

## **Criteria for Evaluating Applications for Exchanges**

The standards and procedures used by the Water Resources Department in evaluating applications for exchanges are described in Oregon Revised Statute (ORS) Chapter 540 (<http://landru.leg.state.or.us/ors/>) and Oregon Administrative Rules (OAR) Chapter 690, Division 380.

This is a summary, prepared by the Water Resources Department, of criteria and procedures that are generally applicable to applications for exchanges. The summary is necessarily general, and may not specifically address every applicant's fact situation. The summary is intended as general guidance for applicants, and not as a substitute for reference to applicable statutes and rules.

According to ORS 540.533, any person holding a water right or any person applying for or holding a permit for an instream purpose may apply to the Department 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
- c) the person can develop water for appropriation under the permit for use of water for an instream purpose, but cannot economically convey the water to its point of use

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In reviewing an application for an exchange under ORS 540.533 to 540.543, the Department will consider the following criteria:

- Compliance with statewide planning goals [OAR 690-005-0030]
- Compliance with acknowledged land use comprehensive plans [OAR 690-005-0035]
- Applicant has a water right established by court decree or a water right certificate or a water right for which proof of beneficial use has been approved by the Department, or has applied for or holds a permit for use of water for an instream purpose [ORS 540.533]
- Adverse effect on other appropriators [ORS 540.537]
- Difficulty for Department to administer the proposed exchange [ORS 540.537]
- Adverse effect on the public interest as determined under ORS 537.170(8) [ORS 540.537]
- Sufficient quantity of water available to replace the water used under the exchange [ORS 540.537]

## **Procedures and Review of an Exchange Application**

The Water Resources Department processes an application for an exchange using the following procedure:

1. The applicant submits a complete application for exchange and required fees to the Department.
2. The Department gives notice of the application in the Department's weekly notice and in a newspaper having a general circulation in the area in which exchange is located for a period of 3 weeks and not less than one publication each week.
3. The Department accepts public comment on the exchange application for at least 30 days.
4. After the close of the public comment period, the Director issues a proposed order approving or denying the application in accordance with ORS 540.537 taking into account any comments received. The Department also notifies the applicant and any person who submitted comments of the issuance of the proposed order.
5. If the applicant or a person who submitted comments requests an opportunity for a hearing, the Department contacts the applicant and the commentors to determine if the issues can be resolved through negotiations. If the Department concludes that negotiations are not likely to yield resolution of the issues, the Commission will hold a public hearing on the application.
6. After the public hearing, the Commission will
  - a. Confirm the Director's decision and authorize issuance of a final order;
  - b. Modify the Director's order and authorize issuance of a final order consistent with the modifications; or
  - c. Remand the application to the Department to seek resolution of the issues identified in the comments and, if the issues are not resolved, to initiate a contested case proceeding.
7. 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 satisfactory proof that water has been used under the exchange for the purposes of and within the limitation of the permit, the Commission issues a certificate incorporating the source, conditions, and priority of the permit existing at the time the exchange was approved.
8. The Commission may issue an order terminating an exchange if the water is not applied under the exchange within the time fixed in the original exchange order, upon written request of all parties to the exchange, upon finding that any termination condition specified in the original exchange order has occurred, or upon attainment of a termination date specified in the original exchange order.