

OREGON ADMINISTRATIVE RULES
CHAPTER 690, DIVISION 33 — WATER RESOURCES DEPARTMENT

DIVISION 33

**ADDITIONAL PUBLIC INTEREST
STANDARDS FOR NEW APPROPRIATIONS**

**Columbia/Snake Threatened and Endangered
Fish Species Above Bonneville Dam**

Purpose

690-33-100 (1) The purpose of OAR 690-33-100 to 690-33-140 is to establish definitions, additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to threatened or endangered fish species.

(2) These rules apply to the following types of applications for permits:

(a) To appropriate surface water;
(b) To appropriate hydraulically connected groundwater with potential for substantial interference as listed in OAR 690-09 040;

(c) To appropriate water for the purpose of groundwater recharge; and

(d) To store water or construct a reservoir.

(3) These rules apply to applications filed after July 17, 1992, upstream from Bonneville Dam in the Columbia/Snake Basin in the areas listed below for which no permit has been granted, or on which no contested case has been ordered:

(a) Hood Basin;

(b) Deschutes Basin;

(c) John Day Basin;

(d) Umatilla Basin;

(e) Grande Ronde Basin;

(f) Powder Basin;

(g) Malheur Basin;

(h) Owyhee Basin;

(i) Mainstem Columbia River above Bonneville Dam; and

(j) Mainstem Snake River.

(4) These definitions, standards and procedures are in addition to, not in lieu of, existing rules and laws.

(5) These rules will be reviewed and may be revised as additional information becomes available concerning the recovery of threatened or endangered fish stocks in the Columbia/Snake Basin.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94

Definitions

690-33-110 (1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Department.

(4) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(5) "Fish and Wildlife Program" means the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council in February, 1994; document number 94-2.

(6) "Human Consumption" means the use of water for purposes of drinking, cooking and sanitation.

(7) "Threatened or Endangered" means fish species listed by Oregon Department Fish and Wildlife (ODFW) under OAR 635-100-125; or listed under the federal Endangered Species Act.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94

Determination of Consistency With the Fish and Wildlife Program

690-33-120 (1) To determine whether a proposed use is consistent with the Fish and Wildlife Program, the Department shall consult with the Northwest Power Planning Council, ODFW, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Indian tribes and appropriate local governments. If the Department determines that a proposed use of water is inconsistent with the Fish and Wildlife Program and cannot be conditioned to achieve consistency, the application shall be presumed to impair or be detrimental to the public interest.

(2) The applicant shall provide information to show compliance with the following standards which will form the basis for permit conditions:

(a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-33-140;

(b) The proposed use does not involve hydraulically connected groundwater with potential for substantial interference as listed in Division 9 of this Chapter during the time period of April 15 to September 30, except that which is artificially recharged or as otherwise provided in OAR 690-33-140;

(c) The proposed use complies with screen design, installation, operation specifications and passage requirements as listed ORS 498.248 through 498.268 and ORS 509.600 through 509.630;

(d) The proposed use complies with existing state and federal water quality standards; and

(e) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Based on the consultation in section (1) of this rule, the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(4) If a proposed use is not consistent with the Fish and Wildlife Program, the applicant may propose mitigation compatible with sections (2) and (3) of this rule. The Director shall determine if the proposed use with mitigation is consistent with the Fish and Wildlife Program. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415-030 adopted November 13, 1991 shall be followed.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190

Hist.: WRD 10-1994, f. & cert. ef. 9-21-94

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Flow Management

690-33-130 If the flow management objectives cannot be achieved because of differing requirements between fish species in the management area, the Department shall consult with the affected fish and wildlife agencies and the appropriate Indian tribes to assist in resolving the flow management conflicts.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190
Hist.: WRD 10-1994, f. & cert. ef. 9-21-94

Exemptions

690-33-140 Notwithstanding OAR 690-33-120(2)(a) and (b), the Commission may approve a water right permit for:

- (1) Domestic water use;
- (2) Projects that provide net benefits for native resident and native anadromous fish recovery. For example, these projects may include, but are not limited to, livestock watering away from water courses which results in improved riparian areas;
- (3) Emergency use necessary for public health and safety;
- (4) Existing water uses covered under House Bill 2153 (Oregon Legislature 1993); or
- (5) Multipurpose storage projects or other projects with measurable public benefits.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190
Hist.: WRD 10-1994, f. & cert. ef. 9-21-94