

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

10/1/93  
10/1/93

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on October 1, 1993  
(Date)

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

to become effective Upon Filing  
(Date)

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

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

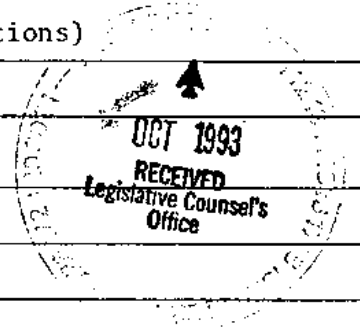
Notice of Intended Action published in Secretary of State's Bulletin: NO  YES  Date Published: August 1, 1993

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) \_\_\_\_\_

Amended:  
(Existing Rules) Applications and Permits - OAR 690-11-010 (Definitions)

Repealed:  
(Titles Only) \_\_\_\_\_



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

DATED this 7th day of October 19 93

By: Rebecca Q. Kneagy  
(Authorized Signer)

Title: Administrator

Statutory Authority: ORS 536.220 - 350 or \_\_\_\_\_

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

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

Subject Matter: The amended rule clarifies water use definitions related to the Department's processing of water use permits and transfers.

For Further Information Contact: Beth Patrino Phone: 378-8455 (ext. 299)  
(Rule Coordinator)

**OREGON WATER RESOURCES DEPARTMENT**  
**ADMINISTRATIVE RULES**  
**CHAPTER 690**  
**DIVISION 11**  
**APPLICATIONS AND PERMITS**

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OREGON WATER RESOURCES DEPARTMENT  
ADMINISTRATIVE RULES  
CHAPTER 690  
DIVISION 11  
APPLICATIONS AND PERMITS

**Purpose**

690-11-000

(1) The purpose of this division is to establish definitions, information requirements, and procedures and standards which shall be applied by the Department and Commission in the evaluation of applications for the following types of permits and licenses:

- (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.

(2) This division also describes 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}

**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 application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.
- (8) "Commission" means the Water Resources Commission.
- (9) "Contested case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS 183.413 - 183.497 and OAR Chapter 690, Division 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) "Fire protection water use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

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

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

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

(20) "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) "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) "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) "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.

(24) "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.

(25) "Objection" means a written statement identifying a particular water use application 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).

(26) "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.

- (27) "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.
- (28) "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.
- (29) "Pollution abatement or pollution prevention water use" means the use of water to dilute, transport or prevent pollutants.
- (30) "Power development use" means the use of water to develop electrical or mechanical power or the use of water for the operation of a hydraulic ram.
- (31) "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.
- (32) "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.
- (33) "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).
- (34) "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.
- (35) "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.
- (36) "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.
- (37) "Recharge permit" means a permit for the appropriation of water for the purpose of artificial ground water recharge.
- (38) "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.
- (39) "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.

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

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

(42) "Stored recharge water" means ground water which results from artificial ground water recharge.

(43) "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 depletions from a ground water reservoir by pumping and natural losses.

(44) "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.

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

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

(47) "Transfer" means a change of use or place of use or point of diversion of a water right.

(48) "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.

(49) "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.

(50) "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.

(51) "Wetland enhancement water use" means the use of water to restore, create, or enhance and maintain wetland resources.

(52) "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 }



## 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 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 fee required by ORS 536.050.

(3) Applicants shall be assessed additional fees for water right permit filing and recording as set forth in ORS 536.050(1)(b).

{ 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;
- (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 Prior to the completion of a technical review, applications to appropriate the surface or groundwaters of the state of Oregon shall include:

- (1) Proposed dates for the beginning of construction, completion of construction, and complete application of the water.
- (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) A written copy of the legal description of the property on which the water is to be used as depicted on the map.
- (4) A copy of the well constructor's log, if available, for any well already constructed.
- (5) 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) 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) 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) 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) Such other information as the Department or Commission deems necessary.

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

### **Reservation 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.
- (8) Such other information as the Department or Commission deems necessary.

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

#### **Ground Water Recharge Applications - Supplemental Information Requirements; Permit Conditions**

690-11-042

- (1) Permit required. The appropriation of water from any source for the purpose of recharging a ground water reservoir requires a permit. Likewise, any beneficial use of artificially recharged ground water in any such ground water reservoir requires a secondary ground water permit.
- (2) Pre-application conference. Due to the complexities and costs associated with recharge projects and recharge permitting, the Department requires a pre-application conference.
- (3) Supplemental information for permit application. In addition to data required on permit applications under OAR 690-11-020 to -030, the applicant shall submit additional information to assist the Commission in determining the public interest on the proposed project. An application shall be accepted by the Department for filing only if it contains all required data. Upon request, the Department may assist other agencies in developing their responses to permit applications. The following attachments are necessary:
  - (a) Minimum perennial stream flow or instream water right. If a stream is the proposed recharge source, the applicant shall provide a copy of the document which establishes that the supplying stream has a minimum perennial stream flow or instream water right for the protection of aquatic and fish life. If none is established, the applicant shall attach a copy of a waiver of this prerequisite from the Oregon Department of Fish and Wildlife.

(b) **Water Quality Permit.** The applicant shall attach a copy of the necessary water quality permits from Oregon Department of Environmental Quality, show that an application for necessary permits has been filed, or show that permits are not necessary.

(c) **Purpose of recharge.** The applicant shall describe the ultimate use or value of the ground water recharge.

(d) **Annual storage.** The applicant shall describe the volume of water, or the range of volumes, expected to be stored annually by artificial recharge. The applicant shall describe anticipated losses between the point of diversion and the place of recharge.

(e) **Financial capability.** If the proposed recharge diversion is for 5 cfs or more, the applicant shall display proof of financial capability to construct and operate the proposed project. Unless otherwise approved by the Director, the capability shall be supported by written statements from a lending institution.

(f) **Hydrogeologic feasibility report.** The applicant shall demonstrate that the proposed recharge project is hydrologically feasible. The report should include an assessment of ground water conditions in the reservoir and anticipated changes due to the proposed recharge project. This report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice in this area of geology.

(g) **Project Description Report.** The applicant shall provide plans for recharge project construction, operation, and costs. The report shall outline proposed monitoring plans for flows, water levels in wells and ground water quality. If surface water is a proposed source of recharge, the report shall indicate when surplus surface waters are generally available. The report shall be sealed and signed by a professional(s) registered or allowed, under Oregon law, to practice civil engineering and this area of geology.

(h) **Additional information.** The Director may require the applicant to submit additional information to assist the Commission in its public interest determination.

(4) **Recharge permit processing.** Prior to referring an application to the Commission for a public interest determination, the Director shall work with the applicant and may work with any person or agency to prepare a draft permit. In particular, the Director shall seek assistance from the State Department of Environmental Quality to develop a water quality monitoring program and standards.

(5) **Permit conditions.** Any permit shall address the following items:

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

(b) **Meters:** The recharge permit shall require both the metering of recharge water from the source(s) and metering of water at the place(s) of recharge. Any subsequent secondary ground water permit shall require metering of stored recharge water withdrawals.

(c) **Records, Inspections.** The permit shall require the permittee to keep accurate and current records of metered values, water levels and other pertinent information. The permit shall allow the Director to inspect records or works covered by the permit upon reasonable notice and at any reasonable time.

(d) **Estimated data.** When metered or measured data are missing in whole or in part, the Director may make estimates from available data. The Director's estimates shall be reasonable and, where there is a range of uncertainty, be conservatively low on water delivered to the place of recharge and conservatively high on withdrawals of stored recharge water.

(e) **Water levels.** The response of water levels in wells shall provide the principal basis on which to judge the effectiveness of recharge under the permit and the availability of stored recharge water.

(A) **Monitoring program.** The permit shall specify a water level monitoring program for selected times and wells.

- (B) Key wells, target levels. The permit shall designate several key wells in the monitoring program. The permit shall establish upper and lower target water levels for each well. Actual water levels on an annual assessment date shall be compared to the target levels for the purpose of prescribing allowable use of stored recharge water.
- (f) Determination of stored recharge water. The permit shall specify the formula to determine the availability of artificially recharged ground water for appropriation. The formula shall result from one of the following:
- (A) Negotiation. The applicant and the Department may negotiate a formula which relies principally on water levels in wells, metered quantities of recharge, secondary permit withdrawals, and hydrogeologic conditions in the area. At permit issuance, stored recharge water may be credited at up to 85 percent of water metered to the place of recharge. Withdrawals of stored recharge water shall be debited at 100 percent of metered values. Calculations of stored recharge water shall be based only on recharge over the last five years.
- (B) Definitive ground water investigation. The applicant may present a definitive ground water investigation as a method to determine stored recharge water. The Director must be satisfied that use of such information accurately describes the quantity and location of water available for withdrawal as a result of the recharge. That quantity must be in excess of the ground water which would be available if artificial recharge were not practiced. If no agreement is reached by negotiation, the applicant must determine stored recharge water by a definitive groundwater investigation.
- (g) Storage account. The Department shall record its final determinations on stored recharge water in a storage account. The permit shall specify a method by which the permittee may obtain information on that account.
- (h) Annual report. The permittee shall submit an annual report to both the Department and any secondary permittee. That report shall include the range of recharge rates and total quantities during the year at both the diversion point and the place of recharge. In addition, the report shall include a general operations review, the permittee's estimate of the storage account and the results of other water quantity and quality programs which are required in the permit.
- (i) Allowable use of stored recharge water. See rules governing secondary ground water 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 and 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 ground water 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 5 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.

{adopted 6-28-88; amended: 8-3-90; renumbered from 690-11-085 and amended 6-5-92}

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

690-11-044

(1) Permit required. The appropriation of artificially recharged ground water for any beneficial use requires a secondary ground water 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 ground water 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.

(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 ground water permit approval. During the first 5 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 ground water permit conditions. A secondary ground water 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 ground water right priority and the allowable use of stored recharge water. The allowable use of stored recharge water falls into 3 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.
  - (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 withdrawing artificially recharged ground water or there are other substantial ground water 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 Ground Water 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.

{adopted 6-28-88; amended: 8-3-90; renumbered from 690-11-086 and amended 6-5-92}

### **Limited License to Use Surface Water**

690-11-046

(1) A request for a 90-day, limited license for 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; 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; and

- 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.

(4) One application for limited license proposing the use of multiple water sources and/or multiple diversions is acceptable only if the request is made by a single applicant or entity for a single use. In these cases, the required data may be submitted on sheets attached to the standard request form.

(5) 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.

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

### **Permits for Reservoirs Storing Up To 5 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 5 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 690-11-015 through 690-11-080.

{adopted 10-3-89; amended: 11-17-89; renumbered from 690-11-083 and amended 6-5-92}

### **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 nor 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.

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



## **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 of 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.

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

## **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 section, the location of the diversion point may be given with reference to a lot or block corner of the subdivision.
- (4) Four permanent-quality prints of other maps, such as deed description survey maps or county assessor maps, also may be used if all the required information is clearly shown on each print. A single print of these may be used only if it is reproduced as a transparency, such as a sepia print or on mylar film.
- (5) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:
  - (a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);
  - (b) The location of main canals, ditches, pipelines, or flumes;
  - (c) The location of the place where water is to be used. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatching and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated; and
  - (d) The scale to which the map is drawn, the section number, township, and range, and a North directional symbol.

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

## **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 applicant 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 ground water 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.

{adopted 6-5-92}

## **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 OAR 690-11-155(2), 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.

{ adopted 6-5-92 }

## **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 690-11-020(1)(g), 030(7) and 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.

{ adopted 6-5-92 }

## **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.

{ adopted 6-5-92 }

## **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 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 195.

{adopted 6-5-92}

## **Alternative Dispute Resolution**

690-11-180

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

- (a) Inform the Director within 30 days of receipt of the copies of the objections mailed under OAR 690-11-175(1) of their election to enter into discussions;
- (b) Notify the Director of the time, date, and location of all discussion sessions not less than 10 days before each session;
- (c) Agree that the Director or the Director's designee may participate in all discussion sessions to provide counsel, direction, facilitation;

- (d) Submit a written report to the Director within 30 days of notice of their election to enter discussions which identifies the parties who will participate in the discussions and sets out an estimated completion date for the discussions which shall not exceed 180 days from the date of notice of election;
- (e) Submit monthly reports to the Director identifying the place, time, and attendance of all discussion sessions and a summary of the matters discussed at each session;
- (f) Agree to identify the issues to be addressed in the discussions before discussions are initiated;
- (g) Acknowledge that no agreement of the applicant and objector(s) is binding on the state of Oregon until approved by the Director or the Commission;
- (h) Agree to support their agreement for resolution of the matters under discussion if such agreement is presented to, and approved by, the Director or the Commission;
- (i) Agree to hold the Director, the Department, and the Commission harmless for any act, omission or event resulting from, or related to, the discussions or any agreement resulting therefrom; and
- (j) Agree that evidence of conduct or statements made during discussions or negotiations which are not included as a part of a settlement are not admissible in any subsequent hearing or action on the application, unless the applicant and objector(s) stipulate otherwise. This prohibition of admissibility does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of discussions or negotiations.

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

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

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

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

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

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

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

{adopted 6-5-92}

## **Conflict with Existing Water Rights**

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

{ adopted 6-5-92 }

## **Public Interest Review**

690-11-185

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

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

- (a) Appropriations for consumptive or out-of-stream uses of water in amounts greater than 10 cubic feet per second (cfs);
- (b) Diversions or appropriation of waters from basin of origin pursuant to ORS 537.801 to 537.850;
- (c) Dams greater than 25 feet in height or impounding more than 100 acre-feet of water;
- (d) Conditional uses under a basin program;
- (e) Artificial ground water recharge;
- (f) Applications for use of water from a surface water source or its tributaries where the Department has been notified of the presence of a species listed as threatened or endangered under either the United States or Oregon Endangered Species Act which may be adversely affected by the water use identified in the application; or
- (g) Applications on which protests have been filed pursuant to OAR 690-11-175(5).

(3) The Director shall evaluate all applications for water use not identified in OAR 690-11-185(2) to determine whether the proposed water use may impair or be detrimental to the public interest.

(4) In determining whether the proposed water use may impair or be detrimental to the public interest under the standards set out in ORS 537.170(5) and OAR 690-11-195, the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall consider the facts set forth in the following documents:

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

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

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

(7) If the Commission, in cases described in 690-11-185(2), or the Director, in cases described in 690-11-185(3), determines that the proposed water use described in the application may impair or be detrimental to the public interest, the Commission or Director shall schedule a contested case hearing. Such hearing shall be conducted according to the provisions for a contested case hearing under ORS 183.413 to 183.497 and OAR Chapter 690, Division 02.

(8) If the Commission, in cases described in 690-11-185(2), or the Director, in cases described in 690-11-185(3), determines that the proposed water use described in the application will impair or be detrimental to the public interest, the Commission or Director shall propose rejection and schedule a contested case hearing. Such hearing shall be conducted according to the provisions for a contested case hearing under ORS 183.413 to 183.497 and OAR Chapter 690, Division 02.

(9) If the Commission, in cases described in 690-11-185(2), or the Director, in cases described in 690-11-185(3), finds that the proposed water use will not impair or be detrimental to the public interest, a water use permit shall be issued.

{ adopted 6-5-92 }

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

690-11-190 In any contested case hearing held for the purpose of determining whether the proposed water use would impair or be detrimental to the public interest, the Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall apply the standards set out in ORS 537-170(5) and OAR 690-11-195 to the facts found on the record made at the hearing. The parties to the hearing shall include the applicant and any person who qualifies for party status under OAR 137-03-005. The Commission or the Director may issue an order that either approves or rejects the application or conditions the proposed water use to ensure it is consistent with the public interest.

{ adopted 6-5-92 }

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

690-11-195

(1) The Commission, in cases described in OAR 690-11-185(2), or the Director, in cases described in OAR 690-11-185(3), shall weigh the effect of the proposed water use on each of the standards set out in ORS 537.170(5) to assess impairment or detriment to the public interest.

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

- (a) The proposed water use is prohibited by statute or scenic waterway criteria;
- (b) The proposed water use is not a classified use under the applicable basin program and an application for the use has not been filed under ORS 536.295 and OAR 690 Division 82;
- (c) The proposed water use cannot be modified to be consistent with conditions previously imposed by the Commission on appropriations from the same source;
- (d) The proposed water use would conflict with existing water right; or
- (e) Water is not available from the source to support the proposed water use.



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

- (a) Population growth demands for domestic and municipal uses;
- (b) Economic development for agriculture, navigation, manufacturing, industry, power generation, commercial fishing, forestry and mining;
- (c) Health and safety requirements for sanitation, drainage, flood control, and fire protection; and
- (d) Public values and uses for recreation, pollution abatement, fish and wildlife resources, and scenic waterway protection.

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

- (a) Existing claims to water from the same source, including but not limited to:
  - (A) Existing decreed rights;
  - (B) Existing certified rights;
  - (C) Existing permits;
  - (D) Pending applications;
  - (E) Existing vested or inchoate rights of record;
  - (F) Indian reserved rights or claims; and
  - (G) Federal reserved rights or claims.
- (b) Land use goals, comprehensive plans, or other land use matters. Public interest determinations relating to land use may be based on, but not necessarily limited to:
  - (A) Statewide Planning Goals;
  - (B) Comprehensive Land Use Plans, including plan assumptions and policies;
  - (C) Public Facilities Plans;
  - (D) Current, planned, or reasonably anticipated uses for land;
  - (E) Local government administrative provisions, regulations, or approvals including zoning designations, filed land division plans or plats, or issued building permits;
  - (F) Projected changes in population, industrial or manufacturing bases, or economic trends; or
  - (G) Land management plans prepared by federal or state agencies.
- (c) Identified environmental concerns, including but not limited to:
  - (A) Water quality;
  - (B) Air pollution;
  - (C) Proximity of urban or transportation congestion; and
  - (D) Soil contamination.
- (d) Character and extent of other natural resources which are present in the water source basin, including but not limited to:
  - (A) Fish and other aquatic species and population;
  - (B) Wildlife species and population;
  - (C) Timber and other woody plant cover;
  - (D) Grasses and forbs;
  - (E) Minerals; and
  - (F) Geothermal energy.
- (e) Riparian and aquatic fauna and flora characteristics;
- (f) Recreational use and potential of the water source and its basin area;
- (g) Agricultural potential of the area, including but not limited to an assessment of the following:

- (A) Crop or livestock production potential including dairy operation;
  - (B) Soil, topographic, and climatic characteristics;
  - (C) Transportation and market access; and
  - (D) Community and support facilities of the area.
- (h) Designated historic, cultural, or natural resource protection areas; and
- (i) Identified health or safety requirements.

{ adopted 6-5-92 }

### **Requirement for Statement of Findings**

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

{ adopted 6-5-92 }

### **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) Applications by municipal corporations for hydroelectric generation shall be processed under OAR 690, Division 51.

(4) Cancellation of primary rights:

- (a) A notice give pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;
- (b) If the primary right is determined to have been forfeited by nonuse and the supplemental right is not determined also to have been forfeited by nonuse, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become a primary right.

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

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

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

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

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

### **Extension of Time Limits**

690-11-205

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

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

(3) Time extensions granted shall be for one year only except for permits for municipal, quasi-municipal or group domestic uses or permits issued to districts. Municipal, quasi-municipal, group domestic and district permits may be granted time extensions of not to exceed 5 years.

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

(a) Deny the request for more time;

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

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

{adopted 8-3-90; renumbered from 690-11-095 and amended 6-5-92}

#### **Cancellation of Permit**

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

{adopted 6-11-87; amended: 8-3-90; renumbered from 690-11-100 6-5-92}

#### **Claims of Beneficial Use for Applications filed after June 30, 1987**

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

{adopted 2-28-88; renumbered from 690-11-103 6-5-92}

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

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

{adopted 2-28-88; renumbered from 690-11-105 6-5-92}

## **Proof of Appropriation**

690-11-225

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

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

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

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

{adopted 6-11-87; amended: 8-3-90; renumbered from 690-11-110 6-5-92}

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

690-11-230

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

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

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

(3) If the disagreement results in a change to any item listed in 690-11-230 (2)(a) through (g), the request for reconsideration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the final proof map, and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

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

- (5) Upon receipt of a request for reconsideration, the Director shall:
- (a) Approve the request without verification and issue a certificate with the changes included;
  - (b) Schedule field verification of the requested changes; or
  - (c) Deny the request by letter from Department staff to the requesting party.

(6) If field verification is scheduled, a new proposed certificate shall be prepared and sent as prescribed by 690-11-110.

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

{ adopted 8-3-90; renumbered from 690-11-120 and amended 6-5-92 }

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

690-11-235

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

- (a) Any incorporated city, village, or town;
- (b) A port formed under ORS 777.725 and 777.915 to 777.953;
- (c) A domestic water supply district formed under ORS Chapter 264; or
- (d) A water supply authority formed under ORS Chapter 450.

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

(3) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

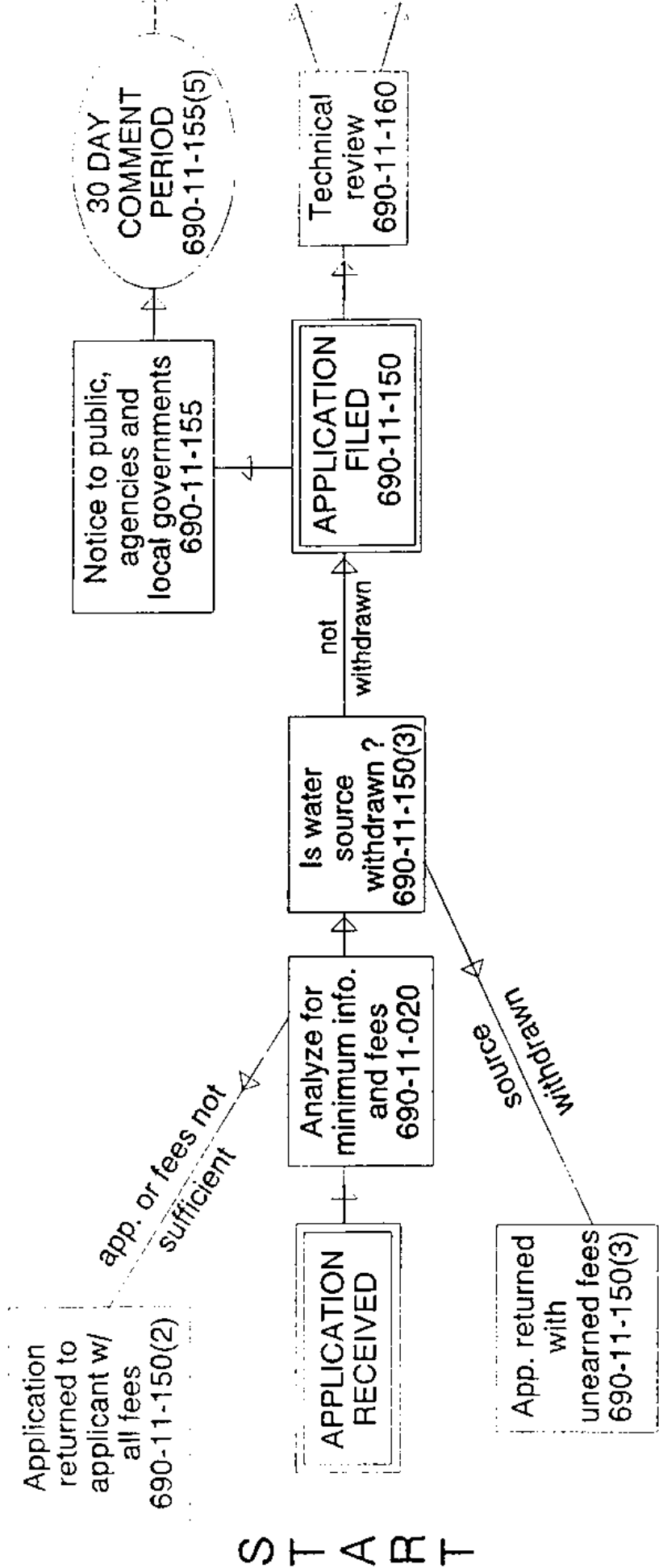
(4) A municipal supplier shall notify the Department, in writing, of its intent to incrementally perfect a portion of its water right. Written notice shall include the following information:

- (a) The quantity of water diverted from each point of diversion, by month, for the preceding three years;
- (b) A plan of how the municipal supplier intends to develop successive increments of its water right; and
- (c) Maps that show where water will be put to use. Maps accompanying notification of intent to perfect an increment of a water right shall be prepared to the specifications described in OAR 690-11-070, except that a standard even scale less than 4 = 1 mile may be used if appropriate.

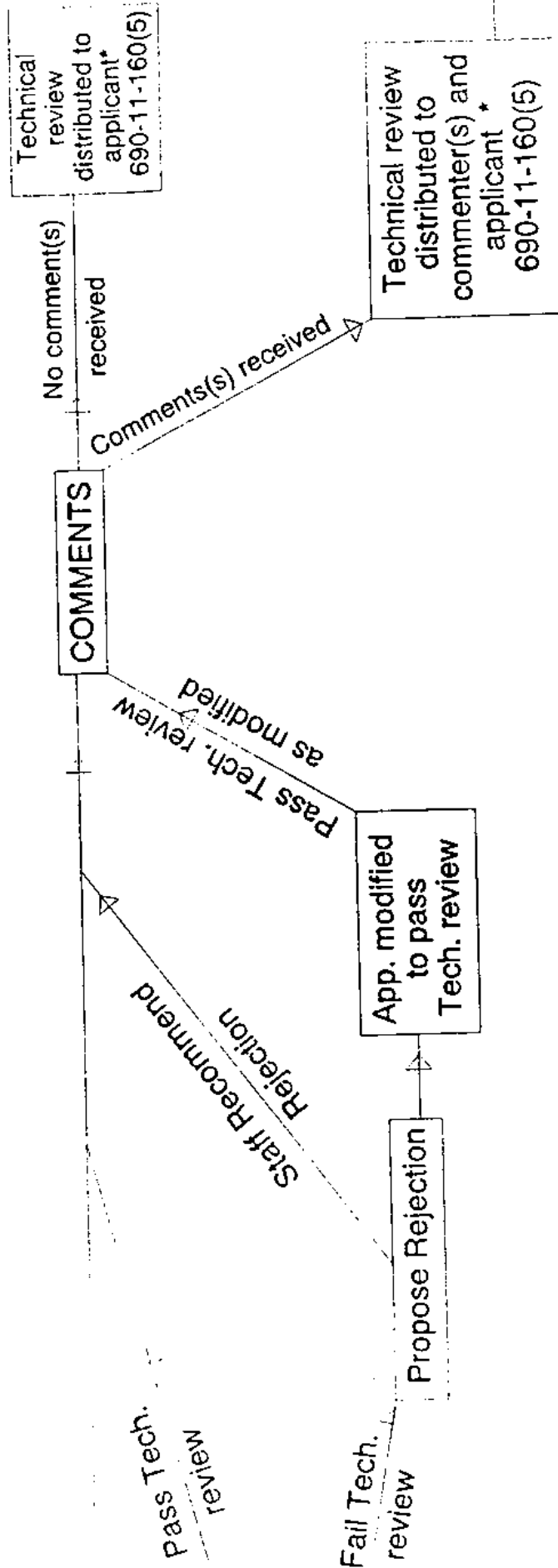
(5) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limits to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-11-205 governing extension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

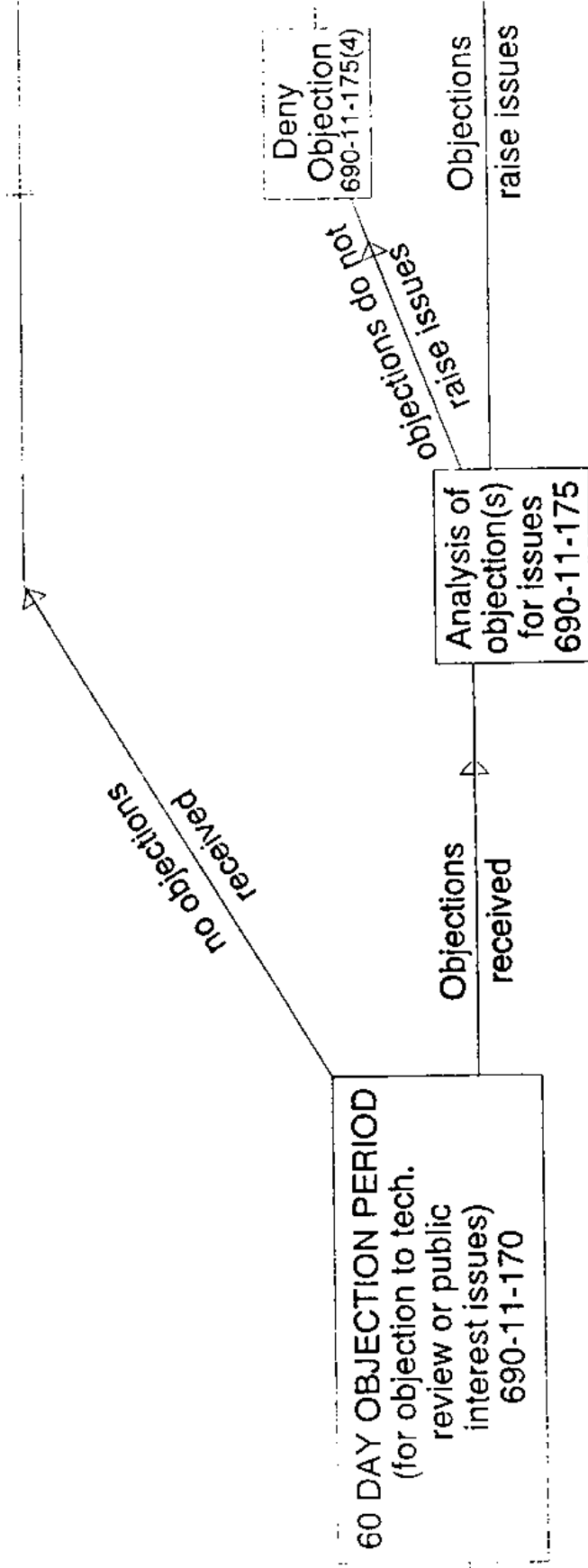
{adopted 12-7-90; renumbered from 690-11-130 and amended 6-5-92}

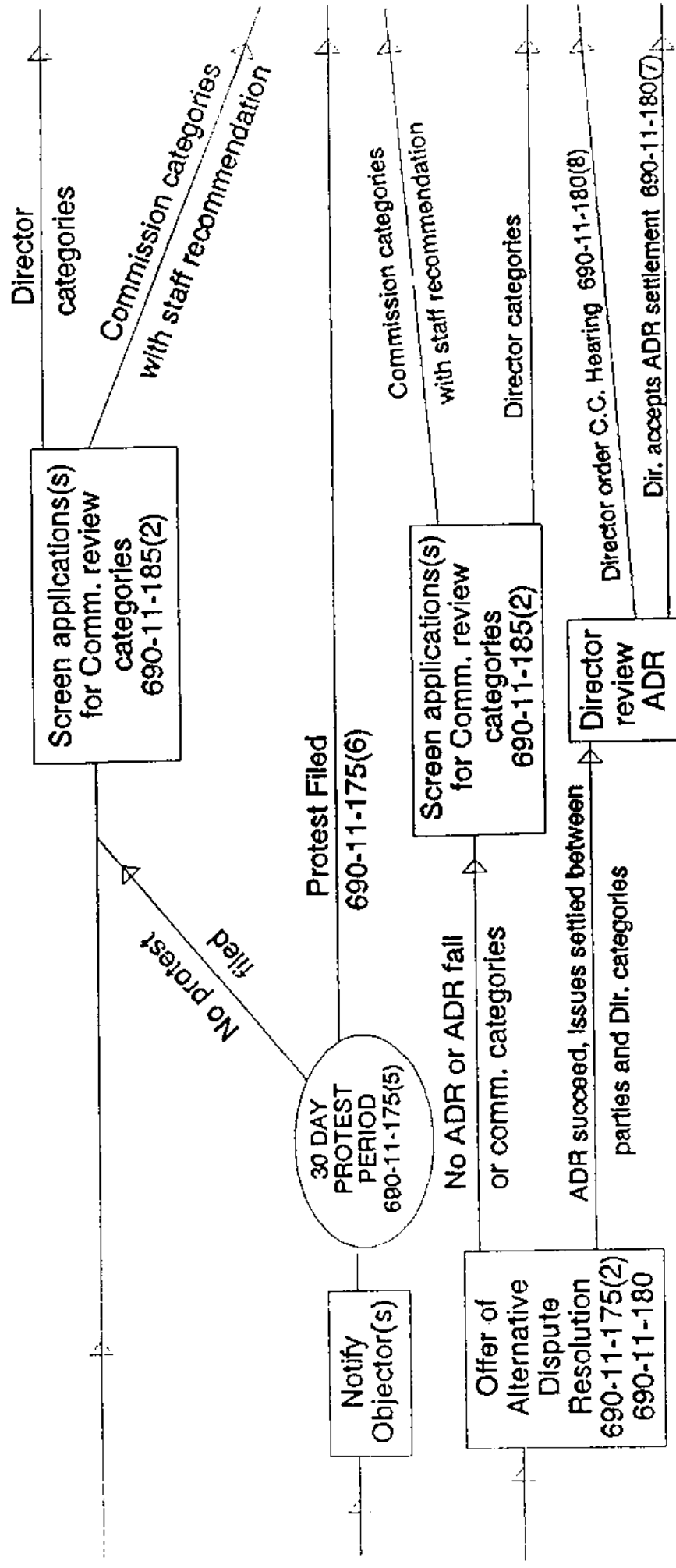
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