

D R A F T

SUMMARY

Authorizes holder of water right certificate that allows storage of water to change use of water, subject to certain requirements.

A BILL FOR AN ACT

Relating to water uses; amending ORS 540.510 and 540.520.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 540.510 is amended to read:

540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use *[theretofore made]* of the water *[in all cases]* without losing priority of the right *[theretofore established]*. A district may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the

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

18 **(b) A holder of a water right certificate that allows the storage of**
19 **water may change the use of the water as described in subsection**
20 **(1)(a) of this section without losing priority of the right.**

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

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

29 (A) The water is applied to lands which are acquired by annexation or
30 through merger, consolidation or formation of a water authority, so long as
31 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 inter-
2 fere with or impair prior vested water rights; or

3 (C) The use is authorized under a permit granted under ORS 468B.050 or
4 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 downstream
19 beyond the diversion point of another appropriator; and

20 (c) The diversion is provided with a proper fish screen, if requested by the
21 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
31 such notice, the department shall provide notice by publication in the

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

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

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

13 **SECTION 2.** ORS 540.520 is amended to read:

14 540.520. (1)(a) Except when the application is made under ORS 541.327 or
15 when an application for a temporary transfer is made under ORS 540.523, if
16 the holder of a water use subject to transfer for irrigation, domestic use,
17 manufacturing purposes, or other use, for any reason desires to change the
18 place of use, the point of diversion, or the use made of the water, an appli-
19 cation to make such change, as the case may be, shall be filed with the
20 Water Resources Department.

21 **(b) A holder of a water right certificate that allows the storage of**
22 **water may change the use of the water as described in this section.**

23 (2) The application required under subsection (1) of this section shall in-
24 clude:

25 (a) The name of the owner;

26 (b) The previous use of the water;

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

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

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

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

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

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

28 (6) Within 30 days after the last publication of a newspaper notice of the
29 proposed transfer or the mailing of the department's weekly notice, which-
30 ever is later, any person may file, jointly or severally, with the department,
31 a protest against approval of the application.

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

9 (8) An application for a change of use under this section is not required
10 if the beneficial use authorized by the water use subject to transfer is irri-
11 gation and the owner of the water right uses the water for incidental agri-
12 cultural, stock watering and other uses related to irrigation use, so long as
13 there is no increase in the rate, duty, total acreage benefited or season of
14 use.

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

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

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

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

27 (A) The name and mailing address of the person using water under the
28 water right;

29 (B) The water right certificate number;

30 (C) A description of the location of the industrial facility owned by the
31 holder of the original water right at the time the water right permit was

1 issued; and

2 (D) A description of the general industrial use to be made of the water

3 after the change.

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