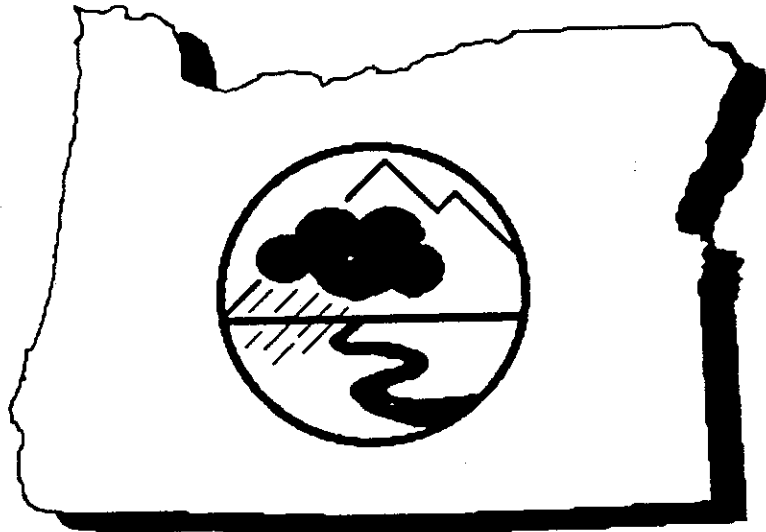


Land Use Planning Procedures Guide



**Water Resources Department
State Agency Coordination Program**

August 1990



Water Resources Department Land Use Planning Procedures Guide

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EXECUTIVE SUMMARY

I. Introduction

Oregon's land use planning statutes (ORS 197.180) require state agencies to comply with the statewide planning goals and be compatible with local comprehensive land use plans when taking actions affecting land use. Agencies assure compliance and compatibility through State Agency Coordination (SAC) Programs. SAC Programs are to agencies as comprehensive plans are to counties and cities -- ways to achieve compliance with the goals. Just as the Land Conservation and Development Commission (LCDC) acknowledged local plans, LCDC is responsible for approving ("certifying") SAC Programs.

LCDC rules require SAC Programs to contain: (1) descriptions of programs and activities which have been identified as affecting land use; (2) rules and procedures to assure agency actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; (3) procedures for coordination with the Department of Land Conservation and Development (DLCD), special districts, and other state and federal agencies; and, (4) a program for cooperating with, and providing technical assistance to, local governments.

The Water Resources Department's SAC Program contains each of these elements, plus a number of other required items. Basically, the program consists of inter-related rules and procedures as illustrated in Figure 1. A new rule division (OAR Chapter 690, Division 60) establishes the SAC Program and provides general standards for meeting compliance and compatibility obligations. Additional rules throughout portions of OAR Chapter 690 provide assurance that the Department's land use program activities meet the ORS 197.180 mandate. A section of OAR Chapter 690 Division 60 provides standards for fulfilling SAC obligations which are referenced by corresponding rules in Chapter 690. (See Figure 2 and Appendix F.) A document entitled the "Land Use Planning Procedures Guide" (Guide) contains descriptions and analyses of Department programs, as well as the required coordination and technical assistance programs.

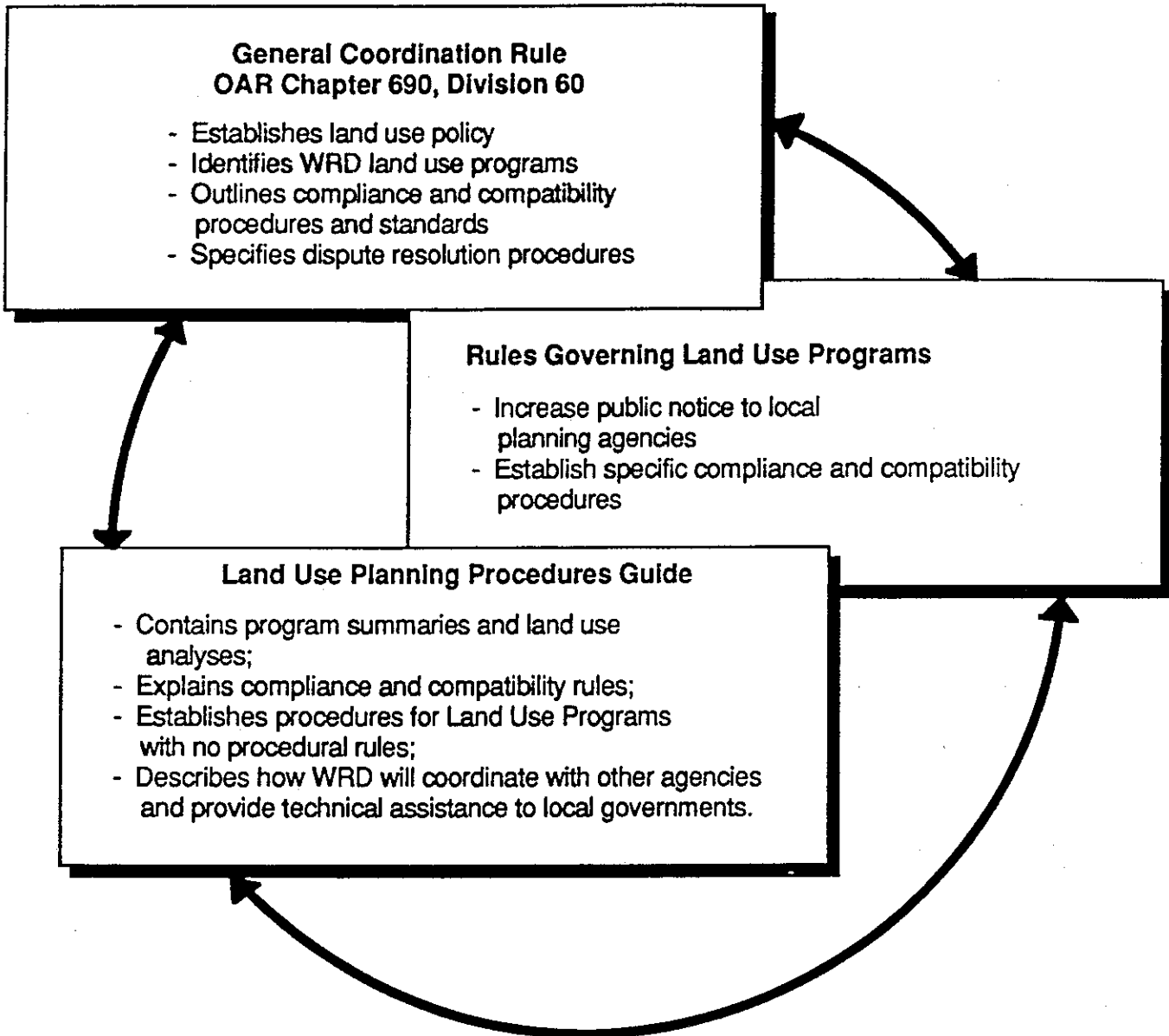
II. Identification of Programs Affecting Land Use

State agency coordination statutes and rules require state agencies to evaluate program activities and determine which significantly affect present or future land uses and/or resources identified in the statewide planning goals. Programs and activities which meet these criteria are known as "programs affecting land use" or agency "land use programs," and are subject to SAC compliance and compatibility requirements.

The Department's approach to identifying land use programs with the understanding that water and land management are inseparable. In addition,

Figure 1

**Water Resources Department's
State Agency Coordination Program**



WRD's PROCESS for Fulfilling SAC Compliance and Compatibility Requirements

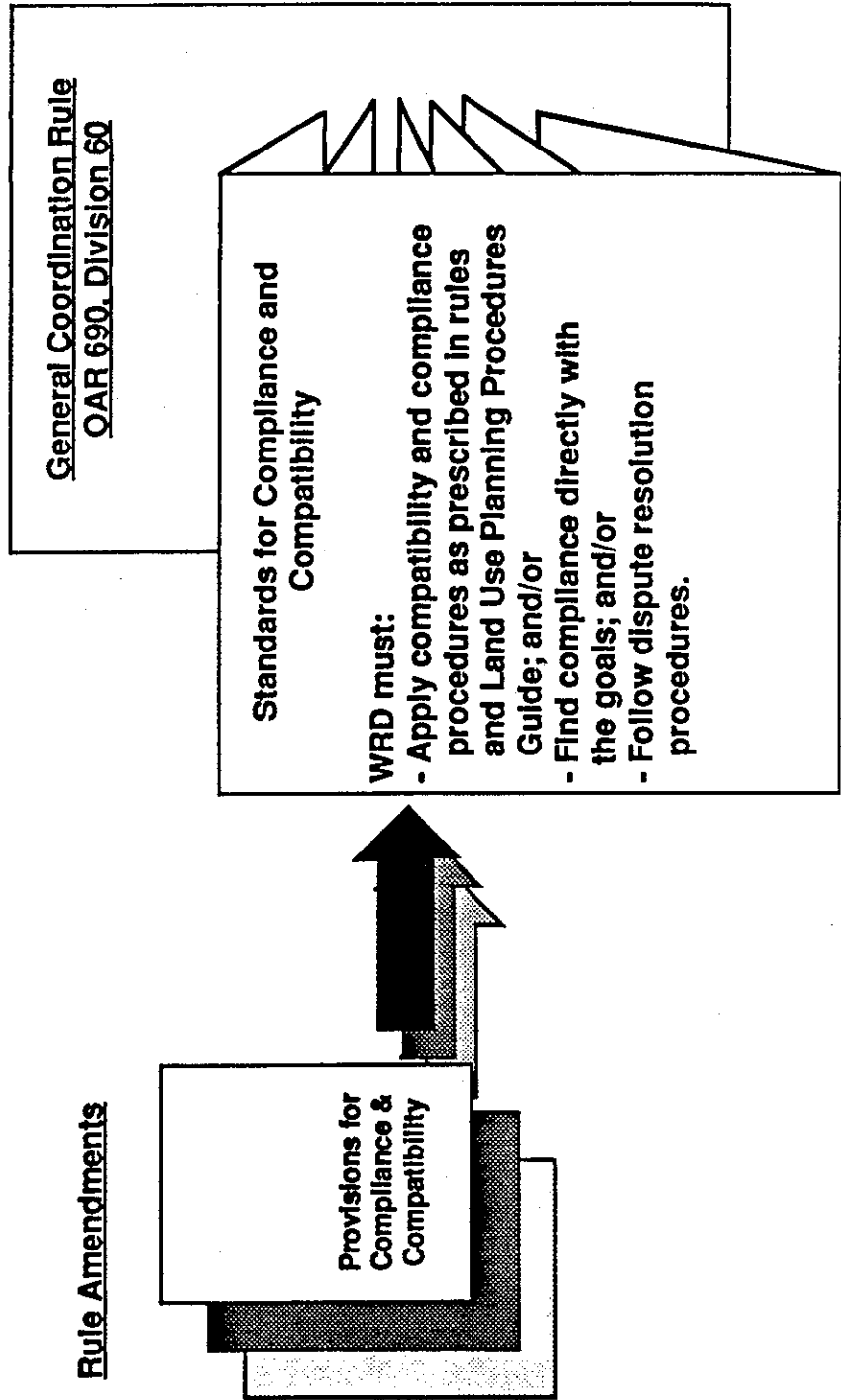


Figure 2

Executive Summary

the statutory definition of "land" includes surface and ground water, and water resources are addressed extensively in the Goals. These references to water encouraged the Department to use an inclusive approach to determining which programs affect land use.

The Department also developed and applied supplemental criteria to determine the significance of expected land use impacts. An action was found to affect land use if it:

- A) substantially affects water availability; or
- B) restricts, controls, or allows particular types of water uses; or
- C) establishes policy which will likely affect water availability or future uses of water; or
- D) is governed under the sole or lead authority of the Water Resources Commission; or
- E) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

The Department's water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights), basin planning activities (including reservations), critical ground water areas and withdrawals, and water development loan program qualify as "programs affecting land use." (See Figure 3.) Advisory, data-gathering, and enforcement activities did not qualify as Department land use programs.

III. Strategies to Assure Compliance with the Goals and Compatibility with Comprehensive Plans

Having identified programs affecting land use, the Department developed strategies to ensure that actions taken to carry out these programs will comply with the Statewide Planning Goals and be compatible with comprehensive plans. LCDC rules generally require state agencies to comply with the Goals by achieving compatibility with comprehensive plans. Under certain circumstances, agencies may find actions in compliance directly with the Goals. The Department's "compatibility strategies" vary by program but can be grouped into basic types as outlined in Figure 3 and described in further detail below. An exceptions process is provided as part of each compatibility strategy and is described in the Dispute Resolution section of this summary.

- A. **Rely on Local Response to Notification of Pending Action, or "Deeming"** (See Figure 4) - (Basin Planning, Instream Water Rights, Minimum Streamflows, Reservations, and other Department water use approvals)

The Department will notify (in writing) affected local governments of a proposed basin program adoption or amendment, and of pending instream water right, minimum perennial streamflow, or reservation applications. The notice will state that the Department assumes the proposal is compatible with comprehensive plans unless informed otherwise by appropriate local officials. The Department will coordinate

Figure 3

| WRD Land Use Programs | Compatibility Strategies |
|---|---|
| <p>Basin Planning Instream Water Rights Reservations for Economic Development Minimum Perennial Streamflows</p> | <p>Rely on local government response to notification of pending action, or "Deeming." WRD will presume compatibility if no response is received. Local indication of incompatibility may result in no action or initiation of dispute resolution procedures.</p> |
| <p>Water Use Permits Water Right Transfers Use of Conserved Water Hydroelectric Permits and Licenses Water Right Exchanges Application for uses in Addition to Classified Uses Water Development Loan Payment for Projects with Public Benefit</p> | <p>Rely on land use information supplied by applicants and confirmed by local planning officials. Depending on the allowability of the use by local plans, and the status of local land use approvals, WRD may approve, approve conditionally, or reject the proposed water use. Deviation from prescribed procedures would trigger dispute resolution procedures.</p> |
| <p>Critical Ground Water Area Determination Withdrawal from further Appropriation Statewide Water Policy</p> | <p>Prepare and adopt findings that the action complies with Statewide Planning Goals Coordinate with local governments to ensure that comprehensive plans reflect resource constraints in appropriate inventories. Notify local governments and planning officials of policy development and hearings. Defer assurance of compatibility to implementation phase.</p> |
| <p>Scenic Waterway Coordination</p> | <p>Defer to Parks and Recreation Department for compatibility assurance.</p> |

RELY on LOCAL RESPONSE TO NOTICE OF PENDING ACTION, or "DEEMING"

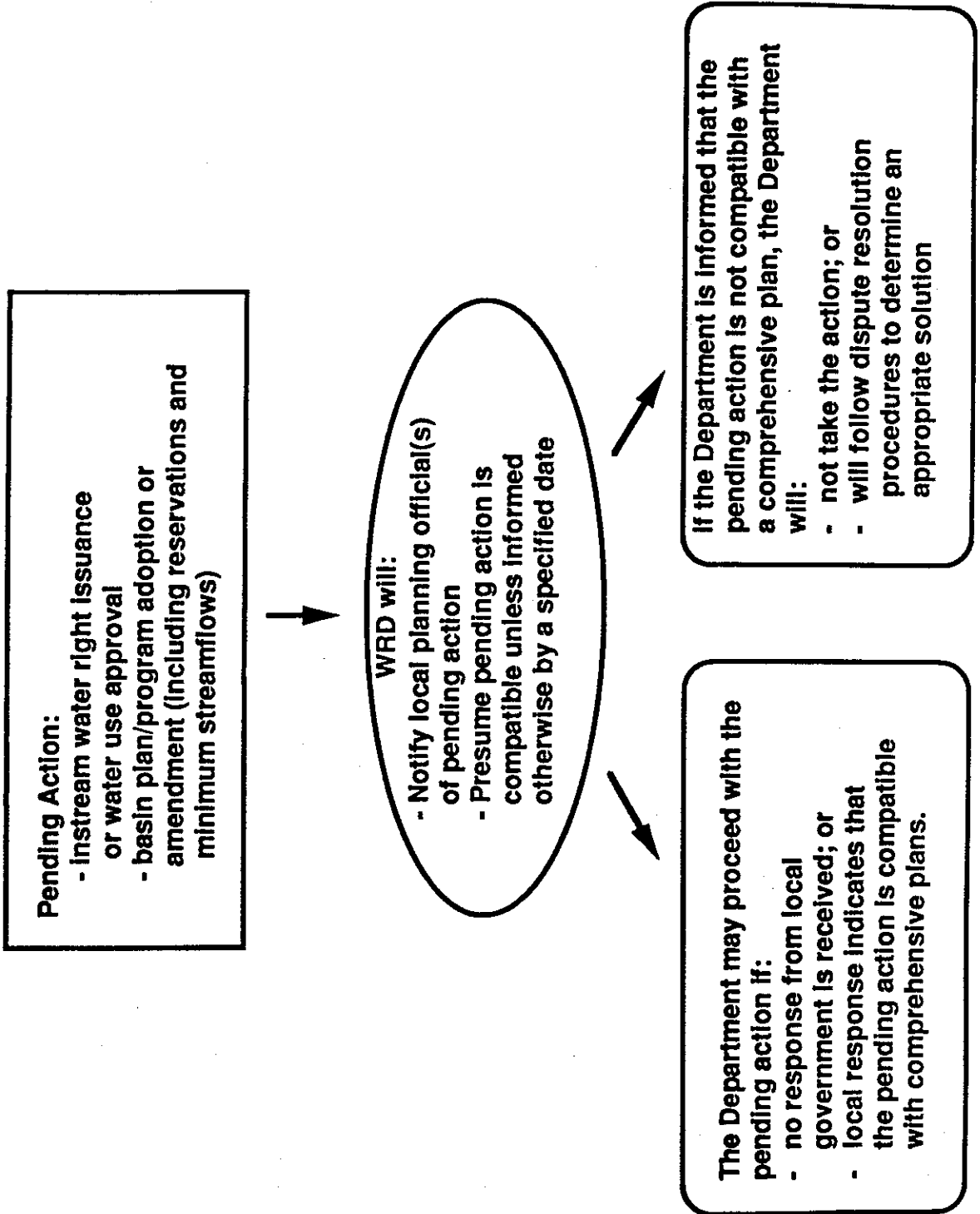


Figure 4

Executive Summary

with affected local governments to achieve compatibility with local plans. If informed that the proposed action is incompatible with local plan policies or provisions, WRD will either not take the disputed action or will follow certified dispute resolution procedures.

B. Rely on Land Use Information Supplied by Applicants and Confirmed by Local Officials (See Figure 5) - (Water Use Approvals, Water Development Loan Program)

The Department will require land use information (i.e., plan designation, zoning, allowability under local plans, and status of applicable local approvals) to be submitted by applicants for permits and other water use approvals. Applicants will be required to contact local planning officials to provide written confirmation of this information. The Department will then proceed as follows:

1. If land uses that correspond with proposed water uses are allowed outright by comprehensive plans, or if all local land use approvals have been granted, the Department may approve the water use.
2. If local land use approvals are pending, the Department may approve the water use with conditions prohibiting water use (and associated construction) until all necessary local land use approvals are obtained.
3. If corresponding land uses are not allowed by local plans and plan amendments are not being pursued, or if land use approvals or plan amendments have been denied, the Department will not approve the water use except as provided in approved dispute resolution procedures.

C. Prepare and Adopt Findings that an Action Complies with the Statewide Planning Goals/Comprehensive Plan Augmentation - (Critical Ground Water Areas, Withdrawals, Statewide Policy Formulation)

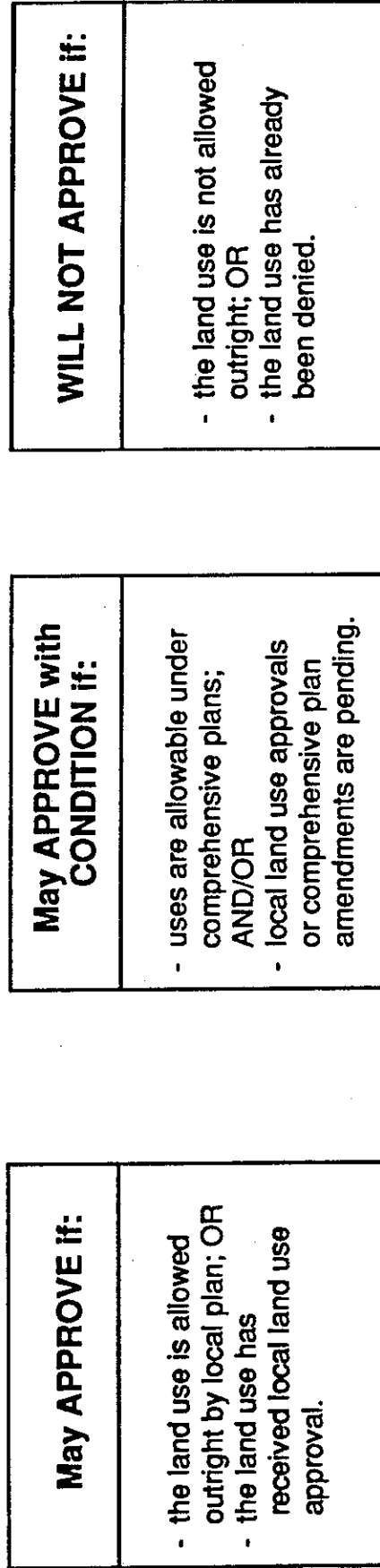
To meet its statutory mandate, the Commission is required to adopt state water resources policy and authorized to restrict the use of water to solve urgent water supply or quality problems. In such cases, the Department will work closely with local planning officials to accommodate local plans and priorities to the maximum extent possible. However, if conflicts arise and/or local plans lack policies or provisions to address the situation, the Commission will adopt findings that the proposed action complies with the Statewide Planning Goals directly. Further, the Department will attempt to resolve disparities between Department rules or orders and local plans by suggesting plan amendments that reflect resource constraints and provide resource protection through the land use planning process.

Figure 5

Water Use Approvals

(i.e. permits, transfers, use of conserved water, exchanges)

the Department:



Dispute Resolution Procedures

Executive Summary

D. Rely on Local Response to Notification of Rule Adoption/Defer Specific Compatibility Assurance to Implementation Phase (Statewide Policy Adoption)

The Water Resources Commission is authorized to develop an integrated, coordinated state water resources policy. These policies are adopted as rule. The Department will notice local planning officials of pending rulemaking actions and will coordinate to assure general compliance and compatibility. Site specific compliance and compatibility assurances will take place in conjunction with policy implementation.

E. Defer to Lead State Agency (Scenic Waterway Coordination)

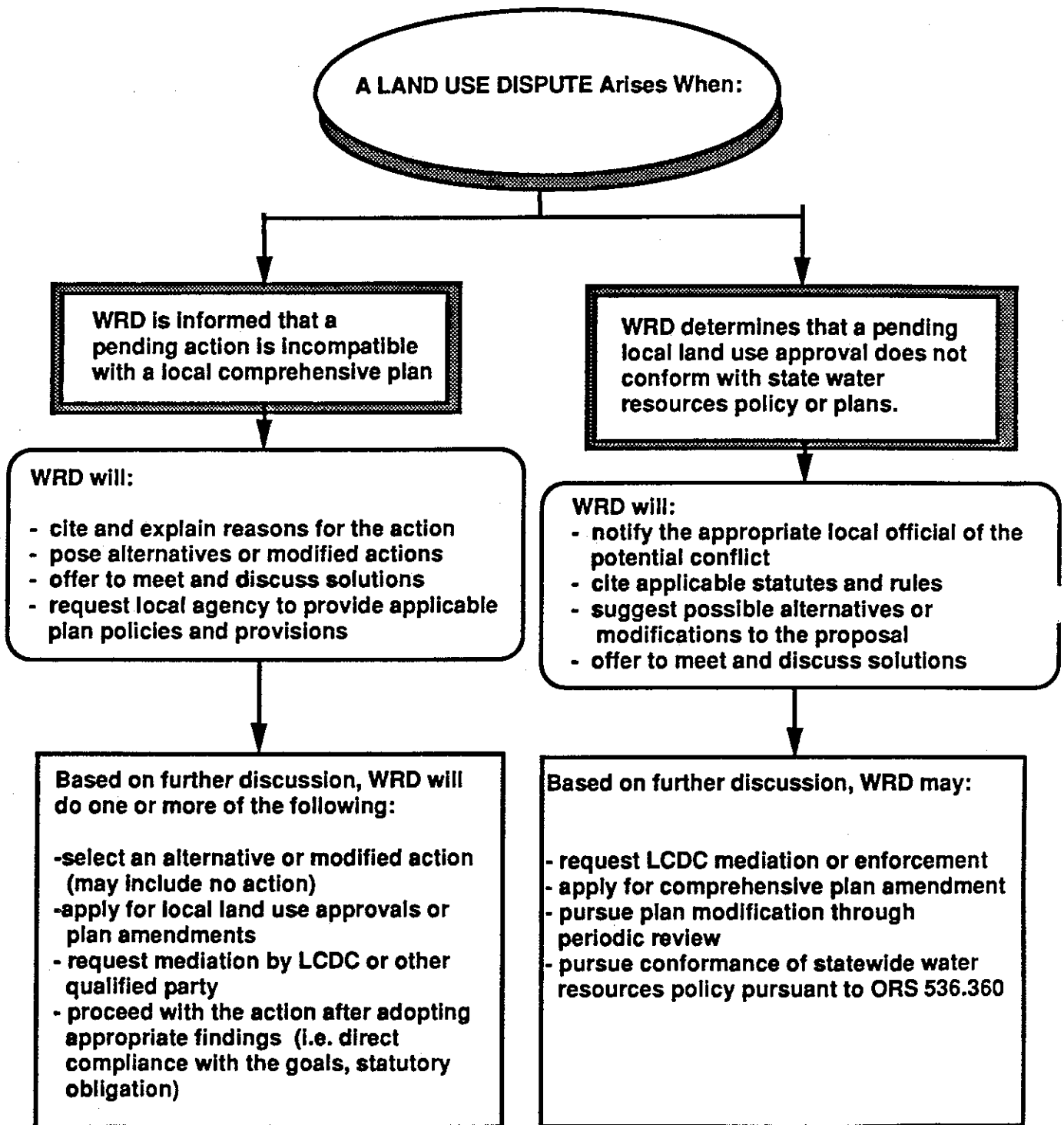
In addition to appropriating water for instream values, the Commission participates in scenic waterway planning by reviewing with Parks and Recreation Department (PRD) scenic waterway management plans. Since PRD prepares the plans prior to Commission review and concurrence, the Department will defer compliance and compatibility assurance to that provided by the PRD's certified SAC Program.

IV. Dispute Resolution Procedures

The Legislature has given authority over water resources to both local governments and the state. The SAC Program attempts to establish a balance between these authorities. The Water Resources Commission will assure that its land use programs comply with the goals and are compatible with comprehensive plans by using the approaches described above. However, despite improved coordination and the implementation compatibility strategies, land use disputes between state agencies and local governments may arise. In addition, the Water Resources Commission may find it necessary to take an action which is believed to be incompatible with comprehensive plans. This would only take place if necessary to fulfill the Commission's statutory mandates. In such cases, the Commission and Department will follow a set of dispute resolution procedures, as described below, prior to taking action.

As mentioned above, the option to initiate dispute resolution procedures is provided in each of the Department's compatibility strategies. (See Figure 6.) The procedures involve an exchange of information between local planning departments and the Department. Local planning officials must state specifically why a pending action would be incompatible with comprehensive plans. The Department must respond by explaining the reason and authority for the action. In addition, the Department must offer to meet to resolve the dispute. Resolution may occur through identification of an alternative action, not taking action, applying for amendments to comprehensive plans, or formal or informal DLCD mediation.

DISPUTE RESOLUTION PROCEDURES



Executive Summary

If no alternatives allow the Department to fulfill its legal requirements and achieve compatibility, it may proceed with the disputed action after adopting written findings. The findings must identify and cite the legal basis for the action. The findings must also document how the Department met standards for fulfilling SAC obligations as prescribed in OAR Chapter 690, Division 60.

V. Coordination with, and Technical Assistance to Local Governments

Preventing disputes between the Department and local governments is a major objective of WRD's SAC Program. The SAC Program provides for increased coordination with local governments, improved participation in periodic review and amendment of comprehensive plans, and technical assistance to local planners. Technical assistance and coordination procedures are prescribed in OAR Chapter 690 Division 60 and are further detailed in the Department's Land Use Planning Procedures Guide. These coordination activities will help ensure that the Department's water resources management and allocation activities will not conflict with local comprehensive plans. These activities will also prevent local land use decisions which conflict with state water policy.

VI. Conclusion

The Water Resources Department's State Agency Coordination Program meets the requirements of ORS 197.180 by assuring actions that affect land use comply with statewide planning goals and are compatible with comprehensive plans. Compliance and compatibility are assured through increased gathering, evaluation, and use of land use information in Department planning and decision-making. Dispute resolution procedures provides an additional forum for communication, and allow the Department to carry out statutory mandates after exploring potential solutions with local governments. The Program provides for technical assistance to local governments including participation in periodic review and amendment of comprehensive plans. Program implementation will provide important opportunities for improving water resources management and land use planning in Oregon.

Executive Summary

I. Introduction

A. Background

The Water Resources Department (Department) is a state agency that carries out the programs and policies of the Water Resources Commission (Commission). The Commission is a seven person group appointed by the Governor to administer the water laws of the state. The Commission is a steward of the public trust in the waters of the state and is charged with developing an integrated, coordinated state water resources program. The program provides for securing the maximum beneficial use and control of the waters of the state. The Department's staff processes water use permits (water rights), conducts water planning studies, enforces water laws, compiles surface and ground water information, and advises the Commission on decisions relating to policy and water appropriation. More information on the Department's statutory mandates and programs may be found in Section II. E. 2 and Appendices A and B . The Department's structure is displayed in Figure 7.

Since the enactment of Oregon's unified water code in 1909, the state's water resources authority -- whether in the form of the State Engineer, the Water Resources Board, the Water Policy Review Board, or the Water Resources Commission -- has dealt extensively with local interests. Early water law included special provisions for providing municipalities with water and power. Before state government assumed enforcement responsibilities, water law was administered through the counties' watermasters. Oregon's water resources were developed through state interaction with local irrigation, drainage, and water improvement districts.

As Oregon's population grew and water resources issues multiplied, many more agencies and localities became involved. Coordination became increasingly difficult. In 1955 the Legislature addressed the situation by identifying the Water Resources Commission as the single authority to promote and secure the maximum beneficial use of water in the state. [ORS 536.220 (2)] The Legislature also required local governments to conform with the water resources policies of the agency. [ORS 536.360]. Thus, by 1955 the Legislature had established one avenue for state-local water resources coordination.

With the passage of SB 100 in 1973, the Legislature required all local governments to formulate comprehensive land use plans. In the land use planning statutes, "land" means both land and water. These plans must address a number of water resource topics including identifying water supplies needed for growth and water bodies that warrant protection from development. At the same time, the Legislature directed that state agency programs and activities affecting land use must comply with the statewide planning goals and be compatible with the comprehensive plans of local governments.



Oregon Water Resources Department

January 1990

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Strategic Water Mgt. Hydro
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**B. Water Resources Department's
State Agency Coordination Program**

ORS 197.180 is the Legislature's principal mechanism for assuring land use planning coordination. This law requires state agencies to: identify which programs or actions can reasonably be expected to significantly affect land use; establish rules and procedures for assuring such programs or actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; adopt procedures for coordination with state and federal agencies and special districts; and, cooperate with and provide technical assistance to local governments. These elements comprise a State Agency Coordination (SAC) Program.

SAC Programs are to state agencies what comprehensive plans are to local governments -- namely, mechanisms for complying with the statewide planning goals. Just as comprehensive plans are acknowledged by the Land Conservation and Development Commission (LCDC), SAC Programs are approved, or "certified", by LCDC. The Water Resources Department's first SAC Program was approved by LCDC in 1978. The 1978 SAC Program was oriented toward review of local government comprehensive plans during the acknowledgment process. The Department's SAC Program is being updated at the direction of LCDC. The new SAC Program will reflect recent changes in Oregon's water law and in administrative rules governing SAC Program formulation. This revised program supersedes the 1978 SAC Program.

The Water Resources Commission and the Water Resources Department place a high priority on coordination with state and federal agencies, local governments, and special districts in managing the water resources of the state. The Department's SAC Program represents a balancing of the authorities of state and local governments to protect and manage water resources. The SAC Program is designed to promote a mutual awareness in the Department and local governments of their respective water and land planning processes. Increasing opportunities for mutual involvement will help the Department promote maximum beneficial use of, and protect the public interest in, the state's water resources.

E. Water Resources Department Programs Affecting Land Use

1. Criteria for the Determination of Department Land Use Programs

a. Water Resources Department "Land Use Programs"

State agency coordination programs must assure that state agency rules and programs which affect land use ("land use programs") comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans. Administrative rules (OAR 660, Divisions 30 and 31) provide several qualifying criteria for agency land use programs. An agency program affects land use if it is:

- (1) specifically referenced in the statewide planning goals; or,
- (2) reasonably expected to have significant effects on
 - (a) resources, objectives or areas identified in the goals, or
 - (b) present or future land uses identified in acknowledged comprehensive plans; or
- (3) a permit listed in OAR 660-31-012 (2) (f).

(1) Water Resources Department Programs Referenced in the Goals

Goal 16, Estuarine Resources, references the appropriation of surface water and hydroelectric power projects. The Implementation Requirements provided in Goal 16 include a statement that the "State Water Policy Review Board ... shall consider establishing minimum fresh-water flow rates and standards" to maintain estuarine uses. This statement may represent an implicit reference to the adoption of minimum perennial streamflows which is now a function of the Water Resources Commission.

No other Water Resources Department functions are specifically referenced in the Goals. Further, the Department believes these references are out-dated as they cite programs and decision-making bodies which have been largely superseded. Thus, the Department found this criterion of limited use in determining which programs affect land use. No program was determined to be a land use program solely on the basis of being referenced in the goals.

(2) Programs Reasonably Expected to Have Significant Effects on Resources Identified in the Goals or Present or Future Land Uses

As stated previously, water and land use are integrally related and must be managed accordingly. Both surface and ground water resources are mentioned in many of the Goals and are included in the description of "land," as used in the statutory definition of "comprehensive plan." The management and regulation of water supplies certainly has the potential to significantly affect land use.

Section II: Department Rules and Programs

The general nature and broad scope of these criteria forced the Department to develop more focused criteria to identify those programs reasonably expected to have significant effects. The Department worked closely with DLCD to assure that the criteria satisfied the intent of the SAC statute and rules.

The Department's programs were divided into actions. Generally, only actions to adopt rules, policies or plans, or to appropriate water resources were found to affect land use. As determined using the additional criteria listed below, an action is expected to affect land use significantly if it:

- 1) substantially affects water availability; or
- 2) restricts, controls, or allows particular types of water uses; or
- 3) establishes policy which will likely affect water availability or future uses of water; or
- 4) is governed under the sole or lead authority of the Water Resources Commission; or
- 5) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

(3) Department Permits Listed in OAR Chapter 660, Division 31

OAR Chapter 660, Division 31 identifies Water Resources Department permits for surface water and ground water use, surface water storage, and hydroelectric use as land use programs. These, and other Department land use programs are discussed further in Sections E and F, below.

b. Department Programs Which Do Not Affect Land Use

Under OAR Chapter 660, Division 30, an agency action does not qualify as a land use program if it is:

- (1) expressly exempt from compliance and compatibility requirements by statute, constitutional provision or appellate court decision;
- (2) limited to the transfer or acquisition of real property; or
- (3) not reasonably expected to significantly affect land use.

(1) Programs Exempted By Statute, Constitutional Provision, or Court Decision

The Department has no programs which are exempt from state agency coordination requirements by statute, constitutional provision, or court decision.

(2) Acquisition or Transfer of Real Property

The Department's Water Development Loan Program includes the acquisition and transfer of real property in conjunction with loan defaults and foreclosures. This activity is summarized in Appendix B, Department Programs which Do Not Affect Land Use.

(3) Not Expected to Significantly Affect Land Use

The Department developed supplemental disqualifying criteria to further clarify the interpretation of supplemental qualifying criteria described in Subsection a. above. A Department action is not expected to affect land use significantly if it:

- (a) is advisory to other decision-making bodies or agencies with sole or lead authority; or
- (b) is limited to study or data-gathering with no Commission or Department actions which would actually affect water supplies or uses; or
- (c) involves the enforcement or validation of existing water uses in accordance with established state laws, rules, and standards; or
- (d) is limited to internal administration, such as accounting, word processing, or data processing.

These qualifying and disqualifying criteria formed the basis for determining which Department programs affect land use. A matrix showing the Departments programs evaluated according to the criteria discussed above is provided in Appendix E.

2. Summary and Analysis of Land Use Programs

Each of the Department's programs and activities were evaluated for effects on land use using criteria described in Section 1 above. Those programs and activities which qualified as Department "land use programs" include: adoption of statewide policies; water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights, minimum perennial streamflows); basin planning (i.e., classification and reservation of water); critical ground water area determinations; withdrawal from further appropriation; the issuance of loan for water development projects; and Commission recommendations to the Legislature on payment for water projects with public benefits. These programs and their relationship to land use are described in further detail below.

(a) Statewide Water Policy Formulation

1. Purpose

State water policies guide Commission actions for protecting the public interest in water. Statewide water policies both express the Commission's direction on managing the state's waters and establish an institutional environment within which decisions are made.

2. Authorization

The Legislature in ORS 536.220 finds that it is in the public interest that a single state agency, the Water Resources Commission, develop and enforce a coordinated, integrated state water resources policy. Under 536.300, the Commission is directed to issue statements pertaining to its coordinated programs for the use and control of all the state's water resources. ORS 536.360 requires every state agency and public corporation to conform to state water resources policy.

There are no procedural administrative rules for formulating statewide policy. Statewide water policies are being adopted as administrative rules under Chapter 690, Divisions 400 and 410.

3. *Statewide Water Policy Formulation Activities*

Since 1955, the Commission has relied on policy statements in statutes and findings in basin programs to guide decision-making concerning water resources. The formal development of policy statements as administrative rules is a recent activity. In 1988, the Commission together with the Strategic Water Management Group approved the Oregon Water Management Program (OWMP). The OWMP consists of three inter-related processes: a two-year program schedule (called the Biennial Water Management Program), basin planning, and statewide policy formulation. The formulation of state water resources policies is authorized by ORS 536.300 and 536.310. One objective of formulating statewide policies is to provide a uniform expression for the state's position on a broad range of water resource issues. The OWMP will not only document existing policies, but identify where new policies are needed.

The process for formulation and adoption of statewide policies is still being developed. In late 1989 the Commission directed staff to draft statewide policies for a number of topics based on policies as found in or expressed through existing statutes and rules. New policies will be established in response to future conditions and needs. Policies will be adopted as administrative rules by the Commission after public hearings. Some policies are expected to be adopted by other lead agencies. Policies adopted by the Commission are not self-implementing. Rather, they will be applied through other programs such as basin planning, permitting, and instream water rights issuance.

4. *Relationship to Land Use*

Because statewide policies are rules which determine the direction and extent of water resources management throughout the state, their formulation has been identified as a land use program. Ultimately, statewide policies are expected to guide Commission and Department decision-making in most management programs. Because of the broad topical scope and statewide nature of the policy statements, testing them against each of the 277 local plans for compatibility is not feasible. Compatibility is best determined and assured at the policy implementation stage. Policies are implemented through other programs where policy-driven actions would be subject to specific compatibility strategies, as described elsewhere in the SAC program. Although statewide policies cannot meaningfully be subjected to compatibility tests at the formulation stage, coordination strategies are very important.

Providing local governments the opportunity to review and comment on proposed policies allows for construction of a coordinated water resources program that respects local interests in water. Early and frequent contact with county commissions and local planning departments also would increase a feeling of ownership in the state program. Providing local governments with a copy of the water resources program, as required under ORS 536.350, will be of little effect if local governments do not understand it or were not involved in its development.

(b) Basin Planning

1. *Purpose*

By law, all waters of the state belong to the public. The Water Resources Department manages the public's water by planning and providing for multiple beneficial water uses. The basin planning process: specifies the water uses for which the Department may grant water rights; identifies water resource problems and potential solutions; reserves future quantities of water for specific needs; and specifies water management controls.

2. *Authorization*

ORS 536.220 describes the need for a coordinated, integrated state water resources policy and the plans and actions needed to implement such a policy. ORS 536.300 directs the Commission to conduct studies and formulate an integrated, coordinated program based on the policies outlined in ORS 536.310. The policies in 536.310 address the protection of existing water rights, provision of safe supplies for human consumption, preferences for multi-purpose impoundments, maintenance of minimum perennial streamflows, and conflicting water uses.

There are no administrative rules directing the basin planning process. Basin programs are adopted as administrative rules under OAR Chapter 690, Division 500.

3. *Basin Planning Activities*

The Department has engaged in basin planning since the passage of the 1955 authorizing legislation. The Department conducts basin planning as part of the Commission's integrated, coordinated program for the use and control of water resources.

Basin reports and programs are the customary products of basin planning. Reports contain information on a basin's character including its size, physical features, climate, and hydrology. Reports also document the nature and extent of water use and control, and which water management issues will be addressed in the planning process.

Section II: Summary and Analysis of : *Basin Planning*

Programs are administrative rules which control future water appropriations by establishing basin water management policies and specific allowable uses and levels of use. Future water rights may only be issued for uses allowed in basin programs. Existing water rights are not affected by basin programs, except to the extent that waste of water might be defined or controlled. Basin programs classify streams, drainage areas and other water bodies for specific future uses. These classifications can be liberal, allowing nearly every kind of use; or very restrictive, allowing only small or non-consumptive uses. The primary factors in determining classifications are water availability and identified water needs for instream flows, ground water levels and future development. Programs may also specify conditions or restrictions to be attached to water rights through the Department's permitting process. Programs have been established for all but two of the state's 18 drainage basins.

Programs adopted from 1955 to 1983 generally were narrow in scope, concerned almost exclusively with identifying those uses for which unappropriated water remained. There was little attempt to direct the pace or extent of development. Many believed public interests in water were not adequately protected.

To remedy the narrow focus, basin programs were developed using local citizen committees and with increased coordination with the Oregon Department of Fish and Wildlife. The basin planning process continues to change. It is becoming issue-driven, where before it was largely issue-neutral. The focus on issues not only assures relevance, but allows a more timely planning cycle than previously possible. It is expected that programs can be updated every 10 to 15 years, rather than every 25 years. In an effort to better manage the resource, the basin planning process now considers other water management issues in addition to appropriation questions. These issues include watershed and riparian area condition, watershed management practices, water quality and interstate issues. In addition, more emphasis is being placed on ground water management and protection. Strategies and recommendations beyond the direct authority of the Commission are now included in a document termed a basin plan.

When the Department formulates or updates basin plans and programs, it contacts other state agencies and affected local governments. Basin boundaries are such that frequently a number of counties and cities are affected. The Department relies heavily upon state agencies and local governments for information to characterize the basin's human and natural resources and to assist in identifying major water resource issues that should be addressed. Citizen advisory committees and work groups are established to provide public input on issue identification, management alternatives, and recommended solutions. Department staff is responsible for compiling information, writing reports, reporting to the Commission, assisting local committees and work groups, and drafting plan and program language.

The primary action associated with basin planning is the Commission's adoption of a basin program. The basin program consists of administrative rules which assign each stream within a basin an allowable future use or uses. Lakes and ground water bodies may also be classified in the program. Other decisions embodied in a basin program can include reservations for municipal use or economic development or the establishment of minimum perennial streamflows. Reservations provide a way to claim specific quantities of water for future need. Minimum perennial streamflows provide an administrative protection for instream flows. It is likely issuance of public instream water rights will supplant the need for establishing future minimum perennial streamflows. In a basin program update, any pre-existing classification, reservation, minimum perennial streamflow, or other program element can be changed. Existing water rights are not subject to change, however, except to prevent waste.

By statute, before adopting a program, the Commission must hold a public hearing in the affected basin. Department staff make a final recommendation to the Commission based on the hearing record. The Commission may accept, modify, or reject staff recommendations for a proposed program, but ultimately decides how to classify the waters of the basin.

The adoption of a basin plan is another action associated with basin planning. The basin plan can be viewed as the Commission's official recommendations to other commissions and agencies. Basin plans also contain those Commission directives to the Department that are not appropriately expressed through rule.

The Commission may also amend or allow exceptions to basin programs. One type of exception -- application for a water use not referenced in a basin program -- is addressed by rule (OAR 690-82-010). Other exceptions are heard by the Commission on a case-by-case basis in conjunction with a staff recommendation. Basin program amendments may be undertaken by the Commission on its own initiative or by petition from other parties. In order to amend a basin program, by statute the Commission must hold a public hearing in the affected basin.

4. Relationship to Land Use

Basin planning is designed to affect one of the most important resources addressed by the statewide land use planning goals -- water. It is therefore a "land use program" as defined in OAR Chapter 660, Division 30. However, one of the most important features of the basin planning program's relationship to land use is the position it and other water policy expressions occupy in the statutes with respect to local governments. ORS 536.360 states:

In the exercise of any power, duty or privilege affecting the water resources of this state, every state agency or public corporation of this state shall give due regard to the statements of the commission and shall conform thereto. No exercise of any such power, duty, or privilege by any such state agency or public corporation which would tend to derogate from or interfere with the state water resources policy shall be lawful.

"Public corporations" are defined under ORS 536.007 as including "any city, county or district organized for public purposes." ORS 536.370 states that the Commission must approve any public corporation order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy.

These statutes underscore the importance the Legislature places on state water resources policies which basin programs express. It is clearly the Legislature's intent that local government actions be consistent with state water resources policies. In a 1983 opinion requested by the Water Policy Review Board (predecessor to the Water Resources Commission), the Attorney General's Office concluded that local governments may exercise planning and zoning authority only to the extent not directly in conflict with the Board's statutory authority. [OP-5506, 1983] Thus, it is the goal of the Water Resources Commission to recognize local government land use plans to the maximum extent possible, consistent with the public interest as expressed through state water resources policy.

The relationship between basin planning and land use planning is not straightforward. By establishing the types and limits of allowable future water uses, it is clear that basin planning can influence the type and extent of land use. However, past basin plans and programs have done little to define potential relationships with local land use plans. Many basin programs were adopted prior to the beginning of Oregon's current land use planning process in 1972. For basin programs updated or formulated since 1972, there has been a limited understanding on the part of Department staff of the linkages between basin planning and local land use planning. Conversely, local representatives generally have not been aware of the existence or purpose of basin programs. Consequently, each program has had little effect on the other.

This lack of awareness may be partially due to the treatment of water resources in the state land use planning goals, upon which all local plans are based. There is no water resources goal, per se. General references to water resources carrying capacity are spread throughout the goals. Although Goal 5 is frequently represented as a water resources goal, it actually deals in a very broad fashion with natural resources, open space, and scenic and historic areas. Thus, local plans have not been required to address water resources issues in any specific or uniform way.

Goal 5 requires local governments to inventory "water areas" as part of their comprehensive plans. Goal 5 also recommends that reservoir sites be protected from irreversible loss and that streamflows be protected for instream uses. However, there is no reference to Water Resources Commission programs or state water policy statements -- in contrast to specific references to the Oregon Wildlife Commission, the State Natural Area Preserves Advisory Committee, and the State Advisory Committee on Historic Preservation. The only explicit reference to the Water Resources Commission (or the Water Policy Review Board at the time of Goal adoption) or the Water Resources Department is under Goal 16 (Estuarine Resources) -- and then only in terms of appropriation and minimum perennial streamflows, not planning. In short, although the Goals do not prevent local governments from coordinating with Commission planning programs and adhering to state water policy, this coordination is not encouraged or required.

The lack of understanding of the relationship between basin planning and land use planning on the part of WRD staff also stems from the complicated nature of that relationship. One of the complicating factors is how land uses identified in local plans and water uses interact. Seldom is the tie between the two so direct that Commission action precludes or would necessitate changes of the overlying land use category.

For example, the Commission may withdraw a stream in an agricultural zone from future use for irrigation. This could affect, but not necessarily preclude, the future development of irrigable lands. Alternative sources of irrigation water could include ground water, savings from conservation, purchase or lease of nearby water rights, service from existing irrigation districts, or use of water from storage. Thus, customary land uses in the area could continue. Zoning ordinances normally do not distinguish between types of agriculture. Therefore even if alternative irrigation sources are not available, agricultural uses of the land, such as dryland farming or grazing, frequently remain. Thus, in one sense, the Commission withdrawal would have no effect on the local plan designations. On the other hand, if an area relies heavily on irrigated agriculture and alternative sources are few, the withdrawal is likely to affect the local pattern and intensity of land use, even if it does not directly affect a local plan.

Conversely, the Commission might allow industrial use of a stream in a zone where industrial land uses are not allowed. This does not necessarily represent a land use / water use conflict. Water is not always used on lands immediately adjacent to a stream. For example, a potential industrial user could occupy an industrially-zoned parcel and yet need to divert water from a distant stream outside the zone. Thus, allowing a water use for a land use precluded by an overlying zone is not necessarily inconsistent. In this case, matching a stream's classification to the surrounding zoning could frustrate a local government's goal of economic development. Because of these types of issues, there is a potential for incompatibility between basin planning and land use planning.

Within a basin, water flows through many jurisdictions. In recognition of the mobile nature of both surface and ground water resources, the Commission is directed by statute to coordinate many interests. One type of coordination deals with balancing state and local interests. Another involves weighing the frequently competitive water resource demands of many local jurisdictions. Examples of the latter might include assessing opportunities for pooling water rights or funds to regionalize city water supplies, coordinating projections of water use for agriculture or recreation from a stream separating two counties, or maintaining sufficient flows to absorb projected sewerage discharge increases from all upstream cities. In short, it is likely the Commission may have to say "no" to City A, in order to meet the needs of Cities B, C, and D. This means that provisions of a given basin program which are compatible with one local plan can at the same time be incompatible with another.

It is the Commission's goal to be as compatible as possible with local plans. Ultimately, this can be assured by obtaining confirmation from all local governments in the basin that the basin plan and program are compatible with local comprehensive plans. However, compatibility is most effectively achieved through early coordination in the basin planning process, and through on-going technical assistance. For example, an area where both local and state government could derive considerable benefit is the identification of future water needs. Local plans reflect projected growth and indicate where and at what levels future development will take place. Often these projections are not tied to water supply or state water policy. It is important that WRD and local planners use the same inventory information in their respective planning processes.

Compatibility can also be achieved through the Department's permitting process. The permitting process can be viewed as one form of implementation for basin programs. That is, permits can only be issued for uses that conform to basin program classifications and statements. As described elsewhere in this document, water use permits are defined in OAR Chapter 660, Division 31 as "Class B" permits and are subject to certain compatibility requirements. In other words, the classifications established in basin programs are tested against local plans during water use permit review.

(c) Instream Water Rights

1. Purpose

Instream water rights are water rights held in trust by the Water Resources Department to support public uses in streams and lakes. The main purposes of providing for instream flows are to protect aquatic life, dilute water pollution, and maintain recreational values. Historically, the Water Resources Commission has been directed to adopt administrative rules establishing certain quantities of water for instream use. These rules, called minimum perennial streamflows, protected instream flows, but monitoring was limited and many streams were already depleted by earlier water rights not subject to the minimum streamflows. During the 1987 legislative session, public instream uses were declared to be "beneficial" for purposes of appropriation. Instream water rights were created to give public instream uses the same legal status as water rights for out-of-stream uses. Instream water rights must be set at the level needed to provide public benefit. If this level exceeds present flows, it establishes a management goal and basis for denial of further appropriations.

2. Authorization

Instream water rights are defined in ORS 537.332 to 537.360. These statutes call for conversion of previously established minimum perennial streamflows. Under these statutes, only the Oregon Departments of Fish and Wildlife, Environmental Quality and the Parks Division may apply to the Commission for instream water rights. A process for transferring and leasing out-of-stream water for instream use is also provided. Procedures and standards for issuing instream water rights are prescribed in OAR 690, Division 77.

3. Instream Water Rights Activities

To date, the Department has converted about 465 out of 490 minimum streamflows to instream water rights. About 40 instream water right applications have been submitted to the Department. Nearly all were submitted jointly by the Departments of Fish and Wildlife and Parks and Recreation to reserve flows for fish and recreational uses. Of these, about 25 have been approved with the remainder still pending.

4. Relationship to Land Use

WRD's authority and program activities to protect instream flows qualify as "land use programs" for SAC purposes. Issuing instream water rights is similar to the Department's water use permitting activities in that both provide for discretionary review of applications to use the public's water. Both result in the allocation of water that is then unavailable for future uses.

Section II: Summary and Analysis of : *Instream Water Rights*

The statutory definition of "land use" states that "land" includes water (both surface and subsurface). Under Goal 5 guidelines, local governments are encouraged to consider instream flows in their planning decisions. For example, local recreation policies and the siting of parks and recreational facilities could be influenced by an assurance that some level of flows are protected. The amenities provided by a river or lake with good water quality, scenic surroundings, and fish resources can significantly influence growth in a community. On a larger scale, the maintenance of instream flows can influence regional economies by protecting fisheries, water quality, and recreational areas which are used by in- and out-of-state residents. At the same time, the issuance of instream water rights signifies a withdrawal of water, at least in a particular stretch of stream, from future appropriation for other uses.

(d) Reservations of Water for Future Economic Development

1. Purpose

Reservations of water for future economic development allow certain quantities of water to be set aside for specified uses which, when developed, will have preference over all water rights subsequent to the date of the reservation, including instream water rights.

2. Authorization

ORS 537.356 authorizes any state agency to request the Water Resources Commission to reserve unappropriated water for future economic development. ORS 537.358 requires the Water Resources Commission to adopt rules to carry out the intent of the authorizing legislation. OAR 690-77-200 governs WRD activities relating to reservations for future economic development.

3. Water Reservation Activities

The administrative rules governing reservations set up a two-step process. First an application for a reservation is submitted. Only state agencies may apply for reservations. If the request is approved, it is recorded as an amendment to the basin program. Second, an application must be submitted at a later date for actual use of the reserved water.

WRD must notify the Oregon Departments of Fish and Wildlife, Environmental Quality, and the Parks and Recreation Department within one month of the receipt of a reservation request. A member of the Water Resources Commission must conduct a public hearing on the proposed reservation in accordance with ORS 537.170 within six months of receipt of the request. The hearing must be conducted in the basin of the proposed reservation.

Approval of the initial reservation requires a public interest determination in accordance with standards outlined in OAR Chapter 690, Division 11. The Director must prepare findings and a recommendation to the Commission on the proposed reservation. The Commission may approve, partially approve, condition or deny the request.

Applications for the use of reserved water shall also undergo a public interest determination based on the standards outlined in Division 11. The administrative rule specifically requires a consideration of "land use plans or policies of local jurisdictions," and states that, "if the reservation contemplates future development that is not foreseen in the plans, the Commission shall seek concurrence of the affected local jurisdiction(s) before making the reservation."

To date, WRD has received one inquiry into reservation of water for future economic development. The interested party was advised that information requirements include the following items:

1. Agency name and address;
2. Purpose of reservation;
3. Amount of water;
4. Source of water;
5. Natural flow or storage;
6. Season of use;
7. Place of use;
8. Developer;
9. Term of reservation;
10. Schedule of development;
11. Economic benefits;
12. Land use compatibility;
13. Alternatives;
14. Foregone opportunities;
15. Existing/future water use;
16. Adverse water impacts;
17. Water management measures;

The Commission has adopted similar information submittal requirements as part of the Department's updated SAC Program.

4. *Relationship to Land Use*

The intent of establishing reservations of water for future economic development is to provide known quantities of water to support certain planned land uses. Almost by definition, these reservations can reasonably be expected to have a significant impact on land use and water use in Oregon. Increasing competition for water between instream and out-of-stream uses is expected to lead to an increased interest in water reservations. Thus WRD activities in this area qualify as a "program affecting land use" and must be addressed in WRD's SAC Program.

(e) Establishment of Minimum Perennial Streamflows

1. Purpose

Minimum perennial streamflows, ("minimum streamflows"), are administrative rules which assign quantities of water and priority dates for the support of instream uses such as aquatic life or pollution abatement. Minimum flows are administered as water rights, with the exception that they are subject to administrative actions that may modify their effect.

2. Authorization

ORS 536.235 makes establishment of "minimum perennial" streamflows a high priority of the Water Resources Commission and the Water Resources Department.

ORS 536.310 (7) states that the "maintenance of minimum perennial stream flows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit .."

ORS 536.325 establishes procedures for accepting, reviewing, and adopting minimum streamflows.

OAR Chapter 690, Division 76 contains the definitions, standards, processes and criteria for the evaluation of minimum perennial streamflow applications.

3. Minimum Perennial Streamflow Activities

Since 1955, the Water Resources Commission has established over 500 minimum streamflows statewide, mostly through basin planning. In 1983 the Legislature made significant changes in the minimum streamflow program. Minimum streamflows may be requested by the Departments of Environmental Quality and Fish and Wildlife. The Commission may also modify or adopt minimum streamflows on its own initiative. Before adopting a minimum flow the Commission must consider Water Resources Department recommendations, provide all other state agencies which may be concerned an opportunity to be heard, consider all legislatively mandated policies, and hold at least one public hearing in the affected river basin.

Section II: Summary and Analysis of : *Minimum Perennial Streamflows*

Minimum flows have priorities dating from when applications were received or, absent applications, from when the Commission initiated action to consider the flows. Within one year of the date an application is received, the Commission must adopt the requested flow, adopt an alternative flow rate, or deny the request. If an alternative flow rate is adopted, the Commission must make a finding that the adopted rate is more appropriate for supporting aquatic life and minimizing pollution. If the request is denied, the Commission must make a finding that establishing a minimum flow is of lesser importance than other uses of the waters of the particular stream. Minimum flows are recorded in applicable basin programs.

In 1987, the Legislature created instream water rights and required all existing minimum streamflows to be converted to instream water rights after a hearing. Instream water rights are water rights held in trust for the people of the state by the Water Resources Department. Unlike minimum streamflows, they cannot be modified by administrative action. Because of this, they are expected to supplant minimum streamflows for purposes of protecting instream uses. However, the Legislature did not do away with minimum streamflows by creating instream water rights. It is possible additional minimum streamflows may be established in the future.

4. Relationship to Land Use

Minimum flows affect future water availability and are indirectly referred to in Goal 5 and Goal 16. Minimum flows also protect public uses such as fish and wildlife habitat, pollution abatement, and recreation, all of which are addressed throughout the statewide planning goals. Therefore, establishment of minimum perennial streamflows represents a land use program.

(f) Withdrawal of Water from Appropriation

1. Purpose

The Legislature established withdrawals to provide an administrative mechanism for making unappropriated water unavailable for further appropriation if necessary to: a) ensure compliance with the state water resources policy; and/or b) uphold the public interest in conserving or controlling water for the maximum beneficial use.

2. Authority

ORS 536.410 authorizes the Commission to withdraw waters of the state from further appropriation. Withdrawals are adopted as administrative rule in accordance with the Administrative Procedures Act. There are no additional administrative rules governing withdrawal activities.

3. Withdrawal Activities

Water withdrawals have been ordered since the inception of Oregon's water code in 1909. Early withdrawal orders generally withheld waters from appropriation, except as needed for irrigation purposes. The State Engineer would apply for withdrawals upon the request of irrigation or reclamation districts. Many of these early withdrawals for undeveloped storage projects have been cancelled and surplus unappropriated waters returned to the public.

The State Engineer also filed withdrawal orders in response to verified complaints that there was insufficient water on an annual basis to support existing water rights. In addition there are a number of legislative withdrawals in statute. Since 1909, the legislature has withdrawn waters for various purposes including protection of municipal supplies, fish and wildlife, and parks.

Today's statutes authorize the Water Resources Commission to file withdrawal orders. Prior to the issuance of an order, the Commission must hold a public hearing on the necessity for the withdrawal. The Commission must follow standard rulemaking proceedings as required by the Administrative Procedures Act. The Commission may amend basin programs to include withdrawals. In many ways, the action of withdrawal is similar to that of classification. The Commission is using restrictive classifications in place of withdrawals. Withdrawals are now being used more as responses to immediate needs for limited duration.

4. Relationship to Land Use

The withdrawal of unappropriated waters is found to be an "agency program affecting land use." Making unavailable a portion, or all, of the unappropriated waters of a particular water body could significantly affect land uses adjacent to and in the vicinity of the water body. In addition, restricting certain uses could require local or regional changes to rural and urban economic development strategies.

(g) Critical Ground Water Area

1. Purpose

Oregon water law contains strong policies to protect the supply and quality of ground water. The statutes authorize the Water Resources Commission to control the use of ground water to achieve policy goals. The Legislature created the "critical ground water area" (CGWA) designation as a tool to mitigate or prevent excessive ground water level declines, overdraft, interference between users, and contamination.

2. Authority

Statutory authorization for critical ground water area determinations is found in ORS 537.620, 537.730, 537.735, and 537.740. Rules to implement the program are found in OAR Chapter 690, Divisions 8 (Definition and Policy Statements Regarding Statutory Ground Water Terms), 9 (Ground Water Interference with Surface Water), and 10 (Water Resources Department).

3. Critical Ground Water Area Activities

The Water Resources Commission may declare a critical ground water area if: 1) ground water levels in the area are declining or have declined excessively; 2) there is or is likely to be substantial interference between: ground water users; or ground water and surface water users or minimum perennial streamflows with earlier priority dates; or ground water users and geothermal development managed by the Department of Geology and Mineral Industries; 3) the ground water is or is about to be overdrawn; or 4) ground water contamination is occurring, or is likely to occur. The Commission may begin the CGWA process upon its own motion, when petitioned by DOGAMI or any existing water user, or when a proposed use of ground water is likely to cause significant interference between water users.

To date, the Water Resources Commission has approved five critical ground water area orders. These include the Cooper Mountain/Bull Mountain, Ordnance, Cow Valley, the Dalles, and Butter Creek Critical Ground Water Areas. Minimum acreage-to-well ratios are also in effect under the Cooper Mountain-Bull Mountain order. The administrative rules under which existing critical ground water areas were established were superseded in 1986. Current and future CGWA proceedings will be carried out in accordance with current rules as described below.

The Water Resources Department Director initiates proceedings for determination of a critical ground water area. Notification is published in newspapers of general circulation in the proposed critical area vicinity. The notification is also mailed to ground water permit applicants and licensed water well constructors within the area boundaries, and to the governing bodies of counties and cities in the area. It is generally expected that the Department would defer action on pending applications after issuing the notification. However, the Commission could grant ground water use permits within the proposed critical area boundary only after holding a contested case hearing.

A period of investigation follows the Notification of critical area proceedings. Within 270 days, the Department must hold a public hearing or the Notification expires. The Commission must hold a public hearing prior to adopting an order establishing the critical area boundaries. State law requires that licensed well constructors, ground water appropriators, and affected cities be notified of the hearing. If the Commission confirms at the conclusion of the public hearing that any of the ground water problems listed above exist, and further finds that protecting the public welfare health and safety require the enactment of corrective controls, the Commission may adopt an order establishing the critical area boundaries. The extent of restrictions on pumping may be defined by rule or order.

The Commission must distribute copies of the order to all parties in the proceeding and file a copy of the order with the clerk of each county within which any part of the critical area lies. The clerk must record the order in the county's deed records. The Commission may suspend, modify, or cancel any order.

4. Relationship to Land Use

The designation of a critical ground water area can significantly affect land use and development and qualifies as a Department land use program. Restrictions on the issuance of ground water permits are imposed when proceedings are initiated, and when rules or orders are adopted. The order defines the areal and hydrogeologic boundaries of the critical area. The order or a separate rule may include any of the following corrective control measures: 1) closure of the critical area to further appropriation; 2) restrictions on the total withdrawal of ground water per day, month, or year; 3) preferred water uses (i.e., residential and livestock watering) not based on priority dates; 4) reduction or prohibition of pumpage by established appropriators; 5) the abatement or sealing of any well; and, 6) a system of rotation between users.

State law requires the Commission to maintain stable ground water levels, and take action to prevent and control substantial interference, overdraft, and contamination of ground water. Under Goal 5 local comprehensive plans are required to inventory and provide programs to protect important ground water resources. Critical ground water areas should be viewed not only as a regulatory tool, but also as an information source for use in local land use planning within those areas.

(h) Applications and Permits

1. Purpose

A permit is required to use, divert, or store any water in the state, except for a few very specific exceptions. Permits for water use are issued to ensure orderly development of the state's water resources for beneficial use without waste. Permits document the conditions under which water resources can be used. Permits also provide a framework for evaluating whether the use has been established (or "perfected") and can be issued a water right. The permit application review process is designed to ensure that existing beneficial uses and the public's interest in water resources are protected.

2. Authorization

Permits for appropriation of the waters of the state are required under ORS 537.110 through 537.295 and 537.505 through 537.745. These statutes apply to surface water and ground water appropriations and prescribe procedures for application and application review, exemptions, standards for approval, standards for hearing, time restrictions, and cancellation of permits.

Corresponding administrative rules are found in OAR 690 Division 11 (Applications and Permits), Division 20 (Dams), Division 50 (Appropriation and Use of Water For Hydroelectric Power Projects), Division 51 (Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications), Division 74 (Standards for Consideration of Applications Involving Hydroelectric Projects), and Division 82 (Rules for Acceptance of Applications for Water uses in Addition to Classified Uses). With one case excepted, Division 51 supersedes Divisions 50 and 74.

3. Permitting Activities

A permit to use or "appropriate" water allows a person to develop a water use prior to certification. Certification is provided through issuance of a water right. Permits are required for nearly all uses of surface water and ground water, except as follows. Certificates for instream water rights are not preceded by issuance of a permit as the use(s) does not require diversion or control of water. Transfers, exchanges, and the use of conserved water are authorized by order. Procedures for approval of these water uses are discussed under separate program summaries. ORS 537.142 exempts the use of less than 30 gallons per minute of surface waters for egg incubation from all WRD permit and certificate requirements. ORS 537.545 exempts the use of ground water for stockwatering, down-hole heat exchange purposes, and domestic, industrial, commercial, and irrigation uses less than specified amounts from WRD registration, permit, and certificate requirements. However, 1989 legislation has authorized the Water Resources Commission to require permits of exempt uses under certain circumstances.

The Water Resources Department Applications and Permits section reviews about 400 permit applications for new uses each year. Application fees are set by statute, however 1989 legislation authorized the Water Resources Commission to set fees for certain minor applications. WRD provides notice of all applications submitted to those persons on a standard weekly mailing list. County planning departments and certain DLCD Field Representatives are included on this list. However, most cities are not on the list and therefore may be unaware of ongoing state water permitting activities.

Oregon administrative rules allow the Director to act on certain permit applications. Larger or more complex appropriation requests require Water Resources Commission review. The Director must screen all permits to determine the potential for "substantial public interest issues." The Director may also refer minor permit applications where the potential for a substantial public interest issue is found to exist. Where authorized, the Director may issue a permit if: 1) the application is consistent with Commission policies; rules, and basin programs; 2) existing rights holders are protected; 3) water is available; 4) there is no request for additional review by other agencies or persons; and, 5) the appropriation does not raise any other substantial public interest issue.

The Water Resources Commission may act on a permit application in three ways. The Commission may:

- 1) find that the use would not be detrimental to the public interest and instruct the Director to issue a permit; or
- 2) find that the use, as appropriately conditioned, would not be detrimental to the public interest and instruct the Director to issue the permit with the conditions; or
- 3) find that the use may be detrimental to the public interest because it raises a substantial public interest issue and require a contested case hearing under ORS 537.170 and 537.180. The hearing is noticed to various parties including the affected local government planning agency and the owners of contiguous lands. Interested persons (including agencies) may petition for party or limited party status. If the petition is approved, they may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions (see program summary for Contested Case Hearings in Appendix B).

OAR 690-11-080 (4) establishes standards to be applied by the Commission or Director in making determinations of public interest. Following a hearing, the Commission may approve issuance of a permit, approve a permit with modifications or conditions, or reject the application with findings.

According to OAR 690-11-090 (8), when a change of interest occurs in lands covered by a permit, the permittee may request the Water Resources Director to assign the permit to the new owner. Actual construction of diversion works must commence within one year of permit issuance. Time limits for completion of construction shall not exceed five years. Time extensions may be granted only to FERC-related project permits or permits issued to a municipal corporation for municipal uses. If no appropriation is made under the terms of the permit, OAR 690-11-100 authorizes the Department to initiate proceedings for permit cancellation. The permittee must be notified and given 60 days to respond to an intent to cancel the permit.

4. Relationship to Land Use

As most land uses need some amount of water to sustain them, WRD's permitting activities significantly affect land use by regulating water use throughout the state. Existing rules reflect the land/water use relationship. WRD water use permits are listed under the "Class B" heading in OAR 660 Division 31. WRD permits state that the issuance of the permit is not a finding of compliance with the statewide planning goals or compatibility with the acknowledged comprehensive Plan. Permittees are also advised that they must receive all applicable land use approvals from affected local governments.

In addition, OAR Chapter 690 Division 11 provides standards for whether a substantial public interest issue exists. These standards require the Director and the Water Resources Commission to assess whether issuance of the permit would be likely to 1) adversely affect vested or inchoate water rights (those rights applied for but uncertified at the time adjudication takes place), 2) result in the wasteful, uneconomic, impractical or unreasonable use of water, 3) impede orderly economic development of the waters involved, 4) be a non-beneficial use of water, and 5) jeopardize the public good. Existing rule language expressly requires an assessment of impacts from a permit on "the public good" to include consideration of "basin policy, state statutes and the respective land-use plans of the jurisdictions affected." (underline added)

Division 51 outlines specific standards for the review and approval of hydroelectric license and permit applications. A municipality or public utility applies for a permit while a non-municipal or private utility applies for a license to use water for hydroelectric power generation purposes. The Department is required to notice both the governing body(ies) and planning department(s) of affected cities of pending applications. The standards for project evaluation include a section entitled Land Resources. Under this rule, the Commission must enter findings that the project will avoid or minimize impacts on prime farmlands, forest lands, wetlands, scenic resources designated for protection in local comprehensive plans or by state or federal agencies, and endangered natural or geological communities as identified by the Oregon Natural Heritage Data Base. The Commission must also find that the project will not violate state noise standards, disturb fragile or unstable soils, or cause soil erosion that would impair water uses. The project must be designed with appropriate safeguards to withstand natural hazards such as geologic instability, flooding, and ice formation.

Division 51 also contains a section entitled Land Use which requires the Commission to consider input on land use in affected counties and cities. The rules require Commission action to be consistent with local government recommendations except when:

- 1) The recommended action conflicts with the development, use, and control of the state's water resources; or
- 2) The recommended action conflicts with the Commission's integrated coordinated water use program for the affected basin.

If inconsistent with the recommendation of an affected local government, the Commission must support its action with findings showing cause for action. The applicant is required to provide local government approval(s) to the Commission prior to issuance of a license or permit. To approve a hydroelectric application the Commission must find that:

- 1) The project complies with statewide land use goals; and
- 2) Either the project is compatible with the acknowledged local comprehensive plan; or local government application of the comprehensive plan conflicts with the Commission's control over, or policies for, the state's water resources.

In summary, Water Resources Department permitting activities are governed by sets of rules which already contain references to the Statewide Planning Goals and local land use planning. WRD is already attempting to achieve compatibility with local comprehensive plans. However, opportunities exist to enhance the level of communication between WRD and local governments regarding WRD's water use permitting and effects on land use.

(I) Water Rights Transfers

1. Purpose

Water rights in Oregon are issued for specific uses in specific locations. No change in either is allowed without approval of the Water Resources Department. A change in the type of use, the place of use, or the point where water is diverted is called a transfer. Water right transfers add flexibility to Oregon's prior appropriation water rights system. The laws regulating transfers ensure that net water use is not increased and that existing rights holders will not be harmed.

2. Authorization

Water right transfers are authorized under ORS 540.510 through ORS 540.570. The statutes provide special guidance for lands within irrigation and water control districts. Corresponding administrative rules for transfers are found in OAR Chapter 690, Divisions 15 and 16. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Transfer Activities

A transfer may include a change in the point of diversion or a change in the type or location of use. It may also include shifting a water right from supplementary to primary status. Any legal owner of a valid water right may apply to the Water Resources Department for a water right transfer or exchange. When a transfer is approved the original water right is superseded and an amended water right issued. Increasing the amount of water use and/or expanding the area of water use (for irrigation) constitutes an enlargement of the water right and is not allowed under the transfer provisions.

Transfers provide for changes in water use but preclude increasing the quantity used or injury to other users. Water rights transfers are approved through an order issued by the Water Resources Commission. Over the past approximately two decades, the Department has received an average of about 200 transfer applications annually.

Primary departmental activities associated with evaluating transfers involve ascertaining the status of existing water rights and determining the potential impact of the transfer. State statutes and rules require public notice of pending transfer applications. Administrative rules pertaining to water right transfer require that notice be published in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion. Those applications requiring notice may not be approved in less than 20 days from the date of notice. Those applications not requiring notice may not be approved in less than 30 days after the date of application. Protests may be filed at any time prior to approval of a pending application. The Water Resources Commission may hold a hearing if sufficient public interest issues emerge.

Failure to complete a water right transfer as approved may constitute grounds for forfeiture of the water right. The Department may grant time extensions on completion of a transfer. Normally, time extensions are granted for one year only. An extension of up to five years may be granted to a municipal corporation for municipal use.

4. Relationship to Land Use

The review and issuance of water right transfers is similar and related to WRD permitting authority. Accordingly, most water rights transfer activities meet the criteria of a "land use program" for SAC purposes.

Transfers can be associated with a change in land use and/or the construction of diversion or distribution facilities on the ground. A change in the type or place of use could be associated with land use plan amendments, local urbanization trends, and changing land values. For example, the subdivision of agricultural lands for residential uses may include changing the point of diversion from surface water to ground water. Transfers involving changes in the point of diversion and shifts from a supplemental to primary rights would not correspond to a change in land use, but could result in the construction of diversion, transmission or pumping facilities on the ground.

However, certain transfers are not expected to have significant effects on land uses. These include transfers which:

- a) involve only irrigation uses; and
- b) involve place-of-use changes only; and
- b) involve no structural change; and
- c) would be located within irrigation districts or Exclusive Farm Use Zones.

Water rights transfers meeting these four conditions would be expected to serve irrigation uses on farm lands both before and after Department action on the application. Further, local governments generally do not differentiate between irrigated and non-irrigated agriculture in their land use plans. Thus, the Department's review and approval activities involving transfers meeting the above criteria are not treated as land use programs.

(I) Water Right Exchanges

1. Purpose

An exchange is a transfer between sources where equal (or reduced) amounts of stored, surface or ground water are used to replace the other source in amounts sufficient to satisfy prior appropriations. Aside from ensuring protection of existing water rights and the public interest, the Water Resources Commission may approve an exchange only if water can be used more efficiently and instream uses are enhanced. Allowing exchanges adds flexibility to Oregon's prior appropriation water rights system.

2. Authorization

Water rights exchanges are authorized under ORS 540.533 through 540.543. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Exchange Activities

Historically, the Department approved water rights exchanges by modifying established rights and issuing rights for supplemental as well as primary uses. Only one application for exchange has been filed since the authorizing statutes were enacted in 1987. This project involves an exchange of rights to use Columbia River water for rights to use Umatilla River water. The exchange of these rights will provide for irrigation and increased instream flows.

4. Relationship to Land Use

WRD's authority to approve water exchanges meets the criteria for a "land use program" as outlined under administrative rule. Although the authorizing statutes do not provide for a change in the type of water uses allowed, exchanges may affect large amounts of land and many interested parties. Exchanges may also involve the construction of storage and distribution facilities. To ensure that existing uses can be maintained, the Commission must determine whether replacement waters will be equal to the water exchanged. Further, exchanges have the potential to maintain or enhance instream flows.

Section II: Summary and Analysis of: *Water Right Transfers*

(k) Use of Conserved Water

1. Purpose

The purpose of this program is to encourage water conservation by allowing water right holders to use a portion of their water savings. In 1987, Senate Bill 24 was passed and codified as ORS 537.455 to 537.500. This law allows a water right holder to use part of any water saved through conservation and returns part to the state. Previously, any water saved was not available to the person saving it, but was immediately returned to the public domain.

2. Authorization

ORS 537.455 to 537.500 declares the policy of the state as being the aggressive promotion of conservation and the encouragement of the highest and best use of water by allowing the sale or lease of the right to the use of conserved water. ORS 540.510 allows any right to the use of conserved water to be severed from the land and transferred or sold.

OAR Chapter 690, Division 18 establishes procedures for processing applications for the use of conserved water.

3. Activities Involving the Use of Conserved Water

Conserved water is defined in ORS 537.455 and OAR 690-18-020 as "the amount of water, previously unavailable to subsequent appropriators, that results from conservation measures." Any holder of a valid water right may apply to use conserved water if the proposal meets requirements outlined in statute and administrative rule.

Basically, an applicant must demonstrate that the proposed conservation measure(s) will make conserved water available for other uses. The processing of applications to use conserved water includes: 1) review of the conservation proposal's scope and effectiveness; 2) quantification of probable water savings; 3) analysis of impacts on other users; 4) developing recommendations for assignment of conserved water to the user and state; 5) determining public interest issues and impacts; 6) providing substantial public notice; and, 7) referral by the Director to the Commission for approval. Authorizing statutes require the Commission to allocate 25 percent of the conserved water to the state, unless the Commission finds that more or less water should be allocated to the state based on several criteria.

The Commission may allocate the conserved water if it finds that the proposed conservation measure:

- (A) Is feasible; and,
- (B) Will produce conserved water; and,
- (C) Can be effected without injury to existing water rights; and
- (D) Will not adversely affected the public interest.

When the Commission approves an application for use of conserved water, it issues a final order stipulating the percent of water allocated to the applicant and the state, and any conditions on the use of conserved water. A new water right certificate is issued for the diminished original right and another for the new use of the conserved water. When the state's share of the conserved water is dedicated to instream use, a certificate is issued for that purpose as well. Given the newness of this process and its complexity, it is unclear how many water users will participate in the program.

4. Relationship to Land Use

The use of conserved water qualifies as a "program affecting land use" for SAC purposes. The use of conserved water can involve changes in the type and intensity of land use, much like water use permits. For example, a water right holder may wish to apply conserved water for residential use to a parcel currently zoned for open space or agricultural land uses. The proportion of conserved water allocated to the state can potentially affect public uses such as recreation, fish and wildlife, water quality, navigation, and scenic values. These public uses should be reflected in local comprehensive plans as required by the Statewide Planning Goals.