

Criteria for District Transfer Applications

The standards and procedures used by the Water Resources Department in evaluating district transfer applications are described in Oregon Revised Statute (ORS) Chapter 540 (<http://landru.leg.state.or.us/ors/>) and in Oregon Administrative Rules (OAR) Chapter 690, Division 385 (<http://www.wrd.state.or.us/OWRD/LAW/oar.shtml>). These criteria and procedures apply to district transfer applications for:

- 1) District Temporary Transfers: Temporarily changing the place of use, type of use in a right to store water, point of diversion to facilitate a change in place of use, point of diversion to a ground water appropriation, point of diversion in response to an emergency, or type of use of a primary water right to a supplemental water right;
- 2) District Permanent Transfers: Permanently changing the place of use; and
- 3) District Permanent Transfers of Water Right for Nonuse: Permanently changing the place of use of a water right subject to forfeiture prior to five consecutive years of nonuse.

District transfers are limited to: an irrigation district formed under ORS Chapter 545, a drainage district formed under ORS Chapter 547, a water improvement district formed under ORS Chapter 522, a water control district formed under ORS Chapter 553, or a corporation formed under ORS Chapter 554.

This is a summary, prepared by the Water Resources Department, of criteria and procedures that are generally applicable to district transfer applications. The summary is necessarily general, and may not specifically address every applicant's fact situation. The summary is intended as general guidance for applicants, and not as a substitute for reference to applicable statutes and rules.

In reviewing district transfer applications under ORS 540.570 to 540.580, the Department will consider the following criteria:

- The applicant qualifies as a district as defined in ORS 540.505
- The lands involved in the transfer are within the boundaries of the district
- The district has a manager who oversees operation of the district
- The water right is not subject to forfeiture due to five consecutive years of nonuse
- The water right proposed for transfer is a water right subject to transfer
- The transfer will not result in injury to existing water rights
- The transfer will not result in enlargement of the water right
- The land from which the water right is transferred will receive no water under the transferred right

The Department may condition, reject, or revoke a district temporary transfer at any time to the extent necessary to avoid injury to existing water rights.

Processing and Reviewing District Transfer Applications

District Temporary Transfers

The Water Resources Department processes temporary transfer applications using the following procedure:

1. The district submits a complete application for a temporary transfer and the appropriate fees to the Department prior to making the proposed change.
2. The change proposed by the transfer application may be made upon submitting the application. Given this, the Department may condition, reject, or revoke a temporary transfer at any time to avoid injury to existing water rights. For a change in point of diversion in response to an emergency, the application requires a listing of governmental organizations the applicant has consulted about the change in point of diversion.
3. Water shall not be used on both the land from which the water right is transferred, and the land to which the water right is transferred during the same irrigation season. Use of water on both locations during the irrigation season may subject both the district and water user to civil penalties.
4. The Department examines the application for completeness to make sure it includes:
 - The standard information required under OAR 690-385-2000;
 - A map, certified by the district, meeting the standards of OAR 690-385-3300;
 - A statement that each user affected by the transfer has authorized the transfer in writing;
 - A statement certifying that the district notified each affected user that the Department may condition or revoke the temporary transfer at any time upon determining the transfer results in injury to an existing water right; and
 - If the transfer involves more than a change in place of use, the applicable information required under OAR 690-385-3200(3).
 - Incomplete applications are returned, along with any fees, to the district.
5. Upon receipt of a complete application, the Department files the application. Within 15 days of receiving the application, the Department places a summary of the application in the Department's weekly notice and requests public comments.
6. The Department accepts comments on the proposed transfer for a 30-day period following publication of the weekly notice.
7. Following the conclusion of the comment period, the Department will issue a final order. The Department considers comments relating to the potential for injury to existing water rights or the enlargement of the water use subject to transfer in determining whether to approve or reject a temporary transfer application. The Department also consults with the Oregon Department of Fish and Wildlife on all point of diversion changes. The Department may condition approval of the transfer application to require an appropriate fish screen.
8. A final order may be appealed by petitioning for judicial review or petitioning the Department for reconsideration of the final order.
9. Upon expiration of the temporary transfer period, all uses of water automatically revert to the terms and conditions of the original water right.

District Permanent Transfers

District permanent transfers are for a place of use change only. The Water Resources Department processes district permanent transfer applications using the following procedure:

1. A district has two options for applying to permanently change the place of use. A district may:
 - Allow a change in place of use before the Department approves a transfer application provided it notices the change, or
 - It may submit an application and await Departmental approval of the change in place of use.
2. Notice procedures for making the change before the Department issues an order approving the transfer are as follows:
 - a. The district files notice of the change with the Department, prior to the change occurring, as described in OAR 690-385-4100(2) through (4).
 - b. The Department publishes notice in its weekly publication of the noticed change.
 - c. The district notifies affected users that the change is subject to approval of the Department and that the Department may direct the district to cease delivery of water or require mitigation to avoid injury to other water rights.
 - d. Prior to the end of the calendar year in which the change occurs the district files a permanent transfer application for the noticed change.
3. Provided the district submits a permanent transfer application and the district did not file notice of a change in place of use with the Department, the district must await approval of the application by the Department before making the change.
4. Upon receipt of an application, the Department examines the application for completeness to make sure it includes;
 - The standard information required under OAR 690-385-2000; and
 - A map, certified by the district, meeting the standards of OAR 690-385-2200;
5. Incomplete applications are returned, along with any fees, to the district.
6. Upon receipt of a complete application, the Department files the application. Within 15 days of receiving the application, the Department places a summary of the application in the Department's weekly notice and requests public comments.
7. The Department accepts comments on the proposed transfer for at least a 30-day period following publication of the weekly notice.
8. Following the conclusion of the comment period, the Department will issue a final order. The Department considers comments relating to the potential for injury to existing water rights or the enlargement of the water use subject to transfer in determining whether to approve or reject a temporary transfer application.
9. Any potentially affected holder of an existing water right may file a protest against the petition within 30 days after the mailing of the Department's weekly notice. The protest must be filed in accordance with OAR Chapter 690, Division 002, and include the required fees.
10. In response to a protest or if in the opinion of the Department a hearing is necessary, the Department may hold a contested case hearing in the area of the state where the rights are located.

11. If a user within the district protests the application alleging injury to the delivery of water by the district, the Department shall refer the protest to the district to resolve and decline to hold a hearing.

District Permanent Transfers of Water Right for Nonuse

The Water Resources Department processes a district permanent transfer of water right for nonuse applications using the following procedure:

1. The district provides notice of intent to submit a district permanent transfer to the user and any security interest holder of record of the land whose right of record would be transferred as described in OAR 690-385-5100.
2. If the district receives an objection from the user within 30 days after the mailing of the notice, the district attempts to resolve the matter with the user.
3. If the objections cannot be resolved, a hearing is held before the board of directors to determine whether to proceed with the transfer.
4. Following resolution of the objection, a hearing, or if no objection is received by the district, the district submits a permanent transfer application containing the information required under OAR 690-385-2000. If a hearing was held by the board of directors to resolve objections, the application must include a copy of any findings, determinations, or conclusions resulting from the hearing.
5. After filing a district permanent transfer of water right for nonuse application with the Department, the district sends a copy of the petition, map indicating the transfer location, and a notice to the users of the district whose right of record is to be transferred and who are to receive the transferred right.
6. Upon receipt of a complete application, the Department files the application. Within 15 days of receiving the application, the Department places a summary of the application in the Department's weekly notice and requests public comments.
7. The Department accepts comments on the proposed transfer for a 30-day period following publication of the weekly notice.
8. Following the conclusion of the comment period, the Department will issue a final order. The Department considers comments relating to the potential for injury to existing water rights or the enlargement of the water use subject to transfer in determining whether to approve or reject a temporary transfer application. The Department also evaluates whether the district submitted the application no later than the end of the calendar year of the fifth year of nonuse under OSR 540.610(1).
9. Any user (within the district) may file a protest against the application within 60 days after the mailing of the notice to the users of the district's submittal of the transfer application to the Department. The protest must be filed in accordance with OAR Chapter 690, Division 002, and include the required fees.
10. In response to a protest or if in the opinion of the Department a hearing is necessary, the Department may hold a contested case hearing in the area of the state where the rights are located.