

House Bill 2810

Sponsored by Representative THATCHER (at the request of Steve Schneider) (Pre-session filed.)

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**.

Requires Water Resources Commission, upon finding that proposed change in point of diversion will injure existing water rights, to allow applicant reasonable opportunity to obtain and submit affidavits from affected water right holders consenting to change. Requires commission to grant proposed change upon applicant obtaining and submitting affidavits unless change would injure in-stream water right.

A BILL FOR AN ACT

1
2 Relating to applications for water right transfer; creating new provisions; and amending ORS
3 540.530.

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

5 **SECTION 1.** ORS 540.530 is amended to read:

6 540.530. (1)(a) If, after hearing or examination, the Water Resources Commission finds that a
7 proposed change can be effected without injury to existing water rights, the commission shall make
8 an order approving the transfer and fixing a time limit within which the approved changes may be
9 completed.

10 (b) If, after hearing or examination, the commission finds that a proposed change in point of
11 diversion cannot be effected without injury to existing water rights, upon [*receipt by the commission*
12 *of an affidavit consenting to the change from every holder of an affected water right, the commission*
13 *may*] **request of the applicant, the commission shall allow the applicant a reasonable oppor-**
14 **tunity to obtain and submit affidavits consenting to the change from all holders of affected**
15 **water rights. If the applicant obtains and submits the affidavits and the proposed change in**
16 **point of diversion would not cause injury to an in-stream water right, the commission shall**
17 **make an order approving the transfer and fixing a time limit within which the approved changes**
18 **may be completed.**

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

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

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 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
 41 541.375, 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 eficial 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 2. The amendments to ORS 540.530 by section 1 of this 2011 Act apply to water**
9 **right transfer applications for which the Water Resources Commission issues a final order**
10 **on or after the effective date of this 2011 Act.**

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