

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

RECEIVED

FEB 8 9 52 AM '91

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on February 1, 1991 STATE

(Date)

by the Water Resources Department

(Department)

Resource Management Division

(Division)

to become effective upon filing

(Date)

The within matter having come before the Water Resources Commission

(Department)

(Division)

after

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: November 1, 1990

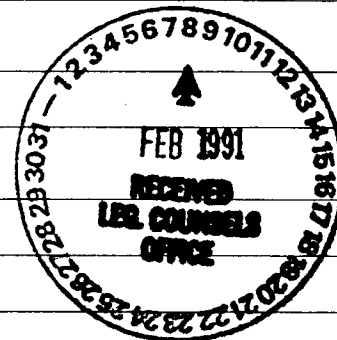
NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:  
(New Total Rules)

OAR Chapter 690-012-010, 020, 030, 040, 050

Amended:  
(Existing Rules)

Re:  
(Total rules Only)



as Administrative Rules of the Water Resources Commission

(Department)

(Division)

DATED this \_\_\_\_\_ day of February, 19 91

By: William H. Young  
(Authorized Signer)

Title: Director

Statutory Authority: ORS 537.801, 537.803, 537.805, 537.809 and 537.810 or

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

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

Subject Matter: Standards for approving applications to divert water out of basin.

For Further Information Contact: Steven C. Brutscher

(Rule Coordinator)

Phone: 378-3671

**OREGON ADMINISTRATIVE RULES****CHAPTER 690, DIVISION 12****OUT-OF-BASIN DIVERSIONS****Purpose**

690-12-010 These rules prescribe the definitions, standards, information requirements, and fees for processing an application proposing an out-of-basin diversion of water. The Water Resources Commission shall use these rules to evaluate the merits of applications to divert water from one basin to another.

**Definitions**

690-12-020 As used in these rules, the following terms shall have the indicated meanings.

- (1) "Basin" means one of the river basins within this state as defined by Water Resources Department map number 0.2, dated 1987, and entitled "Oregon Drainage Basins," unless the context requires otherwise.
- (2) "Basin of origin" means the basin in which surface or groundwater that is the subject of an application under ORS 537.211, 537.400, 537.620, 540.520, 543.210 or 543.290 is located.
- (3) "Commission" means Water Resources Commission
- (4) "Department" means Water Resources Department
- (5) "Director" means Water Resources Director
- (6) "Harm" means to waste or use water inefficiently, deplete water supplies to the detriment of existing right holders or public uses, overdraft groundwater supplies or degrade the quality of surface or groundwater.
- (7) "Historically transported" means the exercise of a valid water right, within the last five years, in a manner that is beneficial and lawful.
- (8) "Out-of-basin-diversion application" means either:
  - (a) An application for a new use of water that proposes to divert water for use outside the basin of origin; or
  - (b) An application to change the place of use of an existing right to a place outside the basin of origin.

(9) "Planned uses or development" means a proposed use of water for which a permit has been issued or an application has been received by the Department.

(10) "Regional municipal water service" means regular service of water for municipal purposes in accordance with the provisions of ORS 540.510, 540.530, and ORS Chapter 450, or such water service to multiple jurisdictions through one or more providers and systems.

(11) "Return flow" means water that returns to a stream either uncontrolled or by controlled conveyance following its diversion and use from a surface or groundwater source.

### **General Provisions**

690-12-030 The following general provisions shall apply to out-of-basin-diversion applications:

(1) These rules shall apply to all out-of-basin-diversion applications subject to ORS 537.803 proposing to divert 0.5 cubic feet per second or more of either surface water, groundwater or both.

(2) Out-of-basin-diversion applications for new uses processed under these rules shall also comply with all other applicable provisions of OAR Chapter 690, Division 11.

(3) Out-of-basin-diversion applications to change the place of use processed under these rules shall also comply with all other applicable provisions of OAR Chapter 690, Division 15.

(4) No out-of-basin-diversion application subject to ORS 537.803 shall be accepted by the Department until it addresses each of the information requirements described in 690-12-040.

(5) No out-of-basin-diversion application subject to ORS 537.803 shall be approved unless the Commission has reserved water to meet future needs, including economic development and public uses in the basin of origin.

(6) All out-of-basin-diversion applications subject to ORS 537.803 proposing to divert 50 cfs or more shall require the consent of the Legislative Assembly.

(7) All out-of-basin-diversion applications subject to ORS 537.803 shall be the subject of one or more public hearings, at least one of which shall be held in the basin of origin.

(8) These rules shall not apply to applications to exchange water involving transfer of water out of the basin of origin.

(9) These rules shall not apply to applications by cities to facilitate regional municipal water service if the city has historically transported water between the basin of origin and the proposed receiving basin.

## **Standards and Information Requirements**

**690-12-040** In order for an out-of-basin-diversion application to be approved, the standards and requirements in sections (1) through (8) of this rule shall be met to the Commission's satisfaction. The Commission shall decide if each standard is met based on information provided in the application, during the public hearing and in written comments received within 20 days after the date of the final public hearing. Information required in the application shall include, at a minimum, those items listed for each standard in sections (1) through (8). Except where the rules specify otherwise, this information shall address conditions for the basin of origin as a whole and for the specific surface or groundwater source proposed for diversion. Information for the basin of origin as a whole may be general in content. Information for the specific surface or groundwater source affected shall be detailed. In applying the standards, the Commission may make allowances where existing information is incomplete, does not exist, or is inadequate to clearly meet the standard. The information required under this rule is in addition to any other information required on applications under the Commission's rules on Applications and Permits, OAR Chapter 690, Division 11 and Water Right Transfers, OAR Chapter 690, Division 15.

(1) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, the amount of water in the basin of origin available for future appropriation in the basin of origin and for the proposed use. In demonstrating water availability, the application shall include an analysis of:

(a) Annual and monthly discharge for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include at least the 80 percent frequency discharges and reflect both natural (without storage or diversion) and regulated conditions at the mouth and the point of diversion. Discharge shall be expressed in units of cubic feet per second and acre feet.

(b) Groundwater in storage and amount of annual recharge for the basin as a whole and for the specific groundwater source proposed for diversion. The evaluation shall indicate whether the recharge is natural or artificial. If groundwater recharge is artificial, the source of the recharge water shall be identified. Volumes of water shall be expressed in units of acre feet.

(c) Existing water rights for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Separate summaries shall be prepared for surface water and groundwater rights. Each summary shall provide a breakdown of water rights by use category, quantity of rights in terms of cfs, and by season of use (irrigation season). The summary shall include minimum streamflows, instream water rights and reservations of water.

(d) Water use for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include an evaluation of water use based on actual measurements, water use reports and estimates. The evaluation shall cover all major water use (beneficial use) categories, both consumptive and nonconsumptive. For each water use category, the analysis shall indicate the amount of water used annually and monthly. Water use shall be expressed in terms of cubic feet per second and acre feet. If the evaluation of water use is based on measurements or reported data, the analysis shall describe the measurement techniques and cite the sources of the reported data. If water use is estimated, the analysis shall describe the information used and all assumptions made in enough detail to permit the Department to verify the accuracy of the estimate.

(e) Water availability for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Water shall be considered available for any given period of time only if the flow that occurs four out of five years (80% frequency) during the period exceeds expected water use by all water rights. An analysis of water availability shall be based on the information required in subsections (a) through (d) of this section. The analysis shall include a statement of water available on an annual and monthly basis. Available water shall be stated in terms of cubic feet per second and acre feet.

(f) Legislative and administrative restrictions on water use for the basin as a whole and for the specific surface or groundwater source proposed for diversion. Analysis shall include determinations of flow and water volume contributed by surface or groundwater sources protected from appropriation by legislation or Gubernatorial designation. Elements included in this analysis shall include:

- (A) Legislative withdrawals and grants.
- (B) State scenic waterways.
- (C) State Engineer withdrawals.
- (D) Commission withdrawals.

(2) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not use water necessary to meet projected future water needs in the basin of origin. In describing projected water needs, the application shall include an analysis of:

(a) Existing population, demographic trends and growth projections. Growth projections shall extend at least 20 years into the future. In providing this analysis, the applicant shall consult with the Center for Population Research and Census at Portland State University and the individual city and county planning departments for the counties included in the basin of origin.

(b) Projected water demand by major use category. This evaluation shall cover at least the categories of municipal, industrial, agricultural and instream water demands. For each major use category, the evaluation shall state the relative percent of projected demand allocated to surface water and groundwater. At a minimum, information supplied to meet this requirement shall reflect :

(A) Facilities plans applicable within an urban growth boundary containing a population greater than 2,500.

(B) Economic Development Department economic strategies, plans or prospects for individual cities, counties, or regions in the basin of origin.

(C) Department of Agriculture and Oregon State University Extension Service inventories and projections for irrigated agriculture in the basin of origin.

(D) The pertinent management plans for fish, wildlife, habitat, water quality, recreation, or other area of responsibility of the agencies listed in paragraphs 040 (7)(a)(A) through (E) of these rules.

(c) Economic factors affecting water use in the basin of origin.

(3) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not harm return flows that benefit water users in the basin of origin. At a minimum, the analysis shall include:

(a) An evaluation of existing and prospective water use by major use category on the proposed diversion source upstream from the proposed point of diversion.

(b) An estimate of the existing and prospective amounts of water that return to the proposed source of diversion upstream from the proposed point of diversion.

(c) An evaluation of existing water rights issued specifically on return flows, effluent discharge, wasteways or recycled water originating upstream and passing the point of diversion for use downstream.

(4) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not harm supplies of surface or groundwater in the basin of origin. The application shall describe the relationship between surface and groundwater and, at a minimum, shall include:

(a) An identification and discussion of groundwater recharge and discharge zones and how surface water and groundwater affect each other in these zones.

(b) An identification of areas where groundwater and surface water are or may be hydraulically interconnected and a discussion of annual and seasonal exchange between these resources.

(c) An evaluation of the relationship between water quantity and quality for both surface water and groundwater and how conditions present in one resource affect conditions in the other.

(d) An evaluation of whether the proposed project will occur in an area of groundwater-surface water hydraulic interconnection and if so, a discussion of the potential and expected impacts of the proposed project on the quantity or quality of either.

(e) In responding to subsections (a) through (d) of this section, any assumptions relied upon or modeling conducted by the applicant shall first be reviewed and approved by the Department.

(5) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that it will not injure or interfere with existing water rights or planned uses or developments within the basin of origin. At a minimum, the analysis shall include:

(a) A summary of the water rights by type of use, quantity of diversion and characteristics of use, that occur on the stream or in the stream system from which the proposed project will divert water. The same information shall be supplied for each aquifer affected if groundwater is proposed as the source of diversion.

(b) A description of all proposed diversion and transmission works and their physical and geographical proximity to existing diversion and transmission facilities. The description shall include a discussion of potential impacts of the proposed project works on existing facilities and the means and methods of avoiding such impacts.

(c) A description of planned uses and developments covering the same points as in subsection (b) of this section.

(d) A description of the type, frequency, period and extent of water rights regulation on the proposed surface or groundwater source of diversion. The description shall include an explanation of the resource problem(s) requiring regulatory measures.

(6) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that the proposed diversion will not adversely affect the quantity or quality of water available for municipal or domestic use in the basin of origin. The analysis shall include:

(a) A description of existing municipal and domestic water rights relying on the same stream or aquifer proposed for the out-of-basin diversion. The description shall include estimated or reported water use by individual municipalities.

(b) A description of any municipal or domestic water storage facilities or reservations of water for municipal or domestic use affecting the proposed source of diversion.

(c) An evaluation of ambient water quality in the stream or stream system affected by the proposed diversion. This evaluation shall be based either on data and analysis by the Department of Environmental Quality (DEQ) or water quality data gathered and analyzed in accordance with DEQ specifications.

(d) A description of construction and operation practices proposed to prevent water quality standards violations or impacts to designated beneficial uses.

(7) In order to be approved, an out-of-basin-diversion application shall demonstrate to the Commission's satisfaction, that public uses in the basin of origin will not be harmed. An analysis of the proposed project impacts on public uses shall include:

(a) A statement of public uses existing in the basin and on the proposed source of diversion. This statement shall include public uses covered by existing water rights as well as those public uses which derive from the presence of live flow. In determining the presence of public uses, the applicant shall consult with the state agencies listed in paragraphs (A) through (E). Evidence of consultation with these agencies shall be included with the application.

- (A) Water Resources Department
- (B) Department of Fish and Wildlife
- (C) Department of Environmental Quality
- (D) Department of Parks and Recreation



**(E) Division of State Lands**

**(b)** A statement of flows or quantities of water needed to maintain public uses. This statement shall reflect existing water rights for such purposes or projected water needs as recommended for such purposes by the agencies listed in paragraphs (A) through (E). If water rights do not exist for public uses, the agencies recommendations shall specify flow levels by month necessary for public uses. If no flow information is available, the applicant shall determine the necessary flows based on methods of determining instream water rights approved by administrative rules prepared by the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation as required in OAR 690-77-020 (3).

**(c)** A statement of how the size, placement, design, shape, color and other physical features of the proposed diversion will affect public uses. This statement shall include comments from the agencies listed in subsection (a) of this section.

**(8)** In order to be approved, an out-of-basin-transfer application shall demonstrate to the Commission's satisfaction, that suitable alternative sources of water, including conservation, within the proposed basin of use are not available for the proposed use.

**Fees**

690-12-050 (1) The applicant shall bear all costs to the state of Oregon for processing an application for an out-of-basin diversion. An application for an out-of-basin diversion shall be accompanied by the following fees:

- (a) An examination fee of \$1,500.00;
- (b) A publication of analysis fee of \$1,000.00; and
- (c) A hearing fee of \$1,200.00.

(2) The Department shall maintain an accounting of all costs incurred in review of the application. The Department shall bill the applicant quarterly for all costs incurred in excess of the examination, publication and hearing fee amounts listed in section (1) of this rule. The first billing shall be made at the end of the calendar quarter in which the application is received. Additional billings shall be made at the close of each quarter thereafter until the application is approved or rejected. If the applicant fails to pay the Department within 30 days of billing, the Department shall suspend review until payment is made. If the applicant refuses to pay any billing, the Department shall halt further review and take steps to reject the application. Expenses for the following items shall be completely reimbursed by the applicant:

- (a) Staff time spent in review, analysis, consultation, public hearings, report preparation, and presentation to the Commission.

(b) Staff and Commissioner's travel expenses, including mileage, meals and lodging, incurred in travel to and from and conduct of public hearing(s) on the proposed application.

(c) Public notice and publication expenses, including reproduction and printing costs, newspaper and other publishing fees, and postage.

(d) Hearing expenses, including rental of a hearing facility, audio and visual equipment, and professional transcription fees.

(e) Such other expenses as may be incurred in the processing of the application, including the reasonable expenses of any state agency incurred for any of the items listed in subsections (a) through (d) of this section in providing services requested by the Department or Commission. Any request for services made by the Department or Commission shall be in writing and shall specify the particular service(s) being requested.

(3) Time spent by state agencies in consultation with the applicant as required in OAR 690-12-040 (7) (a) (A) through (E), shall not be at the applicant's expense.