Secretary of State
Certificate and Order for Filing

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on May 16, 2000 by the
Date prior to or same as filing date.

Water Resources Department - Division: Field Services Division
Agency and Division

690
Administrative Rules Chapter Number

Tom Byler
Rules Coordinator

(503) 378-8455, ext. 299
Telephone

158 12th Street NE, Salem, OR 97310
Address

to become effective May 16, 2000 through November 10, 2000
Date upon filing or later — A maximum of 180 days including the effective date.

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

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

AMEND:

OAR 690-002-0170

OAR 690-015-0060

SUSPEND:

ORS 183.335(5) and 536.027
Stat. Auth.: ORS

Other Authority

ORS 540.505 to 540.530, Oregon Laws Chapter 982 (1999)
Stats. Implemented: ORS

RULE SUMMARY
The temporary rulemaking is made in connection with the Department of Correction's (DOC) construction of the Women's Prison and Intake Center at a site on Day Road near Wilsonville. The facility was sited pursuant to SB 686, Oregon Laws Chapter 982 (1999). Under section 7 of SB 686, every state agency must issue required permits for the facility within 60 days of receiving a completed application for the permit. The DOC intends to apply to transfer the point of appropriation and place of use for an existing water right on the facility to serve its irrigation needs this summer as an initial phase of the construction. The following temporary rule changes were made to allow the Water Resources Department to process the water right transfer in a timely manner to assist DOC to stay on its current accelerated construction schedule and to comply with the permit issuance requirements of SB 686.

The temporary rule change to OAR 690-002-0170 delegates to the Director of the Water Resources Department the authority to establish the time for filing exceptions to any proposed order, and to make the final determination regarding

water right transfers for facilities sited under SB 686. This rule change will make it possible for the Department to make a final decision within the required 60 day time frame in the event that a protest to the transfer is submitted and there is a contested case.

The temporary rule change to OAR 690-015-0060 allows public entities to apply for and receive a water right transfer on property that the public entity is in the process of acquiring through condemnation proceedings. The rule change allows DOC to stay on its accelerated construction schedule.

Authorized Signer

5/16/00
Date

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

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 2
PROCEDURAL RULES FOR CONTESTED CASES

690-002-0000
Scope and Purpose

These rules establish additional procedures governing requests for and conduct of contested case hearings, except for those covered under OAR Chapter 690, Division 51. Other divisions of OAR Chapter 690 and statutory provisions govern entitlement to a contested case hearing. The purpose of these rules is to allow interested persons reasonable notice and opportunity to seek party status and participate in contested case hearings, and to provide for the orderly development of the evidentiary record forming the basis for contested case decisions.

Stat. Auth.: ORS Ch. 183, 536.027 & 536.029
Statutes Implemented: ORS 183.310 - 183.550, Ch. 536 - 543
Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-000

690-02-001 [Renumbered to 690-02-020]

Definitions
690-002-0010

(1) "Applicant" means a person filing an application for a water use permit or for a certificate under OAR Chapter 690, Division 77 .

(2) "Commission" means the Water Resources Commission.

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

(4) "Director" means the Director of the Water Resources Department.

(5) "Hearings Referee" means the agency's Hearings Referee or any other person appointed or directed by the Commission or Director to conduct a contested case hearing.

(6) "Party" means any person admitted as a party in a contested case proceeding whether by virtue of designation prior to notice of contested case hearing, on grant of a petition for full or limited party status, or, where applicable, as described in ORS 537.170(2) or 537.622 (2).

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character and, for the purposes of these rules, includes a state agency as defined in ORS 183.310(1).

(8) "Petition" means a written request in the form described in the applicable Attorney General's Model Rules in which the petitioner requests the Commission or Department to take or initiate a particular action, as in a petition for reconsideration or rehearing of a contested case matter, petition for declaratory ruling or petition for party status in an announced contested case hearing.

(9) "Petitioner" means any person filing a petition with the Department or Commission.

(10) "Proof of Service" means a certification by the sender that the document described in the certification was mailed to the recipient on a certain date and giving the recipient's name and the address to which the document was mailed.

(11) "Protest" means a written protest in the form described in sections 11(5) and 25(5) of Chapter 416, 1995 Oregon Laws against the proposed approval or denial of an application for a water right, in the form and manner described in OAR 690-002-0030 against the proposed approval or denial of an application for a water right other than one made pursuant to Ch. 416, 1995 Oregon Laws, for a change in an existing water right, or in the form and manner described in OAR 690-017-0600 for a protest against a proposed cancellation of a water right.

(12) "Protestant" means any person filing a protest against a proposed action.

(13) "Standing," as used in these rules, means the right acquired by submitting a request for standing pursuant to OAR 690-002-0035 and paying the fee required under ORS 536.050(1)(q) to:

(a) Request intervention under OAR 690-002-0105 and participate in support of a proposed final order in the contested case hearing for which standing was obtained; or

(b) Seek judicial review of a final order issued in the matter for which the request for standing was made.

Stat. Auth.: ORS 536.027 & 536.029
Statutes Implemented: ORS 183.310 to 183.550, Ch. 536 - 543
Hist: WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0020
Authorized Non-Attorney Representation

A party or limited party participating in a contested case hearing before the Water Resources Commission or the Water Resources Department may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-003-0008 of the Attorney General's Model Rules.

Stat. Auth.: ORS 536.027, 536.029
Statutes Implemented: ORS 183.413 to 183.497
Hist: WRD 8-1987 (Temp), f. 8-27-87, ef. 8-25-87; WRD 1-1988, f. 1-19-88, cert. ef. 2-23-88; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-02-001

690-002-0023
Agency Representation by Officer or Employee

(1) As authorized by the Attorney General pursuant to ORS 183.450(7)(a), Department officers and employees may appear and participate on behalf of the Water Resources Department and Commission in the following types of contested case hearings:

(a) Civil penalty hearings under ORS 537.792 and OAR Chapter 690 Division 225 which may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;

(b) Civil penalty hearings under ORS 536.900 and OAR Chapter 690 Division 260 which

may lead to imposition of a fine or order directing compliance with regulatory directives;

(c) Protested water use applications under OAR 537.170 or 537.622 and OAR Chapter 690 Divisions 77 or 310;

(d) Protested conversions of minimum perennial streamflows to instream water rights under OAR Chapter 690 Division 77;

(e) Requests for reservations of water for future economic development under OAR Chapter 690 Division 79;

(f) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations or other analyses done by Department staff and which study, policy recommendation or other analysis has been approved or authorized by the Department or the Commission;

(g) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

(2) The Department representative shall not present legal argument in contested case hearings or give legal advice.

(3) Legal argument includes arguments on:

(a) The jurisdiction of the agency to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) Legal Argument does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(b) Comparison of prior actions of the agency in handling similar situations;

(c) The literal meaning of the statues or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence or the correctness of procedures being followed;

(e) Commission or Department position, policy or practice.

(5) When Department agency officers or employees are representing the Department in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument, the presiding officer shall provide reasonable opportunity for Department officers or employees to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

(6) A Department officer or employee who has appeared and represented the Department in a contested case hearing before the Department's presiding officer may file written exceptions and argument on the exceptions to the proposed order issued for that hearing, subject to the limitations set out in Sections 2 and 3 of this rule.

Stat. Auth.: ORS 183.450
Statutes Implemented: ORS 183.413 through 183.470, ORS Ch. 536 through 543
Hist: WRD 7-1996, f. & cert. ef. 7-23-96

690-002-0025
Filing Generally

(1) Where filing by a certain date is directed, the document to be filed must be received by the date given. A postmark showing the document was placed in the mail on or before the date set for filing will not constitute timely filing. Filings submitted by telephonic facsimile communication device that are incomplete because of transmission, maintenance, or other malfunctions, and filings which do not include any required filing fee, will not constitute timely filing.

(2) An incomplete or untimely filing will not be accepted unless it is shown that the reason for the untimely or incomplete filing was beyond the control of the person.

(3) Where a filing date is a state holiday or on a weekend, the document must be received by the next day of regular mail delivery.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029
Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 to 543
Hist: WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0030
Form and Content of Protest

(1) Except as otherwise provided in ORS Chapter 537 and OAR Divisions 77 and 310 relating to applications for water rights and in Division 17 relating to cancellation of perfected and developed water rights, a protest in any contested case or potential contested case matter shall be in writing, signed by the protestant or the protestant's attorney or authorized representative, and shall contain a detailed statement of:

(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;

(b) The specific relief or action requested;

(c) The name and address of protestant and other person or persons necessary to, or having a direct interest in, the proceeding;

(d) Citation of legal authority or basis for the claim or relief asserted or requested.

(2) Proof of service upon the person or persons whose rights or claims are contested shall be attached to the original protest.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029 & Ch. 540
Statutes Implemented: ORS Ch. 536 to 543
Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-010; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0035
Requests for Standing in Matters Involving Applications Made Under ORS Chapter 537

(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing for purposes of participating in any contested case proceeding which may be held on the proposed final order, or for judicial review of a final order issued

pursuant to ORS 537.172, 537.173, 537.625 or 537.626, whether issued following a contested case hearing or where no contested case hearing is held.

(2) The request for standing must be in writing, signed by the requester, and include the following:

(a) Requester's name, mailing address, and telephone number;

(b) If the requester is representing a group, association or other organization, the name, phone number and mailing address of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified, if known; and

(e) All reasonably ascertainable issues and available arguments supporting the requester's position that the proposed final order should not be modified.

(3) Any person who has filed a request for standing may later file a petition for intervention in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.

(4) If no protest is filed, and the department does not change the proposed final order, the director shall refund the standing fee.

Statutory Authority: ORS 536.027
Statutes Implemented: ORS 537.153, 537.621
Hist: WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0040
Filing of Protest

The original of the protest shall be filed with the Water Resources Department. A protest shall be deemed filed when received by the Water Resources Department accompanied by the statutory filing fee and determined to be timely and in proper form as required by these rules.

Stat. Auth.: ORS Ch. 183, 536.027
Statutes Implemented: ORS 537.153, 537.621
Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-015; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0050
Service of Protest or Request for Standing

(1) Except for requests for standing made pursuant to ORS 537.153(5) or 537.621(6), protests made pursuant to ORS 537.153(6) or 537.621(7) and protests filed under OAR Chapter 690, Division 17, service upon individuals or groups named in the protest shall be made by the protestant personally or by regular mail. If it appears that there are other persons whose interest may be affected by the relief or action requested in the protest, the Department shall serve or direct the protestant to serve a copy of the protest on such persons personally or by regular mail.

(2) The protest shall be deemed served on the date of mailing to the last known address of

the person being served.

(3) Within 10 days after the close of the filing period established under ORS 537.153(7) or 537.621(8), the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029
Statutes Implemented: ORS 537.153, 537.621
Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-020; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0060
Motion to Make More Definite and Certain

(1) The Commission, the Department or the Hearings Referee, on their own motion or on the motion of any party, may order that allegations in the protest be made more definite and certain.

(2) The protestant shall comply with the order to make more definite and certain within 15 days of the order date. Allegations ordered to be made more definite and certain may be stricken upon failure to comply.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029
Statutes Implemented: ORS Ch. 536 to 543
Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-025

690-002-0080
Withdrawal of Protest

At any time prior to hearing, the protestant may withdraw the protest without prejudice.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029
Statutes Implemented: ORS Ch. 536 to 543
Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-035

690-002-0090
Notice of Contested Case Hearings

(1) Formal written notice of the hearing pursuant to OAR 137-003-0001 shall be served on the parties and persons who have timely filed a request for standing under ORS 537.153 or 537.621 at least 30 days prior to the date of hearing unless otherwise provided in OAR Chapter 690 or where a lesser time is agreed to by the parties.

(2) For conversions of minimum streamflows to instream water rights under OAR

Chapter 690, Division 77, notice shall be given at least 30 days prior to the date of hearing by regular mail to the parties, to the affected local government planning agency, to persons who have filed a written request to be notified if a hearing is scheduled, by publication weekly for two consecutive weeks in the newspaper(s) of largest circulation published in each county in which the stream reach or point specified in the minimum perennial streamflow to be converted is located and by regular mail to potentially interested parties as determined by the Department. However, failure to notify an individual under this section shall not constitute a failure to provide adequate notice. Publication and distribution of notice shall be completed at least 30 days prior to the date of hearing.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029
Statutes Implemented: ORS 183.413 to 183.497 and Ch. 537 and 540
Hist: WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1989, f. & cert. ef. 10-3-89; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-007; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0100
Request for Party Status Following Notice of Contested Case Hearing in Matters Other than Applications on which a Hearing is Held Pursuant to ORS 537.170 or 537.622

(1) Where the time for filing petitions for party status is not otherwise set by the Hearings Referee, persons requesting party status or limited party status in the hearing shall file a petition for party status with the Hearings Referee in accordance with OAR 137-003-0005, at least 20 days prior to the date set for the hearing.

(2) The Hearings Referee shall serve the petition for party status or limited party status on all previously admitted parties and any other petitioners personally or by mail. Parties so served shall have seven days from date of mailing to file an answer to the petition with the Hearings Referee. Response to petitions for party status or limited party status shall be limited to previously admitted parties.

(3) Petitions for party status or limited party status in a proceeding shall be considered as provided by OAR 137-003-0005(7). The determination on the petition will be made by the Hearings Referee. The ruling shall be by written order, served promptly on the petitioner and all parties.

(4) An order granting party or limited party status may be conditioned on such terms as the Hearings Referee deems necessary.

(5) Persons granted limited party status may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions only with respect to the issue(s) in which participation is granted.

Stat. Auth.: ORS Ch. 183, 536.027 & 536.029
Statutes Implemented: ORS 183.413 to 183.497 and Ch. 536 to 543
Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-015; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0105

Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622

(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6) may file a request to intervene in the contested case hearing in which standing was obtained.

(2) Requests for intervention shall be in writing, signed by the person making the request, and contain the following information:

(a) Name, mailing address, and telephone number of the person requesting intervention;

(b) Number of the application involved and the date the proposed final order was issued;

(c) A request to intervene in the contested case proceeding on the proposed final order; and

(d) A description of the specific issues on which the requester seeks to participate, as expressed in the original request for standing or as established in the notice of contested case hearing.

(3) The petition for intervention must be received in the offices of the Department no later than 8 a.m. the day prior to the date announced for the pre-hearing conference, if any, or by the date and time specified by the Hearings Referee, and must be accompanied by the statutorily-established filing fee and by a certificate of service showing that a copy of the petition has been served on the named parties to the contested case hearing, as listed in the letter announcing referral of the matter to contested case hearing.

Statutory Authority: ORS Ch. 183, 536.027 and 536.029
Statutes Implemented: ORS 183.413 to 183.497, 537.153 and 537.621
Hist: WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0110
Procedures for Withdrawal from Party Status

A person or agency granted party status or limited party status and later wishing to withdraw from the proceedings shall file written notice with the Hearings Referee and all parties, stating reasons for withdrawal and specifying stipulations, settlements, or other terms or conditions of the withdrawal.

Stat. Auth.: ORS Ch. 183, 536.027 & 536.029
Statutes Implemented: ORS Ch. 183.413 to 183.497, Ch. 536 - 543
Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-025

690-002-0120
Discovery

Discovery of documents, physical evidence or information in preparation for the hearing may be obtained in any manner provided by the Attorney General's Model Rules of Procedure, OAR Chapter 137, Division 3, subject to limitations imposed by the Hearings Referee or as a result of time limitations imposed by law.

Stat. Auth.: ORS Ch. 183, ORS 536.027 & 536.029
Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543
Hist: WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0130
Hearings Referee, Powers

The Hearings Referee shall take all necessary action to ensure a fair and impartial hearing and to maintain order. The Hearings Referee shall have all powers necessary to perform those duties including but not limited to the power to:

(1) Rule on petitions for or withdrawal from party status and limited party status;

(2) Administer oaths and affirmations and examine witnesses;

(3) Receive evidence;

(4) Order depositions and other discovery, including exchange of documents and written testimony, regulate the course of discovery and issue subpoenas;

(5) Regulate the course of discovery and all other aspects of the hearing and the conduct of the participants including the length of oral presentation and written submissions;

(6) Require names of witnesses and summaries of anticipated testimony, exhibits or reports proposed to be entered into the record to be submitted prior to the hearing and copies of the same to be provided to other parties;

(7) Require some or all testimony to be filed in written form prior to the hearing;

(8) Dispose of procedural matters, establish or limit issues to be addressed in the hearing, and rule on motions;

(9) Require parties with substantially similar interests to join in one presentation to avoid redundant testimony;

(10) Call witnesses when essential matters are not addressed by the parties or their witnesses;

(11) Hold conferences to reach settlement, to refine or clarify issues, or for any other purpose the Hearings Referee finds necessary;

(12) Continue the hearing from time to time;

(13) Exclude evidence on failure to comply with discovery orders or orders for exchange of evidence proposed to be offered;

(14) Ensure that a complete record of all motions, rulings, testimony, and exhibits of the hearing is maintained;

(15) Take any other action consistent with governing statutes and the Commission's rules and policies, including the Attorney General's Model and Uniform Rules as adopted by the Commission;

(16) Prepare and serve upon parties a proposed order including findings of fact, findings of ultimate fact and conclusions of law;

(17) Where no exceptions to the proposed order are timely filed, issue and serve upon the parties a final order.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029

Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543

Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 11-1986; f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-030; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0140
Procedure in Contested Cases

OAR 137-003-0040 of the Attorney General's Model Rules of Procedure shall apply in

the conduct of contested cases except that in the following situations, and at the discretion of the Hearings Referee, the order of presenting evidence shall be:

(1) Statement and evidence of party:

(a) Opposing the proposed action on an application for water right permit (ORS 537.170 or 537.622);

(b) Applying for water right transfer (ORS 540.530);

(c) Seeking cancellation of perfected water right (ORS 540.641(2)); or

(d) Seeking water right certificate on which a protest has been filed (ORS 537.260(3)).

(2) Statement and evidence of parties in opposition to claim or position asserted in section (1) of this rule.

(3) Rebuttal testimony.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029

Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543

Hist: WRD 4-1978, f. & cert. ef. 5-22-78; WRD 8-1978, f. & cert. ef. 10-18-78; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-040

690-002-0150
Judicial and Official Notice

(1) The Hearings Referee may take judicial notice of all facts of which the courts of the State of Oregon take judicial notice that are pertinent to the hearing issues.

(2) The Hearings Referee may take official notice of the following:

(a) Administrative rulings and reports of the Commission, the Department and other governmental agencies;

(b) Facts contained in permits and licenses issued by the Director or Commission;

(c) The factual results of the Hearings Referee's personal inspection of physical conditions involved; and

(d) General, technical, or scientific facts, compilations of data, or analysis of same, collected, developed or made within the Department's specialized knowledge.

(3) At any time during the proceeding, or in any event prior to a final decision, the parties shall be notified of facts to be officially or judicially noticed, and shall be afforded an opportunity to contest the facts to be so noticed.

Stat. Auth.: ORS Ch. 183, 536.027, 536.029

Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543

Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 11-1986, f. & cert. ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-040; WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0160
Suggestions for Findings, Conclusions and Orders

The Hearings Referee may provide an opportunity for each party to present in writing,

suggested findings of fact, conclusions and orders on any permit or license application, consistent with a schedule set by the Hearings Referee.

Stat. Auth.: ORS Ch. 183, 536.027 & 536.029
Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543
Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-045

690-002-0170
Proposed Orders; Exceptions; Final Orders

(1) Following completion of the hearing and closure of the record in any contested case matter except for those conducted pursuant to ORS 537.170 or 537.622, the Hearings Referee shall issue a proposed order setting out the determination of the agency. If no exceptions are filed by any party within 30 days from service of the proposed order, and if a different final order is not issued by the Director within the time period allowed for filing exceptions, the proposed order shall become the final order of the agency and a copy of the final order shall be served on the parties to the contested case.

(2)(a) In all contested cases involving matters arising under ORS Chapters 183, 536 through 543, ORS 498.268 and 509.645, or administrative rules in OAR Chapter 690 implementing these statutes, where exceptions are filed to the proposed order, the final determination on behalf of the agency shall be made by the Director except in those areas listed in subsection (2)(b) of this rule;

(b) Where exceptions are filed to the proposed order and the subject matter of any of the following OAR Chapter 690 divisions, or the statutes implemented by these divisions, is the primary issue at the hearing, the Commission shall issue the final decision:

(A) Division 310-Water Right Application Processing;

(B) Division 15-Water Right Transfers;

(C) Division 18-Conservation and Use of Conserved Water;

(D) Division 50-Appropriation and Use of Water for Hydroelectric Power Projects;

(E) Division 51-Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications;

(F) Division 74-Standards for Consideration of Applications Involving Hydroelectric Projects;

(G) Division 77-Instream Water Rights;

(H) Division 225-Assessment of Civil Penalties under OAR 690-225-0100;

(I) Division 260-Civil Penalty Assessment for Other than Well Constructors.

(3) As provided in ORS 183.482 and OAR 137-003-0080, any party may petition for reconsideration or rehearing following issuance of the final order. Any Commissioner may move for reconsideration or rehearing. A motion for reconsideration or rehearing made by a Commissioner shall be passed by a majority of the Commission.

(4) Notwithstanding sections (1) and (2)(b) of this rule or any other provision of law, for a facility sited under SB 686, Or Laws ch. 982 (1999), the Director shall establish a time for filing exceptions to any proposed order that allows for issuance of a final order within

60 days of submission of a completed transfer application, and shall issue the final order, regardless whether any party files exceptions to a Hearings Referee's proposed order.

Stat. Auth.: ORS Chapter 183, 536.025, 536.027 & 536.029
Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543
Hist: WRD 6-1990, f. & cert. ef. 6-25-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-01-041; WRD 1-1996, f. & cert. ef. 1-31-96; f. & cert. ef. 5-16-00

690-002-0175
Proposed Orders; Exceptions; Affirming or Modifying Orders in Contested Cases Involving Water Use Applications Made Pursuant to ORS Chapter 537

(1) Following completion of the hearing and closure of the record in the contested case involving any application subject to the provisions of ORS 537.170 or 537.622, the Hearings Referee shall issue a proposed order. The proposed order may include any of the provisions or restrictions included in the proposed final order and draft permit or Division 77 certificate issued by the agency prior to the contested case hearing.

(2) Any party may file exceptions with the Commission by filing the exception with the department within 20 days following the date of service of the proposed order on the parties to the contested case proceeding. Exceptions must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record or to Commission policies to which modifications are sought in the exceptions.

(3) The Commission may form a subcommittee to review and act on the exceptions filed under subsection (2) of this rule.

(4) Where exceptions are timely filed to the proposed order, within 60 days from the close of the exception period, the Commission shall either issue a modified order or deny the exceptions and affirm the proposed order.

Statutory Authority: ORS Ch. 183, 536.027 and 536.029
Statutes Implemented: ORS 183.413 to 183.497, 537.173, 537.626
Hist: WRD 1-1996, f. & cert. ef. 1-31-96

690-002-0180
Reopening the Hearing Record

(1) On good cause being shown, the Hearings Referee may reopen the hearing record, or the Commission or Director may direct that the hearing record be reopened, for the purpose of receiving further evidence at any time prior to a final decision.

(2) A party requesting to reopen the proceeding must show cause for not presenting the evidence during the previous proceedings and show that the evidence to be presented could affect the outcome of the proceedings.

Stat. Auth.: ORS Ch. 183, 536.027 & 536.029
Statutes Implemented: ORS 183.413 to 183.497, Ch. 536 - 543
Hist: WRD 4-1983, f. & cert. ef. 8-10-83; WRD 8-1992, f. & cert. ef. 6-24-92; Renumbered from 690-75-035