

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

JAN 24 1 30 PM '89

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of TEMPORARY rule(s) adopted on January 20, 1989 (Date)

by the Water Resources Commission (Department) (Division)

to be effective January 24, 1989 (Date) through July 24, 1989 (Date)

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

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

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) 690-77-015(11)

Suspended: (Rules Only) _____

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

DATED this 24th day of January, 1989

[] This Order amends TEMPORARY Order No.(s): _____
Filed: _____

By: William H. Young (Authorized Signer)

NOTE: The Expiration date of this Order remains the same as the original Order.

Title: Director

Statutory Authority: ORS 183.335(5) or _____

Chapter(s) _____, Oregon Laws 1987 or _____

House Bill(s) _____, 19____ Legislature; or Senate Bill(s) 140, 1987 Legislature

Subject Matter: Clarifies subordination of instream water rights created through minimum perennial streamflows.

Emergency Justification Attached: Do you intend to adopt this rule Permanently? YES NO
If so, have you filed Notice of Proposed Rulemaking for publication in the Oregon Bulletin? YES NO

For Further Information Contact: Becky Kreag (Rule Coordinator) Phone: 378-3671

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 77, INSTREAM WATER RIGHTS

PURPOSE

690-77-000

(1) These rules set the policy, procedures, criteria, standards and definitions for establishing instream water rights. Instream water rights provide for protection of public uses including, but not limited to recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. The rules provide for conversion of existing minimum streamflows to instream water rights; for specified agencies to apply for new instream water rights; for purchase, gift or lease of existing water rights for use as instream water rights; and for enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses. The rules also provide a procedure for state agencies to apply for reservations of water for future economic development.

(2) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. They may also be established as a result of a water conservation project governed by OAR 690 Division 18. The instream water right differs from other water rights because it does not require any control or diversion of the water. It is held in trust by the Water Resources Department but is regulated and enforced like all other water rights. Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

DEFINITIONS

690-77-010

As used in these rules:

- (1) "Commission" means the Water Resources Commission.
- (2) "DFW" means the State Department of Fish and Wildlife.
- (3) "DEQ" means the Department of Environmental Quality.
- (4) "Department" means the Water Resources Department.
- (5) "Director" means the director of the Water Resources Department.
- (6) "Held in trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water

right. Actions by the Department affecting instream water rights are limited by public trust obligations.

(7) "Instream," as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(8) "Instream water right," as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(9) "Minimum streamflow," also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.

(10) "Multipurpose storage project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two beneficial uses and/or purposes.

(11) "Parks" means the Parks and Recreation Division of the Department of Transportation.

(12) "Public benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(13) "Public use," as defined in ORS 537.332, includes but is not limited to:

- (a) Recreation;
- (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;
- (c) Pollution abatement; or
- (d) Navigation.

(14) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(15) "Scenic attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(16) "Unappropriated water available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

GENERAL PROVISIONS

690-77-015

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows needed to satisfy the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the public use applied for. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

(5) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(6) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(7) When instream water rights are established through transfers of existing water rights, the certificate shall define the appropriate reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream.

(8) Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses unless specifically withdrawn from appropriation for such use.

(9) Instream water rights shall be approved only if the amount, timing and location serve a public use or uses.

(10) The combination of instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with (4) and (5) above.

(11) An Instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including [the otherwise subordinate use of] storage rights except where an individual permit or water right specifies a subordination to future use or appropriations.

(12) An instream water right created through the conversion of a minimum perennial streamflow which consists in whole or part of waters released from storage are enforceable only as to the waters released to satisfy the instream water right.

(13) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

AGENCY APPLICATIONS FOR NEW INSTREAM WATER RIGHTS
690-77-020

(1) Only DFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.

(2) To promote coordination, DFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.

(3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.

(4) Applications to establish instream water rights shall be submitted in writing and shall include the following:

- (a) Agency(ies) applying;
- (b) Public uses to be supported;
- (c) Stream or lake name;
- (d) If a stream, the reach and stream to which it is tributary;
- (e) The appropriate section of a Department basin map with the applicable lake or stream reach identified;

- (f) Flow requested by month and year in cubic feet per second or acre-feet or lake elevation;
- (g) Methods used to determine the requested amounts;
- (h) Evidence of notification of other qualified applicant agencies;
- (i) If a multi-agency request, the amounts and times requested for each category of public use.

- (5) The applicant is encouraged to propose:
 - (a) A means and location for measuring the instream water right;
 - (b) The strategy and responsibility for monitoring flows for the instream right; and
 - (c) Any provisions needed for managing the water right to protect the public uses.

PROCESSING INSTREAM WATER RIGHT APPLICATIONS
690-77-025

(1) The Department shall establish a tentative date of priority for the instream water right as of the date the application is received at the Department.

(2) Applications which do not fulfill the requirements of OAR 690-77-020 shall be returned to the applicant to correct the deficiencies. The Department shall state a time within which the applicant must complete the application. The time allowed shall be at least thirty days but not more than one year from the date the application is returned to the applicant. If the applicant fails to return a complete application to the Department within the time specified, the tentative priority date is forfeited and the application may be rejected.

(3) The Director shall provide notice of each application received to the water rights public notice list created under OAR 690 Division 11 and to affected Indian tribes and cities.

(4) The Director may presume the proposed use is not precluded by the laws and regulations of any agency or tribe that does not respond within 30 days.

DIRECTOR REVIEW OF APPLICATIONS
690-77-030

(1) The Director shall review all completed applications and determine whether the proposed instream water right:

- (a) Satisfies the provisions of Section 690-77-015; or,
- (b) Is the subject of a request for review by a public agency or person within 30 days of notice.
- (c) Does not raise any other issues that indicate that the issuance of a certificate for an instream water right may impair or be detrimental to the public interest.

(2) If (1)(a) and (c) is satisfied and if no timely petition for review under (b) above has been filed, the Director shall conclude that the application is in the public interest and shall issue the certificate.

(3) If (1)(a) or (c) is not satisfied or (b) applies the Director may work with the applicant and any person or agency who has filed a request for review to determine whether the issues can be resolved through mutually agreeable modifications or conditions, consistent with ORS 537.332 to 537.360 and OAR 690-77-015 and 045. If as a result of negotiation, the Director determines:

(a) The issues indicating that the application may impair or be detrimental to the public interest or may take away or impair any permitted, certificated or decreed right cannot be resolved through negotiation, the Director shall refer the application to the Commission with a recommendation to conduct a hearing under ORS 537.170.

(b) The negotiations have resulted in a mutually acceptable resolution of the issues, the Director may issue the certificate with appropriate conditions or modifications, or may submit the proposed certificate to the Commission for review prior to issuing the certificate.

COMMISSION ACTIONS 690-77-035

(1) When the Commission receives for review an application for a proposed certificate, it may:

(a) Without hearing, find that the use would not impair or be detrimental to the public interest or take away or impair any permitted, certificated or decreed right and instruct the Director to issue a certificate; or

(b) Without hearing, find that the use, appropriately conditioned in accordance with ORS 537.332 to 537.360 and OAR 690-77-015 and 030(3)(b), would not impair or be detrimental to the public interest and would not take away or impair any permitted, certificated or decreed right, and instruct the Director to issue a certificate with the appropriate conditions; or

(c) Find that the use may impair or be detrimental to the public interest or may take away or impair any permitted, certificated or decreed right and require a hearing under ORS 537.170.

(2) After the public hearing held under (1)(c) above, the Commission's final action shall be an order:

(a) To approve an instream right for the amount requested; or

(b) To approve an instream water right for a lesser quantity of water than requested and/or with conditions needed to protect the public interest or avoid taking away or impairing any permitted, certificated or decreed right; or

- (c) To reject the instream water right if it would impair or be detrimental to the public interest or would take away or impair any permitted, certificated or decreed right.

REQUIREMENT OF STATEMENT OF FINDINGS
690-77-040

Any order or proposed order by the Director or Commission which reduces, conditions or rejects an instream water right shall include a statement of findings that sets forth the basis for the reduction, conditioning or rejection.

STANDARDS FOR REVIEW OF PROPOSED INSTREAM WATER RIGHTS
690-77-045

(1) When reviewing a proposed certificate the Director and the Commission shall issue the certificate as requested except as provided in (2) and (3) below.

(2) The Commission shall only modify or condition the proposed instream water right if it is found to be necessary to make the right conform with the general provisions in OAR 690-77-015 or ORS 537.170 as indicated by the following standards:

- (a) The instream water right shall not take away or impair any permitted, certificated, or decreed right to any waters or to the use of any vested waters by altering the availability and timing of water to a user with an earlier priority date;
- (b) An instream water right shall not preclude planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available;
- (c) The cumulative total of instream water rights shall not exceed the amount needed to support public uses when the unappropriated water available could otherwise satisfy both the public uses and additional out of stream uses;
- (d) An instream water right may be conditioned or modified to conserve water for a higher public purpose if the other purpose is expected to provide greater benefits to the public; and,
- (e) An instream water right shall not exceed the estimated average natural flow or level if the source is from a natural streamflow or natural lake unless the higher amount is justified under OAR 690-77-015 (4).

(3) The Commission shall only reject a proposed instream water right if it finds:

- (a) The instream water right is precluded by law; or,

- (b) No significant public benefit can be gained for the intended public use; or,
- (c) A greater benefit to the public will be gained by dedicating all of the unappropriated water to another use; or,
- (d) No amount of instream water right, even with conditions, would be in the public interest.

CONVERSION OF MINIMUM PERENNIAL STREAMFLOWS TO INSTREAM WATER RIGHTS
690-77-050

(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate Department mailing lists notice of proposed conversion, and a list of all existing minimum perennial streamflows established on any waters of this state prior to September 27, 1987 separated as follows:

- (a) Those flows the Commission intends to convert without change to instream water rights;
- (b) Those flows the Commission intends to condition with OAR 690-77-015(11) and schedule a hearing before converting to instream water rights;

(2) Any person or agency, including the Department, may request a hearing on any of the conversions proposed within 60 days of publication in the Secretary of State's bulletin or the mailing of notice.

(3) Requests for hearings shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that:

- (a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary; and/or
- (b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or
- (c) The conversion from a minimum streamflow to an instream water right would not be in the public interest.

(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created.

(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission:

- (a) To approve the conversion; or
- (b) To conduct a hearing under ORS 537.170.

(6) The Commission shall act on the Director's recommendation in accordance with 690-77-045.

DISPOSITION OF MINIMUM PERENNIAL STREAMFLOWS
690-77-055

Following the conversion of a minimum streamflow, the Commission shall retain the original minimum streamflow until it determines through basin program amendment that no public benefit is derived by maintaining both an instream water right and a minimum streamflow.

PURCHASE, LEASE OR GIFTS OF EXISTING WATER RIGHTS FOR CONVERSION TO INSTREAM RIGHTS
690-77-070

(1) Any person may apply to the Commission to convert to an instream water right an existing right or a portion of a right which the applicant would acquire or has acquired through purchase, lease or gift.

(2) An application for conversion shall include the following information:

- (a) Name of person requesting change, mailing address and phone number;
- (b) Public use(s) for which the instream right is desired;
- (c) Source of water for the existing water right including stream or lake name and county;
- (d) Name of record on the certificate, decree or proof of appropriation;
- (e) Name and page of decree and certificate number, if applicable;
- (f) Permit number and certificate number, if applicable;
- (g) Date of priority;
- (h) The authorized existing use of water;
- (i) Place of use, by location in the public land survey and by tax lot or by block, lot and tax lot (if applicable) in a platted subdivision;
- (j) Name of deeded land owner/certificate owner and a notarized statement authorizing the transfer if the owner is not the applicant;
- (k) Copy of the current recorded deed;
- (l) If any encumbrances exist against the property to which the existing right is appurtenant, a notarized statement of no objection from each holder of an encumbrance;
- (m) Description of the quantity of water to be transferred and map delineating the present point of diversion, the lands which are the subject of the transfer and lands if any, from the existing right that would not be subject to transfer;
- (n) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may

include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake level;

- (o) If the water right is acquired through lease, the specified period for the lease and the method of verifying that the original water right is not being used during the period of the lease;
- (p) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(3) The Director may require additional information needed to complete the evaluation of the proposed conversion.

PROCESSING A TRANSFER
690-77-075

Processing of the proposed transfer of a water right to an instream water right shall be pursuant to the water rights transfer rules in OAR 690 Division 15 and the following provisions.

(1) The Director shall provide notice of the proposed conversion in the weekly mailing list established under OAR 690 Division 11 and to affected cities and Indian tribes. Additional notice shall be provided in accordance with OAR Division 15.

(2) The Director shall review all applications to determine whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and

(b) The proposed reach(es) is(are) appropriate considering:

- (A) Instream water rights shall begin at the recorded point of diversion; and
- (B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream; and
- (C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-77-015 (6); and
- (D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate the reduced flows available, in accordance with (c)(B) below.

- (c) The proposed flow(s) is (are) consistent with 690-77-015(5), (6) and (9), shall provide a public benefit for an instream use, and be appropriate considering:
- (A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and,
 - (B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.
- (3) If the Director's findings under subsection (2) above are affirmative and if no protests to the transfer are filed within 20 days of the last notice in the newspaper, the Director shall approve the transfer and issue a permanent certificate or a certificate with a specific date of expiration for the instream water right. A copy of the certificate shall be mailed to the applicant and to DFW, DEQ and Parks as appropriate. The Director shall also issue a new certificate for any remaining right for the existing use. If the instream water right is time-dated, the Director shall enter an order suspending the use of the original water right during the effective period of the instream water right.
- (4) If any of the Director's findings under subsection (2) above are negative or if a protest has been filed, the applicant, Director and protestants, if any, may negotiate to develop a proposed instream water right that would be satisfactory to all. The Director shall issue a certificate in the manner provided in subsection (3) above for any negotiated instream water right transfer that satisfies all parties.
- (5) If under subsection (4) above the applicant or protestant choose not to negotiate, or the parties fail to reach agreement, the Director shall submit the proposed transfer to the Commission with the Director's findings under subsection (2) and a copy of any protests. The Commission shall decide:
- (a) To issue the certificate with conditions as needed to prevent harm to other water right holders; or
 - (b) To conduct a contested case hearing to determine whether the proposed instream water right should be denied, modified or conditioned to meet the legal requirements for transferring a water right under OAR 690 Division 15.
- (6) Contested cases under (5)(b) shall be heard according to the provisions of OAR 690 Division 1 and 75.

CANCELLATION OR WAIVING OF AN INSTREAM WATER RIGHT
690-77-080

- (1) An instream water right, or portion thereof, that has not been put to a public use for five successive years in which water was available shall be conclusively presumed to be abandoned and shall be processed as follows:
 - (a) Upon making a preliminary finding that the instream water right has been abandoned the Director shall notify DEQ, DFW, Parks, and those persons and agencies on the Division 11 mailing lists of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks;
 - (b) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper;
 - (c) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (1);
 - (d) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (2).
- (2) An instream water right established under ORS 537.336 through 537.338 (OAR 690-77-020) may be cancelled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in (1)(a) above.
- (3) An instream water right shall not be subject to abandonment due to non-use when water was not available.

DROUGHT EMERGENCY PROVISIONS
690-77-090

An instream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.730.

PRECEDENCE OF FUTURE USES
690-77-100

- (1) The applicants for a proposed multipurpose storage project may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.
- (2) An applicant for a right to use water for municipal purposes may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.
- (3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(4) Within six months of the receipt of the petition the Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and decision on precedence may occur before the final decision on the permit.

(5) After the public hearing the Commission shall enter an order to:

- (a) Approve the requested precedence; or,
- (b) Approve the requested precedence conditionally; or,
- (c) Deny the requested precedence.

(6) The Department shall also publish a statement of findings that explains the basis for the decision made in (5) above.

RESERVATIONS OF WATER FOR FUTURE ECONOMIC DEVELOPMENT
690-77-200

(1) Any state agency may request that the Commission establish a reservation of unappropriated water for future economic development. Reservations of water shall be established as a classification in a basin program and its priority shall be the date of amendment of the basin program by the Commission. The reservation shall set aside a quantity of water for specified uses which shall, when developed, have preference over all other water rights, including instream water rights, from the same source that are issued subsequent to the date the reservation is established.

(2) DFW, DEQ and Parks shall be notified within one month of the Department's receipt of the request. A member of the Commission shall conduct a public hearing on the proposed reservation in accordance with ORS 537.170 within six months of receipt of the request. The hearing shall be conducted in the basin of the proposed reservation.

(3) The Director shall review the hearing record based on the standards for making a public interest determination in OAR 690 Division 11. The Director shall prepare findings and a recommendation to the Commission on the proposed reservation. The recommendation may be to:

- (a) Approve the proposed reservation through amendment of the basin program classification; or
- (b) Approve a reservation through amendment of a basin program classification for a lesser amount than requested because the proposed reservation would impair or be detrimental to the public interest; or
- (c) Reject the proposed reservation because it would impair or be detrimental to the public interest.

(4) The Commission shall make the final determination on proposed reservations. The Commission may include any conditions deemed necessary to protect and promote the public interest.

(5) Applications for the use of reserved water shall be reviewed under provisions of ORS 537.170 as provided in OAR 690 Division 11, and the Commission's decision shall be based on the standards in those rules and in

OAR 690-77-045. In addition, the review shall consider the land use plans or policies of local jurisdictions and, if the reservation contemplates future development that is not foreseen in the plans, the Commission shall seek concurrence of the affected local jurisdiction(s) before making the reservation.

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