

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

## ***Authority***

Oregon Revised Statutes (ORS) 540.572, 540.574, 540.576 and 540.578 along with Oregon Administrative Rules (OAR) 690-385-5000 to 690-385-5900 set forth the laws and rules 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, and the associated processing of such an application.

## ***Eligibility Requirements [ORS.540.572(1)]***

In order to be eligible to apply for a permanent transfer for non-use pursuant to the above statutes and rules, a district must meet the following criteria:

- (1) Have a full-time manager;
- (2) Be implementing a Water Management and Conservation Plan (WMCP) approved by the Water Resources Commission;
- (3) The relevant lands must be within the legal boundaries of the district.

WMCPs submitted by agricultural water suppliers must meet the requirements listed in OAR 690-086-0225 to 690-086-0270. Upon approval of the WMCP, updated WMCPs must periodically be submitted consistent with the requirements of Chapter 690, Division 86, and on the schedule prescribed in the final order approving the WMCP. In addition, agricultural water suppliers participating in the water transfer provisions in ORS 540.572 to 540.578 must submit an annual report describing progress-to-date in implementing their approved WMCP.

## ***District Responsibilities***

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

- 4th Year Notice to Water User [ORS 540.572(2)]:

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 security interest holder(s) of record 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. The district notice must also advise the users that they 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 notice must be sent to the last known address of the user with a request for a return receipt.

- 5th Year Notice to Water User [ORS 540.572(3)]:

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

The 5<sup>th</sup> Year Notice must meet the following requirements [ORS 540.572(4)]:

- Includes a list of the names and addresses of security holders of record [OAR 690-385-5100(3)(h)];
- Includes the number of acres that the user is being assessed;
- Includes a general description of the land to which the water is appurtenant (e.g. Township, Range, Section Quarter-Quarter, tax lot);
- Includes description of the use; and
- Includes a request for confirmation that the information contained in the notice is correct.
- Advises the water user that 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.)*
- Advises the water user that the district intends to petition the Water Resources Commission for approval to transfer the water right to other lands in the district; and
- Advises the water user that if they 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 must be held before the board of directors who shall make a determination whether to proceed with the application to transfer the water right. [ORS 540.572(5)]

If no written objections are received by the district, or resolution has otherwise been reached or a hearing has been held, the district may petition for approval of a transfer. [ORS 540.572(6)]

#### **After submission to OWRD of permanent district transfer application for non-use.**

- Notice to Inform Water User of Filed Application [ORS 540.576]:

Upon submission of a permanent transfer application for non-use the district must provide notice to affected users and security interest holder(s) of record of both the "FROM/OFF" lands and the "TO/ON" lands. The notice must be sent to the last known address of the affected water users with a request for a return receipt.

The notice must meet the following requirements:

- Includes a copy of the application and map(s);
- Informs the users that they can protest the application within 60 days of the filing of the notice as described in ORS 540.578 and OAR 690-385-5700;
- Informs the users 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 or (2) the water user from which water rights are proposed to be transferred from files a protest as described in OAR 690-385-5700.

### ***Application Requirements [ORS 540.574; OAR 690-385-2000]***

- The submission of a permanent transfer application for non-use must occur no later than the end of the calendar year of the fifth year of non-use [OAR 690-385-5600(5)];
- Meets the standard information required by OAR 690-385-2000;
- Includes a copy of all notices previously sent to the water users (mentioned above) by the district;
- Includes a copy of any objections, and any findings, determinations and conclusions resulting from a hearing held by the district;
- Includes the applicable fee for a POU change;
- Includes a signed statement certifying that:
  - The map(s) and petition are accurate;
  - The water right has not previously been forfeited under ORS 540.610 due to non-use;
  - The required notices were given.

### ***Department Responsibilities***

- 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://apps.wrd.state.or.us/apps/misc/wrd\\_notice\\_view/?notice\\_id=21](http://apps.wrd.state.or.us/apps/misc/wrd_notice_view/?notice_id=21))
- The Department's weekly notice will request public comments on the application and will provide a 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 after the close of the 60 day protest period.

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