

## CONSISTENCY WITH STATUTE AND TECHNICAL CHANGES RULEMAKING

The purpose of this rulemaking is to make certain administrative rules consistent with statute and to affect technical changes. This proposal affects the following Oregon Water Resources Department administrative rule divisions: OAR 690-013; 690-018; 690-053; 690-077; 690-300; 690-310; 690-380; 690-382.

### **DIVISION 13 - PETITION TO CHANGE DEPARTMENT RECORDS WITHIN WATER DISTRICTS**

#### **690-013-0100**

##### **District Petitions**

The district petition shall include:

(1) A listing of:

(a) All of the applicable water rights on lands within the district boundaries;

(b) Only the lands where water use changes have occurred. If the change involves part of a section quarter-quarter, all water rights in the quarter-quarter must be requested; or

(c) A portion of the district to provide a clear record of the water rights. If a portion involves part of a section quarter-quarter, the entire quarter-quarter must be requested. Any part of the district that no longer matches the Department map or certificate should be included in the petition.

(2) A listing of all completed transfers appurtenant to the lands listed.

(3) A map meeting the requirements of OAR [690-0130-200] **690-013-0200**.

(4) A description of the land to which each water right is appurtenant, including the township, range, section, quarter-quarter and assessor's tax lot number. The water right shall be described by the number of acres within each quarter-quarter, the use and the user's name. If a tax lot covers more than one quarter-quarter, it shall be listed in each quarter-quarter.

(5) A description of the district's legal boundaries.

(6) A description of the type(s) of use made on each parcel listed in the petition.

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

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

(7) A list containing the total number of acres:

- (a) Contained in the petition;
- (b) Assessed by the district as of July 1, 1989; and
- (c) Assessed by the district as of July 1, 1993.

(8) A statement of whether the U.S. Secretary of the Interior must assent to inclusion of lands within the district's boundaries. If the Secretary's assent is required but has not yet been given, the petition must include a copy of the district's request for the Secretary's assent.

Stat. Auth.: ORS 541.325 - [ORS 541.333](#)

Stats. Implemented: [ORS 537.325](#) - [ORS 541.333](#)

Hist.: WRD 1-1990, f. & cert. ef. 1-11-90; 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; 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 **in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and the indirect costs which may not exceed twenty (20) percent of the direct costs.** *[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.

(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 53 - HYDROELECTRIC LICENSE, POWER CLAIM AND  
CERTIFICATE AMENDMENTS**

**690-053-0030**

**Public Hearing [ ] g**

(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 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.

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**

**690-077-0077**

**Processing an Instream Lease Application**

(1) On receipt of a lease application, the Department shall include notice of the application in its weekly public notice mailing list and post it in the applicable watermaster office.

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

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

(2) A written assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend the original water use and avoid injury or enlargement;

(3) When the Department initially reviews a lease application, particular attention shall be given to potential sources of enlargement or injury. Examples include but are not limited to: issues related to rate and duty, or total volume being changed; the allotment of stored water available to the owner of a storage right in the year leased; the role of return flows; conveyance losses downstream of the original point of diversion; potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the priority date of instream water rights; whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and issues potentially arising from water users that share a conveyance system. Any allegations of injury to existing water rights or enlargement of the original water right that are received within 21 days of the date of mailing of the weekly public notice shall be reviewed by the parties to the lease before the Department issues an order approving or denying the lease application. If no comments are received the Department may presume that no injury or enlargement will result from the proposed lease.

(4) If the Department determines that the proposed lease may cause injury to existing water rights or enlargement of the original right, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

(5) If a lease is for more than one year the parties shall review any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. If injury or enlargement claims are valid and cannot be prevented the Department shall issue an order terminating the lease.

(6) In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to continue.

(7) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(3)(c) shall conform to the provisions of 690-077-0015(7) and (8) and 690-077-0075(2).

(8) Except as provided in OAR 690-077-0079, a lease involving a water right that is limited to a season of use or a duty of water for a season or year shall only allow the use

of the original water right or the instream right, not both, during any one season unless the source is from stored water.

(9) If the water right being leased has an associated primary or supplemental water right, the lessor(s) shall assure that neither right is being exercised under the original right during the term of the lease unless the lease is for the use of water legally stored under a supplemental water right. In the case of supplemental stored water, an order approving a lease may be issued that does not restrict the use of the primary source.

(10) Nothing in these rules shall be interpreted to prevent the renewal of a lease application or to prevent outside agreements for longer terms that will be activated by an order approving a lease when needed to establish an instream water right in a particular season or at a particular time. A renewal shall be subject to the provisions of this rule.

(11) Water rights for which an order has been issued approving a lease application under OAR 690-077-0077 are considered to be beneficially used for each year that the lease establishes an instream water right.

(12) A lessee has the same standing as the lessor for all purposes regarding management and enforcement of the instream water right.

(13) Copies of orders approving a lease application shall be distributed to all parties, filed with the appropriate watermaster, and tracked on the Department's water rights information system.

(14) Leases that are executed under the provisions of ORS 536.720 to 536.780 "Emergency Water Shortage Powers" shall not be subject to provisions of these rules. Those leases are covered by OAR chapter 690 division 19.

(15) Except as provided in Sections (4) and (5) of this rule, orders approving lease applications shall only be terminated by a [*superceding*] **superseding** order or by specific provision of the originating order approving the lease application.

Stat. Auth.: ORS 536.027 & 537.332 - 539.360

Stats. Implemented:

Hist.: WRD 1-1995, f. & cert. ef. 2-14-95; WRD 8-2001, f. & cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06

## **DIVISION 300 – DEFINITIONS**

### **690-300-0010**

#### **Definitions**

The following definitions apply in OAR Chapter 690, Divisions 15, 310, 320, 330, 340, and 350 and to any permits, certificates or transfers issued under these rules:

(1) "Affected Local Government" means any local government as defined in OAR 690-005-0015 within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved permit, water right transfer, or certificate.

(2) "Agricultural Water Use" means the use of water related to the production of agricultural products. These uses include, but are not limited to, construction, operation and maintenance of agricultural facilities and livestock sanitation at farms, ranches, dairies and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, animal waste management, barn or farm sanitation, dairy operation, and fire control. Such use shall not include irrigation.

(3) "Aquatic Life Water Use" means the use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

(4) "Artificial Groundwater Recharge" means the intentional addition of water to a groundwater reservoir by diversion from another source.

(5) "Beneficial Use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

(6) "Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include *[the]* irrigation or landscape maintenance of more than 1/2 acre.

**Notwithstanding this definition, exempt commercial water use under Division 340 does not include irrigation or landscape maintenance.**

(7) "Comment" means a written statement concerning a particular proposed water use. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.

(8) "Commission" means the Water Resources Commission.

(9) "Contested Case" means a hearing before the Department or Commission as defined in [ORS 183.310\(2\)](#) and conducted according to the procedures described in ORS Chapter 53, [ORS 183.413 - 183.497](#) and OAR Chapter 690, Division 2.

(10) "Cranberry Use" means all necessary beneficial uses of water for growing, protecting and harvesting cranberries. Examples of these uses include, but are not limited to, irrigation of cranberries or other crops in rotation, chemical application, flooding for harvesting or pest control, and temperature control.

(11) "Deficiency of Rate Right" means an additional right allowed from the same source for the same use at the same place of use when an earlier right does not allow a full duty or rate of flow of water.

(12) "Department" means the Water Resources Department.

(13) "Director" means the Director of the Department.

(14) "Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

(15) "Domestic Use Expanded" means the use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or noncommercial garden.

(16) "Drainage Basin", as used in OAR 690-340-0020, 690-340-0030 and 690-340-0050, means hydrologic unit delineated as a cataloging unit by the US geological Survey Office of Water Data Coordination on the State Hydrologic Unit map.

(17) "Fire Protection Water Use" means the use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

(18) "Fish Bypass Structure", as used in OAR 690-340-0010, means any pipe, flume, open channel or other means of conveyance that transports fish that have entered a water diversion structure back to the body of water from which the fish were diverted.

(19) "Fish Screen", as used in OAR 690-340-0010, means a screen, bar, rack trap or other barrier at a water diversion to entrap or provide adequate protection for fish populations, including related improvements necessary to insure its effective operation.

(20) "Fishway," as used in OAR 690-340-0010, means any structure, facility or device used to facilitate upstream or downstream passage of fish through, over or around any man-made or natural barrier to free movement.

(21) "Forestland and Rangeland Management," as used in Chapter 595, Oregon Laws 1993, means water used for operations conducted on or pertaining to forestlands and rangelands. Such uses may include, but are not limited to, reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation.

(22) "Groundwater Reservoir" means a designated body of standing or moving groundwater as defined in [ORS 537.515\(5\)](#).

(23) "Group Domestic Water Use" means the use of water for domestic water use by more than one residence or dwelling unit.

(24) "Human Consumption" means the use of water for the purposes of drinking, cooking, and sanitation.

(25) "Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre.

**Notwithstanding this definition, exempt industrial water use under Division 340 does not include irrigation or landscape maintenance.**

(26) "Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

(27) "Mining Water Use" means the use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control. Examples of mining include, but are not limited to, aggregate, hard rock, heap leach and placer mining.

(28) "Municipal Corporation" means any county, city, town or district as defined in [ORS 198.010](#) or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses.

(29) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power.

(30) "Nursery Operations Use" means the use of water for operation of a commercial nursery which may include temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities. The use of water within plant nursery operations constitutes a different use from field irrigation, although that may be a part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the defined agricultural irrigation season.

(31) "Off-Channel" means outside a natural waterway of perceptible extent which, during average water years, seasonally or continuously contains moving water that flows off the property owned by the applicant and has a definite bed and banks which serve to confine the water. "Off-channel" may include the collection of storm water run-off, snow melt or seepage which, during average water years, does not flow through a defined channel and does not flow off the property owned by the applicant.

(32) "Planned" means a determination has been made for a specific course of action either by a legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by both the public and private sector.

(33) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this section. Such uses include, but are not limited to, the uses approved in the policies, provisions, and maps contained in acknowledged city and county comprehensive plans and land use regulations.

(34) "Pollution Abatement or Pollution Prevention Water Use" means the use of water to dilute, transport or prevent pollution.

(35) "Power Development Water Use" means the use of the flow of water to develop electrical or mechanical power. Examples of these uses include, but are not limited to, the use of water for the operation of a hydraulic ram or water wheel and hydroelectric power production.

(36) "Primary Right" means the right to store water in a reservoir or the water right designated by the commission as the principle water supply for the authorized use, or if no designation has been made, the first in time or initial appropriation.

(37) "Proposed Certificate" means a draft version of a water right certificate describing the elements and extent of the water right developed under the terms of a permit or transfer approval order, as determined by field investigation.

(38) "Protest" means a written statement expressing disagreement with a proposed final order that is filed in the manner and has the content described in [ORS 537.145](#) to [537.240](#).

(39) "Public Corporation" means a corporation which operates subject to control by a local government entity or officers of a local government and which, at least in part, is organized to serve a public purpose of, and receives public funds or other support having monetary value, from such government.

(40) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A quasi-municipal water right shall not be granted the statutory municipal preferences given to a municipality under [ORS 537.190\(2\)](#), [537.230\(1\)](#), [537.352](#), [537.410\(2\)](#), [540.510\(3\)](#), [540.610\(2\)](#), (3), or those preferences over minimum streamflows designated in a basin program.

(41) "Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation.

(42) "Recharge Permit" means a permit for the appropriation of water for the purpose of artificial groundwater recharge.

(43) "Recreation Water Use" means the use of water for play, relaxation or amusement. Examples of these uses include, but are not limited to boating, fishing, wading, swimming, and scenic values.

(44) "Riparian Area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, or ephemeral, intermittent or perennial stream.

(45) "Secondary Groundwater Permit" means a permit for the appropriation of groundwater which was stored through the exercise of a recharge permit or certificate.

(46) "Stockwater Use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

(47) "Storage" means the retention or impoundment of surface or groundwater by artificial means for public or private uses and benefits.

(48) "Stored Recharge Water" means groundwater which results from artificial groundwater recharge.

(49) "Storage Account" means a net volume of artificially recharged groundwater which is calculated for a single recharge activity from a formula specified in a single recharge permit which records additions to a groundwater reservoir by artificial recharge and depletions from a groundwater reservoir by pumping and natural losses.

(50) "Storm Water Management Water Use" means the use or storage of water in any structure or drainage way that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement, flood control or property protection. It may also include, but is not limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as storm water quality facilities.

(51) "Stream or Riparian Area Enhancement Water Use" means the use of water to restore or enhance a stream or riparian area.

(52) "Supplemental Water Right or Supplemental Water Use Permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary water right.

(53) "Surplus Waters" means all waters in excess of those needed to satisfy current existing rights and minimum streamflows established by the Commission.

(54) "Temperature Control" means the use of water to protect a growing crop from damage from extreme temperatures.

(55) "Transfer" means a change of use or place of use or point of diversion of a water right.

(56) "Wastewater" means water that has been diverted under an authorized water right after it is beyond the control of the owner or that right but has not yet returned to the channel of a natural stream. In an irrigation district, the wastewater of an individual user is not subject to appropriation until it leaves the boundaries of the district. Wastewater

abandoned to the channel of a natural stream becomes a part of that stream and is subject to appropriation.

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(a) The requested source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or

(b) If the requested source is already over-appropriated for any portion of the period of use proposed in a new application:

(A) The applicant can show the proposed use requires water only during the period of time in which the requested source is not already over-appropriated;

(B) The applicant has obtained or has shown the applicant can obtain authorization to use water from an alternate source to provide water needed during any period of use in which the source is over-appropriated; or

(C) If the applicant has shown they can obtain authorization to use water from an alternate source during the time water is unavailable, the department conditions the approval of the application to require that prior to diversion of water the applicant obtains authorization for use of water from the alternate source.

(c) For surface water applications received before July 17, 1992, the provisions of subsection (a) of this section shall apply except that the determination of whether a requested source is over-appropriated under OAR 690-400-0010 and 690-410-0070 shall be based upon whether the quantity of water available during a specified period is not sufficient to meet the expected demands for all water rights at least 50 percent of the time during that period.

(58) "Water Availability Analysis" means the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use.

(59) "Water Right Subject to a Transfer" means a right established by a court decree or evidenced by a valid water right certificate, or a right for which proof of beneficial use of water under a water right permit or transfer has been submitted to and approved by the Director but for which a certificate has not yet been issued.

(60) "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(61) "Wetland Enhancement Water Use" means the use of water to restore, create, or enhance or maintain wetland resources.

(62) "Wildlife Water Use" means the use of water by or for sustaining wildlife species and their habitat.

Stat. Auth.: ORS 536.027

Stats. Implemented: [ORS 536](#), [ORS 537](#), [ORS 539](#), [ORS 540](#) & ORS 541

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 4-1993, f. & cert. ef. 10-7-93; WRD 6-1993, f. & cert. ef. 11-30-93; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 7-1994, f. & cert. ef. 6-14-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0010; WRD 3-1996, f. & cert. ef. 3-15-96; WRD 2-1998, f. & cert. ef. 10-13-98

## **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 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

## 690-310-0050

### Map to Accompany Application for Water Use Permit

- (1) Each application shall be accompanied by a map or drawing which shall be considered a part of the application.
- (2) Maps submitted with water use applications shall meet the following criteria:
  - (a) The application map, which is made part of the record, shall be of permanent quality and drawn in ink or otherwise printed in an indelible form with sufficient clarity so as to be easily reproduced;
  - (b) Maps shall be drawn on good-quality paper. If the map is larger than 11 inches by 17 inches, *[four]* **one additional** *[copies]* **copy** must be submitted *[or the map must be drawn on tracing linen, tracing vellum or mylar]*;
  - (c) All maps shall be drawn to a standard, even scale of not less than 4 inches = 1 mile. **The map may be of another standard scale if the Department grants, by mail or electronic means, advance approval of the use of the scale.** All maps must include the scale to which the map is drawn and a north directional symbol.
- (3) A platted and recorded subdivision map, deed description survey map or county assessor may be submitted as the application map if all of the required information is clearly shown.
- (4) Each copy of the map shall show clearly each of the following requirements that apply to the proposed appropriation:
  - (a) The location of each diversion point, well, or dam by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner);
  - (b) The location of main canals, ditches, pipelines, or flumes;
  - (c) The location of the place where water is to be used identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. The Department also shall accept any locational coordinate information that the applicant may wish to provide, including latitude and longitude as established by a global positioning system. If for irrigation, the area to be

irrigated in each quarter-quarter of a section shall be indicated by shading or hatching and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated.

Stat. Auth.: ORS 536.027

Stats. Implemented: [ORS 537.140](#) & [ORS 537.615](#)

Hist.: WRD 6-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 51-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0070

## **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.

(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 – ORS 540.532] **540.533 – 540.543**

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

## **690-380-3100**

### **Map Requirements**

(1) A map shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) Except as otherwise provided under OAR chapter 690, division 380 or 382, the map shall be prepared by a certified water right examiner.

(b) The map shall be of permanent quality and shall be printed with dark ink on a [*white or clear medium*] **good quality paper** that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

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

(d) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if [*three*] **one additional** [*copies*] **copy is** [*of the application map and an electronic file of the map in a format approved by the Department are*] submitted.

(e) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

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

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

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

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

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

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

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

(i) If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.

(j) If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).

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

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

(b) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original;

- (c) The location of each existing and proposed point of diversion or appropriation;
- (d) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;
- (e) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;
- (f) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;
- (g) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;
- (h) Notwithstanding the requirements of subsection (1)(g), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;
- (i) Notwithstanding the requirements of subsection (1)(g), the general location of physical features sufficient to assist in defining
- the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

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

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0070; 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 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.

(3) As provided in ORS 540.520(5), the cost of publication in a newspaper shall be paid by the applicant **in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.** *[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, **and a request for payment for the cost of publishing 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.]* **The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.**

(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)~~ **(7)** The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice **within the period allowed under section (3) of this rule** *[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; 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 **in advance of the publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.** *[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 **and a request for payment for the cost of publishing 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.]* **The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.**

(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*] **to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) 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