

Division 10 Summary of Rule Changes



690-010-0100: Purpose

Changes made:

- None

690-010-0110: Definition

Changes made:

- Added a subsection (a) to section (2) that states "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."
- Added to section (3) Inchoate Transfers. Lakes and Reservoirs.

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

Changes made:

- Added to section (1): "These requirements are:"
 - "Groundwater levels in the area in question are declining or have declined excessively;"
 - "The Water Resources Department finds a pattern of substantial interference between wells within the area in question;"
 - "The department finds a pattern of interference or potential interference between wells of groundwater claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;"
 - "The department finds a pattern of substantial interference between wells within the area in question and:"
 - "An appropriator of surface water whose water right has an earlier priority date; or"
 - "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"
 - "The available groundwater supply in the area in question is being or is about to be overdrawn;"
 - "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"
 - "Groundwater temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796."
- Changed Section 2 to: "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."

690-010-0130: Additional Requirements For Critical Groundwater Area Rulemaking Process

Changes made:

- Added a new section (2) that states: " A rule adopted by the Water Resource Commission shall: "
 - "Define the boundaries of the critical groundwater area and shall indicate which of the groundwater reservoirs located either in whole or in part within the area in question are included within the critical groundwater area. Any number of groundwater reservoirs which either wholly or partially overlie one another may be included within the same critical groundwater area."
 - "Contain a provision requiring a periodic review of conditions in the critical groundwater area. The review shall be in sufficient detail to evaluate the continuing need for the critical groundwater area designation and shall occur no less frequently than once every 10 years"
- Changed section (3) subsection (a) to "Consult with the affected local government and to the process described in OAR 690-010-0140; and"
- Add a new subsection (b) under section 3: "Consult with any federally recognized tribes with in the proposed Critical Ground Water Area"
- Added a new section (6) that states: "The Department will also notify each well constructor licensed under ORS 537.747 with the proposed critical groundwater area under 537.730(3)(b)."
- Changed section (7) to: "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(b)."

690-010-0140: Land Use Planning Consultation with Affected Local Government and Indian Tribes

Changes made:

- Changed the name to Land Use Planning Consultation with Affected Local Government and Indian Tribes.
- Changed Section (1) to: "Prior to notification under ORS 183.335, the Department shall consult with the affected local government pursuant to the applicable provisions under ORS Chapter 197 (State Agency Planning Responsibilities), OAR Chapter 690, Division 030 (Review And Approval of State Agency Coordination Programs), Division 005 (Compliance With Statewide Planning Goals, Compatibility With Comprehensive Plans, and Coordination on Land Use Matters), and these rules.
- To facilitate consultation, the Department shall provide the following information to the affected local government:
- Added a new section (3) that states: "The department shall also consult with any federally recognized tribes with in the proposed Critical Groundwater Area."
- Added a new subsection (f) to section (2) that states: "A copy of the proposed rules"

690-010-0150: Content, Filing, and Review of Adopted Critical Groundwater Area Rules

Changes made:

- Changed the rule name to "Content, Filing, and Review of Adopted Critical Groundwater Area Rules"
- Added subsection (a -f) to section (2) that states: "These corrective controls can be:"
 - "A provision closing the critical groundwater area to any further appropriation of groundwater, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such critical area."
 - "A provision determining the permissible total withdrawal of groundwater in the critical area each day, month or year."
 - "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."
 - "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."
 - "A provision closing all or part of the critical groundwater area to further appropriation of groundwater for its thermal characteristics."
 - "A provision determining the permissible change in thermal characteristics of groundwater in all or part of the critical groundwater 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 groundwater, in accordance with the relative dates of priority of such rights."
- Changed Section 3 to: "The Department shall file a copy of any rules designating a critical groundwater 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, as provided in ORS 537.740. and the county clerk shall record the designation in the deed records of the county."
- Changed section (4) to: "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."

690-010-0160: Initial Notification of Proposed Corrective Actions

Changes made:

- Changed section (1) and subsections (a-f): "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 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. The proposed corrective actions can be:"
 - "A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to groundwater in the critical area in accordance with the relative dates of priority of such rights. "
 - " A provision according preference, without reference to relative priorities, to withdrawals of groundwater in the critical area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of groundwater 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."
 - "A provision reducing the permissible withdrawal of groundwater by any one or more appropriators or wells in the critical area."
 - "Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of groundwater by such appropriator, or a provision forbidding the use of one or more of such wells completely."
 - "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 groundwater supply or responsible for the progressive impairment of the quality of the groundwater supply by dispersing polluting materials that have entered the groundwater supply previously."
 - " A provision requiring and specifying a system of rotation of use of groundwater in the critical area."
- Changed section (2) to: "If the Department intends to initiate a contested case proceeding to implement the corrective control provision(s) it proposes i, the Department shall provide initial notification of its proposed corrective action(s) in accordance with this rule."