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SEC. OF STATE

CERTIFICATE AND ORDER FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on June 2, 1995 (Date)

by the Oregon Water Resources Commission (Department) (Division)

to become effective upon filing (Date)

The within matter having come before the Water Resources Commission (Department) (Division) after all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO ☐ YES ☒ Date Published: March 1, 1995

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted: (New Total Rules)

Amended: (Existing Rules) 690-19-080 and 690-19-100

Repealed: (Total Rules Only)

JUN 1995
RECEIVED
Legislative Counsel's Office

as Administrative Rules of the Water Resources Department (Department) (Division)

DATED this 14th day of June, 19 95

By: Martha O. Pagel (Authorized Signer)

Title: Director

Statutory Authority: ORS 536.720 through 563.780 or

Chapter(s) _____, Oregon Laws 19 ____ or

House Bill(s) _____, 19 ____ Legislature; or Senate Bill(s) _____, 19 ____ Legislature

Subject Matter: The amended rules remove a requirement by the applicant to pay a fee for the cost of public notice.

For Further Information Contact: Beth Patrino (Rule Coordinator) Phone: 378-8455

June 14, 1995

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 19
DROUGHT MITIGATION

Purpose of Rules

690-19-010 (1) The following administrative rules (OAR) apply to drought mitigation activities. The mitigation activities were authorized by the 1989 legislature, amended by the 1993 legislature, and are codified at ORS 536.720 through 536.780 "EMERGENCY WATER SHORTAGE POWERS."

(2) These rules provide for action available to the Governor and the Water Resources Commission. They become operative only during extraordinary drought situations. Action within these rules is intended to mitigate problems which may develop during years when water supplies are inadequate.

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Definitions

690-19-020 The following definitions apply in OAR 690, Division 19:

(1) "Agreement" means a contractual arrangement specifying an understanding or arrangement for one party to temporarily make use of valid permit or water right held by another party.

(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) "Designated Drought Area" means a specific area within the state so designated by the Governor.

(6) "Emergency Use Permit" means a temporary permit for use of water.

(7) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

(8) "Local Government" means any governmental entity authorized by the laws of this state.

(9) "Option" means a contractual arrangement for a specified consideration for the use of a valid permit or water right.

(10) "Political Subdivision" means any local government unit including a county, city, town, or district established under the laws of Oregon.

(11) "Public corporation" means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government.

Note: These rules were filed with the Office of the Secretary of State and took effect on June 14, 1995. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State.

(12) "Temporary transfer" means a temporary change in use, change in place of use, or change in point of diversion.

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Duration of Drought Declaration

690-19-030 (1) During the effective time period of a drought declaration under ORS 536.740 in accordance with these rules, the Commission or the Director may take the following actions:

(a) Allow emergency water use under the terms of emergency use permits without first conducting a hearing under ORS 537.170;

(b) Waive the notice requirements under ORS 537.753 and the report required under ORS537.762 pertaining to water well construction;

(c) Allow a temporary exchange of water as allowed under ORS 540.533 without first giving notice as required under ORS 540.535;

(d) Grant preference of use for human consumption, stock watering; or

(e) Allow a temporary change in use, place of use or point of diversion of water under the terms of an emergency use permit without complying with the notice and waiting requirements under ORS540.520.

(2) Termination of a declaration of drought shall be by order of the Governor.

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Emergency Water Use Permit

690-19-040 (1) After the Governor declares that a severe, continuing drought exists, the Director may accept applications for emergency use permits. Emergency use permits shall allow use of water to replace water not available under an existing right because of the drought. Each application must be for use within a designated drought area. All fees required by OAR 690-19-100 shall accompany the application. Application forms may be obtained from the Department.

(2) Except in applications for a secondary permit for use of stored water, the applicant shall submit sufficient information to establish that:

(a) Drought conditions have created an inability on the part of the applicant to obtain water under an existing right; and

(b) Use is proposed in a designated drought area;

(c) Additionally, the Director may require the applicant to submit a plan and evidence showing conservation and water use curtailment measures have been taken before use is made of an emergency use permit.

(3) The Director shall approve an application for emergency water use upon findings that the proposed use will not cause injury to existing water rights and will not impair or be detrimental to the public interest. In evaluating whether the proposed use will impair or be detrimental to the public interest, the Director shall consider the factors described in OAR 690-11-195; and:

(a) The need for water because of the drought emergency; and

(b) The short-term nature of the proposed emergency use.

(4) An emergency use permit may be issued upon approval by the Director. No hearing under ORS 537.170 is required:

(a) Public notice of receipt of emergency use applications will be included in the Department's regular public notice of applications;

(b) The Director will consider all comments received concerning the use, or proposed use, under the emergency use permit throughout the life of the permit.

(c) Use of water under the emergency use permit may be regulated at any time in accordance with the terms and conditions of the permit;

(d) If use of water under the emergency use permit causes injury to an existing water right, the permit shall be revoked unless the injury is mitigated to the satisfaction of the injured water right holder.

(5) Emergency use permits issued by the Director shall include the following conditions or limitations:

(a) Use of water is subject to prior permits, rights and minimum stream flows;

(b) A specified duration of use;

(c) Rate, volume, and season limitations which shall not exceed the limitations of the underlying water right, including a condition that permits granted pursuant to this section shall not extend the season beyond historic use;

(d) The expiration date for the permit granted pursuant to this section which shall not exceed the term of the Governor's declared drought; and

(e) Any other conditions the Director deems appropriate.

(6) An emergency use permit issued to a state agency or political subdivision shall require:

(a) Submission of a water conservation or curtailment plan for approval by the Director; or

(b) Implementation of an approved water conservation or curtailment plan when directed by the Governor.

(7) A previously submitted conservation or curtailment plan may be submitted in lieu of the requirement for submittal in subsection (6)(a) of this rule.

(8) If an application fails to meet any require-ment of these rules the application shall not be filed and shall be returned to the applicant.

Stat. Auth.: ORS 536.720 thru 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Incomplete Applications

690-19-050 When an application does not contain all the information and supporting material required by the application form and these rules, the application shall be declared incomplete. The applicant shall be notified. Additionally, the application or a portion of the application may be returned to the applicant. A request for additional information will be made of the applicant who shall have 30 days to complete the application. If the applicant fails to complete the application within 30 days, the application shall be rejected.

Stat. Auth.: ORS 536.720 thru 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Temporary Transfers

690-19-055 (1) After the Governor declares that a severe, continuing drought exists, any person holding a water right certificate, who because of the effects of the drought is unable to use water under the certificate, may apply to the Director for a temporary change in use, place of use, or point of diversion of water from another certificate. The Director shall approve such transfer if:

(a) The temporary transfer shall not result in injury to an existing right; and

(b) Total water use at the proposed new location may not exceed either the amount in the original right or the amount in the transferred right, whichever is smaller.

(2) The full value of a right may be transferred. However, if a transfer is made after the beginning of an irrigation season only that portion of the right available for use during the rest of that irrigation season may be used.

(3) The Director may revoke a temporary transfer order if injury to existing water rights is shown and cannot be mitigated to the satisfaction of the Director and injured parties.

(4) The expiration date for the temporary transfer granted pursuant to this rule shall not exceed the term of the Governor's declared drought.

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 8-2994, f. & cert. ef. 8-2-94

Potential Liability

690-19-060 Issuance of an emergency use permit, temporary transfer or a grant of preference of use by order of the Commission may not protect the person receiving the permit, transfer or grant of preference from liability for improper use of the water under the permit, transfer or grant of preference.

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Preference of Use, Human Consumption and Livestock

690-19-070 (1) When the Governor declares that a severe, continuing drought exists, the Commission may grant a temporary preference of use to water rights for human consumption or stock watering. The temporary preference of use shall be by order of the Commission and shall apply only to designated drought areas. Temporary preference may be given over other water uses regardless of priority date.

(2) Applications for preference for human consumption or stock water shall be submitted on a form provided by the Department.

(3) In considering designation of an area for preferential use, the Commission may review recommendations from the Drought Council, recommendations from the Water Availability Committee, recommendations from county government officials within a designated drought area, and any other available information.

(4) Before issuing an order granting a temporary preference of use the Commission shall determine that the order is necessary to protect the health and welfare of the people of Oregon. Any order issued by the Commission for preference of use shall include:

(a) The expiration date for the temporary preference of use granted under the terms of this rule which shall not exceed the term of the Governor's declared drought;

(b) The geographic area specified for the temporary preference of use which shall be within a designated drought area;

(c) A general statement outlining which water uses have been designated temporarily inferior;

(d) A statement that there is an immediate threat to the health and welfare of the people of Oregon; and

(e) A requirement that political subdivisions within the designated drought area submit water conservation or curtailment plans for the Director's approval.

(5) Upon issuance of the order the watermaster within the designated drought area shall be notified of the temporary preference of use.

Stat. Auth.: ORS 536.720 & 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94

Option or Agreement for Use of Existing Right

690-19-080 (1) In order to plan for and mitigate the effects of severe, continuing drought, a local government or public corporation may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right. If approved as provided in sections (2) to (6) of this rule, an option or agreement may be exercised during a period of declared drought after the parties to the option or agreement notify the Department.

(2) Water used under the terms of an approved option or agreement may be used at locations, at points of diversion and for beneficial uses other than those described in the water right.

(3) The holder of the option or agreement is not required to construct any diversion or other appropriation facilities or works.

(4)(a) An option or agreement proposed under section (1) of this rule shall be subject to approval of the Director or Commission. The Director must find that the use of water under the proposed option or agreement will not cause injury to existing water rights and will not impair or be detrimental to the public interest;

(b) A local government or public corporation proposing an option or agreement shall submit an application to the Director. The application shall be accompanied by the fee set forth in ORS 536.050 (1)(a)(B). The application shall include the following information:

(A)The name of the local government or public corporation applying for approval of the option or agreement;

(B) The name of the holder of the permitted, certificated, or decreed water right that will be affected by the option or agreement;

(C) A copy of the water right permit, certificate or decree that shall be affected by the option or agreement;

(D) A copy of the proposed option or agreement;

(E) A statement that the water is intended for in-stream use, or a description of the lands on which the water is currently used, and a description of the lands on which the water shall be used under the option or agreement;

(F) Evidence that the water to be used under the option or agreement has been used over the past five years according to the terms and conditions of the owner's permitted, certificated, or decreed water right.

(G) If not intended for in-stream use, evidence that the water shall be used to supplement an existing water right held by the local government or public corporation, and that water is not available under the existing right.

(5) Upon receipt of an application for an option or agreement, the Director will provide notice in the regular weekly notice of the Department pertaining to applications received and by publication once a week for at least three successive weeks in a newspaper having general circulation in the area in which the water supply for the permitted, certificated or decreed water right is located and in which the option or agreement shall be exercised. The Director shall not take action on an application until at least 20 days after the last date the notice appeared in the newspaper.

(6) Any person whose use of water under an existing water right may be affected by the option or agreement, or any person who represents a public interest that may be affected by the option or agreement, may file a protest against approval of the application with the Department. The protest shall be filed with the Department within 30 days from the date of the first publication. If the petitioner seeks to protect a use of water under an existing water right, the protest shall contain a detailed statement of the petitioner's water use and how the use may be affected by approval of the option or agreement. If the petitioner represents a public interest, the protest shall contain a detailed statement of such public interest and the manner in which the public interest shall be affected by the option or agreement.

(7) Whenever a timely protest is filed or in the opinion of the Director a hearing is necessary to determine whether the exercise of a proposed option or agreement will result in injury to an existing water right or may impair or be detrimental to the public interest, the Director shall schedule a hearing and refer the matter to the Commission for final determination. Notice and conduct of the hearing shall be in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases, and the hearing shall be held in the area where the underlying water rights that are subject to the proposed option or agreement are located unless all parties agree to a different location.

(8) If, after a hearing by the Commission or examination by the Director, it is found that the option or agreement can be implemented without injury to existing water rights or the public interest, the Director shall issue an order approving the option or agreement. The order shall:

(a) Contain conditions describing the period of time in which use may occur and include a limitation that use may occur under the option or agreement only after a

declaration of severe, continuing drought has been made by the Governor, and use may not continue after the drought declaration has been rescinded; and

(b) Remain in effect until terminated by the parties to the option or agreement or by order of the Commission.

(9) The Director may review any order issued under section (8) of this rule to determine whether the order shall be continued in effect, modified or terminated in order to insure protection of other existing water rights and the public interest. Before making such determination the Director shall provide notice and an opportunity for hearing in the manner described in sections (2) to (6) of this rule.

(10) Any proposed change to an option or agreement shall be submitted to the Director for approval before the changes may be implemented. Upon receipt of any proposed change, the Director shall proceed as described in section (5) of this rule. Prior to the date the Director may take action on the change, any person wishing to protest may proceed as allowed under section (6) of this rule. Only the proposed change may be addressed in the process. The Director shall then proceed as per sections (5), (6), and (7) of this rule.

(11) The Commission may enter into an agreement for the use of water for in-stream uses during the time in which a severe, continuing drought is declared to exist. The total use of water by the water right holder and the Commission must be within the rate, volume and seasonal limits of the water right, and must not cause injury to any other water right.

(12) When the Governor declares that a severe, continuing drought exists, the Commission, a local government or a public corporation may proceed with the terms of an approved option or agreement. In addition to the conditions in the agreement, the terms of the use shall be as follows:

(a) Use may begin at any time, but the total use shall be limited to the rate, volume, acreage, time and other limits of the existing water right; and

(b) The local watermaster shall be given written, advance notice of intent to proceed;

(c) Measuring and reporting requirements may be a condition of use required by the Director.

(13) Use or nonuse of water under the terms of an approved option or agreement shall not be considered by the Department in a determination of abandonment of a perfected and developed water right under ORS 540.610(1).

Stat. Auth.: ORS 536.720 thru 536.780
Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD -1995, f. & cert. ef. 6-14-95

Requirement for Conservation and Curtailment Plans

690-19-090 (1) When the Commission declares that a severe or continuing drought is likely to occur, it may order state agencies and political subdivisions to develop and file with the Director conservation or curtailment plans:

(a) The Commission's order shall require development of the plan within 30 days from the date of the order; and

(b) If a state agency or political subdivision fails to comply with the order to provide plans that are acceptable to the Director, or fails to implement approved plans when directed by the Governor, the Director may do any or all of the following:

(A) Delay approval of an emergency use permit requested by a state agency or political subdivision;

(B) Suspend use under an existing emergency use permit held by a state agency or political subdivision;

(C) Offer evidence of the failure to comply by a political subdivision to the Commission when the Commission is considering designating an area for preference of use for livestock and human consumption; and

(D) Develop an appropriate plan for the state agency or political subdivision. Plans developed by the Director shall be implemented by the state agency or political subdivision when directed by the Governor.

(2) Following a declaration by the Governor that a severe, continuing drought exists or is likely to exist, the Governor may direct state agencies and political subdivisions to implement water conservation or curtailment plans, as approved by the Director:

(a) Water conservation plans shall include procedures to:

(A) Reduce usage of water resources for non-essential public purposes;

(B) Undertake activities consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources; and

(C) Establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water.

(b) Water curtailment plans shall be developed to provide water necessary for human and livestock consumption during a severe, continuing drought. The plans shall specify procedures:

(A) To curtail, adjust or allocate the supply of water resources for domestic, municipal and industrial use; and

(B) To regulate the times and manner in which water resources are consumed.

(c) Approval by the Director of a water conservation plan or a water curtailment plan is contingent on the Director finding that the plan satisfactorily promotes uniformity in water conservation or curtailment practices and that there is consideration given to local conditions in providing coordination of usage regulation.

Stat. Auth.: ORS 536.720 thru 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; ; WRD 8-1994, f. & cert. ef. 8-2-94

Schedule of Fees

690-19-100 The following is a schedule of fees for administrative work performed by the Department:

(1) Emergency permit for a new use:

(a) Examination fee = $200 plus;

(b) Recording fee = $400 for first cubic-foot/second or fraction thereof; $100 for each additional cubic-foot/second or fraction thereafter.

(2) Temporary change in use, place of use, or point of diversion:

(a) Examination fee = $100 plus;

(b) Recording fee = $100 for first cubic-foot/second or fraction thereof; $50 for each additional cubic-foot/second or fraction thereafter.

(3) Option or Agreement: Application fee = $200.

Stat. Auth.: ORS 536.720 thru 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD -1995, f. & cert. ef. 6-14-95