

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

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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

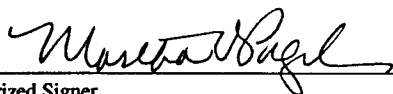
RULE SUMMARY

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 1st 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 15th 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: OAR 690-320-0010 is effective from November 2, 1998 to July 1, 2001.

November 2, 1998

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 320
WATER RIGHT PERMITS

Extension of Time Limits

690-320-0010 (1) Effective until July 1, 2001, this rule establishes 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) This rule does not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) After July 1, 2001, the permit extension application process rules shall be contained in OAR Chapter 690, Division 315.

(4) A holder of a permit for municipal water use, as defined in OAR 690-300-0010, may apply for an extension under the rules in this Division. However, the Department will convene a work group to address issues relating to water rights for municipal water uses. The work group will be asked to make recommendations for rules and/or legislation to address issues specific to water rights for municipal water uses, including extensions of such water rights. Until July 1, 2001, holders of municipal water use permits are not required to apply for a permit extension. During this time, the Department will not require submission of proof of completion for, attempt to cancel, or compel an application for an extension for a water right permit for municipal water uses. This time period is offered to allow the work group to develop recommendations. The Department may shorten the time limit if the working group develops recommendations and new rules are adopted before July 1, 2001.

(5) The time limit to begin construction of water use facilities shall not be extended except for municipal use of surface water by a municipality, permits involving Federal Energy Regulatory Commission projects, permits issued to irrigation districts for reclamation purposes, or county, municipality or district permits for new storage projects.

(6) The time limits to complete construction or to apply the water to a beneficial use may be extended upon showing of good cause for the untimely completion. This determination shall consider the requirements of ORS 537.230, 537.248, 537.630 and 539.010(5).

(7) Time extensions granted shall be for the reasonable time period necessary to complete construction and application of water to beneficial use.

(8) Before taking final action on any request for an extension of time, the Director shall issue a proposed final order including any conditions necessary for approval of the extension. The Director

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.

NOTE: OAR 690-320-0010 is effective from November 2, 1998 to July 1, 2001.

shall provide public notice of the Department's proposed final order by means of publication in the Department's weekly notice. A period of 45 days shall be provided for the submission of a written comment or a written protest against a proposed final order. Protests shall include the fee as required under ORS 536.050. Each person submitting a protest shall raise all reasonably ascertainable issues and raise all reasonably available arguments supporting the person's position by the close of the comment period.

(9) If the Director determines that some progress has been made to complete the construction or use, but if diligence is questionable, the Director may issue a proposed final order to:

(a) Deny the request for more time;

(b) Grant the request for more time and notify the applicant that future requests for more time will not be granted; or

(c) Grant the request for more time by an order amending the permit to include any condition or provisions needed for determining future diligence. Such new provisions or conditions shall not apply to any portion of the right developed under the time limits previously granted.

(10) 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 for 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 (10)(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.

(11) After the 45 day comment and protest period, the Director shall determine whether to:

(a) Issue a final order; or

(b) Schedule a contested case hearing if the Director finds that there are significant disputes related to the use of water.

Stat. Auth.: ORS 536.025, 536.027

Statutes Implemented: 536.220, 536.300, 536.310, 537.230, 537.630, Chapters 540 and 543

Hist: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-095; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 690-11-205; WRD -1998, f. & cert. ef. 11-2-98

Cancellation of Permit

690-320-0020 When it appears from an onsite examination by the Water Resources Department that no appropriation has been made under the terms of the permit, or that use once made

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has undergone a period of five successive years of nonuse, a certified letter of intent to cancel the permit shall be sent to the permittee, allowing 60 days from the date of the letter for response. Failure to respond during the 60-day period shall result in cancellation of the permit.

Stat. Auth.: ORS 536.025, 536.027

Statutes Implemented: 536.220, 536.300, 536.310, 537.260, 537.410 to 537.450, Chapters 540 and 543

Hist: WRD 6-1987, f. & cert. ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-100; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 690-11-210

Claims of Beneficial Use for Applications Filed After June 30, 1987

690-320-0030 Except for applications filed under the provisions of OAR 690-340-220, all final proof surveys and claims of beneficial use for applications filed after July 9, 1987 shall be performed by Certified Water Right Examiners. Applicants prior to July 10, 1987 may either wait for the Department to perform the final proof survey on its own schedule or may hire a certified Water Right Examiner.

Stat. Auth.: ORS 536.027

Statutes Implemented: ORS 537.797, 537.798, 537.799

Hist: WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-103; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 690-11-215

Incremental Perfection of a Municipal Water Right

690-320-0040 (1) A municipal supplier may incrementally perfect a portion of the quantity of water authorized by any of its municipal water use permits. For the purpose of incrementally perfecting water rights, a municipal supplier means:

- (a) Any incorporated city, village, or town;
- (b) A port formed under ORS 777.005 to 777.725 and ORS 777.915 to 777.953;
- (c) A domestic water supply district formed under ORS Chapter 264; or
- (d) A water supply authority formed under ORS Chapter 450.

(2) The portion of water use that may be incrementally perfected by a municipal supplier shall not be less than 25 percent of the quantity originally authorized by permit. The perfection, or proof of appropriation, of each increment of water shall conform to the proof of appropriation requirements of OAR 690-330-010.

(3) When a portion of a permit issued for municipal use is perfected by a municipal supplier, the remaining unperfected quantity of water shall remain in permit status without loss of priority. The increment of water perfected and confirmed by certificate shall be subtracted from the quantity of water originally authorized by permit. The remainder shall be the quantity of water subject to future perfection under the terms of the permit.

(4) A municipal supplier shall notify the Department, in writing, of its intent to incrementally

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perfect a portion of its water right. Written notice shall include the following information:

(a) The quantity of water diverted from each point of diversion, by month, for the preceding three years;

(b) A plan of how the municipal supplier intends to develop successive increments of its water right; and

(c) Maps that show where water will be put to use. Maps accompanying notification of intent to perfect an increment of a water right shall be prepared to the specifications described in OAR 690-310-050, except that a standard even scale less than 4" = 1 mile may be used if appropriate.

(5) Municipal suppliers that incrementally perfect less than the full quantity of water authorized by permit may request further extension of the time limit to complete construction and apply water to beneficial use for the remaining, unperfected quantity of water. OAR 690-320-010 governing extension of time limits applies to unperfected municipal water rights.

Stat. Auth.: ORS 536.025, 536.027,

Statutes Implemented: ORS 536.220, 536.300, 536.310, 537.260 & Ch. 540

Hist: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 9-1992, f. & cert. ef. 7-1-92; Renumbered from 690-11-130; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 690-11-235

Temperature Control

690-320-0050 Where a permit has been issued for use of water for temperature control (either heat or cold), a report detailing the amount of water used, the times of application and conditions requiring the use of water for temperature control shall be required annually. These shall be required as an element of proof of appropriation to the satisfaction of the Department prior to issuance of a confirming water right certificate.

Statutory Authority: ORS 536.027

Statutes Implemented: ORS 537.170, 537.250, 537.525 & 537.630

Hist: WRD 1-1996, f. & cert. ef. 1-31-96

Assignment or Change of Ownership of a Permit or Groundwater Registration

690-320-0060 (1) When a change of interest or ownership occurs in lands covered by a permit or groundwater registration, the record holder may request, in writing, the Director to record the assignment of a new owner.

(2) Should the record holder of the permit or groundwater registration be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the permit or registration. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

(a) A copy of the deed to the land;

(b) A copy of a land sales contract;

(c) A court order or decree; or

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(d) Documentation of survivorship of property held jointly.

Statutory Authority: ORS 536.025, 537.027

Statutes Implemented: ORS 537.220 & 537.635

Hist: WRD 1-1996, f. & cert. ef. 1-31-96; WRD -1998, f. & cert. ef. 11-2-98

Primary and Supplemental Rights

690-320-0070 (1) Cancellation of primary rights:

(a) A notice given pursuant to ORS 540.631 for the proposed cancellation of a primary water right for irrigation of certain lands shall include notice of the proposed cancellation of any supplemental water right for irrigation of the same lands;

(b) If the primary right is determined to have been forfeited by non-use and the supplemental right is not determined also to have been forfeited by non-use, the owner of the land to which the right is appurtenant may apply to transfer the supplemental right, without loss of priority, to become the primary right.

(2) Diminution of a water right: A primary right may, at the request of the owner of the right, be diminished to a supplemental status to allow for a new primary right application from a more dependable source of water.

(3) Supplemental rights: Where more than one right exists, water shall be used from the primary source so long as there is sufficient quantity to satisfy the terms of the permit or certificate. Nevertheless, if requested by the applicant, a permit may be issued which describes a surface water source as supplemental to a groundwater right and shall provide that, in the interest of conserving the groundwater supplies, the supplemental right may be exercised at time when water is available from the surface water supply.

Statutory Authority: ORS 536.027

Statutes Implemented: ORS 540.610 to 540.650

Hist: WRD 1-1996, f. & cert. ef. 1-31-96