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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 November 14, 1994
(Date)

by the Water Resources Department, Water Rights/Adjudication Division
(Department) (Division)

to become effective upon filing
(Date)

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

after

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

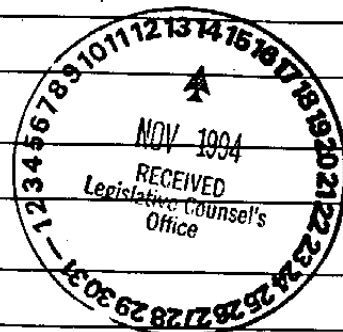
Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: July 1, 1994

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) OAR 690-11-196

Amended:
(Existing Rules)

Repeated:
(Total Rules Only)



as Administrative Rules of the Water Resources Department, Water Rights/Adjudication Division
(Department) (Division)

DATED this 14th day of November, 19 94

By: *Martha D. Pelt*
(Authorized Signer)

Title: Director

Statutory Authority: ORS 536.027 and 390.835

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Legislature

Subject Matter: ORS 390.835(5) authorizes the issuance of water rights for limited human consumption and livestock use within or above state Scenic Water Ways. OAR 690-11-196 sets out the procedure for review of applications and the findings that must be made before water right permits for such uses may be issued.

For further information contact: Beth Patrino Phone: 378-8455 x 299
(Rule Coordinator)

November, 1994

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 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;