

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section shall not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge,

incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a