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WATER RESOURCES DEPARTMENT

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RULES:

690-010-0045, 690-010-0050, 690-010-0053, 690-010-0054, 690-010-0070, 690-010-0100, 690-010-0110, 690-010-0120, 690-010-0130, 690-010-0140, 690-010-0150, 690-010-0160, 690-010-0170, 690-010-0180, 690-010-0190, 690-010-0200, 690-010-0210, 690-010-0220, 690-010-0230, 690-010-0240

REPEAL: 690-010-0045

RULE TITLE: Hearings and Protests

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: Rule repealed to align division with statute.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 536, 543

STATUTES/OTHER IMPLEMENTED:

REPEAL: 690-010-0050

RULE TITLE: Initiation of Proceeding for Determination of a Critical Groundwater Area — Notification

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: Rule repealed to align division with statute.

RULE TEXT:

(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.]

STATUTORY/OTHER AUTHORITY: ORS 183, 197, 536, 537

STATUTES/OTHER IMPLEMENTED:

REPEAL: 690-010-0053

RULE TITLE: Process Options

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: Rule repealed to align division with statute.

RULE TEXT:

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.

STATUTORY/OTHER AUTHORITY: ORS 197, 536

STATUTES/OTHER IMPLEMENTED:

REPEAL: 690-010-0054

RULE TITLE: Public Hearing Requirements

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: Rule repealed to align division with statute.

RULE TEXT:

(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).

STATUTORY/OTHER AUTHORITY: ORS 197, 536

STATUTES/OTHER IMPLEMENTED:

REPEAL: 690-010-0070

RULE TITLE: Local Government Coordination

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: Rule repealed to align division with statute.

RULE TEXT:

(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).

STATUTORY/OTHER AUTHORITY: ORS 197, 536

STATUTES/OTHER IMPLEMENTED:

ADOPT: 690-010-0100

RULE TITLE: Purpose

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the purpose of OAR Chapter 690 Division 10.

RULE TEXT:

The purpose of these rules is to guide implementation of the critical ground water area statutes, ORS 537.730 to 537.742.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.730 - ORS 537.742, ORS 537.780

ADOPT: 690-010-0110

RULE TITLE: Definitions

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule defines terms used in OAR Chapter 690 Division 10 and ORS 537.730 to 537.742.

RULE TEXT:

In addition to the definitions in OAR 690-008-0001, the following definitions apply to critical groundwater area designations conducted pursuant to ORS 537.730 to 537.742 and these rules, unless the context requires otherwise:

(1) "Affected 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 195.025 located within the boundaries of the proposed critical groundwater area.

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

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

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

(5) "Groundwater right" means a permit, certificate, decree, or certificate of groundwater registration as provided in ORS 537.610 authorizing the appropriation and use of groundwater.

(6) "Groundwater reservoir" means a designated body of standing or moving groundwater having exterior boundaries which may be ascertained or reasonably inferred as provided in OAR 690-010-0130.

(7) "Person" means individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public and private municipal corporations, political subdivisions, the state, and any agencies thereof, the federal government and any agencies thereof and federally recognized Indian tribes.

(8) "Exempt User" means any person who exercises the right to use groundwater pursuant to the exemption in ORS 537.545.

(9) "Determined claim" means a water right in the Klamath Basin determined and established in an order of determination certified by the Water Resources Director under ORS 539.130.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.730-537.742, ORS 537.780, ORS 537.525, ORS 536 - 537, ORS 539.130

ADOPT: 690-010-0120

RULE TITLE: Required Criteria for Designation of Critical Ground Water Area

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule incorporates and clarifies the statutory requirements under ORS 537.730 for designating an area of the state a critical groundwater area.

RULE TEXT:

(1) The Commission may adopt rules to designate an area of the state a critical groundwater area if any of the requirements under ORS 537.730(1)(a)–(g) are met. These requirements are:

(a) Groundwater levels in the area in question are declining or have declined excessively;

(b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;

(c) The department finds a pattern of interference or potential interference between wells of groundwater claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;

(d) The department finds a pattern of substantial interference between wells within the area in question and:

(A) An appropriator of surface water whose water right has an earlier priority date; or

(B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the groundwater appropriation

(e) The available groundwater supply in the area in question is being or is about to be overdrawn; (f) The purity of the groundwater in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or

(g) Groundwater temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) For the purposes of ORS 537.730(1)(d)(A), a surface water right with an earlier priority date means a certificated or permitted water right including instream water rights and inchoate transfers, a determined claim, or a right evidenced by court decree, the source of which is surface water, including springs, streams, lakes, reservoirs, rivers and a "surface water diversion" as provided in OAR 690-008-0001(4)(A).

(3) For purposes of the determination under ORS 537.730(1)(d)(B), 'restrictions imposed on surface water appropriations' include but are not limited to, scenic waterways and other types of legally protected surface water flows.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.730-537.742, ORS 537.780, ORS 390.835, ORS 536-537, ORS 537.525

ADOPT: 690-010-0130

RULE TITLE: Additional Requirements for Critical Ground Water Area Rulemaking Process

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the additional requirements of the rulemaking process applicable to rulemaking actions to designate an area of the state a critical groundwater area. This new rule specifies how the OAR Chapter 690, Division 10 rules will be applied to the Department's ongoing OAR Chapter 690, Division 512 rulemaking.

RULE TEXT:

(1) The rulemaking process for designation of a critical groundwater area is governed by the applicable provisions under ORS Chapter 183, ORS 537.730 to 537.742, OAR Chapter 690 Divisions 001 and 005, and these rules.

(2) A rule adopted by the Water Resources Commission shall:

(a) Define the boundaries of the critical groundwater area and shall indicate which of the groundwater reservoirs located either in whole or in part within the area in question are included within the critical groundwater area. Any number of groundwater reservoirs which either wholly or partially overlie one another may be included within the same critical groundwater area;

(b) Contain a provision requiring a periodic review of conditions in the critical groundwater area. The review shall be in sufficient detail to evaluate the continuing need for the critical groundwater area designation and shall occur no less frequently than once every 10 years.

(3) For the purposes of ORS 537.735(1)(a) the exterior boundaries of a critical groundwater area may be reasonably inferred or ascertained:

(a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge areas; or

(b) Administratively by defining an affected area that does not have boundaries defined by natural features.

(c) Additionally, to the extent that sub-areas wholly contained within the designated critical groundwater area must be defined to allow for implementation of corrective control provisions, these sub-area boundaries will also be reasonably inferred or ascertained as in 690-010-0130 (3)(a) or (3)(b).

(4) In addition to the requirements under section (1), prior to Commission adoption of a rule designating a critical groundwater area, the Department shall:

(a) Coordinate with affected local governments using the process described in OAR 690-010-0140; and

(b) Engage, as described in OAR 690-010-0150, with any federally recognized Indian tribes in Oregon;

(c) Prior to convening a rules advisory committee pursuant to ORS 183.333, the Department shall prepare a draft report based on the best available science and information, identifying the criteria met under ORS 537.730(1)(a) – (g), identifying and characterizing the groundwater reservoirs subject to the proposed critical groundwater area designation and identifying corrective control measures likely to resolve the problems that resulted in the recommendation to designate a critical groundwater area. The draft report shall be posted on the Department's webpage until the end of the public comment period:

(A) Until the close of the public comment period, and consistent with ORS 183.335, the Department shall solicit and accept information and comments from the public regarding the draft report;

(B) The Department shall review the information and comments received and present a final report to the Commission that includes the Department's findings and conclusions and includes an assessment of the information and comments received;

(C) The report's findings and conclusions with respect to designation of a critical groundwater area shall be supported by substantial evidence that justifies the designation.

(5) In addition to the notice requirements under ORS 183.335, the Department shall give notice of the proposed rules by regular mail to:

(a) The owners of record of all groundwater registrations, inchoate transfers, permits and certificates for groundwater use within the affected area. For the purpose of providing notice by regular mail, the Department may rely upon the

available county tax lot ownership information for parcels underlying or overlapping with water right places of use in the proposed critical groundwater area.

(b) All tax lot owners within the affected area and not within a municipal or quasi-municipal water service area.

(c) Each well constructor licensed under ORS 537.747.

(6) At least 60 days after notice of the proposed rules is provided under ORS 183.335, ORS 537.730(3) and these rules, the Department shall hold at least one public hearing within each county in which the proposed critical groundwater area lies. Notice of the hearing shall be provided in a manner consistent with ORS 537.730(3) and ORS 183.335(3)(b).

(7) As of the effective date of the 2023 amendments to these OAR Chapter 690, Division 010 rules, the Department had convened a Rulemaking Advisory Committee to consider adoption of a critical groundwater area in the Malheur Lake Basin (OAR Chapter 690, Division 512). These amended Division 010 rules, OAR 690-010-0100 through OAR 690-010-0240, apply to the proposal and adoption of any critical groundwater area rules arising from the already convened Rulemaking Advisory Committee, except as follows: The Department shall post the draft report required by OAR 690-010-0130(4)(c), initiate coordination with affected local governments as provided in OAR 690-010-0140(1), and initiate engagement with applicable federally recognized Indian tribes as provided in OAR 690-010-0150(1), no less than 60 days before issuing a notice of proposed rulemaking pursuant to ORS 183.335.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.730-537.742, ORS 537.780, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0140

RULE TITLE: Land Use Planning Coordination with Affected Local Government

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the process and requirements of coordination with affected local governments regarding designating an area of the state a critical groundwater area.

RULE TEXT:

(1) Prior to convening a Rules Advisory Committee under ORS 183.333, the Department shall initiate coordination with affected local governments pursuant to the applicable provisions under ORS Chapter 197 (State Agency Planning Responsibilities), OAR Chapter 690, Division 005 (Compliance With Statewide Planning Goals, Compatibility With Comprehensive Plans, And Coordination On Land Use Matters), and these rules.

(2) To facilitate coordination as described in the State Agency Coordination Program, the Department shall provide a copy of the draft report that will be posted on the Department's website under OAR 690-010-0130(4)(c)(B).

STATUTORY/OTHER AUTHORITY: ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 536.027, ORSA 537.730 - 537.742, ORS 537.525, ORS 537.780, ORS 183, ORS 536-537, ORS 197

ADOPT: 690-010-0150

RULE TITLE: Engagement with Federally Recognized Indian Tribes

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the engagement process with federally recognized Indian tribes.

RULE TEXT:

(1) Prior to convening the Rules Advisory Committee under ORS 183.333, the Department shall initiate engagement with any federally recognized Indian tribes with reservation lands within the proposed critical groundwater area boundary and with any federally recognized Indian tribes in Oregon who have expressed an interest in the proposed critical groundwater area.

(2) To aid with the engagement the Department will provide a copy of the draft report that will be posted on the Department's website under OAR 690-010-0130(4)(c)(B).

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730 -537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0160

RULE TITLE: Content, Filing, and Review of Adopted Critical Groundwater Area Rules

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule incorporates the statutory requirements for a rule designating an area of the state a critical groundwater area, references the available corrective control provisions, outlines the timing of rule filing under ORS 537.740, and describes the required frequency of rule review.

RULE TEXT:

- (1) Any rule adopted by the Commission under ORS 537.730 and these rules shall include the requirements of ORS 537.735. Corrective control measures that limit or otherwise restrict existing rights or uses of groundwater in a critical groundwater area may be implemented only as consistent with the provisions of ORS 537.742, ORS 183, and OAR 690-010-0170 – 0230.
- (2) A critical groundwater area rule may include any one or more of the corrective control provisions under ORS 537.735(3)(a)–(f) that may be applied to the entire critical groundwater area or to designated subareas of the critical groundwater area. These corrective control provisions include:
 - (a) A provision closing the critical groundwater area to any further appropriation of groundwater, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such critical area;
 - (b) A provision determining the permissible total withdrawal of groundwater in the critical area each day, month or year;
 - (c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process;
 - (d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992;
 - (e) A provision closing all or part of the critical groundwater area to further appropriation of groundwater for its thermal characteristics;
 - (f) A provision determining the permissible change in thermal characteristics of groundwater in all or part of the critical groundwater area each day, month or year. Insofar as may be reasonably done, the Water Resources Director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the groundwater, in accordance with the relative dates of priority of such rights.
- (3) The Department shall file a copy of any rules designating a critical groundwater area with the Secretary of State as provided in ORS 183.355 and with the county clerk of each county within which any part of a critical groundwater area lies, and the county clerk shall record the designation in the deed records of the county.
- (4) The Department shall conduct a periodic review of conditions within the critical groundwater area no less than once every 10 years to evaluate the continuing need for the critical groundwater area.
- (5) In addition to the requirements of section (4), if the Commission adopts a critical groundwater area rule that limits groundwater use, the Commission shall review the rule at least once every three years. The review process shall include public notice and an opportunity to comment on the rule.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730 - 537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0170

RULE TITLE: Initial Notification of Proposed Corrective Control Orders

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the process and requirements of an Initial Notification of Proposed Corrective Control Orders.

RULE TEXT:

(1) At any time after the Commission adopts a rule designating a critical groundwater area, the Commission may initiate a contested case proceeding to propose limitation on existing groundwater rights or limitations on existing exempt users in the designated area. A contested case hearing shall be initiated by issuance of an Initial Notification of Proposed Corrective Control Orders followed by a Notice of Proposed Corrective Control Orders.

(2) An Initial Notification of Proposed Corrective Control Orders may be issued at any time after the Commission adopts a rule designating a critical groundwater area, and prior to issuing a Notice of Proposed Corrective Control Orders. The Initial Notification of Proposed Corrective Control Orders shall identify corrective control provisions as specified in ORS 537.742(2)(a) – (f) that the Department believes will resolve the problems that resulted in the designation of a critical groundwater area and will form the basis of a Notice of Proposed Corrective Control Orders as provided in OAR 690-010-0180.

(3) The proposed corrective control provisions that limit the use of groundwater in the critical groundwater area that may be included in the Initial Notification of Proposed Corrective Control Orders are as follows:

(a) A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to groundwater in the critical area in accordance with the relative dates of priority of such rights;

(b) A provision according preference, without reference to relative priorities, to withdrawals of groundwater in the critical area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer;

(c) A provision reducing the permissible withdrawal of groundwater by any one or more appropriators or wells in the critical area;

(d) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of groundwater by such appropriator, or a provision forbidding the use of one or more of such wells completely;

(e) A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the groundwater supply or responsible for the progressive impairment of the quality of the groundwater supply by dispersing polluting materials that have entered the groundwater supply previously;

(f) A provision requiring and specifying a system of rotation of use of groundwater in the critical area.

(4) In addition to proposed corrective control provisions as provided in subsection (3), the Department's Initial Notification of Proposed Corrective Control Orders must include:

(a) Identification of the critical groundwater area or sub-areas in which the corrective control provisions are proposed;

(b) A statement describing the factors that led to the designation of the critical groundwater area;

(c) A description of the proposed corrective control provisions that the Department believes will resolve the problems that resulted in the designation of the critical groundwater area;

(d) A description of the geographic area in which corrective control provisions will be proposed; and

(e) A description of how persons may request a Notice of Proposed Corrective Control Orders and the deadline for requesting such notice.

- (5) The Department shall give notice of its Initial Notice of Proposed Corrective Control Orders by:
- (a) Publication in a newspaper having general circulation in the area in which the corrective control provisions will be proposed, for a period of at least two weeks and not less than one publication each week;
 - (b) Publication in the weekly notice published by the Department for four consecutive weeks;
 - (c) First class mail to any affected local governments and to all federally recognized Indian tribes within Oregon;
 - (d) Regular mail to the owners of record of all groundwater registrations, inchoate transfers, permits and certificates for groundwater use within the affected area. For the purpose of providing notice by regular mail, the Department may rely upon the available county tax lot ownership information for parcels underlying or overlapping with water right places of use in the proposed critical groundwater area;
 - (e) Holding a public meeting in the area, or as near as practicable to the area, in which the corrective control provisions will be proposed and;
 - (f) Posting the Initial Notification of Proposed Corrective Control Orders on its website.
- (6) Persons requesting a copy of the Department's Notice of Proposed Corrective Control Orders must request a copy of the notice by the deadline specified in the Initial Notification of Proposed Corrective Control Orders. The request shall be on a form provided by the Department on its website, and shall include information from the requestor that establishes whether:
- (a) The requestor holds a groundwater right within the area defined in the Initial Notification of Proposed Corrective Control Orders;
 - (b) The requestor is an exempt user of groundwater; or
 - (c) The requestor otherwise has an interest in the proceedings; and
 - (d) The mailing address and electronic mail address to which the Department may mail and e-mail its Notice of Proposed Corrective Control Orders and the requestor's preference for method of notification.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536 - 537

ADOPT: 690-010-0180

RULE TITLE: Notice of Proposed Corrective Control Orders

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the notice process and requirements for Notice of Proposed Corrective Control Orders.

RULE TEXT:

- (1) Following issuance and notification of the Initial Notification of Proposed Corrective Control Orders, and prior to implementation of any proposed corrective control provisions as may limit the use of groundwater in the critical groundwater area, the Department shall issue a Notice of Proposed Corrective Control Orders proposing implementation of one or more corrective control provisions as specified in ORS 537.742(2)(a)– (f).
- (2) The Notice of Proposed Corrective Control Orders is a notice for the purposes of ORS 183.415 and shall, in addition to those elements in ORS 183.415 and OAR 137-003-0505, include the following:
- (a) A case caption that identifies the critical groundwater area at issue including a citation to the rule establishing the critical groundwater area and identification of each county in which the critical groundwater area is located;
 - (b) A statement of the problem resulting in designation of the critical groundwater area that may be addressed by the proposed corrective control provisions limiting the use of groundwater in the critical groundwater area;
 - (c) A clear and concise description of the proposed corrective control provisions;
 - (d) A description of the area where the Director intends to implement the proposed corrective control provisions including attachment of any maps as necessary to clearly show the area of intended corrective control provisions such that groundwater right holders and exempt users located within the area of intended action may determine whether they will be affected by the proposed corrective control provisions;
 - (e) Identification of those groundwater right holders and exempt users whose rights to use groundwater may be limited or otherwise restricted by the proposed corrective control provisions;
 - (f) Findings of fact that support a conclusion that the problem(s) that resulted in designation of a critical groundwater area may be corrected by implementing the corrective control provisions specified in the Notice of Proposed Corrective Control Orders;
 - (g) Reference to scientific information that supports the agency's findings of fact;
 - (h) Conclusions of law based on the findings of fact and applicable law;
 - (i) An explanation of the reasoning that leads from the findings of fact to the conclusion that the problems that resulted in designation of the critical groundwater area may be resolved by implementation of the corrective control provisions identified in the notice;
 - (j) A notice of right to a contested case hearing pursuant to ORS chapter 183.415 and OAR 137-003-0505;
 - (k) A deadline for filing a Notice of Party Status, as provided in OAR 690-010-0190 by persons holding a groundwater right or exempt users this deadline will be no less than 30 days after the Notice of Proposed Corrective Control Orders is mailed; and
 - (l) A deadline for filing a Petition for Party Status as provided in OAR 690-010-0190; this deadline will be no less than 30 days after the Notice of Proposed Corrective Control Orders is mailed.
- (3) The Department shall provide notification of the Notice of Proposed Corrective Control Orders by:
- (a) Mailing copies of the Notice of Proposed Corrective Control Orders by certified or registered mail to groundwater right holders and exempt users whose wells are within the identified area in which corrective control provisions are proposed and whose use of groundwater will be limited by proposed corrective control provisions but only as the Department possesses contact information or may reasonably obtain contact information;
 - (b) First class mail to any affected local governments and to federally recognized Indian Tribes within Oregon;
 - (c) Mailing copies of the Notice of Proposed Corrective Control Orders by regular mail to persons who have timely requested copies of the notice and who chose mail as their preferred method of contact as provided in OAR 690-010-0170(6);

- (d) Emailing copies of the Notice of Proposed Corrective Control Orders to persons who have timely requested copies of the notice and who chose email as their preferred method of contact as provided in OAR 690-010-0170(6);
- (e) Publication in the weekly notice published by the Department for four consecutive weeks;
- (f) Publication on the Department's website.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730 - 537.742, ORS 537.525, ORS 183, ORS 536 - 537

ADOPT: 690-010-0190

RULE TITLE: Notices of Party Status and Petitions for Party Status

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the process for affected groundwater users to request a hearing and for anyone else who wishes to participate in the contested case hearing to petition for party status.

RULE TEXT:

(1) For the purposes of this rule, the definition of "person" excludes a state agency as "agency" is defined in ORS 183.310(1).

(2) Notice of Party Status. Persons who hold a groundwater right whose groundwater use may be limited and exempt users whose groundwater use may be limited as described in the Notice of Proposed Corrective Control Orders will be deemed to have been named parties to the contested case upon filing a complete, written Notice of Party Status with the Department by the deadline specified in the Notice of Proposed Corrective Control Order. A Notice of Party Status shall include:

(a) Name and address of any petitioners;

(b) Name and address of the petitioner's attorney, if any; and

(c) Identification of the water right held by the petitioner or identification of the exempt well and exempt uses, owned or used by the petitioner.

(d) A Notice of Party Status may also include:

(A) A detailed description of how the corrective control provisions in the Notice of Proposed Corrective Control Orders would adversely affect or aggrieve petitioner supported by an affidavit stating such facts;

(B) A detailed description of how the Notice of Proposed Corrective Control Orders is in error or deficient and how to correct the alleged error or deficiency;

(C) A detailed description of whether the problem(s) that resulted in the designation of the critical ground water area may or may not be corrected by implementing the corrective control provisions specified in the agency notice and why; and

(D) Any citation of legal authority supporting the petition, if known.

(3) Petition for Party Status. Any other persons may seek party status in the contested case regarding a Notice of Proposed Corrective Control Orders by filing a Petition for Party Status with the Department by the deadline specified in the Notice of Proposed Corrective Control Order:

(a) A Petition for Party Status must be in writing, must be consistent with the provisions in OAR 137-003-0535 and OAR 137-003-0630 and must be timely filed in the Department's Salem office by the deadline described in 690-010-0180(2)(l) in the Notice of Proposed Corrective Control Orders. The deadline shall be at least 120 days before the date set for the contested case hearing;

(b) Consistent with the provisions of OAR 137-003-0535 the Department may identify persons who shall be parties or limited parties in a contested case hearing regarding the Notice of Proposed Corrective Control Orders.

(4) Notice of Party Status and Petitions for Party Status shall be considered filed on the date postmarked. Notices of Party Status or Petitions for Party Status sent by facsimile or hand-delivered are considered filed when received by the Department in its Salem office. In computing the period of time for timely filing, the last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and legal holidays identified in ORS 187.010 and 187.020, including Sundays.

(5) State Agency Party Status. Any state agency seeking to request a hearing or petition for party status must follow the procedures in OAR 137-003-0540. A state agency seeking party status may notify the Oregon Water Resources Department of its intent to seek party status before the contested case is referred to the Office of Administrative Hearings.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0200

RULE TITLE: Scope of Contested Case Hearing

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the scope of a contested case hearing on a Notice of Proposed Corrective Control Orders.

RULE TEXT:

(1) A contested case hearing shall be conducted to establish one or more of the corrective control provisions in ORS 537.742 that limits use of groundwater in the critical groundwater area as provided in the Notice of Proposed Corrective Control Orders.

(2) Except as otherwise provided in ORS 183.417(8) the Director shall create a list of issues to be heard in the contested case and shall refer that list to the Office of Administrative Hearings at the time the Notice of Proposed Corrective Control Orders is referred:

(a) The list of issues shall include those issues raised in a timely-filed Notice of Party Status with the information provided in 690-010-190(2)(d)(A) - (D) though issues may be categorized or summarized as furthers efficient administration of the contested case;

(b) Parties to the contested case may seek amendment or clarification of the list of issues consistent with the provisions of OAR 137-003-0630.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0210

RULE TITLE: Conduct of Contested Case

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the process and requirements of a contested case proceeding on a Notice of Proposed Corrective Control Orders.

RULE TEXT:

(1) The conduct of the contested case regarding the Notice of Proposed Corrective Control Orders shall be governed by OAR 137-003-0501 to 137-003-0700 except as otherwise provided in these rules.

(2) The Department shall refer the contested case to the Office of Administrative Hearings as provided in OAR 137-003-0515.

(3) The Department shall post on its webpage the information contained in its referral to the Office of Administrative Hearings and may also post maps, reports or any other information that supports or otherwise is relevant to the Notice of Proposed Corrective Control Orders including links to information referred to in the Notice of Proposed Corrective Control Orders.

(4) Discovery against the Department is only as provided in OAR 137-003-0566(1)(a)-(c). Pursuant to OAR 137-003-0566(2), the Department finds that availability of other discovery methods would unduly complicate or interfere with the hearing process, because of the large number of parties and extensive scope of the hearing, and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information (including the availability of the information posted as provided in subsection (3) and the availability of public records requests pursuant to Oregon's Public Records Law), are sufficient to ensure the fundamental fairness of the proceedings

(5) Service and filing of documents in the contested case hearing may be by electronic means only as directed and allowed by the Administrative Law Judge.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0220

RULE TITLE: Exceptions to Proposed Order

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the process and requirements for filing exceptions to proposed orders and the Commission's review and response to such exceptions.

RULE TEXT:

(1) Exceptions to the Proposed Order issued by the Administrative Law Judge after a contested case hearing must be filed with the Department in its Salem office within 60 days following the date of service of the Proposed Order. Parties must mail or hand-deliver a hard copy of their exceptions to the Department at its Salem offices and must also email an electronic copy to all the email addresses listed on the Certificate of Service.

(2) The Commission must consider timely-filed exceptions but need not individually address each exception in any final order issued. The Commission may form a subcommittee of Commission members to review the exceptions and may provide a report to the Commission prior to the Commission issuing a final order.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0230

RULE TITLE: Final Order in Contested Case

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the requirements for a final order issued at the conclusion of a contested case hearing.

RULE TEXT:

- (1) Upon conclusion of the contested case hearing, including the consideration of exceptions filed against a proposed order issued by the administrative law judge, the Commission shall issue a final order in contested case.
- (2) If, after consideration of the contested case record, the Commission finds that the factors that resulted in the designation of a critical groundwater area under ORS 537.730 can be resolved by implementing one or more of the corrective control measures specified in the Notice of Proposed Corrective Control Orders, the Commission shall issue a final order establishing one or more of the proposed corrective control provisions provided in ORS 537.742.
- (3) Final orders in contested case must be consistent with ORS 183.650 and OAR 137-003-0665 and directed to the named parties in the contested case proceeding.
- (4) Final orders in default issued to a party in the contested case hearing must be consistent with OAR 137-003-0670.
- (5) If no person or state agency files a timely Notice of Party Status, Petition for Party Status, or state agency request for party status, the Commission shall issue a final order in default consistent with OAR 137-003-0670.
- (6) The Commission's final order in contested case is appealable to the Oregon Court of Appeals pursuant to ORS 183.482 and ORS 536.075.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537

ADOPT: 690-010-0240

RULE TITLE: Procedure for Making Changes to Existing Critical Groundwater Area

NOTICE FILED DATE: 03/24/2023

RULE SUMMARY: This new rule describes the procedures for making changes to rules for existing Critical Groundwater Areas.

RULE TEXT:

(1) Where a critical groundwater area is established and described in rule only, and the Commission seeks to expand, alter or reduce the boundaries of the existing critical groundwater area, the Commission must follow the processes for establishing a new critical groundwater area as provided in ORS 537.730 – 735 and OAR 690-010.

(2) Where a critical groundwater area is established by an order or proclamation that is referenced in a basin program rule, the Commission may amend the basin program rule referencing the critical groundwater area order or proclamation so as to confirm the order's or proclamation's provisions governing designation of the critical groundwater area or the establishment of corrective control provisions and may alter or modify a designated critical groundwater area only as consistent with subsection (1). Any rulemaking as provided in this subsection does not amend an order or proclamation as it directs the disposition of individual rights adjudicated in the order or proclamation.

(3) Insofar as critical groundwater area rules, orders or proclamations are amended to establish new or amended critical groundwater area designations or new or amended corrective control measures, such corrective control measures may apply:

(a) To those groundwater rights previously adjudicated in a critical groundwater area order or proclamation only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS 183;

(b) To pending groundwater applications and present groundwater rights, only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS 183.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.780

STATUTES/OTHER IMPLEMENTED: ORS 537.780, ORS 537.730-537.742, ORS 537.525, ORS 183, ORS 536-537