

**540.531 Transfer of surface water point of diversion to ground water; requirements; priority; mitigation measures; return to surface water diversion; rules.** (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water if the proposed transfer complies with the requirements of subsection (2) or (3) of this section and with the requirements for a transfer in point of diversion specified in ORS 540.520 and 540.530.

(2) The Water Resources Department may allow a transfer of the point of diversion under subsection (1) of this section if:

(a)(A) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source;

(B) The proposed change in point of diversion will not result in enlargement of the original water right or in injury to other water right holders;

(C) The use of the new point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(D) The withdrawal of ground water at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1,000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(b) The new point of diversion is not located within the distance requirements set forth in paragraph (a)(D) of this subsection, the holder of the water use subject to transfer submits to the department evidence prepared by a licensed geologist that demonstrates that the use of the ground water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C) of this subsection.

(3) Notwithstanding subsection (2) of this section, the department shall allow a transfer of the point of diversion under subsection (1) of this section in the Deschutes Basin ground water study area if:

(a) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source;

(b) The proposed change in the point of diversion will not result in enlargement of the original water right or in injury to other water right holders; and

(c) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) All applicable restrictions that existed at the original point of diversion shall apply at the new point of diversion allowed under this section.

(5) The new point of diversion shall retain the original date of priority. However, if within five years after approving the transfer, the department finds that the transfer results in substantial interference with existing ground water rights that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to any existing right injured by the transferred water right or permit.

(6)(a) The department shall approve an application to return to the last authorized surface water point of diversion if a holder of a water use subject to transfer submits an application to the department within five years after the department approves a transfer under this section.

(b) The department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the department allows a transfer under subsection (3) of this section if a holder of a water use subject to transfer submits an application to the department, and the return will not result in injury to an existing water right.

(7) For transfers allowed under this section, the department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right, except that the department may not require mitigation measures if the transfer complies with subsection (3) of this section.

(8) The Water Resources Commission shall adopt rules that prescribe:

(a) The process for reviewing applications submitted under this section;

(b) The persons to whom the department shall provide notice of the receipt of an application submitted under this section; and

(c) The persons who may participate in the process of reviewing applications submitted under this section.

(9) As used in this section:

(a) "Deschutes Basin ground water study area" means the part of the Deschutes River