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BARBARA BOGGS
SECRETARY

CERTIFICATE AND ORDER
FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE



I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 22, 1990

(Date)

Water Resources Commission

(Department)

(Division)

to become effective upon filing

(Date)

The within matter having come before the Water Resources Commission

(Department)

(Division)

after

If 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: April 15, 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)

OR 690-19-010 through 690-19-100 Drought Mitigation

repealed:
(Existing Rules)

repealed:
(Total Rules Only)

690-11-081 Emergency Water Use Authorization

Administrative Rules of the Water Resources Department

(Department)

Field Operations Division

(Division)

DATED this 25th day of June, 19 90

By: William H. Young

(Authorized Signer)

Title: Director

Statutory Authority: ORS 536.700 through 536.780

or

Chapter(s) _____, Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) 152, 19 89 Legislature

Subject Matter: Allow the Water Resources Commission to enact emergency action when the Governor declares a drought.

For Further Information Contact: Barry Norris

(Rule Coordinator)

Phone: 378-8455

WATER RESOURCES DEPARTMENT

CHAPTER 690 DIVISION 19

DROUGHT MITIGATION

Purpose of Rules

690-19-010 (1) The following administrative rules (OAR) apply to drought mitigation activities. The mitigation activities were authorized by the 1989 legislature and are codified at ORS 536.720 through 536.780 "EMERGENCY WATER SHORTAGE POWERS."

(2) These rules provide for action available to the Governor and the Water Resources Commission. They become operative only during extraordinary drought situations. Action within these rules is intended to mitigate problems which may develop during years when water supplies are inadequate.

Definitions

690-19-020 The following definitions apply in OAR 690, Division 19:

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the Director of the Water Resources Department.
- (4) "Designated drought area" means a specific area within the state so designated by the Governor.
- (5) "Emergency use permit" means a temporary permit for use, change in use, change in place of use, or change in point of diversion.
- (6) "Human consumption" means the use of water within a household only for drinking, cooking, and sanitation.
- (7) "Local government" means any governmental entity authorized by the laws of this state.
- (8) "Political subdivision" means any local government unit including a county, city, town, or district established under the laws of Oregon with the power to levy and collect taxes.
- (9) "Public corporation" includes any city, county or district organized for public purposes.
- (10) "Purchased agreement" means a contractual arrangement specifying an understanding or arrangement for one party to temporarily make use of a valid permit or water right held by another party. The contractual arrangement is written for a specified consideration and for a specified time period.
- (11) "Purchased option" means a contractual arrangement to buy or sell a valid permit or water right for a specified consideration within a specified time.

Duration of Drought Declaration

690-19-030 (1) During the effective time period of a drought declaration under Oregon Revised Statute 536.740, the Commission may:

(a) Allow emergency water use under the terms of emergency use permits without first conducting a hearing under ORS 537.170; (b) Waive the notice requirements under ORS 537.753 and the report required under ORS 537.762 pertaining to water well construction;

(c) Allow a temporary exchange of water as allowed under ORS 540.533 without first giving notice as required under ORS 540.535;

(d) Grant preference of use for human consumption and stock watering; or

(e) Allow a temporary change in use, place of use or point of diversion of water under the terms of an emergency use permit without complying with the notice and waiting requirements under ORS 540.520.

(2) Termination of a declaration of drought shall be by order of the Governor.

Emergency Water Use Permit

690-19-040 (1) After the Governor declares that a severe, continuing drought exists, the Director may accept applications for emergency use permits. Each application must be for use within a designated drought area and the proposed use must be allowed under the Commission's applicable basin plan. All fees required by OAR 690-19-100 shall accompany the application. Application forms may be obtained from the Department.

(2) Except in applications for a secondary permit for use of stored water, the applicant shall submit sufficient information to establish that:

(a) Drought conditions have created an inability on the part of the applicant to obtain water under an existing right, and

(b) There is an immediate threat to the health and welfare of the people of Oregon.

(c) Additionally, the Director may require the applicant to submit a plan and evidence showing conservation and water use curtailment measures have been taken before use will be made of an emergency use permit.

(3) An emergency use permit may be issued immediately upon approval of the Director without conducting a hearing under ORS 537.170.

(4) Emergency use permits granted by the Director shall include the following conditions or limitations:

(a) A confirmation stating use of water is subject to prior permits, rights and minimum streamflows;

(b) A specified duration of use;

(c) Rate, volume and time limitations;

(d) The expiration date of the permit; or

(e) Any other conditions the Director finds appropriate.

(5) An emergency use permit issued to a state agency or political subdivision shall require:

(a) Submission of a water conservation or curtailment plan or both for approval by the Director; or

(b) Implementation of an approved water conservation or curtailment plan or both when directed by the Governor.

(6) A previously submitted conservation or curtailment plan may be acceptable to the Director in lieu of the requirement for submittal in 5(a) above.

(7) An application for an emergency use permit may be rejected if the application fails to meet any requirements of these rules.

Incomplete Applications

690-19-050 When an application does not contain all the information and supporting material required by the application form and these rules, the application shall be declared incomplete. An incomplete application shall be returned to the applicant with a request for additional information. The applicant shall have 30 days to complete the application and return it to the Director. If the applicant fails to return a completed application within 30 days, the application shall be rejected.

Assumption of Liability

690-19-060 A person issued an emergency use permit shall assume all liability associated with the use of the permit in the event claims of injury or claims for compensation are filed.

Preference of Use, Human Consumption and Livestock

690-19-070 (1) When the Governor declares that a severe, continuing drought exists, the Commission may grant a temporary preference of use to water rights for human consumption and stock watering. The temporary preference of use shall be by order and shall apply only to designated drought areas. Temporary preference shall be given over other water uses regardless of priority date.

(2) In considering designation of an area for preferential use, the Commission may review recommendations from the Drought Council, recommendations from the Water Availability Committee, recommendations from county government officials within a designated drought area, and any other information it may wish to consider.

(3) Before issuing an order granting a temporary preference of use the Commission shall determine that the order is necessary to protect the health and welfare of the people of Oregon. Any order issued by the Commission for preference of use shall include:

(a) An expiration date for the temporary preference of use which shall not extend beyond the termination date of the Governor's drought declaration;

(b) The geographic area specified for the temporary change in preference of use which shall be within the designated drought area;

(c) A general statement outlining which water uses have been designated temporarily inferior;

(d) A statement that there is an immediate threat to the health and welfare of the people of Oregon; and

(e) A requirement that political subdivisions within the designated drought area submit water conservation or curtailment plans or both for the Director's approval.

(4) Upon issuance of the order the watermaster within the designated drought area shall be notified of the temporary preference of use.

Purchase of Option or Agreement for Use of Existing Right

690-19-080 (1) When the Governor declares that a severe, continuing drought exists, the Commission, a local government or a public corporation may proceed with the terms of a purchased option or agreement for use of an existing permit or water right. The terms of the use shall be as follows:

(a) Use may begin at any time, but the total use shall be limited to the rate, duty, volume, seasonal limit and other limits of the existing permit or water right.

(b) Use of water under the agreement or option expires on the date of the Governor's drought termination order.

(2) In order for an agreement or option to be recognized as a valid water use, the holder of the agreement or option shall give written notice to the Director. The notice shall include:

- (a) A copy of the option or agreement;
- (b) A description of the proposed use;
- (c) A map illustrating the place of the proposed use; and

(d) An affidavit from the affected holder of a water right certifying that use has not been abandoned under ORS 540.610(1).

(3) In addition to the notice required under subsection (2) of this rule, state agencies and political subdivisions shall submit for the Director's approval a water conservation or curtailment plan or both when required by the Commission. After approval of the plan, state agencies and political subdivisions must implement the plan when directed by the Governor.

(4) Upon receipt of written notice the Director shall determine whether the agreement or option is a water right of record and shall notify the watermaster of that determination.

(5) The holder of the agreement or option is not required to construct any diversion or other appropriation facilities or works.

(6) Water used under the terms of an approved option or agreement may be used at locations or for beneficial uses other than those described in the permit or water right.

(7) Use of water under the terms of an approved option or agreement shall not be considered by the Department in a determination of abandonment of the original permit or water right under ORS 540.610(1).

Requirement for Conservation and Curtailment Plans

690-19-090 (1) When the Commission declares that a severe or continuing drought is likely to occur, it may order state agencies and political subdivisions to develop and file with the Director conservation or curtailment plans or both.

(a) The Commission's order shall require development of the plan within 30 days from the date of the order.

(b) If a state agency or political subdivision fails to comply with the order to provide plans that are acceptable to the Director, or fails to implement approved plans when directed by the Governor, the Director may do any or all of the following:

(A) Delay approval of an emergency use permit requested by a state agency or political subdivision.

(B) Suspend use under an existing emergency use permit held by a state agency or political subdivision.

(C) Offer evidence of the failure to comply by a political subdivision to the Commission when the Commission is considering designating an area for preference of use for livestock and human consumption.

(D) Develop an appropriate plan for the state agency or political subdivision. Plans developed by the Director shall be implemented by the state agency or political subdivision when directed by the Governor.

(2) Following a declaration by the Governor that a severe, continuing drought exists or is likely to exist, the Governor may direct state agencies and political subdivisions to implement water conservation or curtailment plans or both, as approved by the Director.

(a) Water conservation plans shall include procedures to:

(A) Reduce usage of water resources for non-essential public purposes;

(B) Undertake activities consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources; and

(C) Establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water.

(b) Water curtailment plans shall be developed to provide water necessary for human and livestock consumption during a severe, continuing drought. The plans shall specify procedures: (A) To curtail, adjust or allocate the supply of water resources for domestic, municipal and industrial use; and

(B) To regulate the times and manner in which water resources are consumed.

(c) Approval by the Director of a water conservation plan or a water curtailment plan is contingent on the Director finding that the plan satisfactorily promotes uniformity in water conservation or curtailment practices and that there is consideration given to local conditions in providing coordination of usage regulation.

Schedule of Fees

690-19-100 The following is a schedule of fees for administrative work performed by the Department in processing an emergency use permit:

(1) Temporary permit for a new use:

(a) Examination fee = \$200; plus,

(b) Recording fee = \$400 for first cubic-foot/second or fraction thereof; \$100 for each additional cubic-foot/second or fraction thereafter.

(2) Temporary change in use, place of use, or point of diversion:

(a) Examination fee = \$100; plus,

(b) Recording fee = \$100 for first cubic-foot/second or fraction thereof; \$50 for each additional cubic-foot/second or fraction thereafter.