



# Oregon Water Resources Congress

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June 8, 2006

Water Resources Department  
Attn: Rule Coordinator  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271

Subject: Comments on proposed amendments to OAR Chapter 690, Division 385  
(District Water Right Transfers)

The Oregon Water Resources Congress (OWRC) appreciates the opportunity to comment on the proposed amendments to OAR Chapter 690, 385 (District Water Right Transfers).

OWRC represents irrigation districts, water supply districts, and other public and private entities that deliver non-potable water for irrigation in Oregon.

During the 2005 Legislative Session, OWRC requested House Bill 2875 be introduced in order to ensure there is statutory authority for an irrigation district to transfer its point of diversion when an emergency rendered the district's existing point of diversion inoperable. This legislation was the direct result of a failure in one of our member district's delivery system caused by minor earthquakes on Mt. Hood a few years ago. On behalf of our members, I want to express our thanks to the Department for its assistance in moving this legislation through the Legislature last year.

We appreciate the Water Resources Department's staff efforts in drafting these proposed rule amendments to reflect the emergency situation in which these provisions avoided shutting off water to farmers during an irrigation season. Other than the two comments provided below, we support these proposed amendments in the May 1, 2006, Hearing Draft.

We have two specific comments on the proposed amendments adding 690-385-3145:

1. Add "or groundwater that is shown to be hydraulically connected to the authorized source of surface water as listed in OAR 690-385-3150 (2) (a) – (d)." to subsection (2). This would be consistent with other temporary district transfers.
2. Delete "to determine whether a fish screen device is necessary for the diversion pursuant to OAR 690-385-3520" as redundant language given the reference to section 3520.

Thank you for the opportunity to provide these comments.

Sincerely,



Anita Winkler  
Executive Director

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SALEM OREGON

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources.



# WATERWATCH

PROTECTING NATURAL FLOWS IN OREGON RIVERS

June 8, 2006

Rules Coordinator  
Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271

Re: Comments, Division 385, Temporary District Transfers

Dear Rules Coordinator,

Thank you for the opportunity to comment on these draft rules. WaterWatch is a non-profit river conservation group dedicated to the restoration and protection of natural flows in Oregon's rivers and streams for fish, wildlife, recreation, pollution abatement and a sound economy. Our comments on these draft rules are as follows:


The statutes governing district are very clear---temporary district transfers cannot result in injury to existing water rights. ORS 540.570(2). However, the overall rules governing temporary district transfers do not ensure against injury as they do not require that the WRD make an injury determination and approve the transfer before the applicant actually begins diverting water. All the applicant has to do is submit its application to affect the change in use. While this point was not necessarily the subject of this rulemaking, we urge the Commission to use this opportunity to amend the District Temporary Transfer rules so that the districts cannot in fact start diverting under their temporary transfer until the temporary transfer is approved. Given WRD workloads, and the rules lack of processing deadlines on these applications, it is in fact possible that a district could start diverting once they submit an application, use their water right all irrigation season to the detriment of another water right holder (including instream water rights), and not be told to stop diverting until the end of the irrigation season if that is when the WRD gets around to processing this. We have been told by the WRD that they don't envision this happening, but the fact of the matter is, the rules allow this scenario to take place. The rules, in whole, should be amended to require WRD approval prior to allowing the districts to make temporary changes. Only in this way will the rules in fact be in compliance with the governing statute.

With regards to the specific provisions of the draft rules before the Commission we have the following comments:

OAR 690-385-3145(b)---if, in consultation with ODFW, ODFW identifies concerns with the proposed change the WRD needs to be notified of this in writing. Moreover, in such an instance, the applicant should be prevented from diverting at the new point of diversion until the WRD has approved the application. As noted previously, if language is not included to this end, then even if the District is aware that the WRD would likely find injury, it could go ahead and begin diverting from a point of diversion that will injure other water rights and continue to use this water in an injurious manner until that time that WRD processes the application drafts a final order. Given that there are no timelines for WRD review, this could allow injury for as long as it takes for the WRD to get around to processing the District temporary transfer. Again, the statutory directive is that the transfer "will not result in injury to any existing water right." ORS 540.570(1). These rules do not ensure this.

Thank you for this opportunity to comment.

Sincerely,



Kimberley Priestley

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# Oregon

Theodore R. Kulongoski, Governor

## Department of Fish and Wildlife

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WATER RESOURCES DEPT  
SALEM, OREGON

Attn: Greg Nelson, Rule Coordinator  
Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1271  
(Sent by fax to 503-986-0903)

RE: OAR 690-385; Temporary change in point of diversion in response to an emergency

Dear Greg:

The Oregon Department of Fish and Wildlife (ODFW) has reviewed the above mentioned rule change. ODFW supports the rule change for the following reasons:

- 1) Fish screening is required if ODFW determines that it is needed to protect fish resources.
- 2) The length of time allowed for the temporary change is limited to the need created by the emergency, with an expectation that the change will be no more than 2 years.
- 3) If an in-stream water right may be injured as a result of the temporary change, the applying agency will be involved in determining conditions to prevent the injury.

Thank you for the opportunity to comment.

Sincerely,

Jill Zarnowitz  
Water Policy Coordinator

cc: Rick Kepler