

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on March 11, 2004 by the
Date prior to or same as filing date.

Water Resources Commission
Agency and Division

690
Administrative Rules Chapter Number

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to become effective March 17, 2004 Rulemaking Notice was published in the December 1, 2003 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT:

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

690-380-8002
690-380-8004

AMEND: 690-380-2130, 690-380-8000, 690-380-8010

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Stat. Auth.: ORS 536.025 and 536.027

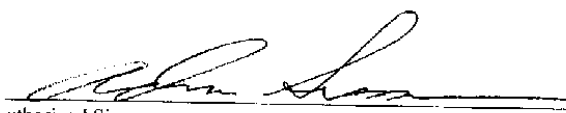
Other Authority:

Stats. Implemented: SB 820, 2003 Oregon Laws

RULE SUMMARY

The Water Resources Commission has created and amended rules relating to water right transfers (OAR Chapter 690, Division 380) which implement statutory changes from the 2003 legislative session (SB 820, 2003 Oregon Laws). Specifically, the rules allow greater flexibility to change a point of diversion from surface water to ground water wells in the Deschutes Ground Water Study Area.* The rules also establish the process for temporary changes in place of use and type of use from irrigation to municipal use in the Deschutes River Basin of all or a portion of a water right, for period not to exceed 25 years. The Department worked with a Rules Advisory Committee to develop these rules.

* Deschutes Ground Water Study Area as designated in OAR Chapter 690, Division 505, Exhibit 1.


Authorized Signer

3/17/04
Date

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

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**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 380
WATER RIGHT TRANSFERS**

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**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 380
WATER RIGHT TRANSFERS**

General Provisions

690-380-0010

Purpose

(1) The rules in OAR Chapter 690, Division 380 establish requirements and procedures that shall be used by the Department to evaluate an application to change a water use subject to transfer. The rules describe the requirements for permanently changing the use, place of use, point of diversion or point of appropriation of a water use subject to transfer and for temporarily changing the character of use of stored water and the place of use of a water use subject to transfer.

(2) A water user may make the following changes without filing a transfer application pursuant to ORS 540.520 and OAR 690-380-3000:

(a) The allocation of conserved water, however, an application for allocation of conserved water is required pursuant to ORS 537.455 to 537.500 and OAR Chapter 690, Division 18 and notice of a change in place of use of conserved water is required pursuant to 537.490;

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, 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) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, Division 21, however, a petition for the change must be submitted to the Department by the district;

(d) A change in point of diversion pursuant to ORS 540.510(5) and the diversion is provided with a proper fish screen, if requested by ODFW;

(e) A point of diversion change caused by government action pursuant to ORS 540.510(6) provided that the owner notifies the Department before changing the point of diversion;

(f) A point of appropriation or diversion change or a place of use change under a water use permit through a permit amendment for which an application has been filed and approved by the Department pursuant to ORS 537.211(4) to (9);

(g) Water right changes made for lands not described in a permit when the Department issues a certificate pursuant to ORS 537.252;

(h) An exchange of water that meets the criteria in ORS 540.533 and 540.537 if the exchange is approved pursuant to OAR 690-380-2260;

(i) A change in character of use from a specific industrial use to general industrial use provided notice is provided to the Department of the change and the change is consistent with the criteria in OAR 690-380-2340; and

(j) 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.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: WRD 16-1990, f & cert. ef. 8-23-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0001 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-0090

Applicability

The rules in OAR Chapter 690, Division 380 shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July 1, 2003 except as follows:

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or OAR 690-015-0060 as adopted by the Commission in June 1996.

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Issue a final order pursuant to OAR Chapter 690, Division 15 as adopted by the Commission in June 1996.

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Initiate cancellation proceedings under OAR Chapter 690, Division 17.

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR Chapter 690, Division 380 where a term is defined in more than one rule, the definition in this rule applies.

(1) "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.

(2) "Enlargement" means an expansion of a water right and includes, but is not limited to:
(a) Using a greater rate or duty of water per acre than currently allowed under a right;
(b) Increasing the acreage irrigated under a right;
(c) Failing to keep the original place of use from receiving water from the same source; or
(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "ODFW" means the Oregon Department of Fish and Wildlife.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(6) "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.

(7) "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.

(8) "Protest" means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

(9) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

(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 approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 7-1987, f& ef6-11-87; WRD 10-1988, f & cert. ef. 8-10-88; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0005 by WRD 4-2003, f & cert. ef. 5/1/2003

Permanent Transfers

690-380-2000

Types of Permanent Transfers

Permanent water right transfers include:

- (1) A change in the point of diversion or appropriation pursuant to OAR 690-380-2110, 690-380-2120 and 690-380-2130;
- (2) A change in the place of use pursuant to OAR 690-380-2200, 690-380-2250, and 690-380-2260;
- (3) A change in the character of use pursuant to OAR 690-380-2300; 690-380-2320, 690-380-2330, and 690-380-2340; and
- (4) A change involving municipal water rights pursuant to OAR 690-380-2410, 690-380-2420, and 690-380-2430.

Stat. Auth.: ORS 536.025 & ORS 536.027
 Stats. Implemented: ORS 540.510 - ORS 540.532
 Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2110

Change in Point of Diversion or Point of Appropriation

- (1) Except as provided in ORS 540.531 and OAR 690-380-2130, 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) 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 380 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 690-380-0100(11)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS chapter 540 and OAR Chapter 690, Division 380 transfer rules for water uses subject to transfer; and
 - (c) A request by a water authority for changes in the point of diversion for water right permits other than those covered under subsection (2)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & ORS 536.027
 Stats. Implemented: ORS 450.695 & ORS 540.510 - ORS 540.532
 Hist.: WRD 7-1987, f& ef6-11-87; WRD 16-1990, f & cert. ef. 8-23-90, Renumbered from 690-015-0015; WRD 19-1990, f & cert. ef. 12-14-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0010 by WRD 4-2003, f & cert. cf. 5/1/2003

690-380-2120

Change in Point of Diversion to Reflect Historical Use

- (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 the 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, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000.

(2) An individual requesting a change in the point of diversion under section (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 690-380-3100, 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) On receipt of an application for a change in point of diversion under section (1) of this rule, the Department shall:

(a) Provide the applicant a list of the affected water rights. 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;

(b) Provide the applicant a copy of a notice to be mailed or hand-delivered to the affected water right holders that:

(A) Describes the locations of the authorized and actual points of diversion;

(B) States that the recipient on the notice may provide comments to the Department on whether the requested change in point of diversion will cause injury; and

(C) Establishes a comment period of at least 30 days after the notice is mailed or hand-delivered to each of the affected water right holders;

(c) Consult with ODFW in the manner provided under OAR 690-380-5060; and

(d) Provide notice of the application in the weekly notice published by the Department.

(4) Upon receipt from the Department of the list of affected water rights and a copy of the notice, the individual shall determine the name and address of the current holder of each affected water right identified by the Department and shall mail or hand deliver the notice to all such holders. The individual shall provide to the Department written proof of service upon the water right holders. A transfer under section (1) of this rule shall not be approved by the Department before the Department receives the written proof of service and before the comment date specified in the notice, whichever is later.

(5) If, after considering any comments received, the Department finds the individual requesting a change in point of diversion to reflect historical use satisfies the requirements under

section (2) to (4) of this rule and that the change does not cause injury, the request shall be approved. The order approving the change in point of diversion shall establish a deadline for compliance with any conditions needed to prevent injury and, where required, to provide fish screening. 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.

(6) After the deadline for compliance with conditions of an approval established pursuant to section (5) of this rule, the use of water from the point of diversion shall be subject to continued compliance with the conditions.

(7) As used in this rule, "individual" means a natural person and does not include a government body, organization, business enterprise, or other such entity.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.532

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0240 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2130

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

(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 ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) **or** (3) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if [~~a transfer application demonstrates~~]:

(a) The criteria in OAR 690-380-5000 are met;

~~[(a)]~~ **(b) The new point of diversion appropriates ground water from an unconfined aquifer that is hydraulically connected to the authorized surface source; and**

~~[(b) The proposed change in point of diversion will not result in injury or;]~~

(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) to (c) of this rule.

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes basin ground water study area if:

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;

(b) The criteria in OAR 690-380-5000 are met;

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

~~[(3)]~~ (4) 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) to (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)]~~ (5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

~~[(5)]~~ (6) 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 ground water 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 section applies only to wells with rights existing at the time the transfer was approved.

~~[(6)]~~ (7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion

(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule~~*[However, if within five 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, including injury to rights obtained or transferred after the approval of the first transfer.

(9) The Department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury.

~~[(7)]~~ (10) For ~~[any transfer]~~ transfers allowed under ~~[sections (1) to (5) of]~~ this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6)~~[-]~~, **except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.**

~~[(8)]~~ (11) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) “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.

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

(d) “Deschutes basin ground water study area” means the Deschutes River Basin drainage area indicated in OAR 690, Division 505, Exhibit 1.

(12) The Department shall provide notice and review of transfer applications under section 3 of this rule pursuant to OAR 690-380-4000 through 690-380-4200

(13) Opportunities to protest a transfer under section 3 of this rule shall be pursuant to OAR 690-380-4030.

(14) The Department shall issue final orders on transfer applications under section 3 of this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.520, ORS 540.530 & ORS 540.531

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0210 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD 3-2004, f & cert. ef. 3-17-04

690-380-2200

Changes in Place of Use

No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer or pursuant to OAR 690-380-2260.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2250

Transfer of Supplemental Water Right or Permit

(1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-380-3000, 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 water 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 690-380-3000.

(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 land owner, as identified under OAR 690-380-3000(13), 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 injury or enlargement.

(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 land owner, as identified under OAR 690-380-3000(13), 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.

(5) The order issued by the Department approving the transfer of a primary water right shall also cancel any appurtenant supplemental water right or permit not included in the transfer if the applicant does not modify or withdraw the application pursuant to section (2) of this rule or withdraw the application pursuant to section (4) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.530

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0048 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2260

Exchanges of Water

(1) A person proposing to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount pursuant to ORS 540.533 to 540.543 shall file an exchange application with the Department along with the fee required under ORS 536.050.

(2) After receipt of a complete exchange application, the Department shall give at least 30 days public notice of the application:

(a) By publication in the Department's weekly notice; and

(b) By publication in a newspaper having a general circulation in the area in which the water uses are located at least once each week for three successive weeks.

(3) Any person may submit comments by the date identified in the notices prescribed by subsections (2)(a) and (2)(b) of this rule.

(4) After the comment period prescribed in section (2) of this rule, the Director shall:

(a) Issue a proposed order approving or denying the application in compliance with OAR 540.537 taking into account comments received under section (3) of this rule; and

(b) Notify the applicant and any person who submitted comments under section (3) of this rule of issuance of the proposed order.

(5) If the applicant or a person who submitted comments under section (3) of this rule, requests an opportunity for a hearing, the Department shall contact the applicant and the commentors to determine if the issues raised can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission shall hold a public hearing on the application.

(6) After the public hearing, the Commission may:

(a) Confirm the Director's decision and authorize issuance of a final order;

(b) Modify the Director's decision and authorize issuance of a final order consistent with the modifications; or

(c) Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding pursuant to the applicable provisions of ORS 183.310 to 183.550.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2300

Changes in Character of Use

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and ORS 540.520(8) and (9) or as approved by the Department through a water right transfer or pursuant to OAR 690-380-2340.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.532
Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2320

Transfer from Supplemental Use to Primary Use

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

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.530
Hist.: WRD 7-1987, f& ef6-11-87; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0030 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2330

Substitution of Supplemental Ground Water Right for Primary Surface Water Right

(1) As provided in ORS 540.524, the holder of both a primary surface water right certificate and a supplemental ground water right certificate or permit may substitute the use of the supplemental water right for the primary water right. This rule does not authorize a change in place of use, character of use, point of diversion or point of appropriation.

(2) A substitution may not be made under section (1) of this rule if the use of the supplemental ground water right results in an enlargement of the primary surface water right.

(3) An application shall be submitted on a form provided by the Department with the appropriate fee as established under ORS 536.050. The Department may request additional information if necessary to assist with the injury evaluation.

(4) Upon receiving an application, the Department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520(5) to (7) and OAR 690-380-4000 to 690-380-4200.

(5) The Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury, the Director shall prohibit or condition the use to avoid or mitigate the injury. The Director shall issue an order approving or denying the substitution within 90 days after the Department receives an application under section (1) of this rule.

(6) For the purpose of this rule, a substituted primary surface water right shall be treated as a supplemental water right and a substituted supplemental ground water right shall be treated as a primary water right.

(7) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this rule may be terminated upon a request by the water right holder or by an order of the Director if the Director determines that the use of the ground water as the primary water right causes injury. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2340

Specific-to-General Industrial Water Use Change

A water right transfer is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

(1) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

(2) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

(3) The person who makes the change in water use provides the following information to the Department:

(a) The name and mailing address of the person using water under the water right;

(b) The water right certificate number;

(c) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued;

(d) The quantity of water diverted to satisfy the authorized specific use under the original water right; and

(e) A description of the general industrial use to be made of the water after the change.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2410

Municipal Water Rights

(1) Water used under a permit or certificate issued to a municipality, under rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 may be applied to beneficial use on:

(a) Any lands acquired by the municipality through annexation, merger, consolidation, or by the formation of a water supply authority in accordance with ORS 540.510(3)(a)(A) so long as the rate and duty allowed under the right is not exceeded;

(b) Subject to the limitations in section (3), lands other than those described in subsection (1)(a) of this rule in accordance with ORS 540.510(3)(a)(B) so long as the use continues to be for municipal purposes and the rate and duty allowed under the right is not exceeded;

(c) Any lands for which the use is authorized by the Department of Environmental Quality or Department of Agriculture under ORS 468B.050 or 468B.053 and for which a reclaimed water registration has been filed under ORS 537.132.

(2) A municipality may seek authorization to use water for municipal purposes on lands other than those described in section (1) of this rule under a water use subject to transfer by submitting a water right transfer application to change the place of use or character of use under OAR 690-380-3000.

(3) The Director may order termination of the use of water under subsection (1)(b) of this rule or, in consultation with the municipal water supplier, may impose other restrictions necessary to eliminate interference with or impairment of prior vested water rights resulting from the use of water under subsection (1)(b) of this rule.

(4) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR Chapter 690, Division 300.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510

Hist.: WRD 19-1990, f & cert. ef. 12-14-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0140 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2420

Notice of Merger, Consolidation or Formation of a Water Authority

(1) Municipal water supply entities that merge, consolidate or form a water authority may notify the Department of such action and request issuance of superseding certificates pursuant to sections (2) and (3) of this rule. The notice and request for issuance of superseding certificates 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 authority and the county or other authority granted coordinative functions under ORS chapter 197 showing consistency with local comprehensive plans;

(d) A listing of the certificated 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 690-380-3100, 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 authority authorized to conduct business; and

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

(2) After verifying the information submitted in accordance with subsections (1)(a) to (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) to (g) of this rule, the Director shall issue certificates to supercede the 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 authority.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f & cert. ef. 12-14-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0150 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-2430

Acquisition of Water Rights by a Water Authority

(1) In addition to using the process described in OAR 690-380-2420, a water authority may acquire 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

(2) A water authority that acquires a water right may:

(a) Exercise the right subject to the limitations in section (4) of this rule if the right is for municipal purposes;

(b) Submit a request for issuance of a superceding certificate that includes the information described in section (3) of this rule if the right is a certificated right for municipal use;

(c) Submit a water right transfer application to change the character of use if the right is subject to transfer; or

(d) Submit a water right transfer application to change the point of diversion or point of appropriation if the right is a permit or a right subject to transfer.

(3) A request for issuance of a superceding certificate submitted pursuant to subsection (2)(b) of this rule shall be in writing and include:

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

(b) The certificate number of the water right acquired by the water authority; and

(c) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the existing points of diversion or points of appropriation for the right.

(4) The Director may restrict the use of water by a water authority to the lands described by previous water use authorizations or, in consultation with the water authority, may impose other restrictions on the use as needed to eliminate the interference with or impairment of prior vested water rights.

(5) As used in this rule, "municipal purposes" includes municipal use, quasi-municipal use, group domestic, domestic use, and human consumption as defined in OAR Chapter 690, Division 300.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 19-1990, f & cert. ef. 12-14-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0130 by WRD 4-2003, f & cert. ef. 5/1/2003

Transfer Applications

690-380-3000

Application for Transfer

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 description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.
- (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 right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:
 - (a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:
 - (A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;
 - (B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or
 - (C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or
 - (b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).
- (13) A lot book report for the land to which the water right is appurtenant prepared by a title company. If the applicant is not the land owner as shown by the lot book report, the applicant shall provide a notarized and signed statement from the land owner authorizing the change. Notwithstanding the provisions of this section, any public agency that is acquiring property by condemnation and that has filed a condemnation case to acquire the property and deposited the funds in court required by ORS 35.265 to obtain the right to possess the property is a proper applicant with standing to seek transfer of any water right appurtenant to the property. Such a public agency need not obtain the consent or authorization for the change from any other person or entity.
- (14) If any lien holders are identified in the lot book report described in section (13) of this rule, a copy of a written notification of the proposed transfer provided by the applicant to each of the lien holders.
- (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 690-380-3100 with an original stamp and signature of the certified water rights examiner or a waiver of mapping requirements approved pursuant to OAR 690-380-3410.

(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) That involve changes in place of use only;

(c) That 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) That 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 the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected water right is located or that serves the right and any district in which the affected water right would be located or that would serve the right after the proposed transfer.

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

(23) If a portion of the fee is waived pursuant to OAR 690-380-3400, documentation showing that the proposed transfer qualifies for the fee waiver.

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

(25) The appropriate fee as required under ORS 536.050, less any portion waived pursuant to OAR 690-380-3400.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 to ORS 540.531

Hist.: WRD 7-1987, f& ef6-11-87; 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 5-1996, f & cert. ef. 7-11-96;

WRD 1-2000(Temp), f5-16-00, certef5-16-00 thru 11-10-00; Administrative correction 6-21-01; Renumbered from 690-015-0060 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-3050

Additional Application Requirements

(1) For the purpose of clarifying the water right record, the Department shall require the applicant to provide the additional information in section (2) of this rule if:

(a) The proposed transfer involves rights for lands under more than one ownership and not all of the owners are applicants; or

(b) The final proof survey maps on file with the Department for any quarter-quarter section in which lands involved in the proposed transfer are located do not adequately describe the location of the place of use or the associated priority dates of the associated water rights.

(2) The supplemental information to be provided by the applicant shall include:

(a) A list of the name and address of each landowner whose lands the Department concludes may be included in the portion of the water right proposed for transfer and written proof of service of a copy of the application on those landowners and a map delineating the location, acreage, priority dates, and ownership of the subject water right; and

(b) Other information sufficient to establish that no portion of the right to be transferred is held by persons other than those proposing the transfer and, for rights with multiple priority dates, the priority dates for the right to be transferred are consistent with the decree or other document establishing the right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: WRD 4-2003, f & cert. ef. 5/1/2003

690-380-3100

Map Requirements

(1) A map prepared by a certified water right examiner shall be included with a transfer application as required under OAR 690-380-3000. The map shall meet the following criteria:

(a) The map shall be of permanent quality and shall be printed with dark ink on a white or clear medium that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(b) The preferred map size is 8 ½" x 11" (letter) at the scale of the final proof or adjudication map for the existing right of record, with supplemental detail maps as needed. If a larger map is required to provide sufficient detail, a size of 8 ½" x 14" (legal) or 11" x 17" (oversized) may be used.

(c) Notwithstanding subsection (1)(b) of this rule, a map size of up to 30" x 30" may be used if the Department grants advance written or e-mail approval and five copies of the application map are submitted.

(d) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the final proof or adjudication map for the existing right of record;

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(e) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

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

(g) The locations of points of diversion and places of use shall be described by bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42° 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map(s) shall include the following information:

(a) A north arrow, the scale, a clear legend, the certified water rights examiner's stamp and signature;

(b) The location of each existing and proposed point of diversion or point of appropriation;