



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item B, July 1, 2013
Water Resources Commission Meeting

Request for Adoption of Temporary Rule Granting Preference to Stock watering and Human Consumption Use in Klamath County

I. Issue Statement

The Klamath Basin above Upper Klamath Lake is experiencing regulation to satisfy senior water rights for the first time. This regulation is the result of the Adjudicator filing the Final Order of Determination in the Klamath Adjudication and one of the worst droughts in recent history. Streamflows in the Basin are between 30% and 50% of average. Below normal snow pack, total precipitation and streamflows prompted the Governor to declare drought in Klamath County on April 18, 2013.

II. Background and Discussion

Irrigation water in the Klamath Basin above Upper Klamath Lake is primarily used for irrigation of pasture and hay production. Many of the water rights in the Basin include domestic and stock water along with irrigation. Some rely on these rights to meet their human consumption needs. In addition, tens of thousands of cattle use the pasture during the summer months. Stock water is largely supplied by the cattle drinking from irrigation ditches. Many, if not all of the irrigation ditches are being regulated off by the watermaster and assistants to satisfy a call by senior water right holders.

The Governor declared a drought in Klamath County under Executive Order No. 13-05 (Attachment 1) on April 18, 2013. Oregon Revised Statute (ORS) 536.750 (Attachment 2) authorizes the Commission, during a declared drought, to grant a preference of use for human consumption and stock water. Oregon Administrative Rules (OAR) Chapter 690 Division 19 (Attachment 3) provides direction when implementing the statutes related to drought.

Landowners in the upper basin have been involved in stream restoration efforts. Most of these efforts have included the fencing of stream banks, blocking cattle from direct access to the stream for drinking. If stock are not allowed to water from irrigation ditches, fences or portions of fences may need to be removed to allow the stock to drink directly from the streams. Allowing stock to continue to water from irrigation ditches will assure stock may access the water they need and will preserve riparian areas protected by fences.

This preference would allow water users to continue to divert and use water for stock water and human consumption purposes during the period of declared drought. OAR 690-19-0020(7) defines human consumption as water for drinking, cooking and sanitation. Without the preference, these uses are subject to regulation and surface water that would otherwise be used to meet these needs will not be available. A lack of water for human consumption or stock watering constitutes a serious harm to the public interest and the interest of the water users concerned. For some water users, there are no readily available alternative sources of water for either stock or human consumption.

Temporary Rule OAR 690 Division 22 (Attachment 4) proposes to grant a preference for stock and human consumption. These temporary rules can only be in effect for 180 days or for the duration of the declared drought, whichever is shorter. Executive Order 13-05 expires December 31, 2013. These rules will expire on December 27, 2013, 180 days following adoption, unless the Governor revokes the declared drought by a subsequent executive order.

III. Conclusion

Stock water and domestic water rights exist in the Klamath Basin. Tens of thousands of livestock rely on these water rights for their drinking water. Drought was declared in Klamath County through the Governor's Executive Order 13-05 on April 18, 2013. Water rights, including those allowing stock water and domestic use, are regulated off to satisfy senior water rights. ORS 536.750(1)(c) authorizes the Commission to grant a preference for stock water and human consumption during a declared drought. Serious harm will result to the public interest and the interest of the water users without the preference.

IV. Options

- 1 Adopt draft temporary rules OAR 690 Division 22
- 2 Find that temporary rules are not needed
- 3 Direct staff to look for other options to meet the stock water and human consumption needs

V. Recommendation

The Director recommends the Commission adopt Option 1, adopt draft temporary rules OAR 690 Division 22.

Attachment 1: Executive Order No. 13-05

Attachment 2: Oregon Revised Statute (ORS) 536.750

Attachment 3: OAR Chapter 690 Division 19

Attachment 4: Temporary Rule OAR 690 Division 22

Thomas Paul
503-986-0852

Office of the Governor State of Oregon



EXECUTIVE ORDER NO. 13 - 05

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN KLAMATH COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS

Pursuant to ORS 401.165 and ORS 536.740, I find that ongoing drought and low water conditions and weather patterns have the potential to cause local adverse natural and economic disaster conditions in Klamath County. I find a need exists for statewide coordination of water resource conservation measures by municipal and other political subdivisions of this state in order to minimize problems caused by this severe shortage of water. Projected weather patterns are not expected to significantly alleviate these conditions and drought conditions are continuing. These conditions are expected to have significant economic impact on the affected basin's agricultural, livestock, and natural resources.

Current conditions are being addressed by state agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Office of Emergency Management.

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of Klamath County, I am therefore declaring a "state of drought emergency" in Klamath County and directing the following activities;

IT IS HEREBY ORDERED AND DIRECTED:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources available to mitigate conditions resulting from drought and affecting agricultural recovery in the affected basin.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for the affected basin as it determines is necessary in accordance with ORS 536.700 to 536.780.

III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected conditions in the affected basin.



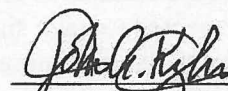
EXECUTIVE ORDER NO. 13 - 05
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IV. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist affected political subdivisions in the affected basin.


V. This Executive Order expires on December 31, 2013.

Done at Salem, Oregon this 18th day of April, 2013.




John A. Kitzhaber, M.D.
GOVERNOR

ATTEST:


Kate Brown
SECRETARY OF STATE

EMERGENCY WATER SHORTAGE POWERS

536.700 “Drainage basin” defined. As used in ORS 536.700 to 536.780, “drainage basin” means one of the 18 Oregon drainage basins identified by the Water Resources Department as shown on maps published by that department dated January 1976. [1977 c.541 §3]

536.710 Policy. (1) The Legislative Assembly finds that an emergency may exist when a severe, continuing drought results in a lack of water resources, thereby threatening the availability of essential services and jeopardizing the peace, health, safety and welfare of the people of Oregon.

(2) The Legislative Assembly finds it necessary in the event of an emergency described in subsection (1) of this section, to promote water conservation and to provide an orderly procedure to assure equitable curtailment, adjustment, allocation or regulation in the domestic, municipal and industrial use of water resources where more than one user is dependent upon a single source of supply. [1977 c.541 §1]

536.720 Declaration of state authority; Governor’s power to order water conservation or curtailment plan. (1) Because municipal and other political subdivision boundaries do not conform with the geographic boundaries of the 18 major drainage basins, or associated subbasins in the state, and because problems caused by a severe continuing drought may exceed local ability to control, the Legislative Assembly declares that water resource conservation in time of severe, continuing drought requires the exercise of state authority.

(2)(a) After a declaration that a severe, continuing drought exists, or is likely to exist, the Governor may order individual state agencies and political subdivisions within any drainage basin or subbasin to implement, within a time certain following the declaration, a water conservation or curtailment plan or both, approved under ORS 536.780.

(b) Each state agency and political subdivision ordered to implement a water conservation or curtailment plan shall file with the Water Resources Commission such periodic reports regarding implementation of the plans as the commission or the Governor may require.

(3) Orders provided for in subsection (2) of this section and curtailments, adjustments, allocations and regulations ordered pursuant thereto shall be designed insofar as practicable not to discriminate within any class of consumers.

(4) It is the intent of the Legislative Assembly that curtailments, adjustments, allocations and regulations ordered pursuant to subsection (2) of this section be continued only so long as a declaration by the Governor of the existence of severe, continuing drought is in effect.

(5) The Governor may direct individual state agencies and political subdivisions of this state to seek enforcement of all orders and regulations issued pursuant to ORS 536.780 and subsection (2) of this section. [1977 c.541 §2; 1985 c.673 §20; 1989 c.87 §7]

536.730 Effect of emergency powers on vested water rights. Except as provided in ORS 536.740 and 536.750, nothing in ORS 536.700 to 536.780 is intended to permit the Governor or the Water Resources Commission to hinder the ability of any holder of a vested water right to obtain and use legally assured benefits of that right. [1977 c.541 §4; 1989 c.87 §8]

536.740 Governor’s authority to declare drought. Upon finding that a need exists for statewide coordination of water resource conservation measures by municipal and other political subdivisions of this state in order to minimize problems caused by a severe shortage of water, the Governor may declare that a severe, continuing drought exists or is likely to exist. [1989 c.87 §2]

536.750 Powers of commission after declaration of drought; rules. (1) Notwithstanding any provision of ORS chapters 536 to 543A, after a declaration that a severe, continuing drought exists, the Water Resources Commission may:

- (a) Issue without first conducting a hearing under ORS 537.170, a temporary permit for an emergency use of water;
 - (b) Allow a temporary change in use, place of use or point of diversion of water without complying with the notice and waiting requirements under ORS 540.520;
 - (c) Notwithstanding the priority of water rights, grant preference of use to rights for human consumption or stock watering use;
 - (d) Waive the notice requirements under ORS 537.753 and the report required under ORS 537.762;
 - (e) Allow a temporary exchange of water without giving notice as required under ORS 540.535; and
 - (f) Utilize an expedited notice and waiting requirement established by rule for the substitution of a supplemental ground water right for a primary water right under drought conditions in place of the notice and waiting requirement provided in ORS 540.524.
- (2) The commission by rule may establish procedures for carrying out the provisions of this section and a schedule of fees that must accompany a request under subsection (1) of this section. [1989 c.87 §3; 1999 c.873 §20; 2001 c.788 §1]

536.760 Cessation of actions taken under ORS 536.750. Any action taken under ORS 536.750 may be carried out only during the period of severe, continuing drought. After the drought, any water use undertaken under ORS 536.750 must cease or comply with the applicable provisions of ORS 537.110 to 537.252, 537.505 to 537.795 and 537.992 or 540.520 and 540.530. [1989 c.87 §4]

536.770 Purchase of option or agreement for use of water permit or right during declared drought; application; fee. (1) The Water Resources Commission or a local government, public corporation or water right holder may purchase an option or enter an agreement to use an existing permit or water right during the time in which a severe, continuing drought is declared to exist.

(2) A local government, public corporation or water right holder proposing to purchase an option or enter an agreement under this section shall submit to the commission an application accompanied by the fee required under ORS 536.050 (1)(a).

(3) After approval of the application by the commission, the option or agreement user:

- (a) Is not required to construct any diversion or appropriation facilities or works;
- (b) May use the water acquired under the option or agreement on property or for a use different than allowed in the permit or water right transferred under the option or agreement, if the water is used to replace water not available to the local government, public corporation or water right holder because of the drought; and

(c) May begin use at any time after approval by the commission so long as the total use by the water right or permit holder and the option or agreement user is within the rate, volume and seasonal limits of the permit or water right. [1989 c.87 §5; 1993 c.349 §1; 1997 c.587 §3; 2001 c.788 §2]

536.780 Water conservation or curtailment plans; contents; review; effect of failure to file or implement. (1) The Water Resources Commission, upon a finding that a severe or continuing drought is likely to occur, may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the commission, within 30 days following the order, a water conservation or curtailment plan or both. The commission may allow the state agencies and political subdivisions more than 30 days following the order to file the plan depending on the urgency for the plan.

(2)(a) The water conservation plan shall specify efforts to be made:

- (A) To reduce usage of water resources for nonessential public purposes;
- (B) To undertake activities consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources; and
- (C) To establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources.

(b) When a state agency or political subdivision files a water conservation plan with the Water

Resources Commission, the commission shall review the plan and approve it if the commission finds that the plan satisfactorily promotes uniformity in water conservation practices and the coordination of usage regulation, taking into account local conditions.

(3)(a) The water curtailment plan, in order to provide water necessary for human and livestock consumption during a severe and continuing drought, shall specify efforts to be made:

(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.

(b) When a state agency or political subdivision files a water curtailment plan with the Water Resources Commission, the commission shall review the plan and approve it if the commission finds that the plan satisfactorily promotes uniformity in water curtailment practices and the coordination of usage regulation, taking into account local conditions.

(4) If a state agency or political subdivision fails to file a water conservation or curtailment plan when so ordered, or if the commission does not approve a filed plan, the commission may develop appropriate plans. [1989 c.87 §6]

February 1, 2012

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 19
DROUGHT MITIGATION**

690-019-0010

Purpose of Rules

(1) The following administrative rules (OAR) 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 through 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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94, 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.

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

(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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94, 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 ORS 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 ORS 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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94, 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

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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.

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

(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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94, 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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 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

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

(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 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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 8-1994, f. & cert. ef. 8-2-94, 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

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

(5) Public notice of a temporary drought instream lease application or approval of such application shall be included in the Department's weekly notice.

Statutory Authority: ORS 536.027 and ORS 536.750

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 9-2001, 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, measurement, 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.

Statutory Authority: ORS 536.027 and ORS 536.750

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 9-2001, f. & cert. ef. 10-8-01

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94, 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.

Statutory Authority: ORS 536.700 through 536.780

Note: These rules were filed with the Office of the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94,
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

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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)

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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 - ORS 536.780

Stats. Implemented: ORS 536.700 - ORS 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. & cert. ef. 2-1-2012

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.

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(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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 9-2001, 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

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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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 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, f. & cert. ef. 10-8-01

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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.

Statutory Authority: ORS 536.700 through 536.780

Stats. Implemented: ORS 536.700 through 536.780

Hist.: WRD 9-2001, f. & cert. ef. 10-8-01

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WATER RESOURCES DEPARTMENT

DIVISION 22

EMERGENCY WATER PROVISIONS – KLAMATH COUNTY

690-022-0005

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. These rules address an immediate threat to the health and welfare of the people of Oregon that would otherwise occur if regulation of senior water rights in Klamath County curtailed or prohibited use of surface water for human consumption and stock watering as defined in these rules.**
- (2) Executive Order No. 13 – 05: Determination of a State of Drought Emergency in Klamath County Due to Drought and Low Water Conditions, was signed by Governor John A. Kitzhaber, M.D., on April 18, 2013.**
- (3) These rules become effective on July 1, 2013 and will remain in effect for 180 days from the effective date or for the term of Oregon Governor Kitzhaber’s Executive Order No. 13 – 05, whichever is shorter.**

690-022-0010

Definitions

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 Use” means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.**

690-022-0015

Applicability and Preference

Notwithstanding any provision of Oregon Administrative Rules Division 690 to the contrary:

- (1) These rules apply only to the diversion or use of surface water within Klamath County.**
- (2) Uses of surface 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 underlying water right.**
- (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 granted in 690-022-0015 (2) of these rules.**
- (4) Political subdivisions exercising the human consumption or stock water preferences established in this rule shall assure curtailment of water uses unrelated to the preference consistent with this rule.**