

House Bill 3219

Sponsored by COMMITTEE ON RURAL COMMUNITIES, LAND USE, AND WATER

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**.

Prohibits district use of expedited process to change place of use for stored surface water from pond, reservoir, lake, impoundment or diversion structure or other surface water storage facility to different pond, reservoir, lake, impoundment or diversion structure or other surface water storage facility. States that expedited process does not create exemption from water permit process.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to district changes in place of use for stored surface water; creating new provisions;
3 amending ORS 540.510; and declaring an emergency.

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

5 **SECTION 1. (1) Notwithstanding ORS 540.570 and 540.572 to 540.580, if a district wishes**
6 **to change the place of use for stored surface water from a pond, reservoir, lake,**
7 **impoundment or diversion structure or other surface water storage facility to a different**
8 **pond, reservoir, lake, impoundment or diversion structure or other surface water storage**
9 **facility:**

10 (a) **The change in the place of use must be processed as provided in ORS 540.520 and**
11 **540.530 and not under the process provided in ORS 540.572 to 540.580.**

12 (b) **Any temporary transfer in the place of use pending approval of the change must be**
13 **processed as provided in ORS 540.523 and not under the process provided in ORS 540.570.**

14 (2) **The processes provided in ORS 540.520, 540.523, 540.530, 540.570 and 540.572 to 540.580**
15 **for changes in the place of use for water do not exempt the construction or operation of any**
16 **pond, reservoir, lake, impoundment or diversion structure or other surface water storage**
17 **facility by a district from the permit requirements established in ORS 537.130.**

18 **SECTION 2. ORS 540.510 is amended to read:**

19 540.510. (1) Except as provided in subsections (2) to (8) of this section, all water used in this
20 state for any purpose shall remain appurtenant to the premises upon which it is used and no change
21 in use or place of use of any water for any purpose may be made without compliance with the pro-
22 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,
23 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,
24 the point of diversion or the use theretofore made of the water in all cases without losing priority
25 of the right theretofore established. **Except as provided in section 1 of this 2015 Act,** a district
26 may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method
27 provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for
28 a primary water right is submitted in accordance with this section, the applicant also shall indicate
29 whether the land described in the application has an appurtenant supplemental water right or per-
30 mit. If the applicant also intends to transfer the supplemental water right or permit, the applicant

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 also shall include the information required under ORS 540.520 (2) for the supplemental water right
2 or permit. If the applicant does not include the supplemental water right or permit in the transfer
3 application, the Water Resources Department shall notify the applicant that the supplemental water
4 right or permit will be canceled before the department issues the order approving the transfer of the
5 primary water right, unless within 30 days the applicant modifies the application to include the
6 supplemental water right or permit or withdraws the application. The department may approve the
7 transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520
8 and 540.530. The department shall not approve the transfer of a supplemental water right or permit
9 if the transfer would result in enlargement of the original water right or injury to an existing water
10 right. If the department approves the transfer of the primary water right but does not approve the
11 transfer of the supplemental water right or permit, the department shall notify the applicant of the
12 department's intent to cancel that portion of the supplemental water right or permit described in the
13 transfer application before the department issues the primary water right transfer order, unless the
14 applicant withdraws the transfer application within 90 days.

15 (2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated
16 by the Water Resources Commission under ORS 537.470 may be severed from the land and trans-
17 ferred or sold after notice to the commission as required under ORS 537.490.

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

21 (A) The water is applied to lands which are acquired by annexation or through merger, consol-
22 idation or formation of a water authority, so long as the rate and use of water allowed in the ori-
23 ginal certificate is not exceeded;

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

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

28 (b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to
29 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter
30 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

31 (4) Pursuant to the provisions of ORS 540.570 or 540.585, **except as provided in section 1 of**
32 **this 2015 Act**, any water used under a permit or certificate issued to a district may be applied to
33 beneficial use on lands within the district to which the right is not appurtenant.

34 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally
35 changing stream channel does not constitute a change in point of diversion for purposes of ORS
36 540.520 if:

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

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

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

43 (6) In the event that government action results in or creates a reasonable expectation of a
44 change in the surface level of a surface water source that impairs or threatens to impair access to
45 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water

1 right may change the point of diversion or add an additional point of diversion in accordance with
 2 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.
 3 Before changing the point of diversion, the water right owner shall provide written notice of the
 4 proposed change to the Water Resources Department. Within 15 days after receipt of such notice,
 5 the department shall provide notice by publication in the department's public notice of water right
 6 applications. Within 60 days after the department receives notice from the owner, the Water Re-
 7 sources Director, by order, shall approve the change unless the director finds the changes will result
 8 in injury to other existing water rights. All other terms and conditions of the water right shall re-
 9 main in effect.

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

12 (8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be sub-
 13 sequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without
 14 application for a change in use or place of use under this section.

15 **SECTION 3. Section 1 of this 2015 Act and the amendments to ORS 540.510 by section 2**
 16 **of this 2015 Act apply to district applications to change the place of use for water that are**
 17 **pending before the Water Resources Department on, or filed with the department on or af-**
 18 **ter, the effective date of this 2015 Act.**

19 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
 20 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 21 **on its passage.**

22 _____