

CERTIFICATE AND ORDER FOR FILING

PERMANENT

ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

RECEIVED

APR 26 10 40 AM '91

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 19, 1991 (Date)

The Water Resources Department Resource Management Division (Department) (Division)

become effective upon filing (Date)

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

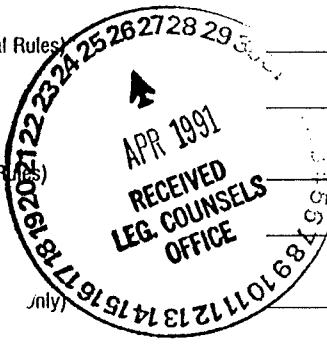
procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO [] YES [x] Date Published: March 1, 1991

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Number of Total Rules: 3

Administrative Rules Chapter 690, Divisions -01-041(1), -11-080(1), 15-080(1) & (2), -18-050(3), 76-020(2), 77-025(4) & 030(1)(b), and -82-040.



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

DATED this 26th day of April, 1991

By: William H. Young (Authorized Signer) Title: Director

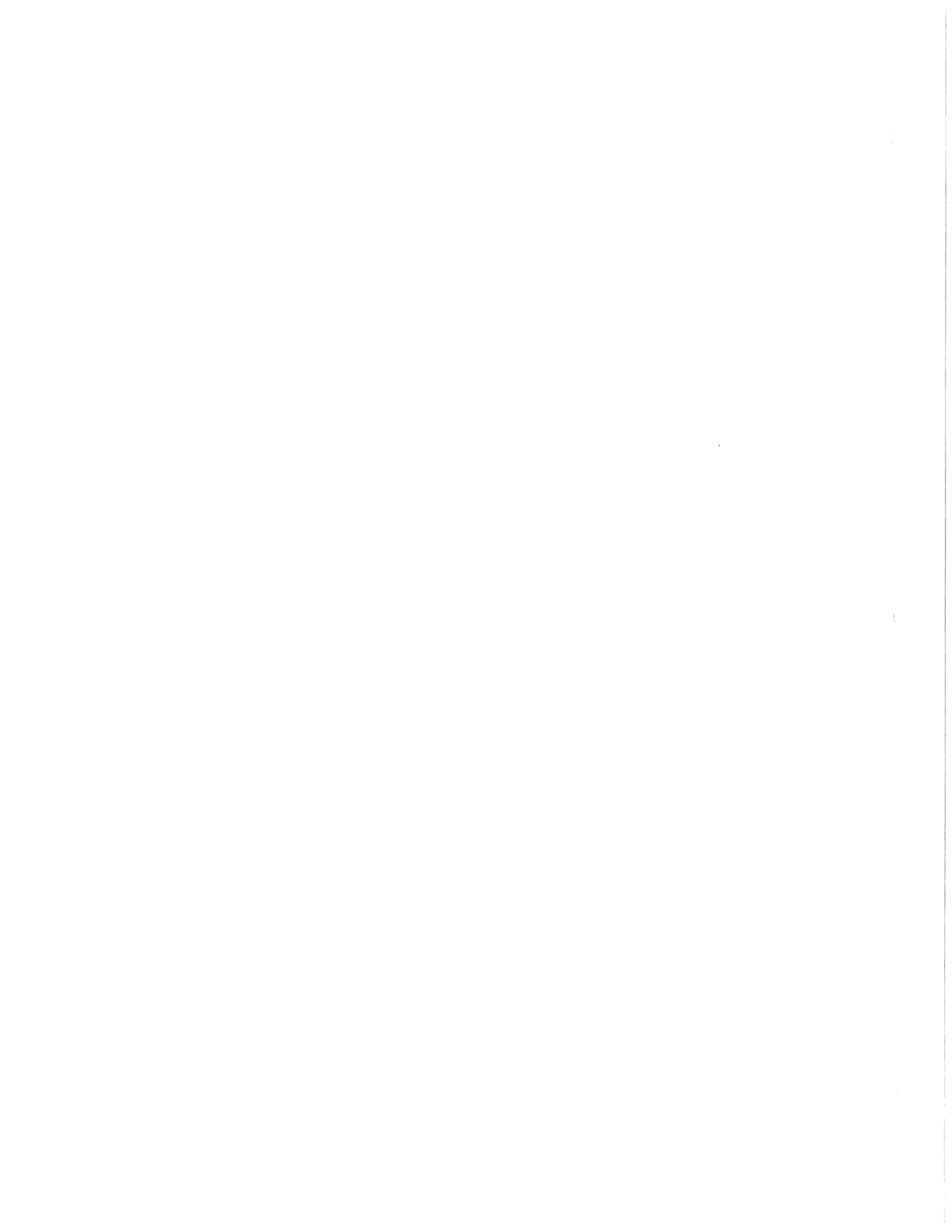
Statutory Authority: ORS 536.025, 536.027 or

Other(s) _____, Oregon Laws 19 _____ or

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

Subject Matter: Filing periods for exceptions to contested cases and for public commentary on water use applications.

Further Information Contact: Weisha Mize or Mike Mattick (Rule Coordinator) Phone: 378-3739



April 26, 1991

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 76
ESTABLISHMENT OF MINIMUM PERENNIAL STREAMFLOWS

Purpose

690-76-005 Establishment of minimum perennial streamflows is a high priority of the Water Resources Commission and Water Resources Department. Minimum perennial streamflows are established as administrative rules to support fish and aquatic life or minimize pollution. Minimum streamflows are included in applicable basin program statements. These rules include the definitions, standards, process and criteria for the evaluation of minimum perennial streamflow applications submitted by the Department of Fish and Wildlife or the Department of Environmental Quality to the Water Resources Commission under the provisions of ORS 536.325.

Stat. Auth.: ORS Ch. 183 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Definitions

690-76-010 The following definitions apply to OAR 690-76-005 to 690-76-035.

(1) "Affected Local Government" means any local government as defined in OAR 690-05-015, within whose jurisdiction a minimum perennial streamflow is proposed or established.

(2) "Basin" means any one of the major drainage areas identified by the Commission for program planning and management purposes. Basin boundaries are identified on Water Resources Department map 0.6.

(3) "Classification" means the designation in basin programs of allowed and preferred beneficial uses of a specified water source as provided in ORS 536.340. A classification may also reserve quantities of water for preferred beneficial uses.

(4) "Commission" means Water Resources Commission.

(5) "Department" means Water Resources Department.

(6) "Director" means Water Resources Director.

(7) "Minimum Perennial Streamflow", also minimum streamflow, means an administrative rule that establishes a flow necessary to support aquatic life or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur. The Commission will assume minimum streamflow levels are most appropriate for support of aquatic life if the flows are the lowest level which, if maintained, would support a population of key fish species consistent with the management objectives of Oregon Department of Fish and

Note: These rules were filed with the Office of the Secretary of State and took effect on April 26, 1991. The 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.

Wildlife. The Commission will assume minimum streamflow levels are most appropriate for minimizing pollution if the flows are the lowest level which, if maintained, would assure that projected loading levels from adequately treated wastes and best management practices for non-point sources would not result in violation of water quality standards of the Department of Environmental Quality.

(8) "Planned" means a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction or application for a development permit from the private sector.

(9) "Potential" means an option which could reasonably occur in the future but is not planned. A feasibility determination may or may not have been completed, but the option has not been ruled out.

(10) "Subbasin" means any subarea of a basin defined by surface drainage patterns such as the drainage basin of any tributary, or the area draining to any point on a river, or draining between two points on a river.

(11) "Withdrawal" means an administrative rule prohibiting all new appropriations for particular uses from a source for part or all of the year as provided in ORS 536.410. A withdrawal can be set for a prescribed length of time or indefinitely until modified or revoked by the Commission.

Stat. Auth.: ORS Ch. 183, 197 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 7-1985, f. & ef. 7-10-85; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

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Effect of Minimum Perennial Streamflows

690-76-015 (1) Except for those uses exempted by a minimum streamflow, use of water under a permit or right with priority date later than the priority date of an established minimum streamflow will not be allowed when flows are below the minimum streamflow level. Use of water under rights and permits with priority dates earlier than the minimum streamflow is not affected. Nothing in these rules is intended to affect the preference for human and livestock consumption under ORS 536.310(12).

(2) The priority date of minimum streamflows established as the result of action on an application by Oregon Department of Fish and Wildlife or Oregon Department of Environmental Quality is the date of application. When an existing minimum streamflow is modified, the earlier minimum streamflow priority date remains in effect for the previous amount or the level of the modified minimum streamflow, whichever is less.

Stat. Auth.: ORS Ch. 183 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

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Application Standards for Minimum Perennial Streamflows

690-76-018 (1) The Commission will accept applications for minimum perennial streamflows to support aquatic life or minimize pollution submitted by the

Department of Fish and Wildlife or the Department of Environmental Quality on or after January 1, 1986.

(2) A complete application shall contain the following information:

- (a) Applicant;
- (b) Stream name;
- (c) The body of water to which the stream is tributary;
- (d) Name of major river basin;
- (e) Map with flow location;
- (f) Purpose(s) of flow;
- (g) Requested flow in cubic feet per second (cfs);
- (h) Method of determining requested minimum streamflow needs and date of study or evaluation;
- (i) Period of year, if any, when streamflow is believed to be frequently lower than requested levels;
- (j) Suggested long-range methods of achieving minimum streamflow objectives during any periods of shortage;
- (k) A completed land use coordination statement as provided in the Department's Land Use Planning Procedures Guide. At a minimum, the statement shall:

(A) Identify affected local government pursuant to OAR 690-76-010;

(B) Explain the purpose of the minimum streamflow;

(C) Invite planning directors to identify and provide policies or provisions in comprehensive plans relating to instream flow protection or other uses of the waters under consideration; and

(D) Offer an opportunity for local government officials to discuss the proposed minimum streamflow with the applicant(s) and Department.

(l) Additional data identified in section (3) and/or (4) of this rule.

(3) Applications to support aquatic life shall also provide the following information:

(a) Species of fish life used to determine flow requirements;

(b) Other significant aquatic species supported;

(c) Population estimates of significant species and historic levels and population trends, if available;

(d) Activities and management plans for support of aquatic life in the stream subbasin;

(e) Any significant changes in the physical habitat or aquatic species composition that has occurred since the date listed in subsection (2)(h) of this rule;

(f) Any other available reports for the same river which identify different minimum stream-flows for support of aquatic life and the reasons why the requested flow is most appropriate;

(g) A preliminary indication from Department of Environmental Quality of whether requested flow levels are sufficient to minimize pollution.

(4) Applications to minimize pollution shall also provide the following information:

(a) Sources of pollution to be minimized that were used to determine the flow requirements;

(b) Other sources of pollution in the stream subbasin;

(c) Beneficial water uses that are presently or potentially limited by water pollution;

(d) Present water quality conditions in the stream;

(e) Water quality management activities and programs in the subbasin;

(f) Any other available reports for the same river which identify different minimum stream-flows to minimize pollution and the reasons why the requested flow is most appropriate;

(g) A preliminary indication from Oregon Department of Fish and Wildlife of whether the requested flow is sufficient for support of aquatic life;

(h) A statement showing why other means to abate pollution are not feasible.

(5) The applicant may include in the application a statement of values associated with the purpose of the minimum streamflow, such as recreational, scenic, scientific, environmental, economic, cultural or health and welfare factors. The statement will not be used to determine if the application is complete.

Stat. Auth.: ORS Ch. 183, 197 & 536

Hist.: WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

Review Process for Applications

690-76-020 After receipt of an application for a minimum perennial streamflow, the Commission shall establish a schedule to complete a decision on the requested flow within one year. The schedule shall provide for the following review process:

(1) The Department will record the date an application is received. If the Department finds the application incomplete, it will be returned to the applicant with the return date noted. The application will retain the priority date if sufficient information is provided within 30 days from the return of the application.

(2) The Department will distribute initial information on the application under consideration and invite public comments on the requested minimum perennial streamflow and other water needs and problems within the stream subbasin. The application will be available for the public review. Public notice will be given to news media of the basin, state agencies, the planning departments of affected local governments, county commissioners, city council members and sent to the administrative rules mailing list. The Director may presume that the proposed minimum streamflow is compatible with the affected laws, regulations, and comprehensive plans of those agencies notified if no response is received within 60 days of the date shown on the notice. The Department will also mail the land use coordination statement referenced in OAR 690-76-018(2)(k) to the planning departments of affected local governments. In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the Director or Commission shall follow procedures provided in OAR 690-05-040 (Resolution of Land Use Disputes). Interested persons may request written notification of the required public hearing.

(3) The department staff will analyze stream-flow and water use information and prepare a recommendation based on information listed in OAR 690-76-025 and the review standards in OAR 690-76-030.

(4) The Commission will schedule a hearing on the minimum streamflow application. If more than one application is pending in the same basin, hearings may be consolidated. The hearing may also encompass any supplemental action proposed by the Commission. The following material shall be available for public review at the time notice of the public hearing is published with the Secretary of State:

(a) Minimum streamflow application(s);

(b) Preliminary findings and analysis of alternatives by the Department;

(c) Proposed action, including proposed findings and conclusions and a statement of reasons supporting the proposed action.

(5) At least one member of the Commission will hold a public hearing in the affected basin to consider the proposed action. The proposal will be to adopt a requested minimum perennial streamflow(s), adopt a more appropriate minimum perennial streamflow rate(s) or reject the application. In addition, the Commission may propose alternative minimum streamflows or supplemental actions. Interested persons, organizations, and local, state and federal agencies may speak at the hearing or provide written comments. The Commission will specify a period for written

comments. If the Commission determines it is in the public interest, additional hearings may be held to consider proposed actions.

(6) The Commission may allow the applicant additional time to respond to evidence received at the hearing.

(7) The Commission will take final action after reviewing the hearing record and a final recommendation of the Department.

Stat. Auth.: ORS Ch. 183, 197, 536.025 & 536.027

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91

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Information Base

690-76-025 (1) The Department and Commission shall consider the following information to the extent available, when evaluating applications:

- (a) Items of information listed in OAR 690-76-018(2) through (5);
- (b) Water permits and rights of record and information pertaining to actual use of water;
- (c) Existing instream uses;
- (d) Stream gage records or estimates of flow;
- (e) Existing water supply and water quality problems;
- (f) Water needs for existing and planned beneficial uses and seasonal characteristics of water demands;
- (g) Sources of water supply in the subbasin considering: groundwater, surface water, planned actions or potential for developing storage sites, conserving water, enhancing riparian zones and enhancing watershed yield;
- (h) Basin water use programs;
- (i) Statutory and administrative restrictions on water use;
- (j) Acknowledged comprehensive land use plans;
- (k) Benefits and values from existing and planned uses of surface water in the subbasin;
- (l) Benefits and values of potential water uses.

(2) The Department and Commission may make reasonable assumptions or estimates for information when specific data are not readily available. Any assumptions or estimates used shall be stated for public review and may include but shall not be limited to:

- (a) Monthly and annual runoff characteristics;
- (b) Major sources of inflow to the stream;
- (c) Characteristics of existing water use including frequency of use, evaporation and transpiration, opportunity for conservation and effects of use on streamflows;
- (d) Potential sources of water supply;
- (e) Amounts of water needed to supply potential beneficial water uses;
- (f) Impact of land use and development on streamflow.

(3) The Commission will determine the adequacy of water supply at a minimum flow location for satisfying existing, planned and potential instream and out-of-stream uses. The Commission will consider the existing streamflow pattern. If there are shortages, the Commission will consider the plans and potential for developing supplies for both instream and out-of-stream needs. The Commission will only consider ground water a separate source if use is not likely to affect streamflow levels and is not in a critical groundwater area. Interbasin transfers may be

considered as an additional water supply only if a project has been planned or constructed. The Commission will consider whether planned or potential out-of-stream use could reasonably be served by sources other than natural flow during periods of shortage. If the uses require natural flow, the Commission will evaluate the importance of the planned uses and both the importance and likelihood of potential uses.

Stat. Auth.: ORS Ch. 183 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

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Review Standards

690-76-030 The Commission will apply the following standards when reviewing a minimum perennial streamflow application.

(1) The Commission will assume the purposes of the minimum streamflow are as important as other water uses and approve the requested minimum stream flow or a more appropriate level unless another use is found to be of greater importance.

(2) Minimum perennial streamflows may be established on streams where appropriations have depleted the flow below the proposed minimum perennial streamflow in some reaches for some period of time if the Commission concludes that the action will result in public benefit for support of aquatic life or minimizing pollution.

(3) The Commission may identify another use as being of greater importance than the purpose of the minimum flow and may reject an application from the Department of Fish and Wildlife or the Department of Environmental Quality if:

(a) Appropriations have depleted streamflows below the proposed minimum perennial streamflow during all or a part of the year and the need to protect water sources to supplement existing inadequately supplied water uses is of greater importance;

(b) Little potential exists for developing a water supply to meet the flow objectives in the future without causing a detrimental impact on more important existing and planned uses;

(c) A more important planned water use could be served by unappropriated streamflow which could not be served by an alternative source if the minimum streamflow were adopted;

(d) A more important use is identified based on state or federal statutory or administrative provisions or acknowledged local comprehensive land use plans that state a preference for another water use which could not be adequately served if the minimum flow application were approved; or

(e) The general economic, social and environmental benefits associated with a planned water use(s) are found to be of greater value than benefits and values identified in the application and hearing record from establishing the minimum streamflow.

(4) The Commission may reject a minimum perennial streamflow application after finding another use is of greater importance and set an alternative minimum streamflow during all or part of a year after reserving water for the more important use(s) or exempting use(s) from the minimum flow. The Commission must find that the alternative minimum streamflow is sufficient to provide a public benefit for supporting aquatic life or minimizing pollution.

(5) The Commission shall assure that the adoption of minimum streamflows meets the requirements established in OAR 690-60-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

(6) In determining whether a more appropriate streamflow should be adopted, the Commission shall consider the comments from the Departments of Fish and Wildlife and Environmental Quality, on any alternative streamflow and:

(a) Whether flow levels should be based on the requirements of other fish species, consistent with fishery management objectives of the Department of Fish and Wildlife;

(b) Whether the methods used for determining optional water requirements for support of aquatic life or minimizing pollution are appropriate and superior to those identified in the application;

(c) Whether levels based on minimizing pollution from difference sources or based on different methods of treatment or disposal of wastes would result in a greater public benefit;

(d) Whether streamflow analysis indicates a proposed flow deviates significantly from the natural runoff pattern of the stream and another level would better support the purposes of the minimum flow and reflect the natural streamflow pattern;

(e) Whether significant changes in stream channel configuration or aquatic habitat have occurred since the minimum streamflow study or evaluation was completed and optional levels identified are more appropriate under existing conditions; or

(f) Whether optional levels will be more appropriate considering both the need to support aquatic life and the need to minimize pollution.

Stat. Auth.: ORS Ch. 183, 197 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 7-1985, f. & ef. 7-10-85; WRD 4-1986, f. & ef. 4-28-86; WRD 12-1990, f. & cert. ef. 8-8-90

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General Provisions and Policies

690-76-035 (1) The Commission may identify potential water storage sites needed to encourage, promote and secure the maximum beneficial uses and control of the water resources under consideration in the evaluation of a minimum perennial streamflow. The Commission may reserve by classification specific quantities of water to assure supplies sufficient to meet future storage development requirements and minimum streamflows.

(2) In addition to the proposed action on the minimum perennial streamflow application the Commission may propose and consider at the same hearing, classification or reclassification of streams, withdrawal of waters from further appropriation, or amending basin water use programs. The supplemental actions under consideration shall either contribute to the objectives of supporting aquatic life and minimizing pollution or preserving water supply for a use that is found to be more important than the purpose of the minimum streamflow.

Stat. Auth.: ORS Ch. 183 & 536

Hist.: WRD 7-1983(Temp), f. & ef. 11-15-83; WRD 2-1984, f. & ef. 6-25-84; WRD 4-1986, f. & ef. 4-28-86

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Exceptions

690-76-040 [WRD 7-1983(Temp),
f. & ef. 11-15-83;
WRD 2-1984, f. & ef. 6-25-84;
Repealed by WRD 4-1986,
f. & ef. 4-28-86]