

*Corrected Copy*

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

RECEIVED

JUL 31 12 19 PM '92

WRD 10-1992

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on July 17, 1992 PHIL KEISLING

by the Water Resources Department (Department) Resource Management Division (Division) SECRETARY OF STATE

to become effective upon filing (Date)

The within matter having come before the Water Resources Commission (Department) 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 Secretary of State's Bulletin: NO  YES  Date Published: April 1, 1992

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

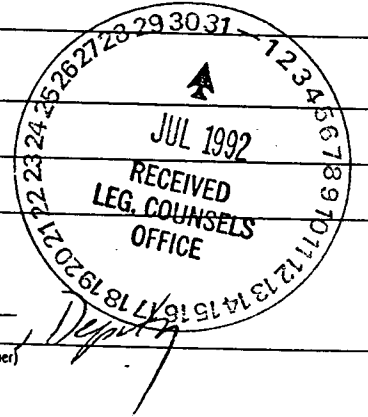
Adopted: (New Total Rules) OAR Chapter 690, Division 410-070 and 410-080  
(Rules establishing state policies and principles on Water Allocation and Storage)  
Amended: (Existing Rules) OAR Chapter 690, Division 400-010 (Definitions)

Repealed: (Total Rules Only)

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

DATED this 31<sup>st</sup> day of July, 19 92

By: [Signature] (Authorized Signer)  
Title: Director



Statutory Authority: ORS 536.025, 536.220 and 536.300 or

Chapter(s) \_\_\_\_\_ Oregon Laws 19 \_\_\_\_\_ or

House Bill(s) \_\_\_\_\_, 19 \_\_\_\_\_ Legislature; or Senate Bill(s) \_\_\_\_\_, 19 \_\_\_\_\_ Legislature

Subject Matter: These rules establish policies and principles on water allocation and storage and amend definitions to reflect policies and principles. The water allocation rules provide a framework for limits on future uses of water based upon water availability and other factors. The water storage rules provide a framework for augmenting water supplies through improvement of the state's water storage capacity.

For Further Information Contact: Doug Parrow (Rule Coordinator) Phone: 378-8455

## STATE WATER RESOURCE MANAGEMENT

### 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.

{ adopted 6-20-90; amended: 12-7-90 }

## **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).

{ adopted 6-22-90 }

## **Instream Flow Protection**

690-410-030

### **(1) Policy**

Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state. The long term goal of this policy shall be to establish an instream water right on every stream, river and lake which can provide significant public benefits.

Where streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented. These activities shall be consistent with the preservation of existing rights, established duties of water, and priority dates, and with the principle that all of the waters within the state belong to the public to be used beneficially without waste.

### **(2) Principles**

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

- (a) The Commission shall consider the needs of both instream and out-of-stream uses when reviewing future appropriations and developing streamflow restoration programs.
- (b) Preservation of instream flows needed to support the purposes of State Scenic Waterways is a high priority for the state.
- (c) Statewide and local programs should be implemented to restore and enhance streamflow and lake levels to provide public uses. Priority of restoration shall be established by the Water Resources Commission. The Commission shall consult with the Department of Fish and Wildlife, Environmental Quality, Parks and Recreation and the public, to identify those waterways where the greater public benefit could be obtained from additional streamflow restoration.
- (d) The Department shall actively encourage the purchase, lease and gift of existing water rights for transfer to instream water rights, and the construction of environmentally sound multipurpose storage projects.
- (e) Streamflow restoration programs shall be designed to encourage cooperation and coordination between instream water interests and out-of-stream water users.
- (f) Instream water rights are preferred, over the establishment of new minimum perennial streamflows, to protect instream public uses.

{ adopted 6-22-90; amended: 8-3-90 }

## **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.

{ adopted 6-22-90 }

## **Water Resources Protection on Public Riparian Lands**

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.

{adopted 12-7-90}

## **Conservation and Efficient Water Use**

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.

(3) 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.

(a) 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.

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

(c) 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.

(d) 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.

(e) 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.

{adopted 12-7-90}

## **Water Allocation**

690-410-070

### **(1) Policy**

The waters of the state shall be allocated within the capacity of the resource and consistent with the principle that water belongs to the public to be used beneficially without waste. Water shall be allocated among a broad range of beneficial uses to provide environmental, economic, and social benefits. The waters of the state shall be protected from over-appropriation by new out-of-stream uses of surface water or new uses of groundwater.

## (2) Principles

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

(a) The surface waters of the state shall be allocated to new out-of-stream uses only during months or half-month periods when the allocations will not contribute to over-appropriation. However, when a stream is over-appropriated, some additional uses may be allowed where public interest in those uses is high and uses are conditioned to protect instream values.

(b) The groundwater of the state shall be allocated to new beneficial uses when the allocations will not contribute to the over-appropriation of groundwater sources. Restrictions on allocations of water for exempt groundwater uses may be considered when a groundwater source is over-appropriated.

(c) New allocations of water for the purpose of filling storage facilities may be allowed notwithstanding subsection (a). Protection may be afforded to all water rights and instream uses by establishing storage filling seasons in basin rules, by considering the need for minimum pass-through flows on water rights, or establishing by rule other conditions consistent with the state policy on water storage as a prerequisite for allocation. In setting a storage season, consideration shall be given to avoiding periods of the year when flows are low and seldom exceed the needs of water rights and when additional flows are needed to support public uses.

(d) A determination that a stream is over-appropriated does not affect the allocation of legally stored water from existing or future facilities.

(e) When surface water or groundwater is known to be contaminated, it may be allocated to new uses only if the Commission determines, after consultation with the Department of Environmental Quality (DEQ) or the Oregon State Health Division (OSHD), that the use does not pose a significant hazard to human health or the environment. Groundwater allocation may be restricted if the Department determines that use would likely result in the spread of existing groundwater contamination.

(f) Water shall not be allocated if the proposed use would injure the exercise of existing water rights or permits.

(g) The Scenic Waterways Act declares that the highest and best uses of the waters within State Scenic Waterways are fish, wildlife, and recreation. Allocations to new out-of-stream uses in State Scenic Waterways shall be consistent with the Scenic Waterways Act. Allocations to new out-of-stream uses in and above State Scenic Waterways shall not interfere with the maintenance of flow levels necessary for the purposes of Scenic Waterways.

(h) When instream flow needs are not protected by instream water rights, new out-of-stream allocations may be limited or conditioned to protect public uses.

(i) When allocating water for new uses, the Commission shall assure compliance with the Statewide Planning Goals and compatibility with local comprehensive plans in accordance with the Department's certified State Agency Coordination Program.

(j) When classifying allowable new uses of water or establishing reservations, the Commission shall seek consistency with management plans for public lands and resources, and with state, regional, and local resource management and economic plans.

(k) Conservation, storage development, water right transfers, and leases are means to maximize beneficial uses and to meet the changing needs of society and shall be encouraged and facilitated.

(l) Future allocation of water for out-of-basin diversions shall be allowed only if consistent with this policy and the conditions specified in existing statute and rule.

{ adopted 7-17-92 }



## Water Storage

690-410-080

### (1) Policy

Water storage options are an integral part of Oregon's strategy to enhance the public and private benefits derived from the instream and out-of-stream uses of the state's water resources. Storage can provide increased water management flexibility and control. Storage can be enhanced through means ranging from natural processes to engineered structures. The state shall facilitate and support project planning and development. The state shall actively pursue funding when storage is determined to be a preferred alternative to meet the water needs of instream and out-of-stream beneficial uses.

### (2) Principles

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

- (a) Water resource planning in the state shall consider storage along with other available alternatives to meet water management goals.
- (b) When determining whether storage is a preferred alternative, due regard shall be given to public interest, needs and priorities, and legal, social, economic and environmental factors.
- (c) The state shall encourage high priority storage projects and facilities through the reservation of unappropriated water for future economic development.
- (d) Storage shall be planned and implemented in a manner to protect and enhance the public health, safety and welfare, and the state's natural resources.
- (e) The state shall encourage enhancement of watershed storage capacity through natural processes using non-structural means.
- (f) The state shall promote the maximization of benefits derived from storage facilities by evaluating existing and potential storage capacities, authorized uses and operational practices.
- (g) Criteria for evaluating impacts of storage projects shall include the following factors:
  - Purpose (e.g. type, location and extent of use, benefits)
  - Legal (e.g. state, federal and local legal requirements)
  - Social (e.g. recreational, public support, cultural, historic)
  - Technical (e.g. siting issues, public safety and structural integrity).
  - Financial (e.g. project financing including site costs, cost sharing and repayment, and operating, maintenance and rehabilitation costs).
  - Economic (e.g. project benefit/cost analysis )
  - Land use (e.g. ownership, comprehensive plans, coordination)
  - Environmental (e.g. impacts on streamflows, fisheries, wildlife, wetlands, habitat, biological diversity, water quality and opportunities for mitigation).
  - Other (e.g. direct and indirect impacts)
- (h) The state shall encourage and give high priority to storage that optimizes instream and out-of-stream public benefits and beneficial uses. Multipurpose storage is to be preferred over single-purpose storage and upstream storage is to be preferred over downstream storage.
- (i) The state shall cooperate with federal agencies, local governments and private entities in identifying and protecting high priority storage sites for development of projects. The state shall promote appropriate land use protection for high priority storage sites.

- (j) The state shall support and participate in programs to finance planning and development of high priority storage.
- (k) The Water Resources Department shall coordinate interagency recommendations to sponsors, developers or operators of high priority storage projects.

{ adopted 7-17-92 }