

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

RECEIVED
APR 11 1994

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 8, 1994
(Date)

by the Water Resources Department
(Department)

to become effective upon filing
(Date)

The within matter having come before the Water Resources Commission
(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: 2/1/94

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) 690-11-014; 041; 049

Amended:
(Existing Rules) 690-11-000; 010; 020; 025; 030; 040; 046; 200; 215

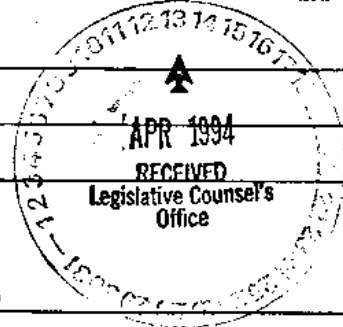
Repealed:
(Total Rules Only)

as Administrative Rules of the Water Resources Department
(Department)

DATED this 13 day of April, 1994
(Division)

By: [Signature]
(Authorized Signer)

Title: Director



Statutory Authority: ORS ORS 536.027

Chapter(s) 595 and 654

Oregon Laws 1993

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

Subject Matter: The rules amend OAR Chapter 690, Division 11, Applications and Permits, to implement provisions of HB 2107 and HB 2153, 1993 Legislative Session. HB 2107 creates a water use registration process for certain water uses. HB 2153 establishes certain exempt uses, authorizes landowners with existing unpermitted ponds to apply for a water use permit and continue water use while a decision is being reached on the application, and establishes new uses for which a limited license may be obtained.

Further Information Contact: Beth Patrino

(Rule Coordinator)

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OREGON WATER RESOURCES DEPARTMENT
 HB 2107 AND HB 2153
 DRAFT AMENDMENTS TO OAR CHAPTER 690, DIVISION 11
 APPLICATIONS AND PERMITS
 (Amended sections only)

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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, *[and]* 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 *[to use surface water]*;
- (d) A permit to appropriate water for the purpose of ground water recharge; *[and]*
- (e) A secondary ground water 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.

{adopted 6-5-92}

Note: Material in boldface type is new; material *[italic and bracketed]* is existing language to be deleted.

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 ground water recharge" means the intentional addition of water to a ground water 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 use" means the 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 one-half 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.

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- (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 02.
- (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 a hydrologic unit delineated as a cataloging unit by the US Geological Survey Office of Water Data Coordination on the State Hydrologic Unit map.
- ~~[(16)]~~ (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.

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(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.

[(17)] (22) "Ground water reservoir" means a designated body of standing or moving ground water as defined in ORS 537.515(5).

[(18)] (23) "Group domestic water use" means the use of water for domestic water use by more than one residence or dwelling unit.

[(19)] (24) "Human consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

[(20)] (25) "Industrial 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 one-half acre.

[(21)] (26) "Irrigation use" 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.

[(22)] (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.

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

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[(24)] (29) "Municipal 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 water uses shall not include generation of hydroelectric power.

[(25)] (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.

[(26)] (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.

[(27)] (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.

[(28)] (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.

[(29)] (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.

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[(30)] (36) "Pollution abatement or pollution prevention water use" means the use of water to dilute, transport or prevent pollutants.

[(31)] (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.

[(32)] (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.

[(33)] (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.

[(34)] (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).

[(35)] (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.

[(36)] (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 preferences given to a municipality under ORS 537.190(2), 537.230(1), 537.352, 537.410(2), 540.510(3), 540.610(2), 540.610(3), or those preferences over minimum streamflows designated in a basin program.

[(37)] (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.

[(38)] (44) "Recharge permit" means a permit for the appropriation of water for the purpose of artificial ground water recharge.

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[(39)] (45) "Recreation 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.

[(40)] (47) "Secondary ground water permit" means a permit for the appropriation of ground water which was stored through the exercise of a recharge permit or certificate.

[(41)] (48) "Stockwater use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

[(42)] (49) "Storage" means the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits.

[(43)] (50) "Stored recharge water" means ground water which results from artificial ground water recharge.

[(44)] (51) "Storage account" means a net volume of artificially recharged ground water which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a ground water reservoir by artificial recharge and depletion from a ground water 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 stormwater quality facilities.

(53) "Stream or riparian area enhancement water use" means the use of water to restore or enhance a stream or riparian area.

[(45)] (54) "Supplemental water right or supplemental water use permit" means an additional appropriation of water to make up any deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right.

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[(46)] (55) "Surplus waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.

[(47)] (56) "Temperature control" means the use of water to protect a growing crop from damage from extreme temperatures.

[(48)] (57) "Transfer" means a change of use or place of use or point of diversion of a water right.

[(49)] (58) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner of 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.

[(50)] (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.

[(51)] (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 ground water 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.

[(52)] (62) "Wetland enhancement water use" means the use of water to restore, create, [or] enhance [*and*] or maintain wetland resources.

[(53)] (65) "Wildlife water use" means the use of water by or for sustaining wildlife species and their habitat.

{adopted 6-11-87; amended: 6-28-88; 8-3-90; 6-5-92; 10-1-93}

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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 one-half acre in area. Not more than one-half 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 one-half 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

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- (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 10 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 OAR 690-11-014 (4).
- (3) Water used for emergency fire-fighting is exempt from permit and certificate requirements regardless of the source of water.
- (4) To qualify as an exempt water use under 690-11-014 (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 US 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 .

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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 [*prepared by a Certified Water Right Examiner, or*] 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 Chapter 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 fees 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).

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{adopted 6-11-87; amended: 6-28-88; 8-3-90; 6-5-92}

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 ground water recharge applications, the information listed in OAR 690-11-042(3); or
- (d) For secondary ground water 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.

{adopted 6-11-87; amended: 6-28-88; 6-5-92}

SURFACE AND GROUND WATER 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:

- [(1)] (a)** Proposed dates for the beginning of construction, completion of construction, and complete application of the water.

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- [(2) *A map of the proposed place of water use prepared by a certified water right examiner in accordance with OAR 690-14-150.*]
- [(3)] (b) A written copy of the legal description of the property on which the water is to be used as depicted on the map.
- [(4)] (c) A copy of the well constructor's log, if available, for any well already constructed.
- [(5)] (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.
- [(6)] (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.
- [(7)] (f) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR Chapter 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.
- [(8)] (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.
- [(9)] (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.

{adopted 6-11-87; amended: 2-28-88; 10-28-88; 8-3-90; 6-5-92}

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[RESERVATION] 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 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 Chapter 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 10 feet in height.
- (8) Such other information as the Department or Commission deems necessary.

{adopted 6-11-87; amended: 8-3-90; 6-5-92}

PONDS IN EXISTENCE PRIOR TO JANUARY 1, 1993 (HB 2153, 1993)

690-11-041

Note: Material in boldface type is new; material [*italic and bracketed*] is existing language to be deleted.

(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 OAR 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 690-11-020 and 690-11-040 above, 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 requirement 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 10 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 10 reservoirs may be included in a single application if the reservoirs existed prior to January 1, 1993; have dams that are less than 10 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 10 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) Modification or alterations to the impoundment structure are not required; and

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- (D) The Commission determines under 690-11-041(1) that the reservoir would qualify for issuance of a permit.

LIMITED LICENSE [TO USE SURFACE WATER]

690-11-046

(1) *[A request for a 90-day, limited license for the intended use of]* **A request for a limited license for a period of up to one year** *[or the intended use of surface waters for any purpose described in ORS 537.143(1)]* 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 or 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) *[If the need for the water use requires additional time beyond the original 90-day period authorized in the license, one extension not to exceed 90 days may be requested in writing to the department, and must be accompanied by a fee of \$25. The extension shall be granted for a period not to exceed 90 days if no public interest issues or claims of conflict with existing water rights, including instream rights, have become evident.]* **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**

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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.

[4]**(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.

{adopted 10-3-89; amended: 11-17-89; 8-3-90; renumbered from 690-11-082 and amended 6-5-92}

**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.

Note: Material in boldface type is new; material *[italic and bracketed]* is existing language to be deleted.

(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;

Note: Material in boldface type is new; material [*italic and bracketed*] is existing language to be deleted.

- (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 stormwater 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 OAR 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) below;

(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 within one-quarter 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 requirement 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 10 feet or a proposed storage greater than 9.2 acre feet.

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(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 10 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;

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- (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 watershed;
- (H) Increased streamflows during the low-flow season; or
- (I) Other wetland enhancement, stream or riparian area enhancement or stormwater 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 United States Postal Service to submit written comments.

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

Note: Material in boldface type is new; material [*italic and bracketed*] is existing language to be deleted.

(a) No written comments are received under OAR 690-11-049 (8) 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 OAR 690-11-049 (4) and (6);

(c) The Department has consulted with the agencies listed in OAR 690-11-049(7) and the project is reasonably expected to result in the wetland, stream or riparian area enhancement or stormwater management benefits, as determined under OAR 690-11-049(6); 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.

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MISCELLANEOUS PROVISIONS

690-11-200

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

[(2) The statutory exemptions from permit requirements for use of groundwater include watering any lawn or noncommercial garden not exceeding one-half acre in area. Not more than one-half acre of lawn and noncommercial garden in total area may be irrigated through a group delivery system under such exemption, nor shall more than one-half acre in total be irrigated from any groundwater source under the exemptions listed in ORS 537.545 (1)(b). The statutory exemption for commercial or industrial use shall not exceed 5,000 gallons per day based upon peak daily use, not on average daily use. A commercial or industrial operation shall be allowed only one well system and one exemption under ORS 537.545(1)(f) on each ownership or tax lot, whichever is larger.]

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

[4](3) Cancellation of primary rights:

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

(b) If the primary right is determined to have been forfeited by nonuse, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become a primary right.

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

[6](5) Supplemental rights; Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be

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issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at times when water is available from the surface water supply.

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

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

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

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

- (A) A copy of the deed to the land;
- (B) A copy of a land sales contract;
- (C) A court order or decree; or
- (D) Documentation of survivorship of property held jointly.

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

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- (a) All applications that are for any proposed point of appropriation within a horizontal distance of one mile of a surface water source;
- (b) All applications that are within a basin, or portion of a basin, which has any applicable closure on surface water appropriation; and
- (c) All applications that are for greater than five cubic feet per second.

{adopted 6-11-87; amended: 6-28-88; 10-28-88; 8-3-90; renumbered from 690-11-090 and amended 6-5-92}

CLAIMS OF BENEFICIAL USE FOR APPLICATIONS FILED AFTER JUNE 30, 1987

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

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