

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 re-

source 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]