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WATER RESOURCES DEPARTMENT

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FILING CAPTION: Changing Mitigation Water to Mitigation Credits and Revising Criteria for Reassignment of Permanent Mitigation Credits

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RULES:

690-522-0010, 690-522-0020, 690-522-0025, 690-522-0030, 690-522-0040, 690-522-0050, 690-522-0060

AMEND: 690-522-0010

RULE TITLE: Purpose

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: States the purpose of the rules and their relationship to other rules for the Deschutes Groundwater Mitigation Program. The Division 522 rules operate in conjunction with the Deschutes Basin Groundwater Mitigation Rules in Division 505 and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules in Division 521. The existing Division 522 rules clarify how the Department counts new, reduced, cancelled and partially cancelled groundwater permits under the allocation cap; allows unused permanent mitigation credits to be reassigned; and clarifies how municipal and quasi-municipal permit holders can provide mitigation under incremental development plans. The rules also allow a mitigation project to provide direct mitigation for a specific ground water application. This rule section is modified to remove references to a prior work group in recognition of emerging needs in the Deschutes Basin Groundwater Study Area.

RULE TEXT:

The following rules are intended to operate in conjunction with the Deschutes Basin Ground Water Mitigation Rules in OAR Chapter 690, Division 505, and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules in OAR Chapter 690, Division 521.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: ORS 537.746, Or Laws 2005, ch 669, Or Laws 2011, ch 694

AMEND: 690-522-0020

RULE TITLE: Applicability

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: This rule states the applicability of the OAR 690, Division 522 rules. The rules apply to mitigation credits and mitigation water established pursuant to the Deschutes Basin Ground Water Mitigation Program.

RULE TEXT:

The following rules apply to final orders, permits, and certificates issued pursuant to OAR 690, Division 505 after September 27, 2002, including but not limited to the change of mitigation water into mitigation credits.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: Or Laws 2011, ch 694, ORS 537.746, Or Laws 2005, ch 669

ADOPT: 690-522-0025

RULE TITLE: Definitions

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: Defines terms used in OAR chapter 690, division 522.

RULE TEXT:

The following definitions apply to OAR chapter 690, division 522.

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

(2) "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.

(3) "Mitigation obligation" means the amount of mitigation water needed for the appropriation of groundwater as determined by the Department under OAR chapter 690, division 505, calculated in acre-feet.

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

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

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: Or Laws 2011, ch 694, ORS 537.746, Or Laws 2005, ch 669

AMEND: 690-522-0030

RULE TITLE: Ground Water Appropriations within the Deschutes Ground Water Study Area

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: This rule defines what is not counted in the Deschutes Basin Ground Water Mitigation allocation cap. This change is a minor correction to update statutory authority and statutes implemented.

RULE TEXT:

The cumulative rate specified under 690-505-0500(1) shall not include:

- (1) Rates associated with offsets pursuant to 690-505-0610(8);
- (2) Rates associated with applications withdrawn after final order issuance pursuant to 690-505-0620;
- (3) Portion of rates approved by a final order issued under 690-505-0620 but not included in a water right permit issued following satisfaction of the mitigation requirement;
- (4) Rates associated with expired final orders pursuant to 690-505-0620(2);
- (5) Portions of rates associated with permits issued pursuant to 690-505-0620 and subsequently cancelled;
- (6) Rates associated with certificates issued pursuant to 690-505-0620 and subsequently canceled; and
- (7) Rates associated with the portion of use originally authorized under a permit issued pursuant to 690-505-0620 and not included in a subsequent certificate.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: ORS 537.746, Or Laws 2005, ch 669, Or Laws 2011, ch 694

AMEND: 690-522-0040

RULE TITLE: Incremental Development in the Deschutes Ground Water Study Area

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: This rule defines the incremental development plan reporting requirement for certain municipal or quasi-municipal groundwater permits. This rule change is a minor correction to update statutory authority and statutes implemented.

RULE TEXT:

(1) An incremental development plan under 690-505-0625 for municipal and quasi-municipal ground water permit applicants and permit holders may include offset pursuant to 690-505-0610(8).

(2) When providing incremental mitigation pursuant to OAR 690-505-0625, a municipal or quasi-municipal ground water permit holder may provide mitigation, offset, or a combination of both during each approved increment to coincide with each stage of development of the permit on the condition that the permit holder does not increase the rate or amount of water diverted under the permit before submitting the corresponding required mitigation or offset and documentary evidence.

(3) The report required under OAR 690-505-0625(1)(b) shall describe the annual volume of water used and the source of offset and mitigation used for that period.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: ORS 537.746, Or Laws 2005, ch 669, Or Laws 2011, ch 694

AMEND: 690-522-0050

RULE TITLE: Reassignment of Permanent Mitigation Credits

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: This rule identifies the circumstances in which mitigation credits can be reassigned. Changes as part of this rulemaking include in: (1) to clarify instances in which the Department may reassign permanent mitigation credits, in (1)(d) to specify that permanent mitigation credits may be reassigned if a groundwater permit is partially cancelled, and in (1)(g) to allow an existing municipal or quasi-municipal permit holder with an incremental development plan the ability to re-assign credits to another such existing permit including those not their own.

RULE TEXT:

(1) Notwithstanding OAR 690-521-0400(2), the Department may reassign part or all of permanent mitigation credits that were used to satisfy a mitigation obligation if:

- (a) The ground water permit application to which the credits were assigned is denied or withdrawn;
- (b) The ground water permit application to which the credits were assigned is amended and the mitigation obligation is reduced;
- (c) The final order issued approving the ground water permit application to which the credits were assigned expires pursuant to OAR 690-505-0620;
- (d) The ground water permit to which the credits were assigned is subsequently cancelled or partially cancelled resulting in a reduced mitigation obligation;
- (e) The subsequent ground water certificate is issued for less ground water use than originally allowed under the permit and there is a corresponding reduction in mitigation obligation;
- (f) The subsequent ground water certificate to which the credits were assigned is cancelled, or partially cancelled resulting in a reduced mitigation obligation; or
- (g) The mitigation credits are assigned to a permit for municipal or quasi-municipal use issued under OAR 690-505-0620 with an incremental development plan under OAR 690-505-0625 and the permit holder requests to re-assign credits to another such existing permit of their own or to another municipal or quasi-municipal entity that holds a groundwater permit issued under OAR 690-505-0620 with an incremental development plan under OAR 690-505-0625, provided the reassignment is consistent with the requirements of OAR 690-505-0610 (4) and OAR 690-505-0625. The permit holder requesting the re-assignment of credits under this provision shall submit to the Department an updated incremental development plan.

(2) Mitigation credits available pursuant to this rule may be assigned by applicant or permit or certificate holder to any person or mitigation bank or assigned to satisfy a mitigation obligation.

STATUTORY/OTHER AUTHORITY: ORS 536.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: ORS 537.746, Or Laws 2005, ch 669, Or Laws 2011, ch 694

ADOPT: 690-522-0060

RULE TITLE: Change of Mitigation Water into Mitigation Credits

NOTICE FILED DATE: 12/24/2019

RULE SUMMARY: This section outlines a new process, which allows mitigation project owners to work through the Department to change mitigation water developed under a specific mitigation project into mitigation credits. Mitigation credits awarded under this process are assigned to the original mitigation obligation under an existing permit or certificate, after which the project owner may utilize other existing rules to re-assign and satisfy other mitigation obligations within the Deschutes Basin.

RULE TEXT:

(1) For mitigation project applications submitted after the adoption of these rules, pursuant to 690-521-0300 (4), any person requesting mitigation credits through completion of a mitigation project, identified in 690-521-0300 (1), shall, in any application associated with the mitigation project, notify the Department that they intend to use the project to establish mitigation credits. For those that do not request to establish mitigation credits under the proposed project, the Department will consult before moving forward.

(2) To apply to change mitigation water into mitigation credits a written request must be submitted to the Department no later than December 31, 2021.

(3) The written request to change mitigation water generated by a mitigation project into mitigation credits may be submitted to the Department by the permit holder(s) of record or certificate holder(s). The request will include:

- (a) The application, permit, or certificate number for which the mitigation water was established;
- (b) The mitigation project number; and
- (c) Any other information requested by the Department.

(4) Provided the written request is consistent with (2) and (3) of this section, the Department may issue an order to approve the change of mitigation water generated by the mitigation project into mitigation credits, consistent with the order approving the mitigation project. The order will:

- (a) Award mitigation credits in any zone(s) where the mitigation project water is legally protected instream;
- (b) Assign the awarded mitigation credits to the existing permit or certificate to which the mitigation water was originally assigned and used to satisfy the originating mitigation obligation.

(5) After the award and assignment of the mitigation credits, the mitigation water will no longer be valid to meet a mitigation obligation.

(6) Approved mitigation credits become subject to the provisions of OAR Chapter 690, Division 521, and OAR Chapter 690, Division 522. Mitigation credits can only be reassigned in accordance with OAR 690-522-0050.

STATUTORY/OTHER AUTHORITY: ORS 537.027, ORS 537.746

STATUTES/OTHER IMPLEMENTED: ORS 537.746, Or Laws 2005, ch 669, Or Laws 2011, ch 694