

Basin that is designated by the Water Resources Commission by rule.

(b) “Similarly” means that the use of ground water at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping. [1995 c.274 §4; 1999 c.555 §5; 2003 c.705 §1; subsection (9) of 2003 Edition enacted as 2003 c.705 §3; 2005 c.614 §2]

540.532 Request for change in point of diversion to reflect historical use; requirements. (1) Notwithstanding ORS 537.797, 540.510, 540.520 and 540.530, an individual may request a change in the point of diversion to reflect the historical use of water at a point of diversion other than that described in the water right certificate or decree if the individual complies with the provisions of subsection (2) of this section.

(2) An individual may request a change in the point of diversion under subsection (1) of this section if:

(a) The actual, current point of diversion has been in use for more than 10 years;

(b) The Water Resources Department has received no claim of injury as a result of the use of water from the current point of diversion prior to the request for the change of diversion;

(c) The individual requesting the change provides written notice to any other affected water right holder, as identified by the Water Resources Department, and the Water Resources Department provides notice of the request in the department’s public notice of water right applications; and

(d) The individual provides a map of sufficient detail and clarity to identify the true point of diversion including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion as specified in the water right certificate or decree and the actual, current point of diversion.

(3) Upon receipt of a request for a change in the point of diversion under subsection (1) of this section, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the historical point of 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.

(4) If the historical point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the Water Resources 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 point of diversion.

(5) When consulting with the State Department of Fish and Wildlife, the Water Resources 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.

(6) 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.359 §3; 2007 c.625 §12]

Note: 540.532 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

540.533 Application for exchange of water. (1) As used in this section, “person holding a water right, certificate or permit” means a person that:

(a) Holds a water right established by court decree;

(b) Holds a water right certificate or a water right for which proof of beneficial use has been approved by the Water Resources Director or the Water Resources Commission;

(c) Is applying for or holds a permit issued under ORS 537.211 for use of water for an in-stream purpose; or

(d) Holds a permit issued under ORS 537.135 for recharging ground water within the Umatilla Basin.

(2) A person holding a water right, certificate or permit may apply to the commission for permission to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from the other source, if:

(a) The source of the person’s appropriation is at times insufficient to fully satisfy the appropriation;

(b) Better conservation and use of the waters of the state can be accomplished; or