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Amend**Division 17****CANCELLATION OF PERFECTED WATER RIGHTS****690-017-0005****Introduction**

These rules define the process the Water Resources Department will follow when cancelling a perfected water right. ~~The action to cancel the perfected water right can be initiated as the result of a request by the record owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non use.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: This rule is amended to resolve inconsistent language with ORS 540.631 that requires a determination that it appears that a water right has been forfeited to initiate cancellation proceedings, rather than just a request to determine the validity of a right.

Amend**690-017-0010****Definitions**

- (1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.
- (2) "Affiant" means the individual completing, swearing to and signing an affidavit.
- (3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.
- (4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right. The action must be based on a preponderance of the evidence in accordance with ORS cChapter 183.
- (5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.
- (6) "District" has the meaning of the term as defined in ORS 540.505.
- (7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.

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(8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years, except as provided in ORS 540.610(3) and (4) and ORS 540.612.

(9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.

(10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.

(11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.

(12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years.

(13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.

(14) "Rebuttable Presumption" means the presumption of forfeiture established pursuant to ORS 540.610(1), which the appropriator may overcome by proving, by a preponderance of the evidence, one or more of the exemptions from forfeiture in ORS 540.610(2). ~~a presumption which, by statute, may be overcome by evidence sufficient to explain or disprove the presumption.~~

(15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Statutory/Other Authority: ORS 536.025, ~~ORS &~~ 536.027,

Statutes/Other Implemented: ORS 540.610–540.670, **ORS 183**

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: This rule is amended to align rule to statute by including statutory references for exemptions to forfeiture which are contained in ORS 540.610(3) and (4) and ORS 540.612, as well as to update the definition of “rebuttable presumption” consistent with ORS 540.610(2). The rule change also clarifies that cancellation is based on preponderance of evidence standard per the Administrative Procedures Act (ORS 183).

690-017-0100

Cancellation Authorized by Record Owner

(1) Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of the land to which the water right in question is appurtenant.

(2) The affidavit shall contain, at a minimum, the following:

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- (a) A statement that the affiant is the record owner of the lands associated with the water right in question;
 - (b) The certificate number of the water right;
 - (c) A statement that the affiant has abandoned any and all interest in and to all or a specified portion of the water right;
 - (d) Where only part of the right has been abandoned, a description of the specific place of use by quarter-quarter section and acres on which the right has been abandoned, with information sufficient to determine the lands on which the right is not to be cancelled; and
 - (e) A request that all or part of the certificate be cancelled.
 - (f) A statement of whether, to the best of the affiant's knowledge, the subject water right is within the boundaries of a district or federal reclamation project.
- (3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, provide the district and the United States Bureau of Reclamation notice of the water right cancellation request.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Amend

690-017-0200

Watermaster Affidavit of Inability to Appropriate or Beneficially Use Water

- (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, ~~including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable~~ as specified in ORS 540.660(1), the watermaster shall file an affidavit with the Water Resources Director.
- (2) The affidavit shall state:
 - (a) ~~The date and time the land or diversion mechanism or other evidence was inspected by the watermaster. That to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate;~~
 - (b) The names of all record owners of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records; and

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(c) ~~The A summary of the evidence supporting the watermaster's findings during the inspection that indicate the water right cannot be exercised~~ statement as provided in subsection (2)(a).

Statutory/Other Authority: ORS 536.025, &ORS 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670; ORS 540.660

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: -The rule is amended to align with ORS 540.660(1). Change includes a reference to the statute for what qualifies under this rule. It provides by providing a broader scope of information, not limited to field inspections, that may be used to support the watermaster's statement that, to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of a water right certificate. The amendment is necessary because the current rule is more restrictive than ORS 540.660(1) concerning what information may support the watermaster's conclusion.

Amend

690-017-0300

Notice of Watermaster Affidavit to Record Owner

(1) The Water Resources Department shall notify each record owner of the land described by an affidavit submitted by a watermaster under ORS 540.660 and OAR 690-017-0200 in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner;

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100; and

(c) If the land is within the boundaries of an irrigation district, the Department shall mail a copy of the affidavit to the irrigation district.

(2) The record owner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate.

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Department shall initiate cancellation proceedings under ORS 540.631. The Department shall give notice of the proposed cancellation as provided in OAR 690-017-0400(6) and these rules to cancel the water right.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670; ORS 540.660

History:

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WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: This rule is amended for clarity and to include reference to other rules associated with this method of forfeiture.

Amend

690-017-0400

Cancellation Initiated by Department

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears to the satisfaction of the Department director that a right has been forfeited as provided in ORS 540.610 and is not likely to be exempt under ORS 540.610(3)–and (4), or ORS 540.612, or would not likely be rebutted under ORS 540.610(2). A decision to initiate cancellation proceedings may be based on evidence submitted to the Department in the form of affidavits from persons other than the Department, as provided in section (2) of this rule, or based on evidence available to the Department, as provided in section (4) of this rule. The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e).

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following:

- (a) Name, address, email address, if available, and telephone number of affiant;
- (b) Certificate number (Por page number) of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate;
- (c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant;
- (d) The use for which the water right was issued;
- (e) The source of water to be used as provided in the certificate;
- (f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge;
- (g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given;

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(h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610;

(i) A copy of ~~the county tax plat~~ map or aerial imagery illustrating the lands with sufficient information to enable the Department to determine to which the subject water right is appurtenant, and if applicable, the location of the portion of the water right asserted to have been forfeited;

(j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary; and

~~(k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and~~

~~(k)~~ Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice ~~of receipt of affidavits submitted under this rule~~, as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding.

(4) Where the Department initiates cancellation proceedings based on evidence available to the Department, the Department shall include, in its notice of proposed cancellation, the information described in sections (2)(b) - (e) and findings of fact on the matters described in sections (2)(f) - (h). ~~the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all information described in section (2) of this rule. In addition, the affidavit shall be supported by~~ The notice of proposed cancellation shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, aerial imagery, maps, evapotranspiration data, or other relevant data evidence covering each year of the period of alleged nonuse.

~~(5) The Department shall initiate proceedings to cancel a water right under ORS 540.631~~ Within 180 days of receiving the evidence affidavits required under section (2)s (1) and (2) of this rule, the Department shall either:

(a) Initiate proceedings to cancel a water right under ORS 540.631, or

(b) Notify the affiants, the record owner of the affected lands, and the occupant of the affected lands, if other than the owner, that the Department is closing the matter because the Department is not satisfied that a right has been forfeited as specified in section 1 of this rule.

(6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation.

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Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

- (a) A description of the water right and the land to which the water right is appurtenant;
- (b) A statement that the information before the Director creates a rebuttable presumption of forfeiture;
- (c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;
- (d) Notice that if the record owner intends to rebut the presumption of forfeiture or establish an exemption from forfeiture under ORS 540.610(3)-(4) or ORS 540.612, the protest shall include a statement of the grounds for rebuttal or exemption relied upon, and shall be accompanied by appropriate supporting documentation; and
- (e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted or an exemption from forfeiture has not been established, a contested case hearing will be scheduled.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: The rule is amended to align with ORS 540.631. Consistent with ORS 540.631, the amended rule provides that the Department may initiate cancellation based on available evidence to the Department without requiring submittal of an affidavit ~~of~~by Department personnel. The amendment clarifies that, regardless of whether notice is based on affidavit, notice still must be provided to irrigation districts and the Bureau of Reclamation consistent with the current rule prior to initiating cancellation. The amendment states information and findings that the Department must include in a notice of proposed cancellation. The amendment clarifies information that must be provided in affidavits submitted by persons other than Department personnel and specifies the Department shall either initiate cancellation proceedings or close the matter within 180 days. The rule also makes necessary updates to include statutory exemptions from forfeiture enacted since the rules were last updated.

Repeal

690-017-0500

Cancellation Not Protested

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~~If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water within the 60 day period prescribed in the notice, the Water Resources Department shall enter an order cancelling the water right as provided in ORS 540.641.~~

~~Statutory/Other Authority: ORS 536.025 & 536.027~~

~~Statutes/Other Implemented: ORS 540.610 – 540.670~~

History:

~~WRD 17-1990, f. & cert. ef. 9-27-90~~

~~WRD 12-1988, f. & cert. ef. 8-10-88~~

Rule Summary: This rule is repealed because under Or Laws 2025, ch 575, section 23, Or Laws 2025, ch 575 section 3(4) applies to proposed cancellation orders, and proposed cancellation orders will automatically become final if not protested.

Amend

690-017-0600

Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture

(1) Except as described in sections (2) and (3) of this rule, protests, requests for party status, and contested case proceedings are governed by Or Laws 2025, ch 575, section 2 and 3, and by OAR chapter 690, division 2. Except as provided in OAR 690-002-0235(4), if no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

~~A protest submitted to the Water Resources Department by the record owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include the following:~~

~~(a) A written statement citing the reasons the record owner or occupant believes the water right has not been forfeited by nonuse; and~~

~~(b) The statutory fee for filing the protest.~~

(2)(a) Only a record owner or occupant may protest the proposed cancellation. Where the record owner or occupant intends to rebut the presumption of forfeiture by claiming one or more of the grounds for rebuttal established in ORS 540.610(2) and as further defined in OAR 690-017-0800, or intends to establish an exemption from forfeiture under ORS 540.610(3)-(4) or ORS 540.612, grounds claimed for rebuttal or exemption shall be stated in the protest;

(b) Where applicable, documentary evidence in support of the rebuttal as described in OAR 690-017-0800(3) shall be submitted with the protest.

(3)(a) On receipt of a protest claiming rebuttal or exemption and supporting documentary evidence, ~~a determination shall be made whether the presumption of forfeiture has been rebutted~~ the Department shall review the evidence before referring the protest for hearing;

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~~(b) Where rebuttal is found to have been made, the matter shall be closed and no further action taken to cancel the water right. Upon review of the rebuttal or exemption evidence, and subject to OAR 690-002-0235(2), the Department may either refer the protest for hearing, request more information, or notify the protestant(s) that the Department is withdrawing the proposed final order -and closing the matter.;~~

~~(c) Where it is determined that the presumption of forfeiture has not been rebutted, the Department shall initiate proceedings to cancel the right as provided in OAR 690-017-0700.~~

~~(4) Sections (1) - (3) of this rule do not apply to a notice of a cancellation proceeding if the notice results from an assertion of forfeiture included in a protest of a transfer application made under OAR cChapter 690, division 380. The transfer applicant need not submit a protest of the notice of proposed cancellationa cancellation proceeding in this circumstance. The Department shall, subject to OAR 690-002-0235(2), refer the transfer protest(s) for hearing. The hearing on the transfer protest(s) shall include issues related to the notice of cancellation proceeding.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, Or Laws 2025, ch 575, sections 2 and 3.

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: The rule is amended to (a) modify- update requirements for filing protests, requests for party status and contested cases in accordance with Or Laws 2025, ch 575, sections 2 and 3, and pointing towards the division 002 rules, as well as including a provision that proposed cancellation orders become final automatically if no protest is timely received, unless withdrawn; (b) clarify existing provisions and update language consistent with other statutory changes made since the rules were last updated; (c) describe the Department's process when adequate rebuttal or exemption evidence is provided, and (d) describe the Department's process when forfeiture is raised in a protest on a transfer application.

Amend

690-017-0700

Cancellation Hearing

~~(1) If the Department receives a protest to the proposed cancellation of a water right within the prescribed 60 day period, a hearing on the protest shall be scheduled. The protestant shall be given not less than 10 days notice of the hearing time and place.~~

~~(2) The hearing shall be held by the Department's Hearings Referee and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases.~~

(1) Except as described in subsection (2) of this rule, hearings on proposed cancellations are governed by Or Laws 2025, ch 575, sections 2 and 3 and OAR chapter 690, division 2. Proposed final orders shall become final by default as provided in OAR 690-002-0235.

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~~(2) The protestant and any person(s) asserting forfeiture shall be given not less than 30 days' notice of the hearing.~~

~~(3) In contested case hearings where the initial determination was made that the presumption of forfeiture had not been rebutted, the owner may offer additional evidence in support of rebuttal.~~

~~(4) After the hearing the Hearings Referee shall enter a proposed order:~~

~~(a) Cancelling the water right;~~

~~(b) Cancelling in part or modifying the water right; or~~

~~(c) Declaring that the water right shall not be cancelled or modified.~~

~~(5) If no exceptions or objections to the proposed order are filed within the time allowed, the Hearings Referee shall issue a final order.~~

~~(43) The Director shall consider any exceptions to the Administrative Law Judge's proposed order and issue a final order.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670, Or Laws 2025, ch 575, section 2, Or Laws 2025, ch 575, section 3

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: This rule is amended to (a) implement Or. Laws 2025, ch 575, sections 2 and 3, which establishes a uniform contested case process; (b) remove unnecessary language related to proposed order issuance by the administrative law judge; and (c) provide that the Director, and not the Commission, shall consider any exceptions to the Administrative Law Judge's proposed order and issue a final order, and (d) to provide that notice of the hearing shall be not less than 30 days.

Amend

690-017-0800

Grounds for and Manner of Rebutting a Presumption of Forfeiture

(1) Any record owner or occupant rebutting a presumption of forfeiture for nonuse of water under ORS 540.610(2), as provided in these rules, shall provide evidence that rebuts the presumption of forfeiture.

(2) A presumption of forfeiture may be rebutted by showing one or more of ~~the following the~~ grounds for rebuttals in ORS 540.610(2):

~~(a) The water right is for reasonable and usual municipal use of water;~~

~~(b) A finding of forfeiture would impair the rights of cities and towns to the use of water, whether acquired by appropriation or purchase, or previously recognized by legislative act, or which may be acquired in the future;~~

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~~(c) The owner of the property was unable to use the water due to economic hardship as defined in section (3) of this rule;~~

~~(d) The period of nonuse occurred during a period of time within which land was withdrawn from use under the Federal Soil Bank Program or the Federal Conservation Reserve Program;~~

~~(e) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted or cancellation proceedings were initiated under ORS 540.631, whichever occurs first; and~~

~~(f) The owner of the property to which the water right is appurtenant is unable to use the water because the use of water under the right is discontinued by an order of the Commission under ORS 537.775 (wasteful or defective wells).~~

(3) An economic hardship exists only during the following periods of time:

(a) During a bankruptcy action initiated by or for the record owner or principal farm operator;

(b) During a foreclosure of real or personal property of the record owner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question;

(c) During the redemption periods as provided in ORS 18.960 to 18.985~~ORS 23.530 to 23.600~~;

(d) Three calendar years following the expiration of redemptions as provided in ORS 18.960 to 18.985~~ORS 23.530 to 23.600~~; or, three years from the date of recording of a deed in lieu of foreclosure tendered by the record owner or principal farm operator in payment of debt owed; ~~and~~

(e) The time during which judicial actions limit or prohibit the record owner's or principal farm operator's use of the water in question; and

(f) The time during which a natural disaster would limit or prohibit the record owner's or principal farm operator's use of the water in question.

(4) Documentation supporting rebuttal based on enrollment in a federal program, bankruptcy, foreclosure or foreclosure redemption, natural disaster, or the 15-year statute of limitations on cancellation as provided for in ORS 540.610(2) may include, but is not limited to, the following items:

(a) The enrollment contract or agreement between the record owner, occupant, or principal farm operator and the appropriate federal jurisdiction;

(b) Affidavits by knowledgeable parties such as employees administering the federal programs;

(c) Court pleadings, filings or other legal documentation of bankruptcy or foreclosure;

(d) Documents from financial, mortgage, lending or title institutions; and

(e) Sworn statements by a watermaster, soil scientist, or insurance claim adjuster.

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Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

Rule Summary: The rule is amended to correct statutory references that were renumbered and to align the rules with ORS 540.610 rebuttals, which have changed since the rules were adopted.

690-017-0900

Time Period of Non-Use

Where the rebutted nonuse occurs as an intervening period within an unrebutted period of nonuse totaling five or more years, the remaining unrebutted years of nonuse will be treated as consecutive and cancellation will be initiated.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.610 - 540.670

History:

WRD 17-1990, f. & cert. ef. 9-27-90

WRD 12-1988, f. & cert. ef. 8-10-88

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Division 18

ALLOCATION OF CONSERVED WATER

Amend

690-018-0010

Purpose and Applicability

- (1) These rules describe the voluntary program under which a water right holder may benefit from an allocation of conserved water. Under the program, a portion of any water conserved may be used on additional lands, be put to a different use, or be leased or sold to another user.
- (2) This program is intended to promote the conservation of water, maximize beneficial use and enhance streamflows pursuant to the statutory authority in ORS 537.455 to 537.500 and 540.510(2) and (3).
- (3) These rules establish the process for review and evaluation of the merits and impacts of applications for allocation of conserved water. After a sufficient number of applications are submitted, these rules shall be reviewed and revised, as necessary, to further promote the allocation of conserved water and to provide criteria for determining requirements for mitigation and the establishment of instream water rights.
- (4) The rules in this division apply to applications submitted **on or** after ~~November 5, 2004~~ April 1, 2026, except as specified in OAR 690, Division 2. Applications submitted before this date shall be subject to rules in effect at the time of submittal, except as specified in OAR 690, Division 2.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS& 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

WRD 19-1988, f. & cert. ef. 11-4-88

Rule Summary: Clarifies when these rules apply to applications.

Amend

690-018-0012

Allocation Formula and Process

- (1) Pursuant to ORS 537.470(3), after determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the Commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the Commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the

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applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(2) A water right affected by an allocation of conserved water under this program shall retain its original priority date. The priority date of the conserved water rights shall be either the same as or one minute after that of the original right.

(3) Many water users have expressed concern about the effects of an allocation of conserved water on the continued use of water under the original water right. These rules allow for a period of up to five years after implementation of a conservation project to confirm that the project is performing as expected. This will allow water right holders to better determine the adequacy of the quantity of water allocated to the original right. However, no out-of-stream uses may be made of the conserved water until after ~~finalization-completion~~ of the project and issuance of the new certificates.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS& 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

Rule Summary: This rule is amended to provide greater clarity and to align terminology with that proposed in OAR 690-018-0065 (Finalization of Conservation Project). Adds language from ORS 537.470(3) which this rule already partially restates, but does not do so in full.

690-018-0014

Timing of applications

(1) Applications for allocation of conserved water should be submitted prior to implementation of conservation measures. Project sponsors are encouraged to consult with the Department and other natural resource agencies and to submit applications early in the process of project development. The Department will work with applicants to identify and resolve any concerns of local water right holders, governmental entities, or other organizations.

(2) Notwithstanding section (1) of this rule, applications for allocation of conserved water may be submitted for projects in which all or a significant portion of the project costs have already been incurred. However, these project sponsors must consult with other water right holders in the area, governmental entities, and other organizations who have asked to be consulted prior to submittal of an application to identify and resolve any concerns regarding the application. Conserved water shall not be allocated pursuant to an application under these rules if the application is filed more than five years after the conservation measure was implemented.

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Statutory/Other Authority: ORS 536.025, 536.027 & 537.480**Statutes/Other Implemented:** ORS 537.455 - 537.500**History:**

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

690-018-0020**Definitions**

The following definitions apply in OAR 690, division 18 and to any applications submitted or certificates issued under these rules.

- (1) "Affected local government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction water is or would be diverted, conveyed, or used under a proposed or approved order allocating conserved water.
- (2) "Commission" means the Water Resources Commission.
- (3) "Conservation" means the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.
- (4) "Conserved Water" means that amount of water that results from conservation measures, measured as the difference between:
 - (a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and
 - (b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate.
- (5) "Conserved Water Right" means any water right established by allocation of a quantity of water, that results from the savings of a conservation measure pursuant to OAR 690-018-0010 to 690-018-0090.
- (6) "Department" means the Water Resources Department.
- (7) "Director" means the Water Resources Director.
- (8) "Instream Water Right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water instream for public use.
- (9) "Project costs" means the estimated total projected expenditures and in-kind contributions for a conservation project including but not limited to the costs of engineering, constructing, and monitoring the project and the present value of the incremental change in costs for up to 20 years of operations and maintenance that would not be incurred or realized in the absence of the project.
- (10) "Water use subject to transfer" means a water use established by:

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- (a) An adjudication under ORS Chapter 539 as evidenced by a 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 Water Resources Commission under ORS 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 Water Resources Commission.

Statutory/Other Authority: ORS 536.025, 536.027 & 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 19-1988, f. & cert. ef. 11-4-88

690-018-0025

District Requirements

- (1) Any district intending to seek allocations of conserved water pursuant to ORS 537.455 to 537.500 shall, after providing public notice and holding a public meeting, adopt a policy that at a minimum shall:
 - (a) Describe how water saved by conservation measures will be allocated by the district;
 - (b) Describe how the district will address the allocation of conserved water percentages under ORS 537.470;
 - (c) Provide district patrons the opportunity to fund a share of the conservation project that is proportionate to the patron's share of the water rights involved in the allocation of conserved water and to receive a corresponding share of the conserved water;
 - (d) Provide district patrons an opportunity to petition for a vote by all district patrons on the policy pursuant to applicable statutes governing elections or recalls in the subject district; and
 - (e) Provide district patrons an opportunity to appeal a proposed district conservation project to the district board of directors for failure to follow the district's policy.
- (2) The adopted policy under section (1) of this rule shall be reviewed and updated by the board of directors of the district at least once every five years and may be reviewed and updated more frequently at the discretion of the board of directors of the district. Review and update of the adopted policy must comply with the process and provisions under section (1) of this rule.

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(3) This rule applies only to applications for allocations of conserved water filed by a district after November 5, 2004. This rule does not apply to applications for allocations of conserved water filed by individuals, including district patrons.

(4) For the purposes of this rule, “district” means an irrigation district organized under ORS Chapter 545 or a water control district organized under ORS Chapter 553.

Statutory/Other Authority: ORS 536.025, 536.027 & 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

Amend

690-018-0040

Application Requirements

Applicants for allocation of conserved water shall provide to the Department the information described in this rule in substantially the same order as listed. The information shall include:

- (1) The name(s) of the applicant(s), mailing address(es), email address(es) (if available), and telephone number(s);
- (2) The certificate, permit, or transfer numbers or the name of the decree, if appropriate, of each water use subject to transfer that will be modified by the proposed allocation of conserved water;
- (3) The date of priority and source of water for each water right identified in section (2) of this rule;
- (4) The amount of water that may be used under the original rights expressed as the maximum rate and annual volume (duty) of water that may be diverted as stated on the water use subject to transfer;
- (5) A description of the diversion facilities in sufficient detail for the Department to determine the capacity of the system. The description shall include:
 - (a) For a project that has not been completed, a description of the existing diversion facilities, including diversion structures, pumps, conveyance facilities, an estimate of the amount of water that can be diverted at the existing facilities stated as a rate of diversion, and application methods that will be affected by the proposed project; or
 - (b) For a project that has already been completed, a description of the diversion facilities before the conservation measure was implemented, including diversion structures, pumps, conveyance facilities, the amount of water that was diverted at the facilities stated as a rate of diversion before the conservation measure was implemented, and application methods that will be affected by the project;
- (6) A description of the proposed changes to be made in the physical system and operations that will result in the conservation of water;

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(7) The amount of water needed to meet the beneficial use currently authorized after implementation of the conservation measures described as a maximum rate and annual volume (duty) of water;

(8) The amount of water conserved by implementing the conservation measure calculated as the amount of water identified in section (4) or section (5) whichever is less, minus the amount of water identified in section (7), expressed as a maximum rate and annual volume (duty) of water;

(9) The proposed percentages and quantities of conserved water to be allocated to the applicants and to the state and the proposed use of any conserved water allocated to the applicant;

(10) The applicant's choice of priority date for the conserved water, being either the same as or one minute after that of the original right;

(11) For a project that has not been completed, the date on which the applicant intends to:

(a) Begin construction of the conservation project;

(b) Complete construction and file notice of project completion pursuant to OAR 690-018-0062(1); and

(c) Request that the allocation be finalized pursuant to OAR 690-018-0062(3);

(12) For a project that has already been completed:

(a) Evidence that the measure was implemented within five years prior to the date of filing the application; and

(b) The date on which the applicant intends to request that the allocation be finalized pursuant to OAR 690-018-0062(3);

(13) A description of any expected effects of the proposed allocation of conserved water on other appropriators that identifies what presently happens to the water that the applicant is proposing to conserve;

(14) A description of any mitigation or other measures planned to avoid harm to other water rights;

(15) A description of the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicant's portion of conserved water would be located and used for beneficial out-of-stream uses;

(16) To the extent possible and as applicable, identification of the stream reach that for which the conserved water should be managed under an instream water right for:

(a) the state's portion of conserved water; and

(b) any part of the applicant's portion of conserved water that is to be any-reservations instream for future out-of-stream beneficial uses or dedicated to instream use;

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(17) A map that meets the standards in OAR Chapter 690, Division 305, with sufficient detail to locate and describe the facilities and areas affected by the conservation measures;

(18) Identification of any federal or state public sources of project funds and, if federal or state public funds that are not subject to repayment will be used in the project, information showing the estimated project costs and anticipated sources of funds for the project including:

(a) The total cost for project engineering and construction;

(b) The present value of any incremental changes in the costs of operations and maintenance that are directly attributable to the project that would not be incurred or realized in the absence of the project;

(c) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental changes in the costs of operations and maintenance to be provided from federal or state public funds that are not subject to repayment; and

(d) The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental change since costs of operations and maintenance to be provided from other funds;:-

(19) If construction of the project has begun or been completed and if more than 25 percent of the project costs have been expended before applying for allocation of conserved water, evidence that the applicant has attempted to identify and resolve the concerns of water right holders in the area, governmental entities, or other organizations who have asked to be consulted regarding the allocation of conserved water;

(20) A letter showing irrigation district or water control district approval if the conservation project is within the boundaries of the district;

(21) For applications submitted by irrigation districts or water controls districts, evidence of an adopted policy consistent with the requirements of OAR 690-018-00250030;:-

(22) Land use information outlined in the Department's Land Use Planning Procedures Guide; and

(23) Other information the Department or Commission deems necessary and appropriate to aid in the evaluation of the application.

(24) The appropriate fee as required under ORS 536.050.

(25) The Director shall waive the application fee based on the percent of conserved water allocated to the state for instream use, not to exceed 50 percent of the application fee, if the instream allocation 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

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(c) Determined and endorsed in writing by Oregon Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS& 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 3-1990, f. & cert. ef. 2-28-90

WRD 19-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) require applicant email address(es) if available; (b) refer to the standards in OAR chapter 690, division 305, which provide greater clarity and consistency in mapping requirements across water right transactions; (c) correct reference to another section of these rules; and (d) correct grammatical errors. The rule is also amended to better differentiate between the state's portion and the applicant's portion of conserved water as it relates to management of the water instream.

Amend

690-018-0050

Processing a Conservation Application and Approval of a Conservation Project

(1) When the Department receives an application for allocation of conserved water, the ~~Director~~ Department shall ~~provide public notice of the application through:~~ review the application to determine if the applicant has included the information required under OAR 690-018-0040, all fees have been paid, and if the water rights that will be modified by the proposed allocation of conserved water are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-018-0020(11).

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

(3) If the Department determines the application is complete, all fees have been paid, and the water rights that will be modified by the proposed allocation of conserved water are water uses subject to transfer, the Department shall file the application and undertake an initial review of the application to determine:

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

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~~(b) Except for those already provided notice of the application under subsection (a) of this section, provide notice by electronic means. Concurrent with the date of the Department's weekly public notice first publication pursuant to subsection (a) of this section, provide notice by electronic means mailing to any individuals, organizations, and governmental agencies including the Indian Tribes, and local government planning departments on the Department's weekly mailing list, irrigation districts in the area, and any other parties that the Director determines should be notified, unless the recipient has requested that the notice be sent by regular mail.~~

~~(2) As provided in ORS 540.520(5), the cost of the publication in a newspaper shall be paid by the applicant in advance of publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and the indirect costs which may not exceed twenty (20) percent of the direct costs.~~

~~(3) Any person may review and comment on the application for allocation of conserved water by the deadline specified in the notice. The deadline specified in the notice shall provide at least 20 days after the Department's date of last publication pursuant to subsection (1)(a) of this rule for the submittal of comments.~~

~~(4) The Department shall review the application and consider any comments received under section (3)(2) of this rule to determine:~~

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

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

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

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

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

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

(g) The amounts of water to be allocated to the applicant and, if needed, to the state for an instream water right based on the project costs and the amount of non-reimbursable public funds to be used for the project consistent with ORS 537.470(3) and OAR 690-018-0012(1);

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

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

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(j) Any other conditions or limitations to be included in the new water rights or tied to the use of the applicant's portion of conserved water, including but not limited to conditions or limitations to prevent or mitigate for harm to existing water rights or to prevent enlargement by the measurement, recording, and reporting to the watermaster the amount of water diverted and used under the applicant's reduced rate and duty water right certificate for the lands involved in the application and under the applicant's portion of conserved water, as applicable.

(4) Upon completion of the review outlined in section (3) of this rule, the Department shall provide -by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application, and allow the applicant a period of at least 30 days to examine the initial review and address any issues in the initial review.

(5) Concurrent with the issuance of the initial review outlined in section (4) of this rule, the Department shall give notice of the initial review and accept written public comments for 20 days by:

(a) Publishing notice of the initial review in the Department's weekly public notice; and

(b) Except for those already provided notice of the application under subsection (a) of this section, providing notice by electronic means to any individuals, organizations, governmental agencies including Indian Tribes, local government planning departments, irrigation districts in the area, and parties that the Director determines should be notified, unless -a recipient has requested notification and that the notice be sent by regular mail.

(6) After conclusion of the time specified in OAR 690-018-0050(4) for the applicant to examine the initial review and for the public comment period described in OAR 690-018-0050(5), the Department shall consider applicant feedback and written public comments. Adjustments determined necessary by the Department shall be documented and incorporated into the proposed final order under section (7) of this rule.

~~(7)~~ The Department shall issue a proposed final order of ~~provide notice of~~ the determination made under section ~~(4)~~(3) of this rule, including any adjustments deemed necessary by the Department pursuant to section (6) of this rule. Based upon the Department's determination, if the proposed final order:

(a) Recommends approval of the water conservation project under the application, then the proposed final order shall include conditions that provide for:

(A) The establishment of the dates pursuant to OAR 690-018-0050(3)(i) by which the applicant must:

(i) Complete the conservation measures under the project and file notice of the completion with the Department; and

(ii) Finalize the project and file a request for finalization with the Department;

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(B) Upon issuance of an order approving completion of the project, ~~except if a living certificate for an irrigation district,~~ the cancellation of the original water right certificate that is to be modified by the allocation of conserved water; and

(C) ~~Upon~~Following issuance of an order approving finalization of the project, the issuance of a certificate superseding the original certificate at the reduced rate and duty, a remaining right certificate for the lands not involved in the application, if applicable, and the allocation of the conserved water, all of which shall be contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062;

(b) Recommends approval of the water conservation project under the application as well as completion of the project, then the proposed final order shall include conditions that provide for:

(A) The establishment of the date, not to exceed five years as set forth in OAR 690-018-0050(3)(i), by which the applicant must finalize the project and file a request for finalization with the Department;

(B) Cancellation of the original water right certificate that is to be modified by the allocation of conserved water, ~~except if a living certificate for an irrigation district;~~ and

(C) ~~Upon~~Following issuance of an order approving finalization of the project, the issuance of a certificate superseding the original certificate at the reduced rate and duty, a remaining right certificate for the lands not involved in the application, if applicable, and the allocation of the conserved water, all of which shall be contingent upon completion of the proposed project and satisfactory proof of use of the conserved water pursuant to OAR 690-018-0062; or

(c) Recommends approval of the conserved water project under the application as well as completion and finalization of the project, then the Department shall, ~~except if a living certificate for an irrigation district,~~ include conditions that provide for cancellation of the original water right certificate -that is to be modified by the allocation of conserved water and shall, following issuance of the proposed final order, also issue the following draft certificate(s), as applicable, to supersede the original certificate and allocate the conserved water:

(A) The applicant's reduced rate and duty water right for the lands involved in the application;

(B) The remaining right for the lands not involved in the application, ~~if applicable;~~

(C) The state's instream water right reflecting the state's portion of the conserved water to be put instream consistent with ORS 537.470(3); and

(D) If the applicant is proposing to permanently dedicate all or a portion of their conserved water to the state, then the amount dedicated to the state may be added to (C) of this subsection consistent with ORS 537.470(3).

(8) The Department shall send the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415. The proposed final order shall include a statement of the opportunity to protest the Department's determination. The Department shall provide notice of issuance of the proposed final order by providing a copy of the proposed final order to any other

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person requesting notice to the applicant and to each person who commented on the application for allocation of conserved water in response to the public notice under section ~~(3)~~(2) of this rule. Notice shall be provided by electronic means unless the recipient has requested that the notice be sent by regular mail.

(9) In accordance with OAR 690-002-0220, any person may file a protest against the proposed final order within 45 days after notice of issuance of the proposed final order. Protests, requests for party status, and contested case proceedings are governed by Or Laws 2025, ch 575 and OAR Chapter 690, Division 002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235. If a protest to the proposed allocation of conserved water is received by the Department within 60 days of providing the mailing of the notice of determination provided pursuant to section (5) of this rule, the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. In addition to any other authority the Department may have, if a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can be resolved informally.

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

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

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

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

Statutory/Other Authority: ORS 536.025, 536.027 & 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500, ORS 536.045, Or Laws 2025, ch 575; Or Laws 2025, ch 282.

History:

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WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

WRD 5-1991, f. & cert. ef. 4-26-91

WRD 12-1990, f. & cert. ef. 8-8-90 WRD 3-1990, f. & cert. ef. 2-28-90

WRD 19-1988, f. & cert. ef. 11-4-88

Rule Summary: The rule is amended to (a) implement Or Laws 2025, ch 575, pertaining to new contested case, party status, and protest processes, (b) implement Or Laws 2025, ch 282, requirements relating to use of a weekly public notice instead of a newspaper notice, move notice timing to initial review, and use of an electronic notice of receipt of an application, unless mailing is requested by the applicant, (c) clarify the public notice process, (d) align the process to be more consistent with other transfer procedures, (e) cite additional reference to the allocation formula and process, (f) provide for inclusion of conditions, cancellation of the original water right certificate, and preparation of draft certificates, as applicable, at the proposed final order stage to facilitate implementation of automatic final orders ~~and certificate issuance~~ after 33 days as a matter of law, provided no protests are filed, and (g) clarify the process when an applicant wishes to dedicate their portion of conserved water permanently to the state. This rule is also amended to reflect the Director's delegation to the Department for providing notice of an allocation of conserved water application, to make terminology consistent when referencing the Department, and to clarify that the Department's ability to condition an ACW project. The heading for this rule was also amended to more fully explain the contents of this rule. This rule is further amended to remove language in order to recognize that an applicant may not be the holder of the water right certificate involved in the ACW project.

Amend

690-018-0062

Completion of Conservation Project and Testing Period

(1) If the order approving the application for allocation of conserved water allows a time period for completing the conservation measures and finalizing the allocations of conserved water prior to certification, upon following notice from the applicant that the project has been completed, the Director shall issue ~~an~~ completion order:

(a) Canceling the original water right certificate held by the applicants that ~~are~~ is modified by the allocation of conserved water.

(b) Allowing the continued use of water for the purposes and at the locations described in the original water right certificates at the reduced rate and duty prescribed under OAR 690-018-0050(4)(7)(e); and

(c) Allowing the use and management of the conserved water as a dedication of the water instream.

(2) Consistent with the order approving the allocation of conserved water and at the request of the applicants within the period allowed under ~~the order under OAR 690-018-0050(4)(i)~~ OAR

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~~690-018-0050(7)(a)(A)(ii) or -0050(7)(b)(A) for finalization of the project,~~ the Director may increase the amount of water to be used pursuant to subsection (1)(b) of this rule and decrease by a like amount the **quantity of** conserved water needed to mitigate for harm to existing water rights and the quantity of conserved water to be allocated ~~pursuant to 690-018-0050(4)(d)~~ if the Director finds that the changes are necessary because the conservation project has not performed as expected and that the applicant's use of additional water would not be wasteful. A request for additional water submitted under this section shall include sufficient information to demonstrate that:

- (a) The project is less effective than was expected when the order approving the allocation of conserved water was issued;
- (b) The lack of performance is not caused by the applicant's failure to maintain the project; and
- (c) The amount of water remaining for use under the original water rights is insufficient to satisfy the beneficial uses.

~~(3) Prior to the expiration of the time allowed under OAR 690-018-0050(4)(i), the applicant may request that an allocation of conserved water be finalized. The request shall include:~~

~~(a) If all or part of the applicants' portion of the conserved water is to be used for an out-of-stream use at an identified location, the following information:~~

~~(A) The name and address of the person using the water;~~

~~(B) A description of the type of beneficial use of the water;~~

~~(C) A legal description of the place of use; and~~

~~(D) A map that meets the standards in OAR 690-310-0050; and~~

~~(b) If all or part of the applicants' portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right.~~

~~(4) Upon receipt of a request that an allocation of conserved water be finalized or upon the expiration of the time allowed under OAR 690-018-0050(4)(i), the Director shall issue:~~

~~(a) A superseding certificate as provided for in the order approving the allocation of conserved water;~~

~~(b) A certificate for an instream water right for the state's portion of the conserved water if required under OAR 690-018-0050(4)(g); and~~

~~(c) An order allowing:~~

~~(A) The use of any portion of the conserved water allocated to the applicants, at the location and for the type of use identified pursuant to subsection (3)(a) of this rule;~~

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~~(B) The use and management as an instream water right of any conserved water that is being leased, dedicated or temporarily reserved instream.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

Rule Summary: This rule is amended to (a) incorporate conforming changes into references to other sections in OAR Chapter 690, Division 18, (b) provide greater clarity for terminology used, and (c) provide more specificity related to the deadline for finalization of the conserved water project. Rule language removed from OAR 690-018-0062(3) and (4) has been readopted and amended in OAR 690-018-0065(1) and (2).

Adopt

690-018-0065

Finalization of Conservation Project

~~(1) Prior to the expiration of the time allowed under OAR 690-018-0050(3)(i) and OAR 690-018-0050(7)(a)(A)(ii) or -0050(7)(b)(A), the applicant may request that an allocation of conserved water be finalized. The request shall include:~~

~~(a) If all or part of the applicant's portion of the conserved water is to be used for an out-of-stream beneficial use at an identified location, the following information:~~

~~(A) The name, mailing address, email address (if available), and telephone number of the person using the water;~~

~~(B) A description of the type of beneficial use of the water;~~

~~(C) A legal description of the place of use; and~~

~~(D) A map that meets the standards in OAR Chapter 690, Division 305; and~~

~~(b) If all or part of the applicant's portion of the conserved water is to be leased, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right.~~

~~(2) Upon Following receipt of a request that an allocation of conserved water be finalized or upon following the expiration of the time allowed under OAR 690-018-0050(7)(a)(A)(ii) or -0050(7)(b)(A), the Director shall issue:~~

~~(a) A finalization order allowing, as applicable:~~

~~(A) The out-of-stream beneficial use of any portion of the conserved water allocated to the applicant, at the location and for the type of use identified pursuant to subsection (1)(a) of this rule; and~~

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(B) The use and management as an instream water right of any portion of the conserved water allocated to the applicant that is being leased, dedicated or temporarily reserved instream;

(b) Certificate(s) to supersede the original certificate as provided for in the order approving the allocation of conserved water for:

(A) The applicant's reduced rate and duty water right for the lands involved in the application; and

(B) The remaining right for the lands not involved in the application, if applicable; and

(c) A certificate for an instream water right for the state's portion of the conserved water as pursuant to ORS 537.470(3).

(d) If the applicant is proposing to permanently dedicate all or a portion of their conserved water to the state, then the amount dedicated to the state may be added to (C) of this subsection consistent with ORS 537.470(3).

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

Rule Summary: This rule is adopted to (a) better differentiate between the rules related to completion of the project and finalization of the project, (b) provide more specificity related to the deadline for finalization of the conserved water project, (c) request additional contact information for the applicant, (d) incorporate conforming changes into references to other sections in OAR chapter 690, division 18, (e) provide greater clarity for terminology used, (f) refer to the standards in OAR chapter 690, division 305 which provide greater clarity and consistency in mapping requirements across water right transactions, and (g) clarify the process when an applicant wishes to permanently dedicate their conserved water to the state. This rule is further amended to provide greater clarity as it relates to the process.

690-018-0080

Management of Conserved Water

(1) The Department shall manage any conserved water allocated to instream use under the rules established to implement ORS 537.332 to 537.360 pertaining to instream water rights.

(2) A conserved water right reserved instream for future out of stream use shall be managed to carry the water through the stream reach described in the order issued pursuant to OAR 690-018-0050. Any conserved water reserved instream shall maintain its priority date and will not be subject to abandonment under ORS 540.610 to 540.670.

Statutory/Other Authority: ORS 536.025, 536.027 & 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 19-1988, f. & cert. ef. 11-4-88

Amend

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690-018-0090**Change in Use of Conserved Water**

- (1) Any person or agency entitled to the use of conserved water shall notify the Director of any change in the type of use, place of use or point of diversion. The notice must be submitted 60 days before the actual change and must include the information requested in OAR 690-018-~~0065(1)(a)~~~~0062(3)(a)~~.
- (2) The Director shall approve a change in the type of use, place of use, or point of diversion for conserved water if:
- (a) The proposed new use is within the area described under OAR 690-018-0050~~(4)~~(3)(h);
 - (b) The proposed change would not constitute an expansion of the right; ~~and~~
 - (c) The proposed point of diversion would divert water from the same authorized source of water and would not constitute injury to another existing water right;
and
 - (d) The approval is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).
- (3) A change in the dispensation of the use of a conserved water right may be initiated 60 days after the notice prescribed in section (1) of this rule if the Director takes no action within that period.
- (4) When a right to the use of conserved water is sold or given to an agency or political subdivision of the state or to a person:
- (a) The right shall become appurtenant to the premises upon which use is made;
 - (b) A certificate of water right shall be issued upon satisfactory proof of use; and
 - (c) Unless dedicated to instream use, the right shall be subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.
- (5) Upon approval of a change in the use or point of diversion proposed under this rule, the Director shall issue a new order to allow the new use of the conserved water.
- (6) Any changes in the type of use, place of use, or point of diversion that are not provided for under this rule shall only be made after compliance with the transfer rules in OAR 690, division 380.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS& 537.480

Statutes/Other Implemented: ORS 537.455 - 537.500

History:

WRD 7-2004, f. & cert. ef. 11-5-04

WRD 15-1994, f. & cert. ef. 12-23-94

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WRD 12-1990, f. & cert. ef. 8-8-90
WRD 19-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) incorporate conforming changes; (b) update reference to other rules; and (c) include criteria that any change in point of diversion under this rule must divert water from the same source and cannot injure other existing water rights, ~~including instream water rights.~~

DRAFT

2/27/26

Division 380
WATER RIGHT TRANSFERS

Amend
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. These rules also establish requirements for changes to a water use permit pursuant to ORS 537.211(4).

(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) and OAR 690-380-7000 through OAR 690-380-7300;

(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.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 – 540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0001

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 10-1988, f. & cert. ef. 8-10-88

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to add reference to OAR 690-380-7000 through 690-380-7300, which are newly adopted rules pertaining to processes regarding applications for water right permit amendment which implement ORS 537.211(4) and to include that as part of the purpose of the rules. This rule is amended to remove temporary change in character of use of a right to store water because ORS 540.523 does not provide this authority.

Amend

690-380-0090

Applicability

The rules in this division apply to applications submitted on or after April 1, 2026, except as specified in OAR chapter 690, division 2. Applications submitted before this date shall be subject to rules in effect at the time of submittal, except as specified in OAR chapter 690, division 2. 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:

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~~(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 chapter 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 Chapter 690, dDivision 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.~~

~~(56) The Department shall not apply OAR 690-380-40104000(56) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership information was included with the application.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 8-2004, f. & cert. ef. 11-5-04

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

Rule Summary: This rule is updated to reflect the new applicability of the updated rules.

Amend

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;

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- (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 or permit amendment 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 response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.~~
- (910) “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.~~
- (1012) “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.
- ~~(113) “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.~~
- ~~(124) “Water use subject to transfer” means a water use established by:~~
- ~~(a) An adjudication under ORS Chapter 539 as evidenced by court decree;~~

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~~(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.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0005

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 10-1988, f. & cert. ef. 8-10-88

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 575, by removing the “standing” definition, (b) add reference to “permit amendment” to align with the inclusion of newly adopted rules under OAR 690-380-7000 through 690-380-7300 pertaining to processes regarding water right permit amendment applications, (c) remove redundant definitions of “protest” and “water use subject to transfer” which are defined in OAR 690-300-0010, and (d) make other changes for rule language consistency.

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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

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

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Amend**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 and OAR 690-380-7000 to OAR 690-380-7300, ~~or~~ certificate of registration modification under OAR chapter 690, division 382, or allocation of conserved water under OAR chapter 690, division 18.

(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, as defined in OAR 690-200-0050(9).

(3) The Department may:

(a) condition the transfer to prevent injury or enlargement resulting from the change.; and

(b) deny a change in the point of appropriation pursuant to ORS 540.586.

(4) 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 ~~c~~Chapter 540 and OAR cChapter 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 for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250, as defined in OAR 690-380-0100(14)(e), shall be subject to the same statutory and administrative review criteria prescribed by ORS ~~c~~Chapter 540 and OAR ~~chapter~~ 690, division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the location of 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 and OAR 690-380-7000 to OAR 690-380-7300.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 450.695, ORS& 540.510 - 540.532, ORS 537.250, ORS 540.586

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

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WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0010

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 19-1990, f. & cert. ef. 12-14-90

WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0015

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) include reference to chapter 690, division 18 rules regarding allocation of conserved water, (b) include references to proposed rules pertaining to water right permit amendments, (c) remove reference to a deleted definition and add simplified language for clarity, (d) make other changes for rule language consistency, and (e) clarify practice of conditioning water rights to prevent injury or enlargement. This rule is also amended to provide more clarity around the meaning of “same aquifer” and recognizes that the department may deny a point of appropriation in certain circumstances (ORS 540.586) as a result of 2025 legislation.

Amend

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 decreed right may request a change in point of diversion ~~or appropriation~~ to reflect the historical use 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 titled “Historic Change in Point of Diversion~~OD~~,” and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000. The provisions under OAR 690-380-2120 shall not be used to change the location of an on-channel dam for a water right certificate that authorizes the storage of water.

(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, including to any instream water right granted pursuant to a request under ORS 537.336, pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department, prior to

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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 validated 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 with, except as specified in section (3)(a)(E) of this rule, the name and address of the current holder(s) of each affected water right identified. 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;

~~(E) The list need not include any instream water right granted pursuant to a request under ORS 537.336, created pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department, as the application to the Department shall be considered notification to the holder of these rights, and no further notice to the Department shall be required.~~

(b) Provide the applicant with a copy of a notice that they must send by certified mail with return receipt service requested ~~to be mailed or hand delivered to the~~ all affected water right holders, ~~except the Department pursuant to (3)(a)(E)~~, 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 or enlargement, and that any timely comments received will be considered pursuant to the Department's evaluation and determination made under section (5) of this rule; and

(C) Establishes a comment period of at least 30 days after the date of delivery of the notice by certified mail ~~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

(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 with the name and address of the current holder(s) of each affected water right identified and a copy of the notice,

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the individual requesting the change 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~~ send the notice by certified mail with return receipt service requested to all such holders. If an instream water right granted pursuant to a request under ORS 537.336, created pursuant to ORS 537.346, ORS 537.348 or ORS 537.470, or converted pursuant to ORS 543A.305, and held in trust by the Department would be affected, the application to the Department shall be considered notification to the holder of these rights, and no further notice to the Department shall be required.— The individual shall, within 14 days of the certified date of delivery of the notice, provide to the Department the signed and dated certified mail return receipts~~written~~ as proof of service upon the affected water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the written signed and dated certified mail return receipts as proof of service and or before the comment date specified in the notice, whichever is later.

(5) If, after considering any timely 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 or enlargement, or can be conditioned to prevent injury or enlargement, the request shall be approved. The order approving the change in point of diversion ~~or appropriation~~:

(a) ~~s~~ Shall establish a deadline for compliance with any conditions needed to prevent injury or enlargement and, where required, to provide fish screening;:-

(b) May, condition the transfer to prevent injury or enlargement resulting from the change if the Department determines that injury or enlargement may occur as a result of the change; and

(c) Shall cancel the certificate, if a certificate had previously been issued, the order shall cancel the certificate.

(6) Concurrent with issuance of the approval order described in section (5) of this rule, Tthe Director shall issue a new certificate confirming the change in point of diversion ~~or appropriation~~ and preserving all other conditions of the water right.

(7) ~~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.

(8) ~~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.

Statutory/Other Authority: ORS 536.025 & 536.027, ORS 537

Statutes/Other Implemented: ORS 540.532, ORS 537.336, ORS 537. 341, ORS 537.346

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0240

WRD 5-1996, f. & cert. ef. 7-11-96

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Rule Summary: This rule is amended to (a) add language to provide more clarity as it relates to the “claim of injury” standard; (b) provide more certainty in proof of service to affected water right holders by requiring applicant to serve notice by certified mail with return receipt requested; (c) add language to provide more clarity around criteria for approval of applications under this rule; (d) conform changes to correct numbering; (e) link to the mapping requirements in OAR 690-380-3100; (f) add language to clarify that instream water rights requested pursuant to ORS 537.336, created pursuant to ORS 537.346, ORS 537.348, or ORS 537.470, or converted pursuant to ORS 543A.305 are included in the listing of affected water rights and the approach for notice to these specific water rights; (g) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation; (h) add language to specify that timely comments are considered as part of the Department’s determination of whether injury or enlargement will occur; and (i) clarify practice of conditioning water rights to prevent injury or enlargement so that an application can be approved. This rule is also amended to reflect that OWRD believes this rule only applies to historic surface water POD changes, to clarify applicability of this rule as it relates to changing the location of an on-channel dam associated with a reservoir storage right.

Amend

690-380-2130

Change from a Surface Water Point of Diversion to a Ground-~~w~~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 [ORS 540.520, ORS 540.530, and](#) 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
 - (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.

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(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 ~~b~~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 ORS 540.520, ORS 540.530, and 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 for the portion of the water right transferred.

(8) Pursuant to ORS 540.531(6)(a), ~~F~~the Department shall, for a water use subject to transfer, 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

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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. If the approved change is not made, the transfer holder or receiving landowner, as appropriate, shall follow the process outlined under OAR 690-380-6010(7) to notify the Department of failure to complete the change and request to return to the last authorized surface water point of diversion prior to the transfer pursuant to OAR 690-380-6010.

(9) Pursuant to ORS 540.531(6)(b), ~~the~~ Department shall, for a water use subject to transfer, approve an transfer 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. If the approved change is not made, the transfer holder or receiving landowner, as appropriate, shall to notify the Department of failure to complete the change and request to return to the last authorized surface water point of diversion prior to the transfer pursuant to OAR 690-380-6010.

(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 ~~(7)(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.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.520, ORS 540.530, ORS& 540.531

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 1-2004, f. & cert. ef. 3-17-04

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WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0210

WRD 5-1996, f. & cert. ef. 7-11-96

Rule Summary: This rule is amended to (a) add language to provide more clarity and reflect standard agency practices, (b) add language that provides a more detailed description of the available processes and criteria to revert an approved groundwater appropriation back to the last authorized surface water point of diversion prior to the transfer, and (c) correct a statutory reference. This rule is also amended to clearly refer to statutory requirements.

Amend**690-380-2200****Changes in Place of Use**

(1) 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, instream lease or instream transfer under OAR chapter 690, division 77, allocation of conserved water under OAR chapter 690, division 18, or pursuant to OAR 690-380-2260.

(2) For water rights with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380-0010(2)(c), the lands from which the water right is removed do not continue to receive water from the same source.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) include references to OAR chapter 690, division 18 rules regarding allocation of conserved water and OAR chapter 690, division 77 rules regarding instream leases and transfers, which also are subject to OAR chapter 690, division 380 rules, and (b) provide greater transparency around, and ensure alignment with, existing Department policy that a place of use transfer must involve a physical change that alters where the water right is located and that it must be consistent with requirements related to the prevention of enlargement.

Amend**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, or 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.

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(2) Pursuant to ORS 540.510(1), ~~W~~hen 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. The Department's notification shall identify the layering issue(s) that must be resolved and the options for resolution outlined in section (3) of this rule, and shall be sent to the applicant through either:

(a) Issuance of an initial review, if required; or

(b) Sending a letter by electronic means, or if requested by regular mail, for those transfers that do not require issuance of an initial review.

(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, or otherwise as allowed under section (5) of this rule;

(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 filed pursuant to (3)(a) of this rule to transfer ~~or amend~~ a layered water use subject to transfer, ~~or amend a layered~~ permit, or modify a layered certificate of registration identified under section (2) of this rule should be denied or not recognized, the Department shall notify the applicant of the Department's intent to issue final orders denying or not recognizing 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.

Statutory/Other Authority: ORS 536.025, ~~&~~ ORS 536.027

Statutes/Other Implemented: ORS 540.510 – 540.532, Or Laws 2025, ch 282

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved, (b) implement

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Or Laws 2025, ch 282, with respect to providing notification in electronic form, and (c) for consistency with Division 382 pertaining to groundwater registration modifications.

Amend

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 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 in the initial review, as prescribed in OAR 690-380-4000, 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 timeframe provided in OAR 690-380-4000(9) and (10) the date of Department notification, the applicant modifies the application to include the supplemental water right or permit or withdraws the application.

(3) Provided the applicant, other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c), responds to the initial review in a manner consistent with the requirements of OAR 690-380-4000, if the report of ownership information required in OAR 690-380-4000(6) and (7) identifies a landowner that is not the applicant, then the Department shall notify the identified landowner, provide the identified landowner a copy of the initial review, and allow the identified landowner 30 days to provide consent to the proposed transfer and method to address the supplemental right.

(4) 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, or if an identified landowner does not provide consent to the proposed transfer and method to address the supplemental right.

(5) If the Department determines it can approve the transfer of the primary water right but ~~does~~ cannot 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-~~4000(6) and (7)~~~~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 an order approving the transfer of the primary water right ~~transfer order~~, unless the applicant withdraws the transfer application within 90 days.

(6) 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

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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.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.530

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0048

WRD 5-1996, f. & cert. ef. 7-11-96

Rule Summary: This rule is amended to (a) clarify that issuance of an initial review under OAR 690-380-4000 serves as the Department's notice of intent to cancel a layered supplemental water right unless the primary right transfer application is modified to include the supplemental or is withdrawn, (b) add language to describe the Department's process for notifying a landowner, other than the applicant, of layering issues, how they may be resolved, and the timeframe for doing so, (c) clarify the stages of processing when the Department makes its determination and issues an order, and (d) add language to correct rule references pertaining to a report of ownership information.

Amend

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: by publication in the Department's weekly public notice and accept written public comments for 30 days.

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

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

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

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

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

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

~~(5) Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR 690-002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.~~

~~(6) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.~~

~~(7) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order. 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.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.533 - 540.543, Or Laws 2025, ch 282, Or Laws 2025 ch 575

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to public notice requirements, and (b) provide for issuance of a proposed final order in order to implement Or Laws 2025, ch 575, with respect to opportunities for protest against a proposed final order and contested case proceedings, and finalization of the order.

Amend

690-380-2300

Changes in Character of Use

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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, instream lease or instream transfer under OAR chapter 690, division 77, allocation of conserved water under OAR chapter 690, division 18, or pursuant to OAR 690-380-2340.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to include reference to OAR chapter 690, division 18 pertaining to allocation of conserved water and OAR chapter 690, division 77 pertaining to instream leases and transfers, both of which also are subject to OAR chapter 690, division 380 rules.

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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.530

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0030

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

Amend

690-380-2330

Substitution of Supplemental Ground-~~w~~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 ~~or expansion~~ of the primary ~~surface~~-water right or if the use results in injury to other existing water rights.

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(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 and enlargement evaluation.

(4) Upon receiving an application, the Department shall provide notice of the application in the Department's weekly public notice and accept written public comments for 30 days. ~~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 a ~~proposed final~~ order recommending ~~approving~~ or ~~denial~~ of the substitution within 90 days after the Department receives an application under section (1) of this rule. If the proposed substitution will result in injury or enlargement, the Director shall prohibit or condition the use to avoid or mitigate the injury or enlargement. ~~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. The Department shall provide notice of the proposed final order and accept protests and requests for party status in the manner described in OAR 690-380-4020 and 690-380-4030.~~

(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 or enlargement. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.

(8) Following approval of a substitution as outlined in section (7) of this rule, no change in place of use, character of use, point of diversion, or point of appropriation may occur except upon termination of the substitution and approval of a new transfer application.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) align the contested case process to implement Or Laws 2025, ch 575, (b) modify rule text to align with statutory language in ORS 540.524(1) and remove redundancies, (c) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation, and (d) provide greater transparency around existing Department policy and practice for not allowing certain transfers to occur prior to termination of the substitution and approval of a new transfer application.

Amend

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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:

- (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, email address (if available), 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) Water use measurement data, system capacity information, or other data acceptable to the Department regarding the maximum instantaneous rate and annual volume ~~The quantity~~ of water diverted to satisfy the authorized specific use under the original water right, as well as the date(s) or time frame associated with the data or information provided; and
 - (e) A description of the general industrial use to be made of the water after the change.
- (4) The Department may request additional information necessary to validate the data or information provided under section (3)(d) of this rule or to establish that the water right is not subject to forfeiture under ORS 540.610.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

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

Rule Summary: This rule is amended to provide more direction on the information necessary to demonstrate the quantity of water diverted for the original specific industrial use and to ensure, consistent with ORS 540.520, that the quantity of water to be used for general industrial use does not exceed that amount. This rule was also amended to provide OWRD with the ability to request additional information when needed to validate submitted water use data/information and to establish the right is not subject to forfeiture under ORS 540.610. The amended rule adds email address for electronic sending of documents and communication.

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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.

(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 690, division 300.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0140

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 19-1990, f. & cert. ef. 12-14-90

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;

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- (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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0150

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 19-1990, f. & cert. ef. 12-14-90

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;

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(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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0130

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 19-1990, f. & cert. ef. 12-14-90

Amend

690-380-3000

Application for Transfer

A separate application is required for each water use subject to transfer that is involved in the proposed transfer, except for those circumstances outlined in OAR 690-380-2240(1) and (5) or unless the criteria under OAR 690-380-3220 are met. 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, email address (if available), and telephone number.

(2) Type of change proposed.

(3) Name appearing on permit, certificate, decree or proof of appropriation.

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- (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 authorized and proposed points of diversion or appropriation located accurately in reference to a public land survey corner. If the request is for a change in point of diversion, then the application shall also:
- (a) Indicate whether the proposed point of diversion is located upstream or downstream from the existing authorized point of diversion; and
- (b) Provide any information, if known, regarding fish screens and passage at the proposed point of diversion, including but not limited to the following:
- (A) Any previous ODFW fish screening certification letter and/or passage approval number;
- (B) A copy of any preliminary ODFW fish screen and/or passage determination; and
- (C) Name and contact information for the ODFW representative(s) with whom the applicant is working.
- (9) The existing 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 existing 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 beneficially 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) A completed evidence of use affidavit on a form provided by the Department;
- (ab) 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 which may include, but is not limited to:
- (A) ~~Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;~~

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~~(B)~~ Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; ~~or~~

~~(CB)~~ Dated satellite imagery, ~~D~~dated aerial photographs of the lands, or other photographs containing sufficient detail to establish the location and date of the photograph; or

(C) Any other documentation with sufficient detail to support the affidavit attesting to beneficial use of the water right during the past five years.

~~(cb)~~ 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), or is exempt under ORS 540.610(3)-4 or 540.612.

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that;

(A) For all applications other than a change in point of diversion to reflect historical use under OAR 690-380-2120, upon receipt of the ~~draft preliminary determination~~ initial review described in OAR 690-380-~~4000~~4010(4) and prior to the Department ~~approval of the issuing a proposed final order on 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-~~4000~~(6)~~4010~~(5); or

(B) For an application to make a change in point of diversion to reflect historical use under OAR 690-380-2120, 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 690-380-4000(6);

(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 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.

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- (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.

Statutory/Other Authority: ORS 536.025, [ORS](#)& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.531, [ORS 536.050, Or Laws 2025, ch 282](#)

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0060

Reverted to WRD 5-1996, f. & cert. ef. 7-11-96

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WRD 1-2000(Temp), f. 5-16-00, cert. ef. 5-16-00 thru 11-10-00

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 16-1990, f. & cert. ef. 8-23-90

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 10-1988, f. & cert. ef. 8-10-88

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology and electronic documentation and notification, (b) provide general clarifications, (c) add language to assist with fish screen and passage evaluation for transfers involving point of diversion changes, (d) update certain language pertaining to documentation submitted as part of the application to support attestations of beneficial use of water or rebuttal to forfeiture to provide the Department with more certainty when evaluating beneficial use of water under the water right or that the right is not subject to forfeiture, add language to clarify that information is to be provided on the Department's evidence of use affidavit, and (e) clarify when ownership information is required for different application types, as it relates to the applicant's signed statement of acknowledgement. This rule is also amended to clarify that a separate transfer application is required for each water use subject involved in the proposed transfer, except under certain circumstances, and to document conforming changes (rule structure). This rule is further amended to reflect that OWRD believes that the Historic Transfer process under OAR 690-380-2120 only applies to historic surface water POD changes.

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.

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Statutory/Other Authority: ORS 536.025 & 536.027**Statutes/Other Implemented:** ORS 540.510 - 540.532**History:**

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

Amend 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 standards in OAR chapter 690, division 305, as well as 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 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~~

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~~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°).~~

(ic) 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.

(dj) 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;~~

~~(ab) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original. A digital stamp or seal and signature are acceptable, provided the requirements under OAR 690-014-0050 are satisfied;~~

(be) The location of each existing and proposed point of diversion or appropriation;

(ce) 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;

(de) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;

(ef) 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

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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.

Statutory/Other Authority: ORS 536.025, [ORS](#) & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0070

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) refer to the standards in OAR Chapter 690, Division 305, for greater clarity and consistency in mapping requirements across water right transactions, and (b) refer to OAR 690-014-0050 which outlines certain requirements for certified water right examiners for digital seals and signatures.

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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Statutory/Other Authority: ORS 536.025 & 536.027**Statutes/Other Implemented:** ORS 540.510 - 540.520**History:**

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0020

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

Amend**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 when one or more of the following circumstances applies:

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

Statutory/Other Authority: ORS 536.025, ORS & 536.027**Statutes/Other Implemented:** ORS 540.520**History:**

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0025

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 16-1990, f. & cert. ef. 8-23-90, Renumbered from 690-015-0035

WRD 10-1988, f. & cert. ef. 8-10-89

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to clarify the requirements for submitting a single transfer application involving multiple water rights.

Amend**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:

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- (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~~541.932; or
- (3) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat except when this determination is as a result of a request for consent to injury to an instream water right as outlined in OAR 690-380-5050.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 541.932, ORS 536.050

History:

RD 2-2003, f & cert. ef. 5-1-03

Rule Summary: This rule is amended to (a) renumber statutory reference to reflect changes made to ORS 541 by legislative action in 2011, and (b) clarify that the waiver of fees due to ODFW's determination and written endorsement that a proposed change will result in a net benefit is not applicable to any request under OAR 690-380-5050 for consent to injury.

Amend

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 541.932; 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

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(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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 541.932

History:

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

~~**Rule Summary:** This rule is amended to renumber statutory reference to reflect changes made to ORS 541 by legislative action in 2011.~~

Amend

690-380-4000

~~**Request for Comments**~~**Initial Review**

(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, all fees have been paid, and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-~~300-001080-0100~~(14).

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

(3) If the Department determines the application is complete, all fees have been paid, 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. undertake an initial review of the application that includes an assessment of whether:~~

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(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 690-300-0010(59) and, for a right described under 690-300-0010(59)(d), the proof of completion is approved under OAR 690-380-6040;

(b) The portion of the water right to be transferred is cancelled pursuant to ORS 540.610;

(c) The right is subject to forfeiture under ORS 540.610;

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

(e) The proposed transfer would result in enlargement as defined in OAR 690-380-0100(2);

(ef) The proposed transfer would result in injury as defined in OAR 690-380-0100(3); and

(fg) Any other requirements set forth in applicable laws for water right transfers are met.

(4) For an initial review that indicates an application is not consistent with the approval criteria outlined in OAR 690-380-5000(1) and should be denied, the initial review shall:

(a) Describe any inconsistencies with the approval criteria; and

(b) Identify any conditions or restrictions that, if included in the transfer, would address the inconsistencies.

(5) Upon completion of the initial review, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application and allow the applicant 30 days from the date of notice to:

(a) Notify the Department to stop processing the application; or

(b) Notify the Department to continue processing the application and, **except as provided in section (10) of this rule,** provide any outstanding information to the Department including, but not limited to:

(A) Amending the application to address any issues or deficiencies identified by the Department in the initial review; and

(B) For permanent transfers under OAR 690-380-2000, submitting documentation to satisfy the requirements of sections (6), (7), and (8) of this rule, as applicable.

(6) Upon receipt of the initial review, 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(9) for the land to which the water right is appurtenant;

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

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(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.

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

(a) Be prepared no earlier than three months prior to the date of the initial review 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.

(8) Upon receipt of an initial review indicating that an application should be denied due to a finding of injury resulting from a proposed change in point of diversion or appropriation, if the applicant intends to request consent to the injurious transfer pursuant to OAR 690-380-5030 as applicable, then the applicant shall submit the following:

(a) For a finding of injury to any water right other than an instream water right as identified in OAR 690-380-5030(1), a written statement in accordance with OAR 690-380-5030(1) notifying the Department that the applicant intends to request consent to the injury of the water right(s) and indicating the applicant understands that, upon receipt of the complete listing of injured water rights and contact information from the Department, the applicant must provide the information required under OAR 690-380-5030(1) and OAR 690-380-5040; or

(b) For a finding of injury to any instream water right granted pursuant to a request under ORS 537.336 or created pursuant to ORS 537.346(1) and held in trust by the Department, a written statement in accordance with OAR 690-380-5050(1) notifying the Department that the applicant intends to request consent to injury to an instream water right pursuant to OAR 690-380-5030(2) and OAR 690-380-5050.

(9) Except as provided in section (10) of this rule, the Department shall permanently close the file for the application and take no further action on the application if, within 30 days from the date of the notice described in section (5) of this rule, the applicant:

(a) does not notify the Department as provided in subsections (5)(a) and (b) of this rule;

(b) does not provide all outstanding information as provided in subsection (5)(b) of this rule; or

(c) notifies the Department to stop processing the application.

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(10) If requested within the 30-day time period specified in section (5) of this rule, the Department may allow an applicant up to 60 additional days, not to exceed a total of 90 days from the date the Department provided notice of the initial review to the applicant pursuant to section (5) of this rule, to provide the outstanding information described in subsection (5)(b) of this rule if the applicant requests additional time and the Department determines that the applicant is undertaking reasonable efforts to provide the information in a timely manner to the Department.

(11) The initial review shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(12) If the applicant amends the application or provides additional information in support of approval of the application, the Department may either revise the initial review and give notice of the revised initial review in the manner set forth under OAR 690-380-4005; or incorporate the amendments into the proposed final order.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WWRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, -with respect to change in document terminology, phased application processing and notice requirements, and electronic forms of documents, (b) make a conforming change and correct reference to another rule, (c) include language formerly located in OAR 690-380-4010 that now pertains to the initial review process in this rule, (d) add language to clarify **applicability and** requirements related to the process for an applicant to request consent to an injurious transfer, and (e) add language to allow for processing efficiency when appropriate as it relates to application amendments. This rule is also amended to clarify the deadline **of 30 days, except as provided in OAR 690-380-4000(10)**, by which an applicant must request additional time if needed to provide any outstanding information and that the total time allowed cannot exceed 90 days total from the date the Department provided notice of the initial review to the applicant. This rule is further amended to align initial review, proposed final order, and final order approval criteria, and to provide that the Department may revise the initial review or incorporate into a PFO if applicant revises its application.

Adopt

690-380-4005

Request for Comments

If, within 30 days from the date of the Department's notification to the applicant described in OAR 690-380-4000(5), the applicant notifies the Department to proceed with the application and

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provides any outstanding information necessary to continue processing the application, or if applicable provides the outstanding information within an additional time period allowed under OAR 690-380-4000(10), the Department shall proceed with processing the application and give notice of the initial review in the Department's weekly public notice and accept written public comments for 30 days.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: -ORS 540.520, Or Laws 2025, ch 282

Rule Summary: This rule is adopted to implement Or Laws 2025, ch 282, with respect to phased application processing and public comment and notice.

Amend

690-380-4010

Preliminary Determination Proposed Final Order

(1) After the conclusion of the public comment period described in OAR 690-380-4005(1)(b)0(4), the Department shall:

(a) ~~prepare~~ Issue a ~~preliminary determination proposed final order indicating of~~ whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4005(1)(b)0 and the considerations described in section (2) of this rule;

(b) Give notice of the transfer application and proposed final order in the manner described in OAR 690-380-4020; and

(c) If applicable, issue draft remaining right certificate(s).

(2) The Department's ~~preliminary determination proposed final order~~ shall include an assessment of whether the application is consistent with the following approval criteria:

(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 690-300-0010(59) and, for a right described under 690-300-0010(59)(d), the proof of completion has been approved under OAR 690-380-6040;

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

(c) 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~~d) The water user is ready, willing and able to use the full amount of water allowed under portion of the right to be transferred;

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

(~~f~~f) Except as provided in OAR 690-380-5030, The proposed transfer would not result in injury as defined in OAR 690-380-0100(3);

and

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(eg) Any other requirements ~~for applicable to~~ water right transfers are met.

(3) For a ~~preliminary determination~~proposed final order that indicates that an application should be denied because it is not consistent with the approval criteria outlined in section (2) of this rule, the ~~preliminary determination~~proposed final order 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.~~

~~(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(910) 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.~~

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~~(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.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, alignment of initial review, proposed final order and final order approval criteria, and removal of initial review process language to relocate under the Initial Review section, (b) correct references to other rules, (c) remove language related to the now obsolete draft preliminary determination, but that still applies to an initial review, so it was moved to OAR 690-380-4000, and (d) modify some provisions related to forfeiture. This rule is also amended to clarify that any applicable other requirements for transfers refers only to those requirements “applicable to” transfers and to clarify the extent to which the applicant must demonstrate the ready, willing and able standard.

Amend

690-380-4020

Notice of ~~Preliminary Determination~~Proposed Final Order

~~(1) After the time for the applicant to respond to~~Upon issuance of the Department's draft preliminary determination proposed final order and, if applicable, draft remaining right certificate(s), the Department shall: ~~issue the preliminary determination and~~

~~(a) Send copies of the proposed final order and, if applicable, draft remaining right certificate(s) to the applicant by registered or certified mail in accordance with ORS 183.415; and~~

~~(b) Give notice of the transfer application and preliminary determination proposed final order:~~

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

~~(b)(B) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week~~By publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least once each week for two consecutive weeks, if the Department determines that more than five water rights would be injured as a result of the change proposed in the transfer application; and

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~~(c)(C)~~ By sending by electronic means~~regular mail~~, or ~~with the consent of if requested by~~ the recipient, by regular mail~~electronic means~~, a copy of the preliminary determination proposed final order, and the notice, and if applicable, the draft remaining right certificate(s), to each person who submitted comments under OAR 690-380-400~~5(1)0(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 690-380-400~~50~~;

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

(c) The application file number;

(d) The applicant's name and mailing 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 in the Department's weekly public notice as prescribed by subsections (1)(a) ~~and (b)~~ of this rule, whichever is later; and

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

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

(3) If newspaper notice is required in subsection 1(b)(B), As provided in ORS 540.520~~(75)~~, 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. If publication in a newspaper is required, a copy of the notice, and a request for payment for the cost of publishing the notice shall be sent to the applicant by electronic means, or if requested by regular mail. The Department shall allow the applicant a period of not fewer than 30 days after the request for payment of newspaper publication costs to submit the required funds. The Department shall submit the notice to the newspaper within 15 days after receiving the payment.

~~(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 newspaper 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;~~

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~~(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)~~(4) 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.

Statutory/Other Authority: ORS 536.025, ~~ORS~~& 536.027

Statutes/Other Implemented: ORS 540.520, ~~ORS~~& 540.532, Or Laws 2025, ch 282; Or Laws 2025, ch 575

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0080

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 5-1991, f. & cert. ef. 4-26-91

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282 and ch 575, including changes in document terminology, proposed final order notice including when newspaper notice is required, standardizing requests for party status, and electronic forms of documents, (b) clarify information for the proposed final order notice; and (c) correct references to other rules.

Amend

690-380-4030

Protests and ~~Requests for~~ Hearings

~~(1) Except as described subsection (2) of this rule, protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR chapter 690 division 002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.~~

~~(2) Within 30 days after the publication in the department's weekly public notice any person may file a protest against the proposed final order.~~

~~(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:~~

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~~(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.~~

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 183.310 - 183.550, ORS 536.050, ORS& 540.530, Or Laws 2025, ch 575

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0085

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to: (a) implement Or Laws 2025, ch 575 sections 2, 3 and 20 by removing protest and standing requirements that have been replaced by Or Laws 2025, ch 575; and (b) remove provisions regarding notification of intent to pursue approval of a transfer under OAR 690-380-5030 to 690-380-5050 that are now covered in OAR 690-380-4200.

Amend

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, the Department shall issue a notice of cancellation proceeding in accordance with ORS 540.631, and the hearing held pursuant to OAR 690-380-4200(1) shall also include the notice and procedures described in OAR 690-017-06500 to 690-017-0900. The hearing on the transfer protest(s) shall include issues related to the notice of cancellation proceeding. The Department may also consolidate for hearing the protest(s) of a transfer application with a notice of proposed cancellation if:~~

~~(a) The transfer application and the notice of proposed cancellation affect the same water right(s), and~~

~~(b) The Department issues the notice of proposed cancellation prior to referral of the transfer protest to the Office of Administrative Hearings.~~

~~(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.~~

~~(3) If the Department issues a proposed final order finding that a change in point of diversion or appropriation will not result in injury, but after hearing the Office of Administrative Hearings issues a proposed order finding that the change will result in injury, the applicant may file a notification of intent to request consent to the injurious transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding OAR 690-002-0175, a notification of intent pursuant to OAR 690-380-5030(1) stays the deadline for filing exceptions for a period of 90 days. A notification of intent pursuant to OAR 690-380-5030(2) stays the deadline for filing exceptions for a period of 180 days.~~

Statutory/Other Authority: ORS 536.025, ~~ORS~~ 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 575 by removing subsection (2)(a), which has been replaced by language in OAR 690-380-4030 that describes the law governing contested case proceedings in a manner consistent with Or Laws 2025, ch 575 section 2, 3 and 20, (b) more clearly describe the process outlined in current OAR 690-380-4200(2)(b) regarding the procedure the Department must follow when there is an assertion that

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the water right proposed for transfer has been forfeited through nonuse, (c) remove language outlining procedural steps for the applicant to file notification of intent to pursue approval of a transfer under OAR 690-380-5030 to 690-380-5050 because this is now moot as these steps were moved from between the proposed final order and final order to an earlier stage now between the initial review and proposed final order; ~~the applicant's opportunity for this is after the Department's issuance of the initial review and no longer triggered by issuance of the proposed final order,~~ and (d) add language describing the procedural steps for the applicant to file notification of intent to pursue consent of an injurious transfer in cases where the Department's proposed final order finds that the change will not result in injury, but after a hearing, the Office of Administrative Hearing's issues a proposed order that the change will result in injury (consents to injury).

Amend

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 690-300-0010(59)80-0100(14) and, for a right described under 690-300-0010(59)(d)80-0100(14)(d), the proof of completion has been approved under OAR 690-380-6040;

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

(c) 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;

(de) The water user is ready, willing and able to use the portion of the right to be transferred;

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

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

~~(eg)~~ Any other requirements ~~for~~ applicable to 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).~~

(2) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order, and if applicable draft remaining right certificate(s) shall become final on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

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(3) Not more than 33 days after the close of the time period for submitting a protest, the department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

Statutory/Other Authority: ORS 536.025, ~~ORS &~~ 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 575

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 8-2004, f. & cert. ef. 11-5-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0050

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule is amended to (a) update the citation for the definition of “water use subject to transfer” to that found in OAR chapter 690, division 300, (b) add language to align approval criteria for the initial review, proposed final order and final order; (c) implement Or Laws 2025, ch 575 sections 2, 3 and 20 by removing language concerning issuing a final order if no timely protests are filed and adding language providing that, if no timely protests are filed, a proposed final order becomes a final order, and if applicable draft remaining right certificate(s) become final, by operation of law unless timely withdrawn by the Department. This rule is also amended to clarify that any other requirements for transfers refers only to those requirements “applicable to” transfers and to clarify the extent to which the applicant must demonstrate the ready, willing and able standard.

Amend

690-380-5030

Approval of Injurious Transfers

Following the issuance of an initial review pursuant to OAR 690-380-4000, 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:

(a) Notifies the Department, as outlined in OAR 690-380-4000(8)(a), that the applicant:

(A) Intends to request consent to injury of the water right; and

(B) Indicates that the applicant understands that, upon receipt of the complete listing of the injured water right and water right holder contact information from the Department, the applicant must files an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040; and

(b) Submits to the Department completed affidavits that conform to OAR 690-380-5040 from every holder of the injured water right(s) consenting to the change; and

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(2) For any instream water right granted pursuant to a request under ORS 537.336 or an instream water right created pursuant to ORS 537.346(1) and held in trust by the Department ~~pursuant to ORS 537.336 or 537.346, provided:~~

(a) The applicant notified the Department that the applicant intends to request consent to injury to an instream water right resulting from a change in point of diversion of appropriation as outlined in OAR 690-380-4000(8)(b); and

(b) The Department consents to the change after complying with the provisions of OAR 690-380-5050.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, ORS 537.341

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) clarify requirements that must be satisfied in order for the Department to approve an injurious change in point of diversion or appropriation, and (b) correct grammar.

Amend

690-380-5040

Affidavits of Consent

An affidavit consenting to a proposed change in point of diversion or appropriation 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 initial review or proposed order~~ of the Department, or, as applicable, the proposed order issued by the administrative law judge after a contested case hearing, 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.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, and (b) include reference to proposed orders that may be

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issued by an administrative law judge following a contested case hearing. This rule is also amended to provide clarity by aligning language throughout the rule, as it relates to proposed changes in point of diversion or appropriation.

Amend

690-380-5050

Consent to Injury of Instream Water Rights

- (1) Following the issuance of an initial review pursuant to OAR 690-380-4000, If the applicant notifies the Department that the applicant intends to ~~pursue request~~ consent to injury to an instream water right resulting from a change in point of diversion or appropriation as outlined in OAR 690-380-4000(8)(b), the Department shall seek a recommendation on whether to consent or not consent 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~~initial review issued under OAR 690-380-4000~~40~~ 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:
- (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:
- (a) Provide notice of the opportunity to comment on the recommendation:
 - (Aa) To the applicant, ~~any protestants or~~ persons who filed comments under OAR 690-380-40304005, and affected Indian Tribes; and
 - (Bb) By publication in the Department's weekly notice; ~~and~~
 - (b) Seek to consult with affected Indian Tribes pursuant to ORS 540.530(1)(d)(A).
- (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.

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(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 public 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~~ receive public comments.

(8) If no comments or requests for a public meeting to review the recommendation 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 public meeting described in section ~~(7)(6)~~ of this rule or Tribal consultation in subsection 4(b), the recommending agency notifies the Department that it will not withdraw its recommendation to consent to injury, the Department ~~shall~~ may issue a proposed final order recommending approval ~~of~~ the transfer and consent ~~ing~~ to the injury to the instream water right. The proposed final order shall, in addition to the considerations and approval criteria outlined in OAR 690-380-4010, 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.

Statutory/Other Authority: ORS 536.025, ORS & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532, Or Laws 2025, ch 282, Or Laws 2025, ch 575

History:

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, with respect to change in document terminology, (b) update rule citation references for processes that were renumbered due to implementation of Or Laws 2025, ch 282, (c) move some of the procedural steps for the consent to injury process between the proposed final order and final order to the earlier stage of between initial review and proposed final order. Pursuant to Or Laws 2025, ch 575, proposed final orders default to final order 33 days after the close of the protest period if a protest is not received; the changes to this rule are intended to provide the applicant another avenue besides the protest process to pursue the consent to injury process, and (d) add language to provide greater clarity and reference to additional approval criteria found in OAR 690-380-4010 for proposed final orders. This rule is also amended to clarify the purpose of holding the joint public meeting described in OAR 690-380-5050(7), and to better align OAR 690-380-5050(8) with statutory authority in ORS 540.530(1)(c) and (e) as it relates to issuance of a proposed final order recommending approval and (1)(d)(A) consultation with Tribes. **Clarifies**

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that recommendation from other state agencies is either to consent or not consent to injury.

Amend

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

(2) 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.

(3) 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~~ ORS 498.306(14)(a).

(3c) If the original point of diversion is included in the priority list referenced in subsection (32)(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.~~

(5d) Any individual required to install a fish screening or by-pass device under ~~this section (3)(c)~~ 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.

Statutory/Other Authority: ORS 536.025, ~~ORS~~ 536.027

Statutes/Other Implemented: ORS 540.510 - 540.525, ~~ORS~~ 540.532, ORS 498.306

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0073

WRD 5-1996, f. & cert. ef. 7-11-96

Rule Summary: This rule is amended to (a) correct a grammatical error, (b) reorder existing language for clarity, and (c) update a reference to Or Laws 1989 that has since been codified in statute.

Amend

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)

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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.~~

Statutory/Other Authority: ORS 197, ORS 536.025, ORS& 536.027

Statutes/Other Implemented: ORS 540.510 - 540.531

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0057

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 12-1990, f. & cert. ef. 8-8-90

Rule Summary: This rule is amended to repeal OAR 690-380-5100(3), because it is inconsistent with OAR 690-005-0035(4)(a).

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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0040

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

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WRD 5-2006, f. & cert. ef. 10-6-06
 WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0045
 WRD 5-1996, f. & cert. ef. 7-11-96
 WRD 16-1990, f. & cert. ef. 8-23-90
 WRD 7-1987, f. & ef. 6-11-87

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 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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0075
 WRD 5-1996, f. & cert. ef. 7-11-96
 WRD 6-1990, f. & cert. ef. 8-23-90

690-380-5140

Time for Completion

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- (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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0087

WRD 5-1996, f. & cert. ef. 7-11-96

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.
- (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.

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Statutory/Other Authority: ORS 536.025 & 536.027**Statutes/Other Implemented:** ORS 540.530**History:**

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0090

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 7-1987, f. & ef. 6-11-87

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.

(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.

Statutory/Other Authority: ORS 536.025 & 536.027**Statutes/Other Implemented:** ORS 540.530**History:**

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0100

WRD 5-1996, f. & cert. ef. 7-11-96

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WRD 10-1988, f. & cert. ef. 8-10-88

WRD 7-1987, f. & ef. 6-11-87

Amend**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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0110

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88

WRD 7-1987, f. & ef. 6-11-87

Rule Summary: This rule amendment repeals language that is now obsolete.

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.

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

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0120

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 16-1990, f. & cert. ef. 8-23-90

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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.532

History:

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

690-380-6060

Petition for Reconsideration

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- (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.
- (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 690, division 2.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.530

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0125

WRD 5-1996, f. & cert. ef. 7-11-96

WRD 16-1990, f. & cert. ef. 8-23-90

Adopt

690-380-7000

Types of Permit Amendments

As provided in ORS 537.211(4), the water right permit holder of record may request to change the point of diversion or appropriation pursuant to OAR 690-380-7010, the point of diversion to allow the appropriation of groundwater pursuant to OAR 690-380-7020, or the place of use pursuant to OAR 690-380-7030.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

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Rule Summary: This new rule is adopted to implement ORS 537.211(4) that allows the holder of a water right permit to change the point of diversion, change the point of appropriation, change the point of diversion to allow the appropriation of ground water, or use the water on land to which the right is not appurtenant, provided certain criteria are satisfied.

Adopt

690-380-7010

Change in Point of Diversion or Appropriation

(1) The point of diversion or point of appropriation of a water right permit may be changed if the proposed change meets the criteria outlined in OAR 690-380-7300, the proposed change meets the requirements under OAR 690-380-2110(2) and (4)(c), and for a change in point of diversion or additional point(s) of diversion, the new diversion(s) is equipped with a proper fish screen if requested by ODFW.

(2) The Department may deny a change in the point of appropriation pursuant to ORS 537.211(5).

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

Rule Summary: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes in points of diversion or appropriation. This rule is also adopted to update references to OAR 690-380-2110 to reflect numbering changes in those rules. Rule also recognizes that the department may deny a point of appropriation in certain circumstances (ORS 537.211(5)) as a result of 2025 legislation.

Adopt

690-380-7020

Change from Surface Water Point of Diversion to a Groundwater Appropriation

The surface water point of diversion of a water right permit, or portion thereof, may be changed to allow the appropriation of groundwater instead of surface water, provided the proposed change meets the standards set forth in:

(1) ORS 540.531(2) or (3);

(2) and the requirements outlined in OAR 690-380-2130(2) to (11), except that the water right permit need not be a water use subject to transfer; as defined in ORS 540.505(4) and OAR chapter 690, division 300, and

meets the criteria outlined in(3) OAR 690-380-7300.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211, ORS 540.531(2), ORS 540.532(3)

Rule Summary: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes from surface water points of diversion to groundwater appropriation.

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Adopt**690-380-7030****Change in Place of Use**

(1) The place of use of a water right permit may be changed, provided the land on which the water is to be used is owned or controlled by the permit holder of record and the proposed place of use is contiguous to the land to which the permit is appurtenant.

(2) Notwithstanding the requirements of section (1) of this rule, the water right permit holder of record may change the place of use of all or any portion of water under the permit to land that is not contiguous to the land to which the permit is appurtenant if:

(a) -The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.176 and OAR 635-100-0040 or the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C. § 1531, as amended), as determined by the listing agency; and

(b) All other requirements of OAR 690-380-7300 are met.

(3) For water right permits with an authorized place of use tied to specific acreage, including but not limited to irrigation, nursery operations, or cranberry operations, a change in place of use must involve a physical movement that alters the location of the water right permit from the existing authorized place of use to the proposed place of use such that, consistent with OAR 690-380-7300(1)(c) and OAR 690-380-01040(2)(c), the lands from which the water right is removed do not continue to receive water from the same source.

(4) As used in this rule, “contiguous” means land sharing a common border or touching, but includes land separated from the land to which a water right permit is appurtenant by the following:

(a) Roads;

(b) Utility corridors;

(c) Irrigation ditches; or

(d) Publicly owned rights of way.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

Rule Summary: This new rule is adopted to implement ORS 537.211 pertaining to allowable changes in places of use. This rule is also amended to provide greater transparency around, and ensure alignment with, existing Department policy that a place of use transfer must involve a physical change that alters where the water right is located and that it must be consistent with requirements related to the prevention of enlargement. This rule is also amended to update state and federal citations (as applicable) related to sensitive, threatened, or endangered species.

Adopt

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690-380-7100**Permit Amendment Application Requirements**

A separate application is required for each water right permit proposed to be amended. Each permit amendment application shall be prepared in ink or typewritten on forms provided by the Department. Permit amendment applications shall contain the following information concerning the permit and any other appurtenant water right, permit, or water use, if applicable:

- (1) Applicant's name, mailing address, email address (if available), and telephone number.
- (2) Type of change proposed.
- (3) Name of the record holder appearing on the water right permit or, if the permit has been assigned pursuant to ORS 537.220 and OAR 690-320-0060, the name of the new record holder to whom the water right permit has been assigned. If the applicant is not the water right permit holder of record, the permit amendment application shall be accompanied by a request for assignment under OAR 690-320-0060 and the appropriate fee required in ORS 536.050 for filing and recording the assignment.
- (4) The time specified in the permit to perfect the water right, or the time specified in the last-approved extension of time to perfect the water right permit. If the specified time to perfect the water right permit has expired, or will expire in 120 days or less, the Department may return the application. A water right permit for which the specified time to perfect the water right has expired is not subject to amendment under ORS 537.211.
- (5) Application number and permit number.
- (6) Source of water listed on the water right permit.
- (7) Date of priority.
- (8) The location of the existing authorized and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.
- (9) The existing authorized use of water.
- (10) The existing authorized place of use identified by its location within the public land survey and tax lot number.
- (11) The proposed place of use, if applicable, 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.
- (12) Reason for the proposed change.
- (13) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.
- (14) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those permit amendments that meet the following four requirements:

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(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.

(15) If the request is for a change in point of appropriation, or a change in point of diversion to allow the appropriation of groundwater, 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.

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

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

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

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

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

(19) The appropriate fee as required under ORS 536.050.

(20) The Department may require the applicant to provide any additional information related to the proposed permit amendment that is necessary in determining whether to approve the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211, Or Laws 2025, ch 282

Rule Summary: This new rule is adopted to (a) implement ORS 537.211 pertaining to water right permit amendment application requirements, and (b) implement Or Laws 2025, ch 282, with respect to electronic documentation and notification.

Adopt

690-380-7110

Permit Amendment on Behalf of a Public Corporation

For an application made by or on behalf of a public corporation, the Department may issue a permit approving the application without requiring the applicant to obtain prior written authorization or an easement permitting access to lands affected by the proposed permit

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amendment that are not owned by the public corporation. However, nothing in this subsection shall be construed to allow any person to trespass on the lands of another person.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

Rule Summary: This new rule is adopted to implement ORS 537.211 pertaining to permit amendments for public corporations.

Adopt

690-380-7200

Notice of Permit Amendment

(1) On receipt of an application for permit amendment, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-7100 and if the time specified in the permit, or the last approved extension of time, to perfect the water right is expired or will expire in 120 days or less from the date the Department received the application.

(2) If the Department determines that the application does not include the information required by OAR 690-380-7100 or that the time specified in the permit, or the last approved extension of time, to perfect the water right is expired or will expire in 120 days or less from the date the Department received the application, the Department may return the application and any fees to the applicant along with the following, as applicable:

(a) A written description of the deficiencies in the application; and

(b) A request that the applicant file and obtain approval of a permit extension of time application, if allowable under OAR Chapter 690, Division 315, before filing a new permit amendment application.

(3) If the Department determines the application is complete and the time specified in the permit, or the last approved extension of time, to perfect the water right is not expired and will not expire in 120 days or less from the date the Department received the application, the Department shall file the permit amendment application and publish notice of the application in the Department's weekly public notice.

(4) If, during the time the application is pending before the Department, the time specified in the permit, or the last approved extension of time, to perfect the water right expires, the Department shall notify the applicant that a permit extension of time application must be submitted and approved, if allowable under OAR Chapter 690, Division 315, before a final order approving the permit amendment application can be issued. If a permit extension of time application is not allowable or is not submitted within 90 days of notification under this rule or, if submitted, the permit extension of time application is denied, then the Department may issue a final order denying the permit amendment application.

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Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 537.211

Rule Summary: This new rule is adopted to (a) implement ORS 537.211, pertaining to the completeness review and notice requirements for permit amendments, (b) include language to clarify the time specified in the permit, or the last approved extension of time, to perfect the water right is not expired and will not expire in 120 days or less from the date the Department received the permit application, so that the completion date is likely to remain unexpired while the application is being processed by the Department, (c) include language to describe the Department's policy and past practice that if the time specified in the permit, or the last approved extension of time, to perfect the water right expires while a permit amendment application is pending, then the Department cannot issue an order approving the application until that is rectified; and d) include language to provide that if a permit extension of time application is not allowable, or is not submitted within 90 days of notification under this rule or, if submitted, the permit extension of time application is denied, then the Department may issue a final order denying the permit amendment application.

Adopt

690-380-7300

Permit Amendment Final Order

(1) A permit amendment application shall be approved through issuance of a final order if the Department determines that:

(a) The water right permit to be amended is not cancelled;

(b) The time specified in the permit to perfect the water right, or the time specified in the last-approved extension of time to perfect the water right, has not expired;

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

(d) The proposed permit amendment would not result in injury as defined in 690-380-0100(3);

(e) All other terms of the permit remain the same, including but not limited to the beneficial use for which the water is used and the number of acres to which water is applied;

(f) Prior approval is obtained from the district if the water is transported or conveyed by an irrigation district organized under ORS 545, a drainage district organized under ORS chapter 547, a water improvement district organized under ORS chapter 552, a water control district organized under chapter 553, or a district improvement company or a corporation organized under ORS chapter 554;

(g) The holder of the water right permit provides written notice to the Department at least 60 days before making any changes to the lands, point of diversion or point of appropriation described in the permit; and

(h) Any other requirements applicable to water right permit amendments are met.

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(2) For purposes of this rule, a complete permit amendment application shall serve as the written notice to the Department described in subsection (1)(g) of this rule. In no circumstance shall a permit amendment application be construed as being approved prior to the issuance of a final order to approve the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.211

Rule Summary: This new rule is adopted to (a) implement ORS 537.211 pertaining to final orders concerning permit amendments, (b) specify criteria that must be satisfied for the Department to approve a permit amendment application, and (c) that any approval of a permit amendment is done through issuance of a final order.

Amend

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) P the 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.

Statutory/Other Authority: ORS 536.025, ~~ORS~~ 536.027

Statutes/Other Implemented: ORS 536.050, ~~ORS~~ 540.520, ~~&~~ ~~ORS~~ 540.523, ~~ORS~~ 540.585

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 1-2004, f. & cert. ef. 3-17-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0300

WRD 5-1996, f. & cert. ef. 7-11-96

Rule Summary: This rule is amended to remove temporary change in character of use of a right to store water because ORS 540.523 does not provide this authority.

Amend

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:

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- (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, will not result in enlargement as defined in OAR 690-380-0100(2), and that all applicable requirements of OAR 690-380-8010 and OAR 690-380-8020 are met. 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 or enlargement.
- (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.

Statutory/Other Authority: ORS 536.025, ORS& 536.027

Statutes/Other Implemented: SB 820 & 2003-OL ORS 540.523

History:

WRD 1-2004, f. & cert. ef. 3-17-04

Rule Summary: This rule is amended to (a) make clear enlargement is part of the approval criteria, consistent with existing practice, permanent transfers, and the doctrine of prior appropriation, (b) add reference to additional requirements for temporary transfers outlined in OAR 690-380-8010 and OAR 690-380-8020, (c) add language to specify that a previously approved temporary transfer may be revoked if it is resulting in enlargement, and (d) update the statutes implemented by this rule.

Adopt

690-380-8003

Renewal of a Previously Approved Temporary Transfer Application under OAR 690-380-8000(1)

(1) Any person who holds a water use subject to transfer for which a temporary transfer application was approved within the past 5 years may request that the Department approve renewal of the temporary transfer for a period of not to exceed five years.

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(2) A request for renewal of a previously approved temporary transfer shall be submitted on the application form provided by the Department titled "Temporary Transfer Renewal" and shall include the following:

(a) The Temporary Transfer Application number the applicant is requesting to be renewed;

(b) The length of time for which the renewal is being requested;

(c) The 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 renewal;

(d) 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.

(e) An oath that the information contained in the renewal application is true and accurate;

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

(g) The appropriate fee pursuant to ORS 536.050; and

(h) A notarized statement from the applicant indicating that:

(A) All changes previously approved under the temporary transfer remain the same;

(B) The use of water under the previously approved temporary transfer was made in accordance with the terms and conditions of the approval order;

(C) All measurement devices required as a condition of the previously approved temporary transfer shall remain in place and in good working order; and

(D) The applicant will continue to comply with all other conditions of the previously approved temporary transfer.

(3) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for renewal of a previously approved temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right and will not result in enlargement as defined in OAR 690-380-0100(2). In issuing the renewal order, the Department may include any conditions:

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(a) Necessary to protect other water rights; and

(b) Necessary to comply with the requirements outlined in OAR 690-380-8010 and OAR 690-380-8020.

(4) All uses for which a renewed 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 renewal period, or earlier if requested in writing by the applicant.

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

(6) The Department may revoke a prior approval of the temporary transfer renewal at any time if the Department finds that the transfer is causing injury or is resulting in enlargement.

(7) If the Department determines that the application is incomplete or defective, that any of the proposed terms of the renewal are not the same as the previously approved temporary transfer, or that all fees have not been paid, the Department shall return the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 536.050, ORS 540.520, ORS 540.523

Rule Summary: This new rule is adopted to promote processing efficiencies by allowing the renewal, for not to exceed a period of five years, of a previously approved temporary transfer under OAR 690-380-8000(1) provided certain criteria are satisfied.

Amend

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);

(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.

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(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) Upon receipt of a complete application for a temporary transfer under OAR 690-380-8000(2), the Department shall file the application and provide notice of the application in its weekly public notice and accept written public comments for 30 days.

(5) 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~~264, a water supplier as defined in 448.115 or a water authority formed under ORS Chapter 450;

(e) The proposed use is municipal use; and

(f) Any applicable requirements under OAR 690-380-8020 are met.

~~(5)~~(6) 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.

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~~(6)~~(7) 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)~~(8) 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)~~(9) 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)~~(10) 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.

~~(10)~~(11) 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.

~~(12)~~(12) The Department shall provide notice and review of temporary transfer applications under this rule pursuant to OAR 690-380-40~~1000~~ through 690-380-4200.

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

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

Statutory/Other Authority: ORS 536.025, ~~ORS~~ 536.027

Statutes/Other Implemented: ~~SB 820 & (2003) OL~~ & ORS 540.585, Or Laws 2025, ch 282

History:

WRD 1-2004, f. & cert. ef. 3-17-04

Rule Summary: This rule is amended to (a) add new language and remove existing language to implement Or Laws 2025, ch 282, with respect to notice of the application, (b) document conforming changes to correct numbering, (c) correct grammatical errors and statutory reference to align with ORS 540.585(1) as it relates to qualifying entities, and (d) add reference to additional requirements for temporary transfers outlined in OAR 690-380-8020.

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

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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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.523

History:

WRD 1-2004, f. & cert. ef. 3-17-04

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0310

WRD 5-1996, f. & cert. ef. 7-11-96

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.
- (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.

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(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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.523

History:

WRD 5-2006, f. & cert. ef. 10-6-06

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0320

WRD 5-1996, f. & cert. ef. 7-11-96

Amend

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 a proposed final order clarifying and defining the description of the land to which the right is appurtenant.

(2) A clarification proposed final 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 proposed final 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 protest within 30 days after issuance of the proposed final order, the Department shall conduct a contested case hearing. 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.

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(4) Except as described in subsection (3) of this rule, protests of and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR 690-002. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.

(5) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(6) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

~~(7) 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 The Department's 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.~~

Statutory/Other Authority: ORS 183, ORS 339, ORS 536, ORS 537, ORS 540, &ORS 649

Statutes/Other Implemented: ORS 540.560; Or Laws 2025, ch 575

History:

WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0400

WRD 10-1988, f. & cert. ef. 8-10-88

Rule Summary: This rule is amended to (a) conform the rule with updates to ORS 540.560 made by Or Laws 2025, ch 575 section 22; and (b) delegate authority to the Department to issue a final order after a contested case hearing even when exceptions to the Administrative Law Judge's proposed order are timely filed. -

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Division 382**GROUNDWATER REGISTRATION MODIFICATIONS****690-382-0010****Purpose**

(1) The rules in OAR chapter 690, division 382 establish the requirements and procedures to be used by the Department to evaluate an application to modify a groundwater certificate of registration. The rules describe the requirements for changing the point of appropriation, place of use, or character of use of a certificate of registration.

(2) No change in point of appropriation, place of use, or character of use of a certificate of registration may be made except as provided under these rules and OAR chapter 690, division 380.

Statutory/Other Authority: ORS 536.025; 536.027, and 537.610

Statutes/Other Implemented: ORS 537.610, and 540.505-540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Amend**690-382-0100****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 382. Where a term is defined in more than one rule, the definition in this rule applies.

- (1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate groundwater under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a groundwater registration.
- (2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:
- (a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;
 - (b) Increasing the acreage irrigated under a certificate of registration;
 - (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 appropriation than is legally available to that certificate of registration at the original point of appropriation.
- (3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled.

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(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) "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 or certificate of registration.

~~(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.~~

~~(67) "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 certificate of registration is appurtenant.~~

~~(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.~~

(79) "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.

~~(10) "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 ORS 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.~~

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) provide consistency with Or Laws 2025, ch 575 by removing the "standing" definition, and (b) removing redundant definitions of "protest" and "water use subject to transfer" which are defined in OAR 690-300-0010.

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Amend**690-382-0200****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 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 registration modification, 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. The Department's notification shall identify the layering issue(s) that must be resolved and the options for resolution outlined in section (3) of this rule and shall be sent to the applicant through issuance of an initial review.

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

(a) As applicable, amend the groundwater registration modification application for concurrent changes in the other layered certificates of registration, Ssubmit applications for concurrent changes in the other layered water uses subject to transfer, or other layered permits, and certificates of registration submit an application as otherwise allowed under section (5) of this rule;

(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 filed pursuant to (3)(a) of this rule to transfer a layered water use subject to transfer, amend a layered permit, or modify a layered certificate of registration should be denied or not recognized, the Department shall notify the applicant of the Department's intent to issue final orders not recognizing or denying the groundwater registration modification 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 certificate of registration that the applicant designates as being for supplemental irrigation use 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 certificate of registration is to be moved.

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Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) add language to clarify when and how the Department notifies an applicant of layering issues and how they may be resolved, (b) update document terminology, as it relates to issuance of an initial review, (c) achieve greater processing consistency with OAR chapter 690, division 380 pertaining to transfers and permit amendments, and (d) provide greater clarity around the options for resolving layering issues.

Amend

690-382-0300

Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered, as defined in OAR 690-382-0100(4).

(3) The Department may deny a change in the point of appropriation pursuant to ORS 537.610(5).

Statutory/Other Authority: ORS 536.025; 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

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Rule Summary: This rule is amended to add greater clarity by pointing to the definition of “layered.” Rule change recognizes that the department may deny a point of appropriation in certain circumstances (ORS 537.610(5)) as a result of 2025 legislation.

Amend

690-382-0400

Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or ~~printed typewritten~~ on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

- (1) Applicant's name, mailing address, email address, if available, and telephone number.
- (2) Type of change proposed.
- (3) Name appearing on the certificate of registration.
- (4) Certificate of registration number for the registration to be modified.
- (5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration, pursuant to OAR 690-382-0200 and OAR 690-382-0300(2).
- (6) Source of water as described on the certificate of registration.
- (7) Tentative ~~D~~date of priority.
- (8) The ~~authorized-existing registered and, if applicable, previously recognized point(s) of appropriation~~ and the proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.
- (9) The ~~authorized-existing registered and, if applicable, previously recognized use of water and the~~ proposed use of water, if applicable.
- (10) The ~~authorized-existing registered and, if applicable, previously recognized place of use and the~~ proposed place of use identified by its location within the public land survey and tax lot number, if applicable.
- (11) A map, which need not be prepared by a certified water right examiner, prepared pursuant to meeting the standards in OAR chapter 690, -division 30580-3100, as well as the following criteria, except it need not be prepared by a water rights examiner:-
 - (a) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

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(b) If the proposed modification involves changes in place of use or character of use for more than three layered, as defined in OAR 690-382-0100(4), certificates of registration, a separate map shall be provided for each certificate of registration.

(c) The location of each existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) of appropriation.

(d) For a change in point of appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of appropriation. If the proposed point of appropriation is not intended to serve the entire certificate of registration, the specific lands to be served shall be identified and the number of registered acres to be served by the new point of appropriation shall be listed.

(e) For a change in place of use or character of use, the location of the existing registered and, if applicable, previously recognized place of use and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the certificate of registration involved in the proposed modification has multiple tentative priority dates or uses, the lands to be served by each tentative priority date and on which each use is proposed must be separately identified.

(f) The location of any part of the certificate of registration not involved in the proposed modification. For modifications involving less than 67 percent of the entire place of use of the certificate of registration, the map shall include at least the location of the portions of the registration not involved in the proposed modification which are included in the same quarter-quarter sections as the proposed modification. The applicant shall have the burden of proving the proposed modification involves less than 67 percent of the entire place of use of the certificate of registration. However, the Department may require a greater portion of the certificate of registration or the entire certificate of registration to be mapped, if necessary to make a determination of potential injury.

(g) The location of property lines for the property involved in the modification, in the vicinity of the modification. For modification of municipal, quasi-municipal, and other similar certificates of registration, the property lines need not be shown; however, the service area boundaries shall be indicated.

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

(a) Where existing registered and, if applicable, previously recognized water uses 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;

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(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.

(13) For a change in point of appropriation, copies of water well reports for the ~~authorized~~ existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) 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 ground-water body developed or proposed to be developed.

(14) 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 registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

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

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the ~~draft preliminary determination~~ initial review described in OAR 690-382-~~05500700(4)~~ and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in 690-382-~~070550(65)~~ to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the ~~right certificate of registration~~ right certificate of registration 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 certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification 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.

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

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, ~~\$70 percent of the amount allowed in ORS 537.610875.~~

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(b) For examination of all other applications to modify a certificate of registration, the maximum amount allowed in ORS 537.610~~\$1,250~~.

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531~~ Or. Laws 2025, ch 570, HB 2123 (ch. 614 & 2005 Oregon Water Laws

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, Or. Laws 2025, ch 282, Or. Laws 2025, ch 570, and ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws), Or. Laws 2025, ch 575.~~

History:

WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

WRD 8-2009, f. 12-8-09, cert. ef. 12-15-09

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, section 2 provisions concerning allowance for electronic documentation, (b), require the email address, if available, of the applicant(s), (c) add greater clarity as it relates to when it is allowable to include more than one certificate of registration in a single groundwater registration modification application, (d) better align with ORS 537.610, as it relates to referring to the tentative priority date for a right to appropriate ground water under a certificate of registration, (e) provide general clarifications, including to differentiate between the existing registered and, if applicable, previously recognized point(s) of appropriation, place of use, and character of use under the certificate of registration and the proposed point(s) of appropriation, place of use, and character of water use, as applicable, (f) refer to the standards in OAR chapter 690, division 305 for greater clarity and consistency in mapping requirements across water right transactions, (g) specify the supplemental mapping requirements that are similar to OAR 690-380-3100 but that use terminology appropriate for certificates of registration, (h) provide more specificity as it relates to mapping requirement involving more than three layered certificates of registration, (i) update document terminology, as it relates to issuance of an initial review, and (j) implement Or Laws 2025, ch 570, section 3 with respect to OWRD water right transaction fee increases in rule: update the fee amounts here using the same ratio as previously in the rules – this would mean a fee of \$1,900 (70% of Max Fee) for a POU change only; and \$2,730 for all other changes/combo of changes.

690-382-0450

Existing Documentation of Modifications

If documentation of a modification under a groundwater registration was on file with the Department prior to July 22, 2005, the Department shall provide an application for recognition of the modification described in the notice priority with respect to processing other applications for recognition of groundwater registration modifications. An application filed under OAR 690-382-0400 may incorporate by reference information about the modification that is on file with the Department.

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532

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History:

WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0500**Fee Refunds**

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the Department's recognition of the modification, the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(18)(b).

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

Adopt**690-382-0550****Completeness Review and Initial Review**

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

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

(3) If the Department determines the application is complete and all fees have been paid, the Department shall file the application and undertake an initial review of the application that includes an assessment of whether:

(a) The proposed modification would result in enlargement, as defined in OAR 690-382-0100(2);

(b) The proposed modification would result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements applicable to the modification of the certificate of registration are met.

(4) For an initial review that indicates a modification application is not consistent with the approval criteria for recognition outlined in OAR 690-382-1000(1) and should not be recognized, the initial review shall:

(a) Describe any inconsistencies with the approval criteria for recognition; and

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(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would address the inconsistencies.

(5) Upon completion of the initial review, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application and allow the applicant 30 days from the date of notice to:

(a) Notify the Department to stop processing the application; or

(b) Notify the Department to continue processing the application and, **except as provided in section (9) of this rule,** provide any outstanding information to the Department including, but not limited to:

(A) Amending the application to address any issues or deficiencies identified by the Department in the initial review; and

(B) Submitting documentation to satisfy the requirements of sections (6) and (7) of this rule, as applicable.

(6) Upon receipt of the initial review, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following:

(a) A report of ownership information as defined in OAR 690-382-0100(6) for the land to which the registration is appurtenant;

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

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;

(B) If interest in the registration has been conveyed, a notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

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

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

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

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(b) If the interest in the certificate of registration 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.

(8) Except as provided in section (9) of this rule, the Department shall permanently close the file for the application and take no further action on the application if, within 30 days from the date of the notice described in section (5) of this rule, the applicant:

(a) does not notify the Department as provided in subsections (5)(a) and (b) of this rule;

(b) does not provide all outstanding information as provided in subsection (5)(b) of this rule; or

(c) notifies the Department to stop processing the application.

(9) If requested within the 30-day time period specified in section (5) of this rule, the Department may allow an applicant up to 60 additional days, not to exceed a total of 90 days from the date the Department provided notice of the initial review to the applicant pursuant to section (5) of this rule, to provide the outstanding information described in subsection (5)(b) of this rule if the applicant requests additional time and the Department determines that the applicant is undertaking reasonable efforts to provide the information in a timely manner to the Department.

(10) The initial review shall constitute the notification required under OAR 690-382-0200 that there are layered water rights, permits, or registrations that must be addressed prior to recognition of the modification.

(11) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the initial review or incorporate the amendments into the proposed final order, as appropriate.

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532

Rule Summary: This new section of rule is adopted to (a) make a change in document terminology, as it relates to the initial review, (b) identify processing steps that align with initial review processing steps for other transfer types, including clarification of the deadline of 30 days by which an applicant must request request additional time if needed to provide any outstanding information and that the total time allowed cannot exceed 90 days total from the date the Department provided notice of the initial review to the applicant, (c) implement Or Laws 2025, chapter 282, section 2, provisions concerning allowance for electronic documentation, (d) include language formerly located in OAR 690-382-0600 that pertains to the completeness review process now located in this rule and to make clear that an application is not complete if not all fees have been paid, (e) include language formerly located in OAR 690-382-0700 that pertains to the initial review process now located in this rule and reflect the correct rule citation referencing the definition of “report of ownership” as modified under OAR 690-382-0100, (f) add language to allow for processing efficiency when appropriate as it relates to application amendments, and (g) clarify that “any other requirements” for groundwater registration

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modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

Amend

690-382-0600

Request for Comments

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

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

~~(3) If the Department determines the application is complete, the Department shall file the application and~~ (1) If, within 30 days from the date of the Department’s notification to the applicant described in OAR 690-382-0550(5), the applicant notifies the Department to proceed with the application and provides any outstanding information necessary to continue processing the application, or if applicable provides the outstanding information within an additional time period allowed under OAR 690-382-0550(9), the Department shall proceed with processing the application and shall request written public comments on the application:

(a) ~~By publication in the Department’s weekly public notice published by the Department;~~ and

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

~~(2)~~(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~, Or. Laws 2025, ch 282.

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: The rule is amended to (a) remove language related to the initial review that is now located under OAR 690-382-0550, (b) identify processing steps that align with applicant response to the initial review processing steps for other transfer types, and (c) implement Or Laws 2025, chapter 282, section 2, provisions concerning allowance for electronic documentation.

Amend

690-382-0700

Preliminary Determination ~~Proposed~~ ~~Final~~ ~~Order~~

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(1) After the conclusion of the public comment period described in OAR 690-382-0600(24), the Department shall:

~~(a) prepare~~Issue a ~~preliminary determination~~proposed final order indicating ~~of~~ whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule; and

~~(b) Give notice of the modification application and proposed final order in the manner described in OAR 690-382-0800.~~

(2) The Department's ~~preliminary determination~~proposed final order shall ~~include an assessment of~~conclude whether the application is consistent with the following approval criteria for recognition:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway ~~not~~receiving less water than previously available ~~water~~during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements ~~for~~applicable to the modification of the certificate of registration are met.

(3) For a ~~preliminary determination~~proposed final order that indicates that an application should not be recognized because it is not consistent with the approval criteria for recognition outlined in section (2) of this rule, the ~~preliminary determination~~proposed final order shall:

(a) Describe the basis for the Department's conclusions; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

~~(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 included in the modification, or to withdraw the application.~~

~~(5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information:~~

~~(a) A report of ownership information as defined in OAR 690-382-0100(67) for the land to which the certificate of registration is appurtenant;~~

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

~~(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:~~

~~(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;~~

~~(B) Notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or~~

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

~~(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 certificate of registration 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 required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.~~

~~(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.~~

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~, Or. Laws 2025, ch 575

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) make a change in document terminology, as it relates to the proposed final order, (b) provide general clarity as it relates to the approval criteria and notice of the proposed final order, (c) correct references to other rules, (d) remove language related to the now obsolete draft preliminary determination, but that still applies to an initial

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review and so was moved to OAR 690-382-0550, and (e) clarify that “any other requirements” for groundwater registration modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

Amend

690-382-0800

Notice of ~~Preliminary Determination~~ Proposed Final Order

(1) ~~After the time for the applicant to respond to the~~ Upon issuance of the Department's ~~draft preliminary determination~~ proposed final order, the Department shall: ~~issue the preliminary determination~~

(a) Send a copy of the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415; and

(b) Give notice of the application to modify the registration and the ~~preliminary determination~~ proposed final order:

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

~~(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week for applications received by the Department prior to January 1, 2012, but for applications received after January 1, 2012, for a period of at least two weeks and not less than one publication each week, and~~

(B)(e) By sending by electronic means, or by regular mail if the recipient has requested mailing, a copy of the proposed final order by regular registered or certified mail to the applicant and by electronic means, unless the recipient has requested mailing, or with the consent of the recipient, by electronic means a copy of the preliminary determination and notice to the applicant and the notice to each person who submitted comments under OAR 690-382-0600.

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

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

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

(c) The registration and certificate numbers;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest ~~or standing statement~~ within 30-45 days after publication in the Department's weekly public notice the date of final publication of the notices prescribed by subsections (1)(a) and (b) of this rule, whichever is later; and

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(f) A summary of the Department's ~~preliminary determination~~proposed final order; and

(g) A statement of the opportunity for a person to file a request for party status pursuant to OAR 690-002; and

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

~~(3) The cost of publication in a newspaper shall be paid by the applicant in advance of the publication. The applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs which may not exceed twenty (20) percent of the direct costs.~~

~~(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; or~~

~~(b) Applications for a change in the point of appropriation of less than one fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.~~

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

~~(7) The Department may deny recognition of the modification if the applicant fails to pay in advance the costs of publication of the newspaper notice within the period allowed under section (3) of this rule.~~

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, 540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, HB 2123 (ch. 614 & 2005 Oregon Water Laws)Or: Laws 2025, ch 282. Or Laws 2025, ch 575.

History:

WRD 1-2012, f. 1-31-12, cert. ef. 2-1-12

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) implement measures to be consistent with changes made in Or Laws 2025, ch 575, with respect to change in document terminology, newspaper notice, requests for party status, and setting the standard 45-day protest period, (b) implement Or Laws 2025, ch 282, with respect to provisions for allowance for electronic documents, (c) remove redundant language with respect to notice of the proposed final order, and (d) provide

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general clarifications, including to differentiate between the existing registered and, if applicable, previously recognized water uses to be included in the notice of proposed final order.

Amend

690-382-0900

Protests and ~~Requests for~~ Hearings

(1) Protests of, requests for party status ~~concerning~~, and contested case proceedings concerning proposed final orders are governed by Or. Laws 2025, ch-575, sections 2 and 3, and OAR chapter 690, division 2. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.

(2) Within 45 days after the publication in the Department's weekly public notice, any person may file a protest against the proposed final order.

~~(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.~~

~~(2) A person filing a protest 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 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.~~

~~(4) Each person submitting a protest must 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 690-382-0100(8) 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.~~

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, 540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, HB 2123 (ch. 614 & 2005 Oregon Water Laws), Or. Laws 2025, ch 575.

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to implement Or Laws 2025, ch 575 sections 2 and 3 relating to protests, requests for party status and by incorporating the standard 45-day protest period.

Amend

2/27/26

690-382-1000**Final Order on Recognition of Modifications**

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements ~~for applicable to the~~ modification of the certificate of registration are met.

~~(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in 690-382-0700 if no protests are received under 690-382-0900.~~

~~(2)(3)~~ Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.

(3) Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235. If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(4) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

~~(5)(4)~~ The final order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground-water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

~~(6)(5)~~ A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, 540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, HB 2123 (ch. 614 & 2005 Oregon Water Laws), Or. Laws 2025, ch 575.

2/27/26

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to (a) provide general clarification as it relates to the final order on recognition of modifications, (b) implement Or Laws 2025, ch 575 section 3 by removing protest requirements that have been replaced by Or Laws 2025, ch 575, by removing existing language concerning issuing a final order if not timely protests are filed, and by adding language providing that, if no timely protests are filed, a proposed final order becomes a final order by operation of law unless timely withdrawn by the Department, and (c) clarify that “any other requirements” for groundwater registration modifications refers only to those requirements “applicable to” the modification of the certificate of registration.

Repeal~~690-382-1100~~~~Hearings~~

~~(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:~~

~~(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;~~

~~(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or~~

~~(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.~~

~~(2) Notice and conduct of the hearing shall 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 and persons who filed a protest stipulate otherwise.~~

~~Statutory/Other Authority: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

~~Statutes/Other Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is repealed to implement Or Laws 2025, ch 575 sections 2 and 3 by removing protest and contested case hearing notice and conduct requirements that have been replaced by Or Laws 2025, ch 575 and are now referenced in OAR 690-382-0900(1).

Amend

690-382-1200

Compatibility with Acknowledged Comprehensive Plans

2/27/26

(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 certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-~~0070~~3000(139).

(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 certificate modification 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 690-382-0800.~~

Statutory/Other Authority: ORS 536.025; ORS 536.027, ORS 537.610, ~~540.531, HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

Statutes/Other Implemented: ORS 537.610, ORS 540.505-540.532, ~~HB 2123 (ch. 614 & 2005 Oregon Water Laws)~~

History:

WRD 5-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to correct a rule reference, as OAR 690-380-0070 does not exist, and the applicable information is in OAR 690-380-3000(19). This rule is also amended to repeal OAR 690-382-1200(3), because it is inconsistent with OAR 690-005-0035(4)(a).

2/7/26

Division 77 INSTREAM WATER RIGHTS

Amend 690-077-0000 Purpose

- (1) The purpose of this Division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights.
- (2) This Division also provides for the conversion of existing minimum streamflows to instream water rights; for the instream transfer or lease of existing water rights for use as instream water rights; and for the enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses.
- (3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission or by an order approving a time-limited instream transfer or lease, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result of the allocation of conserved water under 537.455 to 537.500 and 540.510 (OAR chapter 690, division 18).
- (4) In 2001, the Legislature authorized the split season use leasing of an existing water rights for instream purposes. Under ORS 537.348(3), all or a portion of an existing water right may be used for the existing use and for instream use during the same year, provided that the uses are not concurrent and that the holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the instream water right.
- (5) Instream water rights differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.
- (6) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.

(7) The Department may only issue instream water rights, instream leases, instream transfers, and instream water rights resulting from an allocation of conserved water within the State's borders.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.348, ~~ORS &~~ 537.356 - 537.358, ORS 537.470, ORS 537.485
Statutes/Other Implemented: ORS 537.332 - 537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

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WRD 8-2001, f. & cert. ef. 12-14-01
 WRD 1-1996, f. & cert. ef. 1-31-96
 WRD 5-1995(Temp), f. & cert. ef. 8-4-95
 WRD 1-1995, f. & cert. ef. 2-14-95
 WRD 9-1992, f. & cert. ef. 7-1-92
 WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to specify that -OWRD issues water rights within Oregon's borders **and makes other minor clarification.**

Amend

690-077-0010

Definitions

As used in this Division:

- (1) "Affected Local Government" means any local government, as defined in OAR 690-005-0015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.
- (2) "Agency" means ODFW, DEQ and Parks.
- (3) "Beneficial Use" ~~means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state~~ has the same meaning as the term in OAR 690-300-0010.
- (4) "Comment" means a written statement concerning a particular application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.
- (5) "Commission" means the Water Resources Commission.
- (6) "Contested Case" ~~has the same meaning as the term in OAR 690-300-0010, means a hearing as defined in ORS 183.310(2) and conducted according to the procedures described in ORS Chapter 537, 183.413 to 183.470 and OAR chapter 690, division 2.~~
- (7) "DEQ" means the Department of Environmental Quality.
- (8) "Department" means the Water Resources Department.
- (9) "Director" means the director of the Water Resources Department.
- (10) "District" means an irrigation district formed under ORS 545, a drainage district formed under ORS 547, a water improvement district formed under ORS 552, a water control district formed under ORS 553, or a corporation formed under ORS 554.
- (11) "District Water User" means, for the purposes of instream leases involving a district, the owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be leased **up** instream.

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(120) "Estimated Average Natural Flow" means average natural flow estimates, by month or half month, computed by the Department using sources including and derived from watermaster distribution records, Department measurement records, and/or application of appropriate available scientific and hydrologic technology.

(134) "Held in Trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Department affecting instream water rights are limited by public trust obligations.

(142) "Instream" as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(153) "Instream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(164) "Instream lease" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right for a specified time-period as authorized by ORS 537.348(2).

(175) "Instream transfer" means the conversion of all or a portion of an existing water use subject to transfer to an instream water right as authorized by ORS 537.348(1).

(186) "Instream Water Right" as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.

(197) "Minimum Streamflow" also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235 and; 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.

(2018) "Multipurpose Storage Project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two or more beneficial uses and/or purposes.

(2119) "ODFW" means the Oregon Department of Fish and Wildlife.

~~(20) "ODFW flow restoration priority watershed" means a geographic area identified by ODFW where there is a need for flow restoration during a specified season(s) to support fish recovery under the Oregon Plan for Salmon and Watersheds. The ODFW flow restoration priority watersheds are identified in Figures 1 to 18.~~

(2224) "Parks" means the Oregon Parks and Recreation Department.

~~(22) "Planned" means a determination has been made for a specific course of action either by legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by the public or private sector.~~

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~~(23) "Planned Uses" means the use or uses of water or land which has/have been planned as defined in this rule. Such uses include but are not limited to the policies, provisions, and maps contained in acknowledged city or county comprehensive plans and land use regulations.~~

(234) "Pollution Abatement" means the use of water to dilute, transport or prevent pollution.

~~(245) "Protest" means a written statement, filed in accordance with OAR chapter 690, division 2, and the applicable provisions of this division or division 380, expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing~~ has the same meaning of the term in OAR 690-002-0010.

(256) "Public Benefit" as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(267) "Public Use;" as defined in ORS 537.332, includes but is not limited to:

- (a) Recreation;
- (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;
- (c) Pollution abatement; or
- (d) Navigation.

(278) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(289) "Scenic Attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(29) "Secondary Water Right" means a water right to put water stored under a storage right to an out-of-reservoir beneficial use.

(30) "Split Season Use" means the exercise of an existing water right in the same season defined by the water right in the same calendar year for both the existing purpose of the water right and for an instream purpose, provided that water is not used for the existing purpose during the period in which the water is to be protected instream.

(31) "Time-Limited Instream Transfer;" means an instream transfer authorized under ORS 537.348(1) that is not permanent and under which the existing water right will revert back to its original use:

- (a) Without further action by the Department at the end of the period of time specified in the final order approving the instream transfer; or

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(b) On a determination by the Department that other conditions, specified in the final order approving the instream transfer, for termination have been met.

(32) "Unappropriated Water Available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

(33) "Water Purveyor" means any entity including, but not limited to, a public utility, a mutual water company, a county service district, a water cooperative, or a municipality or quasi-municipality that delivers water to customers~~formed for the purpose of delivering water supply to water right holders.~~

(34) "Water quality limited" has the meaning provided in the OAR 340-041-0002.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.310, ORS 537.332, ORS 537.338, ORS 537.348, ~~ORS & 537.356~~ - 537.358

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 540.505, Or Laws 2025, ch 575

History:

WRD 4-2006, f. & cert. ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

WRD 5-1995(Temp), f. & cert. ef. 8-4-95

WRD 1-1995, f. & cert. ef. 2-14-95

WRD 9-1992, f. & cert. ef. 7-1-92

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) modify the definition of "beneficial use" and "contested case" to refer to the definitions in OAR Chapter 690, division 300; (b) modify the definition of "multipurpose storage project" to require "two or more" beneficial uses and/or purposes instead of "more than two," consistent with the definition of multipurpose in Merriam Webster and the definition of "multipurpose project" in OAR chapter 690, division 90; (c) remove the definition of "ODFW flow restoration priority watershed" because the only rule the phrase appeared in (OAR 690-077-0015(5)) is proposed for removal; (d) remove the definitions of "planned" and "planned uses" because those terms do not appear in OAR chapter 690, division 77 rules nor in the governing statutes; and (e) update the definition of "Protest" to reference the definition of protest in OAR chapter 690, division 2. The rule also is amended to (a) add definitions for "district" and "district water user"; (b) modify the definition of "Estimated Average Natural Flow" to reflect that it is determined by month or half month, which is consistent with existing practice, and to clarify sources of information and responsibility to compute; (c) add a definition of "secondary water right"; and (d) modify the definition of "water purveyor" to identify all types of owners or operators of public water systems which deliver water to customers.

Amend

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690-077-0015**General Statements**

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) For state agency instream water right applications only, if natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the applied public use. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

~~(5) Unless the Director determines otherwise, for instream water rights established through instream transfers, leases, or allocations of conserved water, it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant for the applied public use, if the criteria in Subsection (5)(a) and (b), or in Subsection (5)(a) and (c) are met:~~

~~(a) The flow does not exceed the maximum amount of any instream water right application applied for under OAR 690-077-0020 for the same reach or portion thereof, and for the same public use.~~

~~(b) For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed.~~

~~(c) The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality.~~

(65) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(76) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(87) When instream water rights are established through instream transfers, leases, or allocations of conserved water of existing water rights, the order, and, where appropriate, the certificate shall

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define the appropriate point, reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream or for a point or shorter distance if needed to account for return flow or to prevent injury.

(98) Instream water rights applications shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses. ~~unless specifically withdrawn from appropriation for such use. Any withdrawal rule or order does not withdraw a natural lake or stream for instream public uses unless:~~

(a) ~~The rule or order specifically states that it is prohibiting instream public uses, or~~

(b) ~~The withdrawal is for the exclusive use of a municipality.~~

(109) State agency instream water right applications ~~Instream water rights~~ shall be approved only if the amount, timing and location serve a public use or uses.

(110) The combination of state agency requested instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with Sections (4) and; (5), ~~and (6)~~ of this rule.

(121) An instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies that it shall be subordinate to future uses or appropriations. The priority date of an instream water right created through conversion of a minimum perennial streamflow is as specified in ORS 547.346(1) and (2).

(1312) An instream water right created through the conversion of a minimum perennial streamflow, which consists in whole or part of waters released from storage, is enforceable only as to the waters released to satisfy the instream water right.

(1413) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ~~ORS &~~ 537.356 - 537.358

Statutes/Other Implemented: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.356 ~~- &~~ 537.358

History:

WRD 4-2006, f. & cert. ef. 10-2-06

WRD 1-1995, f. & cert. ef. 2-14-95

WRD 9-1992, f. & cert. ef. 7-1-92

WRD 4-1989, f. & cert. ef. 7-11-89

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WRD 1-1989(Temp), f. & cert. ef. 1-24-89

WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to remove language that is not consistent with statute and to make clear which rules only apply to state agency instream water right applications. In regard to estimated natural average natural flow (ENAF), ORS 537.343(2) provides the Department authority to make the final determination of the level of instream flow necessary to protect the public use(s) identified in a state-agency instream water right application, which is the basis for the limitation in OAR 690-077-0015(4), (9) and (10). However, the Department has not identified a similar statutory basis to use ENAF to limit the amount of water that can be converted by instream transfers, leases or allocations of conserved water under OAR 690-077-0015(5). The rule amendment clarifies that flow limitations only apply to state agency instream water right applications and also clarifies an existing rule with the Department's interpretation of when a withdrawal applies to state agency instream water right applications. Rule change also points to statutory direction on priority date of converted minimum perennial streamflows.

Amend**690-077-0019****State Agency Instream Water Right Applications: Process for Instream Water Right Certificate Requests**

(1) Except as provided in ORS 537.343, the Department shall process a request received under 537.336 for a certificate for an instream water right in accordance with the provisions for obtaining a permit to appropriate water under 537.140 to 537.250, and the policies under 537.332 to 537.360.

~~(2) Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in 183.310 to 183.550 conflicts with a provision in 537.120 to 537.360, the provisions in 537.120 to 537.360 shall control.~~

~~(2)~~ Pursuant to Section 46, Chapter 416, Oregon Laws 1995, for each application described under OAR 690-077-0000 that was pending or filed with the Commission or the Department on June 30, 1995, the Department shall determine an appropriate step in the process established in Chapter 416, Oregon Laws 1995 and this division at which to continue the application process for the application. The definitions and provisions of this division shall be applied as appropriate, to reflect the step determined by the Department.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.140 - 537.250, ORS & 537.332 - 537.360

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575

History:

WRD 4-2006, f. & cert .ef. 10-2-06

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

Rule Summary: This rule amendment deletes subsection 2 of this rule because the statutory authority for subsection 2 is repealed by Or Laws 2025, ch 575, section 4.

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Amend**690-077-0020****State Agency Instream Water Right Applications: Application Requirements**

- (1) Only ODFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.
- (2) To promote coordination, ODFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.
- (3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.
- (4) Applications to establish instream water rights shall be submitted in writing by hard copy or electronic transmittal and shall include the following:
- (a) The name(s) and address(es) of the agency(ies) applying;
 - (b) The public uses to be served by the requested instream water right and the flows necessary to support the public uses;
 - (c) Stream or lake name;
 - (d) If a stream, the reach delineated by river mile and stream to which it is tributary;
 - (e) ~~The appropriate section of a Department basin map with the applicable lake or stream reach identified;~~ A map that includes, at a minimum, the following information:
 - (A) The applicable lake or stream reach by river mile,
 - (B) The upstream and downstream points identified by latitude and longitude, as established by a global positioning system or within a geographic information system;
 - (C) The township(s), range(s), and section(s) that cover the requested reach, along with the quarter quarters for the upstream and downstream points of the requested reach;
 - (D) A north arrow; and
 - (E) An identified scale.
 - (f) The instream flow requested by month or half month ~~and year~~ in cubic feet per second or acre-feet or lake elevation;
 - (g) A description of the technical data and methods used to determine the requested amounts;
 - (h) Evidence of notification of other qualified applicant agencies;

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- (i) If a multi-agency request, the amounts and times requested for each category of public use;
- (j) Identification of affected local governments (pursuant to OAR 690-077-0010) and copies of ~~letters notifying~~notification to each affected local government of the intent to file the instream water right application;
- (k) ~~Written~~dDocumentation of how the agency applying for an instream water right has complied with the requirements contained in its own administrative rules for instream water rights, including application of the required methods to determine the requested flows.
- (l) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.
- (5) The applicant is encouraged to propose:
 - (a) A means and location for measuring the instream water right;
 - (b) The strategy and responsibility for monitoring flows for the instream right; and
 - (c) Any provisions needed for managing the water right to protect the public uses.
- (6) Any request for an instream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request.
- (7) Within 60 days after the applicant notifies the Department ~~to~~ proceeds with the application ~~under as provided in~~ OAR 690-077-0031, the Department shall complete the application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. ~~Within the 60-day period, t~~The Department may request the applicant to provide additional information needed to complete the review. If the Department requests additional information, the request shall be specific and shall be sent to the applicant by electronic means, unless the applicant has requested mailing or other sending in written form., by registered mail. The Department shall specify a date by which the information must be returned, which shall be not less than 10 days after the Department mails the request to the applicant. If the Department does not receive the information or a request for a time extension under OAR 690-077-0052(2) by the date specified in the request, the Department may reject the application. The time period specified by the Department in a request for additional information shall allow the Department to comply with the 60-day time limit established by this sSection.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 537.153, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.336, ORS 537.338, ORS & 537.356 - 537.358
Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 282

History:

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

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WRD 9-1992, f. & cert. ef. 7-1-92

WRD 12-1990, f. & cert. ef. 8-8-90

WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) clarify that the Department interprets application submittal “in writing” to be either hard copy or electronic transmittal; (b) implement electronic documentation requirements under Or Laws 2025, ch 282, as well as the phased application processing approach requiring notification to continue processing; (c) require that the map contain elements that would make the map more useful for the public to orient themselves with where the stream reach is located in the state and to provide the Department watermasters clarity on the locations of the upstream and downstream points; and (d) require the application to contain the instream flow requested by month or half month consistent with existing practice.

Amend**690-077-0027****Application Processing: Completeness Review**

(1) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under OAR 690-077-0020(4) and is complete and not defective. If the Department determines that the application is incomplete or defective, the Department shall return the application.

(2) Upon determining that an application contains the information listed under OAR 690-077-0020(4) and is complete and not defective, the Department shall endorse on the application the date upon which the application was received for filing at the Department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose. For the purposes of this section, a suitable book shall include the Department’s electronic water rights information system.

(3) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited because the source of water is specifically withdrawn from appropriation for such use under ORS 538 or by rule or order of the Water Resources Commission under ORS 536.410, if the Department has information sufficient to make the determination at the time of application intake. ~~by ORS Chapter 538.~~ If the proposed use is prohibited, ~~by ORS Chapter 538,~~ the Department shall ~~reject the application and~~ return the application with an explanation of the statutory prohibition reason for the return.

Statutory/Other Authority: ORS 537.150, ORS 538**Statutes/Other Implemented:** ORS 537.332 - 537.360, ORS 536.410, Or Laws 2025, ch 282,**History:**

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

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Rule Summary: This rule is amended to (a) explain what a suitable book is and (b) implement Or Laws 2025, ch 282, section 14, returning applications that cannot be approved because it is within a withdrawn area.

Amend

690-077-0029

Application Processing: Initial Review

(1) If the proposed use is not prohibited as described in OAR 690-077-0027(3) by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

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

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in OAR 690-077-0027, the Department shall send the applicant by electronic means, unless the applicant has requested mailing or other sending in written form, regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations. and allow Tthe applicant shall have 14-90 days from the date the Department sends the initial review report within which to notify the Department in writing to stop processing the application or to proceed with the application. Given that state-agency instream water right applications may be submitted in batches, a single communication can suffice for more than one application in the batch if the communication specifies which applications the applicant would like the Department to continue processing. If the applicant notifies the Department to stop processing the application or does not notify the Department whether to proceed with processing the application, the Department shall close the application file and take no further action on the application. return the application. If the Department receives no timely response from the applicant, the Department shall proceed with the review of the application.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.150, ORS& 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 282

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule is amended to (a) reference the section of the OAR chapter 690, division 77 rules implementing Or Laws 2025, ch 282, section 14 (returning applications that

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cannot be approved); (b) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2; (c) implement Or Laws 2025, ch 282, section 14 requiring affirmative confirmation within 90 days of initial review for OWRD to continue processing an application; and (d) explicitly state that a single communication can suffice for more than one application in a batch of state instream water right applications if the communication specifies which applications the applicant would like the Department to continue processing.

Amend

690-077-0031

Application Processing: Public Notice and Comments

(1) ~~If the applicant notifies the Department to proceed with the application as provided in OAR 690-077-0029(2), the Department shall proceed with processing the application. The Department shall give notice of the initial review in the weekly public notice of the Department and accept written public comments for 30 days. Within seven days after proceeding with the application under OAR 690-077-0029(2), the Department shall give public notice of the application in the weekly notice published by the Department.~~ The weekly notice shall be sent to the following:

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

(b) Affected Indian Tribes; and

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

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

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

(b) County(ies) of water use;

(c) Application file number;

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

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

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

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

(3) The notice shall be sent by electronic means, unless the applicant has requested mailing or other sending of the document in written form.; ~~regular United States mail, or with the consent of the recipient, by electronic means.~~

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(4) Within 30 days after the public notice under Section (1) of this rule, any person interested in the application shall submit written comments to the Department. Any person who asks to receive a copy of the Department's proposed final order shall submit to the Department the fee required under ORS 536.050. The 30-day comment period shall commence on the day the Department sends the notice. All comments must be received by the Department on or before 5 p.m. on the last day ~~the end~~ of the 30-day comment period.

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

Statutory/Other Authority: ORS 536.025, [ORS 536.027](#), [ORS 536.220](#), [ORS 537.140](#), [ORS & 537.338](#)

Statutes/Other Implemented: ORS 537.332 - 537.360, [Or. Laws 2025, ch 282](#)

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0024

WRD 5-1995(Temp), f. & cert. ef. 8-4-95

WRD 9-1992, f. & cert. ef. 7-1-92

Rule Summary: This rule is amended to (a) implement electronic documentation requirements under Or Laws 2025, ch 282, section 2, as well as issuance of an initial review; and (b) remove the request for affected local, state and federal agencies to post a copy of the Department's weekly public notice, given that all members of the public can access the Department's weekly public notice online.

690-077-0033

Application Processing: Public Interest Presumption

(1) The Department shall presume that a proposed water use will not impair or be detrimental to the public interest if:

(a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under 536.310(12);

(b) Water is available;

(c) The proposed use will not injure other water rights; and

(d) The proposed use complies with the rules of the Commission.

(2) The public interest presumption described in Section (1) of this rule is a rebuttable presumption and may be overcome by a preponderance of the evidence that either:

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(a) One or more of the criteria for establishing the public interest presumption are not satisfied;
or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, protests or a finding of the Department that shows:

(A) The specific public interest under ORS 537.170(7) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS 537.338

Statutes/Other Implemented: ORS 536, ORS 537, ORS 537.332 - 537.360, ORS 537.170, Or Laws 2025, ch 575

History:

WRD 4-2006, f. & cert .ef. 10-2-06

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

Amend

690-077-0037

Application Processing: Public Interest Review

(1) ~~Unless the applicant requests withdrawal of an application following the initial review described in OAR 690-077-0029, b~~ Before issuing a proposed final order, the Department shall determine whether the public interest presumption is established for the proposed water use, as described in OAR 690-077-0033.

(2) If the Department determines that the public interest presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors listed in ORS 537.170(7~~8~~) and may either:

(a) Propose denial of the application upon a finding that the use will impair or be detrimental to the public interest; or

(b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest and propose approval of the application with appropriate modifications or conditions.

(3) If the Department determines that the public interest presumption is established or that the proposed instream use can be modified or conditioned to meet the public interest presumption criteria:

(a) The Department shall further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the public interest presumption is overcome. The Department may find that the presumption is overcome if a preponderance of evidence shows that the proposed use will impair or be detrimental to the public interest as demonstrated in comments or a finding of the Department that shows:

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(A) The specific public interest under ORS 537.170(~~78~~) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(b) In making any determination or finding in (3)(a) of this rule, the Department shall, at a minimum, consider the factors listed below, including any potential effects that the proposed use may have on these factors, where applicable:

(A) Threatened, endangered or sensitive species;

(B) Water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set under Section 303(d) of the federal Clean Water Act and sources which the Environmental Quality Commission has classified as outstanding resource waters as defined in OAR 340-041-0002(~~42~~);

(C) Fish or wildlife;

(D) Recreation;

(E) Economic development; and

(F) Local comprehensive plans, including supporting provisions such as public facilities plans.

(c) In making any determination or finding in (3)(a) of this rule, the Department may consult and communicate with state and federal agencies and local governments as appropriate.

(4) If the Department determines that the presumption is established and not overcome under the provisions of Section (3) of this rule, the Department shall issue a proposed final order recommending issuance of the certificate subject to any appropriate modifications or conditions. If the Department then receives a protest filed pursuant to OAR 690-077-0043, which asserts the presumption is not established or should be overcome, the Department shall evaluate the protest and supporting evidence in accordance with this Section and Sections (5)–(~~67~~) of this rule. The Department shall find that the public interest presumption is overcome if a preponderance of evidence shows that:

(a) One or more of the four public interest presumption criteria listed in OAR 690-077-0033(1)(a)–(d) are not met;

(b) The proposed use may impair or be detrimental to the public interest according to standards described in ORS 537.170(~~78~~), including:

(A) The specific public interest under ORS 537.170(~~78~~) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(5) If the Department finds that under Section (4) of this rule the presumption is overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 denying the application unless the Department makes specific findings to demonstrate that considering all of

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the public interest factors listed in ORS 537.170(7&) the issuance of an instream water right certificate will not impair or be detrimental to the public interest.

(6) If the Department finds that under Section (4) of this rule the presumption is not overcome, the Department shall issue a final order in accordance with OAR 690-077-0047 approving the application with any appropriate modifications or conditions.

~~(7) If the Director finds that a significant dispute about the proposed water use related to the public interest exists and a protest has been filed under OAR 690-077-0043, the Director shall schedule a contested case hearing.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS & 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule is amended to (a) remove provisions referring to application withdrawal after the initial review to simplify the rule, as this process is already established in OAR 690-077-0029; (b) remove a dated reference to a subsection of a rule; (c) remove the provisions related to protests that have been moved to OAR 690-077-0043; and (d) update citations to ORS 537.170 consistent with statutory renumbering.

Amend

690-077-0039

Application Processing: Proposed Final Order

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

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

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

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

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

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

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

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

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

(h) The dates by which protests to the proposed final order and requests for party status must be received by the Department.

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

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

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, ORS& 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575, Or Laws 2025, ch 282, ORS 183.415

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 4-2006, f. & cert. ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 575, sections 3a and 5a with respect to the replacement of requests for standing with requests for party status; (b) remove redundant language requiring notice of the proposed final order to include an explanation of the requirement to raise all issues in a protest, as notice of that requirement is required by ORS 183.415(3)(a); (c) reflect that, under ORS 183.415(2), the Department must send the proposed final order to the applicant by certified or registered mail; and (d) implement Or Laws 2025, ch 282, by allowing the Department to send copies of the proposed final order electronically to persons other than the applicant.

Amend

690-077-0043

Application Processing: Protests and Conduct of Contested Case; Final Orders on Default when No Protest Filed and Standing

(1) Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR chapter 690, division 2. Proposed

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final orders shall become final orders if no protest is filed or by default as provided in OAR 690-002-0235.

(2) Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Department shall:

(a) Issue a final order as provided under ORS 537.170 (1) or (2), if the applicant has not filed a protest and the director finds that there are no significant issues related to the proposed use of water;

(b) Schedule a contested case hearing if a protest has been submitted; or

(c) Provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the contested case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

~~(1) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:~~

~~(a) The name, address and telephone number of the protestant;~~

~~(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;~~

~~(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;~~

~~(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;~~

~~(e) Any citation of legal authority supporting the protest, if known; and~~

~~(f) For persons other than the applicant, the protest fee required under ORS 536.050.~~

~~(2) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order, whether issued following a contested case hearing or where no contested case hearing is held.~~

~~(3) The request for standing must be in writing, signed by the requester, and include the following:~~

~~(a) The requester's name, mailing address and telephone number;~~

~~(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;~~

~~(c) A statement that the requester supports the proposed final order as issued;~~

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~~(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and~~

~~(e) The fee established under ORS 536.050.~~

~~(4) Each person submitting a protest or a request for standing 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 in a hearing, or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue, precludes judicial review based on that issue.~~

~~(5) Any person who has filed a timely request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.~~

~~(6) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the Department. Any person who asks to receive a copy of the Department's final order shall submit to the Department the fee required under ORS 536.050, unless the person has previously paid the fee.~~

~~(7) Within 10 days after the close of the filing period established under Section (6) of this rule, the Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.153, & ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575.

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule amendment implements Or Laws 2025, ch 575, sections 3 and 5a by (a) noting that protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575, and OAR chapter 690, division 2; (b) removing rules concerning requirements for protests and requests for standing that have been replaced with rules in OAR chapter 690, division 2, that are consistent with Or Laws 2025, ch 575; and (c) describing the process that takes place after the protest deadline if a protest is submitted.

Repeal

~~690-077-0046~~

~~Application Processing: Determination to Hold a Contested Case Hearing~~

~~(1) Within 60 days after the close of the period for receiving protests, the Director shall determine whether to:~~

~~(a) Issue a final order as provided under ORS 537.170(6); or~~

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~~(b) Schedule a contested case hearing.~~

~~(2) The Director:~~

~~(a) May schedule a contested case hearing if:~~

~~(A) A protest has been submitted; and~~

~~(B) Upon review of the issues, the Director finds that there are significant disputes related to the proposed use of water.~~

~~(b) Shall schedule a contested case hearing, if within 30 days after the close of the period for submitting protests, the applicant submits the information required for a protest under OAR 690-077-0043 and requests a contested case hearing.~~

~~(3) As soon as possible after making a determination under Section (1) of this rule to refer an application to a contested case hearing, the Director shall advise the applicant, the protestant and any person requesting standing that the matter is being referred to contested case hearing, and describe the procedures each must follow to participate in the contested case hearing. Such notification to the participants shall not be considered the scheduling of the contested case hearing for purposes of the running of the 45 day time period under Section (4) of this rule.~~

~~(4) Within 45 days after the Director schedules a contested case hearing under ORS 537.153(8), the Department shall hold the contested case hearing, which shall be conducted in accordance with the provisions of 183.413 to 183.470 and OAR chapter 690, division 02. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.~~

~~(5) Notwithstanding the provisions of ORS 183.413 to 183.470 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this rule shall be limited to:~~

~~(a) The applicant;~~

~~(b) Any person who timely filed a protest; and~~

~~(c) Any person who timely filed a request for standing under OAR 690-077-0043 and who requests to participate as a party or limited party in the contested case hearing prior to the start of the proceeding.~~

~~(6) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.413 to 183.470 except:~~

~~(a) As provided in Sections (4) and (5) of this rule; and~~

~~(b) An interlocutory appeal under ORS 183.480(3) shall not be allowed.~~

~~(6) After the conclusion of a contested case hearing, any party may file exceptions to the hearing officer's proposed order in the manner described in OAR 690-002-0175.~~

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~~Statutory/Other Authority: ORS 536.025, 536.027, 537.153, 537.170 & 537.338~~~~Statutes/Other Implemented: ORS 537.332 – 537.360~~**History:**~~WRD 4-2006, f. & cert. ef. 10-2-06~~~~WRD 8-2001, f. & cert. ef. 12-14-01~~~~WRD 1-1996, f. & cert. ef. 1-31-96~~

Rule Summary: -This rule is repealed to align with changes in Or Laws 2025, ch 575 and updates to OAR 690-002.

Amend**690-077-0047****Application Processing: Final Orders**

(1) In developing the final order, the Department shall consider all comments and protests received and all findings of the Department, but the final order need not separately address each comment and protest received.

(2) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under 543.017 or would otherwise impair or be detrimental to the public interest, the Director shall issue a final order ~~denying rejecting~~ the application or modifying or conditioning the proposed final order to conform to the public interest.

(3) If a protest of a proposed final order issued under ORS 537.153 is timely filed and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not impair or be detrimental to the public interest, the Director shall issue a final order approving the application or otherwise modifying or conditioning the proposed final order.

(43) A final order issued under Section (2) or (3) of this rule for an instream water right certificate may include any condition the Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The final order may:

- (a) Approve the instream water right application for the quantity of water requested;
- (b) Approve the instream water right application for a lesser quantity of water; or
- (c) Deny the instream water right application.

(54) If the Director reduces the quantity of water requested, denies the instream water right application, or conditions the instream water right, the Director shall include a statement of findings that sets forth the basis for the reduction, denial or conditions.

(65) Upon issuing a final order, or upon a proposed final order becoming a final order by default as provided in OAR 690-002-0235, the Director shall notify the applicant and each person who

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submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050. Within seven days after issuing the final order, the Department shall also publish notice of the final order by publication in the weekly notice published by the Department.

Statutory/Other Authority: ORS 536.025, [ORS 536.027](#), [ORS 537.170](#), [ORS 537.343](#), [ORS& 537.338](#)

Statutes/Other Implemented: ORS 537.332 - 537.360, [ORS 537.153](#), [Or Laws 2025, ch 575](#)

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule is amended to implement (a) Or Laws 2025, ch 575, section 6 by aligning the rule with statutory updates to ORS 537.170; and (b) Or Laws 2025, ch 575, section 3 by making changes that reflect that the Director must issue a final order only when a protest is timely filed because under the new law, if no protest is timely filed, the proposed final order becomes a final order by operation of law.

690-077-0048

Application Processing: Final Public Interest Determination

If the presumption of public interest under OAR 690-077-0033 is overcome in the manner described in 690-077-0037, then before issuing a final order, the Director or the Commission, if applicable, shall make the final determination of whether the proposed use, or the proposed use as modified or conditioned in the proposed final order, would impair or be detrimental to the public interest by considering the factors set forth in ORS 537.170(7).

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.170, ORS 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

690-077-0049

Application Processing: Statement of Findings

Any order or proposed order by the Director or Commission that approves, reduces, conditions or denies an instream water right application shall include a statement or findings that sets forth the basis for the approval, reduction, conditioning or denial.

Statutory/Other Authority: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 - 537.358

Statutes/Other Implemented: ORS 537.332 - 537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

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WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0044
 WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-077-0040
 WRD 20-1988, f. & cert. ef. 11-4-88

Amend**690-077-0051****Application Processing: Contested Case Hearing on Final Order that Modifies Proposed Final Order**

If a timely protest of a proposed final order was filed by a person other than the applicant and, as described in ORS 537.153(7)(a), the Director issues a final order without holding a contested case hearing, and the final order modifies the proposed final order, the applicant, a person granted party status or a protestant may submit a protest as provided in OAR 690-002-0220 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order. The Department must refer the protest to the Office of Administrative Hearings for hearing if the protestant is an applicant, unless the applicant withdraws the protest or the protest is resolved through a settlement prior to referral.

If a contested case hearing is not held prior to the issuance of the final order:

(1) Where the final order modifies or conditions the proposed final order, the applicant may request and the Director shall schedule a contested case hearing as provided under OAR 690-077-0046 by submitting the information required for a protest under 690-077-0043 within 14 days after the Director issues the final order. The issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications or conditions to the proposed final order.

(2) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.170, ORS& 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, ORS 537.153, Or Laws 2025, ch 575

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: -This rule is amended to (a) implement Or Laws 2025, ch 575, section 6(5) by conforming the rule to updates to ORS 537.170 concerning final orders issued without a hearing that modify proposed final orders; and (b) remove language from the rule that is based on portions of ORS 537.170 that are deleted by Or Laws 2025, ch 575, section 6.

Amend**690-077-0052****Application Processing: Time Requirements**

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(1) Except as provided in Section (2) of this rule, the Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.336 within 180 days after the Department proceeds with the application under OAR 690-077-0029(2).

~~(2) If the applicant requests an administrative hold on processing of the application, At the request of the applicant,~~ the Department may extend the 180-day period set forth in Section (1) of this rule for a reasonable period of time. The cumulative length of extensions requested through administrative holds shall not exceed 180 days except upon a finding by the Director that a longer extension is reasonable and necessary for the applicant to engage in collaborative conversations with interested parties that provided public comment under OAR 690-077-0031(4), and the extension does not exceed two years.

~~(3) If a contested case hearing is held, the Director shall issue a final order:~~

~~(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the Department; and~~

~~(b) Within 180 days after scheduling the hearing for all other contested case proceedings.~~

~~(34)~~ If the applicant does not request an extension under Section (2) of this rule and the Department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the Department proceeds with the application under OAR 690-077-0029(2), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the Director to issue a final order or schedule a contested case hearing on an application for a water right.

~~(45)~~ The mandatory timelines set forth in division 77 for the Department to process applications shall not apply to applications filed before October 31, 1996.

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 537.175, ORS& 537.338

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Rule Summary: This rule is amended to provide parameters on what qualifies as a reasonable and necessary extension on the application processing timeline requested by the applicant through an administrative hold. This rule also is amended to implement Or Laws 2025, ch 575, section 7, by conforming the rule with updates to ORS 537.175 related to issuance of final order.

690-077-0053

Application Processing: Issuance of Instream Water Right Certificate

After the Director issues a final order approving an instream water right, the Department shall issue a certificate for an instream water right according to the provisions of ORS 537.341. The instream water right shall date from the filing of the application with the Commission. The

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certificate shall be in the name of the Department as trustee for the people of the State of Oregon and shall be issued by the Commission according to the procedures established under ORS 537.338. The Commission shall forward a copy of each certificate issued under this rule to the state agency requesting the instream water right. A certificate for an instream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336.

Statutory/Other Authority: ORS 536.025, 536.027, 537.338 & 537.341

Statutes/Other Implemented: ORS 537.332 - 537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

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

Amend

690-077-0054

Conversion of Minimum Perennial Streamflows to Instream Water Rights

~~(1) Within 21 days of the adoption of these rules, the Commission shall request publication in the Secretary of State's bulletin and shall mail to the appropriate Department mailing lists notice of proposed conversion, and a list of all existing minimum perennial streamflows established on any waters of this state prior to June 25, 1988 separated as follows:~~

~~(a) Those flows the Commission intends to convert without change to instream water rights;~~

~~(b) Those flows the Commission intends to condition with OAR 690-077-0015(12) and schedule a hearing before converting to instream water rights.~~

(1) Pursuant to ORS 537.346, all minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights. When the Department proposes to convert a minimum perennial streamflow to an in-stream water right under ORS 537.346, the Department shall issue a proposed final order reflecting the proposed conversion.

(2) Any person or agency, including the Department, may request a contested case hearing on any of the conversions proposed within 60 45 days of publication in the Secretary of State's bulletin or the mailing of notice issuance of a pProposed Ffinal oOrder.

(3) Protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 575 and OAR chapter 690, division 002. Proposed final orders shall become final orders if no protest is filed or by default as provided in OAR 690-002-0235.

(4) Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Department shall:

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(a) Issue a final order as provided under ORS 537.170 (1) or (2), if the director finds that there are no significant issues related to the proposed conversion;

(b) Schedule a contested case hearing if a protest has been submitted; or

(c) Provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the contested case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

~~(35) A protest-Requests for hearings~~ shall be filed individually for specific minimum perennial streamflows and shall be substantiated by evidence that:

(a) The conversion will take away or impair permitted, certificated or decreed water rights to the same source of water and a statement of what conditions, if any, could be attached to the conversion to avoid the problems identified, or what clarifications are necessary;

(b) The existing minimum perennial streamflow is not for a public use or exceeds the amounts necessary for the public use; and/or

(c) The conversion from a minimum streamflow to an instream water right would not be in the public interest.

~~(4) The Director shall issue an instream water right certificate for all minimum streamflows where no complete request for hearing was received. These instream water rights shall contain the priority date of the minimum streamflow from which they were created.~~

~~(5) The Director shall review all requests for hearings. The person making the request shall bear the burden of establishing the need for a hearing. After completing this review, the Director shall recommend to the Commission:~~

~~(a) To approve the conversion; or~~

~~(b) To conduct a hearing under ORS 537.170.~~

~~(6) The Commission shall act on the Director's recommendation in accordance with OAR 690-077-0046.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS& 537.356 - 537.358

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2025, ch 575, sec. 2-3, Or Laws, ch 575, sec 5a.

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-077-0050

WRD 9-1992, f. & cert. ef. 7-1-92

WRD 20-1988, f. & cert. ef. 11-4-88

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Rule Summary: This rule is amended to (a) remove the rule referencing a publication that would have occurred decades ago and is no longer part of future Department actions; (b) implement Or Laws 2025, ch 575, by adding procedures concerning actions the Department must take when a protest is timely filed, protests of, requests for party status, and contested case proceedings concerning proposed final orders are governed OAR chapter 690, division 2, and that proposed final orders become final if no protest is filed or upon default; (c) remove rules that have been superseded by these requirements; and (d) including language from statute for context.

690-077-0055

Disposition of Minimum Perennial Stream-flows

Following the conversion of a minimum streamflow, the Commission shall retain the original minimum streamflow until it determines through basin program amendment that no public benefit is derived by maintaining both an instream water right and a minimum streamflow.

Statutory/Other Authority: ORS 536 & 537

Statutes/Other Implemented: ORS 536 & 537

History:

WRD 20-1988, f. & cert. ef. 11-4-88

Amend

690-077-0065

Instream Transfers and Leases: General Provisions

- (1) The Department shall promote and facilitate potential instream transfers and leases under ORS 537.348 ~~that would to~~ provide benefits for public uses.
- (2) The Department encourages ~~irrigation~~-districts and other water purveyors to ~~develop-prepare~~ single lease applications that pool individual existing water rights ~~and ownerships that are to be for leased~~ during the same term.
- (3) Department personnel shall review ~~all~~ instream transfer or lease applications pursuant to OAR 690-077-0070 through OAR 690-077-0079, OAR 690-077-0105, and OAR 690-077-0110 to assure that they comply with these rules and, if possible needed, to develop conditions to prevent enlargement of the existing water original-right or injury to other existing water rights ~~owners~~.
- (4) Completed lease applications submitted pursuant to OAR 690-077-0076 and OAR 690-077-0105, including signatures of lessor(s) and lessee (if applicable), and all necessary attachments or exhibits, must be received by the Department's Salem office prior to July 1, or for year ~~-around~~ uses, must be received prior to October 1. Completed lease applications received after this date shall be returned or, at the request of the applicant, be processed to be effective for the next calendar year. At the discretion of the Director, an application may be received and processed after this date during the current year.
- (5) The Department may compile descriptive information to assist all parties in addressing technical issues related to instream transfers and leases, including but not limited to describing

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injury and enlargement issues, ~~determining whether a proposed instream water right would support a public use~~, setting the location of a proposed instream water right and making agreements for measuring and monitoring the instream water right. The descriptive information shall not restrict new leases, but shall offer options that have been used in earlier leases to ensure compliance with OAR chapter 690, division 77.

(6) The Department may prepare lease application forms that include the requirements listed in OAR 690-077-0076~~(3)~~, OAR 690-077-0105, and any additional information the Department deems necessary to comply with the policies of OAR chapter 690, division 77 and to reflect the nature of the existing water rights ~~subject to being leased~~proposed for instream lease. ~~For example, a special form could be prepared for an irrigation district to sponsor a single lease application that involved multiple water right owners.~~

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 536.027, ORS 537.332-537.360

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01, Renumbered from 690-077-0078

WRD 1-1995, f. & cert. ef. 2-14-95

Rule Summary: This rule is amended to (a) clarify language for consistency with the rest of the OAR chapter 690, division 77 rules; (b) better align with the definitions of “enlargement” and “injury” found in OAR 690-380 that also apply to OAR 690-077; (c) remove language that is inconsistent with the authority under ORS 537.348, as the Department’s authority under ORS 537.343(2) to make the final determination, including to limit the level of instream flow necessary to protect the public use(s) does not apply to these types applications; (d) make reference to a new section of rule related to instream lease renewal applications found in OAR 690-077-0105; and (e) remove reference that a special form could be prepared, because the Department already has special district forms.

Amend

690-077-0070

Application for Instream Transfer

(1) As provided in ORS 537.348(1), any person may apply for an instream transfer, including a time-limited instream transfer.

(2) A holder of a water use subject to transfer that is for surface water, above-ground storage of surface water, or the use of stored surface water- may change all or a portion of the right.

(3) For an instream transfer of an above-ground storage right, the applicant shall consult with the watermaster prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement.

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~~(4) In addition to the transfer application requirements described in OAR 690-380-3000, a~~An application for instream transfer application shall include the following information:

~~(a) Public use(s) for which the instream right is desired;~~The transfer application requirements described in OAR 690-380-3000, except that the application map for instream transfer shall be consistent with the requirements outlined under OAR 690-077-0071;

(b) Description of the time periods of the instream use and quantity of water to be transferred to instream use;

(c) The location of the proposed instream use. If a reach or lake level is requested, identify the upstream and downstream extent of the reach or the appropriate lake level;

(d) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels; and

~~(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right;~~

~~(e)~~ For a time-limited instream transfer, the duration or number of years for which the time-limited instream transfer is being requested and the requested provisions, if any, for early termination.

(5) For instream transfer of an above-ground storage right, in addition to the application requirements under section (4) of this rule, the application shall:

(a) Be consistent with the results of the watermaster consultation outlined in section (3) of this rule and shall include, but is not limited to, the following requirements specified by the watermaster:

(A) A description of the location(s) and type(s) of measuring device(s);

(B) A description of the frequency of the measurements; and

(C) Identification of the parties responsible for performing the respective measurements;

(b) Identify the total volume or rate authorized under the above-ground storage right;

(c) Identify the total volume or rate of the above-ground storage right that is allocated to secondary water right(s) for use of the stored water and the associated permit or certificate number(s) of the secondary water right(s);

(d) Identify the total volume or rate of the above-ground storage right proposed for instream transfer; and

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(e) Include affidavits of voluntary cancellation for secondary water right(s), as applicable, if the combined total volume or rate of subsections (5)(c) and (5)(d) of this rule exceeds the volume or rate identified under subsection (5)(b) of this rule, to ensure the authorized volume or rate of water under the above-ground storage right is not exceeded.

(36) The Department may require additional information needed to complete the evaluation of the proposed conversion under this rule.

Statutory/Other Authority: ORS 536, ORS & 537

Statutes/Other Implemented: ORS 536, ORS & 537, ORS 540, ORS 540.520

History:

WRD 4-2006, f. & cert .ef. 10-2-06

Reverted to WRD 1-1995, f. & cert. ef. 2-14-95

WRD 5-1995(Temp), f. & cert. ef. 8-4-95

WRD 1-1995, f. & cert. ef. 2-14-95

WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) include a description of the water rights that can be transferred instream, (b) provide general clarifications, (c) include new language describing the necessary requirements for transferring above-ground storage rights instream through the instream transfer process, (d) to remove language related to the limitation of water protected instream as there is not a statutory basis to do so under ORS 537.348, and (e) add language relating to provisions for early termination of a time-limited instream transfer.

Adopt

690-077-0071

Map Requirements for Instream Transfer and Instream Lease Applications

(1) A map must be submitted that includes, at a minimum, the following information:

(a) North directional symbol, map scale and legend;

(b) Township, range, section and quarter-quarter (QQ), including tax lots, donation land claims and government lots, if appropriate;

(c) If an irrigation right, nursery use, or other similar uses, the number of acres to be leased or transferred in each quarter-quarter must be clearly labeled and hachured to differentiate between the acres being leased or transferred and any remaining acreage must be identified;

(d) If the place of use on the water right is broken down by more than one priority date, or source stream, and/or diversion the map must identify each with separate hachuring and clearly label what is being changed;

(e) For instream transfer application maps, identify the point(s) of diversion authorized on the water right. If the water right does not identify the point(s) of diversion, include information in the application to identify where the point of diversion is located;

(f) Provide a statement describing the proposed instream reach or point; and

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(g) If more than three water rights are involved, separate maps are needed for each water right.

(2) The map described in section (1) of this rule need not be prepared by a certified water right examiner.

(3) An existing water right map that meets the requirements of this section may be used, if approved by the Department prior to submittal of the application.

(4) If the existing water right proposed for instream lease or transfer is for municipal or quasi-municipal water use, a map is not required.

Statutory/Other Authority: ORS 536, ORS 537

Statutes/Other Implemented: ORS 536, ORS 537, ORS 540, ORS 540.520

Rule Summary: This new rule is adopted to describe required elements, as well as some elements that are not required, for the map that must be submitted with an application for instream lease or instream transfer. This new rule is also adopted to provide more clarity as it relates to mapping for types of uses that must clearly identify number of acres for leased/transferred lands and remaining non-modified lands, and to allow for a statement on the map to describe the proposed instream reach or point.

Amend

690-077-0075

Processing an Instream Transfer Application

(1) A proposed instream transfer **application**, including a time-limited instream transfer **application**, ~~of a water use subject to transfer to an instream water right~~ shall be processed pursuant to the water rights transfer rules in OAR ~~chapter 690, division 380-4000 through OAR 690-380-5000~~ and the following provisions:

~~(1)(2)~~ The Department shall provide notice of the proposed instream transfer pursuant to OAR 690-380-40050, and to affected Indian tribes.

~~(23)~~ In addition to the assessment described in OAR 690-380-40040, the Department's ~~preliminary determination~~ initial review shall include an assessment of whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the ~~original-existing~~ water right; and

(b) The proposed reach(es) is (are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion;

(B) Locations of return flow. Where return flows occur at a definite point, located a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream;

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(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-077-0015~~(87)~~; and

(D) Any known areas of natural loss of streamflow to the riverbed. Where an instream water right passes through an area of known natural loss, several stream reaches may be required to incorporate the reduced flows available, in accordance with paragraph ~~(23)~~(c)(B) of this rule; and

(c) The proposed flow(s) is (are) consistent with OAR 690-077-0015~~(6) and (7) and (8) and (11)~~, shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the ~~old~~ point of diversion, unless the return flows occur at a definite point located a substantial distance below the ~~old~~ point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; ~~and~~

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow; and

(C) For instream transfers of above-ground storage rights, the total volume or rate of the above-ground storage right that is allocated to secondary water right(s), combined with the total volume or rate of the above-ground storage right proposed for instream transfer, shall not exceed the total volume or rate authorized under the above-ground storage right.

~~(43) An instream transfer shall be approved if the Department determines that the transfer is consistent with OAR 690-380-5000, and Section (2) of this rule. The initial review described in section (3) of this rule shall also specify that if the instream application can be approved, then the approval shall include, but is not limited to, conditions specifying that the Department shall:~~

(a) For permanent instream transfers:

(A) Cancel the existing water right(s), or portion -affected by the instream transfer application;

(B) Issue a permanent instream water right certificate(s); and

(C) Issue new remaining right certificate(s), if applicable, for the portion(s) of the existing water right(s) not involved in the instream transfer application; and

(b) For time-limited instream transfers:

(A) Specify the date of expiration or other conditions for termination of the instream water right; and

(B) Suspend the use of the existing water right during the effective period of the instream water right.

~~(54) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 and Section (2) of this rule if no protests are received under 690-380-4030. In addition to the proposed final order requirements outlined in OAR 690-380-~~

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4010, for permanent instream transfer applications, the Department shall issue draft permanent instream water right certificate(s).

(6) As part of the notice of the proposed final order required under OAR 690-380-4020, the Department shall, except for time-limited instream transfer applications, also send copies of the draft permanent instream water right certificate(s) to the applicant(s) by registered or certified mail in accordance with ORS 183.415.

~~(7) Upon approval of an instream transfer application, the Department shall: issue a permanent instream water right certificate. However, upon approval of a time limited instream transfer, the Department shall issue a final order with a specific date of expiration or other conditions for termination for the instream water right and suspend the use of the original right during the effective period of the instream water right. A~~

(a) For a permanent instream transfer, mail a copy of the instream water right certificate ~~or final order and the final approval order shall be mailed~~ to the applicant and as appropriate, to affected Indian Tribes, ODFW, DEQ, and Parks; or

(b) For a time-limited instream transfer, mail a copy of the final approval order to the applicant and as appropriate, to affected Indian Tribes, ODFW, DEQ, and Parks. The Director shall also issue a new certificate for any remaining right for the existing use as appropriate.

Statutory/Other Authority: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.348, -ORS-537.356 - 537.358

Statutes/Other Implemented: ORS 197, ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ORS 537.338, ORS 537.348, ORS 537.356 &-- 537.358, ORS 540.520, ORS 540.530, Or Laws 2025, ch 282

History:

WRD 4-2006, f. & cert .ef. 10-2-06
WRD 8-2001, f. & cert. ef. 12-14-01
WRD 1-1995, f. & cert. ef. 2-14-95
WRD 9-1992, f. & cert. ef. 7-1-92
WRD 12-1990, f. & cert. ef. 8-8-90
WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: This rule is amended to (a) implement Or Laws 2025, ch 282, as it relates to processing steps associated with the application and to conform to the OAR chapter 690 division 380 rules; (b) describe the necessary requirements for transferring an above-ground storage right instream through the instream transfer process; (c) provide additional detail about conditions to be included in the initial review, depending on whether for a permanent instream transfer or a time-limited instream transfer; (d) provide for the preparation and issuance of draft instream water rights certificates, if for a permanent instream transfer, to implement Or Laws 2025, ch 282 as it relates to issuance of the proposed final order; and (e) provide more detail related to distribution of approval orders and instream water right certificates, as applicable upon approval of instream transfers.

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Amend**690-077-0076****Application for an Instream Lease**

(1) A holder of a water use subject to transfer that is for surface water, above-ground storage of surface water, or the use of stored surface water any of the following types of water rights may enter into a lease to ~~convert-change~~ all or a portion of athe existing water right to an instream water right for a specified time period not to exceed five years.:

~~(a) Surface water rights for beneficial use or storage established by a water right certificate or an adjudication under ORS Chapter 539 as evidenced by court decree; or (b)~~

~~A surface 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 Director under 537.250, or; transfer application for which an order has been issued under 540.530 approving the change and for which proper proof of completion of the change has been filed with the Commission;~~

~~(c) Secondary water rights for the use of stored water established by permit, certificate or court decree; or~~

~~(d) The conserver's portion of conserved water allocated under ORS 537.445 to 537.500.~~

(2) The parties to the lease application shall include, but are not limited to:

(a) The holder(s) of the subject water right(s) as the lessor(s);

(b) Any irrigation district or similar organization as defined in ORS chapters 545, 547, 552, 553, or 554 which conveys water to the subject water right and the owner of any storage facility which is the source of the water, as co-lessor(s), if applicable; and

(c) The lessee, if different than the Department. The lessee may include, but is not limited to, individuals; organizations who may assist with the lease application; or organizations who may provide compensation to the lessor(s) for the leasing of the existing water right(s) instream.

(3) For an instream lease of an above-ground storage right, the applicant shall consult with the watermaster prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement.

~~(4) At a minimum, the lease~~ An application to lease an existing water right(s) for instream uses must be filed with the Department, on a form provided by the Department, and shall include:

(a) ~~Names, and signatures, mailing addresses, and email addresses (if available) of the parties; In the case where the lessor(s) is a district or water purveyor, the lease application shall be submitted by the district or water purveyor and signed by the manager or authorized representative of the district or water purveyor. In the case where the lessee is other than the Department, the lease application shall be submitted by the individual or organization and signed by the individual or an authorized representative of the organization, as applicable;~~

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~~(b) If the lessor(s) is a district, the application shall include a statement by the district's manager or authorized representative that each district water user involved in the lease application has provided written authorizations for the lease, such authorization is on file with the district, and is available to the Department and the public upon request;~~

~~(c) A description of the existing water right(s) proposed for to be leased, including the point of diversion location. If only a portion of an existing water right is proposed for will be leased, a clear description of the place of use and, including maps consistent with OAR 690-077-0071 if necessary, of the portion are required. If the lessor(s) is a district, the description shall include the name of each district water user by parcel to be leased;~~

~~(ed) Rate, total volume, timing and location of the proposed instream right lease, including any necessary conditions to avoid enlargement of the original right or potential injury to other existing water right holders;~~

~~(d) A description of how the lease will serve a public use or uses;~~

~~(e) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed lease is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.~~

~~(fe) Provision ensuring the original use of the existing water right will be suspended;~~

~~(gf) The term of the lease;~~

~~(hg) A statement by the lessor(s) verifying that the existing water right(s) described in Subsection (3)(b) of this rule being leased instream have has been used under the terms and conditions of the rights during the last five years, or as an instream water right, or an explanation why the existing water right(s) is not subject to forfeiture under ORS 540.610. As an alternative, an irrigation district or other water purveyor may provide evidence for owners, verifying delivery of water for the lands appurtenant to the rights to be leased;~~

~~(ih) If the lessor(s), as identified in Ssubsection (2)(a) of this rule, is not the deeded owner of the landowner to which the existing water right is appurtenant, sufficient documentation to demonstrate that the lessor(s) is authorized to pursue the instream lease. These also include what the district shall hold on file for subsection (4)(b). Such documentation shall include:~~

~~(A) A notarized statement from the landowner consenting to the lease and a copy of the recorded deed;~~

~~(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or~~

~~(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner.;~~

~~(j) The name and address of any water purveyor that conveys water to the water right(s) described in Subsection (3)(b) of this rule.~~

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(i) A map consistent with OAR 690-077-0071; and

(j) The appropriate fee as required under ORS 536.050.

(5) For instream lease of an above-ground storage right, in addition to the application requirements under this rule, the application shall:

(a) Be consistent with the results of the watermaster consultation outlined in section (3) of this rule and shall include, but is not limited to, the following requirements specified by the watermaster.;

(A) A description of the location(s) and type(s) of measuring device(s);

(B) A description of the frequency of the measurements; and

(C) Identification of the parties responsible for performing the respective measurements;

(b) Identify the total volume or rate authorized under the above-ground storage right;

(c) Identify the total volume or rate of the storage right that is allocated to secondary water right(s) for use of the stored water;

(d) Identify the total volume or rate authorized under the above-ground storage right proposed for instream lease;

(e) If the combined total volume or rate of subsections (8)(c) and (d) of this rule exceeds the volume or rate identified under subsection (8)(b) of this rule, list the secondary water right(s) under which use of the stored water will be suspended for the term of the lease to ensure the authorized volume or rate of water under the above-ground storage right is not exceeded; and

(f) If secondary water right(s) are identified for suspension pursuant to the calculation described in subsection (8)(e) of this rule, provide sufficient documentation to demonstrate that the lessor(s) is authorized to suspend the use of stored water under the secondary water right(s) and pursue the instream lease. Such documentation shall include:

(A) A notarized statement from the landowner or water right holder of record consenting to the lease and a copy of the recorded deed; or copies of contracts or agreements for the use of a reservoir owned by a federal government; or

(B) A water right conveyance agreement(s) as defined in OAR chapter 690, division 380 and a copy of the recorded deed for the landowner at the time the water right was conveyed; or

(C) Other documentation that demonstrates to the Department's satisfaction that the lessor(s) is authorized to pursue the lease in the absence of the consent of the landowner or water right holder of record; and

(g) Include a statement that the quantity of water proposed for instream lease will not be stored under the storage right for the term of the instream lease.

(46) Lease applications shall conform with applicable provisions of OAR 690-077-0015.

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(7) If a final order was issued approving an existing instream lease, and the term of that lease has expired or is about to expire, and there are no changes to the instream use or to the water (or portion thereof) involved, an instream lease renewal application meeting the requirements set forth under OAR 690-077-0105 can be submitted.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implemented: ORS 537.332 – 537.360, ~~& 537.455 – 537.500;~~

History:

WRD 4-2006, f. & cert .ef. 10-2-06

Rule Summary: This rule is amended to (a) modify the description of the water rights that can be leased instream; (b) add new language describing the necessary requirements for transferring storage rights instream through the instream lease process; (c) describe mapping requirements; (d) describe when a lease renewal application can be submitted; (e) clarify language for consistency with OAR chapter 690, division 380; (f) remove the requirement that the application contain conditions to avoid enlargement or injury, as that is the Department's role in reviewing an application; and (g) remove language related to the limitation of water protected instream (via instream water rights established through instream leases), as there is not a statutory basis to do so under ORS 537.348. This rule is also amended to (a) provide more detail as it relates to the lessor and the lessee; (b) allow that if the lessor is a district, written authorization from each district user involved in the lease is on file at the district and available upon request; (c) add reference to statutory fee requirements' and (d) remove language in (4)(j) related to name and address of water purveyors conveying water to the water right to be leased instream, and consolidated into another subsection of this rule (4)(a). This rule is also amended to provide for copies of contracts or agreements for use of a reservoir owned by federal government as it relates to consent.

Amend

690-077-0077

Processing an Instream Lease Application

- (1) On receipt of a complete instream lease application, the Department shall include-give notice of the application in its weekly public notice and accept written public comments for 21 days ~~mailing list and post it in the applicable watermaster office.~~
- (2) A ~~n written~~ assessment shall be prepared by the watermaster or other Department field staff of whether the lease application meets the requirements of these rules to suspend ~~the original~~ water use under the existing water right and avoid injury or enlargement;
- (3) ~~When the Department initially reviews~~ The Department shall evaluate the an instream lease application for injury and enlargement. The Department may consider, particular attention shall be given to potential sources of enlargement or injury. Examples include, but ~~are is~~ not limited to, the following factors to determine the existence of injury or enlargement as a result of the lease:

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~~(a) issues related to r~~Rate and duty, or total volume proposed for instream lease~~being changed;~~

~~(b) the allotment of stored water available to the owner of a storage right in the year leased; the role of~~Location of return flows;

~~(c) e~~Conveyance losses downstream of the original point of diversion;

~~(d) potential issues related to junior users, especially, downstream of the original point of diversion; potential issues related to the p~~Priority dates of instream water rights and other existing water rights;

~~(e) If the existing water right proposed for instream lease is an above-ground storage right:~~

~~(A) The total volume authorized under the above-ground storage right; and~~

~~(B) The total volume of the above-ground storage right that is allocated to secondary water right(s) for use of the stored water; and~~

~~(f) whether a proposal to lease a permit for stored water would result in converting undeveloped rights; and i~~ssues potentially arising from water users that share a conveyance system.

~~(4) If Any~~ comments are received in response to the notice under section (1) of this rule that ~~allegations of injury to other existing water rights or enlargement of the existing original-water right proposed for instream lease, that are received within 21 days of the date of mailing publication of the weekly public notice the Department shall be reviewed provided by the~~ comments to the parties, and reviewed by ~~to the lease before the Department shall review the~~ comments prior to issues issuance of an order approving or denying the lease application. If no ~~comments are received the Department may presume that no injury or enlargement will result from the proposed lease.~~

~~(45)~~ If the Department determines that the proposed lease may cause injury to other existing water rights or enlargement of the original-existing water right proposed for instream lease, considering issues raised under Section (3) of this rule, the order approving the lease application shall be conditioned to prevent the injury or enlargement. If injury or enlargement cannot be prevented, the Department shall deny the lease application. However, if an order approving the lease application has already been issued, and the Department later finds injury or enlargement, the Department shall issue an order modifying or terminating the lease.

~~(56)~~ If a lease is for more than one year, ~~the parties shall review~~ any allegations of injury or enlargement that are received through December 31 of the preceding calendar year of the lease shall be provided to the parties and reviewed by the Department, to determine whether modifications of the lease order are warranted for the remainder of the term of the lease. ~~If injury or enlargement claims are valid and cannot be prevented, the Department shall issue an order terminating the lease.~~

~~(67)~~ In the event that the Department receives a claim of injury or enlargement after issuing an order approving a lease, the Department shall notify the parties. If the Department determines the claim is valid, it shall not distribute water in a way that would cause the injury or enlargement to

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continue. If injury or enlargement claims are valid and cannot be prevented, the Department shall issue an order terminating the lease.

(78) The description of the reach or point of an instream water right provided in response to OAR 690-077-0076(4)(d)3(e) shall conform to the provisions of OAR 690-077-0015(6) and (7) and (8) and 690-077-0075(23).

(89) Except as provided in OAR 690-077-0079, a lease involving an existing water right that is limited to a season of use or a duty of water for a season or year shall only allow the use of the ~~original-existing~~ water right or the instream right, not both, during any one season unless the source is from stored water.

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

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

(11) If the existing water right for an instream lease is an above-ground storage right, and the storage right will be used in tandem with a secondary right to shape storage releases for instream uses, the Department may include conditions to identify the amount and timing of the release of the stored water being protected instream. If the storage right will not be used in tandem with a secondary right to shape storage releases for instream uses, the lessor(s) shall not store the quantity of water being leased instream during the term of the lease.

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

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

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

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

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(1~~6~~5) Except as provided in Sections (4~~5~~) and (5~~6~~) of this rule, orders approving lease applications shall only be terminated by a superseding order or by specific provision of the originating order approving the lease application.

Statutory/Other Authority: ORS 536.027, ~~537.332~~ ~~539.360~~

Statutes/Other Implemented: ORS 537.332 - 537~~9~~.360

History:

WRD 1-2012, f 1-31-12, cert. ef. 2-1-12

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

WRD 1-1995, f. & cert. ef. 2-14-95

Rule Summary: This rule is amended to (a) remove language requiring the Department, following receipt of a lease application, to post the applicable weekly public notice in the applicable watermaster office because this information is available on the Department's website and via the email distribution list for the weekly public notice, and can also be shared by the watermaster if a member of the public requests it; (b) clean up language related to injury and enlargement and clarifies some language to be consistent with the rest of the rules; (c) clarify requirements related to leasing a storage right; (d) reorder rule for clarity related to claims of injury (e) remove language related to instream lease renewals, as there is a new section on renewals; and (f) update references to other rules in OAR 690-077 that have been updated with numbering changes. This rule is also amended to provide greater clarity as it relates to the 21-day comment period for instream lease applications.

Amend

690-077-0079

Split Season Use Instream Leasing

(1) An application~~nt~~ for a split season use instream lease of water shall ~~provide~~include the information required under OAR 690-077-0076 and follow the lease process described under ~~OAR 690-077-0076 and~~ 690-077-0077.

(2) The applicant shall consult with the Department prior to submittal of the application to determine necessary measurement and reporting requirements to prevent enlargement. Measurement devices required by the Department as a result of this consultation shall be in place prior to water use for both the existing purpose and the proposed instream purpose.

(3) In addition to the application requirements described in OAR 690-077-0076, split season use leases applications shall:

(a) Be submitted to the Department two weeks prior to water ~~being used~~ either for the existing purpose or for the proposed instream purpose, whichever comes first;

(b) Be submitted on a form provided by the Department;

(c) Describe when the water will be used for the existing purpose and when the water will be used for the instream purpose, in accordance with the following:

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(A) The existing water use and the instream use shall not be concurrent. However, a portion of an existing water right appurtenant to one piece of land may undergo split season use, while another portion appurtenant to a different piece of land may undergo ~~only one type of use, or~~ a different time period for split season use; and

(B) The type of use under a split season use may be changed only once during a calendar year, except for full-year uses which may have a single instream use period and two existing use periods;

(d) Be consistent with the results of the Department consultation outlined in section (2) of this rule and shall include, but is not limited to, the following requirements specified by the Department:

(A) A description of the location(s) and type(s) of measuring device(s);

(B) A description of the frequency of measurements and reporting; and

(C) Identification of the parties responsible for performing the respective measurements and reporting; and

(e) Identify the total amount of water proposed to be used, listed by rate and duty or volume for the existing purpose and for the instream purpose, including monthly or partial season rate, ~~or~~ duty, or volume limitations, if appropriate.

~~(3) The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Department, or provide for third party measurement and reporting to the satisfaction of the Department. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.~~

~~(4) Upon issuance of an order approving a split season use instream lease application, consistent with the consultation and the requirements described in sections (2) and (3)(d) of this rule, the applicant (lessor or lessee), or the designated third party to be responsible for performing the measurements, shall measure and report to the Department, the amount of water used for the existing purpose authorized under the water right(s) and for the instream purpose. The water right lessor or lessee shall contact the watermaster or other Department field staff to determine the necessary measurement and reporting requirements associated with leasing a water right. The complete lease application shall include:~~

~~(a) Location(s) and type(s) of measuring device(s);~~

~~(b) Frequency of measurement;~~

~~(c) Parties responsible for the respective measurements; and~~

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~~(d) Amount of water proposed to be used, listed by rate and duty for the existing purpose and the instream purpose, including monthly or partial season rate or duty limitations, if appropriate.~~

~~(5) The Commission shall review the split season use leasing program no later than the year 2014 to determine if any changes should be made in the program.~~

~~NOTE: ORS 537.348(3) sunsets on January 2, 2008.~~

Statutory/Other Authority: ORS 536.025, ORS 536.027, ORS 536.220, ORS 536.300, ORS 536.310, ~~537.338 & 537.356~~ 537.358 ORS 537.348

Statutes/Other Implemented: ORS 537.332 - 537.360, Or Laws 2023, ch 55

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

Rule Summary: This rule is amended to (a) implement Or Laws 2023, ch 55, to remove the sunset date for split season use instream leases, (b) add language to provide better clarity related to measurement and reporting requirements for split season use instream leasing, and (c) move existing language in this rule to other sections for clarity. This rule is also updated to reference “Department” instead of “watermaster” in order to align with statute.

Repeal

~~690-077-0080~~

~~Miscellaneous Provisions: Cancellation or Waiving of an Instream Water Right~~

~~(1) There is a rebuttable presumption that an instream water right, or a portion thereof, that has not been put to a public use for five successive years in which water was available is forfeited.~~

~~(2) Upon making a preliminary finding that the instream water right has been forfeited the Director shall notify DEQ, ODFW, Parks, and those persons and agencies on the Department's weekly mailing list of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks.~~

~~(3) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper.~~

~~(4) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(1).~~

~~(5) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641(2).~~

~~(6) An instream water right established under ORS 537.336 through 537.338 (OAR 690-077-0020) may be canceled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in Section (2) of this rule.~~

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~~(7) An instream water right shall not be subject to forfeiture due to non use when water was not available.~~

~~**Statutory/Other Authority:** ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338 & 537.356 – 537.358~~

~~**Statutes/Other Implemented:** ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.338, 537.356 & 537.358~~

History:

~~WRD 4-2006, f. & cert. ef. 10-2-06~~

~~WRD 8-2001, f. & cert. ef. 12-14-01~~

~~WRD 9-1992, f. & cert. ef. 7-1-92~~

~~WRD 20-1988, f. & cert. ef. 11-4-88~~

Rule Summary: This rule is proposed for repeal. Although ORS 537.350 contemplates that instream rights can be cancelled, there are conflicts with the rule and statute, and within the statute that makes it unclear how the Department would ever reach a determination that an instream water right has been forfeited.

690-077-0090

Miscellaneous Provisions: Drought Emergency Provisions

An instream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.730.

Statutory/Other Authority: ORS 536 & 537

Statutes/Other Implemented: ORS 536 & 537

History:

WRD 20-1988, f. & cert. ef. 11-4-88

Amend

690-077-0100

Miscellaneous Provisions: Precedence of Future Uses

(1) The applicants for a proposed multipurpose storage project may submit a formal written request to petition the ~~Commission-Department~~ to establish precedence over an instream water right created through OAR 690-077-0020.

(2) An applicant for a right to use water for municipal purposes may submit a formal written request to petition the ~~Commission-Department~~ to establish precedence over an instream water right created through OAR 690-077-0020.

(3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition submit a formal written request to the ~~Commission-Department~~ to establish precedence over an instream water right created through OAR 690-077-0020.

(4) ~~Within six months of the receipt of the petition, the~~ Department shall conduct a public hearing ~~accept public comment on the request, in accordance with ORS 537.170. The hearing and~~

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decision on precedence may occur before the final decision on the permit. The Department shall provide notice of the public comment opportunity in its weekly public notice.

(5) After ~~the considering~~ public ~~hearing comment received,~~ the ~~Commission-Department~~ shall ~~enter an order to incorporate the Department's decision on precedence into the proposed final order on the application.~~ Based on consideration of the factors in ORS 537.170(7), the Department may decide to:

(a) Approve the requested precedence;

(b) Approve the requested precedence with conditionally conditions; or

(c) Deny the requested precedence.

(6) The Department shall ~~also publish a statement of incorporate~~ findings that explains the basis for the decision made in Section (5) of this rule into the proposed final order on the application.

Statutory/Other Authority: ORS 536, ~~ORS~~ 537

Statutes/Other Implemented: ORS 536, ~~ORS~~ 537, ORS 537.352

History:

WRD 4-2006, f. & cert .ef. 10-2-06

WRD 8-2001, f. & cert. ef. 12-14-01

WRD 20-1988, f. & cert. ef. 11-4-88

Rule Summary: The current rule is inconsistent with statute and is amended to more closely follow the process described in ORS 537.352 and provide additional clarity. ORS 537.352 provides that the Department, not Commission, will make a determination while conducting a review of the project in accordance with ORS 537.170. Changes align the rule with statute and the water rights application processing steps. Note that the Commission may still take up the matter if exceptions are filed to the Director's order through other rules.

Adopt

690-077-0105

Application for Expedited Instream Lease Renewal

(1) A holder of any prior final order approving an instream lease application may submit a renewal application, provided that the prior approved final order and the instream lease renewal application meet the following criteria:

(a) The instream lease renewal application is submitted within 5 years from the date of expiration specified in the last final order approving the instream lease;

(b) The term of the prior approved final order has expired or is about to expire;

(c) The instream lease renewal application does not propose any changes in:

(A) The instream use authorized under the prior approved final order; or

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(B) The quantity of water (or portion thereof) authorized under the prior final order for instream lease;

(d) The instream lease renewal application is complete and includes:

(A) The prior existing instream lease number (i.e., IL-XXX or SL-XX);

(B) The requested term of the renewed instream lease, being no less than one calendar year and no more than five calendar years;

(C) The termination provision(s), if any, for an instream lease renewal application requesting a multiple-year term; and

(D) The name(s) of the parties to the lease application pursuant to subsection OAR 690-077-0076(2) and OAR 690-077-0076(4)(a) and (b); and

(e) The appropriate fee pursuant to ORS 536.050 is submitted.

(2) No map is required for an instream lease renewal application.

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 537.348

Rule Summary: This new rule is adopted to describe the application requirements for the process to renew previously approved instream leases **in an expedited manner**.

Adopt

690-077-0110

Processing an Application for Instream Lease Renewal

(1) Upon receipt of an instream lease renewal application, the Department shall give notice of the application by publication in the Department's weekly public notice. Any allegation of injury must be delivered in writing to the Department no later than 21 days after publication of the request in the Department's weekly public notice.

(2) Concurrent with the waiting period described in section (1) of this rule, the Department shall:

(a) Review the renewal application to confirm all requirements outlined in OAR 690-077-0105 are satisfied; and

(b) Consult with the local watermaster to determine whether the watermaster review completed for the prior approved instream lease is sufficient. If the watermaster finds that:

(A) The prior watermaster review is sufficient, then the watermaster shall provide written or electronic mail confirmation that the review is still valid and completion of a new watermaster review will not be required; or

(B) The prior watermaster review is not sufficient, then the watermaster shall complete a new watermaster review for the instream lease renewal application.

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(3) The Department shall issue an order approving the instream lease renewal application, provided that:

(a) Leasing the water right instream will not result in, or can be conditioned to prevent, injury to other existing water rights and enlargement of the water right proposed for instream lease renewal; and

(b) All the requirements outlined in section (2) of this rule are satisfied.

(4) The Department may, at any time, revoke or modify an order issued to approve an instream lease renewal if the Department later finds that the use of the water right for instream use under the lease has resulted in, or may result in, injury or enlargement.

Statutory/Other Authority: ORS 536.027, ORS 537.332 - 537.360

Statutes/Other Implemented: ORS 537.348

Rule Summary: This new rule is adopted to describe the processing steps for renewal of a previously approved instream lease.

DRAFT