

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 February 9, 2001 by the
Date prior to or same as filing date.

Water Resources Commission
Agency and Division

690
Administrative Rules Chapter Number

Tom Byler
Rules Coordinator

(503) 378-8455, ext. 299
Telephone

158 12th Street NE, Salem, OR 97310
Address

to become effective June 6, 2001 Rulemaking Notice was published in the March, 2001 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

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

ADOPT: N/A

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

AMEND:

OAR 690-030-0045

REPEAL: N/A

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 539.005 and ORS 183.452
Stat. Auth.: ORS

Other Authority

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

RULE SUMMARY

The rule amendment allows Water Resources Department staff to represent the Department in water right adjudication hearings held under OAR Chapter 690, Division 30. The Department expects that the rule change will result in more expeditious handling of contests filed in general stream adjudications. The agency representative would be prohibited from making legal argument, as defined in OAR 137-003-0545. Most contests to claims in general stream adjudications such as the pending Klamath Adjudication are questions of fact, usually involving determinations of places of use, point of diversion and other such factual matters. Where contests involve legal questions, an Assistant Attorney General is available to assist the Department.

Authorized Signer

6/6/01
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.

June 6, 2001

**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.),

Note: These rules were filed with the Office of the Secretary of State and took effect on June 6, 2001. 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.

_____ 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:

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

The Water Resources Director shall not permit any alteration or amendment of the original claim after the period for inspection has commenced; but any new matter which the claimant may wish to set forth shall be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Water Resources Director prior to the close of the period for public inspection.

Stat. Auth.: ORS 536 & ORS 543

Stats. Implemented:

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

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

OREGON ADMINISTRATIVE RULES
CHAPTER 690, DIVISION 30 — WATER RESOURCES DEPARTMENT

Amendment of Statement of Contest

690-30-035 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Service of Amended Statement

690-30-040 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Hearing of Contest

690-30-045 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.

Stat. Auth.: ORS Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Procedure on Hearing

690-30-050 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 on 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Arguments and Briefs

690-30-055 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Postponement of Proceedings

690-30-060 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 9:00 o'clock a.m. until 12 p.m., and from 1:30 p.m. until 5:00 p.m. of each day.

Stat. Auth.: ORS Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Subpoenas

690-30-065 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Notice of Hearing

690-30-070 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Joining Parties Contestant and Contestee

690-30-075 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Practice in Suits in Equity Governs Taking of Testimony

690-30-080 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

OREGON ADMINISTRATIVE RULES
CHAPTER 690, DIVISION 30 — WATER RESOURCES DEPARTMENT

Amendment or Alteration of Claim

690-30-085 The Water Resources Director shall not permit any alteration or amendment of the original claim after the period for inspection has commenced; but any new matter which the claimant may wish to set forth shall be set forth in the form of an affidavit, regularly verified before a proper officer and filed with the Water Resources Director prior to the close of the period for public inspection.

Stat. Auth.: ORS Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77

Withdrawing Original Testimony

690-30-090 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 Ch. 536 & 543
Hist: WRD 3, f. & cf. 2-18-77