

Senate Bill 199

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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**.

Expands means for temporary or permanent acquisition of all or portion of existing water right for conversion to in-stream water right.

Eliminates sunset and continues in effect provision conditionally allowing water right lease to split use of water between existing right and in-stream right within same year. Imposes conditions for split use.

A BILL FOR AN ACT

1
2 Relating to the transfer of water rights to in-stream use; creating new provisions; amending ORS
3 536.050 and 537.348; and repealing section 3, chapter 205, Oregon Laws 2001.

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

5 **SECTION 1.** ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is amended
6 to read:

7 537.348. (1) Any person may [*purchase or lease all or a portion of an existing water right or accept*
8 *a gift of*] **acquire on a temporary or permanent basis** all or a portion of an existing water right
9 for conversion to an in-stream water right. Any water right converted to an in-stream water right
10 under this section shall retain the **original** priority date of the water right. [*purchased, leased or*
11 *received as a gift. At the request of the person the Water Resources Commission shall issue a new*
12 *certificate for the in-stream water right showing the original priority date of the purchased, gifted or*
13 *leased water right. A person who transfers a water right by purchase, lease or gift under this sub-*
14 *section shall comply*] **A permanent transfer under this section must be in compliance** with the
15 requirements for the transfer of a water right under ORS 540.505 to 540.585.

16 (2) **Subject to subsections (3) to (6) of this section**, any person who has an existing water
17 right may lease all or a portion of the existing water right for use as an in-stream water right for
18 a specified period without the loss of the original priority date. During the term of [*such*] **the lease**,
19 the use of the water right as an in-stream water right shall be considered a beneficial use. **The term**
20 **of the lease may not exceed five years. There is no limitation on the number of times that**
21 **the lease may be renewed.**

22 (3) **A lease of all or a portion of an existing water right for use as an in-stream water**
23 **right under subsection (2) of this section may allow the split use of water between the ex-**
24 **isting water right and the in-stream water right during the same calendar year provided:**

25 (a) **The uses of the existing water right and the in-stream water right are not concu-**
26 **rent; and**

27 (b) **The holders of the water rights measure and report to the Water Resources Depart-**
28 **ment the use of the existing water right and the in-stream water right.**

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 (4) A person who has an existing water right and wishes to lease the water right as de-
 2 scribed in subsection (2) of this section must file a request and obtain department approval
 3 of the lease. Upon receipt of the request, the department shall provide notice of the request
 4 by inclusion in the weekly notice published by the department. Any allegation of injury must
 5 be delivered to the department no later than 21 days after publication of the request in the
 6 weekly notice.

7 (5) After publishing notice of a request made under subsection (2) of this section and al-
 8 lowing time for the delivery of allegations of injury, the department shall issue an order ap-
 9 proving the request if the department finds that the leasing of the water right for in-stream
 10 use can be effected without injury to other existing water rights or can be conditioned to
 11 prevent injury to other existing water rights. If the lease is for the split use of water be-
 12 tween the existing water right and the in-stream water right during the same calendar year,
 13 the conditions imposed in the order approving the request must include, but need not be
 14 limited to, compliance with subsection (3) of this section.

15 (6) The department at any time may revoke or modify an order issued for a lease under
 16 subsection (2) of this section if the department determines that the use of the water right
 17 for in-stream use under the lease has resulted in or may result in injury to an existing water
 18 right.

19 **SECTION 2.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is
 20 amended to read:

21 536.050. (1) The Water Resources Department may collect the following fees in advance:

22 (a) For examining an application for a permit:

23 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
 24 droelectric project:

25 (i) A base fee of \$500 for an appropriation of water through a single use, point of diversion or
 26 point of appropriation;

27 (ii) \$200 for the first second-foot or fraction thereof appropriated under the permit;

28 (iii) \$100 for each additional second-foot or fraction thereof appropriated under the permit;

29 (iv) \$200 for each additional use, point of diversion or point of appropriation included in the
 30 application; and

31 (v) If appropriating stored water, \$20 for the first acre-foot or fraction thereof up to 20 acre-feet,
 32 plus \$1 for each additional acre-foot or fraction thereof.

33 (B) To store water under ORS 537.400 or 537.534 (4):

34 (i) A base fee of \$500; and

35 (ii) \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional
 36 acre-foot or fraction thereof.

37 (C) To exclusively appropriate stored water:

38 (i) A base fee of \$250; and

39 (ii) \$15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each additional
 40 acre-foot or fraction thereof.

41 (b) For recording a permit to appropriate or store water, \$300.

42 (c) For filing and recording the assignment or partial assignment of a water right application,
 43 permit or license under ORS 537.220 or 537.635, \$50.

44 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
 45 page.

- 1 (e) For certifying copies, documents, records or maps, \$10 for each certificate.
- 2 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 3 (g) For a computer-generated map, the actual cost of the work.
- 4 (h) For examining an application for approval of a change to an existing water right or permit:
- 5 (A) A base fee of \$400 for a change to a single water right or permit;
- 6 (B) \$400 for each additional type of change requested;
- 7 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 8 540.533, \$200 for each second-foot or fraction thereof requested beyond the first second-foot; and
- 9 (D) \$200 for each additional water right or permit included in the application.
- 10 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 11 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 12 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 13 a supplemental right under ORS 540.570, a base fee of \$200 for the first water right or permit, plus
- 14 \$50 for each additional water right or permit included in the application and:
- 15 (A) For nonirrigation uses, \$80 for each second-foot or fraction thereof requested beyond the
- 16 first second-foot; or
- 17 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are
- 18 submitted to the department in a department-approved digital format, 25 cents per acre of land ir-
- 19 rigated.
- 20 (j) For submitting a protest to the department, \$350.
- 21 (k) For filing an application for extension of time within which irrigation or other works shall
- 22 be completed or a water right perfected, \$350.
- 23 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 24 Water Resources Commission.
- 25 (m) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per
- 26 acre of water involved in the application. For purposes of computing this fee, when any acreage
- 27 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 28 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 29 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
- 30 and certifying the petition.
- 31 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.
- 32 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
- 33 \$250.
- 34 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
- 35 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
- 36 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$10.
- 37 (q) For examining an application to store water under ORS 537.409:
- 38 (A) A base fee of \$80; and
- 39 (B) \$20 for each acre-foot or fraction thereof.
- 40 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
- 41 by the Water Resources Director under ORS 543A.410.
- 42 (s) For examining an application for a substitution made under ORS 540.524, \$280.
- 43 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
- 44 537.500, \$700.
- 45 (u) For submitting a water management and conservation plan pursuant to rules of the com-

1 mission:

2 (A) \$250, if the plan is submitted by an agricultural water supplier;

3 (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or
4 fewer persons; or

5 (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more
6 than 1,000 persons.

7 (v) For examining a new application for an in-stream water right lease under ORS 537.348 (2):

8 (A) \$200 for an application for a lease with four or more landowners or four or more water
9 rights; or

10 (B) \$100 for all other applications.

11 (w) For examining an application for an in-stream water right lease renewal, \$50.

12 (2) Notwithstanding the fees established under subsection (1) of this section, the commission may
13 establish lower examination and permit fees by rule for:

14 (a) The right to appropriate water for a storage project of five acre-feet or less; or

15 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
16 outside of a riparian area, as that term is defined in ORS 541.890.

17 (3)(a) The director may refund all or part of a fee paid to the department under this section if
18 the director determines that a refund of the fee is appropriate in the interests of fairness to the
19 public or necessary to correct an error of the department.

20 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
21 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
22 Water Resources Commission establishes that all or part of a water right has not been canceled or
23 modified under ORS 540.610 to 540.650.

24 (4) The director may waive all or part of a fee for a change to a water right permit under ORS
25 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
26 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

27 (a) Made pursuant to ORS 537.348;

28 (b) Necessary to complete a project funded under ORS 541.932; or

29 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
30 served water that will result in a net benefit to fish and wildlife habitat.

31 (5) Notwithstanding the fees established pursuant to this section, the commission may adopt by
32 rule reduced fees for persons submitting materials to the department in a digital format approved
33 by the department.

34 (6) All moneys received under this section, less any amounts refunded under subsection (3) of
35 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

36 (7) Notwithstanding subsection (6) of this section, all fees received by the department for power
37 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric
38 Fund established by ORS 536.015.

39 **SECTION 3. Section 3, chapter 205, Oregon Laws 2001, as amended by section 1, chapter**
40 **355, Oregon Laws 2007, is repealed.**

41 **SECTION 4. The amendments to ORS 537.348 by section 1 of this 2013 Act apply to leases**
42 **or transfers for which a request is filed with the Water Resources Department on or after**
43 **the effective date of this 2013 Act.**

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