

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

RECEIVED APR 26 10 40 AM '91

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 26 1991

The Water Resources Department Resource Management Division

become effective upon filing

The within matter having come before the Water Resources Commission after

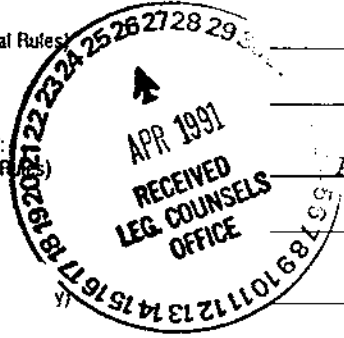
procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: March 1, 1991

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

Total Rules: Administrative Rules Chapter 690, Divisions -01-041(1),

11-080(1), 15-080(1) & (2), 18-050(3), 76-020(2), 77-025(4) & 030(1)(b), and 82-040.



Administrative Rules of the Water Resources Department Resource Management Division

DATED this 26th day of April 1991

By: William H. Young (Authorized Signer) Title: Director

Authority: ORS 536.025, 536.027

Other(s): Oregon Laws 19

Senate Bill(s) 19 Legislature; or Senate Bill(s) 19 Legislature

Subject Matter: Filing periods for exceptions to contested cases and for public commentary on water use applications.

Further Information Contact: Weisha Mize or Mike Mattick (Rule Coordinator) Phone: 378-3739

OREGON ADMINISTRATIVE RULES

CHAPTER 690, DIVISION 11

APPLICATIONS AND PERMITS

Purpose

690-11-005 The purpose of this chapter is to describe the required contents of an application for a new water use permit and procedures for the Department and Commission to review the proposal to authorize or condition the proposed use or to reject the application. Further, the chapter describes the standards and procedures for the management of water use permits, from approval through issuance of the confirming certificate of water right.

Definitions

690-11-010 The following definitions apply in OAR 690, Divisions 11 and 15, and to any permits, certificates or transfers issued under these rules:

(1) Affected local government: 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) Artificial ground water recharge: The intentional addition of water to a ground water reservoir by diversion from another source.

(3) Beneficial use: 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.

(4) Commercial use: Use of water at a place where commodities or services are bought or sold, such as a gas station, restaurant, motel, etc.

(5) Cranberry Use: All necessary beneficial uses of water for growing, protecting and harvesting cranberries. This includes, but is not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control.

(6) Deficiency of rate right: 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.

(7) Domestic use: Use of water for human consumption, household purposes, watering livestock necessary for the sustenance of a family and related accessory uses.

(8) Domestic use expanded: Use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or noncommercial garden.

(9) Draft permit: A proposed permit prepared by the Department describing the intended use of water, and including all proposed terms and conditions of a permit the Commission is prepared to issue.

(10) Duty and rate of water for irrigation: The total volume of water in acre-feet per acre per year, and the maximum quantity of water in cubic feet per second or gallons per minute (instantaneous rate) that may be diverted for irrigation.

(11) Ground water reservoir: A designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred. (ORS 537.515(4))

(12) Group domestic use: Delivery and use of water through a delivery system supplying water for domestic purposes to more than one residence or dwelling unit.

(13) Human consumption: Use of water within a household only for drinking, cooking, and sanitation.

(14) Industrial use: Use of water associated with the production or manufacture of a product.

(15) Irrigation use: Application of water to crops or plants by artificial means to promote growth or nourish plants.

(16) Municipal use: Delivery and use of water through the water service system of an incorporated municipality for all uses usual and ordinary to such systems. Such use includes but is not limited to uses of water for domestic, irrigation of lawns and gardens, commercial, industrial, fire protection, irrigation and other uses in park and recreation facilities, and street washing, but does not include generation of hydroelectric power.

(17) Nursery operations use: Use of water for a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, and watering within greenhouses. 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.

(18) Placer mining: As used in ORS 390.835, 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.

(19) Power development use: Use of water to develop electrical or mechanical power and the use of water for the operation of a hydraulic ram.

(20) Primary right: First or initial appropriation of water for an approved use.

(21) Proposed Certificate: 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 order, as determined by field investigation.

(22) Quasi-municipal use: Delivery and use of water through the water service system of a corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to a municipal water supply system. A quasi-municipal water right does not enjoy the statutory preferences given to a municipality under ORS 537.190(2), 537.230(1), or 537.410(2).

(23) Recharge permit: A permit for the appropriation of water for the purpose of artificial ground water recharge.

(24) Recreation Use: Use of water for relaxation or amusement, including but not limited to boating, fishing, wading, swimming, and scenic values.

(25) Secondary ground water permit: A permit for the appropriation of ground water which was stored through the exercise of a recharge permit or certificate.

(26) Significant adverse effect: The result of a use that would impair or be detrimental to the public interest.

(27) Stockwater: Use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

(28) Stored recharge water: Ground water which results from artificial ground water recharge.

(29) Storage account: 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.

(30) Substantial public interest issue: An issue that raises a reasonable likelihood of a significant adverse effect on the public interest. A significant adverse effect is one that is more than moderate considering:

(a) The context of the proposed action,

(b) The intensity of the proposed action including the magnitude and duration of an impact and the likelihood of its occurrence,

(c) The relationship between a proposed action and other similar actions which are individually insignificant but which may have cumulatively significant impacts, and

(d) Proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant effects to insignificant levels.

(31) Supplemental right: Additional appropriation of water to make up any deficiency in supply from the primary right.

(32) Surplus waters: All waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Water Resources Commission.

(33) Temperature control: Use of water to protect a growing crop from damage from extreme temperatures.

(34) Transfer: Change of use or place of use or point of diversion of a water right.

(35) Wasteful, Uneconomic, Impracticable or Unreasonable as used in ORS 537.170 have the following meanings:

(a) A use of water in a greater quantity or at a greater rate or duty than necessary to achieve the proposed use;

(b) A use of water for which quantifiable public and private economic costs exceed quantifiable public or private economic benefits over the life of the use as demonstrated in the record;

(c) A use of water which could not reasonably be developed with the available quantity of water;

(d) A use of water which would preclude present beneficial uses or other uses with a reasonable expectation of being developed during the proposed life of the use, which have a greater value to the public.

(36) Wastewater: 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.

(37) Water right subject to a transfer: 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.

Water Use Permit Applications

690-11-015 If a water use permit application is submitted to the Department for a use of water that is not clearly defined as an allowable use under an applicable basin program classification, the Director shall review the basin program policies and objectives and determine whether the proposed use is an allowable use within one of the allowed categories of use.

If the Director is unable to make the necessary determination, or if the applicant is not satisfied with the Director's determination, the question shall be referred to the Commission for determination.

690-11-020 Except as noted in OAR 690-11-085 for artificial ground water recharge, the Department shall accept applications for filing and thereby establish a tentative date of priority to appropriate the waters of the State of Oregon when the application is on forms provided or approved by the Department, is accompanied by the examination fee required by ORS 536.050, and contains the following information:

- (1) Name and mailing address of the applicant(s).
- (2) Source(s) of the water.
- (3) Quantity of water to be appropriated.
- (4) A map of the proposed water use prepared by a Certified Water Rights 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 proper quarter-quarter Section, Township and Range.
- (5) Nature of the use(s).
- (6) 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.
- (7) Land use information as outlined in the Department's Land Use Planning Procedures Guide or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning department.
- (8) Signature of the applicant(s). If the applicant is a public agency, corporation or business, the title or authority of the signator shall be indicated.

690-11-025 The applicant shall also provide the information listed in OAR 690-11-030 for surface and groundwater applications or in OAR 690-11-040 for reservoir applications before the Department or Commission shall process the application for a permit. As applicable, the applicant shall provide the information listed in OAR 690-11-085 for artificial ground water recharge applications or in OAR 690-11-086 for secondary ground water permit applications before the Department or Commission shall process the application for permit. If any of the information required by these rules does not apply to the proposed use, the applicant shall indicate why it does not apply.

690-11-030 Prior to approval 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 copy of the legal description of the property on which the water is to be used.
- (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, 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. If the land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-11-020 (7), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.

(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.

690-11-040 Prior to approval, 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. If the land use information is not postmarked, or received by the Department, within 60 days of request, as evidenced by the receipt required in OAR 690-11-020 (7), the Department shall conclude that the requirement for obtaining land use information has been met and may proceed with processing the application.

(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.

690-11-050 (1) For any applications which do not fulfill the requirements of OAR 690-11-030, and/or 690-11-040, the Department shall:

(a) Return the application to the applicant for the curing of defects; or,

(b) Present a draft permit to the applicant for concurrence; or,

(c) Send a letter to the applicant or certified water right examiner, as identified by the applicant on the application form, describing any deficiencies or additional data being requested.

(2) The Department's correspondence shall state a time within which the application, draft permit or requested 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, the signed or modified draft permit, or the requested information may result in the rejection of the application.

690-11-060 Applications may be replaced or amended without loss of the tentative priority date so long as the information provided in the application under OAR 690-11-020(2), and (3) is not increased and (5) does not change. If the replacement or amendment proposes additions to or increases in items listed in OAR 690-11-020(2), (3), or (5), 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.

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.

(d) The scale to which the map is drawn, the section number, township, and range, and a North directional symbol.

Processing An Application

690-11-080 (1) The Director shall provide notice of all applications for water use permits received to those public agencies on the Department's weekly mailing list, to property owners listed on an application pursuant to OAR 690-11-020(7), to affected Indian tribes and to any person who pays the subscription fee as established by the Department. Notified agencies shall include the planning department of each affected local government. The Director may presume the proposed use is allowed by and compatible with the laws and regulations of any public body and is not opposed by any person or entity that does not respond within 60 days from the date of notice. The Director shall provide notice of any determinations made under section (2) of this rule to any person or entity that does respond to the original notice of filing within the prescribed period of the date shown on the notice except as provided to local governments under OAR 690-11-030 (6) and 690-11-040 (5).

(2) The Director shall screen applications to determine whether there is a substantial public interest issue involved.

(a) The Director shall make a preliminary determination under subsection (4) for applications in the following categories and

submit a recommendation to the Commission regarding the need to make a public interest determination under ORS 537.170.

(A) Appropriations for greater than five cubic feet per second, except from the Columbia River.

(B) Out-of-basin diversions.

(C) Dams greater than twenty feet in height or impounding more than 100 acre-feet of water.

(D) Conditional uses under basin programs.

(E) Artificial ground water recharge.

(b) The Director shall review all other applications to determine if the proposed use:

(A) Complies with Water Resources Commission policies, rules and basin programs.

(B) Does not harm vested and inchoate rights.

(C) Appropriates waters likely to be available in the amount and at the times needed.

(D) Is not the subject of a request for review by a public agency or person.

(E) Conforms with the applicable recognized rate and duty.

(F) Does not raise any other substantial public interest issue.

(G) Is allowable under the comprehensive plans of affected local governments, and if applicable local land use approvals have been received or are pending based upon the land use information submitted pursuant to OAR 690-11-030 (7) and 690-11-040 (5), or other input from the affected jurisdiction(s).

(c) If (b)(A) through (G) are satisfied, the Director shall conclude the application is in the public interest and issue the permit if no petition for review under (2)(e) is filed.

(d) If one or more of (b)(A) through (G) is not satisfied, the Director may work with the applicant and any person or agency raising the concern to determine whether the issues can be resolved through mutually agreeable conditions, provisions of the permit, or modifications of the application. If it appears that the application raises a substantial public interest issue that will not be resolved through negotiation, the Director shall refer the application to the Water Resources Commission with a recommendation to conduct a contested case hearing under ORS 537.170 and 537.180. In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the Commission or Director shall follow procedures provided in OAR 690-05-040 (Resolution of Land Use Disputes). If the Director determines that no substantial public interest issue is raised or that any such issue has been resolved through negotiation, the Director may issue the permit with appropriate conditions or modifications if no petition for review under (2)(e) is filed, or may submit a proposed permit to the Water Resources Commission for review prior to issuance of the permit.

(e) A formal petition to the Commission appealing the Director's decision under (2)(c) or (d) may be filed in accordance with OAR 690-01-010 through 020 within 20 days of the mailing of notice of the Director's decision pursuant to Section (1) of this

rule.

(3) When the Commission receives an application or proposed permit for review, it may:

(a) Find that the use would not be detrimental to the public interest and instruct the Director to issue a permit; or

(b) Find that the use, as appropriately conditioned, would not be detrimental to the public interest and instruct the Director to issue the permit with the conditions; or

(c) Find that the use may be detrimental to the public interest because it raises a substantial public interest issue and require a contested case hearing under ORS 537.170 and 537.180.

(4) The following standards shall be applied by the Commission or Director in making determinations of public interest. The proposed use would have a significant adverse effect on the public interest if the use:

(a) Is inconsistent with adopted rules, policy statements and basin programs; or

(b) Adversely affects vested or inchoate rights; or

(c) Is a wasteful, uneconomic, impractical or unreasonable use; or

(d) Is not a beneficial use; or

(e) Impedes orderly economic development of the waters involved for multiple purposes or other preferred uses; or

(f) On balance, would jeopardize or have a significant adverse effect on the use of water for the broadest range of public good, considering basin policy, state statutes and the respective comprehensive plans of the jurisdictions affected.

(5) The Director and Commission shall meet the requirements established in OAR 690-05-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating, and taking action on permit applications.

(6) Following a hearing under ORS 537.170 or 537.180, or 537.620 to 537.625 the Commission may approve issuance of a permit, approve a permit with modifications or conditions, or reject the application with findings.

Limited License

690-11-082

(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; and

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, unless a public interest concern is raised within that period.

(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 harm to 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.

(6) The Director shall presume that the proposed use will have a significant adverse effect on the public interest if it is inconsistent with adopted rules, policy statements, basin programs, statutory or Commission withdrawals for the described source.

Permits for Reservoirs Storing Up To 5 Acre-Feet of Water, or for Livestock Watering Outside of Riparian Areas (SB 150, 1989)

690-11-083

(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.

Ground Water Recharge Applications

690-11-085 (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) Contents of recharge 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 690-11-086.

(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.

Secondary Ground Water Permits for Use of Artificially Recharged Waters

690-11-086 (1) Permit required: The appropriation of artificially recharged ground water for any beneficial use requires a secondary permit.

(2) Contents of secondary ground water 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 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.

(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.

Miscellaneous provisions

690-11-090 (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 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 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; or,
- (B) A copy of a land sales contract; or,
- (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 690-11-080. As provided in ORS 537.620(3) and also in accordance with OAR 690-11-080(2), 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.

(c) All applications that are for greater than five cubic feet per second.

EXTENSION OF TIME LIMITS:

690-11-095 (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 that the project has been pursued with reasonable diligence. The extent of progress made within the last time extension shall be the primary basis for any additional extension. 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; or,

(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.

Cancellation of Permit

690-11-100 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.

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

690-11-103 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.

Applications Filed after November 29, 1987

690-11-105 All applications filed after November 29, 1987 shall have application maps prepared by a Certified Water Right Examiner.

Proof of Appropriation

690-11-110(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.

Request for Reconsideration of the Contents of a Proposed Certificate

690-11-120 (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.
- (g) Any conditions imposed upon the use.

(3) If the disagreement results in a change to any item listed in 690-11-120 (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 690-11-110(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; or,
- (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 75.

Incremental Perfection of a Municipal Water Right

690-11-130 (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 means:

- (a) any incorporated city, villiage, 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 690-11-110.

(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 690-11-095 governing extension of time limits applies to unperfected municipal water rights.