

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 23, 1998 by the  
Date prior to or same as filing date.

Water Resources Department - Water Rights and Adjudications Division  
Agency and Division

Chapter 690, Divisions 315 and 320  
Administrative Rules Chapter Number

Tom Byler  
Rules Coordinator

(503) 378-8455, ext. 299  
Telephone

158 12<sup>th</sup> Street NE, Salem, OR 97310  
Address

to become effective November 2, 1998, Rulemaking Notice was published in the May 1, 1998 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

690-315-0010, 0020, 0030, 0040, 0050, 0060

**AMEND:**

690-320-0010, 0060

**REPEAL:**

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 536.025 and 536.027  
Stat. Auth.: ORS

\_\_\_\_\_  
Other Authority

ORS 537.230, 537.248, 537.630, 539.010  
Stats. Implemented: ORS

**RULE SUMMARY**

On August 1, 1997, the Water Resources Commission directed the Water Resources Department to initiate rulemaking regarding permit extensions. The request was based on a June 26, 1997, letter opinion from the Attorney General's Office which suggested the current extension rules were unnecessarily restrictive based on certain statutory requirements. Specifically, legal counsel advised that ORS 537.230 requires that the Department must authorize a permit extension based on the expectation that the project can be completed within the extension time period allowed. The former Department rules only allowed extensions for periods of one year for non-municipal permit holders, and five years for municipalities. Based on the legal counsel's advice, the former rules did not allow sufficient time for the completion of construction of some projects.

The Commission directed the Department to initiate rulemaking to address this issue and to engage in a broad review of relevant issues associated with permit extensions. Subsequently, the Department formed a Rules Advisory Committee (RAC) to provide input on the rulemaking policy issues. The RAC met eight times to discuss issues related to the rulemaking.

The new rules involve the concurrent adoption of two versions of permit extension rules. The amended OAR Chapter, Division 320 is effective from the date of filing through June 30, 2001. OAR Chapter 690, Division 315 will become effective immediately thereafter, on July 1, 2001. This "staging" of the two sets of rules provides a simpler and more familiar version of the rules to be used by pending extension applicants and those permit holders who may need to apply for an extension on or before June 30, 2001. Most current permit holders will have the opportunity to complete their permit requirements under Division 320, which relies on the language of the statute and is familiar to permit holders. Division 315 is more prescriptive and requires detailed information to be included in permit extension applications. Delaying the effective date of Division 315 to July 1, 2001, will allow permit holders two-and-a-half years to prepare for the more detailed rules.

The Department and RAC members also agreed that extension issues relating to permits for municipal uses presented complex questions that would need to be addressed in a separate working group. Those municipal permit issues were not directly addressed in this rulemaking, but will be considered as part of the working group effort.



Authorized Signer

11/2/98

Date

\*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

\*\*The *Oregon Bulletin* is published on the 1<sup>st</sup> of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15<sup>th</sup> day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. on the preceding workday.

**NOTE: The rules contained in OAR Chapter 690, Division 315 do not become effective until July 1, 2001.**

**November 2, 1998**

**OREGON ADMINISTRATIVE RULES  
WATER RESOURCES DEPARTMENT  
CHAPTER 690  
DIVISION 315  
WATER RIGHT PERMIT EXTENSIONS**

**Purpose**

**690-315-0010** (1) OAR 690-315-0010 through 690-315-0060 establish the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law, or

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.

(2) OAR 690-315-0010 through 690-315-0060 do not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) These rules shall become effective July 1, 2001, superceding OAR 690-320-0010. All applications requesting extensions of time to begin construction and perfect water rights permits filed with the Department on or after July 1, 2001 shall be governed by OAR 690-315-0010 through 690-315-0060.

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

Hist: WRD -1998, f. & cert. ef. 11-2-98

**Application for Extension of Time**

**690-315-0020** (1) Under this rule, water right permit holders may apply to the Department for extensions of time to complete construction and/or apply the water to the full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a water right permit holder shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) If the water right permit holder receives delivery of the subject water right permit from

*Note: These rules were filed with the Office of the Secretary of State and took effect on November 2, 1998. 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.*

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a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water;

(d) Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension;

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence.

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

(e) Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to:

(A) The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied;

(B) The maximum rate of diversion, if any, made to date; and

(C) If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.

(f) A description of financial expenditures made toward completion of the water development;

(g) An estimate of the cost to complete the water development;

(h) A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project which have significantly delayed completion of construction or perfection of the right;

(i) The date by which the water development will be completed and water put to full beneficial use;

(j) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(k) Justification of why the requested time in subsection (h) is needed to complete the project and/or apply the water to full beneficial use;

(l) A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs;

(m) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; and

(n) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application within 90 days after the required date of completion specified by the permit or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.260 or 537.410.

**NOTE: The rules contained in OAR Chapter 690, Division 315 do not become effective until July 1, 2001.**

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

Hist: WRD -1998, f. & cert. ef. 11-2-98

### **Application for Extension of Time to Begin Construction**

**690-315-0030** (1) Counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 may apply for extensions of time to begin construction.

(2) To apply for an extension of time under this rule, a water right permit holder shall submit to the Department a completed application for extension of time. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application to begin construction must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) A summary of any unforeseen events which delayed the beginning of construction;

(d) The date by which the water development will be completed and water applied to the full beneficial use;

(e) A justification of why the requested time is needed to begin construction and fully apply water to beneficial use;

(f) Any additional information the applicant determines is relevant to evaluate the application in accordance with applicable statutory requirements and these rules; and

(g) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application 90 days after the required date specified by the permit to begin construction or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.410.

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

Hist: WRD -1998, f. & cert. ef. 11-2-98

### **Criteria for Department Review of Extension Applications**

**690-315-0040** (1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:

(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;

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(c) The applicant can complete the project within the time period requested for the extension;  
and

(d) There is good cause to approve the extension.

(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market for water or power to be supplied;

(e) The present demands for water or power to be supplied;

(f) The income or use that may be required to provide fair and reasonable returns on investment;

(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;

(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;

(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and

(j) Any other factors relevant to a determination of good cause.

(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:

(a) The amount of construction completed within the time allowed in the permit or previous extension;

(b) The amount of beneficial use made of the water during the permit or previous extension time limits;

(c) Water right permit holder conformance with the permit or previous extension conditions;  
and

(d) Financial investments made toward developing the beneficial water use.

(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;

(d) Economic investment in the project to date;

(e) Other economic interests dependent on completion of the project; and

(f) Other factors relevant to the determination of the market and present demand for water

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and power.

(5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.

(6) The Department may request additional information necessary to evaluate an application.

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

Hist: WRD -1998, f. & cert. ef. 11-2-98

### **Department Action on Extension Applications**

**690-315-0050** If the Department finds an applicant has submitted a completed application as required in 690-315-0020 or 690-315-0030, the Department shall process the application as established in this rule.

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:

- (a) Applicant name and address;
- (b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
- (c) Common name of water source(s) listed in the permit;
- (d) Permit number;
- (e) Use allowed in the permit;
- (f) Proposed extended date of completion; and
- (g) A statement that copy fees are required to receive a proposed final order.

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may respond to the issue, if applicable and relevant to the decision, within the proposed final order.

(3) The Department shall mail the proposed final order issued under subsection (2) of this rule to the applicant and a copy of the proposed final order to any person who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(5) Extension orders may include, but are not limited to, any condition or provision needed

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to:

- (a) Ensure future diligence;
  - (b) Mitigate the effects of the subsequent development on competing demands on the resource; and
  - (c) Periodically document the continued need for the permit.
- (6) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.
- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250.
  - (b) The Department shall provide notice of receipt of progress reports described in subsection (6)(a) of this rule in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

Hist: WRD -1998, f. & cert. ef. 11-2-98

### **Proposed Final Order Hearing Rights**

- 690-315-0060** (1) The applicant or any other person adversely affected or aggrieved by the proposed final order described in OAR 690-315-0050(2) may request a contested case hearing on the proposed final order. The written request for contested case hearing must be filed within 45 days from the date of publication of the proposed final order in the Department's weekly notice.
- (2) A written request for contested case hearing shall include:
    - (a) The name, address and telephone number of the petitioner;
    - (b) A description of the petitioner's interest in the final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
    - (c) A detailed description of how the action proposed in the final order would adversely affect or aggrieve the petitioner's interest;
    - (d) A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
    - (e) Any citation of legal authority supporting the petitioner, if known;
    - (f) Proof of service of the petition upon the water right permit holder, if petitioner is other than the water right permit holder; and
    - (g) The protest fee required under ORS 536.050.
  - (3) Within 60 days after the close of the period for requesting a contested case hearing, the



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Director shall:

- (a) Issue a final order on the extension request; or
- (b) Schedule a contested case hearing if a request for contested case hearing has been submitted and
  - (A) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or
  - (B) The applicant submitted a timely request for a contested case hearing.

Stat. Auth.: ORS 536.025 and 536.027

Statutes Implemented: 537.230, 537.248, 537.630, 539.010

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