

RULEMAKING IMPLEMENTING HB 2133

The purpose of this rulemaking is to implement HB 2133 (Chapter 51, Oregon Laws 2011). This proposal affects the following Oregon Water Resources Department administrative rule divisions: OAR 690-053; OAR 690-077; OAR 690-310; OAR 690-315; OAR 690-330; OAR 690-380; OAR 690-382; and OAR 690-385.

DIVISION 53 - HYDROELECTRIC LICENSE, POWER CLAIM AND CERTIFICATE AMENDMENTS

690-053-0015

Notice Requirements

(1) The Department shall give notice of amendment applications received by publication in the Department's weekly notice "Public Notice of Water Use Requests." Any person interested in an amendment application shall submit written comments to the Department within 30 days of the weekly notice or the last day of the newspaper notice in 690-053-0015(2), whichever is later.

(2) After notice is published by the Department, the applicant shall arrange for publication of a notice provided by the Department in an appropriate newspaper having general circulation in the area in which the hydroelectric facility is located for a period of at least three weeks and not less than one publication each week. The applicant shall provide the Department with a certificate of publication.

(3) The notice must include the following information about the application:

(a) The application and project file number.

(b) The county of use.

(c) The type of amendment proposed.

(d) The applicants name and address.

(e) The date by which comments on the amendment application must be received by the Department.

(f) A statement that upon issuance of a draft proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality.

(4) The Department shall [*mail*] **send** notice of all amendment applications to the planning departments of affected local governments, Indian tribes with lands inside the project boundary or with hunting and fishing rights within the project boundary, state natural resource agencies and the Hydroelectric Application Review Team if one was formed, and any federal agencies with jurisdiction over the project. Agency comments must be received within 30 days after the last date of publication shown on the notice to file comments. **Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.**

Stat. Auth.: ORS 543.092 & ORS 536.027
Stats. Implemented: ORS 543.092 & ORS 543A
Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0030

Public Hearing

(1) Based on review of the application, public comments received, the size of the project and other pertinent information, the Director will determine whether a public meeting and a request for additional studies or consultation will be required.

(2) The public meeting may be omitted under one or more of the following circumstances:

(a) The project generates less than 100 theoretical horsepower of electricity;

(b) The proposed amendment does not involve a change in the annual amount of water used; or

(c) The proposed amendment is one agreed upon by the Department and the affected resource agencies; or

(d) No public comments were received raising substantial issues.

(3) If the Director determines a public meeting is required, notice will be [*mailed*] **sent** two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment process. **Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.**

Stat. Auth.: ORS 543.092 & ORS 536.027
Stats. Implemented: ORS 543.092 & ORS 543A
Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

690-053-0035

Issuance of Amendment Order

(1) In developing the proposed order, the Department shall consider all comments received under OAR-690-053-0015 and 0030, but the proposed order need not separately address each comment received.

(2) The proposed order shall include findings of fact and conclusions of law that show the standards in OAR 690-053-0020 and 0025 are met.

(3) The Department shall **send by regular mail, or with the consent of the recipient, by electronic means**, copies of the proposed order to the applicant and to persons who have requested copies. Within 15 days after issuing the proposed order, the Department shall publish notice of the order in the weekly notice published by the Department.

Stat. Auth.: ORS 543.092 & ORS 536.027
Stats. Implemented: ORS 543.092 & ORS 543A
Hist.: WRD 2-2001, f. & cert. ef. 3-30-01

DIVISION 77 - INSTREAM WATER RIGHTS

690-077-0029

Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

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

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-077-0027, the Department shall **send by regular mail, or with the consent of the recipient, by electronic means** to the applicant an initial review report setting forth the Department's preliminary determinations and allow the applicant 14 days from the date the Department [mails] **sends** the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application. If the Department receives no timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.025, 536.027, 537.150 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01

690-077-0031

Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-077-0029(2), the Department shall give public notice of the application in the weekly notice published by the Department. The weekly notice shall be [transmitted] **sent** to the following:

(a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(b) Affected Indian tribes; and

(c) All persons on the Department's weekly mailing list.

(2) The notice shall include a request for comments on the application, the date by which comments must be received by the Department, and information about how an interested person may obtain future notices about the application and a copy of the proposed final order. The notice also shall include the following information about the application:

(a) The name(s) and address(es) of the applicant agency(ies);

(b) County(ies) of water use;

(c) Application file number;

(d) Description of the characteristics and the purpose of the proposed instream water right;

(e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation;

(f) Common name of surface water source(s); and

(g) The stream reach by mile or geographic location.

(3) The notice shall be [*transmitted*] **sent** by regular United States mail, or [*at the request*] **with the consent** of the recipient, [*transmitted electronically*] **by electronic means**.

(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department [*deposits*] **sends** the notice [*in the mail of the United States Postal Service*]. All comments must be received by the Department on or before the end of the 30-day comment period.

(5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 537.140 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1995(Temp), f. & cert. ef. 8-4-95;

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert. ef. 10-2-06

690-077-0039

Proposed Final Order

(1) In developing the proposed final order, the Department shall consider all comments received under OAR 690-077-0031 and all findings of the Department, but the proposed final order need not separately address each comment received.

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

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

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

(c) An assessment of water availability and the amount of water necessary for the proposed use;

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

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft certificate, including any proposed modifications, conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the Department.

(3) The Department shall *[mail]* **send** copies of the proposed final order to the applicant **by regular mail, or with the consent of the recipient, by electronic means.** *[and]* **The Department shall send copies of the proposed final order by regular mail** to persons **other than the applicant** who have requested copies and paid the fee required under ORS 536.050.

(4) Within seven days after issuing the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-077-0031, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-077-0043(4).

Stat. Auth.: ORS 536.025, 536.027, 537.153 & 537.338

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06

DIVISION 310 - WATER RIGHT APPLICATION PROCESSING

690-310-0080

Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

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

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in 690-310-0070, the Department shall **send by regular mail, or with the consent of the recipient, by electronic means** to the applicant an initial review report setting forth the Department's preliminary determinations. The applicant shall have 14 days from the date the Department [*mails*] **sends** the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application and all except \$50 of any fees paid by the applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.027

Stats. Implemented: [ORS 537.150](#) & [ORS 537.620](#)

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

690-310-0090

Public Notice and Comments

(1) Within seven days after proceeding with the application under OAR 690-310-0080(2), the Department shall give public notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review

the application or obtain a copy of the application. The notice also shall include the following information about the application:

- (a) Type of water use application;
- (b) County of water use;
- (c) Application file number;
- (d) Applicant name and address;
- (e) Amount of proposed water use in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
- (f) Common name of surface water source(s) or basin;
- (g) Nature of use; and
- (h) Location of the proposed point of diversion by section quarter/quarter, township and range.

(2) The weekly notice shall be *[transmitted]* **sent** to the following:

- (a) Affected local, state and federal agencies, including the planning Departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location;
- (b) Property owners listed on an application pursuant to OAR 690-310-0040;
- (c) Affected Indian tribes; and
- (d) All persons on the Department's weekly mailing list.

(3) The notice shall be *[transmitted]* **sent** by regular United States mail or, *[at the request]* **with the consent** of the recipient, *[transmitted electronically]* **by electronic means.**

(4) Within 30 days after the public notice under section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who requests a copy of the Department's proposed final order shall submit to the Department a written request accompanied by the fee required under [ORS 536.050\(1\)](#). The 30-day comment period shall commence on the day the Department *[deposits]* **sends** the notice *[in the mail of the United States Postal Service]*. All comments must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

(5) If the land use information required under OAR 690-310-0040(1)(a)(L) is not received by the Department within the 30-day comment period, the Department shall conclude that the requirement for obtaining land use information has been satisfied and may presume the proposed use is compatible with the comprehensive land use plans and land use regulations of affected local governments.

Stat. Auth.: ORS 536.025 & [ORS 536.027](#)

Stats. Implemented: [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.150](#), ORS 537.620, [ORS 537.338](#) & [ORS 537.356](#) - [ORS 537.358](#)

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0155

690-310-0100

Completion of Application Review; Additional Information and Proposed Final Order

Within 60 days after the Department proceeds with the application under OAR 690-310-0080(2), the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail, **or with the consent of the recipient, by electronic means**. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department [*mails*] **sends** the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-310-0260 by the date specified in the request, the Department may reject the application and may refund fees in accordance with ORS 536.050(3). The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this subsection.

Stat. Auth.: ORS 536.027

Stats. Implemented: [ORS 537.153](#) & [ORS 537.621](#)

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

690-310-0150

Proposed Final Order

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011

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

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

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

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

(c) An assessment of water availability;

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

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

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

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

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

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

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

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

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011

(l) The date by which protests to the proposed final order and requests for standing must be received by the Department; and

(m) The date by which the applicant must request a contested case hearing under OAR 690-310-0170.

(3) The Department shall *[mail]* **send** copies of the proposed final order to the applicant **by regular mail, or with the consent of the recipient, by electronic means.** *[and]* **The Department shall send copies of the proposed final order by regular mail** to persons **other than the applicant** who have requested copies and paid the fee required under ORS 536.050. Within seven days after issuing the proposed final order, the Department also shall publish notice of the proposed final order by publication in the weekly notice published by the Department. In addition to the information required to be published for an application under OAR 690-310-0090, the notice of the proposed final order also shall include a brief explanation of the requirement to raise all issues under OAR 690-310-0160(4).

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 5-2004, f. & cert. ef. 6-15-04

DIVISION 315 - WATER RIGHT PERMIT EXTENSIONS

690-315-0050

Department Action on Extension Applications

If the Department finds an applicant has submitted a completed application as required in 690-315-0020 or 690-315-0030, the Department shall process the application as established in this rule.

(1) The Department shall publish notice of the extension application in its weekly public notice prior to issuance of a proposed final order on the extension request. The notice shall include a request for comments on the application, the date by which comments must be received by the Department and information about how an interested person may review or obtain a copy of the application. The comment period shall be at least 30 days. The notice shall also include the following information about the permit and the extension application:

(a) Applicant name and address;

Text in italics (*example*) is proposed to be removed from existing text.

Text in bold (**example**) is proposed to be added to existing text.

(b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;

(c) Common name of water source(s) listed in the permit;

(d) Permit number;

(e) Use allowed in the permit;

(f) Proposed extended date of completion; and

(g) A statement that copy fees are required to receive a proposed final order.

(2) After consideration of the administrative record, including but not limited to any comments filed on the extension application, the Department shall issue a proposed final order granting the extension request, with or without additional conditions, or denying the extension request. The Department is not required to respond directly to comments, but may respond to the issue, if applicable and relevant to the decision, within the proposed final order.

(3) The Department shall *[mail]* **send** the proposed final order issued under subsection (2) of this rule to the applicant **by regular mail, or with the consent of the recipient, by electronic means.** *[and]* **The Department shall send** a copy of the proposed final order **by regular mail** to any person **other than the applicant** who submitted comments and has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

(4) Permit time extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(5) Extension orders may include, but are not limited to, any condition or provision needed to:

(a) Ensure future diligence;

(b) Mitigate the effects of the subsequent development on competing demands on the resource; and

(c) Periodically document the continued need for the permit.

(6) For extensions exceeding five years, the Department shall establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit

pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports described in subsection (6)(a) of this rule in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98

DIVISION 330 - WATER RIGHT CERTIFICATES

690-330-0010

Proof of Appropriation

(1) ORS 537.250(1) and 537.630(3) prescribe that the Director shall issue a certificate of water right upon satisfactory proof of appropriation. Satisfactory proof shall be following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the permit has been accomplished to the extent authorized;

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the permit was accomplished to an extent less than authorized shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be *[mailed]* **sent by first class mail** to the permittee at the last known address, **or with the consent of the recipient, by**

electronic means together with notice that the permittee or landowner has a period of 60 days from the date [*of mailing*] **the proposed certificate was sent within which** to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to [ORS 537.250\(1\)](#) or [537.630 \(4\)](#).

(3) If the Department determines that proof has been made on the full extent granted by the permit, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & [ORS 536.027](#)

Stats. Implemented: [ORS 536.220](#), [ORS 536.300](#), [ORS 536.310](#), [ORS 537.250](#), ORS 537.338, [ORS 537.356 - ORS 537.358](#), [ORS 537.630](#) & [ORS 540](#) & [ORS 543](#)

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-11-110; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0225

DIVISION 380 - WATER RIGHT TRANSFERS - General Provisions

690-380-4000

Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

(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 applicant 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 file the application and request public comments on the application:

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

(b) By **regular mail, or with the consent of the recipient, by electronic means** to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011

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

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4020

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 transfer application and 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 water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week; and

(c) By *[mailing]* **sending by regular mail, or with the consent of the recipient, by electronic means** a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

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

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required under OAR 690-380-4000;

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

(c) The application file number;

(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;

Text in italics (*example*) is proposed to be removed from existing text.

Text in bold (**example**) is proposed to be added to existing text.

(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.

(3) As provided in ORS 540.520(5), 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 **send by regular mail, or with the consent of the recipient, by electronic means** 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;

(b) A change in point of diversion or appropriation to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or

(c) Applications for a change in the point of diversion or appropriation of less than one-fourth mile and where there are no intervening diversions or wells between the old point of diversion or appropriation and the proposed new point of diversion or appropriation.

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

(7) 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, the Department shall request written notification that the applicant either:

(a) Published the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant published the notice, the applicant shall include the affidavit required under OAR 690-380-4020(3); or

(b) Requests the Department to publish the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant requests the Department to publish the notice, the

applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs not to exceed twenty (20) percent.

(8) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice if the applicant fails to respond with the required information within 30 days after the Department mails a request under section (7) of this rule.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520 & 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0080; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-6040

Proof of Completion of Change

(1) The director shall issue a certificate of water right upon satisfactory proof of completing the change or changes authorized by a transfer approval order. Satisfactory proof shall be one of the following:

(a) A determination by the Department that appropriation of water to beneficial use under the terms of the transfer approval order was completed to the extent authorized; or

(b) A determination by the Department that appropriation of water to a beneficial use under the terms of the transfer approval order was completed to an extent less than authorized. Such determination shall constitute proof for that portion of the appropriation.

(2) If the Department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be *[mailed]* **sent by first class mail, or with the consent of the recipient, by electronic means** to the transferee, together with notice that the transferee or the landowner has a period of 60 days from **the date [of mailing] the proposed certificate was sent within which** to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the director shall issue a water right certificate to the transferee or landowner pursuant to ORS 540.530(2) and the transfer approval order.

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011

(3) If the Department determines that proof has been made to the full extent granted by the approval order, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0120

DIVISION 382 - GROUND WATER REGISTRATION MODIFICATIONS

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 **regular mail, or with the consent of the recipient, by electronic means** 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.

690-382-0800

Notice of Preliminary Determination

Text in italics (*example*) is proposed to be removed from existing text.

Text in bold (**example**) is proposed to be added to existing text.

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011

(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]* **sending by regular mail, or with the consent of the recipient, by electronic means** 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.

(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 **send by regular mail, or with the consent of the recipient, by electronic means** 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

DIVISION 385 - DISTRICT WATER RIGHT TRANSFERS - General Provisions

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 **send by mail or by electronic means** 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
- (b) Direct the district to mitigate the injury caused by the change.

Public Hearing Draft
HB 2133 Rulemaking
October 1, 2011
Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

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*] **posting** 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 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. 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, 183.310-183.550, 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7600

Proof of Completion of Change

Text in italics (*example*) is proposed to be removed from existing text.
Text in bold (**example**) is proposed to be added to existing text.

(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]* **sent by first class mail, or with the consent of the recipient, by electronic means** to the district and affected user, together with notice that the district and affected user has a period of 60 days from **the date [of mailing] the proposed certificate was sent within which** 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

(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 & 536.027

Stats. Implemented: ORS 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; Renumbered from 690-021-0600, WRD 9-2004, f. & cert. ef. 11-16-04

Text in italics (*example*) is proposed to be removed from existing text.

Text in bold (**example**) is proposed to be added to existing text.

