the registrant to withdraw water from an alternative location(s) or stream(s) wherein the proposed

withdrawal will not cause significant adverse impact to the affected watershed.

(8) The public agency must submit an annual renewal statement on or before February 1 of each calendar year. The annual renewal statement shall be accompanied with a \$60 renewal fee and shall specify any change in:

- (a) The registrant's map;
- (b) The sources of water to be used;
- (c) The maximum amount of water to be used during the calendar year or during any 24-hour period; and
- (d) A map delineating any changes in the location(s) of point(s) of diversion.

Stat. Auth.: ORS 536.027

Statutes Implemented: ORS 537.040

Hist.: WRD 6-1995, f. & cert. ef. 6-10-94; WRD 1-1996, f. & cert. ef. 1-31-96,

Renumbered from 690-011-0047; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

### 690-340-0060

#### Expedited Review Process for Applications to Use Stored Water Exclusively

(1) In lieu of the application process described in OAR 690-310-0040, 690-310-0050, and 690-310-0070 through 690-310-0275, a person may apply for a permit to use stored surface water exclusively, to be evaluated through an expedited process. This process may not be used to apply for a permit to use water stored through an aquifer storage and recovery or artificial ground water recharge project under OAR chapter 690, division 350.

(2) In addition to the information, materials, and fees required by OAR 690-310-0040, a person applying under section (1) of this rule shall submit:

(a) A copy of the permit, certificate, or decree as evidence that the proposed use of the stored water is one of the authorized uses under the permit, certificate or decree that allows the storage of water; or

(b) If the storage is authorized under a permit or certificate, the permit or certificate number sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the permit or certificate that allows the storage of water; or

(c) If the storage is authorized under a decree, the name of the decree, the volume number, and the page number(s) of the decree sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the decree that allows the storage of water.

(3) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under section (2) of this rule and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return all fees and the application.

(4) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. The priority date for use of water not previously reserved under OAR chapter 690, division 79 shall be the date the application was received for filing by the Department.

(5) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by any statute. If the proposed use is prohibited by statute, the Department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(6) As soon as practicable after determining that an application is complete and not defective, that all fees have been paid, and the use is not prohibited by statute as prescribed in section (5) of this rule, the Department shall give public notice of the application in the weekly notice published by the Department.

(7) Within 30 days after the public notice prescribed in section (6) of this rule, any person may submit written comments to the Department. The 30-day comment period shall commence on the day the Department gives notice. All comments must be sent by

facsimile, postmarked, or hand-delivered to the Department on or before the last day of the 30-day comment period, and shall identify:

(a) The specific public interest under ORS 537.170(8) that would be affected by the proposed use, and

(b) Specifically how the identified public interest would be affected.

(8) Following the end of the 30-day comment period, the Department may issue a final order and permit approving the application.

(9) If the Department determines public interest issues are raised pursuant to section (7) of this rule, the Department shall process the application as an application under ORS 537.150, and issue a proposed final order pursuant OAR 690-310-0150.

(10) At a minimum, a permit issued under subsection (8) of this rule shall be conditioned to require:

(a) Fish screens and by-pass devices and fish passage consistent with Oregon Department of Fish and Wildlife (ODFW) standards, unless the permittee submits written evidence that ODFW has determined that the devices are not necessary;

(b) A measuring device at each point of diversion authorized under the permit.

(11) Within 10 days of issuing a permit under subsection (8) of this rule, the Department shall:

(a) Provide notice of the issuance in the weekly notice published by the Department, and

(b) Send a copy of the permit to persons who have submitted comments pursuant to section (7) of this rule.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Statutes Implemented: 537.017 - 537.032

Hist.: WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

## DIVISION 350

### AQUIFER STORAGE AND RECOVERY (ASR) AND ARTIFICIAL GROUNDWATER RECHARGE

#### Aquifer Storage and Recovery (ASR)

### 690-350-0010

#### ASR General Provisions

(1) Definitions. The following definitions apply to aquifer storage and recovery in OAR 690, division 350, Rules 0010 to 0030:

(a) "Aquifer Storage and Recovery" (ASR) means the storage of water from a separate source that meets drinking water standards in a suitable aquifer for later recovery and not having as one of its primary purposes the restoration of the aquifer (ORS 537.531). (Applications to obtain limited licenses or permits for ASR uses submitted pursuant to OAR 690-350-0010 to 690-350-0030 are not subject to provisions governing artificial groundwater recharge projects or programs pursuant to OAR 690-350-0110 to 690-350-0130.)

(b) "Commission" means the Water Resources Commission.

(c) "Department" means the Water Resources Department.

(d) "DEQ" means the Department of Environmental Quality.

(e) "Director" means the Water Resources Director.

(f) "HD" means the Oregon Health Division.

(g) "Injection Source Water" means the water which may be injected under terms of an ASR limited license or permit.

(h) "Receiving Aquifer" means the aquifer into which water may be injected under terms of an ASR limited license or permit.

(i) "Recovered Water" means water which is recovered from storage under terms of an ASR limited license or permit.

(j) "Stored Water" means water which is stored in a receiving aquifer under terms of an ASR limited license or permit.

(2) Limited License for ASR Testing. The use of water for ASR testing purposes requires a limited license pursuant to ORS 537.534. A limited license pursuant to ORS 537.143 does not apply. Only after completion of an ASR testing program under a limited license may an applicant apply for a permanent ASR permit. A limited license application may propose ASR testing for

a single well or same-aquifer wells in a wellfield. The limited license may allow for a beneficial use of the recovered water. If the limited license is based on a water right for injection source water, the limited license shall require the same use as the water right, but may allow a rate of injection which is no greater than that of the water right and a rate of recovery which is greater than that of the water right.

(3) Inherent to Water Rights. ASR is a beneficial use inherent in all water rights for other beneficial uses (ORS 537.531). Applicable water rights are either permits or certificates. ASR use under this inherent nature is accessed temporarily under an ASR limited license or permanently through an ASR permit. The use of water under a water right as injection source water for an ASR project up to the limits allowed in the ASR permit neither affects the priority date of the water right, nor changes the use permitted upon its recovery from the use permitted by the water right for injection source water, nor otherwise affects the water right. ASR permits may allow rates of injection which are no greater than those of the water right for injection source water and rates of recovery which are greater than those of the water right for injection source water.

(4) Separate Processes for Water Right and ASR Permit. An ASR permit does not allow an appropriation of water but does allow ASR to occur with a water right. The water right application process rules in OAR 690, division 310 do not apply to ASR application processing. The public interest review standards for an ASR permit shall apply only to the matters raised by the ASR application, not to the water right for the injection source water. An ASR permit may allow ASR storage through a single well or same-aquifer wells in a wellfield. If a new water right is needed as part of the ASR project, the new water right application shall be subject to the same standards as any new water right application.

(5) Use Described by Water Right. The use of recovered water under an ASR permit shall be the same as the use described by the water right permit or certificate for injection source water. The holder of a permit for ASR shall apply for a transfer under procedures set out in OAR 690-015 if the use of recovered ASR water is different from that which is allowed in the water right permit or certificate for the injection source water.

(6) Water Quality. Water quality is a major consideration in ASR activities and all of the following provisions apply:

(a) Injection source water for ASR shall comply with drinking water standards, treatment requirements, and performance standards established by the HD under OAR 333-061-0030 and 0032 (ORS 448.131 and .273) or the maximum measurable levels established by the Environmental Quality Commission under OAR 340-040 (ORS 468B.165), whichever are more stringent. The injection of such water into aquifers under an ASR limited license or permit shall be exempt from the requirement to obtain a discharge permit under ORS 468B.050 or a concentration limit variance from the DEQ;

(b) Conditions shall be placed on the limited license or permit to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer;

(c) No limited license or permit may establish concentration limits for water to be injected in excess of standards established by HD or the maximum measurable levels established by the Environmental Quality Commission under OAR 340-040 (ORS 468B.165), whichever are more stringent;

(d) Except as otherwise provided in (6)(e) of this rule, if the injection source water contains constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) that are detected at greater than 50 percent of the established levels, the ASR limited license or permit may require the permittee to employ technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water;

(e) Constituents that have a secondary contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under OAR 333-061-0030 (ORS 448.131 and 448.273);

(f) The Department may, based upon valid scientific data, further restrict certain constituents in the injection source water if the Department finds the constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses.

(7) Oversight of ASR Projects. The Department is the sole licensing and permitting agency for ASR projects. However, other state agencies and local governments have a role as follows:

(a) The Department shall seek DEQ and HD assistance in the administration of the ASR program, including recommending conditions to be included in the limited license and permit;

(b) ASR activities under a limited license or permit are subject to conformance with land use laws and may be located within or outside an urban growth boundary;

(c) The disposal of recovered ASR testing water may require discharge authorization from DEQ. All applicants should investigate this possibility;

(d) Applicants that are public water systems as defined by the HD (OAR 333-061-0020(68)) shall comply with the HD's construction standards (OAR 333-061-0050) and plan submission and review requirements (OAR 333-061-0060).

(8) Percent Recovery of Stored Water. In addition to other conditions, the limited license or permit shall specify the amount of stored water that may be recovered. The Department may allow up to 100 percent of the stored water to be recovered if data analysis demonstrates that the injected source water is not lost through migration or other means and that groundwater otherwise present in the aquifer has not been irretrievably lost as a result of ASR.

(9) Appeal of Administrative Action. Any order of the Director related to ASR limited licenses is subject to administrative reconsideration as provided in the Administrative Procedures Act (ORS Chapter 183) and judicial review as provided in ORS 536.075. Orders of the Director related to ASR permits are subject to administrative reconsideration as provided in the Administrative Procedures Act (ORS Chapter 183) and judicial review as provided in ORS 536.075.

(10) Groundwater Protection. To reduce the potential for contamination of stored water, ASR operators are encouraged to consider the protection of their groundwater supply through the development of a Wellhead Protection plan or other appropriate groundwater protection plan.

Stat. Auth.: ORS 536.027 & 537.534

Stats. Implemented: ORS 537.531 - 537.534

Hist.: WRD 2-1996, f. & cert. ef. 2-12-96

## 690-350-0020

### ASR Testing Under Limited License

(1) Testing Purposes. To store and use water injected into an aquifer for aquifer storage and recovery testing purposes requires a limited license. Only after completion of an ASR testing program under a limited license may an applicant apply for a permanent ASR permit. The testing approach shall be designed to provide information as needed to evaluate the ultimate capacity anticipated for the project. The limited license may allow for a beneficial use(s) of the recovered water.

(2) Pre-application Conference. The Department requires at least one pre-application conference with a prospective licensee prior to filing an application requesting the right to use water under a limited license for ASR testing. The purpose of the conference is to describe and discuss the processes and requirements which the Department associates with water storage and recovery in the ASR Program. The conference may serve as a point of review for the apparent adequacy of the applicant's hydrogeologic and other information. The Department shall invite personnel from both the DEQ and HD to the conference.

(3) Limited License Application. A request for a limited license for a period of up to five years shall be submitted on a form provided by the Department. The application shall consist of the following:

(a) Information on, and Attachments to, the Form:

(A) Name, address, and telephone number of the applicant;

(B) The proposed source for injection water, maximum diversion rate, maximum injection rate at each well(s), maximum storage volume, maximum storage duration, and maximum withdrawal rate at each well(s);

(C) License Duration. The term or duration for which the limited license is sought;

(D) Proposed Use or Disposal of Recovered Water. The proposed beneficial use or the intended disposal method for the recovered water. In the event of contingencies which preclude the beneficial use, the application should propose an alternate use or disposal. If an existing water right is cited in the application for the injection source water, the use of the recovered water shall be the same as that allowed under the existing water right;

(E) Ultimate Project Size. The ultimate capacity anticipated for the final project to be tested including the proposed source for injection water, maximum diversion rate, maximum injection rate at each well(s), maximum storage volume, maximum storage duration, and maximum withdrawal rate at each well(s);

(F) Water Availability or Water Right Statement. Access to water shall be evidenced by a completed water availability statement from the local watermaster on forms provided by the Department, results from the Department's water availability model or citation of the existing water right (permit or certificate) which is available for use in ASR testing under the limited license;

(G) Water Right Holder Agreement. If the applicant is not the holder of the water right for the proposed ASR testing as may be cited in (F) above, a statement from the water right holder shall indicate permission for use of the water for ASR testing;

(H) Legal Land Use. Evidence that land use and development approval from a local government is sought, obtained, or unnecessary;

(I) Map. A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = one mile, showing:

(i) The locations of all proposed points of diversion, injection wells, recovery wells, and observation wells for the limited license and the final project referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(ii) The general stream course of the source for the proposed use, if applicable;

(iii) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(J) Applicants that are public supply systems as defined by the Health Division (OAR 333-061-0020(68)) shall acknowledge the need to comply with the Health Division's plan submission and review requirements (OAR 333-061-0060);

(K) Other Information. The applicant shall provide any other information the Department believes necessary to evaluate the ASR testing.

(b) Supplemental Reports:

(A) Proposed ASR Test Program. The proposed testing program shall include injection rates and schedules, water storage volumes, the injected water storage durations, recovery rates and schedule, water quality sampling including a quality assurance and quality control plan, water level monitoring including location of observation wells, contingency plan for use of recovered water if the intended use not possible, information on the anticipated final project (scope and conceptual design), and testing report outline. (A licensed professional will be required to develop this information as required by Oregon Law);

(B) Proposed System Design. The proposed system design package shall include well construction information for any injection, recovery, observation and source wells, the wellhead assembly, piping system for injection and recovery, and other conceptual design components of the system. (A licensed professional will be required to develop this information as required by Oregon Law);

(C) Groundwater Information. Preliminary hydrogeologic information shall include the local geology, a conceptual hydrogeologic model, a description of the aquifer targeted for storage, esti-

mated flow direction and rate of movement, allocation of surface water, springs or wells within the area affected by ASR wells, rationale for estimating the affected area, anticipated changes to the groundwater system due to the proposed ASR testing, potential natural resource problems of testing, and other information on groundwater and surface water conditions antecedent to ASR for basing recovery estimations. (A licensed professional will be required to develop this information as required by Oregon law (ORS 672.505-705));

(D) Quality of Source Water. The applicant shall provide information regarding the quality and treatment of the proposed injection source water relevant to the proposed injection time of year for:

(i) Regulated constituents with maximum contaminant levels under OAR 333-061-0030 (test results from a laboratory approved by the HD (OAR 333-061-0036));

(ii) Unregulated constituents under OAR 333-061-0036 (test results from a laboratory approved by the HD (OAR 333-061-0036));

(iii) Constituents with maximum measurable levels established under OAR 340-040 (ORS 468B.165) (test results from a laboratory approved by the HD (OAR 333-061-0036));

(iv) Compliance with treatment requirements and performance standards for source waters that fall in categories identified in OAR 333-061-0032;

(v) Common ion constituents and water quality parameters to include: alkalinity or bicarbonate, calcium, magnesium, iron, manganese, sodium, potassium, chloride, sulfate, silica, total dissolved solids, pH, redox potential and temperature;

(vi) Other constituents as required by the Department.

(E) Comments on Source Water/Standards. The applicant shall address the following situations as they apply:

(i) If a constituent that is regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) is detected in the source water, the applicant shall demonstrate that there are not other sources of water available to the applicant which would be satisfactory for injection and lower in the constituent of concern;

(ii) If a constituent is detected in the source water above 50% of the levels established under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165), the applicant shall install a treatment method, system or other alternative method to reduce the constituent to less than 50% of those levels, unless the applicant can show that there is not a treatment method, system or other alternative method that will reduce the level of a contaminant below the 50% level, or the lesser of:

(I) The applicant can show that it would be more costly to provide the treatment method, system or other alternative method necessary than to obtain the same amount of stored water from the next cheapest feasible water supply alternative; or

(II) In the case of a drinking water system the applicant can show the cost of adding the treatment method, system or other alternative method increases the cost per household of providing water (including operation, maintenance, and debt service for prior water projects) above 1.5% of the median household income of the community.

(iii) Notwithstanding paragraph (3)(b)(E)(ii) of this rule, in the event the applicant cannot reduce a constituent to less than the 50% level, the applicant shall minimize the constituent level by providing the level of treatment available or other alternative method which for the same amount of stored water is not as costly as either the next cheapest water supply alternative or an amount equal to that necessary to increase the cost per household of providing water to 1.5% of the median household income of the community, whichever is less;

(iv) Notwithstanding the provisions of paragraphs (3)(b)(E)(i), (ii), and (iii) of this rule and after consulting with the DEQ and the HD, the Department may determine that the circumstances are such that an alternative source, treatment method, system, or other alternative method is acceptable or not necessary.

(F) Quality of Receiving Aquifer Water. The applicant shall provide information regarding the quality of the receiving aquifer water for:

(i) Regulated constituents with maximum contaminant levels under OAR 333-061-0030 (test results from a laboratory approved by the HD (OAR 333-061-0036));

(ii) Unregulated constituents under OAR 333-061-0036 (test results from a laboratory approved by the HD (OAR 333-061-0036));

(iii) Constituents with maximum measurable levels established under OAR 340-040 (ORS 468B.165) (test results from a laboratory approved by the HD (OAR 333-061-0036));

(iv) Common ion constituents and water quality parameters to include: alkalinity or bicarbonate, calcium, magnesium, iron, manganese, sodium, potassium, chloride, sulfate, silica, total dissolved solids, pH, redox potential and temperature;

(v) Other constituents as required by the Department.

(G) Comments on Compatibility. The applicant shall evaluate the compatibility of the injection source water and receiving aquifer water for possible changes in aquifer characteristics due to hydrogeologic or hydrogeochemical changes.

(c) Other Information. Any other information required by the Department.

(4) Limited License Application Processing:

(a) Review of Application for Completeness. Within 45 days after an individual submits or resubmits an application, the Department shall consult with DEQ and HD about the completeness of the application, determine the completeness of the application, and either:

(A) Notify the applicant that it is complete for purposes of evaluation; or

(B) Notify the applicant of what additional information is required before the application is resubmitted.

(b) Public Notice/Comment Period. Within 7 days after determining that an application is complete, the Department shall provide public notice of the request to the public in the same manner as is used for other water use applications. The appearance in the public notice commences a 30-day public comment period for the application. The Department may require additional information from the applicant pursuant to its own concerns and those raised by the public comments;

(c) DEQ and HD Assistance. The Department shall rely on the DEQ and the HD to comment on and recommend conditions for the limited license and shall provide the public notice and a copy of the complete application to those agencies at the opening of the comment period;

(d) Director's Action on the Application. The Director shall consider comments and recommendations received during the public comment period, and shall:

(A) Issue the license with proper conditions upon finding that:

(i) The proposed ASR testing will not impair or be detrimental to the public interest;

(ii) The proposed ASR testing will produce information that will adequately describe the water quality and quantity response in the aquifer and at nearby wells and springs due to ASR activities; and

(iii) The proposed use will not expand the use under an existing water right; or

(B) Deny the application upon finding that the ASR testing will impair the public interest or will not adequately produce information that will describe the water quality and quantity response in the aquifer and at nearby wells and springs due to ASR activities.

(e) Starting January 1, 1997, the actions outlined in subsection (4)(d) of this section shall occur within 60 days of the close of the comment period;

(f) The Department shall send a copy of the final order to commentors.

(5) Limited License Conditioning. A limited license shall contain the following conditions:

(a) Test Plan Authorization. The limited license shall authorize an ASR test plan which includes the source for injection water, the

maximum diversion rate from the source, the maximum injection rate at each well(s), the maximum storage volume, the maximum storage duration, and the maximum recovery rate at each well(s);

(b) Duration. The Director may issue a limited license for ASR purposes for a term of not more than five years;

(c) License Renewal. The limited license may be renewed if the applicant demonstrates to the Director's satisfaction that further testing is necessary and that the applicant complied with the terms of the limited license. The Department shall offer an additional public comment opportunity prior to renewing the limited license. The standards, findings and process used in the license renewal process shall be as provided in OAR 690-350-0020 and, as a condition of renewal, the Department may further condition the license consistent with the requirements of this rule;

(d) Notice Prior to Injection and Recovery. The licensee shall give notice, in writing, to the watermaster not less than 15 days in advance of initiating injection under the limited license and recovering stored water. The injection notice shall include the limited license number, the location of the injection source water diversion, the quantity of water to be diverted from that source, the time of injection, and the place of injection. The recovery notice shall include the limited license number, the location of the recovery well(s), the time of recovery, and the quantity of water to be recovered;

(e) Record of Use. The permittee shall maintain a record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and recovered. The record of use may be reviewed by Department staff upon request;

(f) Modification/Revocation. The Department shall notify the licensee in writing when the Director either considers modifying or revoking the limited license and allow the licensee to respond:

(A) The Director may modify the ASR limited license for any of the following reasons:

(i) To reflect changes in HD and DEQ water quality or treatment standards;

(ii) To address needed technological changes as requested by DEQ or HD to minimize constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165);

(iii) Upon written request from the applicant for minor adjustments to the authorization in the limited license.

(B) The Director may revoke or modify the ASR limited license for any of the following reasons:

(i) To prevent or mitigate injury to other water rights, minimum perennial streamflows or aquifer water quality; or

(ii) To address any other unintended, injurious effects of the ASR activity.

(C) The Department may offer an additional public comment opportunity consistent with the notice and comment provisions of this rule prior to modifying the limited license.

(g) Priority/Protection. A limited license does not receive a priority date and is not protected under ORS 540.045;

(h) Compliance with Other Laws. The injection of acceptable water into an aquifer(s) under the limited license shall comply with all applicable local, state or federal laws;

(i) Water Quality Conditions:

(A) The limited license shall include conditions to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer;

(B) Except as otherwise provided in (5)(i)(C) of this rule, if the injection source water contains constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) that are detected at greater than 50 percent of the established levels, the aquifer storage and recovery limited license may require the licensee to employ technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water. The Department, in consultation with DEQ and HD, may set specific limits between 50 and 100% of the established level for constituents regulated under

OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) as provided by the standards in paragraph (3)(b)(E) of this rule;

(C) Constituents that have a secondary contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under OAR 333-061-0030 (ORS 448.131 and 448.273);

(D) The Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the Department finds that those constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses;

(E) The licensee shall be in compliance with treatment requirements and performance standards for source waters identified in OAR 333-061-0032;

(F) If during the course of ASR testing a constituent which is regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) is detected above the level prescribed in the limited license, the licensee shall stop injection activities and notify the Department.

(j) Monitoring/Sampling/Recovery/Reporting. The limited license shall include conditions for reporting and monitoring the ASR project aquifer impacts and for constituents reasonably expected to be found in the injection source water. The Department may attach conditions to the limited license regarding sampling and rates of recovery up to 100 percent of the injection quantity. (Data collected under these provisions may be useful in consideration of modifications to the limited license);

(k) Protection for Existing Users. The limited license shall be conditioned to protect existing water rights and the water quality of existing users that rely upon the receiving aquifer and the injection source water;

(l) Use of Recovered Water. If the limited license proposes to recover water injected under an existing water right, the use of the recovered water shall be for the use cited in the water right. If the limited license is not predicated on an existing water right, the limited license may authorize a use(s) for the recovered water;

(m) Other Conditions. The limited license may contain any other conditions required by the Department to protect the public welfare, health, and safety.

Stat. Auth.: ORS 536.027 & 537.534

Stats. Implemented: ORS 537.531 - 537.534

Hist.: WRD 2-1996, f. & cert. ef. 2-12-96

### 690-350-0030

#### ASR Under ASR Permit

(1) ASR Permit Required. On-going authorization to store and recover water injected into an aquifer requires an ASR permit. Only after completion of an ASR testing program under a limited license may an applicant apply for a permanent ASR permit.

(2) Water Right before ASR Permit. A person shall possess a water right or have a water right holder agreement which allows use of a water right for the injection source water before applying for an ASR permit. This water right shall be either a permit or certificate.

(3) Pre-application Conference. The Department requires at least one pre-application conference with a prospective permittee prior to filing an ASR permit application. The purpose of the conference is to discuss the ASR testing results, information needed for the application, and possible constraints on a project. The conference may serve as a point of review for the apparent adequacy of the applicant's hydrogeologic and other information. The Department shall invite personnel from both the DEQ and HD to the conference.

(4) Permit Application. A request for an ASR permit shall be submitted on a form provided by the Department. The application shall consist of the following:

(a) Information on, and Attachments to, the Form:

(A) Name, address and telephone number of the applicant;

(B) The proposed source for injection water, maximum diversion rate, maximum injection rate at each well(s), maximum

storage volume, maximum storage duration, and maximum withdrawal rate at each well(s);

(C) Identification of Water Right for Injection Source Water. The water right(s) for which the ASR permit is sought;

(D) Water Right Holder Agreement. If the applicant is not the holder of the water right for the proposed ASR project as cited in paragraph (C) of this subsection, a statement from the water right holder shall indicate permission for use of the water for ASR;

(E) Limited License(s) Used for Testing. The limited license which was issued to perform the ASR testing necessary for this application;

(F) Legal Land Use. Evidence that land use and development approval from a local government is obtained or unnecessary;

(G) Map. The map submitted with the ASR application shall be prepared by a certified water right examiner and meet the following criteria:

(i) The application map, which is made part of the record, shall be of permanent quality and drawn with sufficient clarity so as to be easily reproduced;

(ii) The map shall be drawn on vellum or mylar except that maps measuring 11" x 17" or smaller may be prepared on good-quality paper. The map shall be drawn to a standard, even scale of not less than 4 inches = one mile. A small area map may be more easily and clearly drawn to a larger scale, such as one inch = 400 feet;

(iii) The map shall show clearly the location of each injection source water diversion point, or well, by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east and west from the corner);

(iv) The map shall show clearly the location of main canals, ditches, pipelines, or flumes which are used to transport injection source water to the injection well(s);

(v) The map shall show clearly the location of the well(s) where water is to be injected;

(vi) The map shall show clearly the location of the well(s) where water is to be recovered;

(vii) The map shall show clearly the location of observation well(s);

(viii) The map shall show clearly other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field; and

(ix) The map shall show clearly the scale to which the map is drawn, the section number, township, and range, and a North directional symbol.

(H) Applicants that are public supply systems as defined by the Health Division (OAR 333-061-0020(68)) shall acknowledge the need to comply with the Health Division's plan submission and review requirements (OAR 333-061-0060);

(I) Other Information. Any other information required by the Department.

(b) Supplemental Reports:

(A) Proposed ASR Operations. A detailed description of proposed ASR operations shall include a description of the proposed manner of ASR operations including injection rates specific to each well, water storage volumes, injected water storage durations, recovery rates at each well, water level monitoring including a quality assurance and quality control plan, water quality sampling, contingency plan for use of recovered water if the intended use isn't possible and reporting. (A licensed professional will be required to develop this information as required by Oregon Law);

(B) Proposed System Design. The proposed system design package shall include well construction information for any injection, recovery, observation and source wells, the wellhead assembly, piping system for injection and recovery, and other conceptual design components of the system. (A licensed professional will be required to develop this information as required by Oregon Law);

(C) Test Report. The results of testing under the limited license, including:

(i) Quality of Injection Source Water. Test results of the quality of the injection source water as required in the test plan proposal under the limited license;

(ii) Quality of Receiving Aquifer Water. Test results of the quality of the aquifer water as required in the test plan proposal under the limited license;

(iii) Quality of Recovered Water. Test results of the quality of the recovered aquifer water as required under the limited license;

(iv) Groundwater Information. Hydrogeologic information shall include the local geology, a conceptual hydrogeologic model, a description of the aquifer targeted for storage, estimated flow direction and rate of movement, allocation of surface water, springs or wells within the area affected by ASR wells, rationale for estimating the affected area, anticipated changes to the groundwater system due to the proposed ASR project, potential natural resource problems of testing, and other information on groundwater and surface water conditions for basing recovery estimations. (A licensed professional will be required to develop this information as required by Oregon law. (ORS 672.505–705));

(D) Comments on Source Water/Standards. The applicant shall address the following situations as they apply:

(i) If a constituent that is regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) is detected in the source water, the applicant shall demonstrate that there are not other sources of water available to the applicant which would be satisfactory for injection and lower in the constituent of concern. Other sources are limited to those for which the applicant has water rights;

(ii) If a constituent is detected in the source water above 50% of the levels established under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165), the applicant shall install a treatment method, system or other alternative method to reduce the constituent to less than 50% of those levels, unless the applicant can show that there is not a treatment method, system or other alternative method that will reduce the level of a contaminant below the 50% level, or the lesser of:

(I) The applicant can show that it would be more costly to provide the treatment method, system or other alternative method necessary than to obtain the same amount of stored water from the next cheapest feasible water supply alternative; or

(II) In the case of a drinking water system the applicant can show the cost of adding the treatment method, system or other alternative method increases the cost per household of providing water (including operation, maintenance, and debt service for prior water projects) above 1.5% of the median household income of the community.

(iii) Notwithstanding paragraph (4)(b)(D)(ii) of this rule, in the event the applicant cannot reduce a constituent to less than the 50% level, the applicant shall minimize the constituent level by providing the level of treatment available or other alternative method which for the same amount of stored water is not as costly as either the next cheapest water supply alternative or an amount equal to that necessary to increase the cost per household of providing water to 1.5% of the median household income of the community, whichever is less;

(iv) Notwithstanding the provisions of paragraph (4)(b)(D)(i), (ii), and (iii) of this rule and after consulting with the DEQ and the HD, the Department may determine that the circumstances are such that an alternative source, treatment method, system, or other alternative method is acceptable or not necessary.

(c) Other Information. Any other information required by the Department.

(5) Permit Application Processing:

(a) Review of Application for Completeness. Within 45 days after an individual submits or resubmits an application, the Department shall consult with DEQ and HD about the completeness of the application, determine the completeness of the application, and either:

(A) Notify the applicant that it is complete for purposes of evaluation; or

(B) Notify the applicant of what additional information is required before the application is resubmitted.

(b) Public Notice/Comment Period. Within 7 days after determining that an application is complete, the Department shall provide public notice of the request to the public in the same manner as is used for water use applications. The appearance in the public notice commences a 60-day public comment period for the application. The Department may require additional information from the applicant pursuant to its own concerns and those raised by the public comments;

(c) DEQ and HD Assistance. The Department shall rely on the DEQ and the HD to comment on and recommend conditions for the permit and shall provide the public notice and a copy of the complete application to those agencies at the opening of the comment period;

(d) Scope of Public Interest Review. When making a public interest determination, the Department shall receive comments from interested parties or agencies for consideration of permit issuance, proposed conditions, and limitations. The public interest review standards shall apply only to the matters raised by the ASR permit application, not to the water right for injection source water;

(e) Referral to Commission. In the discretion of the Director, the Director may refer policy matters raised by the ASR application to the Commission for decision;

(f) Proposed Final Order. After considering comments and/or recommendations specific to the proposed ASR project during the 60-day public comment period, the Director shall issue a proposed final order on the application. The proposed final order shall be mailed to the applicant, commenting agencies, and commentators. Notice of the proposed final order shall be given in the weekly notice published by the Department;

(g) Protests:

(A) The Department shall allow a 45-day protest period, starting when the proposed final order is noticed in the public notice;

(B) Protests may be filed by any person objecting to the proposed issuance of a permit, and by any applicant objecting to proposed permit conditions;

(C) Protests shall be in the form and manner specified in OAR 690, division 2.

(h) Director's Action on the Application. After the close of the protest period and after consideration of any protest filed, the Director may:

(A) Issue the permit with proper conditions upon finding that:

(i) The proposed ASR project will not impair or be detrimental to the public interest; and

(ii) There is a water right for injection source water.

(B) Propose to deny the application and refer to contested case hearing upon finding that the ASR project will impair or be detrimental to the public interest;

(C) Offer the applicant and protester(s) the opportunity to engage in discussions to try and resolve issues of concern;

(D) Refer to contested case hearing to consider protests against approval of the application or protests against proposed permit conditions; or

(E) Refer the application to the Commission to address policy matters raised by the application.

(i) The Department shall send a copy of the final order to commentators and protesters.

(6) Permit Conditioning. The following conditions shall be placed on the ASR permit:

(a) Injection/Storage/Recovery. The permit will specify the maximum allowable injection rate at each well, the maximum allowable storage volume, the maximum storage duration and the maximum allowable recovery rate at each well. These maximum values shall substantially reflect those amounts which were successfully demonstrated under the limited license;

(b) Record of Use. The permittee shall maintain a record of injection and recovery, including the total number of hours of injection and recovery and the total metered quantity injected and

recovered. The record of use may be reviewed by Department staff upon request;

(c) Permit Modification/Revocation. The Department shall notify the permittee in writing when the Director either considers modifying or revoking the permit and allow the permittee to respond:

(A) The Director may modify the ASR permit for any of the following reasons:

(i) To reflect changes in HD and DEQ water quality or treatment standards;

(ii) To address needed technological changes as requested by DEQ or HD to minimize constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165);

(iii) Upon written request from the permittee for minor adjustments to the authorization in the permit;

(iv) Upon written request from the permittee for changes in the limits for the recovery of stored water. Any person operating an ASR project under a permit, upon approval by the Director, may recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that groundwater otherwise present in the aquifer has not been irretrievably lost as a result of aquifer storage or recovery.

(B) The Director may revoke or modify the ASR permit for any of the following reasons:

(i) to prevent or mitigate substantial interference with other water rights, minimum perennial streamflows established prior to the granting of the ASR permit, or aquifer water quality; or

(ii) to address any other unintended, injurious effects of the ASR activity.

(C) The Department shall offer an additional public comment opportunity consistent with the notice and comment provisions of this rule prior to modifying or revoking the permit.

(d) Compliance with Other Laws. The injection of acceptable water into an aquifer(s) under an ASR permit shall comply with all applicable local, state or federal laws;

(e) Water Quality Conditions:

(A) The ASR permit shall include conditions to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer;

(B) Except as otherwise provided in paragraph (6)(e)(C) of this rule, if the injection source water contains constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) that are detected at greater than 50 percent of the established levels, the aquifer storage and recovery permit may require the permittee to employ technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water. The Department, in consultation with DEQ and HD, may set specific limits between 50 and 100% of the established level for constituents regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) as provided by the standards in (4)(b)(D) of this rule;

(C) Constituents that have a secondary contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under OAR 333-061-0030 (ORS 448.131 and 448.273);

(D) The Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the Department finds that those constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses;

(E) The permittee shall be in compliance with treatment requirements and performance standards for source waters that fall in categories identified in OAR 333-061-0032;

(F) If during the course of ASR operations a constituent which is regulated under OAR 333-061-0030 (ORS 448.131 and 448.273) or OAR 340-040 (ORS 468B.165) is detected above the level pre-

scribed in the permit, the permittee shall stop injection activities and notify the Department.

(f) Monitoring/Sampling/Recovery/Reporting:

(A) The permit shall include requirements for reporting, sampling and monitoring the ASR project aquifer impacts and for constituents reasonably expected to be found in the injection source water;

(B) The permit shall specify limits for the recovery of stored water up to 100 percent.

(g) Protection for Existing Users. The ASR permit shall be conditioned to protect existing water rights and the water quality of existing users that rely upon the receiving aquifer and the injection source water;

(h) Other Conditions. The permit may contain any other conditions required by the Director to protect the public welfare, health, and safety.

Stat. Auth.: ORS 536.027 & 537.534

Stats. Implemented: ORS 537.531 - 537.534

Hist.: WRD 2-1996, f. & cert. ef. 2-12-96

## Artificial Groundwater Recharge

### 690-350-0110

#### Definitions

The following definitions apply to artificial groundwater recharge in OAR 690, division 350, Rules 0110 to 0130:

(1) "Artificial Groundwater Recharge" means the intentional addition of water diverted from another source to a groundwater reservoir. (Applications to obtain permits for artificial groundwater recharge uses submitted pursuant to OAR 690-350-0110 to 690-350-0130 are not subject to provisions governing aquifer storage and recovery projects or programs pursuant to OAR 690-350-0010 to 690-350-0030.)

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Department.

(5) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in ORS 537.515(5).

(6) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge.

(7) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate.

(8) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge.

(9) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses.

(10) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 - 537.358, 540 & 543

Stats. Implemented: ORS 537.135

Hist.: WRD 2-1996, f. & cert. ef. 2-12-96

### 690-350-0120

#### Groundwater Recharge Applications — Supplemental Information Requirements; Permit Conditions

(1) Permit Required. The appropriation of water from any source for the purpose of recharging a groundwater reservoir requires a permit. Likewise, any beneficial use of artificially recharged groundwater in any such groundwater reservoir requires a secondary groundwater permit.

(2) Pre-application Conference. Due to the complexities and costs associated with recharge projects and recharge permitting, the Department requires a pre-application conference.

(3) Supplemental Information for Permit Application. In addition to data required on permit applications under OAR 690-310-0040, the applicant shall submit additional information to assist the

Commission in determining the public interest on the proposed project. An application shall be accepted by the Department for filing only if it contains all required data. Upon request, the Department may assist other agencies in developing their responses to permit applications. The following attachments are necessary:

(a) Minimum Perennial Stream Flow or Instream Water Right. If a stream is the proposed recharge source, the applicant shall provide a copy of the document which establishes that the supplying stream has a minimum perennial stream flow or instream water right for the protection of aquatic and fish life. If none is established, the applicant shall attach a copy of a waiver of this prerequisite from the Oregon Department of Fish and Wildlife;

(b) Water Quality Permit. The applicant shall attach a copy of the necessary water quality permits from Oregon Department of Environmental Quality, show that the application for necessary permits has been filed, or show that permits are not necessary;

(c) Purpose of Recharge. The applicant shall describe the ultimate use or value of the groundwater recharge;

(d) Annual Storage. The applicant shall describe the volume of water, or the range of volumes, expected to be stored annually by artificial recharge. The applicant shall describe anticipated losses between the point of diversion and the place of recharge;

(e) Financial Capability. If the proposed recharge diversion is for five cfs or more, the applicant shall display proof of financial capability to construct and operate the proposed project. Unless otherwise approved by the Director, the capability shall be supported by written statements from a lending institution;

(f) Hydrogeologic Feasibility Report. The applicant shall demonstrate that the proposed recharge project is hydrologically feasible. The report should include an assessment of groundwater conditions in the reservoir and anticipated changes due to the proposed recharge project. This report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice in this area of geology;

(g) Project Description Report. The applicant shall provide plans for recharge project construction, operation, and costs. The report shall outline proposed monitoring plans for flows, water levels in wells and groundwater quality. If surface water is a proposed source of recharge, the report shall indicate when surplus surface waters are generally available. The report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice civil engineering and this area of geology;

(h) Additional Information. The Director may require the applicant to submit additional information to assist in making the public interest determination.

(4) Recharge Permit Processing. The Director shall work with the applicant and may work with any person or agency to prepare a draft permit. In particular, the Director shall seek assistance from the State Department of Environmental Quality to develop a water quality monitoring program and standards.

(5) Permit Conditions. Any permit shall address the following items:

(a) Maximum rate and volume. A permit shall specify a maximum diversion rate and a maximum annual diversion volume;

(b) Meters. The recharge permit shall require both the metering of recharge water from the source(s) and metering of water at the place(s) of recharge. Any subsequent secondary groundwater permit shall require metering of stored recharge water withdrawals;

(c) Records, Inspections. The permit shall require the permittee to keep accurate and current records of metered values, water levels and other pertinent information. The permit shall allow the Director to inspect records or works covered by the permit upon reasonable notice and at any reasonable time;

(d) Estimated Data. When metered or measured data are missing in whole or in part, the Director may make estimates from available data. The Director's estimates shall be reasonable and, where there is a range of uncertainty, be conservatively low on water delivered to the place of recharge and conservatively high on withdrawals of stored recharge water;

(e) Water Levels. The response of water levels in wells shall provide the principal basis on which to judge the effectiveness of recharge under the permit and the availability of stored recharge water;

(A) Monitoring Program. The permit shall specify a water level monitoring program for selected times and wells; and

(B) Key Wells, Target Levels. The permit shall designate several key wells in the monitoring program. The permit shall establish upper and lower target water levels for each well. Actual water levels on an annual assessment date shall be compared to the target levels for the purpose of prescribing allowable use of stored recharge water.

(f) Determination of Stored Recharge Water. The permit shall specify the formula to determine the availability of artificially recharged groundwater for appropriation. The formula shall result from one of the following:

(A) Negotiation. The applicant and the Department may negotiate a formula which relies principally on water levels in wells, metered quantities of recharge, secondary permit withdrawals, and hydrogeologic conditions in the area. At permit issuance, stored recharge water may be credited at up to 85 percent of water metered to the place of recharge. Withdrawals of stored recharge water shall be debited at 100 percent of metered values. Calculations of stored recharge water shall be based only on recharge over the last five years;

(B) Definitive Groundwater Investigation. The applicant may present a definitive groundwater investigation as a method to determine stored recharge water. The Director must be satisfied that use of such information accurately describes the quantity and location of water available for withdrawal as a result of the recharge. That quantity must be in excess of the groundwater which would be available if artificial recharge were not practiced. If no agreement is reached by negotiation, the applicant must determine stored recharge water by a definitive groundwater investigation.

(g) Storage Account. The Department shall record its final determinations on stored recharge water in a storage account. The permit shall specify a method by which the permittee may obtain information on that account;

(h) Annual Report. The permittee shall submit an annual report to both the Department and any secondary permittee. That report shall include the range of recharge rates and total quantities during the year at both the diversion point and the place of recharge. In addition, the report shall include a general operations review, the permittee's estimate of the storage account and the results of other water quantity and quality programs which are required in the permit;

(i) Allowable Use of Stored Recharge Water. See rules governing secondary groundwater permits in OAR 690-350-0130;

(j) Permit Assignment. A permit condition shall require a potential assignee to prove, to the Director's satisfaction, the financial capability to construct uncompleted portions of and operate the project, if such proof was required for the application;

(k) Condition Changes. If, under actual operation of the recharge project, the Director notifies the permittee that the Director has reason to believe there are adverse groundwater quantity or quality effects, the permittee shall cease recharge activities. No further diversion shall be made until measures to prevent, correct or monitor those adverse effects have been agreed to and implemented;

(l) Technical Oversight. If the recharge diversion is for five cfs or more, the permit may require the permittee to have the construction and operation of the proposed project overseen by a professional(s) registered or allowed, under Oregon law, to practice civil engineering;

(m) Other Conditions. The permit may contain other conditions which the Commission believes are necessary.

(6) Recharge Certificate. Annual reports as required in the permit shall be an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate. Operational conditions of the permit shall become conditions of the certificate.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.135, 537.338, 537.356 - 537.358, 540 & 543  
 Stats. Implemented: ORS 537.135  
 Hist.: WRD 5-1988, f. & cert. ef. 6-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0085; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 2-1996, f. & cert. ef. 2-12-96, Renumbered from 690-011-0042

### 690-350-0130

#### Secondary Groundwater Permits for Use of Artificially Recharged Waters; Supplemental Information Requirements; Limitations; Conditions

(1) Permit Required. The appropriation of artificially recharged groundwater for any beneficial use requires a secondary groundwater permit.

(2) Supplemental Information for Permit Application. In addition to data required for permit applications under OAR 690-310-0040, the applicant shall submit certain additional information. The following attachments are necessary:

(a) Identify Source. The applicant shall identify an artificially recharged groundwater reservoir as a supply of water;

(b) Written Consent. The applicant shall include the written consent of the holder of the recharge permit or certificate;

(c) Source Proof. The applicant shall submit proof that the proposed use will actually be from the recharged reservoir. Documentation may include water level similarities to the recharged reservoir, geologic and geographic similarities, hydraulic information, and other pertinent data; and

(d) Recharge Understanding. The applicant shall attach a copy of the currently valid recharge certificate or permit and a statement that the applicant understands its content and the conditions of that recharge.

(3) Limitations on Secondary Groundwater Permit Approval. During the first five years of recharge, the Department shall limit cumulative secondary permits to no more than 85 percent of the project's permitted annual recharge volume. Subsequent recharge permits may exceed 85 percent based on recharge performance as determined by the Department.

(4) Secondary Groundwater Permit Conditions. A secondary groundwater permit shall address the following items:

(a) Maximum Rate and Volume. A permit shall specify a maximum diversion rate and annual diversion volume;

(b) Meters. The permit shall require the permittee to meter all withdrawals so as to provide data as a debit against the storage account;

(c) Water Levels. The permit shall require the permittee to measure water levels on a specified basis;

(d) Estimated Data. The permit shall specify that when metered or measured data are missing in whole or in part, the Director may make estimates from available data. The Director's estimates shall be reasonable and, where a range of uncertainty exists, be conservatively high on withdrawal of stored water;

(e) Records, Inspections. The permit shall require the permittee to keep accurate and current records of withdrawals and water levels. The Director may inspect any records or works covered by the permit upon reasonable notice and at any reasonable time;

(f) Annual Report. The permittee shall be required to submit an annual report to the Director and holder of the recharge right. The report shall note withdrawals, dated water levels and other data pertinent to the storage account;

(g) Allowable Use of Stored Recharge Water. The permit shall indicate that availability shall be determined on the basis of secondary groundwater right priority and the allowable use of stored recharge water. The allowable use of stored recharge water falls into three categories. For ease of reference, these categories are named as the following color zones:

(A) Green Zone. If water levels at key wells are above the upper target level, use is allowed up to the maximum of the storage account or maximum duty, whichever is lower. These wells and targets are noted in the recharge permit;

(B) Yellow Zone. If water levels at key wells are between the upper and lower target levels, use is allowed up to 85 percent of the recharge volume for the preceding 12 months; and

(C) Red Zone. If water levels at key wells are below the lower target level, no use of stored recharge water is allowed.

(h) Condition Changes. If the Director has reason to believe that the well(s) is not with drawing artificially recharged groundwater or there are other substantial groundwater concerns, the permittee shall cease withdrawal upon notice from the Director. No further withdrawal shall be made until measures to prevent, correct or monitor the situation have been agreed to and implemented; and

(i) Other Conditions. The permit may contain other conditions which the Director specifies.

(5) Secondary Groundwater Certificate. Annual reports as required in the permit shall be an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate. Operational conditions of the permit shall become conditions of the certificate.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.135, 537.338, 537.356 - 537.358, 540 & 543

Stats. Implemented: ORS 537.135

Hist.: WRD 5-1988, f. & cert. ef. 6-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0086; WRD 2-1996, f. & cert. ef. 2-12-96, Renumbered from 690-011-0044

## DIVISION 380

### WATER RIGHT TRANSFERS

#### General Provisions

### 690-380-0010

#### Purpose

(1) The rules in OAR chapter 690, division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the character of use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.

(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR chapter 690, division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in 537.132 provided the water use complies with the requirements under 540.510(3)(a)(A) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, division 385, however, a petition for the change must be submitted to the Department by the district;

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;

(e) A change in point of diversion in response to government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;

(f) A change in point of diversion or appropriation or a change in place of use under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9);

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;

(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 – 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0001; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

## 690-380-0090

### Applicability

The rules in OAR 690, division 380 shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July 1, 2003 except as follows:

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or 690-015-0060 as adopted by the Commission in June 1996.

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Issue a final order pursuant to OAR 690, division 15 as adopted by the Commission in June 1996.

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Initiate cancellation proceedings under OAR 690, division 17.

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(6) The Department shall not apply OAR 690-380-4010(5) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership information was included with the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 1-2009, f. & cert. ef. 6-18-09

## 690-380-0100

### Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 380. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.

(2) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "ODFW" means the Oregon Department of Fish and Wildlife.

(6) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(7) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(8) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(9) "Protest" means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

(10) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the water right is appurtenant.

(11) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

(12) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(13) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(14) "Water use subject to transfer" means a water use established by:

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

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under 537.250; or

(d) 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 Commission.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0005; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

## Permanent Transfers

### 690-380-2000

#### Types of Permanent Transfers

Permanent water right transfers include:

(1) A change in the point of diversion or appropriation pursuant to OAR 690-380-2110, 690-380-2120 and 690-380-2130;

(2) A change in the place of use pursuant to OAR 690-380-2200, 690-380-2250, and 690-380-2260;

(3) A change in the character of use pursuant to OAR 690-380-2300; 690-380-2320, 690-380-2330, and 690-380-2340; and

(4) A change involving municipal water rights pursuant to OAR 690-380-2410, 690-380-2420, and 690-380-2430.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

#### 690-380-2110

##### Change in Point of Diversion or Point of Appropriation

(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, or certificate of registration modification under OAR chapter 690, division 382.

(2) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer.

(3) As provided in ORS 450.695(2), a water authority may change the points of diversion or appropriation or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion or appropriation from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and Chapter 690, division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion or appropriation authorized by a water use permit, as defined in OAR 690-380-0100(14)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and OAR 690, division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion or appropriation for water right permits other than those covered under subsection (3)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 450.695 & 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0015; WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0010; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2120

##### Change in Point of Diversion to Reflect Historical Use

(1) As provided in ORS 540.532, any individual who holds a water right certificate or decree may request a change in point of diversion or appropriation to reflect the historical use of water at a point of diversion or appropriation other than that described in the water right certificate or decree. The individual shall use the Department's water right transfer application form, clearly marked "Historic Change in POD," and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000.

(2) An individual requesting a change in the point of diversion or appropriation under section (1) of this rule shall provide to the Department the following additional information:

(a) Evidence that the actual, current point of diversion or appropriation for the water right in question has been in use for more than 10 years;

(b) A map meeting the requirements of OAR 690-380-3100, except that it need not be prepared by a certified water rights examiner. The map shall be of sufficient detail and clarity to identify the

true point of diversion or appropriation including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion or appropriation as specified in the water right certificate or decree and the actual, current point of diversion or appropriation;

(c) Evidence that there has been no claim of injury prior to the request for the change in point of diversion or appropriation. The evidence shall include a statement from the local watermaster, based upon the watermaster's knowledge and Department records, that no complaint of injury has been made due to the use of water at the actual, current point of diversion or appropriation.

(3) On receipt of an application for a change in point of diversion or appropriation under section (1) of this rule, the Department shall:

(a) Provide the applicant a list of the affected water rights. The list shall include, but is not limited to:

(A) Any water right with an intervening point of diversion or appropriation;

(B) Any water right for use of stored water being delivered from an upstream reservoir to a downstream user;

(C) Any water right upstream from a significant inflow of water if the request moves the proposed point of diversion upstream, above the inflow, from the authorized point of diversion;

(D) Any water right downstream from a significant inflow of water if the request moves the proposed point of diversion downstream, below the inflow, from the authorized point of diversion;

(b) Provide the applicant a copy of a notice to be mailed or hand-delivered to the affected water right holders that:

(A) Describes the locations of the authorized and actual points of diversion or appropriation;

(B) States that the recipient on the notice may provide comments to the Department on whether the requested change in point of diversion or appropriation will cause injury; and

(C) Establishes a comment period of at least 30 days after the notice is mailed or hand-delivered to each of the affected water right holders;

(c) Consult with ODFW in the manner provided under OAR 690-380-5060; and

(d) Provide notice of the application in the weekly notice published by the Department.

(4) Upon receipt from the Department of the list of affected water rights and a copy of the notice, the individual shall determine the name and address of the current holder of each affected water right identified by the Department and shall mail or hand deliver the notice to all such holders. The individual shall provide to the Department written proof of service upon the water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the written proof of service and before the comment date specified in the notice, whichever is later.

(5) If, after considering any comments received, the Department finds the individual requesting a change in point of diversion or appropriation to reflect historical use satisfies the requirements under section (2) to (4) of this rule and that the change does not cause injury, the request shall be approved. The order approving the change in point of diversion or appropriation shall establish a deadline for compliance with any conditions needed to prevent injury and, where required, to provide fish screening. If a certificate had previously been issued, the order shall cancel the certificate. The director shall issue a new certificate confirming the change in point of diversion or appropriation and preserving all other conditions of the water right.

(6) After the deadline for compliance with conditions of an approval established pursuant to section (5) of this rule, the use of water from the point of diversion or appropriation shall be subject to continued compliance with the conditions.

(7) As used in this rule, “individual” means a natural person and does not include a government body, organization, business enterprise, or other such entity.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.532

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0240; WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2130

##### Change from a Surface Water Point of Diversion to a Ground Water Appropriation

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if:

(a) The criteria in OAR 690-380-5000 are met;

(b) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface source; and

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes basin ground water study area if:

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;

(b) The criteria in OAR 690-380-5000 are met;

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist’s report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.

(9) The Department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury.

(10) For transfers allowed under this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6), except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.

(11) As used in this rule:

(a) “Existing ground water right” means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) “Similarly” means that the use of groundwater at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) “Deschutes basin ground water study area” means the Deschutes River Basin drainage area indicated in OAR 690, division 505, Exhibit 1.

(12) The Department shall provide notice and review of transfer applications under section (3) of this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(13) Opportunities to protest a transfer under section (3) of this rule shall be pursuant to OAR 690-380-4030.

(14) The Department shall issue final orders on transfer applications under section (3) of this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, 540.530 & 540.531

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0210; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2200

##### Changes in Place of Use

No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer, permit amendment under ORS 537.211, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2260.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2240

##### Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a water use subject to transfer, a permit, or a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other lay-

ered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a transfer or permit amendment, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to transfer or amend a layered water use subject to transfer or permit should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A supplemental irrigation water right may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the supplemental right is to be moved.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2250

##### Transfer of Supplemental Water Right or Permit

(1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-380-3000, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant intends to transfer the supplemental water right or permit with the primary water right, the applicant shall include information on the supplemental right or permit as part of the transfer application for the primary water right as required under OAR 690-380-3000.

(2) If the applicant does not include the supplemental water right or permit in the transfer application, the Department shall notify the applicant and the land owner, as identified under OAR 690-380-3000(13), that the supplemental water right will be canceled before the Department issues the order approving the transfer of the primary water right, unless within 30 days after the date of Department notification, the applicant modifies the application to include the supplemental water right or permit or withdraws the application.

(3) The Department may approve the transfer of a supplemental water right or permit in accordance with ORS 540.520 and 540.530. The Department shall not approve the transfer of a supplemental water right or permit if the transfer would result in injury or enlargement.

(4) If the Department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the Department shall notify the applicant and the land owner, as identified under OAR 690-380-3000(13), of the Department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the Department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

(5) The order issued by the Department approving the transfer of a primary water right shall also cancel any appurtenant supplemental water right or permit not included in the transfer if the applicant does not modify or withdraw the application pursuant to

section (2) of this rule or withdraw the application pursuant to section (4) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.530

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0048

#### 690-380-2260

##### Exchanges of Water

(1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.

(2) After receipt of a complete exchange application, the Department shall give at least 30 days public notice of the application:

(a) By publication in the Department's weekly notice; and

(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, at least once each week for two successive weeks.

(3) Any person may submit comments by the date identified in the notices prescribed by subsections (2)(a) and (b) of this rule.

(4) After the comment period prescribed in section (2) of this rule, the Director shall:

(a) Issue a proposed order approving or denying the application in compliance with ORS 540.537 taking into account comments received under section (3) of this rule; and

(b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed order.

(5) If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentors to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.

(6) After the public hearing, the Commission may:

(a) Confirm the Director's decision and authorize issuance of a final order;

(b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or

(c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS 183.310 to 183.550.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.533 - 540.543

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-380-2300

##### Changes in Character of Use

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and 540.520(8) and (9) or as approved by the Department through a water right transfer, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2340.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-380-2320

##### Transfer from Supplemental Use to Primary Use

A transfer application for a change in use from supplemental use to primary use may be submitted. A transfer will be allowed only to the extent the applicant can establish the quantity of water historically used under the supplemental water right. A right cannot be enlarged through this process. The primary water right shall be

canceled before or at the same time as the issuance of the transfer order changing the supplemental use to primary.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0030

### 690-380-2330

#### Substitution of Supplemental Ground Water Right for Primary Surface Water Right

(1) As provided in ORS 540.524, the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the use of the supplemental water right for the primary water right. This rule does not authorize a change in place of use, character of use, point of diversion or point of appropriation.

(2) A substitution may not be made under section (1) of this rule if the use of the supplemental ground water right results in an enlargement of the primary surface water right.

(3) An application shall be submitted on a form provided by the Department with the appropriate fee as established under ORS 536.050. The Department may request additional information if necessary to assist with the injury evaluation.

(4) Upon receiving an application, the Department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520(5) to (7) and OAR 690-380-4000 to 690-380-4200.

(5) The Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury, the Director shall prohibit or condition the use to avoid or mitigate the injury. The Director shall issue an order approving or denying the substitution within 90 days after the Department receives an application under section (1) of this rule.

(6) For the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental ground water right shall be treated as a primary water right.

(7) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this rule may be terminated upon a request by the water right holder or by an order of the Director if the Director determines that the use of the ground water as the primary water right causes injury. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-2340

#### Specific-to-General Industrial Water Use Change

A water right transfer is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

(1) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

(2) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

(3) The person who makes the change in water use provides the following information to the Department:

(a) The name and mailing address of the person using water under the water right;

(b) The water right certificate number;

(c) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued;

(d) The quantity of water diverted to satisfy the authorized specific use under the original water right; and

(e) A description of the general industrial use to be made of the water after the change.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03

### 690-380-2410

#### Municipal Water Rights

(1) Water used under a permit or certificate issued to a municipality, under rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 may be applied to beneficial use on:

(a) Any lands acquired by the municipality through annexation, merger, consolidation, or by the formation of a water supply authority in accordance with ORS 540.510(3)(a)(A) so long as the rate and duty allowed under the right is not exceeded;

(b) Subject to the limitations in section (3), lands other than those described in subsection (1)(a) of this rule in accordance with ORS 540.510(3)(a)(B) so long as the use continues to be for municipal purposes and the rate and duty allowed under the right is not exceeded;

(c) Any lands for which the use is authorized by the Department of Environmental Quality or Department of Agriculture under ORS 468B.050 or 468B.053 and for which a reclaimed water registration has been filed under ORS 537.132.

(2) A municipality may seek authorization to use water for municipal purposes on lands other than those described in section (1) of this rule under a water use subject to transfer by submitting a water right transfer application to change the place of use or character of use under OAR 690-380-3000.

(3) The Director may order termination of the use of water under subsection (1)(b) of this rule or, in consultation with the municipal water supplier, may impose other restrictions necessary to eliminate interference with or impairment of prior vested water rights resulting from the use of water under subsection (1)(b) of this rule.

(4) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR 690, division 300.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0140

### 690-380-2420

#### Notice of Merger, Consolidation or Formation of a Water Authority

(1) Municipal water supply entities that merge, consolidate or form a water authority may notify the Department of such action and request issuance of superseding certificates pursuant to sections (2) and (3) of this rule. The notice and request for issuance of superseding certificates shall include the following:

(a) A listing of the entities in the merger, consolidation or formation of a water authority;

(b) A copy of the documents filed with the city, county or state authorities approving such action;

(c) A copy of the cooperative agreement, or other evidence, between the authority and the county or other authority granted coordinative functions under ORS Chapter 197 showing consistency with local comprehensive plans;

(d) A listing of the certificated water rights by number of all water rights for the usual municipal purposes of all entities involved;

(e) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the points of diversion or appropriation;

(f) The name and address of the authority authorized to conduct business; and

(g) A written request that new water right certificates be issued to the authority.

(2) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue superseding certificates confirming the resulting municipal use of water, showing the place of use within the legal description of the service boundaries of the new entity as it was officially formed.

(3) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue certificates to supersede the certificates that were issued before a merger, consolidation or formation of a water authority. Superseding certificates describing the place of use shall be issued to the authority.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0150; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-2430

#### Acquisition of Water Rights by a Water Authority

(1) In addition to using the process described in OAR 690-380-2420, a water authority may acquire water rights from a municipality, a domestic water supply district, an irrigation district, a drainage district, a water improvement district, or a water control district.

(2) A water authority that acquires a water right may:

(a) Exercise the right subject to the limitations in section (4) of this rule if the right is for municipal purposes;

(b) Submit a request for issuance of a superseding certificate that includes the information described in section (3) of this rule if the right is a certificated right for municipal use;

(c) Submit a water right transfer application to change the character of use if the right is subject to transfer; or

(d) Submit a water right transfer application to change the point of diversion or appropriation if the right is a permit or a right subject to transfer.

(3) A request for issuance of a superseding certificate submitted pursuant to subsection (2)(b) of this rule shall be in writing and include:

(a) The name and address of the water authority;

(b) The certificate number of the water right acquired by the water authority; and

(c) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the existing points of diversion or appropriation for the right.

(4) The Director may restrict the use of water by a water authority to the lands described by previous water use authorizations or, in consultation with the water authority, may impose other restrictions on the use as needed to eliminate the interference with or impairment of prior vested water rights.

(5) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR chapter 690, division 300.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0130; WRD 5-2006, f. & cert. ef. 10-6-06

### Transfer Applications

### 690-380-3000

#### Application for Transfer

Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on permit, certificate, decree or proof of appropriation.

(4) Name of decree and certificate number, if applicable.

(5) Permit number and certificate number, if applicable.

(6) Source of water (from permit, decree or certificate).

(7) Date of priority.

(8) The existing and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.

(9) The authorized existing use of water.

(10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.

(11) The authorized place of use identified by its location within the public land survey and tax lot number.

(12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:

(a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:

(A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;

(B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or

(C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or

(b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-380-4010(4) and prior to Department approval of the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-4010(5);

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant. Such an entity may only apply for a transfer under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(14) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(15) The proposed use of water.

(16) The proposed place of use shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-380-3100.

(19) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;  
(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and  
(d) That involve irrigation water uses only.

(20) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(21) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected water right is located or that serves the right and any district in which the affected water right would be located or that would serve the right after the proposed transfer.

(22) An oath that the information contained in the application is true and accurate.

(23) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

(24) The signature of the applicant, and if an entity, the title of the person signing the form.

(25) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-3400.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.531

Hist.: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 1-2000(Temp), f. 5-16-00, cert. ef. 5-16-00 thru 11-10-00; Administrative correction 6-21-01; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0060; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

## 690-380-3050

### Additional Application Requirements

(1) For the purpose of clarifying the water right record, the Department shall require the applicant to provide the additional information in section (2) of this rule if:

(a) The proposed transfer involves rights for lands under more than one ownership and not all of the owners are applicants; or

(b) The final proof survey maps on file with the Department for any quarter-quarter section in which lands involved in the proposed transfer are located do not adequately describe the location of the place of use or the associated priority dates of the associated water rights.

(2) The supplemental information to be provided by the applicant shall include:

(a) A list of the name and address of each landowner whose lands the Department concludes may be included in the portion of the water right proposed for transfer and written proof of service of a copy of the application on those landowners and a map delineating the location, acreage, priority dates, and ownership of the subject water right; and

(b) Other information sufficient to establish that no portion of the right to be transferred is held by persons other than those proposing the transfer and, for rights with multiple priority dates, the priority dates for the right to be transferred are consistent with the decree or other document establishing the right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03

## 690-380-3100

### Map Requirements

(1) A map shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) Except as otherwise provided under OAR chapter 690, division 380 or 382, the map shall be prepared by a certified water right examiner.

(b) The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(c) The preferred map size is 8-1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(d) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.

(e) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(f) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(g) The map shall be plotted to the accuracy consistent with the map scale.

(h) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(i) If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.

(j) If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, and a clear legend;

(b) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original;

(c) The location of each existing and proposed point of diversion or appropriation;

(d) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;

(e) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as pro-

jected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;

(f) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(g) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(h) Notwithstanding the requirements of subsection (1)(g), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;

(i) Notwithstanding the requirements of subsection (1)(g), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(j) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0070; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

### 690-380-3200

#### District May Submit Application for Water Users

(1) A district, authorized to act on behalf of its members, may apply for a water right transfer under the provisions of ORS 540.520. If the proposed change is for other than a change in point of diversion or appropriation, the application shall contain a notarized statement from the owner of the right authorizing the proposed change.

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR chapter 690, division 385.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0020; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-3220

#### Separate Application Required for Each Water Right

For changes involving more than one landowner or water use subject to transfer, a separate transfer application is required for each water use subject to transfer from each landowner involved, except under the following circumstances:

(1) A change in point or points of diversion or appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships.

(2) A change in use or place of use of all rights on a single parcel from all sources.

(3) A change in use or place of use from as many as four land owners may be allowed within a district. Such a change must be for the same water right and not total more than 10 acres transferred.

(4) Transfers between two parcels using water from the same source.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-89; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0035; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0025; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-3400

#### Waiver of Fees

The Director shall waive \$100 or 50 percent of the application fee, whichever is greater, for that portion of a change to a water right permit under ORS 537.211(4) or a water right subject to transfer under 540.520 or 540.523, that is:

(1) To establish an instream water right pursuant to ORS 537.348;

(2) Is necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(3) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: RD 2-2003, f & cert. ef. 5-1-03

### 690-380-3410

#### Waiver of Mapping Requirements

(1) The Director may waive or assist the applicant in satisfying the requirements of OAR 690-380-3100 for a change to a water right subject to transfer under ORS 540.520 or 540.523, if the change is:

(a) To establish an instream water right pursuant to ORS 537.348;

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(c) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

(2) A request to waive or assist the applicant in satisfying the mapping requirements of OAR 690-380-3100 shall be submitted on a form provided by the Department. The form must be completed by the applicant and signed by the appropriate field staff prior to submittal of the transfer application.

(3) A waiver of mapping requirements under this rule shall only be approved if:

(a) The transfer would establish an instream water right as described in subsection (1)(a) of this rule:

(A) If the entirety of the right is being transferred to an instream water right and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream; or

(B) A map meeting the requirements of OAR 690-380-3100 is available showing the lands not included in the transfer and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream.

(b) At the determination of the Director, other circumstances are present that make an application map unnecessary.

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

### Application Notice and Review

### 690-380-4000

#### Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return

the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By regular mail, or with the consent of the recipient, by electronic means to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

### 690-380-4010

#### Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be denied, the preliminary determination shall:

(a) Describe the basis for the denial; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the water right is appurtenant; and

(c) If the landowner identified in the report of ownership information is not the applicant, documentation to demonstrate that the applicant is authorized to pursue the transfer, which shall include:

(A) A notarized statement by the landowner(s) identified in the report of ownership information consenting to the transfer;

(B) If the interest in the water right has been conveyed, a notarized statement consenting to the transfer from the person or authorized representative(s) of the entity to whom the interest in the water right has been conveyed identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the transfer.

(6) The report of ownership information required under subsection (5)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the water right has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(7) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

### 690-380-4020

#### Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the transfer application and preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week; and

(c) By sending by regular mail, or with the consent of the recipient, by electronic means a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

(2) The notice shall include the following information about the application:

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required under OAR 690-380-4000;\

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the right to be transferred, and the authorized source for the right;

(c) The application file number;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) As provided in ORS 540.520(5), the cost of publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.

(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice, and a request for payment for the cost of publishing the notice. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use;

(b) A change in point of diversion or appropriation to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or

(c) Applications for a change in the point of diversion or appropriation of less than one-fourth mile and where there are no intervening diversions or wells between the old point of diversion or appropriation and the proposed new point of diversion or appropriation.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520 & 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0080; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

### **690-380-4030**

#### **Protests and Requests for Hearings**

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later:

(a) Any person may file, jointly or severally, with the Department, a protest or standing statement; and

(b) If the Department's preliminary determination is that a proposed change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050.

(2) A person filing a protest under this rule must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-380-4020(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-380-0100(11) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183.310 - 183.550, 536.050 & 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0085; WRD 5-2006, f. & cert. ef. 10-6-06

### **690-380-4200**

#### **Hearings**

(1) If a protest is filed under OAR 690-380-4030, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

(b) If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

(3) If after hearing the Department issues a proposed final order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

#### **Final Orders**

### **690-380-5000**

#### **Approval of Transfers**

(1) A transfer application shall be approved if the Department determines that:

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14) and, for a right described under 690-380-0100(14)(d), the proof of completion has been approved under 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;

(c) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);

(d) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in 690-380-0100(3); and

(e) Any other requirements for water right transfers are met.

(2) Except as otherwise provided in OAR 690-380-4020(8), the Department shall issue a final order consistent with the preliminary determination described in 690-380-4010 if no protests or notifications of intent are received under 690-380-4030(1).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0050; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

### **690-380-5030**

#### **Approval of Injurious Transfers**

The Department may approve a transfer of a point of diversion or appropriation that would injure another water right if:

(1) For any water right other than an instream water right, the applicant files an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040, and

(2) For any instream water right held by the Department pursuant to ORS 537.336 or 537.346, the Department consents to the change after complying with the provisions of OAR 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

**690-380-5040**

**Affidavits of Consent**

An affidavit consenting to a proposed change in point of diversion under OAR 690-380-5030(1) shall be notarized and shall include statements that the affiant:

- (1) Is the holder of a water right that the Department has determined would be injured;
  - (2) Has reviewed the preliminary determination or proposed order of the Department concluding the transfer would result in injury and recognizes the nature of the injury;
  - (3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and
  - (4) Consents to the injury resulting from the proposed change in point of diversion or appropriation.
- Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 540.510 - 540.532  
 Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

**690-380-5050**

**Consent to Injury of Instream Water Rights**

- (1) If the applicant notifies the Department that the applicant intends to pursue consent to injury to an instream water right, the Department shall seek a recommendation from the agency that requested the instream water right.
- (2) In requesting a recommendation under section (1) of this rule, the Department shall provide to the appropriate agency a copy of the preliminary determination issued under OAR 690-380-4010 or proposed order issued after hearing and, to facilitate the analysis of cumulative impacts, identify any previously approved transfers injuring the same instream water right as the proposed transfer.
- (3) If the agency that requested the instream water right recommends that the Department consent to injury, the agency's recommendation shall be in writing and include:
  - (a) A description of the extent of the injury to the instream water right;
  - (b) A description of the effect of the injury on the resource;
  - (c) An evaluation of the net benefit that will occur as a result of the proposed change that includes an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and
  - (d) Any proposed conditions necessary to ensure that the proposed change will be consistent with the recommendation.
- (4) On receipt of a recommendation to consent to injury that complies with section (3) of this rule, the Department shall provide notice of the opportunity to comment on the recommendation:
  - (a) To the applicant, any protestants or persons who filed comments under OAR 690-380-4030, and affected Indian Tribes; and
  - (b) By publication in the Department's weekly notice.
- (5) Within 30 days after the date of the notice required in section (4) of this rule, any person may submit written comments on the recommendation or a written request for a public meeting to review the recommendation.
- (6) The Department shall provide copies of any comments submitted in response to the notice in section (4) of this rule to the recommending agency.
- (7) Within 90 days of receipt of a written request for a meeting on the recommendation, the Department and the agency providing the recommendation shall hold a joint public meeting to review the recommendation and to accept public comments.
- (8) If no comments or requests are received by the Department in response to the notice provided under section (4) of this rule or if, after consideration of any written comments or the discussions during the meeting described in section (6) of this rule, the recommending agency notifies the Department that it will not withdraw its recommendation to consent to injury, the Department shall issue an order approving the transfer and consenting to the injury to the instream water right. The order shall include:
  - (a) Findings on the extent of the injury to the instream water right and the effect on the resource;

- (b) Findings on the net benefit that will occur as a result of the change that reflect an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and
- (c) Any conditions necessary to ensure that the change will be consistent with the findings and will result in a continued net benefit to the resource consistent with the purposes of the instream water right.

Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 540.510 - 540.532  
 Hist.: WRD 2-2003, f & cert. ef. 5-1-03

**690-380-5060**

**Fish Screening and By-Pass Devices**

- (1) Pursuant to ORS 540.525, when an application for a change in point of diversion is received, the Department shall consult with the ODFW to determine whether a fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.
- (2) The Department's consultation with ODFW shall determine whether the diversion is:
  - (a) Equipped with an appropriate fish screen or by-pass device; or
  - (b) Included in the list of priority screening projects established under section 8, chapter 933, Oregon Laws 1989.
- (3) If the original point of diversion is included in the priority list referenced in subsection (2)(b) of this rule, the Department, after consulting with ODFW, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.
- (4) If requested by ODFW, a condition requiring a proper fish screen at the new point of diversion shall be attached to any transfer approval order for a change in point of diversion.
- (5) Any individual required to install a fish screening or by-pass device under this section at a point of diversion for a diversion of under 30 cubic feet per second may participate in ODFW's cost sharing program for the installation of screening and by-pass devices.

Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 540.510 - 540.525 & 540.532  
 Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0073

**690-380-5100**

**Compatibility with Acknowledged Comprehensive Plans**

- (1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for transfers except as specified in OAR 690-005-0025 and 690-380-3000(19).
- (2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in 690-005-0040 (Resolution of Land Use Dispute).
- (3) The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-380-4000.

Stat. Auth.: ORS 197, 536.025 & 536.027  
 Stats. Implemented: ORS 540.510 - 540.531  
 Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0057; WRD 5-2006, f. & cert. ef. 10-6-06

**Miscellaneous Provisions**

**690-380-5110**

**Original Right Terminated**

Approval of a change in use or place of use terminates the right to use water for the existing character of use or place of use under the original water right as described in the transfer application form required under OAR 690-380-3000.

Stat. Auth.: ORS 536.025 & 536.027  
 Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0040; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-5120

#### Multiple Primary Water Rights on the Same Lands

If the water right records show two or more irrigation rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0045; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-5130

#### Assignment or Change of Ownership

(1) When a change of ownership or interest occurs in lands described by a transfer application or by an order approving a transfer, the record holder may request the director to record an assignment to the new owner.

(2) If the record holder is not available, the new owner may furnish proof of ownership to change the Department's records for that transfer. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include but not be limited to one or more of the following documents:

- (a) A deed to the land;
- (b) A land sales contract;
- (c) Documentation of survivorship of property held jointly; or
- (d) A court order or decree.

(3) The person making the assignment shall identify the current owner of all property involved in the transfer at the time of assignment. The person making the assignment shall furnish proof that notice of the assignment has been given or attempted for each identified owner not party to the assignment.

(4) When approval of a transfer for a change in place of use moves the water use subject to transfer to lands owned by another owner, the order shall contain the name and address of the receiving landowner and the Department's records shall be changed to show the receiving landowner as the transfer holder. It shall be the responsibility of the receiving landowner to complete the transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 6-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0075

### 690-380-5140

#### Time for Completion

(1) The Department shall fix a time limit in the order authorizing a change of character of use, place of use or point of diversion or appropriation within which the approved changes may be completed.

(2) Extensions of time to complete a transfer may be granted pursuant to OAR 690-380-6020.

(3) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1). The time for completion of the change requested in a transfer application is one full year plus the time until the next October 1. The time for completion of the change of a municipal or quasi-municipal right is five years plus the time until the next October 1. A longer time for completion may be allowed if the applicant can justify the need for a longer period of time.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0087; WRD 5-2006, f. & cert. ef. 10-6-06

## Perfection of Transferred Rights

### 690-380-6010

#### Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon approval of a change in use or place of use, the water use subject to transfer is considered inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not applied to beneficial use under the terms of the transfer order for change in use or place of use, or within any extension of time allowed for completion, is lost.

(3) Non-completion of a change in point of diversion or appropriation does not forfeit the water use subject to transfer. However, upon expiration of the time allowed for completion, the water use shall again become subject to forfeiture pursuant to the provisions of ORS 540.610.

(4) For a change in point of diversion or appropriation, the claim of beneficial use shall identify the lands served by the new point of diversion or appropriation using:

(a) The existing final proof survey map for the right of record; or

(b) Another map prepared in accordance with OAR chapter 690, division 14.

(5) A new application is required to change the point of diversion or appropriation to a new location not authorized by the order.

(6) If the change in point of diversion or appropriation is not completed, the point of diversion or appropriation shall revert to the last authorized point of diversion or appropriation prior to the transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0090; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-6020

#### Extension of Time

(1) An order authorizing a water right transfer sets a time limit in which to beneficially use the water. If the transfer is not completed within the time limit, the owner may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence in the attempt to complete the project within the initial time allowed.

(2) If multiple receiving owners are involved, a separate application is required from each receiving owner requesting an extension.

(3) Extensions are granted for one year, from October 1 to October 1 of each year. An extension for up to five years may be granted for transfers involving municipal or quasi-municipal use. Extensions may be granted for longer time if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(4) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-380-5140. Reasonable diligence shall include, but is not limited to:

- (a) The purchase and installation of water delivery system;
- (b) The expansion or restructuring of the existing delivery system;
- (c) Actual use of a portion of the water according to the terms of the transfer order; or
- (d) For municipal, quasi-municipal and group domestic uses only, the continued increase in population and number of service connections.

(5) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (4) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

## Chapter 690 Water Resources Department

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0100

### 690-380-6030

#### Proof Of Use; Noncompliance

(1) For transfers requested prior to July 10, 1987, at such time given in the order approving the transfer for complete application of water, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.

(2) Transfers requested on or after July 10, 1987 shall have a Claim of Beneficial Use report and map prepared by a certified water right examiner in accordance with OAR chapter 690, division 14.

(3) If any property described in the order approving the transfer application is not included in the request for a water right certificate, the owners of the transfer shall provide to the Department the name and address of the landowner of that property.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0110; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-6040

#### Proof of Completion of Change

(1) The director shall issue a certificate of water right upon satisfactory proof of completing the change or changes authorized by a transfer approval order. Satisfactory proof shall be one of the following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the transfer approval order was completed to the extent authorized; or

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the transfer approval order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be sent by first class mail, or with the consent of the recipient, by electronic means to the transferee, together with notice that the transferee or the landowner has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the director shall issue a water right certificate to the transferee or landowner pursuant to ORS 540.530(2) and the transfer approval order.

(3) If the Department determines that proof has been made to the full extent granted by the approval order, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0120; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

### 690-380-6050

#### Waiver of Proof of Completion

(1) The Director may waive any of the proof of completion requirements of OAR 690-380-6040, if:

(a) The waiver of the mapping requirements has been previously approved under OAR 690-380-3410; or

(b) The Director determines that other circumstances are present that make any of the requirements for proof of completion

unnecessary and the transfer complies with the requirements of OAR 690-380-3410 for a waiver of mapping requirements.

(2) The Department may assist the applicant in satisfying any of the proof of completion requirements of OAR 690-380-6040 if the transfer complies with the requirements of OAR 690-380-3410. The assistance provided by the Department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03

### 690-380-6060

#### Petition for Reconsideration

(1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the transferee or landowner. The petition shall describe the disagreement with the proposed certificate.

(2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(3) The director may allow reasonable time beyond the time set under OAR 690-380-6040(2) for a transferee or landowner to complete and submit a written petition for reconsideration.

(4) Upon receipt of a petition for reconsideration, the director shall:

(a) Approve the petition without verification and issue a certificate with the changes included;

(b) Schedule field verification of the requested changes and pursuant thereto approve or deny the request; or

(c) Deny it by a letter to the requesting person.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-380-6040.

(6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by an order of the director. The order shall provide for either issuance of a certificate of water right in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 2.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0125

## Temporary Transfers

### 690-380-8000

#### Temporary Transfers

Any person who holds a water use subject to transfer may request that the Department approve:

(1) For a period of not to exceed five years, a temporary transfer of:

(a) Place of use and, if necessary to convey the water to the new temporary place of use, point of diversion or appropriation; or

(b) Character of use of a right to store water, or

(2) For a period of not to exceed 25 years, a temporary transfer in the Deschutes River Basin of place of use, type of use, and point of diversion or appropriation if necessary to convey water to the new temporary place of use, of all or a portion of a water right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.520 & 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0300; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

### 690-380-8002

#### Temporary Transfer Applications under OAR 690-380-8000(1)

(1) Applications for a temporary transfer under OAR 690-380-8000(1) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;
- (b) The length of time for which the change is being requested;
- (c) The appropriate fee pursuant to ORS 536.050; and
- (d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.

(2) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right. In issuing the order, the Department may include any conditions necessary to protect other water rights.

(3) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(5) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury.

(6) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: SB 820, 2003 OL

Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

#### 690-380-8004

##### Temporary Transfer Applications under OAR 690-380-8000(2)

(1) Applications for a temporary transfer under OAR 690-380-8000(2) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;
- (b) The length of time for which the change is being requested;

(c) The appropriate fee for the transfer pursuant to ORS 536.050;

(d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner;

(e) Where applicable, a description of the use of any portion of the water right not proposed to be transferred under OAR 690-380-8000(2);

(f) Evidence that an agreement exists between the landowner, district, and receiving municipality if the water right to be temporarily transferred is served by a district.

(2) Any portion of the use of a water right that is not temporarily transferred under OAR 690-380-8000(2) may be used on the designated part of the lands described in the original water right permit, certificate, or adjudication under ORS Chapter 539 as evidenced by a court decree, if the use:

(a) Does not encompass more than the remaining portion of the lands,

(b) Does not enlarge the water right or increase the rate, duty, total acreage benefited or season of use, and

(c) Is within the same land ownership as the water right proposed for transfer.

(3) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

(4) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if:

(a) The proposed temporary transfer will not result in injury to any existing water right or enlargement of the water right;

(b) The person holds a water right subject to transfer;

(c) The type of use specified in the original water use subject to transfer is irrigation;

(d) The person to whom the right is transferred is:

(A) Located with the Deschutes River Basin; and

(B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS Chapter 450, a water supplier as defined in 448.115 or a water authority formed under ORS Chapter 450;

(e) The proposed use is municipal use.

(5) In issuing the order, the Department may:

(a) Include any conditions necessary to protect existing water rights, including any reporting, measurement, and mapping requirements to ensure that use of any remaining portion of the right is consistent with the transfer; and

(b) Prescribe the duration of the temporary transfer period, up to 25 years.

(6) For temporary transfers proposing to use a remaining portion of the right under section 2 of this rule, the Department shall require the installation of a measuring device, monthly recording of water use, and annual reporting of water use.

(7) All temporary transfers allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(8) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(9) The Department may revoke a prior approval of the temporary transfer at any time if:

(a) The Department finds that the transfer is causing injury or results in enlargement; or

(b) Reporting, mapping, or measurement conditions associated with use of any remaining portion of the right under section 2 of this rule are not met.

(10) Prior to revoking a temporary transfer under this rule for failing to comply with any of the conditions of the transfer, the Department may seek compliance with the terms of the temporary transfer.

(11) The Department shall provide notice and review of temporary transfer applications under this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(12) Opportunities to protest a temporary transfer under this rule shall be pursuant to OAR 690-380-4030.

(13) The Department shall issue final orders on temporary transfer applications under this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: SB 820, 2003 OL

Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

#### Miscellaneous Provisions

##### 690-380-8010

###### Seasonal Use

Except as provided in OAR 690-380-8004, the lands from which the water use subject to transfer is removed shall receive no water, under the appurtenant rights, during the period of a temporary transfer. In the case of a temporary transfer approved during the season for which there is a specified season of use, such as the irrigation season, the lands from which the water use subject to transfer is being removed shall have received no water, under the appurtenant rights, during that season, including water used prior to the approval of the temporary transfer. If the lands have received water, under the appurtenant rights, during that season, the temporary transfer may not take effect until the following season.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0310; WRD 1-2004, f. & cert. ef. 3-17-04

##### 690-380-8020

###### Supplemental Water Rights

(1) When an application for a temporary transfer of the place of use is filed with the Department, the applicant also shall indicate whether the land described in the application has an appurtenant

supplemental water right or permit. The applicant shall also indicate whether the supplemental water right or permit is intended to be temporarily transferred with the primary water right or to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

(2) If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant shall include the information required under OAR 690-380-3000 and 690-380-8000 for the supplemental water right or permit.

(3) If an existing supplemental water right or permit is not included in the temporary transfer application, the Department shall notify the applicant and the landowner, as identified under OAR 690-380-3000(14), that the order approving the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(4) The notice shall contain the following:

(a) A description of the supplemental water right or permit and the land to which it is appurtenant;

(b) A statement that the applicant and landowner, as identified under OAR 690-380-3000(14), has 30 days, from the date of the notice, to either modify the application to include the supplemental water right, or withdraw the application;

(c) A statement that, unless the applicant complies with subsection (4)(b) of this rule, the order approving the application for the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(5) If the application is withdrawn, the Department shall keep the examination fee, and shall refund any other fees submitted with the application.

(6) If the application is not modified or withdrawn, the director shall enter an order approving the temporary transfer of the primary water right and not allowing the exercise of the supplemental water right until the primary water right reverts to the original water use.

(7) The Department shall not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in injury or enlargement.

(8) If the Department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the Department shall notify the applicant of the Department's intent not to allow the temporary transfer of the supplemental water right or permit before the Department issues the order approving the temporary transfer of the primary water right. The notice shall inform the applicant that the supplemental water right or permit shall remain appurtenant to the land described in the application, but may not be exercised until the primary water right reverts to the original water use.

(9) If the primary water right does not revert soon enough to allow the use of water under the supplemental water right within five years, the supplemental water right shall become subject to cancellation for nonuse under ORS 540.610.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0320; WRD 5-2006, f. & cert. ef. 10-6-06

## 690-380-9000

### Clarification of Water Rights

(1) If the Director decides that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery, or transfer of that right, the Director may issue an order clarifying and defining the description of the land to which the right is appurtenant.

(2) A clarification order may not reduce the rate, duty or number of acres stated in the perfected right. The sole purpose of the order is to better define the location to which the water right is appurtenant.

(3) Any order issued under this section shall be served on the legal owner of the land to which the water right is appurtenant and on the occupant of the land, by certified mail, return receipt requested. If the owner or occupant files a written request for a hearing within 30 days after service of the order, the Director or the

Director's authorized assistant shall conduct a hearing of the matter under the provisions of ORS 183.413 to 183.484.

(4) If no exceptions or objections to a proposed order issued under this rule are filed within the time allowed, the Director shall issue a final order. Said final order shall be filed with the certificate that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant.

Stat. Auth.: ORS 183, 339, 536, 537, 540 & 649

Stats. Implemented:

Hist.: WRD 10-1988, f. & cert. ef. 8-10-88; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0400

## DIVISION 382

### GROUND WATER REGISTRATION MODIFICATIONS

#### 690-382-0010

##### Purpose

(1) The rules in OAR chapter 690, division 382 establish the requirements and procedures to be used by the Department to evaluate an application to modify a ground water certificate of registration. The rules describe the requirements for changing the point of appropriation, place of use, or character of use of a certificate of registration.

(2) No change in point of appropriation, place of use, or character of use of a certificate of registration may be made except as provided under these rules and OAR chapter 690, division 380.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-382-0100

##### Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 382. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground water registration.

(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;

(b) Increasing the acreage irrigated under a certificate of registration;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of appropriation than is legally available to that certificate of registration at the original point of appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right or certificate of registration.

(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by

OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.

(7) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the certificate of registration is appurtenant.

(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.

(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(10) "Water use subject to transfer" means a water use established by:

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

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) 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 Commission.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

#### 690-382-0200

##### Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a registration modification, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to modify a layered certificate of registration should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A certificate of registration that the applicant designates as being for supplemental irrigation use may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the certificate of registration is to be moved.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-382-0300

##### Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

#### 690-382-0400

##### Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on the certificate of registration.

(4) Certificate of registration number for the registration to be modified.

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.

(6) Source of water as described on the certificate of registration.

(7) Date of priority.

(8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The authorized and proposed use of water, if applicable.

(10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(13) For a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground water body developed or proposed to be developed.

(14) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

(15) An oath that the information contained in the application is true and accurate.

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landowner information and evidence identified in 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(17) The signature of the applicant, and if an entity, the title of the person signing the form.

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, \$875.

(b) For examination of all other applications to modify a certificate of registration, \$1,250.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 8-2009, f. 12-8-09, cert. ef. 12-15-09; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

#### 690-382-0450

##### Existing Documentation of Modifications

If documentation of a modification under a ground water registration was on file with the Department prior to July 22, 2005, the Department shall provide an application for recognition of the modification described in the notice priority with respect to processing other applications for recognition of ground water registration modifications. An application filed under OAR 690-382-0400 may incorporate by reference information about the modification that is on file with the Department.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-382-0500

##### Fee Refunds

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the Department's recognition of the modification, the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(18)(b).

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

#### 690-382-0600

##### Request for Comments

(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required by OAR 690-382-0400.

(2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By regular mail, or with the consent of the recipient, by electronic means to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-382-0700

##### Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-382-0600(4), the Department shall prepare a preliminary determination of whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The proposed modification would result in enlargement;

(b) The proposed modification would result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would result in injury; and

(d) Any other requirements for registration modifications are met.

(3) For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:

(a) Describe the basis for the Department's conclusions; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be included in the modification, or to withdraw the application.

(5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-382-0100(7) for the land to which the certificate of registration is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the certificate of registration is appurtenant; and

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the

applicant is authorized to pursue the modification, which shall include:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;

(B) Notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.

(6) The report of ownership information required under subsection (5)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the certificate of registration has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(7) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.

(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

#### 690-382-0800

##### Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the application to modify the registration and the preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week, and

(c) By sending by regular mail, or with the consent of the recipient, by electronic means a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

(2) The notice shall include the following information about the application:

(a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required OAR 690-382-0600;

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the registration to be modified, and the authorized source for the registration;

(c) The registration and certificate numbers;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

(3) The cost of publication in a newspaper shall be paid by the applicant in advance of the publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.

(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice and a request for payment for the cost of publishing the notice. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use; or

(b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny recognition of the modification if the applicant fails to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### 690-382-0900

##### Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.

(2) A person filing a protest must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-382-0100(8) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)  
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

#### 690-382-1000

##### Recognition of Modifications

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements for modification of the certificate of registration are met.

(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in 690-382-0700 if no protests are received under 690-382-0900.

(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.

(4) The order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

### 690-382-1100

#### Hearings

(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:

(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;

(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or

(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.

(2) Notice and conduct of the hearing shall be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

### 690-382-1200

#### Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-0070(13).

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in 690-005-0040 (Resolution of Land Use Dispute).

(3) The Director may presume that the certificate modification would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-382-0800.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

## DIVISION 385

### DISTRICT WATER RIGHT TRANSFERS

#### General Provisions

#### 690-385-0010

##### Purpose

(1) The rules in chapter 690, division 385 establish requirements and procedures that shall be used by the Department to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district pursuant to ORS 540.570 and 540.580.

(2) The rules in chapter 690, division 385 also describe the process by which a district may submit an application to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578.

(3) Water right transfers by districts and other water users that do not fall under the purview of the rules described by chapter 690, division 385 may be made pursuant to ORS 540.510 to 540.532 and OAR 690, division 380.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510, 540.570, 540.572 - 540.578 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0000, WRD 9-2004, f. & cert. ef. 11-16-04

#### 690-385-0100

##### Definitions

The definitions in this rule, along with the definitions in OAR 690-08-0001 (Statutory Ground Water Terms), 690-300-0010 (Definitions), and 690-380-0100 (Water Right Transfers), apply to the rules in OAR chapter 690, division 385. Where a term is defined in more than one rule, the definition in OAR 690-385-0100 applies.

(1) "Application" means a petition by a district to transfer water rights within district boundaries as used in ORS 540.570 through 540.580.

(2) "District" means an irrigation district formed under ORS chapter 545, a drainage district formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a water control district formed under ORS chapter 553, or a corporation formed under ORS chapter 554.

(3) "District boundaries" means the extent and fixed limit of district jurisdictional authority under state law described by metes and bounds, public land survey, or assessor's map and tax lot numbers.

(4) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(5) "Full-Time Manager", as used in ORS 540.572 and OAR 690-385-5000, means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.

(6) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(7) "Manager" means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district.

(8) “No Longer Irrigated or Susceptible of Irrigation” means:

(a) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district.

(9) “Notice of Permanent District Transfer” means notification of a change in place of use allowed by a district prior to submitting a transfer application to make the change permanent.

(10) “Point of appropriation” means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right.

(11) “Point of diversion” means the place at which surface water is diverted from a surface water source as specified in the water right.

(12) “Primary water right” means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(13) “Protest” means a written statement expressing disagreement with approval of a transfer application and includes the fee prescribed in ORS 536.050.

(14) “ODFW” means the Oregon Department of Fish and Wildlife.

(15) “Supplemental water right or permit” means an additional water right to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(16) “User” means an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred.

(17) “Water use subject to transfer” means a water use established by:

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

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) 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 Commission.

(18) “DSL” means the Department of State Lands

(19) “Emergency” means a sudden, unforeseen event resulting in damage to an authorized point of diversion structure or primary conveyance canal that prevents a district from diverting the water to which it is legally entitled, and necessitates immediate action to minimize loss of property by water users within the district.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0010, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

### Standard Transfer Application Requirements

#### 690-385-2000

##### Application for Transfer

(1) Each application shall be prepared in ink or typewritten on forms acceptable to the Department, or in a digital format acceptable to the Department. Applications shall contain the following information about the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District’s name, mailing address, and telephone number.

(b) Type of change(s) proposed.

(c) Name(s) appearing on permit, certificate, decree or proof of appropriation.

(d) Name(s) of decree and certificate number, if applicable.

(e) Certificate number and Permit number, if applicable.

(f) Source(s) of water (from permit, decree or certificate).

(g) Date(s) of priority.

(h) The authorized existing use of water.

(i) The existing points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(j) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.

(k) The proposed place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.

(l) A map as required in OAR 690-385-2200.

(m) A statement by the district manager or the district’s authorized representative that the right has not been forfeited under ORS 540.610 due to nonuse.

(n) A statement that each user affected by the transfer has provided written authorization for the transfer and such authorization is on file with the district.

(o) A statement by the district manager or the district’s authorized representative certifying that the information contained in the application and map is true and accurate.

(p) The signature of the district manager or the district’s authorized representative.

(q) The appropriate fee as required under ORS 536.050.

(2) The application shall include any additional application requirements necessary to satisfy the specific transfer criteria for the type of transfer the applicant proposes as described in OAR 690-385-3000 (District Temporary Transfers), 690-385-4000 (District Permanent Transfers), and 690-385-5000 (District Permanent Transfers of Water Right for Nonuse).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578 & 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

### Standard Map Requirements

#### 690-385-2200

##### Map Requirements

(1) A map certified by the district but which need not be prepared and stamped by a certified water right examiner shall be included with each district transfer application. The map shall meet the following criteria:

(a) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted except as described in subsection (1)(c) of this rule.

(b) The preferred map size is 8 1/2” x 11” (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8 1/2” x 14” (legal) or 11” x 17” (oversized) may be used.

(c) Notwithstanding subsection (1)(a) and (b) of this rule, a district may submit the following types of map to satisfy the application map requirement:

(A) A digital map on a medium and in a format acceptable to the Department; or

(B) A map containing color elements or up to 30” x 30” in size provided five copies of the map are submitted with the application.

(d) The map scale shall be:

(A) 1” = 400’;

(B) 1” = 1,320’;

(C) The scale of the final proof or adjudication map for the existing right of record, or of the map previously approved by the department as part of a petition under ORS 541.329;

(D) The scale of the county assessor map if the scale is not smaller than 1” = 1,320’; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(e) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(f) The map shall be plotted to the accuracy consistent with the map scale.

(g) The locations of points of diversion and places of use shall be described by bearing and distance, distance north or south and east or west from a recognized survey corner, or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, and clear legend;

(b) The location of each existing and proposed point of diversion or point of appropriation;

(c) For a change in place of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.

(d) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(e) Notwithstanding the requirements of subsection (2)(c) and (d), for place of use transfers involving a water right on a tract of land of five acres or less, the place of use may be identified on a county assessor map provided:

(A) The county assessor map scale is not smaller than 1" = 1,320';

(B) Tax lot boundaries and numbers are legible;

(C) The map contains a title, legend and appropriate location information, such as public land survey corners or quarter-quarter corners, necessary to accurately locate tax lots by public land survey subdivisions; and

(D) Within each affected tax lot, the map lists and clearly identifies the number of acres for each affected water right transferred from or transferred onto the tax lot.

(f) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(g) Notwithstanding the requirements of subsection (1)(f), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features necessary to demonstrate that users are able to put water to beneficial use as proposed by the transfer according to the terms and conditions of the water right;

(h) Notwithstanding the requirements of subsection (1)(f), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(i) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578 & 540.580  
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

## District Temporary Transfers

### 690-385-3000

#### District Temporary Transfer Criteria Renumbered from 690-021-0020

(1) Pursuant to ORS 540.570, the Department may approve a district temporary transfer application for a period of time not to exceed one irrigation season provided:

(a) The district has a manager;

(b) The application does not propose to change the type of use except for a right to store water under OAR 690-385-3120 or change a primary right to a supplemental right under OAR 690-385-3130;

(c) The district has, prior to submitting the application, reviewed and approved a request by a user or a user's agent to temporarily transfer the use of water to different locations elsewhere within the boundaries of the district;

(d) The proposed transfer involves the use of water on lands located within the district boundaries;

(e) The proposed transfer will not result in injury or enlargement; and

(f) The land from which water is transferred does not receive water under the water use subject to transfer during the irrigation season in which the change in place of use occurs.

(2) A district may allow proposed changes to occur upon submission of a district temporary transfer application to the Department.

(3) The Department, may at any time upon determining a change allowed by a district under section (2) of this rule or a final order under OAR 690-385-3500 results in injury to an existing water right:

(a) Impose conditions to avoid injury; or

(b) Reject or revoke the change.

(4) Pursuant to ORS 536.900, a district and user may be subject to civil penalties for allowing the use of water on both the land from which water is transferred, and the lands to which the water is transferred, during the same irrigation season or calendar year.

(5) All uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by a district.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96;

Renumbered from 690-021-0020, WRD 9-2004, f. & cert. ef. 11-16-04

### 690-385-3100

#### Types of District Temporary Transfers

District temporary transfers include:

(1) A change in place of use;

(2) A change in type of use of a water right to store water;

(3) A change in type of use from a primary right to a supplemental right;

(4) A change in point of diversion or appropriation to facilitate a change in place of use;

(5) A change in point of diversion in response to an emergency; and

(6) A change from a surface water point of diversion to a ground water appropriation.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96;

Renumbered from 690-021-0030, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

### 690-385-3110

#### Temporary Change in Place of Use

(1) A change in place of use may be made as approved by the Department.

(2) When an application for a temporary change in place of use for a primary water right is submitted according to OAR 690-385-3200, the district also shall identify whether the lands described in the application have an appurtenant supplemental water right or permit.

(3) The district also shall apply to temporarily transfer the appurtenant supplemental water right or permit unless the district specifies that the supplemental water right or permit is to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### 690-385-3120

##### Temporary Change in Type of Use of a Water Right to Store Water

A change in the type of use of a water right to store water (reservoir right) may be made provided:

(1) The district receives the written consent of the operator of the reservoir; and

(2) The district is a lessor or co-lessor in a proposed instream lease pursuant to OAR 690-077-0077.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### 690-385-3130

##### Temporary Change in Type of Use from a Primary Right to a Supplemental Right

(1) A district may apply to change a primary right to a supplemental right. The use of water on the lands covered by a right temporarily diminished to supplemental is restricted to the total rate and duty described by the primary right.

(2) The right temporarily diminished to supplemental may be used only to the extent of any supply deficiency for the primary right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### 690-385-3140

##### Temporary Change in Point of Diversion or Appropriation

(1) As provided in ORS 540.570, a temporary change in point of diversion or appropriation may be made in combination with, or as necessary to facilitate, a change in place of use.

(2) A change in point of diversion is restricted to the same source of surface water. A change in point of appropriation is restricted to the same aquifer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### 690-385-3145

##### Temporary Change in Point of Diversion in Response to an Emergency

(1) As provided in ORS 540.570, a temporary change in point of diversion may be made in response to an emergency as defined in OAR 690-385-0100(19).

(2) A temporary change in point of diversion is restricted to the same source of surface water or to ground water from an unconfined aquifer that is hydraulically connected to the same source of surface water pursuant to OAR 690-385-3150, and shall be limited to diverting no more than the quantity of water available for diversion from the surface water source at the original point of diversion.

(3) Pursuant to OAR 690-385-3000(1), a district may submit and the Department may approve an application for a temporary change in point of diversion in response to an emergency for a period of time not to exceed one irrigation season.

(4) If more than one irrigation season is necessary to correct the emergency under OAR 690-385-0100(19), a district shall submit an application for a temporary change in point of diversion for the succeeding irrigation season.

(5) Under this rule, a district may be limited to filing no more than two temporary transfer applications, for successive irrigation seasons, in response to the same emergency.

(6) An applicant shall not divert water from a temporary change in point of diversion in response to an emergency prior to:

(a) Submitting a complete application as required under OAR 690-385-3200(3)(a)(C) that lists the agencies and governments and contact names with whom the applicant has notified and consulted; and

(b) Consulting with applicable state agencies such as ODFW and DSL, and applicable local governments and tribal governments about the temporary change in point of diversion.

(7) The Department shall consult with ODFW to determine whether a fish screen device is necessary for the diversion pursuant to OAR 690-385-3520.

(8) Pursuant to OAR 690-385-3500, a final order approving a temporary change in point of diversion in response to an emergency may include any conditions or restrictions necessary to prevent injury to another water right.

(9) If the proposed transfer affects an instream water right, the Department shall develop any conditions or restrictions necessary to prevent injury to the instream water right in consultation with the state agency that has management responsibility for the resources protected by the instream water right.

(10) The Department, may at any time upon determining a temporary change in point of diversion results in injury to an existing water right:

(a) Impose conditions to prevent injury; or

(b) Reject or revoke the change.

Stat. Auth.: ORS 536.025, 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 2-2007, f. & cert. ef. 1-5-07

#### 690-385-3150

##### Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation

(1) A district may, in accordance with the standards established by ORS 540.531(2), apply to transfer a point of diversion to allow the appropriation of groundwater. An application for such a transfer is subject to the requirements under section (2) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if the district temporary transfer application demonstrates:

(a) The new point of diversion appropriates groundwater from an unconfined aquifer that is hydraulically connected to the authorized surface source;

(b) The use of water at the proposed point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(c) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(d) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements

of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(4) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(5) If after approving an application under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(6) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(7) For any transfer allowed under sections (1) to (5) of this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6).

(8) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects only the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Unconfined aquifer" means an aquifer in which the pressure at the upper surface of saturation is equal to atmospheric pressure.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

### **690-385-3200**

#### **District Temporary Transfer Applications**

(1) Each district temporary transfer application shall contain the standard information required by OAR 690-385-2000.

(2) Pursuant to ORS 540.570(3), a district temporary transfer application shall include a statement certifying the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right.

(3) In addition to the standard application information required under OAR 690-385-2000, temporary district transfer applications shall include the following information:

(a) For a change in point of diversion or appropriation, or a change from surface water point of diversion to ground water appropriation, the application shall include:

(A) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(B) If the request is for a change in point of appropriation, or a change in point of diversion to a ground water appropriation (well), copies of water well reports for the authorized and proposed point of appropriation. Each water well report shall be labeled to correctly identify and locate the well, and identify the well report as either the authorized or proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(C) If the request is for a change in point of diversion in response to an emergency, a listing of agencies, local and tribal governments, and the applicable contact names with whom the applicant has consulted about the change in point of diversion.

(b) For a change in type of use from a primary right to a supplemental right, the application shall identify the change from primary to supplemental for the applicable authorized and proposed place of use by its location within the public land survey, tax lot number, and the name of each user.

(c) For a change in type of use of a water right to store water, the application shall include:

(A) Written consent to the change in type of use from the operator of the reservoir; and

(B) If the water right to store water is issued in the name of a federal governmental agency, include written consent from the agency to the change in type of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.570 & 540.574

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96;

Renumbered from 690-021-0040, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

### **690-385-3300**

#### **District Temporary Transfer Application Map Requirements**

(1) A temporary district transfer application map shall meet the standards of OAR 690-385-2200.

(2) In addition, for the following transfers, the application map shall include:

(a) For a change from a surface water point of diversion to a ground water appropriation, if the proposed point of appropriation is intended to serve the entire right of record, a copy of the existing final proof survey or approved ORS 541.329 (House Bill 3111) map for the right of record may be submitted to satisfy this requirement. If the proposed point of appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of acres to be served by the new point of appropriation shall be listed.

(b) For a change in type of use from primary right to supplemental right, the location of the authorized and proposed place of use of the water. If the use is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be uniquely shaded or hachured to clearly identify affected lands, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected

within government lots, donation land claims, or other recognized public land survey subdivisions.

(c) For a change in type of use of a water right to store water, a copy of the final proof map for the water right subject to transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96;

Renumbered from 690-021-0050, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-3400**

##### **District Temporary Transfer Application Notice and Review**

(1) On receipt of a temporary district transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-3200 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96;

Renumbered from 690-021-0060, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-3500**

##### **District Temporary Transfer Approval and Final Orders**

A district temporary transfer application submitted according to ORS 540.570 and OAR 690-385-3200 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under 690-385-0100(17)(d), the proof of completion has been approved under 690-385-7600;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district temporary water right transfers are met.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

#### **690-385-3520**

##### **Fish Screening Devices**

(1) Pursuant to ORS 540.570, when an application includes a temporary change in point of diversion, the Department shall consult with ODFW to determine whether a fish screen device is necessary to prevent fish from leaving the body of water and entering the diversion.

(2) The Department's consultation with ODFW shall determine whether the diversion is equipped with an appropriate fish screen device.

(3) If requested by ODFW, a condition requiring a proper fish screen device at the new point of diversion shall be included in any order of the Department approving a temporary change in point of diversion.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-3600**

##### **Appeal of a Final Order Approving a District Temporary Transfer**

A final order approving a district temporary transfer under OAR 690-385-3500 may be appealed by:

(1) Petitioning for judicial review of the final order pursuant to ORS 536.075(1); or

(2) Petitioning the Department for reconsideration of the final order pursuant to OAR 137, division 004.

(3) A petition for reconsideration may include a request for a stay of the final order if the petition complies with the requirements of OAR 137, division 004.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **District Permanent Transfers**

#### **690-385-4000**

##### **District Permanent Transfer Criteria**

Pursuant to ORS 540.580, the Department may approve a district permanent transfer application to permanently change the place of use provided:

(1) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(2) The use authorized under the water use subject to transfer does not change;

(3) The use of water under the water use subject to transfer will not result in enlargement of the right;

(4) The change in place of use will not result in injury to any other existing water right; and

(5) The district submits the permanent district transfer application to the Department:

(a) Before the change is allowed by the district, or

(b) Prior to the end of the calendar year in which the change occurred if notification of a change was submitted in accordance with OAR 690-385-4100.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4100**

##### **Notice of District Permanent Transfer**

(1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:

(a) The district files notice of the change in place of use under section (2) of this rule prior to making the change;

(b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and

(c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:

(A) Direct the district to cease delivery of water; or

(B) Require mitigation to avoid injury to other water rights.

(2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District name, mailing address, and phone number;

(b) Certificate number, or permit number if applicable, subject to the change;

(c) Names of affected users;

(d) Location of the affected lands according to public land survey description and tax lot number; and

(e) A map meeting the requirements of OAR 690-385-4300.

(3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.

(4) A district delivering notice to the local area Department Watermaster shall concurrently send by mail or by electronic

means the form(s) (but not the map) described in section (2) of this rule to the Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).

(5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:

(a) Direct the district to cease delivery of water to the affected lands; or

(b) Direct the district to mitigate the injury caused by the change.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### **690-385-4200**

##### **District Permanent Transfer Applications**

Each district permanent transfer application shall contain the standard information required by OAR 690-385-2000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.574 & 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4300**

##### **District Permanent Transfer Application Map Requirements**

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4400**

##### **District Permanent Transfer Application Notice and Review**

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-4200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number;

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4500**

##### **District Permanent Transfer Approval and Final Orders**

A district permanent transfer application submitted according to ORS 540.580 and OAR 690-385-4000 shall be approved if the Department determines that:

(1) The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under 690-385-0100(17)(d), that proof of completion has been approved under 690-385-7400;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district permanent water right transfers are met.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4580**

##### **Original Right Terminated by Final Order**

Issuance of a final order approving a permanent change in place of use terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-4600**

##### **Protests and Requests for Hearings**

Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:

(1) Within 30 days of posting the Department's weekly notice;

(2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and

(3) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.

(4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

(5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:

(a) Refer the protest to the district to resolve; and

(b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 183.310 - 183.550 & 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

#### **690-385-4700**

##### **Hearings**

(1) If a protest is filed under OAR 690-385-4600, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the water rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

##### **District Permanent Transfers of Water Right for Nonuse**

#### **690-385-5000**

##### **District Permanent Transfer Criteria**

Pursuant to ORS 540.572, the Department may approve a district permanent transfer application to permanently change the place of use of the water right appurtenant to land no longer irrigated or susceptible to irrigation provided:

(1) The district employs a full-time manager;

(2) The district is implementing an approved water management and conservation plan consistent with the requirements of OAR 690, division 086;

(3) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(4) The district has determined a user has not made beneficial use of water for four successive years; and

(5) The district provides notice to the user of intent to transfer the right and provides the user an opportunity to resolve the matter in the manner described by ORS 540.572 and OAR 690-385-5400 and 690-385-5600.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0090, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-5100**

##### **Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572**

(1) Prior to submitting a district permanent transfer application under OAR 690-385-5200, a district shall provide written notice to the user and any security interest holders of record in the land to which the water right is appurtenant.

(2) Notice shall be sent by certified mail to the last known address of the user with a return receipt requested.

(3) The notice shall include:

(a) A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to submit an application to permanently transfer the water right pursuant to ORS 540.572.

(b) A statement that the user has a 30-day period, from the mailing date of the notice, in which to submit to the district a written objection to the proposed transfer application;

(c) A statement that the user shall notify the district, within the 30-day period described in subsection (3)(b) of this rule, if the user intends to demonstrate that the nonuse is excused by one of the provisions under ORS 540.610.

(d) A statement that the user may demonstrate beneficial use of the water right by:

(A) Beneficially irrigating the lands to which the water right is appurtenant prior to the end of the irrigation season of the fifth consecutive year of nonuse, or

(B) Making beneficial use of water under one of the qualifying programs of the Water Resources Department such as, but not limited to, submitting a water right transfer under OAR 690, division 380 or a transfer to instream use under OAR 690, division 077, prior to the end of the irrigation season of the fifth consecutive year of nonuse.

(e) A general description of the land according to public land survey description to which the water right is appurtenant;

(f) The number of acres of water right, by tax lot, for which the user is charged or assessed by the district and which the district intends to propose for transfer under OAR 690-385-5200;

(g) A description of the type of use described by the water right of record;

(h) A list of the name and address of security interest holders of record in the land to which the water right is appurtenant; and

(i) A request for the user to respond confirming that the information in the notice is correct.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0110, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-5200**

##### **District Permanent Transfer of Water Right for Nonuse Applications**

(1) Each district permanent transfer of water right for nonuse application shall contain the standard information required by OAR 690-385-2000; and

(2) Include the following:

(a) A copy of the notice required under OAR 690-385-5100 mailed by the district to the user;

(b) A copy of any objections to the proposed transfer received by the district within the 30-day time period following the mailing of notice under OAR 690-385-5100; and

(c) A copy of findings, determinations and conclusions resulting from any hearing held by the district to consider unresolved objections received in response to the notice required under OAR 690-385-5100.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.574 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0140, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-5300**

##### **District Permanent Transfer of Water Right for Nonuse Application Map Requirements**

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.574 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0160, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-5400**

##### **Notice of Filing District Permanent Transfer of Water Right for Nonuse Application**

(1) Upon submitting a district permanent transfer application to the Department pursuant to ORS 540.572 and OAR 690-385-5000, a district shall:

(a) Provide notice to the users of affected lands that a district permanent transfer application was submitted to the Department;

(b) Provide the users of affected lands a copy of the application and map; and

(c) Mail the notice, application, and map to the last known address of the affected users by certified mail with a request for a return receipt.

(2) The notice under subsection 1(a) of this rule shall inform the users of affected lands that:

(a) The Department shall approve the district permanent transfer application as provided under OAR 690-385-5600 unless:

(A) The application does not include the information required under OAR 690-385-5200; or

(B) The user, of lands from which water rights are to be transferred, submits a protest pursuant to OAR 690, division 002.

(b) The user has the right to protest the application as described in OAR 690-385-5700.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.576

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0170, WRD 9-2004, f. & cert. ef. 11-16-04

#### **690-385-5500**

##### **District Permanent Transfer of Water Right for Nonuse Application Notice and Review**

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-5200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572, 540.574 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0200, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-5600**

**District Permanent Transfer of Water Right for Nonuse Approval and Final Orders**

A district permanent transfer application submitted under ORS 540.572 and OAR 690-385-5000 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under 690-385-0100(17)(d), that proof of completion has been approved under 690-385-7400;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6);

(4) Any other applicable requirements for district permanent transfers of water right for nonuse are met;

(5) The district submitted the application no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610(1); and

(a) The district received no written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100; or

(b) The district board of directors submitted the permanent district transfer application after having:

(A) Received written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100;

(B) Failed to resolve the objections; and

(C) Held a hearing to review and consider the objections.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.572 - 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-5680**

**Original Right Terminated by Final Order**

Issuance of a final order approving a permanent change in place of use for nonuse terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-5700**

**Protests and Requests for Hearings**

(1) Approval of a district permanent transfer of water right for nonuse application under ORS 540.572 and OAR 690-385-5000, may be protested:

(a) By any user; and

(b) Within 60 days of mailing the notice under OAR 690-385-5400.

(2) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.

(3) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.578

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-5800**

**Hearings**

(1) If a protest is filed under OAR 690-385-5700, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183 & 540.578

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-5900**

**Time Period to Process Permanent Transfer Application Exempt from Forfeiture**

If a district submits a permanent transfer application under OAR 690-385-5000 no later than the end of the calendar year of the fifth year of non-use under ORS 540.610(1), the forfeiture provision of ORS 540.610 shall not apply to the subject lands pending completion of the processing of the transfer application. The time required to process the application, including any time required for hearings, appeals and completion of the authorized changes, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.612

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0250, WRD 9-2004, f. & cert. ef. 11-16-04

**Miscellaneous Provisions**

**690-385-6000**

**Multiple Primary Water Rights on the Same Lands**

If the water right records show two or more rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**Completion and Perfection of Transferred Rights**

**690-385-7000**

**Time for Completion**

(1) The time for a district to complete a transfer as authorized by a final order shall be one full year from the approval date plus an additional time until the next October 1. A longer time for completion may be allowed for good cause shown.

(2) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1).

(3) Extensions of time to complete a transfer may be granted pursuant to OAR 690-385-7200.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-7100**

**Failure to Complete a Transfer as Grounds for Cancellation**

(1) Upon issuance of a final order approving a transfer the water use subject to transfer becomes inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not used beneficially under the terms of the transfer final order, or within any extension of time allowed for completion, is deemed lost and constitutes a loss of water right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

**690-385-7200**

**Extension of the Time Limits**

(1) If the transfer is not completed within the time allowed in the final order, a district may file an application for an extension of time. The application shall contain sufficient information for the

director to determine reasonable diligence was made to complete the project within the initial time specified in the final order.

(2) A separate application requesting an extension of time to complete a transfer shall be submitted for each final order that authorizes the transfer of the water use subject to the extension request.

(3) The Department shall consider an application for extension of time received no later than the date specified in the final order for a district to submit proof of use under OAR 690-385-7400. The Department shall review and issue an order within 90 days of receipt of the application.

(4) Failure of a district to submit an application and receive an order of the Department authorizing an extension of time to complete a transfer may lead to loss of the water right for failure to complete the transfer in accordance with OAR 690-385-7100(2).

(5) The Department may grant extensions for a 12 month time period, from October 1 to October 1. Extensions may be granted for longer time periods if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(6) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-385-7000. Applications for extension of time shall include:

(a) A listing and description of all construction and purchases related to installation of the water delivery system during the previous use perfection period;

(b) A description of any expansion or restructuring of the existing delivery system during the same period;

(c) A description of the extent to which the applicant has made actual use of water according to the terms of the transfer final order; and

(d) Information to indicate whether the applicant has complied with any conditions contained in the transfer final order.

(7) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (6) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0300, WRD 9-2004, f. & cert. ef. 11-16-04

### 690-385-7400

#### Proof of Use; Noncompliance

(1) No later than one year following the date specified in a final order for a district to complete a transfer and apply water to beneficial use, a district shall provide the Department proof of use by submitting a final proof map according to OAR 690-385-7400(3) and a claim of beneficial use report according to OAR 690-385-7400(4).

(2) Districts may self-certify proof of use and are not required to have a certified water rights examiner prepare a final proof map and file a claim of beneficial use report.

(3) Districts shall file a final proof map consistent with the map standards of OAR 690-385-2200 within the time limit specified in the transfer final order, and certify the map as accurate.

(4) Districts shall file a claim of beneficial use report on forms acceptable to the Department. The claim of beneficial use report shall contain the following information:

(a) The district's name, mailing address, and telephone number;

(b) The transfer number assigned by the Department to the application;

(c) The district assigned number for Notice of Permanent District Transfer, if applicable;

(d) The certificate number, or permit number if no certificate has been issued for the subject water right;

(e) The date of priority;

(f) The type of use;

(g) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user;

(h) A description of the diversion, headgate, canal, or district conveyance system used to deliver water to the authorized place of use;

(i) A description of the method for applying water to beneficial use at the authorized place of use;

(j) A description of the beneficial use to which water is applied;

(k) A description of the method used to calculate the extent of beneficial use on the lands or place of use authorized by the final order approving a transfer;

(l) A statement that the district has inspected the authorized place of use and confirms the change has been made consistent with the terms and conditions of the final order; and

(m) The signature of the District Board Chairperson, or if the Board has delegated authority, the signature of the district manager.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0350, WRD 9-2004, f. & cert. ef. 11-16-04

### 690-385-7600

#### Proof of Completion of Change

(1) The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:

(a) A determination by the Department that the application of water to beneficial use under the terms of the transfer final order was completed to the extent authorized; or

(b) A determination by the Department that the application of water to a beneficial use under the terms of the transfer final order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the water right.

(2) The Department shall prepare a proposed water right certificate if it determines that proof has been made to an extent different or less than that approved. The proposed certificate shall describe the right determined completed under the provisions of the transfer final order. The proposed certificate shall be sent by first class mail, or with the consent of the recipient, by electronic means to the district and affected user, together with notice that the district and affected user has a period of 60 days from the date the proposed certificate was sent within which to request the Department reconsider the contents of the proposed water right certificate. If no request for reconsideration is received within the 60-day period, the Department shall issue a water right certificate pursuant to ORS 540.530(2).

(3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:

(a) Whether the district or users within the district requested issuance of a new certificate;

(b) The number of permanent district transfers for which satisfactory proof has been determined;

(c) The frequency and trend in transfer applications submitted by a district; and

(d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0600, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

### 690-385-7800

#### Request for Reconsideration

(1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the district or user. The petition shall describe the disagreement with the proposed certificate.

(2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(3) The director may allow reasonable time beyond the time set under OAR 690-385-7600(2) for a district or user to complete and submit a written petition for reconsideration.

(4) Upon receipt of a petition for reconsideration, the director shall:

(a) Approve the petition without verification and issue a certificate with the changes included; or

(b) Schedule field verification of the requested changes and pursuant thereto approve or deny the petition; or

(c) Deny it by letter to the requesting person.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-385-7600(2).

(6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by order of the director. The order shall provide for either issuance of a water right certificate in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, division 002.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0700, WRD 9-2004, f. & cert. ef. 11-16-04

## DIVISION 400

### STATE WATER RESOURCES POLICY

#### 690-400-0000

##### Purpose and Authorization

(1) These rules, and those contained in division 410, establish statewide policies and principles pertaining to a wide range of water-related topics. All Water Resources Commission and Department activities, including but not limited to:

(a) Basin planning;

(b) Interagency coordination; and

(c) Development and adoption of rules, standards, and implementing strategies to govern Department programs and activities, shall be compatible with these rules and those contained in division 410.

(2) ORS 536.220 authorizes a single state agency, the Water Resources Commission, to formulate and implement an integrated, coordinated state water resources policy. The Water Resources Commission shall progressively formulate plans and programs to develop the water resources of the state and provide for the enforcement of state water policy. State water resources policy must promote the maximum beneficial use of the waters of the state. Multiple water uses shall be preferred over single-purpose uses. Existing water rights shall be protected in accordance with relative priority dates except as they may be temporarily modified under emergency drought circumstances. The Commission shall, in adopting policies that affect the appropriation and control of water resources, design those policies to best protect and promote the general public welfare.

(3) The Water Resources Commission is required by ORS 536.300(2) to develop a state program for managing Oregon's water. The Commission has established the Oregon Water Management Program which consists of statewide policies (OAR 690, divisions 400 and 410), basin programs (OAR 690, divisions 500 to 520) and non-rule program direction for implementing statewide policies and basin level actions (ORS 536.430).

(4) In formulating the Oregon Water Management Program, the Commission shall consider declarations of policy provided in ORS 536.310. These declarations mandate the consideration of existing rights, economic development, human consumptive needs, multiple uses, groundwater quality, protection of wildlife, recreation, watershed management, and other priorities outlined by the Legislature. These rules, and those contained in division 410, are

adopted as statements for inclusion in the integrated, coordinated state water resources policy required under ORS 536.300.

(5) The programs and plans of the Commission are to reflect all laws that relate to or affect the use and control of the water resources of the state (ORS 536.330). The Legislature, in ORS 536.360, directs every state agency and public corporation to conform to statements of state water resources policy as adopted by the Water Resources Commission.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 8-1990, f. & cert. ef. 6-25-90

#### 690-400-0010

##### Definitions

As used in the rules contained in divisions 400 and 410, unless the context requires otherwise:

(1) "Allocate" means to determine allowable new uses by classifying waters through basin program rules, withdrawing waters, reserving water for future economic development by order, or issuing water rights for waters of the state.

(2) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source (OAR 690-011-0010(2)).

(3) "Beneficial Use" means an instream public use or a use of water for the benefit of an appropriator for a purpose consistent with the laws and the economic and general welfare of the people of the state and includes, but is not limited to, domestic, fish life, industrial, irrigation, mining, municipal, pollution abatement, power development, recreation, stockwater and wildlife uses.

(4) "Capacity of the Resource" means the ability of a surface water or groundwater resource to sustain a balance of public and private uses without causing over-appropriation or otherwise significantly impairing the function or character of the resource.

(5) "Conservation" means eliminating waste or otherwise improving efficiency in the use of water while satisfying beneficial uses by modifying the technology or method for diverting, transporting, applying or recovering the water, by changing management of water use, or by implementing other measures.

(6) "Customary Quantity" means the rate or annual amount of appropriation or diversion of water ordinarily used by an appropriator within the terms of that appropriator's water right (OAR 690-008-0001(3)).

(7) "Emergencies" means situations, including but not limited to wildfire, flooding, and toxic spills, which pose an immediate and significant threat to life, health, property, or water or riparian resources.

(8) "Management Activity" means an activity in a riparian area which is planned and undertaken to extract, manipulate, or control natural resources or natural processes. Management activities include but are not limited to timber harvest, reforestation, road construction or reconstruction, spraying of herbicides or pesticides, grazing, mining, or cultivation.

(9) "Mitigation" means the reduction of adverse effects of a proposed project or activity by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environments;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing conditions of comparable substitute value.

(10) "Non-Structural" refers to processes that primarily utilize the natural watershed or natural aquifer storage, rather than structural means.

(11)(a) "Over-Appropriated" means a condition of water allocation in which:

(A) The quantity of surface water available during a specified period is not sufficient to meet the expected demands from all water rights at least 80 percent of the time during that period; or

(B) The appropriation of groundwater resources by all water rights exceeds the average annual recharge to a groundwater source over the period of record or results in the further depletion of already over-appropriated surface waters.

(b) The standards for determining over-appropriation described in paragraph (A) of this subsection shall apply to water availability determination for permit applications submitted after July 17, 1992.

(12) "Public Interest," as a standard for reviewing new uses of water, means a beneficial use which is consistent with state law and includes providing the greatest good for the people of the state based on current values, protecting water rights and conserving water resources for present and future generations.

(13) "Public Use" means an instream use of water that is available to the public at large. It includes but is not limited to:

(a) Recreation;

(b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement;

(d) Navigation;

(e) Scenic attraction; and

(f) Any other similar or related use.

(14) "Riparian Area" means the zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, bog, wet meadow, muskeg, or ephemeral, intermittent or perennial stream.

(15) "Storage" means the retention or impoundment of surface or groundwater by natural and/or artificial means for public or private uses and benefits.

(16) "Waste" means the continued use of more water than is needed to satisfy the specific beneficial uses for which a right was granted. The need for water shall be based on using the technology and management practices that provide for the efficient use of water considering:

(a) The economic feasibility of use of the technology and management practices by the water user;

(b) The environmental impacts of making modifications;

(c) The available proven technology;

(d) The time needed to make modifications;

(e) Local variations in soil type and weather; and

(f) Relevant water management plans and subbasin conservation plans.

(17) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

Stat. Auth.: ORS 536.025, 536.220 & 536.300 - 536.340

Stats. Implemented: ORS 536.025, 536.220 & 536.300 - 536.340

Hist.: WRD 22-1990, f. & cert. ef. 12-14-90; WRD 10-1992, f. & cert. ef. 7-31-92; WRD 3-1993, f. & cert. ef. 7-27-93

## DIVISION 410

### STATEWIDE WATER RESOURCE MANAGEMENT

#### 690-410-0010

##### Groundwater Management

(1) Policy — The groundwaters of the State of Oregon belong to the public. The reasonable control, protection, and use of groundwater is governed by the state on behalf of the public. Groundwater shall be managed to promote efficient and sustainable use for multiple purposes. Groundwater overdraft and contamination shall be prevented to avoid health hazards, environmental damage, and costly correction programs. Interference between groundwater uses and competing groundwater and surface water uses shall be prevented and/or controlled to protect the water resource and existing rights. The state shall pursue restoration of contaminated

groundwaters to protect present and future uses. Coordinated action by federal, state and local agencies, Indian tribes, and special districts, along with public education, shall be fostered to promote the effective management, protection and beneficial use of groundwater.

(2) Principles — Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Groundwater and surface water shall be managed conjunctively where to do so will protect water resources, existing water rights, and the public interest;

(b) Rules governing well construction, maintenance, and abandonment shall provide minimum standards for protection of the public welfare, safety, and health and the groundwaters of the state;

(c) Water well constructors, owners, and operators are responsible to construct, alter, maintain, operate, and abandon wells, and any holes through which the groundwater may be contaminated, in accordance with minimum statewide standards and shall undertake measures necessary to prevent waste, undue interference, contamination, or harm to the groundwater;

(d) Low-temperature geothermal fluids are part of the groundwater resources of the state and are subject to applicable laws and plans. These fluids are developed primarily for thermal characteristics and may require special management approaches to promote beneficial use, protect the environment and achieve other policy directives;

(e) Special-area designations (i.e., critical groundwater management areas, serious water management areas, basin plan restriction areas) may be warranted under conditions such as:

(A) Past, existing or probable excessive groundwater level declines or overdraft;

(B) Substantial interference between two or more wells or between groundwater and surface water uses (including public instream uses), or between groundwater appropriation and geothermal appropriation under ORS Chapter 522; and

(C) Groundwater contamination.

(f) Special-area designations shall be invoked when site-specific standards and regulations are no longer sufficient to solve or prevent the problem(s). The invoking of special-area designations shall be accompanied by recommended monitoring, reporting, or regulating activities to prevent, correct or control existing or potential declines, overdraft, interference or contamination. Existing groundwater appropriations, which are generally protected from infringement, may be controlled if any of the conditions listed in subsection (2)(e) of this rule are found to exist;

(g) Groundwater appropriation for artificial recharge is a beneficial use and can be approved if such action will not:

(A) Cause significant adverse effects on the quantity or quality of the supplying and receiving water sources; or

(B) Harm the public interest.

(h) Ongoing collection, analysis, and distribution of hydrogeologic information are necessary to manage groundwater for maximum beneficial use and to protect the public welfare, safety, and health;

(i) Public education programs, research, and demonstration projects are needed to increase citizen awareness of groundwater issues in this state; and

(j) Adequate and safe supplies of groundwater for human and livestock consumption are given priority over other uses during times of shortage.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 8-1990, f. & cert. ef. 6-25-90; WRC 6-1992(Temp), f. & cert. ef. 3-19-92; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-410-0020

##### Hydroelectric Power Development

(1) Policy — Development and production of hydroelectric power is a beneficial use. However, construction and operation of hydroelectric facilities have had significant adverse impacts on the state's natural resources. New hydroelectric development shall be permitted if it can be demonstrated that there will be no harm to the

state's anadromous salmon and steelhead fish resource and habitat, and no net loss of the state's other natural resources. Relicensing of existing facilities, which have adversely impacted, or may preclude the recovery of, anadromous fish resources shall include measures to restore, enhance or improve the anadromous fish resource. The relicensing of any facility shall include measures to prevent the net loss of other natural resources resulting from future operation of the facility.

(2) Principles — Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Hydroelectric power can provide valuable economic and social benefits when the natural resources of the state are protected from potential adverse impacts;

(b) Proposed or relicensed projects that can be developed consistent with Oregon's resource protection standards should be encouraged. New development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program as adopted by the Northwest Power Planning Council pursuant to PL 96-501;

(c) Mitigation shall be required for harm to Oregon's natural resources caused or likely to be caused by new permitted hydroelectric power development. These natural resources include but are not limited to anadromous fish, wildlife, water quality, scenic and aesthetic values, historic, cultural and archeological sites;

(d) On relicensing of existing facilities, measures for restoration, enhancement or improvement for past harms to Oregon's anadromous and steelhead resource shall be considered and implemented; and

(e) The state shall ensure that the laws of the state and the rules of the Commission concerning hydroelectric power development are satisfied at every stage of any hydroelectric power project. The state shall assert these laws and rules when participating in federal proceedings involving hydroelectric power. Participation in these proceedings by state agencies shall be fostered through the Strategic Water Management Group (SWMG).

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 8-1990, f. & cert. ef. 6-25-90

#### 690-410-0030

##### Instream Flow Protection

(1) Policy — Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state. The long term goal of this policy shall be to establish an instream water right on every stream, river and lake which can provide significant public benefits. Where streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented. These activities shall be consistent with the preservation of existing rights, established duties of water, and priority dates, and with the principle that all of the waters within the state belong to the public to be used beneficially without waste.

(2) Principles — Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) The Commission shall consider the needs of both instream and out-of-stream uses when reviewing future appropriations and developing streamflow restoration programs;

(b) Preservation of instream flows needed to support the purposes of State Scenic Waterways is a high priority for the state;

(c) Statewide and local programs should be implemented to restore and enhance streamflow and lake levels to provide public uses. Priority of restoration shall be established by the Water Resources Commission. The Commission shall consult with the Department of Fish and Wildlife, Environmental Quality, Parks and Recreation and the public, to identify those waterways where the greater public benefit could be obtained from additional streamflow restoration;

(d) The Department shall actively encourage the purchase, lease and gift of existing water rights for transfer to instream water rights, and the construction of environmentally sound multipurpose storage projects;

(e) Streamflow restoration programs shall be designed to encourage cooperation and coordination between instream water interests and out-of-stream water users; and

(f) Instream water rights are preferred, over the establishment of new minimum perennial stream-flows, to protect instream public uses.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 13-1990, f. & cert. ef. 8-8-90

#### 690-410-0040

##### Interstate Cooperation

(1) Policy — The state will seek to cooperate with other states in planning, developing, managing, and resolving conflicts involving surface or groundwater resources. Interstate cooperation shall be actively pursued to benefit the public interest, welfare, health, economy and safety of Oregon's citizens.

(2) Principles — Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Existing laws, agreements, water rights, individual state interests and resource conditions shall guide and limit interstate cooperation in order to protect the public interest;

(b) Cooperation is preferred, but not required, over unilateral action, litigation, arbitration, or adjudication;

(c) The meaning, intent and purpose of interstate cooperation as embodied in this policy also applies to federally recognized Indian Tribes, and their governments, located wholly or partially within this state.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 8-1990, f. & cert. ef. 6-25-90

#### 690-410-0050

##### Water Resources Protection on Public Riparian Lands

(1) Policy — The water-related functions of riparian areas on public lands shall be protected. On public lands, management activities in riparian areas shall be planned to maintain or improve riparian conditions that support water-related functions, consistent with the constitutional or statutory purposes of the public land.

(2) Principles:

(a) The policy in section (1) of this rule is established based on the following principles:

(A) Land and water management are integrally related;

(B) Proper land management can provide for many commodity uses for riparian areas while protecting water resources;

(C) The Legislature has made it a goal of the people of the state to enhance Oregon's waters through the management of riparian areas and associated uplands;

(D) The state's integrated, coordinated water policy needs to address water-related aspects of land management; and

(E) Implementation will be through the programs of public land management agencies having responsibility over riparian lands.

(b) To implement the policy in section (1) of this rule, public land management agencies shall be advised to consider and accommodate the following principles.

(A) Protect water-related riparian functions through public land management plans and practices. Water-related riparian area functions include any or all of the following as applicable to the specific water body segment: providing streambank stability; contributing coarse woody debris to dissipate flood energy and create aquatic habitat; maintaining water tables in relatively close proximity to the ground surface; carrying and storing flood flows; filtering runoff waters of sediment and potential pollutants; insulating streams from summer and winter temperature extremes; and supporting the ecosystem of the adjacent water resource;

(B) Build databases of riparian area condition, by watershed, sufficient to make the planning and management decisions to implement this policy. The condition of riparian areas shall be determined on the basis of the types of functions listed in paragraph (2)(a)(A) of this rule as known from the best scientific information available;

(C) Monitor the effectiveness of riparian area management and rehabilitation activities within a watershed in accordance with land management plans or programs;

(D) Evaluate the effects of proposed management or rehabilitation activities, taking into account known conditions or riparian areas and uplands within the whole watershed and, to the extent practical, the cumulative impacts of ongoing and proposed management activities;

(E) Mitigate activities in riparian areas which are undertaken in accordance with land management plans. In mitigating activities, actions which avoid and minimize impacts as described in the mitigation definition found in OAR 690-400-0010(9)(a) and (b) are preferred;

(F) Undertake mitigation when emergencies require action that damages riparian areas;

(G) Schedule, implement and monitor efforts to improve impaired water-related functions of riparian areas, considering the natural recovery potential of affected resources and the benefits expected from the recovery. Give preference to improvement strategies which take advantage of natural processes; and

(H) Enforce statutes, rules, and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state. (ORS 541.355(2)(b)(C)).

(3) Applicability:

(a) The policy and principles in sections (1) and (2) of this rule shall not apply to:

(A) Privately-owned lands, including those served by a public corporation, such as an irrigation district; or

(B) Facilities constructed for the conveyance of water, including but not limited to irrigation ditches or canals.

(b) Nothing in the policy and principles in sections (1) and (2) of this rule shall preclude operating or using reservoirs, ponds, wetlands created for treating water, or other water facilities in accordance with the purposes for which they were authorized, built or permitted.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 22-1990, f. & cert. ef. 12-14-90

## 690-410-0060

### Conservation and Efficient Water Use

(1) Policy — The elimination of waste and improving the efficiency of water use are high priorities. Use of water without waste is required by state statute and the prior appropriation doctrine. Programs to eliminate waste shall be implemented. In addition, improving the efficiency of water use through implementation of voluntary conservation measures can help restore instream flows and provide for future needs including public uses and continued economic development. Priority shall be given to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and of water quality problems.

(2) Principles — Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Water users shall construct, operate and maintain their water systems in a manner which prevents waste and minimizes harm to the waters of the state and injury to other water rights;

(b) Major water users and suppliers shall prepare water management plans under the guidance of schedules, criteria and procedures which shall be adopted by rule. The plans shall evaluate opportunities for conservation and include a quantification of losses of water from the systems, an evaluation of the effectiveness and costs of alternative measures to reduce losses, and an implementation schedule for all feasible measures. During the planning processes, consideration shall be given to the environmental impacts from and time needed for implementation of system modifications. The Department shall assist water users and suppliers in the preparation of the water management plans;

(c) The Commission shall encourage and facilitate the development of subbasin conservation plans throughout the state by local advisory committees. Subbasin conservation plans shall

include measures to assist water users in eliminating waste, other methods to improve water use efficiency in the subbasin, funding proposals to implement the measures and procedures to protect water dedicated to instream uses from further diversion. Priority shall be given to development of subbasin conservation plans in serious water management problem areas, critical groundwater areas and other areas where water supplies are not sufficient to meet demands. The Commission shall adopt rules to guide formation of broad-based committees, the preparation of subbasin plans, and the submittal of plans to the Commission for approval;

(d) When wasteful practices are identified in water management plans and subbasin conservation plans, the Commission shall adopt rules prescribing statewide and subbasin standards and practices that ensure beneficial use without waste. The rules shall recognize that conditions vary for different parts of the state and for different uses;

(e) A conservation element shall be developed and included in each basin plan when a major plan review and update is performed;

(f) The collection, analysis and distribution of information on water use and availability are necessary to ensure that the waters of the state are managed for maximum beneficial use and to protect the public welfare, safety and health. The ability to measure flows at authorized points of diversion is essential to the management of water and the elimination of waste;

(g) The Commission shall support public education programs, research and demonstration projects to increase citizen and water user awareness of water conservation issues and measures in the state; and

(h) The Commission shall support programs to provide economic assistance to water users to implement desired conservation measures, particularly where the benefits of implementing the measures are high.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536

Hist.: WRD 22-1990, f. & cert. ef. 12-14-90

## 690-410-0070

### Water Allocation

(1) Policy. The waters of the state shall be allocated within the capacity of the resource and consistent with the principle that water belongs to the public to be used beneficially without waste. Water shall be allocated among a broad range of beneficial uses to provide environmental, economic, and social benefits. The waters of the state shall be protected from over-appropriation by new out-of-stream uses of surface water or new uses of groundwater.

(2) Principles. Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) The surface waters of the state shall be allocated to new out-of-stream uses only during months or half-month periods when the allocations will not contribute to over-appropriation. However, when a stream is over-appropriated, some additional uses may be allowed where public interest in those uses is high and uses are conditioned to protect instream values;

(b) The groundwater of the state shall be allocated to new beneficial uses when the allocations will not contribute to the over-appropriation of groundwater sources. Restrictions on allocations of water for exempt groundwater uses may be considered when a groundwater source is over-appropriated;

(c) New allocations of water for the purpose of filling storage facilities may be allowed notwithstanding subsection (a) of this section. Protection may be afforded to all water rights and instream uses by establishing storage filling seasons in basin rules, by considering the need for minimum pass-through flows on water rights, or establishing by rule other conditions consistent with the state policy on water storage as a prerequisite for allocation. In setting a storage season, consideration shall be given to avoiding periods of the year when flows are low and seldom exceed the needs of water rights and when additional flows are needed to support public uses;

(d) A determination that a stream is over-appropriated does not affect the allocation of legally stored water from existing or future facilities;

(e) When surface water or groundwater is known to be contaminated, it may be allocated to new uses only if the Commission determines, after consultation with the Department of Environmental Quality (DEQ) or the Oregon State Health Division (OSHD), that the use does not pose a significant hazard to human health or the environment. Groundwater allocation may be restricted if the Department determines that use would likely result in the spread of existing groundwater contamination;

(f) Water shall not be allocated if the proposed use would injure the exercise of existing water rights or permits;

(g) The Scenic Waterways Act declares that the highest and best uses of the waters within State Scenic Waterways are fish, wildlife, and recreation. Allocations to new out-of-stream uses in State Scenic Waterways shall be consistent with the Scenic Waterways Act. Allocations to new out-of-stream uses in and above State Scenic Waterways shall not interfere with the maintenance of flow levels necessary for the purposes of Scenic Waterways;

(h) When instream flow needs are not protected by instream water rights, new out-of-stream allocations may be limited or conditioned to protect public uses;

(i) When allocating water for new uses, the Commission shall assure compliance with the Statewide Planning Goals and compatibility with local comprehensive plans in accordance with the Department's certified State Agency Coordination Program;

(j) When classifying allowable new uses of water or establishing reservations, the Commission shall seek consistency with management plans for public lands and resources, and with state, regional, and local resource management and economic plans;

(k) Conservation, storage development, water right transfers, and leases are means to maximize beneficial uses and to meet the changing needs of society and shall be encouraged and facilitated;

(l) Future allocation of water for out-of-basin diversions shall be allowed only if consistent with this policy and the conditions specified in existing statute and rule.

Stat. Auth.: ORS 536.025, 536.220 & 536.300

Stats. Implemented: ORS 536.025, 536.220 & 536.300

Hist.: WRD 10-1992, f. & cert. ef. 7-31-92

#### 690-410-0080 Water Storage

(1) Policy. Water storage options are an integral part of Oregon's strategy to enhance the public and private benefits derived from the instream and out-of-stream uses of the state's water resources. Storage can provide increased water management flexibility and control. Storage can be enhanced through means ranging from natural processes to engineered structures. The state shall facilitate and support project planning and development. The state shall actively pursue funding when storage is determined to be a preferred alternative to meet the water needs of instream and out-of-stream beneficial uses.

(2) Principles. Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Water resource planning in the state shall consider storage along with other available alternatives to meet water management goals;

(b) When determining whether storage is a preferred alternative, due regard shall be given to public interest, needs and priorities, and legal, social, economic and environmental factors;

(c) The state shall encourage high priority storage projects and facilities through the reservation of unappropriated water for future economic development;

(d) Storage shall be planned and implemented in a manner to protect and enhance the public health, safety and welfare, and the state's natural resources;

(e) The state shall encourage enhancement of watershed storage capacity through natural processes using non-structural means;

(f) The state shall promote the maximization of benefits derived from storage facilities by evaluating existing and potential storage capacities, authorized uses and operational practices;

(g) Criteria for evaluating impacts of storage projects shall include the following factors:

(A) Purpose (e.g., type, location and extent of use, benefits);  
(B) Legal (e.g., state, federal and local legal requirements);  
(C) Social (e.g., recreational, public support, cultural, historic);

(D) Technical (e.g., siting issues, public safety and structural integrity);

(E) Financial (e.g., project financing including site costs, cost sharing and repayment, and operating, maintenance and rehabilitation costs);

(F) Economic (e.g., project benefit/cost analysis);

(G) Land use (e.g., ownership, comprehensive plans, coordination);

(H) Environmental (e.g., impacts on streamflows, fisheries, wildlife, wetlands, habitat, biological diversity, water quality and opportunities for mitigation);

(I) Other (e.g., direct and indirect impacts).

(h) The state shall encourage and give high priority to storage that optimizes instream and out-of-stream public benefits and beneficial uses. Multi-purpose storage is to be preferred over single-purpose storage and upstream storage is to be preferred over downstream storage;

(i) The state shall cooperate with federal agencies, local governments and private entities in identifying and protecting high priority storage sites for development of projects. The state shall promote appropriate land use protection for high priority storage sites;

(j) The state shall support and participate in programs to finance planning and development of high priority storage;

(k) The Water Resources Department shall coordinate interagency recommendations to sponsors, developers or operators of high priority storage projects.

Stat. Auth.: ORS 536.025, 536.220 & 536.300

Stats. Implemented: ORS 536.025, 536.220 & 536.300

Hist.: WRD 10-1992, f. & cert. ef. 7-31-92

### DIVISION 500

#### BASIN PROGRAMS

#### 690-500-0010

##### Basin Programs Preamble

(1) The Water Resources Commission is responsible for the establishment of policy and procedures for the use and control of the state's water resources. In executing this responsibility, the Commission develops, adopts and periodically modifies programs for the state's major drainage basins.

(2) Basin programs are administrative rules which establish water management policies and objectives and which govern the appropriation and use of the surface and ground water within each of the respective basins. The rules classify surface and ground waters according to the uses which are permitted, may establish preferences among uses, may withdraw surface and groundwaters from further appropriation, may reserve waters for specified future uses, and may establish minimum perennial streamflows. These rules are in addition to rules with statewide applicability which govern the allocation and use of water.

(3) The Commission has adopted programs for the following basins:

- (a) North Coast Basin (division 501);
- (b) Willamette Basin (division 502);
- (c) Sandy Basin (division 503);
- (d) Hood Basin (division 504);
- (e) Deschutes Basin (division 505);
- (f) John Day Basin (division 506);
- (g) Umatilla Basin (division 507);
- (h) Grand Ronde Basin (division 508);
- (i) Powder Basin (division 509);
- (j) Malheur — Owyhee Basins (division 510);
- (k) Goose and Summer Lakes Basin (division 513);
- (l) Rogue Basin (division 515);
- (m) Umpqua Basin (division 516);
- (n) South Coast Basin (division 517);

- (o) Mid Coast Basin (division 518);
- (p) Columbia River (division 519);
- (q) Middle Snake River Basin (division 520).

(4) Although the Commission has not adopted a comprehensive basin program for the waters of the Malheur Lake Basin, minimum perennial stream-flows have been adopted for specified streams in the basin. These minimum perennial streamflows are in division 512. Allocation and use of the waters of the basin also are subject to administrative rules with statewide applicability.

(5) The Commission has not adopted a comprehensive basin program for the waters of the Klamath Basin. Allocation and use of the waters of the basin are subject to administrative rules with statewide applicability and to the provisions of the Klamath River Basin Compact (ORS 542.620).

Stat. Auth.: ORS 536.027 & 536.300

Stats. Implemented:

Hist.: WRD 16-1988, f. & cert. ef. 9-23-88, Renumbered from 690-080-0000

## 690-500-0020

### Definitions

Unless otherwise defined in a basin program, the following definitions apply in OAR 690, divisions 501, 504–512, and 515–520 to any classification adopted prior to January 1, 1993:

(1) “Domestic Use” means the use of water for domestic water use, group domestic water use, commercial water use of less than 5,000 gallons per day, or human consumption as defined in OAR 690-011-0010.

(2) “Fish Culture or Fish Life Use” means the use of water for aquatic life water uses as defined in OAR 690-011-0010 and public uses related to fish culture or fish life water uses as defined in OAR 690-077-0010.

(3) “Industrial Use” means the use of water for commercial water use or industrial water use as defined in OAR 690-011-0010.

(4) “Irrigation Use” means the use of water for agricultural water use, cranberry use, irrigation, nursery operations use, or temperature control as defined in OAR 690-011-0010.

(5) “Livestock Use” means the use of water for stockwater use as defined in OAR 690-011-0010.

(6) “Mining Use” means the use of water for mining water use or placer mining as defined in OAR 690-011-0010.

(7) “Municipal Use” means the use of water for commercial water use, municipal water uses, or quasi-municipal water uses as defined in OAR 690-011-0010.

(8) “Pollution Abatement Use” means the use of water for pollution abatement or prevention water use as defined in OAR 690-011-0010 and public uses related to pollution abatement as defined in OAR 690-077-0010.

(9) “Power or Power Development Use” means the use of water for power development water use as defined in OAR 690-011-0010.

(10) “Recreation Use” means the use of water for recreation water use as defined in OAR 690-011-0010 and public uses related to recreation uses as defined in OAR 690-077-0010.

(11) “Wildlife Use” means the use of water for wildlife use as defined in OAR 690-011-0010 and public uses related to wildlife uses as defined in OAR 690-077-0010.

Stat. Auth.: ORS 536.220 - 536.350

Stats. Implemented:

Hist.: WRD 5-1993, f. & cert. ef. 10-7-93

## DIVISION 501

### NORTH COAST BASIN PROGRAM

**NOTE:** The North Coast Basin is delineated on the agency Map 1.6, dated 1972.

## 690-501-0005

### Classifications

(1) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the North Coast Basin are classified for domestic, livestock, municipal, irrigation, power development,

industrial, mining, recreation, wildlife, and fish life, with the following exceptions:

(a) The waters of the natural lakes of the North Coast Basin are classified for utilization of water for domestic, livestock, power development not to exceed 7-1/2 theoretical horsepower, and in-lake uses for recreation, wildlife, and fish life purposes;

(b) The attainment of the highest and best use of the waters of Clatskanie and Klaskanine Rivers and their tributaries, Lewis and Clark River and Tillasqua Creek (Big Creek), has been determined through legislative withdrawal by ORS 538.251 to be for the protection of fish life. ORS 538.260 states that 538.251 shall not affect any existing rights or prevent appropriation for domestic, stock, municipal, fish culture, esthetic, recreational, or public park purposes;

(c) The waters of the Columbia River creating a tidal influence in the mouths of the tributaries to the Columbia River within the Columbia Subbasin are classified for utilization of water for domestic, livestock, municipal, irrigation, industrial, recreation, wildlife, and fish life purposes;

(d) The waters of all streams tributary to Sand Lake are classified only for utilization for domestic, livestock, use in dairies, irrigation of lawns and noncommercial gardens not exceeding one-half acre in area, power development and instream use for recreation, fish life and wildlife purposes;

(e) The waters of Jetty Creek and its tributaries are classified for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife and fish life purposes. In addition, up to one cubic foot per second of the waters of Jetty Creek is classified for municipal use;

(f) The waters of Heitmiller Creek are classified for utilization of water for human consumption, livestock consumption, and instream uses for recreation, wildlife and fish life purposes;

(g) The waters of the following streams are classified for utilization of water for human consumption, livestock consumption, power development and instream uses for recreation, wildlife, and fish life purposes:

(A) Tillamook Subbasin:

- (i) All streams tributary to Daley Lake;
- (ii) All streams tributary to Netarts Bay;
- (iii) Coleman Creek and its tributaries;
- (iv) Vaughn Creek and its tributaries;
- (v) Douhty Creek and its tributaries;
- (vi) Patterson Creek and its tributaries;
- (vii) Larson Creek and its tributaries;
- (viii) All streams tributary to Lake Lytle.

(B) Nehalem Subbasin:

- (i) Salmonberry River and its tributaries;
- (ii) Rock Creek and its tributaries.

(C) Columbia Subbasin:

- (i) Short Sand Creek and its tributaries;
- (ii) Arch Cape Creek and its tributaries;
- (iii) Cullaby Creek and its tributaries;
- (iv) John Day River and its tributaries;
- (v) Gnat Creek and its tributaries;

(vi) All tributaries to Westport Slough, except Plympton Creek. In addition to uses in subsection (g) of this section, permits may also be used to collect and divert polluted industrial site runoff, before entering OK Creek, for pollution abatement purposes. This use shall be allowed only on the condition that all applicable requirements of other agencies are met;

(vii) Tide Creek and its tributaries, except that water from the main stem Tide Creek from the falls near river mile 3 to the mouth may be used for gravel washing provided that such use shall not diminish the flow in Tide Creek below 2.5 cfs;

(viii) Goble Creek and its tributaries, except that surface water legally stored and released from storage may be used for any beneficial purpose. Diversion for storage shall be limited to the period December 1 to February 28.

(2) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed,

## Chapter 690 Water Resources Department

and operated in conformity with the applicable provisions of ORS 536.310; and any such structures or works, which do not give cognizance to the multiple-purpose concept, are further declared to be prejudicial to the public interest.

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

### 690-501-0010

#### Minimum Perennial Streamflows

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for human consumption, livestock consumption, and waters legally released from storage shall be granted for the waters of the following streams and their tributaries for flows below the amounts specified in Table 1.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

### 690-501-0030

#### Out-of-Basin Appropriations

To support present and proposed North Coast Basin water resource development, no out-of-basin appropriation of the waters of the North Coast Basin shall be granted without the prior approval of, and following a public hearing by, the Water Resources Commission.

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010; WRD 3-2012, f. & cert. ef. 12-12-12

### 690-501-0040

#### Water Quality

Rights to use of water grant by any state agency in accordance with this water use program shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536.300, 536.340 & 537

Stats. Implemented:

Hist.: WRB 21, f. 11-8-62; WRB 27, f. 5-11-64; WRB 51, f. 5-14-73; WRD 5-1978, f. & cert. ef. 6-8-78; WRD 5-1981, f. & cert. ef. 6-19-81; WRD 5-1989, f. & cert. ef. 9-14-89; WRD 3-1991, f. & cert. ef. 3-14-91, Renumbered from 690-080-0010

## DIVISION 502

### WILLAMETTE BASIN PROGRAM

### 690-502-0010

#### Definitions

As used in this rule, unless the context requires otherwise:

(1) The Willamette Basin is as shown on Water Resources Department Map No. 2.6.

(2) "Agricultural Use" means non-irrigation agricultural use of water such as temperature control, chemigation, mineral leaching, dairy barn washing, greenhouse use, harvest use and other related uses.

(3) "Classification" or "Classified" means the allowed and preferred beneficial use(s) of a given surface or groundwater source for which future uses of water shall be permitted. Except as otherwise provided by the Commission, the Department shall not issue permits to appropriate, and no use shall be initiated of any of the surface or groundwaters of the Willamette Basin for any uses except those for which the waters are classified. A classification does not affect legal uses existing on the date of adoption or alteration of the classification.

(4) "Commission" means the Water Resources Commission.

(5) "Commercial Use" means use of water at a place where commodities or services are bought or sold or provided by an entity open to the public, such as a gas station, restaurant, motel, etc.

(6) "Department" means the Water Resources Department.

(7) "Director" means the Director of the Water Resources Department.

(8) "Domestic Use" includes domestic use, domestic use expanded and group domestic, as defined in OAR 690-011.

(9) "Fish Life Use" includes use of water to support natural or artificial propagation of fish and other aquatic life.

(10) "Groundwater Recharge" means the intentional addition of water to a groundwater reservoir where consistent with OAR 690-011.

(11) "Industrial Use" includes the use of water in the manufacture of a product and maintenance of industrial sites, facilities and buildings, and includes other related miscellaneous uses.

(12) "Irrigation Use" means the application of water to crops or plants by artificial means to promote growth or nourish plants.

(13) "Livestock Use" means the use of groundwater or diversion of water from the natural water course or storage of water for consumption by livestock or wildlife.

(14) "Mining Use" means the use of water to extract metals or minerals including placer mining as defined in OAR 690-011 and leaching operations.

(15) "Municipal Use" means the delivery and use of water through the water service system of an incorporated municipality or a nonprofit corporation and includes quasi-municipal uses as defined in OAR 690-011.

(16) "Pollution Abatement" means the use of water to remove or dilute pollutants or achieve water quality standards.

(17) "Power" means the use of water for electrical or mechanical power or for operation of a hydraulic ram where such uses are consistent with OAR 690-051.

(18) "Public Instream Use" means the public use of water where there is no diversion or other means of physical control over the water. Public instream uses include, but are not limited to, recreation, conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, wetlands other than those referred to in section (21) of this rule and any other ecological values, pollution abatement or navigation.

(19) "Recreation Use" means the use of natural or stored water to provide recreation uses as defined in OAR 690-011.

(20) "Storage Season" means the time period during which reservoirs may be filled.

(21) "Wetland Enhancement" means the diversion or control of surface or groundwater for the purpose of mitigating, constructing, enhancing and/or maintaining wetlands.

(22) "Wildlife Use" includes use of water by or for sustaining wild animal species and their habitats.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023

## 690-502-0020

### Policies

Water Resources Commission and Department activities which affect the waters of the Willamette River Basin shall be compatible with the policies established in this rule. Surface water allocation, groundwater management, municipal and domestic water systems, reservoir coordination, conservation and land use coordination are important issues in the Willamette Basin. The Commission's policies on these issues are as follows:

(1) Surface water allocation:

(a) Protect undeveloped streams with instream values for public instream uses;

(b) Seek a balance in the future appropriation of water between instream and total out-of-stream uses on those streams already significantly developed for out-of-stream purposes;

(c) Preserve opportunities for future economic development by reserving water for future use;

(d) Minimize the likelihood of over-appropriation due to new uses;

(e) Manage stored waters which have been released for instream purposes to meet flow needs reflected in established instream water rights;

(f) Allow irrigation use for the longest period possible between March 1 and October 31 provided sufficient water is available.

(2) Groundwater management:

(a) Prevent excessive water level declines, restore aquifer stability in areas of decline and preserve with limited storage capacity for designated uses;

(b) Identify low-yield aquifers and inform local agencies of probable groundwater capacity limitations for some uses;

(c) Ensure safe municipal and domestic groundwater supplies by participating with the Department of Environmental Quality and the State Health Division in a formal monitoring program to document changes in quality and provide data for aquifer management;

(d) Minimize impairment of surface water uses resulting from hydraulic connection between groundwater and surface water;

(e) Encourage the development of programs for making groundwater resource information available to the public and local agencies.

(3) Municipal and domestic water systems: Support coordinated water service planning and consolidation by water purveyors to preserve and protect adequate and safe drinking water supplies for human consumption in the Willamette Basin.

(4) Reservoir coordination:

(a) Promote funding to study and implement the Willamette River Basin Review Study reconnaissance phase recommendations with significant potential to assist the state in meeting its resource management objectives;

(b) Formalize reservoir operation guidelines with the Corps of Engineers to meet state water management objectives and enter into a memorandum of understanding or other agreement that defines the reservoir coordination process and water management objectives.

(5) Water conservation:

(a) Implement programs to eliminate wasteful water use;

(b) Improve the efficiency of water use through implementation of voluntary conservation measures;

(c) Give priority to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and in water quality problem areas as listed by the Department of Environmental Quality.

(6) Land use coordination: Promote effective state and local water resource planning and protection and efficient water use through coordination with land use programs.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023

## 690-502-0030

### Objectives

The objectives of the Commission in managing the waters of Willamette Basin are to:

(1) Retain minimum perennial streamflows as provided in OAR 690-502-0050 to 690-502-0150 until the process for conversion to instream water rights is completed.

(2) Promote public instream uses and values in headwaters streams exhibiting high instream values.

(3) Meet public instream needs for fish life, wildlife, recreation and pollution abatement.

(4) Protect instream values in state scenic waterways as described in ORS 390.835 and support management of national wild and scenic rivers.

(5) Minimize the potential of future permits to over-appropriate water.

(6) Consider reservations for future uses within the context of planned and reasonably expected mixes of land uses and economic development in the basin or subbasin(s) consistent with the public interest. Establish reservations that provide for appropriate mix(es) of future uses as established by local or regional plans; e.g., comprehensive plans, water supply plans, economic development plans, urban reserves, and other relevant resource development and protection plans. Generally, design, condition or subordinate reservations such that water can be allocated to meet future municipal

and irrigation needs without disadvantaging either use in a way that is consistent with the public interest.

(7) Coordinate with the Department of Environmental Quality in efforts to meet total maximum daily loads in designated drainages by limiting new surface water appropriations during the low-flow season and placing conditions on permits requiring efficiency measures. These drainages include, but are not limited to, the Coast Fork of the Willamette, Tualatin, Yamhill, Pudding, Rickreall Creek and Columbia Slough.

(8) Increase basinwide water use efficiency.

(9) Coordinate with the Northwest Power Planning Council in meeting the objectives of the "protected areas" designation when evaluating hydroelectric permit applications.

(10) Protect and encourage use of water which sustains economic development.

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0040

##### General Provisions

(1) Water availability: The classifications in OAR 690-502-0050 through 690-502-0150 limit access to natural streamflow during periods when remaining available supplies are insufficient to meet existing water rights and public instream uses 80 percent of the time. When improved water availability data show that there is insufficient natural flow to support a classification, any permit issued shall further restrict or condition the time of use to when water is available.

(2) Limited licenses: The uses of surface water for which limited licenses may be issued are prescribed in ORS 537.143(1). Applications for limited licenses may be accepted in the Willamette Basin unless expressly prohibited by statute, order of the State Engineer or the Commission, or by the classifications in OAR 690-502-0050 through 690-502-0150.

(3) Surface water applications: Applications to use surface water filed after April 18, 1991, shall be processed under the classifications established in OAR 690-502-0050 through 690-502-0150. Applications filed on or before April 18, 1991, shall be processed under the classification in effect at the time of the application.

(4) Storage:

(a) Unless expressly prohibited by statute, order or administrative rule, the surface waters of the Willamette River and tributaries are classified for storage from November 1 to June 30. A storage permit may be issued for a shorter time period and/or conditioned based on water availability or compatibility with other uses and needs;

(b) Secondary applications to maintain reservoir levels throughout the year may be processed if the proposed use is consistent with the classification;

(c) Water legally stored may be released or used at any time for any beneficial purpose, such as domestic, livestock, irrigation (during the irrigation season as specified in section (6) of this rule), agricultural, commercial, municipal, industrial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement, public instream uses and uses allowed under a limited license.

(5) Groundwater recharge: Use of surface water to recharge groundwater shall be subject to the same limitations and season as specified in section (4) of this rule. Use of groundwater from one aquifer to recharge another shall be allowed only if consistent with

the classification of the providing aquifer as specified in OAR 690-502-0160.

(6) Expanded irrigation season: Unless expressly limited by statute, court decree, order, administrative rule (including classification, except for use of stored water), water availability or any other permit condition, an irrigation season of March 1 to October 31 shall apply to future permits for primary and supplemental irrigation.

(7) Conservation: The Department shall require that special conservation and water use efficiency conditions be employed when permitting the use of water from the Columbia River Basalt Group, low-yield aquifers and water quality limited streams.

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0050

##### Main Stem Willamette River Subbasin

The Main Stem Willamette River Subbasin includes the Willamette River from Willamette Falls near river mile 27 in Oregon City to the confluence of the Middle Fork and Coast Fork Willamette south of Springfield. Stream systems which are tributary to the Willamette River main stem above Willamette Falls are included in the subbasin, except for the major tributary subbasins specified in OAR 690-502-0060 through 690-502-0150:

(1) Surface water classification:

(a) The following streams and tributaries are withdrawn from further appropriation except storage:

(A) Second Periwinkle Creek (also known as Cox Creek and Ash Creek) and tributaries near Willamette River mile 118 at Albany are withdrawn from further appropriation by order of the State Engineer dated November 20, 1950;

(B) Croisan Creek and tributaries near Willamette River mile 84 at Salem are withdrawn from further appropriation by order of the State Engineer dated August 4, 1950;

(C) Pringle Creek and tributaries near Willamette River mile 84 at Salem are withdrawn from further appropriation by order of the State Engineer dated August 4, 1950;

(D) Mill Creek and tributaries near Willamette River mile 84 at Salem are withdrawn from further appropriation by order of the State Engineer dated September 22, 1950;

(E) An unnamed stream and tributaries flowing through Section 24, Township 6 South, Range 4 West, Willamette Meridian, a tributary to Spring Valley Creek in Section 19, Township 6 South, Range 3 West, Willamette Meridian, are withdrawn from further appropriation by order of the State Engineer dated August 18, 1950;

(F) Corral Creek and tributaries near Willamette River mile 40 are withdrawn from further appropriation by order of the State Engineer dated August 7, 1951;

(G) Hatlin Creek and tributaries tributary to Potter Creek near Oregon City are withdrawn from further appropriation by order of the State Engineer dated September 22, 1950.

(b) The Willamette River main stem downstream from the west line of Donation Land Claim 55 in T11S, R4W, upstream from the mouth of the Calapooia River near Albany, except as otherwise specified in subsection (a) of this section, is classified for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses;

(c) The Willamette River main stem upstream from the west line of Donation Land Claim 55 in T11S, R4W, upstream from the mouth of the Calapooia River near Albany, to the confluence of the

McKenzie and Willamette Rivers, except as otherwise specified in subsection (a) of this section, is classified for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from September 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through August 31;

(d) The Willamette River main stem above the confluence with the McKenzie River to the confluence of the Middle and Coast Forks of the Willamette River, except as otherwise specified in subsection (a) of this section, is classified for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from November 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through October 31;

(e) Except as specified in subsection (1)(a) of this rule, tributaries of the Main Stem Willamette River Subbasin are classified for domestic, livestock, municipal, industrial, irrigation, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from September 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through August 31.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in **Table 1**:

(a) The Willamette River or its tributaries above USGS Gage 14174000 (SW 1/4 Section 6, Township 11 South, Range 3 West) at Albany, Oregon, for natural flows of the Willamette River below 1,750 cubic feet per second plus waters released from storage of up to 3,140 cubic feet per second measured at the aforementioned gage;

(b) The Willamette River or its tributaries above USGS Gage 14191000 (SW 1/4 Section 22, Township 7 South, Range 3 West) at Salem, Oregon, for natural flows of the Willamette River below 1,300 cubic feet per second plus waters released from storage of up to 4,700 cubic feet per second measured at the aforementioned gage;

(c) The Willamette River or its tributaries above USGS Gage 14198000 (SE 1/4 Section 23, Township 3 South, Range 1 West) at Wilsonville, Oregon, for natural flows of the Willamette River below 1,250 cubic feet per second plus waters released from storage of up to 4,700 cubic feet per second measured at the aforementioned gage;

(d) The Willamette River or its tributaries above Willamette Falls at Oregon City for natural flows of the Willamette River below 1,500 cubic feet per second plus waters released from storage of up to 4,700 cubic feet per second measured at or near said Willamette Falls and maintained to the mouth.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85; WRD 3-1986(Temp), f. & cert. ef. 3-11-86; WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023

## 690-502-0060

### Middle Fork Willamette River Subbasin

The Middle Fork Willamette River Subbasin includes the Middle Fork Willamette River and tributaries upstream from its confluence with the Coast Fork Willamette River south of Springfield:

(1) Surface water classification:

(a) The North Fork of the Middle Fork Willamette River, from a point one mile upstream from the railroad bridge near Westfir to its headwaters, and Waldo Lake, are designated state scenic waterways. These waters and tributaries are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(b) Except as otherwise specified in subsection (c) of this section, the Middle Fork of the Willamette River and tributaries below Dexter Dam are classified for domestic, livestock, municipal, irrigation, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from September 1 through January 31, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from February 1 through August 31;

(c) The following streams and tributaries are classified for domestic commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only:

(A) Fall Creek tributary to the Middle Fork of the Willamette River;

(B) Lost Creek tributary to the Middle Fork of the Willamette River.

(d) The Middle Fork of the Willamette River and tributaries above Dexter dam are classified year-round for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only;

(e) The waters of the natural lakes of the Middle Fork Willamette River subbasin above 3,000 feet elevation are classified only for domestic, excluding irrigation of lawn and noncommercial garden, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses. Storage shall not be allowed on these lakes.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in **Table 1**:

(a) The Middle Fork Willamette or its tributaries above the Willamette Middle Fork-North Fork of the Willamette Middle Fork confluence for natural flows of the Willamette Middle Fork below 285 cubic feet per second, plus waters released from storage of up to 690 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(b) Fall Creek or its tributaries above the Fall Creek-Willamette Middle Fork confluence for natural flows of Fall Creek below 40 cubic feet per second, plus waters released from storage of up to 470 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(c) The Willamette Middle Fork or its tributaries above the Willamette Middle Fork-Willamette Coast Fork confluence for natural flows of the Willamette Middle Fork below 640 cubic feet per second, plus waters released from storage of up to 1,475 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170,

537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin

Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0070

##### Coast Fork Willamette River Subbasin

The Coast Fork Willamette River Subbasin includes the Coast Fork Willamette River and tributaries above the confluence with the Middle Fork Willamette River south of Springfield:

(1) Surface water classification:

(a) The Coast Fork Willamette River and tributaries below Cottage Grove Dam to the mouth and the Row River below Dorena Dam to the mouth are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from December 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through November 30;

(b) The Coast Fork of the Willamette River and tributaries above Cottage Grove Dam and the Row River and tributaries above Dorena Dam are classified for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in Table 1:

(a) The Willamette Coast Fork or its tributaries above the Willamette Coast Fork-Row River confluence for natural flows of the Willamette Coast Fork below 15 cubic feet per second, plus waters released from storage of up to 100 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(b) Row River or its tributaries above the Row River-Willamette Coast Fork confluence for natural flows of the Row River below 40 cubic feet per second, plus waters released from storage of up to 150 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(c) The Willamette Coast Fork or its tributaries above the Willamette Coast Fork-Willamette Middle Fork confluence for natural flows of the Willamette Coast Fork below 40 cubic feet per second, plus waters released from storage or up to 250 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0080

##### McKenzie River Subbasin

The McKenzie River Subbasin includes the McKenzie River and tributaries above confluence with the Willamette River:

(1) Surface water classification:

(a) The McKenzie River from Clear Lake to Carmen Reservoir, from Tamolitch Falls to Trail Bridge Reservoir and from Trail

Bridge Dam to Paradise Campground is designated a state scenic waterway. The McKenzie River and tributaries above Paradise Campground near river mile 73 (Sec 9, T16S, R6E) are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(b) The South Fork McKenzie River from the Three Sisters Wilderness boundary downstream to Cougar Reservoir and from Cougar Dam downstream to the confluence with the McKenzie River is designated a state scenic waterway. The South Fork McKenzie River and its tributaries are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(c) Blue River upstream from its confluence with the McKenzie River and tributaries are classified year-round only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(d) Except as specified in subsections (a), (b), and (c) of this section, all tributaries to the McKenzie River are classified for domestic, livestock, municipal, industrial, irrigation, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from October 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through September 30;

(e) Except as specified in subsection (a) of this section, the McKenzie River main stem downstream from Paradise Campground near river mile 73 (Sec 9, T16S, R6E) is classified only for domestic, livestock, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement, off-channel power development in conjunction with storage and public instream uses;

(f) The waters of the natural lakes of the McKenzie River subbasin above 3,000 feet elevation are classified only for domestic, excluding irrigation of lawn and noncommercial garden, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses. Storage shall not be allowed on these lakes.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in Table 1:

(a) The South Fork McKenzie River or its tributaries above the South Fork McKenzie River-McKenzie River confluence for natural flows of the South Fork McKenzie River below 200 cubic feet per second, plus waters released from storage of up to 230 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(b) Blue River or its tributaries above the Blue River-McKenzie River confluence for natural flows of Blue River below 30 cubic feet per second, plus waters released from storage of up to 350 cubic feet per second measured at a point between said confluence and 1.0 miles above said confluence;

(c) The McKenzie River or its tributaries above USGS-State Engineer Gage 14162500 (NE 1/4 Section 5, Township 17 South, Range 3 East) near Vida, Oregon, for natural flows of the McKenzie River below 1,400 cubic feet per second plus waters released from storage of up to 580 cubic feet per second measured at the aforementioned gage;

(d) The McKenzie River or its tributaries above the intersection of the McKenzie River and Interstate Highway 5 for natural flows of the McKenzie River below 1,025 cubic feet per second, plus waters released from storage of up to 700 cubic feet per second, measured at the intersection of the McKenzie River and Interstate Highway 5.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0090

##### Long Tom River Subbasin

The Long Tom River Subbasin includes the Long Tom River and tributaries above its confluence with the Willamette River north of Monroe:

(1) Surface water classification:

(a) Coyote Creek and tributaries are withdrawn from further appropriation year-round except for storage from October 1 to June 1 by order of the State Engineer dated June 30, 1960;

(b) Except as otherwise provided in subsection (a) of this section, the Long Tom River and tributaries are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock, wetland enhancement and public instream uses.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in **Table 1**.

(3) For the purpose of obtaining the highest and best use of waters released from storage, no appropriations of water except for domestic and livestock uses shall be made or granted by any state agency or public corporation of the state from the Long Tom River above USGS Gage 14170000 (NE 1/4 Section 33, Township 14 South, Range 5 West) at Monroe, Oregon, for waters released from storage of up to 370 cubic feet per second measured at the aforementioned gage (**Table 1**).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0100

##### Coast Range Subbasin

The Coast Range Subbasin includes the drainage basins of the Marys and Luckiamute Rivers, Rickreall Creek and Yamhill River. Surface water classification:

(1) Marys River Drainage:

(a) The Marys River main stem is classified for domestic, livestock, irrigation, agricultural, commercial, municipal, industrial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses year-round;

(b) The tributaries of the Marys River are classified for domestic, livestock, irrigation, municipal, agricultural, commercial, industrial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through May 31 and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only from June 1 through October 31;

(2) Luckiamute River Drainage:

(a) The Luckiamute River main stem is classified for domestic, livestock, irrigation, municipal, agricultural, commercial, industrial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from October 1 through July 31, and for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only from August 1 through September 30;

(b) Except as specified in subsection (2)(c) of this rule, the tributaries of the Luckiamute River are classified for domestic, livestock, irrigation, municipal, agricultural, commercial, industrial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through October 31;

(c) The following streams and tributaries are classified year-round for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only:

(A) Maxfield Creek tributary to Luckiamute River;

(B) Ritner Creek tributary to Luckiamute River;

(C) Pedee Creek tributary to Luckiamute River.

(3) Rickreall Creek Drainage: Rickreall Creek and tributaries are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through October 31;

(4) Yamhill River Drainage:

(a) Except as specified in subsection (4)(b) of this rule, the Yamhill River and tributaries are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from November 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through October 31;

(b) The following streams and tributaries are classified for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only:

(A) Agency Creek tributary to South Yamhill River;

(B) Gold Creek tributary to South Yamhill River;

(C) Rowell Creek tributary to South Yamhill River;

(D) Rock Creek tributary to South Yamhill River near Grande Ronde;

(E) Pierce Creek tributary to South Yamhill River;

(F) Deer Creek tributary to South Yamhill River;

(G) E. Fork Willamina Creek tributary to Willamina Creek;

(H) Gooseneck Creek tributary to Mill Creek;

(I) Haskins Creek tributary to North Yamhill River;

(J) Panther Creek tributary to North Yamhill River;

(K) Cedar Creek tributary to North Yamhill River;

(L) Fairchild Creek tributary to North Yamhill River;

(M) Turner Creek tributary to North Yamhill River.

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

**690-502-0110**

**Santiam River-Calapooia River Subbasin**

The Santiam-Calapooia Subbasin includes the drainage basins of the Santiam and Calapooia Rivers upstream from the confluence with the Willamette River:

(1) Surface water classification:

(a) The Little North Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the Willamette National Forest boundary near Elkhorn at river mile 17 is a designated state scenic waterway. The Little North Santiam River and tributaries above the Willamette National Forest boundary are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses;

(b) Except as specified in paragraph (b)(A) and (B) of this section, the Santiam River and tributaries are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from September 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through August 31:

(A) The South Santiam River and tributaries below Trout Creek, and the Middle Santiam River and tributaries below Green Peter Dam, are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from October 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through September 30;

(B) The following streams and their tributaries are classified year-round only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses:

(i) South Santiam River above Trout Creek tributary to Santiam River;

(ii) Middle Santiam River above Green Peter Dam;

(iii) Quartzville Creek tributary to the Middle Santiam River;

(iv) Wiley Creek tributary to South Santiam River;

(v) Thomas Creek tributary to South Santiam River;

(vi) North Santiam River above USGS Gage 14181500 at Niagara tributary to Santiam River;

(vii) Mad Creek tributary to North Santiam River;

(viii) Rock Creek tributary to North Santiam River;

(ix) Stout Creek tributary to North Santiam River;

(x) McDowell Creek tributary to South Santiam River.

(c) The Calapooia River and tributaries below Boston Mill at approximately river mile 22 are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from October 1 through July 31, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from August 1 through September 30;

(d) The Calapooia River and tributaries above Boston Mill at approximately river mile 22 are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from November 1 to June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from July 1 through October 31;

(e) The waters of natural lakes with surface elevations above 3,000 feet mean sea level are classified only for domestic, excluding irrigation of lawn and commercial garden, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses. No storage shall be allowed in these lakes.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollution and of attaining the highest and best use of waters released

from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in **Table 1**:

(a) The Middle Santiam River or its tributaries above USGS Gage 14186500 (NE 1/4 SE 1/4 Section 24, Township 13 South, Range 1 East) near Foster, Oregon, for natural flows of the Middle Fork Santiam River or its tributaries below 110 cubic feet per second plus waters released from storage of up to 260 cubic feet per second measured at the aforementioned gage;

(b) The South Santiam River or its tributaries above USGS — Corps of Engineers — State Engineer Gage 14187500 (SW 1/4 NW 1/4 Section 28, Township 12 South, Range 1 West) at Waterloo, Oregon, for natural flows of the South Santiam River below 170 cubic feet per second plus waters released from storage of up to 930 cubic feet per second measured at the aforementioned gage;

(c) The North Santiam River or its tributaries above USGS Gage 14181500 (NE 1/4 NE 1/4 Section 34, Township 9 South, Range 4 East) at Niagara, Oregon, for natural flows of the North Santiam River below 500 cubic feet per second plus waters released from storage of up to 640 cubic feet per second measured at the aforementioned gage;

(d) The North Santiam River or its tributaries above USGS Gage 14183000 (NW 1/4 Section 18, Township 9 South, Range 2 East) at Mehama, Oregon, for natural flows of the North Santiam River below 580 cubic feet per second plus waters released from storage of up to 640 cubic feet per second measured at the aforementioned gage;

(e) The North Santiam River or its tributaries above USGS Gage 14184100 (Section 7, Township 10 South, Range 2 West) near Jefferson, Oregon, for natural flows of the North Santiam River below 430 cubic feet per second plus waters released from storage of up to 640 cubic feet per second measured at the aforementioned gage;

(f) The Santiam River or its tributaries above USGS Gage 14189000 (SE 1/4 Section 11, Township 10 South, Range 3 West) at Jefferson, Oregon, for natural flows of the Santiam River below 330 cubic feet per second plus waters released from storage of up to 1,570 cubic feet per second measured at the aforementioned gage;

(g) The Santiam River or its tributaries above the Santiam River — Willamette River confluence for natural flows of the Santiam River below 320 cubic feet per second plus waters released from storage of up to 1,570 cubic feet per second measured at a point between the said confluence and 1.0 miles above said confluence;

(h) The Calapooia River or its tributaries above USGS Gage 14172000 (SE 1/4 Section 15, Township 14 South, Range 1 West) at Holley, Oregon, for natural flows of the Calapooia River below 30 cubic feet per second plus waters released from storage or up to 340 cubic feet per second measured at the aforementioned gage;

(i) The Calapooia River or its tributaries above USGS Gage 14173500 (NW 1/4 Section 13, Township 11 South, Range 4 West) at Albany, Oregon, for natural flows of the Calapooia River below 20 cubic feet per second plus waters released from storage of up to 340 cubic feet per second measured at the aforementioned gage.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85; WRD 3-1986(Temp), f. & cert. ef. 3-11-86; WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

**690-502-0120**

**Molalla River-Pudding River Subbasin**

The Molalla-Pudding Subbasin includes the drainage area of the Molalla and Pudding Rivers upstream from the confluence with the Willamette River near Canby. Surface water classification:

(1) The following streams and tributaries are withdrawn from further appropriation except storage:

(a) The North and South Forks of Silver Creek above their confluence are withdrawn from further appropriation for any purpose except use in state parks by act of the Legislature, ORS 538.120;

(b) Drift Creek, a tributary of the Pudding River near river mile 51, is withdrawn from further appropriation by order of the State Engineer dated August 8, 1951;

(c) The unnamed stream flowing through Section 25, Township 5 South, Range 2 West, Willamette Meridian and Sections 29, 30 and 32, Township 5 South, Range 1 West, Willamette Meridian, tributary to the Pudding River near river mile 31, is withdrawn from further appropriation by order of the State Engineer dated July 25, 1951;

(d) The unnamed stream flowing through Sections 4, 9 and 10, Township 7 South, Range 1 West, Willamette Meridian, a tributary to Brush Creek near Silverton, is withdrawn from further appropriation by order of the State Engineer dated September 22, 1950;

(e) Rock Creek, tributary to the Pudding River near river mile 12, is withdrawn from further appropriation by order of the State Engineer dated August 13, 1951.

(2) The Molalla River and tributaries, except the Pudding River and tributaries, are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and public instream uses from November 1 through May 31, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from June 1 through October 31.

(3) The following streams and tributaries are classified year-round for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses only:

(a) Molalla River and Table Rock Fork above their confluence near river mile 40;

(b) Gawley Creek tributary to Molalla River;

(c) Pine Creek tributary to Molalla River;

(d) Trout Creek tributary to Molalla River;

(e) North Fork Molalla River tributary to Molalla River;

(f) Cedar Creek tributary to the Molalla River near river mile 24;

(g) Dickey Creek tributary to Molalla River;

(h) Milk Creek, and Cedar Creek above their confluence near Union Mills tributary to Molalla River;

(i) Gribble Creek tributary to Molalla River;

(j) Ogle Creek tributary to Molalla River.

(4) The Pudding River main stem is classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from October 1 through April 30 and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through September 30.

(5) Except as specified in this section, the tributaries of the Pudding River are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through April 30 and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through October 31.

(6) The following streams and tributaries are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, fish life, wildlife, recreation, pollution

abatement, wetland enhancement and public instream uses from December 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from May 1 through November 30:

(a) Butte Creek tributary to Pudding River;

(b) Abiqua Creek tributary to Pudding River.

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 537.170, 537.356 & 537.358

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

**690-502-0130**

**Tualatin River Subbasin**

The Tualatin subbasin includes the drainage area of the Tualatin River upstream from the confluence with the Willamette River near West Linn:

(1) Surface water classification:

(a) The following streams and tributaries are withdrawn from further appropriation except for storage, unless otherwise indicated, by order of the State Engineer on the specified dates:

(A) Unnamed stream flowing through Sections 10, 15, and 21, Township 1 South, Range 3 West, Willamette Meridian, tributary to the Tualatin River, by order dated August 13, 1951;

(B) Unnamed stream flowing through Sections 32, 33, 34 and 35, Township 1 North, Range 3 West, Willamette Meridian, tributary to Dairy Creek, by order dated July 25, 1951;

(C) Unnamed stream, known locally as Burris Creek, flowing through northeast part of Township 2 South, Range 3 West, Willamette Meridian, and Sections 5 and 6, Township 2 South, Range 2 West, Willamette Meridian, tributary to the Tualatin River, by order dated July 25, 1951;

(D) Unnamed stream flowing in the south part of Township 1 South, Range 2 West, Willamette Meridian, tributary to the Tualatin River, by order dated August 4, 1950;

(E) Unnamed stream flowing through Sections 19, 29, 30, 31 and 32, Township 1 South, Range 3 West, Willamette Meridian, tributary to the Tualatin River, by order dated August 8, 1950;

(F) Clear Creek and Iler Creek west of the north-south line between Township 1 North, Ranges 4 and 5 West, being tributaries to Gales Creek for the exclusive use of the City of Forest Grove under permit 12034, by order dated March 2, 1936;

(G) Unnamed branch of Clear Creek within Sections 18, 19, 29 and 30, Township 1 North, Range 4 West, Willamette Meridian, for the exclusive of the City of Forest Grove under permit 13944 by order dated October 19, 1939.

(b) Except as specified in subsections (a) and (c) of this section, the Tualatin River and tributaries are classified for domestic, livestock, municipal, irrigation, industrial, agricultural, commercial, power in conjunction with storage, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through April 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock, wetland enhancement and public instream uses from May 1 through October 31;

(c) The following streams and tributaries are classified year-round only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses:

(A) McFee Creek tributary to Tualatin River;

(B) Gales Creek tributary to Tualatin River;

(C) East Fork of Dairy Creek tributary to Dairy Creek;

(D) McKay Creek tributary to Dairy Creek;

(E) Scoggins Creek tributary to Tualatin River.

(2) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and to minimize pollu-

tion and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic or livestock uses or waters to be legally stored or legally released from storage shall be made or granted by any state agency or public corporation of the state for the following waters and as shown in Table 1.

(3) The Tualatin River or its tributaries above USGS-State Engineer Gage 14207500 (SW 1/4 Section 34, Township 2 South, Range 1 East) at West Linn, Oregon, in the amounts specified in Table 1.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358  
Stats. Implemented:  
Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0140

##### Clackamas River Subbasin

The Clackamas Subbasin includes the drainage area of the Clackamas River upstream from the confluence with the Willamette River near Gladstone. Surface water classification:

(1) The following streams and tributaries are withdrawn, by order of the State Engineer, from further appropriation, unless otherwise specified:

(a) Memaloose Creek and South Fork Clackamas River for the exclusive use of the cities of Oregon City and West Linn, by order dated January 16, 1931. Limited licenses shall not be issued for the use of the waters of the South Fork Clackamas River or tributaries;

(b) Wade Creek, tributary to the Clackamas River near River Mill Dam, by order dated May 19, 1952. Limited licenses shall not be issued for the use of water from Wade Creek or tributaries;

(c) Currin Creek, tributary to Eagle Creek by order dated September 22, 1950. Limited licenses shall not be issued for the use of water from Currin Creek or tributaries.

(2) The Clackamas River from the boundary of the Olallie Lake Scenic Area at about river mile 82 downstream to the North Fork Reservoir and from River Mill Dam downstream to Carver Bridge, the North Fork Clackamas River from its headwaters downstream to North Fork Reservoir, and the South Fork Clackamas River from its confluence with an unnamed tributary near the western boundary of Section 7, Township 5 South, Range 5 East, downstream to its mouth, are designated state scenic waterways. The Clackamas River and tributaries from the headwaters to North Fork Dam near river mile 30 are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses.

(3) The Clackamas River main stem from North Fork Dam near river mile 30 downstream to the mouth is classified for domestic, livestock, municipal, irrigation, industrial, agricultural, commercial, power, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses from November 1 through June 30, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, municipal, livestock and public instream uses from July 1 through October 30.

(4) Except as provided in sections (1), (2) and (5) of this rule, the tributaries of the Clackamas River are classified for domestic, livestock, irrigation, municipal, power, fish life, wildlife, recreation, industrial, agricultural, commercial, pollution abatement, wetland enhancement and public instream uses from November 1 through May 31, and only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses from June 1 through October 31.

(5) The following streams and tributaries are classified year-round for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses:

- (a) Fish Creek tributary to Clackamas River;
- (b) Foster Creek tributary to Clackamas River;
- (c) Wash Creek tributary to Fish Creek;
- (d) Eagle Creek tributary to Clackamas River;
- (e) Clear Creek tributary to Clackamas River;
- (f) Richardson Creek tributary to Clackamas River;
- (g) Rock Creek tributary to Clackamas River;
- (h) Deep Creek tributary to Clackamas River.

(6) The waters of natural lakes with surface elevations above 3,000 feet mean sea level are classified only for domestic, excluding irrigation of lawn and noncommercial garden, livestock and public instream uses. No storage shall be allowed on these lakes.

Stat. Auth.: ORS 536.220, 536.300, 536.310, 536.340, 536.410, 537.170, 537.356 & 537.358  
Stats. Implemented:  
Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1992, f. & cert. ef. 9-9-92

#### 690-502-0150

##### Columbia Subbasin

The Columbia Subbasin includes the Willamette River main stem below Willamette Falls near river mile 27 and its tributaries, and all other stream systems in the Willamette Basin except for the Tualatin River and Clackamas River Subbasins. It includes the Multnomah Channel and Columbia Slough but does not include the main stem Columbia River. Surface water classification:

(1) The following streams and tributaries are withdrawn from further appropriation except storage:

(a) Johnson Creek and tributaries, except Crystal Springs Creek and tributaries for flows in excess of 10 cubic feet per second measured at the mouth, are withdrawn, by act of the Legislature, from further appropriation except for protection of fish life therein and power development not to exceed 25 theoretical horsepower. Appropriation and storage are allowed on Johnson Creek tributaries, but not the main stem, from December 1 through June 1 of each year, ORS 538.170;

(b) Scappoose Creek is withdrawn, by act of the Legislature, from further appropriation, except for protecting fish life therein, domestic, livestock, municipal, fish culture, esthetic, recreation and public park purposes, ORS 538.251(5) and 538.260;

(c) McNulty Creek, tributary to Scappoose Bay, is withdrawn, by act of the Legislature, from further appropriation except for storage during the period November 1 through March 31 each year, ORS 538.280;

(d) Milton Creek is withdrawn by act of the Legislature from further appropriation except for domestic use year-round and storage during the period November 1 through April 30 each year, ORS 538.300;

(e) Little Creek and tributaries, being tributaries to Scappoose Creek, are withdrawn from further appropriation except for storage, by order of the State Engineer dated August 13, 1951;

(f) An unnamed stream, a tributary to the Columbia River flowing through Section 25, Township 1 North, Range 2 East, Willamette Meridian and Sections 19 and 20, Township 1 North, Range 3 East, Willamette Meridian is withdrawn from further appropriation by order of the State Engineer dated September 22, 1950.

(2) The Willamette River main stem below Willamette Falls is classified for domestic, livestock, municipal, industrial, commercial, agricultural, mining, power, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses.

(3) Multnomah Channel and drainage waters originating within drainage districts are classified for domestic, livestock, municipal, industrial, irrigation, commercial, agricultural, mining, power, fish life, wildlife, recreation, pollution abatement, wetland enhancement and public instream uses.

(4) Except as specified in subsections (1)(a), (b), and (c) of this rule, all stream systems in the Columbia Subbasin and Columbia Slough are classified year-round only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 cfs, livestock and public instream uses.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023

### 690-502-0160

#### Groundwater Classifications and Conditions

(1) Use of groundwater from the basalt aquifer within the Cooper-Bull Mountain Critical Groundwater Area shall be as described in the State Engineer's order designating the Cooper-Bull Mountain Critical Groundwater Area dated May 17, 1974.

(2) Groundwater Classification: The groundwater resources of the Willamette Basin are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and statutorily exempt groundwater uses except as described in OAR 690-502-0170 to 690-502-0210.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85, WRD 3-1986(Temp), f. & cert. ef. 3-11-86) WRD 4-1992, f. & cert. ef. 3-13-92, Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1993, f. & cert. ef. 9-9-92; WRD 3-1994, f. & cert. ef. 3-10-94; WRD 13-1994, f. & cert. ef. 11-7-94; WRD 3-2003, f. & cert. ef. 12-4-03

### 690-502-0170

#### Sandy-Boring Ground Water Limited Area

Groundwater from the shallow Troutdale aquifer and the specially designated portion of the deep Troutdale aquifer in the Sandy-Boring area is classified for exempt uses only. The Sandy-Boring Groundwater Limited Area is as described and shown in Exhibit 1. Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed and shall contain the Special Permit Conditions specified in OAR 690-502-0260. Applications may be rejected if the aquifer displays any of the adverse impacts defined in OAR 690, division 008. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0180

#### Damascus, Glad Tidings, Kingston, Mt. Angel, Parrett Mountain, and Stayton-Sublimity Ground Water Limited Areas

(1) Groundwater from the basalt aquifers in the Damascus, Glad Tidings, Kingston, Mt. Angel, Parrett Mountain, and Stayton-Sublimity areas, and the Troutdale aquifer in the Damascus area is classified for exempt uses only.

(2) The Damascus Groundwater Limited Area is as described and shown in Exhibit 2. The Glad Tidings Groundwater Limited Area is as described and shown in Exhibit 3. The Kingston Groundwater Limited Area is as described and shown in Exhibit 4. The Mt. Angel Groundwater Limited Area is as described and shown in Exhibit 5. The Parrett Mountain Groundwater Limited Area is as described and shown in Exhibit 9. The Stayton-Sublimity Groundwater Limited Area is as described and shown in Exhibit 7.

(3) Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed. Permits may be issued for a period not to exceed five years and shall contain the Special Permit Conditions specified in OAR 690-502-0250. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications may be rejected or permit or certificate extensions may be denied if the aquifer displays any of the adverse impacts defined in OAR 690, division 008. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications. Within two years of permit issuance, the applicant shall prepare a plan for the Water Resources Commission which shall indicate the steps for obtaining an alternate long-term water supply.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0190

#### Sherwood-Damascus-Wilsonville Ground Water Limited Area

Groundwater from the basalt aquifers in the Sherwood-Damascus-Wilsonville Groundwater Limited Area as described and shown in Exhibit 6 is classified for exempt uses only.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0200

#### Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Areas

(1) Groundwater in the basalt aquifers in the Chehalem Mountain, Eola Hills and South Salem Hills Groundwater Limited Areas is classified for exempt uses, irrigation and rural residential fire protection systems only. Permits may be issued, for a period not to exceed five years, for fire protection and for drip or equally efficient irrigation provided the Director finds the proposed use and amount do not pose a threat to the groundwater resource or existing permit holders. The amount of water used for irrigation shall be further limited to one acre-foot per acre per year. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications may be rejected or permit or certificate extensions may be denied if the aquifer displays any of the adverse impacts defined in OAR 690, division 008.

(2) The Chehalem Mountain Groundwater Limited Area is as described and shown in Exhibit 8. The Eola Hills Groundwater Limited Area is as described and shown in Exhibit 10. The South Salem Hills Groundwater Limited Area is as described and shown in Exhibit 11.

(3) Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed. Permits may be issued for a period not to exceed five years and shall contain the Special Permit Conditions specified in OAR 690-502-0250. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications. Within two years of permit issuance, the applicant shall prepare a plan for the Water Resources Commission which shall indicate the steps for obtaining an alternate long-term water supply.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0210

#### Amity Hills/Walnut Hill Ground Water Limited Area

(1) Ground water in the Columbia River Basalt Group aquifers in the Amity Hills/Walnut Hill Ground Water Limited Area is classified for exempt uses and irrigation only. Irrigation use shall be limited to use under a limited license pursuant to ORS 537.143 and for the sole purpose of providing water necessary to establish a crop for which no further irrigation will be required after the crop is established. Irrigation use under this rule shall be further limited to drip or equally efficient irrigation and an annual duty of one acre-foot per acre per year.

(2) The Amity Hills/Walnut Hill Ground Water Limited Area is as described and shown in Exhibit 12.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03

### 690-502-0215

#### Five-Year Limited Permits

(1) A holder of a five-year limited permit with a priority date of October 4, 1991, or earlier in the Damascus, Gladtidings, Kingston, Mount Angel, Parrett Mountain, Stayton-Sublimity, Sherwood-Dammasch-Wilsonville, Chehalem Mountain, Eola Hills or South Salem Hills Ground Water Limited Areas may submit a ground water application and not be subject to the classifications or restrictions established by OAR 690-502-0180 to 690-502-0200.

(2) An application submitted under section (1) of this rule must be for the use, or portion thereof, authorized under the existing five-year limited permit (type of use, location, number of acres, source, rate, duty, season, and other permit specifications).

(3) Any permit issued for an application submitted under section (2) of this rule shall, as applicable, contain the special permit conditions under OAR 690-502-0250 and 690-502-0260.

(4) This rule is of no further force or effect after January 1, 2006.

Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 6-2004, f. & cert. ef. 6-15-04

### 690-502-0240

#### Groundwater-Surface Water Hydraulic Connection

These rules are in addition to the requirements of OAR 690, division 009. Groundwater in unconfined alluvium within 1/4 mile of the banks of a stream or surface water source is presumed to be in hydraulic connection with the surface water source, unless the applicant or appropriator provides satisfactory information or demonstration to the contrary. This hydraulically connected groundwater shall be classified the same as the surface source. This section shall not apply to those groundwater uses exempted by ORS 537.545. Notwithstanding such classification, permits may be issued for the use of water from a well in an unconfined aquifer that is hydraulically connected to groundwater, within a quarter mile of a stream, provided that surface water impacts are mitigated through storage releases.

Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0250

#### Special Columbia River Basalt Group Aquifer Permit Conditions

New permits issued to appropriate groundwater from Columbia River Basalt Group aquifers shall be specially conditioned. The conditions shall specify:

(1) A static water level measurement be made and submitted before any use of water may commence at the well;

(2) The permittee/appropriator install a meter or other suitable measuring device approved by the Director and submit an annual report of water used to the Department;

(3) Limits on acceptable amounts of depletion and interference with other users;

(4) Use of water from the well be controlled or shut off if limits specified in the permit to protect the resource from depletion, and prior appropriators from interference, are exceeded;

(5) The Department shall determine, from measurements submitted by the permittee/appropriator, or other data on file in the department, the initial and subsequent water levels from which the previously cited declines are referenced;

(6) Following the issuance of a permit, the permittee/appropriator shall measure the water levels in the permitted well each year between March 1 and March 31 (spring high-water level) and submit the data to the Department within 90 days of measurement. Water level measurements shall be made by a certified water rights examiner, licensed water well driller, licensed pump installer, registered geologist, licensed land surveyor, registered professional engineer or the permittee/appropriator;

(7) Any other conditions derived from OAR 690, division 008 as deemed necessary to protect the groundwater resource.

Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

### 690-502-0260

#### Special Permit Conditions

New permits issued to appropriate groundwater from aquifers within the Sandy-Boring Groundwater Limited Area and the Troutdale aquifer in the Damascus Groundwater Limited Area shall be specially conditioned. The conditions shall specify:

(1) A static water level measurement be made and submitted before any use of water may commence at the well;

(2) Limits on acceptable amounts of depletion and interference with other users;

(3) Use of water from the well be controlled or shut off if limits specified in the permit to protect the resource from depletion, and prior appropriators from interference, are exceeded;

(4) The Department shall determine, from measurements submitted by the permittee/appropriator, or other data on file in the department, the initial and subsequent water levels from which the previously cited declines are referenced;

(5) Following the issuance of a permit, the permittee/appropriator shall measure the water levels in the permitted well each year between March 1 and March 31 (spring high-water level) and submit the data to the Department within 90 days of measurement. Water level measurements shall be made by a certified water rights examiner, licensed water well driller, licensed pump installer, registered geologist, licensed land surveyor, registered professional engineer or the permittee/appropriator;

(6) Any other conditions as specified in OAR 690, division 008 as deemed necessary to protect the groundwater resource.

Stat. Auth.: ORS 536 & 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## DIVISION 503

### SANDY BASIN PROGRAM

### 690-503-0010

#### Definitions

As used in this rule, unless the context requires otherwise:

(1) The Sandy Basin is as shown by Water Resources Department Map No. 3.6 or 2C.6.

(2) "Classification" or "classified" means the allowed and preferred beneficial use(s) of a given surface or groundwater source for which future uses of water shall be permitted. Except as otherwise provided by the Commission, the Department shall not issue permits to appropriate, and no use shall be initiated of, any of the surface or groundwaters of the Sandy Basin for any uses except

those for which the waters are classified. A classification does not affect legal uses existing on the date of adoption or alteration of the classification. A classification does not affect the transfer to another beneficial use of any water right with a priority date prior to adoption of these rules.

(3) "Aesthetic Use" means use of water within its natural course for maintaining and enhancing scenic values.

(4) "Aquifer" means a water-bearing body of naturally occurring earth materials that is sufficiently permeable to yield useable quantities of water to wells or springs.

(5) "Commission" means the Water Resources Commission.

(6) "Department" means the Water Resources Department.

(7) "Commercial Use" means use of water at a place where commodities or services are bought or sold, such as a gas station, restaurant, motel, etc.

(8) "Domestic Use" means use of water for human consumption, household purposes, watering livestock necessary for the sustenance of a family and related accessory uses.

(9) "Group Domestic Use" means delivery and use of water through a delivery system supplying water for domestic purposes to more than one residence or dwelling unit.

(10) "Fish Life" includes use of water to support natural or artificial propagation of fish and other aquatic life.

(11) "Industrial Use" means use of water associated with the production or manufacture of a product including other related miscellaneous uses.

(12) "Irrigation Use" means the application of water to crops or plants by artificial means to promote growth, nourish plants, leach minerals, control frost, etc.

(13) "Livestock Use" means use of water for domesticated animals and wild animals held in captivity as pets or for profit.

(14) "Mining Use" means the use of water to extract metals or minerals including placer mining as defined in OAR 690, division 11, and leaching operations.

(15) "Municipal Use" means the delivery and use of water through the water service system of an incorporated municipality or nonprofit corporation and includes quasi-municipal uses as defined in OAR 690, division 11.

(16) "Public Park Use" includes use of water for domestic, irrigation, and visual display of water in a public park.

(17) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(18) "Statutorily Exempt Uses" means uses of groundwater as defined in ORS 537.545.

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

## 690-503-0020

### Policies

The surface water resources of the Sandy River Basin are important for maintaining instream and scenic values. The groundwater and surface waters are used for municipal, domestic, industrial and agricultural uses. The Bull Run Watershed is the main source of water for the city of Portland and the Portland metropolitan area. The protection and maintenance of water resources for these uses will promote the economic and general welfare of the people of the state. Therefore, it shall be the policy of the Commission:

(1) To limit future surface water appropriations, except for storage, in the Sandy Basin mainly to municipal and noconsumptive, instream uses for the purpose of protecting and enhancing those statutorily preferred uses and values such as municipal, fish life, wildlife, recreation and aesthetics.

(2) To carry out the state groundwater management policy by addressing groundwater declines near Sandy, controlling interference with surface supplies and protecting the quality of shallow aquifers.

(3) To uphold, subject to senior claims, the city of Portland's exclusive right to the waters of the Bull Run and Little Sandy rivers

for municipal use. The Commission supports further development of the Bull Run and Little Sandy rivers for municipal use under a planned approach, designed to best meet the needs of the city and region, while encouraging water use efficiency and conservation and protecting the naturally high quality of the water.

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

## 690-503-0030

### Objectives

The objectives of the Commission in managing the surface and groundwater resources of the Sandy Basin are to:

(1) Uphold existing legislative withdrawals and grants, and state scenic waterway designations, consistent with statutory direction.

(2) Protect existing rights.

(3) Maintain and enhance instream and scenic values in the Sandy River Scenic Waterway and Columbia Gorge and throughout the Sandy Basin by limiting new out-of-stream appropriation from natural summer flows and protecting remaining instream flows in the Sandy River main stem and its tributaries.

(4) Minimize groundwater/surface water hydraulic interference.

(5) Condition permits to regulate future use of groundwater in areas of documented declines near Sandy.

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

## 690-503-0040

### Surface Water Classifications

(1) By act of the Oregon Legislature, the following streams are closed to further appropriation unless otherwise indicated:

(a) The main stems and tributaries of the Bull Run and Little Sandy rivers are protected for the exclusive use of the city of Portland; subject to senior rights or claims predating February 24, 1909 (ORS 538.420);

(b) Hackett Creek, a tributary of the Sandy River located in Clackamas County, and its tributaries, are withdrawn from appropriation except for fish life (ORS 538.150);

(c) Except as provided in ORS 538.210, the following streams forming waterfalls near the Columbia River Highway and flowing directly into the Columbia River shall not be diverted or interrupted for any purposes (ORS 538.200):

(A) Latourell Creek — forming Latourell Falls;

(B) An unnamed stream whose waterfall is approximately at the southwest quarter of the southwest quarter of the northwest quarter of section 28, township one north, range five east, at the northern edge of Tax Lot 27/28. The fall is on the south side of the old Columbia River Highway, 0.7 mile west of the highway bridge at Young Creek;

(C) An unnamed stream whose waterfall is approximately at the southeast quarter of the southwest quarter of the northwest quarter of section 28, township one north, range five east, at the northern intersection of Tax Lot 27/26. The falls are on the south side of the old Columbia River Highway, 0.6 mile west of the highway bridge at Young Creek;

(D) An unnamed stream whose waterfall is approximately at the northeast quarter of the northeast quarter of the northwest quarter of section 28, township one north, range 5 east, Tax Lot 3. The falls are on the south side of the old Columbia River Highway, 0.1 mile west of the highway bridge at Young Creek;

(E) Young Creek — forming Shepperd Dell Falls;

(F) Bridal Veil Creek — forming Bridal Veil Falls;

(G) Coopey Falls Creek;

(H) Mist Falls Creek;

(I) Wahkeena Creek — forming Wahkeena Falls, formerly known as Gordon Falls;

(J) Multnomah Creek — forming Multnomah Falls;

(K) Oneonta Creek — forming Oneonta Falls and Gorge;

(L) Horse Tail Creek — forming Horse Tail Falls;

(M) Tumalt Creek;

(N) McCord Creek, formerly known as Kelly Creek — forming Elwah Falls;

(O) Moffatt Creek — forming Wahe Falls;

(P) Tanner Creek — forming Wahclella Falls.

(2) Except as otherwise provided in sections (1) and (3) of this rule, all the surface waters of the Sandy Basin are classified only for fish life, domestic, stock, municipal, aesthetic, recreation and public park uses.

(3) In addition to uses in section (2) of this rule, all tributaries of the Sandy River but not the main stem Sandy River are open for storage from December 1 to June 1 of each year. Water stored during this period may be used at any time for any beneficial use.

(4) No permit shall be issued if the proposed use is found detrimental to the scenic waterway values as described in ORS 390.835.

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

#### 690-503-0050

##### Groundwater Classification

Permits to use groundwater may be issued only for the following classified uses:

(1) Except as provided in sections (2) and (3) of this rule, the groundwater resources of the Sandy Basin are classified for commercial, group domestic, industrial, irrigation, mining, municipal, and statutorily exempt groundwater uses.

(2) Groundwater from the shallow Troutdale aquifer in the Sandy-Boring Groundwater Management Area, as shown in **Figure 1**, is classified for exempt uses only.

(3) Groundwater hydraulically connected to, and within 1/4 mile of, surface water shall be classified for the same uses as the surface water source and for uses exempted by ORS 537.545.

[ED NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

#### 690-503-0060

##### Special Permit Conditions

Permits issued to appropriate groundwater from aquifers in the Sandy Basin shall be specially conditioned. The conditions shall specify:

(1) Use of water from the well, as allowed herein, shall be regulated if the well displays:

(a) An average water level decline of three or more feet per year for five consecutive years; or

(b) A total water level decline of fifteen or more feet; or

(c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.

(2) The permittee/appropriator shall install a meter or other measuring device suitable to the Director, and shall keep a complete record of water uses.

(3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well:

(a) Use of water from a new well shall not begin until the initial water level in the well has been measured. A measurement of initial water level shall be made at the time a pump is installed, but before pumping begins;

(b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year at the time of spring high water during the period March 15 through April 15;

(c) All water level measurements shall be made by a qualified individual. Qualified individuals include certified water rights examiners, licensed water well drillers, registered geologists, registered professional engineers, registered land surveyors, or the permittee/appropriator;

(d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well

suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department;

(e) The permittee/appropriator shall submit a record of the measurement to the Department on a form available from the Department. The record of measurement shall be received not later than 30 days from the date of measurement.

(4) The Department shall determine when any of the declines cited in section (1) of this rule are evidenced by the well measurement required in section (3) of this rule.

Stat. Auth.: ORS 536.220, 536.300 & 536.310

Stats. Implemented:

Hist.: WRD 4-1991, f. & cert. ef. 3-14-91

## DIVISION 504

### HOOD BASIN PROGRAM

**NOTE:** The Hood Basin is delineated on State Water Resources Board Map File 4.6, available from the agency.

#### 690-504-0000

##### Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Hood Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, fish life, pollution abatement uses, and the waters of the Hood Basin are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of Dog River above its point of diversion at Water Resources Department-U.S. Geological Survey Gage 1134, as shown on State Water Resource Board Map 4.6, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for municipal use and the waters of Dog River above its point of diversion at Water Resources Department-U.S. Geological Survey Gage 1134, as shown on State Water Resources Board Map 4.6, are hereby so classified;

(b) The maximum economic development of this state and the attainment of the highest and best use of the waters of the natural lakes of the Hood Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of natural lakes of the basin are hereby so classified.

(2) Applications for the use of these specified waters of the Hood Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(3) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or work are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88;

Administrative Renumbering 1-1993, Renumbered from 690-080-0040

**690-504-0020**

**Water Quality**

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 34, f. 4-7-66; WRD 3-1980, f. 1-23-80; WRD 1-1981, f. 4-20-81; WRD 1-1985, f. & cert. ef. 3-28-85; WRD 4-1988, f. 5-17-88, cert. ef. 5-13-88; Administrative Renumbering 1-1993, Renumbered from 690-080-0040

**690-504-0100**

**Reservations**

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) Notwithstanding OAR 690-504-0000, stored water may be used for any beneficial purpose.

(3) "Multipurpose reservoir," as used in OAR 690-504-0100 through 0170, means a reservoir storing water to serve multiple potential beneficial uses such as irrigation, power generation, municipal water supply, recreation, and flow augmentation for instream purposes.

(4) Reservations of water for future economic development in OAR 690-504-0110 through 0170 allocate surface water for storage in multipurpose reservoirs. The storage of up to 2,000 acre-feet of water for livestock or domestic purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt from regulation for storage of water reserved under OAR 690-504-0110 through 0170.

(5) In addition to the requirements of OAR 690, division 310, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(6) For the purposes of review of applications to store reserved water under OAR 690, division 310, the reserved quantities of water listed in OAR 690-504-0110 through 0170 are available for appropriation.

(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, division 310, and prior to issuance of a permit for a proposed project storing water reserved under 690-504-0110 through 0170, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies;

(b) The proposed reservoir will enhance instream values; including but not limited to instream flows and

(c) What storage season is appropriate a whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.

(8) Permits to store reserved water shall receive the priority date of the reservation.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water

five years after the adoption of these rules, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved 20 years after October 17, 1996, OAR 690-504-0110 through 0170 shall automatically be repealed on October 17, 2016, unless extended by further rulemaking of the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0110**

**West Fork Hood River Subbasin Reservation**

Nine thousand (9,000) acre-feet of unappropriated water of the Lake Branch of the West Fork Hood River or its tributaries upstream of the confluence with the West Fork Hood River are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0120**

**East Fork Hood River Subbasin Reservation**

Fifty Thousand (50,000) acre-feet of unappropriated water of the East Fork Hood River or its tributaries upstream of the confluence of the Dog River with the East Fork Hood River are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0130**

**Neal Creek Subbasin Reservation**

Five thousand (5,000) acre-feet of unappropriated water of Neal Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0140**

**Mosier Creek Subbasin Reservation**

Six thousand four hundred (6,400) acre-feet of unappropriated water of Mosier Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0150**

**Eightmile Creek Subbasin Reservation**

Four thousand (4,000) acre-feet of unappropriated water of Eightmile Creek or its tributaries upstream of the confluence of Pine Hollow with Eightmile Creek are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

**690-504-0160**

**Fifteenmile Creek Subbasin Reservation**

Unappropriated water in the Fifteenmile Creek subbasin is reserved as follows:

(1) Five thousand (5,000) acre-feet of unappropriated water of Fifteenmile Creek or its tributaries upstream of the City of Dufur water supply reservoir are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

(2) Three thousand five hundred (3,500) acre-feet of unappropriated water of Larch Creek or its tributaries are reserved for storage in multipurpose reservoirs. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 8-1996, f. & cert. ef. 11-14-96

## DIVISION 505

### DESCHUTES BASIN PROGRAM

#### 690-505-0000

##### Upper Deschutes Basin

###### (1) Classifications:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Upper Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Upper Deschutes River Basin are hereby so classified with the following exception: The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Upper Deschutes River Basin, except for Crescent Lake, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife and fish life uses and the waters of the natural lakes, Upper Deschutes River Basin, except for Crescent Lake, are hereby so classified;

(b) Applications for the use of the waters of the Upper Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

###### (2) Minimum Perennial Streamflows:

(a) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Upper Deschutes River and tributaries when flows are below the levels specified in **Table 1**. This limitation shall not apply to:

(A) Human and livestock consumption;

(B) Water legally released from storage.

(b) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64); Administrative Renumbering 1-1993, Renumbered from 690-080-0050

#### 690-505-0010

##### Middle Deschutes River Basin

###### (1) Classifications:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Middle Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Middle Deschutes River Basin are hereby so classified with the following exceptions:

(A) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board;

(B) The maximum economic development of this state, the attainment of the main stem Metolius River, above river mile 13.0, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development, recreation, wildlife and fish life uses and the waters of the main stem, Metolius River, above river mile 13.0, are hereby so classified;

(C) Further, no out-of-basin diversions of the waters of the mainstem Metolius River, above river mile 13.0, shall be permitted for any use;

(D) No further appropriations except for domestic or livestock uses shall be permitted for waters of the mainstem Deschutes River, from the head of Lake Billy Chinook near river mile 120 to the North Canal Dam near river mile 165;

(E) The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Middle Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife and fish life uses.

(b) Applications for the use of the waters of the Middle Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses shall be made or granted by any state agency or public corporation of the state for the waters of Lake Creek or its tributaries above the confluence of Lake Creek with the Metolius River for flows of Lake Creek below 20 cubic feet per second measured at the mouth of Lake Creek except that this limitation shall

not apply to waters legally stored or legally released from storage (priority date — May 24, 1962).

(3) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64; Administrative Renumbering 1-1993, Renumbered from 690-080-0050

## 690-505-0020

### Lower Deschutes River Basin

(1) Classifications:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Lower Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Lower Deschutes River Basin are hereby so classified with the following exceptions:

(A) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board;

(B) The waters of Boulder Lake in Hood River and Wasco Counties are classified only for domestic and livestock uses; power development not to exceed 7-1/2 theoretical horsepower; recreation, wildlife and fish life uses; and irrigation not to exceed 100 acre-feet annually from water stored in the lake;

(C) The maximum economic development of this state, the attainment of the highest and best use of the waters of the other natural lakes of the Lower Deschutes River Basin, and the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife and fish life uses and the waters of the natural lakes of the Lower Deschutes River Basin are hereby so classified.

(b) Applications for the use of the waters of the Lower Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses shall be made or granted by any state agency or public corporation of the state for the waters of the White River or its tributaries above the confluence of White River with the Deschutes River for flows of the White River below the specified flows in **Table 2**, except that this limitation shall not apply to waters legally stored or legally released from storage.

(3) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on

condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64; Administrative Renumbering 1-1993, Renumbered from 690-080-0050

## 690-505-0030

### Upper Crooked River Basin

(1) Classifications:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Deschutes-Upper Crooked River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Deschutes-Upper Crooked River Basin are hereby so classified;

(b) Applications for the use of the waters of the Deschutes-Upper Crooked River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64; Administrative Renumbering 1-1993, Renumbered from 690-080-0050

## 690-505-0040

### Lower Crooked River Basin

Classifications:

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Deschutes-Lower Crooked River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Deschutes-Lower Crooked River Basin are hereby so classified with the following exceptions:

(a) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board;

(b) No further appropriations except for domestic or livestock uses shall be made or granted by any state agency for the waters of Ochoco Creek and its tributaries.

(2) Applications for the use of the waters of the Deschutes-Lower Crooked River Basin shall not be accepted by any state agency for any other use and the granting of applications for such uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state;

(3) Structures or works for the utilization of the water in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(4) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

**NOTE:** The Upper Deschutes River, Middle Deschutes River, Lower Deschutes River, Upper Crooked River and Lower Crooked River Basins are delineated on State Water Resources Board Map, File 5.7014, available from the agency.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64; Administrative Renumbering 1-1993, Renumbered from 690-080-0050

#### 690-505-0050

##### Lower Main Stem Deschutes River

Classifications:

(1) The maximum beneficial use of that portion of the main stem of the Deschutes River from its confluence with the Columbia River to and including river mile 100.0 is for recreation, fish and wildlife purposes and no appropriations of water in this area shall be permitted except for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, recreation, fish and wildlife uses;

(2) The maximum economic development of this state and the attainment of the highest and best use of the waters of the lower main stem Deschutes River from river mile 100.0 to river mile 120.0 and the attainment of an integrated and balanced program for the benefit of the state as a whole will be achieved through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, hydroelectric power, fish, wildlife and recreation purposes and the aforementioned waters of the main stem Deschutes River are hereby so classified;

(3) The maximum economic development of this state and the attainment of the highest and best use of the waters of the waters of the lower main stem Crooked River from its confluence with the Deschutes River to river mile 6.5 and the waters of the main stem of the lower Metolius River from its confluence with the Deschutes River to river mile 13.0 will be attained through utilization of such waters for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, hydroelectric power fish, wildlife, and recreation purposes and the aforementioned waters of the lower main stem, Crooked River, and lower main stem, Metolius River, are hereby so classified.

(4) Applications for the use of such water shall not be accepted by any state agency for any other purpose and applications for such other purposes are declared to be prejudicial to the public interest and the granting of applications for such other uses would

be contrary to the integrated, coordinated program for the use and control of the water resources of the state;

(5) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

**NOTE:** The main stem of the Deschutes River from its confluence with the Columbia River to river mile 120.0 is shown in USGS Water Supply Paper 344; the main stem of the Crooked River from its confluence with the Deschutes River to river mile 6.5 is shown on USGS Plans and Profiles, 1926; and the main stem of the Metolius River from its confluence with the Deschutes River to river mile 13.0 is shown in USGS Water Supply Paper 344.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Deschutes River Basin: WRB 6, f. 11-30-59; WRB 16, f. 2-20-62; WRB 18, f. 6-1-62; WRB 27, f. 5-11-64; WRB 38, f. 6-14-67; WRD 7(Temp), f. 7-11-77; WRD 6-1978(Temp), f. & cert. ef. 8-15-78; WRD 7-1978, f. & cert. ef. 10-13-78; WRD 2-1979(Temp), f. & cert. ef. 10-9-79; WRD 4-1980, f. & cert. ef. 1-23-80; WRD 5-1980, f. & cert. ef. 4-8-80; WRD 8-1980, f. & cert. ef. 11-24-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 3-1981, f. & cert. ef. 5-12-81; WRD 6-1984, f. & cert. ef. 12-27-84; Lower Main Stem Deschutes River Basin: WRB 6, f. 11-30-59; WRD 2-1981, f. & cert. ef. 4-30-81; Lower Main Stem Metolius River: WRB 27, f. 5-11-64; Administrative Renumbering 1-1993, Renumbered from 690-080-0050

#### 690-505-0400

##### Ground Water Classification

Ground water in the Deschutes Basin is classified for any beneficial use.

Stat. Auth.: ORS 536.027, 536.220, 536.300 & 536.340

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

#### 690-505-0500

##### Ground Water Appropriations within the Deschutes Ground Water Study Area

(1) Except for a cumulative total of 200 cubic feet per second (cfs) maximum rate for final orders approving ground water permit applications issued after the effective date of these rules, ground water in the Deschutes Ground Water Study Area is closed to further appropriation.

(2) Prior to January 1, 2008, or upon reaching 150 cfs of the 200 cfs in section (1), whichever comes first, and on subsequent five year intervals, the Commission shall evaluate the Deschutes Basin Ground Water Mitigation Rules and associated mitigation to determine whether the restriction in section (1) shall be lifted or otherwise modified through subsequent public rulemaking. The Commission shall specifically evaluate the effectiveness of mitigation projects and mitigation credits that involve time-limited instream transfers, instream leases and allocations of conserved water from canal lining and piping projects. The Commission shall also evaluate the general zones of impact identified by the Department.

(3) The Department shall, in cooperation with the Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality and Division of State Lands, annually evaluate and report on the implementation of these rules. The annual evaluation and report shall include information on new ground water appropriations, streamflow monitoring, and mitigation activity in order to determine whether scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department.

(4) The restriction in section (1) shall not be lifted unless the Commission determines that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department.

(5) If the Commission's evaluation under section (2) indicates that, due to new ground water appropriations, scenic waterway flows and instream water right flows in the Deschutes Basin are met less frequently as compared to long-term, representative base period flows, the Commission shall initiate proceedings to designate all or portions of the Deschutes Ground Water Study Area a critical ground water area(s) under ORS 537.730, immediately close certain areas of the Deschutes Basin to further ground water appropriations, or take other administrative action(s) to ensure scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

### Deschutes Basin Ground Water Mitigation Rules

#### 690-505-0600

##### Purpose and Applicability of Ground Water Mitigation Rules

(1) In the Deschutes Basin, a joint study of ground water resources by the Department and U.S. Geological Survey has established a hydraulic connection between ground water and surface water within the Deschutes Ground Water Study Area (Ground Water Hydrology of the Upper Deschutes Basin, Oregon, Water Resources Investigations Report 00-4162, Portland, Oregon, 2001). Based on the conclusions of the study, the Department has determined that ground water appropriations within the Deschutes Ground Water Study Area have the potential for substantial interference with surface water rights as described in OAR 690, division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided pursuant to the rules in this division.

(2) These rules implement Senate Bill 1033 (1995, Legislative Assembly), codified as ORS 390.835 to provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water in the Deschutes Basin.

(3) The rules in OAR 690-505-0610 through 690-505-0630 establish the mitigation process for pending and future ground water permit applications in the Deschutes Ground Water Study Area. Without mitigation, the Department is required by law to deny ground water permit applications in the Deschutes Ground Water Study Area.

(4) Holders of existing ground water permits and associated certificates in the Deschutes Ground Water Study Area issued after July 19, 1995, with priority dates after April 19, 1991, that are specifically conditioned to allow regulation for measurable reduction of a state scenic waterway and that choose to provide mitigation meeting the standards of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9). A ground water permit or certificate for which a mitigation project has been approved by the Department prior to the effective date of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9).

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

#### 690-505-0605

##### Definitions

The following definitions apply to OAR 690-505-0500 through 690-505-0630:

(1) "Allocation of conserved water" means an application approved under ORS 537.455 to 537.500 and OAR 690, division 18 in which the Department may award mitigation credits for the applicant's portion of the conserved water that is legally protected for instream use resulting from conservation measures, such as canal lining and piping or other improvements in the technology or method for diverting, transporting, applying, or recovering water.

(2) "Consumptive use" means the Department's determination of the amount of a ground water appropriation that does not return

to surface water flows in the Deschutes Basin due to transpiration, evaporation or movement to another basin.

(3) "Department" means the Oregon Water Resources Department.

(4) "Deschutes Ground Water Study Area" means the Deschutes River Basin drainage area indicated in **Exhibit 1**.

(5) "General zone of impact" means anywhere above the Madras gage on the Lower Deschutes River or, for wells determined by the Department to have a localized impact on surface water, anywhere within the impacted subbasin of the Deschutes River including the Metolius, Squaw Creek, Little Deschutes, and Crooked River subbasins as identified by the Department.

(6) "Ground water use subject to transfer" means a ground water use established by:

(a) A water right certificate;

(b) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(c) 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.

(7) "Measurable reduction" as defined in ORS 390.835(12) means that ground water use will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less.

(8) "Mitigation" means to moderate the impacts to surface water flows from a ground water appropriation by obtaining mitigation credits or by providing for implementation of a mitigation project that results in mitigation water.

(9) "Mitigation bank" means an entity that is authorized by the Water Resources Commission to obtain, hold and assign mitigation credits pursuant to Chapter 659, 2001 Oregon Laws (HB 2184) and OAR 690, division 521.

(10) "Mitigation credit" is a means of accounting for mitigation water, calculated in acre-feet, made available by a mitigation project. One mitigation credit is equal to one acre-foot of mitigation water. Mitigation credits are determined and awarded by the Department under Chapter 659, 2001 Oregon Laws (HB 2184) and OAR 690, division 521.

(11) "Mitigation obligation" means the amount of mitigation water needed for the appropriation of ground water as determined by the Department, calculated in acre-feet.

(12) "Mitigation project" means a project approved by the Department that results in mitigation water.

(13) "Mitigation water" means water that is legally protected for instream use from implementation of a mitigation project, calculated in acre-feet.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

#### 690-505-0610

##### Mitigation Obligation and Mitigation Standards

(1) Except as provided in section (6), (7) and (8) of this rule, the Department may only approve a ground water permit application in the Deschutes Ground Water Study Area if mitigation is provided pursuant to these rules.

(2) A mitigation obligation may be satisfied by obtaining mitigation credits or by providing for implementation of a mitigation project.

(3) Mitigation projects may include:

(a) The allocation of conserved water provided under ORS 537.455 to 537.500 and OAR 690, division 18, where the applicant's portion of the conserved water is allocated and legally protected for instream use;

(b) The transfer of an existing water right to an instream use if the water right to be transferred is also lawfully eligible for transfer to another out-of-stream use, and for mitigation banks, the time-

limited transfer or lease of an existing water right to instream use under ORS 537.348 and OAR 690, division 77;

(c) A permit to appropriate water for the purpose of artificial recharge of a ground water reservoir pursuant to ORS 537.135 and OAR 690, division 350;

(d) A secondary permit to use stored water from an existing reservoir obtained pursuant to ORS 537.130 to 537.211 and OAR 690, division 310, provided the secondary permit is for instream use; or

(e) Other projects approved by the Department that result in mitigation water.

(4) Mitigation water must be provided within the general zone of impact identified by the Department, legally protected for instream use prior to permit issuance, and committed for the life of the permit and subsequent certificate(s).

(5) The amount of mitigation needed to satisfy a mitigation obligation shall be:

(a) One mitigation credit per acre-foot of consumptive use based on the ground water permit application; or

(b) Mitigation water equal to the volume of consumptive use of the ground water permit application, calculated in acre-feet.

(6) These rules do not preclude any person from submitting evidence, which will be considered by the Department, that a proposed or existing ground water appropriation does not have the potential for substantial interference with surface water rights as described in OAR 690, division 9, and will not measurably reduce scenic waterway flows under ORS 390.835.

(7) If the Department finds, based on a preponderance of evidence, that a specific ground water permit application does not have the potential for substantial interference with surface water under OAR 690, division 9, and will not result in a measurable reduction of scenic waterway flows under ORS 390.835, the Department shall not require mitigation for that specific ground water use.

(8) Notwithstanding section (1) of this rule, if the impact of use under a ground water permit application is completely offset by a proposed voluntary cancellation of an existing ground water use subject to transfer, such that impact on surface waters from the new ground water use is the same as, or less than, impact on surface waters from the existing ground water use subject to transfer, the ground water permit application may be approved without additional mitigation once the proposed voluntary cancellation is complete.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

### 690-505-0615

#### Notice of Mitigation Obligation

(1) The Department shall provide notice of the mitigation obligation to ground water permit applicants. The notice shall:

(a) State that mitigation must be provided before a permit may be issued for a water right application approved under ORS 537.621 to 537.626;

(b) Identify the amount and location of the mitigation obligation; and

(c) Identify mitigation banks as potential means of providing mitigation.

(2) For ground water permit applications pending before the Department as of the effective date of this rule, the notice of mitigation obligation and the applicant's response to the mitigation obligation shall be incorporated into the water right application process under OAR 690, division 310.

(3) For ground water permit applications submitted after the effective date of this rule, the notice of mitigation obligation shall be included in the initial review report under OAR 690-310-0080.

(4) Ground water permit applicants receiving notice under this rule shall, through the water right application process under OAR 690, division 310, submit proposed mitigation to the Department that meets the requirements of 690-505-0610(2)-(5).

(5) Ground water permit applicants proposing to implement a mitigation project shall identify and describe the project and, in

any application associated with the mitigation project, identify that the project is being used to satisfy a mitigation obligation.

(6) If the amount of mitigation identified by the ground water permit applicant is different from that stated in the Department's notice of mitigation obligation, the applicant shall provide an explanation of why the amount is different and identify appropriate information proposed to be used to determine the equivalent consumptive use for the proposed ground water appropriation.

(7) The Department shall work in cooperation with a representative of the Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality and Division of State Lands to enhance the resource benefits and make the most effective use of mitigation projects and mitigation water.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

### 690-505-0620

#### Ground Water Permit and Final Order Conditions

(1) Any final order approving a ground water permit application and the associated permit and certificate issued subsequent to a notice of mitigation obligation under 690-505-0615(1) shall, as appropriate:

(a) Specify the amount and location of the mitigation obligation;

(b) Require that mitigation water be legally protected instream for instream use before the permit will be issued;

(c) Require that mitigation water be committed for the life of the permit and subsequent certificate;

(d) Require installation of a measuring device, monthly recording of water use and annual reporting of water use;

(e) If the mitigation is from a secondary right for stored water from a storage project not owned or operated by the ground water permit applicant, require maintenance of a contract for the use of the water with the owner/operator of the storage project;

(f) Provide for regulation and/or cancellation if the required mitigation is not maintained; and

(g) Require additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

(2) Any final order issued under OAR 690, division 310 approving a ground water permit application subject to these rules, that is contingent upon mitigation being provided before a permit may be issued, shall expire 5 years after issuance unless the required mitigation is provided.

(3) Failure to comply with conditions required under section (1) of this rule shall result in the Department regulating the associated ground water right, proposing to deny any permit extension application for the associated right, and proposing to cancel the associated permit.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

### 690-505-0625

#### Municipal and Quasi-municipal Ground Water Permit Applications

(1) Municipal or quasi-municipal ground water permit applicants may satisfy a mitigation obligation by incrementally obtaining and providing mitigation to coincide with the incremental development of the permit, provided that mitigation is provided prior to each stage of development of the permit and in accordance with the standards under 690-505-0610(2)-(5). Municipal or quasi-municipal ground water permit applicants interested in incremental mitigation shall:

(a) Submit an incremental development plan to the Department as part of the response to a notice of mitigation obligation under OAR 690-505-0615. The plan shall indicate a time schedule for the development of the permit and indicate proposed sources of mitigation that will be obtained and used prior to each stage of development;

(b) Report to the Department the progress of implementing the incremental development plan in accordance with a reporting schedule identified in the final order approving the water right permit under OAR 690-310-0200; and

(c) Submit a new or updated Water Management and Conservation Plan pursuant to OAR 690, division 86.

(2) Applicants or permit holders subject to this rule may request that the Department approve changes to an incremental development plan and related mitigation obligation. A permit holder subject to this rule shall not increase the rate or amount of water diversion before increasing the corresponding required mitigation.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

#### 690-505-0630

##### Additional Findings of Department When Mitigation is Provided

(1) If a ground water permit applicant satisfies the mitigation obligation, notwithstanding OAR 690, division 9, for the purposes of OAR 690, divisions 33, 310, 400, and 410, the proposed ground water appropriation is deemed to be a ground water appropriation that does not have the potential for substantial interference with surface water.

(2) The Department shall include the Oregon State Parks and Recreation Department and the Division of State Lands in the interagency review team process under OAR 690, division 33, and use the interagency review team process to seek agency input on ground water permit applications and mitigation projects in the Deschutes Ground Water Study Area.

Stat. Auth.: ORS 536.027 & 390.835

Stats. Implemented: ORS 390.835 & Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

### DIVISION 506

#### JOHN DAY BASIN PROGRAM

#### 690-506-0010

##### Definitions and Procedures

(1) The John Day River Basin and the Upper Mainstem, South Fork, Middle Mainstem, Middle Fork, North Fork and Lower Sub-basins are as shown by Water Resources Department Map No. 6.6L.

(2) Permitted Use, as used in OAR 690-506-0040, means a use classified as being within the public interest, unless the Water Resources Commission, acting under the review process prescribed in OAR 690-001-0002, finds otherwise.

(3)(a) Conditional Use, as used in OAR 690-506-0040, means a use that is classified as being within the public interest, unless the Commission, acting under the review process prescribed in OAR 690-001-0002, finds otherwise. The Department may approve an application for a permit for a conditional use only if the applicant shows that:

(A) The proposed use will not conflict with existing instream or out-of-stream uses classified as permitted on the affected stream;

(B) The quantity of water requested for the proposed use will not interfere with the objectives established for permitted uses; and

(C) The proposed use will not cause violation of water quality standards established for the protection of permitted uses.

(b) If the applicant fails to show to the satisfaction of the Director that the proposed appropriation meets the requirements in subsection (a) of this section, at the request of the applicant, the application shall be transmitted to the Commission for review;

(c) Notwithstanding the provision of subsections (a) and (b) of this section, any application for which Commission consideration is required by OAR 690-011-0100 shall be transmitted directly to the Commission. In addition to any other standards appropriate for evaluating public interest, the Commission shall consider the standards prescribed in subsection (a) of this section when determining if the use of water involves a substantial public interest question.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

#### 690-506-0020

##### Policies

The waters of the John Day River Basin provide the public with important economic, social, and environmental benefits:

(1) In managing the surface and ground waters of the basin the Water Resources Commission shall encourage:

(a) Increases in crop production lands through:

(A) Better seasonal distribution of streamflows;

(B) Protection of ground water quality and quantity; and

(C) Water conservation.

(b) Enhancement of wild anadromous fish production and resident fish production through:

(A) Better seasonal distribution of streamflows;

(B) Water conservation;

(C) Protection and improvement of riparian areas; and

(D) Maintenance of instream flows.

(c) Provision of adequate water supplies for livestock and wildlife through:

(A) Better seasonal distribution of streamflows;

(B) Protection of ground water quality and quantity; and

(C) Water conservation.

(d) Enhancement of water-related tourism and recreation opportunities, especially on lakes and reservoirs, the scenic waterway, and major streams through:

(A) Better seasonal distribution of streamflows;

(B) Water conservation;

(C) Protection and improvement of riparian areas; and

(D) Maintenance of instream flows.

(e) Maintenance of adequate water quality and quantity for projected domestic, industrial, and municipal growth through:

(A) Better seasonal distribution of streamflows;

(B) Protection of ground water quality and quantity;

(C) Water conservation; and

(D) Protection and improvement of riparian areas.

(f) Development of storage reservoirs that are beneficial to anadromous fish and other uses.

(2) The Commission shall:

(a) Allow water use for mining purposes employing practices which do not interfere significantly with other uses;

(b) Prohibit power development where proposed hydroelectric projects damage wild anadromous fish or resident game fish, or harm other resource values beyond mitigation.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

#### 690-506-0030

##### Objectives

(1) Basin Objectives: In furtherance of the policies in OAR 690-506-0020, the following objectives are established for meeting water resource needs in the John Day River Basin:

(a) Achieve better seasonal distribution of runoff to reduce high streamflows and increase low streamflows:

(A) Provide for structural and non-structural storage;

(i) Protect identified sites from incompatible land uses through county comprehensive plans;

(ii) Protect all riparian areas and improve those that are damaged;

(iii) Evaluate the benefits of non-structural alternatives for storage.

(B) Increase the infiltration of water in the basin:

(i) Slow runoff by protecting and improving vegetative cover and riparian areas on forest and range lands and by constructing small retention structures;

(ii) Maintain soil permeability in the watershed by avoiding unnecessary soil compaction, maintaining organic material in the soil, and mitigating for roads and other impervious surfaces.

(b) Protect ground water quality and quantity:

(A) Maintain a balance between ground water pumpage plus natural discharge and recharge;

(B) Maintain ground water quality;

(C) Prevent the use of ground water, which is determined to be hydraulically connected to surface water, from significantly lowering streamflows and interfering with the use of surface water.

(c) Encourage water conservation, the efficient use of water, and the elimination of waste:

(A) Minimize surface runoff back to streams from irrigated areas;

(B) Encourage contingency plans by municipalities for use during periods of water shortage;

(C) Increase public awareness of the importance of water conservation.

(d) Protect existing high-quality riparian areas and improve degraded riparian areas:

(A) Promote development of livestock watering facilities outside of riparian areas;

(B) Revegetate degraded riparian areas;

(C) Implement grazing practices which distribute livestock use over the available range;

(D) Fence riparian areas where appropriate.

(e) Maintain instream flows to provide for needs of aquatic life and recreational opportunities:

(A) Restrict additional withdrawals from streams important for instream uses through conditional use classifications;

(B) Achieve established minimum perennial streamflows;

(C) Evaluate the need for additional minimum perennial streamflows;

(D) Increase monitoring of streamflow at existing minimum perennial flow sites;

(E) Increase monitoring and enforcement of water use.

(f) Develop additional water resources data to improve basin water planning and management.

(2) Subbasin Water Use Objectives: Except as otherwise noticed under subbasin special objectives, the following uses are present in each of the subbasins. The continued use of water in such manner is recognized as important to the public and to the holders of water rights. Therefore, in furtherance of the policies in OAR 690-506-0020, the Commission adopts the following objectives, with the noted subbasin exceptions, for meeting the quantitative and qualitative needs for beneficial uses of water:

(a) Domestic Use: Provide for domestic water needs;

(b) Municipal, Commercial, and Industrial Uses — Provide for water needs of existing and future municipal, commercial, and industrial users;

(c) Irrigation and Agricultural Uses — Increase water supplies to permit late season irrigation of the existing croplands and meet future needs for irrigation and other agricultural uses;

(d) Livestock Use — Satisfy current and future needs. Encourage development of additional watering sites outside riparian areas;

(e) Mining Use — Ensure that mining water use does not interfere with other uses;

(f) Power Use — Permit inclusion of power on storage projects and development of power for residential applications where consistent with instream needs;

(g) Fish Life and Wildlife Use — Restore habitat to increase wild fish production. Increase resident fish and wildlife populations. Promote conditions for anadromous fish migration and seasonal rearing downstream;

(h) Pollution Abatement — Improve water quality by eliminating non-point discharge of bacteria and other pollutants, improving riparian conditions, and increasing summer streamflows;

(i) Recreation Use — Provide water for increased recreational opportunities. Support greater recreational access and more facilities for fishing and swimming.

(3) Subbasin Special Concerns: The following objectives for each of the subbasins address special concerns. Achievement of the objectives will aid in furtherance of the policies in OAR 690-506-0020:

(a) Upper Mainstem Subbasin:

(A) Reduce erosion damage caused by high streamflows on the John Day River and Beech and Canyon Creeks;

(B) Protect existing surface water uses from interference by ground water use along the John Day River.

(b) South Fork Subbasin: Reduce erosion damage caused by high streamflows on the lower South Fork John Day River;

(c) Middle Mainstem Subbasin:

(A) The objective for Recreational Use in the Middle Mainstem Subbasin shall be to protect and enhance recreational uses in the John Day Scenic Waterway and to increase recreational access and facilities as needed;

(B) Reduce erosion and damage caused by high streamflows on the John Day River and Bridge Creek.

(d) Middle Fork Subbasin: The objective for Pollution Abatement in the Middle Fork Subbasin shall be to minimize sediment produced from forestry activities and resolve localized water quality problems. Water quality should be improved by eliminating non-point discharges, improving riparian conditions, and improving summer streamflows;

(e) North Fork Subbasin:

(A) The objectives for Pollution Abatement in the North Fork Subbasin shall be to minimize sediment produced from forestry activities and resolve localized water quality problems. Water quality should be improved by eliminating non-point discharges, improving riparian conditions, and improving summer streamflows;

(B) The objectives for Recreational Use in the North Fork Subbasin shall be to provide for instream recreational values and increased flows for boating on the North Fork John Day River. Recreational access and facilities should be increased as needed;

(C) Reduce erosion damage from high streamflows throughout the subbasin;

(D) Reduce ice scouring on the North Fork John Day River between Monument and Kimberly.

(f) Lower Subbasin:

(A) The objective for Recreational use in the Lower Subbasin shall be to protect and enhance recreational uses in the John Day Scenic Waterway and to increase recreational access and facilities as needed;

(B) Reduce damage from high streamflows on the John Day River and Thirtymile Creek;

(C) Slow runoff to increase infiltration of water on cultivated farmland;

(D) Protect the quantity and quality of ground water in Columbia River Basalt and alluvial aquifers.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

## 609-506-0040

### Classifications

(1) Except as otherwise provided by the Commission, the Department shall not accept an application for a permit to appropriate any of the surface or ground waters of the John Day River Basin for any uses except those for which the waters are classified.

(2) Except as otherwise provided in this rule, the surface and ground waters of the John Day River Basin are classified for domestic, livestock, municipal, ground water recharge, irrigation, agricultural, power, commercial, industrial, mining, fire protection, recreation, pollution abatement, wildlife, and fish life uses.

(3) The waters of the natural lakes of the John Day River Basin are classified for domestic, livestock, irrigation of lawns or non-commercial gardens less than one-half acre, power development less than 100 theoretical horsepower, fire protection, recreation, pollution abatement, wildlife, fish life, and agricultural uses.

(4) The Department shall include in any permit for a well producing from Quaternary Alluvium a condition that the use of water from the well shall be regulated according to priority date in the same manner as, and conjunctively with, surface water from the nearest stream.

(5) Ground water of Quaternary Alluvium is classified for the same uses as the surface water in the adjacent stream.

(6) Upper Mainstem Subbasin:

(a) The waters in the John Day River from Rail Creek to USGS Gage 14040500 at Picture Gorge, and in the following streams and all tributaries, in the Upper Mainstem Subbasin are classified for the uses in subsections (b), (c), and (d) of this section:

- (A) Cottonwood Creek;
- (B) Canyon Creek;
- (C) Beech Creek;
- (D) Strawberry Creek;
- (E) McClellan Creek;
- (F) Fields Creek;
- (G) Belshaw Creek;
- (H) Moon Creek;
- (I) Dog Creek;
- (J) Little Pine Creek;
- (K) Laycock Creek;
- (L) Grub Creek;
- (M) Indian Creek;
- (N) Bear Creek;
- (O) Dixie Creek;
- (P) Deardorff Creek;
- (Q) Reynolds Creek;
- (R) Rail Creek;
- (S) Roberts Creek.

(b) Permitted Uses: Irrigation between January 1 and June 15 or using waters legally stored between January 1 and June 15, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (i) June 15–30, 0.30;
- (ii) July, 0.90;
- (iii) August, 0.70;
- (iv) September, 0.30.

(d) In addition to the uses identified in subsection (b) of this section, industrial use is permitted in the John Day River from the confluence of Strawberry Creek to USGS gage 14040500 at Picture Gorge;

(e) The waters within Long Gulch are classified for municipal use by the City of John Day.

(7) South Fork Subbasin:

(a) The waters in the South Fork John Day River from the confluence of Flat Creek to the mouth, and in the following streams and all tributaries, in the South Fork Subbasin are classified for the uses in subsections (b) and (c) of this section:

- (A) Black Canyon Creek;
- (B) Murderers Creek;
- (C) Deer Creek;
- (D) Wind Creek;
- (E) Sunflower Creek;
- (F) Indian Creek;
- (G) Flat Creek;
- (H) Lewis Creek;
- (I) Corral Creek;
- (J) Venator Creek.

(b) Permitted Uses: Irrigation between January 1 and June 15 or using waters legally stored between January 1 and June 15, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (A) June 15–30, 0.30;
- (B) July, 0.90;
- (C) August, 0.70;
- (D) September, 0.20.

(d) The waters of Gunyon Springs, tributary to Conner Creek, are classified for municipal use by the City of Dayville.

(8) Middle Mainstem Subbasin:

(a) The waters in the John Day River from USGS gage 14040500 at Picture Gorge to the bridge at Service Creek, and in the following streams and all tributaries, in the Middle Mainstem Subbasin are classified for the uses in subsections (b), (c) and (d) of this section:

- (A) Bridge Creek;
- (B) Horseshoe Creek;
- (C) Service Creek;
- (D) Kahler Creek;
- (E) Parrish Creek;
- (F) Rock Creek;
- (G) Alder Creek;
- (H) Johnson Creek;
- (I) Cherry Creek.

(b) Permitted Uses: Irrigation between January 1 and April 30 or using waters legally stored between January 1 and April 30, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (A) May, 0.20;
- (B) June, 0.60;
- (C) July, 0.90;
- (D) August, 0.70;
- (E) September, 0.10.

(d) In addition to the uses identified in subsection (b) of this section, industrial use is permitted on the John Day River from the mouth of the North Fork John Day River downstream to the bridge at Service Creek;

(e) Conditional Uses in the John Day Scenic Waterway: The waters of all streams within the John Day Scenic Waterway as defined in OAR 736, division 40 are classified for irrigation using waters legally stored between January 1 and April 30 or using no more water than shown by the table in subsection (c) of this section, domestic, livestock, and agricultural use. The Department may grant a permit for appropriation of water for a use in this subsection only if the applicant shows that the use of water will not conflict with existing instream fish life, wildlife, or recreation uses.

(9) Middle Fork Subbasin:

(a) The waters in the Middle Fork John Day River, and in the following streams and all tributaries, in the Middle Fork Subbasin are classified for the uses in subsections (b) and (c) of this section:

- (A) Indian Creek;
- (B) Deep Creek;
- (C) Long Creek;
- (D) Camp Creek;
- (E) Beaver Creek;
- (F) Clear Creek;
- (G) Big Boulder Creek;
- (H) Vinegar Creek;
- (I) Vincent Creek;
- (J) Davis Creek;

- (K) Deerhorn Creek;
- (L) Granite Boulder Creek;
- (M) Granite Creek;
- (N) Butte Creek;
- (O) Big Creek;
- (P) Huckleberry Creek;
- (Q) Slide Creek.

(b) Permitted Uses: Irrigation between January 1 and June 15 or using waters legally stored between January 1 and June 15, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (A) June 15–30, 0.30;
- (B) July, 0.90;
- (C) August, 0.70;
- (D) September, 0.30.

(d) The waters of Bly Creek are classified for municipal use by the City of Long Creek.

(10) North Fork Subbasin:

(a) The waters in the North Fork John Day River below the boundary of the North Fork John Day Wilderness Area near river-mile 76, and in the following streams and all tributaries, in the North Fork Subbasin are classified for the uses in subsections (b), (c), and (d) of this section:

- (A) Meadow Brook Creek;
- (B) Rudio Creek;
- (C) Cottonwood Creek;
- (D) Deer Creek;
- (E) Wall Creek;
- (F) Ditch Creek;
- (G) Mallory Creek;
- (H) Potamus Creek;
- (I) Desolation Creek;
- (J) Camas Creek.

(b) Permitted Uses: Irrigation between January 1 and June 15 or using waters legally stored between January 1 and June 15, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (A) June 15–30, 0.30;
- (B) July, 0.90;
- (C) August, 0.70;
- (D) September, 0.30.

(d) In addition to the uses identified in subsection (b) of this section, industrial use is permitted on the North Fork John Day River from rivermile 15.0 to 16.0;

(e) Conditional Uses above the North Fork John Day Wilderness Area: The waters of the North Fork Subbasin upstream from the boundary of the North Fork John Day Wilderness Area near rivermile 76 are classified for irrigation using waters legally stored between January 1 and April 30 or using no more water than shown by the table in subsection (c) of this section, domestic, livestock, and agricultural use. The Department may grant a permit for appropriation of water for a use in this subsection only if the applicant shows that the use of water will not conflict with existing instream fish life, wildlife, or recreation uses.

(11) Lower Subbasin:

(a) The waters in the following streams and all tributaries, in the Lower Subbasin are classified for the uses in subsections (b) and (c) of this section:

- (A) Butte Creek;
- (B) Thirtymile Creek;
- (C) Rock Creek.

(b) Permitted Uses: Irrigation between January 1 and April 30 or using waters legally stored between January 1 and April 30, domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation;

(c) Conditional Uses: Irrigation using no more water during the months shown than those quantities listed below, power in association with storage or for residential applications, agricultural use, municipal, commercial, industrial, and mining. Monthly Irrigation Water Use (acre-feet/acre):

- (A) May, 0.20;
- (i) June, 0.60;
- (ii) July, 0.90;
- (iii) August, 0.70;
- (iv) September, 0.10.

(d) Conditional Uses in the John Day Scenic Waterway: The waters of all streams within the John Day Scenic Waterway as defined in OAR 736, division 40 are classified for irrigation using waters legally stored between January 1 and April 30 or using no more water than shown by the table in subsection (c) of this section, domestic, livestock, and agricultural use. The department may grant a permit for appropriation of water for a use in this subsection only if the applicant shows that the use of water will not conflict with existing instream fish life, wildlife, or recreation uses.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

## 690-506-0050

### Minimum Perennial Streamflows

(1) Except as otherwise provided in this rule, the Department shall include in each permit for appropriation of the waters of any stream identified on **Table 1**, or tributaries, a provision that the right shall not permit the use of waters when the streamflow is less than the adopted minimum flows.

(2) For those streams listed in **Table 1** for which specific points of measurement are not designated, water rights junior to the streamflow requirements shall be regulated as necessary to maintain the flows throughout the specified reaches.

(3) For those streams listed in **Table 1** for which specific points of measurement are designated, water rights junior to the streamflow requirements shall be regulated as necessary to maintain the listed flows at the designated point of measurement. If the designated point of measurement is not at the downstream end of the specified stream reach, water rights junior to the streamflow requirements shall be regulated as necessary to maintain the listed flows throughout the reach between point of measurement and the downstream end of the reach.

(4) Exceptions:

(a) This rule shall not apply to permits for appropriation for domestic or livestock use or to use of water legally stored or legally released from storage;

(b) This rule shall not apply to permits for appropriation for municipal uses on Bridge Creek, the South Fork John Day River, and the John Day River between USGS Gage 14038530 near John Day and the mouth of the North Fork John Day River;

(c) This rule shall not apply to industrial use under permits with priority dates before December 2, 1986, on the John Day River between USGS Gage 14038530 near John Day and the mouth of the North Fork John Day River.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

**690-506-0060**

**Reservations**

(1) Waters of the Upper Mainstem Subbasin: Any application for a permit to store water in the subbasin for use in supplying irrigation uses or to meet adopted minimum perennial streamflow levels up to a total of 8,120 acre-feet shall be reserved for future appropriation effective January 30, 1987.

(2) Waters of the Middle Mainstem Subbasin: Any application for a permit to store water in the subbasin for use in supplying irrigation uses or to meet adopted minimum perennial streamflow levels up to a total of 4,180 acre-feet shall be reserved for future appropriation effective January 30, 1987.

(3) Waters of the Middle Fork Subbasin: Any application for a permit to store water in the subbasin for use in supplying irrigation uses or to meet adopted minimum perennial streamflow levels up to a total of 18,430 acre-feet shall be reserved for future appropriation effective January 30, 1987.

(4) Waters of the North Fork Subbasin: Any application for a permit to store water in the subbasin for use in supplying irrigation uses or to meet adopted minimum perennial streamflow levels up to a total of 21,420 acre-feet shall be reserved for future appropriation effective January 30, 1987.

(5) Waters of the Lower Subbasin: Any application for a permit to store water in the area drained by Rock Creek for use in supplying irrigation uses up to a total of 5,700 acre-feet shall be reserved for future appropriation effective January 30, 1987.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

**690-506-0070**

**Water Quality Control**

The Department shall include in any water right a condition that the use of water under the right is contingent upon continuing compliance with the conditions of any required discharge permit for water quality control held by the water right permittee.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

**690-506-0080**

**Storage of Water**

(1) An application for a permit to store water on a stream with uses classified as conditional shall be subject to the standards and review process in OAR 690-506-0010(3).

(2) The Department shall not accept an application to store or impound water within the John Day Scenic Waterway as defined in OAR 736, division 40.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 20, f. 6-8-62; WRB 23, f. 7-3-63; WRB 27, f. 5-11-64; WRD 3-1981, f. & cert. ef. 5-21-81; WRD 13-1985, f. & cert. ef. 12-18-85; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 2-1987, f. & cert. ef. 3-3-87; WRD 4-1987, f. & cert. ef. 5-14-87; WRD 2-1989(Temp), f. & cert. ef. 1-27-89; Administrative Renumbering 1-1993, Renumbered from 690-080-0060

**DIVISION 507**

**UMATILLA BASIN PROGRAM**

**690-507-0010**

**Definitions**

The following meanings apply to the terms as used in these rules for the Umatilla Basin Program. Other rules of the Department may define these words differently:

(1) "Classification" or "Classified" means the allowed and preferred beneficial use(s) of a given surface or ground water source for which future appropriations of water shall be permitted.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Oregon Water Resources Department.

(4) "Director" means the Water Resources Director.

(5) "Minimum Perennial Streamflow" or "Minimum Streamflow" means an administrative rule that establishes a flow necessary to support aquatic life, or recreation or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur.

(6) "Statutorily Exempt Ground Water Uses" means those uses for which no ground water application, permit, or certificate is required under ORS 537.545. These uses are for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the grounds, three acres in size or less, or schools that have less than 100 students and that are located in cities with a population of less than 10,000;

(d) Single or group domestic purpose in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes; or

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

(7) "Subbasin" means any subarea of a basin defined by surface drainage patterns such as the drainage basin of any tributary, or the area draining to any point on a river or draining between two points on a river.

(8) "Umatilla Basin" means the area comprised by the Walla Walla River, Wildhorse Creek, Upper Umatilla River, Birch and McKay Creeks, Columbia-Umatilla Plateau, Butter Creek, and Willow Creek subbasins as shown on Water Resources Department map number 7.6.

(9) "Withdrawal" or "Withdrawn" means an order of the Commission, or State Engineer or a Legislative act prohibiting all new appropriations for particular uses from a source for part or all of the year. A withdrawal can be set for a prescribed length of time or indefinitely until modified by the Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, f. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

**690-507-0020**

**Policies**

(1) All rights to the surface waters of the Umatilla River and its tributaries initiated after September 28, 1987, shall be subordinate to permitted appropriations for the purpose of artificial ground water recharge established before that date.

(2) To support present and proposed basin resource developments, no out-of-basin or out-of-state appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Umatilla River Basin.

(3) Rights to use water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluent or return flows from such uses shall not interfere with other beneficial uses of water.

(4) Future permits for consumptive water use shall be issued only on condition that efficient water use techniques or water conservation measures are proposed in the application. Failure to implement the proposed measures shall be a violation of the terms of the permit.

(5) Municipal water supplies, interstate cooperation in water management, instream needs, out-of-stream needs, water quality and watershed management are issues of concern in the Umatilla

River Basin. The Commission's policies on these issues are as follows:

(a) Municipal water supply: In addressing the issue of municipal water supply in the Umatilla River Basin, it shall be the Commission's policy to:

(A) Assist cities with limited financial resources secure needed capital to develop, expand and improve municipal water supplies;

(B) Promote and aid municipal water conservation and encourage cities to plan for water service emergencies;

(C) Encourage the use of artificial ground water recharge to supplement city ground water supplies and help reduce water level declines in the basalt ground water reservoir;

(D) Encourage and promote the concept of regional municipal water supply systems and preserve the options for proposed systems;

(E) Promote and support the purchase and transfer of water rights to municipal use;

(F) Promote the continued viability of municipal water systems reliant on the basalt ground water reservoir.

(b) Interstate cooperation on water management: In addressing the issue of interstate cooperation on water management, it shall be the Commission's policy to:

(A) Coordinate and cooperate with the state of Washington in managing the water resources of the Walla Walla subbasin to the extent judicial decisions, stipulations and statutory authority allow;

(B) Open negotiations with the Washington Department of Ecology by 1990.

(c) Instream needs: In addressing the issue of instream needs, it shall be the Commission's policy to:

(A) Support the anadromous fish production goals of the Northwest Power Planning Council, Oregon Department of Fish and wildlife and Confederated Tribes of the Umatilla Indian Reservation for the Umatilla River Basin;

(B) Protect and enhance instream values by limiting new uses of water from heavily appropriated streams and managing interconnected surface and ground water conjunctively;

(C) Support and encourage watershed and riparian zone projects which improve instream habitat and water quantity and quality, and which provide multiple water resources benefits.

(d) Out-of-stream use: In addressing the issue of out-of-stream use, it shall be the Commission's policy to:

(A) Require conservation and efficient water use;

(B) Control growth of water demand by limiting new irrigation appropriations on selected streams to stored or conserved water;

(C) Support the efficient use of surplus surface and ground water to supplement declining ground water levels through artificial ground water recharge;

(D) Support development of multipurpose surface storage consistent with policies in paragraphs (A), (B), and (C) of this subsection.

(e) Water quality: In addressing the issue of water quality, it shall be the Commission's policy to:

(A) Encourage and promote a formal ground water quality monitoring program to ensure safe municipal and domestic ground water supplies;

(B) Encourage development of management plans for ground water aquifers susceptible to contamination;

(C) Support surface water quality standards to satisfy selected subbasin beneficial water uses identified in this basin program;

(D) Encourage and promote control of nonpoint and point sources of water pollution.

(f) Watershed management: In addressing the issue of watershed management, it shall be the Commission's policy to:

(A) Encourage and promote improvements in water quality, quantity and related resources through agency-public cooperation and education about the benefits of watershed management;

(B) Encourage public and private landowners and managers to employ best management practices to benefit water quality and quantity;

(C) Encourage and support the retirement of highly erodible cropland as a means to enhance water quality and improve runoff patterns;

(D) Encourage and support riparian and stream channel enhancement as a means of improving flow distribution, water quality and related resource values.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

## 690-507-0030

### Walla Walla River Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Walla Walla subbasin, the Commission has the following objectives:

(a) Develop interstate cooperation with Washington in the management of surface and ground water and related resources;

(b) Protect instream values in selected streams by closing them to future appropriations or limiting new appropriations to selected nonirrigation uses;

(c) Preserve the opportunity for future upstream storage for all beneficial uses;

(d) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(e) Protect municipal ground water supplies;

(f) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Walla Walla River subbasin shall comply with the following provisions:

(a) The unappropriated waters of the Walla Walla River and tributaries from and including the Little Walla Walla Diversion to the state border are withdrawn from further appropriation. This withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. Frost protection between March 1 and May 15, up to a cumulative total of 35 cfs of permits and rights with priority dates after December 2, 1985, is also exempt from this withdrawal. This withdrawal was established by the Commission on January 17, 1986;

(b) The waters of Dugger Creek and tributaries, being entirely appropriated, are withdrawn from further appropriation. The purpose of the withdrawal is to avoid conflict between new uses and existing rights and administrative problems in the distribution of water resulting from new appropriations. The withdrawal was ordered by the State Engineer on August 12, 1933;

(c) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of the Walla Walla River subbasin generally, are classified for domestic, livestock, irrigation, municipal, industrial, power development (subject to limitations of OAR 690, division 51), mining, fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses only;

(B) The surface waters of the Walla Walla River and tributaries upstream from the Little Walla Walla diversion are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, mining, fish life, wildlife, recreation, pollution abatement, artificial ground water recharge and public instream uses only;

(C) Subject to the rights and priorities existing on June 24, 1988, and established minimum perennial streamflows, 40,000 acre-feet of the annual yield of the Walla Walla River upstream from the Little Walla Walla diversion is further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on the Walla Walla River and its tributaries upstream from the Little Walla Walla diversion after June 24, 1988, shall be subordinate to this classification. Any storage project built under this

classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission;

(D) The surface waters of Mill Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, fish life, wildlife, pollution abatement, artificial ground water recharge and public instream uses only.

(E) The surface waters of Couse and Pine Creeks and tributaries are classified for domestic, livestock, irrigation or non-commercial lawn and garden not to exceed 1/2 acre, fish life, wildlife, pollution abatement, artificial ground water recharge and public instream uses only.

(d) Storage: Surface waters legally stored and legally released may be used for any beneficial purpose;

(e) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 3.375 acre feet per acre to be irrigated;

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program; and

(D) Water shall be recharged only between December 1 and May 15.

(f) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Walla Walla River and tributaries when flows are below the levels specified in **Table 1**. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in **Table 1** with priority dates of 3-31-88.

(3) Ground Water: Appropriation and use of ground water in the Walla Walla River subbasin shall comply with the following provisions:

(a) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the Walla Walla River subbasin are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(B) Ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Athena, Helix, Milton-Freewater, and Weston is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

[ED NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

## 690-507-0040

### Wildhorse Creek Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Wildhorse Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation or non-consumptive uses;

(b) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(c) Protect municipal ground water supplies;

(d) Prevent new appropriations from causing ground water/surface water interference;

(e) Support efforts to reduce nonpoint source sediment loads in subbasin streams.

(2) Surface Water: Appropriation and use of surface water in the Wildhorse Creek subbasin shall comply with the following provisions:

(a) Wildhorse Creek and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use the surface waters of Wildhorse Creek and tributaries may be issued only for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, power development (subject to the limitations of OAR 690, division 51), mining, fish life, wildlife, recreation, pollution abatement, artificial ground water recharge and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988.

(c) Storage: Surface water legally stored during the period November 1 through May 31 and legally released may be used for any beneficial purpose;

(d) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Ground Water: Appropriation and use of ground water in the Wildhorse Creek subbasin shall comply with the following provisions:

(a) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the Wildhorse Creek subbasin are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Adams, Athena, Helix, Pendleton, and Weston is classified for municipal, group

domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

## 690-507-0050

### Upper Umatilla River Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Upper Umatilla River subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Acknowledge the Confederated Tribes of the Umatilla Indian Reservation have an unquantified claim to water and preserve the opportunity for the Tribes to store excess winter flows for Tribal use or purposes;

(c) Preserve the opportunity for future upstream storage for all beneficial uses;

(d) Promote municipal use of surface waters;

(e) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(f) Protect municipal ground water supplies;

(g) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Upper Umatilla River subbasin shall comply with the following provisions:

(a) Subject to the rights existing on March 3, 1941, the waters of the North Fork Umatilla River and its tributaries were set aside by the Oregon Legislature for the exclusive use of the City of Pendleton, ORS 538.450. Nothing in the statute prohibits the City of Pendleton from using the main stem Umatilla River to convey this water to the City;

(b) The Upper Umatilla River and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(c) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) Natural flows of the Upper Umatilla River and tributaries are classified for domestic, livestock, irrigation or noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR 690, division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Until there is a final quantification of any reserved water rights of the Confederated Tribes of the Umatilla Indian Reservation, up to 75,000 acre feet of water in the Upper Umatilla River subbasin are classified for storage for the exclusive use of the Tribes. This classification applies to storage on or off the reservation in a single or multiple impoundments. Storage of this water is subject to the rights and priorities existing on June 24, 1988, and the withdrawal of the Umatilla River and tributaries from June 1 through October 31. All natural flow rights issued on the Umatilla River and its tributaries upstream from Pendleton and on the Umatilla main stem downstream from Pendleton after June 24, 1988, shall be subordinate to this classification. This classification shall be superior to the classification for storage contained in paragraph (C) of this subsection; and

(C) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of the Umatilla River and tributaries from June 1 through October 31, and the 75,000 acre foot classification in paragraph (B) of this subsection, up to 100,000 acre feet of the annual yield of the Umatilla River above Pendleton are classified for all beneficial uses in conjunction with storage. All natural flow rights issued on the Umatilla River and its tributaries upstream from Pendleton and on the Umatilla main stem downstream from Pendleton after this date shall be subordinate to this classification, except that up to a total of 20,000 acre feet of additional permits may be granted for artificial ground water recharge without subordination under this paragraph. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(d) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(e) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(f) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in **Table 1**. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in **Table 1** with priority dates of 3-31-88.

(3) Ground Water: Appropriation and use of ground water in the Upper Umatilla River subbasin shall comply with the following provisions:

(a) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the Upper Umatilla River subbasin are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Adams and Pendleton is classified for municipal, group domestic and statutorily

exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

## 690-507-0060

### Birch and McKay Creeks Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Birch and McKay Creeks subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(d) Protect municipal ground water supplies;

(e) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Birch and McKay Creeks subbasin shall comply with the following provisions:

(a) Birch and McKay Creeks and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Birch and McKay Creeks and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR 690, division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of Birch Creek and tributaries from June 1 through October 31, Birch Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Birch Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(e) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in **Table 1**. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in **Table 1** with priority dates of 3-31-88.

(3) Ground Water: Appropriation and use of ground water in the Birch and McKay Creeks subbasin shall comply with the following provisions:

(a) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the Birch and McKay Creeks subbasin are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Pendleton and Pilot Rock is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

## 690-507-0070

### Columbia-Umatilla Plateau Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the

Columbia-Umatilla Plateau subbasin, the Commission has the following objectives:

- (a) Protect instream values in the Umatilla River main stem by closing the main stem to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation or nonconsumptive uses;
- (b) Permit future surface water storage for any beneficial use;
- (c) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;
- (d) Achieve a balance between ground water pumpage and natural recharge in designated critical ground water areas and ground water study areas;
- (e) Protect municipal ground water supplies;
- (f) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Columbia-Umatilla Plateau subbasin shall comply with the following provisions:

(a) Umatilla River and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) Subject to the provisions of OAR 690-507-0050(2)(c)(B) and (C), the surface waters of the Umatilla River main stem are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, frost control, municipal, industrial, power development, mining, fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) The surface waters of Umatilla River tributaries are classified for domestic, livestock, irrigation, frost control, power development (subject to the limitations of OAR 690, division 51), mining, pollution abatement and artificial ground water recharge during the period November 1 through May 31 each year; and

(C) The surface waters of all other streams are classified for domestic, livestock, irrigation, frost control, power development (subject to limitations of OAR 690, division 51), mining and artificial ground water recharge.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(e) Minimum perennial streamflows: To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in **Table 1**. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and with priority dates of 3-31-88.

(3) Ground Water: Appropriation and use of ground water in the Columbia-Umatilla Plateau subbasin shall comply with the following provisions:

(a) Ground water resources of the basalt aquifer and shallow gravel aquifer within the Ordinance Critical Ground Water Area are closed to further appropriation by Order of the Director dated April 2, 1976;

(b) Ground water resources of the basalt aquifer within the Butter Creek Critical Ground Water Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(c) Ground water resources of the basalt aquifer in the Stage Gulch Ground Water Study Area are closed to further appropriation by Proclamation of the Director dated January 31, 1985.

(d) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the basalt aquifer in the Ella Butte Ground Water Study Area described in the Proclamation of January 31, 1985, are classified for statutorily exempt uses (see definition) only. This classification terminates the critical ground water area determination proceeding initiated January 31, 1985, and the Proclamation of the same date issued for the Ella Butte study area;

(B) The ground water resources of the Columbia-Umatilla Plateau outside the Ordinance and Butter Creek Critical Ground Water Areas and the Ella Butte and Stage Gulch Ground Water Study Areas are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge;

(C) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Heppner, Helix, Ione, Lexington, and Pendleton is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect;

(D) Subject to the more strict controls imposed by the existing State Gulch Proclamation or issuance of a critical area order for the Stage Gulch Ground Water Study Area, ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Echo, Hermiston, Pendleton, Stanfield, and Umatilla is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(e) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

**690-507-0080**

**Butter Creek Subbasin**

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Butter Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(d) Achieve a balance between ground water pumpage and natural recharge in designated critical ground water areas and ground water study areas;

(e) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Butter Creek subbasin shall comply with the following provisions:

(a) Butter Creek and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Butter Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR 690, division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of Butter Creek and tributaries from June 1 through October 31, Butter Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Butter Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Ground Water: Appropriation and use of ground water in the Butter Creek subbasin shall comply with the following provisions:

(a) Ground water resources of the basalt aquifer and shallow gravel aquifer within the Ordinance Critical Ground Water Area are closed to further appropriation by Order of the Director dated April 2, 1976;

(b) Ground water resources of the basalt aquifer within the Butter Creek Critical Ground Water Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(c) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the Butter Creek subbasin outside the Ordinance and Butter Creek Critical Ground Water Areas are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the city of Heppner is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(d) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

**690-507-0090**

**Willow Creek Subbasin**

(1) Objectives: In developing a program for the management, use and control of the surface and ground water resources of the Willow Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by limiting future appropriations to selected nonirrigation or nonconsumptive uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial ground water recharge to offset declining ground water levels and supplement existing ground water uses;

(d) Achieve a balance between ground water pumpage and natural recharge in designated critical ground water areas and ground water study areas;

(e) Protect municipal ground water supplies;

(f) Prevent new appropriations from causing ground water/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Willow Creek subbasin shall comply with the following provisions:

(a) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Willow Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR 690, division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial ground water recharge, and public instream uses; and

(B) Subject to the rights and priorities existing on June 24, 1988, Willow Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Willow Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this

classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(b) Storage: Surface water legally stored and legally released, may be used for any beneficial purpose;

(c) Artificial ground water recharge: Use of surface water for ground water recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Ground Water: Appropriation and use of ground water in the Willow Creek subbasin shall comply with the following provisions:

(a) Ground water resources of the basalt aquifer within the Butter Creek Critical Ground Water Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(b) Classification: Permits to use ground water may be issued only for the following classified uses:

(A) The ground water resources of the basalt aquifer in the Ella Butte Ground Water Study Area as described in the Proclamation of January 31, 1985, are classified for statutorily exempt uses (see definition) only. This classification terminates the critical ground water determination proceeding initiated January 31, 1985, and the Proclamation of the same date issued for the Ella Butte study area;

(B) The ground water resources of the Willow Creek subbasin outside the Butter Creek Critical Ground Water Area and the Ella Butte Ground Water Study Area are classified for statutorily exempt ground water uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and

(C) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Heppner, Ione and Lexington is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(c) Permits issued to appropriate ground waters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070

#### **Methods for Determining and Distributing the Sustainable Annual Yield of the Basalt Groundwater Reservoir by Subarea for the Butter Creek Critical Groundwater Area**

##### **690-507-0610**

##### **Purpose**

(1) The Director issued an order on August 18, 1986, declaring the Butter Creek Critical Ground Water Area. The order described the exterior boundaries and divided the area into six sub-

areas for the purpose of managing the ground-water resource. The response of ground-water levels to pumpage from each subarea is largely independent of pumpage within other subareas.

(2) To promote optimum use of the limited ground water supply in the Butter Creek Critical Ground Water Area, the Commission encourages development of water management plans to maintain a high standard of water use efficiency.

(3) The Commission recognizes that exempt users in the North subarea are a stress on the ground water resource in the Butter Creek Critical Ground Water Area. If, by 2000, reasonably stable water levels have not been achieved, the Department shall determine whether or not to require prior authorization under these rules for ground water uses that are exempt under ORS 537.545.

(4) The purpose of these rules is to stabilize water levels in the basalt ground water reservoir in the Butter Creek Critical Ground Water Area of Umatilla and Morrow counties. These rules carry out the authority granted to the Commission in ORS 536.900 to 536.935 and ORS 537.505 to 537.745.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

##### **690-507-0620**

##### **Definitions**

The following definitions apply to OAR 690, division 507:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Water Resources Department.

(4) "Physically capable" means that the well, pump installed, and distribution system are able to produce and distribute the quantity of water requested.

(5) "Reasonably stable water level" means an annual static water level decline of less than one foot over the entire subarea as determined by averaging the annual water level change of the representative wells in the subarea, and the water level change for the subarea averaged over five consecutive years displays no decline.

(6) "Sustainable annual yield" means the volume of water that can be pumped on an annual basis while maintaining reasonably stable water levels. This is a measurement of the capacity of the available source.

(7) "Water user" means a person who pumps water from the basalt ground water reservoir.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

##### **690-507-0630**

##### **General Requirements**

(1) Except as specified in OAR 690-507-0650(3) and 690-507-0670(7), the use of water from the basalt ground water reservoir within the Butter Creek Critical Ground Water Area shall be limited to the sustainable annual yield.

(2) The Commission delegates to the Director the authority to implement these rules.

(3) Water from the basalt ground water reservoir in the Butter Creek Critical Ground Water Area shall be used for irrigation only during the irrigation season. The irrigation season begins on the 15th of March and ends on the 1st of November.

(4) The Department shall not accept any new applications for appropriation of water from the basalt ground water reservoir within the Butter Creek Critical Area.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92; WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99

##### **690-507-0635**

##### **Water Users Exempt from Division Requirements**

Any school located in the Butter Creek Critical Ground Water Area using water from the basalt reservoir for watering lawns, grounds and fields not exceeding 10 acres in area shall meet the requirements of OAR 690-507-0640(2) to (5) and 690-507-0645.

All other water users exempt under the provisions of ORS 537.545(a), (b), (d), (e), and (f) are not subject to the provisions of OAR 690, division 507.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

**690-507-0640**

**Duties of Water Users**

(1) Appropriation of ground water from the Butter Creek Critical Ground Water Area is prohibited unless the water user meets the requirements of section (2) to (5) of this rule.

(2) A water user authorized by OAR 690-507-0670 to pump water from the basalt ground water reservoir shall satisfy the following conditions:

(a) Wells shall have an access port with a minimum diameter of 3/4 inch. The access shall be adequate to determine the water level at any time.

(b) A water user may install a functioning airline with a pressure gauge in addition to the access port. The airline shall be calibrated and yield accurate data. The airline shall not enter the well through the access port. The airline shall be adequate to determine the water level at any time.

(c) A water user shall install and maintain a totalizing flow meter on each well authorized by OAR 690-507-0670. The meter shall meet the requirements of OAR 690-507-0645.

(3) A water user shall record flow meter and power meter readings on a weekly basis at times when water is being used. The water user shall use forms provided by the Department and shall mail the readings to the Department in Salem by December 1st of the same year.

(4) A water user shall report broken flow meters to the watermaster in Pendleton within 48 hours after determining that the flow meter is broken. A water user shall not appropriate for more than 30 days without an operating flow meter. While the flow meter is broken, the water user shall record daily the hours the pump operates, the power meter reading and the time the power meter was read. The water user shall mail the data to the Department in Salem within one week of the installation of the repaired or replacement flow meter. The data shall include a statement of the initial reading on the newly installed flow meter and the current power meter reading. The water user shall notify the watermaster within 48 hours of installing the repaired or replacement flow meter.

(5) A water user shall notify the Department prior to commencing any repair or modification work on a pump or well. A water user shall mail a description of the repair or modification work to the Department within 10 days of the completion of the repair or modification.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

**690-507-0645**

**Flow Meter Specifications and Installation Guidelines**

(1) A flow meter shall meet the following specifications:

(a) A flow meter shall be of the velocity-propeller type or shunt line venturi type with enclosed propeller made of non-corrosive materials. Other types of flow meters may be used with the written approval of the Water Resources Director;

(b) A flow meter shall have a rated accuracy of plus or minus two percent of actual flow for all rates of flow within the range of flow for which the meter is designed. The flow meter shall register the full range of discharge from the source of water for which it is to be used;

(c) The register head of the flow meter shall have a visual, recording, mechanical, digital totalizer located on or adjacent to the flow meter and shall be equipped with a test sweep hand so that flow rate can be quickly determined. The register face shall be protected by a suitable plate or cover;

(d) Units of water measurement shall be in acre-feet, cubic feet, or gallons. The totalizer shall read directly in the above-described units. Flow meters recording in acre-feet shall read to the

nearest 1/10th acre-foot, and the decimal multiplier shall be clearly indicated on the face of the register head;

(e) The totalizing part of the flow meter shall have a sufficient capacity to record the quantity of water authorized to be pumped over a period of two years;

(f) Both the register and the flow meter unit shall be provided with a method of sealing with a wire or lead seal to prevent unauthorized tampering with the placement or position of the flow meter.

(2) The flow meter installation shall be as follows:

(a) The flow meter shall be installed in accordance with manufacturer's specifications and in such a manner that there shall be a full pipe of water at all times during which water is being pumped;

(b) There shall be no turnouts or diversions between the source of water and the flow meter installation;

(c) The flow meter shall be placed in the pipe not less than five pipe diameters downstream from any valve, elbow, or other obstruction which might create turbulent flow, or install straightening vanes as recommended by the flow meter manufacturer. There shall also be at least one pipe diameter of unobstructed flow on the downstream side of the flow meter;

(d) All in-line saddle flow meters equipped with U-bolt fasteners shall be provided with a sealing wire and lead seal near the terminal ends of the U-bolt following the complete installation of the flow meter;

(e) The flow meter and register shall not be locked in a building which would prevent access to the register. The register or flow meter shelter may be equipped with a lock to prevent tampering or breakage, provided that a lock is used and for which the watermaster has a key;

(f) Provisions shall be made for rating of the flow meter in accordance with the manufacturers specifications;

(g) The flow meter installation is subject to inspection and approval by the Director;

(h) In the case of artesian wells which flow at various times, the flow meter shall be installed in a manner which will measure both pumped and flowing discharges.

(3) Flow meters shall be kept clear of debris or other foreign or vegetative growth which could impede their operation. All flow meters shall be lubricated as specified by the manufacturer.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90

**690-507-0647**

**New Subarea Boundaries**

(1) The Echo Junction Subarea shall be divided into two separate subareas being the Fourmile Canyon Subarea and the Echo Junction Subarea with boundaries as prescribed in sections a and b of this rule:

(a) Echo Junction Subarea: Beginning at a point approximately 3,290 feet east of the northwest corner of Section 3, Township 3 North, Range 28 East, WM; thence southerly through Emigrant Buttes in the east half of Section 3, Township 3 North, Range 28 East, WM; thence southerly through the center of Section 22, Township 3 North, Range 28 East, WM; and continuing southerly towards Service Buttes to a point approximately 750 feet east of the southwest corner of Section 10, Township 2 North, Range 28 East, WM; thence west to the southwest corner of Section 10, Township 2 North, Range 28 East, WM; thence southwest along a straight line to the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WM; thence north along the west line of said Section 22 to the west quarter corner of Section 22, Township 2 North, Range 27 East, WM; thence northeast along a straight line to the southwest corner, northwest quarter southwest quarter, Section 19, Township 3 North, Range 28 East, WM; thence north along the Range line common to Range 27 East and Range 28 East to the northwest corner of Township 3 North, Range 28 East, WM; thence east along the Township line to a point approximately 3,290 feet east of the northwest corner of Section 3, Township 3 North, Range 28 East, WM; the point of beginning.

(b) Fourmile Canyon Subarea: Beginning at the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WM; thence southwest along a straight line to the southwest corner of Section 21, Township 2 North, Range 27 East, WM; thence northwest along a straight line to the northwest corner of Section 1, Township 2 North, Range 26 East, WM; thence east along the Township line common to Township 2 North and Township 3 North, to the southwest corner of Section 35, Township 3 North, Range 27 East, WM; thence northeast along a straight line to the southwest corner of Section 6, Township 3 North, Range 28 East, WM; thence south along the Range line common to Range 27 East and Range 28 East to the southwest corner, northwest quarter southwest quarter, Section 19, Township 3 North, Range 28 East, WM; thence southwest along a straight line to the west quarter corner of Section 22, Township 2 North, Range 27 East, WM; thence south to the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WM; the point of beginning.

(2) The North Subarea shall be divided into two separate subareas being the "North Subarea" and "Section 21" with boundaries as prescribed in sections (a) and (b) of this rule:

(a) North Subarea: Being the basalt aquifer underlying the following area; beginning at the center of Section 9, Township 5 North, Range 28 East, WM, at the Columbia River; thence southerly through Umatilla Butte in the east half of Section 28, Township 5 North, Range 28 East, WM; thence continuing southerly through Hermiston Butte within the northeast quarter of the northwest quarter, Section 10, Township 4 North, Range 28 East, WM and continuing southerly towards Emigrant buttes in the east half of Section 3, Township 3 North, Range 28 East, WM, to a point on the Township line common to Township 3 North and Township 4 North, Range 28 East, WM; thence westerly along the Township line common to Township 3 North and Township 4 North, to the Southwest corner of Township 4 North, Range 28 East, WM; thence northerly along the west boundary line of Range 28 East to the Northwest corner of Township 4 North, Range 28 East, WM; thence easterly along the Township line to the southwest corner of Section 31, Township 5 North, Range 28 East, WM; thence north along the west boundary line of Range 28 East to the Columbia River; thence easterly along the south edge of the Columbia River to the point of beginning, excepting therefrom the following:

(b) Section 21: Being the basalt aquifer underlying the following area above 100 feet in elevation above mean sea level, described as follows: beginning at a point 1725 feet west of the northeast corner of Section 21, Township 5 North, Range 28 East, WM on the section line common to Section 16 and Section 21, Township 5 North, Range 28 East, WM; thence southerly to a point 1100 feet west of the southeast corner of Section 21, Township 5 North, Range 28 East, WM on the section line common to Section 21 and Section 28, Township 5 North, Range 28 East, WM; thence westerly along the section line common to Section 21 and Section 28, Township 5 North, Range 28 East, WM to the southwest corner of Section 21, Township 5 North, Range 28 East, WM; thence northerly along the section line common to Section 20 and Section 21, Township 5 North, Range 28 East, WM to the northwest corner of Section 21, Township 5 North, Range 28 East, WM; thence easterly along the section line common to Section 16 and Section 21, Township 5 North, Range 28 East, WM to the point of the beginning., all that portion of Section 21, Township 5 North, Range 28 East, WM within the North Subarea.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745

Stats. Implemented: ORS 537.535

Hist.: WRD 3-1992, f. & cert. ef. 2-10-92; WRD 2-1999, f. & cert. ef. 3-3-99

#### 690-507-0650

##### Sustainable Annual Yield

(1) Each of the eight subareas in the Butter Creek Critical Ground Water Area shall be managed according to the sustainable annual yield within that subarea. The Department shall refine the sustainable annual yield value over time through the use of pumpage data and the response of ground water levels.

(2) The initial sustainable annual yield for each of the eight subareas was calculated using data from the 1983 through the 1989 irrigation seasons and is listed below by subarea followed by the sustainable annual yield in acre feet:

- (a) North — 250 acre-feet;
- (b) Section 21 — 28 acre-feet;
- (c) Echo Junction — 1,260 acre-feet;
- (d) Fourmile Canyon — 1,300 acre-feet;
- (e) West — 5,670 acre-feet;
- (f) East — 720 acre-feet;
- (g) Pine City — 4,150 acre-feet;
- (h) South — 1,000 acre-feet.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92; WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99

#### 690-507-0660

##### Method for Determining the Sustainable Annual Yield

(1) The Department shall determine the sustainable annual yield for each subarea by comparing the volume of ground water pumped annually from each subarea for a given year to the average of the annual changes in ground water levels for the subarea for the same year.

(a) The Department shall calculate pumpage from each well based on data collected by the Department and as submitted under OAR 690-507-0640. The pumpage for each subarea shall be calculated by totaling the pumpage from each non-exempt well in the subarea.

(b) The Department shall calculate annual change in ground water levels for a subarea by subtracting the current year's February or March water level from the previous year's February or March water level. The average shall be calculated by adding the change at each well in the subarea and dividing by the number of wells with available water level data. Data from all permitted or certificated wells in each subarea that are measurable shall be used to calculate the average annual change. If water level data cannot be collected at a particular well, data from a nearby well may be substituted.

(2) The total volume of ground water pumped from each subarea for a given year shall be plotted against the average change in ground water levels from that subarea for that year.

(3) A line of regression is drawn through the data using the least squares fit method and extended through the zero decline axis.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

#### 690-507-0670

##### Distribution of Sustainable Annual Yield

(1) The method for distributing the sustainable annual yield from the basalt ground water reservoir within each subarea in the Butter Creek Critical Ground Water Area is as follows:

(a) Except as provided in sections (5) of this rule, a water user who intends to pump water during any year shall make a request to the Department in Salem by July 1st of the preceding year on forms provided by the Department.

(b) The distribution of ground water shall be based on the priority dates of the water rights within the individual subarea.

(c) In determining the amount of ground water each water user is allocated to pump during the next calendar year or irrigation season, the Department may consider:

- (A) Request for allocations received;
- (B) The sustainable annual yield;
- (C) The limits of the ground water rights;
- (D) The relative dates of priority;
- (E) Historical usage;

(F) Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and

(G) Any other factors deemed appropriate by the Department.

(d) The Department shall notify, by certified mail with return receipt requested, each water user by August 1st of the amount of ground water allocated under these rules to each water user for the next calendar year or irrigation season.

(2) If pumpage for a particular year exceeds the sustainable annual yield for a subarea, the total subarea allocation for the second year after that occurrence shall be reduced by that volume.

(3) If any water user requests more water than has been historically used, the Department may allocate less water than requested if, upon investigation, it appears unlikely the user will pump the volume requested.

(4) If any water user requests less water than has been historically used, the Department may allocate more water than requested if, upon investigation, it appears likely that the user will pump more than the volume requested.

(5) The method of requesting and distributing water in section (1) of this rule may not apply if a voluntary agreement among ground water users in any subarea is reached. The Director may approve the agreement if it is consistent with ORS 537.730 to 537.740 and the requirements of these rules (division 507). The Department shall be a party to any agreement reached.

(6) Any agreement approved by the Director may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by the Director if the Director finds, after investigation and a public hearing upon adequate notice, that:

(a) The agreement is not being substantially complied with by the parties thereto;

(b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 or OAR division 690, chapter 507; or

(c) That the agreement is ineffective in achieving reasonably stable water levels.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92;

WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99

### 690-507-0680

#### Process of Periodic Review of Sustainable Annual Yield

(1) The Department shall determine whether a reasonably stable water level was achieved in the basalt ground water reservoir in each subarea in 2000 and every five years thereafter.

(2) For any subarea in which a reasonably stable water level was achieved, the Department may increase the sustainable annual yield if the evaluation under section (1) of this rule indicates that more water is available than the existing sustainable annual yield.

(3) For any subarea in which a reasonably stable water level was not achieved, the Department may decrease the sustainable annual yield or modify subarea boundaries, or both, if the evaluation under section (1) of this rule indicates that less water is available than the existing sustainable annual yield.

(4) For any subarea in which a reasonably stable water level was achieved but for which individual wells, in the Director's judgement, show significant water level declines, the Department may propose modification of subarea boundaries.

(5) If the Department proposes to modify sustainable annual yields or subarea boundaries, it shall conduct a rulemaking hearing as part of the basin program.

(6) The Department may propose modification of subarea boundaries at times other than the five year review required in section (1) of this rule.

(7) Individuals with a ground water right in the Butter Creek Critical Ground Water Area may petition the Department to modify subarea boundaries under the following conditions:

(a) The petition shall be in writing;

(b) The petition shall contain evidence in support of the proposed boundary change; and

(c) The petition shall specify the proposed location of the boundary.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

### 690-507-0690

#### Annual Reporting

The Department shall publish a report for the Butter Creek Critical Ground Water Area by May 31 of each year. The report shall include the water user's name, well locations, permit numbers, priority dates, authorized diversions, actual diversion and water levels.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99

### 690-507-0700

#### Violation Policy

Whenever the Department has reason to believe a violation of a rule in OAR 690, division 507 has occurred, it shall investigate. If a violation has occurred, the Director may take enforcement action.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90

#### Methods for Determining and Distributing the Sustainable Annual Yield of the Basalt Groundwater Reservoir by Subarea for the Stage Gulch Critical Groundwater Area

### 690-507-0750

#### Purpose

(1) The Director issued an order on May 15, 1991, declaring the Stage Gulch Critical Groundwater Area. The order described the exterior boundaries and divided the area with eight subareas for the purposes of managing the groundwater resource. The response of ground-water levels to pumpage in each subarea is largely independent of pumpage within other subareas.

(2) To promote optimum use of the limited groundwater supply in the Stage Gulch Critical Groundwater Area, the Commission encourages development of water management plans to maintain a high standard of water use efficiency.

(3) The purpose of these rules is to stabilize water levels in the basalt groundwater reservoir in the Stage Gulch Critical Groundwater area of Umatilla County. These rules carry out the authority granted to the Commission in ORS 536.900 to 536.935 and 537.505 to 537.745.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

### 690-507-0760

#### Definitions

The following definitions apply to OAR 690, division 507:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Water Resources Department.

(4) "Physically Capable" means that the well, pump installed, and distribution system are able to produce and distribute the quantity of water requested.

(5) "Reasonably Stable Water Level" means an annual static water level decline of less than one foot over the entire subarea as determined by averaging the annual water level change of the representative wells in the subarea, and the water level change for the subarea averaged over five consecutive years displays no decline.

(6) "Sustainable Annual Yield" means the volume of water that can be pumped on an annual basis while maintaining reasonably stable water levels. This is a measurement of the capacity of the available source.

(7) "Water User" means a person who pumps water from the basalt groundwater reservoir.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

**690-507-0770**

**General Requirements**

(1) The use of water from the basalt groundwater reservoir within the Stage Gulch Critical Groundwater Area shall be limited to the sustainable annual yield.

(2) The Commission delegates to the Director the authority to implement these rules.

(3) Water from the basalt groundwater reservoir in the Stage Gulch Critical Groundwater Area shall be used for irrigation only during the irrigation season. The irrigation season shall begin on the 1st of March and end on the 30th of November. Water for all other authorized uses may be used at any time :

(a) A water user who wishes to use water for irrigation at any time other than the irrigation season designated in this section shall make a written request to the Department in Salem;

(b) If the request is authorized, the Department may require the water user to submit to the Department in Salem a static water level measurement for each well authorized to be pumped. Water level measurements shall be made by a Certified Water Rights Examiner, Licensed Water Well Driller, Registered Geologist, Licensed Land Surveyor, Registered Professional Engineer, pump installer, or the water user.

(4) The Department shall not accept any new applications for appropriation of water from the basalt groundwater reservoir within the Stage Gulch Critical Groundwater Area.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

**690-507-0775**

**Water Users Exempt from Division Requirements**

(1) Any school located in the Stage Gulch Critical Groundwater Area using water from the basalt reservoir for watering lawns, grounds and fields not exceeding ten (10) acres in area shall meet the requirements of OAR 690-507-0780(2) to (5) and 690-507-0785. Except as provided in section (2) of this rule, water users with wells located in Subarea E of the Stage Gulch Critical Groundwater Area and all other water users exempt under the provisions of ORS 537.545(a), (b), (d), (e), and (f) are not subject to the provisions of OAR 690, division 507.

(2) Permitted wells located in Subarea E of the Stage Gulch Critical Groundwater Area shall not be deepened to a point where the well would penetrate the deep basalt reservoir underlying said subarea.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

**690-507-0780**

**Duties of Water Users**

(1) Appropriation of groundwater from the Stage Gulch Critical Groundwater Area is prohibited unless the water user meets the requirements of sections (2) to (5) of this rule.

(2) A water user authorized by OAR 690-507-0810 to pump water from the basalt groundwater reservoir shall satisfy the following conditions:

(a) Wells shall have an access port with a minimum diameter of 3/4 inch. The access shall be adequate to determine the water level at any time;

(b) A water user may install a functioning airline with a pressure gage in addition to the access port. The airline shall be calibrated and yield accurate data. The airline shall not enter the well through the access port. The airline shall be adequate to determine the water level at any time;

(c) A water user shall install and maintain a totalizing flow meter on each well authorized by OAR 690-507-0810 except wells authorized for irrigation of 10 acres or less. The meter shall meet the requirements of OAR 690-507-0785.

(3) If a flow meter is required, a water user shall record flow meter and power meter readings on a weekly basis at times when water is being used. The water user shall use forms provided by the Department and shall mail the readings to the Department in Salem by December 1st of the same year. The Department may accept

other power-use information from a water user in lieu of weekly power meter readings. Acceptable power-use information may include, but is not limited to, copies of monthly statements provided by the water user or directly by the utility.

(4) A water user shall report broken flow meters to the watermaster in Pendleton within 48 hours after determining that the flow meter is broken. A water user shall not appropriate for more than 60 days without an operating flow meter. While the flow meter is broken, the water user shall record daily the hours the pump operates, the power meter reading and the time the power meter was read. The water user shall mail the data to the Department in Salem within one week of the installation of the repaired or replacement flow meter. The data shall include a statement of the initial reading on the newly installed flow meter and the current power meter reading. The water user shall notify the watermaster within 48 hours of installing the repaired or replacement flow meter.

(5) A water user shall notify the Department in Salem or the watermaster in Pendleton prior to commencing any repair or modification work on a pump or well. If emergency repairs are required at times that preclude prior Department notification, a water user shall notify the Department by 5 p.m. on the first business day following commencement of the repair work. A water user shall mail a description of the repair or modification work to the Department within 10 days of the completion of the repair or modification.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

**690-507-0785**

**Flow Meter Specifications and Installation Guidelines**

(1) A flow meter shall meet the following specifications:

(a) A flow meter shall be of the velocity-propeller type or shunt line venturi type with enclosed propeller made of non-corrosive materials. Other types of flow meters may be used with the written approval of the Water Resources Director;

(b) A flow meter shall have a rated accuracy of plus or minus two percent of actual flow for all rates of flow within the range of flow for which the meter is designed. The flow meter shall register the full range of discharge from the source of water for which it is to be used;

(c) The register head of the flow meter shall have a visual, recording, mechanical, digital totalizer located on or adjacent to the flow meter and shall be equipped with a test sweep hand so that flow rate can be quickly determined. The register face shall be protected by a suitable plate or cover;

(d) Units of water measurement shall be in acre-feet, cubit feet, or gallons. The totalizer shall read directly in the above-described units. Flow meters recording in acre-feet shall read to the nearest 1/10th acre-foot, and the decimal multiplier shall be clearly indicated on the face of the register head;

(e) The totalizing part of the flow meter shall have a sufficient capacity to record the quantity of water authorized to be pumped over a period of two (2) years;

(f) Both the register and the flow meter unit shall be provided with a method of sealing with a wire or lead seal to prevent unauthorized tampering with the placement or position of the flow meter.

(2) The flow meter installation shall be as follows:

(a) The flow meter shall be installed in accordance with manufacturer's specifications and in such a manner that there shall be a full pipe of water at all times during which water is being pumped;

(b) There shall be no turnouts or diversions between the source of water and the flow meter installation;

(c) The flow meter shall be placed in the pipe not less than five pipe diameters downstream from any valve, elbow, or other obstruction which might create turbulent flow, or install straightening vanes as recommended by the flow meter manufacturer. There shall also be at least one pipe diameter of unobstructed flow on the downstream side of the flow meter;

(d) All in-line saddle flow meters equipped with U-bolt fasteners shall be provided with a sealing wire and lead seal near the

terminal ends of the U-bolt following the complete installation of the flow meter;

(e) Except for wells authorized for municipal use, the flow meter and register shall not be locked in a building which would prevent access to the register. The register or flow meter shelter may be equipped with a lock to prevent tampering or breakage, provided that a lock is used and for which that watermaster has a key;

(f) The flow meter installation is subject to inspection and approval by the Director;

(g) In the case of artesian wells which flow at various times, the flow meter shall be installed in a manner which will measure both pumped and flowing discharges.

(3) Flow meters shall be kept clear of debris or other foreign or vegetative growth which could impede their operation. All flow meters shall be lubricated as specified by the manufacturer.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0790

##### Sustainable Annual Yield

(1) Each of the subareas in the Stage Gulch Critical Groundwater Area shall be managed according to the sustainable annual yield within that subarea. The Department shall refine the sustainable annual yield over time through the use of pumpage data and the response of ground-water levels.

(2) The initial sustainable annual yield for each of the seven managed subareas in the Stage Gulch Critical Groundwater Area was determined using data from the 1980 through the 1989 irrigation season and is listed below:

##### SUBAREA — SUSTAINABLE ANNUAL YIELD

A — 11,450 Acre-Feet

B — 200

C — 400

D — 3,250

F — 200

G — 2,750

H — 8,850

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0800

##### Method for Determining the Sustainable Annual Yield

(1) The Department shall determine the sustainable annual yield for each subarea by comparing the volume of groundwater pumped annually from each subarea for a given year to the average of the annual changes in groundwater levels for the area for the same year:

(a) The Department shall calculate pumpage from each well based on data collected by the Department and as submitted under OAR 690-507-0780. The pumpage for each subarea shall be calculated by totaling the pumpage from each well in the subarea required to have a flow meter;

(b) The Department shall calculate annual change in groundwater levels for a subarea by subtracting the current year's February or March water level from the previous year's February or March water level. The average shall be calculated by adding the change at each well in the subarea and dividing by the number of wells with available water level data. Data from all permitted or certificated wells in each subarea that are measurable shall be used to calculate the average annual change. If water level data cannot be collected at a particular well, data from a nearby well may be substituted.

(2) The total volume of groundwater pumped from each subarea for a given year shall be plotted against the average change in groundwater levels from that subarea for that year.

(3) A line of regression is drawn through the data using the least squares fit method and extended through the zero decline axis.

(4) The initial determination of sustainable annual yield for subareas B, C, and F of the Stage Gulch Critical Groundwater Area shall be based on the average annual pumpage in each subarea during the period 1985 through 1989, rounded upward to the nearest 50 acre-feet.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0810

##### Distribution of Sustainable Annual Yield

(1) The method for distributing the sustainable annual yield from the basalt groundwater reservoir within each managed subarea in the Stage Gulch Critical Groundwater Area is as follows:

(a) Except as provided in section (5) of this rule, a water user who intends to pump water for any authorized use except municipal use during any year shall make a request to the Department in Salem by July 1st of the preceding year on forms provided by the Department;

(b) The Department shall assume that municipal water users intend to pump a quantity of water equivalent to the average pumped for the previous three (3) years, unless the municipal water user informs the Department otherwise by July 1st;

(c) Except as provided in section (5) of this rule, the distribution of groundwater for any authorized use except municipal use shall be based on the priority dates of the water rights within the individual subarea;

(d) In determining the amount of groundwater each water user is allocated to pump during the next calendar year or irrigation season, the Department may consider:

(A) Requests for allocations received;

(B) The sustainable annual yield;

(C) The limits of the groundwater rights;

(D) The relative dates of priority, with preference given without regard to priority date for municipal use;

(E) Historical usage;

(F) Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and

(G) Any other factors deemed appropriate by the Department.

(e) The Department shall notify by certified mail with return receipt requested, each water user by August 1st of the amount of groundwater allocated under these rules to each water user for the next calendar year or irrigation season;

(f) Persons who wish to challenge the allocation determined under this rule shall request a hearing before the Department pursuant to ORS 183.415 to 183.470.

(2) If pumpage for a particular year exceeds the sustainable annual yield for a subarea, the total subarea allocation for the second year after that occurrence shall be reduced by that volume.

(3) If any water user requests more water than has been historically used, the Department may allocate less water than requested if, upon investigation, it appears unlikely the user will pump the volume requested.

(4) If any water user requests less water than has been historically used, the Department may allocate more water than requested if, upon investigation, it appears likely that the user will pump more than the volume requested.

(5) The method of requesting and distributing water in section (1) of this rule may not apply if a voluntary agreement among groundwater users in any subarea is reached. The Director may approve the agreement if it is consistent with ORS 537.730 to 537.740 and the requirements of these rules (division 507). The Department shall be a party to any agreement reached.

(6) Any agreement approved by the Director may be terminated by the lapse of time as provided in the agreement, by consent to the parties to the agreement or by the Director if the Director finds, after investigation and a public hearing upon adequate notice, that:

(a) The agreement is not being substantially complied with by the parties thereto;

(b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 or OAR division 690, chapter 507; or

(c) That the agreement is ineffective in achieving reasonably stable water levels.

(7) A gradual reduction of pumpage in excess of the sustainable annual yield shall be implemented beginning in 1992:

(a) Those users who would not be allocated any water in 1992 shall be allowed to pump seventy-five percent of their average pumpage for the period 1986 to 1990;

(b) Those users who would not be allocated any water in 1993 shall be allowed to pump fifty percent of their average pumpage for the period 1986 to 1990;

(c) Those users who would not be allocated any water in 1994 shall be allowed to pump twenty-five percent of their average pumpage for the period 1986 to 1990.

(8) Those users who would be allocated only a portion of their request because it exceeds the sustainable annual yield shall be allowed to pump that volume of water requested that is within the sustainable annual yield. The volume of water allocated under the sustainable annual yield shall be subtracted from the user's average pumpage for the period 1986 to 1990. A percentage of the difference shall be allocated as described in section (7) of this rule in addition to the volume allocated below the sustainable annual yield.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0820

##### Process of Periodic Review of Sustainable Annual Yield

(1) The Department shall determine whether a reasonably stable water level was achieved in the basalt groundwater reservoir in each subarea in 1995 and every five years thereafter.

(2) For any subarea in which a reasonably stable water level was achieved, the Department may increase the sustainable annual yield if the evaluation under section (1) of this rule indicates that more water is available than the existing sustainable annual yield.

(3) For any subarea in which a reasonably stable water level was not achieved, the Department may decrease the sustainable annual yield or modify subarea boundaries, or both, if the evaluation under section (1) of this rule indicates that less water is available than the existing sustainable annual yield.

(4) For any subarea in which a reasonably stable water level was achieved but for which individual wells, in the Director's judg-

ment, show significant water level declines, the Department may propose modification of subarea boundaries.

(5) If the Department proposes to modify sustainable annual yields or subarea boundaries, it shall conduct a rulemaking hearing as part of the basin program.

(6) The Department may propose modification of subarea boundaries or sustainable annual yields at times other than the five year review required in section (1) of this rule.

(7) Individuals with a groundwater right in the Stage Gulch Critical Groundwater Area may petition the Department to modify subarea boundaries or sustainable annual yields under the following conditions:

(a) The petition shall be in writing;

(b) The petition shall contain evidence in support of the proposed modification; and

(c) The petition shall specify the proposed location of the boundary or sustainable annual yield.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0830

##### Annual Reporting

The Department shall publish a report for the Stage Gulch Critical Groundwater Area by May 31 of each year. The report shall include the water user's name, well locations, permit numbers, priority dates, authorized diversions, actual diversion, and water levels.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

#### 690-507-0840

##### Violation Policy

Whenever the Department has reason to believe a violation of a rule in OAR 690, division 507 has occurred, it shall investigate. If a violation has occurred, the Director may take enforcement action.

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91

## DIVISION 508

### GRANDE RONDE BASIN PROGRAM

#### 690-508-0000

##### General Classifications

(1) Stored water may be used for any beneficial purpose.

(2) The storage of up to 900 acre-feet of water for domestic or livestock purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt from regulation for storage of water reserved under OAR 690-508-0110 through 0120.

(3) Storage of water is a beneficial use in the Grande Ronde Basin.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 15, f. 3-7-62; WRB 27, f. 5-11-64; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Administrative Renumbering 1-1993, Renumbered from 690-080-0080; WRD 2-1997, f. & cert. ef. 2-25-97

#### 690-508-0010

##### Upper Grande Ronde Subbasin

(1) Classifications:

(a) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Upper Grande Ronde for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and the waters of the Upper Grande Ronde Basin are hereby so classified.

(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for

such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

(3) Power Development: Water rights acquired for hydroelectric power purposes utilizing the waters of the Upper Grande Ronde Basin shall be subordinate in priority to future upstream beneficial uses of water except for hydroelectric power.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 15, f. 3-7-62; WRB 27, f. 5-11-64; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Administrative Renumbering 1-1993, Renumbered from 690-080-0080; WRD 2-1997, f. & cert. ef. 2-25-97

### 690-508-0020

#### Middle Grande Ronde Subbasin

(1) Classifications:

(a) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Middle Grande Ronde Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life purposes and the waters of the Middle Grande Ronde Basin are hereby so classified.

(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(c) Structures or works for utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses.

(3) Power Development: Water rights acquired for hydroelectric power purposes utilizing the waters of the Middle Grande Ronde Basin shall be subordinate in priority to future beneficial uses of water except for hydroelectric power.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 15, f. 3-7-62; WRB 27, f. 5-11-64; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Administrative Renumbering 1-1993, Renumbered from 690-080-0080; WRD 2-1997, f. & cert. ef. 2-25-97

### 690-508-0030

#### Lower Grande Ronde Subbasin

(1) Classifications:

(a) The maximum economic development of this state and the attainment of the highest and best use of waters of the Lower Grande Ronde Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and the waters of the Lower Grande Ronde Basin are hereby so classified.

(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 15, f. 3-7-62; WRB 27, f. 5-11-64; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Administrative Renumbering 1-1993, Renumbered from 690-080-0080; WRD 2-1997, f. & cert. ef. 2-25-97

### 690-508-0040

#### Wallowa River Subbasin

(1) Classifications:

(a) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Wallowa River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life purposes and the waters of the Wallowa River Basin are hereby so classified with the following specific exceptions:

(A) The maximum economic development of this state and the attainment of the highest and best use of the waters of the Minam River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation, recreation, wildlife, and fish life uses and the waters of the Minam River Basin are hereby so classified.

(B) Further, no out-of-basin diversions of waters of the Minam River shall be permitted for any use.

(b) Applications for use of the waters of the Wallowa River Basin shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency for waters of the Wallowa River Basin shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 15, f. 3-7-62; WRB 27, f. 5-11-64; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Administrative Renumbering 1-1993, Renumbered from 690-080-0080; WRD 2-1997, f. & cert. ef. 2-25-97

### 690-508-0050

#### Imnaha River Subbasin

(1) Classifications:

(a) The maximum economic development of the state and the attainment of the highest and best use of the waters of the Imnaha River Basin and the attainment of an integrated and coordinated program for the benefit of the state as a whole, will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life purposes and the waters of the Imnaha River Basin are hereby so classified.

(b) Applications for the use of such water shall not be accepted by any state agency for any other purpose and the granting of applications for such other purposes is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to the use of water for industrial or mining purposes granted by any state agency shall be issued only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses.

(3) Power Development: Water rights acquired for hydroelectric power purposes utilizing the waters of the Imnaha River Basin shall be subordinate in priority to future upstream beneficial uses of water except for hydroelectric power.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

## 690-508-0100

### Reservations

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-508-0100 through 0120, means a reservoir storing water to serve multiple potential beneficial uses such as irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-508-0110 through 0120 allocate surface water for storage in multipurpose reservoirs.

(4) In addition to the requirements of OAR 690, division 310, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(5) For the purposes of review of applications to store reserved water under OAR 690, division 310, and subject to the provisions of section (7), the reserved quantities of water listed in OAR 690-508-0110 through 0120 are available for appropriation.

(6) The determination of water availability under section (5) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the

resource to support the proposed project, as required under OAR 690, division 310.

(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, division 310, and prior to issuance of permit for a proposed project storing water reserved under 690-508-0110 through 0120, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) What storage season is appropriate and whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.

(8) Permits to store reserved water shall receive the priority date of the reservation.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by February 7, 2002, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved by February 7, 2017, OAR 690-508-0110 through 0120 shall automatically be repealed on February 7, 2017, unless extended by further rulemaking of the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

## 690-508-0110

### Upper Grande Ronde Subbasin Reservation

Unappropriated water is reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservations is November 6, 1992. The quantity and source of reserved water are as follows:

(1) Fourteen thousand nine hundred (14,900) acre-feet of Meadows Creek and tributaries are reserved;

(2) Twelve thousand (12,000) acre-feet of the Grande Ronde River and tributaries, including Fly Creek and tributaries, upstream of river mile 184 (in NE 1/4 Sec. 14, T4S, R35E).

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

## 690-508-0120

### Middle Grande Ronde Subbasin Reservation

Nine thousand (9,000) acre-feet of unappropriated water of Catherine Creek and tributaries above Ames Creek are reserved. The water is reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservations is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

## DIVISION 509

### POWDER BASIN PROGRAM

**NOTE:** The Powder Basin is delineated on State Water Resources Board Map 9.6, available from the agency.

## 690-509-0000

### Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder

Basin, and attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Powder Basin are hereby so classified with the following exceptions:

(a) That 65,000 acre-feet annually of unappropriated water of Eagle Creek and its tributaries at or above stream mile 21 be classified for domestic, livestock, municipal, irrigation, recreation, wildlife, and fish life purposes.

(b) That 265,000 acre-feet annually of natural flows of Snake River water at or near stream mile 9 of Powder River (arm of Brownlee Reservoir) lying within Section 25, Township 9 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation and industrial purposes.

(c) That 87,000 acre-feet annually of natural flows of Snake River water at or near stream mile 327 of Snake River lying within Section 8, Township 14 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation, and industrial purposes.

(d) The maximum economic development of this state, the attainment of the highest and best use of the unappropriated waters of the natural lakes of the Powder Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses, and the waters of the natural lakes of the Powder Basin are hereby so classified.

(e) Stored water may be used for any beneficial purpose subject to the reservation of water under OAR 690-509-0110 through 0160.

(2) Application for the use of these specified waters of the Powder Basin shall not be accepted by any state agency for any other use and the granting of applications for such other use is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(3) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(4) Notwithstanding a determination water is unavailable for appropriation, permits for domestic and livestock purposes from the Burnt River and tributaries may be issued to water-use applicants:

(a) In amounts not to exceed a cumulative total of 2.5 cubic feet per second of live-flow, and

(b) Provided water-use applicants cannot acquire access to a viable source of water supplied by a community water system, irrigation district, or other water supply organization.

(5) Applications filed prior to March 8, 1996, shall be processed under the classification in effect at the time of the application.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090; WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0010**

##### **Out-of-Basin Appropriations**

To support present and proposed Powder Basin resource developments no out-of-basin or out-of-state appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of Pine Creek, Eagle Creek, Powder River and Burnt River or their tributaries.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090

#### **690-509-0030**

##### **Water Quality**

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090

#### **690-509-0100**

##### **Reservation Applications and Process**

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-509-0110 through 0160, means a reservoir storing water to serve multiple potential beneficial uses of stored water such as, but not limited to, irrigation, power generation, municipal water supply, recreation, pollution abatement and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-509-0110 through 0160 allocate and reserve surface water for storage in multipurpose reservoirs for the period of the reservation.

(4) Permits to store reserved water shall receive the priority date of the reservation.

(5) In addition to the requirements of ORS Chapter 537 and OAR 690, division 310, an application for a permit to store water reserved under 690-509-0110 through 0160 shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(6) For the purposes of review of water right permit applications to store reserved water under OAR 690, divisions 310, the reserved quantities of water listed in OAR 690-509-0110 through 0160 are available for appropriation. However, the determination that water is available under OAR 690-509-0110 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under ORS Chapter 537, OAR 690 or any other applicable statutes or rules. Because the finding that water is available in OAR 690-509-0110 through 0160 is a water availability determination for a sub-basin, analysis of water availability at the specific location shall be conducted at the time of permit application review.

(7) In addition to any other findings required for issuance of a reservoir permit under ORS Chapter 537 or OAR 690, division 310, and prior to issuance for a proposed project storing water reserved under 690-509-0110 through 0160, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose and intent of the reservation following consultation with the Department of Agriculture;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) Whether minimum bypass flows are required.

(8) The Department shall determine, and impose as a condition, an appropriate storage season, and shall include other conditions to insure no harm to senior water rights and to protect instream values.

(9) Progress Reports:

(a) If the Department has not received applications for multi-purpose reservoir permits for the full quantity of reserved water under OAR 690-509-0110 through 0130 by March 8, 2001, the Department of Agriculture shall provide the Commission with a progress report on the development of the reservations. After the first report is provided, future progress reports may be submitted on the same schedule as the progress reports due for the reservations under OAR 690-509-0140 through 0160.

(b) If the Department has not received applications for multi-purpose reservoir permits for the full quantity of reserved water under OAR 690-509-0140 through 0160 by May 26, 2005, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations.

(c) Progress reports shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals, except as otherwise provided under subsection 9(a), while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) Effective date of rules:

(a) OAR 690-509-0110 through 0130 shall be effective until March 8, 2016 unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(b) OAR 690-509-0140 through 0160 shall be effective until May 26, 2020, unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(c) The expiration of these reservation rules shall not affect pending applications that have been received and deemed complete and not defective by the Water Resources Department pursuant to ORS 537.150(2), prior to the expiration date of the rules.

Stat. Authority: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0110**

##### **South Fork Burnt River Reservation**

Seventeen thousand eight hundred (17,800) acre-feet of unappropriated water of the South Fork Burnt River and tributaries upstream of Unity reservoir are reserved for storage by the Burnt River Irrigation District in multipurpose reservoirs to be constructed in the future. The priority date of the reservation is June 5, 1992. In accordance with ORS 537.249, a reservoir permit authorizing the storing of the water reserved under this rule shall be granted precedence over instream water rights in the Burnt River subbasin.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0120**

##### **North Fork Burnt River Reservation**

Six thousand five hundred (6,500) acre-feet of unappropriated water of the North Fork Burnt River and tributaries upstream of Unity Reservoir are reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0130**

##### **Burnt River Subbasin Reservation**

Two thousand (2,000) acre-feet of unappropriated water are reserved for storage in reservoirs to be constructed on the Burnt River and tributaries. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 4-1996, f. & cert. ef. 3-15-96; WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0140**

##### **Pine Creek Subbasin Reservation**

Ten thousand (10,000) acre-feet of unappropriated water of Pine Creek and tributaries above Long Branch, tributary to the Snake River, are reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 536.025, 536.027 & 536.300

Stats. Implemented: ORS 536.310, 537.249 & 537.356

Hist.: WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0150**

##### **Eagle Creek Subbasin Reservation**

Four thousand three hundred (4,300) acre feet of unappropriated water of Eagle Creek and tributaries upstream of gage 13288200 at Skull Creek are reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 536.025, 536.027 & 536.300

Stats. Implemented: ORS 536.310, 537.249 & 537.356

Hist.: WRD 3-2000, f. & cert. ef. 5-26-00

#### **690-509-0160**

##### **Powder River Subbasin Reservation**

Unappropriated water is reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992. The quantity and source of reserved water is as follows:

(1) Three thousand nine hundred and ninety (3,990) acre feet of Goose Creek and tributaries upstream of the mouth, tributary to the Powder River east of Keating.

(2) Twenty seven thousand (27,000) acre feet of the Powder River and tributaries upstream of Thief Valley Dam and below the confluence of Blue Canyon Creek

(3) Two thousand nine hundred (2,900) acre feet of water of the Powder River and tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek.

Stat. Auth.: ORS 536.025, 536.027 & 536.300

Stats. Implemented: ORS 536.310, 537.249 & 537.356

Hist.: WRD 3-2000, f. & cert. ef. 5-26-00

### **DIVISION 510**

#### **MALHEUR BASIN PROGRAM**

**NOTE:** The Malheur and Owyhee Basins are delineated on State Water Resources Board Map 10-11-6, available from the agency.

#### **690-510-0000**

##### **Classifications**

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Malheur-Owyhee Basins and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, fish life, pollution abatement uses, and the waters of the Malheur-Owyhee Basins are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the mainstem of the South Fork Owyhee River from the Oregon-Idaho border to Three Forks (the confluence of the North, Middle and South Forks Owyhee River), and the main stem Owyhee River from Crooked Creek (river mile 118) to the mouth of Birch Creek (river mile 76), and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, industrial, mining, recreation, wildlife, and fish life uses and the aforementioned waters are hereby so classified;

(b) The maximum economic development of this state and the attainment of the highest and best use of the waters of the natural

lakes of the Malheur-Owyhee Basins, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of the natural lakes of the Malheur-Owyhee Basins are hereby so classified.

(2) The maximum economic development of this state, the attainment of the highest and best use of 1,454,000 acre-feet annually of natural flows of the Snake River, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, and irrigation uses, and the 1,454,000 acre-feet annually of natural flows of the Snake River are hereby so classified.

(3) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 44, f. 10-29-70; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 2-1985, f. & cert. ef. 3-28-85; WRD 2-1986, f. & cert. ef. 2-20-86; Administrative Renumbering 1-1993, Renumbered from 690-080-0100

#### 690-510-0010

##### Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Malheur Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Malheur Basin are hereby so classified with the following exceptions:

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Malheur Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7 1/2 theoretical horsepower, recreation, wildlife, and fish life uses, and the waters of the natural lakes of the Malheur Basin are hereby so classified.

(b) Stored water may be used for any beneficial purpose.

(c) Storage, of up to 1000 acre-feet of water in the Malheur Basin, for domestic or livestock purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt from regulation for storage of water reserved under OAR 690-510-0110 through 0120.

(d) Storage of water is a beneficial use in the Malheur Basin.

(2) The maximum economic development of this state, the attainment of the highest and best use of 1,454,000 acre-feet annually of natural flows of the Snake River, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, and irrigation uses, and the 1,454,000 acre-feet annually of natural flows of the Snake River are hereby so classified.

(3) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

#### 690-510-0020

##### Water Quality

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 44, f. 10-29-70; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 2-1985, f. & cert. ef. 3-28-85; WRD 2-1986, f. & cert. ef. 2-20-86; Administrative Renumbering 1-1993, Renumbered from 690-080-0100

#### 690-510-0100

##### Reservations

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-510-0100 and 0110, means a reservoir storing water to serve multiple potential beneficial uses such as irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-511-0110 allocate surface water for storage in multipurpose reservoirs.

(4) In addition to the requirements of OAR 690, division 310, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(5) For the purposes of review of applications to store reserved water under OAR 690, division 310, and subject to the provisions of section (7), the reserved quantities of water listed in OAR 690-510-0110 are available for appropriation.

(6) The determination of water availability under section (5) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR 690, division 310.

(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, division 310, and prior to issuance of a permit for a proposed project storing water reserved under 690-510-0110, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) What storage season is appropriate and whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.

(8) Permits to store reserved water shall receive the priority date of the reservation.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by January 7, 2002, the Department of Agriculture shall provide the Commission with a progress report on development of the reserva-

tions. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved by January 7, 2017, OAR 690-510-0110 shall automatically be repealed on January 7, 2017, unless extended by further rulemaking of the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**690-510-0110**

**Malheur Reservations**

Unappropriated water is reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservations is November 6, 1992. The quantity and source of reserved water is as follows:

(1) Thirty five thousand (35,000) acre-feet of the Malheur River and tributaries, excluding the North Fork and South Fork Malheur Rivers and tributaries, are reserved;

(2) Thirteen thousand two hundred (13,200) acre-feet of the South Fork Malheur River and tributaries are reserved.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**DIVISION 511**

**OWYHEE BASIN PROGRAM**

**690-511-0010**

**Classifications**

The maximum economic development of this state, the attainment of the highest and best use of the waters of the Owyhee Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Owyhee Basin are hereby so classified with the following exceptions:

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the mainstem of the South Fork Owyhee River from the Oregon-Idaho border to Three Forks (the confluence of the North, Middle and South Forks Owyhee River), and the main stem Owyhee River from Crooked Creek (river mile 118) to the mouth of Birch Creek (river mile 76), and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, industrial, mining, recreation, wildlife, and fish life uses and the aforementioned waters are hereby so classified.

(2) The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Owyhee Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses, and the waters of the natural lakes of the Owyhee Basin are hereby so classified.

(3) Stored water may be used for any beneficial purpose.

(4) Storage, of up to 1,000 acre-feet of water in the Owyhee Basin, for domestic or livestock purposes authorized under water rights with priority dates after November 6, 1992, shall be exempt

from regulation for storage of water reserved under OAR 690-511-

0110.

(5) Storage of water is a beneficial use in the Owyhee Basin.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**690-511-0020**

**Water Quality**

Rights to use of water for industrial or mining purposes

granted by any state agency shall be issued only on condition that

any effluents or return flows from such uses shall not interfere with

other beneficial uses of water.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 & 536.310

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**690-511-0100**

**Reservations**

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient surface water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) "Multipurpose reservoir," as used in OAR 690-511-0100 and 0110, means a reservoir storing water to serve multiple potential beneficial uses such as irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development in OAR 690-511-0110 allocate surface water for storage in multipurpose reservoirs.

(4) In addition to the requirements of OAR 690, division 310, an application for a permit to store reserved water shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

(5) For the purposes of review of applications to store reserved water under OAR 690, division 310, and subject to the provisions of section (7), the reserved quantities of water listed in OAR 690-511-0110 are available for appropriation.

(6) The determination of water availability under section (5) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR 690, division 310.

(7) In addition to any other findings required for issuance of a reservoir permit under OAR 690, division 310, and prior to issuance of a permit for a proposed project storing water reserved under 690-511-0110, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose of the reservation following consultation with the Department of Agriculture and other state agencies;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) What storage season is appropriate and whether minimum bypass flows or other conditions should be included in the permit to insure no harm to senior water rights and to protect instream values.

(8) Permits to store reserved water shall receive the priority date of the reservation.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by January 7, 2002, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(10) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved by January 7, 2017, OAR 690-511-0110 shall automatically be repealed on January 7, 2017, unless extended by further rulemaking of the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**690-511-0110**

**Owyhee Reservations**

Sixty thousand (60,000) acre-feet of unappropriated water of the Owyhee River and tributaries are reserved. The water is reserved for storage in multipurpose reservoirs to be constructed in the future. The priority date of the reservations is November 6, 1992.

Stat. Auth.: ORS 537

Stats. Implemented: ORS 537.249 & 537.356

Hist.: WRD 2-1997, f. & cert. ef. 2-25-97

**DIVISION 512**

**MALHEUR LAKE BASIN PROGRAM PROVISION**

**690-512-0040**

**Water Availability**

(1) Except as provided in section (3) of this rule, the Department shall not accept an application for permit, or issue a permit, for any use of surface water, or of groundwater the use of which has the potential to substantially interfere with surface water, in the Malheur Lake Basin unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:

(a) Streamflow measurements of gage records from the source or, for use of groundwater, the stream in hydraulic connection with the source; or

(b) An estimate of water availability from the source or, for use of groundwater, the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other, similar streams and considers current demands for water affecting the streamflows.

(2) The criteria used in determining if the use of groundwater has the potential to substantially interfere with surface water shall be those established in OAR chapter 690, division 9.

(3) This rule shall not apply to issuance of:

(a) Instream water rights;

(b) Permits for storage of water between March 1 and May 31;

or

(c) Permits for use of water legally stored.

(d) Permits for Multipurpose Storage under OAR 690-512-0100.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: WRD 3-1985, f. & cert. ef. 3-28-85; WRD 23-1990, f. & cert. ef. 12-14-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0120; WRD 2-2009, f. 6-18-09, cert. ef. 7-1-09

**690-512-0100**

**Home Creek Reservations**

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 economic benefits through both instream and out-of-stream uses of water. 4,550 acre-feet of unappropriated water in Home Creek and tributaries are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of February 25, 2009.

(2) "Multipurpose reservoir", as used in OAR 690-512-0100 means a reservoir storing water to serve more than two potential beneficial uses including but not limited to irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development allocate surface water for storage in multipurpose reservoirs.

(4) For the purposes of review of applications to store reserved water under OAR chapter 690, division 310, and subject to the provisions of section (6), the reserved quantities of water listed in OAR 690-512-0100(1) are available for appropriation.

(5) The determination of water availability under section (4) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR chapter 690, division 310.

(6) In addition to the requirements of ORS Chapter 537 and applicable rules, the Department will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:

(a) The proposed reservoir and any water rights secondary with the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;

(b) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with Department of Fish and Wildlife and Department of Environmental Quality; and

(c) Whether minimum bypass flows are required.

(7) In addition to the requirements of ORS Chapter 537 and applicable rules, any final order approving an application for a permit to store water and any order for water rights secondary with the storage right under the Home Creek Reservation shall contain the findings required in (6)(a)–(c) above, and will also contain conditions that:

(a) Set the appropriate storage season,

(b) Ensure no injury to senior water rights, including instream water rights,

(c) Protect instream values; and

(d) Set minimum bypass flows if identified under (6)(c) above.

(8) If the Department has not received applications for multi-purpose reservoir permits for the full quantity of reserved water by July 1, 2014, the Department shall provide the Parties involved in the Home Creek Settlement Agreement with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(9) If the Department has not received applications for multi-purpose reservoir permits for the full quantity of water reserved by July 1, 2029, applications for remaining quantities of unallocated water under OAR 690-0512-0100(1) may not be accepted after July 1, 2029, unless this deadline is extended through rulemaking by the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 2-2009, f. 6-18-09, cert. ef. 7-1-09

## DIVISION 513

### GOOSE AND SUMMER LAKES BASIN PROGRAM

#### 690-513-0010

##### Definitions

As used in this rule, unless the context requires otherwise:

(1) The Goose and Summer Lakes Basin and the Goose Lake, Warner Lakes, Chewaucan and Summer Lakes Subbasins are as shown by Water Resources Department Map No. 13.6S.

(2) “Classification” or “Classified” means the allowed and preferred beneficial use(s) of a given surface or ground water source for which future uses of water shall be permitted. Except as otherwise provided by the Commission, the Department shall not issue permits to appropriate, and no use shall be initiated of, any of the surface or ground waters of the Goose and Summer Lakes Basin for any uses except those for which the waters are classified. A classification does not affect uses existing on the date of adoption or alteration of the classification. A classification does not

affect the transfer to another beneficial use of any water right with a priority date prior to August 5, 1988.

(3) “Commission” means the Water Resources Commission.

(4) “Department” means the Water Resources Department.

(5) “Agriculture Use” means the use of water for agricultural and forestry purposes other than irrigation and includes nursery operations use as defined in OAR 690, division 11, protection of facilities and crops from fire, temperature control and other related miscellaneous uses.

(6) “Domestic Use” includes domestic use, domestic use expanded and commercial use as defined in OAR 690, division 11 and other related miscellaneous uses.

(7) “Fish Life Use” includes use of diverted water to sustain fish confined to ponds and artificial impoundments and the use of stored water to supplement natural streamflows to improve habitat conditions.

(8) “Ground Water Recharge” means the intentional addition of water to a ground water reservoir where consistent with OAR 690, division 11.

(9) “Industrial Use” means the use of water in the manufacture of a product including other related miscellaneous uses.

(10) “Instream Use” means the public use of water where there is no diversion or other means of physical control over the water. Public uses include, but are not limited to, creation; conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; or navigation.

(11) “Irrigation Use” means the application of water to crops or plants by artificial means to promote growth, nourish plants or leach minerals from croplands.

(12) “Mining Use” means the use of water to extract metals or minerals including placer mining as defined in OAR 690, division 11 and leaching operations.

(13) “Municipal Use” means the delivery and use of water through the water service system of an incorporated municipality or a nonprofit corporation and includes quasi-municipal uses as defined in OAR 690, division 11.

(14) “Pollution Abatement” means the diversion of waters into artificial or other natural channels to remove or dilute pollutants and use of stored water to augment natural streamflow to remove or dilute pollutants.

(15) “Power” means the use of water for electrical or mechanical power or for operation of a hydraulic ram where such uses are consistent with OAR 690, division 51.

(16) “Recreation” means the diversion of water from natural water courses or use of stored waters to provide scenic or recreational values.

(17) “Stockwater Use” means the physical diversion of water from the natural water course or storage of water for use by livestock or wildlife.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

#### 690-513-0020

##### Policies

The water resources of the Goose and Summer Lakes Basin are important for irrigation and instream aquatic life, fish life, recreation and wildlife uses. The waters also are used for domestic, municipal, industrial and stockwatering purposes. The protection and maintenance of water resources for these uses will promote the economic and general welfare of the people of the state. Therefore, it shall be the policy of the Commission to:

(1) Limit the potential for additional conflict over inadequate supplies of water and to enhance watershed conditions as needed to provide for instream and out-of-stream needs.

(2) Promote improvement of water quality and quantity through protection and improvement of watershed conditions, particularly those within riparian areas.

(3) Promote protection and restoration of the quality of surface and ground water supplies from the effects of past and future mining and waste disposal activities and to protect the public health where contamination has occurred.

(4) Promote the improvement of watershed conditions and facilities needed for enhanced fish and wildlife habitat and recreational opportunities.

(5) Cooperate with other states in the protection of existing users of water from reductions in the quantity or quality of supplies.

(6) Promote the development and use of geothermal resources where development is accomplished in a manner consistent with conservation of the resource and without harming current water right holders.

(7) Encourage the active involvement of basin residents in all decisions affecting the availability and quality of water in the area.

(8) Ensure the perpetual availability of ground water resources by protecting the resource from the demands of future uses where necessary.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

### 690-513-0030

#### Goose Lake Subbasin

(1) Objectives. The objectives of the Commission in managing the surface and ground water resources of the Goose Lake Subbasin consistent with the provisions of the Goose Lake Compact are to:

(a) Avoid additional conflicts over inadequate supplies of water from and protect the remaining instream flows in Thomas Creek;

(b) Prevent the spread of the contaminated water originating at the uranium mill tailings site near Lakeview through regulation of well construction.

(2) Classifications. Except as otherwise provided in this subsection, the surface and ground waters of the Goose Lake Subbasin are classified for agriculture, domestic, fish life, ground water recharge, industrial, instream, irrigation, mining, municipal, pollution abatement, power, recreation and stockwater uses.

(a) Surface waters of Thomas Creek and tributaries below the point where Thomas Creek enters Section 15, Township 38S, Range 19E, except Cottonwood Creek, are classified for any beneficial use of stored water, domestic and stockwater uses;

(b) Surface waters of Thomas Creek and tributaries above the point where Thomas Creek enters Section 15, Township 38S, Range 19E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(c) Ground water from alluvial aquifers within the Thomas Creek drainage above the point where Thomas Creek enters Section 15, Township 38S, Range 19E, is classified for domestic and stock-water uses only;

(d) Ground water from any well within 1,000 feet of Thomas Creek, or a tributary, and taking water from an unconfined aquifer is classified for domestic and stockwater uses only. This paragraph only applies to wells within the following areas:

(A) Sections 28, 29, and 31-35; Township 37S; Range 20E;

(B) Sections 10-15, 21-27, and 34-36; Township 38S; Range 19E;

(C) Sections 2-11, 14-22, and 28-33; Township 38S; Range 20E;

(D) Sections 1-3 and 10-15; Township 39S; Range 19E;

(E) Sections 3-10, 15-22, and 27-34; Township 39S; Range 20E.

(3) Reservoir Standards. Development of a reservoir may be permitted on any stream in the Goose Lake Subbasin, however, in addition to meeting any other standards required by the Commission, any person proposing development of a reservoir in the subbasin shall give due consideration to:

(a) Alternative sizing of the project to achieve a reasonable economic development of the proposed site;

(b) The potential for use of the reservoir, and any water which is stored and released, for multiple beneficial uses; and

(c) The maintenance of natural flows downstream from the reservoir at levels sufficient to meet instream and out-of-stream needs.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

### 690-513-0040

#### Warner Lakes Subbasin

(1) Objectives. The objectives of the Commission in managing the surface and ground water resources of the Warner Lakes Subbasin are to:

(a) Avoid additional conflicts over inadequate supplies of water from and protecting the remaining instream flows in Deep and Camas, Honey and Snyder, and Twentymile Creeks;

(b) Maintain water levels in Pelican and Crump Lakes.

(2) Classifications. Except as otherwise provided in this subsection, the surface and ground waters of the Warner Lakes Subbasin are classified for agriculture, domestic, fish life, ground water recharge, industrial, instream, irrigation, mining, municipal, pollution abatement, power, recreation and stockwater uses.

(a) Except as provided in paragraphs (C) and (D) of this subsection, surface waters of Deep Creek and tributaries below the point where Deep Creek enters Section 20, Township 40S, Range 22E are classified for any beneficial use of stored water, domestic and stockwater uses;

(b) Surface waters of Deep Creek and tributaries above the point where Deep Creek enters Section 20, Township 40S, Range 22E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(c) Surface waters of Burnt Creek and tributaries above the point where Burnt Creek enters the east 1/2 section, Section 5, Township 40S, Range 22E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(d) Surface waters of Willow Creek and tributaries above the point where Willow Creek enters Section 8, Township 40S, Range 22E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(e) Surface waters of Honey Creek and tributaries below the point where Honey Creek enters Section 28, Township 36S, Range 22E are classified for any beneficial use of stored water, domestic and stockwater uses;

(f) Surface waters of Honey Creek and tributaries above the point where Honey Creek enters Section 28, Township 36S, Range 22E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(g) Surface waters of Twentymile Creek and tributaries are classified for any beneficial use of stored water, domestic and stockwater uses;

(h) Ground water from alluvial aquifers within the Deep Creek drainage and above the point where Deep Creek enters Section 21, Township 39S, Range 24E is classified for domestic and stockwater uses only;

(i) Ground water from alluvial aquifers within the Honey Creek drainage and above the point where Honey Creek enters Section 29, Township 36S, 24E is classified for domestic and stockwater uses only;

(j) Ground water from alluvial aquifers within the Twentymile Creek drainage and above the point where Twentymile Creek enters Section 24, Township 40S, Range 23E is classified for domestic and stockwater uses only;

(k) Ground water from any well within 1,000 feet of Deep, Honey or Twentymile Creeks, or a tributary, and taking water from an unconfined aquifer is classified for domestic and stockwater uses only. This paragraph only applies to wells within the following areas:

(A) Sections 26–29 and 32–34; Township 36S; Range 24E;  
(B) Sections 1–4, 9–16, 21–29, and 31–36; Township 39S; Range 24E;

(C) Sections 6, 7, 17–20, and 29–32; Township 39S; Range 25E;

(D) Sections 12, 13, and 24; Township 40S; Range 23E;

(E) Sections 1–11, 15–21, and 28–30; Township 40S; Range 24E;

(F) Sections 5, 6, and 8; Township 40S; Range 25E.

(3) Reservoir Standards. Development of a reservoir may be permitted on any stream in the Warner Lakes Subbasin, however, in addition to meeting any other standards required by the Commission, any person proposing development of a reservoir in the subbasin shall give due consideration to:

(a) Alternative sizing of the project to achieve a reasonable economic development of the proposed site;

(b) The potential for use of the reservoir, and any water which is stored and released, for multiple beneficial uses; and

(c) The maintenance of natural flows downstream from the reservoir at levels sufficient to meet instream and out-of-stream needs.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

#### 690-513-0050

##### Chewaucan Subbasin

(1) Objective. The objective of the Commission in managing the surface and ground water resources of the Chewaucan Subbasin is to avoid additional conflicts over inadequate supplies of water from and to protect the remaining instream flows in the Chewaucan River.

(2) Classifications. Except as otherwise provided in this subsection, the surface and ground waters of the Chewaucan Subbasin are classified for agriculture, domestic, fish life, ground water recharge, industrial, instream, irrigation, mining, municipal, pollution abatement, power, recreation and stockwater uses.

(a) Surface waters of the Chewaucan River and tributaries above USGS gage 10384000 are classified for agriculture, domestic, fish life, ground water recharge, industrial, instream, irrigation, mining, municipal, pollution abatement, power, recreation and stockwater uses from November 1 to July 31;

(b) Surface waters of the Chewaucan River and tributaries between the point where the Chewaucan River enters Section 4, Township 34S, Range 18E and USGS gage 10384000 are classified for any beneficial use of stored water, domestic and stockwater uses from August 1 to October 31;

(c) Surface waters of the Chewaucan River and tributaries above the point where the Chewaucan River enters Section 4, Township 34S, Range 18E are classified for any beneficial use of stored water, domestic, instream and stockwater uses from August 1 to October 31.

(3) Reservoir Standards. Development of a reservoir may be permitted on any stream in the Chewaucan Subbasin, however, in addition to meeting any other standards required by the Commission, any person proposing development of a reservoir in the subbasin shall give due consideration to:

(a) Alternative sizing of the project to achieve a reasonable economic development of the proposed site;

(b) The potential for use of the reservoir, and any water which is stored and released, for multiple beneficial uses; and

(c) The maintenance of natural flows downstream from the reservoir at levels sufficient to meet instream and out-of-stream needs.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

#### 690-513-0060

##### Summer Lake Subbasin

(1) Objectives. In developing a program for the management, use and control of the surface and ground water resources of the Summer Lake Subbasin, the Commission has the following objectives:

(a) Classify water in a manner consistent with the withdrawal of Silver Lake and Paulina Marsh and tributaries;

(b) Classify water in a manner consistent with the withdrawal of the waters of Dutchy, Church and No Name Lakes, and tributaries, to provide resting areas and breeding grounds for migratory and resident waterfowl;

(c) Prevent the spread of the contaminated water originating at the chemical waste disposal site near Alkali Lake through regulation of well construction;

(d) Classify the main ground water reservoir of the Fort Rock Basin to avoid overdraft and protect existing rights.

(2) Classifications. Except as otherwise provided in this subsection, the surface and ground waters of the Summer Lake Subbasin are classified for agriculture, domestic, fish life, ground water recharge, industrial, instream, irrigation, mining, municipal, pollution abatement, power, recreation and stockwater uses:

(a) The surface waters of Duncan and Bear Creeks and tributaries and all other tributaries to Silver Lake and Paulina Marsh not otherwise identified in this subsection are classified for any beneficial use of stored water, domestic and stockwater uses;

(b) The surface waters of Silver Creek and West Fork Silver Creek and tributaries below the points where the streams enter the north 1/2 section, Section 17, Township 29S, Range 14E are classified for any beneficial use of stored water, domestic and stockwater uses;

(c) The surface waters of Silver Creek and West Fork Silver Creek and tributaries above the points where the streams enter the north 1/2 section, Section 17, Township 29S, Range 14E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(d) The surface waters of Buck Creek and tributaries below the point where Buck Creek enters Section 7, Township 29S, Range 13E are classified for any beneficial use of stored water, domestic and stockwater uses;

(e) The surface waters of Buck Creek and tributaries above the point where Buck Creek enters Section 7, Township 29S, Range 13E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(f) The surface waters of Bridge Creek and tributaries below the point where Bridge Creek enters the northwest 1/4 section, Section 15, Township 29S, Range 13E are classified for any beneficial use of stored water, domestic and stockwater uses;

(g) The surface waters of Bridge Creek and tributaries above the point where Bridge Creek enters the northwest 1/4 section, Section 15, Township 29S, Range 13E are classified for any beneficial use of stored water, domestic, instream and stockwater uses;

(h) Ground water from alluvial aquifer in the Silver Creek drainage above the point where Silver Creek enters Section 21, Township 28S, Range 14E is classified for domestic and stockwater uses only;

(i) Ground water from alluvial aquifers in the Buck Creek drainage above the point where Buck Creek enters Section 18, Township 28S, Range 14E is classified for domestic and stockwater uses only;

(j) Ground water from alluvial aquifers in the Duncan Creek drainage above the point where Duncan Creek enters Section 3, Township 29S, Range 15E is classified for domestic and stockwater uses only;

(k) Ground water from alluvial aquifers in the Bridge Creek drainage above the point where Bridge Creek enters Section 20, township 28S, Range 14E is classified for domestic and stockwater uses only;

(l) The surface water of Dutchy, Church and No Name Lakes, located in Sections 12 and 13, Township 30S, Range 16E, and the tributaries which feed and connect the lakes are classified for irri-

gation use between April 1 and September 30 of any year provided that such use is compatible with management programs for migratory and resident waterfowl;

(m) Ground water from any well within Sections 12 and 13, Township 30S, Range 16E and taking water from an unconfined aquifer is classified for irrigation use between April 1 and September 30 of any year provided that such use is compatible with management programs migratory and resident waterfowl;

(n) Ground water from the main ground water reservoir of the Fort Rock Basin is classified for stockwater, watering any lawn or noncommercial garden not exceeding one-half acre in area, watering any lawn or noncommercial garden not exceeding three acres in area for public uses, quasi-municipal, single or group domestic, down-hole heat exchange, industrial, and commercial uses only. The main ground water reservoir of the Fort Rock Basin includes all water contained in the basalt, as well as the interbedded and overlying pyroclastic and sedimentary aquifers. Further, the water level altitudes in these aquifers is approximately 4,300 feet above mean sea level or lower. Precise boundaries include parts of Lake, Klamath, and Deschutes Counties and are described as follows: Beginning at the southwest corner of Section 35, Township 22 South, Range 13 East, WM; thence northeasterly to the southeast corner of Section 25, Township 22 South, Range 15 East, WM; thence southeasterly to the southwest corner of Section 35, Township 23 South, Range 29 East, WM; thence southeasterly to the southeast corner of Section 9, Township 28 South, Range 21 East, WM; thence southwesterly to the southwest corner of Section 6, Township 29 South, Range 20 East, WM; thence northwesterly to the southwest corner of Section 16, Township 28 South, Range 18 East, WM; thence southwesterly to the southwest corner of Section 14, Township 29 South, Range 16 East, WM; thence southwesterly to the southeast corner of Section 21, Township 31 South, Range 15 East, WM; thence northwesterly to the southeast corner of Section 36, Township 30 South, Range 12 East, WM; thence northwesterly to the southwest corner of Section 34, Township 26 South, Range 10 East, WM; thence northeasterly to the point of beginning.

(3) Reservoir Standards. Development of a reservoir may be permitted on any stream in the Summer Lake Subbasin, however, in addition to meeting any other standards required by the Commission, any person proposing development of a reservoir in the subbasin shall give due consideration to:

(a) Alternative sizing of the project to achieve a reasonable economic development of the proposed site;

(b) The potential for use of the reservoir, and any water which is stored and released, for multiple beneficial uses; and

(c) The maintenance of natural flows downstream from the reservoir at levels sufficient to meet instream and out-of-stream needs.

Stat. Auth.: ORS 183, 536 & 537

Stats. Implemented:

Hist.: WRB 31, f. 5-7-65; WRD 5, f. 6-15-77; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 3-1987, f. & cert. ef. 3-13-87; WRD 2-1990, f. & cert. ef. 2-23-90, Renumbered from 690-080-0130

## DIVISION 515

### ROGUE BASIN PROGRAM

#### 690-515-0000

##### Upper Rogue Basin

###### (1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the upper Rogue River Basin are classified with the following exceptions:

(A) Those waters on which development is further restricted by ORS 542.210;

(B) In accordance with ORS 538.220, the waters of Barr Creek (beginning in Section 1, T32S, R3E, W.M. and in Section 6 and Section 7, T32s, R4E, W.M. running thence in a general southwesterly direction through T32S, R3E, W.M. to a junction with the Rogue River in Section 32, T32S, R3EW.M.) and its tributaries are

withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife;

(C) In accordance with ORS 536.220, the waters of Mill Creek and its tributaries (beginning in Section 22, T31S, R4E, W.M., running thence southwesterly through T31S, R3E, W.M. and T32S, R3E, W.M., to a junction with the Rogue River in Section 32, T32S, R3E, W.M.) are withdrawn from further appropriation for any purpose except domestic use and fish life as determined by the Oregon Department of Fish and Wildlife (ODFW), and the development of hydroelectric power not to exceed one megawatt if: 1) the hydroelectric project is located on Mill Creek at a point at least two miles above the confluence of Mill Creek and the Rogue River, 2) all water appropriated from the stream is returned to the stream at a point at least one-half mile above the confluence of Mill Creek and the Rogue River, and 3) the hydroelectric project was constructed and operated in compliance with ODFW concerning fish conservation, including streamflow requirements based upon biological criteria;

(D) In accordance with ORS 538.430, the waters of Big Butte Creek, including its tributaries and springs at the head which form the creek, are withdrawn from further appropriation for any purpose except municipal use by the City of Medford, with the exceptions for Eagle Point Irrigation District as provided in ORS 538.430;

(E) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(F) The waters of Indian Creek, Evergreen Creek, Reese Creek, Trail Creek and Elk Creek and tributaries are classified for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for purposes specified in subsection (a) of this section;

(G) To protect, maintain and perpetuate the resident fish habitat, the recreational value, and the cultural resources of the Upper Rogue Basin, the waters of the following streams and natural lakes shall not be diverted, interrupted or appropriated for power development purposes:

(i) All natural lakes in the Upper Rogue Basin;

(ii) The Rogue River from the origin near the intersection with the south line of Section 4, Township 29 South, Range 5 East, downstream to USGS stream gage 14328000 (Township 32 South, Range 3 East, Section 19) excluding existing projects;

(iii) Union Creek and tributaries;

(iv) Abbott Creek and tributaries.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

###### (2) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or tributaries above river mile 164 when the combined flow measured at stream gages 14330000, Rogue River below Prospect (Township 33 South, Range 3 East, Section 6), and 14334700, South Fork Rogue River, South of Prospect (Township 33 South, Range 3 East, Section 7) is below 835 cubic feet per second except that this limitations shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(C) Appropriation of water for power development at or near gage 14330000 provided that alternative provisions for flow mea-

surements are included in any permit or license issued for the project.

(b)(A) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of Reese Creek and tributaries when flows are below the specified levels in Table 1, Section B. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to section (3) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Storage:

(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following site: Elk Creek (SW 1/4 SW 1/4, Section 20, Township 33 South, Range 1 East).

(4) Water Quality: Rights to use of water for industrial, power development or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreation, fish life or other beneficial uses of water.

**NOTE:** The Upper Rogue Basin includes all of the drainage area of the Rogue River and its tributaries above river mile 133 at the south line of Section 31, Township 35 South, Range 1 West, Willamette Meridian.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66; Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

#### 690-515-0010

##### Little Butte Creek Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Little Butte Creek Basin are classified for domestic, livestock, irrigation, agricultural use, power development, recreation, wildlife, and fish life purposes, except for water administratively withdrawn from appropriation;

(b) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Antelope Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water.

(c) Structures or works of the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows: For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be granted, except that this limitation shall not apply to water legally stored or legally released from storage subject to the provisions of Section D for the waters of the streams listed in Table 2 when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens.

(3) Storage:

(a) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Lake Creek (E 1/2, Section 30, Township 36 South, Range 2 East);

(B) South Fork Little Butte Creek (SE 1/4 SE 1/4, Section 29, Township 36 South, Range 2 East).

(b) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66; Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

#### 690-515-0020

##### Bear Creek Basin

(1) Classifications:

(a) In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol 9, Page 489), the waters of Bear Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water;

(b) No applications for appropriation of water shall be approved except for beneficial uses involving water legally stored in excess of the amount necessary for existing rights;

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life, or other beneficial uses of water.

(3) Power Development: Rights to use of water for power development purposes shall be issued only on the condition, as demonstrated by the applicant, that any dams, diversions, generating facility, or return flows shall not significantly interfere with recreational, fish life or other beneficial uses of water.

(4) Storage:

(a) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Walker Creek, NE 1/4 Section 12, Township 39 South, Range 1 East, Willamette Meridian;

(B) West Fork Ashland Creek (Winburn site), NE 1/4 Section 32, Township 39 South, Range 1 East, Willamette Meridian;

(C) West Fork Ashland Creek (Ranger site), SW 1/4 Section 28, Township 39 South, Range 1 East, Willamette Meridian.

(b) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66; Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

**690-515-0030**

**Applegate River Basin**

(I) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Applegate River Basin are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life, with the following exceptions:

(A) The waters of the following streams and tributaries are classified for domestic, livestock, power development except for those streams listed in paragraph (C) of this subsection, irrigation of noncommercial gardens not to exceed 1/2 acre in area, and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

- (i) Palmer Creek;
- (ii) Beaver Creek;
- (iii) Little Applegate River;
- (iv) Forest Creek;
- (v) Williams Creek;
- (vi) Cheney Creek;
- (vii) Slate Creek.

(B) The waters of Thompson Creek and tributaries are classified for domestic, livestock and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for purposes specified in subsection (a) of this section;

(C) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

- (i) Palmer Creek from the confluence with Bailey Gulch downstream to the mouth;
- (ii) Beaver Creek from the intersection with the east line of Section 11, Township 40 South, Range 3 West, Willamette Meridian, to the mouth;
- (iii) Little Applegate River Subbasin:
- (I) Little Applegate River from the confluence with Lake Creek downstream to the mouth;
- (II) Glade Creek from the confluence with Mule Gulch downstream to the mouth;
- (III) Yale Creek from the intersection with the east line of Section 22, Township 40 South, Range 2 West, Willamette Meridian, to the mouth;
- (IV) Sterling Creek from the intersection with the east line of Section 8, Township 39 South, Range 2 West, Willamette Meridian, to the mouth.

(iv) Forest Creek from the intersection with the north line of Section 15, Township 38 South, Range 3 West, Willamette Meridian, to the mouth;

(v) Thompson Creek from the intersection with the south line of Section 24, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Ninemile Creek from the intersection with the east line of Section 30, Township 39 South, Range 4 West, Willamette Meridian, to the mouth;

(vi) Williams Creek Subbasin:

- (I) Williams Creek from the confluence with the East Fork and West Fork of Williams Creek downstream to the mouth;
- (II) East Fork Williams Creek from the first intersection with the east line of Section 26, Township 39 South, Range 5 West, Willamette Meridian, to the mouth and the tributary of Rock Creek from the confluence with Horsetail Creek downstream to the mouth;

(III) West Fork Williams Creek from the confluence with Right Hand Fork of the West For, Williams Creek downstream to the mouth;

(IV) Right Hand Fork of the West Fork Williams Creek from the intersection with the south line of Section 13, Township 39 South, Range 6 West, Willamette Meridian, to the confluence of the West Fork Williams Creek;

(V) Bill Creek from the confluence with Bear Wallow Creek downstream to the mouth;

(VI) Munger Creek from the confluence with North Fork Munger Creek downstream to the mouth;

(VII) Powell Creek from the intersection with the west line of Section 167, Township 38 South, Range 5 West, Willamette Meridian, to the mouth.

(vii) Cheney Creek from the intersection with the south line of Section 22, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of Little Cheney Creek from the intersection with the south line of Section 18, Township 37 South, Range 6 West, Willamette Meridian, to the mouth;

(viii) Slate Creek Subbasin:

(I) Slate Creek from the intersection with the north line of Section 1, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(II) Ramsey Creek from the intersection with the north line of Section 13, Township 37 South, Range 8 West, Willamette Meridian, to the mouth;

(III) Butcherknife Creek from the intersection with the west line of Section 18, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(IV) Waters Creek from the intersection with the west line of Section 32, Township 36 South, Range 7 West, Willamette Meridian, to the mouth;

(V) The entire length of Bear Creek;

(VI) Salt Creek from the intersection with the north line of Section 8, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VII) Elliott Creek from the intersection with the south line of Section 15, Township 37 South, Range 7 West, Willamette Meridian, to the mouth;

(VIII) Round Prairie Creek from the intersection with the north line of Section 3, Township 37 South, Range 7 West, Willamette Meridian, to the mouth and the tributary of South Fork Round Prairie Creek from the intersection with the west line of Section 2, Township 37 South, Range 7 West, Willamette Meridian, to the mouth.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Reservoir sites should be protected through the comprehensive land-use planning process for possible further development or until alternative methods of meeting water needs have been developed. Immediate concern should be given to the following sites as delineated on Water Resources Department map file number 15B.4, Plate 4:

(A) Little Applegate River, site 26;

(B) Waters Creek, site 112;

(C) Elliott Creek, site 110.

(3) Minimum Perennials Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, and of attaining the highest and best use of waters released from storage, no appropriations of water except for domestic, livestock and irrigation of non-commercial gardens not to exceed 1/2 acre in area or waters legally released from storage shall be granted for the waters of the Applegate River or its tributaries for flows below the specified levels in Table 3, Section A;

(b)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of Williams Creek and Thompson Creek and tributaries for flows below the

specified levels in Table 3, Section B. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens;

(ii) Water legally stored or released from storage, subject to paragraph (1)(a)(C) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with recreational, fish life, or other beneficial uses of water.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

## 690-515-0040

### Middle Rogue Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Middle Rogue River are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life, with the following exceptions:

(A) The waters within the Rogue River Scenic Waterway from the confluence with the Applegate River near river mile 95 to Lobster Creek Bridge near river mile 11 are classified for domestic, livestock, and irrigation of one-half acre noncommercial garden, and instream use for recreation, wildlife and fish life;

(B) Those waters on which development is further restricted by ORS 542.210;

(C) In accordance with ORS 538.270, the waters of the main channel of the Rogue River (excluding tributaries) from its intersection with the south line of Section 27, T33S, R1E, W.M. to its confluence with the Pacific Ocean, are withdrawn from appropriation for any purpose except domestic, stock, irrigation, municipal, fish, wildlife, recreation, and road maintenance;

(D) The waters of the following streams and tributaries are classified only for domestic use, livestock consumption and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section. Domestic use does not include irrigation of lawns and gardens:

- (i) Galls Creek;
- (ii) Foots Creek;
- (iii) Birdseye Creek;
- (iv) Sardine Creek;
- (v) Same Creek;
- (vi) Kane Creek;
- (vii) Fruitdale Creek;
- (viii) Ward Creek;
- (ix) Gilbert Creek;
- (x) Jones Creek;
- (xi) Savage Creek.

(E) The waters of the following streams and tributaries, are classified only for domestic, livestock and irrigation of one-half acre noncommercial garden and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

- (i) Pickett Creek;
- (ii) Limpy Creek;

(iii) Snider Creek;

(iv) Shan Creek.

(F) The waters of the following streams and tributaries, are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section:

(i) Grave Creek;

(ii) Evans Creek.

(G) The waters of Jumpoff Joe Creek and tributaries are classified only for domestic, livestock, irrigation of one-half acre noncommercial garden, industrial, mining during the period November 1 to May 1, power development and instream use for recreation, fish life and wildlife, except for the use of stored water. Water diverted for storage between November 1 and March 31 may be used for any purpose specified in subsection (a) of this section;

(H) To protect, maintain and perpetuate anadromous fish habitat and propagation within the Middle Rogue Basin, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) Galice Creek from the intersection with the south line of Section 10, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(ii) North Fork Galice Creek from the intersection with the west line of Section 5, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iii) Taylor Creek from the intersection with the east line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(iv) South Fork Taylor Creek from the intersection with the south line of Section 28, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(v) Lone Tree Creek from the intersection with the north line of Section 32, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth;

(vi) Minnow Creek from the intersection with the south line of Section 34, Township 35 South, Range 8 West, Willamette Meridian, downstream to the mouth.

(b) Structures or works for the utilization of the waters in accordance with the aforementioned classifications, are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Storage:

(a) Storage projects consistent with the purposes of minimum perennial streamflows shall be encouraged;

(b) Potential reservoir sites should be identified in the comprehensive land-use planning process for possible future development or until alternative methods of meeting water needs have been developed. Immediate consideration should be given to the following sites:

(A) Grave Creek, SE 1/4, Section 6, Township 34 South, Range 4 West, Willamette Meridian;

(B) Jumpoff Joe Creek, NE 1/4, Section 36, Township 34 South, Range 6 West, Willamette Meridian;

(C) Evans Creek, SE 1/4, Section 19, Township 34 South, Range 2 West, Willamette Meridian;

(D) West Fork Evans Creek, SE 1/4 Section 32, Township 33 South, Range 3 West, Willamette Meridian.

(3) Minimum Perennial Streamflows:

(a) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or tributaries above Raygold for flows of the Rogue River below 1200 cubic feet per second, except that this limitation shall not apply to:

(A) Waters legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(b) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water shall be granted for the waters of the Rogue River or tributaries above Savage Rapids Dam for flows of the Rogue River below 1,200 cubic feet per second, except that this limitation shall not apply to:

(A) Water legally stored or legally released from storage;

(B) Domestic and livestock uses. Domestic use does not include irrigation of lawns and gardens.

(c) For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life and minimize pollution, no appropriations of water except for domestic or livestock use shall be granted, except that this limitation shall not apply to water legally stored or legally released from storage, for the waters of the Rogue River tributaries listed in Table 4, Section B when flows are below the specified levels. Domestic use does not include irrigation of lawns and gardens;

(d)(A) To support aquatic life and minimize pollution in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriations of water shall be granted for the waters of the Rogue River tributaries listed in Table 4, Section C when flows are below the levels specified. This limitation shall not apply to:

(i) Domestic and livestock uses. Domestic use does not include the irrigation of lawns and gardens;

(ii) Water legally stored or released from storage subject to the provisions of subsection (2)(a) of this rule.

(B) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(4) Water Quality: Rights to use of water for industrial, power development, or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not significantly interfere with recreational, fish life or other beneficial uses of water.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: (Rogue River Basin: WRB 4, f. 5-22-59; WRB 5, f. 10-12-59; WRB 27, f. 5-11-64; WRB 33, f. 3-25-66; WRB 37, f. 12-21-66; WRB 41, f. 10-14-69; WRD 3-1981, f. & cert. ef. 5-12-9-81; WRD 11-1982, f. & cert. ef. 9-27-82; WRD 5-1983, f. & cert., ef. 8-19-83; WRD 6-1983, f. & cert. ef. 10-19-83; WRD 3-1984, f. & cert. ef. 7-5-84; WRD 3-1989, f. & cert. ef. 2-9-89; Upper Rogue River Basin: WRB 27, f. 5-11-64; Little Butte Creek Basin: WRB 33, f. 3-25-66; Bear Creek Basin: WRB 37, f. 12-21-66); Administrative Renumbering 1-1993, Renumbered from 690-080-0150; WRD 3-2012, f. & cert. ef. 12-12-12

## 690-515-0050

### Illinois Basin

(1) Classifications:

(a) In accordance with ORS 536.220, 536.300, 536.310, and 536.340, the waters of the Illinois River Basin are classified for domestic, livestock, municipal, irrigation, agricultural use, power development, industrial, mining, recreation, wildlife and fish life uses including propagation, with the following exceptions:

(A) The waters within the Illinois River Scenic Waterway from the confluence with Deer Creek near river mile 47 to the confluence with the Rogue River are classified only for domestic and

livestock uses and instream use for recreation, wildlife and fish life;

(B) The waters of the following streams and all tributaries are classified only for domestic, livestock, agricultural use, municipal, industrial, power development except for those streams listed in paragraph (C) of this subsection, mining use during the period November 1 to May 1, fish propagation, irrigation use for noncommercial gardens not exceeding one-half acre in area, and instream use for recreation, fish life and wildlife. Water stored between November 1 and March 1 may be used for purposes specified in subsection (a) of this section:

(i) Deer Creek;

(ii) East Fork Illinois River, except Althouse and Sucker Creeks and their tributaries;

(iii) West Fork Illinois River.

(C) The waters of Althouse and Sucker Creeks and tributaries are classified only for domestic, livestock and non-consumptive instream uses for fish life, wildlife and recreation between May 1 and November 30. Althouse and Sucker Creeks and tributaries are classified for domestic, livestock, mining (subject to Division 51 restrictions and except for those streams listed in paragraph (D) of this subsection), storage, and instream uses for fish life, wildlife and recreation between December 1 and April 30. Water diverted for storage between December 1 and April 30 may be used for any beneficial purpose. Permits shall be conditioned to prevent obstacles to fish migration and degradation of rearing or spawning habitat;

(D) To protect, maintain and perpetuate anadromous fish habitat and propagation, the waters of the following stream reaches shall not be diverted, interrupted or appropriated for hydropower development purposes:

(i) West Fork Illinois River Subbasin:

(I) West Fork Illinois River from the confluence with Whiskey Creek downstream to the mouth;

(II) Whiskey Creek from the intersection with the west line of Section 8, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(III) Elk Creek from the Oregon-California border downstream to the mouth;

(IV) Trapper Gulch from the intersection with the east line of Section 13, Township 41 South, Range 9 West, Willamette Meridian, to the mouth;

(V) Dwight Creek from the Oregon-California border downstream to the mouth;

(VI) Wood Creek from the potential reservoir site in SE 1/4 of NW 1/4 of Section 32, Township 40 South, Range 8 West, Willamette Meridian, to the mouth and the tributary of Fry Gulch from the intersection with the east line of Section 29, Township 40 South, Range 8 West, Willamette Meridian, to the mouth;

(VII) Rough and Ready Creek from the confluence with the North and South forks downstream to the mouth;

(VIII) North Fork Rough and Ready Creek from the intersection with the west line of Section 8, Township 40 South, Range 9 West, Willamette Meridian, to the mouth;

(IX) South Fork Rough and Ready Creek from the intersection with the west line of Section 20, Township 40 South, Range 9 West, Willamette Meridian, to the mouth.