

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Limited License

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Registration of Water Use for Road Maintenance and Construction**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The affected watershed; or

(B) Any existing water right; and

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

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

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

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

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

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

Stat. Auth.: ORS 537.040

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

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

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

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

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

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

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

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

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

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

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

(2) Project Qualification Criteria:

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

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

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

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

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

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

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

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

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

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

(i) Decreased pollutant loads to streams;

(ii) Reduced soil or bank erosion;

(iii) Reduced summer stream temperatures;

(iv) Improved riparian conditions;

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

(vi) Decreased peak or storm flows;

(vii) Increased storage capacity in the watershed;

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

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

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

(3) Notices of Registration:

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

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

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

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

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

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

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

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

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

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

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

(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 hatchuring 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. & cert. ef. 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.