

Guidance for District Permanent Transfer of Water Right for Non-Use

Introduction

Certain agricultural water suppliers must have an approved conservation plan to transfer water rights within the boundaries of the district to other lands within the district (ORS 540.572 to 540.578). Each of these agricultural water suppliers are required to submit a water management and conservation plan, implement the approved plan and submit an updated plan consistent with the requirements of OAR 690, Division 86 as prescribed during the plan approval.

Agricultural water suppliers participating in the water transfer provisions in ORS 540.572 to 540.578 shall submit an annual report describing progress-to-date in implementing a water management and conservation plan. Water management and conservation plans submitted by agricultural water suppliers shall meet the requirements listed in OAR 690-086-0225 to 690-086-0270.

Oregon Revised Statutes 540.572, 540.574 and 540.576 along with Oregon Administrative Rules (OAR) 690-385-5000 to 690-385-5900 set forth the rules and laws in which an irrigation district may apply to transfer lands that have been confiscated from a water user because of non-use of a period of five successive irrigation seasons.

In order for the above statute and rules to be applicable, the district must have a full-time manager, be implementing a conservation plan approved by the Water Resources Commission and the relevant lands must be within the legal boundaries of the district.

Discussion

Prior to submission of permanent district transfer application for non-use

If a water user (an owner of land who is subject to the charges and assessment of the district) has not made beneficial use of the water appurtenant to the user's land for a period of four successive years, the district must advise the user and all interest holder(s) that if the water right is not used for a fifth successive year, the district may petition the Water Resources Commission to transfer the water right off of the user's land without the user's approval.

When a district wishes to transfer the use of water, the district shall provide notice of its intent to the user and interest holder(s) after the fourth year of non-use has occurred. The notice must be sent to the last known address of the user with a return receipt requested.

The notice shall include the following:

- The number of acres that the user is being assessed;
- A general description of the land to which the water is appurtenant (e.g. Township, Range, Section Quarter-Quarter, tax lot);
- A description of the use; and
- A request for confirmation that the information contained in the notice is correct.

Furthermore, the notice must communicate that:

- The district has determined that the user's land is no longer irrigated or susceptible of irrigation; Note- users may demonstrate beneficial use of water by beneficially irrigating the lands to which the water right is appurtenant prior to the end of the fifth consecutive year of non-use or by making beneficial use of water under one of the qualifying programs of the Department (water right transfer, transfer to instream, instream lease, etc.)

- The district intends to petition the Water Resources commission for approval to transfer the water right to other lands in the district; and
- Should the water user disagree with the proposed action of the district, the user shall, in writing, advise the district of their objection within 30 days after the notice is mailed.

If the district receives a written objection within 30 days from the date of mailing the notice, the district manager will attempt to resolve the matter with the user. If the objections cannot be resolved, a hearing shall be held before the board of directors who shall make a determination whether to proceed with the application to transfer the water right.

If no written objections are received by the district or resolution has otherwise been reached, the district may petition for approval of a transfer.

Submission of permanent district transfer application for non-use

The submission of a transfer application for non-use must occur no later than the end of the calendar year of the fifth year of non-use. The application should contain the standard information required by OAR 690-385-2000, a copy of the notice that was previously sent to the water user (mentioned above), a copy of any timely objection received by the district and a copy of the conclusions resulting from any hearing held by the district.

Upon submission of a permanent transfer for non-use the district must:

- Provide notice to the affected user that a district permanent transfer application has been submitted;
- Provide the user of the affected lands a copy of the application and map; and
- Mail the notice, application and map to the last known address of the water user by certified mail with a request for a return receipt.

The notice mentioned above must contain information that communicates to the user that the Department will approve the application under the requirements of OAR 690-385-5600 unless the Department determines that (1) the application is incomplete (2) or the water user from which water rights are proposed to be transferred from files a protest as described in OAR 690-385-5700.

Following submission

Upon receipt of the application the Department will review the application to determine if the application is complete. Within 15 days of receipt of a complete application, the Department will notice the application in our weekly electronic publication (http://www1.wrd.state.or.us/cgi-bin/notices.pl?water_rights). The Department's weekly notice will request public comments on the application and will provide period of at least 30 days for interested parties to comment.

The Department will evaluate the application to ensure that the water right proposed for transfer is subject to transfer and will not result in enlargement or injury. The Department will also ensure that all applicable requirements for a district permanent transfer of water right for non-use have been adhered to and satisfactorily met, including the water user notice requirements described above.

If the application meets all the criteria set forth in rule and statute (and outlined here), the Department will issue a final order approving the transfer.

An example of a final order approving a district permanent transfer for non-use is available for review at the following link:

http://apps2.wrd.state.or.us/apps/misc/vault/vault.aspx?Type=Order&volume_nbr=74&page_nbr=845&page_char=