

CHAPTER 690
DIVISION 325
ASSIGNMENT OF A WATER RIGHT PERMIT AND REQUEST FOR ISSUANCE OF
REPLACEMENT PERMITS

690-325-0010

Purpose

The rules in OAR chapter 690, division 325 establish requirements and procedures that shall be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders. These rules do not replace OAR chapter 690-320-0060.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0020

Applicability

- (1) The Department can only accept an application for assignment and request for issuance of replacement permits to reflect the assignment where the original water right is for irrigation, nursery, temperature control, stock watering or agricultural water use.
- (2) The Department cannot accept an application for assignment and request for issuance of replacement permits under the rules in OAR chapter 690, division 325 for municipal permits, quasi-municipal permits, or water right permits held by a unit of local government, including but not limited to water right permits held by a port, water authority, or a district.
- (3) Any water right permit for the use(s) of irrigation, nursery, temperature control, stock watering, or agricultural purposes, with a completion date that has expired or a completion date that will expire within less than 210 days of receipt of an application by OWRD cannot be assigned by the rules in OAR Chapter 690, division 325.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0030

Definitions

Note: These rules were filed with the Office of the Secretary of State and took effect on November 25, 2014. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State.

The definitions in this rule, along with the definitions in OAR 690-300-0010 (Definitions) and OAR 690-380-0100 (Water Right Transfers), apply to the rules in OAR chapter 690, division 325. Where a term is defined in more than one rule, the definition in this rule applies.

- (1) “Enlargement” means an expansion of a water right permit and includes, but is not limited to:
 - (a) Using a greater rate or duty of water per acre than currently allowed under a permit;
 - (b) Increasing the acreage irrigated under a permit;
- (2) “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.
- (3) “Injury” or “Injury to an existing water right” means a water right transaction that would result in another, existing water right not receiving previously available water to which it is legally entitled.
- (4) “Unit of local government” includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0040

Application Requirements

- (1) Each application shall be prepared in ink or typewritten on forms provided by the Department.
- (2) The application shall contain the following information concerning the subject water right permit and assignment:
 - (a) The name, mailing address, e-mail address (if it exists), and telephone number of each applicant. Each applicant’s name shall have an assigned alphabet letter or number that corresponds with the application map as required under OAR 690-325-0050(2)(e).
 - (b) Name(s) appearing on the water right permit.
 - (c) Water Right Permit number.
 - (d) Water Right Permit use. Must be one or more of the following uses approved for assignment under OAR 690-325-0010: irrigation, nursery, temperature control, stock watering or agricultural water use.
 - (e) A map meeting the criteria set forth in OAR 690-325-0050.
 - (f) A copy of the recorded deed showing the applicant is an owner of the land to which the water right permit is appurtenant.

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- (g) An affidavit certifying that the water right permit has not been conveyed or withheld, and remains appurtenant to the applicant's land and also certifying that the applicant has read the permit.
- (h) A statement by the applicant that the most recent water use under the applicant's portion of the water right permit, if any, has been exercised within relevant terms and conditions of the permit.
- (i) Agreements to the assignment and to the request of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or an assignment of interest and request for the issuance of replacement water right permits by one or more of the owners of land to which the water right permit is appurtenant and information identifying other landowners not participating in the assignment and request for issuance of replacement water right permit. Such information shall include:
 - (A) Landowner(s) name;
 - (B) Address;
 - (C) Description of the properties by public land survey and tax lot number.
 - (D) Number of acres and permit rate held by each landowner.
- (j) A listing of the names and mailing addresses of any district within which the water right permit is located.
- (k) The Department may require the applicant to provide any additional information the department deems appropriate in determining whether or not to approve the application.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist:

690-325-0050

Map Requirements

- (1) A map shall be included with the application required under OAR 690-325-0040. The map shall meet the following criteria:
 - (a) The map shall be prepared by a certified water right examiner.
 - (b) The map shall be based upon the original water right application map or permit amendment map.
 - (c) The map shall not include:
 - (A) Any unauthorized change to the location of the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.
 - (B) Any unauthorized change to the location of the point(s) of diversion/appropriation as exhibited on the original water right application map or approved permit amendment application map.

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- (c) 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.
 - (d) The preferred map size is 8-1/2" x 11" (letter). 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.
 - (e) 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.
 - (f) The map scale shall be:
 - (A) 1" = 400';
 - (B) 1" = 1,320';
 - (C) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or
 - (D) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.
 - (g) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.
 - (h) The map shall be plotted to the accuracy consistent with the map scale.
 - (i) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:
 - (A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42¼ 32' 15.5"); or
 - (B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).
- (2) The map shall include the following information:
- (a) A north arrow, the scale, and a clear legend.
 - (b) The certified water rights examiner's stamp and signature. An electronically generated stamp or seal is acceptable, provided the signature is original.
 - (c) The place of use of each applicant's portion of the water right permit shall be clearly defined by outline and shaded or hachured and shall show the number of acres for each portion 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 permit has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.
 - (d) The place of use of any part of the water right permit not being assigned shall be clearly defined by outline and 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 portion of the water right permit not being assigned has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.

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- (e) Each applicant's portion of the water right permit shall be referenced, by either alphabet letter or number, to each assignee's listed in the application form under OAR 690-325-0040(2).
- (f) The rate and any applicable acre-feet allowance of water use under the water right permit for each applicant's portion of the permit shall be clearly labeled on the map.
- (g) The location of each authorized point of diversion or appropriation.
- (h) The location of tax lot lines for all properties upon which the water right permit is located.
- (i) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines.
- (j) Notwithstanding the requirements of subsection (1)(i), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features.
- (k) Notwithstanding the requirements of subsection (1)(i), the general location of physical features sufficient to assist in defining the location of the place of use of the water right permit. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate.

Stat. Auth:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0060

Receipt of Application; Fees

- (1) The applicant is required to pay the Water Resources Department the full cost to the Department of processing the application.
- (2) Within 15 days upon receipt of an application containing all the requirements described under OARs 690-325-0040 and 690-325-0050, the Department shall estimate the actual cost of work involved in processing the application.
- (3) The Department shall notify the applicant of the estimate of the actual cost of work and provide a time period of:
 - (a) 30 days for the applicant to submit the appropriate fees covering the estimated actual cost of work, or
 - (b) Upon a written or e-mailed request from the applicant, a reasonable time period greater than 30 days to submit the appropriate fees.
- (4) If the Department does not receive the appropriate fees after the expiration of the appropriate time period described in OAR 690-325-0060(3), the Department will send notice to the applicant that if the fees are not received by the Department within 10 days of the mailing of this notice, the Department will consider the application incomplete and will notify the applicant that the application is not properly filed and that the application will be of no further force or effect.

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- (5) All required fees must be received before the final assignment is made and replacement water right permits reflecting the assignment are issued. Excess fees will be returned after the final order is issued.

Stat. Auth:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0070

Technical Review and Issuance of Draft Documents

- (1) The Department will undertake a technical review of the application that includes:
 - (a) Verification of the mailing address of each owner of the authorized place of use identified on the map contained in the application.
 - (b) Verification that the deed(s) supplied with the application matches the properties proposed for the assignments.
 - (c) Verification that the most recent water use under the permit, if any, has been exercised within relevant terms and conditions of the water right permit.
 - (d) Assessment of the application for enlargement of the original water right permit and injury to other water right holders.
- (2) Once the technical review described in OAR 690-325-0070(1) has been completed, the Department shall:
 - (a) Prepare a draft proposed final order to approve the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will not result in the enlargement of the original water right permit nor injury to other water right holders and that the water right permit has been exercised by the applicant in compliance within the terms and conditions of the water right permit, or
 - (b) Prepare a draft proposed final order to deny the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will result in the enlargement of the original permit and/or injury to other water right holders and/or that the water right permit has not been exercised by the applicant in compliance within its terms and conditions.
 - (c) Prepare drafts of the replacement water right permits if a draft proposed final order to approve the application under OAR 690-325-0070(2)(a) is prepared.
- (3) Within 30 days after the appropriate fees have been received, the Department shall mail, or with consent of the applicant, send by electronic means, copies of the application, map, existing water right permit, draft proposed final order, and, if the requirement under OAR 690-325-0070(2)(a) is satisfied, draft replacement water right permits, to each owner of land upon which the water right permit is appurtenant.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

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690-325-0080

Public Notice and Request for Comments

- (1) Within ten days of proceeding with the application under OAR 690-325-0070(3), the Department shall give notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which the comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application.
- (2) The notice shall include the following information about the application:
 - (a) County of water use.
 - (b) Permit number.
 - (c) Authorized use and associated rate and/or duty.
 - (d) Permit Completion Date.
 - (e) Applicant name(s).
 - (f) Number of acres, rate (or applicable acre-feet allowances), allowed under the existing water right permit.
 - (g) Source(s).
 - (h) Location of the point(s) of diversion/appropriation by quarter-quarter, section, township and range.
- (3) Within 30 days after the public notice under OAR 690-325-0080(1), any record landowner, applicant, assignee, affected water right permit holder, or other person interested in the application may submit written comments or request copies of the documents described in OAR 690-325-0070(3). All comments and requests for copies must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

690-325-0090

Proposed Final Order; Public Notice

- (1) Within 30 days after the comment period closes under OAR 690-325-0080(3), the Department shall issue a proposed final order either approving or denying the application, taking into account comments received in response to the notice under OAR 690-325-0080.
- (2) The Department shall send copies of the proposed final order to each owner of land described in OAR 690-325-0070(3) by mail, or, with the consent of the applicant, send by electronic means, and to each person who submitted comments under OAR 690-325-0080(3).
- (3) Within seven days of issuance of the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the

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Department. The notice shall give the date that protests must be received by the Department, no later than 45 days after the date the notice is published.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist:

690-325-0100

Protests

- (1) A record landowner, an applicant, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right permit assignment under ORS 537.225. The protest must be in writing and received by the Department within the time provided under OAR 690-325-0090(3). The protest must be accompanied by the protest fee required under ORS 536.050 and include:
 - (a) The name, address, and telephone number of the person filing the protest; and
 - (b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.
- (2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.
- (3) 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. The Department may:
 - (a) Reissue a proposed final order;
 - (b) Issue a final order; or
 - (c) Refer the matter for a contested case hearing.
- (4) If the Department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the Department an opportunity for response is not subject to review at the contested case hearing.
- (5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:
 - (a) The applicant for the water right permit assignment; and
 - (b) Persons that timely filed a protest against the proposed order under (OAR 690-325-0090(3)).

Stat. Auth.:

Stats. Implemented: ORS 537.227

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Hist.:

690-325-0110

Final Order and Replacement Water Right Permits

- (1) Within 30 days of the end of the protest period described in OAR 690-325-0090(3) and if no protests were received, an application for assignments and issuance of replacement water right permits shall be approved by final order of the Department. The final order approving the assignment shall contain:
 - (a) Findings that the assignment and issuance of replacement water right permits do not enlarge the permit as defined in OAR 690-325-0030(1);
 - (b) Findings that the assignment and issuance of replacement water right permits do not injure other water rights as defined in OAR 690-325-0030(3).
 - (c) Findings that all other requirements for assignments and issuance of replacement water right permits are met, including, but not limited to the completion date of the water right permit.
- (2) The replacement water right permits shall:
 - (a) Include the same conditions as the replaced water right permit, including, but not limited to priority date, source of water, and type of use;
 - (b) Identify the land to which the replacement water right permit is appurtenant and the owner(s) of that land;
 - (c) Apportion the rate and, if applicable, the duty, or, if applicable, the acre-foot allowance in proportion to the amount of land to which the replacement water right permits are appurtenant.
- (3) The replacement water right permits shall not:
 - (a) Authorize any change to the authorized point(s) of diversion or appropriation, including the addition of a point of diversion or appropriation, and
 - (b) Authorize any change to the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

Stat. Auth.:

Stats. Implemented: ORS 537.225

Hist.:

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