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CERTIFICATE AND ORDER FOR FILING

PERMANENT

SECRETARY OF STATE ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on August 3, 1990 (Date)

Water Resources Commission (Department)

(Department)

(Division)

upon filing (Date)

(Date)

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

(Department)

(Division)

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 [x] Date Published: June 1, 1990

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

Numbered: (Total Rules) 690-11-005, -120; 690-15-001, -025, -075, -120, -125

Numbered: (Pending Rules) 690-11-010, -015, -020, -030, -040, -050, -070, -080, -082, -086, -090, -100, -110; 690-15-010, -045, -060

Numbered: (Unfiled Rules Only) 690-15-015, -035

Administrative Rules of the Water Resources Department (Department) Field Operations (Division)

(Department)

(Division)

DATED this 23rd day of August, 1990

By: RA Keag (Authorized Signer)

Title: Director, Deputy

Legal Authority: ORS 536 through 540, and 543 or Oregon Laws 19 or

Bill(s) 536 through 540, and 543 or Oregon Laws 19 or

Bill(s) 19 Legislature; or Senate Bill(s) 146 and 1102, 1989 Legislature

Matter: Amendments to water rights rules, Chapter 690, Divisions 11 and 15, concerning Water use permits, transfers and certificates.

Other Information Contact: Steve Applegate (Rule Coordinator) Phone: 378-3066

OREGON ADMINISTRATIVE RULES

CHAPTER 690, DIVISION 11

APPLICATIONS AND PERMITS

Definitions

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.

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 690-60-015 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 hatchuring 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 30 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 690-60-015 (Definitions), the

Commission or Director shall follow procedures provided in OAR 690-60-040 (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 690-60-045 (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