

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

10-6

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on August 11, 2006 by the
Date prior to or same as filing date

Oregon Water Resources Commission

OAR Chapter 690

Agency and Division

Administrative Rules Chapter Number

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to become effective October 6, 2006. Rulemaking Notice was published in the May 2006 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Amended water right transfer rules and adopted rules for modifications to ground water registrations

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 690-380-2240

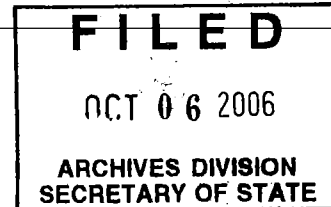
690-382-0010; 690-382-0100; 690-382-0200; 690-382-0300; 690-382-0400; 690-382-0450; 690-382-0500;
690-382-0600; 690-382-0700; 690-382-0800; 690-382-0900; 690-382-1000; 690-382-1100; 690-382-1200

AMEND: 690-380-0010; 690-380-0100; 690-380-2110; 690-380-2120; 690-380-2130; 690-380-2200; 690-380-2260;
690-380-2300; 690-380-2330; 690-380-2420; 690-380-2430; 690-380-3000; 690-380-3100; 690-380-3200;
690-380-3220; 690-380-4000; 690-380-4010; 690-380-4020; 690-380-4030; 690-380-4200; 690-380-5000;
690-380-5030; 690-380-5040; 690-380-5100; 690-380-5110; 690-380-5120; 690-380-5140; 690-380-6010;
690-380-6030; 690-380-8000; 690-380-8020

REPEAL:

RENUMBER:

AMEND & RENUMBER:



Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Other Auth.:

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

RULE SUMMARY

The Water Resources Commission adopted rules related to defining the process and standards for recognizing ground water modifications (OAR Chapter 690, Division 282, HB 2123, 2005 Legislative Assembly). HB 2123 also modified ORS 540.531 to provide great flexibility for surface water to ground water point of diversion transfers. The Water Resources Commission also amended rules relating to the implementation of the provisions of HB 2123 related to surface water to ground water transfers and also clarify other provisions related to water right transfers (OAR Chapter 690, Division 380).

Authorized Signer

Debbie Colbert
Printed name

10/4/06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

WRD 5-2006

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

General Provisions

690-380-0010

Purpose

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

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

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

(b) Use water at an additional or different place of use under a water use subject to transfer issued to a municipality, rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132 provided the water use complies with the requirements under ORS 540.510(3)(a)(A) to (C) and 540.510(3)(b);

(c) Use water at a different place of use under a permit or certificate issued to a district pursuant to ORS 540.570 to 540.580 and OAR Chapter 690, Division 385, however, a petition for the change must be submitted to the Department by the district;

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

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

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

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

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

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

(j) Any change of use if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 8-23-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0001 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-0100

Definitions

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

(1) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 552, a water control district formed under ORS Chapter 553 or a corporation organized under ORS Chapter 554.

(2) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

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

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

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

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

(7) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(8) "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.

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

(10) "Report of ownership and lien information" means a document prepared by a title company that includes current ownership, a legal description of the lands, identification of lien holders, and if a water right conveyance agreement has been recorded for the subject lands, a copy of the agreement and identification of the owner of the lands at the time the agreement was recorded.

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

(12) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(13) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(14) "Water use subject to transfer" means a water use established by:

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

(b) A water right certificate;

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

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 6-11-87; f & cert. ef. 8-10-88; f & cert. ef. 7-11-96; Renumbered from 690-015-0005 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

Permanent Transfers

690-380-2110

Change in Point of Diversion or Point of Appropriation

(1) No change in point of diversion or appropriation may be made except as described under OAR 690-380-0010 or as approved or recognized by the Department through a water right transfer, permit amendment under ORS 537.211, or certificate of registration modification under OAR Chapter 690, Division 382.

(2) Except as provided in ORS 540.531 and OAR 690-380-2130, a change in point of diversion is restricted to the same source of surface water. A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer.

(3) As provided in ORS 450.695(2), a water authority may change the points of diversion or appropriation or move the water intake sources of the water use permits or certificates conveyed to it by the districts and municipalities that formed the water authority. For the purposes of this

subsection, moving a water intake source is the same as changing the location of a point of diversion. Water authorities shall be subject to the following requirements:

(a) A request by a water authority to change the location of a point of diversion or appropriation from that authorized by a water right certificate shall be made pursuant to ORS Chapter 540 and OAR Chapter 690, Division 380 transfer rules;

(b) A request by a water authority to change the location of a point of diversion or appropriation authorized by a water use permit, as defined in OAR 690-380-0100(14)(c), shall be subject to the same statutory and administrative review criteria prescribed by ORS Chapter 540 and OAR Chapter 690, Division 380 transfer rules for water uses subject to transfer; and

(c) A request by a water authority for changes in the point of diversion or appropriation for water right permits other than those covered under subsection (3)(b) of this rule, shall be made pursuant to ORS 537.211.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 450.695 & ORS 540.510 - ORS 540.532

Hist.: f & ef 6-11-87; f & cert. ef. 8-23-90, Renumbered from 690-015-0015; f & cert. ef. 12-14-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0010 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2120

Change in Point of Diversion or Appropriation to Reflect Historical Use

(1) As provided in ORS 540.532, any individual who holds a water right certificate or decree may request a change in point of diversion or appropriation to reflect the historical use of water at a point of diversion or appropriation other than that described in the water right certificate or decree. The individual shall use the Department's water right transfer application form, clearly marked "Historic Change in POD," and, except as otherwise provided in section (2) of this rule, include the information required in OAR 690-380-3000.

(2) An individual requesting a change in the point of diversion or appropriation under section (1) of this rule shall provide to the Department the following additional information:

(a) Evidence that the actual, current point of diversion or appropriation for the water right in question has been in use for more than 10 years;

(b) A map meeting the requirements of OAR 690-380-3100, except that it need not be prepared by a certified water rights examiner. The map shall be of sufficient detail and clarity to identify the true point of diversion or appropriation including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion or appropriation as specified in the water right certificate or decree and the actual, current point of diversion or appropriation;

(c) Evidence that there has been no claim of injury prior to the request for the change in point of diversion or appropriation. The evidence shall include a statement from the local watermaster, based upon the watermaster's knowledge and Department records, that no complaint of injury has been made due to the use of water at the actual, current point of diversion or appropriation.

(3) On receipt of an application for a change in point of diversion or appropriation under section (1) of this rule, the Department shall:

(a) Provide the applicant a list of the affected water rights. The list shall include, but is not limited to:

(A) Any water right with an intervening point of diversion or appropriation;

(B) Any water right for use of stored water being delivered from an upstream reservoir to a downstream user;

(C) Any water right upstream from a significant inflow of water if the request moves the proposed point of diversion upstream, above the inflow, from the authorized point of diversion;

(D) Any water right downstream from a significant inflow of water if the request moves the proposed point of diversion downstream, below the inflow, from the authorized point of diversion;

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

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

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

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

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

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

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

(5) If, after considering any comments received, the Department finds the individual requesting a change in point of diversion or appropriation to reflect historical use satisfies the requirements under section (2) to (4) of this rule and that the change does not cause injury, the request shall be approved. The order approving the change in point of diversion or appropriation shall establish a deadline for compliance with any conditions needed to prevent injury and, where required, to provide fish screening. If a certificate had previously been issued, the order shall cancel the certificate. The director shall issue a new certificate confirming the change in point of diversion or appropriation and preserving all other conditions of the water right.

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.532

Hist.: f & cert. ef. 7-11-96; Renumbered from 690-015-0240 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2130

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

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.

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

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

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

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

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

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

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

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

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

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine

the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

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

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion.

(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.

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

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

(11) As used in this rule:

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

(b) "Similarly" means that the use of groundwater at the new point of diversion affects 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) "Deschutes basin ground water study area" means the Deschutes River Basin drainage area indicated in OAR 690, Division 505, Exhibit 1.

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

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

Hist.: f & cert. ef. 7-11-96; Renumbered from 690-015-0210 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 3-17-04; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2200

Changes in Place of Use

No change in the place of use may be made except as described under OAR 690-380-0010 or as approved by the Department through a water right transfer, permit amendment under ORS 537.211, certificate of registration modification under OAR Chapter 690, Division 382, or pursuant to OAR 690-380-2260.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2240

Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a water use subject to transfer, a permit, or a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a transfer or permit amendment, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to transfer or amend a layered water use subject to transfer or permit should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A supplemental irrigation water right may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the supplemental right is to be moved.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2260

Exchanges of Water

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2300

Changes in Character of Use

Water may only be used for the authorized purposes in the water right except as provided under ORS 540.510(3) and (8) and ORS 540.520(8) and (9) or as approved by the Department

through a water right transfer, certificate of registration modification under OAR Chapter 690, Division 382, or pursuant to OAR 690-380-2340.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2330

Substitution of Supplemental Ground Water Right for Primary Surface Water Right

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2420

Notice of Merger, Consolidation or Formation of a Water Authority

(1) Municipal water supply entities that merge, consolidate or form a water authority may notify the Department of such action and request issuance of superseding certificates pursuant to sections (2) and (3) of this rule. The notice and request for issuance of superseding certificates shall include the following:

- (a) A listing of the entities in the merger, consolidation or formation of a water authority;
 - (b) A copy of the documents filed with the city, county or state authorities approving such action;
 - (c) A copy of the cooperative agreement, or other evidence, between the authority and the county or other authority granted coordinative functions under ORS Chapter 197 showing consistency with local comprehensive plans;
 - (d) A listing of the certificated water rights by number of all water rights for the usual municipal purposes of all entities involved;
 - (e) A map, meeting the requirements of OAR 690-380-3100, showing the legal boundaries of the water service area and the points of diversion or appropriation;
 - (f) The name and address of the authority authorized to conduct business; and
 - (g) A written request that new water right certificates be issued to the authority.
- (2) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue superseding certificates confirming the resulting municipal use of water, showing the place of use within the legal description of the service boundaries of the new entity as it was officially formed.
- (3) After verifying the information submitted in accordance with subsections (1)(a) to (g) of this rule, the Director shall issue certificates to supersede the certificates that were issued before a merger, consolidation or formation of a water authority. Superseding certificates describing the place of use shall be issued to the authority.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: f & cert. ef. 12-14-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0150 by WRD 4-2003, f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-2430

Acquisition of Water Rights by a Water Authority

- (1) In addition to using the process described in OAR 690-380-2420, a water authority may acquire water rights from a municipality, a domestic water supply district, an irrigation district, a drainage district, a water improvement district, or a water control district.
- (2) A water authority that acquires a water right may:
- (a) Exercise the right subject to the limitations in section (4) of this rule if the right is for municipal purposes;
 - (b) Submit a request for issuance of a superseding certificate that includes the information described in section (3) of this rule if the right is a certificated right for municipal use;
 - (c) Submit a water right transfer application to change the character of use if the right is subject to transfer; or
 - (d) Submit a water right transfer application to change the point of diversion or appropriation if the right is a permit or a right subject to transfer.
- (3) A request for issuance of a superseding certificate submitted pursuant to subsection (2)(b) of this rule shall be in writing and include:
- (a) The name and address of the water authority;
 - (b) The certificate number of the water right acquired by the water authority; and

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: f & cert. ef. 12-14-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0130 by WRD 4-2003, f & cert. ef. 5-1-2003; WRD: 8-2006, f & cert. ef. 10-06-06

Transfer Applications

690-380-3000

Application for Transfer

Each transfer application shall be prepared in ink or typewritten on forms provided by the Department. Applications shall contain the following information concerning the primary water right and any appurtenant supplemental water right or permit, if applicable:

- (1) Applicant's name, mailing address, and telephone number.
- (2) Type of change proposed.
- (3) Name appearing on permit, certificate, decree or proof of appropriation.
- (4) Name of decree and certificate number, if applicable.
- (5) Permit number and certificate number, if applicable.
- (6) Source of water (from permit, decree or certificate).
- (7) Date of priority.
- (8) The existing and proposed points of diversion or appropriation located accurately in reference to a public land survey corner.
- (9) The authorized existing use of water.
- (10) A description of the current water delivery system that demonstrates that the applicant is ready, willing, and able to exercise the right and includes information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized use.
- (11) The authorized place of use identified by its location within the public land survey and tax lot number.
- (12) Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. The evidence shall include the following information:
 - (a) If the right has been used during the past five years, one or more affidavits from persons, such as the owner or operator, a neighbor, crop field person for a cannery or other product buyer, or Natural Resources Conservation Service (NRCS) representatives, who can attest from personal knowledge or professional expertise that the right was exercised at the authorized

location and for the authorized purpose. Such affidavits shall state the specific grounds for the affiant's knowledge, the specific use to which the water was put (e.g., the crops grown, the nursery stock watered), and the delivery system used to apply the water and include supporting documentation such as:

(A) Copies of receipts from sales of irrigated crops or for expenditures relating to use of water;

(B) Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers; or

(C) Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph, or

(b) If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2).

(13) For permanent transfers under OAR 690-380-2000:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-380-4010(4) and prior to Department approval of the transfer, the applicant will be required to provide landownership information and evidence that the applicant is authorized to pursue the transfer as identified in OAR 690-380-4010(5);

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant. Such an entity may only apply for a transfer under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(14) For temporary transfers under OAR 690-380-8000, name of the deeded landowner of the land to which the water right is appurtenant and a copy of the recorded deed to the subject lands. If the applicant is not the deeded landowner, the applicant shall provide a notarized statement from the landowner authorizing the change.

(15) The proposed use of water.

(16) The proposed place of use shall be identified by its location within the public land survey and, if the applicant is not a municipality as defined in ORS 540.510(3)(b), by tax lot number and name and address of each tax lot owner(s) other than the applicant.

(17) Reason for the proposed change.

(18) Map as required in OAR 690-380-3100.

(19) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those transfers that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(20) If the request is for a change in point of diversion to a well, or a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(21) A listing of the names and mailing addresses of:

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 to ORS 540.531

Hist.: f & ef. 6-11-87; f & cert. ef. 8-10-88; f & cert. ef. 8-8-90; f & cert. ef. 8-23-90; f & cert. ef. 7-11-96; (Temp), f 5-16-00, cert. ef. 5-16-00 thru 11-10-00; Administrative correction 6-21-01;

Renumbered from 690-015-0060 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004;

WRD: 8-2006, f & cert. ef. 10-06-06

690-380-3100

Map Requirements

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

(a) Except as otherwise provided under OAR Chapter 690, Division 380 or 382, the map shall be prepared by a certified water right examiner.

(b) 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.

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

(d) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if three copies of the application map and an electronic file of the map in a format approved by the Department are submitted.

(e) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

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

(D) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or
(E) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

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

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

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

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

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

(i) If the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right.

(j) If existing final proof survey maps on file with the Department accurately identify the points of diversion or appropriation and the place of use for the water rights affected by the proposed transfer and include the information described in section (2) of this rule, on advance written or e-mail approval by the Department, the existing final proof survey maps may be submitted to meet the requirements of OAR 690-380-3000(18).

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

(a) A north arrow, the scale, and a clear legend;

(b) The certified water rights examiner's stamp and signature, if applicable. An electronically generated stamp or seal is acceptable provided the signature is original;

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

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

(e) For a change in place of use or character of use, the location of the authorized and proposed place of use of the water. If the application is for irrigation, nursery use, cranberry use, or other similar uses, the place of use indicated on the map shall be shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right involved in the proposed transfer has multiple priority dates or uses, the lands to be served by each priority date and on which each use is proposed must be separately identified;

(f) 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;

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

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

(i) Notwithstanding the requirements of subsection (1)(g), 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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & ef 6-11-87; f 2-26-88, cert ef 2-28-88; f & cert. ef. 7-11-96; Renumbered from 690-015-0070 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-3200

District May Submit Application for Water Users

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

(2) An application for a change in the place of use of water rights managed by a district may be made pursuant to OAR Chapter 690, Division 385.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.520

Hist.: f & ef 6-11-87; f & cert. ef. 7-11-96; Renumbered from 690-015-0020 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-3220

Separate Application Required for Each Water Right

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

(1) A change in point or points of diversion or appropriation to a new common point of diversion or appropriation for a delivery system serving multiple rights or multiple ownerships.

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.520

Hist.: f & ef. 6-11-87; f & cert. ef. 8-10-89; f & cert. ef. 8-23-90, Renumbered from 690-015-0035; f & cert. ef. 7-11-96; Renumbered from 690-015-0025 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

Application Notice and Review

690-380-4000

Request for Comments

- (1) On receipt of an application for transfer, the Department shall review the application to determine if the applicant has included the information required by OAR 690-380-3000 and if the water rights proposed for transfer are water uses subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
- (2) If the Department determines that the application does not include the required information or that the water rights proposed for transfer are not subject to transfer, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.
- (3) If the Department determines the application is complete and the water rights proposed for transfer are uses subject to transfer, the Department shall file the application and request public comments on the application:
 - (a) In the weekly notice published by the Department; and
 - (b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-380-3000(21).
- (4) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-4010

Preliminary Determination

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

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

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

(c) The proposed transfer would result in enlargement;

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

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

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

(a) Describe the basis for the denial; and

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

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

(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information to demonstrate that the applicant is authorized to pursue the transfer:

(a) A report of ownership and lien information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant that has been prepared within the prior three months;

(b) A copy of a written notification of the proposed transfer provided by the applicant to all lien holders on the subject lands unless the report on ownership and lien information shows that a water right conveyance agreement has been recorded for the subject lands; and

(c) If the landowner identified in the report of ownership and lien information is not the applicant, a notarized statement consenting to the transfer by the landowner identified in the report or an authorized representative of the entity to whom the interest in the water right has been conveyed as identified in a water right conveyance agreement or other documentation demonstrating that the applicant is authorized to pursue the transfer in the absence of the consent of the landowner.

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-4020

Notice of Preliminary Determination

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

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

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the water uses subject to transfer are located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing a copy of the preliminary determination and notice to each person who submitted comments under OAR 690-380-4000(3).

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

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

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

(c) The application file number;

(d) The applicant's name and address;

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

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

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

(3) As provided in ORS 540.520(5), the cost of publication in a newspaper shall be paid by the applicant. At the discretion of the Director, the applicant may satisfy this requirement by arranging for the publication of the notice prepared by the Department in a newspaper that meets the criteria in subsection (1)(b) and providing the Department with an affidavit of publication or by paying the costs of the publication in advance to the Department.

(4) On issuance of the preliminary determination, the Department shall mail to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice. The Department shall allow the applicant a period of not fewer than 45 days after mailing of the preliminary determination to provide the Department with the affidavit required under section (3) of this rule.

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

(a) A change in place of use;

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

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

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

(7) If the applicant fails to provide the Department with the affidavit required under section(3) of this rule within the period allowed under section (4) of this rule, the Department shall request written notification that the applicant either:

(a) Published the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant published the notice, the applicant shall include the affidavit required under OAR 690-380-4020(3); or

(b) Requests the Department to publish the newspaper notice required under OAR 690-380-4020(1)(b). If the applicant requests the Department to publish the notice, the applicant shall include payment for the cost of publication including the direct cost of the notice and indirect costs not to exceed twenty (20) percent.

(8) The Department may deny the application for failure to pay in advance the costs of publication of the newspaper notice if the applicant fails to respond with the required information within 30 days after the Department mails a request under section (7) of this rule.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.520 & ORS 540.532

Hist.: f & ef 6-11-87; f & cert. ef. 8-8-90; f & cert. ef. 4-26-91; f & cert. ef. 7-11-96; Renumbered from 690-015-0080 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-4030

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later:

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

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

(2) A person filing a protest under this rule must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-380-4020(3) to the Department prior to or concurrent with the filing of the protest.

(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 may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-380-0100(11) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025 & ORS 536.027

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

Hist.: f & ef 6-11-87; f & cert. ef. 7-11-96; Renumbered from 690-015-0085 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-4200

Hearings

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

(2) Notice and conduct of the hearing shall:

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

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

(3) If after hearing the Department issues a proposed final order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of OAR 690-380-5030 to 690-380-5050.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

Final Orders

690-380-5000

Approval of Transfers

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

(a) The water right affected by the proposed transfer is a water use subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14) and, for a right described under OAR 690-380-0100(14)(d), the proof of completion has been approved under OAR 690-380-6040;

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

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

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

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

(2) Except as otherwise provided in OAR 690-380-4020(8), the Department shall issue a final order consistent with the preliminary determination described in OAR 690-380-4010 if no protests or notifications of intent are received under OAR 690-380-4030(1).

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & ef 6-11-87; f & cert. ef. 7-11-96; Renumbered from 690-015-0050 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef. 11-5-2004; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5030

Approval of Injurious Transfers

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5040

Affidavits of Consent

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

- (1) Is the holder of a water right that the Department has determined would be injured;
- (2) Has reviewed the preliminary determination or proposed order of the Department concluding the transfer would result in injury and recognizes the nature of the injury;
- (3) Understands that approval of the proposed transfer may permanently reduce the quantity of water available for use under the water right; and
- (4) Consents to the injury resulting from the proposed change in point of diversion or appropriation.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5100

Compatibility with Acknowledged Comprehensive Plans

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

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

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

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

Stats. Implemented: ORS 540.510 to ORS 540.531

Hist.: f & cert. ef. 8-8-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0057 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5110

Original Right Terminated

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & ef 6-11-87; f & cert. ef. 7-11-96; Renumbered from 690-015-0040 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5120

Multiple Primary Water Rights on the Same Lands

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.510 - ORS 540.532

Hist.: f & ef 6-11-87; f & cert. ef. 8-23-90; f & cert. ef. 7-11-96; Renumbered from 690-015-0045 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-5140

Time for Completion

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

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

(3) The time allowed by the Department for completion of an authorized change shall not be used when computing a five-year period of non-use under the provisions of ORS 540.610(1). The time for completion of the change requested in a transfer application is one full year plus the

time until the next October 1. The time for completion of the change of a municipal or quasi-municipal right is five years plus the time until the next October 1. A longer time for completion may be allowed if the applicant can justify the need for a longer period of time.

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: f & cert. ef. 7-11-96; Renumbered from 690-015-0087 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

Perfection of Transferred Rights

690-380-6010

Failure to Complete a Transfer as Grounds for Cancellation

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: f & ef 6-11-87; f & cert. ef. 7-11-96; Renumbered from 690-015-0090 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

690-380-6030

Proof Of Use; Noncompliance

(1) For transfers requested prior to July 10, 1987, at such time given in the order approving the transfer for complete application of water, the director may have the subject property inspected and shall issue a certificate of water right confirming the water right to the extent it has been re-established by use under the terms of the order approving the transfer. The owner may either hire a certified water right examiner to prepare the map and report required for his/her

claim of Beneficial Use or wait for the Department to conduct a final proof survey on its own schedule.

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

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.530

Hist.: f & ef 6-11-87; f 2-26-88, cert ef 2-28-88; f & cert. ef. 7-11-96; Renumbered from 690-015-0110 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

Temporary Transfers

690-380-8000

Temporary Transfers

Any person who holds a water use subject to transfer may request that the Department approve:

(1) For a period of not to exceed five years, a temporary transfer of:

(a) Place of use and, if necessary to convey the water to the new temporary place of use, point of diversion or appropriation; or

(b) Character of use of a right to store water, or

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

Stat. Auth.: ORS 536.025 & ORS 536.027

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

Hist.: f & cert. ef. 7-11-96; Renumbered from 690-015-0300 by WRD 4-2003, f & cert. ef. 5/1/2003; f & cert. ef 3-17-04; WRD: 8-2006, f & cert. ef. 10-06-06

Miscellaneous Provisions

690-380-8020

Supplemental Water Rights

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

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

(3) If an existing supplemental water right or permit is not included in the temporary transfer application, the Department shall notify the applicant and the landowner, as identified under OAR 690-380-3000(14), that the order approving the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

(4) The notice shall contain the following:

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

(b) A statement that the applicant and landowner, as identified under OAR 690-380-3000(14), has 30 days, from the date of the notice, to either modify the application to include the supplemental water right, or withdraw the application.

(c) A statement that, unless the applicant complies with subsection (4)(b) of this rule, the order approving the application for the temporary transfer of the primary water right will not allow the exercise of the supplemental water right or permit.

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

(6) If the application is not modified or withdrawn, the director shall enter an order approving the temporary transfer of the primary water right and not allowing the exercise of the supplemental water right until the primary water right reverts to the original water use.

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

(8) If the Department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the Department shall notify the applicant of the Department's intent not to allow the temporary transfer of the supplemental water right or permit before the Department issues the order approving the temporary transfer of the primary water right. The notice shall inform the applicant that the supplemental water right or permit shall remain appurtenant to the land described in the application, but may not be exercised until the primary water right reverts to the original water use.

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

Stat. Auth.: ORS 536.025 & ORS 536.027

Stats. Implemented: ORS 540.523

Hist.: f & cert. ef. 7-11-96; Renumbered from 690-015-0320 by WRD 4-2003, f & cert. ef. 5/1/2003; WRD: 8-2006, f & cert. ef. 10-06-06

**OREGON ADMINISTRATIVE RULES
WATER RESOURCES DEPARTMENT
CHAPTER 690
DIVISION 382
GROUND WATER REGISTRATION MODIFICATIONS**

690-382-0010

Purpose

(1) The rules in OAR Chapter 690, Division 382 establish the requirements and procedures to be used by the Department to evaluate an application to modify a ground water certificate of registration. The rules describe the requirements for changing the point of appropriation, place of use, or character of use of a certificate of registration.

(2) No change in point of appropriation, place of use, or character of use of a certificate of registration may be made except as provided under these rules and OAR Chapter 690, Division 380.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR Chapter 690, Division 382. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground water registration.

(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;

(b) Increasing the acreage irrigated under a certificate of registration;

(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 appropriation than is legally available to that certificate of registration at the original point of appropriation.

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

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

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

(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.

(7) "Report of ownership and lien information" means a document prepared by a title company that includes current ownership, a legal description of the lands, identification of lien holders, and if a water right conveyance agreement has been recorded for the subject lands, a copy of the agreement and identification of the owner of the lands at the time the agreement was recorded.

(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.

(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(10) "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; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0200

Layered Water Rights and Certificates of Registration

(1) Except as provided in section (5) of this rule, a change in place of use or character of use of a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized.

(2) When reviewing an application for a registration modification, the Department shall notify the applicant if other layered water uses subject to transfer, permits, or certificates of registration are identified for which applications for concurrent changes have not been filed.

(3) The Department shall provide an applicant notified under section (2) of this rule a period of not less than 30 days to:

(a) Submit applications for concurrent changes in the other layered water uses subject to transfer, permits, and certificates of registration;

(b) Submit affidavits of voluntary cancellation for the other layered water uses subject to transfer, permits, and certificates of registration; or

(c) Withdraw the application.

(4) If the Department determines that an application to modify a layered certificate of registration should be denied, the Department shall notify the applicant of the Department's intent to issue final orders denying the application and all associated applications unless, within 30 days after the date of Department notification, the applicant:

(a) Submits an affidavit of voluntary cancellation for the portion of the water use subject to transfer, permit, or certificate of registration that the Department has determined cannot be transferred, amended, or modified; or

(b) Withdraws the applications.

(5) A certificate of registration that the applicant designates as being for supplemental irrigation use may be moved separately from the associated primary irrigation water right if another primary irrigation water right with similar reliability is appurtenant to the lands to which the certificate of registration is to be moved.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0300

Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification .

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0400

Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

- (1) Applicant's name, mailing address, and telephone number.
- (2) Type of change proposed.
- (3) Name appearing on the certificate of registration.
- (4) Certificate of registration number for the registration to be modified.
- (5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.
- (6) Source of water as described on the certificate of registration.
- (7) Date of priority.
- (8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.
- (9) The authorized and proposed use of water, if applicable.
- (10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.
- (11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.
- (12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:
 - (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;
 - (b) That involve changes in place of use only;
 - (c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and
 - (d) That involve irrigation water uses only.
- (13) For a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground water body developed or proposed to be developed.
- (14) A listing of the names and mailing addresses of:
 - (a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and
 - (b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.
- (15) An oath that the information contained in the application is true and accurate.
- (16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in OAR 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

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

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, \$350.

(b) For examination of all other applications to modify a certificate of registration, \$500.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0450

Existing Documentation of Modifications

If documentation of a modification under a ground water registration was on file with the Department prior to July 22, 2005, the Department shall provide an application for recognition of the modification described in the notice priority with respect to processing other applications for recognition of ground water registration modifications. An application filed under OAR 690-382-0400 may incorporate by reference information about the modification that is on file with the Department.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0500

Fee Refunds

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the

Department's recognition of the modification , the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400(17)(b).

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0600

Request for Comments

(1) On receipt of an application for modification, the Department shall review the application to determine if the applicant has included the information required by OAR 690-382-0400.

(2) If the Department determines that the application does not include the required information, the Department shall return the application and any fees to the applicant along with a written description of the deficiencies in the application.

(3) If the Department determines the application is complete, the Department shall file the application and request public comments on the application:

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

(b) By mail to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(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; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0700

Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-382-0600(4), the Department shall prepare a preliminary determination of whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule.

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

(a) The proposed modification would result in enlargement;

(b) The proposed modification would result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would result in injury; and

(d) Any other requirements for registration modifications are met.

(3) For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:

(a) Describe the basis for the Department's conclusions; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

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

(5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information to demonstrate that the applicant is authorized to pursue the modification:

(a) A report of ownership and lien information as defined in OAR 690-382-0100(7) for the land to which the water right is appurtenant that has been prepared within the prior three months;

(b) A copy of a written notification of the proposed modification provided by the applicant to all lien holders on the subject lands unless the report on ownership and lien information shows that a water right conveyance agreement has been recorded for the subject lands; and

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership and lien information:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership and lien information or who are authorized representatives of an entity to whom the interest in the water right has been conveyed as identified in a water right conveyance agreement; or

(B) Documentation demonstrating that the applicant is authorized to pursue the modification in the absence of the consent of the persons named on the certificate of registration or the assignee and the owner of the lands to which registration is appurtenant.

(6) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.

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

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0800

Notice of Preliminary Determination

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

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

(b) Except as provided in section (5) of this rule, by publication in a newspaper having a general circulation in the area in which the certificate of registration(s) is located for a period of at least three weeks and not less than one publication each week; and

(c) By mailing a copy of the preliminary determination and notice to the applicant and each person who submitted comments under OAR 690-382-0600.

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

(a) The type of modification proposed and any amendments to the application that were made subsequent to the notice required OAR 690-382-0600;

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

(c) The registration and certificate numbers;

(d) The applicant's name and address;

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

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

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

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

(4) On issuance of the preliminary determination, the Department shall mail to the applicant a copy of the preliminary determination and, if publication in a newspaper is required, a copy of the notice. The Department shall allow the applicant a period of not fewer than 45 days after mailing of the preliminary determination to provide the Department with the affidavit required under section (3) of this rule.

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

(a) A change in place of use; or

(b) Applications for a change in the point of appropriation of less than one-fourth mile and where there are no intervening wells between the documented point of appropriation and the proposed point of appropriation that is listed in the modification application.

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

(7) The Department may deny recognition of the modification if the applicant fails to provide the Department with the affidavit required under section (3) of this rule within the period allowed under section (4) of this rule.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-0900

Protests and Requests for Hearings

(1) Within 30 days after the date of last publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, with the Department, a protest or standing statement.

(2) A person filing a protest must comply with the provisions of OAR 690-002-0030 and include the fee required under ORS 536.050.

(3) An applicant filing a protest under this rule must provide the affidavit required under OAR 690-382-0800(3) to the Department prior to or concurrent with the filing of the protest.

(4) Each person submitting a protest must 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 may preclude consideration of the issue during the hearing.

(5) The Department shall provide to persons who have filed standing statements as defined in OAR 690-382-0100(8) notice of any differences between the Department's preliminary determination and the final order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-1000

Recognition of Modifications

(1) An application for modification of a certificate of registration shall be recognized if the Department determines that:

(a) The proposed modification would not result in enlargement as defined in OAR 690-382-0100(2);

(b) The proposed modification would not result in a state Scenic Waterway receiving less water than previously available during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would not result in injury as defined in OAR 690-382-0100(3); and

(d) Any other requirements for modification of the certificate of registration are met.

(2) Except as otherwise provided in OAR 690-382-0800(7), the Department shall issue a final order consistent with the preliminary determination described in OAR 690-382-0700 if no protests are received under OAR 690-382-0900.

(3) Issuance of the final order recognizing changes in character of use or place of use shall terminate the right to use water for the character of use or place of use under the original certificate of registration or a previously recognized modification of a registration.

(4) The order recognizing a modification of a certificate of registration may not be construed as a final determination of the right to appropriate ground water under the registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

(5) A copy of the final order and all supporting documentation will be filed with the original request for registration and made available at the time of adjudication under ORS 537.670 to 537.695.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-1100

Hearings

(1) If a protest is filed under OAR 690-382-0900, the Department shall, within 60 days after the close of the period for receiving protests, determine whether to:

(a) Issue a final order that is consistent with the preliminary determination described in OAR 690-382-0700;

(b) Issue a final order that is not consistent with the preliminary determination described in OAR 690-382-0700 that addresses any significant disputes raised in the protest; or

(c) Schedule a contested case hearing to resolve any significant disputes raised in the protest.

(2) Notice and conduct of the hearing shall 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.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06

690-382-1200

Compatibility with Acknowledged Comprehensive Plans

(1) The Department and Commission shall meet requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive

Plans) in evaluating and taking action on applications for certificate of registration modifications except as specified in OAR 690-005-0025 and 690-380-0070(13).

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

(3) The Director may presume that the certificate modification would be allowed by, and compatible with comprehensive plans unless an affected local government informs the Director otherwise within 30 days after the date shown on the notice issued pursuant to OAR 690-382-0800.

Stat. Auth.: ORS 536.025; 536.027; 537.610; 540.531; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610; ORS 540.505-540.532; HB 2123 (Chapter 614, 2005 Oregon Water Laws)

Hist: WRD: 8-2006, f & cert. ef. 10-06-06