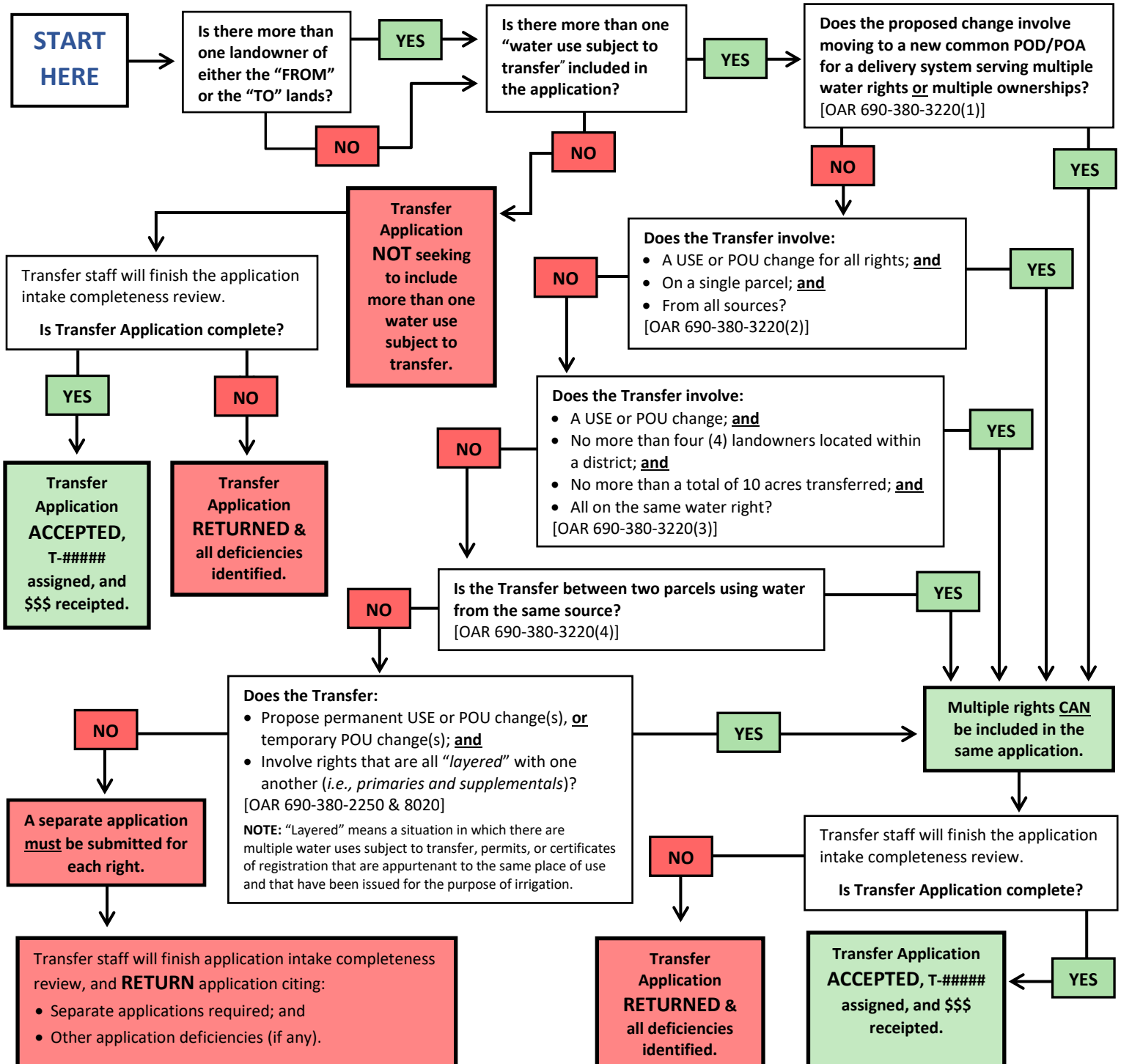


Decision Tree: Can Multiple Water Rights be included in a Single Transfer Application?

OAR 690-380-3220 – General Criteria / OAR 690-380-2250 – Suppl Water Right or Permit / OAR 690-380-8020 – Temp Transfer Suppl WR

FOR DIV. 380 TRANSFERS: The following series of questions outlined in the flow chart below can be used to determine if separate applications are required for each “water use subject to transfer” (as defined in ORS 540.505 & OAR 690-380-0100) that is proposed for transfer. To qualify for including multiple water rights in a single application, a proposed transfer application must meet at least one of the exceptions outlined in OAR 690-380-3220(1)-(4).



- **NOTE:** Only water rights that meet the criteria of a “water use subject to transfer” under ORS 540.505 may be transferred in a Div. 380 Transfer, except as otherwise noted in OAR 540.510, OAR 690-380-2240, & OAR 690-380-2250. Permit Amendments & GR Modifications are administered under ORS 537.211(4) & OAR 690-382, respectively.
- **“More than one landowner”** does NOT mean two individuals who are married & are both a deeded owner of the parcel(s), nor a single Trust citing more than one name.
- **Other considerations:** The claim of beneficial use for all the water rights involved in a transfer will be evaluated at one time. The Department does not allow sequential or partial perfection of the rights changed through a water right transfer. As a result, the ability of a water right holder to obtain a certificate and/or apply for a subsequent transfer, including a temporary transfer, will be limited if the first transfer includes rights held by other parties who have not completed the authorized changes.

OAR 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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.520

NOTE: When reading the text of OAR 690-380-3220, the four exceptions outlined in (1) – (4) of that rule must be read with an “OR” in mind. Meeting any one of these circumstances would allow the inclusion of more than one water right in a single transfer application. To read the text of OAR 690-380-3220(1)-(4) with an “AND” in mind, would be too restrictive. There would be very few transfer applications that would include all the circumstances set forth in OAR 690-380-3220(1)-(4).

Additionally, for those transfer applications that include multiple types of changes to multiple rights (e.g., a POD change and a POU change on ten (10) water rights), as long as the circumstance meets one of the exceptions specified in OAR 690-380-3220(1)-(4), we must allow its submittal. Based on the reasoning outlined above, we would not be able to require an applicant to submit ten (10) separate transfer applications (one for each water right) if one of the circumstances in OAR 690-380-3220(1)-(4) applies. Further (assuming the POD and POU changes under each water right affect the same portion of the right), we would not be able to require an applicant to group all of the POD changes on ten (10) water rights in one application and group all of the POU changes on those same ten (10) water rights in another application. That would result in the same portion of the same water rights being inchoate under two different transfer orders and requiring two different Claims of Beneficial Use for the same portion of the same inchoate water right.

OAR 690-380-2250(1)**Transfer of Supplemental Water Right or Permit**

(1) When an application for change of the use or place of use for a primary water right is submitted in accordance with OAR 690-380-3000, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant intends to transfer the supplemental water right or permit with the primary water right, the applicant shall include information on the supplemental right or permit as part of the transfer application for the primary water right as required under OAR 690-380-3000.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.510 - 540.530

OAR 690-380-8020(1) & (2)**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.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implemented: ORS 540.523