



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

RECEIVED APR 26 10 46 AM '91

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on April 19, 1991

Water Resources Department Resource Management Division

become effective upon filing

The within matter having come before the Water Resources Commission after

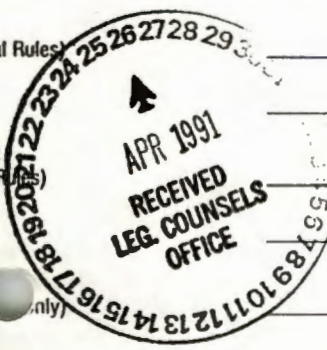
procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: March 1, 1991

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

Total Rules: 26

Administrative Rules Chapter 690, Divisions -01-041(1), 11-080(1), 15-080(1) & (2), 18-050(3), 76-020(2), 77-025(4) & 030(1)(b), and 82-040.



Administrative Rules of the Water Resources Department Resource Management Division

DATED this 26th day of April, 1991

By: William H. Young (Authorized Signer) Title: Director

Primary Authority: ORS 536.025, 536.027

Bill(s) Oregon Laws 19

Bill(s) 19 Legislature; or Senate Bill(s) 19 Legislature

Subject Matter: Filing periods for exceptions to contested cases and for public commentary on water use applications.

Further Information Contact: Weisha Mize or Mike Mattick (Rule Coordinator) Phone: 378-3739

## OREGON ADMINISTRATIVE RULES

## CHAPTER 690, DIVISION 15

## WATER RIGHT TRANSFERS

**PURPOSE**

**690-15-001** These rules describe the procedures used by the Department to manage perfected water rights. The rules define the requirements to change the use, place of use, point of diversion or the point of appropriation of a water right.

**DEFINITIONS**

**690-15-005** Definitions of terms in these rules are contained in OAR Chapter 690 Division 11.

**CHANGE IN POINT OF DIVERSION**

**690-15-010 (1)** An application for a change in point of diversion is not required IF:

(a) the change is due solely to the movements of a naturally changing stream channel and;

(b) the new diversion point stays within 500 feet of the diversion point of record and;

(c) the change does not move the diversion point upstream or downstream beyond the diversion point of another appropriator.

(2) A change in point of diversion is restricted to the same natural source of water. Whether or not a protest is filed, 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 and minimum streamflows.

(3) A water supply authority may change the points of diversion or move the water intake sources of the water use permits conveyed to it by the districts and municipalities that formed the water supply authority. Moving a water intake source is the same as changing the location of a point of diversion.

(a) A change in the location of a point of diversion from that authorized by a certificate of water right requires a transfer in accordance with ORS Chapter 540 and OAR 690, Division 15 transfer rules.

(b) A water supply authority shall submit a written request to the Director requesting a change in the location of a point of diversion authorized by a water use permit. The written request shall include a completed Department water right transfer application form.

(c) A request by a water supply authority to change the location of a point of diversion authorized by a water use permit shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and OAR 690, Division 15 transfer rules for perfected water rights.

(d) Upon approval of a change in the location of the point of diversion authorized by a water use permit, the Director shall issue an order amending the water use permit to reflect the approved change in the location of the point of diversion.

#### **IRRIGATION DISTRICT MAY SUBMIT APPLICATION FOR WATER USERS**

690-15-020 An organized water distribution entity, such as an irrigation district, authorized to act on behalf of its members, may apply for a water right transfer. 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.

#### **SEPARATE APPLICATION REQUIRED FOR EACH WATER RIGHT**

690-15-025 A separate transfer application is required for each water right from each landowner involved, except under these circumstances where a single application may be submitted:

(1) A change in point of diversion from the old common point of diversion to the new common point of diversion 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.

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

(4) Switching priority dates between two parcels served from a common point of diversion, within a single ownership.

#### **TRANSFER FROM SUPPLEMENTAL USE TO PRIMARY USE**

690-15-030 A transfer application for a change in character of 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. A right cannot be enlarged through this process. A transfer application may be submitted any time prior to the issuance of a final order cancelling the primary right.

#### **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 described in the application.

#### **MULTIPLE PRIMARY RIGHTS ON THE SAME LANDS**

690-15-045 (1) If the water right records show two or more rights as primary on the same land, all rights that would allow diverting more than the established rate and duty of water shall be diminished to supplemental use and transferred with the designated primary right. An affidavit of diminution from the land owner must be received before the transfer is approved.

(2) Any water right subject to diminution but not transferred shall be cancelled before a transfer application is approved.

**TRANSFER SHALL NOT REDUCE STREAMFLOW TO DOWN STREAM RIGHTS**

690-15-050 A transfer application shall be approved only to the extent that the change would not result in a net loss of water available to downstream users and/or minimum flow requirements. The burden of proof of consumptive use shall be on the applicant.

**TRANSFER DENIED IF ORIGINAL PLACE OF USE CONTINUES TO RECEIVE WATER**

690-15-055 If the original place of use cannot be prevented from receiving water from the same source under a change in place of use, the proposed change shall not be approved.

**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 OAR 690-15-05 (16).

(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).

**APPLICATION FORM**

690-15-060 Each application shall be prepared in ink or typewritten on forms provided by the department. Applications shall contain:

- (1) Applicant's name, mailing address, and telephone number;
- (2) Type of change proposed;
- (3) Name appearing on 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 decree or certificate);
- (7) Date of priority;
- (8) The existing and proposed points of diversion located accurately in reference to a public land survey corner. (If maps of a platted, recorded subdivision are submitted, the diversion point may be located in reference to a lot corner of the subdivision);
- (9) The authorized existing use of water. The place of use identified by its location within the public land survey. (If within a platted, recorded subdivision, further identification by lot and block may be given);
- (10) 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, county agent, crop field person for cannery or other product buyer, ASCS representatives, etc.

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

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

(11) 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 application shall contain a notarized statement from the deeded owner authorizing the change;

(12) If encumbrances exist against the property to which the existing right is appurtenant, the application shall be accompanied by a notarized statement from the holder of the encumbrance that there is no objection to the proposed change;

(13) The proposed use of water. The proposed place of use shall be identified by its location within the public land survey. (If within a platted, recorded subdivision, further identification by lot and block number may be given). The name and address of each receiving owner, by parcel;

(14) Reason for the proposed change;

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

(16) 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.

#### MAPS

690-15-070 Maps shall be prepared by a certified water right examiner in accordance with the provisions set forth in OAR 690-11-070 and shall include the following data:

(1) The location of all authorized and proposed points of diversion;

(2) The location of the authorized and proposed places of use of water, and the location of any part of the right not involved in the proposed transfer;

(3) The location of streams and direction of flow.

#### 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; or,
- (b) a land sales contract; or,
- (c) documentation of survivorship of property held jointly; or,
- (d) a court order or decree.

#### TIME REQUIRED FOR APPROVAL

690-15-080 (1) ORS 540.520(2) requires that notice be published in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion. Applications requiring publication of notice shall not be approved within less than 60 days after the last date the notice appeared in the newspaper. Applications not requiring publication of notice may be approved after expiration of at least 60 days from date of filing.

(2) 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 60 days of the date shown on the notice.

#### PROTESTS

690-15-085 Protests may be filed at any time prior to approval of a pending application. Protests against approval of a transfer application shall be in accordance with OAR Chapter 690, Section 01.

#### FAILURE TO COMPLETE A TRANSFER AS GROUNDS FOR CANCELLATION OF WATER RIGHT

690-15-090 (1) Upon approval of a change in use or place of use, the water right becomes inchoate (incomplete) until the authorized change has been completed to the satisfaction of the Water Resources Director.

(2) Any part of a transferred water right 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 right. However, upon expiration of the time allowed for completion, the water right shall again become subject to forfeiture pursuant to the provisions of ORS 540.610. A new application is required to change the point of diversion or point of appropriation to a location not authorized by the order.

#### **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 normally granted for one year, from October 1 to October 1 of each year. An extension of up to five years may be granted to a municipal corporation for municipal use. Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension.

#### **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 Water Resources Department. 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 Water Resources 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 reestablished 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. 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 Chapter 690, Division 14 Rules.

#### **PROOF OF COMPLETION OF CHANGE**

690-15-120 (1) ORS 540.530 (2) prescribes that 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 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.

(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.

(4) When a certificate has many changes due to transfers, such as in irrigation districts, the Director may decide to confirm those changes by issuance of a proposed partial certificate. This creates an interim record. After many proposed partial certificates are issued, the Director may issue a certificate confirming those changes described by the proposed partial certificates.

#### REQUEST FOR RECONSIDERATION

690-15-125 (1) A request for reconsideration of the content of a proposed certificate may be prepared by the transferee or landowner and submitted to the Department. The petition shall describe the disagreement with the proposed certificate.

(2) The request for reconsideration may be in the form of a phone call or personal contact unless the disagreement proposes a change to:

- (a) the source of water; or,
- (b) the purpose the water is used; or,
- (c) the quantity of water granted; or,
- (d) the location of the points of diversion; or,
- (e) the location of the use; or,
- (f) the extent of the use; or,
- (g) any conditions imposed upon the use.

(3) If the disagreement results in a change to any item listed in 690-15-125 (2) (a) through (g), the request for reconsideration shall be completed in writing. The request 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.



(4) 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 request for reconsideration.

(5) Upon receipt of a request for reconsideration, the Director shall:

(a) Approve the request without verification and issue a certificate with the changes included; or,

(b) Schedule field verification of the requested changes; or,

(c) Deny it by a letter from Department staff to the requesting party.

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

(7) A request for reconsideration resulting from section (6) shall be approved or denied. If denied, the denial shall be in the form of an order of the Director. The order shall provide for either issuance of a certificate of water right in conformance with the Director's findings, or for the scheduling of a contested case hearing as provided under OAR 690, Division 75.

#### ACQUISITION OF WATER RIGHTS BY A WATER SUPPLY AUTHORITY

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

(2) When a water supply 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 acquired. The request shall be in writing and include the following information:

(a) The name and address of the water supply authority.

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

(c) The quantity of water acquired per certificate.

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

#### 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) 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.

**NOTICE OF MERGER, CONSOLIDATION OR FORMATION OF A WATER SUPPLY AUTHORITY**

690-15-150 (1) Municipal water supply entities which merge, consolidate or form a water supply authority shall 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 supply 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 containing sufficient detail and scale to determine the legal boundaries of the water service area.

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

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

(2) Superseding certificates issued to confirm the municipal use of water resulting from a merger, consolidation or formation of a water supply authority shall not limit the place of beneficial use to specific lands. The place of use on these certificates shall be within the legal description of the service boundaries of the new entity as it was officially formed and any annexations or expansions that occur thereafter.

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

#### 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 refining 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 purposed, the final order shall constitute the description of the land to which the water right is appurtenant.

6795D