

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

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BARBARA M. DEWITT
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on February 16, 1988
(Date)

by the Water Resources Commission
(Department) (Division)

to become effective February 28, 1988
(Date)

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

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: October 15, 1987

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: Chapter 690, Division 14 rules
(New Total Rules)

Amended: Chapter 690, Divisions 11 & 15 rules
(Existing Rules)

Total Rules Only

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LEGISLATIVE COUNSEL'S OFFICE

as Administrative Rules of the Water Resources Department and Water Resources Commission
(Department) (Division)

DATED this 26th day of February, 19 88

By: John Borden, Deputy Director
(Authorized Signer)

Title: Director, Water Resources Department

Statutory Authority: ORS 536.027, 536.029 and or

Chapter(s) 542 Oregon Laws 19 87 or

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

Subject Matter: Rules for certification of water right examiners, the preparation of water right application maps, and the preparation of the claim of beneficial use.

For Further Information Contact: Bruce A. Estes (Rule Coordinator) Phone: 378-3739

2/26/88

OREGON ADMINISTRATIVE RULES

WATER RESOURCES DEPARTMENT

CHAPTER 690

DIVISION 15, WATER RIGHT TRANSFERS

GENERAL

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

690-15-010 An application for a change in point of diversion is not required for a diversion point to follow the movements of a naturally changing stream channel if the diversion point stays within the same quarter-quarter section and the change does not move the diversion point upstream or downstream beyond the diversion point of another appropriator.

690-15-015 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.

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.

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.

690-15-035 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.

1. Proposed deletions are denoted by [brackets] and additions are underlined. Changes involve 690-15-070 and 690-15-110.

(3). A transposition of priority dates between two parcels served from a common point of diversion, within a single ownership.

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.

690-15-045 If the water right records show two or more rights as primary on a particular parcel, all rights that would allow the diversion of more than the established rate and duty of water shall be canceled or diminished to supplemental use for transfer with the designated primary right before the transfer may be authorized.

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.

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.

APPLICATION FORM

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

- a. Applicant's name, mailing address, and telephone number.
- b. Type of change proposed.
- c. Name appearing on certificate, decree or proof of appropriation.
- d. Name of decree and certificate number, if applicable.
- e. Permit number and certificate number, if applicable.
- f. Source of water (from decree or certificate).
- g. Date of priority.
- h. 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.)
- i. 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.)
- j. 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.
- k. 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.
- l. 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.
- m. Reason for the proposed change.
- n. Map as required in OAR 690-15-070.

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:

- a. The location of all authorized and proposed points of diversion.
- b. 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.
- c. The location of streams and direction of flow.

TIME REQUIRED FOR APPROVAL

690-15-080 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 20 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 thirty days from date of filing.

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 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.

If multiple receiving owners are involved, a separate application is required from each receiving owner requesting an extension.

Extensions are granted for one year only, 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 [W] 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.

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