

may proceed with the construction of the necessary works and may take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation.

(2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or 537.400 indicates that the applicant does not have written authorization or an easement permitting access to nonowned land crossed by the proposed ditch, canal or other work, the department may issue a final order approving the application if the approval includes a condition requiring the applicant to obtain such written authorization, or easement or ownership of such land and to provide the department with a copy of the written authorization, easement or evidence of ownership.

(3) If an application referred to in ORS 537.140 or 537.400 is rejected, the department shall enter a written order setting forth the reasons for the rejection. The applicant shall take no action toward construction of the works or use of the water. The department shall mail a copy of the order to the applicant.

(4) The holder of a water right permit may change the point of diversion, change the point of appropriation, change the point of diversion to allow the appropriation of ground water or use the water on land to which the right is not appurtenant if:

(a) The use of water on land to which the right is not appurtenant, the change of point of diversion or the change in point of appropriation does not result in injury to an existing water right;

(b) For a proposed change in the place of use of the water, the land on which the water is to be used is owned or controlled by the holder of the permit and is contiguous to the land to which the permit is appurtenant;

(c) All other terms of the permit remain the same, including but not limited to the beneficial use for which the water is used and the number of acres to which water is applied;

(d) Prior approval is obtained from the district if the water is transported or conveyed by an irrigation district organized under ORS chapter 545, a drainage district organized under ORS chapter 547, a water improvement district organized under ORS chapter 552, a water control district organized under ORS chapter 553 or a district improvement company or a corporation organized under ORS chapter 554;

(e) The holder of the permit provides written notice to the department at least 60 days before making any changes to the lands,

point of diversion or point of appropriation described in the permit;

(f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if applicable;

(g) Diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife; and

(h) For a request to transfer the point of diversion to allow the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

(5) Notwithstanding the requirements of subsection (4)(b) of this section, the holder of a water right permit may change the place of use of all or any portion of water under the permit to land that is not contiguous to the land to which the permit is appurtenant if:

(a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as determined by the listing agency; and

(b) All other requirements of subsection (4) of this section are met.

(6) For an application made by or on behalf of a public corporation, the department may issue a permit approving the application without requiring the applicant to obtain prior written authorization or an easement permitting access to nonowned lands affected by the proposed project. However, nothing in this subsection shall be construed to allow any person to trespass on the lands of another person.

(7) When the department receives notice under subsection (4)(e) of this section, the department shall publish the notice in the department's weekly public notice of water right applications.

(8) If the use of water under the permit is for operation of a mining operation as defined in ORS 517.952:

(a) Review of the application and approval or denial of the application shall be coordinated with the consolidated application process under ORS 517.952 to 517.989. However, such review and approval or denial shall take into consideration all policy considerations for the appropriation of water as set forth in this chapter and ORS chapter 536.

(b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall be conditioned on the applicant's compliance with the consolidated application process.