

WATER RESOURCES DEPARTMENT

DIVISION 79

RESERVATIONS OF WATER FOR FUTURE ECONOMIC DEVELOPMENT

690-079-0010

Purpose

(1) This Division establishes the procedure for state agencies to request reservations of water for future economic development pursuant to ORS 537.356.

(2) These rules shall apply to all reservation requests received by the Department after June 30, 1989. Notwithstanding the provisions of OAR 690-079-0040 to 690-079-0150, any reservation for which a request is received by the Department prior to June 5, 1992, and which is approved under these rules, shall receive a priority date of June 5, 1992, provided information that conforms to the provision of 690-079-0060 are received by the Department prior to January 1, 1995. For purposes of this rule, the request for a reservation of water in the Willamette Basin for municipal purposes and the request for a reservation of water in the Willamette Basin for agricultural purposes, both of which were referenced in the Commission's Willamette Basin Plan as adopted on January 31, 1992, shall be considered requests received by the Department prior to June 5, 1992.

(3) This Division also establishes temporary procedures to consider applications to extend reservations as provided in OAR 690-079-0160. Except as provided in 690-079-0160, 690-079-0010 to 690-079-0150 do not apply to requests for extensions of reservations received by the Department in September 2015, which were originally established pursuant to ORS 537.249.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.170, 537.249, 537.338 & 537.356 - 537.358

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 7-1993, f. & cert. ef. 11-30-93; WRD 7-2015(Temp), f. & cert. ef. 12-2-15 thru 5-29-16

690-079-0020

Definitions

As used in this Division:

(1) "Affected Local Government" means any local government, as defined in OAR 690-050-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.

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

(3) "Contested Case" means a hearing before the Department or Commission as defined in [ORS 183.310\(2\)](#) and conducted according to the procedures described in [ORS 183.413 - 183.497](#) and OAR Chapter 690, Division 1.

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

(5) "Director" means the Director of the Water Resources Department.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), ORS 537.338 & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0030

Request for Reservation

Any state agency may request that the Commission establish a reservation of unappropriated water for future economic development. A reservation shall be established by order. The reservation shall set aside a quantity of water for specified uses which shall, when developed, have priority over all other water rights, including instream water rights, from the same source that are filed subsequent to the date the request for reservation is filed with the Department.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), ORS

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0040

Priority Date

The order establishing the reservation shall fix the date on which the request for reservation was filed with the Department as the reservation priority date. A request for reservation will be deemed filed on the date it is received by the Department provided that either:

(1) The request contains all the information required under OAR 690-079-0060; or

(2) Any additional information the Department deems necessary to complete the application is received by the Department within 30 days of its request for additional information, or within such additional time as the Department provides, not to exceed one year.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0050

Term of Reservation and Extensions

The Commission may approve the reservation of water for up to 20 years. Prior to termination of the approved term of reservation, the applicant may apply for a time extension of up to 20 years. The proposed time extension shall be subject to all rule requirements and standards governing review of initial reservations. An approved time extension shall retain the priority date of the original reservation. The Commission also may require review of a reservation at specified time intervals during the approved

reservation time period. For the purpose of that review, the Commission may require the applicant to provide evidence that the purpose, intent, and amount of the reservation still meet the public interest standards of OAR Chapter 690, Division 11.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0060

Information Requirements

Requests for reservations of water for future economic development shall include the following information:

- (1) Agency name and address;
- (2) Purpose of the reservation;
- (3) Amount of water proposed to be reserved and evidence of water availability;
- (4) Source(s) of water to supply the reservation;
- (5) If the reservation is to be provided by existing storage, agreement to the proposed reservation by the party in charge of disposition of the stored water or evidence of authorization or allocation consistent with the proposed reservation;
- (6) If the proposal is to reserve water to be stored in a new facility, evidence that sites for the storage facility can be developed and that water is available for storage;
- (7) Approximate season(s) of use;
- (8) Approximate location(s) of use;
- (9) Evidence that the proposal is compatible with overall basin program goals and policies;
- (10) Identification of affected local governments and copies of letters notifying each local government of the intent to file a reservation request accompanied by a description of the reservation proposal;
- (11) Intended types of use(s) of the reserved water;
- (12) Expected duration of the reservation prior to application for use of the water;
- (13) Economic benefits provided;
- (14) Water sources alternatives;
- (15) Evidence that the proposal does not conflict with Scenic Waterway flow requirements;

(16) Evidence that the proposed reservation and water use(s) will promote the beneficial use of the water without waste; and

(17) Potential adverse impacts on water resources.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0070

Notice of Reservation Request

Within 30 days of receiving a request for reservation that is deemed complete by the Director, the Director shall notify:

(1) The Department of Fish and Wildlife, Department of Environmental Quality, Parks and Recreation Department, Economic Development Department, other affected federal and state agencies and the planning department(s) of affected local governments;

(2) Affected Indian tribes; and

(3) All persons on the Department's weekly mail list and reservations mail list.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0080

Copies of Reservation Request

Upon request from any governmental entity or other party, the Department shall provide a complete copy of the request for reservation.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0090

Comment Period and Land Use Compatibility

(1) A 60-day comment period shall commence on the day the Department deposits the notice in the mail of the U.S. Postal Service. All comments must be received by the Department on or before the end of the 60-day comment period. The notice will state the date by which comments must be received by the Department.

(2) The Director may presume the proposed use is allowed by and compatible with the programs and plans of any agency or affected local government that does not respond within the comment period shown on the notice. In the event of a land use dispute as defined in OAR 690-005-0015 (Definitions), the Director or Commission shall follow procedures as provided in OAR 690-005-0040 (Resolution of Land Use Disputes).

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0100

Review by Director

Following the comment period established by OAR 690-079-0090, the Department shall review the reservation request. The Director shall reject the reservation request if:

(1) The reservation request does not contain all the information required by OAR 690-079-0060 after the applicant has been given an opportunity to cure any defects in the request according to OAR 690-079-0040(2); or

(2) The Department concludes the reservation request would impair or be detrimental to the public interest based on the public interest review standards of OAR Chapter 690, Division 11.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), ORS 537.338 & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0110

Appeal of Director's Decision

The agency requesting the reservation may file a request for Commission review of the Director's rejection within 60 days of notification of rejection of a reservation request.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), ORS 537.338 & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0120

Contested Case Proceeding

If, after the Department performs a review of the reservation request, the Director does not find that the requested reservation will impair or be detrimental to the public interest, or if the Commission reverses the Director's rejection of the reservation request, the Director shall initiate a contested case hearing on the reservation request and shall so notify the agency requesting the reservation and any party which submitted comments during the 60-day comment period.

Stat. Auth.: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), ORS 537.338 & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92

690-079-0130

Public Interest Review

The Director shall apply any applicable public interest standards set out in OAR Chapter 690, Division 11 to the facts developed at the hearing. The Director shall prepare findings and a recommendation to the Commission on the requested reservation. The recommendation may be to issue an order:

- (1) Approving the requested reservation;
- (2) Approving a reservation for a lesser amount than requested because approval of a reservation in the amount requested would impair or be detrimental to the public interest; or
- (3) Rejecting the requested reservation because it would impair or be detrimental to the public interest.
- (4) Notwithstanding OAR 690-001-0045, the Commission shall issue the proposed order, hear exceptions, and issue the final order on all reservations on which a contested case hearing is held.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0140

Conditions on a Reservation

When approving a reservation, the Commission shall include any conditions deemed necessary to protect and promote the public interest.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0150

Applications for Use of Reserved Water

Applications for the use of reserved water shall comply with and be processed under provisions of OAR Chapter 690, Division 11, governing applications and permits generally. In addition to any information required under Division 11, an application for use of reserved water shall include a statement from the agency which requested the reservation that the proposed use is consistent with the reservation.

Stat. Auth.: ORS 197, [ORS 536.025](#), [ORS 536.027](#), [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Stats. Implemented:

Hist.: WRD 20-1988, f. & cert. ef. 11-4-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0200

690-079-0160

Extension of Reservation Requests Received in September 2015

- (1) This section was adopted by temporary rulemaking to establish a process to consider pending applications submitted in September 2015 to extend reservations established under ORS 537.249 that are set to expire in March 2016.
- (2) Notwithstanding OAR 690-079-0020 to 690-079-0150, and except as specifically stated in this section, applications to extend reservations established in OAR chapter 690, division 509 that were received by the Department in September 2015, shall be processed according to the provisions in this section.
- (3) Prior to termination of the approved term of reservation, the applicant may apply for a time extension of up to 20 years from the expiration date established in rule. An approved time extension shall retain the priority date of the original reservation.
- (4) An application for an extension shall contain the information required in OAR 690-079-0060.
- (5) If the applicant for an extension of a reservation made the election in ORS 537.249(2) to establish the reservation by rule, then an extension of a reservation must also occur by a rulemaking that amends the applicable basin program plan.
- (6) The Department shall provide notification, accept public comment, and hold hearings as provided in ORS 183.335, 536.300(3), and OAR 690, division 1. Notice shall also be provided to Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department, and Business Oregon. The public comment period shall be no less than 30 days.
- (7) In considering an application to extend a reservation, the Commission shall review information in the application, comments received, and information and recommendations provided by the Department.

Stat. Auth.: ORS 536.025, 536.027 & 537.249

Stats. Implemented: ORS 537.249

Hist.: WRD 7-2015(Temp), f. & cert. ef. 12-2-15 thru 5-29-16