

(c) The person can develop water for appropriation under the permit for use of water for an in-stream purpose or the permit for recharging ground water, but cannot economically convey the water to its point of use.

(3) A person may apply for an exchange under this section among any combination of surface, storage or ground water rights.

(4) An application for exchange shall be accompanied by:

(a) Any map, plan or other information required by the commission;

(b) The fee required under ORS 536.050; and

(c) If the application for exchange is by a person that holds a permit issued under ORS 537.135 for recharging ground water within the Umatilla Basin, evidence satisfactory to the director that the exchange will result in no net loss of flow in the Umatilla River. [1987 c.815 §2; 2011 c.281 §1]

540.535 Notice of application for exchange. After receipt of an exchange application, the Water Resources Commission shall give notice of the application by publishing notice of the application in a newspaper having general circulation in the area in which the water uses are located at least once each week for at least two successive weeks. The cost of providing the notice by publication shall be paid in advance by the applicant to the commission. [1987 c.815 §3; 2011 c.52 §7]

540.537 Order allowing exchange; order terminating exchange. (1) The Water Resources Commission shall issue an order allowing an exchange unless the commission finds any of the following:

(a) The proposed exchange would adversely affect other appropriators.

(b) The proposed exchanges would be too difficult to administer.

(c) The proposed exchange would adversely affect the public interest as determined under ORS 537.170 (8).

(d) A sufficient quantity of water would not be available to replace the water to be used under the exchange. In determining whether replacement water will be equal to the water exchanged, the commission may consider relative consumptive uses and transmission losses.

(2) The commission may include any condition the commission considers necessary in an order allowing an exchange.

(3) The commission shall issue an order terminating the exchange:

(a) If water is not applied under the exchange within the time fixed by the commission in the order approving the exchange;

(b) Upon written request signed by all parties to the exchange;

(c) Upon finding that any other termination condition specified in the original order has occurred; or

(d) Upon attainment of a termination date specified in the original exchange order.

(4) For purposes of subsection (3) of this section, the time fixed for implementing the exchange shall include any extension granted by the commission for good cause shown. [1987 c.815 §4; 1995 c.416 §38]

540.539 Exchange subject to beneficial use requirements. An exchange of water under ORS 540.533 to 540.537 is subject to the requirements of beneficial use under ORS 540.610. [1987 c.815 §5]

540.540 [Renumbered 540.545 in 1987]

540.541 Delivery and use of water under exchange. (1) Any water made available to a person under an exchange shall be delivered in accordance with the order allowing the exchange. The use of water under an exchange is without prejudice to, but shall be considered use and enjoyment of, the permitted, certificated or decreed right held by that water user at the time the exchange was approved.

(2) The use of water under a permit may be perfected by application of exchange water to the use specified in that permit. Upon receipt of proof satisfactory to the Water Resources Commission that water has been used under the exchange for the purposes of and within the limitations of the permit, the commission shall issue a certificate of the same character as that described in ORS 539.140. The certificate shall incorporate the source, conditions and priority of the permit existing at the time the exchange was approved.

(3) If regulation by the watermaster is required, after implementation of the exchange, water shall be delivered in accordance with the terms and conditions of the order allowing the exchange. [1987 c.815 §6]

540.543 Regulation of headgates when water provided by exchange. If water for an in-stream use is provided by exchange, the watermaster shall regulate headgates and other diversion points as necessary to assure that the exchange water is not diverted from the channel at any point above the most downstream point of use specified in the permit or certificate that establishes the right to use of water for an in-stream purpose. [1987 c.815 §7]