

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO
SENATE BILL 946**

1 On page 1 of the printed bill, line 2, delete “540.505” and insert “537.465,
2 540.505, 540.510, 540.520, 540.523, 540.531, 540.570, 540.580 and 540.585 and
3 section 23, chapter 705, Oregon Laws 2003”.

4 Delete lines 5 through 30 and delete page 2 and insert:

5 **“SECTION 1.** ORS 540.505 is amended to read:

6 “540.505. As used in ORS 540.505 to 540.585:

7 “(1) ‘District’ means an irrigation district formed under ORS chapter 545,
8 a drainage district formed under ORS chapter 547, a water improvement
9 district formed under ORS chapter 552, a water control district formed under
10 ORS chapter 553 or a corporation organized under ORS chapter 554.

11 “(2) ‘Primary water right’ means the water right designated by the Water
12 Resources Commission as the principal water supply for the authorized use,
13 or if no designation has been made, the water right designated by the ap-
14 plicant as the principal water supply for the authorized use.

15 **“(3) Secondary water right’ means a water right that refers to a
16 reservoir or pond as a source of water, if the supply is stored under a
17 primary water right to store water.**

18 “[3] (4) ‘Supplemental water right or permit’ means an additional ap-
19 propriation of water to make up a deficiency in supply from an existing wa-
20 ter right. A supplemental water right or permit is used in conjunction with
21 a primary water right.

1 “[~~(4)~~] (5) ‘Water [*use*] **right** subject to transfer’ means a water [*use*] **right**
2 established by:

3 “(a) An adjudication under ORS chapter 539 as evidenced by a court de-
4 cree;

5 “(b) A water right certificate;

6 “(c) A water use permit for which a request for issuance of a water right
7 certificate under ORS 537.250 has been received and approved by the Water
8 Resources Commission under ORS 537.250; or

9 “(d) A transfer application for which an order approving the change has
10 been issued under ORS 540.530 and for which proper proof of completion of
11 the change has been filed with the Water Resources Commission.

12 **“SECTION 2. Section 3 of this 2019 Act is added to and made a part
13 of ORS 540.505 to 540.585.**

14 **“SECTION 3. (1) As used in this section, ‘place of use’ means the
15 area submerged by the water stored in the reservoir or pond at maxi-
16 mum fill.**

17 **“(2) The holder of a water right subject to transfer for storing water
18 in a reservoir or pond may apply for a change in place of use or the
19 character of use of the water only as provided in this section. The
20 Water Resources Commission shall refuse to accept an application to
21 change the point of diversion in a water right subject to transfer for
22 storing water in a reservoir or pond.**

23 **“(3) The commission shall approve an application that is in com-
24 pliance with this section, unless the commission determines that the
25 proposed change to the water right subject to transfer will result in
26 injury to an existing water right, including but not limited to second-
27 ary water rights, or will result in enlargement of the water right
28 subject to transfer.**

29 **“(4) The holder of a water right described in subsection (2) of this
30 section shall file an application for the change as provided under ORS**

1 **537.520. The application must comply with ORS 540.520 and any appli-**
2 **cable provisions of subsections (5) and (6) of this section.**

3 **“(5) The application must identify all secondary water rights that**
4 **refer to the water right subject to transfer. If the approval of the**
5 **change to the water right subject to transfer will affect a secondary**
6 **water right:**

7 **“(a) A combined application may be filed to change both the water**
8 **right subject to transfer and the secondary water right. The commis-**
9 **sion may approve the change to the secondary water right as provided**
10 **under ORS 540.520 and 540.530.**

11 **“(b) If an applicant holds the water right subject to transfer and**
12 **all of the affected secondary water rights, and does not include one**
13 **or more of the affected secondary water rights in the application, the**
14 **Water Resources Department shall notify the applicant that any sec-**
15 **ondary water right that is not included will be canceled before the**
16 **department issues the order approving the change to the water right**
17 **subject to transfer unless, no later than 30 days after the applicant**
18 **receives the notification, the applicant modifies the application to in-**
19 **clude the secondary water right or withdraws the application.**

20 **“(c) If an applicant under this section that holds the water right**
21 **subject to transfer does not hold all of the affected secondary water**
22 **rights, the holder of the water right subject to transfer must submit**
23 **a joint application with all holders of affected secondary water rights**
24 **as described in paragraph (a) of this subsection or secure written**
25 **consent from all the holders of affected secondary water rights to the**
26 **cancellation of those secondary water rights. If the application does**
27 **not contain the applications or written consent for all of the affected**
28 **secondary water rights, the department shall inform the holder of the**
29 **water right subject to transfer that the department will deny the ap-**
30 **plication unless, no later than 30 days after receiving the notification,**

1 the holder of the water right subject to transfer modifies the applica-
2 tion to comply with this section or withdraws the application.

3 “(6) If an application under this section is for a change in the place
4 of use, the commission may approve the change in the place of use for
5 a water right subject to transfer, if:

6 “(a)(A) The water right authorizes on-channel storage of 100 acre-
7 feet or less;

8 “(B) The application seeks to move the place of use off-channel on
9 the same property;

10 “(C) The new point of diversion will be located at the existing res-
11 ervoir or pond; and

12 “(D) The applicant agrees to remove or modify the dam associated
13 with the water right to facilitate fish passage; or

14 “(b)(A) The water right authorizes off-channel storage of 50 acre-
15 feet or less;

16 “(B) The application seeks to move the place of use off-channel on
17 the same property; and

18 “(C) The application does not seek to change the location of the
19 existing point of diversion.

20 “SECTION 4. The Legislative Assembly hereby ratifies and declares
21 valid any change in a water right for the storage of water in a reser-
22 voir or pond that was approved and became final by operation of law
23 or on appeal prior to the effective date of this 2019 Act.

24 “SECTION 5. Section 3 of this 2019 Act and the amendments to ORS
25 540.505 by section 1 of this 2019 Act apply to applications for changes
26 to water rights made before, on or after the effective date of this 2019
27 Act that are approved or disapproved on or after the effective date of
28 this 2019 Act.

29 “SECTION 6. ORS 537.465 is amended to read:

30 “537.465. (1) Any person or group of persons holding a water [use] **right**

1 subject to transfer as defined in ORS 540.505 may submit an application to
2 the Water Resources Commission for approval of an allocation of conserved
3 water for a measure that:

4 “(a) The person or group of persons intends to implement; or

5 “(b) Was implemented by the person or group of persons within five years
6 prior to the submission of the application.

7 “(2) An application submitted under subsection (1)(a) of this section shall
8 include:

9 “(a) A description of the proposed measures;

10 “(b) A description of the existing diversion facilities and an estimate of
11 the amount of water that can be diverted at the facilities;

12 “(c) The amount of water that will be needed to supply existing rights
13 after implementation of the conservation measures;

14 “(d) The amount of conserved water expected from implementation of the
15 conservation measures;

16 “(e) The proposed allocation and use of the conserved water if different
17 from the allocation specified in ORS 537.470;

18 “(f) The intended use of any water allocated to the applicant;

19 “(g) The applicant’s choice of priority date for the conserved water; and

20 “(h) Any other information the commission considers necessary to evalu-
21 ate the effectiveness of the proposal.

22 “(3) An application under subsection (1)(b) of this section shall include:

23 “(a) A description of the measure as implemented and the date on which
24 the measure was implemented;

25 “(b) A description of the diversion facilities before the conservation
26 measure was implemented and the amount of water that was diverted at the
27 facilities before the conservation measure was implemented;

28 “(c) The amount of water needed to supply existing rights after imple-
29 mentation of the conservation measure;

30 “(d) The amount of water conserved by implementing the conservation

1 measure;

2 “(e) The proposed allocation and use of the conserved water if different
3 from the allocation specified in ORS 537.470;

4 “(f) The intended use of any water allocated to the applicant;

5 “(g) The applicant’s choice of priority date for the conserved water;

6 “(h) Evidence that the measure was implemented within five years prior
7 to the date of filing the application; and

8 “(i) Any other information the commission considers necessary to evalu-
9 ate the application.

10 “(4) If a person proposes conservation measures within the boundaries of
11 an irrigation district organized under ORS chapter 545 or a water control
12 district organized under ORS chapter 553, at the time the person submits the
13 application, the person also must submit evidence that the district has ap-
14 proved the conservation application.

15 **“SECTION 7.** ORS 540.510 is amended to read:

16 “540.510. (1) Except as provided in subsections (2) to (8) of this section,
17 all water used in this state for any purpose shall remain appurtenant to the
18 premises upon which it is used and no change in use or place of use of any
19 water for any purpose may be made without compliance with the provisions
20 of ORS 540.520 and 540.530. However, the holder of any water [use] **right**
21 subject to transfer may, upon compliance with the provisions of ORS 540.520
22 and 540.530, change the use and place of use, the point of diversion or the
23 use theretofore made of the water in all cases without losing priority of the
24 right theretofore established. A district may change the place of use in the
25 manner provided in ORS 540.572 to 540.580 in lieu of the method provided in
26 ORS 540.520 and 540.530. When an application for change of the use or place
27 of use for a primary water right is submitted in accordance with this section,
28 the applicant also shall indicate whether the land described in the applica-
29 tion has an appurtenant supplemental water right or permit. If the applicant
30 also intends to transfer the supplemental water right or permit, the applicant

1 also shall include the information required under ORS 540.520 (2) for the
2 supplemental water right or permit. If the applicant does not include the
3 supplemental water right or permit in the transfer application, the Water
4 Resources Department shall notify the applicant that the supplemental water
5 right or permit will be canceled before the department issues the order ap-
6 proving the transfer of the primary water right, unless within 30 days the
7 applicant modifies the application to include the supplemental water right
8 or permit or withdraws the application. The department may approve the
9 transfer of the supplemental water right or permit in accordance with the
10 provisions of ORS 540.520 and 540.530. The department shall not approve the
11 transfer of a supplemental water right or permit if the transfer would result
12 in enlargement of the original water right or injury to an existing water
13 right. If the department approves the transfer of the primary water right but
14 does not approve the transfer of the supplemental water right or permit, the
15 department shall notify the applicant of the department's intent to cancel
16 that portion of the supplemental water right or permit described in the
17 transfer application before the department issues the primary water right
18 transfer order, unless the applicant withdraws the transfer application
19 within 90 days.

20 “(2) Subject to the limitations in ORS 537.490, any right to the use of
21 conserved water allocated by the Water Resources Commission under ORS
22 537.470 may be severed from the land and transferred or sold after notice to
23 the commission as required under ORS 537.490.

24 “(3)(a) Any water used under a permit or certificate issued to a munici-
25 pality, or under rights conferred by ORS 538.410 to 538.450, or under the
26 registration system set forth in ORS 537.132, may be applied to beneficial use
27 on lands to which the right is not appurtenant if:

28 “(A) The water is applied to lands which are acquired by annexation or
29 through merger, consolidation or formation of a water authority, so long as
30 the rate and use of water allowed in the original certificate is not exceeded;

1 “(B) The use continues to be for municipal purposes and would not in-
2 terfere with or impair prior vested water rights; or

3 “(C) The use is authorized under a permit granted under ORS 468B.050
4 or 468B.053 and for which a reclaimed water registration form has been filed
5 under ORS 537.132.

6 “(b) As used in this subsection, ‘municipality’ means a city, a port formed
7 under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water
8 supply district formed under ORS chapter 264, a water supplier as defined in
9 ORS 448.115 or a water authority formed under ORS chapter 450.

10 “(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used
11 under a permit or certificate issued to a district may be applied to beneficial
12 use on lands within the district to which the right is not appurtenant.

13 “(5) The relocation of a point of diversion as necessary to follow the
14 movements of a naturally changing stream channel does not constitute a
15 change in point of diversion for purposes of ORS 540.520 if:

16 “(a) The diversion point stays within 500 feet of the point of diversion on
17 record with the Water Resources Department;

18 “(b) The change does not move the diversion point upstream or down-
19 stream beyond the diversion point of another appropriator; and

20 “(c) The diversion is provided with a proper fish screen, if requested by
21 the State Department of Fish and Wildlife.

22 “(6) In the event that government action results in or creates a reasonable
23 expectation of a change in the surface level of a surface water source that
24 impairs or threatens to impair access to a point of diversion authorized by
25 a water right permit, certificate or decree, the owner of the water right may
26 change the point of diversion or add an additional point of diversion in ac-
27 cordance with the provisions of this section in lieu of complying with the
28 requirements of ORS 540.520 and 540.530. Before changing the point of di-
29 version, the water right owner shall provide written notice of the proposed
30 change to the Water Resources Department. Within 15 days after receipt of

1 such notice, the department shall provide notice by publication in the
2 department's public notice of water right applications. Within 60 days after
3 the department receives notice from the owner, the Water Resources Direc-
4 tor, by order, shall approve the change unless the director finds the changes
5 will result in injury to other existing water rights. All other terms and
6 conditions of the water right shall remain in effect.

7 “(7) The sale or lease of the right to the use of conserved water under
8 ORS 537.490 does not constitute a change of use or a change in the place of
9 use of water for purposes of ORS 540.520.

10 “(8) Ground water applied to an exempt use as set forth in ORS 537.141
11 or 537.545 may be subsequently applied to land for irrigation purposes under
12 ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use
13 or place of use under this section.

14 “**SECTION 8.** ORS 540.520 is amended to read:

15 “540.520. (1) Except when the application is made under ORS 541.327 or
16 when an application for a temporary transfer is made under ORS 540.523, if
17 the holder of a water [use] **right** subject to transfer for irrigation, domestic
18 use, manufacturing purposes, or other use, for any reason desires to change
19 the place of use, the point of diversion, or the use made of the water, an
20 application to make such change, as the case may be, shall be filed with the
21 Water Resources Department.

22 “(2) The application required under subsection (1) of this section shall
23 include:

24 “(a) The name of the owner;

25 “(b) The previous use of the water;

26 “(c) A description of the premises upon which the water is used;

27 “(d) A description of the premises upon which it is proposed to use the
28 water;

29 “(e) The use that is proposed to be made of the water;

30 “(f) The reasons for making the proposed change; and

1 “(g) Evidence that the water has been used over the past five years ac-
2 cording to the terms and conditions of the owner’s water right certificate
3 or that the water right is not subject to forfeiture under ORS 540.610.

4 “(3) If the application required under subsection (1) of this section is
5 necessary to allow a change in a water right pursuant to ORS 537.348, is
6 necessary to complete a project funded under ORS 541.932, or is approved by
7 the State Department of Fish and Wildlife as a change that will result in a
8 net benefit to fish and wildlife habitat, the department, at the discretion of
9 the Water Resources Director, may waive or assist the applicant in satisfying
10 the requirements of subsection (2)(c) and (d) of this section. The assistance
11 provided by the department may include, but need not be limited to, devel-
12 opment of an application map.

13 “(4) If the application is to change the point of diversion, the transfer
14 shall include a condition that the holder of the water right provide a proper
15 fish screen at the new point of diversion, if requested by the State Depart-
16 ment of Fish and Wildlife.

17 “(5) Upon the filing of the application the department shall give notice
18 by publication in a newspaper having general circulation in the area in
19 which the water rights are located, for a period of at least two weeks and
20 not less than one publication each week. The notice shall include the date
21 on which the last notice by publication will occur. The cost of the publica-
22 tion shall be paid by the applicant in advance to the department. In appli-
23 cations for only a change in place of use or for a change in the point of
24 diversion of less than one-fourth mile, and where there are no intervening
25 diversions between the old diversion of the applicant and the proposed new
26 diversion, no newspaper notice need be published. The department shall in-
27 clude notice of such applications in the weekly notice published by the de-
28 partment.

29 “(6) Within 30 days after the last publication of a newspaper notice of the
30 proposed transfer or the mailing of the department’s weekly notice, which-

1 ever is later, any person may file, jointly or severally, with the department,
2 a protest against approval of the application.

3 “(7) If a timely protest is filed, or in the opinion of the Water Resources
4 Director a hearing is necessary to determine whether the proposed changes
5 as described by the application would result in injury to existing water
6 rights, the department shall hold a hearing on the matter. Notice and con-
7 duct of the hearing shall be under the provisions of ORS chapter 183, per-
8 taining to contested cases, and shall be held in the area where the rights are
9 located unless all parties and persons who filed a protest under this sub-
10 section stipulate otherwise.

11 “(8) An application for a change of use under this section is not required
12 if the beneficial use authorized by the water [use] **right** subject to transfer
13 is irrigation and the owner of the water right uses the water for incidental
14 agricultural, stock watering and other uses related to irrigation use, so long
15 as there is no increase in the rate, duty, total acreage benefited or season
16 of use.

17 “(9) A water right transfer under subsection (1) of this section is not re-
18 quired for a general industrial use that was not included in a water right
19 certificate issued for a specific industrial use if:

20 “(a) The quantity of water used for the general industrial use is not
21 greater than the rate allowed in the original water right and not greater
22 than the quantity of water diverted to satisfy the authorized specific use
23 under the original water right;

24 “(b) The location where the water is to be used for general industrial use
25 was owned by the holder of the original water right at the time the water
26 right permit was issued; and

27 “(c) The person who makes the change in water use provides the following
28 information to the Water Resources Department:

29 “(A) The name and mailing address of the person using water under the
30 water right;

1 “(B) The water right certificate number;

2 “(C) A description of the location of the industrial facility owned by the
3 holder of the original water right at the time the water right permit was
4 issued; and

5 “(D) A description of the general industrial use to be made of the water
6 after the change.

7 **“SECTION 9.** ORS 540.523 is amended to read:

8 “540.523. (1) In accordance with the provisions of this section, any person
9 who holds a water [*use*] **right** subject to transfer may request that the Water
10 Resources Department approve the temporary transfer of place of use and,
11 if necessary to convey water to the new temporary place of use, temporarily
12 change the point of diversion or point of appropriation for a period not to
13 exceed five years. An application for a temporary transfer shall:

14 “(a) Be submitted in writing to the Water Resources Department;

15 “(b) Be accompanied by the appropriate fee for a change in the place of
16 use as set forth in ORS 536.050;

17 “(c) Include the information required under ORS 540.520 (2); and

18 “(d) Include any other information the Water Resources Commission by
19 rule may require.

20 “(2) Notwithstanding the notice and waiting requirements under ORS
21 540.520, the department shall approve by order a request for a temporary
22 transfer under this section if the department determines that the temporary
23 transfer will not injure any existing water right.

24 “(3) All uses of water for which a temporary transfer is allowed under
25 this section shall revert automatically to the terms and conditions of the
26 water [*use*] **right** subject to transfer upon expiration of the temporary
27 transfer period.

28 “(4) The time during which water is used under an approved temporary
29 transfer order does not apply toward a finding of forfeiture under ORS
30 540.610.

1 “(5) The department may revoke a prior approval of the temporary trans-
2 fer at any time if the department finds that the transfer is causing injury to
3 any existing water right.

4 “(6) Any map that may be required under subsection (1) of this section
5 need not be prepared by a certified water right examiner.

6 “(7) The lands from which the water right is removed during the period
7 of a temporary transfer shall receive no water under the transferred water
8 right.

9 “(8) When an application for a temporary change of the place of use for
10 a primary water right is submitted in accordance with this section, the ap-
11 plicant also shall indicate whether the land described in the application has
12 an appurtenant supplemental water right or permit. If the applicant also in-
13 tends to temporarily transfer the supplemental water right or permit, the
14 applicant also shall include the information required under ORS 540.520 (2)
15 for the supplemental water right or permit. If the applicant does not include
16 the supplemental water right or permit in the temporary transfer application,
17 the Water Resources Department shall notify the applicant that the supple-
18 mental water right or permit will be canceled before the department issues
19 the order approving the temporary transfer of the primary water right, unless
20 within 30 days the applicant modifies the application to include the supple-
21 mental water right or permit or withdraws the application. The department
22 may approve the temporary transfer of the supplemental water right or per-
23 mit in accordance with the provisions of this section. The department may
24 not approve the temporary transfer of a supplemental water right or permit
25 if the temporary transfer would result in enlargement of the original water
26 right or injury to an existing water right. If the department approves the
27 temporary transfer of the primary water right but does not approve the
28 temporary transfer of the supplemental water right or permit, the department
29 shall notify the applicant of the department’s intent not to allow the tem-
30 porary transfer of the supplemental water right or permit before the depart-

1 ment issues the order for the temporary transfer of the primary water right.
2 If the department does not allow the temporary transfer of the supplemental
3 right, the supplemental right shall remain appurtenant to the land described
4 in the application, but may not be exercised until the primary right reverts
5 to the original water use. If the primary water right does not revert soon
6 enough to allow use of water under the supplemental right within five years,
7 the supplemental right shall become subject to cancellation for nonuse under
8 ORS 540.610.

9 “(9) In issuing an order under subsection (2) of this section, the depart-
10 ment shall include any condition necessary to protect other water rights.

11 **“SECTION 10.** ORS 540.531 is amended to read:

12 “540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a
13 surface water [*use*] **right** subject to transfer may apply for a transfer of the
14 point of diversion to allow the appropriation of ground water if the proposed
15 transfer complies with the requirements of subsection (2) or (3) of this sec-
16 tion and with the requirements for a transfer in point of diversion specified
17 in ORS 540.520 and 540.530.

18 “(2) The Water Resources Department may allow a transfer of the point
19 of diversion under subsection (1) of this section if:

20 “(a)(A) The new point of diversion appropriates ground water from an
21 aquifer that is hydraulically connected to the authorized surface water
22 source;

23 “(B) The proposed change in point of diversion will not result in en-
24 largement of the original water right or in injury to other water right
25 holders;

26 “(C) The use of the new point of diversion will affect the surface water
27 source similarly to the authorized point of diversion specified in the water
28 [*use*] **right** subject to transfer; and

29 “(D) The withdrawal of ground water at the new point of diversion is lo-
30 cated within 500 feet of the surface water source and, when the surface water

1 source is a stream, is also located within 1,000 feet upstream or downstream
2 of the original point of diversion as specified in the water [use] **right** subject
3 to transfer; or

4 “(b) The new point of diversion is not located within the distance re-
5 quirements set forth in paragraph (a)(D) of this subsection, the holder of the
6 water [use] **right** subject to transfer submits to the department evidence
7 prepared by a licensed geologist that demonstrates that the use of the ground
8 water at the new point of diversion will meet the criteria set forth in para-
9 graph (a)(A) to (C) of this subsection.

10 “(3) Notwithstanding subsection (2) of this section, the department shall
11 allow a transfer of the point of diversion under subsection (1) of this section
12 in the Deschutes Basin ground water study area if:

13 “(a) The new point of diversion appropriates ground water from an aquifer
14 that is hydraulically connected to the authorized surface water source;

15 “(b) The proposed change in the point of diversion will not result in en-
16 largement of the original water right or in injury to other water right
17 holders; and

18 “(c) The use of the new point of diversion will affect the surface water
19 source hydraulically connected to the authorized point of diversion specified
20 in the water [use] **right** subject to transfer. The department may not require
21 that the use of the new point of diversion affect the surface water source
22 similarly to the authorized point of diversion specified in the water [use]
23 **right** subject to transfer under this subsection.

24 “(4) All applicable restrictions that existed at the original point of di-
25 version shall apply at the new point of diversion allowed under this section.

26 “(5) The new point of diversion shall retain the original date of priority.
27 However, if within five years after approving the transfer, the department
28 finds that the transfer results in substantial interference with existing
29 ground water rights that would not have occurred in the absence of the
30 transfer, the new point of diversion shall be subordinate to any existing right

1 injured by the transferred water right or permit.

2 “(6)(a) The department shall approve an application to return to the last
3 authorized surface water point of diversion if a holder of a water *[use]* **right**
4 subject to transfer submits an application to the department within five
5 years after the department approves a transfer under this section.

6 “(b) The department shall approve an application to return to the last
7 authorized surface water point of diversion after five years of the date the
8 department allows a transfer under subsection (3) of this section if a holder
9 of a water *[use]* **right** subject to transfer submits an application to the de-
10 partment, and the return will not result in injury to an existing water right.

11 “(7) For transfers allowed under this section, the department shall require
12 mitigation measures to prevent depletion from any surface water source not
13 specified in the permit or certificated or decreed water right, except that the
14 department may not require mitigation measures if the transfer complies
15 with subsection (3) of this section.

16 “(8) The Water Resources Commission shall adopt rules that prescribe:

17 “(a) The process for reviewing applications submitted under this section;

18 “(b) The persons to whom the department shall provide notice of the re-
19 ceipt of an application submitted under this section; and

20 “(c) The persons who may participate in the process of reviewing appli-
21 cations submitted under this section.

22 “(9) As used in this section:

23 “(a) ‘Deschutes Basin ground water study area’ means the part of the
24 Deschutes River Basin that is designated by the Water Resources Commis-
25 sion by rule.

26 “(b) ‘Similarly’ means that the use of ground water at the new point of
27 diversion affects the surface water source specified in the permit or certif-
28 icated or decreed water right and would result in stream depletion of at least
29 50 percent of the rate of appropriation within 10 days of continuous pumping.

30 **“SECTION 11.** ORS 540.570 is amended to read:

1 “540.570. (1) Provided that the proposed transfer complies with all of the
2 provisions of this subsection and will not result in injury to any existing
3 water right, a district with a manager may, for one irrigation season, tem-
4 porarily transfer the place of use of water appurtenant to any land within
5 the legal boundaries of the district to an equal acreage elsewhere within the
6 legal boundaries of that district or temporarily transfer the type of use
7 identified in a right to store water. A temporary transfer of the place of use
8 may occur if:

9 “(a) The rate and duty, and the total number of acres to which water will
10 be applied under the transfer, do not exceed existing limits on the water
11 [use] **right** subject to transfer;

12 “(b) The type of use authorized under the water [use] **right** subject to
13 transfer remains the same; and

14 “(c) The land from which the water use is being transferred does not re-
15 ceive any water under the right being transferred during the irrigation sea-
16 son in which the change is made.

17 “(2) Provided that the proposed transfer complies with all the provisions
18 of this subsection and will not result in injury to or enlargement of an ex-
19 isting water right, a district with a manager may, for one irrigation season,
20 temporarily change the point of diversion or appropriation combined with a
21 change in place of use, change the point of diversion in the event that an
22 emergency prevents the district from diverting water from its authorized
23 point of diversion, change the point of diversion to allow for the appropri-
24 ation of ground water or change a primary right to a supplemental right if:

25 “(a) The land on which the water is to be used is within the district’s
26 legal boundaries established pursuant to ORS chapter 545, 547, 552, 553 or
27 554;

28 “(b) The other terms of the permit or certificate remain the same, in-
29 cluding the beneficial use for which the water is used and the number of
30 acres to which water is applied;

1 “(c) The diversion is provided with a proper fish screen, if required by the
2 Water Resources Department; and

3 “(d) For a proposal to transfer the point of diversion to allow for the
4 appropriation of ground water, the proposed change meets the standards set
5 forth in ORS 540.531 (2).

6 “(3) When a district or an owner or an owner’s agent within a district
7 who is subject to the charges or assessments of the district wishes to use
8 water on alternate acreage within the district, if the district has approved
9 the owner’s request, the district shall submit to the department a petition
10 seeking a temporary transfer under this section. The district shall submit the
11 petition prior to making the proposed change. The petition may contain
12 changes to one or more tax lots within the district and shall:

13 “(a) Include the information required under ORS 540.574 (3);

14 “(b) Be accompanied by a map in a form satisfactory to the department
15 and certified by the district. If the water right is on a tract of land of five
16 acres or less, the assessor’s tax map with a notation of the acres of water
17 right shall be sufficient for identification of the tract and place of use;

18 “(c) Include a statement that a written authorization for the transfer from
19 each landowner affected by the particular temporary transfer is on file with
20 the district;

21 “(d) Include any other information required by rules of the Water Re-
22 sources Commission; and

23 “(e) Include a fee in the amount required under ORS 536.050 (1)(i).

24 “(4) The district shall notify each affected landowner that the department
25 may reject the transfer or may require mitigation to avoid injury to other
26 water rights. Upon receipt of a completed petition under subsection (3) of
27 this section, the department shall place a summary of the petition in the
28 weekly notice published by the department. The department shall accept
29 written public comments on the petition for 30 days following publication
30 of the weekly notice. The department shall consider comments that pertain

1 to the potential for injury to an existing water right or to the enlargement
2 of the water [*use*] **right** subject to transfer in determining whether to con-
3 dition, reject or revoke a temporary transfer.

4 “(5) Use of water on lands from which the right is transferred and in the
5 new temporary location during the same irrigation season or calendar year
6 is prohibited and may subject the district and the landowner to civil penal-
7 ties.

8 “(6) The department may condition, reject or revoke a temporary transfer
9 at any time to the extent necessary to avoid injury if the department finds
10 the transfer is causing injury to an existing water right.

11 “(7) Upon expiration of the temporary transfer period, all uses of water
12 for which a temporary transfer is allowed under this section shall revert
13 automatically to the terms and conditions of the original water right permit,
14 certificate or adjudication under ORS chapter 539 as evidenced by a court
15 decree.

16 “(8) The time during which water is used under an approved temporary
17 transfer order does not apply toward a finding of forfeiture under ORS
18 540.610.

19 “**SECTION 12.** Sections 23, chapter 705, Oregon Laws 2003, as amended
20 by section 1, chapter 283, Oregon Laws 2009, and section 2, chapter 384,
21 Oregon Laws 2015, is amended to read:

22 “**Sec. 23.** (1) In order to increase district water management flexibility,
23 the Water Resources Department shall establish a pilot project in which
24 districts may temporarily allow, for water [*uses*] **rights** subject to transfer,
25 the use of water on any land within the legal boundaries of the district es-
26 tablished pursuant to ORS chapter 545, 547, 552, 553 or 554.

27 “(2) The use of water on any land within the legal boundaries of the dis-
28 trict may be allowed if:

29 “(a) The rate and duty, and the total number of acres to which water will
30 be applied under the transfer, do not exceed existing limits on the water

1 [use] **right** subject to transfer;

2 “(b) The type of use authorized under the water [use] **right** subject to
3 transfer is for irrigation and remains the same; and

4 “(c) The land from which the water use is being transferred does not re-
5 ceive any water under the right being transferred during the irrigation sea-
6 son in which the change is made.

7 “(3) The department shall allow the pilot project to be implemented in the
8 Talent Irrigation District, the Owyhee Irrigation District, the Tualatin Val-
9 ley Irrigation District, the Central Oregon Irrigation District, the Swalley
10 Irrigation District, the Westland Irrigation District, the North Unit Irri-
11 gation District, the Arnold Irrigation District, the Stanfield Irrigation Dis-
12 trict, the West Extension Irrigation District, the Hermiston Irrigation
13 District, the Medford Irrigation District, the Sutherlin Water Control Dis-
14 trict, the Santiam Water Control District and the Ochoco Irrigation District
15 or their successor districts. However, any district participating in the project
16 must:

17 “(a) Have defined state district boundaries;

18 “(b) Have a management structure that can ensure that water is applied
19 only where the water use is authorized;

20 “(c) Not irrigate an area in any one irrigation season that exceeds the
21 maximum number of acres allowed to be irrigated under the original water
22 right;

23 “(d) Have a full and accurate measurement of the water appropriated;

24 “(e) Have an accurate map identifying the location of authorized use, by
25 priority date, for review upon request and provide a copy of the map to the
26 watermaster; and

27 “(f) Have on file statements by any landowner affected by the water use
28 change indicating that the landowner agrees to the change.

29 “(4) If any of the specified districts are unable to participate in the
30 project, the department may identify another district for the project. Before

1 allowing another district to participate in the project for the first time, the
2 department shall publish notice of the planned participation by publication
3 in the weekly notice published by the department and shall allow the public
4 at least 20 days to provide information to assist the department in deter-
5 mining whether the district meets the qualifications required under sub-
6 section (3) of this section.

7 “(5) The department may require that use of water under the pilot project
8 cease and that the use revert to the use allowed under the water right of
9 record if the department determines that:

10 “(a) The district does not meet the qualifications established in subsection
11 (3) of this section;

12 “(b) The water is being used in a manner that violates the requirements
13 in subsection (2) of this section; or

14 “(c) The changes made to the use of water would result in injury to ex-
15 isting water rights or an enlargement of the original water right.

16 “(6) The department shall annually, prior to commencement of the irri-
17 gation season, publish notice of the districts that might intend to make use
18 of the pilot program during the year. The notice shall identify the districts
19 by name and provide the contact information for the watermasters for the
20 districts. The department shall publish the notice by publication in the
21 weekly notice published by the department.

22 “(7) Use of water under the pilot project constitutes a beneficial use of
23 water and does not constitute nonuse for purposes of forfeiture under ORS
24 540.610.

25 **“SECTION 13.** ORS 540.580 is amended to read:

26 “540.580. (1) In accordance with this section, a district may by petition
27 request that the Water Resources Department approve the permanent trans-
28 fer of the place of use of water within a district as long as the proposed
29 transfer complies with all of the following:

30 “(a) The rate, duty and total number of acres to which water is to be

1 applied under the water [*use*] **right** subject to transfer are not exceeded;

2 “(b) The use authorized under the water [*use*] **right** subject to transfer
3 remains the same;

4 “(c) The change in place of use will not result in injury to any existing
5 water right; and

6 “(d) The land from which the water right is removed by the transfer shall
7 receive no water under the transferred right.

8 “(2) A district may submit a petition for a permanent transfer prior to
9 or subsequent to the change in place of use, but no later than the end of the
10 calendar year in which the change occurs. The petition submitted by the
11 district may include an unlimited number of transfers within the same peti-
12 tion. A petition under this section shall:

13 “(a) Include the information required under ORS 540.574 (3), except for
14 the statement that a notice under ORS 540.572 (2) has been given;

15 “(b) Be accompanied by a map in a form satisfactory to the department
16 and certified by the district. If the water right is on a tract of land of five
17 acres or less, the assessor’s tax map with a notation of the acres of water
18 right shall be sufficient for identification of the tract and place of use;

19 “(c) Include a statement that each landowner affected by a permanent
20 transfer has authorized the transfer in a writing that is on file with the
21 district;

22 “(d) Include any other information required by rules of the Water Re-
23 sources Commission; and

24 “(e) Include the fee required under ORS 536.050 (1)(h) for a change in the
25 place of use.

26 “(3) If a district allows a change in the place of use of water before ob-
27 taining the approval of the department, the district shall:

28 “(a) Notify each affected landowner that the change is subject to the ap-
29 proval of the department and that the department may reject the transfer or
30 may require mitigation to avoid injury to other water right holders; and

1 “(b) Notify the department in advance of the change. The notice shall
2 include:

3 “(A) The name of the district and the certificate number of each water
4 right that is the subject of the change;

5 “(B) The names of the users within the district from whose lands and to
6 whose lands water rights are to be transferred;

7 “(C) A general description of the users’ lands by township, range, quarter
8 quarter section and tax lot number, and of the water right, for each parcel
9 from which and to which water rights are to be transferred; and

10 “(D) A description of the use that is proposed to be made of the water
11 on each parcel.

12 “(4) Upon receipt of the notice required under subsection (3)(b) of this
13 section, the department shall provide public notice in the weekly notice
14 published by the department.

15 “(5) If a district allows a change in the place of use of water before ob-
16 taining approval of the department under this section, the department may
17 direct the district to cease delivery of water or mitigate injury where the
18 change in place of use is causing injury to an existing water right.

19 “(6) Within 15 days after the filing of a petition under subsection (2) of
20 this section, the department shall include notice of the petition in the weekly
21 notice published by the department. Within 30 days after the mailing of the
22 department’s weekly notice, any potentially affected holder of an existing
23 water right may file, jointly or severally, with the department, a protest
24 against approval of the petition.

25 “(7) Subject to the provisions of subsection (8) of this section, whenever
26 a timely protest is filed, or in the opinion of the Water Resources Director
27 a hearing is necessary to determine whether the proposed changes as de-
28 scribed in the petition would result in injury to existing water rights, the
29 department may hold a hearing on the petition. Notice and conduct of the
30 hearing shall be according to the provisions of ORS chapter 183 pertaining

1 to contested cases, shall be scheduled within 45 days after the filing of the
2 petition, and shall be held in the area where the rights are located unless
3 all parties and persons who filed a protest under this subsection stipulate
4 otherwise.

5 “(8) If a water user within the district files a protest claiming injury to
6 a water right delivery by the district, no contested case hearing shall be re-
7 quired, but the district shall resolve the matter directly with the water user.

8 “(9) After examination or hearing, the department shall issue an order
9 approving the transfer if the proposed change can be effected without injury
10 to existing water rights. If no hearing is scheduled under subsection (7) of
11 this section, the order of the department shall be issued within 90 days after
12 the date of the filing of the petition. If the proposed change cannot be ef-
13 fected without injury to existing water rights, the department may condition
14 approval, including requiring mitigation of the effects on other water rights,
15 to the extent necessary to avoid injury. If a hearing is scheduled, the de-
16 partment shall issue a final order within 120 days after scheduling the
17 hearing.

18 “(10) Within 20 days after the director issues a final order under this
19 section, the district or any protestant may file with the commission ex-
20 ceptions to the final order. The commission shall issue an order granting or
21 denying the exceptions within 30 days after receiving the exceptions.

22 “(11) If a certificate covering the water right has been previously issued,
23 the department may amend the certificate or may cancel the certificate and
24 issue a new certificate preserving the previously established priority of
25 rights and covering the authorized changes. If only a portion of the water
26 right covered by the previous certificate is affected by the changes, a sepa-
27 rate new certificate may be issued to cover the unaffected portion of the
28 water right. A certificate as amended or issued under this section has the
29 evidentiary effect provided for in ORS 537.270 as to the new lands except
30 when the right to appropriate water described in the certificate is abandoned

1 after the certificate is amended or issued.

2 “(12) Notwithstanding the provisions of subsection (2) of this section, a
3 petition filed on or before December 31, 1996, may include all changes in
4 place of use allowed by a district after July 1, 1992, and before November
5 30, 1996.

6 “**SECTION 14.** ORS 540.585 is amended to read:

7 “540.585. (1) In accordance with the provisions of this section, a person
8 may request that the Water Resources Department approve the temporary
9 transfer of the place of use and type of use and temporarily change the point
10 of diversion if necessary to convey water to the new temporary place of use,
11 of all or a portion of a water right, for a period not to exceed 25 years if:

12 “(a) The person holds a water [*use*] **right** subject to transfer;

13 “(b) The type of use specified in the original water [*use*] **right** subject to
14 transfer is irrigation;

15 “(c) The person to whom the right is transferred is:

16 “(A) Located within the Deschutes River Basin; and

17 “(B) A city, a quasi-municipal corporation, a domestic water supply dis-
18 trict formed under ORS chapter 264, a water supplier as defined in ORS
19 448.115 or a water authority formed under ORS chapter 450;

20 “(d) The proposed use is municipal use; and

21 “(e) The proposed temporary transfer will not result in injury to any ex-
22 isting water right.

23 “(2) An application for a temporary transfer under this section shall:

24 “(a) Be submitted in writing to the Water Resources Department;

25 “(b) Be accompanied by the appropriate fee for a change in the place of
26 use and type of use as set forth in ORS 536.050;

27 “(c) Include the information required under ORS 540.520 (2); and

28 “(d) Include any other information the Water Resources Commission by
29 rule may require.

30 “(3)(a) Any portion of the use of a water right that is not temporarily

1 transferred under this section may be used on the designated part of the
2 lands described in the original water right permit, certificate or adjudication
3 under ORS chapter 539 as evidenced by a court decree, if the use does not
4 encompass more than the remaining portion of the lands, enlarge the water
5 right or increase the rate, duty, total acreage benefited or season of use.

6 “(b) The Water Resources Department shall designate the lands on which
7 water may be applied under this subsection and shall prescribe mapping,
8 measurement and recording requirements under this subsection.

9 “(4) Upon expiration of a temporary transfer period, all uses of water for
10 which a temporary transfer is allowed under this section shall revert auto-
11 matically to the terms and conditions of the original water right permit,
12 certificate or adjudication under ORS chapter 539 as evidenced by a court
13 decree.

14 “(5) The time during which water is used under an approved temporary
15 transfer order does not apply toward a finding of forfeiture under ORS
16 540.610.

17 “(6) The department may revoke a prior approval of a temporary transfer
18 at any time if:

19 “(a) The department finds that the transfer is causing injury to any ex-
20 isting water right; or

21 “(b) The person fails to comply with the requirements prescribed by the
22 department pursuant to subsection (3) of this section.

23 “(7) The department shall provide notice, in the manner provided in ORS
24 540.520 (5), that the department received an application for a temporary
25 transfer under this section.

26 “(8) The department may:

27 “(a) Prescribe the duration of the temporary transfer period allowed under
28 this section, up to 25 years;

29 “(b) Impose conditions in the terms of the temporary transfer, including
30 revocation of the transfer for noncompliance with applicable state, local or

1 federal laws; and

2 “(c) Determine the parties that may participate in the review of applica-
3 tions submitted under this section.

4 **“SECTION 15. This 2019 Act being necessary for the immediate
5 preservation of the public peace, health and safety, an emergency is
6 declared to exist, and this 2019 Act takes effect on its passage.”.**

7
