

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 [November 19, 2009] by the Oregon Water Resources Commission.

Oregon Water Resources Department; Water Rights/Adjudication Division OAR Chapter 690
Agency and Division Administrative Rules Chapter Number

Ruben E. Ochoa 725 Summer St. NE, Salem, OR 97301 (503) 986-0874
Rules Coordinator Address Telephone

to become effective [December 15, 2009]. Rulemaking Notice was published in the [October, 2009] Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Fees related to certain applications to the Oregon Water Resources Department requesting a limited license.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 690-340-0030

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 536.027; ORS 537.144

Other Auth.:

Stats. Implemented: ORS



RULE SUMMARY

By statute, fees associated with applications to the Oregon Water Resources Department requesting a limited license are established by the Oregon Water Resources Commission. This rulemaking amends the fee structure for requesting a limited license for the use of water for Aquifer Storage and Recovery testing purposes, for Artificial Groundwater Recharge purposes, and for all other limited license filings.

Ruben E. Ochoa *RUBEN E. OCHOA* *12/8/09*
Authorized Signer Printed name Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

OREGON WATER RESOURCES DEPARTMENT

DIVISION 340

WATER USE AUTHORIZATIONS

690-340-0010

Exempt Uses

The uses of water listed below do not require a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(1) The statutory exemptions from permit requirements for use of groundwater include watering any lawn or noncommercial garden not exceeding 1/2 acre in area. Not more than 1/2 acre of lawn and noncommercial garden in total area may be irrigated through a group delivery system under such exemption. The statutory exemptions from permit and certificate requirements for use of groundwater include:

(a) Stockwater use;

(b) Lawn or non-commercial garden watering of not more than 1/2 acre in total can be irrigated from any groundwater source under the exemptions listed in ORS 537.545(1)(b);

(c) Single or group domestic water uses of no more than 15,000 gallons per day;

(d) Industrial or commercial water uses not exceeding 5,000 gallons per day based on peak daily use. A commercial or industrial operation shall be allowed only one well system and exemption under ORS 537.545(1)(f) on each ownership or tax lot, whichever is larger.

(2) The statutory exemptions from permit and certificate requirements for use of surface water include:

(a) Use of waste, spring or seepage waters which are exempt under ORS 537.800;

(b) Water used for egg incubation projects under the Salmon and Trout Enhancement Program (STEP);

(c) Fish screens, fishways and fish by-pass structures. A fish screen, fish way or fish by-pass structure is an exempt use if it either:

(A) Is part of a hydroelectric project permitted or licensed by the Department; or

(B) Is found to not be harmful to fish or wildlife after consultation with the Oregon Department of Fish and Wildlife and causes no injury to existing water rights.

(d) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water permit or certificate for the reservoir;

(e) Reservoirs that store less than 9.2 acre feet of water or with a dam less than ten feet in height; that are located off-channel and outside the immediate riparian area; that do not divert water directly from a natural stream, lake or other on-channel source; that were constructed before January 1, 1993; and for which a written notice is submitted under section (4) of this rule.

(3) Water used for emergency firefighting is exempt from permit and certificate requirements regardless of the source of water.

(4) To qualify as an exempt water use under subsection (2)(e) of this rule, the landowner shall provide written notice of the use to the Department on or before January 1, 1995. Such notice shall be on a form provided by the Department and signed and verified by the

owner of the land or the owner's authorized agent upon which the reservoir is located. The notice shall include the following:

- (a) The volume of water stored;
 - (b) The source of the water used to fill the reservoir;
 - (c) The height of the dam measured at its highest point above natural ground elevation;
 - (d) A U.S. Geological Survey topographic map or a tax lot map showing the location of the reservoir;
 - (e) Evidence that the reservoir existed on or before January 1, 1993 as described in OAR 690-340-0020; and
 - (f) A statement describing the off-channel nature of the reservoir.
- (5) The Commission may require other information from the landowner regarding an exempt use including, but not limited to, estimates of the quantity of water used; diversion location; place of use; or photographs showing the scale of the project and the immediate area above, below and surrounding a reservoir.

Stat. Auth.: ORS 536.027, ORS 595 & ORS 654

Stats. Implemented: ORS 537.141

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96,

Renumbered from 690-011-0014

690-340-0020

Ponds in Existence Prior to January 1, 1993 (HB 2153, 1993)

- (1) A landowner with an unpermitted reservoir constructed before January 1, 1993 may apply for a water right permit and continue the use of water while a decision is pending on the application. The water right application, if approved in accordance with OAR 690-011-0155 through 690-011-0185 (dated 4-13-94), will receive a priority date of January 1, 1993. In order to qualify for these benefits, an application must be filed on or before January 1, 1995. In addition to the information and fees required under OAR 690-011-0020 and 690-011-0040 (dated 4-13-94), an application shall also be accompanied by evidence that the reservoir existed before January 1, 1993. Such evidence may include:
- (a) A dated aerial photograph which shows the immediate area above, below and surrounding the reservoir;
 - (b) An affidavit signed by the landowner or other knowledgeable person;
 - (c) A dated map prepared by a local, state or federal agency showing the location of the reservoir; or
 - (d) Construction receipts or other forms of documentation.
- (2) Notwithstanding the requirements for a survey set forth in ORS 537.230, no survey of the appropriation is required for a reservoir storing less than 9.2 acre feet or with a dam less than ten feet in height. Maps submitted with the application shall be of sufficient quality and scale to establish the location of the reservoir to the nearest quarter-quarter section, township and range.
- (3) Up to ten reservoirs may be included in a single application if the reservoirs existed prior to January 1, 1993; have dams that are less than ten feet in height or that store less than 9.2 acre-feet of water; are in the same drainage basin; and within the same ownership on contiguous property. For a rural fire protection district formed under ORS 478.010 or a forest protection district formed under ORS 477.225, up to ten reservoirs

may be included in a single application if all the reservoirs are within the boundaries of the district; are within the same drainage basin; and are an element of the district's fire protection system.

- (4) A water right certificate under ORS 537.250 may be issued in lieu of a permit if:
- (a) The reservoir existed before January 1, 1993;
 - (b) The records of the Department provide satisfactory documentation to describe the location and volume of storage;
 - (c) Modifications or alterations to the impoundment structure are not required; and
 - (d) The Commission determines under section (1) of this rule that the reservoir would qualify for issuance of a permit.

Stat. Auth.: ORS 536.027, ORS 595 & ORS 654

Stats. Implemented: ORS 595, Oregon Laws 1993, & ORS 537.405 - ORS 537.409

Hist.: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96,

Renumbered from 690-011-0041

690-340-0030

Limited License

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

(a) The fee for examination and recording:

(A) \$1,000 for a limited license filing requesting the use of water for Aquifer Storage and Recovery testing purposes.

(B) \$500 for renewal of a limited license for Aquifer Storage and Recovery testing purposes.

(C) \$500 for modification of a limited license for Aquifer Storage and Recovery testing purposes.

(D) \$1,000 for a limited license filing requesting the use of water for Artificial Groundwater Recharge purposes.

(E) For all other limited license filings, \$[150] 250 for the first point of diversion plus \$[15] 25 for each additional point of diversion; and

(b) A completed water availability statement from the local watermaster on forms provided by the department; and

(c) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

- (3) Each limited license shall be limited to an area within a single drainage basin.
- (4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.
- (5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.
- (6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.
- (7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, 595 & 654

Stats. Implemented: ORS 537.143 & 537.144

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0082; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 11-2009, f. & cert. ef. 12-15-09

690-340-0040

Registration of Water Use for Road Maintenance and Construction

- (1) A request by a public agency to register water use for road and highway maintenance, construction and reconstruction shall be submitted on a form provided by the Water Resources Department and shall include at least the following:
 - (a) The name and authorized agent of the public agency;
 - (b) The address and telephone number of the agency's authorized agent;
 - (c) If the source of water to be used for the agency's road maintenance or construction program:
 - (A) Is groundwater, attach copy of well log or description of the well;
 - (B) Is surface water, identify the name of the source and the stream, or river the source is tributary to.
 - (d) The maximum amount of water to be used during the calendar year in gallons or acre-feet;
 - (e) The maximum amount of water to be used during any 24-hour period in gallons or acre-feet;
 - (f) A map indicating the location(s) of the point(s) of diversion of water to be used for road maintenance or construction (the map shall be of sufficient scale to establish the location(s) of the point(s) of diversion to the nearest quarter section, township and range);
 - (g) A fee in the amount of \$300 (more than one point of diversion may be identified per registration); and

(h) If water is obtained from a well, conveyance or storage facility that has a perfected or certificated water right:

(A) Provide the permit or certificate number or the court decree identification of the right; and

(B) Written authorization from the owner of the right that allows use of water from the well, conveyance or storage facility.

(2) The registrant may use either a county road map or a Water Resources Department basin map to indicate the location(s) of point(s) of diversion. Counties may submit one registration for all uses within the county. State-wide public agencies shall submit one registration for each of the agencies administrative units. (The Oregon Department of Transportation shall submit one registration for each of its Regions within which road construction or maintenance water is to be used). Federal agencies with jurisdiction over roads/highways shall submit one registration for each of their administrative units.

(3) An Oregon Department of Fish and Wildlife "Requirements for Small Pump Screen", Self-Certification form shall accompany the registration form.

(4) As used in this rule, public agency means:

(a) The State of Oregon or any agency of the State of Oregon;

(b) A county or a special road district of a county;

(c) A city, town or incorporated municipality; and

(d) Any federal agency that has jurisdiction over a roadway in this state.

(5) The registration is subject to the following terms:

(a) Water use authorized by the registration shall not have priority over any existing water right;

(b) Water use authorized by the registration shall be subordinate to all future permitted or certificated water rights;

(c) Water use authorized under the registration shall not exceed 50,000 gallons from a single source during any 24-hour period;

(d) The registration shall be valid until the public agency voluntarily withdraws the registration or the public agency fails to file the annual renewal statement as required under section (8) of this rule;

(e) No person may construct any dam, reservoir or other impoundment facility to divert water from within a designated scenic waterway;

(f) Under no circumstances may the registrant cause the water course to be dewatered to a degree that the live, continuous flow is obstructed;

(g) The department may require the public agency to cease diversion of water at any time the director has reason to believe use of water under the registration is causing a significant adverse impact upon:

(A) The affected watershed; or

(B) Any existing water right; and

(h) The registrant shall notify the watermaster for the district in which the water is to be diverted not fewer than 30 days nor more than 60 days prior to the date diversion under the registration is to be initiated. If the proposed diversion is within or above a designated scenic waterway, the registrant shall not withdraw water under the registration until the watermaster provides written findings that the proposed withdrawal will not interfere with the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife uses.

(6) The registrant may authorize any person(s) to divert, transport or apply water under the registration; however, the registrant is responsible for the acts of such person(s) as authorized by the registration and these rules.

(7) The registrant shall provide copies of its registration form and map to the local office of the Oregon Department of Fish and Wildlife (ODFW) at least 30 days before water use under the registration is initiated. If sensitive, threatened or endangered aquatic species are present in the stream(s) proposed as a source(s) of water under the registration and such species may be adversely affected by withdrawal of water by the registrant, ODFW shall advise the watermaster to direct the registrant to withdraw water from an alternative location(s) or stream(s) wherein the proposed withdrawal will not cause significant adverse impact to the affected watershed.

(8) The public agency must submit an annual renewal statement on or before February 1 of each calendar year. The annual renewal statement shall be accompanied with a \$50 renewal fee and shall specify any change in:

- (a) The registrant's map;
- (b) The sources of water to be used;
- (c) The maximum amount of water to be used during the calendar year or during any 24-hour period; and
- (d) A map delineating any changes in the location(s) of point(s) of diversion.

Stat. Auth.: ORS 536.027

Statutes Implemented: ORS 537.040

Hist.: WRD 6-1995, f. & cert. ef. 6-10-94; WRD 1-1996, f. & cert. ef. 1-31-96,
Renumbered from 690-011-0047

690-340-0060

Expedited Review Process for Applications to Use Stored Water Exclusively

(1) In lieu of the application process described in OAR 690-310-0040, 690-310-0050, and 690-310-0070 through 690-310-0275, a person may apply for a permit to use stored surface water exclusively, to be evaluated through an expedited process. This process may not be used to apply for a permit to use water stored through an aquifer storage and recovery or artificial ground water recharge project under OAR chapter 690, division 350.

(2) In addition to the information, materials, and fees required by OAR 690-310-0040, a person applying under section (1) of this rule shall submit:

(a) A copy of the permit, certificate, or decree as evidence that the proposed use of the stored water is one of the authorized uses under the permit, certificate or decree that allows the storage of water; or

(b) If the storage is authorized under a permit or certificate, the permit or certificate number sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the permit or certificate that allows the storage of water; or

(c) If the storage is authorized under a decree, the name of the decree, the volume number, and the page number(s) of the decree sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the decree that allows the storage of water.

(3) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under section (2) of this rule and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return all fees and the application.

(4) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. The priority date for use of water not previously reserved under OAR chapter 690, division 79 shall be the date the application was received for filing by the Department.

(5) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by any statute. If the proposed use is prohibited by statute, the Department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(6) As soon as practicable after determining that an application is complete and not defective, that all fees have been paid, and the use is not prohibited by statute as prescribed in section (5) of this rule, the Department shall give public notice of the application in the weekly notice published by the Department.

(7) Within 30 days after the public notice prescribed in section (6) of this rule, any person may submit written comments to the Department. The 30-day comment period shall commence on the day the Department gives notice. All comments must be sent by facsimile, postmarked, or hand-delivered to the Department on or before the last day of the 30-day comment period, and shall identify:

(a) The specific public interest under ORS 537.170(8) that would be affected by the proposed use, and

(b) Specifically how the identified public interest would be affected.

(8) Following the end of the 30-day comment period, the Department may issue a final order and permit approving the application.

(9) If the Department determines public interest issues are raised pursuant to section (7) of this rule, the Department shall process the application as an application under ORS 537.150, and issue a proposed final order pursuant OAR 690-310-0150.

(10) At a minimum, a permit issued under subsection (8) of this rule shall be conditioned to require:

(a) Fish screens and by-pass devices and fish passage consistent with Oregon Department of Fish and Wildlife (ODFW) standards, unless the permittee submits written evidence that ODFW has determined that the devices are not necessary;

(b) A measuring device at each point of diversion authorized under the permit.

(11) Within 10 days of issuing a permit under subsection (8) of this rule, the Department shall:

(a) Provide notice of the issuance in the weekly notice published by the Department, and

(b) Send a copy of the permit to persons who have submitted comments pursuant to section (7) of this rule.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Statutes Implemented: 537.017 - 537.032

Hist.: WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07