

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 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; 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.