

**Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on January 27, 2006 by the
Date prior to or same as filing date.

Water Resources Department Director
Agency and Division

690
Administrative Rules Chapter
Number

Debbie Colbert
Rules Coordinator

(503) 986-0878
Telephone

725 Summer Street NE, Suite A, Salem, Oregon 97301
Address

to become effective January 30, 2006 Rulemaking Notice was published in the July, 2005 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

690-030-0085

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 539.130

Stat. Auth.: ORS

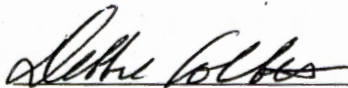
Other Authority

ORS 539

Stats. Implemented: ORS

RULE SUMMARY

The Water Resources Department amended rules relating to contests in the adjudication of water rights (OAR Chapter 690, Division 30). The rules under OAR Chapter 690, Division 30 allow claimants in an adjudication proceeding to add or change points of diversion to water uses covered under a claim so long as the change does not cause injury to another claimant or water right holder and so long as the new diversion points are on the same source, do not increase the rate or duty and are downstream of the original diversion point. Without this amendment, claimants in an adjudication would otherwise have to wait until the adjudication was completed in order to make this kind of change to their water right.



Authorized Signer

01/27/06
Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. on the preceding workday.

**WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 30
CONTESTS IN THE ADJUDICATION OF WATER RIGHTS**

690-030-0005

Rules of the Water Resources Director

The following rules, OAR 690-030-0005 to 690-030-0090, have been adopted by the Water Resources Director to govern the practice and procedure relative to contests before him. A substantial compliance with the rules is required.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0010

Statement of Contest, When to Be Filed

Every statement of contest must be filed within the period prescribed by statute; and no statement of contest will be received or considered which is not filed with the Water Resources Director within the time permitted by law.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0015

Contents and Form of the Statement of Contest

(1) The statement of contest shall be as nearly as may be in the following form:

Before the Water Resources Director of the State of Oregon.

_____ County.

In the Matter of the Determination of the Relative Rights to the Waters of _____, a
Tributary of _____ A. B. (or A. B. and C. D.),

_____ Contestants, Statement of Contest.

v.s.

_____ E.F., Contestee.

To _____, Water Resources Director and to the above-named contestant
_____ hereby contests the right claimed by the above-named contestee _____, to the
waters of _____, a tributary of _____, in the above entitled proceedings, and for
statement of contest, said contestant _____ alleges:

*Note: These rules were filed with the Office of the Secretary of State and took effect on
January 30, 2006. These 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.*

1. That said contestant _____ claims an interest in the waters of the said stream, as follows, to wit: (Here set forth the nature of the rights claimed by the contestant or contestants briefly and within reasonable certainty).

2. That said contestee _____ are claiming (Here set forth the nature of the claims made by the contestees with reasonable certainty).

3. That said contestant _____ contests the rights claimed by the contestee for the following reasons: (Here set forth, with reasonable certainty, the ground of the proposed contest).

Wherefore, contestant demands that a hearing of said contest be had, and testimony taken therein, and that it be determined by the Water Resources Director in the above-entitled proceeding that (Here set forth the extent of the rights to which contestant claims said contestee is entitled, and the extent to which the same should be determined).

Service of notice of hearing, or answers or other papers may be made upon (Contestant, agent or attorney, as the case may be), whose post office address is: _____.

(2) This statement of contest must be verified in substantially the following form:

STATE OF OREGON,)

) ss.

County of _____)

I, A. B., being first duly sworn, depose and say: That I am (a or the) _____, contestant (or agent or attorney for contestant or contestants, as the case may be) in the above-entitled statement of contest; that I have read the foregoing statement of contest, and that the same is true, as I verily believe.

Subscribed and sworn to before me this _____ day of _____, 19__

Notary Public of Oregon.

(3) In accordance with the provisions of law permitting the filing of contests, no statement of contest will be received or filed which does not state with reasonable certainty the grounds of the proposed contest, or which is not verified by a contestant, his agent, or attorney.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0020

Service to Be Made on Contestee

Upon filing of a statement of contest, service thereof shall be made by the contestant upon the contestee, by registered mail, as provided by the statute.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0025

Answers

Answers on the part of contestees are not required by the statute; and the contest is deemed at issue upon the filing of the statement of contest, the statement and proof of contestee being deemed as put in issue by the contest to the extent as shown by the allegations in the statement of contest; contestees may, however, set up by way of answer, any new matter; service of such answer shall be made on the opposing party, his agent or attorney, conformably to the rules of practice in suits in equity in the Circuit Court, and no answer will be received or filed until such service is made.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0030

Answers, When to Be Served

Answers shall be filed at least five days prior to the day set for hearing of contest, with due proof of service on the opposing party indorsed thereon.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0035

Amendment of Statement of Contest

The statement of contest may be amended, prior to the date fixed for the hearing, by the filing of such amended statement of contest with the Water Resources Director at least 10 days prior to the date fixed for the hearing of said contest.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0040

Service of Amended Statement

Service of such amended statement of contest shall be made on the contestee, his agent or attorney, prior to the filing of the same with the Water Resources Director and no amendment of the statement of contest will be received or filed which does not bear an endorsement thereon of service upon said contestee, his agent, or attorney.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0045

Hearing of Contest

(1) Upon the day named in the notice of hearing, as the same shall be fixed by the Water Resources Director therein, said contest will be heard by said Water Resources Director, or his authorized assistant.

(2) Department officers and employees may appear and participate on behalf of the Water Resources Director in contests before the Water Resources Director or his authorized assistant. The Department representative shall only represent the Water Resources Director in the manner described in OAR 137-003-0545(3).

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented: 183.413 through 183.470, ORS Ch. 539

Hist.: WRD 3, f. & ef. 2-18-77; WRD 4-2001, f & cert. ef. 6-7-01

690-030-0050

Procedure on Hearing

Upon the hearing of any contest, except when the parties have agreed otherwise, such contest will be considered as putting the claimant or claimants so contested upon proof, and such contestee or contestees shall first produce witnesses for examination, and the testimony adduced shall be in support of the allegations or statements in such contestees' statements and proofs of claims as have been contested. The contestant shall then produce his witnesses. Such variations in this order of procedure, however, as may be deemed necessary for the convenience of witnesses or other considerations, may be made by the Water Resources Director, [or] his authorized assistant.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0055

Arguments and Briefs

Upon application therefor, made to the Water Resources Director upon the close of the testimony in any contest, the parties thereto may submit briefs, in support of their respective contentions within a time to be fixed by the Water Resources Director and the Water Resources Director will, upon application, fix a time and place for such oral argument as the parties may desire to make prior to the entry of the final order of determination.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0060

Postponement of Proceedings

The taking of testimony in any contest shall not be postponed, except for good cause shown, and upon notice to all parties, and after opportunity has been given said parties to be

heard; and adjournments shall be taken only upon notice to all parties, at the time of the taking of testimony, and then only to a time and place certain, and upon good cause being shown; excepting however, that adjournments upon the conclusion of one day's testimony, to the next day, and over Sundays and legal holidays shall be taken as a matter of course; and except as otherwise ordered by the Water Resources Director, when the taking of testimony shall have been commenced, the same shall be continued from day to day, commencing at the hour of 9 a.m. until 12 p.m., and from 1:30 p.m. until 5 p.m. of each day.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0065

Subpoenas

Subpoenas to require the attendance of witnesses will be issued by the Water Resources Director, in any contest, upon the application to him therefore, to either party; which subpoenas shall be served in the same manner as subpoenas issued out of the Circuit Courts of the state; and said witnesses shall receive fees as in civil cases, but the parties to contests, to whom subpoenas are issued, will be required to attend to the service thereof, and to pay the fees therefore to said witnesses, and said subpoenas will not be served, or the fees due said witnesses paid, by or through the Water Resources Director. As to service of subpoenas, see ORS 539.110.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0070

Notice of Hearing

The notice of the time and place fixed for the hearing of a contest is served upon the party or parties contested by registered mail; and said notice will be prepared and delivered for service by the Water Resources Director; and the Water Resources Director shall cause notice of the said time and place of hearing to be served upon each of the parties contestant, or his agent or attorney, if he appear by agent or attorney, by depositing such copy of such notice in the post office as registered mail, properly addressed to said contestant, or his agent or attorney, as the case may be; and the said contestant shall be required, in his statement of contest, to set forth his post office address, or the post office address of his agent or attorney upon whom he desires service of such notice to be made; also the address, or place, where each of such contestees may be found for service, so far as he can ascertain.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0075

Joining Parties Contestant and Contestee

Any number of persons, firms, or corporations, jointly interested in the subjects enumerated in the notice of contest may appear as parties contestant therein; and any number of persons, corporations, or associations claiming interest adversely to the rights claimed by said contestants, and who shall have submitted proof of their claim to the Water Resources Director, may be jointed as parties contestee, in the statement of contest.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0080

Practice in Suits in Equity Governs Taking of Testimony

The practice in the Circuit Courts of the state governing the taking of testimony in suits in equity, in so far as applicable, shall govern the taking of testimony on the hearing of said contest; but the evidence shall be confined to the subjects enumerated in the statement of contest; and the Water Resources Director or his authorized assistant may, in their discretion, reject testimony and evidence offered, which is not so confined.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77

690-030-0085

Amendment or Alteration of Claim

(1) Except as provided in Sections (2) through (12) of this rule, the Water Resources Director (Director) may not permit any alteration or amendment of the original claim after the period for inspection has commenced; but any new matter that the claimant may wish to set forth must be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Director prior to the close of the period for public inspection.

(2) A claimant may add to the claim additional point(s) of diversion or change the location of the point(s) of diversion as described in the claim, as long as the following conditions are satisfied:

(a) The claimant must file the request for the proposed additional or relocated point(s) of diversion with the Director before diverting water from the additional or relocated point(s) of diversion. The request must include the number of the claim for which the requested additional or relocated point(s) of diversion is being made. The request must be set forth in a verified affidavit. For each point of diversion included in the requested amended claim, whether additional, relocated, or previously claimed, the request must also identify for each type of use claimed, the rate of diversion and the number of acres served within each quarter/quarter section.

(b) At the time the claimant files a request as specified in Section (2)(a), the claimant must provide a map prepared by a Certified Water Rights Examiner showing the original point(s) of diversion and all additional or relocated point(s) of diversion proposed in the request. If the request proposes more than one point of diversion serving the claim, the map must identify

which lands or uses are served by each diversion point. The map must conform to the standards set forth in OAR 690-014-0170.

(c) The additional or relocated point(s) of diversion may not be upstream from the point(s) of diversion described in the claim.

(d) Use of water from the additional or relocated point(s) diversion must not increase the total claimed rate, duty, acreage benefited, or season of use.

(e) The amount of water to be diverted from all points of diversion included in the requested amended claim is limited to no more than the rate and duty of water that was previously claimed and is lawfully available for use by the claimant at the original point of diversion.

(f) The additional or relocated point(s) of diversion may not be located on a different source than the source identified in the original claim. For the purposes of 690-030-0085, a downstream source does not constitute a different source, even where the source has a different name at the downstream location, if the source of the original diversion is on the mainstem of or a tributary to the source for the additional or relocated downstream point(s) of diversion.

(3) If the claimant's request meets the requirements in Section (2) and the claimant has prepaid the estimated cost of the notice in accordance with Section (4), the Director must give notice of the proposed additional or relocated point(s) of diversion as follows:

(a) By regular mail to all those identified in the Department's files whose points of diversion lie between the point of diversion as claimed and the proposed additional or relocated points of diversion furthest downstream from the point of diversion as claimed, specifically:

(A) Claimants and contestants to any claim;

(B) Holders of existing water use permits;

(C) Holders of water rights under certificates; and

(D) Holders of water rights established by court decree; and

(b) By publication in a newspaper having general circulation in the area in which the claim is located, not less than once each week for three consecutive weeks; and

(c) By publication in the Director's weekly notice.

(d) Each notice must include the date on which claims of injury under Section (5) must be filed with the Director.

(4) If the claimant's request meets the requirements under Section 2, the Director must provide the claimant an estimate of the actual cost of providing the notice described in Section (3). The actual cost is the total cost of publishing the notice in the newspaper, plus the paper, postage and staff time involved to prepare and mail the notice. The claimant must prepay the estimated cost before the Director provides notice of the proposed point of diversion changes. If the actual cost exceeds the estimated cost, the claimant must pay the difference by a date certain provided by the Director, or the Director or the Director's delegated Adjudicator shall not consider the amendment in the Findings of Fact and Order of Determination.

(5) Any adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree claiming injury as a result of the proposed additional or relocated point(s) of diversion must file a written claim of injury with the Director on or before the date specified in the Notice. An existing contestant to the claimant's claim need not file a claim of injury, but must comply with the provisions of Section (8). For purposes of OAR 690-030-0085, an adjudication claimant, holder of a water use permit, holder of a water use certificate, or holder of a water right established by court decree filing a claim of

injury pursuant to this Section is referred to as the "petitioner." All claims of injury must be received in the office of the Director by the date specified. For claims of injury under this Section, the postmarked date will not be deemed the filing date. An injury claim must:

(a) Provide a description of the claimed injury; and

(b) Identify the number of the adjudication claim, permit, or certificate, or identify the water right established by court decree that would allegedly be injured.

(6) If, based upon the information provided in Section (5), the Director determines that the petitioner has demonstrated a personal interest that could reasonably be affected by the outcome of the proceeding, the Director must name the petitioner to be a limited party to the contested case hearing for the sole purpose of contesting the proposed additional or relocated point(s) of diversion.

(7) If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, at the time of a ruling under Section (6) allowing participation, the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings, for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(8) If an existing contestant to the claimant's claim wishes to contest the proposed additional or relocated point(s) of diversion, the existing contestant must notify the Director in writing on or before the date specified in the Notice. The existing contestant's notification must be received in the office of the Director by the date specified. If the record in the contested case has closed, or due to informal disposition the case has been withdrawn from or not referred to the Office of Administrative Hearings, upon timely receipt of the existing contestant's notification the Director must request the administrative law judge to re-open the record or refer the matter to the Office of Administrative Hearings for the limited purpose of taking evidence and hearing argument on the issue of the proposed additional or relocated point(s) of diversion.

(9) The Director's ruling under Section (6) must be by written order and served promptly on the petitioner, all parties to the contested case, and the Office of Administrative Hearings or assigned administrative law judge. If participation in the contested case hearing is allowed, the agency must provide the participant with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

(10) A petitioner or party to the contested case adversely affected by the Director's ruling under Section (6) may file a notice of intent to oppose the ruling within 30 days of the date of the order. Such notice shall be filed with the Director and the Office of Administrative Hearings or assigned administrative law judge, and must be served upon the petitioner and all parties to the contested case hearing. Any opposition to the Director's ruling under Section (6) must be heard by the Office of Administrative Hearings as part of the contested case hearing and the administrative law judge's findings must be incorporated into the administrative law judge's proposed order in the contested case. If the record has closed in the contested case hearing, the Director must request the administrative law judge to re-open the record for the purpose of hearing opposition to the Director's ruling.

(11) The administrative law judge's findings on the issue of the proposed additional or relocated point(s) of diversion must be incorporated into the administrative law judge's proposed order in the contested case.

(12) For purposes of the Klamath Basin Adjudication, the last day to request additional or relocated points of diversion pursuant to Sections (2) through (11) is December 1, 2006. For other general stream adjudications, any request by a claimant for additional or relocated point(s) of diversion pursuant to Sections (2) through (11) must be made on or before the date specified by the Director as adopted by rule.

(13) Sections (2) through (12) create the process to amend claims under ORS Chapter 539 following the commencement of the period for inspection and have no effect on the permissibility of a change in point of diversion under other provisions of law.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77, WRD 1, f. & cert. ef. 1-30-2006

690-030-0090

Withdrawing Original Testimony

From and after the beginning of the inspection period, the original testimony shall remain in the custody of the Water Resources Director or his authorized assistant, and shall not be withdrawn therefrom.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

Hist.: WRD 3, f. & ef. 2-18-77