

face water source and a supplemental water right permit or certificate originating from a ground water source may substitute the use of the supplemental water right for the primary water right. A substitution may not be made under this subsection if the use of the supplemental water right results in an enlargement or expansion of the primary water right. This subsection does not authorize a change in place of use, type of use, point of diversion or point of appropriation.

(2) An application required under subsection (1) of this section shall be submitted on forms provided by the department. The department may request additional information if necessary to assist with the injury evaluation. Each application shall be submitted with the fee described in ORS 536.050 (1)(s).

(3) Upon receiving an application under subsection (1) of this section, the department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520 (5), (6) and (7).

(4) The Water Resources Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury to other water rights, the director shall prohibit or condition the use to avoid or mitigate the injury. The director shall issue an order approving or denying the substitution within 90 days after the department receives an application under subsection (1) of this section.

(5) For the purpose of ORS 540.610, a substituted primary surface water right shall be treated as a supplemental water right, and a substituted supplemental ground water right shall be treated as a primary water right.

(6) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this section may be terminated upon a request by the water right holder or by an order of the director if the director determines that the use of the ground water as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status. [1999 c.555 §2]

**Note:** 540.524 was added to and made a part of 540.505 to 540.585 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**540.525 Installation of fish screening or by-pass device as prerequisite for transfer of point of diversion.** (1) Upon receipt of an application for a change in the point of diversion under ORS 540.520, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the diversion is:

(a) Equipped with an appropriate fish screening or by-pass device; or

(b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(2) If the original point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the department, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.

(3) When consulting with the State Department of Fish and Wildlife, the department shall determine whether the installation of an appropriate fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(4) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.274 §6a; 2007 c.625 §11]

**540.530 Order authorizing change of use, place of use or point of diversion; consent to injury; new or modified certificate.** (1)(a) If, after hearing or examination, the Water Resources Commission finds that a proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(b) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to existing water rights, upon receipt by the commission of an affidavit consenting to the change from every holder of an affected water right, the commission may make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(c) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to an in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water Resources Department may consent to the change only upon a recommendation that the department do so from the agency that requested the in-stream water right. The agency that requested the in-stream water right may recommend that the department consent to the change only if the change will result in