

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 380
WATER RIGHT TRANSFERS**

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General Provisions

690-380-0010

Purpose

(1) The rules in OAR chapter 690, division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the character of use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.

(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR chapter 690, division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in 537.132 provided the water use complies with the requirements under 540.510(3)(a)(A) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, division 385, however, a petition for the change must be submitted to the Department by the district;

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;

(e) A change in point of diversion in response to government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;

(f) A change in point of diversion or appropriation or a change in place of use under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9);

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;

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(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0001; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-0090

Applicability

The rules in OAR 690, division 380 shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July 1, 2003 except as follows:

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or 690-015-0060 as adopted by the Commission in June 1996.

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Issue a final order pursuant to OAR 690, division 15 as adopted by the Commission in June 1996.

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Initiate cancellation proceedings under OAR 690, division 17.

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

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(6) The Department shall not apply OAR 690-380-4010(5) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership information was included with the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510-ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04,
WRD 6-2009 f & cert ef. 6-18-09

690-380-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, Division 380. Where a term is defined in more than one rule, the definition in this rule applies.

(1) “District” means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.

(2) “Enlargement” means an expansion of a water right and includes, but is not limited to:

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

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) “Injury” or “Injury to an existing water right” means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

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

(5) “ODFW” means the Oregon Department of Fish and Wildlife.

(6) “Point of appropriation” means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(7) “Point of diversion” means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(8) “Primary water right” means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(9) “Protest” means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in

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response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

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

(11) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

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

(13) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(14) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0005; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06, WRD 6-2009 f & cert ef 6-18-09

Permanent Transfers

690-380-2000

Types of Permanent Transfers

Permanent water right transfers include:

(1) A change in the point of diversion or appropriation pursuant to OAR 690-380-2110, 690-380-2120 and 690-380-2130;

(2) A change in the place of use pursuant to OAR 690-380-2200, 690-380-2250, and 690-380-2260;

(3) A change in the character of use pursuant to OAR 690-380-2300; 690-380-2320, 690-380-2330, and 690-380-2340; and

(4) A change involving municipal water rights pursuant to OAR 690-380-2410, 690-380-2420, and 690-380-2430.

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Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: WRD 2-2003, f & cert. ef. 5-1-03

690-380-2110

Change in Point of Diversion or Point of Appropriation

(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, or certificate of registration modification under OAR chapter 690, division 382.

(2) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer.

(3) As provided in ORS 450.695(2), a water authority may change the points of diversion or appropriation or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion or appropriation from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and Chapter 690, division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion or appropriation authorized by a water use permit, as defined in OAR 690-380-0100(14)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and chapter 690, division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion or appropriation for water right permits other than those covered under subsection (3)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 450.695 & 540.510 - 540.532
Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90,
Renumbered from 690-015-0015; WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-
1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from
690-015-0010; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-
06

690-380-2120

Change in Point of Diversion to Reflect Historical Use

(1) As provided in ORS 540.532, any individual who holds a water right certificate or decree may request a change in point of diversion or appropriation to reflect the historical use

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of water at a point of diversion or appropriation other than that described in the water right certificate or decree. The individual shall use the Department's water right transfer application form, clearly marked "Historic Change in POD," and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000.

(2) An individual requesting a change in the point of diversion or appropriation under section (1) of this rule shall provide to the Department the following additional information:

(a) Evidence that the actual, current point of diversion or appropriation for the water right in question has been in use for more than 10 years;

(b) A map meeting the requirements of OAR 690-380-3100, except that it need not be prepared by a certified water rights examiner. The map shall be of sufficient detail and clarity to identify the true point of diversion or appropriation including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion or appropriation as specified in the water right certificate or decree and the actual, current point of diversion or appropriation;

(c) Evidence that there has been no claim of injury prior to the request for the change in point of diversion or appropriation. The evidence shall include a statement from the local watermaster, based upon the watermaster's knowledge and Department records, that no complaint of injury has been made due to the use of water at the actual, current point of diversion or appropriation.

(3) On receipt of an application for a change in point of diversion or appropriation under section (1) of this rule, the Department shall:

(a) Provide the applicant a list of the affected water rights. The list shall include, but is not limited to:

(A) Any water right with an intervening point of diversion or appropriation;

(B) Any water right for use of stored water being delivered from an upstream reservoir to a downstream user;

(C) Any water right upstream from a significant inflow of water if the request moves the proposed point of diversion upstream, above the inflow, from the authorized point of diversion;

(D) Any water right downstream from a significant inflow of water if the request moves the proposed point of diversion downstream, below the inflow, from the authorized point of diversion;

(b) Provide the applicant a copy of a notice to be mailed or hand-delivered to the affected water right holders that:

(A) Describes the locations of the authorized and actual points of diversion or appropriation;

(B) States that the recipient on the notice may provide comments to the Department on whether the requested change in point of diversion or appropriation will cause injury; and

(C) Establishes a comment period of at least 30 days after the notice is mailed or hand-delivered to each of the affected water right holders;

(c) Consult with ODFW in the manner provided under OAR 690-380-5060; and

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(d) Provide notice of the application in the weekly notice published by the Department.

(4) Upon receipt from the Department of the list of affected water rights and a copy of the notice, the individual shall determine the name and address of the current holder of each affected water right identified by the Department and shall mail or hand deliver the notice to all such holders. The individual shall provide to the Department written proof of service upon the water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the written proof of service and before the comment date specified in the notice, whichever is later.

(5) If, after considering any comments received, the Department finds the individual requesting a change in point of diversion or appropriation to reflect historical use satisfies the requirements under section (2) to (4) of this rule and that the change does not cause injury, the request shall be approved. The order approving the change in point of diversion or appropriation shall establish a deadline for compliance with any conditions needed to prevent injury and, where required, to provide fish screening. If a certificate had previously been issued, the order shall cancel the certificate. The director shall issue a new certificate confirming the change in point of diversion or appropriation and preserving all other conditions of the water right.

(6) After the deadline for compliance with conditions of an approval established pursuant to section (5) of this rule, the use of water from the point of diversion or appropriation shall be subject to continued compliance with the conditions.

(7) As used in this rule, "individual" means a natural person and does not include a government body, organization, business enterprise, or other such entity.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.532

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03,

Renumbered from 690-015-0240; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2130

Change from a Surface Water Point of Diversion to a Ground Water Appropriation

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if:

(a) The criteria in OAR 690-380-5000 are met;

(b) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface source; and

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

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(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes basin ground water study area if:

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;

(b) The criteria in OAR 690-380-5000 are met;

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

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(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.

(9) The Department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury.

(10) For transfers allowed under this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6), except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.

(11) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Deschutes basin ground water study area" means the Deschutes River Basin drainage area indicated in OAR 690, division 505, Exhibit 1.

(12) The Department shall provide notice and review of transfer applications under section (3) of this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(13) Opportunities to protest a transfer under section (3) of this rule shall be pursuant to OAR 690-380-4030.

(14) The Department shall issue final orders on transfer applications under section (3) of this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, 540.530 & 540.531

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0210; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2200

Changes in Place of Use

No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer, permit amendment under ORS 537.211, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2260.

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Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.510 - 540.532
Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2240

Layered Water Rights and Certificates of Registration

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

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

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

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

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

(c) Withdraw the application.

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

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

(b) Withdraws the applications.

(5) A supplemental irrigation water right may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the supplemental right is to be moved.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.510 - 540.532
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06

690-380-2250

Transfer of Supplemental Water Right or Permit

(1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-380-3000, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant intends to transfer the supplemental water right or permit with the

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primary water right, the applicant shall include information on the supplemental right or permit as part of the transfer application for the primary water right as required under OAR 690-380-3000.

(2) If the applicant does not include the supplemental water right or permit in the transfer application, the Department shall notify the applicant and the land owner, as identified under OAR 690-380-3000(13), that the supplemental water right will be canceled before the Department issues the order approving the transfer of the primary water right, unless within 30 days after the date of Department notification, the applicant modifies the application to include the supplemental water right or permit or withdraws the application.

(3) The Department may approve the transfer of a supplemental water right or permit in accordance with ORS 540.520 and 540.530. The Department shall not approve the transfer of a supplemental water right or permit if the transfer would result in injury or enlargement.

(4) If the Department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the Department shall notify the applicant and the land owner, as identified under OAR 690-380-3000(13), of the Department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the Department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

(5) The order issued by the Department approving the transfer of a primary water right shall also cancel any appurtenant supplemental water right or permit not included in the transfer if the applicant does not modify or withdraw the application pursuant to section (2) of this rule or withdraw the application pursuant to section (4) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.530

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03;

Renumbered from 690-015-0048

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:

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(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 540.533 – 540.543

Hist.: WRD 2-2003, f & cert. ef. 5-1-03; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2012, f. & cert. ef. 2-1-2012

690-380-2300

Changes in Character of Use

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and 540.520(8) and (9) or as approved by the Department through a water right transfer, certificate of registration modification under OAR chapter 690, division 382, or pursuant to OAR 690-380-2340.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

690-380-2320

Transfer from Supplemental Use to Primary Use

A transfer application for a change in use from supplemental use to primary use may be submitted. A transfer will be allowed only to the extent the applicant can establish the quantity of water historically used under the supplemental water right. A right cannot be enlarged through this process. The primary water right shall be canceled before or at the same time as the issuance of the transfer order changing the supplemental use to primary.

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Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0030

690-380-2330

Substitution of Supplemental Ground Water Right for Primary Surface Water Right

(1) As provided in ORS 540.524, the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the use of the supplemental water right for the primary water right. This rule does not authorize a change in place of use, character of use, point of diversion or point of appropriation.

(2) A substitution may not be made under section (1) of this rule if the use of the supplemental ground water right results in an enlargement of the primary surface water right.

(3) An application shall be submitted on a form provided by the Department with the appropriate fee as established under ORS 536.050. The Department may request additional information if necessary to assist with the injury evaluation.

(4) Upon receiving an application, the Department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520(5) to (7) and OAR 690-380-4000 to 690-380-4200.

(5) The Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury, the Director shall prohibit or condition the use to avoid or mitigate the injury. The Director shall issue an order approving or denying the substitution within 90 days after the Department receives an application under section (1) of this rule.

(6) For the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental ground water right shall be treated as a primary water right.

(7) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this rule may be terminated upon a request by the water right holder or by an order of the Director if the Director determines that the use of the ground water as the primary water right causes injury. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

690-380-2340

Specific-to-General Industrial Water Use Change

A water right transfer is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

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(1) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

(2) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

(3) The person who makes the change in water use provides the following information to the Department:

(a) The name and mailing address of the person using water under the water right;

(b) The water right certificate number;

(c) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued;

(d) The quantity of water diverted to satisfy the authorized specific use under the original water right; and

(e) A description of the general industrial use to be made of the water after the change.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

690-380-2410

Municipal Water Rights

(1) Water used under a permit or certificate issued to a municipality, under rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 may be applied to beneficial use on:

(a) Any lands acquired by the municipality through annexation, merger, consolidation, or by the formation of a water supply authority in accordance with ORS 540.510(3)(a)(A) so long as the rate and duty allowed under the right is not exceeded;

(b) Subject to the limitations in section (3), lands other than those described in subsection (1)(a) of this rule in accordance with ORS 540.510(3)(a)(B) so long as the use continues to be for municipal purposes and the rate and duty allowed under the right is not exceeded;

(c) Any lands for which the use is authorized by the Department of Environmental Quality or Department of Agriculture under ORS 468B.050 or 468B.053 and for which a reclaimed water registration has been filed under ORS 537.132.

(2) A municipality may seek authorization to use water for municipal purposes on lands other than those described in section (1) of this rule under a water use subject to transfer by submitting a water right transfer application to change the place of use or character of use under OAR 690-380-3000.

(3) The Director may order termination of the use of water under subsection (1)(b) of this rule or, in consultation with the municipal water supplier, may impose other restrictions necessary to eliminate interference with or impairment of prior vested water rights resulting from the use of water under subsection (1)(b) of this rule.

Note: These rules were filed with the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

(4) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR chapter 690, division 300.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0140

690-380-2420

Notice of Merger, Consolidation or Formation of a Water Authority

(1) Municipal water supply entities that merge, consolidate or form a water authority may notify the Department of such action and request issuance of superseding certificates pursuant to sections (2) and (3) of this rule. The notice and request for issuance of superseding certificates shall include the following:

(a) A listing of the entities in the merger, consolidation or formation of a water authority;

(b) A copy of the documents filed with the city, county or state authorities approving such action;

(c) A copy of the cooperative agreement, or other evidence, between the authority and the county or other authority granted coordinative functions under ORS Chapter 197 showing consistency with local comprehensive plans;

(d) A listing of the certificated water rights by number of all water rights for the usual municipal purposes of all entities involved;

(e) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the points of diversion or appropriation;

(f) The name and address of the authority authorized to conduct business; and

(g) A written request that new water right certificates be issued to the authority.

(2) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue superseding certificates confirming the resulting municipal use of water, showing the place of use within the legal description of the service boundaries of the new entity as it was officially formed.

(3) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue certificates to supersede the certificates that were issued before a merger, consolidation or formation of a water authority. Superseding certificates describing the place of use shall be issued to the authority.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0150; WRD 5-2006, f. & cert. ef. 10-6-06

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690-380-2430

Acquisition of Water Rights by a Water Authority

(1) In addition to using the process described in OAR 690-380-2420, a water authority may acquire water rights from a municipality, a domestic water supply district, an irrigation district, a drainage district, a water improvement district, or a water control district.

(2) A water authority that acquires a water right may:

(a) Exercise the right subject to the limitations in section (4) of this rule if the right is for municipal purposes;

(b) Submit a request for issuance of a superseding certificate that includes the information described in section (3) of this rule if the right is a certificated right for municipal use;

(c) Submit a water right transfer application to change the character of use if the right is subject to transfer; or

(d) Submit a water right transfer application to change the point of diversion or appropriation if the right is a permit or a right subject to transfer.

(3) A request for issuance of a superseding certificate submitted pursuant to subsection (2)(b) of this rule shall be in writing and include:

(a) The name and address of the water authority;

(b) The certificate number of the water right acquired by the water authority; and

(c) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the existing points of diversion or appropriation for the right.

(4) The Director may restrict the use of water by a water authority to the lands described by previous water use authorizations or, in consultation with the water authority, may impose other restrictions on the use as needed to eliminate the interference with or impairment of prior vested water rights.

(5) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR chapter 690, division 300.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f. & cert. ef. 12-14-90; WRD 5-1996, f. & cert. ef. 7-11-96;

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0130; WRD 5-2006, f. & cert. ef. 10-6-06

Transfer Applications

690-380-3000

Application for Transfer

Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

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

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- (2) Type of change proposed.
- (3) Name appearing on permit, certificate, decree or proof of appropriation.
- (4) Name of decree and certificate number, if applicable.
- (5) Permit number and certificate number, if applicable.
- (6) Source of water (from permit, decree or certificate).
- (7) Date of priority.
- (8) The existing and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.
- (9) The authorized existing use of water.
- (10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.
- (11) The authorized place of use identified by its location within the public land survey and tax lot number.
- (12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:
 - (a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:
 - (A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;
 - (B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or
 - (C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or
 - (b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).
- (13) For permanent transfers under OAR 690-380-2000:
 - (a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-380-4010(4) and prior to Department approval of the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-4010(5);
 - (b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or
 - (c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for

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

(14) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(15) The proposed use of water.

(16) The proposed place of use shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-380-3100.

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

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

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

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

(d) That involve irrigation water uses only.

(20) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

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

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

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

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

(23) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

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

(25) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-3400.

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Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.531

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 1-2000(Temp), f. 5-16-00, cert. ef. 5-16-00 thru 11-10-00; Administrative correction 6-21-01; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0060; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3050

Additional Application Requirements

(1) For the purpose of clarifying the water right record, the Department shall require the applicant to provide the additional information in section (2) of this rule if:

(a) The proposed transfer involves rights for lands under more than one ownership and not all of the owners are applicants; or

(b) The final proof survey maps on file with the Department for any quarter-quarter section in which lands involved in the proposed transfer are located do not adequately describe the location of the place of use or the associated priority dates of the associated water rights.

(2) The supplemental information to be provided by the applicant shall include:

(a) A list of the name and address of each landowner whose lands the Department concludes may be included in the portion of the water right proposed for transfer and written proof of service of a copy of the application on those landowners and a map delineating the location, acreage, priority dates, and ownership of the subject water right; and

(b) Other information sufficient to establish that no portion of the right to be transferred is held by persons other than those proposing the transfer and, for rights with multiple priority dates, the priority dates for the right to be transferred are consistent with the decree or other document establishing the right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

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 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

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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 one additional copy is 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

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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; WRD 1-2012, f. & cert. ef. 2-1-2012

690-380-3200

District May Submit Application for Water Users

(1) A district, authorized to act on behalf of its members, may apply for a water right transfer under the provisions of ORS 540.520. If the proposed change is for other than a change in point of diversion or appropriation, the application shall contain a notarized statement from the owner of the right authorizing the proposed change.

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR chapter 690, division 385.

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Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.510 - 540.520
Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0020; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3220

Separate Application Required for Each Water Right

For changes involving more than one landowner or water use subject to transfer, a separate transfer application is required for each water use subject to transfer from each landowner involved, except under the following circumstances:

(1) A change in point or points of diversion or appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships.

(2) A change in use or place of use of all rights on a single parcel from all sources.

(3) A change in use or place of use from as many as four land owners may be allowed within a district. Such a change must be for the same water right and not total more than 10 acres transferred.

(4) Transfers between two parcels using water from the same source.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.520
Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-89; WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0035; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0025; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-3400

Waiver of Fees

The Director shall waive \$100 or 50 percent of the application fee, whichever is greater, for that portion of a change to a water right permit under ORS 537.211(4) or a water right subject to transfer under 540.520 or 540.523, that is:

(1) To establish an instream water right pursuant to ORS 537.348;

(2) Is necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(3) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: RD 2-2003, f & cert. ef. 5-1-03

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690-380-3410

Waiver of Mapping Requirements

(1) The Director may waive or assist the applicant in satisfying the requirements of OAR 690-380-3100 for a change to a water right subject to transfer under ORS 540.520 or 540.523, if the change is:

(a) To establish an instream water right pursuant to ORS 537.348;

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(c) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

(2) A request to waive or assist the applicant in satisfying the mapping requirements of OAR 690-380-3100 shall be submitted on a form provided by the Department. The form must be completed by the applicant and signed by the appropriate field staff prior to submittal of the transfer application.

(3) A waiver of mapping requirements under this rule shall only be approved if:

(a) The transfer would establish an instream water right as described in subsection (1)(a) of this rule:

(A) If the entirety of the right is being transferred to an instream water right and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream; or

(B) A map meeting the requirements of OAR 690-380-3100 is available showing the lands not included in the transfer and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream.

(b) At the determination of the Director, other circumstances are present that make an application map unnecessary.

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

Application Notice and Review

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

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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; WRD 1-2012, f. & cert. ef. 2-1-2012

690-380-4010

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

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

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be denied, the preliminary determination shall:

(a) Describe the basis for the denial; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

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(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the water right is appurtenant; and

(c) If the landowner identified in the report of ownership information is not the applicant, documentation to demonstrate that the applicant is authorized to pursue the transfer, which shall include:

(A) A notarized statement by the landowner(s) identified in the report of ownership information consenting to the transfer;

(B) If the interest in the water right has been conveyed, a notarized statement consenting to the transfer from the person or authorized representative(s) of the entity to whom the interest in the water right has been conveyed identified in a water right conveyance agreement; or

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

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

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

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

(7) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

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

Stat. Auth.: ORS 536.025 & 536.027

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, WRD 6-2009 f & cert ef 6-18-09

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

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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 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.

(4) On issuance of the preliminary determination, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice, and a request for payment for the cost of publishing the notice. 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) 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.

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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; WRD 1-2012, f. & cert. ef. 2-1-2012

690-380-4030

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later:

(a) Any person may file, jointly or severally, with the Department, a protest or standing statement; and

(b) If the Department's preliminary determination is that a proposed change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050.

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

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-380-4020(3) to the Department prior to or concurrent with the filing of the protest.

(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 may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-380-0100(11) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 183.310 - 183.550, 536.050 & 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0085; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-4200

Hearings

(1) If a protest is filed under OAR 690-380-4030, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

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(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

(b) If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

(3) If after hearing the Department issues a proposed final order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

Final Orders

690-380-5000

Approval of Transfers

(1) A transfer application shall be approved if the Department determines that:

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14) and, for a right described under 690-380-0100(14)(d), the proof of completion has been approved under 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;

(c) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);

(d) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in 690-380-0100(3); and

(e) Any other requirements for water right transfers are met.

(2) Except as otherwise provided in OAR 690-380-4020(8), the Department shall issue a final order consistent with the preliminary determination described in 690-380-4010 if no protests or notifications of intent are received under 690-380-4030(1).

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0050; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06

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690-380-5030

Approval of Injurious Transfers

The Department may approve a transfer of a point of diversion or appropriation that would injure another water right if:

(1) For any water right other than an instream water right, the applicant files an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040, and

(2) For any instream water right held by the Department pursuant to ORS 537.336 or 537.346, the Department consents to the change after complying with the provisions of OAR 690-380-5050.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

690-380-5040

Affidavits of Consent

An affidavit consenting to a proposed change in point of diversion under OAR 690-380-5030(1) shall be notarized and shall include statements that the affiant:

(1) Is the holder of a water right that the Department has determined would be injured;

(2) Has reviewed the preliminary determination or proposed order of the Department concluding the transfer would result in injury and recognizes the nature of the injury;

(3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and

(4) Consents to the injury resulting from the proposed change in point of diversion or appropriation.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

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

690-380-5050

Consent to Injury of Instream Water Rights

(1) If the applicant notifies the Department that the applicant intends to pursue consent to injury to an instream water right, the Department shall seek a recommendation from the agency that requested the instream water right.

(2) In requesting a recommendation under section (1) of this rule, the Department shall provide to the appropriate agency a copy of the preliminary determination issued under OAR 690-380-4010 or proposed order issued after hearing and, to facilitate the analysis of cumulative impacts, identify any previously approved transfers injuring the same instream water right as the proposed transfer.

(3) If the agency that requested the instream water right recommends that the Department consent to injury, the agency's recommendation shall be in writing and include:

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(a) A description of the extent of the injury to the instream water right;
(b) A description of the effect of the injury on the resource;
(c) An evaluation of the net benefit that will occur as a result of the proposed change that includes an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and

(d) Any proposed conditions necessary to ensure that the proposed change will be consistent with the recommendation.

(4) On receipt of a recommendation to consent to injury that complies with section (3) of this rule, the Department shall provide notice of the opportunity to comment on the recommendation:

(a) To the applicant, any protestants or persons who filed comments under OAR 690-380-4030, and affected Indian Tribes; and

(b) By publication in the Department's weekly notice.

(5) Within 30 days after the date of the notice required in section (4) of this rule, any person may submit written comments on the recommendation or a written request for a public meeting to review the recommendation.

(6) The Department shall provide copies of any comments submitted in response to the notice in section (4) of this rule to the recommending agency.

(7) Within 90 days of receipt of a written request for a meeting on the recommendation, the Department and the agency providing the recommendation shall hold a joint public meeting to review the recommendation and to accept public comments.

(8) If no comments or requests are received by the Department in response to the notice provided under section (4) of this rule or if, after consideration of any written comments or the discussions during the meeting described in section (6) of this rule, the recommending agency notifies the Department that it will not withdraw its recommendation to consent to injury, the Department shall issue an order approving the transfer and consenting to the injury to the instream water right. The order shall include:

(a) Findings on the extent of the injury to the instream water right and the effect on the resource;

(b) Findings on the net benefit that will occur as a result of the change that reflect an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and

(c) Any conditions necessary to ensure that the change will be consistent with the findings and will result in a continued net benefit to the resource consistent with the purposes of the instream water right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

690-380-5060

Fish Screening and By-Pass Devices

(1) Pursuant to ORS 540.525, when an application for a change in point of diversion is received, the Department shall consult with the ODFW to determine whether a fish

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screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(2) The Department's consultation with ODFW shall determine whether the diversion is:

(a) Equipped with an appropriate fish screen or by-pass device; or

(b) Included in the list of priority screening projects established under section 8, chapter 933, Oregon Laws 1989.

(3) If the original point of diversion is included in the priority list referenced in subsection (2)(b) of this rule, the Department, after consulting with ODFW, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.

(4) If requested by ODFW, a condition requiring a proper fish screen at the new point of diversion shall be attached to any transfer approval order for a change in point of diversion.

(5) Any individual required to install a fish screening or by-pass device under this section at a point of diversion for a diversion of under 30 cubic feet per second may participate in ODFW's cost sharing program for the installation of screening and by-pass devices.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.525 & ORS 540.532

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03;

Renumbered from 690-015-0073

690-380-5100

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on applications for transfers except as specified in OAR 690-005-0025 and 690-380-3000(19).

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

(3) The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-380-4000.

Stat. Auth.: ORS 197, 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.531

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0057; WRD 5-2006, f. & cert. ef. 10-6-06

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Miscellaneous Provisions

690-380-5110

Original Right Terminated

Approval of a change in use or place of use terminates the right to use water for the existing character of use or place of use under the original water right as described in the transfer application form required under OAR 690-380-3000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0040; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5120

Multiple Primary Water Rights on the Same Lands

If the water right records show two or more irrigation rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; 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 690-015-0045; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-5130

Assignment or Change of Ownership

(1) When a change of ownership or interest occurs in lands described by a transfer application or by an order approving a transfer, the record holder may request the director to record an assignment to the new owner.

(2) If the record holder is not available, the new owner may furnish proof of ownership to change the Department's records for that transfer. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include but not be limited to one or more of the following documents:

- (a) A deed to the land;
- (b) A land sales contract;
- (c) Documentation of survivorship of property held jointly; or
- (d) A court order or decree.

(3) The person making the assignment shall identify the current owner of all property involved in the transfer at the time of assignment. The person making the assignment shall

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furnish proof that notice of the assignment has been given or attempted for each identified owner not party to the assignment.

(4) When approval of a transfer for a change in place of use moves the water use subject to transfer to lands owned by another owner, the order shall contain the name and address of the receiving landowner and the Department's records shall be changed to show the receiving landowner as the transfer holder. It shall be the responsibility of the receiving landowner to complete the transfer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 6-1990, f. & cert. ef. 8-23-90; WRD 5-1996, f. & cert. ef. 7-11-9; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0075

690-380-5140

Time for Completion

(1) The Department shall fix a time limit in the order authorizing a change of character of use, place of use or point of diversion or appropriation within which the approved changes may be completed.

(2) Extensions of time to complete a transfer may be granted pursuant to OAR 690-380-6020.

(3) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1). The time for completion of the change requested in a transfer application is one full year plus the time until the next October 1. The time for completion of the change of a municipal or quasi-municipal right is five years plus the time until the next October 1. A longer time for completion may be allowed if the applicant can justify the need for a longer period of time.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0087; WRD 5-2006, f. & cert. ef. 10-6-06

Perfection of Transferred Rights

690-380-6010

Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon approval of a change in use or place of use, the water use subject to transfer is considered inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not applied to beneficial use under the terms of the transfer order for change in use or place of use, or within any extension of time allowed for completion, is lost.

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(3) Non-completion of a change in point of diversion or appropriation does not forfeit the water use subject to transfer. However, upon expiration of the time allowed for completion, the water use shall again become subject to forfeiture pursuant to the provisions of ORS 540.610.

(4) For a change in point of diversion or appropriation, the claim of beneficial use shall identify the lands served by the new point of diversion or appropriation using:

- (a) The existing final proof survey map for the right of record; or
- (b) Another map prepared in accordance with OAR chapter 690, division 14.

(5) A new application is required to change the point of diversion or appropriation to a new location not authorized by the order.

(6) If the change in point of diversion or appropriation is not completed, the point of diversion or appropriation shall revert to the last authorized point of diversion or appropriation prior to the transfer.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0090; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-6020

Extension of Time

(1) An order authorizing a water right transfer sets a time limit in which to beneficially use the water. If the transfer is not completed within the time limit, the owner may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence in the attempt to complete the project within the initial time allowed.

(2) If multiple receiving owners are involved, a separate application is required from each receiving owner requesting an extension.

(3) Extensions are granted for one year, from October 1 to October 1 of each year. An extension for up to five years may be granted for transfers involving municipal or quasi-municipal use. Extensions may be granted for longer time if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(4) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-380-5140. Reasonable diligence shall include, but is not limited to:

- (a) The purchase and installation of water delivery system;
- (b) The expansion or restructuring of the existing delivery system;
- (c) Actual use of a portion of the water according to the terms of the transfer order; or
- (d) For municipal, quasi-municipal and group domestic uses only, the continued increase in population and number of service connections.

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(5) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (4) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0100

690-380-6030

Proof Of Use; Noncompliance

(1) For transfers requested prior to July 10, 1987, at such time given in the order approving the transfer for complete application of water, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.

(2) Transfers requested on or after July 10, 1987 shall have a Claim of Beneficial Use report and map prepared by a certified water right examiner in accordance with OAR chapter 690, division 14.

(3) If any property described in the order approving the transfer application is not included in the request for a water right certificate, the owners of the transfer shall provide to the Department the name and address of the landowner of that property.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

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 690-015-0110; 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

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certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be 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 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; WRD 1-2012, f. & cert. ef. 2-1-2012

690-380-6050

Waiver of Proof of Completion

(1) The Director may waive any of the proof of completion requirements of OAR 690-380-6040, if:

(a) The waiver of the mapping requirements has been previously approved under OAR 690-380-3410; or

(b) The Director determines that other circumstances are present that make any of the requirements for proof of completion unnecessary and the transfer complies with the requirements of OAR 690-380-3410 for a waiver of mapping requirements.

(2) The Department may assist the applicant in satisfying any of the proof of completion requirements of OAR 690-380-6040 if the transfer complies with the requirements of OAR 690-380-3410. The assistance provided by the Department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 2-2003, f & cert. ef. 5-1-03

690-380-6060

Petition for Reconsideration

(1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the transferee or landowner. The petition shall describe the disagreement with the proposed certificate.

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(2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(3) The director may allow reasonable time beyond the time set under OAR 690-380-6040(2) for a transferee or landowner to complete and submit a written petition for reconsideration.

(4) Upon receipt of a petition for reconsideration, the director shall:

(a) Approve the petition without verification and issue a certificate with the changes included;

(b) Schedule field verification of the requested changes and pursuant thereto approve or deny the request; or

(c) Deny it by a letter to the requesting person.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-380-6040.

(6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by an order of the director. The order shall provide for either issuance of a certificate of water right in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR chapter 690, division 2.

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 690-015-0125

Temporary Transfers

690-380-8000

Temporary Transfers

Any person who holds a water use subject to transfer may request that the Department approve:

(1) For a period of not to exceed five years, a temporary transfer of:

(a) Place of use and, if necessary to convey the water to the new temporary place of use, point of diversion or appropriation; or

(b) Character of use of a right to store water, or

(2) For a period of not to exceed 25 years, a temporary transfer in the Deschutes River Basin of place of use, type of use, and point of diversion or appropriation if necessary to convey water to the new temporary place of use, of all or a portion of a water right.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.520 & 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0300; WRD 1-2004, f. & cert. ef. 3-17-04; WRD 5-2006, f. & cert. ef. 10-6-06

Note: These rules were filed with the Secretary of State and took effect on February 1, 2012. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360(2)(a) when published by the Secretary of State.

690-380-8002

Temporary Transfer Applications under OAR 690-380-8000(1)

(1) Applications for a temporary transfer under OAR 690-380-8000(1) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;
- (b) The length of time for which the change is being requested;
- (c) The appropriate fee pursuant to ORS 536.050; and
- (d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.

(2) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right. In issuing the order, the Department may include any conditions necessary to protect other water rights.

(3) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(5) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury.

(6) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: SB 820, 2003 OL
Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

690-380-8004

Temporary Transfer Applications under OAR 690-380-8000(2)

(1) Applications for a temporary transfer under OAR 690-380-8000(2) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;
- (b) The length of time for which the change is being requested;
- (c) The appropriate fee for the transfer pursuant to ORS 536.050;
- (d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner;
- (e) Where applicable, a description of the use of any portion of the water right not proposed to be transferred under OAR 690-380-8000(2);

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(f) Evidence that an agreement exists between the landowner, district, and receiving municipality if the water right to be temporarily transferred is served by a district.

(2) Any portion of the use of a water right that is not temporarily transferred under OAR 690-380-8000(2) may be used on the designated part of the lands described in the original water right permit, certificate, or adjudication under ORS Chapter 539 as evidenced by a court decree, if the use:

(a) Does not encompass more than the remaining portion of the lands,

(b) Does not enlarge the water right or increase the rate, duty, total acreage benefited or season of use, and

(c) Is within the same land ownership as the water right proposed for transfer.

(3) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

(4) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if:

(a) The proposed temporary transfer will not result in injury to any existing water right or enlargement of the water right;

(b) The person holds a water right subject to transfer;

(c) The type of use specified in the original water use subject to transfer is irrigation;

(d) The person to whom the right is transferred is:

(A) Located within the Deschutes River Basin; and

(B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS Chapter 450, a water supplier as defined in 448.115 or a water authority formed under ORS Chapter 450;

(e) The proposed use is municipal use.

(5) In issuing the order, the Department may:

(a) Include any conditions necessary to protect existing water rights, including any reporting, measurement, and mapping requirements to ensure that use of any remaining portion of the right is consistent with the transfer; and

(b) Prescribe the duration of the temporary transfer period, up to 25 years.

(6) For temporary transfers proposing to use a remaining portion of the right under section 2 of this rule, the Department shall require the installation of a measuring device, monthly recording of water use, and annual reporting of water use.

(7) All temporary transfers allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(8) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(9) The Department may revoke a prior approval of the temporary transfer at any time if:

(a) The Department finds that the transfer is causing injury or results in enlargement;

or

(b) Reporting, mapping, or measurement conditions associated with use of any remaining portion of the right under section 2 of this rule are not met.

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(10) Prior to revoking a temporary transfer under this rule for failing to comply with any of the conditions of the transfer, the Department may seek compliance with the terms of the temporary transfer.

(11) The Department shall provide notice and review of temporary transfer applications under this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(12) Opportunities to protest a temporary transfer under this rule shall be pursuant to OAR 690-380-4030.

(13) The Department shall issue final orders on temporary transfer applications under this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: SB 820, 2003 OL
Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

Miscellaneous Provisions

690-380-8010

Seasonal Use

Except as provided in OAR 690-380-8004, the lands from which the water use subject to transfer is removed shall receive no water, under the appurtenant rights, during the period of a temporary transfer. In the case of a temporary transfer approved during the season for which there is a specified season of use, such as the irrigation season, the lands from which the water use subject to transfer is being removed shall have received no water, under the appurtenant rights, during that season, including water used prior to the approval of the temporary transfer. If the lands have received water, under the appurtenant rights, during that season, the temporary transfer may not take effect until the following season.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.523
Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03;
Renumbered from 690-015-0310; WRD 1-2004, f. & cert. ef. 3-17-04

690-380-8020

Supplemental Water Rights

(1) When an application for a temporary transfer of the place of use is filed with the Department, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. The applicant shall also indicate whether the supplemental water right or permit is intended to be temporarily transferred with the primary water right or to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

(2) If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant shall include the information required under OAR 690-380-3000 and 690-380-8000 for the supplemental water right or permit.

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(3) If an existing supplemental water right or permit is not included in the temporary transfer application, the Department shall notify the applicant and the landowner, as identified under OAR 690-380-3000(14), that the order approving the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(4) The notice shall contain the following:

(a) A description of the supplemental water right or permit and the land to which it is appurtenant;

(b) A statement that the applicant and landowner, as identified under OAR 690-380-3000(14), has 30 days, from the date of the notice, to either modify the application to include the supplemental water right, or withdraw the application;

(c) A statement that, unless the applicant complies with subsection (4)(b) of this rule, the order approving the application for the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(5) If the application is withdrawn, the Department shall keep the examination fee, and shall refund any other fees submitted with the application.

(6) If the application is not modified or withdrawn, the director shall enter an order approving the temporary transfer of the primary water right and not allowing the exercise of the supplemental water right until the primary water right reverts to the original water use.

(7) The Department shall not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in injury or enlargement.

(8) If the Department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the Department shall notify the applicant of the Department's intent not to allow the temporary transfer of the supplemental water right or permit before the Department issues the order approving the temporary transfer of the primary water right. The notice shall inform the applicant that the supplemental water right or permit shall remain appurtenant to the land described in the application, but may not be exercised until the primary water right reverts to the original water use.

(9) If the primary water right does not revert soon enough to allow the use of water under the supplemental water right within five years, the supplemental water right shall become subject to cancellation for nonuse under ORS 540.610.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03,

Renumbered from 690-015-0320; WRD 5-2006, f. & cert. ef. 10-6-06

690-380-9000

Clarification of Water Rights

(1) If the Director decides that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery, or transfer of that right, the Director may issue an order clarifying and defining the description of the land to which the right is appurtenant.

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(2) A clarification order may not reduce the rate, duty or number of acres stated in the perfected right. The sole purpose of the order is to better define the location to which the water right is appurtenant.

(3) Any order issued under this section shall be served on the legal owner of the land to which the water right is appurtenant and on the occupant of the land, by certified mail, return receipt requested. If the owner or occupant files a written request for a hearing within 30 days after service of the order, the Director or the Director's authorized assistant shall conduct a hearing of the matter under the provisions of ORS 183.413 to 183.484.

(4) If no exceptions or objections to a proposed order issued under this rule are filed within the time allowed, the Director shall issue a final order. Said final order shall be filed with the certificate that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537, ORS 540 & ORS 649

Stats. Implemented:

Hist.: WRD 10-1988, f. & cert. ef. 8-10-88; WRD 2-2003, f & cert. ef. 5-1-03;

Renumbered from 690-015-0400

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