

**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

Adam Sussman
Rules Coordinator

(503) 378-8455, ext. 297
Telephone

158 12th Street NE, Salem, OR 97310
Address

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

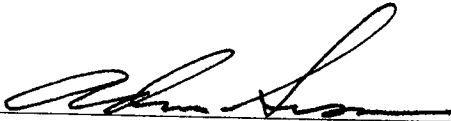
ORS 390.835 and Chapter 659, 2001 Oregon Laws (HB 2184)
Stats. Implemented: ORS

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.

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**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 521**

DESCHUTES BASIN MITIGATION BANK AND MITIGATION CREDIT RULES

690-521-0100

Purpose of Mitigation Bank and Mitigation Credit Rules

(1) The rules in OAR 690-521-0100 through 690-521-0600 set forth the process to recognize and establish mitigation banks in the Deschutes Basin and to establish, obtain and assign mitigation credits pursuant to Chapter 659, 2001 Oregon Laws (HB 2184).

(2) Mitigation credits are a means to fulfill a mitigation obligation under OAR Chapter 690, Division 505.

(3) Mitigation credits are a means of encouraging individuals and institutions to invest in mitigation projects in the Deschutes Basin, such that credits earned by such projects may be held, applied, sold, or otherwise transferred for the purposes set forth above.

Stat. Auth.: ORS 537.746 and 536.027

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

690-521-0200

Definitions

The following definitions apply to OAR 690-521-0100 through 690-521-0600.

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

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

(4) "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.

(5) "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 these rules.

(6) "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 upon completion of the project and verification by the Department.

(7) "Mitigation obligation" means the amount of mitigation water needed for the appropriation of ground water as determined by the Department under OAR Chapter 690,

Division 505, calculated in acre-feet.

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

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

(10) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.

Stat. Auth.: ORS 537.746 and 536.027

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

690-521-0300

Establishing Mitigation Credits

(1) Any person or mitigation bank may establish mitigation credits by completing a mitigation project as approved by the Department. Mitigation projects may include:

(a) the allocation of conserved water provided under ORS 537.455 to 537.500 and OAR Chapter 690, Division 018, 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 077;

(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 legally protected mitigation water.

(2) Nothing in this rule modifies, adds or removes any procedures, or criteria and standards for review required for the Department to process applications or requests under the respective separate authorities for mitigation projects identified in section (1) of this rule.

(3) Mitigation credits for time-limited transfers and leases made under section (1)(b) of this rule may only be established by mitigation banks. A mitigation bank may assign mitigation credits established under this section to any person who intends to submit the credits to the Department to satisfy a mitigation obligation, provided that the bank demonstrates to the Department that it will hold in reserve an amount of mitigation credits, established or obtained from a source under section (1) of this rule, that is at least equal to the number of mitigation credits assigned to the person by the bank.

(4) Any person requesting mitigation credits through completion of a mitigation project identified under section (1) of this rule shall, in any application associated with the mitigation project, notify the Department that they intend to use the project to establish mitigation credits.

(5) Any person with a pending application for a mitigation project shall notify the Department that they intend to use the project to establish mitigation credits within 180 days of the effective date of these rules.

(6) Upon receipt of notification under section (4) and (5) the Department shall give public notice of the intent to establish mitigation credits in the weekly notice published by the Department.

(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.

(8) A mitigation project for which a final order of approval was issued by the Department between November 1, 2000, and the effective date of these rules shall be eligible for final mitigation credit(s) under OAR 690-521-0400(1) upon completion of the project.

(9) Any person may establish mitigation credits under these rules whether or not there is an existing or known mitigation obligation that the mitigation credits may ultimately be used to satisfy.

Stat. Auth.: ORS 537.746 and 536.027

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

690-521-0400

Award and Validity of Mitigation Credits

(1) Concurrent with the issuance of a final order approving one of the mitigation projects identified in OAR 690-521-0300, the Department shall make a preliminary finding as to the amount of mitigation credits available. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The Department shall award mitigation credits to the person or mitigation bank that completed the mitigation project, unless otherwise requested by the project applicant.

(2) Mitigation credits awarded by the Department are valid until used to fulfill a mitigation obligation. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

Stat. Auth.: ORS 537.746 and 536.027

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

690-521-0500

Mitigation Banks

(1) Pursuant to Chapter 659, 2001 Oregon Laws (HB 2184), the Department may recognize and establish mitigation banks for the Deschutes Basin to facilitate transactions among holders of mitigation credits and persons interested in acquiring mitigation credits.

(2) Any person may apply to become recognized as a mitigation bank by submitting an application form to the Department. The form shall be provided by the Department.

(3) A person applying to be recognized as a mitigation bank shall enter into an agreement with the Department to receive a mitigation bank charter that details the agreements and obligations necessary to meet the provisions of OAR Chapter 690, Division 521 and Chapter 659, 2001 Oregon Laws (HB 2184). A mitigation bank shall at a minimum be required to:

(a) maintain an accounting system to track assignments of mitigation credits to or from the bank. A separate account shall be maintained for mitigation credits obtained through time-limited transfer and instream lease mitigation projects. Each type of account maintained by the mitigation bank shall be separated into the general zones of impact established by the Department; and

(b) annually report all transactions and activities of the bank to the Department in accordance with the requirements of this rule, and any other reporting requirements determined to be necessary by the Department.

(4) Mitigation bank charters under section (3) of this rule shall be approved or denied by the Water Resources Commission following public notice and an opportunity for public comment.

(5) A mitigation bank may establish, obtain, hold and assign mitigation credits, and is subject to the rules contained in OAR 690-521-0100 through OAR 690-521-0600.

(6) The Department is neither party to nor in any way responsible for the contractual agreements between a mitigation bank and its customers.

(7) The Department may, at the discretion of the Director, audit the mitigation credit accounting records of any mitigation bank.

Stat. Auth.: ORS 537.746 and 536.027

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

690-521-0600

Department Mitigation Credit Oversight Account

The Department shall maintain a system to account for the award and use of mitigation credits in the Deschutes Basin. The Department shall prepare an annual report on the implementation and management of the mitigation credits system.

Stat. Auth.: ORS 537.746 and 536.027

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