

Senate Bill 847

Sponsored by Senators NELSON, TELFER, Representative G SMITH; Representatives CONGER, JENSON, MCLANE, WHISNANT

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**.

Establishes conditions under which supplemental water right or permit omitted from district petition to transfer primary water right from same land is not subject to transfer, diminishment or cancellation.

A BILL FOR AN ACT

Relating to water district transfers; creating new provisions; and amending ORS 537.132 and 540.510.

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

SECTION 1. ORS 540.510 is amended to read:

540.510. (1) Except as provided in [*subsections (2) to (8) of*] this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use [*theretofore*] **to be** made of the water in all cases without losing **the previously established** priority of the right [*theretofore established*]. A district may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. **Except as provided in subsections (2) and (3) of this section**, if the applicant does not include the supplemental water right or permit in the transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not approve the transfer of a supplemental water right or permit if the transfer would result in enlargement of the original water right or injury to an existing water right. **Except as provided in subsections (2) and (3) of this section**, 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

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 primary water right transfer order, unless the applicant withdraws the transfer application within
2 90 days.

3 **(2)(a) A supplemental water right or permit that is omitted from a transfer application**
4 **filed by a district is not subject to transfer, diminishment or cancellation if:**

5 **(A) The petition by the district is to transfer a primary water right held by the district;**

6 **(B) The supplemental water right or permit is not held by the district;**

7 **(C) The land to which the rights are appurtenant is within the boundaries of the district;**

8 **(D) The supplemental water right or permit was appurtenant to the land prior to the**
9 **primary right becoming appurtenant to the land; and**

10 **(E) The department did not provide the district with reasonable opportunity to avoid**
11 **making the primary right appurtenant to land having a supplemental water right or permit.**

12 **(b) For purposes of this subsection, “did not provide the district with reasonable oppor-**
13 **tunity to avoid” means the department did not provide the district with written notice of the**
14 **supplemental water right or permit before the primary right became appurtenant to the land**
15 **and did not allow the district adequate time to withdraw or revise the application for making**
16 **the primary right appurtenant to the land.**

17 **(3) A supplemental water right or permit that is omitted from a transfer application filed**
18 **by a district is not subject to transfer, diminishment or cancellation if:**

19 **(a) The petition by the district is to transfer a primary water right held by the district;**

20 **(b) The supplemental water right or permit is not held by the district;**

21 **(c) The land to which the rights are appurtenant is within the boundaries of the district;**

22 **(d) The primary water right or permit was appurtenant to the land prior to the supple-**
23 **mental water right or permit becoming appurtenant to the land; and**

24 **(e) The district did not give written consent for the supplemental water right or permit**
25 **to become appurtenant to the land.**

26 [(2)] **(4) Subject to the limitations in ORS 537.490, any right to the use of conserved water al-**
27 **located by the Water Resources Commission under ORS 537.470 may be severed from the land and**
28 **transferred or sold after notice to the commission as required under ORS 537.490.**

29 [(3)(a)] **(5)(a) Any water used under a permit or certificate issued to a municipality, or under**
30 **rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS**
31 **537.132, may be applied to beneficial use on lands to which the right is not appurtenant if:**

32 **(A) The water is applied to lands [which] that are acquired by annexation or through merger,**
33 **consolidation or formation of a water authority, [so long as] provided that the rate and use of water**
34 **allowed in the original certificate is not exceeded;**

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

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

39 **(b) As used in this subsection, “municipality” means a city, a port formed under ORS 777.005 to**
40 **777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter**
41 **264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.**

42 [(4)] **(6) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit**
43 **or certificate issued to a district may be applied to beneficial use on lands within the district to**
44 **which the right is not appurtenant.**

45 [(5)] **(7) The relocation of a point of diversion as necessary to follow the movements of a na-**

1 turally changing stream channel does not constitute a change in point of diversion for purposes of
2 ORS 540.520 if:

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

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

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

9 [(6)] (8) [In the event that] If government action results in or creates a reasonable expectation
10 of a change in the surface level of a surface water source that impairs or threatens to impair access
11 to a point of diversion authorized by a water right permit, certificate or decree, the owner of the
12 water right may change the point of diversion or add an additional point of diversion in accordance
13 with the provisions of this section in lieu of complying with the requirements of ORS 540.520 and
14 540.530. Before changing the point of diversion, the water right owner shall provide written notice
15 of the proposed change to the Water Resources Department. Within 15 days after receipt of such
16 notice, the department shall provide notice by publication in the department's public notice of water
17 right applications. Within 60 days after the department receives notice from the owner, the Water
18 Resources Director, by order, shall approve the change unless the director finds the changes will
19 result in injury to other existing water rights. All other terms and conditions of the water right
20 shall remain in effect.

21 [(7)] (9) The sale or lease of the right to the use of conserved water under ORS 537.490 does
22 not constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

23 [(8)] (10) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be
24 subsequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without
25 application for a change in use or place of use under this section.

26 **SECTION 2.** ORS 537.132 is amended to read:

27 537.132. (1) The provisions of ORS 537.130 requiring application for a permit to appropriate
28 water shall not apply to the use of reclaimed water, if:

29 (a) The use of reclaimed water is authorized by the national pollutant discharge elimination
30 system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053;

31 (b) The Department of Environmental Quality, in reviewing an application for a permit pursuant
32 to ORS 468B.050 or 468B.053, has consulted with the State Department of Fish and Wildlife on the
33 impact to fish and wildlife to determine that the application of reclaimed water under ORS 537.130,
34 537.131, 537.132, 540.510 and 540.610 shall not have a significant negative impact on fish and wildlife;
35 and

36 (c) The Department of Environmental Quality has determined the use of reclaimed water is in-
37 tended to improve the water quality of the receiving stream.

38 (2) Any person using or intending to use reclaimed water shall file with the Water Resources
39 Department a reclaimed water registration form setting forth the following:

40 (a) Name and mailing address of the registrant;

41 (b) The date the use of reclaimed water is initiated;

42 (c) Source of reclaimed water supply, including a description of the location of the reclaimed
43 water treatment facility and the name and mailing address of the owner and operator of the facility;

44 (d) Nature of the use of the reclaimed water;

45 (e) Amount of reclaimed water used or proposed to be used;

1 (f) Location and description of the ditch, canal, pipeline or any other conduction facility used
 2 or to be used to transport the reclaimed water from the treatment facility to the place of use;

3 (g) A statement declaring the existence of a written contract or agreement to provide reclaimed
 4 water including the name and address of the reclaimed water provider and the date and terms of
 5 such contract or agreement;

6 (h) A description of the season of use and the place of use of the reclaimed water, and any re-
 7 strictions applicable to the use of the reclaimed water; and

8 (i) If the reclaimed water is used in lieu of using water under an existing water right, the ap-
 9 plication, permit and certificate number of such right, or if the right is granted pursuant to a decree
 10 of circuit court, the volume and page number setting forth the right.

11 (3) If a municipality has discharged waste water into a natural watercourse for five or more
 12 years, and the discharge represents more than 50 percent of the total average flow of the natural
 13 watercourse and if such discharge would cease as a result of the use of reclaimed water in accord-
 14 ance with the provisions of ORS 540.510 [(3)] (5) and this section, the **Water Resources** Director
 15 [of the department] shall notify any persons who, according to [the] **Water Resources** Department
 16 records, have a water right that may be affected by the cessation of the discharge by the munici-
 17 pality.

18 (4) If a person holding an affected water right demonstrates to the department that the cessation
 19 of discharge by the municipality substantially impairs the ability to satisfy a water right, the person
 20 shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the
 21 reclaimed water to the person claiming such preference shall be accomplished through a conveyance
 22 facility or channel other than a natural watercourse.

23 (5) If a municipality has a less expensive alternative for the disposal and distribution of the re-
 24 claimed water, the municipality shall not be obligated to incur expenses or cost beyond the expenses
 25 or costs of such alternative.

26 (6) The Water Resources Commission shall adopt rules to implement the notice and preference
 27 provisions and impairment evaluation standards of this section.

28 **SECTION 3. The amendments to ORS 540.510 by section 1 of this 2011 Act apply to dis-**
 29 **trict water right transfer petitions that are approved by the Water Resources Department**
 30 **on or after the effective date of this 2011 Act.**