

## District Permanent Transfers

690-385-4000

### District Permanent Transfer Criteria

Pursuant to ORS 540.580, the Department may approve a district permanent transfer application to permanently change the place of use provided:

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

(2) The use authorized under the water use subject to transfer does not change;

(3) The use of water under the water use subject to transfer will not result in enlargement of the right;

(4) The change in place of use will not result in injury to any other existing water right;  
and

(5) The district submits the permanent district transfer application to the Department:

(a) Before the change is allowed by the district, or

(b) Prior to the end of the calendar year in which the change occurred if notification of a change was submitted in accordance with OAR 690-385-4100.

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

690-385-4100

### Notice of District Permanent Transfer

(1) A district may allow a change in place of use prior to the Department issuing an order approving a district permanent transfer application provided:

(a) The district files notice of the change in place of use under section (2) of this rule prior to making the change;

(b) Prior to the end of the calendar year in which the change in place of use occurs, the district submits a permanent district transfer application for the change in place of use noticed according to section (2) of this rule; and

(c) The district notifies each affected user that the change is subject to the approval of the Department and that the Department may:

(A) Direct the district to cease delivery of water; or

(B) Require mitigation to avoid injury to other water rights.

(2) The notice under subsection (1)(a) of this rule shall be on forms acceptable to the Department and contain the following information for the primary water right and any appurtenant supplemental water right or permit, if applicable:

(a) District name, mailing address, and phone number;

(b) Certificate number, or permit number if applicable, subject to the change;

(c) Names of affected users;

(d) Location of the affected lands according to public land survey description and tax lot number; and

(e) A map meeting the requirements of OAR 690-385-4300.

(3) A district shall deliver the notice described in section (2) of this rule to the local area Department Watermaster prior to allowing the use of water to change.

(4) A district delivering notice to the local area Department Watermaster shall concurrently mail the form(s) (but not the map) described in section (2) of this rule to the

**Department's Headquarters Office for public notice in the Department's weekly publication pursuant to ORS 540.580(4).**

**(5) If at any time the Department finds the change allowed by a district, under the notice requirements of sections (1) and (2) of this rule, results in injury to an existing water right the Department may:**

- (a) Direct the district to cease delivery of water to the affected lands; or**
- (b) Direct the district to mitigate the injury caused by the change.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

#### **690-385-4200**

##### **District Permanent Transfer Applications**

**Each district permanent transfer application shall contain the standard information required by OAR 690-385-2000.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 536.050, ORS 540.574, ORS 540.580*

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

#### **690-385-4300**

##### **District Permanent Transfer Application Map Requirements**

**A district permanent transfer application map shall meet the standards of OAR 690-385-2200.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

#### **690-385-4400**

##### **District Permanent Transfer Application Notice and Review**

**(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-4200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).**

**(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is 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.**

**(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:**

- (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.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

**690-385-4500**

**District Permanent Transfer Approval and Final Orders**

**A district permanent transfer application submitted according to ORS 540.580 and OAR 690-385-4000 shall be approved if the Department determines that:**

**(1) The water right 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), that proof of completion has been approved under OAR 690-385-7400;**

**(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 permanent water right transfers are met.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

**690-385-4580**

**Original Right Terminated by Final Order**

**Issuance of a final order approving a permanent change in place of use terminates the right to use water at the previously authorized place of use.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

**690-385-4600**

**Protests and Requests for Hearings**

**Approval of a permanent district transfer application under OAR 690-385-4500, may be protested:**

**(1) Within 30 days of mailing of the Department's weekly notice;**

**(2) By any potentially affected holder of an existing water right, either jointly or severally with other persons, provided the protest is not by a user within a district alleging injury to the delivery of water by the district; and**

**(3) Protests shall be filed in accordance with OAR Chapter 690, Division 002, and shall include the fee required under ORS 536.050.**

**(4) 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.**

**(5) Pursuant to ORS 540.580, if a user within a district protests approval of a permanent district transfer application under OAR 690-385-4500 and alleges approval of the transfer would cause injury to the delivery of water by the district, the Department shall:**

**(a) Refer the protest to the district to resolve; and**

**(b) Notwithstanding OAR 690-385-4700, decline to hold a hearing on the matter.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 536.050, ORS 183.310 – ORS 183.550, ORS 540.580*

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

## **690-385-4700**

### **Hearings**

**(1) If a protest is filed under OAR 690-385-4600, 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 water 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.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 183*

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

## **DISTRICT TRANSFER PETITIONS**

### **690-21-070**

#### **Enlargement or Injury Considerations**

~~(1) A district may petition the Director to approve a request for a permanent change in the place of use of the water managed by the district from lands within the district legal boundaries which are no longer irrigated or susceptible of irrigation to irrigable lands within the district legal boundaries, pursuant to ORS 540.574.~~

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

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

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

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

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

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

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

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

**690-21-080**

**Change in Point of Diversion Requires Division 15 Transfer**

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

**District Permanent Transfers of Water Right for Nonuse**

**690-385-5000**

**District Permanent Transfer Criteria**

**Pursuant to ORS 540.572, the Department may approve a district permanent transfer application to permanently change the place of use of the water right appurtenant to land no longer irrigated or susceptible to irrigation provided:** The Department shall not approve a district transfer unless the district is:

- (1) **The district employs a full-time manager;** Managed by a full-time manager; and
- (2) **The district is implementing an approved water management and conservation plan consistent with the requirements of OAR Chapter 690, Division 086;** Implementing a conservation plan approved by the Water Resources Commission which meets:
  - (a) Water use efficiency criteria; and
  - (b) All other management responsibility criteria.
- (3) **The proposed transfer involves the use of water on lands located within the boundaries of the district;**
- (4) **The district has determined a user has not made beneficial use of water for four successive years; and**
- (5) **The district provides notice to the user of intent to transfer the right and provides the user an opportunity to resolve the matter in the manner described by ORS 540.572 and OAR 690-385-5400 and OAR 690-385-5600.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.572*

*Hist.: Renumbered from 690-021-0090 by WRD 10-2004, f. & cert. ef. 11-16-2004*

**690-21-100**

**Period of Nonuse and Notice of Nonuse Required Prior to Petitioning**

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

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

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

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

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

#### 690-385-5100

##### **Notice of Nonuse of Water Right and Intent to Transfer Pursuant to ORS 540.572**

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

~~(1) **Prior to submitting a district permanent transfer application under OAR 690-385-5200, a district shall provide written notice to the user and any security interest holders of record in the land to which the water right is appurtenant.** A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to petition under OAR 690-21-070;~~

~~(2) **Notice shall be sent by certified mail to the last known address of the user with a return receipt requested.** A statement advising the user that the user has 30 days from the mailing date of the notice to submit a written objection to the proposed petition to the district;~~

~~(3) **The notice shall include:** A general description of the land upon which the water right is of record;~~

~~(a) **A statement advising the user that the district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to submit an application to permanently transfer the water right pursuant to ORS 540.572.**~~

~~(b) **A statement that the user has a 30-day period, from the mailing date of the notice, in which to submit to the district a written objection to the proposed transfer application;**~~

~~(c) **A statement that the user shall notify the district, within the 30-day period described in subsection (3)(b) of this rule, if the user intends to demonstrate that the nonuse is excused by one of the provisions under ORS 540.610.**~~

~~(d) **A statement that the user may demonstrate beneficial use of the water right by:**~~

~~(A) **Beneficially irrigating the lands to which the water right is appurtenant prior to the end of the irrigation season of the fifth consecutive year of nonuse, or**~~

~~(B) **Making beneficial use of water under one of the qualifying programs of the Water Resources Department such as, but not limited to, submitting a water right transfer under OAR Chapter 690, Division 380 or a transfer to instream use under OAR Chapter 690, Division 077, prior to the end of the irrigation season of the fifth consecutive year of nonuse.**~~

~~(e) **A general description of the land according to public land survey description to which the water right is appurtenant;**~~

~~(f) **The number of acres of water right, by tax lot, for which the user is charged or assessed by the district and which the district intends to propose for transfer under OAR 690-385-5200;**~~

~~(g) **A description of the type of use described by the water right of record;**~~

~~(h) **A list of the name and address of security interest holders of record in the land to which the water right is appurtenant; and**~~

~~(i) **A request for the user to respond confirming that the information in the notice is correct.**~~

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

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

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

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

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

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.572*

*Hist.: Renumbered from 690-021-0110 by WRD 10-2004, f. & cert. ef. 11-16-2004*

#### **690-21-120**

##### **User Disagreement**

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

#### **690-21-130**

##### **Disagreement Resolution**

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

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

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

#### **690-385-5200**

##### **District Permanent Transfer of Water Right for Nonuse Applications**

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

~~(1) Each district permanent transfer of water right for nonuse application shall contain the standard information required by OAR 690-385-2000; and The name of the district;~~

~~(2) Include the following: The certificate number of each water right contained in the petition;~~

~~(a) A copy of the notice required under OAR 690-385-5100 mailed by the district to the user;~~

~~(b) A copy of any objections to the proposed transfer received by the district within the 30-day time period following the mailing of notice under OAR 690-385-5100; and~~

~~(c) A copy of findings, determinations and conclusions resulting from any hearing held by the district to consider unresolved objections received in response to the notice required under OAR 690-385-5100.~~

~~(3) The names of all the users within the district from whose land the water rights are to be transferred;~~

~~(4) The names of all the users within the district to whose land the water rights are to be transferred;~~

~~(5) A general description of the district's boundaries;~~

~~(6) A general description of each user's land from which and to which water rights are to be transferred. The description, or notations on the tax assessor's map for parcels of five acres or less shall include the location by township, range, section, quarter-quarter section, tax lot and the number of acres of water right to be transferred out or to be transferred in;~~

- ~~(7) Identification of the sources of water and the location by quarter-quarter section of the diversions necessary to serve the lands to which the water rights are to be transferred;~~
- ~~(8) A description of the use that is proposed to be made of the water on each parcel;~~
- ~~(9) A map meeting the requirements set out in OAR 690-21-160 shall accompany the petition;~~
- ~~(10) A sworn statement by the petitioner that the petition and map or maps are accurate to the best of the petitioner's knowledge;~~
- ~~(11) A sworn statement by the petitioner that notice requirements of OAR 690-21-100 and 690-21-110 have been met;~~
- ~~(12) A statement by the petitioner that the water right is not subject to forfeiture as provided under ORS 540.610. The statement may also provide evidence, including but not limited to:
 
  - ~~(a) Affidavits from knowledgeable persons, such as the owner or operator, district personnel, a neighbor, county agent, crop field person for cannery or other product buyer, ASCS representatives, etc.;~~
  - ~~(b) Receipts from sales of irrigated crops or for expenditures relating to use of water;~~
  - ~~(c) Other records such as ASCS farm management plan, dated photographs, or water district records.~~~~
- ~~(13) Land use information as outlined in the Department's Land Use Planning Procedures Guide except for those transfers where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts which:
 
  - ~~(a) Involve changes in place of use only; and~~
  - ~~(b) Do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and~~
  - ~~(c) Involve irrigation water uses only.~~
 [Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Water Resources Department.]~~

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.574, ORS 540.580*

*Hist.: Renumbered from 690-021-0140 by WRD 10-2004, f. & cert. ef. 11-16-2004*

## **690-385-5300**

### **District Permanent Transfer of Water Right for Nonuse Application Map-Requirements**

**A district permanent transfer application map shall meet the standards of OAR 690-385-2200.** ~~The map submitted with a district petition to change the place of use shall meet the following criteria:~~

- ~~(1) The preferred map size is 8 1/2" X 11". The maximum size shall be 30" X 30" unless prior approval is obtained from the Department. Standard map symbols shall be used as provided by the Department.~~
- ~~(2) The map shall be drawn in ink on permanent quality tracing linen or 0.003 inch mylar with sufficient clarity so as to be easily reproduced. It shall be drawn to one of the following scales:
 
  - ~~(a) One inch equals 1,320 feet; or~~
  - ~~(b) One inch equals 400 feet; or~~
  - ~~(c) The assessor's scale if larger than one inch equals 1,320 feet; or~~
  - ~~(d) A combination of these scales if using map inserts.~~~~
- ~~(3) The map shall show the following for parcels of more than five acres:
 
  - ~~(a) The location of diversions, canals, ditches, pipelines or flumes;~~~~



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

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

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

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

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

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.574, ORS 540.580*

*Hist.: Renumbered from 690-021-0160 by WRD 10-2004, f. & cert. ef. 11-16-2004*

#### **690-385-5400**

##### **Notice of Filing District Permanent Transfer of Water Right for Nonuse Application**

(1) **Upon submitting a district permanent transfer application to the Department pursuant to ORS 540.572 and OAR 690-385-5000, a district shall:** Within 30 days after filing a petition the district shall send a notice and a copy of the petition and map to the users whose water right of record is proposed to be transferred and who are to receive the transferred water right. The notice and the petition and map copies shall be sent by certified mail to the last known address of the user with a return receipt requested. The notice shall advise the user that:

(a) **Provide notice to the users of affected lands that a district permanent transfer application was submitted to the Department;** Within 60 days of the date the notice of petition filed was mailed, the Director shall accept the petition and map and prepare a final order approving the transfer unless a protest is filed or the petition and map do not meet the requirements of OAR 690-21-140 and 690-21-160; and

(b) **Provide the users of affected lands a copy of the application and map; and** The user has the right to protest the petition, map and proposed transfer of water right by filing a protest with the Director within 60 days of the mailing date of the notice.

(c) **Mail the notice, application, and map to the last known address of the affected users by certified mail with a request for a return receipt.**

(2) **The notice under subsection 1(a) of this rule shall inform the users of affected lands that:**

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

(a) **The Department shall approve the district permanent transfer application as provided under OAR 690-385-5600 unless:**

(A) **The application does not include the information required under OAR 690-385-5200; or**

**(B) The user, of lands from which water rights are to be transferred, submits a protest pursuant to OAR Chapter 690, Division 002.**

**(b) The user has the right to protest the application as described in OAR 690-385-5700.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.576*

*Hist.: Renumbered from 690-021-0170 by WRD 10-2004, f. & cert. ef. 11-16-2004*

#### **690-385-5500**

##### **District Permanent Transfer of Water Right for Nonuse Application Notice and Review**

**(1) On receipt of a district permanent transfer application, the Department shall review the application to determine if the district has included the information required by OAR 690-385-5200 and if the water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17).** Upon receipt of a complete petition, the Department shall place a summary of the proposed change in the Department's weekly notice of applications received. The Department shall accept written public comments for a period of 30 days following the published date of the weekly notice. Comments pertaining to the potential for injury to other water rights or to the enlargement of the subject water right shall be considered by the Department in preparing the written review described in section (4) of this rule.

**(2) If the Department determines that the application does not include the required information or that the water right proposed for transfer is 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.** Within 60 days of receiving a petition and map, and if the petitioner has met the requirements of OAR 690-21-090, the Director shall notify the petitioner if the map and petition are accepted. If the petition and map are not complete, the Director shall notify the petitioner and identify the deficiencies:

**(3) If the Department determines the application is complete and the water right proposed for transfer is subject to transfer, the Department shall:** The petitioner shall have at least 60 days to cure the deficiencies. The Director may extend the time allowed for good cause up to one year from the date of return of the petition. Failure to cure the deficiencies within the time allowed shall result in a denial of the petition.

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

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

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

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

- (d) A listing of lands by quarter-quarter section, section, township and range from which the water right is transferred;
- (e) A listing of the lands by quarter-quarter section, section, township and range to which the water right is transferred;
- (f) Instructions to cancel the certificates listed in the petition;
- (g) Instructions to issue new certificates of water right for any lands within the certificates petitioned that are not changed by the petition (remaining rights);
- (h) A date setting a time limit to complete the construction of facilities necessary to beneficially apply the water to the new place of use requested by the petition;
- (i) A finding that injury to existing water rights would not result and/or provisions required of the district or the user necessary for the prevention of enlargement of the water rights petitioned or for the prevention of injury to existing water rights;
- (j) Instructions to issue a new certificate to confirm the changes upon receipt of satisfactory proof of completion.

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.572, ORS 540.574, ORS 540.580*

*Hist.: Renumbered from 690-021-0200 by WRD 10-2004, f. & cert. ef. 11-16-2004*

**690-385-5600**

**District Permanent Transfer of Water Right for Nonuse Approval and Final Orders**

**A district permanent transfer application submitted under ORS 540.572 and OAR 690-385-5000 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), that proof of completion has been approved under OAR 690-385-7400;**
- (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);**
- (4) Any other applicable requirements for district permanent transfers of water right for nonuse are met;**
- (5) The district submitted the application no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610(1); and**
  - (a) The district received no written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100; or**
  - (b) The district board of directors submitted the permanent district transfer application after having:**
    - (A) Received written objections to the proposed transfer within the 30-day time period following the mailing of notice under OAR 690-385-5100;**
    - (B) Failed to resolve the objections; and**
    - (C) Held a hearing to review and consider the objections.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.572 - ORS 540.580*

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

**690-385-5680**

**Original Right Terminated by Final Order**

**Issuance of a final order approving a permanent change in place of use for nonuse terminates the right to use water at the previously authorized place of use.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

**690-385-5700**

**Protests and Requests for Hearings**

**(1) Approval of a district permanent transfer of water right for nonuse application under ORS 540.572 and OAR 690-385-5000, may be protested:**

**(a) By any user; and**

**(b) Within 60 days of mailing the notice under OAR 690-385-5400.**

**(2) Protests shall be filed in accordance with OAR Chapter 690, Division 002, 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 540.578*

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

**690-385-5800**

**Hearings**

**(1) If a protest is filed under OAR 690-385-5700, 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.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 183, ORS 540.578*

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

**690-385-5900**

**Time Period to Process Permanent Transfer Application Exempt from Forfeiture**

If a district submits a **permanent transfer application** ~~petition~~ under OAR **690-385 -5000** ~~070~~ no later than the end of the calendar year of the fifth year of non-use under ORS 540.610(1), the

forfeiture provision of ORS 540.610 shall not apply to the **subject** lands ~~from which the water right is sought to be transferred~~ pending completion of the processing of the **transfer application** ~~district petition~~. The time required to process the **application** ~~petition~~, including any time required for hearings, appeals and completion of the authorized changes, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610(1).

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.612*

*Hist.: Renumbered from 690-021-0250 by WRD 10-2004, f. & cert. ef. 11-16-2004*

### **Miscellaneous Provisions**

#### **690-385-6000**

##### **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 540.580*

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

### **Completion and Perfection of Transferred Rights**

#### **690-385-7000**

##### **Time for Completion**

**(1) The time for a district to complete a transfer as authorized by a final order shall be one full year from the approval date plus an additional time until the next October 1. A longer time for completion may be allowed for good cause shown.**

**(2) 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).**

**(3) Extensions of time to complete a transfer may be granted pursuant to OAR 690-385-7200.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

#### **690-385-7100**

##### **Failure to Complete a Transfer as Grounds for Cancellation**

**(1) Upon issuance of a final order approving a transfer the water use subject to transfer becomes 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 used beneficially under the terms of the transfer final order, or within any extension of time allowed for completion, is deemed lost and constitutes a loss of water right.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

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

#### **690-385-7200**

##### **Extension of the Time Limits**

**(1) If the transfer is not completed within the time allowed in the final order, a district may file an application for an extension of time. The application shall contain sufficient information for the director to determine reasonable diligence was made to complete the project within the initial time specified in the final order.** The Director may grant an extension of the time to complete construction of the water delivery system and apply the water, provided that:

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

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

**(2) A separate application requesting an extension of time to complete a transfer shall be submitted for each final order that authorizes the transfer of the water use subject to the extension request.** Each extension of time granted shall be limited to one year. No more than three extensions of the time limit shall be approved.

**(3) The Department shall consider an application for extension of time received no later than the date specified in the final order for a district to submit proof of use under OAR 690-385-7400. The Department shall review and issue an order within 90 days of receipt of the application.**

**(4) Failure of a district to submit an application and receive an order of the Department authorizing an extension of time to complete a transfer may lead to loss of the water right for failure to complete the transfer in accordance with OAR 690-385-7100(2).**

**(5) The Department may grant extensions for a 12 month time period, from October 1 to October 1. Extensions may be granted for longer time periods if the applicant can justify the need for a longer period of time by submission of pertinent evidence.**

**(6) 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 690-385-7000. Applications for extension of time shall include:**

**(a) A listing and description of all construction and purchases related to installation of the water delivery system during the previous use perfection period;**

**(b) A description of any expansion or restructuring of the existing delivery system during the same period;**

**(c) A description of the extent to which the applicant has made actual use of water according to the terms of the transfer final order; and**

**(d) Information to indicate whether the applicant has complied with any conditions contained in the transfer final order.**

**(7) 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 (6) of this rule.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

*Hist.: Renumbered from 690-021-0300 by WRD 10-2004, f. & cert. ef. 11-16-2004*

**690-385-7400**

**Proof of Use; Noncompliance**

(1) **No later than one year following the date specified in a final order for a district to complete a transfer and apply water to beneficial use, a district shall provide the Department proof of use by submitting a final proof map according to OAR 690-385-7400(3) and a claim of beneficial use report according to OAR 690-385-7400(4).** Within 60 days of the completion date allowed, the district shall submit, on forms provided by the Department, one of the following, whichever is applicable:

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

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

(2) **Districts may self-certify proof of use and are not required to have a certified water rights examiner prepare a final proof map and file a claim of beneficial use report.** The district shall certify on its completion notice that the use was completed as proposed by the district's petition and map.

(3) **Districts shall file a final proof map consistent with the map standards of OAR 690-385-2200 within the time limit specified in the transfer final order, and certify the map as accurate.** If the map and petition initially submitted do not accurately describe the actual location of the place and extent of beneficial use of the water right transferred, the district shall submit a new map and petition to the Director. The new map shall be certified by the district to accurately represent the use completed. The new map and petition shall be submitted within one year of the date the notice of complete application of water is submitted, or within one year of the date allowed to complete the appropriation, whichever occurs first. The petition and map describing the completed appropriation shall meet the requirements of OAR 690-21-140 and 690-21-160.

(4) **Districts shall file a claim of beneficial use report on forms acceptable to the Department. The claim of beneficial use report shall contain the following information:** Failure by a district to submit the required notice of complete beneficial use of water, including a new map and petition if required, or a properly completed application for extension of time shall result in the initiation of cancellation proceedings for that portion of the water right transferred.

(a) **The district's name, mailing address, and telephone number;**

(b) **The transfer number assigned by the Department to the application;**

(c) **The district assigned number for Notice of Permanent District Transfer, if applicable;**

(d) **The certificate number, or permit number if no certificate has been issued for the subject water right;**

(e) **The date of priority;**

(f) **The type of use;**

(g) **The authorized place of use identified by its location within the public land survey, tax lot number, and name of each user;**

(h) **A description of the diversion, headgate, canal, or district conveyance system used to deliver water to the authorized place of use;**

(i) **A description of the method for applying water to beneficial use at the authorized place of use;**

(j) **A description of the beneficial use to which water is applied;**

**(k) A description of the method used to calculate the extent of beneficial use on the lands or place of use authorized by the final order approving a transfer;**

**(l) A statement that the district has inspected the authorized place of use and confirms the change has been made consistent with the terms and conditions of the final order; and**

**(m) The signature of the District Board Chairperson, or if the Board has delegated authority, the signature of the district manager.**

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

*Hist.: Renumbered from 690-021-0350 by WRD 10-2004, f. & cert. ef. 11-16-2004*

#### **690-21-400**

##### **User's Notice of Change**

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

#### **690-21-500**

##### **Field Verification of Map and Use**

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

(2) The examination shall consider the following requirements:

(a) Evidence of a method to control and deliver the water;

(b) Evidence of cultivation of the lands described under the petition; and

(c) Evidence of beneficial use of the water.

#### **690-385-7600**

##### **Proof of Completion of Change**

(1) **The Department may issue a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer. Satisfactory proof shall be one of the following:** ORS 540.530(2) prescribes that the Director shall issue a certificate of water right upon satisfactory proof of completing the change or changes authorized by a transfer approval order. Satisfactory proof shall be one of the following:

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

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



(2) The Department shall prepare a proposed water right certificate if it determines that proof has been made to an extent different or less than that approved. If the Department determines that beneficial use was made to an extent less than 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 final order. The proposed certificate shall be mailed first class to the district and receiving landowner affected user, together with notice that the district and receiving landowner affected user has a period of 60 days from date of mailing to request the Department reconsider the contents of the proposed water right certificate of water right. If no request for reconsideration is received within the 60-day period, the ~~director~~ Department shall issue a water right certificate pursuant to ORS 540.530(2) ~~and the transfer approval order.~~

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.

(3) The Department shall issue a water right certificate on a determination that it is necessary to produce a certificate describing the right. The determination of when to issue a water right certificate shall take in to account:

(a) Whether the district or users within the district requested issuance of a new certificate;

(b) The number of permanent district transfers for which satisfactory proof has been determined;

(c) The frequency and trend in transfer applications submitted by a district; and

(d) The necessity to modify the water right record to allocate conserved water under ORS 537.470 and accomplish other administrative functions.

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

*Hist.: Renumbered from 690-021-0600 by WRD 10-2004, f. & cert. ef. 11-16-2004*

690-385-7800

### Request for Reconsideration

(1) A petition request for reconsideration of the content of a proposed certificate may be submitted in writing to the Department prepared by the district or user ~~and submitted to the Department.~~ The petition request 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. ~~The request for reconsideration may be in the form of a phone call or personal contact unless the disagreement proposes a change to:~~

~~(a) The source of water; or~~

~~(b) The purpose the water is used; or~~

~~(c) The quantity of water granted; or~~

~~(d) The location of the points of diversion; or~~

~~(e) The location of the use; or~~

~~(f) The extent of the use; or~~

~~(g) Any conditions imposed upon the use.~~

(3) The director may allow reasonable time beyond the time set under OAR 690-385-7600(2) for a district or user to complete and submit a written petition for reconsideration. If the disagreement results in a change to any item listed in subsections (2)(a) through (g) of this rule, ~~the request for reconsideration shall be completed in writing. The request shall set forth the changes~~

to the proposed certificate or the map and shall include any facts which support the request. Maps, photographs, affidavit, receipts or other such evidence may be included to support the request.

~~(4) The Director may allow reasonable time beyond the time set under OAR 690-21-600(2) for a district or user to complete and submit a written request for reconsideration.~~

~~(4) (5) Upon receipt of a **petition** request for reconsideration, the director **shall** may:~~

~~(a) Approve the **petition** request without verification and issue a certificate with the changes included; or~~

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

~~(c) Deny **it by letter** the request by a letter from Department staff to the requesting **person** party.~~

~~(5) (6) If field verification **is scheduled** shows a change from the original proposed certificate, a new proposed certificate **may shall** be prepared and sent as prescribed by OAR 690-21-600-385-7600(2).~~

~~(6) (7) A **petition** request 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 order of the director**. If denied, the denial shall be in the form of an order of the director. The order shall provide for either issuance of a **water right** certificate ~~of water right~~ in conformance with the director's findings, or for the scheduling of a contested case hearing as provided under ~~Chapter~~ OAR **Chapter** 690, **Division** 002.~~

*Stat. Auth.: ORS 536.025 & ORS 536.027*

*Stats. Implemented: ORS 540.580*

*Hist.: Renumbered from 690-021-0700 by WRD 10-2004, f. & cert. ef. 11-16-2004*