

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 385
DISTRICT WATER RIGHT TRANSFERS**

Table of Contents

Table of Contents	1
General Provisions	3
690-385-0100 Definitions	3
Standard Transfer Application Requirements	5
690-385-2000 Application for Transfer	5
Standard Map Requirements	6
690-385-2200 Map Requirements	6
District Temporary Transfers	8
690-385-3000 District Temporary Transfer Criteria	8
690-385-3100 Types of District Temporary Transfers	8
690-385-3110 Temporary Change in Place of Use	9
690-385-3120 Temporary Change in Type of Use of a Water Right to Store Water	9
690-385-3130 Temporary Change in Type of Use from a Primary Right to a Supplemental Right	10
690-385-3140 Temporary Change in Point of Diversion or Appropriation	10
690-385-3145 Temporary Change in Point of Diversion in Response to an Emergency	10
690-385-3150 Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation	11
690-385-3200 District Temporary Transfer Applications	12
690-385-3300 District Temporary Transfer Application Map Requirements	13
690-385-3400 District Temporary Transfer Application Notice and Review	14
690-385-3500 District Temporary Transfer Approval and Final Orders	14
690-385-3520 Fish Screening Devices	15
690-385-3600 Appeal of a Final Order Approving a District Temporary Transfer	15
District Permanent Transfers	15
690-385-4000 District Permanent Transfer Criteria	15
690-385-4100 Notice of District Permanent Transfer	16
690-385-4200 District Permanent Transfer Applications	17
690-385-4300 District Permanent Transfer Application Map Requirements	17
690-385-4400 District Permanent Transfer Application Notice and Review	17
690-385-4500 District Permanent Transfer Approval and Final Orders	18
690-385-4580 Original Right Terminated by Final Order	18
690-385-4600 Protests and Requests for Hearings	18
690-385-4700 Hearings	19
District Permanent Transfers of Water Right for Nonuse	19

690-385-5000 District Permanent Transfer Criteria	19
690-385-5100 Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572.....	20
690-385-5200 District Permanent Transfer of Water Right for Nonuse Applications.....	21
690-385-5300 District Permanent Transfer of Water Right for Nonuse Application Map Requirements	21
690-385-5400 Notice of Filing District Permanent Transfer of Water Right for Nonuse Application.....	21
690-385-5500 District Permanent Transfer of Water Right for Nonuse Application Notice and Review.....	22
690-385-5600 District Permanent Transfer of Water Right for Nonuse Approval and Final Orders.....	22
690-385-5680 Original Right Terminated by Final Order.....	23
690-385-5700 Protests and Requests for Hearings.....	23
690-385-5800 Hearings	24
690-385-5900 Time Period to Process Permanent Transfer Application Exempt from Forfeiture.....	24
Miscellaneous Provisions	24
690-385-6000 Multiple Primary Water Rights on the Same Lands	24
Completion and Perfection of Transferred Rights	25
690-385-7000 Time for Completion.....	25
690-385-7100 Failure to Complete a Transfer as Grounds for Cancellation.....	25
690-385-7200 Extension of the Time Limits.....	25
690-385-7400 Proof of Use; Noncompliance	26
690-385-7600 Proof of Completion of Change	27
690-385-7800 Request for Reconsideration	28

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 385
DISTRICT WATER RIGHT TRANSFERS

General Provisions

690-385-0010

Purpose

(1) The rules in Chapter 690, Division 385 establish requirements and procedures that shall be used by the Department to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district pursuant to ORS 540.570 and 540.580.

(2) The rules in Chapter 690, Division 385 also describe the process by which a district may submit an application to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578.

(3) Water right transfers by districts and other water users that do not fall under the purview of the rules described by Chapter 690, Division 385 may be made pursuant to ORS 540.510 to 540.532 and OAR Chapter 690, Division 380.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510, ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: Renumbered from 690-021-0000 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-08-0001 (Statutory Ground Water Terms), 690-300-010 (Definitions), and 690-380-0100 (Water Right Transfers), apply to the rules in OAR Chapter 690, Division 385. Where a term is defined in more than one rule, the definition in OAR 690-385-0100 applies.

(1) “Application” means a petition by a district to transfer water rights within district boundaries as used in ORS 540.570 through 540.580.

(2) “District” means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553, or a corporation formed under ORS Chapter 554.

(3) “District boundaries” means the extent and fixed limit of district jurisdictional authority under state law described by metes and bounds, public land survey, or assessor’s map and tax lot numbers.

(4) “Enlargement” means an expansion of a water right and includes, but is not limited to:

- (a) Using a greater rate or duty of water per acre than currently allowed under a right;
- (b) Increasing the acreage irrigated under a right;

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(c) Failing to keep the original place of use from receiving water from the same source; or
(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(5) “Full-Time Manager”, as used in ORS 540.572 and OAR 690-385-5000, means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.

(6) “Injury” or “Injury to an existing water right” means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(7) “Manager” means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district.

(8) “No Longer Irrigated or Susceptible of Irrigation” means:

(a) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district.

(9) “Notice of Permanent District Transfer” means notification of a change in place of use allowed by a district prior to submitting a transfer application to make the change permanent.

(10) “Point of appropriation” means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right.

(11) “Point of diversion” means the place at which surface water is diverted from a surface water source as specified in the water right.

(12) “Primary water right” means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(13) “Protest” means a written statement expressing disagreement with approval of a transfer application and includes the fee prescribed in ORS 536.050.

(14) “ODFW” means the Oregon Department of Fish and Wildlife.

(15) “Supplemental water right or permit” means an additional water right to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(16) “User” means an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred.

(17) “Water use subject to transfer” means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

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(18) “DSL” means the Department of State Lands

(19) “Emergency” means a sudden, unforeseen event resulting in damage to an authorized point of diversion structure or primary conveyance canal that prevents a district from diverting the water to which it is legally entitled, and necessitates immediate action to minimize loss of property by water users within the district.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: Renumbered from 690-021-0010 by WRD 10-2004, f. & cert. ef. 11-16-2004

Standard Transfer Application Requirements

690-385-2000

Application for Transfer

(1) Each application shall be prepared in ink or typewritten on forms acceptable to the Department, or in a digital format acceptable to the Department. Applications shall contain the following information about the primary water right and any appurtenant supplemental water right or permit, if applicable:

- (A) District’s name, mailing address, and telephone number.
- (B) Type of change(s) proposed.
- (C) Name(s) appearing on permit, certificate, decree or proof of appropriation.
- (D) Name(s) of decree and certificate number, if applicable.
- (E) Certificate number and Permit number, if applicable.
- (F) Source(s) of water (from permit, decree or certificate).
- (G) Date(s) of priority.
- (H) The authorized existing use of water.
- (I) The existing points of diversion or points of appropriation located accurately in reference to a public land survey corner.
- (J) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.
- (K) The proposed place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.
- (L) A map as required in OAR 690-385-2200.
- (M) A statement by the district manager or the district’s authorized representative that the right has not been forfeited under ORS 540.610 due to nonuse.
- (N) A statement that each user affected by the transfer has provided written authorization for the transfer and such authorization is on file with the district.
- (O) A statement by the district manager or the district’s authorized representative certifying that the information contained in the application and map is true and accurate.
- (P) The signature of the district manager or the district’s authorized representative.
- (Q) The appropriate fee as required under ORS 536.050.

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(2) The application shall include any additional application requirements necessary to satisfy the specific transfer criteria for the type of transfer the applicant proposes as described in OAR 690-385-3000 (District Temporary Transfers), 690-385-4000 (District Permanent Transfers), and 690-385-5000 (District Permanent Transfers of Water Right for Nonuse).

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

Standard Map Requirements

690-385-2200

Map Requirements

(1) A map certified by the district but which need not be prepared and stamped by a certified water right examiner shall be included with each district transfer application. The map shall meet the following criteria:

(a) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted except as described in subsection (1)(c) of this rule.

(b) The preferred map size is 8 1/2" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8 1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(c) Notwithstanding subsection (1)(a) and (b) of this rule, a district may submit the following types of map to satisfy the application map requirement:

(A) A digital map on a medium and in a format acceptable to the Department; or

(B) A map containing color elements or up to 30" x 30" in size provided five copies of the map are submitted with the application.

(d) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record, or of the map previously approved by the department as part of a petition under ORS 541.329;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(e) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(f) The map shall be plotted to the accuracy consistent with the map scale.

(g) The locations of points of diversion and places of use shall be described by bearing and distance, distance north or south and east or west from a recognized survey corner, or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

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(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, and clear legend;

(b) The location of each existing and proposed point of diversion or point of appropriation;

(c) For a change in place of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.

(d) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

(e) Notwithstanding the requirements of subsection (2)(c) and (d), for place of use transfers involving a water right on a tract of land of five acres or less, the place of use may be identified on a county assessor map provided:

(A) The county assessor map scale is not smaller than 1" = 1,320';

(B) Tax lot boundaries and numbers are legible;

(C) The map contains a title, legend and appropriate location information, such as public land survey corners or quarter-quarter corners, necessary to accurately locate tax lots by public land survey subdivisions; and

(D) Within each affected tax lot, the map lists and clearly identifies the number of acres for each affected water right transferred from or transferred onto the tax lot.

(f) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(g) Notwithstanding the requirements of subsection (1)(f), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features necessary to demonstrate that users are able to put water to beneficial use as proposed by the transfer according to the terms and conditions of the water right;

(h) Notwithstanding the requirements of subsection (1)(f), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(i) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

Stat. Auth.: ORS 536.025 & ORS 536.027

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*Stats. Implemented: ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580
Hist.: f. & cert. ef. 11-16-2004*

District Temporary Transfers

690-385-3000

District Temporary Transfer Criteria

(1) Pursuant to ORS 540.570, the Department may approve a district temporary transfer application for a period of time not to exceed one irrigation season provided:

(a) The district has a manager;
(b) The application does not propose to change the type of use except for a right to store water under OAR 690-385-3120 or change a primary right to a supplemental right under OAR 690-385-3130;

(c) The district has, prior to submitting the application, reviewed and approved a request by a user or a user's agent to temporarily transfer the use of water to different locations elsewhere within the boundaries of the district;

(d) The proposed transfer involves the use of water on lands located within the district boundaries;

(e) The proposed transfer will not result in injury or enlargement; and

(f) The land from which water is transferred does not receive water under the water use subject to transfer during the irrigation season in which the change in place of use occurs.

(2) A district may allow proposed changes to occur upon submission of a district temporary transfer application to the Department.

(3) The Department, may at any time upon determining a change allowed by a district under section (2) of this rule or a final order under OAR 690-385-3500 results in injury to an existing water right:

(a) Impose conditions to avoid injury; or

(b) Reject or revoke the change.

(4) Pursuant to ORS 536.900, a district and user may be subject to civil penalties for allowing the use of water on both the land from which water is transferred, and the lands to which the water is transferred, during the same irrigation season or calendar year.

(5) All uses for which a temporary transfer is approved shall revert to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by a district.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0020 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3100

Types of District Temporary Transfers

District temporary transfers include:

(1) A change in place of use;

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- (2) A change in type of use of a water right to store water;
- (3) ~~A change in type of use from a primary right to a supplemental right~~ [A change in point of diversion or appropriation];
- (4) A change in point of diversion or appropriation to facilitate a change in place of use; [A change in type of use from a primary right to a supplemental right; and]
- (5) A change in point of diversion in response to an emergency; and [A change from a surface water point of diversion to a ground water appropriation.]
- (6) A change from a surface water point of diversion to a ground water appropriation.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0030 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3110

Temporary Change in Place of Use

- (1) A change in place of use may be made as approved by the Department.
- (2) When an application for a temporary change in place of use for a primary water right is submitted according to OAR 690-385-3200, the district also shall identify whether the lands described in the application have an appurtenant supplemental water right or permit.
- (3) The district also shall apply to temporarily transfer the appurtenant supplemental water right or permit unless the district specifies that the supplemental water right or permit is to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3120

Temporary Change in Type of Use of a Water Right to Store Water

A change in the type of use of a water right to store water (reservoir right) may be made provided:

- (1) The district receives the written consent of the operator of the reservoir; and
- (2) The district is a lessor or co-lessor in a proposed instream lease pursuant to OAR 690-077-0077.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

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690-385-3130

Temporary Change in Type of Use from a Primary Right to a Supplemental Right

(1) A district may apply to change a primary right to a supplemental right. The use of water on the lands covered by a right temporarily diminished to supplemental is restricted to the total rate and duty described by the primary right.

(2) The right temporarily diminished to supplemental may be used only to the extent of any supply deficiency for the primary right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3140

Temporary Change in Point of Diversion or Appropriation

(1) As provided in ORS 540.570, a temporary change in point of diversion or appropriation may be made in combination with, or as necessary to facilitate, a change in place of use.

(2) A change in point of diversion is restricted to the same source of surface water. A change in point of appropriation is restricted to the same aquifer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3145

Temporary Change in Point of Diversion in Response to an Emergency

(1) As provided in ORS 540.570, a temporary change in point of diversion may be made in response to an emergency as defined in OAR 690-385-0100(19).

(2) A temporary change in point of diversion is restricted to the same source of surface water or to ground water from an unconfined aquifer that is hydraulically connected to the same source of surface water pursuant to OAR 690-385-3150.

(3) Pursuant to OAR 690-385-3000(1), a district may submit and the Department may approve an application for a temporary change in point of diversion in response to an emergency for a period of time not to exceed one irrigation season.

(4) If more than one irrigation season is necessary to correct the emergency under OAR 690-385-0100(19), a district shall submit an application for a temporary change in point of diversion for the succeeding irrigation season.

(5) Under this rule, a district may be limited to filing no more than two temporary transfer applications, for successive irrigation seasons, in response to the same emergency.

(6) An applicant shall not divert water from a temporary change in point of diversion in response to an emergency prior to:

(a) Submitting a complete application as required under OAR 690-385-3200(3)(a)(C) that lists the agencies and governments and contact names with whom the applicant has notified and consulted; and

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(b) Consulting with applicable state agencies such as ODFW and DSL, and applicable local governments and tribal governments about the temporary change in point of diversion.

(7) The Department shall consult with ODFW to determine whether a fish screen device is necessary for the diversion pursuant to OAR 690-385-3520.

(8) Pursuant to OAR 690-385-3500, a final order approving a temporary change in point of diversion in response to an emergency may include any conditions or restrictions necessary to prevent injury to another water right.

(9) If the proposed transfer affects an instream water right, the Department shall develop any conditions or restrictions necessary to prevent injury to the instream water right in consultation with the state agency that has management responsibility for the resources protected by the instream water right.

(10) The Department, may at any time upon determining a temporary change in point of diversion results in injury to an existing water right:

(a) Impose conditions to prevent injury; or

(b) Reject or revoke the change.

690-385-3150

Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation

(1) A district may, in accordance with the standards established by ORS 540.531(2), apply to transfer a point of diversion to allow the appropriation of groundwater. An application for such a transfer is subject to the requirements under section (2) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if the district temporary transfer application demonstrates:

(a) The new point of diversion appropriates groundwater from an unconfined aquifer that is hydraulically connected to the authorized surface source;

(b) The use of water at the proposed point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(c) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(d) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other

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requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(4) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(5) If after approving an application under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(6) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(7) For any transfer allowed under sections (1) to (5) of this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6).

(8) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects only the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Unconfined aquifer" means an aquifer in which the pressure at the upper surface of saturation is equal to atmospheric pressure.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3200

District Temporary Transfer Applications

(1) Each district temporary transfer application shall contain the standard information required by OAR 690-385-2000.

(2) Pursuant to ORS 540.570(3), a district temporary transfer application shall include a statement certifying the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right.

(3) In addition to the standard application information required under OAR 690-385-2000, temporary district transfer applications shall include the following information:

(a) For a change in point of diversion or appropriation, or a change from surface water point of diversion to ground water appropriation, the application shall include:

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

(A) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(B) If the request is for a change in point of appropriation, or a change in point of diversion to a ground water appropriation (well), copies of water well reports for the authorized and proposed point of appropriation. Each water well report shall be labeled to correctly identify and locate the well, and identify the well report as either the authorized or proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(C) If the request is for a change in point of diversion in response to an emergency, a listing of agencies, local and tribal governments, and the applicable contact names with whom the applicant has consulted about the change in point of diversion.

(b) For a change in type of use from a primary right to a supplemental right, the application shall identify the change from primary to supplemental for the applicable authorized and proposed place of use by its location within the public land survey, tax lot number, and the name of each user.

(c) For a change in type of use of a water right to store water, the application shall include:

(A) Written consent to the change in type of use from the operator of the reservoir, and

(B) If the water right to store water is issued in the name of a federal governmental agency, include written consent from the agency to the change in type of use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 540.570, ORS 540.574

Hist.: Renumbered from 690-021-0040 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3300

District Temporary Transfer Application Map Requirements

(1) A temporary district transfer application map shall meet the standards of OAR 690-385-2200.

(2) In addition, for the following transfers, the application map shall include:

(a) For a change from a surface water point of diversion to a ground water appropriation, if the proposed point of appropriation is intended to serve the entire right of record, a copy of the existing final proof survey or approved ORS 541.329 (House Bill 3111) map for the right of record may be submitted to satisfy this requirement. If the proposed point of appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of acres to be served by the new point of appropriation shall be listed.

(b) For a change in type of use from primary right to supplemental right, the location of the authorized and proposed place of use of the water. If the use is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be uniquely shaded or hachured to clearly identify affected lands, and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.

(c) For a change in type of use of a water right to store water, a copy of the final proof map for the water right subject to transfer.

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0050 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3400

District Temporary Transfer Application Notice and Review

(1) On receipt of a temporary district transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-3200 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication;

and

(c) Request public comments on the application

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0060 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3500

District Temporary Transfer Approval and Final Orders

A district temporary transfer application submitted according to ORS 540.570 and OAR 690-385-3200 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), the proof of completion has been approved under OAR 690-385-~~[7300]~~ **7600**;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district temporary water right transfers are met.

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3520

Fish Screening Devices

(1) Pursuant to ORS 540.570, when an application includes a temporary change in point of diversion, the Department shall consult with ODFW to determine whether a fish screen device is necessary to prevent fish from leaving the body of water and entering the diversion.

(2) The Department's consultation with ODFW shall determine whether the diversion is equipped with an appropriate fish screen device.

(3) If requested by ODFW, a condition requiring a proper fish screen device at the new point of diversion shall be included in any order of the Department approving a temporary change in point of diversion.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: f. & cert. ef. 11-16-2004

690-385-3600

Appeal of a Final Order Approving a District Temporary Transfer

A final order approving a district temporary transfer under OAR 690-385-3500 may be appealed by:

(1) Petitioning for judicial review of the final order pursuant to ORS 536.075(1); or

(2) Petitioning the Department for reconsideration of the final order pursuant to OAR Chapter 137, Division 004.

(3) A petition for reconsideration may include a request for a stay of the final order if the petition complies with the requirements of OAR Chapter 137, Division 004.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 183

Hist.: f. & cert. ef. 11-16-2004

District Permanent Transfers

690-385-4000

District Permanent Transfer Criteria

Pursuant to ORS 540.580, the Department may approve a district permanent transfer application to permanently change the place of use provided:

(1) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(2) The use authorized under the water use subject to transfer does not change;

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

- (3) The use of water under the water use subject to transfer will not result in enlargement of the right;
- (4) The change in place of use will not result in injury to any other existing water right; and
- (5) The district submits the permanent district transfer application to the Department:
 - (a) Before the change is allowed by the district, or
 - (b) Prior to the end of the calendar year in which the change occurred if notification of a change was submitted in accordance with OAR 690-385-4100.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4100

Notice of District Permanent Transfer

- (1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:
 - (a) The district files notice of the change in place of use under section (2) of this rule prior to making the change;
 - (b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and
 - (c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:
 - (A) Direct the district to cease delivery of water; or
 - (B) Require mitigation to avoid injury to other water rights.
- (2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:
 - (a) District name, mailing address, and phone number;
 - (b) Certificate number, or permit number if applicable, subject to the change;
 - (c) Names of affected users;
 - (d) Location of the affected lands according to public land survey description and tax lot number; and
 - (e) A map meeting the requirements of OAR 690-385-4300.
- (3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.
- (4) A district delivering notice to the local area Department Watermaster shall concurrently mail the form(s) (but not the map) described in section (2) of this rule to the Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).
- (5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:
 - (a) Direct the district to cease delivery of water to the affected lands; or

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**
Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

(b) Direct the district to mitigate the injury caused by the change.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4200

District Permanent Transfer Applications

Each district permanent transfer application shall contain the standard information required by OAR 690-385-2000.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 540.574, ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4300

District Permanent Transfer Application Map Requirements

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4400

District Permanent Transfer Application Notice and Review

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-4200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication;
and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4500

District Permanent Transfer Approval and Final Orders

A district permanent transfer application submitted according to ORS 540.580 and OAR 690-385-4000 shall be approved if the Department determines that:

- (1) The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), that proof of completion has been approved under OAR 690-385-7400;
- (2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);
- (3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and
- (4) Any other applicable requirements for district permanent water right transfers are met.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4580

Original Right Terminated by Final Order

Issuance of a final order approving a permanent change in place of use terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4600

Protests and Requests for Hearings

Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:

- (1) Within 30 days of mailing of the Department's weekly notice;
- (2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and
- (3) Protests shall be filed in accordance with OAR Chapter 690, Division 002, and shall include the fee required under ORS 536.050.
- (4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period.

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**
Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

(5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:

- (a) Refer the protest to the district to resolve; and
- (b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 183.310 – ORS 183.550, ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-4700

Hearings

(1) If a protest is filed under OAR 690-385-4600, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the water rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 183

Hist.: f. & cert. ef. 11-16-2004

District Permanent Transfers of Water Right for Nonuse

690-385-5000

District Permanent Transfer Criteria

Pursuant to ORS 540.572, the Department may approve a district permanent transfer application to permanently change the place of use of the water right appurtenant to land no longer irrigated or susceptible to irrigation provided:

(1) The district employs a full-time manager;

(2) The district is implementing an approved water management and conservation plan consistent with the requirements of OAR Chapter 690, Division 086;

(3) The proposed transfer involves the use of water on lands located within the boundaries of the district;

(4) The district has determined a user has not made beneficial use of water for four successive years; and

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

(5) The district provides notice to the user of intent to transfer the right and provides the user an opportunity to resolve the matter in the manner described by ORS 540.572 and OAR 690-385-5400 and OAR 690-385-5600.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.572

Hist.: Renumbered from 690-021-0090 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-5100

Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572

(1) Prior to submitting a district permanent transfer application under OAR 690-385-5200, a district shall provide written notice to the user and any security interest holders of record in the land to which the water right is appurtenant.

(2) Notice shall be sent by certified mail to the last known address of the user with a return receipt requested.

(3) The notice shall include:

(a) A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to submit an application to permanently transfer the water right pursuant to ORS 540.572.

(b) A statement that the user has a 30-day period, from the mailing date of the notice, in which to submit to the district a written objection to the proposed transfer application;

(c) A statement that the user shall notify the district, within the 30-day period described in subsection (3)(b) of this rule, if the user intends to demonstrate that the nonuse is excused by one of the provisions under ORS 540.610.

(d) A statement that the user may demonstrate beneficial use of the water right by:

(A) Beneficially irrigating the lands to which the water right is appurtenant prior to the end of the irrigation season of the fifth consecutive year of nonuse, or

(B) Making beneficial use of water under one of the qualifying programs of the Water Resources Department such as, but not limited to, submitting a water right transfer under OAR Chapter 690, Division 380 or a transfer to instream use under OAR Chapter 690, Division 077, prior to the end of the irrigation season of the fifth consecutive year of nonuse.

(e) A general description of the land according to public land survey description to which the water right is appurtenant;

(f) The number of acres of water right, by tax lot, for which the user is charged or assessed by the district and which the district intends to propose for transfer under OAR 690-385-5200;

(g) A description of the type of use described by the water right of record;

(h) A list of the name and address of security interest holders of record in the land to which the water right is appurtenant; and

(i) A request for the user to respond confirming that the information in the notice is correct.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.572

Hist.: Renumbered from 690-021-0110 by WRD 10-2004, f. & cert. ef. 11-16-2004

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**
Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

690-385-5200

District Permanent Transfer of Water Right for Nonuse Applications

- (1) Each district permanent transfer of water right for nonuse application shall contain the standard information required by OAR 690-385-2000; and
- (2) Include the following:
- (a) A copy of the notice required under OAR 690-385-5100 mailed by the district to the user;
 - (b) A copy of any objections to the proposed transfer received by the district within the 30-day time period following the mailing of notice under OAR 690-385-5100; and
 - (c) A copy of findings, determinations and conclusions resulting from any hearing held by the district to consider unresolved objections received in response to the notice required under OAR 690-385-5100.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.574, ORS 540.580

Hist.: Renumbered from 690-021-0140 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-5300

District Permanent Transfer of Water Right for Nonuse Application Map-Requirements

A district permanent transfer application map shall meet the standards of OAR 690-385-2200.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.574, ORS 540.580

Hist.: Renumbered from 690-021-0160 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-5400

Notice of Filing District Permanent Transfer of Water Right for Nonuse Application

- (1) Upon submitting a district permanent transfer application to the Department pursuant to ORS 540.572 and OAR 690-385-5000, a district shall:
- (a) Provide notice to the users of affected lands that a district permanent transfer application was submitted to the Department;
 - (b) Provide the users of affected lands a copy of the application and map; and
 - (c) Mail the notice, application, and map to the last known address of the affected users by certified mail with a request for a return receipt.
- (2) The notice under subsection 1(a) of this rule shall inform the users of affected lands that:
- (a) The Department shall approve the district permanent transfer application as provided under OAR 690-385-5600 unless:
 - (A) The application does not include the information required under OAR 690-385-5200; or
 - (B) The user, of lands from which water rights are to be transferred, submits a protest pursuant to OAR Chapter 690, Division 002.
 - (b) The user has the right to protest the application as described in OAR 690-385-5700.

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**
Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.576

Hist.: Renumbered from 690-021-0170 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-5500

District Permanent Transfer of Water Right for Nonuse Application Notice and Review

(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-5200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).

(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is not subject to transfer, the Department shall return the application and any fees to the district along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication;
and

(c) Request public comments on the application.

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.572, ORS 540.574, ORS 540.580

Hist.: Renumbered from 690-021-0200 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-5600

District Permanent Transfer of Water Right for Nonuse Approval and Final Orders

A district permanent transfer application submitted under ORS 540.572 and OAR 690-385-5000 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), that proof of completion has been approved under OAR 690-385-7400;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6);

(4) Any other applicable requirements for district permanent transfers of water right for nonuse are met;

(5) The district submitted the application no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610(1); and

(a) The district received no written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100; or

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**

Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

(b) The district board of directors submitted the permanent district transfer application after having:

- (A) Received written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100;
- (B) Failed to resolve the objections; and
- (C) Held a hearing to review and consider the objections.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.572 - ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-5680

Original Right Terminated by Final Order

Issuance of a final order approving a permanent change in place of use for nonuse terminates the right to use water at the previously authorized place of use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-5700

Protests and Requests for Hearings

(1) Approval of a district permanent transfer of water right for nonuse application under ORS 540.572 and OAR 690-385-5000, may be protested:

- (a) By any user; and
- (b) Within 60 days of mailing the notice under OAR 690-385-5400.

(2) Protests shall be filed in accordance with OAR Chapter 690, Division 002, and shall include the fee required under ORS 536.050.

(3) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.578

Hist.: f. & cert. ef. 11-16-2004

Bold, underlined text was proposed new text in the May 1, 2006 hearing draft: **example**
Strikethrough text in brackets was proposed to be removed in the May 1, 2006 hearing draft: [~~example~~]

Bold, double-underlined text is proposed new text in the final proposed rules: **example**

690-385-5800

Hearings

(1) If a protest is filed under OAR 690-385-5700, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 183, ORS 540.578

Hist.: f. & cert. ef. 11-16-2004

690-385-5900

Time Period to Process Permanent Transfer Application Exempt from Forfeiture

If a district submits a permanent transfer application under OAR 690-385 -5000 no later than the end of the calendar year of the fifth year of non-use under ORS 540.610(1), the forfeiture provision of ORS 540.610 shall not apply to the subject lands pending completion of the processing of the transfer application. The time required to process the application, including any time required for hearings, appeals and completion of the authorized changes, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.612

Hist.: Renumbered from 690-021-0250 by WRD 10-2004, f. & cert. ef. 11-16-2004

Miscellaneous Provisions

690-385-6000

Multiple Primary Water Rights on the Same Lands

If the water right records show two or more rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

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Completion and Perfection of Transferred Rights

690-385-7000

Time for Completion

(1) The time for a district to complete a transfer as authorized by a final order shall be one full year from the approval date plus an additional time until the next October 1. A longer time for completion may be allowed for good cause shown.

(2) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1).

(3) Extensions of time to complete a transfer may be granted pursuant to OAR 690-385-7200.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-7100

Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon issuance of a final order approving a transfer the water use subject to transfer becomes inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not used beneficially under the terms of the transfer final order, or within any extension of time allowed for completion, is deemed lost and constitutes a loss of water right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: f. & cert. ef. 11-16-2004

690-385-7200

Extension of the Time Limits

(1) If the transfer is not completed within the time allowed in the final order, a district may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence was made to complete the project within the initial time specified in the final order.

(2) A separate application requesting an extension of time to complete a transfer shall be submitted for each final order that authorizes the transfer of the water use subject to the extension request.

(3) The Department shall consider an application for extension of time received no later than the date specified in the final order for a district to submit proof of use under OAR 690-385-7400. The Department shall review and issue an order within 90 days of receipt of the application.

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(4) Failure of a district to submit an application and receive an order of the Department authorizing an extension of time to complete a transfer may lead to loss of the water right for failure to complete the transfer in accordance with OAR 690-385-7100(2).

(5) The Department may grant extensions for a 12 month time period, from October 1 to October 1. Extensions may be granted for longer time periods if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(6) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-385-7000. Applications for extension of time shall include:

(a) A listing and description of all construction and purchases related to installation of the water delivery system during the previous use perfection period;

(b) A description of any expansion or restructuring of the existing delivery system during the same period;

(c) A description of the extent to which the applicant has made actual use of water according to the terms of the transfer final order; and

(d) Information to indicate whether the applicant has complied with any conditions contained in the transfer final order.

(7) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (6) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: Renumbered from 690-021-0300 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-7400

Proof of Use; Noncompliance

(1) No later than one year following the date specified in a final order for a district to complete a transfer and apply water to beneficial use, a district shall provide the Department proof of use by submitting a final proof map according to OAR 690-385-7400(3) and a claim of beneficial use report according to OAR 690-385-7400(4).

(2) Districts may self-certify proof of use and are not required to have a certified water rights examiner prepare a final proof map and file a claim of beneficial use report.

(3) Districts shall file a final proof map consistent with the map standards of OAR 690-385-2200 within the time limit specified in the transfer final order, and certify the map as accurate.

(4) Districts shall file a claim of beneficial use report on forms acceptable to the Department. The claim of beneficial use report shall contain the following information:

(a) The district's name, mailing address, and telephone number;

(b) The transfer number assigned by the Department to the application;

(c) The district assigned number for Notice of Permanent District Transfer, if applicable;.

(d) The certificate number, or permit number if no certificate has been issued for the subject water right;

(e) The date of priority;

(f) The type of use;

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- (g) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user;
- (h) A description of the diversion, headgate, canal, or district conveyance system used to deliver water to the authorized place of use;
- (i) A description of the method for applying water to beneficial use at the authorized place of use;
- (j) A description of the beneficial use to which water is applied;
- (k) A description of the method used to calculate the extent of beneficial use on the lands or place of use authorized by the final order approving a transfer;
- (l) A statement that the district has inspected the authorized place of use and confirms the change has been made consistent with the terms and conditions of the final order; and
- (m) The signature of the District Board Chairperson, or if the Board has delegated authority, the signature of the district manager.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: Renumbered from 690-021-0350 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-7600

Proof of Completion of Change

- (1) The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:
 - (a) A determination by the Department that the application of water to beneficial use under the terms of the transfer final order was completed to the extent authorized; or
 - (b) A determination by the Department that the application of water to a beneficial use under the terms of the transfer final order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the water right.
- (2) The Department shall prepare a proposed water right certificate if it determines that proof has been made to an extent different or less than that approved. The proposed certificate shall describe the right determined completed under the provisions of the transfer final order. The proposed certificate shall be mailed first class to the district and affected user, together with notice that the district and affected user has a period of 60 days from date of mailing to request the Department reconsider the contents of the proposed water right certificate. If no request for reconsideration is received within the 60-day period, the Department shall issue a water right certificate pursuant to ORS 540.530(2).
- (3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:
 - (a) Whether the district or users within the district requested issuance of a new certificate;
 - (b) The number of permanent district transfers for which satisfactory proof has been determined;
 - (c) The frequency and trend in transfer applications submitted by a district; and

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(d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: Renumbered from 690-021-0600 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-7800

Request for Reconsideration

(1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the district or user. The petition shall describe the disagreement with the proposed certificate.

(2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(3) The director may allow reasonable time beyond the time set under OAR 690-385-7600(2) for a district or user to complete and submit a written petition for reconsideration.

(4) Upon receipt of a petition for reconsideration, the director shall:

(a) Approve the petition without verification and issue a certificate with the changes included; or

(b) Schedule field verification of the requested changes and pursuant thereto approve or deny the petition; or

(c) Deny it by letter to the requesting person.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-385-7600(2).

(6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by order of the director. The order shall provide for either issuance of a water right certificate in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR Chapter 690, Division 002.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.580

Hist.: Renumbered from 690-021-0700 by WRD 10-2004, f. & cert. ef. 11-16-2004

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