

**Secretary of State  
Certificate and Order for Filing  
PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on September 13, 2002 by the  
(Date prior to or same as filing date)

Water Resources Commission  
Agency and Division

690  
Administrative Rules Chapter Number

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to become effective September 27, 2002 Rulemaking Notice was published in the April, 2002  
(Date upon filing or later) (Month and Year)  
Oregon Bulletin.\*\*

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

690-505-0400, 690-505-0500, 690-505-0600, 690-505-605, 690-505-0610, 690-505-615, 690-505-0620, 690-505-0625, 690-505-0630

690-521-0100, 690-521-0200, 690-521-0300, 690-521-0400, 690-521-0500, 690-521-0600

**AMEND:**

**REPEAL:** N/A

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 536.027, 536.220, 536.300 536.340  
Stat. Auth.: ORS

\_\_\_\_\_  
Other Authority

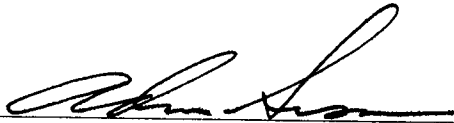
ORS 390.835 and Chapter 659, 2001 Oregon Laws (HB 2184)  
Stats. Implemented: ORS

**RULE SUMMARY**

The rule amendments under OAR Chapter 690, Division 505 implement Senate Bill 1033 (1995 Legislative Assembly, now codified as ORS 390.835) and provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water. Without mitigation, the Department is required to deny new and pending ground water applications in the Deschutes Ground Water Study Area (Study Area).

The amendments to OAR Chapter 690, Division 505 provide ground water permit applicants two options to satisfy the requirement to mitigate - completion of an individual project or acquisition of mitigation credits. The rules identify the amount of mitigation needed, how new ground water permits issued under the proposed rules will be conditioned, and how municipal and quasi-municipal water users can provide incremental mitigation. The rules also clarify the types of ground water uses allowable in the basin. Finally, the proposed rules provide that holders of certain existing conditioned permits/certificates in the Study Area that choose to mitigate will not be subject to future regulation for scenic waterway flows.

The rules in OAR Chapter 690, Division 521, implement House Bill 2184 (2001 Legislative Assembly), which provides for the establishment of mitigation credits through completion of various mitigation projects and actions, and formation of mitigation banks for the Deschutes Basin.



Authorized Signer

9/27/02

Date

\*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

\*\*The *Oregon Bulletin* is published on the 1<sup>st</sup> of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15<sup>th</sup> day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. on the preceding workday.

**OREGON ADMINISTRATIVE RULES  
WATER RESOURCES DEPARTMENT  
CHAPTER 690  
DIVISION 505  
DESCHUTES BASIN PROGRAM**

**690-505-0000**

**Upper Deschutes Basin**

(1) Classifications

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Upper Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Upper Deschutes River Basin are hereby so classified with the following. The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Upper Deschutes River Basin, except for Crescent Lake, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7 1/2 theoretical horsepower, recreation, wildlife and fish life uses and the waters of the natural lakes, Upper Deschutes River Basin, except for Crescent Lake, are hereby so classified.

(b) Applications for the use of the waters of the Upper Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows

(a) To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Upper Deschutes River and tributaries when flows are below the levels specified in Table 1. This limitation shall not apply to:

(A) Human and livestock consumption.

(B) Water legally released from storage.

(b) Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

(3) Water Quality

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued

only on the condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS

Hist.: WRD

**690-505-0010**

**Middle Deschutes River Basin**

(1) Classifications

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Middle Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Middle Deschutes River Basin are hereby so classified with the following exceptions:

(A) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board.

(B) The maximum economic development of this state, the attainment of the highest and best use of the waters of the main stem, Metolius River, above river mile 13.0, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or non-commercial garden not to exceed one-half acre in area, power development, recreation, wildlife and fish life uses and the waters of the main stem, Metolius River, above river mile 13.0, are hereby so classified.

(C) Further, no out-of-basin diversions of the waters of the mainstem Metolius River, above river mile 13.0, shall be permitted for any use.

(D) No further appropriations except for domestic or livestock uses shall be permitted for waters of the mainstem Deschutes River, from the head of Lake Billy Chinook near river mile 120 to the North Canal Dam near river mile 165.

(E) The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Middle Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7 1/2 theoretical horsepower, recreation, wildlife and fish life uses.

(b) Applications for the use of the waters of the Middle Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or

works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses shall be made or granted by any state agency or public corporation of the state for the waters of Lake Creek or its tributaries above the confluence of Lake Creek with the Metolius River for flows of Lake Creek below 20 cubic feet per second measured at the mouth of Lake Creek except that this limitation shall not apply to waters legally stored or legally released from storage (priority date - May 24, 1962).

(3) Water Quality

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS

Hist.: WRD

**690-505-0020**

**Lower Deschutes River Basin**

(1) Classifications

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Lower Deschutes River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Lower Deschutes River Basin are hereby so classified with the following exceptions:

(A) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board.

(B) The waters of Boulder Lake in Hood River and Wasco Counties are classified only for domestic and livestock uses; power development not to exceed 7-1/2 theoretical horsepower; recreation, wildlife and fish life uses; and irrigation not to exceed 100 acre-feet annually from water stored in the lake.

(C) The maximum economic development of this state, the attainment of the highest and best use of the waters of the other natural lakes of the Lower Deschutes River Basin, and the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7-1/2 theoretical horsepower, recreation, wildlife, and fish life uses and the waters of the natural lakes of the Lower Deschutes River Basin are hereby so classified.

(b) Applications for the use of the waters of the Lower Deschutes River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such uses would be contrary to the integrated and coordinated program for the use and control of the water resource of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

(2) Minimum Perennial Streamflows

For the purpose of maintaining a minimum perennial streamflow sufficient to support aquatic life, no appropriations of water except for domestic or livestock uses shall be made or granted by any state agency or public corporation of the state for the waters of the White River or its tributaries above the confluence of White River with the Deschutes River for flows of the White River below the specified flows in Table 2, except that this limitation shall not apply to waters legally stored or legally released from storage.

(3) Water Quality

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS

Hist.: WRD

**690-505-0030**

**Upper Crooked River Basin**

(1) Classifications

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Deschutes - Upper Crooked River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Deschutes - Upper Crooked River Basin are hereby so classified.

(b) Applications for the use of the waters of the Deschutes - Upper Crooked River Basin shall not be accepted by any state agency for any other use and the granting of applications for such other uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality

Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

Stat. Auth.: ORS  
Hist.: WRD

**690-505-0040**

**Lower Crooked River Basin**

(1) Classifications

(a) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Deschutes - Lower Crooked River Basin, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife and fish life uses and the waters of the Deschutes - Lower Crooked River Basin are hereby so classified with the following exceptions:

(A) OAR 690-505-0050, Lower Main Stem Deschutes River, adopted April 3, 1964, as modified by the Water Policy Review Board.

(B) No further appropriations of water except for domestic or livestock uses shall be made or granted by any state agency for the waters of Ochoco Creek and its tributaries.

(b) Applications for the use of the waters of the Deschutes - Lower Crooked River Basin shall not be accepted by any state agency for any other use and the granting of applications for such uses is declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated and coordinated program for the use and control of the water resources of the state.

(c) Structures or works for the utilization of the water in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

(2) Water Quality

Rights to use water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

**Note:** The Upper Deschutes River, Middle Deschutes River, Lower Deschutes River, Upper Crooked River and Lower Crooked River Basins are delineated on State Water Resources Board Map, File 5.7014, available from the Water Resources Department.

Stat. Auth.: ORS  
Hist.: WRD

**690-505-0050**

**Lower Main Stem Deschutes River**

(1) Classifications

(a) The maximum beneficial use of that portion of the main stem of the Deschutes River from its confluence with the Columbia River to and including river mile 100.0 is for recreation, fish and

wildlife purposes and no appropriations of water in this area shall be permitted except for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, recreation, fish and wildlife uses.

(b) The maximum economic development of the state and the attainment of the highest and best use of the waters of the lower main stem Deschutes River from river mile 100.0 to river mile 120.0 and the attainment of an integrated and balanced program for the benefit of the state as a whole will be achieved through utilization of the aforementioned waters for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, hydroelectric power, fish, wildlife, and recreation purposes and the aforementioned waters of the main stem Deschutes River are hereby so classified.

(c) The maximum economic development of this state and the attainment of the highest and best use of the waters of the lower main stem Crooked River from its confluence with the Deschutes River to river mile 6.5 and the waters of the main stem of the lower Metolius River from its confluence with the Deschutes River to river mile 13.0 will be attained through utilization of such waters for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, hydroelectric power, fish, wildlife, and recreation purposes and the aforementioned waters of the lower main stem, Crooked River, and lower main stem, Metolius River, are hereby so classified.

(d) Applications for the use of such water shall not be accepted by any state agency for any other purpose and applications for such other purposes are declared to be prejudicial to the public interest and the granting of applications for such other uses would be contrary to the integrated, coordinated program for the use and control of the water resources of the state.

(e) Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with the applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give proper cognizance to the multiple-purpose concept.

#### (2) Power Development

Water rights acquired for structures or works for the utilization of the waters for hydroelectric purposes shall be subordinate to all present and future upstream beneficial uses of water except for hydroelectric power.

**Note:** The main stem of the Deschutes River from its confluence with the Columbia River to river mile 120.0 is shown in USGS Water Supply Paper 344; the main stem of the Crooked River from its confluence with the Deschutes River to river mile 6.5 is shown on USGS Plans and Profiles, 1926; and the main stem of the Metolius River from its confluence with the Deschutes River to river mile 13.0 is shown in USGS Water Supply Paper 344.

Stat. Auth.: ORS

Hist.: WRD

### **690-505-0400**

#### **Ground Water Classification**

(1) Ground water in the Deschutes Basin is classified for any beneficial use.



Stat. Auth.: ORS 536.027; 536.220; 536.300; 536.340  
Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

**690-505-0500**

**Ground Water Appropriations within the Deschutes Ground Water Study Area**

(1) Except for a cumulative total of 200 cubic feet per second (cfs) maximum rate for final orders approving ground water permit applications issued after the effective date of these rules, ground water in the Deschutes Ground Water Study Area is closed to further appropriation.

(2) Prior to January 1, 2008, or upon reaching 150 cfs of the 200 cfs in section (1), whichever comes first, and on subsequent five year intervals, the Commission shall evaluate the Deschutes Basin Ground Water Mitigation Rules and associated mitigation to determine whether the restriction in section (1) shall be lifted or otherwise modified through subsequent public rulemaking. The Commission shall specifically evaluate the effectiveness of mitigation projects and mitigation credits that involve time-limited instream transfers, instream leases and allocations of conserved water from canal lining and piping projects. The Commission shall also evaluate the general zones of impact identified by the Department.

(3) The Department shall, in cooperation with the Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality and Division of State Lands, annually evaluate and report on the implementation of these rules. The annual evaluation and report shall include information on new ground water appropriations, streamflow monitoring, and mitigation activity in order to determine whether scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department.

(4) The restriction in section (1) shall not be lifted unless the Commission determines that scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows established by the Department.

(5) If the Commission's evaluation under section (2) indicates that, due to new ground water appropriations, scenic waterway flows and instream water right flows in the Deschutes Basin are met less frequently as compared to long-term, representative base period flows, the Commission shall initiate proceedings to designate all or portions of the Deschutes Ground Water Study Area a critical ground water area(s) under ORS 537.730, immediately close certain areas of the Deschutes Basin to further ground water appropriations, or take other administrative action(s) to ensure scenic waterway flows and instream water right flows in the Deschutes Basin continue to be met on at least an equivalent or more frequent basis as compared to long-term, representative base period flows.

Stat. Auth.: ORS 536.027 and 390.835  
Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

**Deschutes Basin Ground Water Mitigation Rules**

**690-505-0600**

**Purpose and Applicability of Ground Water Mitigation Rules**

(1) In the Deschutes Basin, a joint study of ground water resources by the Department and U.S. Geological Survey has established a hydraulic connection between ground water and surface water within the Deschutes Ground Water Study Area (Ground Water Hydrology of the Upper Deschutes Basin, Oregon, Water Resources Investigations Report 00-4162, Portland, Oregon, 2001). Based on the conclusions of the study, the Department has determined that ground water appropriations within the Deschutes Ground Water Study Area have the potential for substantial interference with surface water rights as described in OAR Chapter 690, Division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided pursuant to the rules in this Division.

(2) These rules implement Senate Bill 1033 (1995, Legislative Assembly), codified as ORS 390.835 to provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water in the Deschutes Basin.

(3) The rules in OAR 690-505-0610 through 690-505-0630 establish the mitigation process for pending and future ground water permit applications in the Deschutes Ground Water Study Area. Without mitigation, the Department is required by law to deny ground water permit applications in the Deschutes Ground Water Study Area.

(4) Holders of existing ground water permits and associated certificates in the Deschutes Ground Water Study Area issued after July 19, 1995, with priority dates after April 19, 1991, that are specifically conditioned to allow regulation for measurable reduction of a state scenic waterway and that choose to provide mitigation meeting the standards of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9). A ground water permit or certificate for which a mitigation project has been approved by the Department prior to the effective date of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9).

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

## **690-505-0605**

### **Definitions**

The following definitions apply to OAR 690-505-0500 through 690-505-0630:

(1) "Allocation of conserved water" means an application approved under ORS 537.455 to 537.500 and OAR Chapter 690, Division 18 in which the Department may award mitigation credits for the applicant's portion of the conserved water that is legally protected for instream use resulting from conservation measures, such as canal lining and piping or other improvements in the technology or method for diverting, transporting, applying, or recovering water.

(2) "Consumptive use" means the Department's determination of the amount of a ground water appropriation that does not return to surface water flows in the Deschutes Basin due to transpiration, evaporation or movement to another basin.

(3) "Department" means the Oregon Water Resources Department.

(4) "Deschutes Ground Water Study Area" means the Deschutes River Basin drainage area indicated in Exhibit 1.

(5) "General zone of impact" means anywhere above the Madras gage on the Lower Deschutes River or, for wells determined by the Department to have a localized impact on surface water,

anywhere within the impacted subbasin of the Deschutes River including the Metolius, Squaw Creek, Little Deschutes, and Crooked River subbasins as identified by the Department.

(6) "Ground water use subject to transfer" means a ground water use established by:

(a) a water right certificate;

(b) a water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250;

or

(c) a transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission.

(7) "Measurable reduction" as defined in ORS 390.835(12) means that ground water use will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less.

(8) "Mitigation" means to moderate the impacts to surface water flows from a ground water appropriation by obtaining mitigation credits or by providing for implementation of a mitigation project that results in mitigation water.

(9) "Mitigation bank" means an entity that is authorized by the Water Resources Commission to obtain, hold and assign mitigation credits pursuant to Chapter 659, 2001 Oregon Laws (HB 2184) and OAR Chapter 690, Division 521.

(10) "Mitigation credit" is a means of accounting for mitigation water, calculated in acre-feet, made available by a mitigation project. One mitigation credit is equal to one acre-foot of mitigation water. Mitigation credits are determined and awarded by the Department under Chapter 659, 2001 Oregon Laws (HB 2184) and OAR 690, Division 521.

(11) "Mitigation obligation" means the amount of mitigation water needed for the appropriation of ground water as determined by the Department, calculated in acre-feet.

(12) "Mitigation project" means a project approved by the Department that results in mitigation water.

(13) "Mitigation water" means water that is legally protected for instream use from implementation of a mitigation project, calculated in acre-feet.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

## **690-505-0610**

### **Mitigation Obligation and Mitigation Standards**

(1) Except as provided in section (6), (7) and (8) of this rule, the Department may only approve a ground water permit application in the Deschutes Ground Water Study Area if mitigation is provided pursuant to these rules.

(2) A mitigation obligation may be satisfied by obtaining mitigation credits or by providing for implementation of a mitigation project.

(3) Mitigation projects may include:

(a) the allocation of conserved water provided under ORS 537.455 to 537.500 and OAR Chapter

690, Division 18, where the applicant's portion of the conserved water is allocated and legally protected for instream use;

(b) the transfer of an existing water right to an instream use if the water right to be transferred is also lawfully eligible for transfer to another out-of-stream use, and for mitigation banks, the time-limited transfer or lease of an existing water right to instream use under ORS 537.348 and OAR Chapter 690, Division 77;

(c) a permit to appropriate water for the purpose of artificial recharge of a ground water reservoir pursuant to ORS 537.135 and OAR Chapter 690, Division 350;

(d) a secondary permit to use stored water from an existing reservoir obtained pursuant to ORS 537.130 to 537.211 and OAR Chapter 690, Division 310, provided the secondary permit is for instream use; or

(e) other projects approved by the Department that result in mitigation water.

(4) Mitigation water must be provided within the general zone of impact identified by the Department, legally protected for instream use prior to permit issuance, and committed for the life of the permit and subsequent certificate(s).

(5) The amount of mitigation needed to satisfy a mitigation obligation shall be:

(a) one mitigation credit per acre-foot of consumptive use based on the ground water permit application; or

(b) mitigation water equal to the volume of consumptive use of the ground water permit application, calculated in acre-feet.

(6) These rules do not preclude any person from submitting evidence, which will be considered by the Department, that a proposed or existing ground water appropriation does not have the potential for substantial interference with surface water rights as described in OAR Chapter 690, Division 9, and will not measurably reduce scenic waterway flows under ORS 390.835.

(7) If the Department finds, based on a preponderance of evidence, that a specific ground water permit application does not have the potential for substantial interference with surface water under OAR Chapter 690, Division 9, and will not result in a measurable reduction of scenic waterway flows under ORS 390.835, the Department shall not require mitigation for that specific ground water use.

(8) Notwithstanding section (1) of this rule, if the impact of use under a ground water permit application is completely offset by a proposed voluntary cancellation of an existing ground water use subject to transfer, such that impact on surface waters from the new ground water use is the same as, or less than, impact on surface waters from the existing ground water use subject to transfer, the ground water permit application may be approved without additional mitigation once the proposed voluntary cancellation is complete.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

## **690-505-0615**

### **Notice of Mitigation Obligation**

(1) The Department shall provide notice of the mitigation obligation to ground water permit applicants. The notice shall:

(a) state that mitigation must be provided before a permit may be issued for a water right

application approved under ORS 537.621 to 537.626;

(b) identify the amount and location of the mitigation obligation; and

(c) identify mitigation banks as potential means of providing mitigation.

(2) For ground water permit applications pending before the Department as of the effective date of this rule, the notice of mitigation obligation and the applicant's response to the mitigation obligation shall be incorporated into the water right application process under OAR Chapter 690, Division 310.

(3) For ground water permit applications submitted after the effective date of this rule, the notice of mitigation obligation shall be included in the initial review report under OAR 690-310-0080.

(4) Ground water permit applicants receiving notice under this rule shall, through the water right application process under OAR Chapter 690, Division 310, submit proposed mitigation to the Department that meets the requirements of 690-505-0610 (2)-(5).

(5) Ground water permit applicants proposing to implement a mitigation project shall identify and describe the project and, in any application associated with the mitigation project, identify that the project is being used to satisfy a mitigation obligation.

(6) If the amount of mitigation identified by the ground water permit applicant is different from that stated in the Department's notice of mitigation obligation, the applicant shall provide an explanation of why the amount is different and identify appropriate information proposed to be used to determine the equivalent consumptive use for the proposed ground water appropriation.

(7) The Department shall work in cooperation with a representative of the Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality and Division of State Lands to enhance the resource benefits and make the most effective use of mitigation projects and mitigation water.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

## **690-505-0620**

### **Ground Water Permit and Final Order Conditions**

(1) Any final order approving a ground water permit application and the associated permit and certificate issued subsequent to a notice of mitigation obligation under 690-505-0615(1) shall, as appropriate:

(a) specify the amount and location of the mitigation obligation;

(b) require that mitigation water be legally protected instream for instream use before the permit will be issued;

(c) require that mitigation water be committed for the life of the permit and subsequent certificate;

(d) require installation of a measuring device, monthly recording of water use and annual reporting of water use;

(e) if the mitigation is from a secondary right for stored water from a storage project not owned or operated by the ground water permit applicant, require maintenance of a contract for the use of the water with the owner/operator of the storage project;

(f) provide for regulation and/or cancellation if the required mitigation is not maintained; and

(g) require additional mitigation if the Department determines that average annual consumptive

use of the subject appropriation has increased beyond the originally mitigated amount.

(2) Any final order issued under OAR Chapter 690, Division 310 approving a ground water permit application subject to these rules, that is contingent upon mitigation being provided before a permit may be issued, shall expire 5 years after issuance unless the required mitigation is provided.

(3) Failure to comply with conditions required under section (1) of this rule shall result in the Department regulating the associated ground water right, proposing to deny any permit extension application for the associated right, and proposing to cancel the associated permit.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

### **690-505-0625**

#### **Municipal and Quasi-municipal Ground Water Permit Applications**

(1) Municipal or quasi-municipal ground water permit applicants may satisfy a mitigation obligation by incrementally obtaining and providing mitigation to coincide with the incremental development of the permit, provided that mitigation is provided prior to each stage of development of the permit and in accordance with the standards under 690-505-0610(2)-(5). Municipal or quasi-municipal ground water permit applicants interested in incremental mitigation shall:

(a) submit an incremental development plan to the Department as part of the response to a notice of mitigation obligation under OAR 690-505-0615. The plan shall indicate a time schedule for the development of the permit and indicate proposed sources of mitigation that will be obtained and used prior to each stage of development;

(b) report to the Department the progress of implementing the incremental development plan in accordance with a reporting schedule identified in the final order approving the water right permit under OAR 690-310-0200; and

(c) submit a new or updated Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86.

(2) Applicants or permit holders subject to this rule may request that the Department approve changes to an incremental development plan and related mitigation obligation. A permit holder subject to this rule shall not increase the rate or amount of water diversion before increasing the corresponding required mitigation.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

### **690-505-0630**

#### **Additional Findings of Department When Mitigation is Provided**

(1) If a ground water permit applicant satisfies the mitigation obligation, notwithstanding OAR Chapter 690, Division 9, for the purposes of OAR Chapter 690, Divisions 33, 310, 400, and 410, the proposed ground water appropriation is deemed to be a ground water appropriation that does not have the potential for substantial interference with surface water.

(2) The Department shall include the Oregon State Parks and Recreation Department and the Division of State Lands in the interagency review team process under OAR Chapter 690, Division 33,

and use the interagency review team process to seek agency input on ground water permit applications and mitigation projects in the Deschutes Ground Water Study Area.

Stat. Auth.: ORS 536.027 and 390.835

Hist.: WRD 9-2002, f. & cert. ef. 9-27-02

# DESCHUTES BASIN

