

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

OCT 3 4 03 PM '89
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on September 29, 1989
(Date)

by the Water Resources Commission
(Department) (Division)

to become effective October 3, 1989
(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:

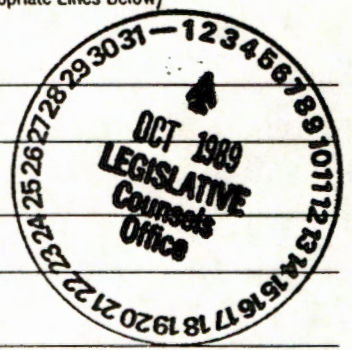
Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: September 1, 1989

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:
New Total Rules) _____

Amended:
Existing Rules) OAR 690-75-007

Repealed:
Total Rules Only) _____



Administrative Rules of the Water Resources Department Resource Management Division
(Department) (Division)

DATED this 3rd day of October, 19 89

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

Statutory Authority: ORS 537.170 and 537.343 or _____

Chapter(s) _____, Oregon Laws 19 _____ or _____

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

Subject Matter:
The amendment substitutes a requirement that, for contested case hearings on instream water rights, notice shall be provided by publication in the newspaper(s) of largest circulation in the area, press releases and notices to known interested parties.

For Further Information Contact: Michael Mattick Phone: 378-3671
(Rule Coordinator)

10/3/87

DIVISION 75

CONTESTED CASE HEARINGS IN MATTERS OF PUBLIC INTEREST.

Scope, Purpose and Statutory Authority
690-75-000

These rules establish additional procedures governing the conduct of contested case hearings before the Water Resources Commission and the Water Resources Department in matters of public interest except for those covered under OAR-690, Division-51. The purpose of these rules is to provide for the orderly development of evidence for contested case order decisions while allowing interested persons reasonable notice and opportunity to prepare and seek party status in the contested case hearing. The Commission may adopt additional procedural rules, if necessary.

Public Interest Hearings on Permit Applications
690-75-007

(1) Upon its own motion, on recommendation of the director, or upon petition by any person, whenever in the judgment of the commission a proposed use of the waters of the state may prejudicially affect the public interest, the commission shall hold a contested case hearing on the application.

(2) Formal written notice of the hearing pursuant to OAR 137-03-001 shall be served on the applicant and on any one objecting to the proposed use, at least 30 days prior to the date of hearing.

(3) In addition to formal written notice required by ORS 537.170 and subsection (2) of this rule, the department shall give notice at least 30 days prior to the date of hearing by regular mail to those who have requested notice of such hearings, to the affected local government planning agency, and:

- (a) For applications for permits under OAR 690 Division 11, to the owners of contiguous lands, as shown on the records of the county assessor.
- (b) For applications or conversions under OAR 690 Division 77, by publication weekly for two consecutive weeks in the newspaper(s) of largest circulation published in each county in which the stream reach or point specified in the instream water right application or minimum perennial streamflow is located. To ensure that broad public notice is provided, the Department also shall give notice to the news media in the area and to potentially interested parties as determined by the Department. However, the failure to notify an individual under this paragraph shall not constitute a failure by the Department to provide adequate notice. The publication and distribution of notice shall be completed at least 30 days prior to the date of hearing.

(4) The notice shall reference or set forth the procedures by which persons may request to participate as parties in the contested case.

(5) The standards for the commission's determination will be those in ORS 537.170(5).

Request for Party Status
690-75-015

(1) Persons requesting party status or limited party status in the hearing shall file a petition with the Water Resources Department in accordance with OAR 137-03-005, at least twenty (20) days prior to the date set for the hearing.

(2) The Department shall serve the petition for party status or limited party status on all parties personally or by mail. Parties shall have seven (7) days from date of personal service or Department mailing to file an answer to the petition with the Department.

(3) Petitions for party status or limited party status in a proceeding shall be considered as provided by OAR 137-03-005(7). The determination on the petition will be made by the Commission, the Chairman of the Commission, the Director or the presiding officer for the hearing. The ruling shall be by written order, served promptly on the petitioner and all parties.

(4) Conditions on party status rulings:

- (a) An order granting party or limited party status may be conditioned on such terms as the Commission, the Chairman of the Commission, the Director or the presiding officer deems necessary.
- (b) Intervenors may join in one presentation to avoid redundant testimony.
- (c) Persons granted limited party status may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions only with respect to the issue(s) in which participation is granted.

Procedures for Withdrawal from Party Status
690-75-025

A person or agency granted party status or limited party status and later wishing to withdraw from the proceedings shall file written notice stating reasons for withdrawal and specifying stipulations, settlements, or other terms of conditions of the withdrawal.

Presiding Officer, Powers
690-75-030

(1) The presiding officer shall take all necessary action to ensure a fair and impartial hearing and to maintain order. The presiding officer shall have all powers necessary to perform those duties including but not limited to the power to:

- (a) Rule on petitions for or withdrawal from party status and limited

- party status;
- (b) Administer oaths and affirmations;
 - (c) Receive evidence;
 - (d) Order depositions and other discovery to be taken and to issue subpoenas;
 - (e) Regulate the course of discovery and all other aspects of the hearing and the conduct of the participants;
 - (f) Dispose of procedural matters and rule on motions;
 - (g) Examine witnesses;
 - (h) Hold conferences for settlement, simplification of issues, or any other purpose the presiding officer finds necessary;
 - (i) Continue the hearing from time to time;
 - (j) Take any other action consistent with governing statutes and the Commission's rules and policies.
 - (k) Prepare and serve upon parties a proposed order including findings of fact, findings of ultimate fact and conclusion of law.

(2) The presiding officer shall keep the Commission informed on the status of the proceedings.

(3) The presiding officer shall ensure that a complete and current record of all motions, rulings, testimony, and exhibits of the hearing is maintained.

(4) The presiding officer may require exhibits or reports proposed to be entered into the record to be submitted prior to the hearing. The presiding officer may require some or all testimony to be filed in written form prior to the hearing.

Reopening the Hearing Record

690-75-035

(1) The Commission or the presiding officer may reopen the hearing proceedings for cause to receive further evidence at any time prior to a final decision by the Commission.

(2) A party requesting to reopen the proceeding must show cause for not presenting the evidence during the previous proceedings and show that the evidence to be presented could affect the outcome of the proceedings.

Judicial and Official Notice

690-75-040

(1) The Commission or presiding officer may take judicial notice of all facts of which the courts of the State of Oregon take judicial notice that are pertinent to the hearing issues.

(2) The Commission or presiding officer may take official notice of the following:

- (a) Administrative rulings and reports of the Commission, the Department

- and other governmental agencies;
- (b) Facts contained in permits and licenses issued by the Water Resources Director;
 - (c) The factual results of the presiding officer's or the Commission's personal inspection of physical conditions involved; and
 - (d) General, technical, or scientific facts within the Department's specialized knowledge.

(3) At any time during the proceeding, or in any event prior to a final decision by the Commission, the parties shall be notified of facts to be officially or judicially noticed, and shall be afforded an opportunity to contest the facts to be so noticed.

Suggestions for Findings, Conclusions and Orders
690-75-045

Consistent with a schedule set by the presiding officer, the presiding officer may provide an opportunity for each party to present in writing, suggested findings of fact, conclusions and orders on any permit or license application.

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