

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 May 26, 2000 by the
Date prior to or same as filing date.

Water Resources Department - _____ Division
Agency and Division

690
Administrative Rules Chapter Number

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to become effective May 26, 2000 . Rulemaking Notice was published in the November 1, 1999 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

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

ADOPT:

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

OAR 690-509-0140, 690-509-0150 and 690-509-0160

AMEND: OAR 690-509-0000, 690-509-0100, 690-509-0110, 690-509-0120 and 690-509-0130

REPEAL:

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 536.025, 536.027 and 536.300
Stat. Auth.: ORS

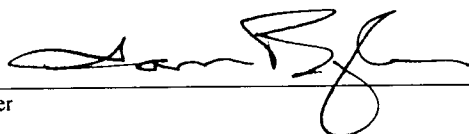
Other Authority

ORS 536.310, 537.249 and 537.356
Stats. Implemented: ORS

RULE SUMMARY

These rules reserve water for future economic development in the Powder River Basin and amend the rules for an existing reservation in the Burnt River Basin to make the language more consistent with other basin reservation rules. Both reservations were requested by the Oregon Department of Agriculture. They reserve water for possible future appropriation for storage in multipurpose reservoirs in the Powder River Basin and Burnt River Basin. The reservations aid in planning and securing financing for local storage projects. A future permit to store water under these reservations shall receive the same priority date as the reservations—November 6, 1992.

Authorized Signer



5/26/00
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 1st 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 15th 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 509
POWDER BASIN PROGRAM**

690-509-0000

Classifications

(1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder Basin, and 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 Powder Basin are hereby so classified with the following exceptions:

(a) That 65,000 acre-feet annually of unappropriated water of Eagle Creek and its tributaries at or above stream mile 21 be classified for domestic, livestock, municipal, irrigation, recreation, wildlife, and fish life purposes.

(b) That 265,000 acre-feet annually of natural flows of Snake River water at or near stream mile 9 of Powder River (arm of Brownlee Reservoir) lying within Section 25, Township 9 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation and industrial purposes.

(c) That 87,000 acre-feet annually of natural flows of Snake River water at or near stream mile 327 of Snake River lying within Section 8, Township 14 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation, and industrial purposes.

(d) The maximum economic development of this state, the attainment of the highest and best use of the unappropriated waters of the natural lakes of the Powder 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, and the waters of the natural lakes of the Powder Basin are hereby so classified.

(e) Stored water may be used for any beneficial purpose subject to the reservation of water under OAR 690-509-0110 through 0160.

(2) Application for the use of these specified waters of the Powder Basin shall not be accepted by any state agency for any other use and the granting of applications for such other use 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.

(3) 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 cognizance to the multiple-purpose concept.

(4) Notwithstanding a determination water is unavailable for appropriation, permits for

domestic and livestock purposes from the Burnt River and tributaries may be issued to water-use applicants:

(a) In amounts not to exceed a cumulative total of 2.5 cubic feet per second of live-flow, and

(b) Provided water-use applicants cannot acquire access to a viable source of water supplied by a community water system, irrigation district, or other water supply organization.

(5) Applications filed prior to March 8, 1996, shall be processed under the classification in effect at the time of the application.

Stat. Auth.: ORS 536

Stats. Implemented: ORS 536.220 and ORS 536.310

Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090; WRD 4-1996, f. & cert. ef. 3-15-96

690-509-0010

Out-of-Basin Appropriations

To support present and proposed Powder Basin resource developments no out-of-basin or out-of-state appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of Pine Creek, Eagle Creek, Powder River and Burnt River or their tributaries.

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented: Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090

690-509-0030

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 536 & ORS 537

Stats. Implemented: Hist.: WRB 43, f. 7-10-70; WRD 1-1981, f. & cert. ef. 4-20-81; Administrative Renumbering 9-1993, Renumbered from 690-080-0090

690-509-0100

Reservation [*Provisions*] Applications and Process

(1) [(2)] Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(2) [(1)] "Multipurpose **reservoir**", as used in OAR 690-509-0110 [*and 0120*] **through 0160**, means a **reservoir storing water to serve** [*serving*] multiple potential beneficial uses of

stored water such as, **but not limited to**, irrigation, power generation, municipal water supply, recreation, **pollution abatement** and flow augmentation for instream purposes.

[(3) The quantities of unappropriated water reserved under OAR 690-509-0110, 690-509-0120 and 690-509-0130 represent the total allowable storage capacities of reservoirs relying on the respective reservations.]

(3) Reservations of water for future economic development in OAR 690-509-0110 through 0160 allocate and reserve surface water for storage in multipurpose reservoirs for the period of the reservation.

(4) [Reservoir p]Permits to store reserved water shall receive the priority date of the reservation. [Pursuant to OAR 690-079-0150, an application for a permit to store reserved water shall be accompanied by a statement from the Oregon Department of Agriculture that the proposed reservoir is consistent with the purpose of the reservation. Applicants for permits to store water will be notified of the reservations. Each applicant will be provided an opportunity to supplement their application with a statement from the Oregon Department of Agriculture that their proposed use is consistent with the purpose of a reservation.]

(5) In addition to the requirements of ORS Chapter 537 and OAR Chapter 690, Division 310, an application for a permit to store water reserved under 690-509-0110 through 0160 shall include:

(a) An assessment of the effect of the proposed reservoir on fish and wildlife developed after consultation with the Oregon Department of Fish and Wildlife;

(b) An assessment of the effect of the proposed reservoir on water quality developed after consultation with the Oregon Department of Environmental Quality;

(c) An analysis of water supply alternatives to the proposed reservoir, such as off-stream storage, water right transfers and implementation of conservation measures; and

(d) An analysis summarizing and describing how the proposed project will enhance instream values, including but not limited to instream flows.

[(5) A permit application for a project to store water reserved under OAR 690-509-0110 or 690-509-0120 shall describe whether and how the proposed project will contribute to the support of instream values.]

[(6) Prior to the issuance of a permit to store water reserved under OAR 690-509-0110 or 690-509-120, the Department shall find that the proposed project will contribute to the support of instream values.]

[(7) For the purposes of review of applications to store reserved water, the quantities listed in OAR 690-509-0110, 690-509-0120, and 690-509-0130 are available for appropriation.]

(6) For the purposes of review of water right permit applications to store reserved water under OAR Chapter 690, Divisions 310, the reserved quantities of water listed in OAR 690-509-0110 through 0160 are available for appropriation. However, the determination that water is available under OAR 690-509-0110 through 0160 shall not substitute for consideration during the public interest review of site-specific information as required under ORS Chapter 537, OAR Chapter 690 or any other applicable statutes or rules. Because the finding that water is available in OAR 690-509-0110 through 0160 is a water availability determination for a sub-basin, analysis of water availability at the specific location shall be conducted at the time of permit application review.

(7) In addition to any other findings required for issuance of a reservoir permit

under ORS Chapter 537 or OAR 690, Division 310, and prior to issuance for a proposed project storing water reserved under 690-509-0110 through 0160, the Department shall also find:

(a) The proposed reservoir is consistent with the purpose and intent of the reservation following consultation with the Department of Agriculture;

(b) The proposed reservoir will enhance instream values, including but not limited to instream flows; and

(c) Whether minimum bypass flows are required.

(8) The Department shall determine, and impose as a condition, an appropriate storage season, and shall include other conditions to insure no harm to senior water rights and to protect instream values.

~~[(8)]~~ (9) Progress Reports:

(a) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water under OAR 690-509-0110 through 0130 by March 8, 2001, the Department of Agriculture shall provide the Commission with a progress report on the development of the reservations. After the first report is provided, future progress reports may be submitted on the same schedule as the progress reports due for the reservations under OAR 690-509-0140 through 0160.

(b) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water under OAR 690-509-0140 through 0160 by May 26, 2005, the Department of Agriculture shall provide the Commission with a progress report on development of the reservations.

(c) Progress reports shall include information on the continued need for the reservations and the quantities of water reserved. The Department of Agriculture shall continue to provide progress reports at five year intervals, except as otherwise provided under subsection 9(a), while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water. *[The Department of Agriculture shall, at five-year intervals, provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water which have been allocated to each type of use.]*

~~[(9)]~~ (10) Effective date of rules:

(a) OAR 690-509-0110 through 0130 shall be effective until March 8, 2016 unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(b) OAR 690-509-0140 through 0160 shall be effective until May 26, 2020, unless the effective date has been extended by further rulemaking of the Water Resources Commission.

(c) The expiration of these reservation rules shall not affect pending applications that have been received and deemed complete and not defective by the Water Resources Department pursuant to ORS 537.150(2), prior to the expiration date of the rules. *[OAR 690-509-0110, 690-509-0120, and 690-509-0130 shall automatically be rescinded 20 years following adoption of these rules absent action by the Water Resources Commission extending the rules.]*

Stat. Authority: ORS Ch. 536 and 537
Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358
Hist.: WRD 4-1996, f. & cert. ef. 3-15-96

690-509-0110

South Fork Burnt River Reservation

[(1)] Seventeen thousand eight hundred (17,800) acre-feet of unappropriated water **of the South Fork Burnt River and tributaries upstream of Unity reservoir are [is]** reserved for storage by the Burnt River Irrigation District in multipurpose reservoirs to be constructed **in the future [on the South Fork Burnt River and tributaries upstream of Unity Reservoir]**. The priority date of the reservation is June 5, 1992 . In accordance with ORS 537.249, a reservoir permit authorizing the storing of the water reserved under this rule shall be granted precedence over instream water rights in the Burnt River subbasin.

[(2) *An application to store water reserved under this rule shall include information on fish, wildlife, water quality, and storage alternatives developed after consultation with the Oregon Departments of Fish and Wildlife and Environmental Quality.*

[(3) *Permits to store reserved water shall include a specific time period in which storage may occur.*]

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 4-1996, f. & cert. ef. 3-15-96

690-509-0120

North Fork Burnt River Reservation

(1) Six thousand five hundred (6,500) acre-feet of unappropriated water **of the North Fork Burnt River and tributaries upstream of Unity Reservoir are [is]** reserved for storage in multipurpose reservoirs to be constructed **in the future. [on the North Fork Burnt River and tributaries upstream of Unity Reservoir.]** The priority date of the reservation is November 6, 1992.

[(2) *An application to store water reserved under this rule shall include information on fish, wildlife, water quality, and storage alternatives developed after consultation with the Oregon Departments of Fish and Wildlife and Environmental Quality.*

[(3) *Permits to store reserved water shall include a specific time period in which storage may occur.*]

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 4-1996, f. & cert. ef. 3-15-96

690-509-0130

Burnt River Subbasin Reservation

Two thousand (2,000) acre-feet of unappropriated water [is] **are** reserved for storage in reservoirs to be constructed on the Burnt River and tributaries. The priority date of the reservation is November 6, 1992.

Stat. Auth.: ORS 537
Stats. Implemented: ORS 537.249 & ORS 537.356
Hist.: WRD 4-1996, f. & cert. ef. 3-15-96

690-509-0140

Pine Creek Subbasin Reservation

Ten thousand (10,000) acre-feet of unappropriated water of Pine Creek and tributaries above Long Branch, tributary to the Snake River, are reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Stat. Auth.:
Stats. Implemented:

690-509-0150

Eagle Creek Subbasin Reservation

Four thousand three hundred (4,300) acre feet of unappropriated water of Eagle Creek and tributaries upstream of gage 13288200 at Skull Creek are reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992.

Stat. Auth.:
Stats. Implemented:

690-509-0160

Powder River Subbasin Reservation

Unappropriated water is reserved for multi purpose reservoirs to be constructed in the future. The priority date of the reservation is November 6, 1992. The quantity and source of reserved water is as follows:

- (1) Three thousand nine hundred and ninety (3,990) acre feet of Goose Creek and tributaries upstream of the mouth, tributary to the Powder River east of Keating.**
- (2) Twenty seven thousand (27,000) acre feet of the Powder River and tributaries upstream of Thief Valley Dam and below the confluence of Blue Canyon Creek**
- (3) Two thousand nine hundred (2,900) acre feet of water of the Powder River and tributaries below the confluence of Blue Canyon Creek, including Blue Canyon Creek.**

Stat. Auth.:
Stats. Implemented:

**OREGON WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 509**

POWDER BASIN PROGRAM

Classifications

690-509-000 (1) The maximum economic development of this state, the attainment of the highest and best use of the waters of the Powder Basin, and 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 Powder Basin are hereby so classified with the following exceptions:

(a) That 65,000 acre-feet annually of unappropriated water of Eagle Creek and its tributaries at or above stream mile 21 be classified for domestic, livestock, municipal, irrigation, recreation, wildlife, and fish life purposes.

(b) That 265,000 acre-feet annually of natural flows of Snake River water at or near stream mile 9 of Powder River (arm of Brownlee Reservoir) lying within Section 25, Township 9 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation and industrial purposes.

(c) That 87,000 acre-feet annually of natural flows of Snake River water at or near stream mile 327 of Snake River lying within Section 8, Township 14 South, Range 45 East, Willamette Meridian, be classified for domestic, livestock, municipal, irrigation, and industrial purposes.

(d) The maximum economic development of this state, the attainment of the highest and best use of the unappropriated waters of the natural lakes of the Powder 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, and the waters of the natural lakes of the Powder Basin are hereby so classified.

(2) Application for the use of these specified waters of the Powder Basin shall not be accepted by any state agency for any other use and the granting of applications for such other use 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.

(3) 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

Adopted June 26, 1979. Amended April 4, 1981 and March 8, 1996.

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 cognizance to the multiple-purpose concept.

(4) Notwithstanding a determination water is unavailable for appropriation, permits for domestic and livestock purposes from the Burnt River and tributaries may be issued to water-use applicants:

(a) In amounts not to exceed a cumulative total of 2.5 cubic feet per second of live-flow, and

(b) Provided water-use applicants cannot acquire access to a viable source of water supplied by a community water system, irrigation district, or other water supply organization.

(5) Applications filed prior to March 8, 1996, shall be processed under the classification in effect at the time of the application.

Stat. Auth.: ORS Ch. 536

Stats. Implemented: ORS 536.220 and 536.310

Out-of-Basin Appropriations

690-509-010 To support present and proposed Powder Basin resource developments no out-of-basin or out-of-state appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of Pine Creek, Eagle Creek, Powder River and Burnt River or their tributaries.

Stat. Auth.: ORS Ch. 536

Stats. Implemented: ORS 536.220 and 536.310

Water Quality

690-509-030 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. Authority: ORS Ch. 536

Stats. Implemented: ORS 536.310

Reservation Provisions

690-509-100 (1) "Multipurpose", as used in OAR 690-509-110 and 120, means serving multiple potential beneficial uses of stored water such as irrigation, power generation, municipal water supply, recreation, and flow augmentation for instream purposes.

(2) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 to ensure sufficient water will be available in the future to meet expected needs. Economic development includes, but is not limited to, the production of goods and services and

management of natural resources which contribute economic benefits through both instream and out-of-stream uses of water.

(3) The quantities of unappropriated water reserved under OAR 690-509-110, 690-509-120 and 690-509-130 represent the total allowable storage capacities of reservoirs relying on the respective reservations.

(4) Reservoir permits to store reserved water shall receive the priority date of the reservation. Pursuant to OAR 690-79-150, an application for a permit to store reserved water shall be accompanied by a statement from the Oregon Department of Agriculture that the proposed reservoir is consistent with the purpose of the reservation. Applicants for permits to store water will be notified of the reservations. Each applicant will be provided an opportunity to supplement their application with a statement from the Oregon Department of Agriculture that their proposed use is consistent with the purpose of a reservation.

(5) A permit application for a project to store water reserved under OAR 690-509-110 or 690-509-120 shall describe whether and how the proposed project will contribute to the support of instream values.

(6) Prior to the issuance of a permit to store water reserved under OAR 690-509-110 or 690-509-120, the Department shall find that the proposed project will contribute to the support of instream values.

(7) For the purposes of review of applications to store reserved water, the quantities listed in OAR 690-509-110, 690-509-120, and 690-509-130 are available for appropriation.

(8) The Department of Agriculture shall, at five-year intervals, provide the Commission with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water which have been allocated to each type of use.

(9) OAR 690-509-110, 690-509-120, and 690-509-130 shall automatically be rescinded 20 years following adoption of these rules absent action by the Water Resources Commission extending the rules.

Stat. Authority: ORS Ch. 536 and 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 and 537.358

South Fork Burnt River Reservation

690-509-110 (1) Seventeen thousand eight hundred (17,800) acre-feet of unappropriated water is reserved for storage by the Burnt River Irrigation District in multipurpose reservoirs to be constructed on the South Fork Burnt River and tributaries upstream of Unity Reservoir. The priority date of the reservation is June 5, 1992. In accordance with ORS 537.249, a reservoir permit authorizing the storing of the water reserved under this rule shall be granted precedence over instream water rights in the Burnt River subbasin.

(2) An application to store water reserved under this rule shall include information on fish, wildlife, water quality, and storage alternatives

developed after consultation with the Oregon Departments of Fish and Wildlife and Environmental Quality.

(3) Permits to store reserved water shall include a specific time period in which storage may occur.

Stat. Authority: ORS Ch. 537

Stats. Implemented: ORS 537.249 and 537.356

North Fork Burnt River Reservation

690-509-120 (1) Six thousand five hundred (6,500) acre-feet of unappropriated water is reserved for storage in multipurpose reservoirs to be constructed on the North Fork Burnt River and tributaries upstream of Unity Reservoir. The priority date of the reservation is November 6, 1992.

(2) An application to store water reserved under this rule shall include information on fish, wildlife, water quality, and storage alternatives developed after consultation with the Oregon Departments of Fish and Wildlife and Environmental Quality.

(3) Permits to store reserved water shall include a specific time period in which storage may occur.

Stat. Authority: ORS Ch. 537

Stats. Implemented: ORS 537.249 and 537.356

Burnt River Subbasin Reservation

690-509-130 Two thousand (2,000) acre-feet of unappropriated water is reserved for storage in reservoirs to be constructed on the Burnt River and tributaries. The priority date of the reservation is November 6, 1992.

Stat. Authority: ORS Ch. 537

Stats. Implemented: ORS 537.249 and 537.356

Note: The Powder Basin is delineated on State Water Resources Board Map 9.6, available from the Water Resources Department.