

CERTIFICATE AND ORDER
FOR FILING
PERMANENT

ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on 6/28/96
(Date)

by the Water Resources Commission
(Department) (Division)

to become effective² upon filing
Date

The matter having come before the Water Resources Department
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: 2/1/96

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List INDIVIDUAL Rule Number(s) on appropriate lines below).

ADOPTED^{3,4,6,7}: (see attachment)

AMENDED^{4,6,7}: (see attachment)

REPEALED⁴: (see attachment)

RENUM. TO^{3,4,6,7}: _____

AMENDED & RENUM. TO^{3,4,6,7}: _____

*Filed w/
SOS
7/11/96*

Administrative Rules of the Water Resources Department

DATED this 11th ^{Department} day of July, 19 ^{Division} 96

BY⁵: *Michael D. Adell*
(Authorized Signer)

Title: Director

STATUTORY AUTHORITY: ORS 536.027 ; or

OTHER AUTHORITY: _____

STATUTES BEING IMPLEMENTED: ORS ch. 540

SUMMARY:

The 1995 Oregon Legislature adopted HB 2184, HB 3086, HB 3225 and SB 494 making numerous changes to the law concerning the transfer of water rights. The rules pertaining to water right transfers are located in OAR Chapter 690, Divisions 15 and 21. The amended rules both update Division 15 and bring Division 15 and 21 into conformity with the 1995 legislation.

For Further Information Contact
RULES COORDINATOR⁵: Tom Byler

Phone: 503/378-8455

Instructions:
1 Date must be prior to or same day as filing - not subsequent to filing date.
2 Date must be upon filing or any later specified date.
3 Numbers being assigned must be preapproved by Secretary of State's office, Archives Division, Administrative Rules Section.
4 Enter each rule number affected INDIVIDUALLY (i.e., 000-00-000, 000-00-000, & 000-00-000). Do not use series or parts of rules.
5 Required to be on file with Secretary of State's office, Archives Division, Administrative Rules Section.
6 Attach the FULL TEXT of each rule number being affected. Do not attach text of rules not affected.
7 Following the text of each rule attached, insert the numbers of the statutes being implemented.

SED 425a
July 11, 1996

**Attachment to Certificate and Order
for Filing Permanent Administrative Rules
with the Secretary of State**

Adopted: 690-15-048, 690-15-073, 690-15-087, 690-15-210, 690-15-240, 690-15-300, 690-15-310, 690-15-320

Amended: 690-15-001, 690-15-005, 690-15-010, 690-15-020, 690-15-025, 690-15-030, 690-15-040, 690-15-045, 690-15-050, 690-15-057, 690-15-060, 690-15-070, 690-15-075, 690-15-080, 690-15-085, 690-15-090, 690-15-100, 690-15-110, 690-15-120, 690-15-125, 690-15-130, 690-15-140, 690-15-150, 690-21-000, 690-21-010, 690-21-020, 690-21-030, 690-21-040, 690-21-050, 690-21-060

Repealed: 690-15-055

July 11, 1996

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 15
WATER RIGHT TRANSFERS

Purpose

690-15-001 (1) The purpose of this division is to establish requirements and procedures which shall be used by the department to evaluate an application to change a water use subject to transfer. The rules describe the requirements to permanently change the use, place of use, point of diversion or point of appropriation of a water use subject to transfer and to temporarily change the place of use of a water use subject to transfer.

(2) The following changes are not required to file a transfer application pursuant to ORS 540.520 and OAR 690-15-060:

(a) The allocation of conserved water pursuant to ORS 537.470;

(b) Any water used under a permit or certificate issued to a municipality, or to rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 provided the water use complies with the requirements under ORS 540.510(3)(a)(A)-(C) and 540.510(3)(b);

(c) Any water used under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, division 21;

(d) A change in point of diversion pursuant to ORS 540.510(5);

(e) A point of diversion change caused by government action pursuant to ORS 540.510(6);

(f) Water permit changes pursuant to ORS 537.211;

(g) Water right changes made for lands not described in a permit pursuant to ORS 537.252; and

(h) 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist.: WRD 16-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Note: These rules were filed with the Office of the Secretary of State and took effect on July 11, 1996. 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.

GENERAL

Definitions

690-15-005 The following definitions, along with the applicable definitions contained in OAR Chapter 690, Divisions 8 and 300, apply to the rules in this Division:

- (1) "Commission" means the Water Resources Commission.
- (2) "Department" means the Water Resources Department.
- (3) "Director" means the director of the Water Resources Department.
- (4) "District" means an irrigation district formed under ORS chapter 545, a drainage district formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a water control district formed under ORS chapter 553 or a corporation organized under ORS chapter 554.
- (5) "Injury to an existing water right" means a proposed transfer would result in a water right not receiving the water to which it is legally entitled.
- (6) "ODFW" means the Oregon Department of Fish and Wildlife.
- (7) "Point of appropriation" means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right.
- (8) "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.
- (9) "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.
- (10) "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.
- (11) "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 has been issued under ORS 540.530 approving the change.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD -1996, f. & cert. ef. 7-11-96

Change in Point of Diversion or Point of Appropriation

690-15-010 (1) Except as provided in ORS 540.531 and OAR 690-15-210, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation is restricted to the same aquifer.

(2) Whenever a change in point of diversion along a stream channel would move the diversion point past a point of substantial inflow, the applicant shall submit evidence showing how the transfer can be effected without injury to existing rights.

(3) Water may be diverted or appropriated at the new point of diversion or point of appropriation only to the extent that water is lawfully available at the original point of diversion or point of appropriation.

(4) As provided in ORS 450.695(2), a water authority may change the points of diversion 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 from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and OAR Chapter 690, Division 15 transfer rules;

(b) A request by a water authority to change the location of a point of diversion authorized by a water use permit, as defined in OAR 690-15-005(11)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and OAR Chapter 690, Division 15 transfer rules for water uses subject to transfer; and

(c) A request by a water authority to change in point of diversion for water right permits other than those covered under subsection (4)(b), shall be made pursuant to ORS 537.211.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 450.695 & 540.510 to 540.532

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; Renumbered from 690-15-015; WRD 19-1990, f. & cert. ef. 12-14-90; WRD -1996, f. & cert. ef. 7-11-96

690-15-015 [Renumbered to 690-15-010(2)]

District May Submit Application For Water Users

690-15-020 (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, 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 21.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

Separate Application Required for Each Water Right

690-15-025 For changes involving more than one landowner or water use subject to transfer, a separate transfer application is required for each water use subject to transfer from each landowner involved, except under the following circumstances:

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

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

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

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

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-89; WRD 16-1990, f. & cert. ef. 8-23-90; Renumbered from 690-15-035; WRD -1996, f. & cert. ef. 7-11-96

Transfer from Supplemental Use to Primary Use

690-15-030 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 right. A right cannot be enlarged through this process. The primary right shall be canceled before or at the same time as the issuance of the transfer order changing the supplemental use to primary.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.530

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

690-15-035 [Renumbered to 690-15-025]

Original Right Terminated

690-15-040 Approval of a change in use or place of use terminates the right to use water for the existing use or place of use under the original water right as described in the transfer application form required under OAR 690-15-060.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

Multiple Primary Rights on the Same Lands

690-15-045 If the water right records show two or more rights as primary on the same land, the right with the oldest priority date shall be considered the primary

right unless the applicant designates a right, other than the right with the oldest priority date, as the primary right. All other rights shall be diminished to supplemental rights.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 16-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Transfer of Supplemental Water Right or Permit

690-015-048 (1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-15-060, 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 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 690-15-060.

(2) If the applicant does not include the supplemental water right or permit in the transfer application, the department shall notify the applicant and the deeded owner, as identified under OAR 690-15-060(12), that the supplemental water right will be canceled before the department issues the order approving the transfer of the primary water right, unless within 30 days after the date of department notification, the applicant modifies the application to include the supplemental water right or permit or withdraws the application.

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

(4) If the department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the department shall notify the applicant and the deeded owner, as identified under OAR 690-15-060(12), of the department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.530

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

Transfer Shall Not Result in Injury to Existing Water Rights

690-15-050 (1) A transfer application shall not be approved if the proposed transfer would result in the injury of an existing water right. Injury shall include the following:

(a) A transfer would result in a net loss of water available to downstream water rights; or

- (b) The water right to be transferred would be enlarged.
- (2) An injury to an existing water right or an enlargement of the water right to be transferred shall be determined to result from, but is not limited to, the following:
 - (a) A change reducing the quantity of water previously available to another water right and to which the other water right is entitled;
 - (b) A diversion of more water than is specified as a rate of flow or duty of water per acre for the subject water right; or
 - (c) Under a change in place of use, the original place of use cannot be prevented from receiving water from the same source.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

Transfer Denied If Original Place of Use Continues to Receive Water

690-15-055 [WRD 7-1987,
f. & cert. ef. 6-11-87;
Repealed by WRD 6-1996,
f. & cert. ef. 7-9-96]

Compatibility with Acknowledged Comprehensive Plans

690-15-057 (1) The department and commission shall meet requirements established in OAR 690-05-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on transfer applications except as specified in OAR 690-05-025 and 690-15-060(18).

(2) In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the department shall follow procedures provided in OAR 690-05-040 (Resolution of Land Use Dispute).

Statutory Authority: ORS Ch. 197, 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.531

Hist.: WRD 12-1990, f. & cert. ef. 8-8-90; WRD -1996, f. & cert. ef. 7-11-96

Transfer Application Form

690-15-060 Each transfer application shall be prepared in ink or typewritten on forms provided by the department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

- (1) Applicant's name, mailing address, and telephone number.
- (2) Type of change proposed.
- (3) Name appearing on permit, certificate, decree or proof of appropriation.
- (4) Name of decree and certificate number, if applicable.
- (5) Permit number and certificate number, if applicable.
- (6) Source of water (from permit, decree or certificate).
- (7) Date of priority.

(8) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(9) The authorized existing use of water.

(10) A general description of the current water delivery system, including capacity.

(11) The authorized place of use identified by its location within the public land survey and tax lot number.

(12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the certificate. The evidence may include but not be limited to:

(a) Affidavits from knowledgeable persons, such as the owner or operator, a neighbor, crop field person for cannery or other product buyer, Natural Resources Conservation Service (NRCS) representatives, etc.;

(b) Receipts from sales of irrigated crops or for expenditures relating to use of water; and

(c) Other records such as NRCS farm management plan, dated photographs, or water district records.

(13) Name of deeded owner of the land to which the water right is appurtenant. A copy of the recorded deed to the subject lands shall accompany the application. If the applicant is not the deeded owner, the applicant shall provide a notarized and signed statement from the deeded owner authorizing the change.

(14) If encumbrances exist against the property to which the existing right is appurtenant, the application shall be accompanied by a signed statement from the holder of the encumbrance that there is no objection to the proposed 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 tax lot number. The name and address of each receiving owner(s), by parcel.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-15-070.

(19) Land use information as outlined in the department's Land Use Planning Procedures Guide except for those transfers:

(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) Which involve changes in place of use only;

(c) Which 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) Which 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 all affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments.

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

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

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

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.531

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Map Requirements

690-15-070 (1) A map prepared by a certified water right examiner shall be included with a transfer application as required under OAR 690-15-060. The map shall meet the following criteria:

(a) The map shall be drawn in dark ink with sufficient clarity so as to be easily reproduced.

(b) An application map larger than 11 inches by 17 inches shall be drawn on tracing linen, tracing vellum, or mylar.

(c) The map shall be drawn to a standard, even scale of not less than 4 inches equals 1 mile. A small area map may be drawn to a larger scale, such as 1 inch equals 400 feet.

(d) Field measurement accuracy is required to within 10 feet for the purpose of locating and quantifying water rights.

(e) The map shall be plotted to the accuracy consistent with the map scale.

(2) The map shall include the following information:

(a) The location of each existing and proposed point of diversion or point of appropriation. The location shall be further described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner;

(b) 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 hatched 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;

(c) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67% of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67% 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;

(d) The location of township, section, quarter-quarter section, donation land claim, and other recognized public land survey lines;

(e) Notwithstanding the requirements of subsection (1)(d), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features;

(f) Notwithstanding the requirements of subsection (1)(d), 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

(g) 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 3-1988, f. 2-26-88, cert. ef. 2-28-88; WRD -1996, f. & cert. ef. 7-11-96

Fish Screening and By-pass Devices

690-15-073 (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) The Department's consultation with ODFW shall determine whether the diversion is:

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

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

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

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

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

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 to 540.525 & 540.532

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

Assignment or Change of Ownership

690-15-075 (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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 6-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Notice Requirements; Time Required for Approval

690-15-080 (1) Except as provided in subsection (4) of this rule, the department shall give notice of all transfer applications by publication in the department's weekly notice and 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.

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

- (a) The type of transfer proposed;
- (b) The county of water use;
- (c) The application file number;
- (d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the department a protest against the approval of the application on the basis of an injury to an existing water right and the date by which a protest must be filed; and

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

(3) As provided in ORS 540.520(4), the cost of publication in a newspaper shall be paid by the applicant in advance to the department. The applicant may satisfy this

requirement by arranging for the publication of the notice prepared by the department in a newspaper subject to the requirements of subsection (1) and providing the department with an affidavit of publication.

(4) No notice by publication in a newspaper is required for:

(a) A change in place of use;

(b) A change in point of diversion to reflect historical use pursuant to ORS 540.532 and OAR 690-15-240; or

(c) Applications for a change in the point of diversion of less than one-fourth mile and where there are no intervening diversions between the old point of diversion of the applicant and the proposed new point of diversion.

(5) The department shall not approve an application prior to 30 days after publication in the department's weekly notice or prior to 30 days after the last date of publication in the newspaper, whichever is later.

(6) The department shall mail notice of all transfer applications to the planning departments of affected local governments. The director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless informed otherwise within 30 days after the date shown on the notice.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, 540.532

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 5-1991, f. & cert. ef. 4-26-91; WRD -1996, f. & cert. ef. 7-11-96

Protests and Hearings

690-15-085 (1) Any person may file, jointly or severally, with the department, a protest against the approval of a transfer application on the ground that the transfer will result in injury.

(2) Protests shall be filed within 30 days after the last publication of the newspaper notice or the mailing of the department's weekly notice, whichever is later.

(3) Protests shall be filed in accordance with OAR Chapter 690, Division 2, and shall include the fee required under ORS 536.050(1)(k).

(4) Whenever a timely protest is filed, or in the opinion of the director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, the department shall hold a hearing on the matter.

(5) Notice and conduct of the hearing shall be under the 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 Authority: ORS 536.025 & 536.027

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

Hist.: WRD 7-1987, f. & ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

Time for Completion

690-15-087 (1) The department shall fix a time limit in the order authorizing a change of use, place of use or point of diversion within which the approved changes may be completed.

(2) Extensions of time to complete a transfer may be granted pursuant to OAR 690-15-100.

(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 5 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

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

Failure to Complete a Transfer as Grounds for Cancellation of Water Use Subject to Transfer

690-15-090 (1) Upon approval of a change in use or place of use, the water use subject to transfer becomes 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 point of 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.

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

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

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD -1996, f. & cert. ef. 7-11-96

Extension of Time

690-15-100 (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 690-15-087. 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 subsection (4) of this rule.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD -1996, f. & cert. ef. 7-11-96

Proof Of Use; Noncompliance

690-15-110 Upon completion of a transfer, the owner of the transfer shall submit a notice of use of water to the department.

(1) For transfers requested prior to July 10, 1987 when the notice is received, or at such time given in the order approving the transfer for complete application of water, if the owner has failed to submit such notice, 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 3-1988, f. & cert. ef. 2-26-88; WRD -1996, f. & cert. ef. 7-11-96

Proof of Completion of Change

690-15-120 The director shall issue a certificate of water right upon satisfactory proof of completing the change or changes authorized by a transfer approval order. Satisfactory proof shall be one of the following:

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

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

(2) If the department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be mailed first class to the transferee, together with notice that the transferee or the landowner has a period of 60 days from date of mailing 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 16-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Petition for Reconsideration

690-15-125 (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 690-15-120(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 party.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-15-120.

(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) - (3) of this rule. Such petitions shall be approved or denied by an order of the director. The order shall provide for either issuance of a certificate of water right in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR Chapter 690, Division 02.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 16-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Acquisition of Water Rights by a Water Authority

690-15-130 (1) A water authority may acquire perfected 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. A water authority shall acquire all water rights according to the provisions of OAR Chapter 690, Division 15.

(2) When a water authority acquires a perfected water right that was originally issued for municipal use, the authority may request the director issue the authority a superseding certificate of water right for the amount required. The request shall be in writing and include the following information:

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

(b) The certificate number of the perfected municipal water right acquired;

(c) The quantity of water acquired per certificate; and

(d) A map containing sufficient detail and scale to determine the legal boundaries of the water authority service area.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

Hist: WRD 19-1990, f. & cert. ef. 8-23-90; WRD -1996, f. & cert. ef. 7-11-96

Municipal Water Rights

690-15-140 (1) Water used by a municipality for municipal use under a permit, perfected water right or conferred by ORS 538.410 to 538.450, may be used at any lands acquired by annexation, merger, consolidation, or by the formation of a water supply authority. A municipality also may use water beneficially on any lands so long as the use continues to be for municipal purposes and the place and nature of use are compatible with local comprehensive plans. Changes in the originally authorized place of use pursuant to ORS 540.510 may be made so long as the changes do not cause injury to other prior vested rights. The rate of use of water by a municipality shall not exceed that allowed by its existing rights.

(2) For the purpose of ORS 540.510(3) municipal purposes includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption.

(3) Interference with or impairment of any prior vested water right due to municipal use of water by a municipal supplier on lands other than those described by its water right certificates is cause for the director to restrict the use of water. Municipal use of water may be restricted to the lands described by previous water use authorizations if such an action eliminates the interference with or impairment of prior vested water rights.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510

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

Notice of Merger, Consolidation or Formation of a Water Authority

690-15-150 (1) Municipal water supply entities which merge, consolidate or form a water authority may notify the department of such action. Notice shall be given within 90 days of the date such action occurred. Notice shall include the following:

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

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

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

(d) A listing of the 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 690-15-070, showing the legal boundaries of the water service area and the points of diversion or points of appropriation;

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

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

(2) After verifying the information submitted in accordance with subsections (1)(a) through (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) through (g) of this rule, the director shall issue certificates to superseded 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 new water service entity.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.530

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

Change in a Surface Water Point of Diversion to a Groundwater Appropriation

690-15-210 (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 groundwater, subject to the requirements for a transfer in point of diversion under this division and the requirements under subsection (2) of this rule.

(2) The department may allow the transfer of the point of diversion under subsection (1) of this rule if a transfer application demonstrates:

(a) The new point of diversion appropriates groundwater from an unconfined aquifer that is hydraulically connected to the authorized surface source;

(b) The proposed change in point of diversion will not result in enlargement of the original water right or in injury to other water right holders;

(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)-(c) of this rule.

(3) 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)-(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.

(4) All applicable restrictions that existed at the original point of diversion shall apply at the new point of diversion allowed under this rule.

(5) The new point of diversion shall retain the original date of priority, however, 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 groundwater 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 subsection applies only to wells with rights existing at the time the transfer was approved. This subsection does not apply to water rights resulting from subsequent transfer approvals.

(6) If within 5 years after the department approves a transfer under this rule, the department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved. It shall be presumed, for transfers under this subsection, that there is no injury to existing water rights, including rights obtained or transferred after the approval of the first transfer.

(7) For purposes of this rule only:

(a) "Similarly" means that the use of groundwater at the new point of diversion affects only 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.

(b) "Unconfined aquifer" means an aquifer in which the pressure at the upper surface of saturation is equal to atmospheric pressure.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, 540.530 & 540.531

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

Request for Change in Point of Diversion to Reflect Historical Use

690-15-240 (1) As provided in ORS 540.532, any individual who holds a water right certificate or decree may request a change in point of diversion to reflect a historical use of water at a point of diversion other than that described in the water right certificate or decree. The individual shall use the department's water right transfer application form, clearly marked "Historic Change in POD," and include the information required in OAR 690-15-060.

(2) An individual requesting a change in the point of diversion under subsection (1) of this rule shall provide to the department the following information:

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

(b) A map meeting the requirements of OAR 690-15-070, 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 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 as specified in the water right certificate or decree and the actual, current point of diversion;

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

(3) The individual shall request from the department a list of the affected water rights. The request shall be made to the department at the same time as the filing of the application under subsection (1) of this rule. The list shall include, but is not limited to:

(a) Any water right with an intervening point of diversion;

(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.

(4) Upon receipt of the list of affected water rights from the department, the individual shall determine the name and address of the holder of each affected water right and shall mail or hand deliver written notice of the requested change to all such holders. The individual shall provide to the department written proof of service upon the water right holders. A transfer under subsection (1) of this rule shall not be approved by the department before the department receives the written proof of service.

(5) Upon receipt of an application for a change in the point of diversion under subsection (1) of this rule, the department shall consult with ODFW in the manner provided under OAR 690-15-073.

(6) Upon receipt of an application under subsection (1) of this rule, the department shall provide notice of the application in the weekly notice published by the department.

(7) An individual is a natural person, not a government body, organization, business enterprise, or other such entity.

(8) If the Department finds the individual requesting a change in point of diversion to reflect historical use satisfies the requirements under subsection (2)-(7) of this rule, the request shall be approved, the director shall enter an order approving the change in point of diversion, including any needed conditions, included if needed, a condition that water may not be used until all appropriate conditions of the approval order have been met. If a certificate had previously been issued, the order shall cancel the certificate. The director shall issue a new certificate confirming the change in point of diversion and preserving all other conditions of the water right.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.532

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

Temporary Transfers

Temporary Transfer Application

690-15-300 (1) As provided in ORS 540.523, any person who holds a water use subject to transfer may request that the department approve a temporary transfer of place of use for a period not to exceed five years.

(2) The application for a temporary transfer 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 690-15-060;
 - (b) The length of time for which the change is being requested;
 - (c) The appropriate fee for the transfer of the place of use pursuant to ORS 536.050;
- and

(d) A map prepared pursuant to the requirements of OAR 690-15-070, except it need not be prepared by a certified water right examiner.

(3) Notwithstanding the notice and time requirements of OAR 690-15-080, the department shall issue an order to approve a request for a temporary transfer under this rule if the department determines that the temporary transfer will not injure any existing water right. In issuing the order, the department may include any conditions necessary to protect other water rights.

(4) 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.

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

(6) The department may revoke a prior approval of the temporary transfer at any time if the department finds that the transfer is causing injury to any existing water right.

(7) The lands from which the water use subject to transfer is removed during the period of a temporary transfer shall receive no water under the transferred water right.

(8) 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 Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.520 & 540.523

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

Seasonal Use

690-15-310 The lands from which the water use subject to transfer is removed shall receive no water, under the appurtenant rights, during the period of a temporary transfer. In the case of a temporary transfer approved during the season for which there is a specified season of use, such as the irrigation season, the lands from which the water use subject to transfer is being removed shall have received no water, under the appurtenant rights, during that season, including water used prior to the approval of the temporary transfer. If the lands have received water, under the appurtenant rights, during that season, the temporary transfer may not take effect until the following season.

Statutory Authority: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.523

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

Supplemental Rights

690-15-320 (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 690-15-060 and 690-15-300 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 deeded owner, as identified under OAR 690-15-060(12), that the department will cancel the supplemental water right or permit before issuing the order approving the temporary transfer of the primary water right.

(4) Notice by the department shall be sent by certified mail, return receipt requested. 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 deeded owner, as identified under OAR 690-15-060(12), 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 supplemental water right or permit shall be canceled before the department issues the order approving the application for the temporary transfer of the primary water right.

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

(6) If the application is not modified or withdrawn, the director shall enter an order canceling the supplemental water right before issuing the order approving the temporary transfer of the primary water right.

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

(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 right within five years, the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

Statutory Authority: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.523
Hist: WRD -1996, f. & cert. ef. 7-11-96

Clarification of Water Rights

690-15-400 (1) If the Director decides that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery, or transfer of that right, the Director may issue an order clarifying and defining the description of the land to which the right is appurtenant.

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

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

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

Stat. Auth.: ORS Ch. 183, 339, 536, 537, 540 & 649
Hist.: WRD 10-1988, f. & cert. ef. 8-10-88