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CERTIFICATE AND ORDER FOR FILING
MAY 15 3 33 PM '90

PERMANENT ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on May 11, 1990

(Date)

Water Resources Commission

by the _____
(Department) (Division)

to become effective May 15, 1990
(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: January 15, 1990

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 690-250-130 Regulation of Exempt Groundwater Uses under ORS
537.545

Repealed:
(Total Rules Only) _____

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

DATED this 15th day of May, 19 90

By: William H. Young
(Authorized Signer)

Title: Director

Statutory Authority: ORS 540.145 or

Chapter(s) _____, Oregon Laws 19 _____ or

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

Subject Matter: Pertains to the establishment of a priority date for exempt uses of groundwater for regulatory purposes.

For further information contact Bud Bartels Phone: 378-3739

(Rule Coordinator)

OREGON ADMINISTRATIVE RULES
FOR
WATER DISTRIBUTION
Water Resources Department
Chapter 690
Division 250

Purpose of Rules

690-250-005 The purpose of these administrative rules is to give guidance in the administration of Oregon water laws. The rules provide instruction on how regulatory actions are to be done where statutes are unclear. Statutory authority to adopt administrative rules for water distribution is in ORS 540.145.

Definitions

690-250-010 The following definitions apply in OAR 690, Division 250.

- (1) Appropriator: Water user, trustee or agent in charge of the works.
- (2) Basin Program: A program adopted by the Water Resources Commission to establish water management policies and objectives for a specified basin. Basin programs establish rules for appropriation and use of surface and ground water within each river basin. Water use regulations include classification of surface and ground waters according to permitted uses, the withdrawal of surface and ground waters from further appropriation, the reservation of waters for specific future uses, and the establishment of minimum perennial streamflow requirements.
- (3) Beneficial Use: Reasonably efficient use of water without waste for a purpose consistent with the laws and the best interests of the people of the state.
- (4) Commission: Water Resources Commission.
- (5) Compensation: Salary and related payroll expenditures.
- (6) Enforceable Rotation Agreement: Written agreement between two or more appropriators to rotate the use of water, to bring about more economical use of the available supply to which they are collectively entitled.
- (7) Exempt Uses: Uses of water for which no registration, certificate of registration, application for a permit, permit, certificate of completion or water right certificate is required.
- (8) Expenses: Includes but is not limited to, lodging, meals, mileage, and supplies.

- (9) Irrigation Seasons: Time period (s) during the year when a water right for irrigation purposes can be legally used.
- (10) Legally Stored Water: Any water impounded in a reservoir under the provisions of an established right to store water.
- (11) Point of Diversion: For surface water, the point at which water is physically diverted from the natural source by manmade works for the beneficial use and, unless specified otherwise, includes point of appropriation as in a well or ground water development.
- (12) Rate and Duty of Water for Irrigation: Maximum quantity of water in cubic feet per second or gallons per minute (rate) and the total quantity of water in acre-feet per acre per year that may be diverted for irrigation (duty).
- (13) Reservoir: A natural or artificial lake or pond in which water is collected for beneficial use or purpose.
- (14) Substantial or undue interference: As defined in OAR 690-08-001.
- (15) Transfer: Legal process for change of use, change in place of use, or change of point of diversion of a water right.
- (16) Wasteful Use of Ground Water: As defined in OAR 690-08-001.
- (17) Water Right Subject to a Transfer: Right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued.

Futile Calls

690-250-020 (1) A call for distribution of surface water is futile when a junior appropriator has been denied the use of water and, in the judgement of the watermaster, an inadequate amount of water, or no water, reaches the senior appropriator or minimum flow point or reach or instream water right. Factors for consideration by the watermaster in making such a judgement may include, but are not limited to, the following:

- A. Soil moisture conditions;
 - B. Temperature;
 - C. Evaporation rate;
 - D. Moisture condition of the stream channel;
 - E. Conveyance characteristics of the stream channel; or,
 - F. Previous records that show the conveyance characteristics of the stream
- (2) Upon the judgment that water will not reach its destination, or

that an inadequate amount of water will reach its destination, the watermaster may disregard the call of the senior downstream appropriator.

Appropriator Obligated to Maintain a Functional Point of Diversion

690-250-030 The watermaster shall have no obligation to increase flows of surface water to reach the elevation of a diversion or to overcome friction losses caused by clogged diversion facilities of the person calling for water. The appropriator shall be responsible for diversion and conveyance of water from the natural source to the place of use.

Protection of Water Involved in a Transfer of Point of Diversion

690-250-040 The quantity of water available under a right that has been transferred to a new point of diversion is protected only to the extent of the terms of the certificate for that right and the quantity available at the original point of diversion. The quantity of water does not include an allowance for losses or return flows in the stream channel between the original point of diversion and the new point of diversion. Transmission losses incurred in transporting stored water through a natural stream channel shall not be made up from natural flow. The watermaster may deny water to an appropriator using an unauthorized point of diversion.

Controlling Waste and Unlawful Use of Water

690-250-050 (1) Unlawful use of water subject to corrective action by watermasters includes, but is not limited to, the following:

- A. Irrigating land without a right; or
- B. Using water for a purpose not authorized in the right; or
- C. Irrigating land or using water for a purpose with a priority different than the priority under which the water is diverted from the source; or
- D. Wasting water.

(2) If, after oral or written notice to the appropriator to stop unlawful use, the unlawful water use is continued, the watermaster or assistant watermaster may take control of the diversion works or controlling works of a well and reduce the amount of water diverted by the amount being wasted or unlawfully used. If such waste or unlawful use continues, the watermaster may further reduce the amount of water diverted by the amount wasted or unlawfully used, and so on until the unlawful use is eliminated. When taking control of the diversion works or controlling works of a well, the watermaster shall post a notice of control. Any person that interferes with the watermaster's regulation may be prosecuted under ORS 540.710.

(3) If wasteful use of groundwater is determined to occur, within an individual well, due to the nature of the construction of that well, the watermaster may post a notice of control and achieve compliance pursuant to OAR, Division 225 (690-225-030).

Diversion Works and Measuring Device Installation Notices for Surface Water & Ground Water

690-250-060 (1) Water use controlling devices and/or measuring devices shall be required when necessary for regulation or management purposes. When, in the watermaster's judgement, it becomes necessary to require such devices, the watermaster shall use a notice form furnished by the Water Resources Department. For each water use control or measuring device installation, a separate form must be filled out completely for each appropriator and submitted in duplicate to the Director (these notices are not valid unless signed by the Director). The original signed notice shall be returned to the watermaster to be delivered in person with date of delivery entered on each notice. When it is impractical for the watermaster or the appointed representative to deliver the notice in person, it shall be sent by certified mail. The date of delivery shall be the date of mailing.

(2) All required water use controlling devices and measuring devices shall be approved by the watermaster prior to installation. If the appropriator refuses or neglects to construct and install the required water use control or measuring devices or have an approved construction schedule for such installation after 10 days notice, the watermaster may close the diversion (ORS 540.320) or open the reservoir outlet (ORS 540.330), or regulate the controlling works of a well. The appropriator may request an extension of time from the watermaster and submit another construction schedule.

(3) If the appropriator fails to meet an approved construction schedule, the watermaster may close the diversion or close the controlling works of the well.

Irrigation Seasons

690-250-070 (1) Whenever the dates or times of the year within which an irrigation right may be exercised are not specified in decree, permit, certificate, order or basin program, the watermaster shall recognize the entitlement of the permits and certificates on adjudicated streams to be exercised during the same season as adjudicated rights, and permits and certificates in unadjudicated areas to be exercised between March 1 and October 31.

(2) When adopting or amending a basin plan, the Commission may designate a different period of use for rights described in section (1) of this rule, after considering soils, climate, topography, crop patterns or other circumstances.

Water Rotation Agreements

690-250-080 (1) Appropriators may rotate use of the supply to which they may be collectively entitled. The nature of potential agreements are subject to the limitations in Section (3) of this rule.

(2) An agreement shall identify the duration of the agreement which shall be no less than one (1) irrigation season. The agreement shall not be terminated within an irrigation season, and the rotation agreement shall be signed by all participants and dated. A copy of the agreement shall be filed with the watermaster for the area. Unless the rotation agreement provides otherwise, any member of the agreement may notify the watermaster after the end of the irrigation season, and before the beginning of the next season's use, that they are terminating the agreement.

(3) A watermaster shall distribute water only under those enforceable agreements that include the provisions of section 2. A watermaster shall not implement a rotation agreement that violates existing water statutes, court decrees, instream water rights, minimum flows, other rules of the Commission, or interferes with the rights of any appropriator not a member of such agreement. If distribution of water by the rotation agreement requires substantially more of the watermaster's time than distribution among the relative priorities, then the watermaster may require payment by the appropriators for an assistant watermaster, as described in ORS 540.100.

(4) The agreement may contain language describing how a call from an appropriator or minimum flow senior to one or more appropriators in the rotation will be honored.

Entry on Private Property

690-250-090 (1) 536.037(1)(e) empowers the director to "enter upon any private property in the performance of the duties of the director, doing no unnecessary injury to the private property." The director may delegate authority to a watermaster or any other staff member. Authority to enter private property to inspect wells is granted in ORS 537.780(4).

(2) Entry as stated above is restricted to open areas and does not include entry into the house or immediate out buildings except with permission. If an owner or occupant refuses permission to enter or threatens physical harm or obstruction of the watermaster's performance of duties, the watermaster may seek a court order or an administrative search warrant with the aid of the district attorney or a police

officer. If the owner or occupant refuses permission to enter, the watermaster may regulate a diversion that is not on the property if it is accessible.

(3) If a watermaster has reason to believe that water is being used illegally, the watermaster may enter private property to inspect, gather evidence, and/or post any unauthorized uses found, if the watermaster restricts entry to open areas. The watermaster may enter open areas of private property if there exists probable cause that the property contains evidence of a violation of the water laws and urgent circumstances justify warrantless entry. If the owner or occupant is present or has been contacted and refuses permission to enter, the watermaster may seek a search warrant or other court order to enter the property.

Regulation of Surface Water

690-250-100 (1) The watermaster shall investigate and respond to all complaints of water shortages or unlawful use based on a review of appropriate records and performance of field inspections, as judgement may require. The watermaster's response may be by oral or written communication to appropriators involved in the complaint or shortages, or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster may begin regulation if investigation reveals a valid complaint of water shortage or unlawful use. Water shall be regulated in accordance with the relative rights or rotation agreements of the appropriators involved in the complaint or shortage.

Regulation of Ground Water

690-250-110 (1) The watermaster shall respond to complaints based on a review of appropriate records and performance of necessary field inspections as judgement may require. The watermaster may request the assistance of a ground water geologist. The watermaster's response may be by oral or written communication to appropriators involved in the complaint or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster shall distribute the ground water within the affected areas if substantial interference is determined. Ground water shall be distributed in accordance with the relative rights or rotation agreements of the appropriators involved in the complaint. The watermaster may request the assistance of a ground water geologist during any phase of ground water distribution.

Regulation of Ground Water/Surface Water

690-250-120 (1) The watermaster shall respond to complaints based on a review of appropriate records and performance of necessary field inspections as judgement may require. The watermaster may request the

assistance of a ground water geologist. The watermaster's response may be by oral or written communication to the ground water and surface appropriators involved in the complaint, or by personal visits by the watermaster or assistant watermaster.

(2) The watermaster shall distribute the surface water and ground water by relative priority within the affected area if ground water and surface water connection and substantial interference are determined. The watermaster may request the assistance of a ground water geologist during any phase of ground water/surface water distribution.

Regulation of Exempt Ground Water Uses Under ORS 537.545

690-250-130 (1) In addition to non-exempt uses, the watermaster may regulate exempt uses of groundwater based on the priority of the exempt uses. The priority date shall be the date the well was completed as shown on the well log.

(2) If no completion date is shown on the well log or if no well log is available for the well, the owner of the well may provide other documentation that shows when water use began, to establish the date of priority. Examples of such documentation include but are not limited to the following:

- a) Copies of building permits for houses served by the well;
- b) Records of power use to pump the well; and
- c) Affidavits from people stating when water use began.

(3) If no completion date is shown on the well log or if no well log is available, the Director or Director's designee may interpret the documentation furnished by the well owner or obtained from Department records and determine a priority date. The watermaster shall use the priority date determined to regulate the exempt use.

Special Problem Area Regulation

690-250-140 The watermaster may prohibit the diversion or use of water by anyone who has failed to comply with a Commission rule or order pursuant to a declaration of a serious water management problem area under ORS 540.435.

Management of Stored Water

690-250-150 (1) Water which has been illegally stored is under the complete control of the watermaster. When water has been illegally stored, the watermaster shall notify the owner of the reservoir containing the illegally stored water of how much was illegally stored and how it is to be released. If necessary, the watermaster may take control of the outlet controls to effect the appropriate release. Such release shall be done in a manner which will make the most effective use of the water for downstream uses. Releases recommended by the

Oregon Fish and Wildlife Department to prevent damage to fish and wildlife resources may be considered.

(2) Downstream storage right holders can demand water from upstream storage right holders when the actions of upstream storage right holders, junior in priority, have prevented the fulfillment of the downstream, senior storage rights. When storable water is made available to downstream storage interests, any of the storable water which they fail to store shall be deducted from the amount that could be demanded from the upstream rights holders. While downstream senior rights must be protected, they have a duty to store when it is available. The senior right holder's failure to do so shall not work to the disadvantage of an upstream junior right. When releases from upstream storage are made, the recommendations of the Department of Fish and Wildlife may be considered to prevent damage to fish and wildlife resources.

(3) When physical circumstances permit, and when all interests involved agree, the watermaster shall coordinate the storage and release of waters from multiple reservoirs in a manner which results in the most effective use of the storage space available. However, such action shall not deprive any water right holder of water to which the holder would otherwise have been entitled. The purpose of this section is to allow the watermaster to deviate from the storage program dictated by the storage right holders involved when such deviation would result in mutual benefits to all parties, including the public. Such deviations may include water exchanges between consenting storage interests. Releases recommended by the Oregon Fish and Wildlife Department to prevent damage to fish and wildlife resources may be considered.

(4) Use of legally stored water is governed by the water rights, if any, which call on that source of water. Any legally stored water released in excess of the needs of water rights calling on that source of water shall be considered natural flow, unless such release is part of a water exchange under the approval and control of the watermaster.

Collections Authority

690-250-160 (1) The Water Resources Department has collection authority through the provisions of ORS 540.080, 540.100 to 540.135, 540.220 to 540.260, and 540.410.

(2) The Director may bill for services where authorized by statute. With the exception of ORS 540.410 any billable activity shall be paid in advance by the user before services are rendered.

(3) When the demand for services exceeds the personnel available to provide the services requested, and county funds do not provide the funding for the assistant watermasters, the appropriators demanding the

service may pay the assistant's compensation and expenses. If the users requesting the service pay the compensation and expenses of an assistant watermaster, payment shall be in advance, based on an estimation of the compensation and expenses. If funding is provided, the services may be continued as long as the funding covers the earned compensation and expenses. If no funding is provided, the services requested may be provided by the watermaster or assistant watermaster as time is available.

(4) Upon a written request for the watermaster to distribute water on a private water delivery system, the watermaster shall prepare an estimate for expenses and compensation to do the distribution. The Director shall require the appropriators requesting the distribution to pay in advance the estimated compensation and expenses. It shall be the responsibility of the appropriators requesting the distribution to proportion the compensation and expenses, as described in ORS 540.100, to the users of the water delivery system.

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