

HB 2133; HB 215; CONSISTENCY WITH STATUTE AND TECHNICAL CHANGES

These rules reflect a compilation of final proposed changes resulting from three separate rulemakings undertaken to implement HB 2133 (relating to electronic communications); implement HB 2135 (relating to reductions in newspaper notice requirements), and to make certain existing administrative rules are consistent with statute. This compilation of final proposed rules affect the following Oregon Water Resources Department administrative rule divisions: OAR 690-013; 690-018; 690-019; 690-053; 690-077; 690-300; 690-310; 690-315; 690-330; 690-380; 690-382; and 690-385.

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.
- (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

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-

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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 **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 19 - DROUGHT MITIGATION

690-019-0080

Option or Agreement for Use of Existing Right

(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;

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(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.

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- (b) The county of use.
- (c) The type of amendment proposed.
- (d) The applicants name and address.
- (e) The date by which comments on the amendment application must be received by the Department.
- (f) A statement that upon issuance of a draft proposed final order any person may file with the Department a protest against the approval of the application on the grounds of injury to an existing water right and impacts to fish and wildlife values or water quality.

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

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

690-053-0030

Public Hearin [] 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*] sent two weeks prior to the meeting to the applicant and to any person or agency submitting comments within the prescribed comment period or who participated in any earlier proceedings in the amendment process. **Notice shall be sent by regular mail, or with the consent of the recipient, by electronic means.**

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

690-053-0035

Issuance of Amendment Order

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

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

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

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

DIVISION 77 - INSTREAM WATER RIGHTS

690-077-0029

Initial Review

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

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

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

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

Stats. Implemented: ORS 537.332 - 537.360

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

690-077-0031

Public Notice and Comments

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

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

(b) Affected Indian tribes; and

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

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

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

(b) County(ies) of water use;

(c) Application file number;

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 537.332 - 537.360

Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1995(Temp), f. & cert. ef. 8-4-95;
WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024; WRD 8-2001, f. &
cert. ef. 12-14-01; WRD 4-2006, f. & cert .ef. 10-2-06

690-077-0039

Proposed Final Order

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

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

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

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

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

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

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

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

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

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

(3) The Department shall [*mail*] **send** copies of the proposed final order to the applicant **by regular mail, or with the consent of the recipient, by electronic means.** [*and*] **The**

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Department shall send copies of the proposed final order by regular mail to persons **other than the applicant** who have requested copies and paid the fee required under ORS 536.050.

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

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

Stats. Implemented: ORS 537.332 - 537.360

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

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.

(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.

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

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

- (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 (HB 2135) [*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

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

690-310-0080

Initial Review

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

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

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in 690-310-0070, the Department shall **send by regular mail, or with the consent of the recipient, by electronic means** to the applicant an initial review report setting forth the Department's preliminary determinations. The applicant shall have 14 days from the date the Department [*mails*] **sends** the initial review report within which to notify the Department

to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application and all except \$50 of any fees paid by the applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.027

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

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

690-310-0090

Public Notice and Comments

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

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

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

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

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

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

(b) Property owners listed on an application pursuant to OAR 690-310-0040;

(c) Affected Indian tribes; and

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

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

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

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

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

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

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

690-310-0100

Completion of Application Review; Additional Information and Proposed Final Order

Within 60 days after the Department proceeds with the application under OAR 690-310-0080(2), the Department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within the 60-day period, the Department may request the

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

Stat. Auth.: ORS 536.027

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

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

690-310-0150

Proposed Final Order

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

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

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

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

(c) An assessment of water availability;

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

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

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

- (g) If the application is for the use of ground water, an assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;
- (h) Whether the rebuttable presumption set forth in OAR 690-310-0110 or 690-310-0130 has been established;
- (i) If the public interest presumption is established, the Department's determination as to whether the presumption is overcome.
- (j) An assessment of the measures, if any, proposed by the applicant to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters;
- (k) A draft permit, including any proposed conditions, or a recommendation to deny the application;
- (l) The date by which protests to the proposed final order and requests for standing must be received by the Department; and
- (m) The date by which the applicant must request a contested case hearing under OAR 690-310-0170.

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

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.153 & 537.621

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

DIVISION 315 - WATER RIGHT PERMIT EXTENSIONS

690-315-0050

Department Action on Extension Applications

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

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

- (a) Applicant name and address;
- (b) Amount of water use permitted in gallons per minute (gpm), cubic feet per second (cfs) or acre feet (af) of storage;
- (c) Common name of water source(s) listed in the permit;
- (d) Permit number;
- (e) Use allowed in the permit;
- (f) Proposed extended date of completion; and
- (g) A statement that copy fees are required to receive a proposed final order.

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

(3) The Department shall *[mail]* **send** the proposed final order issued under subsection (2) of this rule to the applicant **by regular mail, or with the consent of the recipient, by electronic means.** *[and]* **The Department shall send** a copy of the proposed final order **by regular mail** to any person **other than the applicant** who submitted comments and

has paid the copy fee required under ORS 536.050. The Department shall also publish notice of the proposed final order in the weekly notice published by the Department.

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

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

(a) Ensure future diligence;

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

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

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

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

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

Stat. Auth.: ORS 536.025 & 536.027

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

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

DIVISION 330 - WATER RIGHT CERTIFICATES

690-330-0010

Proof of Appropriation

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

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

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

(2) If the Department determines that proof has been made to an extent different from or less than that granted by the permit, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the permit. The proposed certificate shall be *[mailed]* **sent by first class mail** to the permittee at the last known address, **or with the consent of the recipient, by electronic means** together with notice that the permittee or landowner has a period of 60 days from the date *[of mailing]* **the proposed certificate was sent within which** to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the Director shall issue a water right certificate to the permittee pursuant to [ORS 537.250\(1\)](#) or 537.630 (4).

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

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

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

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

DIVISION 380 - WATER RIGHT TRANSFERS - General Provisions

690-380-2260

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 – 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

690-380-4000

Request for Comments

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

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

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

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

4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

690-380-4020

Notice of Preliminary Determination

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

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

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week **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*] **sending by regular mail, or with the consent of the recipient, by electronic means** a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

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

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

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

(c) The application file number;

(d) The applicant's name and address;

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

(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 (HB 2133) **send by regular mail, or with the consent of the recipient, by electronic means** to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice, **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

690-380-6040

Proof of Completion of Change

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

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

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

(2) If the Department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

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

DIVISION 382 - GROUND WATER REGISTRATION MODIFICATIONS

690-382-0600

Request for Comments

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

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

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

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

(b) By **regular mail, or with the consent of the recipient, by electronic means** to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

690-382-0800

Notice of Preliminary Determination

(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*] **sending by regular mail, or with the consent of the recipient, by electronic means** a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

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

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

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

(c) The registration and certificate numbers;

(d) The applicant's name and address;

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

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

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

(3) The cost of publication in a newspaper shall be paid by the applicant **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 (2133) **send by regular mail, or with the consent of the recipient, by electronic means** to the applicant

a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice **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

DIVISION 385 - DISTRICT WATER RIGHT TRANSFERS - General Provisions

690-385-4100

Notice of District Permanent Transfer

(1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:

(a) The district files notice of the change in place of use under section (2) of this rule prior to making the change;

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

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

- (b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and
- (c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:
- (A) Direct the district to cease delivery of water; or
 - (B) Require mitigation to avoid injury to other water rights.
- (2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:
- (a) District name, mailing address, and phone number;
 - (b) Certificate number, or permit number if applicable, subject to the change;
 - (c) Names of affected users;
 - (d) Location of the affected lands according to public land survey description and tax lot number; and
 - (e) A map meeting the requirements of OAR 690-385-4300.
- (3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.
- (4) A district delivering notice to the local area Department Watermaster shall concurrently **send by mail or by electronic means** the form(s) (but not the map) described in section (2) of this rule to the Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).
- (5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:
- (a) Direct the district to cease delivery of water to the affected lands; or
 - (b) Direct the district to mitigate the injury caused by the change.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-4600

Protests and Requests for Hearings

Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:

- (1) Within 30 days of [*mailing of*] **posting** the Department's weekly notice;
- (2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and
- (3) Protests shall be filed in accordance with OAR 690, division 002, and shall include the fee required under ORS 536.050.
- (4) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.
- (5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:
 - (a) Refer the protest to the district to resolve; and
 - (b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 536.050, 183.310-183.550, 540.580
Hist.: WRD 9-2004, f. & cert. ef. 11-16-04

690-385-7600

Proof of Completion of Change

(1) The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:

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

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

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

(3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:

(a) Whether the district or users within the district requested issuance of a new certificate;

(b) The number of permanent district transfers for which satisfactory proof has been determined;

(c) The frequency and trend in transfer applications submitted by a district; and

(d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.580

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

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

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