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

WATER RESOURCES DEPT.
SALEM, OREGON

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on 2-26-97 (Date)
by the Water Resources Department (Department) (Division)

to become effective² upon filing (Date)

The matter having come before the Director of the Water Resources Department (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: 1-1-97

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List INDIVIDUAL Rule Number(s) on appropriate lines below).

ADOPTED^{3,4,6,7}: _____

AMENDED^{4,6,7}: 690-28-025

REPEALED⁴: _____

RENUM. TO^{3,4,6,7}: _____

AMENDED & RENUM. TO^{3,4,6,7}: _____

as Administrative Rules of the Water Resources Department

DATED this 26th (Department) day of February (Division) 1997

BY: [Signature] (Authorized Signer)
Title: Director

STATUTORY AUTHORITY: ORS 539.005(2) : or

OTHER AUTHORITY: _____

STATUTES BEING IMPLEMENTED: _____

SUMMARY:

OAR 690, Division 28 are the rules by which the Director conducts Oregon's adjudication proceedings. The proposed amendments to Division 28 will authorize the Director to grant waivers to the adjudication claiming and/or mapping requirements on a case-by-case basis. Waivers will be granted only where to do so will not diminish the Department's ability to evaluate the claim.

For Further Information Contact
RULES COORDINATOR⁵: Tom Byler Phone: (503) 378-8455

- Instructions:
- ¹ Date must be prior to or same day as filing - not subsequent to filing date.
 - ² Date must be upon filing or any later specified date.
 - ³ Numbers being assigned must be preapproved by Secretary of State's office, Archives Division, Administrative Rules Section.
 - ⁴ Enter each rule number affected INDIVIDUALLY (i.e., 000-00-000, 000-00-000, & 000-00-000. Do not use series or parts of rules).
 - ⁵ Required to be on file with Secretary of State's office, Archives Division, Administrative Rules Section.
 - ⁶ Attach the FULL TEXT of each rule number being affected. Do not attach text of rules not affected.
 - ⁷ Following the text of each rule attached, insert the numbers of the statutes being implemented.

February 28, 1997

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 28
SURFACE WATER REGISTRATIONS AND THE ADJUDICATION PROCESS

Purpose

690-28-005 These rules provide for the filing of registration statements for pre-1909 uses of water in areas not yet adjudicated, and federal and Indian reserved rights. They explain the process by which the Director will make determinations on surface water registrations, federal reserved water rights, and spring registrations. These rules also explain the adjudication process for making final determinations of the water rights.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

Definitions

690-28-010 The following definitions apply in OAR Chapter 690, Division 28:

(1) "Adjudication Process" is the process for making final determinations of the extent of vested water rights and federal reserved rights within a stream basin as set out in ORS Chapter 539.

(2) "Beneficial Uses" are as defined under OAR Chapter 690, Division 11.

(3) "Claim" means a completed statement and proof of claim concerning a pre-1909 vested water right, or a federal reserved water right as described in ORS Chapter 539, or a right to the use of spring waters under ORS 537.599.

(4) "Claimant" means any person asserting ownership of rights to the use of surface or spring waters of the State of Oregon or on whose behalf ownership of rights to the use of water is asserted. The rights asserted shall be undetermined vested or spring rights not evidenced by a court decree issued pursuant to ORS Chapter 539, or be federal reserved rights. "Claimant" includes, but is not limited to, registrants, an individual Indian or Indian Tribe, or the federal government acting on its own behalf or on the behalf of an Indian Tribe or an individual Indian.

(5) "Department" means the Oregon Water Resources Department.

(6) "Director" means the Water Resources Director.

(7) "Documentation" includes but is not limited to:

(a) Statements of persons having knowledge of historical use of water;

(b) A true copy of the original land patent taking the land in question from the public domain;

(c) A true copy of the original government land office survey map;

(d) A document that substantiates the time the project was initiated or constructed;

(e) Contracts, agreements or stipulations between water users that define rotation agreements, uses along a common ditch, or other conditions to reduce conflicts among users;

(f) A true copy of Congressional Legislation, Presidential Order, Indian Treaty, or Court Order setting aside lands as a federal reservation; or

(g) Other relevant documents or information tending to establish the water right.

Note: These rules were filed with the Office of the Secretary of State and took effect on February 28, 1997. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State.

(8) "Federal Reserved Water Right" means the right for a quantity of water necessary to satisfy the primary purpose or purposes of lands set aside by the United States government as a federal reservation, or a right derived from such rights. The reservation shall be documented in an original Congressional Act, Presidential Order, Indian Treaty, or Court Order.

(9) "Final Order of Registration" means the final order which contains the Director's findings of fact and determines the rights to the use of water for a particular registration. This order is valid from the time it is entered into the records of the Department until an order of determination is submitted to the Circuit Court.

(10) "Inchoate Right" means a right to the use of water that began prior to February 24, 1909, or as part of a federal reserved right that has passed into non-federal ownership, or as part of an Indian reserved right for practicably irrigable acreage that has passed into non-Indian ownership. The right must be put to full beneficial use and perfected with reasonable diligence.

(11) "Indian" means any federally recognized tribe of Indians or any enrolled member of such tribe.

(12) "Instream" means within the stream channel, lake bed or place where water naturally flows or occurs. An instream water right does not require a diversion or any other means of physical control over the water.

(13) "Instream Flow Requirement" means the amount of water required for aquatic life, fish life, wildlife, fish and wildlife habitat, or other federal reserved water right for which there is no diversion from a stream.

(14) "Order of Determination" means the final summary document submitted to the Circuit Court which contains the Director's findings of fact and establishes all of the vested and reserved rights to the waters within the general stream basin being adjudicated.

(15) "Party" includes all claimants and all holders of permitted, certificated, or decreed water rights on a stream subject to the adjudication.

(16) "Person" means any individual, partnership, corporation, association, governmental subdivision, private organization of any character, the State of Oregon or any political subdivision thereof, the United States, an Indian Tribe, or any state or federal agency.

(17) "Practicably Irrigable Acreage" means lands that were set aside as part of an Indian treaty or which derived from Indian treaty rights for the purpose of developing agricultural benefits. The lands shall be capable of being identified as agricultural lands. Agricultural lands in general are lands which with water applied without waste in amounts common to current reasonable farming practices, can produce specific crops suited to the local climate. The land must be capable of sustaining production for a reasonable number of years to offset the initial investment of farm improvements. The land shall have been part of an Indian reservation, continuously under Indian ownership and need not be irrigated now.

(18) "Proposed Order of Registration" means a proposed order containing the Director's findings of fact and determines the right to the use of waters for a particular registration. If the registrant does not request a hearing on this order it becomes a final order of registration.

(19) "Registrant" means any person who has filed a registration statement under ORS 539.240 or ORS 537.800, or any person or owner on whose behalf a registration statement is filed.

(20) "Registration Statement" means a completed form in writing making claim to an undetermined vested right to appropriate surface water under ORS 539.010, or to a federal reserved right under ORS 539.230 and 539.240, or a right to the use of spring waters under ORS 537.800.

(21) "Statement and Proof of Claim" means a completed form in writing, under oath to be submitted at the time of the taking of testimony pursuant to ORS 539.070.

(22) "Testimony" means oral or written statements under oath provided to support the previously filed registration statement or statement and proof of claim.

(23) "Undetermined Vested Right" means any right to the use of waters of the State of Oregon initiated prior to February 24, 1909, under state common law or statute, or a federal reserved right which is not evidenced by any decree issued pursuant to ORS Chapter 539.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

SURFACE WATER REGISTRATION PROCESS

Notice of Need to Register Claims

690-28-015 In addition to publishing notice as required by ORS 539.230(2), the Director shall provide notice of the need to register all claims to undetermined vested water rights and federal reserved rights by:

(1) Holding public meetings within the county/counties in which the stream or river system to be adjudicated is located.

(2) Publishing announcements in applicable trade or organization newsletters.

(3) Submitting public service announcements on local radio stations.

(4) Submitting of notice for posting in appropriate post offices.

(5) Informing the following:

(a) State watermasters;

(b) County extension agents;

(c) Soil and water conservation districts;

(d) County livestock association;

(e) County wheat league;

(f) County historical society;

(g) County dairymen's association;

(h) Affected Indian tribes and government agencies;

(i) County courts and county commissioners; and

(j) Certified water right examiners.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

Previously Adjudicated Streams

690-28-020 (1) In an area where a general stream adjudication has been completed only claimants for federal reserved rights, or persons claiming a right to the use of spring waters which originally stayed all on one property, or persons who were not or whose predecessors were not served notice of the original adjudication may file a registration statement of claim under these rules.

(2) A registration statement for a federal reserved right in an area where a general stream adjudication has been completed shall be indorsed with the date of receipt. The registration shall not be affirmed until the status of the filing has been determined with respect to the original and any supplemental decrees.

(3) A person having an undetermined vested water right in an area where a general stream adjudication has been completed may file a petition for a supplemental adjudication with the court where the original decree was entered if the person documents the owner of the land was not given required notice at the time of initiation of the original proceeding.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

**FILINGS TO DIVERT WATER FOR A BENEFICIAL
USE OR FOR STORAGE IN A RESERVOIR**

General Instructions

690-28-025 For purposes of filing registration statements and statements and proofs of claim in an adjudication.

(1) Each registration statement shall be neatly printed in ink or typewritten on a form or in a format approved by the Department. The registration statement shall be verified as accurate by the registrant and notarized.

(2) One registration statement or statement and proof of claim may include multiple uses with one common date of priority for parcels of contiguous land. Separate statements shall be registered for non-contiguous properties or different priority dates.

(3) Each item on the form shall be completed. If the answer to a question is not available a statement to that effect shall be made for each such entry.

(4) The required map shall be prepared by a certified water right examiner. The certified water right examiner shall confirm the map by an on-site inspection. Maps submitted become a part of the registration. The survey and map standards shall be the same as OAR 690-11 and 690-14-170. In addition the map shall include:

(a) The date the survey was performed;

(b) The point of beginning and the referenced land survey corner of the deed, if applicable;

(c) The dimensions and the capacity of any existing diversion systems; and

(d) The number of acres irrigated in each quarter-quarter shall be shown to the nearest tenth of an acre.

(5) Any person or agency claiming a federal or Indian reserved water right shall also identify the reservation upon which the claimed rights are made. They shall state the primary purpose or purposes of the reservation, the date of the reservation, and attach copies of the reservation documents. The Director may request additional documentation of Indian allotments and chain of title to the time the lands may have passed out of Indian ownership, if appropriate.

(6) Forms prepared by the Department for filing registration statements shall be provided upon request. Forms shall be available at all state watermaster offices. The completed statement shall be filed with the required map, fees and supporting documentation, in the office of the Department in Salem, Oregon.

(7) Requests for exceptions to the mapping standards or for modification of the application form shall be requested in advance of filing. The request may be approved at the discretion of the Director.

(8) Pursuant to ORS 539.040 (3) (a) and ORS 539.240 (10), the Director may authorize waivers of the requirements of these rules, so long as substantially the same information required by ORS 539.240 (2) is provided. Requests for waivers shall be submitted to the Director in writing no less than 30 days prior to filing of a registration statement or statement and proof of claim. The Director may approve a waiver only upon a finding that the waiver does not diminish the Department's ability to evaluate the registration statement or statement and proof of claim. The Director's decision as to whether to grant or deny a waiver shall be made in a timely manner, shall be in writing and shall become a part of the record of the adjudication.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90; WRD -1997, f. & cert. ef. 2-28-97

Filings for Practicably Irrigable Acreage

690-28-026 (1) Any Indian or Indian tribe claiming a right for practicably irrigable acreage shall, in addition to OAR 690-28-025, establish that the land for which the right is claimed is arable. The claimant must show that it is technically and economically possible to develop an irrigation system to serve the land. Factors that shall be considered include but are not limited to:

- (a) Source and availability of water;
- (b) Soils type and classification;
- (c) Slope of the land;
- (d) Elevation above sea level;
- (e) Growing season (degree days);
- (f) Natural precipitation;
- (g) Crop types that could be grown;
- (h) Description of the proposed irrigation system; and
- (i) Estimated costs of developing the irrigation system.

(2) A claimant for practicably irrigable acreage shall identify and map all acres that are or are proposed to be irrigated. The claimant shall show existing points of diversion or storage reservoirs, as appropriate.

(3) A claimant shall document through a chain of title statement that the lands have never had more than five consecutive years of non-Indian ownership since the date of the reservation.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Filings for Federal Reserved Instream Water Rights

690-28-027 (1) Any Indian tribe or federal agency claiming an instream federal reserved right shall provide the information in OAR 690-28-025(3) and (5) for each stream reach for which a right is being claimed. A separate registration form shall be filed for each stream reach in which an instream reserved right is being claimed. Each stream reach or lake shall be identified on a Department basin map. The upstream and downstream locations of the reach shall be identified according to the public lands survey system. The purpose or purposes of the instream flow shall be given. If applicable, the species of fish or wildlife to be supported must be identified. Flows requested shall be specified by month in cubic feet per second, elevation of lake surface, or other measurable units as appropriate.

(2) A claimant shall provide supporting documentation of the methods used to estimate water quantities needed to satisfy the purpose or purposes of the reservation. Accepted methodologies for determining habitat needs include, but are not limited to:

(a) Instream Flow Incremental Methodology habitat suitability curves published in a series of technical reports by the U.S. Fish and Wildlife Service;

(b) The Oregon Method developed by the Oregon State Game Commission (Thompson, K.E., 1972, determining streamflows for fish life, pp. 31-50, in Proceedings of the Instream Flow Requirement Workshops, Pacific N.W. River Basins Commission, Portland, OR);

(c) Forest Service Method developed by the Pacific Northwest Region USDA Forest Service, (Swank, G.W. and Phillips, R.W. 1976, Instream Flow Methodology for the Forest Service in the Pacific Northwest Region, pp. 334-343, in Proceedings of Symposium and Special Conference on Instream Flow Needs, Orsborn, J.F. and O.H. Allman, eds. Vol. II, American Fisheries Society, Bethesda, MD); and

(d) Environmental Basin Investigation Reports conducted by the Oregon State Game Commission between the mid-1960's and the mid-1970's.

(3) The claimant may propose for the Department's consideration:

- (a) A means and location for measuring the instream water right;
- (b) A strategy and responsibility for monitoring flows for the instream right; and
- (c) Any provisions needed for managing the water right to protect the reserved claim.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Fees and Late Registration or Claims

690-28-028 (1) Minimum fees required by ORS 539.081 shall be paid at the time a registration or claim is submitted. Persons filing after December 31, 1992, shall pay one and one-half times the fees required for a timely filing.

(2) A person filing for practicably irrigable acreage or for other federal reserved rights may request additional time to provide support materials. The request for additional time shall state when interim data will be available and when the final claim is to be made. The Director may approve a time extension based on the progress of the general stream adjudication in question. The final claim shall detail the exact acreages or quantities of water for which the claim is being made. All fees shall be paid at the time the exact quantity of water is requested. Persons are encouraged to file early on practicably irrigable acreage and instream water rights so the Department can aid in determining how to obtain additional supporting documentation.

(3) Fees for instream water rights shall be based on the month of the year having the highest quantity of water requested for the stream reach.

(4) Fees shall not apply to any federally recognized Indian tribe, or to the United States acting as trustee for such a tribe, claiming an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted instream use to satisfy tribal hunting, fishing, or gathering rights.

(5) After December 31, 1992, a petition filed for late registration shall include a sworn statement detailing the good cause for failing to file the registration on time. The petition shall include a brief summary of the claim to be filed. The Director shall decide each case on its own merits.

(6) For purposes of ORS 539.240(4), good cause for not filing a registration statement by December 31, 1992, includes, but is not limited to that:

(a) Recent acquisition of lands made filing by the deadline impracticable; or

(b) Other circumstances made filing on time impossible.

(7) To rebut the presumption that a person has abandoned a claim because of a late filing a person must:

(a) Show there has been a continuous use of water from before February 24, 1909;

(b) State the registration is for a future use of a federal reserved right; or

(c) Claim an exemption based on economic hardship as allowed under OAR 690-17-800.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Review of Registration Statements and Orders of Registration

690-28-029 (1) When a registration statement is received in acceptable form by the Department, the Department shall indorse on the registration the date it was received. The statement shall be filed and an acknowledgement letter sent to the registrant. A copy of the claim shall be sent to the watermaster.

(2) Notice of each registration shall be published in the Department's public notice of applications. Notice may also be published in a newspaper within the general area of the claim.

(3) The Department shall review each registration to identify new or conflicting uses of water and those persons that may be impacted by enforcement of the claim. If two or more persons are impacted by the registration, then an informational public hearing may be scheduled to determine the extent of the problem. Additional information may be requested of the registrant. Persons may meet at their own discretion to stipulate agreements for the Director to review. A field inspection may be made of any registration.

(4) The Director shall prepare a proposed order of registration for each registration. If the registration is affirmed or modified the Director shall identify:

- (a) The name and mailing address of the claimant;
- (b) The claimed beneficial use of the water and the amount allowed;
- (c) The stream from which the water is diverted or in which the instream right is reserved;
- (d) The tentative priority date of the claimed use of water;
- (e) The period of the year during which the claimed use of water is allowed;
- (f) Location of the claim within the township and range, by quarter-quarter section, Donated Land Claim, or Government Lot;
- (g) The location of the diversion point by reference to an established public land survey corner;
- (h) The location of the place of use, and if for irrigation, the area irrigated in each quarter-quarter section; and
- (i) Any conditions or stipulation that have been added to the registration, such as flow monitoring requirements.

(5) If the registration is rejected the Director shall state the basis for the rejection.

(6) Upon completion of the review, the Director shall mail a copy of the proposed order of registration to the registrant. The registrant may petition for a hearing within 20 days under ORS 183.415 to 183.470. If no hearing is requested the proposed order of registration becomes a final order of registration. The final order of registration shall be entered into the records of the Department and mailed to the registrant and the watermaster.

(7) A registrant may modify a claim prior to the final order of registration being entered. All modifications are subject to review under this rule, and no refunds of fees shall be awarded based on any modification.

(8) Upon entry of the Director's final order of registration the registrant is prima facie entitled to appropriate the water to the extent and in the manner disclosed in the recorded registration statement and final order of registration.

(9) No registration statement recorded under this chapter or affirmed or modified by a final order of registration under OAR 690-28-029 shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate surface or spring water under a recorded registration statement is subject to a determination under ORS 539.010 to 539.240, and is not final or conclusive until so determined.

Stat. Auth.: ORS Ch. 539
Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Petition for Determination of Water Rights
690-28-030 [WRD 22-1988,
f. & cert. ef. 12-14-88;
Repealed by WRD 10-1990,
f. & cert. ef. 7-20-90]

Time for Filing Claims and Evidence
690-28-035 [WRD 22-1988,

f. & cert. ef. 12-14-88;
Repealed by WRD 10-1990,
f. & cert. ef. 7-20-90]

Standards to Evaluate Claims

690-28-040 (1) Each claim or registration statement for existing beneficial uses shall be compared to all information submitted for consistency regarding settlement of the area and general development of projects. The burden of proof to establish a claim by a preponderance of relevant evidence rests on the claimant.

(2) Lands identified as practicably irrigable acreage shall be evaluated based on the physical characteristics as they compare to lands commonly identified with growing a particular crop. The Department may consult with federal or state agricultural agencies, or any other person with appropriate expertise to verify factors for determining arable lands.

(3) For any river basin or subbasin the Director may propose rates and duties of water to be allowed per acre of irrigated lands and of practicably irrigable acreage. The Director may schedule a public hearing to accept information and testimony about the appropriateness of those limitations.

(4) The Director may propose rates and duties for watering stock from streams, for lands that are naturally flooded, or for other beneficial uses as appropriate. The Director may schedule a public hearing to accept information and testimony about the appropriateness of those limitations.

(5) Instream flow requirements shall be based on hydrological estimates or gaging data that can be obtained for the particular stream reach. The Department shall prepare an estimate of natural flows that would be available in the stream reach. The water availability estimate shall account for current usage of the water resource. The Director may require additional documentation of instream flow requirements if the claim is greater than the estimated average natural flow or level for the stream reach. If the physical conditions of a waterway have changed since the reservation lands were established then the Department may consult with federal or state fisheries agencies, or any other person with appropriate expertise to aid in determining natural flows necessary to maintain the primary purpose or purposes of the reservation.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

Reasonable Diligence

690-28-045 (1) The complete beneficial use of all the water for a proposed purpose does not have to be made in its entirety prior to February 24, 1909, to claim a vested water right. All persons, including persons who acquire formerly reserved land shall be allowed to develop their claim with reasonable diligence.

(2) Reasonable diligence in the construction of the system of works necessary to fully accomplish appropriation of the water does not require unusual or extraordinary effort. Reasonable diligence is that which is usual and ordinary with persons performing similar projects. The water user must demonstrate a genuine intent to complete the appropriation in a timely manner. The question is one of fact, to be determined from the circumstances on case-by-case basis.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 22-1988, f. & cert. ef. 12-14-88; WRD 10-1990, f. & cert. ef. 7-20-90

Filing Contests of Claims of Others

690-28-050 [WRD 22-1988,

f. & cert. ef. 12-14-88;
Repealed by WRD 10-1990,
f. & cert. ef. 7-20-90]

Amendments to Registration Orders

690-28-055 (1) When any amendment in ownership, point of diversion, place of use, or type of use is necessary within a right defined by a registration statement then the amendment shall be submitted in writing to the Department. The request shall include documentation that the water has been used over the past five years in accordance with the terms and conditions of the registration. The request shall state the reasons for the change.

(2) When any change in point of diversion, place of use, or type of use is received by the Department a notice of the change shall be published in the Department's public notice of applications.

(3) The Director shall review each amendment to determine that the change will not result in injury to other water rights holders, or a net loss of water available to downstream users or an expansion of the right under the original registration.

(4) The Director may accept the amendment to the registration statement and include it as part of the records of the Department. No amendment to a registration shall be construed as final or conclusive until it is determined under an adjudication proceeding under ORS 539.010 to 539.240.

(5) When lands are sold a registration is to be assigned in whole or in part from an Indian reserved right of practicably irrigable acreage to a non-Indian, the assignment must be filed with the Department. The Director shall cancel the initial order for the federal reserved right and issue an order confirming an inchoate right for the undeveloped uses. The inchoate right shall be put to full beneficial use within five years of issuance of the order unless an extension is granted by the Director. The Director shall also issue a remaining right order for the part of the federal reserved right not assigned.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Beginning the Adjudication Process

690-28-060 (1) Any water right holder may petition the Director to begin a general stream adjudication. The petitioner may be a registrant or the holder of a right to appropriate water from the subject stream system. The petition may be signed by more than one registrant or permitted or certificated water right owner.

(2) At the start of a general stream adjudication the Director shall send in person, or by registered or certified return receipt mail to each claimant and all holders of permitted or certificated water rights on the stream the notice required by ORS 539.030. The Director shall include a form for any party to file who wishes to be included in the adjudication solely to contest the claims of others.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Time for Filing Claims and Documentation

690-28-065 The notice of taking of testimony issued by the Director pursuant to ORS 539.040 shall state:

(1) All claimants shall file a statement and proof of claim, including persons who have already filed a registration statement. The claim shall contain the same information as required under OAR 690-28-025, 690-28-026, or 690-28-027 as appropriate. If the claimant agreed with data collected and mapped by the

Department or if the map submitted with the original registration is still valid, then an additional map is not required. For purposes of the Klamath Basin adjudication a person may submit an updated map prepared by a certified water right examiner, or a registered engineer or surveyor.

(2) Any person who does not file a registration statement within the time required by ORS 539.240 may not file a statement and proof of claim to an undetermined vested right to water.

(3) Director shall set a time certain for filing statements and proofs of claim and notify all registrants by certified return receipt mail when and how the statement and proof of claim shall be filed. The Director may set separate times for accepting claims for consumptive uses, practicably irrigable acreage and instream reserved rights.

(4) Claimants may be required to provide information in addition to that on their registration statement, including, but not limited to additional information that was not available at time of registration such as:

(a) New maps showing changes in use; or

(b) Documentation of chain of title to the current owner.

(5) For purposes of the Klamath Basin adjudication fees required by ORS 539.081 shall be paid at the time a claim is filed. Fees shall be processed as provided in OAR 690-28-028.

(6) Each claim shall be evaluated on the same basis as surface water registrations as stated in OAR 690-28-040.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Summary of Claims

690-28-070 The Director shall identify for all claimants in a summary document:

(1) The name and mailing address of the claimant.

(2) The claimed beneficial use of the water and the amount allowed.

(3) The stream from which the water is diverted or in which the instream right is reserved.

(4) The priority date of the claimed use of water.

(5) The period of the year during which the claimed use of water is allowed.

(6) Location of the claim within the township and range, by quarter-quarter section, Donation Lane Claim, or Government Lot.

(7) The location of the diversion point by reference to an established public land survey corner.

(8) The location of the place of use, if for irrigation, the area irrigated in each quarter-quarter section.

(9) Any conditions or stipulations that have been added to the claim.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Filing Contests of Claims of Others

690-28-075 (1) After all claims, documentation and supporting materials have been filed the Director shall schedule an open inspection period. All parties shall receive notice as provided in ORS 539.090 of the times to inspect the claims and evidence. All contests of claims shall be filed in accordance with the requirements of OAR Chapter 690, Division 30 within 15 days of the closing date for public inspection. The Director may extend this time by 20 days if requested by a party to the proceeding showing good reason for the extension.

(2) A person who does not claim a pre-1909 vested right but has interest in a stream by holding a valid water right period or certificate may enter the proceeding solely for contesting claims made by others pursuant to OAR 690-30.

(3) Contestants shall state with reasonable certainty the ground for the contest. Reasons for contest include, but are not limited to:

(a) Claiming a wrong priority date;

(b) Claiming a wrong quantity of water;

(c) Claiming a wrong area of use;

(d) Claiming a use started after February 24, 1909, except on federal reserved rights or spring registration;

(e) Claiming a use that had been forfeited by five or more consecutive years of non-use less than fifteen years previously; and

(f) Claiming a use that has been intentionally abandoned.

(4) The contestant shall serve notice on contestee by certified mail with return receipt and shall submit proof of service to the Director. The Director shall set a date for hearing if the parties involved cannot settle the contest by stipulation as provided in OAR 690-30.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90

Responsibilities to Circuit Court

690-28-080 (1) The Director shall prepare findings of fact and an order of determination of all of the claims within the general stream basin. The original documentation and certified copies of the observations, measurements, and maps shall be submitted to the Circuit Court with the findings of fact and order of determination.

(2) The Director shall send a notice of the Court hearing date to all parties as provided in ORS 539.130.

(3) The Director shall participate in the hearings on the findings and in hearings on exceptions to the findings, if any. If the findings are remanded to the Department, the Director shall collect such additional documentation as is necessary to establish the facts or to resolve conflicts. The Director may amend the findings and shall submit the amended findings and order of determination back to the Court for reconsideration.

(4) After the court has affirmed or modified the findings of fact and order of determination of the Director and the Director has received a certified copy of the decree, the watermasters shall enforce the rights as evidenced in the decree.

(5) The Director shall allow a six month period to pass to allow for appeal of the Court's decision. When all appeals have been resolved the Director shall issue a certificate to each water right holder as provided in the decree or as modified in the appeals process.

Stat. Auth.: ORS Ch. 539

Hist.: WRD 10-1990, f. & cert. ef. 7-20-90