

Senate Bill 1153

Sponsored by COMMITTEE ON NATURAL RESOURCES AND WILDFIRE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

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

1
2 Relating to water; creating new provisions; and amending ORS 537.211, 537.803, 540.510, 540.520,
3 540.523, 540.530 and 540.531.

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

6 **CONSIDERING THE EFFECTS OF TRANSFERS ON THE PUBLIC INTEREST**

7
8 **SECTION 1.** ORS 537.211 is amended to read:

9 537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set
10 forth in a water right permit issued by the Water Resources Department. The permit shall specify
11 the details of the authorized use and shall set forth any terms, limitations and conditions as the
12 department considers appropriate including but not limited to any applicable condition required
13 under ORS 537.289. A copy of the permit shall be filed as a public record in the department. The
14 permit shall be mailed to the applicant, and upon receipt of the permit the permittee may proceed
15 with the construction of the necessary works and may take all action required to apply the water
16 to the designated beneficial use and to perfect the proposed appropriation.

17 (2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or
18 537.400 indicates that the applicant does not have written authorization or an easement permitting
19 access to nonowned land crossed by the proposed ditch, canal or other work, the department may
20 issue a final order approving the application if the approval includes a condition requiring the ap-
21 plicant to obtain such written authorization, or easement or ownership of such land and to provide
22 the department with a copy of the written authorization, easement or evidence of ownership.

23 (3) If an application referred to in ORS 537.140 or 537.400 is rejected, the department shall enter
24 a written order setting forth the reasons for the rejection. The applicant shall take no action toward

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 construction of the works or use of the water. The department shall mail a copy of the order to the
2 applicant.

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

6 (a) The use of water on land to which the right is not appurtenant, the change of point of di-
7 version or the change in point of appropriation does not:

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

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

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

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

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

17 (d) Prior approval is obtained from the district if the water is transported or conveyed by an
18 irrigation district organized under ORS chapter 545, a drainage district organized under ORS chap-
19 ter 547, a water improvement district organized under ORS chapter 552, a water control district
20 organized under ORS chapter 553 or a district improvement company or a corporation organized
21 under ORS chapter 554;

22 (e) The holder of the permit provides written notice to the department at least 60 days before
23 making any changes to the lands, point of diversion or point of appropriation described in the per-
24 mit;

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

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

29 (h) For a request to transfer the point of diversion to allow the appropriation of ground water,
30 the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

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

34 (a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts
35 undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered
36 under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544),
37 as determined by the listing agency; and

38 (b) All other requirements of subsection (4) of this section are met.

39 (6) For an application made by or on behalf of a public corporation, the department may issue
40 a permit approving the application without requiring the applicant to obtain prior written authori-
41 zation or an easement permitting access to nonowned lands affected by the proposed project. How-
42 ever, nothing in this subsection shall be construed to allow any person to trespass on the lands of
43 another person.

44 (7) When the department receives notice under subsection (4)(e) of this section, the department
45 shall publish the notice in the department's weekly public notice of water right applications.

1 (8) If the use of water under the permit is for operation of a mining operation as defined in ORS
2 517.952:

3 (a) Review of the application and approval or denial of the application shall be coordinated with
4 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-
5 proval or denial shall take into consideration all policy considerations for the appropriation of water
6 as set forth in this chapter and ORS chapter 536.

7 (b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall
8 be conditioned on the applicant's compliance with the consolidated application process.

9 (c) The permit shall include a condition that additional conditions may be added to the use of
10 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
11 540.520 and 540.530 to use for a mine.

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

14 **SECTION 2.** ORS 537.803 is amended to read:

15 537.803. (1) When an application for appropriation of water submitted under ORS 537.211,
16 537.400, 537.620, 543.210, 543.290 or for a change in the place of use of an existing water right sub-
17 mitted under ORS 540.520 proposes use of water outside the basin of origin, the application shall
18 include, in addition to any other information required, an analysis of the following:

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

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

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

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

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

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

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

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

34 (i) **Whether the proposed use will:**

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

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

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

39 (3) This section shall not apply to an application for exchange of water under ORS 540.533 to
40 540.543.

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

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

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

2 540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this
 3 state for any purpose shall remain appurtenant to the premises upon which it is used and no change
 4 in use or place of use of any water for any purpose may be made without compliance with the pro-
 5 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,
 6 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,
 7 the point of diversion or the use of the water without losing priority of the right. A district may
 8 change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method
 9 provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for
 10 a primary water right is submitted in accordance with this section, the applicant also shall indicate
 11 whether the land described in the application has an appurtenant supplemental water right or per-
 12 mit. If the applicant also intends to transfer the supplemental water right or permit, the applicant
 13 also shall include the information required under ORS 540.520 (2) for the supplemental water right
 14 or permit. If the applicant does not include the supplemental water right or permit in the transfer
 15 application, the Water Resources Department shall notify the applicant that the supplemental water
 16 right or permit will be canceled before the department issues the order approving the transfer of the
 17 primary water right, unless within 30 days the applicant modifies the application to include the
 18 supplemental water right or permit or withdraws the application. The department may approve the
 19 transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520
 20 and 540.530. The department shall not approve the transfer of a supplemental water right or permit
 21 if the transfer would result in enlargement of the original water right or injury to an existing water
 22 right, **result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic**
 23 **species in stream reaches not protected by an existing water right or contribute to water**
 24 **quality impairment in water quality limited streams.** If the department approves the transfer of
 25 the primary water right but does not approve the transfer of the supplemental water right or permit,
 26 the department shall notify the applicant of the department's intent to cancel that portion of the
 27 supplemental water right or permit described in the transfer application before the department is-
 28 sues the primary water right transfer order, unless the applicant withdraws the transfer application
 29 within 90 days.

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

33 (2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated
 34 by the Water Resources Commission under ORS 537.470 may be severed from the land and trans-
 35 ferred or sold after notice to the commission as required under ORS 537.490.

36 (3)(a) Any water used under a permit or certificate issued to a municipality, or under rights
 37 conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may
 38 be applied to beneficial use on lands to which the right is not appurtenant if:

39 (A) The water is applied to lands which are acquired by annexation or through merger, consol-
 40 idation or formation of a water authority, so long as the rate and use of water allowed in the ori-
 41 ginal certificate is not exceeded;

42 (B) The use continues to be for municipal purposes and would not interfere with or impair prior
 43 vested water rights; or

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

1 (b) As used in this subsection, “municipality” means a city, a port formed under ORS 777.005 to
 2 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter
 3 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

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

7 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally
 8 changing stream channel does not constitute a change in point of diversion for purposes of ORS
 9 540.520 if:

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

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

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

16 (6) In the event that government action results in or creates a reasonable expectation of a
 17 change in the surface level of a surface water source that impairs or threatens to impair access to
 18 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water
 19 right may change the point of diversion or add an additional point of diversion in accordance with
 20 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.
 21 Before changing the point of diversion, the water right owner shall provide written notice of the
 22 proposed change to the Water Resources Department. Within 15 days after receipt of such notice,
 23 the department shall provide notice by publication in the department’s public notice of water right
 24 applications. Within 60 days after the department receives notice from the owner, the Water Re-
 25 sources Director, by order, shall approve the change unless the director finds the changes will result
 26 in injury to other existing water rights. All other terms and conditions of the water right shall re-
 27 main in effect.

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

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

33 **SECTION 4.** ORS 540.520 is amended to read:

34 540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application
 35 for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer
 36 for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change
 37 the place of use, the point of diversion, or the use made of the water, an application to make such
 38 change, as the case may be, shall be filed with the Water Resources Department.

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

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

42 (a) The name of the owner;

43 (b) The previous use of the water;

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

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

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

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

3 (g) Evidence that the water has been used over the past five years according to the terms and
4 conditions of the owner's water right certificate or that the water right is not subject to forfeiture
5 under ORS 540.610.

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

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

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

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

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

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

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

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

45 (b) The location where the water is to be used for general industrial use was owned by the

1 holder of the original water right at the time the water right permit was issued; and

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

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

5 (B) The water right certificate number;

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

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

9 **SECTION 5.** ORS 540.523 is amended to read:

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

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

16 (b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS
17 536.050;

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

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

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

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

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

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

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

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

40 (8) When an application for a temporary change of the place of use for a primary water right
41 is submitted in accordance with this section, the applicant also shall indicate whether the land de-
42 scribed in the application has an appurtenant supplemental water right or permit. If the applicant
43 also intends to temporarily transfer the supplemental water right or permit, the applicant also shall
44 include the information required under ORS 540.520 (2) for the supplemental water right or permit.
45 If the applicant does not include the supplemental water right or permit in the temporary transfer

1 application, the Water Resources Department shall notify the applicant that the supplemental water
2 right or permit will be canceled before the department issues the order approving the temporary
3 transfer of the primary water right, unless within 30 days the applicant modifies the application to
4 include the supplemental water right or permit or withdraws the application. The department may
5 approve the temporary transfer of the supplemental water right or permit in accordance with the
6 provisions of this section. The department may not approve the temporary transfer of a supplemental
7 water right or permit if the temporary transfer would result in enlargement of the original water
8 right or injury to an existing water right, **will result in a loss of in-stream habitat for sensitive,
9 threatened or endangered aquatic species in stream reaches not protected by an existing
10 water right or will contribute to water quality impairment in water quality limited streams.**
11 If the department approves the temporary transfer of the primary water right but does not approve
12 the temporary transfer of the supplemental water right or permit, the department shall notify the
13 applicant of the department's intent not to allow the temporary transfer of the supplemental water
14 right or permit before the department issues the order for the temporary transfer of the primary
15 water right. If the department does not allow the temporary transfer of the supplemental right, the
16 supplemental right shall remain appurtenant to the land described in the application, but may not
17 be exercised until the primary right reverts to the original water use. If the primary water right
18 does not revert soon enough to allow use of water under the supplemental right within five years,
19 the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

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

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

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

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

34 (c) If, after hearing or examination, the commission finds that a proposed change in point of
35 diversion cannot be effected without injury to an in-stream water right granted pursuant to a re-
36 quest under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water
37 Resources Department may consent to the change only upon a recommendation that the department
38 do so from the agency that requested the in-stream water right. The agency that requested the in-
39 stream water right may recommend that the department consent to the change only if the change
40 will result in a net benefit to the resource consistent with the purposes of the in-stream water right.

41 (d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c)
42 of this subsection, the department shall obtain a recommendation from the agency that requested the
43 in-stream water right. If the recommendation of the agency is to consent to the change, the depart-
44 ment shall provide public notice of the recommendation and, consistent with state laws regarding
45 cooperation with Indian tribes in the development and implementation of state agency programs that

1 affect tribes or rights and privileges of tribes, the department shall consult with affected Indian
2 tribes.

3 (B) The recommendation of an agency under this paragraph must be in writing and, if the rec-
4 ommendation is to consent to the change, must describe the extent of the injury to the in-stream
5 water right, the effect on the resource and the net benefit that will occur as a result of the proposed
6 change. The recommendation may include any proposed conditions that are necessary to ensure that
7 the proposed change will be consistent with the recommendation.

8 (C) In determining whether a net benefit will result from the proposed change, the recommen-
9 dation of an agency must include an analysis of the cumulative impact of any previous changes un-
10 der paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

11 (D) A person may comment on the recommendation of an agency. The comment must be in
12 writing and must be received by the department within 30 days after publication of notice under this
13 paragraph. If a written comment received by the department requests a meeting on the proposed
14 change, the department and the agency that requested the in-stream water right shall hold a joint
15 public meeting within 90 days of the receipt of the comment requesting a meeting.

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

20 (B) An order approving a change under paragraph (c) of this subsection shall include written
21 findings on the extent of the injury to the in-stream water right, the effect on the resource and the
22 net benefit that will occur as a result of the change. The order shall include any conditions neces-
23 sary to ensure that the change will be consistent with the findings and ensure that the change will
24 result in a continued net benefit to the resource consistent with the purposes of the in-stream water
25 right.

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

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

32 (2)(a) If a certificate covering the water right has been previously issued, the commission shall
33 cancel the previous certificate or, if for an irrigation district, the commission may modify the pre-
34 vious certificate and, when proper proof of completion of the authorized changes has been filed with
35 the commission, issue a new certificate or, if for an irrigation district, modify the previous certif-
36 icate, preserving the previously established priority of rights and covering the authorized changes.
37 If only a portion of the water right covered by the previous certificate is affected by the changes,
38 a separate new certificate may be issued to cover the unaffected portion of the water right.

39 (b) If the change authorized under subsection (1) of this section is necessary to allow a change
40 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
41 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in
42 a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the
43 Water Resources Director, may waive or assist the applicant in satisfying any of the proof of com-
44 pletion requirements of paragraph (a) of this subsection. The assistance provided by the department
45 may include, but need not be limited to, development of a final proof survey map and claim of ben-

1 official use.

2 (3) Upon receiving notification of the merger or consolidation of municipal water supply entities,
3 or the formation of a water authority under ORS chapter 450, the commission shall cancel the pre-
4 vious certificates of the entities replaced by the merger, consolidation or formation and issue a new
5 certificate to the newly formed municipality or water authority. The new certificate shall preserve
6 the previously established priority of rights of the replaced entities and shall allow beneficial use
7 of the water on any lands acquired in the merger, consolidation or formation.

8 **SECTION 7.** ORS 540.531 is amended to read:

9 540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject
10 to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground
11 water if the proposed transfer complies with the requirements of subsection (2) or (3) of this section
12 and with the requirements for a transfer in point of diversion specified in ORS 540.520 and 540.530.

13 (2) The Water Resources Department may allow a transfer of the point of diversion under sub-
14 section (1) of this section if:

15 (a)(A) The new point of diversion appropriates ground water from an aquifer that is hydrau-
16 lically connected to the authorized surface water source;

17 (B) The proposed change in point of diversion will not result in enlargement of the original
18 water right or in injury to other water right holders, **will not result in a loss of in-stream habitat**
19 **for sensitive, threatened or endangered aquatic species in stream reaches not protected by**
20 **an existing water right and will not contribute to water quality impairment in water quality**
21 **limited streams;**

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

24 (D) The withdrawal of ground water at the new point of diversion is located within 500 feet of
25 the surface water source and, when the surface water source is a stream, is also located within 1,000
26 feet upstream or downstream of the original point of diversion as specified in the water use subject
27 to transfer; or

28 (b) The new point of diversion is not located within the distance requirements set forth in par-
29 agraph (a)(D) of this subsection, the holder of the water use subject to transfer submits to the de-
30 partment evidence prepared by a licensed geologist that demonstrates that the use of the ground
31 water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C) of this
32 subsection.

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

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

38 (b) The proposed change in the point of diversion will not result in enlargement of the original
39 water right or in injury to other water right holders, **will not result in a loss of in-stream habitat**
40 **for sensitive, threatened or endangered aquatic species in stream reaches not protected by**
41 **an existing water right and will not contribute to water quality impairment in water quality**
42 **limited streams;** and

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

1 source similarly to the authorized point of diversion specified in the water use subject to transfer
 2 under this subsection.

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

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

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

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

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

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

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

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

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

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

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

31 (9) As used in this section:

32 (a) “Deschutes Basin ground water study area” means the part of the Deschutes River Basin
 33 that is designated by the Water Resources Commission by rule.

34 (b) “Similarly” means that the use of ground water at the new point of diversion affects the
 35 surface water source specified in the permit or certificated or decreed water right and would result
 36 in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous
 37 pumping.

38
 39 **TRIBAL REVIEW OF TRANSFER APPLICATIONS**

40
 41 **SECTION 8. Section 9 of this 2025 Act is added to and made a part of ORS chapter 540.**

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

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

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

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

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

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

8 (B) Enlarge a water right;

9 (C) Impact tribal cultural resources;

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

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

13 (b) Request to confer with the applicant.

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

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

18 (a) Confer with the tribe.

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

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

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

26
27 **DEPARTMENT AUTHORITY TO CONDITION TRANSFERS**

28
29 **SECTION 10.** Section 11 of this 2025 Act is added to and made a part of ORS chapter 540.

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

32 (a) Water use measurement and reporting.

33 (b) Water level measurement and reporting.

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

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

37
38 **CAPTIONS**

39
40 **SECTION 12.** The unit captions used in this 2025 Act are provided only for the conven-
41 ience of the reader and do not become part of the statutory law of this state or express any
42 legislative intent in the enactment of this 2025 Act.