

DRAFT

SUMMARY

Digest: The Act tells an agency to consider if changes to water rights will affect the public interest. The Act tells the agency to allow tribes to review certain requests to change water rights. The Act allows the agency to condition water right changes in certain ways. (Flesch Readability Score: 60.6).

Directs the Water Resources Department to consider whether certain water right transfers will result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.

Directs the department to provide an opportunity for tribes to review certain water right transfer applications.

Authorizes the department to condition water right transfers with water use measurement and reporting, water level measurement and reporting or the installation of fish screening or by-pass devices.

A BILL FOR AN ACT

Relating to water; creating new provisions; and amending ORS 537.211, 537.803, 540.510, 540.520, 540.523, 540.530 and 540.531.

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

CONSIDERING THE EFFECTS OF TRANSFERS ON THE PUBLIC INTEREST

SECTION 1. ORS 537.211 is amended to read:

537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set forth in a water right permit issued by the Water Resources Department. The permit shall specify the details of the authorized

1 use and shall set forth any terms, limitations and conditions as the depart-
2 ment considers appropriate including but not limited to any applicable con-
3 dition required under ORS 537.289. A copy of the permit shall be filed as a
4 public record in the department. The permit shall be mailed to the applicant,
5 and upon receipt of the permit the permittee may proceed with the con-
6 struction of the necessary works and may take all action required to apply
7 the water to the designated beneficial use and to perfect the proposed ap-
8 propriation.

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

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

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

26 (a) The use of water on land to which the right is not appurtenant, the
27 change of point of diversion or the change in point of appropriation does
28 not:

29 (A) Result in injury to an existing water right;

30 (B) **Result in a loss of in-stream habitat for sensitive, threatened**
31 **or endangered aquatic species in stream reaches not protected by an**

1 **existing water right; or**

2 **(C) Contribute to water quality impairment in water quality limited**
3 **streams;**

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

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

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

16 (e) The holder of the permit provides written notice to the department at
17 least 60 days before making any changes to the lands, point of diversion or
18 point of appropriation described in the permit;

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

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

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

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

30 (a) The change to noncontiguous land is in furtherance of mitigation or
31 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.

(c) The permit shall include a condition that additional conditions may be added to the use of water when a water right certificate is issued, or when the use of water is changed pursuant to ORS 540.520 and 540.530 to use for a mine.

(9) As used in this section, "contiguous" includes land separated from the land to which a water right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights of way.

SECTION 2. ORS 537.803 is amended to read:

537.803. (1) When an application for appropriation of water submitted under ORS 537.211, 537.400, 537.620, 543.210, 543.290 or for a change in the place of use of an existing water right submitted under ORS 540.520 proposes use of water outside the basin of origin, the application shall include, in addition to any other information required, an analysis of the following:

(a) The amount of water in the basin of origin available for future appropriation.

(b) Projected future needs for water in the basin of origin.

(c) Benefits presently and prospectively derived from the return flow of water used within the basin of origin that will be eliminated by the proposed out-of-basin use.

(d) The correlation between surface water and ground water in the basin of origin, and whether the proposed use will be harmful to the supply of either.

(e) Injury to existing water rights of other appropriators or interference with planned uses or developments within the basin of origin for which a permit has been issued or for which an application is pending.

(f) Whether the proposed use will adversely affect the quantity or quality of water available for domestic or municipal use within the basin of origin.

(g) Whether the proposed use will adversely affect public uses, as defined in ORS 537.332, in the basin of origin.

(h) Alternative sources of water for the proposed use that would not rely on transfer of water out of its basin of origin.

(i) Whether the proposed use will:

(A) Result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right; or

(B) Contribute to water quality impairment in water quality limited streams.

(2) This section shall apply only to an application filed on and after October 3, 1989.

1 (3) This section shall not apply to an application for exchange of water
2 under ORS 540.533 to 540.543.

3 (4) This section shall not apply to an application for the transfer of less
4 than 0.5 cubic feet per second of water.

5 (5) Subsection (1) of this section shall not apply to an appropriation or
6 diversion by a city to facilitate regional municipal water service if the city
7 has historically transported water between the basin of origin and proposed
8 receiving basins identified in the application.

9 **SECTION 3.** ORS 540.510 is amended to read:

10 540.510. (1)(a) Except as provided in subsections (2) to (8) of this section,
11 all water used in this state for any purpose shall remain appurtenant to the
12 premises upon which it is used and no change in use or place of use of any
13 water for any purpose may be made without compliance with the provisions
14 of ORS 540.520 and 540.530. However, the holder of any water use subject to
15 transfer may, upon compliance with the provisions of ORS 540.520 and
16 540.530, change the use and place of use, the point of diversion or the use
17 of the water without losing priority of the right. A district may change the
18 place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the
19 method provided in ORS 540.520 and 540.530. When an application for change
20 of the use or place of use for a primary water right is submitted in accord-
21 ance with this section, the applicant also shall indicate whether the land
22 described in the application has an appurtenant supplemental water right or
23 permit. If the applicant also intends to transfer the supplemental water right
24 or permit, the applicant also shall include the information required under
25 ORS 540.520 (2) for the supplemental water right or permit. If the applicant
26 does not include the supplemental water right or permit in the transfer ap-
27 plication, the Water Resources Department shall notify the applicant that
28 the supplemental water right or permit will be canceled before the depart-
29 ment issues the order approving the transfer of the primary water right,
30 unless within 30 days the applicant modifies the application to include the
31 supplemental water right or permit or withdraws the application. The de-

1 department may approve the transfer of the supplemental water right or permit
2 in accordance with the provisions of ORS 540.520 and 540.530. The depart-
3 ment shall not approve the transfer of a supplemental water right or permit
4 if the transfer would result in enlargement of the original water right or
5 injury to an existing water right, **result in a loss of in-stream habitat for**
6 **sensitive, threatened or endangered aquatic species in stream reaches**
7 **not protected by an existing water right or contribute to water quality**
8 **impairment in water quality limited streams.** If the department approves
9 the transfer of the primary water right but does not approve the transfer of
10 the supplemental water right or permit, the department shall notify the ap-
11 plicant of the department's intent to cancel that portion of the supplemental
12 water right or permit described in the transfer application before the de-
13 partment issues the primary water right transfer order, unless the applicant
14 withdraws the transfer application within 90 days.

15 (b) A holder of a water right certificate that authorizes the storage of
16 water may change the type of use identified in the water right certificate,
17 as described in paragraph (a) of this subsection, without losing priority of
18 the right.

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

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

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

30 (B) The use continues to be for municipal purposes and would not inter-
31 fere with or impair prior vested water rights; or

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

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

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

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

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

(b) The change does not move the diversion point upstream or downstream beyond the diversion point of another appropriator; and

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

(6) In the event that government action results in or creates a reasonable expectation of a change in the surface level of a surface water source that impairs or threatens to impair access to a point of diversion authorized by a water right permit, certificate or decree, the owner of the water right may change the point of diversion or add an additional point of diversion in accordance with the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530. Before changing the point of diversion, the water right owner shall provide written notice of the proposed change to the Water Resources Department. Within 15 days after receipt of such notice, the department shall provide notice by publication in the department’s public notice of water right applications. Within 60 days after the department receives notice from the owner, the Water Resources Direc-

tor, by order, shall approve the change unless the director finds the changes will result in injury to other existing water rights. All other terms and conditions of the water right shall remain in effect.

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

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

SECTION 4. ORS 540.520 is amended to read:

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

(b) A holder of a water right certificate that authorizes the storage of water may change the type of use identified in the water right certificate, as described in this section.

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

(a) The name of the owner;

(b) The previous use of the water;

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

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

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

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

(g) Evidence that the water has been used over the past five years ac-

1 cording to the terms and conditions of the owner's water right certificate
2 or that the water right is not subject to forfeiture under ORS 540.610.

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

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

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

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

31 (7) If a timely protest is filed, or in the opinion of the Water Resources

Director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, **result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams**, the department shall hold a hearing on the matter. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

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

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

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

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

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

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

(B) The water right certificate number;

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

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

SECTION 5. ORS 540.523 is amended to read:

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

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

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

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

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

(2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department shall approve by order a request for a temporary transfer under this section if the department determines that the temporary transfer will not injure any existing water right, **result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.**

(3) All uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period.

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

(5) The department may revoke a prior approval of the temporary transfer at any time if the department finds that the transfer is causing injury to any existing water right, **resulting in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contributing to water quality impairment in water quality limited streams.**

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

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

(8) When an application for a temporary change of the 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 temporarily 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 supplemental water right or permit in the temporary transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the temporary transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the temporary transfer of the supplemental water right or permit in accordance with the provisions of this section. The department may not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in enlargement of the original water right or injury to an existing water right, **will result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or will con-**

1 **tribute to water quality impairment in water quality limited streams.**

2 If the department approves the temporary transfer of the primary water right
3 but does not approve the temporary transfer of the supplemental water right
4 or permit, the department shall notify the applicant of the department's in-
5 tent not to allow the temporary transfer of the supplemental water right or
6 permit before the department issues the order for the temporary transfer of
7 the primary water right. If the department does not allow the temporary
8 transfer of the supplemental right, the supplemental right shall remain
9 appurtenant to the land described in the application, but may not be exer-
10 cised until the primary right reverts to the original water use. If the primary
11 water right does not revert soon enough to allow use of water under the
12 supplemental right within five years, the supplemental right shall become
13 subject to cancellation for nonuse under ORS 540.610.

14 (9) In issuing an order under subsection (2) of this section, the department
15 shall include any condition necessary to protect other water rights.

16 **SECTION 6.** ORS 540.530 is amended to read:

17 540.530. (1)(a) If, after hearing or examination, the Water Resources
18 Commission finds that a proposed change can be effected without injury to
19 existing water rights, **a loss of in-stream habitat for sensitive, threat-**
20 **ened or endangered aquatic species in stream reaches not protected**
21 **by an existing water right or contribution to water quality impairment**
22 **in water quality limited streams**, the commission shall make an order
23 approving the transfer and fixing a time limit within which the approved
24 changes may be completed.

25 (b) If, after hearing or examination, the commission finds that a proposed
26 change in point of diversion cannot be effected without injury to existing
27 water rights, upon receipt by the commission of an affidavit consenting to
28 the change from every holder of an affected water right, the commission may
29 make an order approving the transfer and fixing a time limit within which
30 the approved changes may be completed.

31 (c) If, after hearing or examination, the commission finds that a proposed

1 change in point of diversion cannot be effected without injury to an in-
2 stream water right granted pursuant to a request under ORS 537.336 or an
3 in-stream water right created pursuant to ORS 537.346 (1), the Water Re-
4 sources Department may consent to the change only upon a recommendation
5 that the department do so from the agency that requested the in-stream wa-
6 ter right. The agency that requested the in-stream water right may recom-
7 mend that the department consent to the change only if the change will
8 result in a net benefit to the resource consistent with the purposes of the
9 in-stream water right.

10 (d)(A) If an in-stream water right would be injured by a proposed change
11 under paragraph (c) of this subsection, the department shall obtain a rec-
12 ommendation from the agency that requested the in-stream water right. If the
13 recommendation of the agency is to consent to the change, the department
14 shall provide public notice of the recommendation and, consistent with state
15 laws regarding cooperation with Indian tribes in the development and im-
16 plementation of state agency programs that affect tribes or rights and privi-
17 leges of tribes, the department shall consult with affected Indian tribes.

18 (B) The recommendation of an agency under this paragraph must be in
19 writing and, if the recommendation is to consent to the change, must de-
20 scribe the extent of the injury to the in-stream water right, the effect on the
21 resource and the net benefit that will occur as a result of the proposed
22 change. The recommendation may include any proposed conditions that are
23 necessary to ensure that the proposed change will be consistent with the
24 recommendation.

25 (C) In determining whether a net benefit will result from the proposed
26 change, the recommendation of an agency must include an analysis of the
27 cumulative impact of any previous changes under paragraphs (b) and (c) of
28 this subsection that allow injury to the affected in-stream water right.

29 (D) A person may comment on the recommendation of an agency. The
30 comment must be in writing and must be received by the department within
31 30 days after publication of notice under this paragraph. If a written com-

1 ment received by the department requests a meeting on the proposed change,
2 the department and the agency that requested the in-stream water right shall
3 hold a joint public meeting within 90 days of the receipt of the comment
4 requesting a meeting.

5 (e)(A) If, after review of public comments and consultation with the
6 agency that requested the in-stream water right, the agency that requested
7 the in-stream water right does not withdraw its recommendation to consent
8 to the change, the department may approve the change consistent with the
9 requirements of paragraphs (b) and (c) of this subsection.

10 (B) An order approving a change under paragraph (c) of this subsection
11 shall include written findings on the extent of the injury to the in-stream
12 water right, the effect on the resource and the net benefit that will occur
13 as a result of the change. The order shall include any conditions necessary
14 to ensure that the change will be consistent with the findings and ensure
15 that the change will result in a continued net benefit to the resource con-
16 sistent with the purposes of the in-stream water right.

17 (C) In determining whether a net benefit will result from the change, the
18 order of the department must include an analysis of the cumulative impact
19 of any previous changes approved under paragraphs (b) and (c) of this sub-
20 section that allow injury to the affected in-stream water right.

21 (f) The time allowed by the commission for completion of an authorized
22 change under paragraphs (a) to (e) of this subsection may not be used when
23 computing a five-year period of nonuse under the provisions of ORS 540.610
24 (1).

25 (2)(a) If a certificate covering the water right has been previously issued,
26 the commission shall cancel the previous certificate or, if for an irrigation
27 district, the commission may modify the previous certificate and, when
28 proper proof of completion of the authorized changes has been filed with the
29 commission, issue a new certificate or, if for an irrigation district, modify
30 the previous certificate, preserving the previously established priority of
31 rights and covering the authorized changes. If only a portion of the water

1 right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the
2 water right.
3

4 (b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary
5 to complete a project funded under ORS 541.932, or is approved by the State
6 Department of Fish and Wildlife as a change that will result in a net benefit
7 to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant
8 in satisfying any of the proof of completion requirements of paragraph (a)
9 of this subsection. The assistance provided by the department may include,
10 but need not be limited to, development of a final proof survey map and
11 claim of beneficial use.
12

13 (3) Upon receiving notification of the merger or consolidation of municipal water supply entities, or the formation of a water authority under ORS
14 chapter 450, the commission shall cancel the previous certificates of the entities replaced by the merger, consolidation or formation and issue a new
15 certificate to the newly formed municipality or water authority. The new
16 certificate shall preserve the previously established priority of rights of the
17 replaced entities and shall allow beneficial use of the water on any lands
18 acquired in the merger, consolidation or formation.
19

20 **SECTION 7.** ORS 540.531 is amended to read:
21

22 540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject to transfer may apply for a transfer of the point of
23 diversion to allow the appropriation of ground water if the proposed transfer
24 complies with the requirements of subsection (2) or (3) of this section and
25 with the requirements for a transfer in point of diversion specified in ORS
26 540.520 and 540.530.
27

28 (2) The Water Resources Department may allow a transfer of the point
29 of diversion under subsection (1) of this section if:
30

31 (a)(A) The new point of diversion appropriates ground water from an

1 aquifer that is hydraulically connected to the authorized surface water
2 source;

3 (B) The proposed change in point of diversion will not result in enlarge-
4 ment of the original water right or in injury to other water right holders,
5 **will not result in a loss of in-stream habitat for sensitive, threatened**
6 **or endangered aquatic species in stream reaches not protected by an**
7 **existing water right and will not contribute to water quality impair-**
8 **ment in water quality limited streams;**

9 (C) The use of the new point of diversion will affect the surface water
10 source similarly to the authorized point of diversion specified in the water
11 use subject to transfer; and

12 (D) The withdrawal of ground water at the new point of diversion is lo-
13 cated within 500 feet of the surface water source and, when the surface water
14 source is a stream, is also located within 1,000 feet upstream or downstream
15 of the original point of diversion as specified in the water use subject to
16 transfer; or

17 (b) The new point of diversion is not located within the distance re-
18 quirements set forth in paragraph (a)(D) of this subsection, the holder of the
19 water use subject to transfer submits to the department evidence prepared
20 by a licensed geologist that demonstrates that the use of the ground water
21 at the new point of diversion will meet the criteria set forth in paragraph
22 (a)(A) to (C) of this subsection.

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

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

28 (b) The proposed change in the point of diversion will not result in en-
29 largement of the original water right or in injury to other water right
30 holders, **will not result in a loss of in-stream habitat for sensitive,**
31 **threatened or endangered aquatic species in stream reaches not pro-**

tected by an existing water right and will not contribute to water quality impairment in water quality limited streams; and

(c) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) All applicable restrictions that existed at the original point of diversion shall apply at the new point of diversion allowed under this section.

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

(6)(a) The department shall approve an application to return to the last authorized surface water point of diversion if a holder of a water use subject to transfer submits an application to the department within five years after the department approves a transfer under this section.

(b) The department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the department allows a transfer under subsection (3) of this section if:

(A) A holder of a water use subject to transfer submits an application to the department[,]; and

(B) The return will not result in injury to an existing water right, **will not result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right and will not contribute to water quality impairment in water quality limited streams.**

(7) For transfers allowed under this section, the department shall require

mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right, except that the department may not require mitigation measures if the transfer complies with subsection (3) of this section.

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

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

(b) The persons to whom the department shall provide notice of the receipt of an application submitted under this section; and

(c) The persons who may participate in the process of reviewing applications submitted under this section.

(9) As used in this section:

(a) “Deschutes Basin ground water study area” means the part of the Deschutes River 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.

TRIBAL REVIEW OF TRANSFER APPLICATIONS

SECTION 8. Section 9 of this 2025 Act is added to and made a part of ORS chapter 540.

SECTION 9. (1) As used in this section, “tribe” means a federally recognized Indian tribe in this state.

(2) The Water Resources Department shall provide an opportunity for tribes to opt in to reviewing water right transfer applications in specific counties.

(3) If a tribe has opted in to reviewing applications as described in subsection (2) of this section, the department shall provide the tribe with notice of any water transfer received for water use in the specific

counties.

(4) Not more than 30 days after receiving a notice described in subsection (3) of this section, a tribe may:

(a) Provide information to the department on whether the proposed transfer would:

(A) Cause injury to tribal water rights or other existing water rights;

(B) Enlarge a water right;

(C) Impact tribal cultural resources;

(D) Result in a loss of in-stream habitat for sensitive, threatened or endangered species in a stream reach not protected by existing water rights; or

(E) Contribute to water quality impairment in water quality limited streams.

(b) Request to confer with the applicant.

(5) If a tribe requests to confer with an applicant as described in subsection (4)(b) of this section, the department shall send notice of the requested conference to the applicant.

(6) Not more than 30 days after receiving a notice described in subsection (5) of this section, an applicant shall:

(a) Confer with the tribe.

(b) Notify the department of any changes or outcomes to consider while the department is processing the application.

(7) The department shall encourage persons that apply for transfers under this chapter to engage with tribes before submitting an application.

(8) Notwithstanding any contrary provision of law, a tribe that provides information on an application as described in subsection (4)(a) of this section shall have standing to protest the final order of the department on the application.

DEPARTMENT AUTHORITY TO CONDITION TRANSFERS

SECTION 10. Section 11 of this 2025 Act is added to and made a part of ORS chapter 540.

SECTION 11. (1) Notwithstanding any contrary provision of law, the Water Resources Department may condition a transfer described in this chapter with:

(a) Water use measurement and reporting.

(b) Water level measurement and reporting.

(c) The installation of fish screening or by-pass devices.

(2) The authority granted by subsection (1) of this section applies to an entire water right regardless of the change that is proposed.