

**Water Resources Department  
Chapter 690  
Division 10  
APPROPRIATION AND USE OF GROUND WATER**

**90-010-0045**      **Hearings and Protests**

- ~~Rules and regulations governing the filing of protests or petitions and procedures to be followed in hearings as required by ORS Chapter 183 and division 1.~~

- ~~Statutory/Other Authority: ORS 536, 543  
Statutes/Other Implemented:~~

- ~~**Rule Summary:** Rule repealed to align division with statute.~~

**690-010-0050**      **Initiation of Proceeding for Determination of a Critical Groundwater Area — Notification**

- ~~(1) A proceeding for the determination of a critical ground water area shall be initiated by a Notification from the Water Resources Director.~~

- ~~(2) The Notification shall include:~~

- ~~(a) A description of the proposed exterior boundaries of the area for which, the proceeding is initiated, referenced to the U.S. Public Lands Survey;~~

- ~~(b) Citation to the specific statutory provision or provisions under which the proceeding is brought;~~

- ~~(c) The preliminary findings indicating why the area described may be a critical ground water area;~~

- ~~(d) A general description of the nature of the ground water reservoir which is the subject of the determination;~~

- ~~(e) The effective date and duration of the Notification. In no case shall the Notification have a duration greater than 270 days;~~

- ~~(f) A statement concerning applications in the area and reservoir in question which were filed in the Water Resources Department prior to the effective date of the Notification, but which had not received permits prior to that date. Such statement shall explain the applicants' options which include:~~

- (A) Withdrawing the application with refund of any submitted recording fees; or
- (B) Requesting deferral of action on the application until a determination of a critical ground water area; or
- (C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.
- (g) A statement concerning applications in the area and reservoir in question which are submitted on or after the effective date of the Notification. The statement shall explain the applicants' options which include:
  - (A) Withdrawing the application with refund of all related fees; or
  - (B) Requesting deferral of permit action until a determination of a critical ground water area; or
  - (C) Requesting a hearing on the application with the understanding that permit denial will result in rejection of the application. Failure to request a specific option will result in the department taking no action on the application until the Commission takes action on the area in question.
  - (h) Upon receipt of a request for hearing under subsection (2)(f) or (g) of this rule, the Director shall schedule and conduct the hearing.
- (3) The Notification shall be distributed by:
  - (a) Publication at least once each week for two consecutive weeks in a newspaper having general circulation in the area in question;
  - (b) Mailing by regular or certified mail to each legal claimant or appropriator of ground water in the area in question;
  - (c) Mailing by regular or certified mail to each applicant for a permit to appropriate water from the ground water reservoir and area in question;
  - (d) Mailing by regular or certified mail to the governing body and planning department(s) of the affected local governments within which all or part of the area in question is located;
  - (e) Mailing by regular or certified mail to each licensed water well constructor licensed to construct wells in the State of Oregon;

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~~(f) Mailing by regular or certified mail to the state legislative delegates representing the people of the area in question.~~

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~~(4) The Notification initiating a proceeding for determination of a critical ground water area shall be recorded in the Special Order Record of the Water Resources Director.~~

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~~Statutory/Other Authority: ORS 183, 197, 536, 537~~  
~~Statutes/Other Implemented:~~

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~~**Rule Summary:** Rule repealed to align division with statute.~~

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~~**690-010-0053                      Process Options**~~

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~~Within 270 days of the issuance of Notification, the Commission shall:~~

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~~(1) Determine that a critical ground water area is not warranted and inform those parties who received the Notification of the Commission's determination.~~

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~~(2) Conduct a public hearing to withdraw the ground water from further appropriation as authorized by ORS 536.410.~~

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~~(3) Conduct a public hearing to amend the appropriate basin program to classify the ground water in question as authorized by ORS 536.310 and 536.340.~~

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~~(4) Complete sections 2 and/or 3 of this rule and proceed at some future date with additional hearings necessary to fulfill the requirements of ORS 537.730 and issue a critical ground water area order.~~

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~~(5) Conduct a public hearing and issue a critical ground water area order and/or adopt rules.~~

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~~Statutory/Other Authority: ORS 197, 536~~  
~~Statutes/Other Implemented:~~

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~~**Rule Summary:** Rule repealed to align division with statute.~~

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~~**690-010-0054                      Public Hearing Requirements**~~

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~~(1) At least one public hearing shall be held within or near the proposed critical ground water area.~~

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~~(2) Notice of any hearing associated with critical ground water area proceedings shall be distributed as provided in OAR 690-010-0050(3).~~

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Statutory/Other Authority: ORS 197, 536

Statutes/Other Implemented:

- **Rule Summary:** Rule repealed to align division with statute.

- **690-010-0070                    Local Government Coordination**

- (1) Proceedings for the determination of a critical ground water area include Notification, rulemaking, the issuance or modification of an order, or other related activities.

- (2) The Director and Commission shall assure that proceedings for the determination of a critical ground water area meet the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Comprehensive Plans). Further, the Commission shall:

- (a) Upon notification, request the planning director of affected local governments to submit applicable policies, provisions, or procedures from acknowledged comprehensive plans which address and provide guidance for mitigating ground water problems;

- (b) Accommodate comprehensive plans (i.e., areas of planned growth and priority land uses) to the extent possible within the physical constraints of the ground water resource and the Commission's responsibilities under ORS 537.525, in adopting rules or issuing orders to manage or control water use in established or potential critical ground water area;

- (c) Instruct the planning directors of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended to:

- (A) Reflect the physical constraints of ground water resources in the critical area;

- (B) Ensure compliance with restrictions in the Notification, withdrawal order, classification, or critical ground water area order; and

- (C) Reduce the potential for future ground water problems within affected localities.

- (d) Consider how local government participation could enhance the effectiveness of managing the area;

- (e) Distribute the final critical ground water area rule and/or order to the county clerk and the planning director(s) of affected local governments.

- (3) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Director and Commission shall follow procedures in 690-005-0040 (Resolution of Land Use Disputes).

Statutory/Other Authority: ORS 197, 536

Statutes/Other Implemented:

Rule Summary: Rule repealed to align division with statute.

### **690-010-0100 Purpose**

The purpose of these rules is to guide implementation of the critical groundwater area statutes, ORS 537.730 to 537.742.

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 537.730

**Rule Summary:** This new rule describes the purpose of OAR Chapter 690 Division 10.

### **690-010-0110 Definitions**

In addition to the definitions underin OAR 690-008-0001, the following definitions apply to critical groundwater area designations conducted pursuant to ORS 537.730 to 537.742 and these rules, unless the context requires otherwise:

(1) "Affected local government" means any city, county, or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190 located within the boundaries of the proposed critical groundwater area.

(2) "Groundwater right" means a permit, certificate, decree or certificate of groundwater registration as provided in ORS 537.610 authorizing the appropriation and use of groundwater.

~~(3) "Groundwater reservoir" means a designated body of standing or moving groundwater having exterior boundaries which may be ascertained or reasonably inferred as provided in OAR 690-010-01320. Boundaries may be established by (a) physically by coincidence with natural features such as groundwater reservoir boundaries, hydrological barriers, or recharge or discharge boundaries, or (b) Administratively by surrounding an affected area when that area does not coincide with an area bounded by natural features.~~

~~(a) For the purpose of definition above, reasonably inferred means a fair, proper, and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.~~

(4) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies and Indian tribes.

(5) "Persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545" means persons other than the driller associated with the well log identification number for the exempt well.

~~(63)~~ “Water right” as used in ORS 537.730(1)(d)(A) means certificated and permitted water rights, inchoate transfers and determined claims, the source of which is surface water, including springs, streams, lakes, reservoirs, and rivers. A water right includes a “surface water diversion” as provided in OAR 690-008-0001(4). ~~is a “water right” as defined in this rule.~~

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 537.730

**Rule Summary:** This new rule defines terms used in OAR Chapter 690 Division 10 and ORS 537.730 to 537.742.

### **690-010-0120                      Required Criteria for Designation of Critical Groundwater Area**

- (1) The Commission may adopt rules to designate an area of the state a critical groundwater area if any of the requirements under ORS 537.730(1)(a)–(g) are met. These requirements are:
- (a) Ground water levels in the area in question are declining or have declined excessively;
  - (b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;
  - (c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;
  - (d) The department finds a pattern of substantial interference between wells within the area in question and:
    - (A) An appropriator of surface water whose water right has an earlier priority date; or
    - (B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the ground water appropriation
  - (e) The available ground water supply in the area in question is being or is about to be overdrawn;
  - (f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or
  - (g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) For purposes of the determination under ORS 537.730(1)(d)(B), 'restrictions imposed on surface water appropriations' include instream water rights and other types of legally protected surface water flows.

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 537.730

**Rule Summary:** This new rule incorporates and clarifies the statutory requirements under ORS 537.730 for designating an area of the state a critical groundwater area.

**690-010-0130 Additional Requirements for Critical Groundwater Area Rulemaking Process**

(1) The rulemaking process for designation of a critical groundwater area is governed by the applicable provisions under ORS Chapter 183, ORS 537.730 to 537.742, OAR Chapter 690, Division 001, and these rules.

(2) A rule adopted by the Water Resource Commission shall:

(a) Define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.

(b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years.

(3) For the purposes of ORS 537.735(1)(a) the exterior boundaries of groundwater reservoirs may be reasonably inferred or ascertained:

(a) According to the presence of physical natural boundaries, hydrological conditions, or recharge or discharge boundaries; or

(b) Administratively by defining an affected area that does not coincide with an area the boundaries of which are defined by natural features.

(4) For purposes of subsection (4)(c), the Department may rely upon any available records, including, but not limited to, reports, studies, maps, data, and model results.

(5) In addition to the requirements under section (1), prior to Commission adoption of a rule designating a critical groundwater area, the Department shall:

(a) coordinate with the affected local government and to the process described in OAR 690-010-0140; and

(b) Consult with any federally recognized Indian tribes with-in the proposed Critical Ground Water Area;

(c) Provide and present to the Commission a report, that is based on the best scientific and commercial data and information available, that identifies and characterizes the groundwater reservoirs subject to the proposed critical groundwater designation; supports any of the Department findings required under ORS 537.730(1)(a) – (g); and if applicable, supports the Department’s recommendation or proposal for any of the corrective control provisions under ORS 537.735(3)(a) – (f).

(d) The Department shall post the report presented to the Commission on the Department’s website at least 120 days prior to the public hearing as provided in section (7) of this rule.

~~(c) Ensure there is substantial evidence in the rulemaking record to:~~

~~(A) Justify the imposition of restrictions on groundwater use in the affected area; and~~

~~(B) If applicable, support a determination that a groundwater use will impair, substantially interfere, or unduly interfere with a surface water source.~~

~~(4) For purposes of subsection (3)(c), the Department may rely upon any available records, including, but not limited to, reports, studies, maps, data, and model results.~~

(6) In addition to the notice requirements under ORS 183.335, the Department shall give notice of the proposed rules by regular mail to:

(a) The owners of record of all groundwater registrations, permits and certificates for water use within the affected area.

(b) For the purpose of providing notice by regular mail, the Department may rely upon the available county tax lot ownership information for parcels underlying or overlapping with water right places of use in the proposed critical groundwater area. ~~when providing notice of the rulemaking to owners of record under ORS 537.730(3)(a).~~

(c) (6) The Department will also notify each well constructor licensed under ORS 537.747 with the proposed critical groundwater area under 537.730(3)(b).



(7) Within 60 days after notice of the proposed rules is provided under ORS 183.335, ORS 537.730(3) and these rules, ~~the~~ Department shall hold the public hearing ~~required under ORS 537.730(2)~~ within the county in which the proposed critical groundwater area lies. Notice of the hearing shall be provided in a manner consistent with ORS 537.730(3) and ORS 183.335(3)(b).

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 183.335, 537.730, 537.780

**Rule Summary:** This new rule describes the additional requirements of the rulemaking process applicable to rulemaking actions to designate an area of the state a critical groundwater area.

**690-010-0140 Land Use Planning Coordination with Affected Local Government ~~and Indian Tribes~~**

(1) Prior to notification of the proposed rules under ORS 183.335, the Department shall coordinate with the affected local government pursuant to the applicable provisions under ORS Chapter 197 (State Agency Planning Responsibilities), ~~OAR Chapter 660 Division 030 (Review And Approval Of State Agency Coordination Programs),~~ OAR Chapter 690, Division 005 (Compliance With Statewide Planning Goals, Compatibility With Comprehensive Plans, And Coordination On Land Use Matters), and these rules.

(2) To facilitate coordination in the rulemaking process to designate a critical groundwater area, the Department shall provide the following information to ~~the~~ affected local governments:

(a) Boundaries of the proposed critical groundwater area;

(b) List of any groundwater reservoirs located either in whole or in part within the proposed critical groundwater area;

(c) List of subsections under ORS 537.730 relied upon for the designation of the proposed critical groundwater area;

(d) Information ~~Copies of any evidence~~ relied upon to compile the list under subsection (2)(c) and;

(e) A ~~List~~ of any proposed corrective control provisions to be included in the proposed critical groundwater area rule under ORS 537.735; and

(f) A of copy the proposed rules.

~~(3) Prior to notification of the proposed rule under ORS 183.335, the department shall consult notify Indian tribes of the proposed rulemaking and also consult with any federally recognized tribes who have expressed an interest with in the proposed Critical Ground Water Area and in aid of consultation will provide to the tribe the information in section (2) of this rule.~~

~~(a) Posting on the Department website; and~~

~~(b) The newspaper(s) of record for any county within the proposed boundary.~~

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 537.730, 537.735

**Rule Summary:** This new rule describes the process and requirements of coordination with affected local government ~~and Indian tribe prior~~ to adoption of a rule designating an area of the state a critical groundwater area.

### 690-010-0150      Consultation with Federally Recognized Tribes

(1) Prior to convening the Rules Advisory Committee, the department shall consult with any federally recognized tribes within the basin and also consult with any federally recognized tribes who have expressed an interest in the proposed Critical Ground Water Area.

(2) To aid with consultation the department will provide the information in 690-010-0140(2)(a) – (e) to the federally recognized tribe and any interested federally recognized tribes.

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Other Implemented: ORS 537.730, 537.735

Rule Summary: This new rule describes the consultation process with a Federally Recognized Tribe within the basin.

**Rule Summary:** This new rule describes the process and requirements of coordination with affected local government and Indian tribe prior to adoption of a rule designating an area of the state a critical groundwater area.

### 690-010-01560      **Content, Filing, and Review of Adopted Critical Groundwater Area Rules**

(1) Any rule adopted by the Commission under ORS 537.730 and these rules shall meet the requirements of ORS 537.735.

(2) A critical groundwater area rule may include any one or more of the corrective control provisions under ORS 537.735(3)(a)–(f). These corrective controls ~~provisions may include~~ can be:

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year.

(c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process.

(d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(e) A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics.

(f) A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year. Insofar as may be reasonably done, the Water Resources Director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the ground water, in accordance with the relative dates of priority of such rights.

(3) The Department shall file a copy of any rules designating a critical ground water area with the Secretary of State as provided in ORS 183.355 and with the county clerk of each county within which any part of a critical groundwater area lies, and the county clerk shall record the designation in the deed records of the county.

(4) The Department shall conduct a periodic review of conditions within the critical groundwater area no less than once every 10 years to evaluate the continuing need for the critical groundwater area.

(5) In addition to the requirements of section (4), if the Commission adopts a critical groundwater area rule that restricts groundwater use, the Department shall review the rule at least once every three years. The review process shall include public notice and an opportunity to comment on the rule. For purposes of this section, “restrict” means curtailment of groundwater use within the critical groundwater area.

Statutory/Other Authority: ORS 53~~67~~.027, 537.730

Statutes/Others Implemented: ORS 537.730, 537.735, 537.740, 537.780

**Rule Summary:** This new rule incorporates the statutory requirements for a rule designating an area of the state a critical groundwater area, references the available corrective control provisions, outlines the timing of rule filing under ORS 537.740, and describes the required frequency of rule review.

**690-010-017~~60~~**

### **Initial Notification of Proposed Corrective Actions**

(1) At any time after the Commission adopts a rule designating a critical groundwater area, the Commission may initiate a contested case proceeding to propose limitation on groundwater

rights or limitations on persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 in the designated area. A contested case hearing shall be initiated by issuance of an Initial Notification of Proposed Corrective Action(s) followed by a Notice of Proposed Corrective Action(s).

(2) An Initial Notification of Proposed Corrective Action(s) may be issued At any time after the Commission adopts a rule designating a critical groundwater area, and prior to issuing a Notice of Proposed Corrective Actions. ,the Department may The Initial Notification of Proposed Corrective Actions shall identify propose corrective control provisions as specified in ORS 537.742(2)(a)–(f) that the Department believes will resolve the problems that resulted in the designation of a critical groundwater area and .These corrective control provisions will form the basis of a Notice of Proposed Corrective Action(s) the contested case hearing as provided in OAR 690-010-0170.

(3) The proposed corrective actions that limit or restrict the use of groundwater in the critical groundwater area that may be included in the Initial Notification of Proposed Corrective Actions are as follows can be:

(a) A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights.

(b) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for residential and livestock watering purposes first.

Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer.

(c) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(d) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

(e) A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

(f) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

~~(2) If the Department intends to initiate a contested case proceeding to implement the corrective control provision(s) it proposes , the Department shall provide initial notification of its proposed corrective action(s) in accordance with this rule.~~

~~(43) In addition to proposed corrective control measures as provided in subsection (2), the Department's Initial Notification of Proposed Corrective Actions must include:~~

- (a) Identification of the critical groundwater area in which the corrective actions are proposed ;
- (b) A statement describing the factors that led to the designation of the critical groundwater area;
- (c) A description of the proposed corrective actions that the Department believes will resolve the problems that resulted in the designation of the critical groundwater area;
- (d) A description of the geographic area in which corrective actions will be proposed; and
- (e) A description of how persons may request a Notice of Proposed Corrective Action and the deadline for requesting such notice.

~~(54)~~ The Department shall give notice of its ~~i~~initial Notice of Proposed Corrective Action(s) by:

- (a) Publication in a newspaper having general circulation in the area in which the corrective actions will be proposed, for a period of at least two weeks and not less than one publication each week.
- (b) Publication in the weekly notice published by the Department for four consecutive weeks.
- (c) First class mail to any affected local governments and to tribal governments within or adjacent to the geographic area in which corrective actions are identified.

(d) Holding a public meeting in the area in which the corrective actions will be proposed; and

~~(e)~~ Posting the ~~i~~initial Notification of ~~P~~roposed Corrective Actions on its website.

~~(65)~~ Persons requesting a copy of the Department's Notice of Proposed Corrective Actions must request a copy of the notice by the deadline specified in the ~~i~~initial Proposed Corrective Actions. The request shall be on a form provided by the Department on its website, and shall include information from the requestor that establishes whether:

- (a) The requester holds a groundwater right within the area of the initial notification of proposed corrective action;
- (b) The requester exercises the right to use groundwater pursuant to the exemption in ORS 537.545; or

(c) The requester otherwise has an interest in the proceedings; and

~~(d)~~ The mailing address and electronic mail address to which the Department may mail and e-mail its Notice of Proposed Corrective Action.

Statutory/Other Authority: ORS 536.027, 537.742

Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the process and requirements of an initial notification of proposed corrective actions.

**690-010-01870**

**Notice of Proposed Corrective Actions**

(1) Following issuance and notification of the Initial Proposed Corrective Action(s), and prior to implementation of any proposed corrective actions as may limit the use of groundwater in the critical groundwater area, the Department shall ~~At any time after the deadline for requesting a notice as provided in OAR 690-010-0160(3), the Commission may~~ issue a Notice of Proposed Corrective Actions proposing implementation of one or more corrective control provisions as specified in ORS 537.742(2)(a)–(f).

(2) The Notice of Proposed Corrective Action(s) is a notice for the purposes of ORS 183.415 and shall, ~~also in addition to those elements in ORS 183.415 and OAR 137-003-0505, include~~ contain the following:

(a) A case caption that identifies the critical groundwater area at issue including a citation to the rule establishing the critical groundwater area and identification of the county or counties in which the critical groundwater area is located;

(b) A statement of the ~~problem factors~~ resulting in designation of the critical groundwater area that may be addressed by limiting the use of groundwater in the critical groundwater area;

(c) A clear and concise description of the proposed corrective action(s);

(d) A description of the area where the Director intends to implement the proposed corrective actions including attachment of any maps as necessary to clearly show the area of intended action(s) such that groundwater right holders and users of groundwater exempt under ORS 537.545 located within the area of intended action may determine whether they will be affected by the proposed corrective action(s);

(e) Identification of those groundwater right holders and persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 whose rights to use groundwater may be limited ~~affected~~ by the proposed corrective actions, ~~and exempt groundwater users who have identified themselves in a request pursuant to OAR 690-010-0160(5);~~

(f) Findings of fact that support a conclusion that the problem(s) that resulted in designation of a critical groundwater area may be corrected by implementing the corrective control measures specified in the Notice of Proposed Corrective Action(s);

(g) Reference to observations, evidence, reports, studies, maps data, model results or any other substantial information that supports the agency's findings of fact;

(h) Conclusions of law based on the findings of fact and applicable law;

(i) An explanation of the reasoning that leads from the findings of fact to the conclusion that the problems that resulted in designation of the critical groundwater area may be resolved by implementation of the corrective control measure(s) identified in the notice;

~~(j) A citation to any laws involved;~~

~~(j) A statement notice of a party's right to a contested case hearing pursuant to ORS chapter 183.415 and OAR 137-003-0505; and~~

~~(k) A deadline for submitting a request for hearing, or, for persons other than those holding a groundwater right or persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545, a deadline for filing a Petition or for Pparty Sstatus as provided in OAR 690-010-0180.~~

(3) The Department shall provide notification of the Notice of Proposed Corrective Actions by:

(a) Mailing copies of the Notice of Proposed Actions by certified or registered mail to:

(A) Groundwater right holders and persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 whose wells are within the identified area in which corrective actions are proposed and whose use of groundwater will be limited by proposed corrective actions but only as the Department possesses contact information or may reasonably obtain contact information. ~~or;~~

~~(B) (b) Mailing copies of the Notice of Proposed Actions by regular mail to Ppersons who have timely requested copies of the notice as provided in OAR 690-010-01760(34) and who have identified themselves as persons who hold a groundwater right or exercise the right to use groundwater pursuant to the exemption in ORS 537.545.~~

~~(c) Publication in the weekly notice published by the Department for four consecutive weeks.~~

~~(d) Publication on the Department's website.~~

Statutory/Other Authority: ORS 536.027, 537.742

Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the notice process and requirements for Notice of Proposed Corrective Actions.

**690-010-01980**

**Requests for Hearing and Petitions for Party Status**

~~(1) Holders of groundwater rights or persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 and whose use of groundwater will be limited as described in the Notice of Proposed Corrective Action(s) are parties to the contested case regarding a Notice of Proposed Corrective Action(s). Only those persons identified by the Department as parties may participate in the contested case hearing regarding the Notice of Proposed Corrective Action(s).~~

~~(2) Persons who do not hold groundwater rights or persons who do not exercise the right to use groundwater pursuant to the exemption in ORS 537.545 may seek party status in the contested case regarding a Notice of Proposed Corrective Action(s) by filing a Petition for Party Status with the Department by the deadline specified in the Notice of Proposed Corrective Actions.~~

~~(a) A Petition for Party Status must be in writing, must be filed at least 120 days before the date set for hearing, must be consistent with the provisions in OAR 137-003-0535 and OAR 137-003-0630 and must be timely filed in the Department's Salem office by the deadline described in the Notice of Proposed Corrective Action(s). Parties are identified only as provided in these rules according to the timelines provided 690-010-170(2)(l) in these rules.~~

~~(b) Consistent with the provisions of OAR 137-003-0535 the Department may identify persons who shall be parties or limited parties in a contested case hearing regarding the Notice of Proposed Corrective Action(s).~~

~~(a) For the purposes of these rules, "person" includes individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies and Indian tribes.~~

~~(2) After receipt of a timely petition for party status, the Department may identify persons who shall be parties or limited parties in a contested case hearing regarding the Notice of Proposed Corrective Action(s).~~

~~(a) The Department's order on party status shall be a written order directed to the petitioner. An order denying party status shall be promptly served by first class mail on the petitioner and may be appealed in accordance with the provisions of ORS 183.484.~~

~~(b) If the Department grants a petition for party status, the agency shall specify areas of participation and procedural limitations as it deems appropriate and shall list those issues raised by petitioner in petitioner's request for party status.~~



(3) Persons who hold a groundwater right or persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 and whose groundwater use will be limited as provided in the Notice of Proposed Corrective Action(s) who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 may request a hearing to respond to the matters asserted in the Notice of Proposed Corrective Action(s). A request for hearing party status or limited party status to participate in a contested case hearing involving the Notice of Proposed Corrective Action(s). The petition for party status must be in writing and filed by the deadline specified in the Notice of Proposed Corrective Actions.

(a) Requests for hearing shall include the following:

(a) Names and addresses of the petitioner;

(b) Name and address of the petitioner's attorney, if any; and

(c) Identification of the water right held by petitioner or identification of the exempt well, and exempt uses, used or owned by petitioner.

(d) Requests for hearing may also include:

(e) A detailed description of how the corrective actions in the Notice of Proposed Corrective Action(s) would adversely affect or aggrieve petitioner supported by an affidavit stating such facts;

(f) A detailed description of how the Notice of Proposed Corrective Action(s) is in error or deficient and how to correct the alleged error or deficiency;

(g) A detailed description of whether the problem(s) that resulted in the designation of the critical groundwater area may or may not be corrected by implementing the corrective control measures specified in the agency notice and why; and

(h) Any citation of legal authority supporting the petition, if known.

~~(4) Persons who do not hold a groundwater right or who do not exercise the right to use groundwater pursuant to the exemption in ORS 537.545 may request party status as provided in OAR 137-003-0535 except that the agency need not serve a copy of the petition as provided in OAR 137-003-0535(5).~~

~~(5)~~(4) Requests for Hearings and Petitions for ~~party~~Party ~~status~~status shall be considered filed on the date postmarked. Requests for Hearing or Petitions for Party Status sent by facsimile or hand-delivered are considered filed when received by the Department in its Salem office.

(a) In computing the period of time for timely filing ~~of a petition for party status~~, the last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of

office closure include, but are not limited to, Saturdays and legal holidays identified in ORS 187.010 and 187.020, including Sundays.

Statutory/Other Authority: ORS 536.027, 537.742

Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the process and requirements for requests for party standing to a contested case hearing on a Notice of Proposed Corrective Action.

### **690-010-0200190**                      **Scope of Contested Case Hearing**

(1) A contested case hearing shall be conducted to establish one or more of the corrective control provisions in ORS 537.742 that limit use of groundwater in the critical groundwater area as provided in the Notice of Proposed Corrective Actions. ~~determine whether the corrective actions proposed in the Notice of Proposed Corrective Action(s) will resolve the problems that resulted in the designation of the critical groundwater area.~~

(2) Except as otherwise provided in ORS 183.417(8) the Director shall create a list of issues to be heard in the contested case and shall refer that list to the Office of Administrative Hearings at the time the Notice of Proposed Corrective Action(s) is referred.

(a) The list of issues shall include those issues raised in a timely-filed Request for Hearing though issues may be categorized or summarized as furthers efficient administration of the contested case.

(b) Parties to the contested case may seek amendment or clarification of the list of issues consistent with the provisions of OAR 137-003-0630.

~~(a) The list of issues shall identify each party that has been granted party status, shall detail the scope of each party's participation in the contested case hearing and shall list the issues raised by each party in their petition for party status.~~

~~(3) Any party seeking to amend or add to the list of issues filed by the Department in its referral to the Office of Administrative Hearings must make a motion to the Administrative Law Judge.~~

~~(a) Good cause must be asserted if the party moves to add an issue not raised in the party's petition for party status.~~

~~(b) For the purposes of this rule, "good cause" is defined in OAR 137-003-0501(7).~~

Statutory/Other Authority: ORS 536.027, 537.742

Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the scope of a contested case hearing on a Notice of Proposed Action.

**690-010-02100**

**Conduct of Contested Case**

(1) The conduct of the contested case regarding the Notice of Proposed Corrective Action(s) shall be governed by OAR 137-003-05~~0120~~ to 137-003-0700 except as otherwise provided in these rules.

(2) The Department shall refer the contested case ~~submit~~ to the Office of Administrative Hearings as provided in OAR 137-003-0515. ~~the following documents when it refers the Notice of Proposed Corrective Actions to the Office of Administrative Hearings:~~

~~(a) The Notice of Proposed Corrective Actions; and~~

~~(b) Copies of evidence, maps, reports or any other information that supports the Department's findings of fact, conclusions and determination of corrective actions that will resolve the problems that resulted in designation of the critical groundwater area;~~

~~(c) Copies of each order on party status with the petition for party status attached;~~

~~(d) The list of issues compiled by the Director;~~

~~(e) A certificate of service that includes each party's or a party's representative's name, mailing address, electronic mail address and phone number; and~~

~~(f) Any other information that the Director reasonably believes is necessary to support the Notice of Proposed Corrective Actions or is relevant to the proceedings.~~

(3) ~~In addition to submitting the information in subsection (2) above, T~~the Department shall post all of on its webpage the information contained in its ~~referred~~ to the Office of Administrative Hearings ~~on its webpage and will~~ may also post maps, reports or any other information supporting the Notice of Proposed Corrective Action including provide any necessary links to information evidence referred to in the Notice of Proposed Corrective Action. ~~that supports the agency's findings of fact, conclusions, and determinations of corrective actions.~~

(4) Due to the extensive scope of the contested case hearing and the large number of parties, the availability of the information posted Department's case in chief as provided in subsections ~~(2) and~~ (3), and the availability of public seeking record requestss pursuant to Oregon's Public Records Law, discovery against the Department is only as provided in OAR 137-003-0566(1)~~(a) -~~ (c).

~~(a) Parties may seek discovery against each other as provided in OAR 137-003-0566.~~

(5) Service and filing of documents in the contested case hearing may be by electronic means only as directed and allowed by the Administrative Law Judge.

~~(a) In lieu of mail or electronic service to individual parties, the Office of Administrative Hearings or the Department may maintain a webpage where any party may access all the documents filed in the proceeding. Service may consist only of notification to a party that documents have been uploaded to the webpage.~~

~~(6) Notwithstanding OAR 137-003-0630(3), the timelines for filing and response to motions for ruling on legal issues shall be only as provided in a prehearing order from the Administrative Law Judge.~~

Statutory/Other Authority: ORS 536.027, 537.742  
Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the process and requirements of a contested case proceeding on a Notice of Proposed Corrective Action.

#### **690-010-02~~10~~**                      **Exceptions to Proposed Order**

~~(1) If the recommended action in the proposed order issued by the administrative law judge is adverse to any party or the Department, the party or the Department may file exceptions and present argument to the Commission.~~

~~(2) Exceptions to the Proposed Order issued by the Administrative Law Judge after a contested case hearing must be in writing and must clearly and concisely identify the portions of the proposed order excepted to and must be filed within 630 days following the date of service of the Proposed Order.~~

(a) Parties must mail or hand-deliver a hard copy of their exceptions to the Department at its Salem offices and must also email an electronic copy to all the email addresses listed on the Certificate of Service.

~~(23) The Commission must consider timely-filed the exceptions but need not individually address each exception in any final order issued. The Commission may form a subcommittee to review the exceptions and may provide a report to the Commission prior to the Commission issuing a final order.~~

Statutory/Other Authority: ORS 536.027, 537.742  
Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the process and requirements for filing exceptions to proposed orders and the Commission’s review and response to such exceptions.

690-010-02230

**Final Order in Contested Case Imposing Corrective Actions**

(1) Upon conclusion of the contested case hearing including the consideration of exceptions filed against a proposed order issued by the administrative law judge, the Commission shall issue a final order in contested case.

(2) If, after consideration of the contested case record, the Commission finds that the ~~problems factors~~ that resulted in the designation of a critical groundwater area under ORS 537.730 can be resolved by implementing one or more of the corrective control measures specified in the Notice of Proposed Corrective Action(s), the Commission shall issue a final order establishing one or more of the proposed corrective actions which may include limitations on the use of groundwater by those holding groundwater rights or on persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545.

~~(3) If, after consideration of the contested case record, the Commission finds that the problems that resulted in the designation of a critical groundwater area under ORS 537.730 cannot be resolved by implementing one or more of the corrective control measures specified in the Notice of Proposed Corrective Action(s), the Commission may issue a final order:~~

~~(a) Remanding all or a portion of the Notice of Proposed Corrective Actions back to the Department for further review considering the contested case record.~~

~~(b) Insofar as any modifications are supported by the contested case record, modifying the corrective actions to specify corrective control measures that can resolve the problems that resulted in designation of the critical groundwater area.~~

~~(b) Finding that corrective control measures cannot resolve the problems that resulted in the designation of a critical groundwater area and making any recommendations as the Commission believes is in the best interest of the public's health, welfare and safety as provided in ORS 537.525.~~

(34) Final orders in contested case must be consistent with ORS 183.650 and OAR 137-003-0665 and directed to the named parties in the contested case proceeding.

(45) Final orders in default issued to a party in the contested case hearing must be consistent with OAR 137-003-0670.

(56) The Commission's final order in contested case is appealable to the Oregon Court of Appeals pursuant to ORS 183.482.

~~(7) Subsequent to the Commission's final order becoming final by operation of law or after all appeals are resolved, the Commission may promulgate the order's provisions as a rule consistent with laws governing rulemaking proceedings and basin program plan amendments.~~

Statutory/Other Authority: ORS 536.027, 537.742

Statutes/Others Implemented: ORS 537.742

**Rule Summary:** This new rule describes the requirements for a final order issued at the conclusion of a contested case hearing.

**690-010-02340 Procedure for Making Changes to Existing Critical Groundwater Area**

(1) Where a critical groundwater area is established and described in rule only, the Commission may modify an existing critical area designation by amending the basin program rules pursuant to the process in ORS 536.300 – 340 and ORS chapter 183.335.

(2) Where a critical groundwater area is established by an order or proclamation that is referenced in a basin program rule, the Commission may amend the basin program rule referencing the critical area order so as to confirm or modify the order’s provisions governing designation of the critical area or the establishment of corrective control provisions.

(a) Any rulemaking as provided in subsection (2) does not amend an order or proclamation as it directs the disposition of individual rights adjudicated in the order or proclamation.

(3) Insofar as critical groundwater area rules, orders or proclamations are amended to establish new or amended critical area designations or new or amended corrective control measures such corrective control measures may apply:

(a) To those rights previously adjudicated in a critical groundwater area order or proclamation only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS chapter 183;

(b) To pending applications and present water rights, only upon completion of a contested case initiated pursuant to ORS 537.742 and ORS chapter 183.

**Rule Summary:** This new rule describes the procedures for making changes to rules for existing Critical Groundwater Areas.

Statutory/Other Authority: ORS 536.027, 537.730

Statutes/Others Implemented: ORS 537.730