

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

RECEIVED

JUL 1 2 43 PM '92

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 5, 1992 (Date) PHIL KEISELING
(Secretary of State)

by the Water Resources Commission (Department) Water Resources Department (Division)

to become effective upon filing (Date)

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

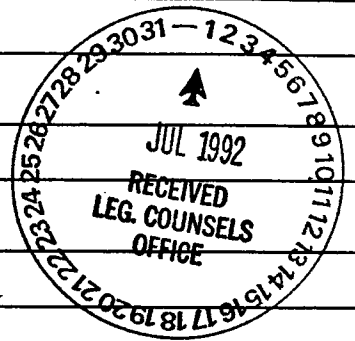
Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: March 1, 1992

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: see attached
(New Total Rules)

Amended: see attached
(Existing Rules)

Repealed: see attached
(Total Rules Only)



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

DATED this 15th day of July, 19 92

By: John E. Borden, Deputy (Authorized Signer)
Title: Director

Statutory Authority: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, and 537.356 - 537.358 or

Chapter(s) _____, Oregon Laws 19 _____ or

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

Subject Matter: Clarifies the public involvement opportunities and public interest criteria required in Department activities related to water use applications and permits, instream water rights and reservations for future economic development. Amendments to Divisions 11 and 77 revise the process by which water use applications shall be evaluated. These Divisions also clarify the basis for Water Resources Commission and Department considerations of public interest issues associated with proposed water development. In addition, these amendments formalize a dispute resolution process and establish bounds on third party negotiations. Division 79 rules describe the process for reserving water for future economic development.

For Further Information Contact: Reed Marbut, Michael Mattick and Doug Parrow (Rule Coordinator) Phone: 378-8455

OAR 690 - DIVISION 11
SUMMARY OF DIVISION REVISION
RULE NUMBERING

RECEIVED

JUL 1 2 45 PM '92

PHIL KEISLING
SECRETARY OF STATE

Adopting

690-11-000
690-11-150
690-11-155
690-11-160
690-11-170
690-11-175
690-11-180
690-11-183
690-11-185
690-11-190
690-11-195
690-11-197

Amending

690-11-010
690-11-020
690-11-030
690-11-040
690-11-050
690-11-060
690-11-082 renumbered 690-11-046 and amended
690-11-083 renumbered 690-11-048 and amended
690-11-085 renumbered 690-11-042 and amended
690-11-086 renumbered 690-11-044 and amended
690-11-090 renumbered 690-11-200 and amended
690-11-095 renumbered 690-11-205 and amended
690-11-100 renumbered 690-11-210
690-11-103 renumbered 690-11-215
690-11-105 renumbered 690-11-220
690-11-110 renumbered 690-11-225
690-11-120 renumbered 690-11-230 and amended
690-11-130 renumbered 690-11-235 and amended

Repealing

690-11-005
690-11-015
690-11-080

OAR 690 - DIVISION 77
SUMMARY OF DIVISION REVISION
RULE NUMBERING

Adopting

690-77-021
690-77-022
690-77-023
690-77-024
690-77-026
690-77-028
690-77-032
690-77-034
690-77-036
690-77-038
690-77-042

Amending

690-77-000
690-77-010
690-77-015
690-77-020
690-77-040 renumbered 690-77-044 and amended
690-77-050
690-77-075
690-77-080
690-77-200 and renumbered to 690-79

Repealing

690-77-025
690-77-030
690-77-035
690-77-045

Adopting

690-79-010 through 150

WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 79
RESERVATIONS OF WATER FOR FUTURE ECONOMIC DEVELOPMENT

Purpose

690-79-010

(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 filed with the Department after June 30, 1989. Notwithstanding the provisions of 690-79-040, 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.

{adopted 6-5-92}

Definitions

690-79-020 As used in this division:

(1) "Affected local government" means any local government, as defined in OAR 690-05-015, 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.

{adopted 6-5-92}

Request for Reservation

690-79-030 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.

{adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(1)}

Priority Date

690-79-040 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 690-79-060; 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.

{adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(2)}

Term of Reservation and Extensions

690-79-050 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.

{adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(3)}

Information Requirements

690-79-060 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 uses(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.

{ adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(4) }

Notice of Reservation Request

690-79-070 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.

{ adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(5) }

Copies of Reservation Request

690-79-080 Upon request from any governmental entity or other party, the Department shall provide a complete copy of the request for reservation.

{ adopted 6-5-92 }

Comment Period and Land Use Compatibility

690-79-090

- (1) A 60-day comment period shall commence on the day the Department deposits the notice in the mail of the United State 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 690-05-015 (Definitions), the Director or Commission shall follow procedures as provided in OAR 690-05-040 (Resolution of Land Use Disputes).

{adopted 6-5-92}

Review by Director

690-79-100 Following the comment period established by OAR 690-79-090, 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 690-79-060 after the applicant has been given an opportunity to cure any defects in the request according to OAR 690-79-040(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.

{adopted 6-5-92}

Appeal of Director's Decision

690-79-110 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.

{adopted 6-5-92}

Contested Case Proceeding

690-79-120 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.

Public Interest Review

690-79-130 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 690-01-045, the Commission shall issue the proposed order, hear exceptions, and issue the final order on all reservations on which a contested case is held.

{adopted 6-5-92}

Conditions on a Reservation

690-79-140 When approving a reservation, the Commission shall include any conditions deemed necessary to protect and promote the public interest.

{adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(8)}

Applications for Use of Reserved Water

690-79-150 Applications for the use of reserved water shall comply with and be processed under provisions of OAR 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.

{adopted 10-28-88; 8-8-90; amended: 6-5-92 and renumbered from 690-77-200(9)}