

RULEMAKING IMPLEMENTING HB 2135

The purpose of this rulemaking is to implement changes in administrative rule that are consistent with HB 2135 (Chapter 52, Oregon Laws 2011). This proposal affects the following Oregon Water Resources Department administrative rule divisions: OAR 690-013; 690-018; 690-019; 690-053; 690-310; 690-380; 690-382

DIVISION 13 - PETITION TO CHANGE DEPARTMENT RECORDS WITHIN WATER DISTRICTS

690-013-0310

Processing of Petition

(1) When the Department receives a petition and map the Director shall examine the petition and map under OAR 690-013-0350. If, after the petitioner has had an opportunity to correct identified deficiencies, this examination shows that the district has met the requirements of ORS 541.325 to 541.333 and that the proposed changes would not result in injury to existing water rights, the Director shall issue a proposed order approving the petition as submitted or as modified. If the Director proposes to deny a petition, the Commission shall hold a hearing as described in section (5) of this rule.

(2) The Director shall provide public notice of all proposed orders through publication in the Department's **Weekly Summary of Applications Filed**. The Director shall also mail a summary of the proposed order to the planning department of each affected local government, to a newspaper of general circulation within the affected area, to any person who has requested notification of proposals and any other parties the Director determines should be notified. These notice requirements shall not affect petitioner's notice responsibilities under [ORS 541.329](#).

(3) Within 30 days after a proposed order is issued the petitioner shall provide notice to the owners of all lands whose rights, as recorded in the state's records or in the district's records, would be altered by the proposed order. This notice shall be sent to the last-known address of the landowner, with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the landowner is being assessed, if any, a general description or tax lot number of the land whose right will be altered, and a description of the use. In addition to the notice of the proposed order sent to the landowners, **for proposed orders issued by the Department prior to February 1, 2012**, the petitioner shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks, **but for proposed orders issued on or after February 1, 2012, for a period of**

at least two weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive;

(b) That the proposed map and order are available for inspection at the office of the petitioner during normal business hours for a period of 120 days from the date of first publication;

(c) That 120 days after the date of first publication, the Commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of [ORS 541.325 to 541.333](#); and

(d) That a landowner whose right of record is to be altered by the proposed order has the right to protest the proposed order and map.

(4) Any landowner or user whose rights, as recorded in either the state's records or the district's records, would be altered by the petition may file with the Water Resources Commission, within 120 days after the date of first newspaper publication, as provided in section (3) of this rule, a protest against a proposed order approving the petition. Any person may file comments on the proposed order within 120 days of the date of first newspaper publication. The Director may work with any person or agency submitting protests or comments and the petitioner to determine whether the issues can be resolved through mutually agreeable conditions, or by modifications to the proposal. Whenever a timely protest cannot be resolved, the Commission shall schedule a hearing to consider the protest. The Commission shall also schedule a hearing whenever, in its opinion, considering timely comments received, it is necessary to determine:

(a) If the petitioner has met the requirements of [ORS 541.325 to 541.333](#);

(b) If the petition may result in injury to existing water rights. The hearing shall be conducted according to the provisions of [ORS 183.310 to 183.550](#) applicable to contested cases.

(5) If after examination or hearing, the Commission finds that:

(a) The petitioner has met the requirements of [ORS 541.325 to 541.333](#); and

(b) That the changes described in the proposed order would not result in injury to existing rights; then

(c) The Commission shall issue a final order approving the petition and map as described in the proposed order. If the Commission cannot make the findings in subsections (a) and (b) of this section then the final order may modify or deny the petition, and may include

conditions, as necessary to ensure that existing water rights are not injured. However, no final order denying a petition shall be issued before holding a hearing on the denial. If a final order approving a petition is issued, and if a water right has been issued previously, the Commission shall cancel the previous certificate and issue a new certificate that conforms to the final order and map and retains the original priority date.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 541.325 - [ORS 541.333](#)
Stats. Implemented: [ORS 537.325](#) - [ORS 541.333](#)
Hist.: WRD 4-1994, f. & cert. ef. 3-25-94

DIVISION 18 - ALLOCATION OF CONSERVED WATER

690-018-0050

Processing a Conservation Application

(1) When the Department receives an application for allocation of conserved water, the Director shall provide public notice of the application through:

(a) Publication in a newspaper having general circulation in the area in which the water rights addressed in the application are located, for a period of at least three weeks and not less than one publication each week **for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week;** and

(b) Concurrent with the date of first publication pursuant to subsection (a) of this section, mailing to individuals, organizations and agencies including the Indian tribes and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the Director determines should be notified.

(2) As provided in ORS 540.520(5), the cost of the 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)(a) and providing the Department with an affidavit of publication or paying the costs of the publication in advance to the Department.

(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specified in the notice shall

provide at least 20 days after the date of last publication pursuant to subsection (1)(a) of this rule for the submittal of comments.

(4) The Department shall review the application and consider any comments received under section (3) of this rule to determine:

(a) If the proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights;

(b) If the proposed allocation of conserved water will harm existing water rights;

(c) If the application is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans);

(d) The quantity of conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water that may be allocated;

(e) The new rate and duty for the existing water rights held by the applicant and for any out-of-stream use of the conserved water rights;

(f) In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, if conserved water is needed to support instream uses;

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3);

(h) The areas within which the conserved water may be used for out-of-stream purposes and the stream reaches to which the conserved water may be dedicated for instream purposes;

(i) The periods to be allowed for the applicants to file a notice of completion of the conservation measures and to request that the allocation be finalized pursuant to OAR 690-018-0062. The time allowed between filing the notice of completion of the conservation measures and requesting that the allocation be finalized shall not exceed five years; and

(j) Any other conditions or limitations to be included in the new water rights, including conditions or limitations to prevent or mitigate for harm to existing water rights.

(5) The Department shall provide notice of the determination under section (4) of this rule to the applicant and to each person who commented on the application for allocation of conserved water in response to the public notice under section (3) of this rule.

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

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

(6) If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the determination provided pursuant to section (5) of this rule, the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application

(7) If no protests are received or if the protests are resolved pursuant to section (6) of this rule, the Director shall issue an order consistent with the determination and including any agreed-upon conditions. An order approving an application shall provide for issuance of a certificate superseding the original certificate at the reduced rate and duty and for allocation of the conserved water, contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062.

(8) If protests are received raising issues that cannot be resolved pursuant to section (6) of this rule, the Director shall present the application, all protests and a recommendation for action to the Commission for review and action.

(9) The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with these rules, the Commission may authorize the Director to issue an order approving the application.

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

Stat. Auth.: ORS 536.025, 536.027 & 537.480

Stats. Implemented: ORS 537.455-537.500

Hist.: WRD 19-1988, f. & cert. ef. 11-4-88; WRD 3-1990, f. & cert. ef. 2-28-90; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD 15-1994, f. & cert. ef. 12-23-94; WRD 7-2004, f. & cert. ef. 11-5-04

DIVISION 19 - DROUGHT MITIGATION

690-019-0080

Option or Agreement for Use of Existing Right

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) In order to plan for and mitigate the effects of severe, continuing drought, a local government, public corporation, or water right holder may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area. If approved as provided in sections (2) to (6) of this rule, an option or agreement may be exercised during a period of declared drought after the parties to the option or agreement notify the Department.

(2) Water used under the terms of an approved option or agreement may be used at locations, at points of diversion and for beneficial uses other than those described in the water right.

(3) The holder of the option or agreement is not required to construct any diversion or other appropriation facilities or works.

(4)(a) An option or agreement proposed under section (1) of this rule shall be subject to approval of the Director or Commission. The Director must find that the use of water under the proposed option or agreement will not cause injury to existing water rights and will not impair or be detrimental to the public interest;

(b) A local government, public corporation, or water right holder proposing an option or agreement shall submit an application to the Director. The application shall be accompanied by the fee set forth in ORS 536.050(1)(a). The application shall include the following information:

(A) The name of the local government, public corporation, or water right holder applying for approval of the option or agreement;

(B) The name of the holder of the permitted, certificated, or decreed water right that will be affected by the option or agreement;

(C) A copy of the water right permit, certificate or decree that shall be affected by the option or agreement;

(D) A copy of the proposed option or agreement;

(E) A statement that the water is intended for in-stream use, or a description of the lands on which the water is currently used, and a description of the lands on which the water shall be used under the option or agreement;

(F) Evidence that the water to be used under the option or agreement has been used over the past five years according to the terms and conditions of the owner's permitted, certificated, or decreed water right.

(G) If not intended for in-stream use, evidence that the water shall be used to supplement an existing water right held by the local government, public corporation, or water right holder and that water is not available under the existing right.

(5) Upon receipt of an application for an option or agreement, the Director will provide notice in the regular weekly notice of the Department pertaining to applications received and by publication once a week for at least *[three]* **two** successive weeks in a newspaper having general circulation in the area in which the water supply for the permitted, certificated or decreed water right is located and in which the option or agreement shall be exercised. The Director shall not take action on an application until at least 20 days after the last date the notice appeared in the newspaper.

(6) Any person whose use of water under an existing water right may be affected by the option or agreement, or any person who represents a public interest that may be affected by the option or agreement, may file a protest against approval of the application with the Department. The protest shall be filed with the Department within 30 days from the date of the first publication. If the petitioner seeks to protect a use of water under an existing water right, the protest shall contain a detailed statement of the petitioner's water use and how the use may be affected by approval of the option or agreement. If the petitioner represents a public interest, the protest shall contain a detailed statement of such public interest and the manner in which the public interest shall be affected by the option or agreement.

(7) Whenever a timely protest is filed or in the opinion of the Director a hearing is necessary to determine whether the exercise of a proposed option or agreement will result in injury to an existing water right or may impair or be detrimental to the public interest, the Director shall schedule a hearing and refer the matter to the Commission for final determination. Notice and conduct of the hearing shall be in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases, and the hearing shall be held in the area where the underlying water rights that are subject to the proposed option or agreement are located unless all parties agree to a different location.

(8) If, after a hearing by the Commission or examination by the Director, it is found that the option or agreement can be implemented without injury to existing water rights or impairment or detriment to the public interest, the Director shall issue an order approving the option or agreement. The order shall:

(a) Contain conditions describing the period of time in which use may occur and include a limitation that use may occur under the option or agreement only after a declaration of severe, continuing drought has been made by the Governor, and use may not continue after the drought declaration has been rescinded;

(b) Include any other conditions the Director deems appropriate, including but not limited to water use conservation, measurement and curtailment measures; and

(c) Remain in effect until terminated by the parties to the option or agreement or by order of the Commission or Director.

(9) The Director may review any order issued under subsection (8) of this section to determine whether the order shall be continued in effect, modified or terminated in order to insure protection of other existing water rights and the public interest. Before making such determination the Director shall provide notice and an opportunity for hearing in the manner described in subsections (2) to (6) of this section.

(10) Any proposed change to a previously-approved option or agreement shall be submitted to the Director for approval before the changes may be implemented. Upon receipt of any proposed change, the Director shall proceed as described in subsection (5) of this section. If the Director determines that the proposed change substantially alters the previously-approved option or agreement, the Director may request additional information to review the proposed change. Prior to the date the Director may take action on the change, any person wishing to protest may proceed as allowed under subsection (6) of this section. Only the proposed change may be addressed in the process. The Director shall then proceed as per subsections (5), (6), (7), and (8) of this section.

(11) The Commission may enter into an option or agreement for the use of water under an existing permitted, certificated or decreed water right within a designated drought area during the time in which a severe, continuing drought is declared to exist. Water used under the terms of an approved option or agreement may be used at locations, at points of diversion, and for beneficial uses other than those described in the water right. The total use of water by the water right holder and the Commission must be within the rate, volume and seasonal limits of the water right, and must not cause injury to any other water right.

(12) When the Governor declares that a severe, continuing drought exists, the Commission, a local government, a public corporation, or water right holder may proceed with the terms of an approved option or agreement. In addition to the conditions in the agreement, the terms of the use shall be as follows:

(a) Use may begin at any time, but the total use shall be limited to the rate, volume, acreage, time and other limits of the existing water right; and

(b) The local watermaster shall be given written, advance notice of intent to proceed;

(c) Measuring and reporting requirements may be a condition of use required by the Director.

(13) Use or nonuse of water under the terms of an approved option or agreement shall not be considered by the Department in a determination of abandonment of a perfected and developed water right under ORS 540.610(1).

Stat. Auth.: ORS 536.700 - ORS 536.780

Stats. Implemented: ORS 536.700 - ORS 536.780

Hist.: WRD 7-1990, f. & cert. ef. 6-25-90; WRD 8-1994, f. & cert. ef. 8-2-94; WRD 3-1995, f. & cert. ef. 6-14-95; WRD 6-2001, f. & cert. ef. 10-8-01

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*] **two** 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 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.

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 310 - WATER RIGHT APPLICATION PROCESSING

690-310-0020

Requirement to Notify Owner of Land Crossed by Proposed Ditch, Canal or Other Work

(1) The Department shall not issue a permit without notifying the owner, as identified in the application, of any land to be crossed by a proposed ditch, canal or other work as set forth in the application. The Department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(2) If more than 25 persons are identified in the application as required under OAR 690-310-0040(1)(a)(F), the Department may provide the notice required under section (1) of this rule by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least *three* **two** successive weeks. The cost of the publication shall be paid by the applicant in advance to the Department. The applicant may satisfy this requirement by arranging for the publication in an appropriate newspaper and providing the Department with a certificate of publication.

Stat. Auth.: ORS 536.027
Stats. Implemented: [ORS 537.130](#)
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96

DIVISION 380 - WATER RIGHT TRANSFERS - General Provisions

690-380-2260

Exchanges of Water

(1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.

(2) After receipt of a complete exchange application, the Department shall give at least 30 days public notice of the application:

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

(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks **for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, at least once each week for two successive weeks.**

(3) Any person may submit comments by the date identified in the notices prescribed by subsections (2)(a) and (b) of this rule.

(4) After the comment period prescribed in section (2) of this rule, the Director shall:

(a) Issue a proposed order approving or denying the application in compliance with ORS 540.537 taking into account comments received under section (3) of this rule; and

(b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed order.

(5) If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentors to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.

(6) After the public hearing, the Commission may:

(a) Confirm the Director's decision and authorize issuance of a final order;

(b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or

(c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS 183.310 to 183.550.

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 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 **for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week;** and

(c) By mailing 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;

(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.

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

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

(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 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;

(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

DIVISION 382 - GROUND WATER REGISTRATION MODIFICATIONS

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 **for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two 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.

(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