

PERMANENT ADMINISTRATIVE RULES

WATER RESOURCES DEPT
SALEM, OREGON

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 17, 2006 by the

Oregon Water Resources Commission

Date prior to or same as filing date
OAR Chapter 690

Agency and Division

Administrative Rules Chapter Number

Debbie Colbert

725 Summer Street NE, Suite A, Salem, Oregon 97301

503-986-0878

Rules Coordinator

Address

Telephone

to become effective March 29, 2007. Rulemaking Notice was published in the September 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Expedited review of certain stored water applications; repeal of water use registration process

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: 690-340-0060

AMEND: 690-310-0040; 690-310-0280

REPEAL: 690-340-0050

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 536.027

Other Auth.:

Stats. Implemented: ORS 537.140 – 536-211; 537.145 – 537.230; 537.400 Chapter 37, 2005 Oregon Water Laws); Chapter 14, 2005 Oregon Water Laws (repealing ORS 537.015 to 537.032)



RULE SUMMARY

The Water Resources Commission adopted rules related to the Water Right Application Process (OAR Chapter 690, Division 310) and Water Use Authorizations (OAR Chapter 690, Division 340) implementing HB 2178, Chapter 37, 2005 Oregon Water Laws. HB 2178, which was codified at ORS 537.147, establishes an expedited process for permits to use stored water exclusively. This expedited process allows the Department to issue a permit following a public comment, if no public interest issues are raised. The adopted rules establishes the process, while amendments specify minimum application requirements for applications to use stored water.

The repeal of OAR 690-340-0050 implemented HB 2083 (Chapter 14, 2005 Oregon Water Laws). HB 2083 repealed obsolete statutes.

Debbie Colbert

Debbie Colbert

3/27/07

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 ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
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, Ch. 595 & 654

Statutes 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 OAR 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, Ch. 595 & 654

Statutes Implemented: Chapter 595 (Oregon Laws 1993), ORS 537.405 to 537.409

Hist: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 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, \$150 for the first point of diversion plus \$15 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, Ch. 595 & 654

Statutes 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 OAR 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-2004

~~690-340-0050~~

~~Water Use Registrations for Wetland, Stream or Riparian Area Enhancement or Storm Water Management (HB 2107, 1993)~~

~~(1) Any person may apply to register a water use that would otherwise require a water right if the use is for a qualifying wetland, stream or riparian area enhancement or storm water management project. The registration process is an expedited process for obtaining a water right permit.~~

~~(2) Project Qualification Criteria:~~

~~(a) A proposed water use shall meet the following criteria to be considered for registration:~~

~~(A) The primary purpose of the proposed appropriation or impoundment of water must be for one or more of the following purposes:~~

~~(i) Wetland enhancement, except that groundwater may only be appropriated to maintain a wetland;~~

~~(ii) Stream or riparian area enhancement, including but not limited to:~~

~~(I) The construction of off-channel reservoirs, diversion or spring development to provide water for livestock and wildlife use outside of riparian areas in order to protect or enhance a riparian area; or~~

~~(II) Channel improvement or restoration that is hydraulically stable and enhances the biological conditions of the stream or riparian area; or~~

~~(iii) Management or treatment of storm water, including:~~

~~(I) Landscaping or channeling that directs run-off into small reservoirs, wetlands or treatment facilities; or~~

~~(II) On-channel storm water treatment facilities that impound or slow water; and~~

~~(B) The project must be designed to result in one or more of the following benefits:~~

~~(i) Decreased pollutant loads to streams;~~

~~(ii) Reduced soil or bank erosion;~~

~~(iii) Reduced summer stream temperatures;~~

~~(iv) Improved riparian conditions;~~

~~(v) Improved habitat conditions for aquatic or terrestrial species;~~

~~(vi) Decreased peak or storm flows;~~

~~(vii) Increased storage capacity in the watershed~~

~~(viii) Increased streamflows during the low-flow season; or~~

~~(ix) Other wetland enhancement, stream or riparian area enhancement or storm water management benefits.~~

~~(b) If the project does not qualify according to the criteria described in this section, the proposed water use shall be processed in the same manner as a water use application under OAR~~

~~Chapter 690, Division 310.~~

~~(3) Notices of Registration:~~

~~(a) A notice of registration for a water use for wetland, stream or riparian area enhancement or storm water management shall be submitted by an applicant on a form provided by the Department and shall be accompanied by the following:~~

~~(A) The information and fees required under OAR 690-310-0040, except as modified in paragraph (C) of this subsection;~~

~~(B) The name and address of each adjacent property owner and verification that each owner has been mailed a copy of the completed notice. For the purposes of this rule, "adjacent property owner" means any owner of property that shares a common boundary within 1/4 mile of a proposed project site;~~

~~(C) A map that meets the requirements of OAR 690-310-0050, with the following exceptions;~~

~~(i) The standard scale requirements shall be no less than 2 inches = 1 mile; and~~

~~(ii) The map is required to be prepared by a certified water right examiner only when the notice of registration includes a reservoir with a proposed dam height greater than ten feet or proposed storage greater than 9.2 acre feet.~~

~~(D) A description of the proposed water use and related project, the condition the proposed project will address, and the benefits that are expected to result from the proposed project.~~

~~(b) One notice of registration may be submitted for up to ten reservoirs provided:~~

~~(A) Each reservoir stores less than 9.2 acre feet of water or includes a dam that is less than ten feet high;~~

~~(B) All of the reservoirs are located within the same drainage basin; and~~

~~(C) All of the reservoirs are located on contiguous property and are owned by the same party.~~

~~(e) The applicant is encouraged to submit copies of permits or endorsements, if any, which have been received from natural resource agencies, watershed councils, the Governor's Watershed Enhancement Board, or the Watershed Health Program.~~

~~(4) Injury to Existing Water Rights. The Department shall evaluate each notice of registration to determine whether the proposed water use would interfere with the exercise of an existing water right and the proposed use cannot be restricted so as to avoid causing injury to an existing water right.~~

~~(5) Injury to the Public Interest. The Department shall evaluate each notice of registration in accordance with OAR 690-310-0110 through 690-310-0140, as applicable.~~

~~(6) Project Benefits:~~

~~(a) In consultation with the agencies listed below, the Department shall determine if the proposed project is reasonably expected to result in wetland, stream or riparian area enhancement or storm water management benefits:~~

~~(A) The Oregon Department of Fish and Wildlife;~~

~~(B) The Oregon Department of Environmental Quality;~~

~~(C) The Oregon Department of Agriculture;~~

~~(D) The Oregon Division of State Lands;~~

~~(E) The Oregon Economic Development Department; and~~

~~(F) Any other agency the Department considers appropriate.~~

~~(b) In order to determine if the proposed project is reasonably expected to result in wetland, stream or riparian area enhancement or storm water management benefits, the Department and consulting agencies shall consider if the proposed project is likely to result in one or more of the following benefits:~~

~~(A) Decreased pollutant loads to streams;~~
~~(B) Reduced soil or bank erosion;~~
~~(C) Reduced summer stream temperatures;~~
~~(D) Improved riparian conditions;~~
~~(E) Improved habitat conditions for aquatic or terrestrial species;~~
~~(F) Decreased peak or storm flows;~~
~~(G) Increased storage capacity in the water shed;~~
~~(H) Increased stream flows during the low flow season; or~~
~~I) Other wetland enhancement, stream or riparian area enhancement or storm water management benefits.~~

~~(8) Public Notice and Comments:~~

~~(a) The Department shall include notice of registration applications for qualifying projects and a description of the proposed projects in its weekly notice described in OAR 690-310-0090;~~

~~(b) The public and state agencies shall have 30 days from the day the Department deposits the notice in the mail of the U.S. Postal Service to submit written comments.~~

~~(9) The Department shall issue a water use registration if:~~

~~(a) No written comments are received under section (8) of this rule that warrant further review, as determined by the Director;~~

~~(b) The proposed water use will not result in injury to existing water rights or the public interest, as determined under sections (4) and (6) of this rule;~~

~~(c) The Department has consulted with the agencies listed in section (7) of this rule and the project is reasonably expected to result in the wetland, stream or riparian area enhancement or storm water management benefits, as determined under section (6) of this rule; and~~

~~(d) No issues are identified during the Department's review of the proposed water use that warrant further review, as determined by the Director.~~

~~(10) The Department shall mail a registration to the applicant and a copy of the registration to all individuals and agencies who have filed timely comments with the Department. In addition, any person may request a copy of a registration. The Department shall include notice of issuing a water use registration in the weekly notice described in OAR 690-310-0090. The notice shall include the date by which objections to the registration must be received.~~

~~(11) Objections:~~

~~(a) A 60-day objection period shall commence on the day the Department mails a registration to the applicant and other interested parties.~~

~~(b) If an objection is received that the Director determines warrants further review, the Director shall rescind the registration and the water use application process shall continue.~~

~~(c) If no objection is received that the Director determines warrants further review, the Department may presume that the registration is not opposed by any person or entity.~~

~~(12) Registration Denials. If the Director denies registration, the construction of facilities or~~

~~use of water is prohibited until the applicant successfully completes the permit application process and a permit is issued.~~

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

~~Statutes Implemented: 537.017 to 537.032~~

~~Hist: WRD 5-1994, f. & cert. ef. 4-13-94; WRD 9-1994, f. & cert. ef. 8-11-94; WRD 5-1995 (Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96 Renumbered from OAR 690-011-0049.]~~

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.

(10) 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 to 537.032

Hist: WRD 11-2006, f. & cert. ef. 3-29-07