

(c) For a change in point of diversion or appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of diversion or appropriation. If the proposed point of diversion or appropriation is intended to serve the entire right of record, a copy of the existing final proof survey map for the right of record may be submitted to satisfy this requirement. If the proposed point of diversion or appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of certificated acres to be served by the new point of diversion or appropriation shall be listed;

(d) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions;

(e) The location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The applicant shall have the burden of proving the proposed transfer involves less than 67 percent of the entire place of use of the water use subject to transfer. However, the Department may require a greater portion of the use subject to transfer or the entire use subject to transfer be mapped, if necessary to make a determination of potential injury;

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

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

(h) Notwithstanding the requirements of subsection (1)(f), the general location of physical features sufficient to assist in defining the location of the place of use of the water use subject to transfer. These features may include, but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate; and

(i) The location of property lines for the property involved in the transfer, in the vicinity of the transfer. For transfer of municipal, quasi-municipal, and other similar rights, the property lines need not be shown, however, the service area boundaries shall be indicated.

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 3-1988, f2-26-88, certef2-28-88; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0070 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-3200

District May Submit Application for Water Users

(1) A district, authorized to act on behalf of its members, may apply for a water right transfer under the provisions of ORS 540.520. If the proposed change is for other than a change in point of diversion, the application shall contain a notarized statement from the owner of the right authorizing the proposed change.

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR Chapter 690, Division 21.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.510 - ORS 540.520
Hist.: WRD 7-1987, f& ef6-11-87; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0020 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-3220

Separate Application Required for Each Water Right

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

- (1) A change in point or points of diversion or points of appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships.
- (2) A change in use or place of use of all rights on a single parcel from all sources.
- (3) A change in use or place of use from as many as four land owners may be allowed within a district. Such a change must be for the same water right and not total more than 10 acres transferred.
- (4) Transfers between two parcels using water from the same source.

Stat. Auth.: ORS 536.025 & ORS 536.027
Stats. Implemented: ORS 540.520
Hist.: WRD 7-1987, f& ef6-11-87; WRD 10-1988, f & cert. ef. 8-10-89; WRD 16-1990, f & cert. ef. 8-23-90, Renumbered from 690-015-0035; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0025 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-3400

Waiver of Fees

The Director shall waive \$100 or 50 percent of the application fee, whichever is greater, for that portion of a change to a water right permit under ORS 537.211 (4) or a water right subject to transfer under ORS 540.520 or 540.523, that is:

- (1) To establish an instream water right pursuant to ORS 537.348;
- (2) Is necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or
- (3) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

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

690-380-3410

Waiver of Mapping Requirements

(1) The Director may waive or assist the applicant in satisfying the requirements of OAR 690-380-3100 for a change to a water right subject to transfer under ORS 540.520 or 540.523, if the change is:

- (a) To establish an instream water right pursuant to ORS 537.348;

(b) Necessary to complete a project funded by the Oregon Watershed Enhancement Board under ORS 541.375; or

(c) Determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat

(2) A request to waive or assist the applicant in satisfying the mapping requirements of OAR 690-380-3100 shall be submitted on a form provided by the Department. The form must be completed by the applicant and signed by the appropriate field staff prior to submittal of the transfer application.

(3) A waiver of mapping requirements under this rule shall only be approved if:

(a) The transfer would establish an instream water right as described in subsection (1)(a) of this rule:

(A) If the entirety of the right is being transferred to an instream water right and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream; or

(B) A map meeting the requirements of OAR 690-380-3100 is available showing the lands not included in the transfer and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream.

(b) At the determination of the Director, other circumstances are present that make an application map unnecessary.

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

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

Application Notice and Review

690-380-4000

Request for Comments

(1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(11).

(2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:

(a) In the weekly notice published by the Department; and

(b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

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

690-380-4010

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or rejected taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be rejected, the preliminary determination shall:

(a) Describe the basis for the rejection; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(6) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the preliminary determination as appropriate.

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

690-380-4020

Notice of Preliminary Determination

(1) After the time for the applicant to respond to the Department's draft preliminary determination, the Department shall give notice of the transfer application and preliminary determination:

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

(b) Except as provided in section (4) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing notice to each person who submitted comments under OAR 690-380-4000(3).

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

(a) The type of transfer proposed and any amendments to the application that were made subsequent to the notice required OAR 690-380-4000;

(b) The locations of the applicant's existing and proposed water uses, the amount of water allowed under the right to be transferred, and the authorized source for the right;

(c) The application file number;

(d) The applicant's name and address;

(e) A statement that any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of the notices prescribed by subsections (1)(a) and (1)(b) of this rule, whichever is **later**; [~~later~~];

(f) A summary of the Department's preliminary determination; and

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

(3) As provided in ORS 540.520(4), the cost of publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)[~~(b)~~] **(b)** and providing the Department with an affidavit of publication or by paying the costs of the publication in advance to the Department.

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

(a) A change in place of use;

(b) A change in point of diversion to reflect historical use pursuant to ORS 540.532 and OAR 690-380-2120; or

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

(5) The Department shall not take action on an application prior to the end of the protest period described in this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.520 & ORS 540.532

Hist.: WRD 7-1987, f& ef6-11-87; WRD 12-1990, f & cert. ef. 8-8-90; WRD 5-1991, f & cert. ef. 4-26-91; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0080 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-4030

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the mailing of the Department's weekly notice, whichever is later:

(a) Any person may file, jointly or severally, with the Department, a protest or standing statement; and

(b) If the Department's preliminary determination is that a proposed change in point of diversion would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050.

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

(3) Each person submitting a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue precludes consideration of the issue during the hearing.

Stat. Auth.: ORS 536.025 & ORS 536.027

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

Hist.: WRD 7-1987, f& ef6-11-87; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0085 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-4200

Hearings

(1) If a protest is filed under OAR 690-380-4030, the Department shall hold a hearing on the matter.

(2) Notice and conduct of the hearing shall:

(a) Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties and persons who filed a protest stipulate otherwise; and

(b) If a protest has asserted that the water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

(3) If after hearing the Department issues a proposed final order finding that a change in point of diversion will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding OAR 690-002-0170, if the applicant files a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of OAR 690-380-5030 to 690-380-5050.

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

Final Orders

690-380-5000

Approval of Transfers

(1) A transfer application shall be approved if the Department determines that:

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(11) and, for a right described under OAR 690-380-0100(11)(d), the proof of completion has been approved under OAR 690-380-6040;

(b) The portion of the water right to be transferred is not cancelled pursuant to ORS 540.610;

(c) The proposed transfer would not result in enlargement as defined in OAR 690-380-0100(2);

(d) Except as provided in OAR 690-380-5030, the proposed transfer would not result in injury as defined in OAR 690-380-0100(3); and

(e) Any other requirements for water right transfers are met.

(2) The Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 if no protests or notifications of intent are received under OAR 690-380-4030(1).

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 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0050 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-5030

Approval of Injurious Transfers

The Department may approve transfer of a point of diversion that would injure another water right if:

(1) For any water right other than an instream water right, the applicant files an affidavit from every holder of the injured water rights consenting to the change that conforms to OAR 690-380-5040, and

(2) For any instream water right held by the Department pursuant to ORS 537.336 or 537.346, the Department consents to the change after complying with the provisions of OAR 690-380-5050.

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

690-380-5040

Affidavits of Consent

An affidavit consenting to a proposed change in point of diversion under OAR 690-380-5030(1) shall be notarized and shall include statements that the affiant:

(1) Is the holder of a water right that the Department has determined would be injured;

(2) Has reviewed the preliminary determination or proposed order of the Department concluding the transfer would result in injury and recognizes the nature of the injury;

(3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and

(4) Consents to the injury resulting from the proposed change in point of diversion.

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

690-380-5050

Consent to Injury of Instream Water Rights

(1) If the applicant notifies the Department that the applicant intends to pursue consent to injury to an instream water right, the Department shall seek a recommendation from the agency that requested the instream water right.

(2) In requesting a recommendation under section (1) of this rule, the Department shall provide to the appropriate agency a copy of the preliminary determination issued under OAR

690-380-4010 or proposed order issued after hearing and, to facilitate the analysis of cumulative impacts, identify any previously approved transfers injuring the same instream water right as the proposed transfer.

(3) If the agency that requested the instream water right recommends that the Department consent to injury, the agency's recommendation shall be in writing and include:

(a) A description of the extent of the injury to the instream water right;

(b) A description of the effect of the injury on the resource;

(c) An evaluation of the net benefit that will occur as a result of the proposed change that includes an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and

(d) Any proposed conditions necessary to ensure that the proposed change will be consistent with the recommendation.

(4) On receipt of a recommendation to consent to injury that complies with section (3) of this rule, the Department shall provide notice of the opportunity to comment on the recommendation:

(a) To the applicant, any protestants or persons who filed comments under OAR 690-380-4030, and affected Indian Tribes; and

(b) By publication in the Department's weekly notice.

(5) Within 30 days after the date of the notice required in section (4) of this rule, any person may submit written comments on the recommendation or a written request for a public meeting to review the recommendation.

(6) The Department shall provide copies of any comments submitted in response to the notice in section (4) of this rule to the recommending agency.

(7) Within 90 days of receipt of a written request for a meeting on the recommendation, the Department and the agency providing the recommendation shall hold a joint public meeting to review the recommendation and to accept public comments.

(8) If no comments or requests are received by the Department in response to the notice provided under section (4) of this rule or if, after consideration of any written comments or the discussions during the meeting described in section (6) of this rule, the recommending agency notifies the Department that it will not withdraw its recommendation to consent to injury, the Department shall issue an order approving the transfer and consenting to the injury to the instream water right. The order shall include:

(a) Findings on the extent of the injury to the instream water right and the effect on the resource;

(b) Findings on the net benefit that will occur as a result of the change that reflect an analysis of the cumulative impact of any previously approved changes that injured the instream water right; and

(c) Any conditions necessary to ensure that the change will be consistent with the findings and will result in a continued net benefit to the resource consistent with the purposes of the instream water 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

690-380-5060

Fish Screening and By-Pass Devices

(1) Pursuant to ORS 540.525, when an application for a change in point of diversion is received, the Department shall consult with the ODFW to determine whether a fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(2) The Department's consultation with ODFW shall determine whether the diversion is:

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.525 & ORS 540.532

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0073 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-5100

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating and taking action on transfer applications except as specified in OAR 690-005-0025 and 690-380-3000(19).

(2) In the event of a land use dispute, as defined in OAR 690-005-0015 (Definitions), the Department shall follow procedures provided in OAR 690-005-0040 (Resolution of Land Use Dispute).

(3) The Director may presume that the transfer would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-380-4000.

Stat. Auth.: ORS 197, ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 to ORS 540.531

Hist.: WRD 12-1990, f & cert. ef. 8-8-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0057 by WRD 4-2003, f & cert. ef. 5/1/2003

Miscellaneous Provisions

690-380-5110

Original Right Terminated

Approval of a change in use or place of use terminates the right to use water for the existing use or place of use under the original water right as described in the transfer application form required under OAR 690-380-3000.

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 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0040 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-5120

Multiple Primary Water Rights on the Same Lands

If the water right records show two or more rights as primary on the same land, the right with the oldest priority date shall be considered the primary water right unless the applicant designates a right, other than the right with the oldest priority date, as the primary water right. All other water rights shall be diminished to supplemental water rights.

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 16-1990, f & cert. ef. 8-23-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0045 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-5130

Assignment or Change of Ownership

(1) When a change of ownership or interest occurs in lands described by a transfer application or by an order approving a transfer, the record holder may request the director to record an assignment to the new owner.

(2) If the record holder is not available, the new owner may furnish proof of ownership to change the Department's records for that transfer. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include but not be limited to one or more of the following documents:

- (a) A deed to the land;
- (b) A land sales contract;
- (c) Documentation of survivorship of property held jointly; or
- (d) A court order or decree.

(3) The person making the assignment shall identify the current owner of all property involved in the transfer at the time of assignment. The person making the assignment shall furnish proof that notice of the assignment has been given or attempted for each identified owner not party to the assignment.

(4) When approval of a transfer for a change in place of use moves the water use subject to transfer to lands owned by another owner, the order shall contain the name and address of the receiving landowner and the Department's records shall be changed to show the receiving landowner as the transfer holder. It shall be the responsibility of the receiving landowner to complete the transfer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 6-1990, f & cert. ef. 8-23-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0075 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-5140

Time for Completion

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

(2) Extensions of time to complete a transfer may be granted pursuant to OAR 690-380-6020.

(3) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1)The time for completion of the change requested in a transfer application is one full year plus the time until the next October 1The time for completion of the change of a municipal or quasi-municipal right is five years plus the time until the next October 1A longer time for completion may be allowed if the applicant can justify the need for a longer period of time.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0087 by WRD 4-2003, f & cert. ef. 5/1/2003

Perfection of Transferred Rights

690-380-6010

Failure to Complete a Transfer as Grounds for Cancellation

(1) Upon approval of a change in use or place of use, the water use subject to transfer is considered inchoate (incomplete) until the authorized change has been completed to the satisfaction of the director.

(2) Any part of a transferred water use that is not applied to beneficial use under the terms of the transfer order for change in use or place of use, or within any extension of time allowed for completion, is lost.

(3) Non-completion of a change in point of diversion or point of appropriation does not forfeit the water use subject to transfer. However, upon expiration of the time allowed for completion, the water use shall again become subject to forfeiture pursuant to the provisions of ORS 540.610.

(4) For a change in point of diversion or point of appropriation, the claim of beneficial use shall identify the lands served by the new point of diversion using:

(a) The existing final proof survey map for the right of record; or

(b) Another map prepared in accordance with OAR Chapter 690, Division 14.

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f& ef6-11-87; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0090 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-6020

Extension of Time

(1) An order authorizing a water right transfer sets a time limit in which to beneficially use the water. If the transfer is not completed within the time limit, the owner may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence in the attempt to complete the project within the initial time allowed.

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

(3) Extensions are granted for one year, from October 1 to October 1 of each year. An extension for up to five years may be granted for transfers involving municipal or quasi-municipal use. Extensions may be granted for longer time if the applicant can justify the need for a longer period of time by submission of pertinent evidence.

(4) In reviewing an application for an extension of time, the director shall determine whether reasonable diligence was made by the applicant to complete the project within the time period established under OAR 690-380-5140. Reasonable diligence shall include, but is not limited to:

- (a) The purchase and installation of water delivery system;
- (b) The expansion or restructuring of the existing delivery system;
- (c) Actual use of a portion of the water according to the terms of the transfer order; or
- (d) For municipal, quasi-municipal and group domestic uses only, the continued increase in population and number of service connections.

(5) Applications for succeeding extensions shall show reasonable diligence within the time allowed by the previous extension and shall be subject to the Department review based on section (4) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

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 690-015-0100 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-6030

Proof Of Use; Noncompliance

(1) Upon completion of a transfer, the owner of the transfer shall submit a notice of use of water to the Department.

(2) For transfers requested prior to July 10, 1987, when the notice is received, or at such time given in the order approving the transfer for complete application of water, if the owner has failed to submit such notice, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.

(3) Transfers requested on or after July 10, 1987 shall have a Claim of Beneficial Use report and map prepared by a certified water right examiner in accordance with OAR Chapter 690, Division 14.

(4) If any property described in the order approving the transfer application is not included in the request for a water right certificate, the owners of the transfer shall provide to the Department the name and address of the landowner of that property.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 7-1987, f& ef6-11-87; WRD 3-1988, f2-26-88, certef2-28-88; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0110 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-6040

Proof of Completion of Change

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

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

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

(2) If the Department determines that proof has been made to an extent different or less than that approved, a proposed certificate of water right shall be prepared. The proposed certificate shall describe the right determined completed under the provisions of the transfer approval order. The proposed certificate shall be mailed first class to the transferee, together with notice that the transferee or the landowner has a period of 60 days from date of mailing to request the Department reconsider the contents of the proposed certificate of water right. If no request for reconsideration is received within the 60-day period, the director shall issue a water right certificate to the transferee or landowner pursuant to ORS 540.530(2) and the transfer approval order.

(3) If the Department determines that proof has been made to the full extent granted by the approval order, a certificate may be issued without the necessity of a proposed certificate.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f & cert. ef. 8-23-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0120 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-6050

Waiver of Proof of Completion

(1) The Director may waive any of the proof of completion requirements of OAR 690-380-6040, if:

(a) The waiver of the mapping requirements has been previously approved under OAR 690-380-3410; or

(b) The Director determines that other circumstances are present that make any of the requirements for proof of completion unnecessary and the transfer complies with the requirements of OAR 690-380-3410 for a waiver of mapping requirements.

(2) The Department may assist the applicant in satisfying any of the proof of completion requirements of OAR 690-380-6040 if the transfer complies with the requirements of OAR 690-380-3410. The assistance provided by the Department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

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

690-380-6060

Petition for Reconsideration

(1) A petition for reconsideration of the content of a proposed certificate may be submitted in writing to the Department by the transferee or landowner. The petition shall describe the disagreement with the proposed certificate.

(2) The petition shall set forth the changes to the proposed certificate or the final proof map and shall include any facts which support the request. Maps, photographs, affidavits, receipts or other such evidence may be included to support the request.

(3) The director may allow reasonable time beyond the time set under OAR 690-380-6040(2) for a transferee or landowner to complete and submit a written petition for reconsideration.

(4) Upon receipt of a petition for reconsideration, the director shall:

(a) Approve the petition without verification and issue a certificate with the changes included;

(b) Schedule field verification of the requested changes and pursuant thereto approve or deny the request; or

(c) Deny it by a letter to the requesting person.

(5) If field verification is scheduled, a new proposed certificate may be prepared and sent as prescribed by OAR 690-380-6040.

(6) A petition for reconsideration of a new proposed certificate issued under section (5) of this rule shall be filed in accordance with sections (1) to (3) of this rule. Such petitions shall be approved or denied by an order of the director. The order shall provide for either issuance of a certificate of water right in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under OAR Chapter 690, Division 2.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: WRD 16-1990, f & cert. ef. 8-23-90; WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0125 by WRD 4-2003, f & cert. ef. 5/1/2003

Temporary Transfers

690-380-8000

Temporary Transfers [*Application*]

~~[(1) As provided in ORS 540.523, a]~~ Any person who holds a water use subject to transfer may request that the Department approve a temporary transfer of:

(1) ~~[p]Place of use or character of use identified in a right to store water for a period not to exceed five years[-] or~~

(2) In the Deschutes River Basin, place of use, type of use, and point of diversion if necessary to convey water to the new temporary place of use, of all or a portion of a water right, for a period not to exceed 25 years.

~~[(2) The application for a temporary transfer shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:~~

- ~~(a) The information required in OAR 690-380-3000;~~
- ~~(b) The length of time for which the change is being requested;~~
- ~~(c) The appropriate fee for the transfer of the place of use pursuant to ORS 536.050; and~~
- ~~(d) A map prepared pursuant to the requirements of OAR 690-380-3010, except it need not be prepared by a certified water right examiner.~~

~~(3) Notwithstanding the notice and time requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right. In issuing the order, the Department may include any conditions necessary to protect other water rights.~~

~~(4) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.~~

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

~~(6) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury.~~

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

~~(8) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.]~~

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 540.520 & ORS 540.523

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0300 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD 3-2004, f & cert. ef. 3-17-04

690-380-8002

Temporary Transfer Applications under OAR 690-380-8000(1)

(1) Applications for a temporary transfer under OAR 690-380-8000(1) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;**
- (b) The length of time for which the change is being requested;**
- (c) The appropriate fee pursuant to ORS 536.050; and**
- (d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.**

(2) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department

determines that the temporary transfer will not injure any existing water rightIn issuing the order, the Department may include any conditions necessary to protect other water rights.

(3) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

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

(5) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury.

(6) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

Stat. Auth.:

Stats. Implemented:

Hist.: WRD 3-2004, f & cert. ef 3-17-04

690-380-8004

Temporary Transfer Applications under OAR 690-380-8000(2)

(1) Applications for a temporary transfer under OAR 690-380-8000(2) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

(a) The information required in OAR 690-380-3000;

(b) The length of time for which the change is being requested;

(c) The appropriate fee for the transfer pursuant to ORS 536.050;

(d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner;

(e) Where applicable, a description of the use of any portion of the water right not proposed to be transferred under OAR 690-380-8000(2);

(f) Evidence that an agreement exists between the landowner, district, and receiving municipality if the water right to be temporarily transferred is served by a district.

(2) Any portion of the use of a water right that is not temporarily transferred under OAR 690-380-8000(2) may be used on the designated part of the lands described in the original water right permit, certificate, or adjudication under ORS Chapter 539 as evidenced by a court decree, if the use:

(a) Does not encompass more than the remaining portion of the lands,

(b) Does not enlarge the water right or increase the rate, duty, total acreage benefited or season of use, and

(c) Is within the same land ownership as the water right proposed for transfer.

(3) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

(4) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if:

(a) The proposed temporary transfer will not result in injury to any existing water right or enlargement of the water right;

(b) The person holds a water right subject to transfer;

(c) The type of use specified in the original water use subject to transfer is irrigation;

(d) The person to whom the right is transferred is:

(A) Located with the Deschutes River Basin; and

(B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS Chapter 450, a water supplier as defined in ORS 448.115 or a water authority formed under ORS Chapter 450;

(e) The proposed use is municipal use.

(5) In issuing the order, the Department may:

(a) Include any conditions necessary to protect existing water rights, including any reporting, measurement, and mapping requirements to ensure that use of any remaining portion of the right is consistent with the transfer; and

(b) Prescribe the duration of the temporary transfer period, up to 25 years.

(6) For temporary transfers proposing to use a remaining portion of the right under section 2 of this rule, the Department shall require the installation of a measuring device, monthly recording of water use, and annual reporting of water use.

(7) All temporary transfers allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

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

(9) The Department may revoke a prior approval of the temporary transfer at any time if:

(a) The Department finds that the transfer is causing injury or results in enlargement; or

(b) Reporting, mapping, or measurement conditions associated with use of any remaining portion of the right under section 2 of this rule are not met.

(10) Prior to revoking a temporary transfer under this rule for failing to comply with any of the conditions of the transfer, the Department may seek compliance with the terms of the temporary transfer.

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

(12) Opportunities to protest a temporary transfer under this rule shall be pursuant to OAR 690-380-4030.

(13) The Department shall issue final orders on temporary transfer applications under this rule pursuant to OAR 690-380-5000.

Stat. Auth.:

Stats. Implemented:

Hist.: WRD 3-2004, f & cert. ef 3-17-04

690-380-8010

Seasonal Use

Except as provided in OAR 690-380-8004, the [The] lands from which the water use subject to transfer is removed shall receive no water, under the appurtenant rights, during the period of a temporary transfer. In the case of a temporary transfer approved during the season for which there is a specified season of use, such as the irrigation season, the lands from which the

water use subject to transfer is being removed shall have received no water, under the appurtenant rights, during that season, including water used prior to the approval of the temporary transfer. If the lands have received water, under the appurtenant rights, during that season, the temporary transfer may not take effect until the following season.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0310 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD 3-2004, f & cert. ef. 3-17-04

690-380-8020

Supplemental Water Rights

(1) When an application for a temporary transfer of the place of use is filed with the Department, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. The applicant shall also indicate whether the supplemental water right or permit is intended to be temporarily transferred with the primary water right or to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

(2) If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant shall include the information required under OAR 690-380-3000 and 690-380-8000 for the supplemental water right or permit.

(3) If an existing supplemental water right or permit is not included in the temporary transfer application, the Department shall notify the applicant and the land owner, as identified under OAR 690-380-3000(13), that the Department will cancel the supplemental water right or permit before issuing the order approving the temporary transfer of the primary water right.

(4) Notice by the Department shall be sent by certified mail, return receipt requested. The notice shall contain the following:

(a) A description of the supplemental water right or permit and the land to which it is appurtenant;

(b) A statement that the applicant and land owner, as identified under OAR 690-380-3000(13), has 30 days, from the date of the notice, to either modify the application to include the supplemental water right, or withdraw the application.

(c) A statement that, unless the applicant complies with subsection (4)(b) of this rule, the supplemental water right or permit shall be canceled before the Department issues the order approving the application for the temporary transfer of the primary water right.

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

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

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

(8) If the Department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the Department shall notify the applicant of the Department's intent not to allow the temporary transfer of the supplemental water right or permit before the Department issues the order approving the temporary transfer of the primary water right. The notice shall inform the applicant that the

supplemental water right or permit shall remain appurtenant to the land described in the application, but may not be exercised until the primary water right reverts to the original water use.

(9) If the primary water right does not revert soon enough to allow the use of water under the supplemental water right within five years, the supplemental water right shall become subject to cancellation for nonuse under ORS 540.610.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.523

Hist.: WRD 5-1996, f & cert. ef. 7-11-96; Renumbered from 690-015-0320 by WRD 4-2003, f & cert. ef. 5/1/2003

690-380-9000

Clarification of Water Rights

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

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

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

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

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537, ORS 540 & ORS 649

Stats. Implemented:

Hist.: WRD 10-1988, f & cert. ef. 8-10-88; Renumbered from 690-015-0400 by WRD 4-2003, f & cert. ef. 5/1/2003