

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 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: 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
2/1/96*

Administrative Rules of the Water Resources Department

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

BY: *Michael D. Adge*
(Authorized Signer)

Title: Director

STATUTORY AUTHORITY: ORS 536.027

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 21
WATER RIGHT TRANSFERS WITHIN DISTRICTS

Introduction

690-21-000 (1) These rules establish the standards and criteria that a district which delivers irrigation water may follow to temporarily change the place of use of the water rights managed by the district pursuant to ORS 540.570. These rules also describe the process by which a district may petition to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578.

(2) A district may also request the permanent transfer of the place of use of water within a district, pursuant to ORS 540.580. This process is not addressed in these rules.

(3) Other water right transfers by districts and other water right holders are processed under the authority of ORS 540.510 to 540.532 and 540.560 and OAR Chapter 690, Division 15.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

Definitions of Terms

690-21-010 (1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the 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 formed under ORS Chapter 554.

(5) "District Temporary Transfer" as used in OAR 690-21-020 to 690-21-060, means a request from a district for a temporary change in the place of use of water, for up to five years, on lands within the district which are different from the record location of the right, permit, or approved transfer, as authorized under ORS 540.570.

(6) "District Transfer Petition" as used in OAR 690-21-070 to 690-21-700, means a petition and map filed by a district requesting approval of a change in the place of use of water managed by the district because the user's lands are no longer irrigated or susceptible of irrigation, as authorized under ORS 540.574.

(7) "Full-Time Manager" means a person employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.

(8) "Irrigable Land" as used on OAR 690-21-070 to 690-21-700, means land that is currently under irrigation or susceptible of irrigation for agricultural, horticultural, viticultural or grazing purposes.

(9) "No Longer Irrigated or Susceptible of Irrigation" as used on OAR 690-21-070

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.

to 690-21-700, means:

(a) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district.

(10) "Owned" or "Controlled" as used in OAR 690-21-070 to 690-21-700, means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(11) "Perfected Water Right" as used in OAR 690-21-070 to 690-21-700, means a water right confirmed by a court decree, a water right certificate or a transfer recognized as complete by the Department.

(12) "User" means an owner of land with an appurtenant water right who is subject to the charges or assessments of a district and from whose land the water right would be transferred by the petition and map filed under OAR 690-21-070 and an owner of land to which the water right would be transferred.

(13) "Water use subject to transfer," as used in OAR 690-21-020 to 690-21-060, means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by a court decree;

(b) A water right certificate;

(c) A water right 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.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

DISTRICT TEMPORARY TRANSFERS

District Temporary Transfer Notices

690-21-020 (1) When a district or an owner or an owner's agent within a district who is subject to the charges or assessments of the district intends to use water on alternate acreage within the legal boundaries of the district, if the district has approved the owner's request, the district shall submit a notice to the department. If a district or owner believes it may want to use water on alternate acreage, but is unable to make a final determination by the filing deadline in subsection (2), the district may include all contemplated transfers in a notice. Before June 1 of the first year of the temporary transfer period, the district shall file an amended notice under OAR 690-21-060 (3) identifying the contemplated transfers that will be made and deleting the transfers that will not be made.

(2) A district temporary transfer notice shall be submitted to the department at least 60 days prior to the beginning of irrigation deliveries for the year, or March 1, whichever is earlier.

(3) Within 30 days of receiving a notice, the department shall determine if the submitted notice is complete and substantially complies with the requirements of these rules.

(a) If the department determines that the notice is incomplete or does not substantially comply with the requirements of these rules, the notice shall be returned to the district. A district shall return such notice to the department by the filing deadline set in subsection (2) and the 60 day review period established in ORS 540.570 (3) shall start again.

(b) If a notice substantially complies with the requirements of these rules but requires minor corrections, the department may allow a district to submit such corrections after the filing deadline set in subsection (2).

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

Eligible Water Rights and Permits

690-21-030 (1) The following water rights and permits are eligible to be included in a district temporary transfer notice:

(a) Water uses subject to transfer; and

(b) Portions of permits and approved transfers for which the district certifies that the water has been applied to the land described in the permit or approved transfer.

(2) Before a district may include in a temporary transfer notice any land not described in a permit or certificate as land from which water is proposed to be moved, the department must find that the criteria listed in ORS 537.252 are met or must approve a petition filed under ORS 541.325 to 541.331, as appropriate.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

District Temporary Transfer Notice Requirements

690-21-040 A district temporary transfer notice shall be submitted on a form prescribed by the department. The notice shall include but not be limited to;

(1) District name and address,

(2) Certificate, permit, or transfer number, as appropriate.

(3) Source of water.

(4) Date of priority.

(5) Authorized point of diversion or point of appropriation.

(6) The owner's name, township, range, section, tax lot and the number of acres of water right per tax lot being removed.

(7) The owner's name, township, range, section, tax lot and the number of acres of water right per tax lot of the alternate acres.

(8) The period of the proposed change.

(9) A statement that land use zoning for the alternate acres is compatible with the requested change.

(10) A statement the water right is not subject to forfeiture due to nonuse as defined under ORS 540.610.

(11) A statement that the lands from which the water right is removed will receive no water under the appurtenant rights during the period of the temporary transfer.

(12) A statement that the water will be diverted or appropriated from the authorized point of diversion or point of appropriation.

(13) A statement that each landowner affected by the temporary change in place of use has authorized the temporary transfer in writing on file with the district.

(14) A copy of the map required by OAR 690-21-050.

(15) If the map is larger than 11 inches by 17 inches, 4 copies of the map required by OAR 690-21-050.

(16) An oath that the information contained in the notice is true and accurate.

(17) The notice shall be signed by an authorized representative of the district

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

District Temporary Transfer Map Requirements

690-21-050 (1) The district shall maintain a map of the lands affected by a district temporary transfer notice. The map shall be available at the district's principal office and copies shall be provided at the request of any user.

(2) The map may be prepared from a county tax assessor's map, approved final proof survey map or map previously approved by the Department as part of a petition under ORS 541.329. The district temporary transfer notice or amended petition and the map shall be in agreement.

(3) The map shall meet the following criteria and include the following information:

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

(b) Maps must be drawn to a standard, even scale of not less than 4 inches = 1 mile. Small area maps may be drawn to a larger scale, such as 1 inch = 400 feet.

(c) The location of the existing and proposed places of use shall be shaded or hatched and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter sections as projected within government lots, donation land claims, or other recognized public land subdivisions.

(d) For temporary transfers involving less than 67% of the entire place of use of a right, the map shall include at least the location of the portions of the right not involved in the temporary transfer which are included in the same quarter-quarter sections as the temporary transfer. However, the department may require a greater portion of the right or the entire right be mapped if necessary to make a determination of injury.

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

(f) The general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features.

(g) The general location of physical features that would assist the department in identifying the location of the existing and proposed places of use of the water right. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences and types of crops. For rivers and streams, the direction of flow shall also be included.

(h) The location of property lines for the property involved in the temporary change in place of use.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

Review and Action on District Temporary Transfer Notice

690-21-060 (1) Upon receipt of a complete district temporary transfer notice, the Department shall place a summary of the notice in the Department's weekly notice of applications received. The Department shall accept written public comments for a period of 30 days following the published date of the weekly notice. Comments pertaining to the potential for injury to other water rights or to the enlargement of the subject water right shall be considered by the Department in preparing the written review described in section (2) of this rule.

(2) The Department shall prepare a written review of each notice to determine if the change would injure existing rights or result in enlargement of the subject right, as described under OAR 690-21-070(3). The department may approve or deny the request to use water on alternate acreage. If the department does not deny the request within 60 days of receipt of complete notice the temporary change in place of use is approved. A district shall not deliver water to any existing or proposed place of use included in a temporary transfer notice until the department approved the request or the 60 day period has expired.

(3) Before June 1 of the first year of a temporary transfer period, a district may request an amendment to the location of the proposed place of use requested in a notice. The amendment request may not result in an increase in the number of acres involved in the temporary transfer and must be submitted before the district has delivered water to either the existing or proposed place of use affected by the amendment. The amendment request shall not be approved if the district has delivered water to either the existing or proposed place of use in the original notice in the current irrigation season. The request for amendment shall be submitted on a form prescribed by the Department. The Department shall include a summary of the amendment request in the weekly notice of applications received and shall review each amended notice to determine if the change would injure existing rights or result in enlargement of the right. The Director may approve or deny an amendment. For the purposes of reviewing an amendment request under this section, the 60 day review period in ORS 540.570 (3) shall not apply. A district shall not deliver water to any proposed place of use included in an amendment request until the department has approved the amendment.

(4) The department may condition or revoke a temporary transfer at any time to the extent necessary to avoid injury if the department finds the transfer is causing injury to an existing water right.

(5) The water right affected by an approved district temporary transfer notice shall revert back to the location of record at the end of the temporary change in place of use, or earlier if requested in writing by the district .

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD -1996, f. & cert. ef. 7-11-96

DISTRICT TRANSFER PETITIONS

Enlargement or Injury Considerations

690-21-070 (1) A district may petition the Director to approve a request for a permanent change in the place of use of the water managed by the district from lands within the district legal boundaries which are no longer irrigated or

susceptible of irrigation to irrigable lands within the district legal boundaries, pursuant to ORS 540.574.

(2) The Director shall not approve a district transfer if:

(a) The water right to be transferred would be enlarged; or

(b) Existing water rights would be injured by this process.

(3) An enlargement of the water right to be transferred or injury to an existing water right shall be determined to result from, but not be limited to, any of the following:

(a) A diversion of more water than is specified as a rate of flow or duty of water per acre for the subject water right;

(b) An increase in the land area or defined season of use allowed by the subject water right;

(c) The inability of the users or the district to prevent the water from continuing to benefit the lands from which the water right is to be transferred;

(d) A change that would reduce the quantity of water previously available to another water right and to which the other water right is entitled.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Change in Point of Diversion Requires Division 15 Transfer

690-21-080 If a change in the point of diversion is necessary to deliver the water to the place of use proposed by a district transfer, the district shall submit an application for transfer under OAR Chapter 690, Division 15, requesting approval of the change in point of diversion from the Director. The Department may consider both requests concurrently.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Eligibility for District Transfer

690-21-090 The Department shall not approve a district transfer unless the district is:

(1) Managed by a full-time manager; and

(2) Implementing a conservation plan approved by the Water Resources Commission which meets:

(a) Water use efficiency criteria; and

(b) All other management responsibility criteria.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Period of Nonuse and Notice of Nonuse Required Prior to Petitioning

690-21-100 (1) When a water user within a district has not made beneficial use of the district water to which the user is entitled for four successive years, and the district intends to initiate a change in the place of use of the water, the district shall provide a written notice to the user and any security interest holders of record. The notice shall inform the user of the following:

(a) The user may be able to file a request with the Water Resources Department for a transfer under OAR Chapter 690, Division 15; or

(b) The user may be able to file a request with the Water Resources Department for a transfer to an instream water right under the provisions of OAR 690-77-070 and 690-77-075; or

(c) If the user fails to complete a transfer under subsection (a) or (b) of this section and does not use the water for a fifth successive year, the district may petition the Director for approval of a change in the place of use of the water, pursuant to ORS 540.572 to 540.578 and these rules.

(2) The district shall provide the Department with a copy of each notice sent to a user within 30 days of the mailing date of the notice.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Notice of Nonuse and Intent to Transfer Required

690-21-110 Prior to submitting a petition under OAR 690-21-070, the district shall provide a written notice to the user and any security interest holders of record. The notice shall be sent by certified mail to the last known address with a return receipt requested. The notice shall include:

(1) A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to petition under OAR 690-21-070;

(2) A statement advising the user that the user has 30 days from the mailing date of the notice to submit a written objection to the proposed petition to the district;

(3) A general description of the land upon which the water right is of record;

(4) The number of acres of water right for which the user is charged or assessed within each tax lot which the district intends to include in its petition under OAR 690-21-070;

(5) A description of the type of use described by the water right of record;

(6) A list with name and address of security interest holders of record;

(7) A request for confirmation that the information in the notice is correct; and

(8) Advise to the user that the user shall advise the district within said 30-day period if the nonuse would be rebuttable as provided under ORS 540.610.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

User Disagreement

690-21-120 If a user has objections to the proposed petition, or can provide a rebuttal to the presumption of forfeiture, the user shall advise the district in writing within 30 days from the date the notice to the user was mailed.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Disagreement Resolution

690-21-130 (1) If a user advises the district of his objection to a proposed petition as provided under OAR 690-21-120, the district's manager shall attempt to resolve the matter with the user.

(2) If the user's objection cannot be resolved with the manager of the district, a hearing shall be conducted before the district's board of directors. The board of directors shall determine whether to submit the petition to the Director.

(3) If the district does not receive a written notice of objection within the 30 day period set under OAR 690-21-120, the district may submit the petition to the Director requesting approval.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Content of Petition (District Transfer)

690-21-140 The petition to be submitted to the Water Resources Commission under OAR 690-21-070 shall include:

- (1) The name of the district;
- (2) The certificate number of each water right contained in the petition;
- (3) The names of all the users within the district from whose land the water rights are to be transferred;
- (4) The names of all the users within the district to whose land the water rights are to be transferred;
- (5) A general description of the district's boundaries;
- (6) A general description of each user's land from which and to which water rights are to be transferred. The description, or notations on the tax assessor's map for parcels of five acres or less shall include the location by township, range, section, quarter-quarter section, tax lot and the number of acres of water right to be transferred out or to be transferred in;
- (7) Identification of the sources of water and the location by quarter-quarter section of the diversions necessary to serve the lands to which the water rights are to be transferred;
- (8) A description of the use that is proposed to be made of the water on each parcel;
- (9) A map meeting the requirements set out in OAR 690-21-160 shall accompany the petition;
- (10) A sworn statement by the petitioner that the petition and map or maps are accurate to the best of the petitioner's knowledge;
- (11) A sworn statement by the petitioner that notice requirements of OAR 690-21-100 and 690-21-110 have been met;
- (12) A statement by the petitioner that the water right is not subject to forfeiture as provided under ORS 540.610. The statement may also provide evidence, including but not limited to:
 - (a) Affidavits from knowledgeable persons, such as the owner or operator, district personnel, 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.
- (13) Land use information as outlined in the Department's **Land Use Planning Procedures Guide** except for those transfers 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 which:
 - (a) Involve changes in place of use only; and
 - (b) 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
 - (c) Involve irrigation water uses only.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Mapping Requirements

690-21-160 The map submitted with a district petition to change the place of use shall meet the following criteria:

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

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

(a) One inch equals 1,320 feet; or

(b) One inch equals 400 feet; or

(c) The assessor's scale if larger than one inch equals 1,320 feet; or

(d) A combination of these scales if using map inserts.

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

(a) The location of diversions, canals, ditches, pipelines or flumes;

(b) The location of the place of use. If for irrigation, the area irrigated in each section quarter-quarter shall be indicated by shading or hatchuring and the number of acres in each section quarter-quarter indicated. The map shall show the lands from which the water right is proposed to be transferred and also the lands to which the water right is proposed to be transferred hatchured differently. A hatchuring legend shall be placed on the map;

(c) The scale to which the map is drawn, the section number, township, range, a north directional symbol and property boundaries.

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

(5) More than one water right may be entered on the same map if clearly identified by different hatchuring.

(6) The map shall include a statement by the petitioner certifying the map as accurate to the best of their knowledge.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Notice of Petition Filed

690-21-170 (1) Within 30 days after filing a petition the district shall send a notice and a copy of the petition and map to the users whose water right of record is proposed to be transferred and who are to receive the transferred water right. The notice and the petition and map copies shall be sent by certified mail to the last known address of the user with a return receipt requested. The notice shall advise the user that:

(a) Within 60 days of the date the notice of petition filed was mailed, the Director shall accept the petition and map and prepare a final order approving the transfer

unless a protest is filed or the petition and map do not meet the requirements of OAR 690-21-140 and 690-21-160; and

(b) The user has the right to protest the petition, map and proposed transfer of water right by filing a protest with the Director within 60 days of the mailing date of the notice.

(2) On the same date that the notice to the user is mailed, the district shall also submit a copy of said notice to the Department.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Processing the Petition

690-21-200 (1) Upon receipt of a complete petition, the Department shall place a summary of the proposed change in the Department's weekly notice of applications received. The Department shall accept written public comments for a period of 30 days following the published date of the weekly notice. Comments pertaining to the potential for injury to other water rights or to the enlargement of the subject water right shall be considered by the Department in preparing the written review described in section (4) of this rule.

(2) Within 60 days of receiving a petition and map, and if the petitioner has met the requirements of OAR 690-21-090, the Director shall notify the petitioner if the map and petition are accepted. If the petition and map are not complete, the Director shall notify the petitioner and identify the deficiencies.

(3) The petitioner shall have at least 60 days to cure the deficiencies. The Director may extend the time allowed for good cause up to one year from the date of return of the petition. Failure to cure the deficiencies within the time allowed shall result in a denial of the petition.

(4) If the Director finds the petition and map to be acceptable and finds that no injury would result to existing water rights and no protest has been filed, within 60 days after the notice required under OAR 690-21-170 has been sent, the Department shall prepare a written review of the determination that the change would not injure existing rights or result in enlargement of the subject right and the Director shall prepare a final order approving the changes requested by the petition. The final order shall include:

(a) A summary of actions made by the petitioner, the users, the Department and the Commission as provided by these rules;

(b) The name of the district, the certificate numbers contained in the petition, the sources of water and the priority dates;

(c) The location of the diversions from the sources by quarter-quarter section, section, township and range;

(d) A listing of lands by quarter-quarter section, section, township and range from which the water right is transferred;

(e) A listing of the lands by quarter-quarter section, section, township and range to which the water right is transferred;

(f) Instructions to cancel the certificates listed in the petition;

(g) Instructions to issue new certificates of water right for any lands within the certificates petitioned that are not changed by the petition (remaining rights);

(h) A date setting a time limit to complete the construction of facilities necessary to beneficially apply the water to the new place of use requested by the petition;

(i) A finding that injury to existing water rights would not result and/or provisions required of the district or the user necessary for the prevention of enlargement of the water rights petitioned or for the prevention of injury to existing water rights;

(j) Instructions to issue a new certificate to confirm the changes upon receipt of satisfactory proof of completion.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Time Period to Process Petition Exempt from Forfeiture

690-21-250 If a district submits a petition under OAR 690-21-070 no later than the end of the calendar year of the fifth year of non-use under ORS 540.610(1), the forfeiture provision of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending completion of the processing of the district petition. The time required to process the petition, including any time required for hearings, appeals and completion of the authorized changes, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Extension of the Time Limits

690-21-300 (1) The Director may grant an extension of the time to complete construction of the water delivery system and apply the water, provided that:

(a) The district submits an application for such extension together with the statutory fee for extension of time; and

(b) The district demonstrates that diligence has been exercised and progress made to complete the works and apply the water as proposed within the time limits allowed.

(2) Each extension of time granted shall be limited to one year. No more than three extensions of the time limit shall be approved.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Completion Notice and Final Proof Map

690-21-350 (1) Within 60 days of the completion date allowed, the district shall submit, on forms provided by the Department, one of the following, whichever is applicable:

(a) A notice of complete beneficial use of the water; or

(b) A request for an extension of the time limits.

(2) The district shall certify on its completion notice that the use was completed as proposed by the district's petition and map.

(3) If the map and petition initially submitted do not accurately describe the actual location of the place and extent of beneficial use of the water right transferred, the district shall submit a new map and petition to the Director. The new map shall be certified by the district to accurately represent the use completed. The new map and petition shall be submitted within one year of the date the notice of complete application of water is submitted, or within one year of the date allowed to complete the appropriation, whichever occurs first. The petition and map describing the completed appropriation shall meet the requirements of OAR 690-21-140 and 690-21-160.

(4) Failure by a district to submit the required notice of complete beneficial use of water, including a new map and petition if required, or a properly completed application for extension of time shall result in the initiation of cancellation proceedings for that portion of the water right transferred.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

User's Notice of Change

690-21-400 If the map submitted with the original petition is amended due to a minor change in the location of the use or reduction of the acreage for the completed use and a user's water right is changed, the affected user shall be notified of such change by the district at the time the amended map is submitted. Such notice shall be sent to the user at their last known address by certified mail with return receipt requested. The user may file a protest with the Commission, within 60 days after the mailing date of said notice.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Field Verification of Map and Use

690-21-500 (1) Whenever the time to complete a district transfer has expired or after the district has submitted its completion notice, the Director may examine the facilities and use of the water. The examination may include a site inspection to verify the accuracy of the maps and addenda and to verify the application of water is to the beneficial use allowed by the final order. The Director may use statistical sampling methods in lieu of examining the entire acreage in the petition.

(2) The examination shall consider the following requirements:

- (a) Evidence of a method to control and deliver the water;
- (b) Evidence of cultivation of the lands described under the petition; and
- (c) Evidence of beneficial use of the water.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Proof of Completion of Change

690-21-600 (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 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 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 district and to the receiving landowner, together with notice that the district or the

landowner has a period of 60 days from the 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 district 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.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93

Request for Reconsideration

690-21-700 (1) A request for reconsideration of the content of a proposed certificate may be prepared by the district or user and submitted to the Department. The request 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 subsections (2)(a) through (g) of this rule, the request for reconsideration shall be completed in writing. The request shall set forth the changes to the proposed certificate or the map and shall include any facts which support the request. Maps, photographs, affidavit, 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 690-21-600(2) for a district or user to complete and submit a written request for reconsideration.

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

- (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 the request by a letter from Department staff to the requesting party.

(6) If field verification shows a change from the original proposed certificate, a new proposed certificate shall be prepared and sent as prescribed by OAR 690-21-600.

(7) A request for reconsideration 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 Chapter OAR 690-02.

Stat. Auth.: ORS 540.510, 540.545, 540.570, 540.572 - 540.578, 541.327, 541.329 & 545.468

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93