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CERTIFICATE AND ORDER FOR FILING

BARBARA C. ... SECRETARY OF STATE

PERMANENT

ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

SEO FORM No. 42 Rev.

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 22, 1990 (Date)

Water Resources Commission

by the (Department) (Division)

to become effective June 25, 1990 (Date)

The within matter having come before the Water Resources Commission (Department) (Division) after

If procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO [] YES [X] Date Published: April 15, 1990

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted: New Total Rules) OAR 690-01-041

Amended: Existing Rules)

Rescinded: Total Rules Only)

Administrative Rules of the Water Resources Commission (Department) Resource Management Division (Division)

DATED this 25th day of June, 1990

By: William N. Young (Authorized Signer)

Title: Director

Statutory Authority: ORS 536.025 and 536.029

Chapter(s) Oregon Laws 19

House Bill(s) 19 Legislature; or Senate Bill(s) 19 Legislature

Subject Matter: Delegates authority to hear all contested cases, issue proposed orders, and sign final orders if no exceptions are filed, to the Department's Hearings Referees; authority is delegated to the Director to hear exceptions filed to proposed orders in all matters except those specifically retained by the Water Resources Commission in this rule; matters retained for consideration of exceptions and issuance of final orders by the Commission are listed.

For Further Information Contact: Weisha Mize (Rule Coordinator) Phone: 378-3671

DIVISION 1
PROCEDURAL RULES

Notice of Proposed Rule

690-01-000 Prior to the adoption, amendment, or repeal of any rule by the Water Resources Commission The Water Resources Department shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date.

(2) By mailing a copy of the notice to persons and organizations on the Water Resources Department's mailing list established pursuant to ORS 183.335(7) at least fifteen (15) days prior to the effective date.

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

(a) Oregon State Department of:

(A) Fish and Wildlife;

(B) Environmental Quality;

(C) Forestry;

(D) Land Conservation and Development;

(E) Energy;

(F) Transportation; and

(G) Agriculture.

(b) United Press International and Associated Press.

(c) Persons and organizations filing a written request for such notice with the Department.

Public Interest Policy Review

OAR 690-01-002 (1) If, in the judgment of the Commission, a proposed use of public water may prejudicially affect the general public interest as reflected in the policies of ORS 536.310, the Commission may, prior to commencement of a contested case hearing pursuant to ORS 537.170, determine whether applicable sections of the river basin program adequately sustain the public interest in the waters sought for use.

(2) The Commission may hold a hearing to receive the views of the public on the question of whether the existing river basin program adequately sustains the public interest in the affected public waters or whether the Commission should initiate rulemaking to modify applicable sections of the river basin program.

(3) Notice of the hearing shall be given:

(a) As prescribed by OAR 690-01-000;

(b) By mailing a copy of the notice to any applicant for use of the subject public waters under ORS chapters 537 and 543; and

(c) By mailing a copy of the notice to the governing body of any county or city that would be affected by modification of the subject river basin program.

(4) Except as provided in subsection (5) of this section, no application pending for use of the subject public waters shall be rejected or approved until the Commission has reached a decision that the existing basin program adequately sustains the general public interest in the subject public waters, or until completion of the rulemaking proceeding initiated by the Commission to modify the existing basin program.

(5) If, in the judgment of the Commission, decision on any pending application in the affected basin or area would not be affected by the outcome of the proposed rulemaking, the Commission may act on or authorize the director to act on that application.

(6) Compliance with the basin program is one of the standards for determination of the public interest under ORS 537.170 in a contested case hearing.

Model Rules of Procedure

690-01-005 The Attorney General's Model Rules of Procedure, March 1986 edition, with the exception of OAR 137-03-090 to 137-03-093, were adopted by the Water Resources Commission on May 30, 1986, and shall be followed in all matters except where a different procedure is prescribed by statute or in Division 1 to 235 of Chapter 690.

Form and Content of Protest or Petition

690-01-010 (1) A protest or petition directed to the Water Resources Commission or the Water Resources Department in any contested case matter shall be in writing, signed by the protestant, petitioner, or their attorney, and, except for cancellation of a perfected and developed water right, shall contain a detailed statement of:

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

(b) The specific relief or action requested;

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

(2) Proof of service upon the necessary and interested person or persons whose rights or claims are contested shall be attached to the original right or petition.

Filing of Protest or Petition

690-01-015 The original of the protest or petition shall be filed with the Water Resource Department. A protest or petition shall be deemed filed when received by the Water Resources Department accompanied by the statutory filing fee.

Service of Protest or Petition

690-01-020 (1) Service upon parties named in the protest or petition shall be made by the protestant or petitioner, personally or by regular mail. If in the opinion of the Water Resources Commission or the Water Resources Director there are other persons whose interest may be affected by the relief or action requested in the protest or petition, the Director shall serve or cause protestant or petitioner to serve such persons personally or by regular mail a copy of the protest or petition.

(2) The protest or petition shall be deemed served on the date of mailing to the last known address of the person being served.

(3) Answers: Answers to protests or petitions are not required. Where no answer is filed with the Water Resources Department all allegations are deemed denied. An answer, if filed, shall be served upon the protestant or petitioner personally or by regular mail. Proof of service shall be attached to the original and filed with the Water Resources Department.

Motion to Make More Definite and Certain

690-01-025 Within ten days of the filing of the protest or petition, the Commission, the Water Resources Director, on his own motion or motion of any party, may order that allegations in the protest or petition be made more definite and certain. The protestant or petitioner shall be given fifteen days to comply with the order of the Water Resources Commission or the Director. Allegations ordered to be made more definite and certain may be stricken upon failure to comply.

Amendment of Protest or Petition

690-01-030 At any time more than ten days prior to hearing, the protestant or petitioner may amend his protest or petition by serving a copy of the amended protest or petition upon all parties. Proof of service shall be attached to the original and filed with the Water Resources Department.

Withdrawal of Protest or Petition

690-01-035 At any time prior to hearing, the protestant or petitioner may withdraw the protest or petition without prejudice.

Procedure in Contested Cases

690-01-040 In the conduct of contested cases under authority delegated to the Water Resources Director by the Water Resources Commission, rule 137-03-040 of the Attorney General's Model Rules of Procedure shall apply except that in the following situations, and at the discretion of the presiding officer, the order of presenting evidence shall be:

- (1) Statement and evidence of party:
 - (a) Protesting application for water right permit (ORS 537.180 or 537.622); or
 - (b) Applying for water right transfer (ORS 540.530); or
 - (c) Seeking cancellation of perfected water right (ORS 540.641(2)); or
 - (d) Seeking water right certificate on which a protest has been filed (ORS 537.260(3)).
- (2) Statement and evidence of parties in opposition to claim or position asserted in (1).
- (3) Rebuttal testimony.

690-01-041 (1) Following completion of the hearing and closure of the record in any contested case matter, the hearings referee shall issue a proposed order setting out the determination of the agency. If no exceptions are filed by any party within 60 days from

service of the proposed order, and if a different final order is not issued by the Director within the time period allowed for filing exceptions, the proposed order shall become the final order of the agency.

(2)(a) In all contested cases involving matters arising under ORS Chapters 183, 536 through 543, ORS 498.268 and ORS 509.643, or administrative rules in OAR Chapter 690 implementing these statutes, where exceptions are filed to the proposed order, the final determination on behalf of the agency shall be made by the Director except in those areas listed in (2)(b) of this rule.

(2)(b) Where exceptions are filed to the proposed order and the subject matter of any of the following Chapter 690 rule divisions, or the statutes implemented by these divisions, is the primary issue at the hearing, the Commission shall issue the final decision:

- (A) Div. 11 Applications and Permits
- (B) Div. 15 Water Right Transfers
- (C) Div. 18 Conservation and Use of Conserved Water
- (D) Div. 50 Appropriation and Use of Water for Hydroelectric Power Projects
- (E) Div. 51 Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications
- (F) Div. 74 Standards for Consideration of Applications Involving Hydroelectric Projects
- (G) Div. 77 Instream Water Rights
- (H) Div. 225 Assessment of Civil Penalties under OAR 690-225-100
- (I) Div. 260 Civil Penalty Assessment for Other Than Well Constructors

(3) As provided in ORS 183.482 and OAR 137-03-080, any party may petition for reconsideration or rehearing following issuance of the final order. Any Commissioner may move for reconsideration or rehearing. A motion for reconsideration or rehearing made by a Commissioner shall be passed by a majority of the Commission.

Permit Applications

690-01-050 Water Resources Department "permit" applications subject to Chapter 3, Second Special Session 1982 Oregon Laws: (ORS 182.815)

- (1) Ground Water Application (ORS 537.615).
- (2) Surface Water Application (ORS 537.130, 537.140, and 537.240).
- (3) Reservoir Application (ORS 537.130, 537.140 and 537.240 to 537.300):
 - (a) Small dam, not requiring plans and specifications by licensed engineer;
 - (b) Large dam, requiring plans and specifications pursuant to OAR 690-20-035.
- (4) Hydroelectric License Application (ORS 543.010 to 543.630):
 - (a) Minor Project (OAR 690-50-050 to 690-50-060);
 - (b) Major Project (OAR 690-50-070 to 690-50-075).
- (5) Water Right Transfer Application (ORS 540.510 to 540.530):
 - (a) Change in Place of Use;
 - (b) Change in Point of Diversion, less than 1/4 mile and no intervening diversion point;
 - (c) Change in Point of Diversion, 1/4 mile or more and/or intervening diversion point;
 - (d) Change in Use Theretofore Made.
- (6) Landowner Permit to Construct Well on Own Property (ORS 537.753(4)).

NOTE: -a- Applications for "permits" Items (1), (2), (3)(a), (4)(a), (5)(a) and (b) and (6) are normally subject to approval or denial within 60 days from the date of filing of the completed application.

-b- Applications for "permits" Item (2)(b) are not normally subject to approval or denial within 60 days from date of filing of the completed application due to required site inspection and subsequent detailed engineering analysis of plans and specifications for construction of the reservoir.

-c- Applications for "permits" Items (4)(b), (5)(c) and (d) are subject to statutory provisions for public notice, waiting periods and hearing opportunities for public participation in the review process which delay approval or denial beyond 60 days from the date of filing of a completed application.

Processing of Permit Applications

690-01-060 All applications shall be acknowledged in writing to the applicant or the applicant's agent of record within 10 working days of the date of filing. Written acknowledgement of applications for "permit" Items-(3)(b), (4)(b) and (5)(c) and (d) shall include a summary of procedural steps to be followed in the processing of the application and the estimated time schedule.

Review Procedures for Permit Applications

690-01-070 The estimated time schedule for the application review procedures for any application for "permit" shall be determined on the basis of the required statutory procedures for that application, the then current workload, and the projected staff capability.

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