

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 October 22, 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 November 16, 2004 Rulemaking Notice was published in the June 1, 2004 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.

See Attached

AMEND:

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.

See Attached

Stat. Auth.: ORS 536.025 and 536.027

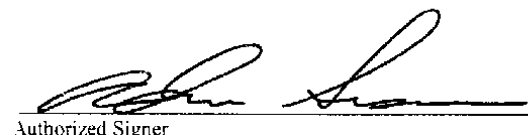
Other Authority:

Stats. Implemented: ORS 536.050, 540.570 to 540.580, 540.612

RULE SUMMARY

The Water Resources Commission adopted rules relating to District Water Right Transfers (OAR Chapter 690, Division 385). These rules were reorganized and renumbered from OAR Chapter 690, Division 21.

The rules describe the process and procedures the Water Resources Department shall use to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district. The rules implement statutory authority for temporary district water right transfers under ORS 540.570, permanent district water right transfers under ORS 540.580, and the permanent district transfer of water rights due to nonuse under 540.572 - 540.578. The rules also implement permanent district transfer provisions enacted by the Oregon Legislature in 1995, and temporary district transfer provisions enacted in 2001 and 2003.



Authorized Signer

11/16/04
Date

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

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Adopted

690-385-2000
690-385-2200
690-385-3110
690-385-3120
690-385-3130
690-385-3140
690-385-3150
690-385-3500
690-385-3520
690-385-3600
690-385-4000
690-385-4100
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690-385-4300
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690-385-4500
690-385-4580
690-385-4600
690-385-4700
690-385-5600
690-385-5680
690-385-5700
690-385-5800
690-385-6000
690-385-7000
690-385-7100

Amended and Renmbered

Old to new 690-021-0000 to 690-385-0010
690-021-0010 to 690-385-0100
690-021-0020 to 690-385-3000
690-021-0030 to 690-385-3100
690-021-0040 to 690-385-3200
690-021-0050 to 690-385-3300
690-021-0060 to 690-385-3400
690-021-0090 to 690-385-5000
690-021-0110 to 690-385-5100
690-021-0140 to 690-385-5200
690-021-0160 to 690-385-5300
690-021-0170 to 690-385-5400
690-021-0200 to 690-385-5500
690-021-0250 to 690-385-5900
690-021-0300 to 690-385-7200
690-021-0350 to 690-385-7400
690-021-0600 to 690-385-7600
690-021-0700 to 690-385-7800

Repeal

690-021-0070
690-021-0100
690-021-0120
690-021-0130
690-021-0400
690-021-0500

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 385
DISTRICT WATER RIGHT TRANSFERS

Table of Contents

Table of Contents.....	1
General Provisions.....	3
690-385-0010 Purpose.....	3
690-385-0100 Definitions.....	3
Standard Transfer Application Requirements.....	6
690-385-2000 Application for Transfer.....	6
Standard Map Requirements.....	6
690-385-2200 Map Requirements.....	6
District Temporary Transfers.....	8
690-385-3000 District Temporary Transfer Criteria.....	8
690-385-3100 Types of District Temporary Transfers.....	9
690-385-3110 Change in Place of Use.....	10
690-385-3120 Change in Type of Use of a Water Right to Store Water.....	10
690-385-3130 Change in Type of Use from a Primary Right to a Supplemental Right.....	10
690-385-3140 Change in Point of Diversion or Appropriation.....	11
690-385-3150 Change from Surface Water Point of Diversion to Ground Water Appropriation.....	11
690-385-3200 District Temporary Transfer Applications.....	12
690-385-3300 District Temporary Transfer Application Map Requirements.....	13
690-385-3400 District Temporary Transfer Application Notice and Review.....	14
690-385-3500 District Temporary Transfer Approval and Final Orders.....	16
690-385-3520 Fish Screening Devices.....	16
690-385-3600 Appeal of a Final Order Approving a District Temporary Transfer.....	16
District Permanent Transfers.....	17
690-385-4000 District Permanent Transfer Criteria.....	17
690-385-4100 Notice of District Permanent Transfer.....	17
690-385-4200 District Permanent Transfer Applications.....	18
690-385-4300 District Permanent Transfer Application Map Requirements.....	18
690-385-4400 District Permanent Transfer Application Notice and Review.....	18
690-385-4500 District Permanent Transfer Approval and Final Orders.....	19
690-385-4580 Original Right Terminated by Final Order.....	19
690-385-4600 Protests and Requests for Hearings.....	19
690-385-4700 Hearings.....	20
District Permanent Transfers of Water Right for Nonuse.....	21
690-385-5000 District Permanent Transfer Criteria.....	21

690-385-5100 Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572.....	22
690-385-5200 District Permanent Transfer Applications.....	23
690-385-5300 District Permanent Transfer Application Map-Requirements.....	24
690-385-5400 Notice of Filing District Permanent Transfer Application for Nonuse.....	25
690-385-5500 District Permanent Transfer Application Notice and Review.....	26
690-385-5600 District Permanent Transfer Approval and Final Orders.....	27
690-385-5680 Original Right Terminated by Final Order.....	28
690-385-5700 Protests and Requests for Hearings.....	28
690-385-5800 Hearings.....	28
690-385-5900 Time Period to Process Permanent Transfer Application Exempt from Forfeiture.....	28
Miscellaneous Provisions.....	29
690-385-6000 Multiple Primary Water Rights on the Same Lands.....	29
Completion and Perfection of Transferred Rights.....	29
690-385-7000 Time for Completion.....	29
690-385-7100 Failure to Complete a Transfer as Grounds for Cancellation.....	29
690-385-7200 Extension of the Time Limits.....	30
690-385-7400 Proof of Use; Noncompliance.....	31
690-385-7600 Proof of Completion of Change.....	32
690-385-7800 Request for Reconsideration.....	33

OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 385
DISTRICT WATER RIGHT TRANSFERS WITHIN DISTRICTS

General Provisions

690-385-0010

Purpose

(1) The rules in Chapter 690, Division 385 establish requirements and procedures that shall be used by the Department to evaluate an application to temporarily or permanently change a water use subject to transfer managed by a district pursuant to ORS 540.570 and 540.580. These rules establish the standards and criteria that a district which delivers irrigation water may follow to temporarily change the place of use of the water rights managed by the district pursuant to ORS 540.570. These rules also describe the process by which a district may petition to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578.

(2) The rules in Chapter 690, Division 385 also describe the process by which a district may submit an application to permanently change the place of use of water managed by the district from lands within the district which are no longer irrigated or susceptible to irrigation to other lands within the district pursuant to ORS 540.572 through 540.578. A district may also request the permanent transfer of the place of use of water within a district, pursuant to ORS 540.580. This process is not addressed in these rules.

(3) Water right transfers by districts and other water users that do not fall under the purview of the rules described by Chapter 690, Division 385 may be made pursuant to ORS 540.510 to 540.532 and OAR Chapter 690, Division 380. Other water right transfers by districts and other water right holders are processed under the authority of ORS 540.510 to 540.532 and 540.560 and OAR Chapter 690, Division 15.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510, ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: Renumbered from 690-021-0000 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-08-0001 (Statutory Ground Water Terms), 690-300-010 (Definitions), and 690-380-0100 (Water Right Transfers), apply to the rules in OAR Chapter 690, Division 385. Where a term is defined in more than one rule, the definition in OAR 690-385-0100 applies.

(1) “Application” means a petition by a district to transfer water rights within district boundaries as used in ORS 540.570 through 540.580. “Commission” means the Water Resources Commission.

(2) “District” means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553, or a corporation formed under ORS Chapter 554. “Department” means the Water Resources Department.

(3) **“District boundaries” means the extent and fixed limit of district jurisdictional authority under state law described by metes and bounds, public land survey, or assessor’s map and tax lot numbers.** “Director” means the Director of the Department.

(4) **“Enlargement” means an expansion of a water right and includes, but is not limited to:**

“District” means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553, or a corporation formed under ORS Chapter 554.

(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.

(5) **“Full-Time Manager”, as used in ORS 540.572 and OAR 690-385-5000, means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.** “District Temporary Transfer” as used in OAR 690-21-020 to 690-21-060, means a request from a district for a temporary change in the place of use of water, for up to five years, on lands within the district which are different from the record location of the right, permit, or approved transfer, as authorized under ORS 540.570.

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

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

(8) **“No Longer Irrigated or Susceptible of Irrigation” means:**

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

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district. “Irrigable Land” as used on OAR 690-21-070 to 690-21-700, means land that is currently under irrigation or susceptible of irrigation for agricultural, horticultural, viticultural or grazing purposes.

(9) **“Notice of Permanent District Transfer” means notification of a change in place of use allowed by a district prior to submitting a transfer application to make the change permanent.** “No Longer Irrigated or Susceptible of Irrigation” as used on OAR 690-21-070 to 690-21-700, means:

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

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

(10) **“Point of appropriation” means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right. “Owned” or “Controlled” as used in OAR 690-21-070 to 690-21-700, means ownership in fee, purchase on a land sale contract, option to purchase or lease.**

(11) **“Point of diversion” means the place at which surface water is diverted from a surface water source as specified in the water right. “Perfected Water Right” as used in OAR 690-21-070 to 690-21-700, means a water right confirmed by a court decree, a water right certificate or a transfer recognized as complete by the Department.**

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

(13) **“Protest” means a written statement expressing disagreement with approval of a transfer application and includes the fee prescribed in ORS 536.050. “Water use subject to transfer,” as used in OAR 690-21-020 to 690-21-060, means a water use established by:**

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

(b) A water right certificate;

(c) A water right permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the commission under ORS 537.250; or

(d) A transfer application for which an order has been issued under ORS 540.530 approving the change.

(14) **“ODFW” means the Oregon Department of Fish and Wildlife.**

(15) **“Supplemental water right or permit” means an additional water right 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.**

(16) **“User” means an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred.**

(17) **“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 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: Renumbered from 690-021-0010 by WRD 10-2004, f. & cert. ef. 11-16-2004

Standard Transfer Application Requirements

690-385-2000

Application for Transfer

(1) Each application shall be prepared in ink or typewritten on forms acceptable to the Department, or in a digital format acceptable to the Department. Applications shall contain the following information about the primary water right and any appurtenant supplemental water right or permit, if applicable:

- (A) District's name, mailing address, and telephone number.
 - (B) Type of change(s) proposed.
 - (C) Name(s) appearing on permit, certificate, decree or proof of appropriation.
 - (D) Name(s) of decree and certificate number, if applicable.
 - (E) Certificate number and Permit number, if applicable.
 - (F) Source(s) of water (from permit, decree or certificate).
 - (G) Date(s) of priority.
 - (H) The authorized existing use of water.
 - (I) The existing points of diversion or points of appropriation located accurately in reference to a public land survey corner.
 - (J) The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.
 - (K) The proposed place of use identified by its location within the public land survey, tax lot number, and name of each user, by parcel.
 - (L) A map as required in OAR 690-385-2200.
 - (M) A statement by the district manager or the district's authorized representative that the right has not been forfeited under ORS 540.610 due to nonuse.
 - (N) A statement that each user affected by the transfer has provided written authorization for the transfer and such authorization is on file with the district.
 - (O) A statement by the district manager or the district's authorized representative certifying that the information contained in the application and map is true and accurate.
 - (P) The signature of the district manager or the district's authorized representative.
 - (Q) The appropriate fee as required under ORS 536.050.
- (2) The application shall include any additional application requirements necessary to satisfy the specific transfer criteria for the type of transfer the applicant proposes as described in OAR 690-385-3000 (District Temporary Transfers), 690-385-4000 (District Permanent Transfers), and 690-385-5000 (District Permanent Transfers of Water Right for Nonuse).

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

Standard Map Requirements

690-385-2200

Map Requirements

(1) A map certified by the district but which need not be prepared and stamped by a certified water right examiner shall be included with each district transfer application. 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 except as described in subsection (1)(c) of this rule.

(b) The preferred map size is 8 1/2" 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 1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(c) Notwithstanding subsection (1)(a) and (b) of this rule, a district may submit the following types of map to satisfy the application map requirement:

(A) A digital map on a medium and in a format acceptable to the Department; or

(B) A map containing color elements or up to 30" x 30" in size provided five copies of the map are submitted with the application.

(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, or of the map previously approved by the department as part of a petition under ORS 541.329;

(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 and distance, 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, and clear legend;

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

(c) For a change in place 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.

(d) 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;

(e) Notwithstanding the requirements of subsection (2)(c) and (d), for place of use transfers involving a water right on a tract of land of five acres or less, the place of use may be identified on a county assessor map provided:

(A) The county assessor map scale is not smaller than 1" = 1,320';

(B) Tax lot boundaries and numbers are legible;

(C) The map contains a title, legend and appropriate location information, such as public land survey corners or quarter-quarter corners, necessary to accurately locate tax lots by public land survey subdivisions; and

(D) Within each affected tax lot, the map lists and clearly identifies the number of acres for each affected water right transferred from or transferred onto the tax lot.

(f) The location of township, range, 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 necessary to demonstrate that users are able to put water to beneficial use as proposed by the transfer according to the terms and conditions of the water right;

(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 540.570, ORS 540.572 – ORS 540.578, ORS 540.580

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

District Temporary Transfers

690-385-3000

District Temporary Transfer Criteria

(1) Pursuant to ORS 540.570, the Department may approve a district temporary transfer application for a period of time not to exceed one irrigation season provided: ~~When a district or an owner or an owner's agent within a district who is subject to the charges or assessments of the district intends to use water on alternate acreage within the legal boundaries of the district, if the district has approved the owner's request, the district shall submit a notice to the department. If a district or owner believes it may want to use water on alternate acreage, but is unable to make a final determination by the filing deadline in subsection (2), the district may include all contemplated transfers in a notice. Before June 1 of the first year of the temporary transfer period, the district shall file an amended notice under OAR 690-21-060 (3) identifying the contemplated transfers that will be made and deleting the transfers that will not be made.~~

(a) The district has a manager;

(b) The application does not propose to change the type of use except for a right to store water under OAR 690-385-3120 or change a primary right to a supplemental right under OAR 690-385-3130;

(c) The district has, prior to submitting the application, reviewed and approved a request by a user or a user's agent to temporarily transfer the use of water to different locations elsewhere within the boundaries of the district;

(d) The proposed transfer involves the use of water on lands located within the district boundaries;

(e) The proposed transfer will not result in injury or enlargement; and

(f) The land from which water is transferred does not receive water under the water use subject to transfer during the irrigation season in which the change in place of use occurs.

(2) A district may allow proposed changes to occur upon submission of a district temporary transfer application to the Department. A district temporary transfer notice shall be submitted to the department at least 60 days prior to the beginning of irrigation deliveries for the year, or March 1, whichever is earlier.

(3) The Department, may at any time upon determining a change allowed by a district under section (2) of this rule or a final order under OAR 690-385-3500 results in injury to an existing water right: Within 30 days of receiving a notice, the department shall determine if the submitted notice is complete and substantially complies with the requirements of these rules.

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

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

(4) Pursuant to ORS 536.900, a district and user may be subject to civil penalties for allowing the use of water on both the land from which water is transferred, and the lands to which the water is transferred, during the same irrigation season or calendar year.

(5) All uses for which a temporary transfer is approved shall revert 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 a district.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0020 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3100

Types of District Temporary Transfers

District temporary transfers include:

(1) A change in place of use; The following water rights and permits are eligible to be included in a district temporary transfer notice:

(a) Water uses subject to transfer; and

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

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

(3) A change in point of diversion or appropriation;

(4) A change in type of use from a primary right to a supplemental right; and

(5) A change from a surface water point of diversion to a ground water appropriation.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0030 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3110

Temporary Change in Place of Use

(1) A change in place of use may be made as approved by the Department.

(2) When an application for a temporary change in place of use for a primary water right is submitted according to OAR 690-385-3200, the district also shall identify whether the lands described in the application have an appurtenant supplemental water right or permit.

(3) The district also shall apply to temporarily transfer the appurtenant supplemental water right or permit unless the district specifies that the supplemental water right or permit is to remain unexercised at the place of use as described in the original water right during the period of the temporary transfer.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3120

Temporary Change in Type of Use of a Water Right to Store Water

A change in the type of use of a water right to store water (reservoir right) may be made provided:

(1) The district receives the written consent of the operator of the reservoir; and

(2) The district is a lessor or co-lessor in a proposed instream lease pursuant to OAR 690-077-0077.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3130

Temporary Change in Type of Use from a Primary Right to a Supplemental Right

(1) A district may apply to change a primary right to a supplemental right. The use of water on the lands covered by a right temporarily diminished to supplemental is restricted to the total rate and duty described by the primary right.

(2) The right temporarily diminished to supplemental may be used only to the extent of any supply deficiency for the primary right.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3140

Temporary Change in Point of Diversion or Appropriation

(1) As provided in ORS 540.570, a temporary change in point of diversion or appropriation may be made in combination with, or as necessary to facilitate, a change in place of use.

(2) 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.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3150

Temporary Change from Surface Water Point of Diversion to Ground Water Appropriation

(1) A district may, in accordance with the standards established by ORS 540.531(2), apply to transfer a point of diversion to allow the appropriation of groundwater. An application for such a transfer is subject to the requirements under section (2) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if the district temporary transfer application demonstrates:

(a) The new point of diversion appropriates groundwater from an unconfined aquifer that is hydraulically connected to the authorized surface source;

(b) The use of water at the proposed 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

(c) 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

(d) 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) 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) 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) If after approving an application 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) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(7) For any transfer 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).

(8) 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.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3200

District Temporary Transfer Applications

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

(1) Each district temporary transfer application shall contain the standard information required by OAR 690-385-2000, District name and address,

(2) Pursuant to ORS 540.570(3), a district temporary transfer application shall include a statement certifying the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right, Certificate, permit, or transfer number, as appropriate.

(3) In addition to the standard application information required under OAR 690-385-2000, temporary district transfer applications shall include the following information: Source of water.

(a) For a change in point of diversion or appropriation, or a change from surface water point of diversion to ground water appropriation, the application shall include:

(A) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(B) If the request is for a change in point of appropriation, or a change in point of diversion to a ground water appropriation (well), copies of water well reports for the authorized and proposed point of appropriation. Each water well report shall be labeled to correctly identify and locate the well, and identify the well report as either the authorized or 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.

(b) For a change in type of use from a primary right to a supplemental right, the application shall identify the change from primary to supplemental for the applicable authorized and proposed place of use by its location within the public land survey, tax lot number, and the name of each user.

(c) For a change in type of use of a water right to store water, the application shall include:

(A) Written consent to the change in type of use from the operator of the reservoir, and

(B) If the water right to store water is issued in the name of a federal governmental agency, include written consent from the agency to the change in type of use.

(4) Date of priority.

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

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

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

(8) The period of the proposed change.

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 536.050, ORS 540.570, ORS 540.574

Hist.: Renumbered from 690-021-0040 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3300

District Temporary Transfer Application Map Requirements

(1) A temporary district transfer application map shall meet the standards of OAR 690-385-2200. The district shall maintain a map of the lands affected by a district temporary transfer notice. The map shall be available at the district's principal office and copies shall be provided at the request of any user.

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

(a) For a change from a surface water point of diversion to a ground water appropriation, if the proposed point of appropriation is intended to serve the entire right of record, a copy of the existing final proof survey or approved ORS 541.329 (House Bill 3111) map for the right of record may be submitted to satisfy this requirement. If the proposed point of appropriation is not intended to serve the entire right of record, the specific lands to be served shall be identified and the number of acres to be served by the new point of appropriation shall be listed.

(b) For a change in type of use from primary right to supplemental right, the location of the authorized and proposed place of use of the water. If the use is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be uniquely shaded or hachured to clearly identify affected lands, 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.

(c) For a change in type of use of a water right to store water, a copy of the final proof map for the water right subject to transfer.

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0050 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3400

District Temporary Transfer Application Notice and Review

(1) On receipt of a temporary district transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-

385-3200 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17). Upon receipt of a complete district temporary transfer notice, the Department shall place a summary of the notice in the Department's weekly notice of applications received. The Department shall accept written public comments for a period of 30 days following the published date of the weekly notice. Comments pertaining to the potential for injury to other water rights or to the enlargement of the subject water right shall be considered by the Department in preparing the written review described in section (2) of this rule.

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

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

(a) File the application and assign it a transfer number,

(b) Within 15 days of receipt, notice the application in the Department's weekly publication; and

(c) Request public comments on the application

(4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application. The department may condition or revoke a temporary transfer at any time to the extent necessary to avoid injury if the department finds the transfer is causing injury to an existing water right.

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: Renumbered from 690-021-0060 by WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3500

District Temporary Transfer Approval and Final Orders

A district temporary transfer application submitted according to ORS 540.570 and OAR 690-385-3200 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), the proof of completion has been approved under OAR 690-385-7300;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district temporary water right transfers are met.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3520

Fish Screening Devices

(1) Pursuant to ORS 540.570, when an application includes a temporary change in point of diversion, the Department shall consult with ODFW to determine whether a fish screen 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 equipped with an appropriate fish screen device.

(3) If requested by ODFW, a condition requiring a proper fish screen device at the new point of diversion shall be included in any order of the Department approving a temporary change in point of diversion.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004

690-385-3600

Appeal of a Final Order Approving a District Temporary Transfer

A final order approving a district temporary transfer under OAR 690-385-3500 may be appealed by:

(1) Petitioning for judicial review of the final order pursuant to ORS 536.075(1); or

(2) Petitioning the Department for reconsideration of the final order pursuant to OAR Chapter 137, Division 004.

(3) A petition for reconsideration may include a request for a stay of the final order if the petition complies with the requirements of OAR Chapter 137, Division 004.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 183

Hist.: WRD 10-2004, f. & cert. ef. 11-16-2004