

CERTIFICATE AND ORDER  
FOR FILING  
**PERMANENT**  
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on September 9, 1994  
(Date)

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

to become effective Upon Filing  
(Date)

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

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

Notice of Intended Action published in Secretary of State's Bulletin: NO  YES  Date Published: May 1, 1994

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

Adopted:  
(New Total Rules)

Public Interest Standards for New Appropriations within the  
Columbia/Snake Basin above Bonneville Dam - OAR 690-33-100;  
110; 120; 130; 1

Amended:  
(Existing Rules)

Public Interest Review - OAR 690-11-185 (1)

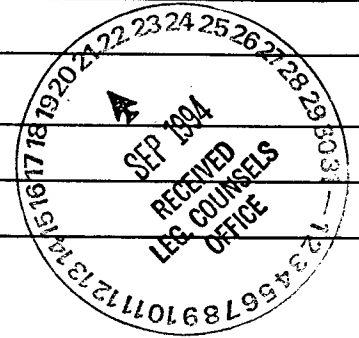
Repealed:  
(Total Rules Only)

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

DATED this 21st day of September, 19 94

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

Title: Director



Statutory Authority: ORS ORS 536.027; Specific statute 537.140-190; especially 537.170 or

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

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

Subject Matter: Setting standards for public interest review of water right applications  
potentially affecting Columbia/Snake threatened and endangered fish specie  
above Bonneville Dam.

For Further Information Contact: Beth Patrino Phone: 378-8455 ext. 2  
(Rule Coordinator)

**Public Interest Standards For New Appropriations  
Within The Columbia/Snake Basin  
Above Bonneville Dam**

24 SEP 94 11:29  
SBO. OF STATE

**DIVISION 11**

**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, [and] OAR 690-11-185 and the definitions, procedures and standards in OAR 690-33-100 through 690-33-140.

**DIVISION 33**

**ADDITIONAL PUBLIC INTEREST STANDARDS FOR NEW APPROPRIATIONS**

**Columbia / Snake Threatened and Endangered Fish Species Above Bonneville Dam**

**Purpose**

**690-33-100**

(1) The purpose of OAR 690-33-100 to 690-33-140 is to establish definitions, additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to threatened or endangered fish species.

(2) These rules apply to the following types of applications for permits:

- (a) To appropriate surface water;
- (b) To appropriate hydraulically connected groundwater with potential for substantial interference as listed in OAR Chapter 690, Division 9, Section 040;
- (c) To appropriate water for the purpose of groundwater recharge; and
- (d) To store water or construct a reservoir.

(3) These rules apply to applications filed after July 17, 1992, upstream from Bonneville Dam in the Columbia / Snake Basin in the areas listed below for which no permit has been granted, or on which no contested case has been ordered:

- (a) Hood Basin;
- (b) Deschutes Basin;
- (c) John Day Basin;
- (d) Umatilla Basin;
- (e) Grande Ronde Basin;
- (f) Powder Basin;

- (g) Malheur Basin;
- (h) Owyhee Basin;
- (i) Mainstem Columbia River above Bonneville Dam; and
- (j) Mainstem Snake River.

**(4) These definitions, standards and procedures are in addition to, not in lieu of, existing rules and laws.**

**(5) These rules will be reviewed and may be revised as additional information becomes available concerning the recovery of threatened or endangered fish stocks in the Columbia / Snake Basin.**

#### **Definitions**

**690-33-110**

**(1) "Commission" means the Water Resources Commission.**

**(2) "Department" means the Water Resources Department.**

**(3) "Director" means the Director of the Department.**

**(4) "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.**

**(5) "Fish and Wildlife Program" means the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council in February, 1994; document number 94-2.**

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

**(7) "Threatened or Endangered" means fish species listed by Oregon Department of Fish and Wildlife (ODFW) under OAR 635-100-125; or listed under the federal Endangered Species Act.**

#### **Determination of Consistency with the Fish and Wildlife Program**

**690-33-120**

**(1) To determine whether a proposed use is consistent with the Fish and Wildlife Program, the Department shall consult with the Northwest Power Planning Council, ODFW, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Indian tribes**

and appropriate local governments. If the Department determines that a proposed use of water is inconsistent with the Fish and Wildlife Program and cannot be conditioned to achieve consistency, the application shall be presumed to impair or be detrimental to the public interest.

(2) The applicant shall provide information to show compliance with the following standards which will form the basis for permit conditions:

- (a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-33-140;
- (b) The proposed use does not involve hydraulically connected groundwater with potential for substantial interference as listed in Division 9 during the time period of April 15 to September 30, except that which is artificially recharged or as otherwise provided in OAR 690-33-140;
- (c) The proposed use complies with screen design, installation, operation specifications and passage requirements as listed in ORS 498.248 through 498.268 and 509.600 through 509.630;
- (d) The proposed use complies with existing state and federal water quality standards; and
- (e) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Based on the consultation in OAR 690-33-120(1), the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(4) If a proposed use is not consistent with the Fish and Wildlife Program, the applicant may propose mitigation compatible with OAR 690-33-120(2) and (3). The Director shall determine if the proposed use with mitigation is consistent with the Fish and Wildlife Program. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.

690-33-130

If the flow management objectives cannot be achieved because of differing requirements between fish species in the management area, the Department shall consult with the affected fish and wildlife agencies and the appropriate Indian tribes to assist in resolving the flow management conflicts.

## **Exemptions**

**690-33-140**

**Notwithstanding OAR 690-33-120(2)(a) and (b), the Commission may approve a water right permit for:**

- (a) Domestic water use;**
- (b) Projects that provide net benefits for native resident and native anadromous fish recovery. For example, these projects may include, but are not limited to, livestock watering away from water courses which results in improved riparian areas;**
- (c) Emergency use necessary for public health and safety;**
- (d) Existing water uses covered under House Bill 2153 (Oregon Legislature 1993);**  
**or**
- (e) Multipurpose storage projects or other projects with measurable public benefits.**

October 3, 1994

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WATER  
RESOURCES  
DEPARTMENT

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Carol Irwin-Leal  
Administrative Rules Unit  
800 NE Summer Street  
Salem, OR 97310

Dear Carol:

Attached is the corrected filing for the Division 11 rules that we submitted on September 21, 1994. Please call me if you require anything further. Thanks!

Sincerely,



Beth Patrino  
Rules Coordinator

cc: Bob Rice, Resource Management Division



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Commerce Building  
158 12th Street NE  
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(503) 378-3739  
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## 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, [and] OAR 690-11-195 and the definitions, procedures and standards in OAR 690-33-100 through 690-33-140.

(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 ORS183.413 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 OARChapter 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