



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Certificate of Water Right Ownership Update

NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit or water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department. *If for multiple rights, a separate form for each right will be required.*

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

PROPERTY SELLER INFORMATION

Applicant(s): _____
First Last

Mailing Address: _____

City State Zip

Phone: _____
Home Work Other

PROPERTY BUYER INFORMATION

Applicant(s): _____
First Last

Mailing Address: _____

City State Zip

Phone: _____
Home Work Other

PROPERTY DESCRIPTION (attach additional pages if necessary):

County: _____ Township: _____ Range: _____ Section: _____

Tax Lot Number(s): _____

Street address of water right property: _____

Water Right Information (attach copy of water right permit or certificate & final proof map):

Application #: _____ Permit #: _____ Certificate or Page #: _____

Will all the lands associated with this water right be owned by the buyer? Yes No

Name of individual completing this form: _____ Phone: _____

Signature: _____ Date: _____

Please be sure to attach a copy of your property deed or legal description of the property.

A cursory examination of relevant Oregon Revised Statutes reveals that the Oregon Water Resources Department currently has specific stated authority to issue water right certificates under a different name or use at least under eight separate statutes found in three separate chapters of Oregon water law including:

ORS 537.343

ORS 537.348

ORS 537.490

ORS 537.635

ORS 540.530

ORS 540.574

ORS 540.650

ORS 541.329

What none of these statutes appear to approve is the authority to charge a fee for this service that the Department is already providing under those eight different specific statutory authorizations.

The Department unquestionably has the authority to issue a new certificate for change of ownership and or/use.

What they appear to be seeking is the authority to charge for that service.

With due respect, this appears to me to be nothing more than a fee bill.

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GENERAL PROVISIONS

Oregon Revised Statute

536.026 Powers of Water Resources Commission. (1) The Water Resources Commission, its members or a person designated by and acting for the commission may:

- (a) Conduct public hearings.
- (b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.
- (c) Administer oaths.
- (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Water Resources Department under ORS 196.600 to 196.905, 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 536.029]

536.037 Functions of director. (1) Subject to policy direction by the Water Resources Commission, the Water Resources Director shall:

- (a) Be administrative head of the Water Resources Department;
- (b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;
- (c) Administer and enforce the laws of the state concerning the water resources of this state;
- (d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the water resources of this state;
- (e) Have power to enter upon any private property in the performance of the duties of the director, doing no unnecessary injury to the private property; and
- (f) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any employee of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of a person so acting in the director's name and by the director's authority shall be considered to be an official act of the director. [1985 c.673 §8; 1987 c.734 §14]

537.097 Verification of land ownership; time limits; exception. (1) As the Water Resources Commission updates its water right and permit records with current land ownership information from county records or other sources, the commission shall request the person shown in those updated records to verify that the person owns the land to which a water right or permit is appurtenant.

(2) Any person receiving a request under subsection (1) of this section shall return the verification within 120 days.

(3) Except as provided in subsection (4) of this section, the commission shall request verification from all persons shown in updated water right and permit records on or before July 1, 1992.

(4) If the commission considers verification unnecessary for any water right perfected, transferred or adjudicated after July 16, 1987, the commission need not request verification of that water right or permit. [1987 c.649 §2]

537.220 Assignment of application, permit or license. (1) Any application, permit or license to appropriate water may be assigned, subject to the conditions of the application or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department.

(2) An assignment of an application, permit or license to appropriate water filed for record with the Water Resources Department shall identify the current record owners of all property described in the application, permit or license. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [Amended by 1985 c.673 §34; 1995 c.367 §1]

537.343 Proposed final order; conditions. (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

- (a) Approve the in-stream water right for the quantity of water requested;
- (b) Approve the requested in-stream water right for a lesser quantity of water; or
- (c) Reject the requested in-stream water right.

(2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use.

537.490 Use of conserved water; notice of dispensation of right to use. (1) Any person or agency allocated conserved water under ORS 537.470 may reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the commission of the dispensation of the right to the use of conserved water. The notice shall include:

- (a) The name and address of the person buying or leasing the right to the use of conserved water;
- (b) The use to which the conserved water is to be put; and
- (c) The terms of any agreement between the appropriator and the person using the conserved water.

(2) Notwithstanding any other provision of law, a person who holds a water right permit or certificate having a subsequent priority to a certificate issued under ORS 537.470 may not acquire a vested right to any water or return flow of water that results from either the lease of the right to the use of conserved water or the reservation of conserved water in stream for future use under subsection (1) of this section.

(3) Any right to the use of conserved water sold under subsection (1) of this section:

- (a) Shall become appurtenant to the premises upon which the purchaser uses the water; and
- (b) Shall be subject to the provisions of ORS 540.505 to 540.585 and 540.610 to 540.650.

(4) When the commission receives notice of the sale of the right to the use of conserved water under subsection (1) of this section, the commission shall issue to the purchaser a new water right certificate covering the right to the use of conserved water that was sold. The certificate shall indicate the priority of the water right according to the provisions of ORS 537.485. [1987 c.264 §8; 1993 c.641 §7]

537.635 Assignment of application, certificate of registration or permit. (1) Any certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department.

(2) An assignment of an application filed under ORS 537.615 or a permit issued under ORS 537.625 and filed for record with the Water Resources Department shall identify the current record owners of all property described in the application or permit. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [1955 c.708 §13; 1985 c.673 §59; 1995 c.367 §4]

540.530 Order authorizing change of use, place of use or point of diversion; consent to injury; new or modified certificate. (1)(a) If, after hearing or examination, the Water Resources Commission finds that a proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(b) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to existing water rights, upon receipt by the commission of an affidavit consenting to the change from every holder of an affected water right, the commission may make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(c) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to an in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water Resources Department may consent to the change only upon a recommendation that the department do so from the agency that requested the in-stream water right. The agency that requested the in-stream water right may recommend that the department consent to the change only if the change will result in a net benefit to the resource consistent with the purposes of the in-stream water right.

(d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c) of this subsection, the department shall obtain a recommendation from the agency that requested the in-stream water right. If the recommendation of the agency is to consent to the change, the department shall provide public notice of the recommendation and, consistent with state laws regarding cooperation with Indian tribes in the development and implementation of state agency programs that affect tribes or rights and privileges of tribes, the department shall consult with affected Indian tribes.

(B) The recommendation of an agency under this paragraph must be in writing and, if the recommendation is to consent to the change, must describe the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the proposed change. The recommendation may include any proposed conditions that are necessary to ensure that the proposed change will be consistent with the recommendation.

(C) In determining whether a net benefit will result from the proposed change, the recommendation of an agency must include an analysis of the cumulative impact of any previous changes under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(D) A person may comment on the recommendation of an agency. The comment must be in writing and must be received by the department within 30 days after publication of notice under this paragraph. If a written comment received by the department requests a meeting on the proposed change, the department and the agency that requested the in-stream water right shall hold a joint public meeting within 90 days of the receipt of the comment requesting a meeting.

(e)(A) If, after review of public comments and consultation with the agency that requested the in-stream water right, the agency that requested the in-stream water right does not withdraw its recommendation to consent to the change, the department may approve the change consistent with the requirements of paragraphs (b) and (c) of this subsection.

(B) An order approving a change under paragraph (c) of this subsection shall include written findings on the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the change. The order shall include any conditions

necessary to ensure that the change will be consistent with the findings and ensure that the change will result in a continued net benefit to the resource consistent with the purposes of the in-stream water right.

(C) In determining whether a net benefit will result from the change, the order of the department must include an analysis of the cumulative impact of any previous changes approved under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(f) The time allowed by the commission for completion of an authorized change under paragraphs (a) to (e) of this subsection may not be used when computing a five-year period of nonuse under the provisions of ORS 540.610 (1).

(2)(a) If a certificate covering the water right has been previously issued, the commission shall cancel the previous certificate or, if for an irrigation district, the commission may modify the previous certificate and, when proper proof of completion of the authorized changes has been filed with the commission, issue a new certificate or, if for an irrigation district, modify the previous certificate, preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right.

(b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying any of the proof of completion requirements of paragraph (a) of this subsection. The assistance provided by the department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

(3) Upon receiving notification of the merger or consolidation of municipal water supply entities, or the formation of a water authority under ORS chapter 450, the commission shall cancel the previous certificates of the entities replaced by the merger, consolidation or formation and issue a new certificate to the newly formed municipality or water authority. The new certificate shall preserve the previously established priority of rights of the replaced entities and shall allow beneficial use of the water on any lands acquired in the merger, consolidation or formation. [Amended by 1975 c.581 §26b; 1983 c.807 §2; 1985 c.673 §95; 1989 c.707 §4; 1993 c.577 §37; 1999 c.664 §3; 1999 c.804 §1; 2001 c.299 §§1,2; 2005 c.614 §4]

540.574 Petition for approval of transfer. (1) In accordance with the requirements of subsection (3) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the transfer of the location and use of the water rights within the district or any part of the district. The map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. In no event shall the petition and map expand a water right of the district or its users beyond the total right of record for the district. If the district complies with the requirements of ORS 540.572 to 540.580, and after the opportunity for hearing under ORS 540.578, the commission shall issue an order approving the transfer and proceed as provided in ORS 540.530 (1) and ~~(2)~~. *Issue New Certificate*

(2) If the commission denies the petition under subsection (1) of this section, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be according to the provisions of ORS chapter 183 applicable to a contested case proceeding. The hearing shall be conducted in the area of the state where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(3) The petition required under subsection (1) of this section shall include:

(a) The name of the district and the certificate number of each water right contained in the petition.

(b) The names of all users within the district from whose lands water rights are to be transferred.

(c) The names of all users within the district to whose lands water rights are to be transferred.

(d) A general description of the district boundaries.

(e) A general description of the users' land and the water right for each parcel from which and to which water rights are to be transferred. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

(f) A description of the use that is proposed to be made of the water on each parcel.

(g) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

(h) A statement by the petitioner that notice has been given as required under ORS 540.572 (2), and that the water right has not previously been forfeited under ORS 540.610 due to an earlier or longer period of nonuse. [1991 c.957 §4]

540.650 Issuance of new water right certificate for water rights not canceled. If the order of the Water Resources Commission or the final decree on the appeal therefrom under ORS 540.641 cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the commission. Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4; 1979 c.67 §6; 1985 c.673 §99]

541.329 Petition for approval of district map; contents; notice to users; corrections. (1)

Pursuant to the requirements of subsection (2) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the location and use of the water rights within the district or any part thereof. The petition and map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. For a district that notifies the Water Resources Department under ORS 541.327 (4), the map must be submitted in an electronic format meeting the standards set by the department. The petition and map may not expand a water right of the district or its users beyond the total right of record of the district. If the district has met the requirements of ORS 541.325 to 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the director to issue a new certificate to the district listing the requested locations and uses and retaining the original priority date. If the commission denies the petition, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(2) The petition required under subsection (1) of this section shall be submitted on or before July 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and shall include:

(a) The name of the district and the certificate number of each water right contained in the petition.

(b) The names of all users within the district whose lands are included in the petition.

(c) A general description of the district boundaries.

(d) A general description of the users' land and all water rights per each parcel affected by the petition and the map. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

(e) A description of the use that is proposed to be made of the water on each parcel.

(f) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

(3) A petition submitted under this section shall contain no more acres of land than the least of the following:

(a) The number of acres assessed by the district as of July 1, 1989;

(b) The number of acres assessed by the district as of July 1, 1993; or

(c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by the district as of December 31, 2003.

(4) Before submitting a petition under subsection (2) of this section, the district shall send a notice to the user of every parcel whose right of record is to be altered, as evidenced by the district's records. This notice shall be sent to the last-known address for the user with a return receipt requested. The notice shall include the number of acre-feet of water or its equivalent, for which the user is being assessed, a general description or tax lot of the land to which the water is assigned, a description of the use and a request for confirmation that the information in the notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as described in subsections (1) and (2) of this section. Payment for water by the user or the user's predecessor for a period of five years before the petition shall create a rebuttable presumption that the number of acres billed and paid by the user or the user's predecessor is equal to the

user's water right.

(5) Within 30 days after the commission issues a proposed order regarding the petition, the district shall send notice to the users of the district whose right of record is to be altered by the proposed order. This notice shall be sent to the last-known address of the user with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the user is being assessed, a general description or tax lot number of the land to which the water is assigned and a description of the use. In addition to the notice of the proposed order that the district sends to the users, the district shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least two weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive and the associated priority dates;

(b) That the proposed map and order are available for inspection at the office of the district during normal business hours for a period of 60 days from the date of first publication;

(c) That not less than 60 days after the date of first publication, the commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of subsections (1) and (2) of this section; and

(d) That the user has the right to protest the proposed order and map as described in ORS 541.331.

(6) If the commission returns a petition or map to a district for correction, the commission may prescribe a deadline for the petitioner to provide additional information or correct the petition or map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may deny the petition. [1989 c.1000 §3; 1991 c.957 §13; 1993 c.818 §3; 2003 c.691 §2; 2011 c.52 §8]

Note: See note under 541.325.