

Division 382**GROUNDWATER 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 groundwater 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.

Statutory/Other Authority: ORS 536.025; 536.027, and 537.610

Statutes/Other Implemented: ORS 537.610, and 540.505-540.532

History:

WRD 5-2006, f. & cert. ef. 10-6-06

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 groundwater under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a groundwater 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(5) "Point of appropriation" means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right or certificate of registration.

(6) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the certificate of registration is appurtenant.

(7) "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.

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 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. The Department's notification shall identify the layering issue(s) that must be resolved and the options for resolution outlined in section (3) of this rule and shall be sent to the applicant through issuance of an initial review.

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

(a) As applicable, amend the groundwater registration modification application for concurrent changes in the other layered certificates of registration, submit applications for concurrent changes in the other layered water uses subject to transfer or other layered permits, and submit an application as otherwise allowed under section (5) of this rule;

(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 filed pursuant to (3)(a) of this rule to transfer a layered water use subject to transfer, amend a layered permit, or modify a layered certificate of registration should be denied or not recognized, the Department shall notify the applicant of the Department's intent to issue final orders not recognizing or denying the

groundwater registration modification 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.

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, as defined in OAR 690-382-0100(4).

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 typewritten 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, email address, if available, 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, pursuant to OAR 690-382-0200 and OAR 690-382-0300(2).

(6) Source of water as described on the certificate of registration.

(7) Tentative date of priority.

(8) The existing registered and, if applicable, previously recognized point(s) of appropriation and the proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The existing registered and, if applicable, previously recognized use of water and the proposed use of water, if applicable.

(10) The existing registered and, if applicable, previously recognized place of use and the proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map, which need not be prepared by a certified water right examiner, meeting the standards in OAR chapter 690, division 305, as well as the following criteria:

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

(b) If the proposed modification involves changes in place of use or character of use for more than three layered, as defined in OAR 690-382-0100(4), certificates of registration, a separate map shall be provided for each certificate of registration.

(c) The location of each existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) of appropriation.

(d) For a change in point of appropriation that does not also include a change in place of use, identification of the lands to be served by the proposed point of appropriation. If the proposed point of appropriation is not intended to serve the entire certificate of registration, the specific lands to be served shall be identified and the number of registered acres to be served by the new point of appropriation shall be listed.

(e) For a change in place of use or character of use, the location of the existing registered and, if applicable, previously recognized place of use 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 certificate of registration involved in the proposed modification has multiple tentative priority dates or uses, the lands to be served by each tentative priority date and on which each use is proposed must be separately identified.

(f) The location of any part of the certificate of registration not involved in the proposed modification. For modifications involving less than 67 percent of the entire place of use of the certificate of registration, the map shall include at least the location of the portions of the registration not involved in the proposed modification which are included in the same quarter-quarter sections as the proposed modification. The applicant shall have the burden of proving the proposed modification involves less than 67 percent of the entire place of use of the certificate of registration. However, the Department may require a greater portion of the certificate of registration or the entire certificate of registration to be mapped, if necessary to make a determination of potential injury.

(g) The location of property lines for the property involved in the modification, in the vicinity of the modification. For modification of municipal, quasi-municipal, and other similar certificates of registration, the property lines need not be shown; however, the service area boundaries shall be indicated.

(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 registered and, if applicable, previously recognized water uses 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 existing registered and, if applicable, previously recognized point(s) of appropriation and proposed point(s) 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.

(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 initial review described in OAR 690-382-0550 and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in 690-382-0550(6) 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 certificate of registration 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, 70 percent of the amount allowed in ORS 537.610.

(b) For examination of all other applications to modify a certificate of registration, the maximum amount allowed in ORS 537.610.

690-382-0450

Existing Documentation of Modifications

If documentation of a modification under a groundwater 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 groundwater 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.

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(18)(b).

Statutory/Other Authority: ORS 536.025; 536.027, and 537.610

Statutes/Other Implemented: ORS 537.610, and 540.505-540.532

History:

WRD 1-2009, f. & cert. ef. 6-18-09

WRD 5-2006, f. & cert. ef. 10-6-06

690-382-0550**Completeness Review and Initial Review**

(1) On receipt of an application for modification, the Department shall review the application to determine if all fees have been paid and 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 and all fees have been paid, the Department shall file the application and undertake an initial review of the application that includes an assessment of whether:

(a) The proposed modification would result in enlargement, as defined in OAR 690-382-0100(2);

(b) The proposed modification would 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 result in injury as defined in OAR 690-382-0100(3); and

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

(4) For an initial review that indicates a modification application is not consistent with the approval criteria for recognition outlined in OAR 690-382-1000(1) and should not be recognized, the initial review shall:

(a) Describe any inconsistencies with the approval criteria for recognition; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would address the inconsistencies.

(5) Upon completion of the initial review, the Department shall provide by electronic means, or if requested by regular mail, a copy of the initial review to notify the applicant of its preliminary determinations, identify any outstanding information that is necessary to continue processing the application and allow the applicant 30 days from the date of notice to:

(a) Notify the Department to stop processing the application; or

(b) Notify the Department to continue processing the application and provide any outstanding information to the Department including, but not limited to:

(A) Amending the application to address any issues or deficiencies identified by the Department in the initial review; and

(B) Submitting documentation to satisfy the requirements of sections (6) and (7) of this rule, as applicable.

(6) Upon receipt of the initial review, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following:

(a) A report of ownership information as defined in OAR 690-382-0100(6) for the land to which the registration is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the registration is appurtenant; 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 information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:

(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 information;

(B) If interest in the registration has been conveyed, a notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.

(7) The report of ownership information required under subsection (6)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the initial review showing current ownership; or

(b) If the interest in the certificate of registration has been conveyed, be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(8) The Department shall close the file for the application and take no further action on the application if, within 30 days from the date of the notice described in section (5) of this rule, the applicant:

(a) does not notify the Department as provided in subsections (5)(a) and (b) of this rule;

(b) does not provide all outstanding information as provided in subsection (5)(b) of this rule; or

(c) notifies the Department to stop processing the application.

(9) The Department may allow an applicant up to 60 additional days to provide the outstanding information described in subsection (8)(b) of this rule if the applicant requests additional time and the Department determines that the applicant is undertaking reasonable efforts to provide the information in a timely manner to the Department.

(10) The initial review shall constitute the notification required under OAR 690-382-0200 that there are layered water rights, permits, or registrations that must be addressed prior to recognition of the modification.

(11) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the initial review or incorporate the amendments into the proposed final order, as appropriate.

690-382-0600

Request for Comments

(1) If, within 30 days from the date of the Department's notification to the applicant described in OAR 690-382-0550(5) or an additional time period allowed under OAR 690-382-0550(9), the applicant notifies the Department to proceed with the application and provides any outstanding information necessary to continue processing the application, the Department shall proceed with processing the application and shall request written public comments on the application:

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

(b) By notification by electronic means, unless the recipient has requested mailing, to each affected local government and irrigation district identified by the applicant pursuant to OAR 690-382-0400(14).

(2) The request for comments shall provide a period of at least 30 days for interested persons to comment on the application.

690-382-0700

Proposed Final Order

(1) After the conclusion of the public comment period described in OAR 690-382-0600(2), the Department shall:

(a) Issue a proposed final order indicating 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; and

(b) Give notice of the modification application and proposed final order in the manner described in OAR 690-382-0800.

(2) The Department's proposed final order shall conclude whether the application is consistent with the following approval criteria for recognition:

(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 applicable to the modification of the certificate of registration are met.

(3) For a proposed final order that indicates that an application should not be recognized because it is not consistent with the approval criteria for recognition outlined in section (2) of this rule, the proposed final order 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.

690-382-0800

Notice of Proposed Final Order

(1) Upon issuance of the Department's proposed final order, the Department shall:

(a) Send a copy of the proposed final order to the applicant by registered or certified mail in accordance with ORS 183.415; and

(b) Give notice of the application to modify the registration and the proposed final order:

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

(B) By sending by electronic means, or by regular mail if the recipient has requested mailing, a copy of the proposed final order and the notice to 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 by OAR 690-382-0600;

(b) The locations of the applicant's existing registered and, if applicable, previously recognized water uses 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 within 45 days after publication in the Department's weekly public notice;

(f) A summary of the Department's proposed final order; and

(g) A statement of the opportunity for a person to file a request for party status pursuant to OAR 690-002.

690-382-0900**Protests and Hearings**

(1) Protests of, requests for party status concerning, and contested case proceedings concerning proposed final orders are governed by Or Laws 2025, ch 57, sections 2 and 3, and OAR chapter 690, division 2. Proposed final orders shall become final if no protest is filed or by default as provided in OAR 690-002-0235.

(2) Within 45 days after the publication in the Department's weekly public notice, any person may file a protest against the proposed final order.

690-382-1000**Final Order on 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 applicable to the modification of the certificate of registration are met.

(2) 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.

(3) If no protest of a proposed final order is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(4) Not more than 33 days after the close of the time period for submitting a protest, the Department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

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

(6) 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.

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.

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 690-380-3000(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 690-005-0040 (Resolution of Land Use Dispute).