

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

RECEIVED APR 26 10 40 AM '91

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

Water Resources Department (Department) Resource Management Division (Division)

become effective upon filing (Date)

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

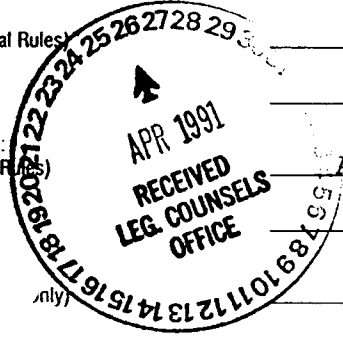
procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

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

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

Number of Total Rules: 25 26 27 28 29

Administrative Rules Chapter 690, Divisions -01-041(1), -11-080(1), 15-080(1) & (2), -18-050(3), 76-020(2), 77-025(4) & 030(1)(b), and -82-040.



Administrative Rules of the Water Resources Department (Department) Resource Management Division (Division)

DATED this 26th day of April, 1991

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

Statutory Authority: ORS 536.025, 536.027 or

Other(s) Oregon Laws 19 or

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

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

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

OREGON ADMINISTRATIVE RULES
CHAPTER 690, DIVISION 18 — WATER RESOURCES DEPARTMENT

DIVISION 18

**CONSERVATION AND THE USE OF
CONSERVED WATER**

Purpose

690-18-010 The purpose of OAR 690-18-010 through OAR 690-18-090 is to carry out the provisions required by the enactment of ORS 537.455 to 537.500 and 540.510 (2) and (3), the intention of which is to promote the conservation of water, maximize beneficial use and enhance streamflows.

Stat. Auth.: ORS Ch. 536, 537 & 540
Hist.: WRD 19-1988, f. & cert. ef. 11-4-88

Definitions

690-18-020 The following definitions apply in OAR 690, Division 18 and to any proposals approved or certificates issued under these rules.

(1) "Affected local government" means any local government, as defined in OAR 690-05-015, within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved order allowing conservation or the use of conserved water.

(2) "Commission" means Water Resources Commission.

(3) "Conservation", as defined in ORS 537.455, means the reduction in the amount of water consumed or irretrievably lost in the process of satisfying an existing beneficial use, achieved either by improving the technology or method for diverting, transporting, applying or recovering the water, or by implementing other approved conservation measures.

(4) "Conserved Water", as defined in ORS 537.455, means the amount of water, previously unavailable to subsequent appropriators, that results from conservation measures.

(5) "Conserved Water Right" means a water right established by allocation of a quantity of water, which results from the savings created by the implementation of a conservation measure, approved by the Water Resources Commission.

(6) "Department" means Water Resources Department.

(7) "Director" means Water Resources Director.

(8) "Feasible" means a conservation proposal incorporating appropriate technology or improved use or management of water which would result in a reduced diversion.

(9) "Instream", as defined in ORS 537.455, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(10) "Instream Water Right", as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(11) "Public Use", as defined in ORS 537.455, includes, but is not limited to:

- (a) Recreation;
- (b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other

- ecological values;
- (c) Pollution abatement;
- (d) Navigation;
- (e) Scenic attraction; or
- (f) Any other similar or related use or use protected by the public trust.

Stat. Auth.: ORS Ch. 197, 536, 537 & 540
Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90

Policy

690-18-030 (1) The implementation of ORS 537.455 to 537.500 and 537.450(2) and (3) is a means of promoting more efficient use of water while increasing streamflows where public benefits can be enhanced. These rules are intended to encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water.

(2) An analysis of past water use is necessary to evaluate the effectiveness of a conservation measure. A lack of detailed use records will not automatically delay the processing of a conservation application, but the Commission may require a period of data collection by the applicant prior to implementation to establish a baseline for evaluating the effectiveness of the measures.

(3) The Commission recognizes that the potential to conserve water and the benefits from water conservation may vary with each proposal. These rules establish a process to review and evaluate the merits and impacts of conservation proposals. After a sufficient number of applications are submitted, these rules shall be reviewed and revised, if necessary, to further promote efficient water use.

(4) It is the intent of these rules to maintain and protect the irrigated agricultural base by allowing conserved irrigation water to be used to meet the needs of the right holder.

Stat. Auth.: ORS Ch. 536, 537 & 540
Hist.: WRD 19-1988, f. & cert. ef. 11-4-88

Application Form

690-18-040 (1) Each application containing a conservation proposal shall be prepared on forms provided by the Department. A separate conservation application must be submitted to the Department for each water right, except:

(a) When the conservation application is submitted by an organized water distribution entity, such as an irrigation district or other user group. Evidence of the applicant's authority to represent the certificate holders must be included; and

(b) When a conversation application is submitted for several rights under one ownership.

(2) Applications shall contain:

(a) The applicant's name, mailing address and telephone number;

(b) The names appearing on the certificates, decrees, or proof of appropriation;

(c) The names of decrees and page numbers, if applicable;

(d) The permit and certificate numbers, if applicable;

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- (e) The source(s) of water;
 - (f) The date(s) of priority;
 - (g) The rate and volume of water diverted in four of the last five years, and the rate and volume used in the portion of the system to be affected, noting the means of determination;
 - (h) The amount of conserved water the applicant expects to result from the implementation of the conservation measures in each month of the use period, described as a rate of flow and volume of water;
 - (i) A preliminary schedule which includes when the applicant proposes to begin construction, complete construction, and expects to achieve conservation;
 - (j) The estimated cost of the project, the anticipated source of funds and amounts from each source;
 - (k) For any out of stream use, the point of diversion, place of use and the type of use the holder intends to make with the portion of conserved water the holder may be allocated. If the use is instream, the applicant must specify the stream reach for which the water is to be managed;
 - (l) Whether the anticipated use of conserved water is on the applicants property, a sale, a lease, a temporary reservation or a dedication;
 - (m) A list of public and private entities which may have an interest or regulatory authority concerning any aspect of the proposed conservation measure;
 - (n) Irrigation district or water control district approval when applicable;
 - (o) Land use information outlined in the Department's Land Use Planning Procedures Guide; and
 - (p) Other information the Department or Commission deems necessary and appropriate to aid in the evaluation of the proposal.
- (3) Items to be attached to the application are:
- (a) A map with sufficient detail to locate and describe the facilities or areas affected by the conservation measures;
 - (b) A narrative description of the conservation proposal, including:
 - (A) A description of the diversion, transportation, application or recovery system which will be affected. The description shall be sufficient to verify the listed rates and volumes;
 - (B) A description of what presently happens to the water the applicant is proposing to conserve;
 - (C) A description of the planned changes necessary to conserve water. The description may be of sufficient detail to calculate new rates of use;
 - (D) A description of any measures planned to protect the public interest; and
 - (E) An assessment of the possible effects the proposed use of conserved water will have on other appropriators;
 - (F) A description of any mitigation planned to offset anticipated impacts to other water users.

Stat. Auth.: ORS Ch. 197, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90

Processing a Conservation Application

690-18-050 (1) When the Department receives a conservation application the Director shall make the following evaluation:

(a) Whether the conservation proposal will result in a reduced diversion;

(b) Whether the conservation proposal will not adversely affect existing water rights or the public interest, as described in ORS 537.170(5); and

(c) Whether 25 percent of conserved water is the appropriate amount to allocate to public use. The criteria the Director shall use in making a recommendation concerning the allocation of conserved water are listed in OAR 690-18-050(6)(b)(A)(i) through (vi).

(2) The Director shall provide public notice of all conservation applications and preliminary evaluations through:

(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the proposal are located, for a period of at least three weeks and not less than one publication each week;

(b) Mailing to individuals, organizations and agencies on the OAR Chapter 690, Division 1, and Division 11 mailing lists;

(c) Mailing to the planning department of each affected local government; and

(d) Mailing to any person who has requested notification of proposals and other parties the Director determines should be notified.

(3) If an objection is received by the Department within 30 days of the mailing of public notice or the first publication under subsection (2)(a) of this rule, the Director may work with the applicant and any person or agency raising the objection to determine whether the issues can be resolved through mutually agreeable conditions, or by modifications of the proposal.

(4) The Director shall refer the application, all public responses and an evaluation to the Commission.

(5) The Commission shall examine the application, the public responses and the Director's evaluation. If in the judgement of the Commission a proposed conservation measure may injure existing water rights or adversely affect the public interest, the Commission shall hold a public hearing on the application pursuant to ORS 537.170.

(6)(a) The Commission shall allocate conserved water if the Commission finds that the proposed conservation measure:

(A) Is feasible;

(B) Will produce conserved water;

(C) Can be effected without injury to existing water rights;

(D) Adequately mitigates any effects on other water users;

(E) Will not adversely affect the public interest; and

(F) Has been evaluated pursuant to requirements established in OAR 690-60-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans). If information on the future type and place of use is unavailable, the Commission may defer this determination until a request for allocation of conserved water is submitted.

(b) When the Commission allocates conserved water it shall issue a final order to be served on the applicant. A copy of the order shall be furnished to anyone requesting a copy. The order shall include:

(A) The percent of water allocated to the applicant and the state. The criteria the

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Commission shall consider in allocating more or less than 25 percent of conserved water to the state shall include, but need not be limited to:

(i) The amount of water necessary to satisfy identified instream needs as determined by the Commission;

(ii) The source of funds used for implementing the conservation measure. When more than 25 percent of the funds used to finance the project come from public sources and there are identified instream needs, more than 25 percent of the conserved water should be allocated to the State, except when allocating less would be of sufficient benefit to offset the contribution of the public funds;

(iii) The conservation potential of the affected basin. Less than 25 percent may be allocated to the State when the Commission determines that a lower allocation may result in an increase in conservation effort in the basin;

(iv) Whether or not the water right is located in a critical groundwater area. When in a critical groundwater area the Commission may allocate less than 25 percent to the State if the water right source is surface water and the applicant is willing to accept a condition on the use of conserved water such that its use may protect or enhance the groundwater aquifer;

(v) Whether or not the water right is located in an area with unresolved Native American or Aboriginal water rights. If so, more may be allocated to the State to offset potential future claims on the waters of Oregon; and

(vi) The pertinent provisions of the applicable basin plan.

(B) Any conditions placed on the proposed conservation measure, including a designated method and schedule for the collection of data before and after implementation to determine the effectiveness of the measures; and

(C) The approved schedule for:

(i) Completion of construction;

(ii) Implementation of the conservation measure; and

(iii) A time limit for requesting allocation of a quantity of conserved water. The applicant may request an extension of time if the project is not completed on schedule.

(c) If a timely request for a hearing is not filed under OAR 690-18-060, the director shall issue a final order.

(7) The issuance of a final order allocating a percent of conserved water does not allow any change in the type of use, place of use, or point of diversion of the original water right.

Stat. Auth.: ORS Ch. 197, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90

Appeal

690-18-060 An applicant or any one objecting to the proposed order may request a contested case hearing before the Commission within 30 days of issuance of the proposed order.

Stat. Auth.: ORS Ch. 197, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90

Allocation of a Quantity of Conserved Water

690-18-070 (1) Upon completion of the approved conservation measures, and the designated period of measurement, the water right holder may request the Water Resources Commission to determine the quantity of conserved water allocated to the state and to the water right holder according to the percentages established by the Commission. Any person requesting an allocation of (a quantity of) conserved water, must calculate on a form provided by the Department, the amount of conserved water by subtracting (b) from (a) as provided below:

(a) The maximum rate of diversion, and total volume appropriated as determined by measurements during the use period prior to the implementation of the conservation measures designated in OAR 690-18-050(6)(b)(B).

(b) The maximum rate of diversion and total volume appropriated as determined by measurement during the use period following the implementation of the conservation measures as designated in OAR 690-18-050(6)(b)(B). The Department may assist the applicant in making measurements to determine maximum rate of diversion and total volume appropriated as determined by measurements during the designated period.

(2) Due to weather factors, the applicant may request, or the Commission may determine, that a different quantity of conserved water than the amount shown above shall be considered as the amount of conserved water when applying the percentages defined in the final order under OAR 690-18-050(6)(b)(A).

(3) The request for allocation of a quantity of conserved water shall include:

(a) The point of diversion, place of use and the type of use the holder intends to make with the conserved water right. The information shall include:

(A) The name and address of any person buying or leasing the conserved water right and a legal description of the place of use;

(B) The period of time for which a water right is to be reserved instream, when applicable;

(C) A map shall be submitted that will clearly show each of the following:

(i) The location of each diversion point, 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);

(ii) If the use is irrigation, the area to be irrigated in each quarter-quarter section shall be indicated by shading or hatching and the number of acres in each quarter-quarter section indicated;

(iii) If the right is to remain instream, the stream reach through which the water is to be managed; and

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

(D) The terms of any agreement between the appropriator and the person using the conserved water; and

(E) If the right to the use of the conserved water is leased, a place where the water is to revert to upon expiration of the lease, containing the same information requested in OAR 690-18-070(3)(a)

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through (b).

(b) Evidence that the use of the conserved water by the holder would not harm any other appropriator; and

(c) Land use information as outlined in the Department's Land Use Planning Procedures Guide if the proposed type or place of use of conserved water is different than that approved under 690-18-050. In this case, the Commission shall follow those procedures for assuring compliance with Statewide Planning Goals and compatibility with comprehensive plans used in meeting Section 690-18-050 requirements.

(4) The Director shall provide written notice of the pending allocation request to the planning department of each affected local government. Planning directors shall have 30 days from the date shown on the notice to respond if the proposed allocation is incompatible with acknowledged comprehensive plans. The response period may be extended at the Director's discretion. The Director may presume that the proposal is compatible with acknowledged comprehensive plans unless informed otherwise within the specified comment period.

(5) In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the Commission shall follow resolution procedures provided in OAR 690-05-040 (Resolution of Land Use Disputes).

(6) The Commission shall verify the information provided in the request for allocation, submitted to satisfy OAR 690-18-070(1) through (3), and allocate a quantity of water to the applicant and the state based on the percentages established under OAR 690-18-050(6). After the Commission completes the allocation of conserved water, the Commission shall issue new certificates covering the changes in the original water right. These shall be:

(a) A separate new certificate preserving the unaffected portion of the water right;

(b) A separate new certificate shall be issued to define the right to the use of the applicant's portion of conserved water.

(A) When the right is not leased, reserved instream or dedicated to instream use, the certificate shall include:

(i) The name and address of the water right holder;

(ii) The decree and page number or the certificate number of the original water right;

(iii) The location of the point of diversion;

(iv) The source of water;

(v) The priority date of the right;

(vi) The rate at which water may be diverted and the amount that may be diverted;

(vii) The purpose for which the water is used;

(viii) The description of the legal subdivisions of land to which the water is appurtenant;

(ix) Any terms or conditions from the original water right which still apply; and

(x) Any other special circumstances or limitations affecting the use of water.

(B) When the conserved water right is leased by the water right holder, a certificate shall be issued:

(i) Subject to the terms and conditions of the lease;

(ii) Containing the same information listed in paragraphs (6)(B)(i) through (x) of this rule; and

(iii) Describing the place of use the right will revert to upon the expiration of the lease.

(C) When the conserved water right is reserved instream for future out of stream use, a certificate shall be issued which states:

(i) The name and address of the water right holder;

(ii) The decree and page number or the certificate number of the original water right;

(iii) The source of water;

(iv) The priority date of the right;

(v) The rate and duty which will be managed instream;

(vi) The stream reach through which the conserved water will be managed;

(vii) Any terms of conditions from the original water right which still apply; and

(viii) Any other special circumstances or limitations affecting the use of water.

(c) When a conserved water right is dedicated to instream use a new certificate shall be issued (defining the same information described in paragraphs (6)(C)(i) through (viii) of this rule according to subsection (6)(d) of this rule.)

(d) A new certificate shall be issued to the Water Resources Department defining the state's portion of the conserved water. This shall include:

(A) The decree and page number or the certificate number of the original water right;

(B) The source of water;

(C) The priority date of the right;

(D) The use for which the water will be managed;

(E) The stream reach within which the water will be managed;

(F) The rate of flow allocated to the state;

(G) The dates within which this right will be managed;

(H) All applicable terms or conditions from the original water right; and

(I) Any special circumstances or limitations affecting the use or management of water.

Stat. Auth.: ORS Ch. 193, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90

Management of Conserved Water

690-18-080 (1) The Department shall manage any conserved water allocated to instream use under the rules established to implement ORS 537.332 to 537.360 pertaining to instream water rights.

(2) A conserved water right reserved instream for future out of stream use shall be managed to carry the water through the stream reach approved by the Commission. Any conserved water reserved instream shall maintain its priority date and will not be subject to abandonment under ORS 540.610 to 540.650.

Stat. Auth.: ORS Ch. 193, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88

Change in Use of Conserved Water

690-18-090 (1) Any person or agency holding a certificate for the use of conserved water, which is being leased or reserved instream for future out of stream use, shall notify the Director of any change in the type of use, place of use or point of diversion. The notice must be submitted 60 days before the actual change and must include the same

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information requested in OAR 690-18-070, subsections (3)(a) through (c). All other water rights are subject to the transfer rules in OAR 690, Division 15.

(2) The Director shall only approve a change in the use of conserved water, that involves a change in the point of diversion, when the proposed change could not constitute an expansion of the right.

(3) The Director shall not approve a change in the use of conserved water unless evaluation of the proposal meets the requirements established in OAR 690-05-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(4) A change in the dispensation of the use of a conserved water right shall be deemed approved if the Director takes no action within 60 days.

(5) Any right to the use of conserved water that is sold or given to an agency or political subdivision of the state or person:

(a) Shall become appurtenant to the premises upon which use is made; and

(b) Unless dedicated to instream use, shall be subject to the provisions of ORS 540.510 to 540.539 and 540.610 to 540.560.

(6) The Director shall issue an order amending the certificate for the right to the use of conserved water, which describes the new use of the conserved water. The order shall include the information cited in OAR 690-18-070(4)(b) or (c).

Stat. Auth.: ORS Ch. 193, 536, 537 & 540

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90