

CERTIFICATE AND ORDER
FOR FILING

RECEIVED

PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

FEB 26 10 25 AM '88

DAFFARA ALBERTS
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on February 16, 1988
(Date)

by the Water Resources Commission
(Department) (Division)

to become effective February 28, 1988
(Date)

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

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

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: October 15, 1987

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

Adopted: Chapter 690, Division 14 rules
(New Total Rules)

Amended: Chapter 690, Divisions 11 & 15 rules
(Existing Rules)

RECEIVED

Total Rules Only: 1
(Total Rules Only)

FEB 26 1988

LEGISLATIVE COUNSEL'S
OFFICE

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

DATED this 26th day of February, 19 88

By: John Borden, Deputy Director
(Authorized Signer)

Title: Director, Water Resources Department

Statutory Authority: ORS 536.027, 536.029 and or

Chapter(s) 542 Oregon Laws 19 87 or

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

Subject Matter: Rules for certification of water right examiners, the preparation of water right application maps, and the preparation of the claim of beneficial use.

For Further Information Contact: Bruce A. Estes Phone: 378-3739
(Rule Coordinator)

WATER RESOURCES DEPARTMENT

ADMINISTRATIVE RULES

CHAPTER 690

DIVISION 11

APPLICATIONS AND PERMITS

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) Beneficial use: The reasonably efficient use of water without waste for a purpose consistent with the laws and the best interests of the people of the state.

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

(3) 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.

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

(5) 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.

(6) Duty and rate of water for irrigation: Maximum quantity of water in cubic-feet per second or gallons per minute and the total quantity of water in acre-feet per acre per year that may be diverted for irrigation.

(7) Groundwater recharge use under ORS 537.135: Use of surplus surface water to artificially recharge a groundwater reservoir.

(8) 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 when the delivery system is not owned and operated by an incorporated municipality or a non-profit corporation created for the purpose of operating a water delivery system. For fee-collection purposes, each dwelling unit requires the statutory permit recording fee.

1. Proposed deletions are denoted by [brackets] and additions are underlined. Changes involve 690-11-030(2), 690-11-070, 690-11-103, and 690-11-105.

- (9) Human consumption: Use of water within a household only for drinking, cooking, and sanitation.
- (10) Industrial use: Use of water in the manufacture of a product.
- (11) Irrigation use: Application of water to crops or plants by artificial means to promote growth or nourish plants.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) Power development use: Use of water to develop electrical or mechanical power and the use of water for the operation of a hydraulic ram.
- (16) Primary right: First or initial appropriation of water for an approved use.
- (17) Quasi-municipal use: Delivery and use of water through the water service system of a nonprofit 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).
- (18) Significant adverse effect: The result of a use that would impair or be detrimental to the public interest.
- (19) Stockwater: Use of water for domesticated animals and wild animals held in captivity as pets or for profit.
- (20) 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.
- (21) Supplemental right: Additional appropriation of water to make up any deficiency in supply from the primary right.
- (22) Surplus waters: All waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Water Resources Commission.
- (23) Temperature control: Use of water to protect a growing crop from damage from extreme temperatures.
- (24) Transfer: Change of use or place of use or point of diversion of a water right.
- (25) 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.
- (26) Wastewater: Water that has been diverted under an authorized water right after it is beyond the control of the owner of that right out 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.
- (27) 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.

Applications for Permits to Appropriate the Waters of the State of Oregon

690-11-015 If a water right 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 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) Location of the point of diversion by quarter-quarter section.
- (5) Nature and place of the use(s).
- (6) Name and mailing address of the legal owner of the property upon which any significant 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) 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. 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 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-~~[11-070]~~14-150.
- (3) A copy of the legal description of the property on which the water is to be used.
- (4) 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.

(5) Such other information as the Department or Commission deems necessary.

690-11-040 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) Such other information as the Department or Commission deems necessary.

690-11-050 Applications which do not fulfill the requirements of OAR 690-11-030, and/or 690-11-040, shall be returned to the applicant for the curing of defects. Applications so returned shall state a time within which the application must be returned to the Department cured of defects. The time allowed shall not be less than 30 days nor more than one calendar year from the date of first return for that defect. Failure to return the application within the time specified shall result in the loss of the tentative priority date and 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 permit

690-11-070 Maps submitted with water right applications shall be prepared by a certified water right examiner and meet[ing] the following criteria:

(1) The application map, which is made part of the record, shall be 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 hachuring and the number of acres in each quarter-quarter section 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 permits received and of determinations made by the Director under section (2) of this rule, to those public agencies on the Department's weekly mailing list, to property owners listed on an application pursuant to OAR 690-11-020(6), to affected indian tribes and to any person who pays the subscription fee as established by the Department. The Director may presume the proposed use is not precluded by the laws and regulations of any public body that does not respond to the notice within 30 days.

(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 ten feet in height or impounding more than 9.2 acre-feet of water.
 - (D) Conditional uses under basin programs.
- (b) The Director shall review all other applications to determine if the proposed use:

- (A) Complies with Water Resources Commission policies 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.
- (c) If (a)(A) through (F) 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 (F) 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. 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 a 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 land-use plans of the jurisdictions affected.

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

690-11-090 Miscellaneous provisions:

(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 Water Wells in Oregon.

(2) The statutory exemptions 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).

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

(4) Cancellation of 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) Annual reports required for 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 of permit: When a change of interest occurs in lands covered by a permit, the permittee may request the Water Resources Director to record the assignment of permit to the new name. In addition to an assignment executed by a permittee, the Water Resources Department shall also record and recognize an assignment based on proof of death or the permittee and survivor as heir or trustee. Should the record holder of the permit be unavailable, then the current owner of the property may furnish proof of such ownership to the Commission to obtain an assignment of the permit.

(9) Extension of time limits: The time limit to begin construction shall not be extended except for municipal use of water by a municipality or permits involving Federal Energy Regulatory Commission projects. The time limits to complete construction or apply the water to a beneficial use may be extended upon showing that the project has been prosecuted 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).

(10) Artificial groundwater recharge: The determination that surface waters used for artificial groundwater recharge are surplus, as required by ORS 537.135(2), shall be based on a determination at the time of issuance of the permit that there is water available in the surface water source above and beyond the amount necessary to satisfy the requirements of prior rights and established minimum flows at or below the proposed point of diversion. A permit to appropriate surface water for groundwater recharge shall be restricted to use during times of the year when such surplus surface flows are determined to exist.

(a) Each permit issued by the Director for the appropriation of surface waters for the purpose of artificially recharging a groundwater reservoir shall require the permittee to operate the recharge facility in such a manner that the quality in the receiving reservoir does not become degraded to such an extent as to be unsuitable for human consumption. If the receiving groundwater reservoir contains water that, prior to artificial recharge, is not naturally suitable for human consumption, the recharge project shall be operated in such a manner that water quality is not further degraded. If the receiving groundwater reservoir contains water that, prior to artificial recharge, is not suitable for human consumption because of specific man-induced contaminant(s), the recharge facility shall be operated in such a manner that water quality with respect to these specific contaminant(s) will be improved and, further, that quality with respect to other contaminants will not be degraded.

(b) When the Water Resources Department determines that reduction of water quality is occurring or is about to occur as a result of artificial recharge, the Department may require regulation or discontinuation of the recharge project operation to prevent the further degradation of groundwater quality.

(c) Final proof of beneficial use under the permit shall require demonstration by the permittee of the extent of the beneficially stored recharge. Such demonstration shall include, but not be limited to, documented changes in water levels, determination of amounts of increased storage, and location of the stored recharge water.

(d) A permit is required to appropriate recharged groundwater. The permit shall be issued for the prevailing duty of water in the area for the use proposed or such lesser amount as may actually be available in storage as a result of the artificial recharge. The permittee shall establish, to the satisfaction of the Director, the amount of recharged water actually available at the proposed point or points of appropriation.

(11) All groundwater permits issued after the date of adoption of these rules shall be distributed subject to prior rights in any hydraulically connected surface water source, as well as prior groundwater rights.

690-11-100 Cancellation of permit: When it appears from an onsite examination by the Water Resources Department that no appropriation has been made under the terms of the permit, a certified letter of intent to cancel the permit shall be sent to the permittee, allowing sixty days 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 ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation.

(1) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the full extent authorized by the permit shall constitute proof of appropriation to the satisfaction of the Director pursuant to ORS 537.250(1) or 537.630(3).

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

(3) A proposed certificate of water right describing the right determined by the Department to have been established under the provisions of the permit shall be served upon the permittee, together with notice that the permittee or the landowner has a period of 60 days from date of service to petition the Department to reconsider the contents of the proposed certificate of water right. If no petition for reconsideration is filed within the 60-day period, the Director may proceed with issuance of a water right certificate to the permittee pursuant to ORS 537.250(1) or 537.630(3).

0355E