

(c) The applicant is encouraged to submit copies of permits or endorsements, if any, which have been received from natural resource agencies, watershed councils, the Governor's Watershed Enhancement Board, or the Watershed Health Program.

(4) **Injury to Existing Water Rights.** The Department shall evaluate each notice of registration to determine whether the proposed water use would interfere with the exercise of an existing water right and the proposed use cannot be restricted so as to avoid causing injury to an existing water right.

(5) **Technical Review.** The Department shall evaluate each notice of registration in accordance with OAR 690-11-160(1).

(6) **Injury to the Public Interest.** The Department shall evaluate each notice of registration in accordance with OAR 690-11-195.

(7) **Project Benefits:**

(a) In consultation with the agencies listed below, the Department shall determine if the proposed project is reasonably expected to result in wetland, stream or riparian area enhancement or storm water management benefits:

(A) The Oregon Department of Fish and Wildlife;

(B) The Oregon Department of Environmental Quality;

(C) The Oregon Department of Agriculture;

(D) The Oregon Division of State Lands;

(E) The Oregon Economic Development Department; and

(F) Any other agency the Department considers appropriate.

(b) In order to determine if the proposed project is reasonably expected to result in wetland, stream or riparian area enhancement or storm water management benefits, the Department and consulting agencies shall consider if the proposed project is likely to result in one or more of the following benefits:

(A) Decreased pollutant loads to streams;

(B) Reduced soil or bank erosion;

(C) Reduced summer stream temperatures;

(D) Improved riparian conditions;

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

(F) Decreased peak or storm flows;

(G) Increased storage capacity in the water-shed;

(H) Increased stream flows during the low-flow season; or

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

(8) **Public Notice and Comments:**

(a) The Department shall include notice of registration applications for qualifying projects and a description of the proposed projects in its weekly notice described in OAR 690-11-155;

(b) The public and state agencies shall have 30 days from the day the Department deposits the notice in the mail of the U.S. Postal Service to submit written comments.

(9) The Department shall issue a water use registration if:

(a) No written comments are received under section (8) of this rule that warrant further review, as determined by the Director;

(b) The proposed water use will not result in injury to existing water rights or the public interest, as determined under sections (4) and (6) of this rule;

(c) The Department has consulted with the agencies listed in section (7) of this rule and the project is reasonably expected to result in the wetland, stream or riparian area enhancement or storm water management benefits, as determined under section (6) of this rule; and

(d) No issues are identified during the Department's technical review of the proposed water use in accordance with OAR 690-11-160(1) that warrant further review, as determined by the Director.

(10) The Department shall mail a registration to the applicant and a copy of the registration to all individuals and agencies who have filed timely comments with the Department. In addition, any person may request a copy of a registration. The Department shall include notice of issuing a water use registration in the weekly notice described in OAR 690-11-155. The notice shall include the date by which objections to the registration must be received.

**(11) Objections:**

(a) A 60-day objection period shall commence on the day the Department mails a registration to the applicant and other interested parties. The content of the objection must meet the same standards as objections filed under OAR 690-11-170. The Department shall handle any objection received in the same manner as objections received on a water right application under OAR 690-11-170;

(b) If an objection is received that the Director determines warrants further review, the Director shall rescind the registration and the water use application process shall continue as described in OAR 690-11-175 through 690-11-180;

(c) If no objection is received that the Director determines warrants further review, the Department may presume that the registration is not opposed by any person or entity.

(12) **Registration Denials.** If the Director denies registration, the construction of facilities or use of water is prohibited until the applicant successfully completes the permit application process under OAR 690-11-160 through 690-11-180 and a permit is issued.

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

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94, f. & cert. ef. 8-11-94

**Incomplete Applications**

**690-11-050** (1) If at any time during the processing of an application that has been received for filing, the Department determines that the application is defective or does not fulfill the requirements of OAR 690-11-020, 690-11-030, 690-11-040, 690-11-042, 690-11-044, 690-11-046 or 690-11-048 whichever is applicable, the Department shall return the application to the applicant for the curing of defects or resubmittal with the required information.

(2) The Department's correspondence shall state a time within which the application and required information must be returned to the Department. The time allowed shall not be less than 30 days no more than one calendar year from the date on the correspondence. Failure to return the application within the time specified shall result in the loss of the tentative priority date. Failure to return the application or the requested information may result in the rejection of the application.

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

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

**Replacing or Amending Applications; Tentative Priority Dates**

**690-11-060** Applications may be replaced or amended without loss of the tentative priority date so long as the requested source of the water and the nature of use are the same as was described in the original application and the requested quantity is not increased. If the replacement or amendment proposes different or additional sources or uses, or increases the amount of water requested, the original proposal shall retain the original tentative priority date and the additions or

increases shall be assigned a new tentative priority date, as of the date the amendment is received by the Department.

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

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 9-1992, f. & cert. ef. 7-1-92

#### **Map to Accompany Application for Water Use Permit**

690-11-070 Maps submitted with water use applications shall be prepared by a certified water right examiner and meet the following criteria:

(1) The application map, which is made part of the record, shall be of permanent quality and drawn with sufficient clarity so as to be easily reproduced.

(2) Maps shall be drawn on tracing linen, tracing vellum or mylar except that maps measuring 11" x 17" or smaller may be prepared on good-quality paper. All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. Small area maps may be more easily and clearly drawn to a larger scale, such as 1 inch = 400 feet.

(3) Four prints of a platted and recorded subdivision may be submitted as the application map if all of the required information is clearly shown on each print. Notwithstanding the provisions of subsection (5)(a) of this rule, the location of the diversion point may be given with reference to a lot or block corner of the subdivision.

(4) Four permanent-quality prints of other maps, such as deed description survey maps or county assessor maps, also may be used if all the required information is clearly shown on each print. A single print of these may be used only if it is reproduced as a transparency, such as a sepia print or on mylar film.

(5) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:

(a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);

(b) The location of main canals, ditches, pipelines, or flumes;

(c) The location of the place where water is to be used. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatching and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated; and

(d) The scale to which the map is drawn, the section number, township, and range, and a North directional symbol.

Stat. Auth.: ORS Ch. 536 - 540 & 543

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 16-1990, f. & cert. ef. 8-23-90

#### **Processing an Application**

690-11-080 [WRD 6-1987, f. & ef. 6-11-87;

WRD 5-1988, f. & cert. ef. 6-28-88;

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 5-1991, f. & cert. ef. 4-26-91;

Repealed by WRD 9-1992,

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

### Conditional Use of Water

690-11-081 [WRD 10-1987(Temp),  
f. & ef. 10-9-87;  
WRD 6-1988, f. & cert. ef. 6-28-88;  
Repealed by WRD 7-1990,  
f. & cert. ef. 6-25-90]

690-11-082 [Renumbered to 690-11-046]

690-11-083 [Renumbered to 690-11-048]

690-11-085 [Renumbered to 690-11-042]

690-11-086 [Renumbered to 690-11-044]

690-11-090 [Renumbered to 690-11-200]

690-11-095 [Renumbered to 690-11-205]

690-11-100 [Renumbered to 690-11-210]

690-11-103 [Renumbered to 690-11-215]

690-11-105 [Renumbered to 690-11-220]

690-11-110 [Renumbered to 690-11-225]

690-11-120 [Renumbered to 690-11-230]

690-11-130 [Renumbered to 690-11-235]

### Application Filing

**690-11-150** (1) Before receipt of an application for filing, the Department shall determine if the documents contain the information and fees described in OAR 690-11-020.

(2) If the application does not contain the information and fees described in OAR 690-11-020, the application shall not be received for filing and shall be returned to the applicant along with all fees submitted. Nothing in this section prohibits an application from resubmitting a completed or corrected application.

(3) If the application contains the information and fees described in OAR 690-11-020, the Department shall assess the status of the body(ies) of water designated in the application as the water source(s). If the water source(s) has been withdrawn or classified so as to completely prohibit the proposed use of water by previous action of the Commission or the Legislature, the application shall not be received for filing and shall be returned to the applicant with all unearned fees.

(4) Except as noted in OAR 690-11-042 for artificial groundwater recharge, the Department shall receive an application for filing and thereby establish a tentative priority date to appropriate the waters of the State of Oregon if:

(a) The application contains the required minimum information described in OAR 690-11-020; and

(b) The proposed water source(s) has not been withdrawn or classified so as to prohibit the proposed use.

(5) The tentative priority date for use of water not previously reserved under OAR Chapter 690, Division 79 shall be the date the application was received for

filing by the Department. The tentative priority date for use of reserved water shall be the date of the reservation.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

## APPLICATION PROCESSING

### Public Notice and Comments

**690-11-155** (1) Upon filing of a water use permit application, the Director shall notify the following:

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(b) Property owners listed on an application pursuant to OAR 690-11-020(1)(f);

(c) Affected Indian tribes; and

(d) All persons on the Department's weekly mailing list.

(2) The notice shall include but is not limited to the following information:

(a) Type of water use application;

(b) County of water use;

(c) Application file number;

(d) Applicant name and address;

(e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;

(f) Common name of surface water source(s) or basin;

(g) Nature of use; and

(h) Location of the proposed point of diversion by Section quarter/quarter, Township and Range.

(3) The notice shall be transmitted by regular United States mail.

(4) In addition to the information required in section (2) of this rule, a notice shall include a tear-off comment tab to facilitate participation by interested and affected parties.

(5) A 30-day comment period shall commence on the day the Department deposits the notice in the mail of the United States Postal Service. All comments must be received by the Department on or before the end of the 30-day comment period. The notice shall state the date by which comments must be received by the Department.

(6) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed use is compatible with the comprehensive land use plans and land use regulations of affected local governments and the proposed water use is not opposed by any person or entity and may act on the application pursuant to applicable statutes and rules.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

### Technical Review

**690-11-160** (1) After an application is received for filing by the Department, the Director shall undertake a technical review of such application and prepare a report. A technical review is an analysis of a water use application by the Department which shall include, but is not limited to:

- (a) Identifying defects in the application and supporting data;
  - (b) Assessing whether the proposed use is restricted or prohibited by statute;
  - (c) Assessing the proposed water use with respect to conditions previously imposed on permit(s) granted for use of water from the same source or for the same category of beneficial use;
  - (d) Assessing the proposed water use with respect to other Commission administrative rules, including but not limited to:
    - (A) The applicable basin program;
    - (B) Standards established for the specific use requested, including rate and duty of water for irrigation; and
    - (C) Scenic waterway flow requirements.
  - (e) Evaluating the potential conflict with existing water rights;
  - (f) Evaluating the extent to which water is available from the proposed source during the time(s) and in the amount(s) requested in the application; and
  - (g) Evaluating whether the amount of water requested is necessary to achieve the proposed water use;
  - (h) Evaluating information received from local government(s) regarding compatibility of the proposed water use with land use plans and regulations.
- (2) If the technical review indicates that water is available on a limited basis, or if the proposed water use can be restricted so as to avoid causing conflict with existing water rights and cause the use to be permitted within the programs or policies of the Commission, the Director shall propose permit conditions to reflect such limits or restrictions.
- (3) If the application is for the use of water reserved under OAR Chapter 690, Division 79, the analysis of water availability shall be based upon streamflow and water use at the time of the reservation.
- (4) Upon entry of the report of the technical review, an evaluation of the application shall be initiated to determine whether the proposed water use may impair or be detrimental to the public interest pursuant to the procedure set forth in OAR 690-11-185.
- (5) The report of the technical review shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. In addition, any person may request a copy of the report of the technical review.
- (6) On the basis of the land use information received from local government(s) pursuant to OAR 690-11-020(1)(g), 690-11-030(7) and 690-11-040(5), the Director shall take action under OAR 690-05-035 (Compatibility with Acknowledged Comprehensive Plans). As described in OAR 690-05-035, such action may include granting a water right permit subject to other Departmental requirements, proposing permit conditions, or rejecting the application. The report of the technical review shall explain the reasons for actions taken or proposed in accordance with OAR 690-05-035.
- (7) The report of the technical review shall state the date by which objection(s) must be received by the Department. See OAR 690-11-170.

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

Hist.: WRD 9-1992, f. & cirt. cf. 7-1-92

#### Objections

**690-11-170** (1) A 60-day objection period shall commence on the day the Department deposits the report of technical review in the mail of the United States Postal Service for delivery to the applicant. Objection(s) shall be received by the Department within said 60-day objection period. If the objector alleges that the

Director's technical review is defective, the objection shall set forth facts which support the allegation. If the objector alleges that the proposed water use may impair or be detrimental to the public interest, the objection shall specify the particular public interest standard(s) identified in ORS 537.170 and OAR 690-11-195 that the objector believes would prohibit or restrict the proposed water use. The objector shall also state facts to support the allegation that the proposed water use is not permitted by the specified standards. Objectors are encouraged to indicate if they would be interested in participating in settlement of their concerns through alternative dispute resolution or if the issues raised should be considered as a part of a contested case hearing.

(2) If no objection is received by the Department on or before the date stated in the report of the technical review, the Commission and Director may presume the application is not opposed by any person or entity.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

### **Evaluation of Objections and Filing of Protests**

**690-11-175** (1) If objection(s) are filed with the Department within the time limits prescribed in OAR 690-11-170(1), the Director shall transmit copies of such objection(s) to the applicant(s), all objectors and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review. The Director shall assess such objection(s) to determine if the matters raised by the objector(s) demonstrate that the Director's technical review was defective or that the proposed water use may impair or be detrimental to the public interest.

(2) If the Director determines that the objection(s) contains facts that establish that the Director's technical review was defective or identifies elements of the proposed water use that may impair or be detrimental to the public interest, the Director shall advise the objector(s), applicant and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review that the parties may engage in discussions to attempt to resolve the technical review or public interest issues described in the objection.

(3) If the parties elect to engage in formal discussions to attempt to resolve the technical review or public interest issues, such discussions shall be conducted as prescribed in OAR 690-11-180.

(4) If the Director determines that the objection(s) does not contain facts that establish that the Director's technical review was defective or does not identify elements of the proposed water use that may impair or be detrimental to the public interest, the Director shall deny the objection and shall transmit notice of the denial to the applicant and objector(s) by mail.

(5) The objector(s) shall be allowed 30 days from the date of mailing of the denial to protest the denial of their objection(s). The form and content of the protest along with the filing and service procedure shall be in accordance with the standards set forth in OAR 690-02-030 through 690-02-080.

(6) If a protest(s) is timely filed, the Director shall refer the application, with accompanying objection(s) and protest(s), to the Commission for review.

(7) If the objection(s) are denied and no protests are filed, the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall review the application to determine if the proposed water use may impair or be detrimental to the public interest pursuant to OAR 690-11-185 and 690-11-195.

**Alternative Dispute Resolution**

**690-11-180** (1) If an objection(s) is timely filed and is not denied, and if the applicant and objector(s) elect to engage in discussions, the applicant and objector(s) shall:

(a) Inform the Director within 30 days of receipt of the copies of the objections mailed under OAR 690-11-175(1) of their election to enter into discussions;

(b) Notify the Director of the time, date, and location of all discussion sessions not less than ten days before each session;

(c) Agree that the Director or the Director's designee may participate in all discussion sessions to provide counsel, direction, facilitation;

(d) Submit a written report to the Director within 30 days of notice of their election to enter discussions which identifies the parties who will participate in the discussions and sets out an estimated completion date for the discussions which shall not exceed 180 days from the date of notice of election;

(e) Submit monthly reports to the Director identifying the place, time, and attendance of all discussion sessions and a summary of the matters discussed at each session;

(f) Agree to identify the issues to be addressed in the discussions before discussions are initiated;

(g) Acknowledge that no agreement of the applicant and objector(s) is binding on the State of Oregon until approved by the Director or the Commission;

(h) Agree to support their agreement for resolution of the matters under discussion if such agreement is presented to, and approved by, the Director or the Commission;

(i) Agree to hold the Director, the Department, and the Commission harmless for any act, omission or event resulting from, or related to, the discussions or any agreement resulting therefrom; and

(j) Agree that evidence of conduct or statements made during discussions or negotiations which are not included as a part of a settlement are not admissible in any subsequent hearing or action on the application, unless the applicant and objector(s) stipulate otherwise. This prohibition of admissibility does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of discussions or negotiations.

(2) If the applicant or objector(s) fail to submit timely reports, fail to show progress toward resolution of the identified issues or fail to adhere to their schedule or the requirements set forth in this section, the Director shall terminate the discussions and refer the application to the Commission for review or schedule a contested case hearing. The Director may allow an extension of the completion date for good cause.

(3) The applicant or objector(s) may request that the Director, or the Director's designee, facilitate the discussions.

(4) If the applicant and objector(s) are able to resolve the issues raised by the objector(s), the applicant and objector(s) shall execute a settlement agreement setting forth such resolution and submit said settlement agreement to the Director for review.

(5) Upon receipt of a settlement agreement the Director shall determine whether the technical review or public interest issues raised by the objection(s) have been resolved.



(6) If the application is within one or more of the categories described in OAR 690-11-185(2), the Director shall refer the application, along with the settlement agreement, to the Commission for review.

(7) If the technical review or public interest issues are resolved to the satisfaction of the Director, and the application is not within one of the categories described in OAR 690-11-185(2), the Director may order that a permit be issued which reflects the elements of the settlement agreement.

(8) If the Director finds that the settlement agreement does not resolve the technical review or public interest issues, and the application is not within one of the categories described in OAR 690-11-185(2), the Director shall refer the application to a contested case hearing.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### **Conflict with Existing Water Rights**

**690-11-183** The Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall reject any application for a proposed water use that conflicts with an existing water right.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### **Public Interest Review**

**690-11-185 (1)** Each water use application shall be evaluated to determine whether the proposed use may impair or be detrimental to the public interest according to the standards described in ORS 537.170, OAR 690-11-195 and the definitions, procedures and standards in OAR Chapter 690, Division 33.

(2) The following categories of applications shall be submitted to the Commission for determination as to whether the proposed water use may impair or be detrimental to the public interest:

(a) Appropriations for consumptive or out-of-stream uses of water in amounts greater than ten cubic feet per second (cfs);

(b) Diversions or appropriation of waters from basin of origin pursuant to ORS 537.801 to 537.850;

(c) Dams greater than 25 feet in height or impounding more than 100 acre-feet of water;

(d) Conditional uses under a basin program;

(e) Artificial groundwater recharge;

(f) Applications for use of water from a surface water source or its tributaries where the Department has been notified of the presence of a species listed as threatened or endangered under either the United States or Oregon Endangered Species Act which may be adversely affected by the water uses identified in the application; or

(g) Applications on which protests have been filed pursuant to OAR 690-11-175(5).

(3) The Director shall evaluate all applications for water use not identified in section (2) of this rule to determine whether the proposed water use may impair or be detrimental to the public interest.

(4) In determining whether the proposed water use may impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195, the Commission, in cases described in section (2) of this rule, or the Director, in

cases described in section (3) of this rule, shall consider the facts set forth in the following documents:

- (a) The application and supporting data;
- (b) The Director's report of technical review;
- (c) Objection(s) that meet the requirements of OAR 690-11-170(1); and
- (d) Protest(s) filed pursuant to OAR 690-11-175(5) and (6).

(5) If no objection or protest has been filed, the Commission shall not receive public testimony during its review of the proposed water use, unless the testimony relates to an issue that could not have been identified in an objection or protest.

(6) If an objection or protest has been timely filed, the Commission may, but is not required to, hear public testimony during its review of the proposed water use.

(7) If the Commission, in cases described in section (2) of this rule, or the Director, in cases described in section (3) of this rule, determines that the proposed water use described in the application may impair or be detrimental to the public interest, the Commission or Director shall schedule a contested case hearing. Such hearing shall be conducted according to the provisions for a contested case hearing under ORS 183.413 to 183.497 and OAR Chapter 690, Division 2.

(8) If the Commission, in cases described in section (2) of this rule, or the Director, in cases described in section (3) of this rule, determines that the proposed water use described in the application will impair or be detrimental to the public interest, the Commission or Director shall propose rejection and schedule a contested case hearing. Such hearing shall be conducted according to the provisions for a contested case hearing under ORS 183.413 to 183.497 and OAR Chapter 690, Division 2.

(9) If the Commission, in cases described in section (2) of this rule, or the Director, in cases described in section (3) of this rule, finds that the proposed water use will not impair or be detrimental to the public interest, a water use permit shall be issued.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92, WRD -1994, f. & cert. ef. 9-21-94; WRD -1995, f. & cert. ef. 6-16-95

#### **Contested Case Public Interest Review**

**690-11-190** In any contested case hearing held for the purpose of determining whether the proposed water use would impair or be detrimental to the public interest, the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall apply the standards set out in ORS 537.170(5) and OAR 690-11-195 to the facts found on the record made at the hearing. The parties to the hearing shall include the applicant and any person who qualifies for party status under OAR 137-03-005. The Commission or the Director may issue an order that either approves or rejects the application or conditions the proposed water use to ensure it is consistent with the public interest.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### **Standards for Public Interest Review**

**690-11-195** (1) The Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall weigh the effect of the

proposed water use on each of the standards set out in ORS 537.170(5) to assess impairment or detriment to the public interest.

(2) The Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall conclude that a proposed water use will impair or be detrimental to the public interest under ORS 537.170(5) if the technical review conducted under OAR 690-11-160 reveals that:

(a) The proposed water use is prohibited by statute or scenic waterway criteria;

(b) The proposed water use is not a classified use under the applicable basin program and an application for the use has not been filed under ORS 536.295 and OAR Chapter 690, Division 82;

(c) The proposed water use cannot be modified to be consistent with conditions previously imposed by the Commission on appropriations from the same source;

(d) The proposed water use would conflict with existing water right; or

(e) Water is not available from the source to support the proposed water use.

(3) In applying the standards set forth in ORS 537.170(5), the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall evaluate the proposed water use in light of current uses, planned uses and reasonably anticipated future demands for water from the source as established in the record. The evaluation shall recognize all known beneficial uses of water, including but not limited to the following categories:

(a) Population growth demands for domestic and municipal uses;

(b) Economic development for agriculture, navigation, manufacturing, industry, power generation, commercial fishing, forestry and mining;

(c) Health and safety requirements for sanitation, drainage, flood control, and fire protection; and

(d) Public values and uses for recreation, pollution abatement, fish and wildlife resources, and scenic waterway protection.

(4) The public interest determination shall be based on evidence which may include, but is not limited to, the following:

(a) Existing claims to water from the same source, including but not limited to:

(A) Existing decreed rights;

(B) Existing certified rights;

(C) Existing permits;

(D) Pending applications;

(E) Existing vested or inchoate rights of record;

(F) Indian reserved rights or claims; and

(G) Federal reserved rights or claims.

(b) Land use goals, comprehensive plans, or other land use matters. Public interest determinations relating to land use may be based on, but not necessarily limited to:

(A) Statewide Planning Goals;

(B) Comprehensive Land Use Plans, including plan assumptions and policies;

(C) Public Facilities Plans;

(D) Current, planned, or reasonably anticipated uses for land;

(E) Local government administrative provisions, regulations, or approvals including zoning designations, filed land division plans or plats, or issued building permits;

(F) Projected changes in population, industrial or manufacturing bases, or economic trends; or

(G) Land management plans prepared by federal or state agencies.

(c) Identified environmental concerns, including but not limited to:

(A) Water quality;

(B) Air pollution;

(C) Proximity of urban or transportation congestion; and

- (D) Soil contamination.
- (d) Character and extent of other natural resources which are present in the water source basin, including but not limited to:
  - (A) Fish and other aquatic species and population;
  - (B) Wildlife species and population;
  - (C) Timber and other woody plant cover;
  - (D) Grasses and forbs;
  - (E) Minerals; and
  - (F) Geothermal energy.
- (e) Riparian and aquatic fauna and flora characteristics;
- (f) Recreational use and potential of the water source and its basin area;
- (g) Agricultural potential of the area, including but not limited to an assessment of the following:
  - (A) Crop or livestock production potential including dairy operation;
  - (B) Soil, topographic, and climatic characteristics;
  - (C) Transportation and market access; and
  - (D) Community and support facilities of the area.
- (h) Designated historic, cultural, or natural resource protection areas; and
- (i) Identified health or safety requirements.

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

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

#### **Water Rights Within or Above State Scenic Waterways**

690-11-196 (1) Pursuant to the provisions of ORS 390.835, and these rules the Director is authorized to:

(a) Issue water rights within or above the designated reach of a scenic waterway provided the free-flowing character of the waterway is maintained in quantities necessary for recreation, fish and wildlife uses.

(b) Issue water rights for limited human consumption and livestock consumption uses within or above a designated reach of a scenic waterway when flows are less than quantities necessary for recreation, fish and wildlife.

(2) The Director may issue water rights under subsection (1)(b) of this rule for human consumption and livestock consumption uses upon the following findings:

(a) Issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife;

(b) Appropriation of water under the water right is consistent with the provisions of ORS Chapters 536 and 537 and OAR Chapter 690;

(c) Construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925;

(d) Water rights for human consumption shall not exceed .005 cubic feet per second per household; and

(e) Water rights for livestock consumption uses shall not exceed one-tenth of one cubic foot per second per 1,000 head of livestock.

(3) Prior to completion of a technical review, applications to appropriate water for human consumption or livestock consumption uses shall include:

(a) Information which identifies all potential alternate source(s) of water, if any, and describes why the applicant cannot reasonably obtain water from such sources;

(b) If the application proposes to appropriate water for human consumption, evidence that denial of the application will result in loss of reasonable expectations for use of the property; and

(c) If the application proposes to appropriate water for livestock consumption use, a description of how livestock will be excluded from the stream and its riparian zone and information that the water right is necessary to prevent the livestock from watering in or along the stream bed.

(4) In addition to the findings set out in subsection (2) of this rule, before a water right permit may be issued for human consumption or for livestock consumption uses under subsection (1)(b) of this rule the Director must find:

(a) The water right meets a need for a use which is given preference under ORS 536.310(12) when available supplies of water are insufficient to meet all uses;

(b) No alternate sources of water are reasonably available;

(c) For applications for human consumption, denial of the application will result in loss of reasonable expectations for use of the property;

(d) For applications for livestock consumption uses, the water right is necessary to prevent livestock from watering in or along the stream bed and the applicant has excluded livestock from the stream and its adjacent riparian zone; and

(e) Water is available within the combined cumulative total limitation described in subsection (5) of this rule.

(5) The Director shall limit the total water use authorized under subsection (1)(b) of this rule within or above each scenic waterway to no more than a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less. Such combined cumulative total may be exceeded if representatives of the Departments of Water Resources, Parks and Recreation, Fish and Wildlife, Environmental Quality and the Division of State Lands agree that exceeding the one percent or one cubic foot per second limit will not significantly impair the free-flowing character of the waters in quantities necessary for recreation, fish and wildlife.

(6) Water rights issued for human consumption shall contain measuring and reporting conditions which require permittees to install meters or other suitable measuring devices, to keep complete records of amounts of water used and to submit periodic reports to the Department as specified in the permits.

(7) Water rights issued for livestock consumption uses shall contain conditions that require permittees to exclude livestock from the stream and its adjacent riparian zone.

(8) The Department's report of technical review issued pursuant to this rule shall:

(a) Set forth a summary of the findings required under subsections (2) and (4) of this rule;

(b) State that the applicant has submitted the information described in subsection (3) of this rule;

(c) Identify the maximum amount of water available within or above the applicable scenic water way in accordance with the limitations set out in subsection (5) of this rule; and

(d) State the residual amount of water available from the source for the proposed human consumption or livestock consumption use.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD -1994, f. & cert. ef. 11-14-94

#### Requirement for Statement of Findings

690-11-197 Any order or proposed order by the Director or Commission that approves, conditions or rejects an application for a permit or license shall include a statement of findings that sets forth the basis for the approval, conditioning, or rejection.

### Miscellaneous Provisions

**690-11-200** (1) All permits for use of water from wells shall provide that the well shall be constructed in accordance with the Water Resources Department's General Standards for the Construction and Maintenance of Wells in Oregon. All permits shall further provide that the well may be controlled or shut off if a determination is made, in accordance with OAR 690-09, that it caused substantial interference with a surface water source.

(2) Applications by municipal corporations for hydroelectric generation shall be processed under OAR Chapter 690, Division 51.

(3) Cancellation of primary rights:

(a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;

(b) If the primary right is determined to have been forfeited by nonuse and the supplemental right is not determined also to have been forfeited by nonuse, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become a primary right.

(4) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to supplemental status to allow for a new primary application from a more dependable source of water.

(5) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at times when water is available from the surface water supply.

(6) Temperature control: Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.

(7) Assignment or change of ownership of permit, groundwater registration or application:

(a) When a change of interest or ownership occurs in lands covered by a permit, groundwater registration or pending application the record holder may request, in writing the Director to record the assignment to the new owner;

(b) Should the record holder of the permit, groundwater registration or application be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit, registration or application. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (A) A copy of the deed to the land;
- (B) A copy of a land sales contract;
- (C) A court order or decree; or

(D) Documentation of survivorship of property held jointly.

(8) All reviews and any determinations made in accordance with this section shall be made part of the application file and shall contain sufficient detail to allow the Director to determine how to proceed with the processing of the application, in accordance with OAR 690-11-155 to 690-11-197. As provided in ORS 537.620(3) and also in accordance with OAR 690-11-160, the Department shall review the following categories of applications for permits to appropriate groundwater to determine whether the proposed appropriation would have the potential to cause interference with a surface water source, in accordance with OAR 690-09-040:

(a) All applications that are for any proposed point of appropriation within a horizontal distance of one mile of a surface water source;

(b) All applications that are within a basin, or portion of a basin, which has any applicable closure on surface water appropriation; and

(c) All applications that are for greater than five cubic feet per second.

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 18-1988, f. & cert. ef. 11-4-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-090; WRD 5-1994, f. & cert. ef. 4-13-94

#### **Extension of Time Limits**

690-11-205 (1) The time limit to begin construction of water use facilities shall not be extended except for municipal use of surface water by a municipality, permits involving Federal Energy Regulatory Commission projects or permits issued to irrigation districts for reclamation purposes.

(2) The time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230 and 539.010(5).

(3) Time extensions granted shall be for one year only except for permits for municipal, quasi-municipal or group domestic uses or permits issued to districts. Municipal, quasi-municipal, group domestic and district permits may be granted time extensions of not to exceed five years.

(4) If the Director determines that some progress has been made to complete the construction or use, but if diligence is questionable, the Director may:

(a) Deny the request for more time;

(b) Grant the request for more time and notify the applicant that future requests for more time will not be granted; or

(c) Grant the request for more time by an order amending the permit to include any condition or provisions needed for determining future diligence. Such new provisions or conditions shall not apply to any portion of the right developed under the time limits previously granted.

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

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-095

#### **Cancellation of Permit**

690-11-210 When it appears from an onsite examination by the Water Resources Department that no appropriation has been made under the terms of the permit, or that use once made has undergone a period of five successive years of nonuse, a certified letter of intent to cancel the permit shall be sent to the permittee, allowing 60 days from the date of the letter for response. Failure to respond during the 60-day period shall result in cancellation of the permit.

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

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-100

#### **Claims of Beneficial Use for Applications Filed After June 30, 1987**

690-11-215 Except for applications filed under the provisions of OAR 690-11-041, all final proof surveys and claims of beneficial use for applications filed after July 9, 1987 shall be performed by Certified Water Right Examiners. Applicants prior to July 10, 1987 may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.

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

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-103; WRD 5-1994, f. & cert. ef. 4-13-94

#### **Applications Filed After November 29, 1987**

690-11-220 All applications filed after November 29, 1987 shall have application maps prepared by a Certified Water Right Examiner.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 - 537.358 & Ch. 542

Hist.: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-105

#### **Proof of Appropriation**

690-11-225 (1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be mailed first class to the permittee at the last known address, together with notice that the permittee or landowner has a period of 60 days from the date of mailing to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630 (4).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed 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 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-110

#### **Request for Reconsideration of the Contents of a Proposed Certificate**



690-11-230 (1) A request for reconsideration of the contents of a proposed certificate may be prepared by the permittee or landowner and submitted to the Department. The requests shall describe any disagreement with the contents of the proposed certificate.

(2) The request for reconsideration may be in the form of a phone call or personal contact, unless the disagreement proposes a change to any of the following:

- (a) The source of water;
- (b) The purpose for which the water is used;
- (c) The quantity of water;
- (d) The location of the points of diversion;
- (e) The location of the use;
- (f) The extent of the use; and
- (g) Any conditions imposed upon the use.

(3) If the disagreement results in a change to any item listed in subsections (2)(a) through (g) of this rule, the request for reconsideration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the final proof map, and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(4) The Director may allow reasonable time beyond the time limit set under OAR 690-11-225(2) for a permittee or landowner to complete and submit a written request for reconsideration.

(5) Upon receipt of a request for reconsideration, the Director shall:

(a) Approve the request without verification and issue a certificate with the changes included;

(b) Schedule field verification of the requested changes; or

(c) Deny the request by letter from Department staff to the requesting party.

(6) If field verification is scheduled, a new proposed certificate shall be prepared and sent as prescribed by OAR 690-11-225.

(7) A request for reconsideration resulting from section (6) of this rule shall be approved or denied. If denied, the denial shall be in the form of an Order of the Director. The order shall provide for either issuance of a certificate of water right in conformance with the Director's findings, or for the scheduling of a contested case hearing as provided under OAR Chapter 690, Division 2.

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

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-120

#### **Incremental Perfection of a Municipal Water Right**

690-11-235 (1) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:

(a) Any incorporated city, village, or town;

(b) A port formed under ORS 777.005 to 777.725 and ORS 777.915 to 777.953;

(c) A domestic water supply district formed under ORS Chapter 264; or

(d) A water supply authority formed under ORS Chapter 450.

(2) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-11-225.

(3) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in

permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

(4) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:

(a) The quantity of water diverted from each point of diversion, by month, for the preceding three years;

(b) A plan of how the municipal supplier intends to develop successive increments of its water right; and

(c) Maps that show where water will be put to use. Maps accompanying notification of intent to perfect an increment of a water right shall be prepared to the specifications described in OAR 690-11-070, except that a standard even scale less than 4" = 1 mile may be used if appropriate.

(5) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-11-205 governing extension of time limits applies to unperfected municipal water rights.

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

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-130