

Senate Bill 1512

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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**.

Makes Klamath Basin water right determined and established in order of determination existing water right for purposes of statute governing leasing of existing water rights for in-stream use. Makes Klamath Basin water right determined and established in order of determination primary water right subject to transfer for purposes of statute allowing temporary change in place of use for water right.

A BILL FOR AN ACT

1
2 Relating to alterations in determined water rights in the Klamath Basin; amending ORS 537.348 and
3 540.523.

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

5 **SECTION 1.** ORS 537.348 is amended to read:

6 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
7 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
8 Any water right converted to an in-stream water right under this section shall retain the priority
9 date of the water right purchased, leased or received as a gift. At the request of the person the
10 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
11 original priority date of the purchased, gifted or leased water right. Except as provided in sub-
12 sections (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift
13 under this subsection shall comply with the requirements for the transfer of a water right under
14 ORS 540.505 to 540.585.

15 (2) Subject to subsections (3) to (6) of this section, any person who has an existing water right
16 may lease all or a portion of the existing water right for use as an in-stream water right for a
17 specified period without the loss of the original priority date. During the term of the lease, the use
18 of the water right as an in-stream water right shall be considered a beneficial use. The term of the
19 lease may not exceed five years. There is no limitation on the number of times that the lease may
20 be renewed. However, the total period for which a water right may be leased for split use as de-
21 scribed in subsection (3) of this section may not exceed 10 years regardless of the number of leases
22 or renewals of leases issued for the water right.

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

26 (a) The uses of the existing water right and the in-stream water right are not concurrent; and

27 (b) The holders of the water rights measure and report to the Water Resources Department the
28 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 described
 2 in subsection (2) of this section must file a request and obtain department approval of the lease.
 3 Upon receipt of the request, the department shall provide notice of the request by inclusion in the
 4 weekly notice published by the department. Any allegation of injury must be delivered to the de-
 5 partment no later than 21 days after publication of the request in the weekly notice.

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

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

17 **(7) Except as provided in this subsection, a water right in the Klamath Basin determined**
 18 **and established in an order of determination certified by the Water Resources Director and**
 19 **pending judicial review is an existing water right for purposes of subsections (2) to (6) of this**
 20 **section. This subsection does not apply to a water right determined and established in an**
 21 **order of determination that has been stayed by the filing of a bond or irrevocable letter of**
 22 **credit under ORS 539.180.**

23 **SECTION 2.** ORS 537.348, as amended by section 2, chapter 165, Oregon Laws 2013, is amended
 24 to read:

25 537.348. (1) Any person may purchase or lease all or a portion of an existing water right or
 26 accept a gift of all or a portion of an existing water right for conversion to an in-stream water right.
 27 Any water right converted to an in-stream water right under this section shall retain the priority
 28 date of the water right purchased, leased or received as a gift. At the request of the person the
 29 Water Resources Commission shall issue a new certificate for the in-stream water right showing the
 30 original priority date of the purchased, gifted or leased water right. Except as provided in sub-
 31 sections (2) to (5) of this section, a person who transfers a water right by purchase, lease or gift
 32 under this subsection shall comply with the requirements for the transfer of a water right under
 33 ORS 540.505 to 540.585.

34 (2) Subject to subsections (3) to (5) of this section, any person who has an existing water right
 35 may lease all or a portion of the existing water right for use as an in-stream water right for a
 36 specified period without the loss of the original priority date. During the term of the lease, the use
 37 of the water right as an in-stream water right shall be considered a beneficial use. The term of the
 38 lease may not exceed five years. There is no limitation on the number of times that the lease may
 39 be renewed.

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

45 (4) After publishing notice of a request made under subsection (2) of this section and allowing

1 time for the delivery of allegations of injury, the department shall issue an order approving the re-
2 quest if the department finds that the leasing of the water right for in-stream use can be effected
3 without injury to other existing water rights or can be conditioned to prevent injury to other ex-
4 isting water rights.

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

8 **(6) Except as provided in this subsection, a water right in the Klamath Basin determined**
9 **and established in an order of determination certified by the Water Resources Director and**
10 **pending judicial review is an existing water right for purposes of subsections (2) to (5) of this**
11 **section. This subsection does not apply to a water right determined and established in an**
12 **order of determination that has been stayed by the filing of a bond or irrevocable letter of**
13 **credit under ORS 539.180.**

14 **SECTION 3.** ORS 540.523 is amended to read:

15 540.523. (1) In accordance with the provisions of this section, any person who holds a water use
16 subject to transfer may request that the Water Resources Department approve the temporary
17 transfer of place of use and, if necessary to convey water to the new temporary place of use, tem-
18 porarily change the point of diversion or point of appropriation for a period not to exceed five years.
19 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 use as set forth in ORS
22 536.050;

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

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

25 (2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department
26 shall approve by order a request for a temporary transfer under this section if the department de-
27 termines that the temporary transfer will not injure any existing water right.

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

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

33 (5) The department may revoke a prior approval of the temporary transfer at any time if the
34 department finds that the transfer is causing injury to any existing water right.

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

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

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

1 right or permit will be canceled before the department issues the order approving the temporary
2 transfer of the primary water right, unless within 30 days the applicant modifies the application to
3 include the supplemental water right or permit or withdraws the application. The department may
4 approve the temporary transfer of the supplemental water right or permit in accordance with the
5 provisions of this section. The department may not approve the temporary transfer of a supplemental
6 water right or permit if the temporary transfer would result in enlargement of the original water
7 right or injury to an existing water right. If the department approves the temporary transfer of the
8 primary water right but does not approve the temporary transfer of the supplemental water right
9 or permit, the department shall notify the applicant of the department's intent not to allow the
10 temporary transfer of the supplemental water right or permit before the department issues the order
11 for the temporary transfer of the primary water right. If the department does not allow the tempo-
12 rary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land
13 described in the application, but may not be exercised until the primary right reverts to the original
14 water use. If the primary water right does not revert soon enough to allow use of water under the
15 supplemental right within five years, the supplemental right shall become subject to cancellation for
16 nonuse under ORS 540.610.

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

19 **(10) Except as provided in this subsection, a water right in the Klamath Basin determined**
20 **and established in an order of determination certified by the Water Resources Director and**
21 **pending judicial review is a primary water right subject to transfer for purposes of sub-**
22 **sections (1) to (9) of this section. This subsection does not apply to a water right determined**
23 **and established in an order of determination that has been stayed by the filing of a bond or**
24 **irrevocable letter of credit under ORS 539.180.**

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