

SB 1153-3
(LC 4004)
5/27/25 (DJ/AG/ps)

Requested by Senator JAMA (at the request of Governor Tina Kotek)

**PROPOSED AMENDMENTS TO
SENATE BILL 1153**

1 On page 1 of the printed bill, line 2, delete “537.803,”.

2 Delete lines 8 through 24 and delete pages 2 through 12 and insert:

3 **“SECTION 1. ORS 537.211 is amended to read:**

4 “537.211. (1) The approval of an application referred to in ORS 537.140 or
5 537.400 shall be set forth in a water right permit issued by the Water Re-
6 sources Department. The permit shall specify the details of the authorized
7 use and shall set forth any terms, limitations and conditions as the depart-
8 ment considers appropriate including but not limited to any applicable con-
9 dition required under ORS 537.289. A copy of the permit shall be filed as a
10 public record in the department. The permit shall be mailed to the applicant,
11 and upon receipt of the permit the permittee may proceed with the con-
12 struction of the necessary works and may take all action required to apply
13 the water to the designated beneficial use and to perfect the proposed ap-
14 propriation.

15 “(2) Except as provided in subsection [(6)] (7) of this section, if an appli-
16 cation under ORS 537.140 or 537.400 indicates that the applicant does not
17 have written authorization or an easement permitting access to nonowned
18 land crossed by the proposed ditch, canal or other work, the department may
19 issue a final order approving the application if the approval includes a con-
20 dition requiring the applicant to obtain such written authorization, or ease-
21 ment or ownership of such land and to provide the department with a copy

1 of the written authorization, easement or evidence of ownership.

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

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

11 “(a) The use of water on land to which the right is not appurtenant, the
12 change of point of diversion or the change in point of appropriation does not
13 result in injury to an existing water right;

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

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

20 “(d) Prior approval is obtained from the district if the water is trans-
21 ported or conveyed by an irrigation district organized under ORS chapter
22 545, a drainage district organized under ORS chapter 547, a water improve-
23 ment district organized under ORS chapter 552, a water control district or-
24 ganized under ORS chapter 553 or a district improvement company or a
25 corporation organized under ORS chapter 554;

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

29 “(f) The holder of the permit complies with the publication requirements
30 of ORS 540.520 (5), if applicable;

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

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

6 **“(5)(a) Paragraphs (b) to (d) of this subsection apply in addition to
7 subsection (4) of this section if:**

8 **“(A) The change in the point of diversion is upstream from the ex-
9 isting point of diversion where there is no existing permanent in-
10 stream water right;**

11 **“(B) The change in the point of appropriation is to within one-
12 quarter mile of a stream where there is no existing permanent in-
13 stream water right; or**

14 **“(C) The change is to move the point of appropriation closer to a
15 stream than the existing point of appropriation, if the existing point
16 of appropriation is within one-quarter mile of a stream and the stream
17 that the point of appropriation is moving closer to does not have an
18 existing permanent in-stream water right.**

19 **“(b) A change described in paragraph (a) of this subsection may not
20 be made if the change would contribute to a reduction in flow that
21 results in a loss of in-stream habitat for sensitive, threatened or en-
22 dangered fish species or contribute to water quality impairment in
23 water quality limited streams.**

24 **“(c) The determination described in paragraph (b) of this subsection
25 may not exceed the time required for the department to complete the
26 injury analysis described in subsection (4)(a) of this section. If the
27 department is unable to complete a determination under this para-
28 graph within the time prescribed in this paragraph, the application
29 shall be presumed to not contribute to a reduction in flow that is
30 prohibited under paragraph (b) of this subsection.**

1 “(d) This subsection does not apply to water right transfer applica-
2 tions submitted in accordance with ORS 540.520 or 540.523, if sufficient
3 information is included in the application materials that demonstrate
4 the following criteria are met:

5 “(A) Transfers of water rights authorizing municipal use or water
6 rights held by a municipality, as defined in ORS 540.510 (3), are nec-
7 essary to address an imminent public health or safety risk;

8 “(B) Transfers connected to an aquatic restoration or protection
9 project, if the net effect of the transfer and the aquatic habitat resto-
10 ration or protection project would be a benefit to fish populations,
11 based on the advice of the State Department of Fish and Wildlife or
12 other information relevant to the project; or

13 “(C) Transfers of water rights authorizing municipal use or water
14 rights held by a municipality, as defined in ORS 540.510 (3), that are
15 subject to conditions or mitigation requirements that address the
16 permanent impact of reduced quantity of flow on in-stream habitat for
17 sensitive, threatened or endangered fish species or water quality
18 impairment as part of other state or federal regulatory authorizations,
19 including but not limited to:

20 “(i) A removal-fill permit or United States Army Corps of Engineers
21 authorization under section 404 of the federal Clean Water Act, 33
22 U.S.C. 1344;

23 “(ii) A water quality certification permit issued under section 401
24 of the federal Clean Water Act, 33 U.S.C. 1341;

25 “(iii) Fish persistence conditions, if applicable; or

26 “(iv) A water conservation and management plan, if applicable.

27 “[(5)] (6) Notwithstanding the requirements of subsection (4)(b) of this
28 section, the holder of a water right permit may change the place of use of
29 all or any portion of water under the permit to land that is not contiguous
30 to the land to which the permit is appurtenant if:

1 “(a) The change to noncontiguous land is in furtherance of mitigation or
2 conservation efforts undertaken for the purposes of benefiting a species listed
3 as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the
4 federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as deter-
5 mined by the listing agency; and

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

7 “[~~(6)~~] (7) For an application made by or on behalf of a public corporation,
8 the department may issue a permit approving the application without re-
9 quiring the applicant to obtain prior written authorization or an easement
10 permitting access to nonowned lands affected by the proposed project. How-
11 ever, nothing in this subsection shall be construed to allow any person to
12 trespass on the lands of another person.

13 “[~~(7)~~] (8) When the department receives notice under subsection (4)(e) of
14 this section, the department shall publish the notice in the department’s
15 weekly public notice of water right applications.

16 “[~~(8)~~] (9) If the use of water under the permit is for operation of a mining
17 operation as defined in ORS 517.952:

18 “(a) Review of the application and approval or denial of the application
19 shall be coordinated with the consolidated application process under ORS
20 517.952 to 517.989. However, such review and approval or denial shall take
21 into consideration all policy considerations for the appropriation of water
22 as set forth in this chapter and ORS chapter 536.

23 “(b) The permit may be issued for exploration under ORS 517.702 to
24 517.740, but the permit shall be conditioned on the applicant’s compliance
25 with the consolidated application process.

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

30 “[~~(9)~~] (10) As used in this section, ‘contiguous’ includes land separated

1 from the land to which a water right is appurtenant by roads, utility corri-
2 dors, irrigation ditches or publicly owned rights of way.

3 **“SECTION 2.** ORS 540.510 is amended to read:

4 “540.510. (1)(a) Except as provided in subsections (2) to (8) of this section,
5 all water used in this state for any purpose shall remain appurtenant to the
6 premises upon which it is used and no change in use or place of use of any
7 water for any purpose may be made without compliance with the provisions
8 of ORS 540.520 and 540.530. However, the holder of any water use subject to
9 transfer may, upon compliance with the provisions of ORS 540.520 and
10 540.530, change the use and place of use, the point of diversion or the use
11 of the water without losing priority of the right. A district may change the
12 place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the
13 method provided in ORS 540.520 and 540.530. When an application for change
14 of the use or place of use for a primary water right is submitted in accord-
15 ance with this section, the applicant also shall indicate whether the land
16 described in the application has an appurtenant supplemental water right or
17 permit. If the applicant also intends to transfer the supplemental water right
18 or permit, the applicant also shall include the information required under
19 ORS 540.520 (2) for the supplemental water right or permit. If the applicant
20 does not include the supplemental water right or permit in the transfer ap-
21 plication, the Water Resources Department shall notify the applicant that
22 the supplemental water right or permit will be canceled before the depart-
23 ment issues the order approving the transfer of the primary water right,
24 unless within 30 days the applicant modifies the application to include the
25 supplemental water right or permit or withdraws the application. The de-
26 partment may approve the transfer of the supplemental water right or permit
27 in accordance with the provisions of ORS 540.520 and 540.530. The depart-
28 ment *[shall]* **may** not approve the transfer of a supplemental water right or
29 permit if the transfer would:

30 **“(A)** Result in enlargement of the original water right or injury to an

existing water right; or

“(B) Contribute to a reduction in flow that results in a loss of in-stream habitat for sensitive, threatened or endangered fish species or contribute to water quality impairment in water quality limited streams, if the proposed change is one or more of the following and is not covered by an exception described in ORS 537.211 (5)(d):

“(i) A change in the point of diversion that is upstream from the existing point of diversion where there is no existing permanent in-stream water right;

“(ii) A change in the point of appropriation to within one-quarter mile from a stream where there is no existing permanent in-stream water right; or

“(iii) A change in the point of appropriation that is closer to a stream than the existing point of appropriation, if the existing point of appropriation is within one-quarter mile of a stream and the stream that the point of appropriation is moving closer to does not have an existing permanent in-stream water right.

“(b) If the department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the department shall notify the applicant of the department’s intent to cancel that portion of the supplemental water right or permit described in the transfer application before the department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

“[(b)] (c) 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 paragraph (a) of this subsection, without losing priority of the right.

“(2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated by the Water Resources Commission under ORS

1 537.470 may be severed from the land and transferred or sold after notice to
2 the commission as required under ORS 537.490.

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

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

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

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

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

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

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

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

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

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

1 “(6) In the event that government action results in or creates a reasonable
2 expectation of a change in the surface level of a surface water source that
3 impairs or threatens to impair access to a point of diversion authorized by
4 a water right permit, certificate or decree, the owner of the water right may
5 change the point of diversion or add an additional point of diversion in ac-
6 cordance with the provisions of this section in lieu of complying with the
7 requirements of ORS 540.520 and 540.530. Before changing the point of di-
8 version, the water right owner shall provide written notice of the proposed
9 change to the Water Resources Department. Within 15 days after receipt of
10 such notice, the department shall provide notice by publication in the
11 department’s public notice of water right applications. Within 60 days after
12 the department receives notice from the owner, the Water Resources Direc-
13 tor, by order, shall approve the change unless the director finds the changes
14 will result in injury to other existing water rights. All other terms and
15 conditions of the water right shall remain in effect.

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

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

23 **“SECTION 3.** ORS 540.520 is amended to read:

24 “540.520. (1)(a) Except when the application is made under ORS 541.327
25 or when an application for a temporary transfer is made under ORS 540.523,
26 if the holder of a water use subject to transfer for irrigation, domestic use,
27 manufacturing purposes, or other use, for any reason desires to change the
28 place of use, the point of diversion, or the use made of the water, an appli-
29 cation to make such change, as the case may be, shall be filed with the
30 Water Resources Department.

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

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

6 “(a) The name of the owner;

7 “(b) The previous use of the water;

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

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

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

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

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

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

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

29 “(5) Upon the filing of the application the department shall give notice
30 by publication in a newspaper having general circulation in the area in

1 which the water rights are located, for a period of at least two weeks and
2 not less than one publication each week. The notice shall include the date
3 on which the last notice by publication will occur. The cost of the publica-
4 tion shall be paid by the applicant in advance to the department. In appli-
5 cations for only a change in place of use or for a change in the point of
6 diversion of less than one-fourth mile, and where there are no intervening
7 diversions between the old diversion of the applicant and the proposed new
8 diversion, no newspaper notice need be published. The department shall in-
9 clude notice of such applications in the weekly notice published by the de-
10 partment.

11 “(6) Within 30 days after the last publication of a newspaper notice of the
12 proposed transfer or the mailing of the department’s weekly notice, which-
13 ever is later, any person may file, jointly or severally, with the department,
14 a protest against approval of the application.

15 “(7)(a) **Paragraph (b) of this subsection applies** if a timely protest is
16 filed, or in the opinion of the Water Resources Director a hearing is neces-
17 sary to determine whether the proposed changes as described by the appli-
18 cation would:

19 “(A) Result in injury to existing water rights[.]; or

20 “(B) **Contribute to a reduction in flow that results in a loss of in-**
21 **stream habitat for sensitive, threatened or endangered fish species or**
22 **to water quality impairment in water quality limited streams, if the**
23 **proposed change is one or more of the following and is not covered by**
24 **an exception described in ORS 537.211 (5)(d):**

25 “(i) **A change in the point of diversion that is upstream from the**
26 **existing point of diversion where there is no existing permanent in-**
27 **stream water right;**

28 “(ii) **A change in the point of appropriation to within one-quarter**
29 **mile from a stream where there is no existing permanent in-stream**
30 **water right; or**

1 “(iii) A change in the point of appropriation that is closer to a
2 stream than the existing point of appropriation, if the existing point
3 of appropriation is within one-quarter mile of a stream and the stream
4 that the point of appropriation is moving closer to does not have an
5 existing permanent in-stream water right.

6 “(b) The department shall hold a hearing on the matter. Notice and
7 conduct of the hearing shall be under the provisions of ORS chapter 183,
8 pertaining to contested cases, and shall be held in the area where the rights
9 are located unless all parties and persons who filed a protest under this
10 subsection stipulate otherwise. **Any person who disagrees with a depart-**
11 **ment finding that a proposed change will not contribute to a reduction**
12 **in flow that results in a loss of in-stream habitat for sensitive,**
13 **threatened or endangered fish species or to water quality impairment**
14 **in water quality limited streams has the burden of proving, by a pre-**
15 **ponderance of the evidence, that the proposed change will result in the**
16 **loss or impairment.**

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

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

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

30 “(b) The location where the water is to be used for general industrial use

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

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

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

7 “(B) The water right certificate number;

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

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

13 **“SECTION 4.** ORS 540.523 is amended to read:

14 “540.523. (1) In accordance with the provisions of this section, any person
15 who holds a water use subject to transfer may request that the Water Re-
16 sources Department approve the temporary transfer of place of use and, if
17 necessary to convey water to the new temporary place of use, temporarily
18 change the point of diversion or point of appropriation for a period not to
19 exceed five years. An application for a temporary transfer shall:

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

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

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

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

26 “(2) Notwithstanding the notice and waiting requirements under ORS
27 540.520, the department shall approve by order a request for a temporary
28 transfer under this section if the department determines that the temporary
29 transfer will not:

30 **“(a) Injure any existing water right; or**

1 “(b) Contribute to a reduction in flow that results in a loss of in-
2 stream habitat for sensitive, threatened or endangered fish species or
3 contribute to water quality impairment in water quality limited
4 streams if the proposed change is one or more of the following and is
5 not covered by an exception described in ORS 537.211(5)(d):

6 “(A) A change in the point of diversion that is upstream from the
7 existing point of diversion where there is no existing permanent in-
8 stream water right.

9 “(B) A temporary renewal for no more than a five-year time period
10 of a previously approved temporary transfer.

11 “(3) All uses of water for which a temporary transfer is allowed under
12 this section shall revert automatically to the terms and conditions of the
13 water use subject to transfer upon expiration of the temporary transfer pe-
14 riod.

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

18 “(5) The department may revoke a prior approval of the temporary trans-
19 fer at any time if the department finds that the transfer:

20 “(a) Is causing injury to any existing water right; or

21 “(b) Results in a loss of in-stream habitat for sensitive, threatened
22 or endangered fish species in stream reaches that are not protected
23 by an existing in-stream water right or contributes to water quality
24 impairment in water quality limited streams.

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

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

30 “(8) When an application for a temporary change of the place of use for

1 a primary water right is submitted in accordance with this section, the ap-
2 plicant also shall indicate whether the land described in the application has
3 an appurtenant supplemental water right or permit. If the applicant also in-
4 tends to temporarily transfer the supplemental water right or permit, the
5 applicant also shall include the information required under ORS 540.520 (2)
6 for the supplemental water right or permit. If the applicant does not include
7 the supplemental water right or permit in the temporary transfer application,
8 the Water Resources Department shall notify the applicant that the supple-
9 mental water right or permit will be canceled before the department issues
10 the order approving the temporary transfer of the primary water right, unless
11 within 30 days the applicant modifies the application to include the supple-
12 mental water right or permit or withdraws the application. The department
13 may approve the temporary transfer of the supplemental water right or per-
14 mit in accordance with the provisions of this section. The department may
15 not approve the temporary transfer of a supplemental water right or permit
16 if the temporary transfer would result in enlargement of the original water
17 right or injury to an existing water right. If the department approves the
18 temporary transfer of the primary water right but does not approve the
19 temporary transfer of the supplemental water right or permit, the department
20 shall notify the applicant of the department's intent not to allow the tem-
21 porary transfer of the supplemental water right or permit before the depart-
22 ment issues the order for the temporary transfer of the primary water right.
23 If the department does not allow the temporary transfer of the supplemental
24 right, the supplemental right shall remain appurtenant to the land described
25 in the application, but may not be exercised until the primary right reverts
26 to the original water use. If the primary water right does not revert soon
27 enough to allow use of water under the supplemental right within five years,
28 the supplemental right shall become subject to cancellation for nonuse under
29 ORS 540.610.

30 “(9) In issuing an order under subsection (2) of this section, the depart-

1 ment shall include any condition necessary to protect other water rights.

2 **“SECTION 5.** ORS 540.530 is amended to read:

3 **“540.530. (1)(a) The Water Resources Commission shall make an or-**
4 **der approving the transfer and fixing a time limit within which the**
5 **approved changes may be completed** if, after hearing or examination, the
6 [Water Resources] commission finds that a proposed change can be effected
7 without:

8 **“(A)** Injury to existing water rights[, *the commission shall make an order*
9 *approving the transfer and fixing a time limit within which the approved*
10 *changes may be completed.*]; **or**

11 **“(B) Contribution to a reduction in flow that results in a loss of**
12 **in-stream habitat for sensitive, threatened or endangered fish species**
13 **or contribution to water quality impairment in water quality limited**
14 **streams if the proposed change is one or more of the following and is**
15 **not covered by an exception described in ORS 537.211 (5)(d):**

16 **“(i) A change in the point of diversion that is upstream from the**
17 **existing point of diversion where there is no existing permanent in-**
18 **stream water right;**

19 **“(ii) A change in the point of appropriation to within one-quarter**
20 **mile from a stream where there is no existing permanent in-stream**
21 **water right; or**

22 **“(iii) A change in the point of appropriation that is closer to a**
23 **stream than the existing point of appropriation, if the existing point**
24 **of appropriation is within one-quarter mile of a stream and the stream**
25 **that the point of appropriation is moving closer to does not have an**
26 **existing permanent in-stream water right.**

27 **“(b)** If, after hearing or examination, the commission finds that a proposed
28 change in point of diversion cannot be effected without injury to existing
29 water rights, upon receipt by the commission of an affidavit consenting to
30 the change from every holder of an affected water right, the commission may

1 make an order approving the transfer and fixing a time limit within which
2 the approved changes may be completed.

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

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

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

28 “(C) In determining whether a net benefit will result from the proposed
29 change, the recommendation of an agency must include an analysis of the
30 cumulative impact of any previous changes under paragraphs (b) and (c) of

1 this subsection that allow injury to the affected in-stream water right.

2 “(D) A person may comment on the recommendation of an agency. The
3 comment must be in writing and must be received by the department within
4 30 days after publication of notice under this paragraph. If a written com-
5 ment received by the department requests a meeting on the proposed change,
6 the department and the agency that requested the in-stream water right shall
7 hold a joint public meeting within 90 days of the receipt of the comment
8 requesting a meeting.

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

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

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

25 “(f) The time allowed by the commission for completion of an authorized
26 change under paragraphs (a) to (e) of this subsection may not be used when
27 computing a five-year period of nonuse under the provisions of ORS 540.610
28 (1).

29 “(2)(a) If a certificate covering the water right has been previously issued,
30 the commission shall cancel the previous certificate or, if for an irrigation

1 district, the commission may modify the previous certificate and, when
2 proper proof of completion of the authorized changes has been filed with the
3 commission, issue a new certificate or, if for an irrigation district, modify
4 the previous certificate, preserving the previously established priority of
5 rights and covering the authorized changes. If only a portion of the water
6 right covered by the previous certificate is affected by the changes, a sepa-
7 rate new certificate may be issued to cover the unaffected portion of the
8 water right.

9 “(b) If the change authorized under subsection (1) of this section is nec-
10 essary to allow a change in a water right pursuant to ORS 537.348, is nec-
11 essary to complete a project funded under ORS 541.932, or is approved by the
12 State Department of Fish and Wildlife as a change that will result in a net
13 benefit to fish and wildlife habitat, the Water Resources Department, at the
14 discretion of the Water Resources Director, may waive or assist the appli-
15 cant in satisfying any of the proof of completion requirements of paragraph
16 (a) of this subsection. The assistance provided by the department may in-
17 clude, but need not be limited to, development of a final proof survey map
18 and claim of beneficial use.

19 “(3) Upon receiving notification of the merger or consolidation of munic-
20 ipal water supply entities, or the formation of a water authority under ORS
21 chapter 450, the commission shall cancel the previous certificates of the en-
22 tities replaced by the merger, consolidation or formation and issue a new
23 certificate to the newly formed municipality or water authority. The new
24 certificate shall preserve the previously established priority of rights of the
25 replaced entities and shall allow beneficial use of the water on any lands
26 acquired in the merger, consolidation or formation.

27 **“SECTION 6.** ORS 540.531 is amended to read:

28 “540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a
29 surface water use subject to transfer may apply for a transfer of the point
30 of diversion to allow the appropriation of ground water if the proposed

1 transfer complies with the requirements of subsection (2) or (3) of this sec-
2 tion and with the requirements for a transfer in point of diversion specified
3 in ORS 540.520 and 540.530.

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

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

9 “(B) The proposed change in point of diversion will not:

10 “(i) Result in enlargement of the original water right or in injury to
11 other water right holders; **or**

12 **“(ii) Contribute to a reduction in flow that results in a loss of in-**
13 **stream habitat for sensitive, threatened or endangered fish species or**
14 **contribute to water quality impairment in water quality limited**
15 **streams if the proposed change is one or more of the following and is**
16 **not covered by an exception described in ORS 537.211(5)(d):**

17 **“(I) A change in the point of diversion that is upstream from the**
18 **existing point of diversion where there is no existing permanent in-**
19 **stream water right;**

20 **“(II) A change in the point of appropriation to within one-quarter**
21 **mile from a stream where there is no existing permanent in-stream**
22 **water right; or**

23 **“(III) A change in the point of appropriation that is closer to a**
24 **stream than the existing point of appropriation, if the existing point**
25 **of appropriation is within one-quarter mile of a stream and the stream**
26 **that the point of appropriation is moving closer to does not have an**
27 **existing permanent in-stream water right;**

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

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

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

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

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

17 “(b) The proposed change in the point of diversion will not:

18 “(A) Result in enlargement of the original water right or in injury to
19 other water right holders; **or**

20 “(B) **Contribute to a reduction in flow that results in a loss of in-**
21 **stream habitat for sensitive, threatened or endangered fish species or**
22 **contribute to water quality impairment in water quality limited**
23 **streams if the proposed change is one or more of the following and is**
24 **not covered by an exception described in ORS 537.211(5)(d):**

25 “(i) **A change in the point of diversion that is upstream from the**
26 **existing point of diversion where there is no existing permanent in-**
27 **stream water right;**

28 “(ii) **A change in the point of appropriation to within one-quarter**
29 **of a mile from a stream where there is no existing permanent in-**
30 **stream water right; or**

1 “(iii) A change in the point of appropriation that is closer to a
2 stream than the existing point of appropriation, if the existing point
3 of appropriation is within one-quarter mile of a stream and the stream
4 that the point of appropriation is moving closer to does not have an
5 existing permanent in-stream water right; and

6 “(c) The use of the new point of diversion will affect the surface water
7 source hydraulically connected to the authorized point of diversion specified
8 in the water use subject to transfer. The department may not require that
9 the use of the new point of diversion affect the surface water source simi-
10 larly to the authorized point of diversion specified in the water use subject
11 to transfer under this subsection.

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

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

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

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

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

29 “(B) The return will not:

30 “(i) Result in injury to an existing water right; **or**

1 “(ii) Contribute to a reduction in flow that results in a loss of in-
2 stream habitat for sensitive, threatened or endangered fish species or
3 contribute to water quality impairment in water quality limited
4 streams if the proposed change is one or more of the following and is
5 not covered by an exception described in ORS 537.211(5)(d):

6 “(I) A change in the point of diversion that is upstream from the
7 existing point of diversion where there is no existing permanent in-
8 stream water right;

9 “(II) A change in the point of appropriation to within one-quarter
10 mile from a stream where there is no existing permanent in-stream
11 water right; or

12 “(III) A change in the point of appropriation that is closer to a
13 stream than the existing point of appropriation, if the existing point
14 of appropriation is within one-quarter mile of a stream and the stream
15 that the point of appropriation is moving closer to does not have an
16 existing permanent in-stream water right.

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

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

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

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

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

28 “(9) As used in this section:

29 “(a) ‘Deschutes Basin ground water study area’ means the part of the
30 Deschutes River Basin that is designated by the Water Resources Commis-

1 sion by rule.

2 “(b) ‘Similarly’ means that the use of ground water at the new point of
3 diversion affects the surface water source specified in the permit or certifi-
4 cated or decreed water right and would result in stream depletion of at least
5 50 percent of the rate of appropriation within 10 days of continuous pumping.

6
7 **“TRIBAL CONSULTATION ON TRANSFER APPLICATIONS**

8
9 **“SECTION 7. Section 8 of this 2025 Act is added to and made a part**
10 **of ORS chapter 540.**

11 **“SECTION 8. (1) As used in this section and section 10 of this 2025**
12 **Act:**

13 **“(a) ‘Consultation’ means formal communication between the Wa-**
14 **ter Resources Department and a tribe that aims, but is not required,**
15 **to obtain the free, prior and informed consent of the tribe with respect**
16 **to any right transfer that may affect the sovereign rights, privileges**
17 **and interests of the tribe, including but not limited to treaty-protected**
18 **rights, in the waters of this state.**

19 **“(b) ‘Tribe’ means a federally recognized Indian tribe in this state.**

20 **“(c) ‘Waters of this state’ has the meaning given that term in ORS**
21 **536.007.**

22 **“(2) If requested by a tribe, the department shall engage in consul-**
23 **tation with the tribe to, pursuant to ORS chapter 190, develop and**
24 **enter into an intergovernmental agreement with the tribe that sets**
25 **forth a consultation protocol for any water right transfers in areas of**
26 **the state that may affect the sovereign rights, privileges and interests**
27 **of the tribe, including but not limited to treaty-protected rights, in the**
28 **waters of this state. The department shall seek to ensure that the**
29 **consultation process gives due regard to the sovereign nature of the**
30 **concerns raised by the tribe while not unreasonably delaying the pro-**

1 cessing of any water right transfer application.

2 “(3) A tribe shall have standing to protest the proposed final order
3 of the department for any water right transfer application on which
4 the tribe has consulted with the department.

5
6 “DEPARTMENT AUTHORITY TO CONDITION TRANSFERS
7

8 “SECTION 9. Section 10 of this 2025 Act is added to and made a part
9 of ORS chapter 540.

10 “SECTION 10. The Water Resources Department may condition a
11 transfer described in this chapter with any of the following:

12 “(1) Water use measurement and reporting.

13 “(2) Water level measurement and reporting.

14 “(3) The installation of fish screening or by-pass devices.

15 “(4) Measures to avoid or minimize injury to the sovereign rights,
16 privileges and interests of a tribe, including but not limited to treaty-
17 protected rights, in the waters of this state.

18 “(5) Measures to avoid or minimize the loss of in-stream habitat for
19 sensitive, threatened or endangered species in a stream reach that is
20 not protected by existing in-stream water rights.

21 “(6) Measures to prevent injury or enlargement of a water right or
22 to ensure that a water right transfer is from the same source.

23 “(7) If a transfer is from a well, measures to ensure that well con-
24 struction standards are met.

25
26 “CAPTIONS
27

28 “SECTION 11. The unit captions used in this 2025 Act are provided
29 only for the convenience of the reader and do not become part of the
30 statutory law of this state or express any legislative intent in the

1 **enactment of this 2025 Act.”.**

2 _____