

## **Division 310**

### **WATER RIGHT APPLICATION PROCESSING**

#### **690-310-0000**

##### **Purpose**

(1) The purpose of this division is to establish information requirements, and procedures and standards which shall be applied by the Department in the evaluation of applications for a permit to appropriate surface water, ground water, to construct a reservoir and store water, to use reserved water or to use water stored in a reservoir.

(2) Applicants should be aware that other rule divisions apply to applications for instream water rights (OAR 690, division 77), reservations for economic development (OAR 690, division 79), water right transfers (OAR 690, division 380), use of conserved water (OAR 690, division 18), water use for chemical process mining (OAR 690, division 78), out-of-basin diversions (OAR 690, division 12), drought mitigation (OAR 690, division 19), claims for pre-1909 vested water rights (OAR 690, division 28), hydroelectric power generation (OAR 690, division 51), minimum perennial streamflows (OAR 690, division 76) and other uses of water not subject to permit or certificate requirements (OAR 690, division 340).

#### **690-310-0005**

##### **Determination of Appropriate Step in Process for Applications Pending on June 30, 1995**

Pursuant to section 46, chapter 416, Oregon Laws 1995, for each application described under OAR 690-310-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

#### **690-310-0010**

##### **~~Application Processing Rules Control General Administrative Procedures Act Provisions~~**

~~Notwithstanding any provision of ORS 183.310 to 183.550, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360 or 537.505 to 537.795. Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS 183.310 to 183.550 conflicts with a provision set forth in ORS 537.120 to 537.360 or 537.505 to 537.795, the provisions in ORS 537.120 to 537.360 or 537.505 to 537.795 shall control.~~

#### **690-310-0020**

##### **Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work**

(1) The Department shall not issue a permit without notifying the owner, as identified in the application, of any lands not owned by the applicant to be crossed by a proposed ditch, canal or other work, or any lands not owned by the applicant within the proposed place of use, as set forth in the application. The Department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(2) If more than 25 persons are identified in the application as required under OAR 690-310-0040(1)(a)(F), the Department may provide the notice required under section (1) of this rule by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the Department.

### **690-310-0030**

#### **Grounds for Refusal to Issue or Cancellation of Permit**

(1) In addition to any other provision for refusal to issue a permit, the following shall be grounds for refusal to issue a permit:

(a) Failure of an applicant to comply with the requirements under OAR 690-310-0020; or

(b) Failure to obtain written authorization, obtain an easement or acquire ownership of the land if required by a condition of issuance.

(2) If an applicant makes a statement under OAR 690-310-0040(1)(a)(G) that falsely states that the applicant owns all lands crossed by a proposed ditch, canal or other work or that the applicant has obtained written authorization or an easement permitting access across such lands, any permit issued in response to the application shall be subject to cancellation.

(3) The Department is not required to mediate or arbitrate a dispute between a permittee and a landowner with respect to the provisions of ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305, and 772.310.

### **690-310-0040**

#### **Application Requirements**

(1)(a) Each application for a permit to appropriate water shall be made to the Department on a form prescribed by the Department and shall set forth:

(A) The name, mailing address, and email address, if available, of the applicant(s);

(B) The source(s) of water from which the water is proposed to be diverted or appropriated, including the name and mailing address of any owner of the land upon which the source of the water supply is located;

(C) The amount of water to be appropriated from each source;

(D) A map of the proposed water use as set forth in the mapping requirements in OAR 690-310-0050;

(E) The nature of the proposed use(s);

(F) The name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work, or any lands not owned by the applicant within the proposed place of use, even if the applicant has obtained written authorization or an easement from the owner;

(G) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work. This requirement shall not apply to applications for irrigation or domestic use where the applicant would occupy state-owned submersible lands for the construction, maintenance, and operation of any structure or facility necessary for the use of water;

(H) Proposed dates for the beginning of construction, completion of construction, and complete application of the water to the proposed beneficial use;

(I) The legal description of:

(i) The property from which the water is to be diverted;

(ii) Any property crossed by the proposed ditch, canal or other work; and

(iii) Any property on which the water is to be used as depicted on the map.

(J) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters;

(K) Information the applicant has that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters;

(L) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4);

(M) Signature of the applicant(s), and, if the applicant is a public agency, corporation or business, trust, or other organization, the title or authority of the person who signs the application on behalf of the entity, and evidence of signatory authority or a signed statement that such authority exists;

(N) An oath that the information contained in the application is true and accurate;

(O) The estimated capacity of each pump in gallons per minute, and the horsepower of each pump motor;

(P) All other data concerning the proposed project and the applicant's ability and intention to construct the project, as the Department considers necessary;

(Q) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements;

(R) If the requested water use is supplemental to an existing water use, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant that is primary to the supplemental use.

(b) If the application is for a permit to appropriate ground water, in addition to the information required under subsection (a) of this section, the application shall contain:

(A) For any well already constructed, a copy of the well constructor's log, if available. If a well log is not available, or if the well is not already constructed, the proposed total depth, depth of casing and seal, and the anticipated perforation and open intervals;

(B) If the groundwater is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision;

(C) The depth to the water table, if known;

(D) The location of each well with reference to government survey corners or monuments or corners of recorded plats;

(E) The estimated capacity of each well;

(F) If the ground water does not require pumping, the rate of flow in gallons in such manner as the Commission may prescribe.

(c) If the application is to store water and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, the application also shall include or be accompanied by:

(A) Preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area;

(B) Proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water;

(C) A legal description of the property upon which the water is to be stored;

(D) A map of the proposed place of use prepared, stamped, and signed by a certified water right examiner in accordance with OAR 690--310-0050 unless the application is to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height, in which case the map need not be prepared by a certified water right examiner.

(d) If the application is to appropriate stored surface water, the application also shall include or be accompanied by documentary evidence that:

(A) The applicant has provided notice of the application to the operator of the reservoir, if other than the applicant. This requirement may be satisfied by providing a copy of written notice to the operator of the reservoir, or a notarized affidavit signed by the applicant stating that notice has been provided to the operator of the reservoir;

(B) An agreement has been entered into with the owner of the reservoir to provide enough water for the purposes set forth in the application. If the applicant is the reservoir owner, no such agreement is required. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance; and

(C) An agreement has been entered into with any entity delivering the stored water other than the applicant. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance.

(e) If for agricultural purposes, in addition to any other information required, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be;

(f) Except as otherwise provided in OAR 690, division 51, if for power purposes, in addition to any other information required, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied;

(g) If for municipal or quasi-municipal water supply, in addition to any other information required, the application shall give the already installed and available capacities to provide water service, present population to be served, and, as near as may be, the future requirements of the population served, and if known, the methods that may be used to meet such future requirements;

(h) If for mining purposes, in addition to any other information required, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) Each application for a permit to appropriate water shall be accompanied by the portion of the examination fee set forth in ORS 536.050 stated on the Department's application form.

(3) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(4) If the department determines that the source of a proposed use of water is in or above a scenic waterway, in addition to any other information required, the applicant shall provide the information required under OAR 690-310-0260.

(5) If the application is to appropriate ground water for group domestic use expanded for a public water system in an amount of water equivalent to the amount of water provided by abandoned water wells as provided in OAR 690-310-0130(3) and (4), the applicant shall provide evidence that, prior to being abandoned, the wells had used water as provided in:

(a) ORS 537.545 (1)(d); or

(b) If used by a household, ORS 537.545 (1)(b) and (d).

#### **690-310-0050**

##### **Map to Accompany Application for Water Use Permit**

Maps submitted as part of an application for water use permit shall meet the standards in OAR chapter 690, division 305.

#### **690-310-0060**

##### **Permits for Livestock Watering Outside of Riparian Areas (SB 150, 1989); Fees**

(1) Applications for permits to use water exclusively for livestock watering outside of riparian areas are subject to the following reduced fees:

(a) For examining the application, \$40;

(b) For filing and recording the permit, \$10.

(2) Applications submitted under this rule shall in all other respects be subject to the usual requirements for application processing.

#### **690-310-0070**

##### **Completeness Review**

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-310-0040 and is complete and not defective, including the payment of the portion of the examination fees stated in the application form. If the Department determines that the application is incomplete or defective or that the portion of the examination fees stated in the application form has not been paid, the Department shall return all fees and the application.

(2) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose. For the purposes of this section, a suitable book shall include the Department's electronic water rights information system.

(3) The priority date for use of water not previously reserved under OAR 690, division 79 shall be the date the application was received for filing by the Department.

(4) If an application for the use or storage of surface water is complete and not defective, the Department shall determine whether the proposed use is prohibited because the source of water is withdrawn from appropriation under ORS chapter 538 or by rule or order of the Water Resources Commission under ORS 536.410, if the Department has information sufficient to make the determination at the time of application intake. If the proposed use is prohibited, the Department shall return the application and return the portion of the fees stated in the application form to the applicant with an explanation of the reason for the return.

(5) If an application to appropriate groundwater is complete and not defective, the Department shall determine whether the proposed use is prohibited because the source of water is designated as a critical groundwater area under ORS 537.730, subject to restrictions on allowed groundwater uses by classification under ORS 536.340, or withdrawn from appropriation under ORS Chapter 538 or by rule or order of the Water Resources Commission under ORS 536.410, if the Department has information sufficient to make the determination at the time of application intake. If the proposed use is prohibited, the Department shall return the application and return

the portion of the fees stated in the application form to the applicant with an explanation of the reason for the return. This subsection does not apply to applications related to the recovery of groundwater under an artificial recharge or aquifer storage and recovery project, or under ORS 536.295.

#### **690-310-0080**

##### **Initial Review**

(1) If the proposed use is not prohibited as described in OAR 690-310-0070(4) or (5), the Department shall undertake an initial review of the application and make a preliminary determination of:

- (a) Whether the proposed use is restricted or limited by statute or rule;
- (b) Except for applications described in ORS 537.615 (7), the extent to which water is available from the proposed source during the times and in the amounts requested; and
- (c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-310-0070, the Department shall send the applicant an initial review report setting forth the Department's preliminary determinations. The initial review report shall be sent by electronic means, unless the applicant has requested mailing or other sending in written form, and notify the applicant of the remaining portion of the examination fee due. The applicant shall have 90 days from the date the Department sends the initial review report within which to notify the Department in writing to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, does not notify the Department whether to proceed with processing the application, or does not pay the remaining portion of the fee due, the Department shall close the application file and take no further action on the application.

#### **690-310-0090**

##### **Public Notice and Comments**

(1) If the applicant notifies the Department to proceed with the application as provided in OAR 690-310-0080(2) and pays any remaining portion of the application examination fees, the Department shall proceed with processing the application. The Department shall give notice of the initial review in the weekly public notice of the Department and accept written public comments for 30 days. The notice shall include a request for comments on the application, the date by which comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application. The notice also shall include the following information about the application:

- (a) Type of water use application;
  - (b) County of water use;
  - (c) Application file number;
  - (d) Applicant name and address;
  - (e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
  - (f) Common name of surface water source(s) or basin;
  - (g) Nature of use; and
  - (h) Location of the proposed point of diversion by section quarter-quarter, township and range.
- (2) The weekly notice shall be sent to the following:
- (a) Affected local, state and federal agencies, including the planning departments of affected local governments;
  - (b) Property owners listed on an application pursuant to OAR 690-310-0040;
  - (c) Affected Indian Tribes; and
  - (d) All persons on the Department's weekly mailing list.
- (3) The notice shall be sent by electronic means unless the recipient has requested mailing or other sending of the document in written form.
- (4) Within 30 days after the public notice under section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who requests a copy of the Department's proposed final order shall submit to the Department a written request accompanied by the fee required under ORS 536.050(1). The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

#### **690-310-0100**

##### **Completion of Application Review; Additional Information and Proposed Final Order**

Within 60 days after the applicant notifies the Department to proceed with the application as provided in OAR 690-310-0080(2) and pays any remaining portion of the application examination fees, the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by electronic means, unless the applicant has requested mailing or other sending in written form. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department sends the request to the applicant. If the Department does not receive the information or a request for a



time extension under OAR 690-310-0270 by the date specified in the request, the Department may reject the application and may refund fees in accordance with ORS 536.050(4)(a). The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this subsection.

#### **690-310-0110**

##### **Public Interest Presumption; Surface Water**

(1) The Department shall presume that a proposed surface water use will not impair or be detrimental to the public interest if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The presumption described in section (1) of this rule is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(7) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

#### **690-310-0120**

##### **Public Interest Review; Surface Water**

(1) Before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-310-0110.

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(7) and may either:

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(7) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Water use efficiency and the avoidance of waste;

(B) Threatened, endangered or sensitive species;

(C) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0006(42);

(D) Fish or wildlife;

(E) Recreation;

(F) Economic development; and

(G) Local comprehensive plans, including supporting provisions such as public facilities plans.

(c) In making the determination in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)–(6) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four presumption criteria listed in OAR 690-310-0110(1)(a)–(d) are not met; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(7) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(5) If the Department finds that under section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application unless the Department makes specific findings to demonstrate that considering all of the public interest factors listed in ORS 537.170(7) the issuance of a permit will not impair or be detrimental to the public interest.

(6) If the Department finds that under section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.

#### **690-310-0130**

##### **Public Interest Presumption; Groundwater**

(1) The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2)(a) The presumption described in subsection (1) of this section is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

(A) One or more of the criteria for establishing the presumption are not satisfied; or

(B) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, protests or a finding of the Department that shows:

(i) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

(ii) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or detrimentally affected.

(b) In lieu of the factors described in subsections (1) and (2)(a) of this section, the Department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health if the application is for group domestic use expanded for a public water system located in

a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in section (3).

(3) Notwithstanding any contrary provision of law, and subject to subsection (4) of this section, the Department may approve an application under ORS 537.615 by a public water system to appropriate ground water in a ground water quality management area declared under ORS 468B.180 for group domestic use expanded in an amount of water equivalent to the amount of water provided by abandoned water wells that, prior to being abandoned, had used water as provided in:

(a) ORS 537.545 (1)(d); or

(b) If used by a household, ORS 537.545 (1)(b) and (d).

(4) The Department may not approve an application described in subsection (3) of this section unless:

(a) The amount of equivalent water described in subsection (3) of this section is less than or equal to 5,000 gallons per abandoned well per day; and

(b) The impact of the proposed public water system well on hydraulically connected surface water bodies is similar to or less than the cumulative impact of the abandoned water wells described in this section.

#### **690-310-0140**

##### **Public Interest Review; Groundwater**

(1) Before issuing a proposed final order, the Department shall determine whether the presumption under OAR 690-310-0130 is established for the proposed groundwater use, as described in OAR 690-310-0130.

(2) If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either:

(a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the presumption is established or that the proposed use can be modified or conditioned to meet the presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will not

ensure the preservation of the public welfare, safety, and health under ORS 537.525 as demonstrated in comments or a finding of the Department that shows:

(A) The specific aspect of the public welfare, safety, and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety, and health under ORS 537.525 would be impaired or adversely affected.

(b) In making the determination in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Water use efficiency and the avoidance of waste;

(B) Threatened, endangered or sensitive species;

(C) Water quality;

(D) Fish or wildlife;

(E) Recreation;

(F) Economic development;

(G) Local comprehensive plans, including supporting provisions such as public facilities plans;

(H) Stability of groundwater levels; and

(I) Thermal characteristics of groundwater source.

(c) In making any determination or finding in subsection (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments, as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-310-0160, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this section and section (5)–(6) of this rule. The Department shall find that the presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four presumption criteria listed in OAR 690-310-0130(1)(a)–(d) are not met; or

(b) The proposed use would not ensure the preservation of the public welfare, safety and health, including:

(A) The specific aspect of the public welfare, safety and health that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health would be impaired or detrimentally affected.

(5) If the Department finds under section (4) of this rule that the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 denying the application unless the Department makes specific findings to demonstrate that the issuance of a permit will ensure the preservation of the public welfare, safety and health under ORS 537.525.

(6) If the Department finds under section (4) of this rule that the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-310-0190 approving the application with any appropriate modifications or conditions.

### **690-310-0150**

#### **Proposed Final Order**

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-310-0090(4), but the proposed final order need not separately address each comment received.

(2) (a) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(A) Confirmation or modification of the preliminary determinations made in the initial review;

(B) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(C) An assessment of water availability;

(D) The amount of water necessary for the proposed use;

(E) An assessment of whether the proposed use would result in injury to existing water rights;

(F) If the application is for the use of surface water, an assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(G) If the application is for the use of ground water, an assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;

(H) Whether the rebuttable presumption set forth in OAR 690-310-0110 or 690-310-0130 has been established;

(I) If the public interest presumption is established, the Department's determination as to whether the presumption is overcome.

(J) An assessment of the measures, if any, proposed by the applicant to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters;

(K) A draft permit, including any proposed conditions, or a recommendation to deny the application; and

(L) The dates by which protests to the proposed final order and requests for party status must be received by the Department.

(b) Notwithstanding paragraph (a) of this subsection, if the application is to appropriate ground water for group domestic use expanded for a public water system located in a ground water quality management area declared under ORS 468B.180 for an amount of water equivalent to the amount of water provided by abandoned water wells as provided in OAR 690-310-0130(3) and (4), the proposed order need not cite the findings of fact and conclusions of law described in paragraph (a)(B) to (D) of this subsection, except that the order must include a brief statement that explains the criteria considered relevant to the decision and the compatibility of the proposed use with applicable land use plans.

(3) The Department shall send copies of the proposed final order to the applicant by registered or certified mail. The Department shall send copies of the proposed final order by electronic means, unless the recipient requests mailing, to persons other than the applicant who have requested copies and paid the fee required under ORS 536.050. Within seven days after issuing the proposed final order, the Department also shall publish notice of the proposed final order by publication in the weekly notice published by the Department.

#### **690-310-0160**

##### **Protests and Conduct of Contested Case; Final Orders on Default when No Protest Filed**

(1) Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235. Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575, and OAR chapter 690, division 002.

(2) Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Department shall:

(a) Issue a final order as provided under ORS 537.170 (1) or (2), if the applicant has not filed a protest and the director finds that there are no significant issues related to the proposed use of water;

(b) Schedule a contested case hearing if a protest has been submitted; or

(c) Provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the contested case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

#### **690-310-0170**

##### **~~Determination of Director to Refer Application for Contested Case Hearing, Final Order of Director~~**

~~(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:~~

~~(a) Issue a final order as provided under OAR 690-310-0190 or 690-310-0200; or~~

~~(b) Schedule a contested case hearing.~~

~~(2) The Director:~~

~~(a) May schedule a contested case hearing if:~~

~~(A) A protest has been submitted; and~~

~~(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.~~

~~(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-310-0160 and requests a contested case hearing.~~

~~(3) As soon as possible after making a determination under subsection (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing and describe the procedure each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered to be the scheduling of the contested case hearing for purposes of the running of the 45 day time period under OAR 690-310-0180.~~

#### **690-310-0180**

##### **Conduct of Contested Case**

~~(1) Within 45 days after the Director schedules a contested case hearing under OAR 690-310-0170, the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of OAR 690, division 2. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.~~

~~(2) The parties to any contested case hearing initiated under this section shall be limited to:~~

~~(a) The applicant;~~

~~(b) Any person who timely filed a protest; and~~

~~(c) Any person who timely filed a request for standing under OAR 690-310-0160, pays the fee required under ORS 536.050 for participating in the contested case hearing and requests to intervene in the contested case hearing prior to the start of the proceeding.~~

~~(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:~~

~~(a) As provided in sections (1) and (2) of this rule; and~~

~~(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.~~

#### **690-310-0190**

##### **Final Order for Proposed Use of Surface Water when Proposed Final Order Protested**



(1) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order denying the application or modifying the proposed final order to conform to the public interest.

(2) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of surface water would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying the proposed final order.

(3) A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

#### **690-310-0200**

##### **Final Order for Proposed Use of Groundwater when Proposed Final Order Protested**

(1) If a protest of a proposed final order issued under ORS 537.621 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use of ground water does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order denying the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

(2) If a protest of a proposed final order issued under ORS 537.621 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the Director shall issue a final order approving the application or otherwise modifying the proposed final order.

(3) A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project.

#### **690-310-0210**

##### **Contested Case Hearing on Final Order that Modifies Proposed Final Order**

If a timely protest of a proposed final order was filed by a person other than the applicant and, as described in ORS 537.153(7)(a) or 537.621(8)(a), the Director issues a final order without holding a contested case hearing, and the final order modifies the proposed final order, the applicant, a person granted party status, or a protestant may submit a protest as provided in OAR

690-002-0220 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order. The Department must refer the protest to the Office of Administrative Hearings for hearing if the protestant is an applicant, unless the applicant withdraws the protest or the protest is resolved through a settlement prior to referral.

#### **690-310-0220**

##### **Final Determination of Public Interest (Surface Water) or Public Welfare, Safety and Health (Groundwater)**

(1) If the presumption of public interest under OAR 690-310-0110 or 690-310-0130 is overcome, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(7) or, if the application is for the use of ground water, whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering the factors set forth in ORS 537.625(4).

(2) In complying with section (1), the Director shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

(3) Upon issuing a final order, or upon a proposed final order becoming final by default as provided in OAR 690-002-0235, the Director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department also shall publish notice of the final order by publication in the weekly notice published by the Department.

#### **690-310-0230**

##### **Exceptions**

~~Any party may file exceptions to the hearings referee's proposed order in the manner provided in OAR 690-002-0175.~~

#### **690-310-0240**

##### **Approval, Condition or Rejection of Permit Application Generally**

(1) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, or that any proposed use or well will impair or substantially interfere with existing rights to appropriate ground water for the beneficial use of the water less than 250°F for its thermal characteristics, the Department may impose conditions or limitations in the permit to prevent the same or reject the application after hearing, or, in the Department's discretion, request the Water Resources Commission to initiate a rulemaking

proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(2)(a) When an application discloses the probability that a proposed use or well will impair or interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250°F, the Department may:

(A) Approve the permit;

(B) Impose conditions or limitations in the permit to prevent the probable interference or impairment;

(C) After a hearing under ORS 537.622, reject the application; or

(D) Request the Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(b) In deciding whether to issue, deny or condition a permit under this subsection, the Department shall consider any orders or permits applicable to the ground water reservoir issued by the State Geologist or the governing board of the State Department of Geology and Mineral Industries under ORS Chapter 522.

(3) The Department may issue a permit for a water use that is conditioned or modified from the use originally proposed in the application only if the conditioned or modified use does not change the source of the water, increase the amount of land appurtenant to the water use or enlarge the proposed use of water in any way.

**Statutory/Other Authority:** ORS 536.027

**Statutes/Other Implemented:** ORS 537.190 & 537.629

**History:**

WRD 1-1996, f. & cert. ef. 1-31-96

## **690-310-0250**

### **Permit Conditions Related to Well Construction and Maintenance**

All permits for use of water from wells shall provide that the well shall be constructed in accordance with the Water Resources Department's General Standards for the Construction and Maintenance of Wells in Oregon. All permits shall further provide that the well may be controlled or shut off if a determination is made, in accordance with OAR 690-009, that it caused substantial interference with a surface water source.

## **690-310-0260**

### **Water Rights Within or Above State Scenic Waterways**

(1) Pursuant to the provisions of ORS 390.835, and these rules the Director is authorized to:

(a) Issue water rights within or above the designated reach of a scenic waterway provided the free-flowing character of the waterway is maintained in quantities necessary for recreation, fish and wildlife uses;

(b) Issue water rights for limited human consumption and livestock consumption uses within or above a designated reach of a scenic waterway when flows are less than quantities necessary for recreation, fish and wildlife.

(2) The Director may issue water rights under subsection (1)(b) of this rule for human consumption and livestock consumption uses upon the following findings:

(a) Issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife;

(b) Appropriation of water under the water right is consistent with the provisions of ORS Chapters 536 and 537 and OAR 690;

(c) Construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925;

(d) Water rights for human consumption shall not exceed 0.005 cubic foot per second per household; and

(e) Water rights for livestock consumption uses shall not exceed one-tenth of one cubic foot per second per 1,000 head of livestock.

(3) In addition to the requirements under OAR 690-310-0040, an application to appropriate water for human consumption or livestock consumption uses under subsection (1)(b) of this rule shall include:

(a) Information which identifies all potential alternate source(s) of water, if any, and describes why the applicant cannot reasonably obtain water from such sources;

(b) If the application proposes to appropriate water for human consumption, evidence that denial of the application will result in loss of reasonable expectations for use of the property; and

(c) If the application proposes to appropriate water for livestock consumption use, a description of how livestock will be excluded from the stream and its riparian zone and information that the water right is necessary to prevent the livestock from watering in or along the stream bed.

(4) In addition to the findings set out in section (2) of this rule, before a water right permit may be issued for human consumption or for livestock consumption uses under subsection (1)(b) of this rule the Director must find:

(a) The water right meets a need for a use which is given preference under ORS 536.310(12) when available supplies of water are insufficient to meet all uses;

(b) No alternate sources of water are reasonably available;

(c) For applications for human consumption, denial of the application will result in loss of reasonable expectations for use of the property;

(d) For applications for livestock consumption uses, the water right is necessary to prevent livestock from watering in or along the stream bed and the applicant has excluded livestock from the stream and its adjacent riparian zone; and

(e) Water is available within the combined cumulative total limitation described in section (5) of this rule.

(5) The Director shall limit the total water use authorized under subsection (1)(b) of this rule within or above each scenic waterway to no more than a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less. Such combined cumulative total may be exceeded if representatives of the Departments of Water Resources, Parks and Recreation, Fish and Wildlife, Environmental Quality and the Division of State Lands agree that exceeding the one percent or one cubic foot per second limit will not significantly impair the free-flowing character of the waters in quantities necessary for recreation, fish and wildlife.

(6) Water rights issued for human consumption shall contain measuring and reporting conditions which require permittees to install meters or other suitable measuring devices, to keep complete records of amounts of water used and to submit periodic reports to the Department as specified in the permits.

(7) Water rights issued for livestock consumption uses shall contain conditions that require permittees to exclude livestock from the stream and its adjacent riparian zone.

(8) The Department's proposed final order shall:

(a) Set forth a summary of the findings required under sections (2) and (4) of this rule;

(b) State that the applicant has submitted the information described in section (3) of this rule;

(c) Identify the maximum amount of water available within or above the applicable scenic waterway in accordance with the limitations set out in section (5) of this rule; and

(d) State the residual amount of water available from the source for the proposed human consumption or livestock consumption use.

(9)(a) The provisions of this rule shall not apply to a water right application for the use of ground water except upon a finding by the Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife;

(b) The Department shall review every application for the use of ground water to determine whether to make the finding specified in subsection (a) of this section. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use;

(c) In making the determination required by subsection (a) of this section, the Department shall consider the timing of projected impacts of the proposed use in relation to other factors,

including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows;

(d) If the Director makes the finding specified in subsection (a) of this section, the Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with provisions of ORS 390.835(9); or

(B) The applicant submits evidence to overcome the finding under subsection (a) of this section.

(e) Except as provided under section (12) of this rule, if the Director does not make the finding specified in subsection (a) of this section, the Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795 and rules adopted thereunder;

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water;

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced;

(h) Nothing in this section shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Commission and the Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) As used in this rule 'measurably reduce' means that the use authorized under section (9) of this rule will individually or cumulatively with other groundwater uses, reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow by month or one cubic foot per second, whichever is less, unless:

(a) The Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Division of State Lands unanimously agree to exceed that amount; and

(b) exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(12) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in section (11) of this rule, the Director shall find:

- (a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.
- (b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS Chapters 536 and 537 and the rules adopted thereunder.
- (c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

## **690-310-0270**

### **Timelines**

- (1) Except as provided in section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2).
- (2) If the applicant requests an administrative hold on processing of the application, the Department may extend the 180-day period set forth in section (1) of this rule for a reasonable period of time. The cumulative length of extensions requested through administrative holds shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary for the applicant to:
  - (a) Bring a well into compliance with current minimum well construction standards, and the extension does not exceed two years;
  - (b) Engage in collaborative conversations with interested parties that provided public comment under OAR 690-310-0090(4), and the extension does not exceed two years;
  - (c) Explore mitigation under OAR 690, division 33 for impacts to sensitive, threatened, or endangered fish species, or mitigation under OAR 690-310-0260 for impacts to a scenic waterway, including submitting a mitigation proposal to the Department, and the extension does not exceed two years;
  - (d) Exhaust the administrative appeal process for a land use approval, and the extension does not exceed one year; or
  - (e) Collect Annual High Water Level data sufficient to evaluate Reasonably Stable Groundwater Levels, as those terms are defined in OAR 690-008, and the extension does not exceed seven years, except that the administrative hold shall expire if the applicant fails to submit the first static water level measurement to the Department within three years of approval of the administrative hold.
- (3) If the applicant does not request an extension under section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-310-0080(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Department to issue a final order or schedule a contested case hearing on an application for a water right. If the application is for an out-of-stream use or for the use of ground water, the writ of mandamus shall compel the Department to issue a water

right permit, unless the Department shows by affidavit that to issue a permit may result in harm to an existing water right holder.

**690-310-0275****Applicability of Mandatory Timelines**

The mandatory timelines set forth in division 310 for processing applications shall not apply to applications filed before October 31, 1996.

**690-310-0280****Assignment of Application**

Assignment or change of ownership of application:

(1) When a change of interest or ownership occurs in lands covered by a pending application the record holder may request, in writing, the Director to record the assignment to the new owner;  
(2) Should the record holder of the application be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the application. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

- (a) A copy of the deed to the land;
- (b) A copy of a land sales contract;
- (c) A court order or decree; or
- (d) Documentation of survivorship of property held jointly.