

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

RECEIVED
DEC 14 1 58 PM '88

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on December 9, 1988
(Date)

by the Water Resources Commission
(Department) (Division)

to become effective upon filing
(Date)

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

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

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: August 15, 1988

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: 690-28-005 to 050
(New Total Rules)

Amended: _____
(Existing Rules)

Repealed: _____
(Total Rules Only)

RECEIVED

DEC 14 1988

REG. COUNSEL'S OFF.

as Administrative Rules of the Water Resources Department Field Operations Division
(Department) (Division)

DATED this 9th day of December, 19 88.

By: William H. Young
(Authorized Signer)

Title: Director

Statutory Authority: ORS 539 or

Chapter(s) _____, Oregon Laws 19 87 or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) 130, 19 87 Legislature

Subject Matter:
Explains procedure to file registration statements of claims to the use of water made prior to 1909. Also explains the actual adjudication process.

For further information contact Larry W. Jebousek Phone: 378-3066
(Rule Coordinator)

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690, DIVISION 28
REGISTRATION AND ADJUDICATION OF CLAIMS

690-28-005 Purpose

These rules provide instruction for preserving evidence of pre-1909 use of water in areas not yet adjudicated by registering a statement of claim. These rules also provide instruction for the adjudication procedure.

690-28-010 Definitions

The following definitions apply in OAR 690 Division 28:

- (1) "Claim" means a completed statement and proof of claim.
- (2) "Claimant" means any person asserting ownership of rights to the use of surface water of the state of Oregon or on whose behalf ownership of rights to the use of water is asserted, where the rights asserted are undetermined vested rights not evidenced by a court decree issued pursuant to ORS Chapter 539. "Claimant" includes but is not limited to registrants.
- (3) "Director" means the Water Resources Director.
- (4) "Evidence" 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) Other relevant documents or information tending to establish the water right.
- (5) "Perfected Right" means a water right established by a court decree or a water right certificate.
- (6) "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.
- (7) "Registrant" means any person who has filed a registration statement under ORS 539.240, or any person or owner on whose

behalf a registration statement is submitted.

(8) "Registration Statement" means a completed form in writing making claim to an undetermined vested right to appropriate surface water under ORS 539.010.

(9) "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.

(10) "Testimony" means oral or written statements under oath provided to support the previously filed registration statement.

(11) "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 which is not evidenced by any decree issued pursuant to ORS Chapter 539.

OAR 690-28-015 Notice of Need to Register Claims

In addition to publishing notice as required by ORS 539.230(2), the Director shall provide understandable and widespread notice of the importance of registering all claims to undetermined vested water 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; and

(5) Informing any or all of the following:

- (a) State watermaster
- (b) County extension agent
- (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

OAR 690-28-020 Previously Adjudicated Streams

No water-user in an area where a general stream adjudication has been completed may file a registration statement of claim under

these rules. Under these circumstances, the landowner may file a petition for a supplemental adjudication with the court where the original decree was entered if the user documents the following:

- (1) The owner of the land was not given required notice at the time of initiation of the original proceeding and,
- (2) Had no actual knowledge of the proceeding to appear and make a claim at any stage.

OAR 690-28-025 Procedure for Filing a Registration Statement

General Instructions

- (1) Each statement shall be neatly printed in ink or typewritten on a form provided by the Water Resources Department, verified accurate by the registrant and notarized.
- (2) One registration statement claiming multiple uses with one common date of priority may be accepted for parcels of contiguous land. Separate statements shall be registered for non-contiguous properties or different priority dates.
- (3) Each item on the registration statement shall be completed. If the information needed to fill out certain questions is not available and cannot be obtained, a statement to that effect shall be made for each such entry.
- (4) The required map shall be prepared by a registered land surveyor or engineer. The standards shall be substantially the same as OAR 690 Division 11.
- (5) Forms prepared by the Water Resources Department for filing registration statement shall be provided to any person or public agency upon request. Forms shall also be available at all state watermaster offices. The completed registration statement shall be filed, together with the required map and fees and supporting evidence, in the office of the Water Resources Department in Salem, Oregon.

OAR 690-28-030 Petition for Determination of Water Rights

A petition form for requesting the Director to adjudicate a stream system shall be provided by the Water Resources Department. 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 water right owner.

OAR 690-28-035 Time for Filing Claims and Evidence

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.
- (2) Any person who does not file a registration statement within the time required by ORS 539.240 may file a statement and proof of claim to an undetermined vested right to water. However, no water right shall be awarded unless the presumption that the right has not been abandoned is overcome by a preponderance of evidence.
- (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.
- (4) Registrants may be required to provide evidence in addition to that on their registration statement, including, but not limited to additional evidence that was not available at time of registration such as:
 - a) New maps showing changes in use; and/or
 - b) Evidence of chain of title to registrant, if not the claimant.

OAR 690-28-040 Standards to Evaluate Evidence Submitted

The evidence submitted with each claim or registration statement shall be compared to all evidence submitted in the proceeding for consistency regarding settlement of the area and general development of projects. The evidence shall be reviewed for conflicts with the field investigation report. The burden of proof to establish a claim by a preponderance of relevant evidence rests on the claimant.

OAR 690-28-045 Reasonable Diligence

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.

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.

OAR 690-28-050 Filing Contests of Claims of Others

(1) All contests of claims shall be filed in accordance with the requirements of 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 permit or certificate may enter the proceeding solely for contesting claims made by others pursuant to OAR Chapter 690, Division 30 or 690-28-029.

(3) Contestants shall state with reasonable certainty the grounds 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;
- (e) Claiming a use that had been forfeited by five or more consecutive years of non-use.

(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.