

tion to assign all or part of a water right permit has been properly filed, and that the issuance of replacement water right permits will not result in the enlargement of the original water right or otherwise cause injury to other water right holders, the department shall issue one or more replacement water right permits to reflect the assignment. The replacement water right permits:

(a) Must have the same conditions as the replaced water right permit, including but not limited to priority date, source of water and type of use;

(b) May not add or change a point of diversion or point of appropriation;

(c) May not result in the enlargement of the water use authorized under the replaced water right permit;

(d) Must apportion the rate, and if applicable the duty, in proportion to the amount of land to which the water right is appurtenant; and

(e) Must identify the land to which the replacement water right permit is appurtenant and the owner of that land.

(6) This section does not apply to municipal or quasi-municipal permits or to permits held by a unit of local government, including but not limited to permits held by a port or water authority or a district. As used in this subsection, "unit of local government" has the meaning given that term in ORS 190.003 and "district" has the meaning given that term in ORS 540.505. [2013 c.166 §2]

Note: 537.225 and 537.227 were added to and made a part of ORS chapter 537 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.227 Protest of application to assign all or part of water right permit. (1) A record landowner, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right assignment under ORS 537.225. The protest must be in writing and received by the department within the time provided under ORS 537.225 (4). The protest must be accompanied by the protest fee required under ORS 536.050 and include:

(a) The name, address and telephone number of the person filing the protest; and

(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.

(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether

the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.

(3) If a protest is properly filed, the department may work with the applicant for the water right assignment and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The department may:

(a) Reissue a proposed final order;

(b) Issue a final order; or

(c) Refer the matter for a contested case hearing.

(4) If the department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the department an opportunity for response is not subject to review at the contested case hearing.

(5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:

(a) The applicant for the water right assignment; and

(b) Persons that timely filed a protest against the proposed order under ORS 537.225 (4). [2013 c.166 §3]

Note: See note under 537.225.

537.230 Time allowed for construction of irrigation or other work; extension; survey; map; requirements for supplemental water right. (1) As used in this section, "undeveloped portion" means the difference between the maximum rate or duty specified in a water right permit and the maximum rate or duty diverted as of the later of:

(a) June 29, 2005;

(b) The time specified in the permit to perfect the water right; or

(c) The time specified in the last approved extension of time to perfect the water right.

(2) Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.