

June 16, 1995

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 11
APPLICATIONS AND PERMITS

Purpose

690-11-000 (1) The purpose of this division is to establish definitions, information requirements, and procedures and standards which shall be applied by the Department and Commission in the evaluation of applications for the following types of permits, licenses and registrations:

- (a) A permit to appropriate surface or groundwater;
- (b) A permit to store water or construct a reservoir;
- (c) A limited license;
- (d) A permit to appropriate water for the purpose of groundwater recharge;
- (e) A secondary groundwater permit to use artificially recharged waters; and
- (f) A registration to use water for wetland, stream or riparian area enhancement or storm water management.

(2) This division also describes water uses which are exempt from permit requirements, and the standards and procedures for the management of water use permits, from permit approval through the issuance of a water right certificate.

(3) Applicants should be aware that other rule divisions apply to applications for instream water rights (OAR Chapter 690, Division 77), reservations for economic development (OAR Chapter 690, Division 79), water right transfers (OAR Chapter 690, Division 15), use of conserved water (OAR Chapter 690, Division 18), water use for chemical process mining (OAR Chapter 690, Division 78), out-of-basin diversions (OAR Chapter 690, Division 12), drought mitigation (OAR Chapter 690, Division 19), claims for pre-1909 vested water rights (OAR Chapter 690, Division 28), hydroelectric power generation (OAR Chapter 690, Division 51), and minimum perennial streamflows (OAR Chapter 690, Division 76).

(4) These rules apply to all applications on which no permit has been granted, application rejected, or on which no contested case has been ordered, on or before June 5, 1992.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94

Purpose

690-11-005 [WRD 16-1990, f. & cert. ef. 8-23-90;

Repealed by WRD 9-1992,
f. & cert. ef. 7-1-92]

Definitions

690-11-010 The following definitions apply in OAR Chapter 690, Divisions 11 and 15, and to any permits, certificates or transfers issued under these rules:

(1) "Affected Local Government" means any local government as defined in OAR 690-05-015 within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit, water right transfer, or certificate.

(2) "Agricultural Water Use" means the use of water related to the production of

"Note: These rules were filed with the Office of the Secretary of State and took effect on June 16, 1995. 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.

agricultural products. These uses include, but are not limited to, construction, operation and maintenance of agricultural facilities and livestock sanitation at farms, ranches, dairies and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, animal waste management, barn or farm sanitation, dairy operation, and fire control. Such use shall not include irrigation.

(3) "Aquatic Life Water Use" means the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

(4) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source.

(5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include the irrigation or landscape maintenance of more than 1/2 acre.

(7) "Comment" means a written statement requesting the Director's report of the technical review for a particular permit application or a written statement concerning a particular notice of water use registration for a proposed wetland, stream or riparian area enhancement or storm water management project. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

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

(9) "Contested Case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS 183.413 - 183.497 and OAR Chapter 690, Division 2.

(10) "Cranberry Use" means all necessary beneficial uses of water for growing, protecting and harvesting cranberries. Examples of these uses include, but are not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control.

(11) "Deficiency of Rate Right" means an additional right allowed from the same source for the same use at the same place of use when an earlier right does not allow a full duty or rate of flow of water.

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

(13) "Director" means the Director of the Department.

(14) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(15) "Domestic Use Expanded" means the use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or noncommercial garden.

(16) "Drainage Basin", as used in OAR 690-11-041, 690-11-046 and 690-11-049, means hydrologic unit delineated as a cataloging unit by the US geological Survey Office of Water Data Coordination on the State Hydrologic Unit map.

(17) "Fire Protection Water Use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

(18) "Fish Bypass Structure", as used in OAR 690-11-014, means any pipe, flume, open channel or other means of conveyance that transports fish that have entered a water diversion structure back to the body of water from which the fish were diverted.

(19) "Fish Screen", as used in OAR 690-11-014, means a screen, bar, rack trap or other barrier at a water diversion to entrap or provide adequate protection for fish populations, including related improvements necessary to insure its effective operation.

(20) "Fishway", as used in OAR 690-11-014, means any structure, facility or device used to facilitate upstream or downstream passage of fish through, over or around any man-made or natural barrier to free movement.

(21) "Forestland and Rangeland Management", as used in Chapter 595, Oregon Laws 1993, means water used for operations conducted on or pertaining to forestlands and rangelands. Such uses may include, but are not limited to, reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation.

(22) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in ORS 537.515(5).

(23) "Group Domestic Water Use" means the use of water for domestic water use by more than one residence or dwelling unit.

(24) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

(25) "Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre.

(26) "Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

(27) "Mining Water Use" means the use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control. Examples of mining include, but are not limited to, aggregate, hard rock, heap leach and placer mining.

(28) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses.

(29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power.

(30) "Nursery Operations Use" means the use of water for operation of a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities.

The use of water within plant nursery operations constitutes a different use from field irrigation, although that may be a part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the defined agricultural irrigation season.

(31) "Objection" means a written statement identifying a particular water use application or water use registration and identifying defects in the Director's report of the technical review, or identifying the elements of the application which, in the opinion of the objector, would conflict with an existing water right or would impair or be detrimental to the public interest. Objections shall meet the requirements of OAR 690-11-170(1).

(32) "Off-Channel" means outside a natural waterway of perceptible extent which, during average water years, seasonally or continuously contains moving water that flows off the property owned by the applicant and has a definite bed and banks which serve to confine the water. "Off-channel" may include the collection of storm water run-off, snow melt or seepage which, during average water years, does not flow through a defined channel and does not flow off the property owned by the applicant.

(33) "Placer mining" as used in ORS 390.835, means the process of extracting minerals from a placer utilizing mechanized or hydraulic equipment, except a motorized surface dredge with a suction hose intake four inches or less in diameter.

(34) "Planned" means a determination has been made for a specific course of action either by a legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by both the public and private sector.

(35) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this section. Such uses include, but are not limited to, the uses approved in the policies, provisions, and maps contained in acknowledged city and county comprehensive plans and land use regulations.

(36) "Pollution Abatement or Pollution Prevention Water Use" means the use of water to dilute, transport or prevent pollutants.

(37) "Power Development Water Use" means the use of the flow of water to develop electrical or mechanical power. Examples of these uses include, but are not limited to, the use of water for the operation of a hydraulic ram or water wheel and hydroelectric power production.

(38) "Primary Right" means the right to store water in a reservoir or the water right designated by the commission as the principle water supply for the authorized use, or if no designation has been made, the first in time or initial appropriation.

(39) "Proposed Certificate" means a draft version of a water right certificate describing the elements and extent of the water right developed under the terms of a permit or transfer approval order, as determined by field investigation.

(40) "Protest" means a written statement filed by an objector identifying errors of law or fact in the Director's denial of an objection. Protests shall comply with the requirements of OAR 690-11-175(5).

(41) "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.

(42) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), (3), or those preferences over minimum streamflows designated in a basin program.

- (43) "Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation.
- (44) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge.
- (45) "Recreation Water Use" means the use of water for play, relaxation or amusement. Examples of these uses include, but are not limited to boating, fishing, wading, swimming, and scenic values.
- (46) "Riparian Area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, or ephemeral, intermittent or perennial stream.
- (47) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate.
- (48) "Stockwater Use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.
- (49) "Storage" means the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits.
- (50) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge.
- (51) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses.
- (52) "Storm Water Management Water Use" means the use or storage of water in any structure or drainage way that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement, flood control or property protection. It may also include, but is not limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as storm water quality facilities.
- (53) "Stream or Riparian Area Enhancement Water Use" means the use of water to restore or enhance a stream or riparian area.
- (54) "Supplemental Water Right or Supplemental Water Use Permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right.
- (55) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.
- (56) "Temperature Control" means the use of water to protect a growing crop from damage from extreme temperatures.
- (57) "Transfer" means a change of use or place of use or point of diversion of a water right.
- (58) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner or that right but has not yet returned to the channel of a natural stream. In an irrigation district, the wastewater of an individual user is not subject to appropriation until it leaves the boundaries of the district. Wastewater abandoned to the channel of a natural stream becomes a part of that stream and is subject to appropriation.
- (59) "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow

requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use.

(60) "Water Right Subject to a Transfer" means a right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued.

(61) "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(62) "Wetland Enhancement Water Use" means the use of water to restore, create, or enhance or maintain wetland resources.

(63) "Wildlife Water Use" means the use of water by or for sustaining wildlife species and their habitat.

Stat. Auth.: ORS 390.835(1) & 536.027

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 4-1993, f. & cert. ef. 10-7-93; WRD 6-1993, f. & cert. ef. 11-30-93; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 7-1994, f. & cert. ef. 6-14-94

Exempt Uses

690-11-014 The uses of water listed below do not require a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(1) The statutory exemptions from permit requirements for use of groundwater include watering any lawn or noncommercial garden not exceeding 1/2 acre in area. Not more than 1/2 acre of lawn and noncommercial garden in total area may be irrigated through a group delivery system under such exemption. The statutory exemptions from permit and certificate requirements for use of groundwater include:

- (a) Stockwater use;
- (b) Lawn or non-commercial garden watering of not more than 1/2 acre in total can be irrigated from any groundwater source under the exemptions listed in ORS 537.545(1)(b);
- (c) Single or group domestic water uses of no more than 15,000 gallons per day;
- (d) Industrial or commercial water uses not exceeding 5,000 gallons per day based on peak daily use. A commercial or industrial operation shall be allowed only one well system and exemption under ORS 537.545(1)(f) on each ownership or tax lot, whichever is larger.

(2) The statutory exemptions from permit and certificate requirements for use of surface water include:

- (a) Use of waste, spring or seepage waters which are exempt under ORS 537.800;
- (b) Water used for egg incubation projects under the Salmon and Trout Enhancement Program (STEP);
- (c) Fish screens, fishways and fish by-pass structures. A fish screen, fish way or fish by-pass structure is an exempt use if it either:
 - (A) Is part of a hydroelectric project permitted or licensed by the Department; or
 - (B) Is found to not be harmful to fish or wildlife after consultation with the Oregon Department of Fish and Wildlife and causes no injury to existing water rights.

(d) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir;

(e) Reservoirs that store less than 9.2 acre feet of water or with a dam less than ten feet in height; that are located off-channel and outside the immediate riparian area; that do not divert water directly from a natural stream, lake or other on-channel source; that were constructed before January 1, 1993; and for which a written notice is submitted under section (4) of this rule.

(3) Water used for emergency firefighting is exempt from permit and certificate requirements regardless of the source of water.

(4) To qualify as an exempt water use under subsection (2)(e) of this rule, the landowner shall provide written notice of the use to the Department on or before January 1, 1995. Such notice shall be on a form provided by the Department and signed and verified by the owner of the land or the owner's authorized agent upon which the reservoir is located. The notice shall include the following:

(a) The volume of water stored;

(b) The source of the water used to fill the reservoir;

(c) The height of the dam measured at its highest point above natural ground elevation;

(d) A U.S. Geological Survey topographic map or a tax lot map showing the location of the reservoir;

(e) Evidence that the reservoir existed on or before January 1, 1993 as described in OAR 690-11-041; and

(f) A statement describing the off-channel nature of the reservoir.

(5) The Commission may require other information from the landowner regarding an exempt use including, but not limited to, estimates of the quantity of water used; diversion location; place of use; or photographs showing the scale of the project and the immediate area above, below and surrounding a reservoir.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94

Water Use Permit Applications

690-11-015 [WRD 6-1987, f. & ef. 6-11-87;

WRD 16-1990, f. & cert. ef. 8-23-90;

Repealed by WRD 9-1992,

f. & cert. ef. 7-1-92]

Minimum Application Requirements

690-11-020 (1) Applications shall be submitted on forms provided or approved by the Department and shall contain the following minimum information:

(a) Name and mailing address of the applicant(s);

(b) Source(s) of the water;

(c) Quantity of water to be appropriated;

(d) A map of the proposed water use and such other information as may be necessary to establish the location of the proposed point of diversion and place of use to the nearest quarter-quarter Section, Township and Range;

(e) Nature of the use(s);

(f) Name and mailing address of the legal owner of the property upon which any portion of the proposed development will occur, if other than the applicant. (This requirement may be waived by the Director if the applicant is an agent acting on behalf of multiple users, such as a municipality, irrigation district, group domestic water system or ditch company.);

(g) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-05-015(7) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning department;

(h) Signature of the applicant(s). (If the applicant is a public agency, corporation or business, the title or authority of the signer shall be indicated.); and

(i) An oath that the information contained in the application is a true and accurate representation of the proposed water use.

(2) Each application shall be accompanied by the appropriate examination fee required by ORS 536.050.

(3) Applicants shall be assessed additional fees for water right permit filing and recording as set forth in ORS 536.050(1)(b).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94

Supplemental Information Requirements

690-11-025 (1) Prior to the completion of a technical review of an application under OAR 690-11-160, the applicant shall also provide the following information:

(a) For surface and groundwater applications, the information listed in OAR 690-11-030;

(b) For reservoir applications, the information listed in OAR 690-11-040 and, if applicable, the information listed in OAR 690-11-041;

(c) For artificial groundwater recharge applications, the information listed in OAR 690-11-042(3); or

(d) For secondary groundwater permit applications, the information listed in OAR 690-11-044.

(2) If any of the information required by this rule does not apply to the proposed use, the applicant shall indicate why the information does not apply.

(3) Nothing in this rule precludes the Department from requesting additional information, as provided under OAR 690-11-050, when the technical review reveals that the applicant has not provided the information required under applicable rules.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94

Surface and Groundwater Applications — Supplemental Information Requirements

690-11-030 (1) Prior to the completion of a technical review, applications to appropriate the surface or groundwaters of the State of Oregon shall include:

(a) Proposed dates for the beginning of construction, completion of construction, and complete application of the water;

(b) A written copy of the legal description of the property on which the water is to be used as depicted on the map;

(c) A copy of the well constructor's log, if available, for any well already constructed;

(d) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream or to prevent damage to public uses of affected surface waters;

(e) The horizontal distance from the proposed point of groundwater appropriation to the nearest surface water source, if less than one mile, and the difference in land surface elevation between them;

(f) Land use information as outlined in the Department's **Land Use Planning Procedures Guide** described in OAR 690-05-015(7). If the land use information is not postmarked, or received by the Department, before the end of the 30-day comment period initiated pursuant to OAR 690-11-155, the Department shall conclude that the requirement for obtaining land use information has been met and may presume the land use served by the proposed water use is compatible with the comprehensive plans and land use regulations of affected local governments;

(g) A copy of written authorization or easement permitting access to land not owned by the applicant, and crossed by the proposed ditch, canal or other work;

(h) Such other information as the Department or Commission deems necessary.

(2) Prior to the issuance of a permit, the applicant shall provide a map of the proposed water use prepared by a certified water rights examiner in accordance with ORS 537.140.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 18-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94

Reservoir Applications — Supplemental Information Requirements

690-11-040 Prior to the completion of a technical review, applications to store waters of the state of Oregon and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, shall include or be accompanied by:

(1) Plans, specifications and supporting information for the dam and impoundment area, as required in OAR Chapter 690, Division 20.

(2) A description, including drawings if required by the Department, of the proposed means of diversion and operation of the appropriation works and transmission of the appropriated waters, including provisions, if any, to measure the amount diverted, to prevent damage to aquatic life, or to prevent damage to public uses of affected surface waters.

(3) Proposed dates for the beginning and completion of construction of the reservoir.

(4) A legal description of the property upon which the water is to be stored.

(5) Land use information as outlined in the Department's **Land Use Planning Procedures Guide** described in OAR 690-05-015(7). If the land use information is not postmarked, or received by the Department, before the end of the 30-day comment period initiated pursuant to OAR 690-11-155, the Department shall conclude that the requirement for obtaining land use information has been met and may presume the land use served by the proposed water use is compatible with the comprehensive plans and land use regulations of affected local governments..

(6) A copy of written authorization or easement permitting access to land not owned by the applicant, and crossed by the proposed ditch, canal or other work.

(7) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-14-150 if the reservoir stores more than 9.2 acre feet of water or has a dam greater than ten feet in height.

(8) Such other information as the Department or Commission deems necessary.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94

Ponds in Existence Prior to January 1, 1993 (HB 2153, 1993)

690-11-041 (1) A landowner with an unpermitted reservoir constructed before January 1, 1993 may apply for a water right permit and continue the use of water while a decision is pending on the application. The water right application, if approved in accordance with OAR 690-11-155 through 690-11-195, will receive a priority date of January 1, 1993. In order to qualify for these benefits, an application must be filed on or before January 1, 1995. In addition to the information and fees required under OAR 690-11-020 and 690-11-040, an application shall also be accompanied by evidence that the reservoir existed before January 1, 1993. Such evidence may include:

- (a) A dated aerial photograph which shows the immediate area above, below and surrounding the reservoir;
- (b) An affidavit signed by the landowner or other knowledgeable person;
- (c) A dated map prepared by a local, state or federal agency showing the location of the reservoir; or
- (d) Construction receipts or other forms of documentation.

(2) Notwithstanding the requirements for a survey set forth in ORS 537.230, no survey of the appropriation is required for a reservoir storing less than 9.2 acre feet or with a dam less than ten feet in height. Maps submitted with the application shall be of sufficient quality and scale to establish the location of the reservoir to the nearest quarter-quarter section, township and range.

(3) Up to ten reservoirs may be included in a single application if the reservoirs existed prior to January 1, 1993; have dams that are less than ten feet in height or that store less than 9.2 acre-feet of water; are in the same drainage basin; and within the same ownership on contiguous property. For a rural fire protection district formed under ORS 478.010 or a forest protection district formed under ORS 477.225, up to ten reservoirs may be included in a single application if all the reservoirs are within the boundaries of the district; are within the same drainage basin; and are an element of the district's fire protection system.

(4) A water right certificate under ORS 537.250 may be issued in lieu of a permit if:

- (a) The reservoir existed before January 1, 1993;
- (b) The records of the Department provide satisfactory documentation to describe the location and volume of storage;
- (c) Modifications or alterations to the impoundment structure are not required; and
- (d) The Commission determines under section (1) of this rule that the reservoir would qualify for issuance of a permit.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94

Groundwater Recharge Applications — Supplemental Information Requirements; Permit Conditions

690-11-042 (1) Permit required. The appropriation of water from any source for the purpose of recharging a groundwater reservoir requires a permit. Likewise, any

beneficial use of artificially recharged groundwater in any such groundwater reservoir requires a secondary groundwater permit.

(2) Pre-application conference. Due to the complexities and costs associated with recharge projects and recharge permitting, the Department requires a pre-application conference.

(3) Supplemental information for permit application. In addition to data required on permit applications under OAR 690-11-020 to 690-11-030, the applicant shall submit additional information to assist the Commission in determining the public interest on the proposed project. An application shall be accepted by the Department for filing only if it contains all required data. Upon request, the Department may assist other agencies in developing their responses to permit applications. The following attachments are necessary:

(a) Minimum perennial stream flow or instream water right. If a stream is the proposed recharge source, the applicant shall provide a copy of the document which establishes that the supplying stream has a minimum perennial stream flow or instream water right for the protection of aquatic and fish life. If none is established, the applicant shall attach a copy of a waiver of this prerequisite from the Oregon Department of Fish and Wildlife;

(b) Water Quality Permit. The applicant shall attach a copy of the necessary water quality permits from Oregon Department of Environmental Quality, show that the application for necessary permits has been filed, or show that permits are not necessary;

(c) Purpose of recharge. The applicant shall describe the ultimate use or value of the groundwater recharge;

(d) Annual storage. The applicant shall describe the volume of water, or the range of volumes, expected to be stored annually by artificial recharge. The applicant shall describe anticipated losses between the point of diversion and the place of recharge;

(e) Financial capability. If the proposed recharge diversion is for five cfs or more, the applicant shall display proof of financial capability to construct and operate the proposed project. Unless otherwise approved by the Director, the capability shall be supported by written statements from a lending institution;

(f) Hydrogeologic feasibility report. The applicant shall demonstrate that the proposed recharge project is hydrologically feasible. The report should include an assessment of groundwater conditions in the reservoir and anticipated changes due to the proposed recharge project. This report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice in this area of geology;

(g) Project Description Report. The applicant shall provide plans for recharge project construction, operation, and costs. The report shall outline proposed monitoring plans for flows, water levels in wells and groundwater quality. If surface water is a proposed source of recharge, the report shall indicate when surplus surface waters are generally available. The report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice civil engineering and this area of geology;

(h) Additional information. The Director may require the applicant to submit additional information to assist the Commission in its public interest determination.

(4) Recharge permit processing. Prior to referring an application to the Commission for a public interest determination, the Director shall work with the applicant and may work with any person or agency to prepare a draft permit. In particular, the Director shall seek assistance from the State Department of Environmental Quality to develop a water quality monitoring program and standards.

- (5) Permit conditions. Any permit shall address the following items:
- (a) Maximum rate and volume. A permit shall specify a maximum diversion rate and a maximum annual diversion volume;
 - (b) Meters. The recharge permit shall require both the metering of recharge water from the source(s) and metering of water at the place(s) of recharge. Any subsequent secondary groundwater permit shall require metering of stored recharge water withdrawals;
 - (c) Records, Inspections. The permit shall require the permittee to keep accurate and current records of metered values, water levels and other pertinent information. The permit shall allow the Director to inspect records or works covered by the permit upon reasonable notice and at any reasonable time;
 - (d) Estimated data. When metered or measured data are missing in whole or in part, the Director may make estimates from available data. The Director's estimates shall be reasonable and, where there is a range of uncertainty, be conservatively low on water delivered to the place of recharge and conservatively high on withdrawals of stored recharge water;
 - (e) Water levels. The response of water levels in wells shall provide the principal basis on which to judge the effectiveness of recharge under the permit and the availability of stored recharge water:
 - (A) Monitoring program. The permit shall specify a water level monitoring program for selected times and wells; and
 - (B) Key wells, target levels. The permit shall designate several key wells in the monitoring program. The permit shall establish upper and lower target water levels for each well. Actual water levels on an annual assessment date shall be compared to the target levels for the purpose of prescribing allowable use of stored recharge water.
 - (f) Determination of stored recharge water. The permit shall specify the formula to determine the availability of artificially recharged groundwater for appropriation. The formula shall result from one of the following:
 - (A) Negotiation. The applicant and the Department may negotiate a formula which relies principally on water levels in wells, metered quantities of recharge, secondary permit withdrawals, and hydrogeologic conditions in the area. At permit issuance, stored recharge water may be credited at up to 85 percent of water metered to the place of recharge. Withdrawals of stored recharge water shall be debited at 100 percent of metered values. Calculations of stored recharge water shall be based only on recharge over the last five years;
 - (B) Definitive groundwater investigation. The applicant may present a definitive groundwater investigation as a method to determine stored recharge water. The Director must be satisfied that use of such information accurately describes the quantity and location of water available for withdrawal as a result of the recharge. That quantity must be in excess of the groundwater which would be available if artificial recharge were not practiced. If no agreement is reached by negotiation, the applicant must determine stored recharge water by a definitive groundwater investigation.
 - (g) Storage account. The Department shall record its final determinations on stored recharge water in a storage account. The permit shall specify a method by which the permittee may obtain information on that account;
 - (h) Annual report. The permittee shall submit an annual report to both the Department and any secondary permittee. That report shall include the range of recharge rates and total quantities during the year at both the diversion point and the place of recharge. In addition, the report shall include a general operations review, the permittee's estimate of the storage account and the results of other water quantity and quality programs which are required in the permit;

(i) Allowable use of stored recharge water. See rules governing secondary groundwater permits in OAR 690-11-044;

(j) Permit assignment. A permit condition shall require a potential assignee to prove, to the Director's satisfaction, the financial capability to construct uncompleted portions of an operate the project, if such proof was required for the application;

(k) Condition changes. If, under actual operation of the recharge project, the Director notifies the permittee that the Director has reason to believe there are adverse groundwater quantity or quality effects, the permittee shall case recharge activities. No further diversion shall be made until measures to prevent, correct or monitor those adverse effects have been agreed to and implemented;

(l) Technical Oversight. If the recharge diversion is for five cfs or more, the permit may require the permittee to have the construction and operation of the proposed project overseen by a professional(s) registered or allowed, under Oregon law, to practice civil engineering;

(m) Other conditions. The permit may contain other conditions which the Commission believes are necessary.

(6) Recharge certificate. Annual reports as required in the permit shall be an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate. Operational conditions of the permit shall become conditions of the certificate.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 - 537.358, Ch. 540 & 543

Hist.: WRD 5-1988, f. & cert. ef. 6-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-085

Secondary Groundwater Permits for Use of Artificially Recharged Waters; Supplemental Information Requirements; Limitations; Conditions

690-11-044 (1) Permit required. The appropriation of artificially recharged groundwater for any beneficial use requires a secondary groundwater permit.

(2) Supplemental information for permit application. In addition to data required for permit applications under OAR 690-11-020, the applicant shall submit certain additional information. The following attachments are necessary:

(a) Identify source. The applicant shall identify an artificially recharged groundwater reservoir as a supply of water;

(b) Written consent. The applicant shall include the written consent of the holder of the recharge permit or certificate;

(c) Source proof. The applicant shall submit proof that the proposed use will actually be from the recharged reservoir. Documentation may include water level similarities to the recharged reservoir, geologic and geographic similarities, hydraulic information, and other pertinent data; and

(d) Recharge understanding. The applicant shall attach a copy of the currently valid recharge certificate or permit and a statement that the applicant understands its content and the conditions of that recharge.

(3) Limitations on secondary groundwater permit approval. During the first five years of recharge, the Department shall limit cumulative secondary permits to no more than 85 percent of the project's permitted annual recharge volume. Subsequent recharge permits may exceed 85 percent based on recharge performance as determined by the Department.

(4) Secondary groundwater permit conditions. A secondary groundwater permit shall address the following items:

(a) Maximum rate and volume. A permit shall specify a maximum diversion rate and annual diversion volume;

(b) Meters. The permit shall require the permittee to meter all withdrawals so as to provide data as a debit against the storage account;

(c) Water levels. The permit shall require the permittee to measure water levels on a specified basis;

(d) Estimated data. The permit shall specify that when metered or measured data are missing in whole or in part, the Director may make estimates from available data. The Director's estimates shall be reasonable and, where a range of uncertainty exists, be conservatively high on withdrawal of stored water;

(e) Records, inspections. The permit shall require the permittee to keep accurate and current records of withdrawals and water levels. The Director may inspect any records or works covered by the permit upon reasonable notice and at any reasonable time;

(f) Annual report. The permittee shall be required to submit an annual report to the Director and holder of the recharge right. The report shall note withdrawals, dated water levels and other data pertinent to the storage account;

(g) Allowable use of stored recharge water. The permit shall indicate that availability shall be determined on the basis of secondary groundwater right priority and the allowable use of stored recharge water. The allowable use of stored recharge water falls into three categories. For ease of reference, these categories are named as the following color zones:

(A) Green zone. If water levels at key wells are above the upper target level, use is allowed up to the maximum of the storage account or maximum duty, whichever is lower. These wells and targets are noted in the recharge permit;

(B) Yellow zone. If water levels at key wells are between the upper and lower target levels, use is allowed up to 85 percent of the recharge volume for the preceding 12 months; and

(C) Red zone. If water levels at key wells are below the lower target level, no use of stored recharge water is allowed.

(h) Condition changes. If the Director has reason to believe that the well(s) is not with-drawing artificially recharged groundwater or there are other substantial groundwater concerns, the permittee shall cease withdrawal upon notice from the Director. No further withdrawal shall be made until measures to prevent, correct or monitor the situation have been agreed to and implemented; and

(i) Other conditions. The permit may contain other conditions which the Director specifies.

(5) Secondary groundwater Certificate. Annual reports as required in the permit shall be an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate. Operational conditions of the permit shall become conditions of the certificate.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 - 537.358, Ch. 540 & 543

Hist.: WRD 5-1988, f. & cert. ef. 6-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-086

Limited License

690-11-046 (1) A request for a limited license for a period of up to one year shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

(a) The fee for examination and recording, \$100 for the first point of diversion plus \$10 for each additional point of diversion; and

(b) A completed water availability statement from the local watermaster on forms provided by the department; and

(c) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

(3) The limited license shall not authorize the use of water for more than 180 days during the period of the limited license for all points of diversion. Each license shall be limited to an area within a single drainage basin. Any use during a 24-hour period beginning at 12:01 a.m. shall constitute one day of use.

(4) The licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.

(5) The licensee shall maintain a record of use, including the total number of hours of pumping and an estimate of the total quantity pumped. The record of use shall be submitted to the watermaster upon request.

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.

(7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-082; WRD 5-1994, f. & cert. ef. 4-13-94

Registration of Water Use for Road Maintenance and Construction

690-11-047 (1) A request by a public agency to register water use for road and highway maintenance, construction and reconstruction shall be submitted on a form provided by the Water Resources Department and shall include at least the following:

(a) The name and authorized agent of the public agency;

(b) The address and telephone number of the agency's authorized agent;

(c) If the source of water to be used for the agency's road maintenance or construction program:

(A) Is groundwater, attach copy of well log or description of the well;

(B) Is surface water, identify the name of the source and the stream, or river the source is tributary to.

(d) The maximum amount of water to be used during the calendar year in gallons or acre-feet;

(e) The maximum amount of water to be used during any 24-hour period in gallons or acre-feet;

(f) A map indicating the location(s) of the point(s) of diversion of water to be used for road maintenance or construction (the map shall be of sufficient scale to establish the location(s) of the point(s) of diversion to the nearest quarter section, township and range);

(g) A fee in the amount of \$300 (more than one point of diversion may be identified per registration); and

(h) If water is obtained from a well, conveyance or storage facility that has a perfected or certificated water right:

(A) Provide the permit or certificate number or the court decree identification of the right; and

(B) Written authorization from the owner of the right that allows use of water from the well, conveyance or storage facility.

(2) The registrant may use either a county road map or a Water Resources Department basin map to indicate the location(s) of point(s) of diversion. Counties may submit one registration for all uses within the county. State-wide public agencies shall submit one registration for each of the agencies administrative units. (the Oregon Department of Transportation shall submit one registration for each of its Regions within which road construction or maintenance water is to be used). Federal agencies with jurisdiction over roads/highways shall submit one registration for each of their administrative units.

(3) An Oregon Department of Fish and Wildlife "Requirements for Small Pump Screen", Self-Certification form shall accompany the registration form.

(4) As used in this rule, public agency means:

(a) The State of Oregon or any agency of the State of Oregon;

(b) A county or a special road district of a county;

(c) A city, town or incorporated municipality; and

(d) Any federal agency that has jurisdiction over a roadway in this state.

(5) The registration is subject to the following terms:

(a) Water use authorized by the registration shall not have priority over any existing water right;

(b) Water use authorized by the registration shall be subordinate to all future permitted or certificated water rights;

(c) Water use authorized under the registration shall not exceed 50,000 gallons from a single source during any 24-hour period;

(d) The registration shall be valid until the public agency voluntarily withdraws the registration or the public agency fails to file the annual renewal statement as required under section (8) of this rule;

(e) No person may construct any dam, reservoir or other impoundment facility to divert water from within a designated scenic waterway;

(f) Under no circumstances may the registrant cause the water course to be dewatered to a degree that the live, continuous flow is obstructed;

(g) The department may require the public agency to cease diversion of water at any time the director has reason to believe use of water under the registration is causing a significant adverse impact upon:

(A) The affected watershed; or

(B) Any existing water right; and

(h) The registrant shall notify the watermaster for the district in which the water is to be diverted not fewer than 30 days nor more than 60 days prior to the date diversion under the registration is to be initiated. If the proposed diversion is within or above a designated scenic waterway, the registrant shall not withdraw water under the registration until the watermaster provides written findings that the proposed withdrawal will not interfere with the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife uses.

(6) The registrant may authorize any person(s) to divert, transport or apply water under the registration; however, the registrant is responsible for the acts of such person(s) as authorized by the registration and these rules.

(7) The registrant shall provide copies of its registration form and map to the local office of the Oregon Department of Fish and Wildlife (ODFW) at least 30 days

before water use under the registration is initiated. If sensitive, threatened or endangered aquatic species are present in the stream(s) proposed as a source(s) of water under the registration and such species may be adversely affected by withdrawal of water by the registrant, ODFW shall advise the watermaster to direct the registrant to withdraw water from an alternative location(s) or stream(s) wherein the proposed withdrawal will not cause significant adverse impact to the affected watershed.

(8) The public agency must submit an annual renewal statement on or before February 1 of each calendar year. The annual renewal statement shall be accompanied with a \$50 renewal fee and shall specify any change in:

- (a) The registrant's map;
- (b) The sources of water to be used;
- (c) The maximum amount of water to be used during the calendar year or during any 24-hour period; and
- (d) A map delineating any changes in the location(s) of point(s) of diversion.

Stat. Auth.: ORS 537.040

Hist.: WRD 6-1994, f. & cert. ef. 6-10-94

Permits for Reservoirs Storing Up to Five Acre-Feet of Water, or for Livestock Watering Outside of Riparian Areas (SB 150, 1989); Fees

690-11-048 (1) Applications for permits to use water for storage projects of five acre-feet or less, or for livestock watering outside of riparian areas, are subject to the following reduced fees:

- (a) For examining the application, \$40;
- (b) For filing and recording the permit, \$10.

(2) If the intended use of the stored water requires a secondary permit as defined by ORS 537.400(2), the secondary application shall be subject to the usual fees as described under ORS 536.050.

(3) Applications submitted under this rule shall in all other respects be subject to the usual requirements for application processing as defined under OAR 690-11-020 through 690-11-040, 690-11-050 through 690-11-070, and 690-11-150 through 690-11-185.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-083

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Water Use Registrations for Wetland, Stream or Riparian Area Enhancement or Storm Water Management (HB 2107, 1993)

690-11-049 (1) Any person may apply to register a water use that would otherwise require a water right if the use is for a qualifying wetland, stream or riparian area enhancement or storm water management project. The registration process is an expedited process for obtaining a water right permit.

(2) Project Qualification Criteria:

(a) A proposed water use shall meet the following criteria to be considered for registration:

(A) The primary purpose of the proposed appropriation or impoundment of water must be for one or more of the following purposes:

(i) Wetland enhancement, except that groundwater may only be appropriated to maintain a wetland;

(ii) Stream or riparian area enhancement, including but not limited to:

(I) The construction of off-channel reservoirs, diversion or spring development to provide water for livestock and wildlife use outside of riparian areas in order to protect or enhance a riparian area; or

(II) Channel improvement or restoration that is hydraulically stable and enhances the biological conditions of the stream or riparian area; or

(iii) Management or treatment of storm water, including:

(I) Landscaping or channeling that directs run-off into small reservoirs, wetlands or treatment facilities; or

(II) On-channel storm water treatment facilities that impound or slow water; and

(B) The project must be designed to result in one or more of the following benefits:

(i) Decreased pollutant loads to streams;

(ii) Reduced soil or bank erosion;

(iii) Reduced summer stream temperatures;

(iv) Improved riparian conditions;

(v) Improved habitat conditions for aquatic or terrestrial species;

(vi) Decreased peak or storm flows;

(vii) Increased storage capacity in the watershed;

(viii) Increased streamflows during the low-flow season; or

(ix) Other wetland enhancement, stream or riparian area enhancement or storm water management benefits.

(b) If the project does not qualify according to the criteria described in this section, the proposed water use shall be processed in the same manner as a water use application under OAR 690-11-155 through 690-11-200.

(3) Notices of Registration:

(a) A notice of registration for a water use for wetland, stream or riparian area enhancement or storm water management shall be submitted by an applicant on a form provided by the Department and shall be accompanied by the following:

(A) The information and fees required under OAR 690-11-020 and 690-11-030, except as modified in paragraph (C) of this subsection;

(B) The name and address of each adjacent property owner and verification that each owner has been mailed a copy of the completed notice. For the purposes of this rule, "adjacent property owner" means any owner of property that shares a common boundary within 1/4 mile of a proposed project site;

(C) A map that meets the requirements of OAR 690-11-070, with the following exceptions;

(i) The standard scale requirements shall be no less than 2 inches = 1 mile; and

(ii) The map is required to be prepared by a certified water right examiner only when the notice of registration includes a reservoir with a proposed dam height greater than ten feet or proposed storage greater than 9.2 acre feet.

(D) A description of the proposed water use and related project, the condition the proposed project will address, and the benefits that are expected to result from the proposed project.

(b) One notice of registration may be submitted for up to ten reservoirs provided:

(A) Each reservoir stores less than 9.2 acre feet of water or includes a dam that is less than ten feet high;

(B) All of the reservoirs are located within the same drainage basin; and

(C) All of the reservoirs are located on contiguous property and are owned by the same party.