

## Non-Use Permanent District Transfer General Process (aka 572 transfers)

### Eligibility to File Non-Use Transfer [OAR 690-385-5000(1)-(3); ORS 540.572(1)(a-b)]

Pursuant to ORS 540.572, the Department may approve a district permanent transfer for place of use of water right appurtenant to land no longer irrigated or susceptible to irrigation, provided:

- **Compliance with ORS 540.572, 540.574 and 540.576**
- **Place of use of water right appurtenant to land no longer irrigated or susceptible to irrigation**
- **To and From lands are within boundaries of the district**
- **Full-time manager employed by District**
- **Implementing an approved WMCP**

### District Process (OAR 690-385-5000(4)-(5); OAR 690-385-5100; ORS 540.572(2) - (6))

- **4<sup>th</sup> year notice – district determination of no water use for four consecutive years** [[ORS 540.572(2); OAR 690-385-5000(4)]
  - **District advises user (by certified mail with a return receipt requested and security interest holder** [ORS 540.572(2); also OAR 690-385-5100(1)-(2)]
    - **No use for 5<sup>th</sup> year, district may petition OWRD for transfer under ORS 540.574**
  - **Include Statement that the user may demonstrate beneficial use by:** [OAR 690-385-5100(3)(d)]
    - **Making beneficial use of water prior to end of the 5<sup>th</sup> consecutive year of non-use** [OAR 690-385-5100(3)(d)(A)]
    - **Using a qualifying OWRD program (instream lease, POU transfer) prior to the end of the 5<sup>th</sup> consecutive year of non-use** [OAR 690-385-5100(3)(d)(B)]
- **5<sup>th</sup> year notice of intent to petition for a transfer after 5th consecutive year of non-use** [ORS 540.572(3); OAR 690-385-5000(5)]
  - **District provides notice to user (Certified mail to user with return receipt request and notice to security interest holder -** [ORS 540.572(3)]; also OAR 690-385-5100(1)-(2)]
  - **Notice to include:** [ORS 540.572(4); OAR 690-385-5100(3)]
    - **# acres assessed by tax lot of acres intended to transfer** [OAR 690-385-5100(3)(f); ORS 540.572(4)(a)(A)]
    - **Tax lot/PLS description** [OAR 690-385-5100(3)(e); ORS 540.572(4)(a)(B)]
    - **Description of use** [OAR 690-385-5100(3)(g); ORS 540.572(4)(a)(C)]
    - **A list of the name and address of security interest holders of record** [OAR 690-385-5100(3)(h)]
    - **Request for confirmation of information in notice is correct** [OAR 690-385-5100(3)(i); ORS 540.572(4)(a)(D)]
    - **Advise user that:** [540.572(4)(b)(A-C); OAR 690-385-5100(3)(a)-(c)]
      - **Determination by District that user's land no longer irrigated or susceptible to irrigation**

- **District intends to petition for approval of transfer pursuant to ORS 540.572**
  - **User has 30 days to object in writing and has opportunity to resolve with district or have a hearing before the board of Directors**  
[OAR 690-385-5600(5)(a)-(b); ORS 540-572(5); OAR 690-385-5000(5)]
  - **User has 30 days to advise the district in writing that presumption of forfeiture under 540.610 is rebuttable and why**
- **Once all the above has been satisfied, the District may file a Petition/Application with OWRD**  
[ORS 540.572(6)]

**Notice of Filing District Permanent Transfer Petition/Application** [OAR 690-385-5400; ORS 540.576]

- **After filing a petition under 540.572 district shall send a notice to users of both “FROM” and “TO” lands**
  - **Notice shall include a copy of the petition and map**
    - **Certified mail to last known address with return receipt requested.**
  - **Inform the user they can protest the petition and transfer as described in 540.578 and OAR 690-385-5700 within 60 days of filing this notice.**
  - **Inform the user OWRD will approve as provided for in OAR 690-385-5600 unless:**
    - **Application is deficient or doesn’t meet the requirements of ORS 540.572-.580**
    - **A timely protest is submitted.**

**Application/Petition Process** [OAR 690-385-5200 & 5300 & 5500 & 5600; ORS 540.574]

- (1) District submits a petition (Application) by Dec 31 of 5<sup>th</sup> year of non-use that includes:**
- **Meeting application standards of OAR 690-385-2000** [OAR 690-385-5200(1)]
  - **A map (standard requirements of OAR 690-385-2200) certified by the District (CWRE not required)** [ORS 540.574(1); ORS 540.580(2)(b); OAR 690-385-5300]
  - **Name of district and certificate number(s)** [540.574(3)(a)]
  - **Names of users of “From” and “To” lands** [540.574(3)(b)&(c)]
  - **General description of district boundaries and lands being transferred and the use**[540.574(3)(d)&(e)&(f)]
  - **Signed statement that map and petition are accurate** [540.574(3)(g)]
  - **Signed statement that required notice was given** [540.574(3)(h)]
  - **Signed statement that water right wasn’t ever forfeited under ORS 540.610 due to non-use** [540.574(3)(h)]
  - **Copy of the notices mailed to by the district to the user** [OAR 690-385-5200(2)(a)]
  - **Copy of any objections received by the district within 30 days of notice(s)** [OAR 690-385-5200(2)(b)]
  - **Copy of findings, determinations and conclusions resulting from a hearing held by the district** [OAR 690-385-5200(2)(c)]
  - **Include fee for POU change.** [ORS 540.580(2)(e)]

## **(2) OWRD processes petition/Application**

- **Review application for completeness** [OAR 690-385-5500(1)]
  - **Meets information required in OAR 690-385-5200 (see Item (1), above)**
  - **The water right is subject to transfer per ORS 540.505(4) and OAR 690-385-0100(17)**
- **Return incomplete applications and fees** [OAR 690-385-5500(2)]
- **PN within 15 days of receipt of complete application**[ORS 540.580(6); OAR 690-385-5500(3)(b)]
  - **30 day comment period** –OAR 690-385-5500(3)(c) & (4)
- **Criteria for approval**
  - **District complied with ORS 540.572 - .580** [ORS 540.574(1); ORS 540.578(2)]
  - **There was an opportunity for resolution of the non-use issue as described in OAR 540.572 /OAR 690-385-5600 (objections or hearing), and OAR 690.385-5400 (protest per ORS 540.578 /OAR 690-385-5700)** [OAR 690-385-5000(5); ORS 540.574(1)]
  - **Water right proposed for transfer is subject to transfer per ORS 540.505(4) and OAR 690-385-0100(17)** [OAR 690-385-5500(1); OAR 690-385-5600]
  - **No enlargement of the total right of record of the district** [ORS 540.574(1); ORS 540.580(1)(a); OAR 690-385-5600(2)]
  - **No Injury as defined in OAR 690-385-0100(6)** [OAR 690-385-5600(3); ORS 540.578(2); ORS 540.580(1)(c)]
  - **No change in character of use** [ORS 540.580(1)(b)]
  - **Application is submitted no later than end of calendar year of 5<sup>th</sup> year of non-use** [OAR 690-385-5600(5)]
  - **District did not receive any written objections within 30 day time period following notice under OAR 690-385-5100** [OAR 690-385-5600(5)(a)] **or resolved filed objections or held a hearing to review and consider unresolved objections** [OAR 690-385-5600(5)(b)]

## **(3) Protesting the Petition; Hearings;** [OAR 690-385-5700 & 5800; ORS 540.578; ORS 540.574(2)]

- **User (only) may file a protest within 60 days of mailing date of notice sent to user under 540.576/OAR 690-385-5400** [OAR 690-385-5700(1)(a)&(b)]
  - **Protest must be filed in accordance with OAR 690, division 002** [OAR 690-385-5700(2)]
  - **Protest must include fees under ORS 536.050** [OAR 690-385-5700(2)]
  - **Protest must raise all reasonably ascertainable issues, etc.** [OAR 690-385-5700(3)]

- **Hearing shall be held if:**
  - **Protest is filed** [OAR 690-385-5800(1); ORS 540.578(1)]
  - **It is necessary to determine if the district complied with the requirements of ORS 540.572.580** [ORS 540.578(1)]
  - **Proposed transfers would result in injury** [ORS 540.578(1)]
  - **The application/petition is denied** [540.574(2)]

**(4) Final Order Issued** [ORS 540.574(1); OAR 690-385-5680]

- **After 60 days of the district mailing the notice under OAR 690-385-5400.** [ORS 540.576(1); OAR 690-385-5700]
  - **Final Order is Subject to judicial review w/in 60 days** [ORS 536.075; OAR 137-003-0675]
- **Original right is terminated by order (can no longer legally apply water on “from” lands)** [OAR 690-385-5680; ORS 540.580(1)(d)]

**(5) Time for Completion** [OAR 690-385-7000; ORS 540.574(1)]

- **1 year + time to next Oct 1, or request an extension**
- **Proof of use**
  - **District submits Final Proof map certified by District**
  - **District submits CBU certified by District**
  - **OWRD makes a determination of satisfactory proof (DSP)**
    - **OWRD issues an updated cert (when it is “time”)**