

CERTIFICATE AND ORDER
FOR FILING
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 January 26, 1996 by the Water Resources Commission to become effective upon filing.


The matter having come before the Water Resources Commission after 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 the Secretary of State's Bulletin: ___ No X Yes
Date Published: November 1, 1995

NOW, THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List INDIVIDUAL Rule Number(s) on the appropriate line below).

ADOPTED: (see attached)
AMENDED: (see attached)
REPEALED: (see attached)
RENUM. TO.: (see attached)
AMENDED AND RENUMB. To: (see attached)

as the Administrative Rules of the Water Resources Commission
Dated this 31st day of January, 1996.

By: 
Title: Director

STATUTORY AUTHORITY: ORS 536.027

OTHER AUTHORITY:

STATUTES BEING IMPLEMENTED: ORS Chapters 183, 390, 536, 537,
SUMMARY:

The rules are permanent water right application processing rules that reflect changes made by the 68th Legislative Assembly through SB 510, SB 674, SB 1032, SB 1033, and HB 2184. In addition, the rules include new divisions to better organize the department's rules by subject matter in OAR Chapter 690.

For further information, contact

RULES COORDINATOR: Beth Patrino

Phone: 378-8455, ext. 299

Adopted

690-02-025; 02-035; 02-105; 02-175

690-77-019; 77-027; 77-029; 77-033; 77-037; 77-039; 77-043; 77-046; 77-047; 77-048;
77-051; 77-052; 77-053

690-310-005; 310-010; 310-020; 310-030; 310-070; 310-080; 310-100; 310-110;
310-120; 310-130; 310-140; 310-150; 310-160; 310-170; 310-180; 310-190; 310-200;
310-210; 310-220; 310-230; 310-240; 310-250; 310-260; 310-270; 310-275; 310-280

Amended

690-02-010; 02-030; 02-040; 02-050; 02-090; 02-100; 02-120; 02-130; 02-150; 02-170

690-05-040; 05-050

690-77-000; 77-010; 77-015; 77-020; 77-070;

Repealed

690-02-070

690-77-021; 77-022; 77-023; 77-026; 77-028; 77-032; 77-034; 77-036; 77-038; 77-042;

690-11-025; 11-030; 11-040; 11-050; 11-060; 11-150; 11-160; 11-170; 11-175; 11-180;
11-18311-185; 11-190; 11-195; 11-197;

Renum. to

690-77-044 to 77-049; 77-050 to 77-054

Amended and Renumb. to

690-11-010 to 690-300-010

690-11-000 to 690-310-000; 690-11-020 to 690-310-040; 690-11-070 to 690-310-050;
690-11-048 to 690-310-060; 690-11-155 to 690-310-090; 690-11-196 to 690-310-260

690-11-200(3) to 690-320-070; 690-11-200(6) to 690-320-050; 690-11-200(7) to 690-
320-060; 690-11-205 to 690-320-010; 690-11-210 to 690-320-020; 690-11-235 to 690-
320-040; 690-11-215 to 690-320-030

690-11-225 to 690-330-010; 690-11-230 to 690-330-020; 690-11-200(6) to 690-330-
030; 690-11-200(3) - (5) to 690-330-040

690-11-014 to 690-340-010; 690-11-041 to 690-340-020; 690-11-046 to 690-340-030;
690-11-047 to 690-340-040; 690-11-049 to 690-340-050

690-77-024 to 690-77-031 ✓

**WATER RESOURCES DEPARTMENT
OAR CHAPTER 690, DIVISION 340
WATER USE AUTHORIZATIONS**

Exempt Uses

690-340-010 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.

January 31, 1996

(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 690-340-020; 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

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

690-340-020 (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 690-11-155 through 690-11-185 (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 690-11-020 and 690-11-040 (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

Limited License

690-340-030 (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, \$100 for the first point of diversion plus \$10 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

Registration of Water Use for Road Maintenance and Construction

690-340-040 (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

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

690-340-050 (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 690-310-040, 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 690-310-050, 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.

(c) 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 690-310-110 through 690-310-140, 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 690-310-090;

(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 690-310-090. 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