

CERTIFICATE AND ORDER  
FOR FILING

**PERMANENT**  
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

RECEIVED

JUN 24 3 43 PM '92

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 5, 1992 (Date) **PHIL KEISLING**  
SECRETARY OF STATE

by the Water Resources Department (Department) Resource Management Division (Division)

to become effective upon filing (Date)

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

all 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  Date Published: March 1, 1992

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: see attached  
New Total Rules)

Amended: see attached  
Existing Rules)

Repealed: 690-10-002  
Total Rules Only)



Administrative Rules of the Water Resources Department (Department) (Division)

DATED this 24<sup>th</sup> day of June, 19 92

By: *Matthew D. Pugh* (Authorized Signer)

Title: Director

Statutory Authority: ORS 536.027 and 536.029

Chapter(s) \_\_\_\_\_, Oregon Laws 19 \_\_\_\_\_ or

House Bill(s) \_\_\_\_\_, 19 \_\_\_\_\_ Legislature; or Senate Bill(s) \_\_\_\_\_, 19 \_\_\_\_\_ Legislature

Subject Matter: Rulemaking notice rule, adoption of Attorney General's Model Rules - Division 1. Contested case procedural rules - Division 2. Timelines for processing applications - Division 3.

For further information contact: Weisha Mize (Rule Coordinator) Phone: 378-8455

Adopting	690-01-003			
	690-02-010			
	690-02-120			
Amending	690-01-000			
	690-01-005			
	690-01-010	renumbered	690-02-030	and amended.
	690-01-015	renumbered	690-02-040	and amended.
	690-01-020	renumbered	690-02-050	and amended.
	690-01-025	renumbered	690-02-060	and amended.
	690-01-030	renumbered	690-02-070	and amended.
	690-01-035	renumbered	690-02-080	and amended.
	690-01-040	renumbered	690-02-140	and amended.
	690-01-041	renumbered	690-02-170	and amended.
	690-01-050	renumbered	690-03-000	and amended.
	690-01-060	renumbered	690-03-010.	
	690-01-070	renumbered	690-01-020.	
	690-02-001	renumbered	690-02-020	and amended.
	690-75-000	renumbered	690-02-000	and amended.
	690-75-007	renumbered	690-02-090	and amended.
	690-75-015	renumbered	690-02-100	and amended.
	690-75-025	renumbered	690-02-110	and amended.
	690-75-030	renumbered	690-02-130	and amended.
	690-75-035	renumbered	690-02-180	and amended.
	690-75-040	renumbered	690-02-150	and amended.
690-75-045	renumbered	690-02-160	and amended.	
Repealing	690-01-002			

OREGON WATER RESOURCES DEPARTMENT  
ADMINISTRATIVE RULES  
CHAPTER 690  
DIVISION 2  
PROCEDURAL RULES FOR CONTESTED CASES

## Scope and Purpose

690-02-000 These rules establish additional procedures governing requests for and conduct of contested case hearings except for those covered under OAR 690, Division 51. Other divisions of OAR Chapter 690 and statutory provisions govern entitlement to a contested case hearing. The purpose of these rules is to allow interested persons reasonable notice and opportunity to seek party status and participate in contested case hearings, and to provide for the orderly development of the evidentiary record forming the basis for contested case decisions.

{adopted 8-10-83; amended: 9-30-86; renumbered from 690-75-000 and amended 6-5-92}

## Definitions

690-02-010

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the Director of the Water Resources Department.
- (4) "Hearings Referee" means the agency's Hearings Referee or any other person appointed or directed by the Commission or Director to conduct a contested case hearing.
- (5) "Party" means any person admitted as a party in a contested case proceeding whether by virtue of designation prior to notice of contested case hearing or on grant of a petition for full or limited party status.
- (6) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character and, for the purposes of these rules, includes a state agency as defined in ORS 183.310(1).
- (7) "Petition" means a written request in the form described in the applicable Attorney General's Model Rules in which the petitioner requests the Commission or Department to take or initiate a particular action, as in a petition to initiate rulemaking, petition for reconsideration or rehearing of a contested case matter, petition for declaratory ruling or petition for party status in an announced contested case hearing.
- (8) "Petitioner" means any person filing a petition with the Department or Commission.
- (9) "Proof of Service" means a certification by the sender that the document described in the certification was mailed to the recipient on a certain date and giving the recipient's name and the address to which the document was mailed.

(10) "Protest" means a written protest in the form described in OAR 690-01-010 against the proposed approval or denial of an application for a water right, including but not limited to applications made under OAR Chapter 690 Divisions 11, 15, and 77, or a protest against a proposed cancellation of a water right.

(11) "Protestant" means any person filing a protest.

{adopted 6-5-92}

### **Authorized Non-Attorney Representation**

690-02-020 A party or limited party participating in a contested case hearing before the Water Resources Commission or the Water Resources Department may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-03-008 of the Attorney General's Model Rules.

{adopted 2-23-88; amended: renumbered from 690-02-001(1) and amended 6-5-92}

### **Form and Content of Protest**

690-02-030

(1) Except as otherwise provided in Division 17 relating to cancellation of perfected and developed water rights, a protest in any contested case or potential contested case matter shall be in writing, signed by the protestant or the protestant's attorney or authorized representative and shall 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 protestant and other person or persons necessary to, or having a direct interest in, the proceeding;
- (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 claims are contested shall be attached to the original protest.

{adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-010 and amended 6-5-92}

### **Filing of Protest**

690-02-040 The original of the protest shall be filed with the Water Resource Department. A protest shall be deemed filed when received by the Water Resources Department accompanied by the statutory filing fee of \$25.00 and determined to be in proper form as required by these rules.

{adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-015 and amended 6-5-92}

## **Service of Protest**

690-02-050

(1) Service upon individuals or groups named in the protest shall be made by the protestant personally or by regular mail. If it appears that there are other persons whose interest may be affected by the relief or action requested in the protest the Department shall serve or direct the protestant to serve a copy of the protest on such persons personally or by regular mail.

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

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

{ adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-020 and amended 6-5-92 }

## **Motion to Make More Definite and Certain**

690-02-060

(1) The Commission, the Department of the Hearings Referee, on his own motion or on the motion of any party, may order that allegations in the protest be made more definite and certain.

(2) The protestant shall comply with the order to make more definite and certain within 15 days of the order date. Allegations ordered to be made more definite and certain may be stricken upon failure to comply.

{ adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-025 and amended 6-5-92 }

## **Amendment of Protest**

690-02-070 On good cause shown and when allowed by the Commission, the Department or the Hearings Referee, the protestant may amend his protest at any time more than 45 days prior to hearing by serving a copy of the amended protest upon all parties. Proof of service shall be attached to the original of the amended protest and filed with the Water Resources Department.

{ adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-030 and amended 6-5-92 }

## **Withdrawal of Protest**

690-02-080 At any time prior to hearing, the protestant may withdraw the protest without prejudice.

{ adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-035 and amended 6-5-92 }

## **Notice of Contested Case Hearings**

690-02-090

- (1) Formal written notice of the hearing pursuant to OAR 137-03-001 shall be served on the parties at least 30 days prior to the date of hearing unless otherwise provided in OAR Chapter 690.
- (2) Where the Director or Commission has directed that a contested case hearing involving public interest issues be held, in addition to formal written notice required by ORS 537.170 and section (1) of this rule, notice shall be given at least 30 days prior to the date of hearing by regular mail to the affected local government planning agency and to persons who have filed a written request to be notified if a hearing is scheduled.
- (3) For conversions of minimum streamflows to instream water rights under OAR 690 Division 77, notice shall be given as required in sections (1) and (2) of this rule and by publication weekly for two consecutive weeks in the newspaper(s) of largest circulation published in each county in which the stream reach or point specified in the minimum perennial streamflow to be converted is located and by regular mail to potentially interested parties as determined by the Department. However, failure to notify an individual under this section shall not constitute a failure to provide adequate notice. Publication and distribution of notice shall be completed at least 30 days prior to the date of hearing.
- (4) The notice described in Section 3 of this rule shall reference or set forth the procedures by which persons may request to participate as parties in the contested case.
- (5) The standards for the public interest determination will be those in ORS 537.170(5) and the applicable Division of OAR Chapter 690.

{adopted 9-30-86; amended: 10-3-89; renumbered from 690-75-007 and amended 6-5-92}

## **Request for Party Status Following Notice of Contested Case Hearing**

690-02-100

- (1) Where the time for filing petitions for party status is not otherwise set by the Hearings Referee, persons requesting party status or limited party status in the hearing shall file a petition for party status with the Hearings Referee in accordance with OAR 137-03-005, at least twenty (20) days prior to the date set for the hearing.
- (2) The Hearings Referee shall serve the petition for party status or limited party status on all previously admitted parties and any other petitioners personally or by mail. Parties so served shall have seven (7) days from date of mailing to file an answer to the petition with the Hearings Referee. Response to petitions for party status or limited party status shall be limited to previously admitted parties.
- (3) Petitions for party status or limited party status in a proceeding shall be considered as provided by OAR 137-03-005(7). The determination on the petition will be made by the Hearings Referee. The ruling shall be by written order, served promptly on the petitioner and all parties.
- (4) An order granting party or limited party status may be conditioned on such terms as the Hearings Referee deems necessary.

(5) The Hearings Referee may require parties with substantially similar interests to join in one presentation to avoid redundant testimony.

(6) Persons granted limited party status may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions only with respect to the issue(s) on which participation is granted.

{ adopted 8-10-83; amended: 9-30-86; renumbered from 690-75-015 and amended 6-5-92 }

### **Procedures for Withdrawal from Party Status**

690-02-110 A person or agency granted party status or limited party status and later wishing to withdraw from the proceedings shall file written notice with the Hearings Referee and all parties, stating the reasons for withdrawal and specifying stipulations, settlements, or other terms or conditions of the withdrawal.

{ adopted 8-10-83; amended: renumbered from 690-75-025 and amended 6-5-92 }

### **Discovery**

690-02-120 Discovery of documents, physical evidence or information in preparation for the hearing may be obtained in any manner provided by the Attorney General's Model Rules of Procedure, OAR Chapter 137 Division 03.

{ adopted 6-5-92 }

### **Hearings Referee, Powers**

690-02-130

(1) The Hearings Referee shall take all necessary action to ensure a fair and impartial hearing and to maintain order. The Hearings Referee shall have all powers necessary to perform those duties including but not limited to the power to:

- (a) Rule on petitions for or withdrawal from party status and limited party status;
- (b) Administer oaths and affirmations;
- (c) Receive evidence;
- (d) Order depositions and other discovery to be taken and to issue subpoenas;
- (e) Regulate the course of discovery and all other aspects of the hearing and the conduct of the participants;
- (f) Require exhibits or reports proposed to be entered into the record to be submitted prior to the hearing.
- (g) Require some or all testimony to be filed in written form prior to the hearing;
- (h) Dispose of procedural matters and rule on motions;
- (i) Examine witnesses;
- (j) Call witnesses when essential matters are not addressed by the parties or their witnesses;
- (k) Hold conferences to reach settlement, to refine or clarify issues, or for any other purpose the Hearings Referee finds necessary;
- (l) Continue the hearing from time to time;
- (m) Take any other action consistent with governing statutes and the Commission's rules and policies, including the Attorney General's Model and Uniform Rules as adopted by the Commission;

(n) Prepare and serve upon parties a proposed order including findings of fact, findings of ultimate fact, conclusions of law and opinion;

(o) Where no exceptions to the proposed order are timely filed, issue and serve upon the parties a final order.

(2) The Hearings Referee shall keep the Commission informed on the status of the proceedings.

(3) The Hearings Referee shall ensure that a complete and current record of all motions, rulings, testimony, and exhibits of the hearing is maintained.

{adopted 8-10-83; amended: 9-30-86; renumbered from 690-75-030 and amended 6-5-92}

### **Procedure in Contested Cases**

690-02-140 Rule 137-03-040 of the Attorney General's Model Rules of Procedure shall apply in the conduct of contested cases except that in the following situations, and at the discretion of the Hearings Referee, the order of presenting evidence shall be:

(1) Statement and evidence of party:

(a) Opposing the proposed action on an application for water right permit (ORS 537.180 or 537.622);

(b) Applying for water right transfer (ORS 540.530);

(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.

{adopted 5-22-78; amended: 10-18-78; 9-30-86; renumbered from 690-01-040 and amended 6-5-92}

### **Judicial and Official Notice**

690-02-150

(1) The Hearings Referee may take judicial notice of all facts of which the courts of the State of Oregon take judicial notice that are pertinent to the hearing issues.

(2) The Hearings Referee may take official notice of the following:

(a) Administrative rulings and reports of the Commission, the Department and other governmental agencies;

(b) Facts contained in permits and licenses issued by the Director or Commission;

(c) The factual results of the Hearings Referee's personal inspection of physical conditions involved; and

(d) General, technical, or scientific facts within the Department's specialized knowledge.

(3) At any time during the proceeding, or in any event prior to a final decision the parties shall be notified of facts to be officially or judicially noticed, and shall be afforded an opportunity to contest the facts to be noticed.

{adopted 8-10-83; amended: 9-30-86; renumbered from 690-75-040 and amended 6-5-92}



**Suggestions for Findings, Conclusions and Orders**

690-02-160 The Hearings Referee may provide an opportunity for each party to present in writing, suggested findings of fact, conclusions and orders on any permit or license application, consistent with a schedule set by the Hearings Referee.

{adopted 8-10-83; amended: renumbered from 690-75-045 and amended 6-5-92}

**Proposed Orders, Exceptions, Final Orders**

690-02-170

(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 30 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 and a copy of the final order shall be served on the parties to the contested case.

(2) (a) In all contested cases involving matters arising under ORS Chapters 183, 536 through 543, ORS 498.268 and ORS 509.645, 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.

(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.

{adopted 6-22-90; amended: 4-19-91; renumbered from 690-01-041 and amended 6-5-92}

## **Reopening the Hearing Record**

690-02-180

(1) On good cause being shown, the Hearings Referee may reopen the hearing record, or the Commission or Director may direct that the hearing record be reopened, for the purpose of receiving further evidence at any time prior to a final decision.

(2) A party requesting to reopen the proceeding must show cause for not presenting the evidence during the previous proceedings and show that the evidence to be presented could affect the outcome of the proceedings.

{adopted 8-10-83; amended: renumbered from 690-75-035 and amended 6-5-92}

RULE FOR NON-ATTORNEY REPRESENTATION

690-02-001 (1) A party or limited party participating in a contested case hearing before the Water Resources Commission or the Water Resources Department may be represented by an authorized representative.

(2) On or before first appearance by authorized representative as defined in subsection (4)(b) herein, an authorized representative must provide the presiding officer with a letter authorizing the named representative to appear on behalf of a party or limited party.

(3) The presiding officer shall have authority to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal argument as defined in subsection (4)(b).

(4) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Authorized representative means a member of a partnership, an authorized officer or regular employe of a corporation, association or organized group, or an authorized officer or employe of a governmental authority other than a state agency.

(b) "Legal argument" includes arguments on:

(i) The jurisdiction of the agency to hear the contested case;

(ii) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(iii) The application of court precedent to the facts of the particular contested case proceeding.

(c) "Legal argument" does not include arguments on:

(i) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(ii) Comparison of prior actions of the agency conducting the proceeding;

(iii) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(iv) The admissibility of evidence or the correctness of procedures being followed.

(5) When authorized representatives are representing a party or limited party in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, presiding officers shall provide reasonable opportunity for authorized representatives to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.