

Criteria for Evaluating Transfer Applications



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The standards and procedures used by the Water Resources Department (OWRD) in evaluating transfer applications are described in [Oregon Revised Statute \(ORS\) 540](#) and in Oregon Administrative Rules (OAR) Chapter 690, [Division 380](#) and [Division 77](#). These criteria and procedures apply to transfer applications proposing to:

- 1) Permanently change the type of use, place of use, point of diversion (POD for surface water), point of appropriation (POA for groundwater), or change a surface water point of diversion (POD) to a groundwater appropriation for a water use subject to transfer;
- 2) Temporarily (not to exceed five years) change the place of use of a water use subject to transfer (and, if necessary to convey the water to the new temporary place of use, change the POD or POA);
- 3) Temporarily (not to exceed 25 years) change the type of use from irrigation to municipal use, or change the place of use (and, if necessary to convey the water to the new temporary place of use, change the POD or POA) in the Deschutes Basin groundwater study area; and
- 4) Change an existing water right for use as an instream water right.

This is a summary, prepared by the OWRD, of criteria and procedures that are generally applicable to transfer applications. The summary is necessarily general and may not specifically address every applicant's fact situation. The summary is intended as general guidance for applicants, and not as a substitute for reference to applicable statutes and rules.

In reviewing transfer applications under ORS 540.505 to 540.585, the Department will consider the following criteria:

- Compliance with statewide planning goals and acknowledged comprehensive plans ([OAR 690-005-0010](#) through 690-005-0060). However, if a transfer meets all four requirements below, land use information is not required.
 - The existing and proposed uses would be located entirely within lands zoned for exclusive farm use as provided in [ORS 215.203](#) or within irrigation districts;
 - The transfer proposes only a change in place of use;
 - The transfer does 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
 - The transfer only involves irrigation use.
- Water has been used over the past 5 years in accordance with the terms and conditions of the water right and that the right is not subject to forfeiture under ORS 540.610 [OAR 690-380-4010(2)(c)]

- The water user is ready, willing, and able to exercise the right under the existing authorization [OAR 690-380-4010(2)(d)]
- The proposed change will not result in enlargement of the right [OAR 690-380-4010(2)(e)]
- The proposed change will not result in injury to existing water rights [OAR 690- 380-4010(2)(f)] except for POD. transfers where the holders of the injured water rights have consented to the proposed change [OAR 690-380-5030]
- *POD/POA Transfers*: In most cases, the proposed change in POD or POA must be from the same source of surface water or same aquifer (groundwater) as the original water right [OAR 690-380-2110]
- *POD Transfers*: Consultation with the Oregon Department of Fish and Wildlife (ODFW) regarding installation of fish screening or by-pass device for transfer applications for a change in POD [OAR 690-380-5060]
- *Surface Water POD to Groundwater POA Transfers(OAR 690-380)*: Transfer applications for changes from a surface water POD to a groundwater appropriation are subject to the following additional criteria:
 - New groundwater withdrawal appropriates groundwater from an aquifer that is hydraulically connected to the authorized surface source;
 - New groundwater withdrawal must affect the surface water source similarly to the original authorized point of diversion; and
 - New groundwater withdrawal must be within 500 feet of the surface water source. In addition, when the surface water source is a stream, the new groundwater withdrawal must be located within 1000 feet upstream or downstream of the original POD. If the applicable distance requirements aren't met, the transfer application must include evidence from a licensed geologist demonstrating the following:
 - 1) New groundwater withdrawal is from an aquifer hydraulically connected to the authorized surface source; and
 - 2) New groundwater withdrawal will have a similar affect on the surface water source to the original authorized point of diversion.
- *Surface Water POD to Groundwater POA Transfers in the Deschutes basin groundwater study area (OAR 690-380)*: Transfer applications for changes from a surface water POD to a groundwater appropriation in the Deschutes basin groundwater study area are subject to the following additional criteria:
 - New groundwater withdrawal appropriates groundwater from an aquifer that is hydraulically connected to the authorized surface water source; and
 - New groundwater withdrawal affects surface water source hydraulically connected to the original authorized point of diversion.

- *Temporary Transfers in Place of Use*: A temporary transfer application to change the place of use (and, if necessary to convey the water to the new temporary place of use, change the POD or POA) cannot exceed 5 years, and automatically reverts upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant. The Department may revoke approval of a temporary transfer at any time if the Department finds that the transfer is causing injury to an existing water right. [OAR 690-380-8000(1) and 690-8000(2)(3)]
- *Temporary Transfers in Type of Use and Place of Use for Municipalities, Districts, and other qualifying entities within the Deschutes River Basin*: A temporary transfer application to change the type of use from irrigation to municipal use, and place of use (and, if necessary to convey the water to the new temporary place of use, change the POD or POA) are subject to the following additional criteria:
 - The authorized use is irrigation, and the temporary transfer proposes a change to municipal use.
 - The person to whom the right is transferred is:
 - 1) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS 450; and
 - 2) Located within the Deschutes River Basin.
 - The transfer cannot exceed 25 years and automatically reverts upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant. [OAR 690-380-8004]
- *Transfers of an Existing Water Right to an Instream Right*: Amount and timing of instream flow is allowable within the limits and use, including return flows, of the existing water right, and the proposed reach and proposed flows are appropriate per criterion in OAR 690-077-0075(3).

Transfer Application Procedures and Review

The OWRD processes a transfer application using the following procedure:

1. The applicant submits a complete application for transfer and the appropriate fees to the OWRD.
2. OWRD consults with the local Watermaster for the area, Oregon Department of Fish and Wildlife, and Oregon Department of Environmental Quality, as applicable. OWRD gives notice of the transfer application in the Department's weekly notice and provides a 30-day public comment period.

3. OWRD evaluates the application and prepares and emails an initial review to the applicant that identifies any inconsistencies with statute and rule preventing approval of the application, and any additional information the applicant is required to submit. From the date of the initial review, the applicant has 30 days to notify the OWRD to continue processing the application and provide any additional information required by the initial review or to notify the OWRD to stop processing the application.

Be aware that if the applicant does not request the OWRD continue processing the application *and* provide any additional required information or request the OWRD stop processing the application within the 30-day period, the OWRD **will permanently close the file** for the application **and take no further action**. If the file is closed, **it cannot be reopened**. If the applicant wants to pursue the changes proposed in the transfer, a new transfer application must be submitted to the OWRD.

4. If the applicant requests the OWRD continue processing the application and provides any additional required information in the initial review, the OWRD provides notice in the Department's weekly public notice and accepts written public comments for 30 days.
5. After the close of the 30-day public comment period, the OWRD considers any comments received, issues a proposed final order approving the transfer application or denying the transfer application, and issues any draft remaining right certificate(s), if applicable. The proposed final order and any draft remaining right certificate(s) are sent to the applicant by registered or certified mail. In addition, copies are sent to any person who submitted public comments after the initial review.

Upon issuance of the proposed final order, the OWRD provides notice in the Department's weekly public notice of the transfer application and proposed final order. In addition, if the OWRD determines that more than five water rights would be injured as a result of the change proposed in the transfer application, it is also published in a newspaper for at least once a week for two consecutive weeks.

6. Protests against the approval of a transfer must be received by OWRD within 30 days after the date the proposed final order was noticed in the Department's weekly notice. Requests for party status must be received by OWRD within 30 days after the protest deadline.
7. Within 33 days of the protest deadline, the OWRD may withdraw the proposed final order for reconsideration and issuance of a superseding proposed final order.
8. If no protest of the proposed final order is timely received, as a matter of law, the **proposed final order will become a final order**, and any draft remaining right certificates will become final **33 days after the protest deadline, with no further action by the OWRD**.

If a protest is received, OWRD may gather the applicant and any protestants in an attempt to resolve the protest. If a settlement cannot be reached, a contested case hearing before an administrative law judge will be held. Notice of the hearing will be under the provisions of ORS 183.310 to 183.500, pertaining to contested cases. A contested case hearing is held in the area where the proposed transfer is located unless all parties who filed a protest stipulate otherwise.