

WATER RESOURCES DEPARTMENT

DIVISION 382

GROUND WATER REGISTRATION MODIFICATIONS

690-382-0010

Purpose

(1) The rules in OAR chapter 690, division 382 establish the requirements and procedures to be used by the Department to evaluate an application to modify a ground water certificate of registration. The rules describe the requirements for changing the point of appropriation, place of use, or character of use of a certificate of registration.

(2) No change in point of appropriation, place of use, or character of use of a certificate of registration may be made except as provided under these rules and OAR chapter 690, division 380.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 382. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground water registration.

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(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;

(b) Increasing the acreage irrigated under a certificate of registration;

(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 appropriation than is legally available to that certificate of registration at the original point of appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right or certificate of registration.

(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.

(7) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the certificate of registration is appurtenant.

(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.

(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county

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describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(10) "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.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

690-382-0200

Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a registration modification, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

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(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to modify a layered certificate of registration should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A certificate of registration that the applicant designates as being for supplemental irrigation use may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the certificate of registration is to be moved.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0300

Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

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(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

690-382-0400

Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on the certificate of registration.

(4) Certificate of registration number for the registration to be modified.

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.

(6) Source of water as described on the certificate of registration.

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(7) Date of priority.

(8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The authorized and proposed use of water, if applicable.

(10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(13) For a change in point of appropriation, copies of water well reports for the authorized and 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 ground water body developed or proposed to be developed.

(14) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

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(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

(15) An oath that the information contained in the application is true and accurate.

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in OAR 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition

of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(17) The signature of the applicant, and if an entity, the title of the person signing the form.

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, \$[350] **775**.

(b) For examination of all other applications to modify a certificate of registration, \$[500] **1,125**.

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Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0450

Existing Documentation of Modifications

If documentation of a modification under a ground water registration was on file with the Department prior to July 22, 2005, the Department shall provide an application for recognition of the modification described in the notice priority with respect to processing other applications for recognition of ground water registration modifications. An application filed under OAR 690-382-0400 may incorporate by reference information about the modification that is on file with the Department.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0500

Fee Refunds

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the Department's recognition of the modification , the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(18)(b).

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

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690-382-0600

Request for Comments

(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required by OAR 690-382-0400.

(2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(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; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0700

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-382-0600(4), the Department shall prepare a preliminary determination of whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

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- (a) The proposed modification would result in enlargement;
 - (b) The proposed modification would result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;
 - (c) The proposed modification would result in injury; and
 - (d) Any other requirements for registration modifications are met.
- (3) For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:
- (a) Describe the basis for the Department's conclusions; and
 - (b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.
- (4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be included in the modification, or to withdraw the application.
- (5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information:
- (a) A report of ownership information as defined in OAR 690-382-0100(7) for the land to which the certificate of registration is appurtenant;
 - (b) A copy of any water right conveyance agreement(s) for the land to which the certificate of registration is appurtenant; and
 - (c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:

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(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;

(B) Notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.

(6) The report of ownership information required under subsection (5)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the certificate of registration has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(7) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.

(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

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690-382-0800

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall issue the preliminary determination and give notice of the application to modify the registration and the preliminary determination:

(a) By publication in the Department's weekly notice;

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

(2) The notice shall include the following information about the application:

(a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required OAR 690-382-0600;

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the registration to be modified, and the authorized source for the registration;

(c) The registration and certificate numbers;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later;

(f) A summary of the Department's preliminary determination; and

(g) For a notice published in a newspaper, the date on which the last publication will occur.

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(3) The cost of publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)(b) and providing the Department with an affidavit of publication or by paying the costs of the publication in advance to the Department.

(4) On issuance of the preliminary determination, the Department shall mail to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice. The Department shall allow the applicant a period of not fewer than 45 days after mailing of the preliminary determination to provide the Department with the affidavit required under section (3) of this rule.

(5) No notice by publication in a newspaper is required for:

(a) A change in place of use; or

(b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.

(6) The Department shall not take action on an application prior to the end of the protest period described in this rule.

(7) The Department may deny recognition of the modification if the applicant fails to provide the Department with the affidavit required under section (3) of this rule within the period allowed under section (4) of this rule.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0900

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.

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(2) A person filing a protest must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest must 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 may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-382-0100(8) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1000

Recognition of Modifications

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

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(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements for modification of the certificate of registration are met.

(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in 690-382-0700 if no protests are received under 690-382-0900.

(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.

(4) The order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1100

Hearings

(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:

(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;

(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or

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(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.

(2) Notice and conduct of the hearing shall 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.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-382-1200

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-0070(13).

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in 690-005-0040 (Resolution of Land Use Dispute).

(3) The Director may presume that the certificate modification would be allowed by, and compatible with comprehensive plans unless an affected local government informs the

Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-382-0800.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

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