

CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

REC. OF STATE
MAR 04 08 13

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on February 25, 1994
(Date)

by the Water Resources Department
(Department)

Division)

to become effective upon filing
(Date)

The within matter having come before the Water Resources Commission
(Department)

(Division)

after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: January 1, 1994

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules) 690-13-110, 310

Amended:
(Existing Rules) 690-13-005, 010, 030, 050, 070, 100, 150, 350

Repealed:
(Total Rules Only) 690-13-300 400

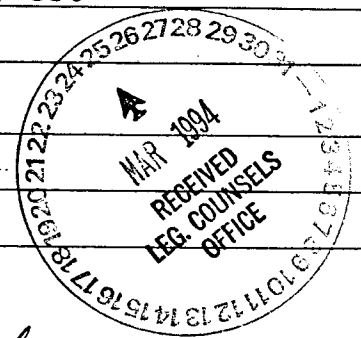
a. Administrative Rules of the _____
(Department)

(Division)

DATED this 25th day of March 19 94

By: *Martha D. Rife*
(Authorized Signer)

Title: Director



Statutory Authority: ORS 541.325 to 541.333

Chapter(s) _____ Oregon Laws 19 _____ or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) 129, 19 93 Legislature

Subject Matter: The irrigation district remapping process was adopted by the legislature in 1989 (HB 3111). The process allows certain irrigation water suppliers to file a petition to conform their water rights with current use. Senate Bill 129 in 1993 amended the authorizing statutes, prompting changes to the prior rules.

For Further Information Contact: Beth Patrino

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OREGON WATER RESOURCES DEPARTMENT
ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 13
PETITION TO CHANGE DEPARTMENT RECORDS WITHIN WATER DISTRICTS

Introduction

690-13-005

(1) The purpose of these rules is to establish the criteria for filing petitions to adjust the water right record to match the actual use of the water within districts. Such petitions were authorized by [*Chapter 1000, Oregon Laws 1989 codified at*] ORS 541.325 - 541.333, 536.050 and 540.520 as modified by Chapter 818, Oregon Laws 1993. This process cannot enlarge the original right or injure existing rights. The rules also define the standards for petitions and maps submitted by districts and for individual applications.

[(2) These rules will be applied to district petitions and individual transfer applications received on or before July 1, 1993. Applications for transfer submitted on or after July 2, 1993 shall be subject to Division 15 rules and ORS 540.510 to 540.530.]

{adopted 1-5-90; amended: 1-22-93}

Definitions

690-13-010

(1) "Altered by the petition or proposed order": A water right is altered by the petition or proposed order if its defining parameters would be changed if the petition or proposed order were approved. The defining parameters include, among others, the place of use, rate, duty, and limitations.

(2)[(1)] "Application": means a written request by individuals to change or transfer a water right. See the definition of "petition".

(3)[(2)] "Commission": means the Water Resources Commission.

(4)[(3)] "Department": means the Water Resources Department.

(5)[(4)] "Director": means the Director of the Department.

[(5) "District": means any district or corporation organized under ORS chapter 545, 552, 553 or 554 or any corporation, cooperative, company or other association formed before 1917 for the purpose of distributing water for irrigation purposes.]

[(6)] (6) "General description": means the location of property or district by government subdivision, metes and bounds or tax lot.

(7) "Interim transfer": means a change in use or place of use of those rights eligible under OAR Chapter 690, Division 13, made during the preparation of a petition, and prior to the submission of that petition to the Water Resources Department.

[(7)] (8) "Owned or Controlled": means ownership in fee, purchase on a land sale contract, option to purchase or lease.

[(8)] (9) "Perfected water right": means a water right confirmed by a court decree, water right certificate or transfers recognized as complete by the Department.

[(9)] (10) "Petition": means a written request by a district for a new water right certificate which will include changes within districts. See the definition of "application".

[(10)] (11) "Transfer": means a formal change of use or place of use of a perfected water right, pursuant to OAR Chapter 690, Division 15.

[(11)] (12) "User": means an owner of land with an appurtenant water right pursuant to current state records or proposed to be recognized as a result of a petition; and subject, either previously or currently, to assessment by a district; and which right would be altered by the petition and map filed by a district.

{adopted 1-5-90}

Eligibility to Petition

690-13-030

- (1) The following types of water rights are eligible to petition:
 - (a) A perfected water right which has been assessed by a district in at least one of the last five years. It is not necessary for the water right to be in the name of the district;
 - (b) An approved transfer of water rights to lands [*Transfers*] which have been assessed by a district in at least one of the last five years but are not certified [*recognized as complete*] by the Department; and
 - (c) A permit for supplemental supply which moves with the perfected primary right.
- (2) The following are not eligible to petition:
 - (a) A permit which is a primary supply of water; and
 - (b) A request for point of diversion change.

{adopted 1-5-90}

Individual Applications

690-13-050

[(1) A district that has not filed or notified the Department of its intent to file a petition by July 1, 1991, is presumed to have refused or failed to be a petitioner. This presumption does not deny the district opportunity to petition later.]

[(2)] (1) If the district fails or refuses to file a petition, an owner may file an application affecting only the owner's land. The application shall be on the form provided by the Department. Division 15 transfer rules shall apply except that the applicant shall not be obliged to hire a Certified Water Right Examiner to prepare the application map and claim of beneficial use. Fees for these applications shall be as specified in ORS 536.050.

[(3)] (2) Several owners within a section quarter-quarter may file as a group. The application shall comply with Division 15 rules except that the applicant shall not be obliged to hire a Certified Water Right Examiner to prepare the application map and claim of beneficial use. There are no fees required by these applications.

[(4)] (3) Applications under this section will adhere to the timing and verification procedures found in OAR 690-13-300 and 690-13-350.

{adopted 1-5-90}

Interim Transfers

690-13-070 **Water right changes** [*Transfers*] inside districts, **made** prior to July 1, 1993, **may** [*shall*] comply with the following:

(1) Where the change is to occur prior to the District submitting its petition which will include this change, the district may submit a notice to the Department. This notice requires no fee, but shall include:

- (a) A statement that the district intends to file a petition including this change; and
- (b) A completed interim transfer notice on a form provided by the Department.

(2) If a more formal record of a change is desired by a user prior to the district submitting its petition, the user may submit a transfer application in compliance with Division 15 rules and ORS 536.050 and 540.510 to 540.530.

(3) For a change after a district has submitted its petition, a landowner must submit a transfer application in compliance with Division 15 rules and ORS 536.050 and 540.510 to 540.530.

{adopted 1-5-90; amended: 1-22-93}

District Petitions

690-13-100 The district petition shall include:

- (1) A listing of:
 - (a) All of the applicable water rights on lands within the district boundaries;
 - (b) Only the lands where water use changes have occurred. If the change involves part of a section quarter-quarter, all water rights in the quarter-quarter must be requested; or
 - (c) A portion of the district to provide a clear record of the water rights. If a portion involves part of a section quarter-quarter, the entire quarter-quarter must be requested. Any part of the district that no longer matches the Department map or certificate should be included in the petition.
- (2) A listing of all completed transfers appurtenant to the lands listed.
- (3) A map meeting the requirements of OAR 690-13-200.
- (4) A description of the land to which each water right is appurtenant, including the township, range, section, quarter-quarter and assessor's tax lot number. The water right shall be described by the number of acres within each quarter-quarter, the use and the user's name. If a tax lot covers more than one quarter-quarter, it shall be listed in each quarter-quarter.
- (5) A description of the district's legal boundaries.
- (6) A description of the type(s) of use made on each parcel listed in the petition.
- (7) A list containing the total number of acres:
 - (a) contained in the petition;
 - (b) assessed by the district as of July 1, 1989; and
 - (c) assessed by the district as of July 1, 1993.
- (8) A statement of whether the U.S. Secretary of the Interior must assent to inclusion of lands within the district's boundaries. If the Secretary's assent is required but has not yet been given, the petition must include a copy of the district's request for the Secretary's assent.

{adopted 1-5-90}

Requests for Additional Information

690-13-110 (1) Pursuant to ORS 541.329 (6), the Director may require additional information if the Director determines it is needed to evaluate the petition.

(2) If the Director returns a petition or map to a district for correction or additional information, the Director shall prescribe a reasonable deadline for the petitioner to provide additional information or correct the petition and map. If the petitioner fails to meet the deadline prescribed by the Director, the Director may deny the petition.

Supplemental Permits

690-13-120 When supplemental permits apply to lands having perfected water rights, the supplemental permit shall be appurtenant to the land listed in the petition.

{adopted 1-5-90}

District Shall Certify Petition

690-13-150

(1) The petitioner or petitioner's authorized representative shall certify that the information contained in the petition and attached exhibits is true and accurate to the best knowledge of the petitioner.

(2) The petitioner shall certify that notice was sent by certified mail to the user of every parcel whose right of record, as evidenced by the district's records, is to be altered by the petition. The certification shall state that the notice was sent to the last known address of the user with a return receipt requested and included:

- (a) The number of acres of land or its equivalent for which the user is being assessed;
- (b) A general description or tax lot number of the land to which the water is assigned;
- (c) A description of the use; and
- (d) A request that the user confirm that the information in the notice is correct.

[(3) The petitioner shall certify that after submitting the petition the district will publish notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks. There shall be not less than one publication each week. This notice shall include subsections (4)(d), (e), (f), and (g) of this rule. The dates of proposed publication shall be included.]

(4) The petitioner shall certify that after submitting the petition a notice will be sent to users of the district whose right of record is to be altered by the petition. The notice shall be sent to the last known address of the user with a return receipt requested. The notice shall include:

- (a) The number of acres of land or its equivalent, for which the user is being assessed;*
- (b) A general description or tax lot number of the land to which the water is assigned;*
- (c) A description of the use;*
- (d) The number of acres of water right that each parcel will receive;*
- (e) A statement that the proposed map and petition are available for inspection at the office of the district during normal business hours for a period of 60 days from the date of first publication in the newspaper;*
- (f) A statement that 60 days after the date of first publication, the petition and map shall be accepted by the Commission unless a protest is filed or the petition does not meet the requirements of Chapter 1000, Oregon Laws 1989, sections (1) and (2). (ORS 541.325 to 541.333; and*
- (g) A statement that the user has the right to protest the petition and map as described in section 4, Chapter 1000, Oregon Laws 1989 (ORS 541.331).]*

{adopted 1-5-90}

Mapping Requirements

690-13-200 The map submitted with a district petition or individual application shall meet the following criteria:

(1) The preferred map size is 8-1/2" X 11"; the maximum size shall be 30" X 30" unless prior approval is obtained from the Department. Standard map symbols shall be used as provided by the Department.

(2) The map shall be drawn in ink on permanent quality tracing linen or 0.003-inch mylar with sufficient clarity so as to be easily reproduced. It shall be drawn to one of the following scales:

- (a) One inch equals 1320 feet;
- (b) One inch equals 400 feet;
- (c) The assessor's scale if larger than one inch equals 1320 feet; or,
- (d) A combination of these scales if using map inserts.

(3) The map shall show the following for parcels of more than 5 acres:

- (a) The location of diversions, canals, ditches, pipelines or flumes;
- (b) The location of the place where water is used. If for irrigation, the area irrigated in each section quarter-quarter shall be indicated by shading or hachuring and the number of acres in each section quarter-quarter indicated; and
- (c) The scale to which the map is drawn, the section number, township, range, a north directional symbol and property boundaries.

(4) When the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for the identification of the place of use and the extent of use. A portion of a tax map may be included as part of the map submitted.

(5) More than one water right or type of use may be entered on the same map if clearly identified by different hachuring.

{adopted 1-5-90}

Processing of Petition

690-13-310

(1) When the Department receives a petition and map the Director shall examine the petition and map under OAR 690-13-350. If, after the petitioner has had an opportunity to correct identified deficiencies, this examination shows that the district has met the requirements of ORS 541.325 to 541.333 and that the proposed changes would not result in injury to existing water rights, the Director shall issue a proposed order approving the petition as submitted or as modified. If the Director proposes to deny a petition, the Commission shall hold a hearing as described in subsection (5).

(2) The Director shall provide public notice of all proposed orders through publication in the Department's Weekly Summary of Applications Filed. The Director shall also mail a

summary of the proposed order to the planning department of each affected local government, to a newspaper of general circulation within the affected area, to any person who has requested notification of proposals and any other parties the Director determines should be notified.

These notice requirements shall not affect petitioner's notice responsibilities under ORS 541.329.

(3) Within 30 days after a proposed order is issued the petitioner shall provide notice to the owners of all lands whose rights, as recorded in the State's records or in the district's records, would be altered by the proposed order. This notice shall be sent to the last-known address of the landowner, with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the landowner is being assessed, if any, a general description or tax lot number of the land whose right will be altered, and a description of the use. In addition to the notice of the proposed order sent to the landowners, the petitioner shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive;

(b) That the proposed map and order are available for inspection at the office of the petitioner during normal business hours for a period of 120 days from the date of first publication;

(c) That 120 days after the date of first publication, the Commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of ORS 541.325 to 541.333; and

(d) That a landowner whose right of record is to be altered by the proposed order has the right to protest the proposed order and map.

(4) Any landowner or user whose rights, as recorded in either the State's records or the district's records, would be altered by the petition may file with the Water Resources Commission, within 120 days after the date of first newspaper publication, as provided in subsection (3), a protest against a proposed order approving the petition. Any person may file comments on the proposed order within 120 days of the date of first newspaper publication. The Director may work with any person or agency submitting protests or comments and the petitioner to determine whether the issues can be resolved through mutually agreeable conditions, or by modifications to the proposal. Whenever a timely protest cannot be resolved, the Commission shall schedule a hearing to consider the protest. The Commission shall also schedule a hearing whenever, in its opinion, considering timely comments received, it is necessary to determine:

(a) if the petitioner has met the requirements of ORS 541.325 to 541.333;

(b) if the petition may result in injury to existing water rights.

The hearing shall be conducted according to the provisions of ORS 183.310 to 183.550 applicable to contested cases.

(5) If after examination or hearing, the Commission finds that:

- (a) the petitioner has met the requirements of ORS 541.325 to 541.333; and
- (b) that the changes described in the proposed order would not result in injury to existing water rights,

then the Commission shall issue a final order approving the petition and map as described in the proposed order. If the Commission cannot make the findings in (a) and (b) then the final order may modify or deny the petition, and may include conditions, as necessary to ensure that existing water rights are not injured. However, no final order denying a petition shall be issued before holding a hearing on the denial. If a final order approving a petition is issued, and if a water right has been issued previously, the Commission shall cancel the previous certificate and issue a new certificate that conforms to the final order and map and retains the original priority date.

[Processing of Petition]

[690-13-300]

[(1) Within 60 days of receiving a petition and map, the Director shall notify the petitioner if the map and petition are accepted. If the petition and map are not acceptable, the Director shall notify the petitioner and identify the deficiencies.]

[(2) The petitioner shall have at least 60 days, or such other time as the Director may allow, to cure the deficiencies. Failure to cure the deficiencies within the time allowed may result in a denial of the petition.]

[(3) Within 30 days after accepting the petition and map, the Director shall schedule a field examination. The petitioner shall be notified when the field examination is to occur.]

[(4) Within 60 days after the field examination is complete, the Director shall order certification of the water rights adjusted by the petition and map, or identify deficiencies. The petitioner shall have at least 60 days, or such other time as the Director may allow, to cure the deficiencies. Failure to cure deficiencies within the allotted time shall result in denial of the petition and map.]

[(5) If a petition or map is amended and a user's water right is changed, the affected user shall be notified of such change by the district. Notice shall be sent describing the change to the last known address with return receipt requested. The user may file a protest with the Commission, within 60 days after the date of said notice.]

[(6) When a petition is accepted the Director shall provide notice of that acceptance by inclusion in the Departments' periodic notice of water right applications.]

{adopted 1-5-90}

Field Verification of the Petition and Map

690-13-350

(1) The Director shall examine the petition and maps that are filed. The examination may include a site inspection to verify the accuracy of the petition, maps and addenda; to verify whether the application of water is to an allowed beneficial use; or to determine whether an existing water right may be injured. The Director may use statistical sampling methods in lieu of examining the entire acreage in the petition.

(2) The examination shall consider the following requirements:

- (a) Evidence of a method to control and deliver the water;
- (b) Evidence of cultivation of the lands described under the petition, if for irrigation;
- (c) Evidence of beneficial use of the water; and
- (d) Evidence of potential injury to existing water rights.**

{adopted 1-5-90}

[690-13-400 If the Director finds that the petition and map met the field examination requirements, the Director shall issue an order providing for a new water right certificate. The order may describe transfers that have been included or are to be excluded from the new certificate. If the petition was for a portion of a perfected water right, the order shall provide for issuance of a new certificate confirming the petition and a certificate for the remainder of the right. The remaining right certificate shall include a statement that the right is not confirmed but is still subject to cancellation procedures defined by ORS 540.610.]

{adopted 1-5-90}

Penalty for Knowingly Misrepresenting Information

690-13-500 The Director may assess penalties of up to \$1000.00 for knowingly misrepresenting information within a petition or map. The following factors shall be considered when prescribing a penalty:

(1) Whether the petitioner made a material misstatement or omission of fact.

(2) The amount of land and/or volume of water in evidence in the misrepresentation in relation to the amount of land or volume of water in the whole petition.

(3) Whether the petitioner has cooperated in correcting the misrepresentation or omission in a timely fashion.

(4) The cost to the Department after the initial field examination, including travel costs to obtain and verify corrections to the petition.

(5) Any other relevant factors. {adopted 1-5-90}