

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 2
PROTESTS AND CONTESTED CASES**

690-002-0000

Scope and Purpose

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in this Division (Division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR Chapter 690 and statutory provisions govern entitlement to a contested case hearing.

Stat. Auth.: ORS Ch. 183.341, 536.025 & 536.027
Statutes Implemented: ORS 183.310 - 183.497, Ch. 536 - 543
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0010

Definitions

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

- (1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.
- (2) "Commission" means the Water Resources Commission.
- (3) "Department" means the Water Resources Department.
- (4) "Director" means the Director of the Water Resources Department.
- (5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and the address to which the document was mailed.
- (6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing. Where provided or required by applicable law, a "protest" may include a request for contested case hearing. Except as provided in ORS 543.230, a protest must be in writing.
- (7) "Protestant" means any person filing a protest against an action or proposed action.

Stat. Auth.: ORS 183.341, 536.025 & 536.027
Statutes Implemented: ORS 183.310 to 183.497, Ch. 536 - 543
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

Note: These rules were filed with the Office of the Secretary of State and took effect on October 6, 2006. 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.

690-002-0020

Authorized Non-Attorney Representation

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

Stat. Auth.: ORS 183.341, 536.025 & 536.027
Statutes Implemented: ORS 183.341 & 183.457
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0023

Agency Representation by Officer or Employee

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

- (1) Civil penalty hearings under ORS 537.792 and OAR Chapter 690 Division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;
- (2) Civil penalty hearings under ORS 536.900 and OAR Chapter 690 Division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;
- (3) Protested water use applications under ORS 537.170 or 537.622 and OAR Chapter 690 Divisions 77 or 310;
- (4) Protested conversions of minimum perennial streamflows to instream water rights under OAR Chapter 690 Division 77;
- (5) Requests for reservations of water for future economic development under OAR Chapter 690 Division 79;
- (6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;
- (7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;
- (8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;
- (9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under ORS 537.211;
- (10) Non-FERC hydro projects under OAR 690 Division 51 and ORS Chapters 543 and 543A;
- (11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;
- (12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and
- (13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

Stat. Auth.: ORS ORS 183.341, 536.025 & 536.027
Statutes Implemented: ORS 183.341, 183.452 & Ch. 536 to 543
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

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690-002-0025

Time for Filing Protests or Requests for Hearing

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

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

and

(b) The protest includes any statutorily required fees.

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

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

Stat. Auth.: ORS Ch. 183.341, 536.025, 536.027

Statutes Implemented: ORS 183.341, Ch. 536 to 543

Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0030

Form and Content of Protest

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

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

(b) The specific relief or action requested;

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

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

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

Stat. Auth.: ORS Ch. 183.341, 536.025 & 536.027

Statutes Implemented: ORS 183.341, Ch. 536 to 543

Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0035

Requests for Standing in Matters Involving Applications Made Under ORS Chapter 537

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

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

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

Statutory Authority: ORS 183.341, 536.025 & 536.027

Statutes Implemented: ORS 537.153 & 537.621

Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

Note: These rules were filed with the Office of the Secretary of State and took effect on October 6, 2006. 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.

690-002-0075

Scope of Hearing

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

Stat. Auth.: ORS Ch. 183. 341, 536.025 & 536.027
Statutes Implemented: ORS 183.341 & Ch. 536 to 543
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0105

Participation in Hearings for Persons Who Previously Obtained Standing Pursuant to ORS 537.170 or 537.622

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

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

Statutory Authority: ORS Ch. 183. 341, 536.025 & 536.027
Statutes Implemented: ORS 183.341, 537.170 and 537.622
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

690-002-0175

Exceptions to Proposed Orders

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

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

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

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

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

Statutory Authority: ORS Ch. 183.341, 536.025 & 536.027
Statutes Implemented: ORS 183.341, 183.470 & Ch. 536 – 543
Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

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690-002-0190

Exceptions to Final Orders

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

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 183.341, 536.025 & 536.027

Statutes Implemented: ORS 183.341, 537.173 & 537.626

Hist.: WRD 8-2006, f. & cert. ef. 10-6-06

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