

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

DEC 1990

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on December 7, 1990 (Date)

by the Water Resources Commission
(Department) Division)

to become effective immediately
(Date)

The within matter having come before the Water Resources Commission
(Department) (Division)

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 Secretary of State's Bulletin: NO YES Date Published: November 1, 1990

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules) OAR 690-400-010 Definitions for Statewide Policies

~~Adopted:~~
~~(Existing Rules)~~ 690-410-060 Statewide Policy on Conservation and Efficient Work Use

~~Adopted:~~
~~(Existing Rules)~~ 690-410-050 Statewide Policy on Protection of Water Resources on Public Riparian Lands

Repealed:
(Total Rules Only)

as Administrative Rules of the Water Resources Department
(Department) (Division)

DATED this 14th day of December, 19 90

By: William H. Young
(Authorized Signer)

Title: Director

Statutory Authority: ORS 536.300 and 536.310

Chapter(s) _____, Oregon Laws 19 _____

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) _____, 19 _____ Leg

Subject Matter: State policies conservation and efficient water use and water resources protection on public riparian lands. Definitions for the statewide policies.

For Further Information Contact: Doug Parrow / Rick Bastasch Phone: 378-3671
(Rule Coordinator)

WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 400
STATE WATER RESOURCES POLICY

PURPOSE AND AUTHORIZATION
690-400-000

- (1) These rules, and those contained in Division 410, establish statewide policies and principles pertaining to a wide range of water-related topics. All Water Resources Commission and Department activities, including but not limited to: (a) basin planning; (b) interagency coordination; and (c) development and adoption of rules, standards, and implementing strategies to govern Department programs and activities, shall be compatible with these rules and those contained in Division 410.
- 2) ORS 536.220 authorizes a single state agency, the Water Resources Commission, to formulate and implement an integrated, coordinated state water resources policy. The Water Resources Commission shall progressively formulate plans and programs to develop the water resources of the state and provide for the enforcement of state water policy. State water resources policy must promote the maximum beneficial use of the waters of the state. Multiplewater uses shall be preferred over single-purpose uses. Existing water rights shall be protected in accordance with relative priority dates except as they may be temporarily modified under emergency drought circumstances. The Commission shall, in adopting policies that affect the appropriation and control of water resources, design those policies to best protect and promote the general public welfare.
- (3) The Water Resources Commission is required by ORS 536.300(2) to develop a state program for managing Oregon's water. The Commission has established the Oregon Water Management Program which consists of statewide policies (OAR Chapter 690, Divisions 400 and 410), basin programs (OAR Chapter 690, Divisions 500 to 520) and non-rule program direction for implementing statewide policies and basin level actions (ORS 536.430).
- (4) In formulating the Oregon Water Management Program, the Commission shall consider declarations of policy provided in ORS 536.310. These declarations mandate the consideration of existing rights, economic development, human consumptive needs, multiple uses, groundwater quality, protection of wildlife, recreation, watershed management, and other priorities outlined by the Legislature. These rules, and those contained in Division 410, are adopted as statements for inclusion in the integrated, coordinated state water resources policy required under ORS 536.300.
- (5) The programs and plans of the Commission are to reflect all laws that relate to or affect the use and control of the water resources of the state (ORS 536.330). The Legislature, in ORS

536.360, directs every state agency and public corporation to conform to statements of state water resources policy as adopted by the Water Resources Commission.

690-400-010 Definitions

As used in the rules contained in Divisions 400 and 410, unless the context requires otherwise:

(1) Beneficial use means an instream public use or a use of water for the benefit of an appropriator for a purpose consistent with the laws and the economic and general welfare of the people of the state and includes, but is not limited to, domestic, fish life, industrial, irrigation, mining, municipal, pollution abatement, power development, recreation, stockwater and wildlife uses.

(2) Conservation means eliminating waste or otherwise improving efficiency in the use of water while satisfying beneficial uses by modifying the technology or method for diverting, transporting, applying or recovering the water, by changing management of water use, or by implementing other measures.

(3) Emergencies mean situations, including but not limited to wildfire, flooding, and toxic spills, which pose an immediate and significant threat to life, health, property, or water or riparian resources.

(4) Management activity means an activity in a riparian area which is planned and undertaken to extract, manipulate, or control natural resources or natural processes. Management activities include but are not limited to timber harvest, reforestation, road construction or reconstruction, spraying of herbicides or pesticides, grazing, mining, or cultivation.

(5) Mitigation means the reduction of adverse effects of a proposed project or activity by considering, in the following order:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environments;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
- (e) Compensating for the impact by replacing or providing conditions of comparable substitute value.

(6) Over-appropriated means a condition of water allocation in which, for a specified period:

- (a) The quantity of surface water available an average of four out of five years is not sufficient to meet the expected demands from all water rights during the specified period; or
- (b) The expected depletion of a groundwater resource from all water rights is likely to result in declines in supplies below economic pumping levels, to exceed recharge to the aquifer on an annual basis or to cause significant interference with surface waters.

(7) Public interest, as a standard for reviewing new uses of water, means a beneficial use which is consistent with state law and includes providing the greatest good for the people of the state based on current values, protecting water rights and conserving water resources for present and future generations.

(8) Public use means an instream use of water that is available to the public at large. It includes but is not limited to:

- (a) Recreation;
- (b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values;
- (c) Pollution abatement;
- (d) Navigation;
- (e) Scenic attraction; and
- (f) Any other similar or related use.

(9) Riparian area means the zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone_s existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, bog, wet meadow, muskeg, or ephemeral, intermittent or perennial stream. [ORS 541.350(4)]

(10) Waste means the continued use of more water than is needed to satisfy the specific beneficial uses for which a right was granted. The need for water shall be based on using the technology and management practices that provide for the efficient use of water considering:

- (a) The economic feasibility of use of the technology and management practices by the water user;
- (b) The environmental impacts of making modifications;
- (c) The available proven technology;
- (d) The time needed to make modifications;
- (e) Local variations in soil type and weather; and
- (f) Relevant water management plans and subbasin conservation plans.

(11) Watershed means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

STATE WATER RESOURCE POLICY

GROUNDWATER MANAGEMENT
690-410-010

(1) Policy

The groundwaters of the State of Oregon belong to the public. The reasonable control, protection, and use of groundwater is governed by the state on behalf of the public. Groundwater shall be managed to promote efficient and sustainable use for multiple purposes. Groundwater overdraft and contamination shall be prevented to avoid health hazards, environmental damage, and costly correction programs. Interference between groundwater uses and competing groundwater and surface water uses shall be prevented and/or controlled to protect the water resource and existing rights. The state shall pursue restoration of contaminated groundwaters to protect present and future uses. Coordinated action by federal, state and local agencies, Indian tribes, and special districts, along with public education, shall be fostered to promote the effective management, protection and beneficial use of groundwater.

(2) Principles

Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Groundwater and surface water shall be managed conjunctively where to do so will protect water resources, existing water rights, and the public interest.

(b) Rules governing well construction, maintenance, and abandonment shall provide minimum standards for protection of the public welfare, safety, and health, and the groundwaters of the state.

(c) Water well constructors, owners, and operators are responsible to construct, alter, maintain, operate, and abandon wells, and any holes through which the groundwater may be contaminated, in accordance with minimum statewide standards and shall undertake measures necessary to prevent waste, undue interference, contamination, or harm to the groundwater.

(d) Low-temperature geothermal fluids are part of the groundwater resources of the state and are subject to applicable laws and plans. These fluids are developed primarily for thermal characteristics and may require special management approaches to promote beneficial use, protect the environment and achieve other policy directives.

(e) Special-area designations (i.e., critical groundwater management areas, serious water management areas, basin plan restriction areas) may be warranted under conditions such as:

(A) past, existing or probable excessive groundwater level declines or overdraft,

(B) substantial interference between two or more wells or between groundwater and surface water uses (including public instream uses), or between groundwater appropriation and geothermal appropriation under ORS Chapter 522, and/or
(C) groundwater contamination.

(f) Special-area designations shall be invoked when site-specific standards and regulations are no longer sufficient to solve or prevent the problem(s). The invoking of special-area designations shall be accompanied by recommended monitoring, reporting, or regulating activities to prevent, correct or control existing or potential declines, overdraft, interference or contamination. Existing groundwater appropriations, which are generally protected from infringement, may be controlled if any of the conditions listed in (e) above are found to exist.

(g) Groundwater appropriation for artificial recharge is a beneficial use and can be approved if such action will not:

(A) cause significant adverse effects on the quantity or quality of the supplying and receiving water sources, or
(B) harm the public interest.

(h) Ongoing collection, analysis, and distribution of hydrogeologic information are necessary to manage groundwater for maximum beneficial use and to protect the public welfare, safety, and health.

(i) Public education programs, research, and demonstration projects are needed to increase citizen awareness of groundwater issues in this state.

(j) Adequate and safe supplies of groundwater for human and livestock consumption are given priority over other uses during times of shortage.

HYDROELECTRIC POWER DEVELOPMENT 690-410-020

(1) Policy

Development and production of hydroelectric power is a beneficial use. However, construction and operation of hydroelectric facilities have had significant adverse impacts on the State's natural resources. New hydroelectric development shall be permitted if it can be demonstrated that there will be no harm to the state's anadromous salmon and steelhead fish resource and habitat, and no net loss of the state's other natural resources. Relicensing of existing facilities, which have adversely impacted, or may preclude the recovery of, anadromous fish resources shall include measures to restore, enhance or improve the anadromous fish resource. The relicensing of any facility shall include measures to prevent the net loss of other natural resources resulting from future operation of the facility.

(2) Principles

Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Hydroelectric power can provide valuable economic and social benefits when the natural resources of the state are protected from potential adverse impacts.

(b) Proposed or relicensed projects that can be developed consistent with Oregon's resource protection standards should be encouraged. New development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program as adopted by the Northwest Power Planning Council pursuant to PL 96-501.

(c) Mitigation shall be required for harm to Oregon's natural resources caused or likely to be caused by new permitted hydroelectric power development. These natural resources include but are not limited to anadromous fish, wildlife, water quality, scenic and aesthetic values, historic, cultural and archaeological sites.

(d) On relicensing of existing facilities, measures for restoration, enhancement or improvement for past harms to Oregon's anadromous and steelhead resource shall be considered and implemented.

(e) The state shall ensure that the laws of the state and the rules of the Commission concerning hydroelectric power development are satisfied at every stage of any hydroelectric power project. The state shall assert these laws and rules when participating in federal proceedings involving hydroelectric power. Participation in these proceedings by state agencies shall be fostered through the Strategic Water Management Group (SWMG).

INTERSTATE COOPERATION

690-410-040

(1) Policy

The state will seek to cooperate with other states in planning, developing, managing, and resolving conflicts involving surface or groundwater resources. Interstate cooperation shall be actively pursued to benefit the public interest, welfare, health, economy and safety of Oregon's citizens.

(2) Principles

Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Existing laws, agreements, water rights, individual state interests and resource conditions shall guide and limit interstate cooperation in order to protect the public interest.

(b) Cooperation is preferred, but not required, over unilateral action, litigation, arbitration, or adjudication.

(c) The meaning, intent and purpose of interstate cooperation as embodied in this policy also applies to federally recognized Indian Tribes, and their governments, located wholly or partially within this state.

OAR 690-410-050

(1) Policy

The water-related functions of riparian areas on public lands shall be protected. On public lands, management activities in riparian areas shall be planned to maintain or improve riparian conditions that support water-related functions, consistent with the constitutional or statutory purposes of the public land.

(2) Principles

(a) The policy in section (1) of this rule is established based on the following principles:

- (A) Land and water management are integrally related;
- (B) Proper land management can provide for many commodity uses of riparian areas while protecting water resources.
- (C) The Legislature has made it a goal of the people of the state to enhance Oregon's waters through the management of riparian areas and associated uplands.
- (D) The state's integrated, coordinated water policy needs to address water-related aspects of land management.
- (E) Implementation will be through the programs of public land management agencies having responsibility over riparian lands.

(b) To implement the policy in section (1) of this rule, public land management agencies shall be advised to consider and accommodate the following principles.

(A) Protect water-related riparian functions through public land management plans and practices. Water-related riparian area functions include any or all of the following as applicable to the specific water body segment: providing streambank stability; contributing coarse woody debris to dissipate flood energy and create aquatic habitat; maintaining water tables in relatively close proximity to the ground surface; carrying and storing flood flows; filtering runoff waters of sediment and potential pollutants; insulating streams from summer and winter temperature extremes; and supporting the ecosystem of the adjacent water resource.

(B) Build databases of riparian area condition, by watershed, sufficient to make the planning and management decisions to implement this policy. The

condition of riparian areas shall be determined on the basis of the types of functions listed in subsection (A) as known from the best scientific information available.

- (C) Monitor the effectiveness of riparian area management and rehabilitation activities within a watershed in accordance with land management plans or programs.
- (D) Evaluate the effects of proposed management or rehabilitation activities, taking into account known conditions of riparian areas and uplands within the whole watershed and, to the extent practical, the cumulative impacts of ongoing and proposed management activities.
- (E) Mitigate activities in riparian areas which are undertaken in accordance with land management plans. In mitigating activities, actions which avoid and minimize impacts as described in sections (a) and (b) of the mitigation definition found in OAR 690-400-010 are preferred.
- (F) Undertake mitigation when emergencies require action that damages riparian areas.
- (G) Schedule, implement and monitor efforts to improve impaired water-related functions of riparian areas, considering the natural recovery potential of affected resources and the benefits expected from the recovery. Give preference to improvement strategies which take advantage of natural processes.
- (H) Enforce statutes, rules, and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state. [ORS 541.355 (2) (b) (C)]

(3) Applicability

- (a) The policy and principles in sections (1) and (2) shall not apply to:
 - (A) Privately-owned lands, including those served by a public corporation, such as an irrigation district; or
 - (B) Facilities constructed for the conveyance of water, including but not limited to irrigation ditches or canals.
- (b) Nothing in the policy and principles in sections (1) and (2) shall preclude operating or using reservoirs, ponds, wetlands created for treating water, or other

water facilities in accordance with the purposes for which they were authorized, built or permitted.

690-410-060

(1) Policy

The elimination of waste and improving the efficiency of water use are high priorities. Use of water without waste is required by state statute and the prior appropriation doctrine. Programs to eliminate waste shall be implemented. In addition, improving the efficiency of water use through implementation of voluntary conservation measures can help restore instream flows and provide for future needs including public uses and continued economic development. Priority shall be given to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and of water quality problems.

(2) Principles

Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

(a) Water users shall construct, operate and maintain their water systems in a manner which prevents waste and minimizes harm to the waters of the state and injury to other water rights.

(b) Major water users and suppliers shall prepare water management plans under the guidance of schedules, criteria and procedures which shall be adopted by rule. The plans shall evaluate opportunities for conservation and include a quantification of losses of water from the systems, an evaluation of the effectiveness and costs of alternative measures to reduce losses, and an implementation schedule for all feasible measures. During the planning processes, consideration shall be given to the environmental impacts from and time needed for implementation of system modifications. The Department shall assist water users and suppliers in the preparation of the water management plans.

(c) The Commission shall encourage and facilitate the development of subbasin conservation plans throughout the state by local advisory committees. Subbasin conservation plans shall include measures to assist water users in eliminating waste, other methods to improve water use efficiency in the subbasin, funding proposals to implement the measures and procedures to protect water dedicated to instream uses from further diversion. Priority shall be given to development of subbasin conservation plans in serious water management problem areas, critical ground water areas and other areas where water supplies are not sufficient to meet demands. The Commission shall adopt rules to guide formation of broad-based committees, the preparation of subbasin plans, and the submittal of plans

to the Commission for approval.

(d) When wasteful practices are identified in water management plans and subbasin conservation plans, the Commission shall adopt rules prescribing statewide and subbasin standards and practices that ensure beneficial use without waste. The rules shall recognize that conditions vary for different parts of the state and for different uses.

(e) A conservation element shall be developed and included in each basin plan when a major plan review and update is performed.

(f) The collection, analysis and distribution of information on water use and availability are necessary to ensure that the waters of the state are managed for maximum beneficial use and to protect the public welfare, safety and health. The ability to measure flows at authorized points of diversion is essential to the management of water and the elimination of waste.

(g) The Commission shall support public education programs, research and demonstration projects to increase citizen and water user awareness of water conservation issues and measures in the state.

(h) The Commission shall support programs to provide economic assistance to water users to implement desired conservation measures, particularly where the benefits of implementing the measures are high.