

D R A F T

SUMMARY

Identifies water use purposes for which certain processes for transferring or changing water use subject to transfer are applicable, including use for purpose of storage in reservoir. Imposes conditions on certain changes and transfers affecting water use for purpose of storage in reservoir.

Specifies time limits for Water Resources Department to process application by holder of water use subject to transfer to change place of use, point of diversion or use made of water.

Makes existing prohibition and civil penalty regarding certain district use of temporarily transferred water applicable only to use of irrigation waters.

Revises conditions for department approval of request for permanent transfer of place of use or use of water within district.

A BILL FOR AN ACT

1
2 Relating to changes to water uses; creating new provisions; amending ORS
3 536.900, 537.211, 537.348, 537.470, 540.520, 540.523, 540.524, 540.570, 540.580,
4 540.585 and 540.990 and section 1, chapter 445, Oregon Laws 2015.

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

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

7 537.348. (1) **As used in this section, “existing water right” includes,**
8 **but is not limited to, a right to use water for purposes of irrigation,**
9 **domestic use, manufacturing or storage in a reservoir.**

10 (2) Any person may purchase or lease all or a portion of an existing water
11 right or accept a gift of all or a portion of an existing water right for con-
12 version to an in-stream water right. Any water right converted to an in-
13 stream water right under this section shall retain the priority date of the
14 water right purchased, leased or received as a gift. At the request of the
15 person the Water Resources Commission shall issue a new certificate for the

1 in-stream water right showing the original priority date of the purchased,
2 gifted or leased water right. Except as provided in subsections [(2) to (6)]
3 **(3) to (7)** of this section, a person who transfers a water right by purchase,
4 lease or gift under this subsection shall comply with the requirements for the
5 transfer of a water right under ORS 540.505 to 540.585.

6 [(2)] **(3)** Subject to subsections [(3) to (6)] **(4) to (7)** of this section, any
7 person who has an existing water right may lease all or a portion of the
8 existing water right for use as an in-stream water right for a specified period
9 without the loss of the original priority date. During the term of the lease,
10 the use of the water right as an in-stream water right shall be considered a
11 beneficial use. The term of the lease may not exceed five years. There is no
12 limitation on the number of times that the lease may be renewed. However,
13 the total period for which a water right may be leased for split use as de-
14 scribed in subsection [(3)] **(4)** of this section may not exceed 10 years re-
15 gardless of the number of leases or renewals of leases issued for the water
16 right.

17 [(3)] **(4)** A lease of all or a portion of an existing water right for use as
18 an in-stream water right under subsection [(2)] **(3)** of this section may allow
19 the split use of the water between the existing water right and the in-stream
20 water right during the same calendar year, provided:

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

23 (b) The holders of the water rights measure and report to the Water Re-
24 sources Department the use of the existing water right and the in-stream
25 water right.

26 [(4)] **(5)** A person who has an existing water right and wishes to lease the
27 water right as described in subsection [(2)] **(3)** of this section must file a
28 request and obtain department approval of the lease. Upon receipt of the
29 request, the department shall provide notice of the request by inclusion in
30 the weekly notice published by the department. Any allegation of injury must
31 be delivered to the department no later than 21 days after publication of the

1 request in the weekly notice.

2 [(5)] (6) After publishing notice of a request made under subsection [(2)]
3 (3) of this section and allowing time for the delivery of allegations of injury,
4 the department shall issue an order approving the request if the department
5 finds that the leasing of the water right for in-stream use can be effected
6 without injury to other existing water rights or can be conditioned to pre-
7 vent injury to other existing water rights. If the lease is for the split use of
8 water between the existing water right and the in-stream water right during
9 the same calendar year, the conditions imposed in the order approving the
10 request must include, but need not be limited to, compliance with subsection
11 [(3)] (4) of this section.

12 [(6)] (7) The department at any time may revoke or modify an order issued
13 for a lease under subsection [(2)] (3) of this section if the department deter-
14 mines that the use of the water right for in-stream use under the lease has
15 resulted in or may result in injury to an existing water right.

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

18 537.348. (1) **As used in this section, “existing water right” includes,**
19 **but is not limited to, a right to use water for purposes of irrigation,**
20 **domestic use, manufacturing or storage in a reservoir.**

21 (2) Any person may purchase or lease all or a portion of an existing water
22 right or accept a gift of all or a portion of an existing water right for con-
23 version to an in-stream water right. Any water right converted to an in-
24 stream water right under this section shall retain the priority date of the
25 water right purchased, leased or received as a gift. At the request of the
26 person the Water Resources Commission shall issue a new certificate for the
27 in-stream water right showing the original priority date of the purchased,
28 gifted or leased water right. Except as provided in subsections [(2) to (5)]
29 (3) to (6) of this section, a person who transfers a water right by purchase,
30 lease or gift under this subsection shall comply with the requirements for the
31 transfer of a water right under ORS 540.505 to 540.585.

1 [(2)] (3) Subject to subsections [(3) to (5)] (4) to (6) of this section, any
2 person who has an existing water right may lease all or a portion of the
3 existing water right for use as an in-stream water right for a specified period
4 without the loss of the original priority date. During the term of the lease,
5 the use of the water right as an in-stream water right shall be considered a
6 beneficial use. The term of the lease may not exceed five years. There is no
7 limitation on the number of times that the lease may be renewed.

8 [(3)] (4) A person who has an existing water right and wishes to lease the
9 water right as described in subsection [(2)] (3) of this section must file a
10 request and obtain department approval of the lease. Upon receipt of the
11 request, the department shall provide notice of the request by inclusion in
12 the weekly notice published by the department. Any allegation of injury must
13 be delivered to the department no later than 21 days after publication of the
14 request in the weekly notice.

15 [(4)] (5) After publishing notice of a request made under subsection [(2)]
16 (3) of this section and allowing time for the delivery of allegations of injury,
17 the department shall issue an order approving the request if the department
18 finds that the leasing of the water right for in-stream use can be effected
19 without injury to other existing water rights or can be conditioned to pre-
20 vent injury to other existing water rights.

21 [(5)] (6) The department at any time may revoke or modify an order issued
22 for a lease under subsection [(2)] (3) of this section if the department deter-
23 mines that the use of the water right for in-stream use under the lease has
24 resulted in or may result in injury to an existing water right.

25 **SECTION 3.** ORS 540.520 is amended to read:

26 540.520. (1) Except when the application is made under ORS 541.327 or
27 when an application for a temporary transfer is made under ORS 540.523, if
28 the holder of a water use subject to transfer for **purposes of** irrigation, do-
29 mestic use, manufacturing [*purposes*], **storage in a reservoir** or other use,
30 for any reason desires to change the place of use, the point of diversion, or
31 the use made of the water, an application to make such change, as the case

1 may be, shall be filed with the Water Resources Department.

2 (2) The application required under subsection (1) of this section shall in-
3 clude:

4 (a) The name of the owner;

5 (b) The previous use of the water;

6 (c) A description of the premises upon which the water is used;

7 (d) A description of the premises upon which it is proposed to use the
8 water;

9 (e) The use that is proposed to be made of the water;

10 (f) The reasons for making the proposed change; and

11 (g) Evidence that the water has been used over the past five years ac-
12 cording to the terms and conditions of the owner's water right certificate
13 or that the water right is not subject to forfeiture under ORS 540.610.

14 (3) If the application required under subsection (1) of this section is nec-
15 essary to allow a change in a water right pursuant to ORS 537.348, is nec-
16 essary to complete a project funded under ORS 541.932, or is approved by the
17 State Department of Fish and Wildlife as a change that will result in a net
18 benefit to fish and wildlife habitat, the department, at the discretion of the
19 Water Resources Director, may waive or assist the applicant in satisfying the
20 requirements of subsection (2)(c) and (d) of this section. The assistance pro-
21 vided by the department may include, but need not be limited to, development
22 of an application map.

23 (4) If the application is to change the point of diversion, the transfer shall
24 include a condition that the holder of the water right provide a proper fish
25 screen at the new point of diversion, if requested by the State Department
26 of Fish and Wildlife.

27 **(5) If a change in place of use is to a water use for the purpose of**
28 **storage in a reservoir, the volume of storage authorized at the original**
29 **storage location shall be reduced by the volume of storage authorized**
30 **under the transfer. A water right holder may use the process under**
31 **this section for transferring the place of use for water storage in a**

1 **reservoir in lieu of using the process for obtaining a new water right**
2 **under ORS 537.400 or 537.407 if the reservoir into which the water is**
3 **to be transferred and associated works are constructed in accordance**
4 **with the applicable requirements of ORS 540.310 to 540.430.**

5 [(5)] (6) [Upon] **No later than 60 days after** the filing of the application
6 the **Water Resources** Department shall give notice by publication in a
7 newspaper having general circulation in the area in which the water rights
8 are located, for a period of at least two weeks and not less than one publi-
9 cation each week. The notice shall include the date on which the last notice
10 by publication will occur. The cost of the publication shall be paid by the
11 applicant in advance to the department. In applications for only a change in
12 place of use or for a change in the point of diversion of less than one-fourth
13 mile, and where there are no intervening diversions between the old diver-
14 sion of the applicant and the proposed new diversion, no newspaper notice
15 need be published. The department shall include notice of such applications
16 in the weekly notice published by the department.

17 [(6)] (7) [Within] **No later than 30 days** after the last publication of a
18 newspaper notice of the proposed transfer or the mailing of the department's
19 weekly notice, whichever is later, any person may file, jointly or severally,
20 with the department, a protest against approval of the application.

21 [(7)] (8) If a timely protest is filed, or in the opinion of the Water Re-
22 sources Director a hearing is necessary to determine whether the proposed
23 changes as described by the application would result in injury to existing
24 water rights, the department shall hold **and complete** a hearing on the
25 matter **no later than 180 days after the first receipt of a timely protest**
26 **or, if no protest was received, 180 days after the director issues an**
27 **opinion that a hearing is necessary.** Notice and conduct of the hearing
28 shall be under the provisions of ORS chapter 183, pertaining to contested
29 cases, and shall be held in the area where the rights are located unless all
30 parties and persons who filed a protest under this subsection stipulate oth-
31 erwise. **The department shall issue a final order on the application no**

1 **later than:**

2 (a) **90 days after the completion of a hearing on the application; or**

3 (b) **180 days after the application is filed if the department does not**
4 **conduct a hearing on the application.**

5 [(8)] (9) An application for a change of use under this section is not re-
6 quired if the beneficial use authorized by the water use subject to transfer
7 is irrigation and the owner of the water right uses the water for incidental
8 agricultural, stock watering and other uses related to irrigation use, so long
9 as there is no increase in the rate, duty, total acreage benefited or season
10 of use.

11 [(9)] (10) A water right transfer under subsection (1) of this section is not
12 required for a general industrial use that was not included in a water right
13 certificate issued for a specific industrial use if:

14 (a) The quantity of water used for the general industrial use is not
15 greater than the rate allowed in the original water right and not greater
16 than the quantity of water diverted to satisfy the authorized specific use
17 under the original water right;

18 (b) The location where the water is to be used for general industrial use
19 was owned by the holder of the original water right at the time the water
20 right permit was issued; and

21 (c) The person who makes the change in water use provides the following
22 information to the [*Water Resources*] department:

23 (A) The name and mailing address of the person using water under the
24 water right;

25 (B) The water right certificate number;

26 (C) A description of the location of the industrial facility owned by the
27 holder of the original water right at the time the water right permit was
28 issued; and

29 (D) A description of the general industrial use to be made of the water
30 after the change.

31 **SECTION 4.** ORS 540.523 is amended to read:

1 540.523. (1) In accordance with the provisions of this section, any person
2 who holds a water use subject to transfer **for irrigation, domestic use,**
3 **manufacturing purposes, storage in a reservoir or other use** may re-
4 quest that the Water Resources Department approve the temporary transfer
5 of place of use and, if necessary to convey water to the new temporary place
6 of use, temporarily change the point of diversion or point of appropriation
7 for a period not to exceed five years. An application for a temporary transfer
8 shall:

9 (a) Be submitted in writing to the Water Resources Department;

10 (b) Be accompanied by the appropriate fee for a change in the place of
11 use as set forth in ORS 536.050;

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

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

15 (2) Notwithstanding the notice and waiting requirements under ORS
16 540.520, the department shall approve by order a request for a temporary
17 transfer under this section if the department determines that the temporary
18 transfer will not injure any existing water right.

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

22 (4) The time during which water is used under an approved temporary
23 transfer order does not apply toward a finding of forfeiture under ORS
24 540.610.

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

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

30 (7) [*The lands*] **Except as provided in subsection (8) of this section,**
31 **the place of use** from which the water right is removed during the period

1 of a temporary transfer shall receive no water under the transferred water
2 right.

3 **(8) If a temporary transfer application under this section is for**
4 **change to a water use for storage in a reservoir, the volume of storage**
5 **authorized at the original storage location shall be reduced by the**
6 **volume of storage authorized under the transfer. A water right holder**
7 **may use the process under this section for temporarily transferring**
8 **the place of use for water storage in a reservoir in lieu of using the**
9 **process for obtaining a new water right under ORS 537.400 or 537.407**
10 **if the reservoir into which the water is to be transferred and associ-**
11 **ated works are constructed in accordance with the applicable require-**
12 **ments of ORS 540.310 to 540.430.**

13 [(8)] (9) When an application for a temporary change of the place of use
14 for a primary water right is submitted in accordance with this section, the
15 applicant also shall indicate whether the land described in the application
16 has an appurtenant supplemental water right or permit. If the applicant also
17 intends to temporarily transfer the supplemental water right or permit, the
18 applicant also shall include the information required under ORS 540.520 (2)
19 for the supplemental water right or permit. If the applicant does not include
20 the supplemental water right or permit in the temporary transfer application,
21 the Water Resources Department shall notify the applicant that the supple-
22 mental water right or permit will be canceled before the department issues
23 the order approving the temporary transfer of the primary water right, unless
24 within 30 days the applicant modifies the application to include the supple-
25 mental water right or permit or withdraws the application. The department
26 may approve the temporary transfer of the supplemental water right or per-
27 mit in accordance with the provisions of this section. The department may
28 not approve the temporary transfer of a supplemental water right or permit
29 if the temporary transfer would result in enlargement of the original water
30 right or injury to an existing water right. If the department approves the
31 temporary transfer of the primary water right but does not approve the

1 temporary transfer of the supplemental water right or permit, the department
 2 shall notify the applicant of the department's intent not to allow the tem-
 3 porary transfer of the supplemental water right or permit before the depart-
 4 ment issues the order for the temporary transfer of the primary water right.
 5 If the department does not allow the temporary transfer of the supplemental
 6 right, the supplemental right shall remain appurtenant to the land described
 7 in the application, but may not be exercised until the primary right reverts
 8 to the original water use. If the primary water right does not revert soon
 9 enough to allow use of water under the supplemental right within five years,
 10 the supplemental right shall become subject to cancellation for nonuse under
 11 ORS 540.610.

12 [(9)] (10) In issuing an order under subsection (2) of this section, the de-
 13 partment shall include any condition necessary to protect other water rights.

14 **SECTION 5.** ORS 540.570 is amended to read:

15 540.570. (1) [*Provided that the*] **If a** proposed transfer complies with [*all*
 16 *of the provisions of*] this subsection and will not result in injury to any ex-
 17 isting water right, a district with a manager may, for one irrigation season
 18 **or storage season**, temporarily transfer the place of use of [*water*] **a water**
 19 **use subject to transfer that is** appurtenant to any land within the legal
 20 boundaries of the district to [*an equal acreage elsewhere*] **another location**
 21 within the legal boundaries of that district or temporarily transfer the type
 22 of use identified in a right to store water. [*A temporary transfer of the place*
 23 *of use may occur if:*]

24 [(a) *The rate and duty, and the total number of acres to which water will*
 25 *be applied under the transfer, do not exceed existing limits on the water use*
 26 *subject to transfer;*]

27 [(b) *The type of use authorized under the water use subject to transfer re-*
 28 *mains the same; and*]

29 [(c) *The land from which the water use is being transferred does not receive*
 30 *any water under the right being transferred during the irrigation season in*
 31 *which the change is made.*] **The following conditions apply to a transfer**

1 **under this section:**

2 **(a) The type of use authorized under the water right subject to**
3 **transfer must remain the same. This paragraph does not apply to a**
4 **change in a right to store water in a reservoir.**

5 **(b) If the use is for the purpose of irrigation:**

6 **(A) The rate and duty, and total number of acres to which water**
7 **will be applied under the transfer, may not exceed existing limits on**
8 **the water use subject to transfer; and**

9 **(B) The land from which the water use is being transferred may not**
10 **receive any water under the right being transferred during the irri-**
11 **gation season in which the change is made.**

12 **(c) If the transfer changes the place of use for a right to store water**
13 **in a reservoir, the volume of storage authorized at the original storage**
14 **location shall be reduced by the volume of storage authorized under**
15 **the transfer.**

16 **(2) A water right holder may use the process under subsection (1)**
17 **of this section for temporarily transferring the place of use for water**
18 **storage in a reservoir in lieu of using the process for obtaining a new**
19 **water right under ORS 537.400 or 537.407 if the reservoir into which the**
20 **water is to be transferred and associated works are constructed in**
21 **accordance with the applicable requirements of ORS 540.310 to 540.430.**

22 **[(2)] (3) [Provided that] If the proposed transfer complies with [all the**
23 **provisions of] this subsection and will not result in injury to or enlargement**
24 **of an existing water right, a district with a manager may, for one irrigation**
25 **season, temporarily change the point of diversion or appropriation combined**
26 **with a change in place of use, change the point of diversion in the event that**
27 **an emergency prevents the district from diverting water from its authorized**
28 **point of diversion, change the point of diversion to allow for the appropri-**
29 **ation of ground water or change a primary right to a supplemental right if:**

30 **(a) The land on which the water is to be used is within the district's legal**
31 **boundaries established pursuant to ORS chapter 545, 547, 552, 553 or 554;**

1 (b) The other terms of the permit or certificate remain the same, including
2 the beneficial use for which the water is used and the number of acres to
3 which water is applied;

4 (c) The diversion is provided with a proper fish screen, if required by the
5 Water Resources Department; and

6 (d) For a proposal to transfer the point of diversion to allow for the ap-
7 propriation of ground water, the proposed change meets the standards set
8 forth in ORS 540.531 (2).

9 [(3)] (4) When a district or an owner or an owner's agent within a district
10 who is subject to the charges or assessments of the district wishes to use
11 water on alternate acreage within the district, if the district has approved
12 the owner's request, the district shall submit to the department a petition
13 seeking a temporary transfer under this section. The district shall submit the
14 petition prior to making the proposed change. The petition may contain
15 changes to one or more tax lots within the district and shall:

16 (a) Include the information required under ORS 540.574 (3);

17 (b) Be accompanied by a map in a form satisfactory to the department and
18 certified by the district. If the water right is on a tract of land of five acres
19 or less, the assessor's tax map with a notation of the acres of water right
20 shall be sufficient for identification of the tract and place of use;

21 (c) Include a statement that a written authorization for the transfer from
22 each landowner affected by the particular temporary transfer is on file with
23 the district;

24 (d) Include any other information required by rules of the Water Re-
25 sources Commission; and

26 (e) Include a fee in the amount required under ORS 536.050 (1)(i).

27 [(4)] (5) The district shall notify each affected landowner that the de-
28 partment may reject the transfer or may require mitigation to avoid injury
29 to other water rights. Upon receipt of a completed petition under subsection
30 [(3)] (4) of this section, the department shall place a summary of the petition
31 in the weekly notice published by the department. The department shall ac-

1 cept written public comments on the petition for 30 days following publica-
2 tion of the weekly notice. The department shall consider comments that
3 pertain to the potential for injury to an existing water right or to the en-
4 largement of the water use subject to transfer in determining whether to
5 condition, reject or revoke a temporary transfer.

6 [(5)] (6) Use of **irrigation** water on lands from which the right is trans-
7 ferred and in the new temporary location during the same irrigation season
8 or calendar year is prohibited and may subject the district and the landowner
9 to civil penalties.

10 [(6)] (7) The department may condition, reject or revoke a temporary
11 transfer at any time to the extent necessary to avoid injury if the department
12 finds the transfer is causing injury to an existing water right.

13 [(7)] (8) Upon expiration of the temporary transfer period, all uses of
14 water for which a temporary transfer is allowed under this section shall re-
15 vert automatically to the terms and conditions of the original water right
16 permit, certificate or adjudication under ORS chapter 539 as evidenced by a
17 court decree.

18 [(8)] (9) The time during which water is used under an approved tempo-
19 rary transfer order does not apply toward a finding of forfeiture under ORS
20 540.610.

21 **SECTION 6.** ORS 540.580 is amended to read:

22 540.580. (1) [*In accordance with this section,*] A district may by petition
23 request that the Water Resources Department approve the permanent trans-
24 fer of the place of use of water **or the use made of water under a water**
25 **right subject to transfer** within a district. [*as long as the proposed transfer*
26 *complies with all of the following:*]

27 [(a) *The rate, duty and total number of acres to which water is to be ap-*
28 *plied under the water use subject to transfer are not exceeded;*]

29 [(b) *The use authorized under the water use subject to transfer remains the*
30 *same;*]

31 [(c) *The change in place of use will not result in injury to any existing*

1 *water right; and]*

2 [(d) *The land from which the water right is removed by the transfer shall*
3 *receive no water under the transferred right.*] **The following conditions ap-**
4 **ply to a transfer under this section:**

5 (a) **The use authorized under the water use subject to transfer must**
6 **remain the same.**

7 (b) **The change in place of use may not result in injury to any ex-**
8 **isting water right.**

9 (c) **If the water right to be transferred or changed is for purposes**
10 **of irrigation:**

11 (A) **The rate, duty and total number of acres to which water is to**
12 **be applied under the water use subject to transfer are not exceeded;**
13 **and**

14 (B) **The land from which the water right is removed by the transfer**
15 **shall receive no water under the transferred right.**

16 (d) **If the water right to be transferred or changed is for the purpose**
17 **of storage in a reservoir, the volume of storage authorized at the ori-**
18 **ginal storage location shall be reduced by the volume of storage au-**
19 **thorized under the transfer.**

20 (2) **A water right holder may use the process under subsection (1)**
21 **of this section to permanently transfer the place of use of a water**
22 **right for storage in a reservoir in lieu of using the process for ob-**
23 **taining a new water right under ORS 537.400 or 537.407 if the reservoir**
24 **into which the water is to be transferred and associated works are**
25 **constructed in accordance with the applicable requirements of ORS**
26 **540.310 to 540.430.**

27 [(2)] (3) **A district may submit a petition for a permanent transfer prior**
28 **to or subsequent to the change in place of use, but no later than the end of**
29 **the calendar year in which the change occurs. The petition submitted by the**
30 **district may include an unlimited number of transfers within the same peti-**
31 **tion. A petition under this section shall:**

1 (a) Include the information required under ORS 540.574 (3), except for the
2 statement that a notice under ORS 540.572 (2) has been given;

3 (b) Be accompanied by a map in a form satisfactory to the department and
4 certified by the district. If the water right is on a tract of land of five acres
5 or less, the assessor's tax map with a notation of the acres of water right
6 shall be sufficient for identification of the tract and place of use;

7 (c) Include a statement that each [*landowner affected by a*] **owner of land**
8 **involved in the** permanent transfer has authorized the transfer in a writing
9 that is on file with the district;

10 (d) Include any other information required by rules of the Water Re-
11 sources Commission; and

12 (e) Include the fee required under ORS 536.050 (1)(h) for a change in the
13 place of use.

14 [(3)] (4) If a district allows a change in the place of use of water before
15 obtaining the approval of the department, the district shall:

16 (a) Notify each affected landowner that the change is subject to the ap-
17 proval of the department and that the department may reject the transfer or
18 may require mitigation to avoid injury to other water right holders; and

19 (b) Notify the department in advance of the change. The notice shall in-
20 clude:

21 (A) The name of the district and the certificate number of each water
22 right that is the subject of the change;

23 (B) The names of the users within the district from whose lands and to
24 whose lands water rights are to be transferred;

25 (C) A general description of the users' lands by township, range, quarter
26 quarter section and tax lot number, and of the water right, for each parcel
27 from which and to which water rights are to be transferred; and

28 (D) A description of the use that is proposed to be made of the water on
29 each parcel.

30 [(4)] (5) Upon receipt of the notice required under subsection [(3)(b)]
31 (4)(b) of this section, the department shall provide public notice in the

1 weekly notice published by the department.

2 [(5)] (6) If a district allows a change in the place of use of water before
3 obtaining approval of the department under this section, the department may
4 direct the district to cease delivery of water or mitigate injury where the
5 change in place of use is causing injury to an existing water right.

6 [(6)] (7) Within 15 days after the filing of a petition under subsection
7 [(2)] (3) of this section, the department shall include notice of the petition
8 in the weekly notice published by the department. Within 30 days after the
9 mailing of the department's weekly notice, any potentially affected holder
10 of an existing water right may file, jointly or severally, with the department,
11 a protest against approval of the petition.

12 [(7)] (8) Subject to [*the provisions of*] subsection [(8)] (9) of this section,
13 [*whenever*] if a timely protest is filed, or in the opinion of the Water Re-
14 sources Director a hearing is necessary to determine whether the proposed
15 changes as described in the petition would result in injury to existing water
16 rights, the department may hold a hearing on the petition. Notice and con-
17 duct of the hearing shall be according to the provisions of ORS chapter 183
18 pertaining to contested cases, shall be scheduled within 45 days after the
19 filing of the petition, and shall be held in the area where the rights are lo-
20 cated unless all parties and persons who filed a protest under this subsection
21 stipulate otherwise.

22 [(8)] (9) If a water user within the district files a protest claiming injury
23 to a water right delivery by the district, no contested case hearing shall be
24 required, but the district shall resolve the matter directly with the water
25 user.

26 [(9)] (10) After examination or hearing, the department shall issue an or-
27 der approving the transfer if the proposed change can be effected without
28 injury to existing water rights. If no hearing is scheduled under subsection
29 [(7)] (8) of this section, the order of the department shall be issued within
30 90 days after the date of the filing of the petition. If the proposed change
31 cannot be effected without injury to existing water rights, the department

1 may condition approval, including requiring mitigation of the effects on
2 other water rights, to the extent necessary to avoid injury. If a hearing is
3 scheduled, the department shall issue a final order within 120 days after
4 scheduling the hearing.

5 ~~[(10)]~~ (11) Within 20 days after the director issues a final order under this
6 section, the district or any protestant may file with the commission ex-
7 ceptions to the final order. The commission shall issue an order granting or
8 denying the exceptions within 30 days after receiving the exceptions.

9 ~~[(11)]~~ (12) If a certificate covering the water right has been previously
10 issued, the department may amend the certificate or may cancel the certif-
11 icate and issue a new certificate preserving the previously established pri-
12 ority of rights and covering the authorized changes. If only a portion of the
13 water right covered by the previous certificate is affected by the changes, a
14 separate new certificate may be issued to cover the unaffected portion of the
15 water right. A certificate as amended or issued under this section has the
16 evidentiary effect provided for in ORS 537.270 as to the new lands except
17 when the right to appropriate water described in the certificate is abandoned
18 after the certificate is amended or issued.

19 ~~[(12)]~~ (13) Notwithstanding the provisions of subsection ~~[(2)]~~ (3) of this
20 section, a petition filed on or before December 31, 1996, may include all
21 changes in place of use allowed by a district after July 1, 1992, and before
22 November 30, 1996.

23 **SECTION 7.** ORS 536.900 is amended to read:

24 536.900. (1) In addition to any other liability or penalty provided by law,
25 the Water Resources Commission may impose a civil penalty on a person for
26 any of the following:

27 (a) Violation of any of the terms or conditions of a permit, certificate or
28 license issued under ORS chapters 536 to 543A.

29 (b) Violation of ORS 537.130 or 537.535.

30 (c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS
31 537.545 (8).

1 (d) Violation of any rule or order of the Water Resources Commission
2 that pertains to well maintenance.

3 (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330,
4 540.340, 540.435, 540.440, 540.570 [(5)] (6), 540.710, 540.720 and 540.730 or rules
5 adopted under ORS 540.145.

6 (2) A civil penalty may be imposed under this section for each day of vi-
7 olation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 [(5)] (6),
8 540.710, 540.720 or 540.730.

9 (3) In the event the petitioner knowingly misrepresents the map and pe-
10 tition required in ORS 541.329, the commission may assess a penalty of up
11 to \$1,000 based upon guidelines to be established by the commission. In ad-
12 dition, the petition and map shall be amended to correct the error at the
13 petitioner's cost. Affected users shall be given notice as provided in ORS
14 541.329 (5).

15 (4) A civil penalty may not be imposed until the commission prescribes
16 a reasonable time to eliminate the violation. The commission shall notify the
17 violator of the time allowed to correct a violation within five days after the
18 commission first becomes aware of the violation.

19 (5) Notwithstanding any term or condition of a permit, certificate or li-
20 cense, the rotation of the use of water under ORS 540.150 may not be con-
21 sidered a violation under subsection (1) of this section.

22 **SECTION 8.** ORS 537.211 is amended to read:

23 537.211. (1) The approval of an application referred to in ORS 537.140 or
24 537.400 shall be set forth in a water right permit issued by the Water Re-
25 sources Department. The permit shall specify the details of the authorized
26 use and shall set forth any terms, limitations and conditions as the depart-
27 ment considers appropriate including but not limited to any applicable con-
28 dition required under ORS 537.289. A copy of the permit shall be filed as a
29 public record in the department. The permit shall be mailed to the applicant,
30 and upon receipt of the permit the permittee may proceed with the con-
31 struction of the necessary works and may take all action required to apply

1 the water to the designated beneficial use and to perfect the proposed ap-
2 propriation.

3 (2) Except as provided in subsection (6) of this section, if an application
4 under ORS 537.140 or 537.400 indicates that the applicant does not have
5 written authorization or an easement permitting access to nonowned land
6 crossed by the proposed ditch, canal or other work, the department may issue
7 a final order approving the application if the approval includes a condition
8 requiring the applicant to obtain such written authorization, or easement or
9 ownership of such land and to provide the department with a copy of the
10 written authorization, easement or evidence of ownership.

11 (3) If an application referred to in ORS 537.140 or 537.400 is rejected, the
12 department shall enter a written order setting forth the reasons for the re-
13 jection. The applicant shall take no action toward construction of the works
14 or use of the water. The department shall mail a copy of the order to the
15 applicant.

16 (4) The holder of a water right permit may change the point of diversion,
17 change the point of appropriation, change the point of diversion to allow the
18 appropriation of ground water or use the water on land to which the right
19 is not appurtenant if:

20 (a) The use of water on land to which the right is not appurtenant, the
21 change of point of diversion or the change in point of appropriation does not
22 result in injury to an existing water right;

23 (b) For a proposed change in the place of use of the water, the land on
24 which the water is to be used is owned or controlled by the holder of the
25 permit and is contiguous to the land to which the permit is appurtenant;

26 (c) All other terms of the permit remain the same, including but not
27 limited to the beneficial use for which the water is used and the number of
28 acres to which water is applied;

29 (d) Prior approval is obtained from the district if the water is transported
30 or conveyed by an irrigation district organized under ORS chapter 545, a
31 drainage district organized under ORS chapter 547, a water improvement

1 district organized under ORS chapter 552, a water control district organized
2 under ORS chapter 553 or a district improvement company or a corporation
3 organized under ORS chapter 554;

4 (e) The holder of the permit provides written notice to the department at
5 least 60 days before making any changes to the lands, point of diversion or
6 point of appropriation described in the permit;

7 (f) [*The holder of the permit complies with the*] Publication [*requirements*
8 *of*] **as provided under ORS 540.520 [(5)] (6) has been made**, if applicable;

9 (g) Diversion is provided with a proper fish screen, if requested by the
10 State Department of Fish and Wildlife; and

11 (h) For a request to transfer the point of diversion to allow the appro-
12 priation of ground water, the proposed change meets the standards set forth
13 in ORS 540.531 (2) or (3).

14 (5) Notwithstanding the requirements of subsection (4)(b) of this section,
15 the holder of a water right permit may change the place of use of all or any
16 portion of water under the permit to land that is not contiguous to the land
17 to which the permit is appurtenant if:

18 (a) The change to noncontiguous land is in furtherance of mitigation or
19 conservation efforts undertaken for the purposes of benefiting a species listed
20 as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the
21 federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as deter-
22 mined by the listing agency; and

23 (b) All other requirements of subsection (4) of this section are met.

24 (6) For an application made by or on behalf of a public corporation, the
25 department may issue a permit approving the application without requiring
26 the applicant to obtain prior written authorization or an easement permit-
27 ting access to nonowned lands affected by the proposed project. However,
28 nothing in this subsection shall be construed to allow any person to trespass
29 on the lands of another person.

30 (7) When the department receives notice under subsection (4)(e) of this
31 section, the department shall publish the notice in the department's weekly

1 public notice of water right applications.

2 (8) If the use of water under the permit is for operation of a mining op-
3 eration as defined in ORS 517.952:

4 (a) Review of the application and approval or denial of the application
5 shall be coordinated with the consolidated application process under ORS
6 517.952 to 517.989. However, such review and approval or denial shall take
7 into consideration all policy considerations for the appropriation of water
8 as set forth in this chapter and ORS chapter 536.

9 (b) The permit may be issued for exploration under ORS 517.702 to 517.740,
10 but the permit shall be conditioned on the applicant's compliance with the
11 consolidated application process.

12 (c) The permit shall include a condition that additional conditions may
13 be added to the use of water when a water right certificate is issued, or when
14 the use of water is changed pursuant to ORS 540.520 and 540.530 to use for
15 a mine.

16 (9) As used in this section, "contiguous" includes land separated from the
17 land to which a water right is appurtenant by roads, utility corridors, irri-
18 gation ditches or publicly owned rights of way.

19 **SECTION 9.** ORS 537.470 is amended to read:

20 537.470. (1) Upon receipt of an application for allocation of conserved
21 water under ORS 537.465, the Water Resources Commission shall give notice
22 of receipt of the application in accordance with ORS 540.520 [(5)] (6).

23 (2) The commission shall allocate conserved water as provided in sub-
24 section (3) of this section and approve modifications of water rights as pro-
25 vided in subsection (6) of this section. The commission may not allocate
26 conserved water pursuant to an application under ORS 537.465 if the appli-
27 cation is filed more than five years after the conservation measure was im-
28 plemented.

29 (3) After determining the quantity of conserved water, if any, required to
30 mitigate the effects on other water rights, the commission shall allocate 25
31 percent of the remaining conserved water to the state and 75 percent to the

1 applicant, unless the applicant proposes a higher allocation to the state or
2 more than 25 percent of the funds used to finance the conservation measures
3 comes from federal or state public sources. If more than 25 percent of the
4 funds used to finance the conservation measures comes from federal or state
5 public sources and is not subject to repayment, the commission shall allocate
6 to the state a percentage equal to the percentage of public funds used to fi-
7 nance the conservation measures and allocate to the applicant a percentage
8 equal to the percentage of other funds used to finance the conservation
9 measures. If the commission determines that the water allocated to the state
10 is necessary to support in-stream flow purposes in accordance with ORS
11 537.332 to 537.360, the water shall be converted to an in-stream water right.
12 If the water allocated to the state is not necessary to support in-stream flow
13 purposes, it shall revert to the public for appropriation by the next user in
14 priority. In no event, however, shall the applicant receive less than 25 per-
15 cent of the remaining conserved water unless the applicant proposes a higher
16 allocation to the state.

17 (4) The commission shall notify the applicant and any other person re-
18 questing notice, of the action the commission intends to take under sub-
19 section (3) of this section. Any person objecting to the proposed allocation
20 may file a protest requesting a contested case hearing before the commission.

21 (5) The modification of water rights under an allocation of conserved
22 water may not require a separate request for transfer under ORS 540.520.

23 (6) After the commission completes the allocation of conserved water un-
24 der subsection (3) of this section, the commission shall issue orders for pro-
25 posed new certificates covering the changes in the original water rights.
26 Once the conservation project is completed, separate new certificates pre-
27 serving the previously established priority of rights shall be issued to cover
28 the unaffected portion of the water rights and separate new certificates in-
29 dicating the priority of rights as set forth in ORS 537.485 shall be issued to
30 cover the right to the use of the allocated water.

31 **SECTION 10.** ORS 540.524 is amended to read:

1 540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an
2 application submitted to the Water Resources Department, the holder of both
3 a primary water right originating from a surface water source and a sup-
4 plemental water right permit or certificate originating from a ground water
5 source may substitute the use of the supplemental water right for the pri-
6 mary water right. A substitution may not be made under this subsection if
7 the use of the supplemental water right results in an enlargement or expan-
8 sion of the primary water right. This subsection does not authorize a change
9 in place of use, type of use, point of diversion or point of appropriation.

10 (2) An application required under subsection (1) of this section shall be
11 submitted on forms provided by the department. The department may request
12 additional information if necessary to assist with the injury evaluation. Each
13 application shall be submitted with the fee described in ORS 536.050 (1)(s).

14 (3) Upon receiving an application under subsection (1) of this section, the
15 department shall provide notice, accept protests and conduct hearings on
16 protests in the manner described in ORS 540.520 [(5), (6) and (7)] **(6) to (8)**.

17 (4) The Water Resources Director shall issue an order approving or de-
18 nying the substitution. If the proposed substitution will result in injury to
19 other water rights, the director shall prohibit or condition the use to avoid
20 or mitigate the injury. The director shall issue an order approving or deny-
21 ing the substitution within 90 days after the department receives an appli-
22 cation under subsection (1) of this section.

23 (5) For the purpose of ORS 540.610, a substituted primary surface water
24 right shall be treated as a supplemental water right, and a substituted sup-
25 plemental ground water right shall be treated as a primary water right.

26 (6) A completed and approved substitution of a supplemental ground water
27 right for a primary surface water right under this section may be terminated
28 upon a request by the water right holder or by an order of the director if the
29 director determines that the use of the ground water as the primary water
30 right causes injury to other water rights. Upon termination, the substituted
31 primary and supplemental water rights shall revert back to their original

1 status.

2 **SECTION 11.** ORS 540.585 is amended to read:

3 540.585. (1) In accordance with the provisions of this section, a person
4 may request that the Water Resources Department approve the temporary
5 transfer of the place of use and type of use and temporarily change the point
6 of diversion if necessary to convey water to the new temporary place of use,
7 of all or a portion of a water right, for a period not to exceed 25 years if:

8 (a) The person holds a water use subject to transfer;

9 (b) The type of use specified in the original water use subject to transfer
10 is irrigation;

11 (c) The person to whom the right is transferred is:

12 (A) Located within the Deschutes River Basin; and

13 (B) A city, a quasi-municipal corporation, a domestic water supply district
14 formed under ORS chapter 264, a water supplier as defined in ORS 448.115
15 or a water authority formed under ORS chapter 450;

16 (d) The proposed use is municipal use; and

17 (e) The proposed temporary transfer will not result in injury to any ex-
18 isting water right.

19 (2) An application for a temporary transfer under this section 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
22 use and type of use as set forth in ORS 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
25 rule may require.

26 (3)(a) Any portion of the use of a water right that is not temporarily
27 transferred under this section may be used on the designated part of the
28 lands described in the original water right permit, certificate or adjudication
29 under ORS chapter 539 as evidenced by a court decree, if the use does not
30 encompass more than the remaining portion of the lands, enlarge the water
31 right or increase the rate, duty, total acreage benefited or season of use.

1 (b) The Water Resources Department shall designate the lands on which
2 water may be applied under this subsection and shall prescribe mapping,
3 measurement and recording requirements under this subsection.

4 (4) Upon expiration of a temporary transfer period, all uses of water for
5 which a temporary transfer is allowed under this section shall revert auto-
6 matically to the terms and conditions of the original water right permit,
7 certificate or adjudication under ORS chapter 539 as evidenced by a court
8 decree.

9 (5) The time during which water is used under an approved temporary
10 transfer order does not apply toward a finding of forfeiture under ORS
11 540.610.

12 (6) The department may revoke a prior approval of a temporary transfer
13 at any time if:

14 (a) The department finds that the transfer is causing injury to any exist-
15 ing water right; or

16 (b) The person fails to comply with the requirements prescribed by the
17 department pursuant to subsection (3) of this section.

18 (7) The department shall provide notice, in the manner provided in ORS
19 540.520 [(5)] (6), that the department received an application for a temporary
20 transfer under this section.

21 (8) The department may:

22 (a) Prescribe the duration of the temporary transfer period allowed under
23 this section, up to 25 years;

24 (b) Impose conditions in the terms of the temporary transfer, including
25 revocation of the transfer for noncompliance with applicable state, local or
26 federal laws; and

27 (c) Determine the parties that may participate in the review of applica-
28 tions submitted under this section.

29 **SECTION 12.** ORS 540.990 is amended to read:

30 540.990. (1) Violation of any provision of ORS 540.440 is a Class C
31 misdemeanor.

1 (2) Violation of any provision of ORS 540.370 (2), 540.570 [(5)] (6), 540.710,
2 540.720 or 540.730 is a Class B misdemeanor.

3 **SECTION 13.** Section 1, chapter 445, Oregon Laws 2015, is amended to
4 read:

5 **Sec. 1.** (1) As used in this section, “determined claim” means a water
6 right in the Upper Klamath Basin determined and established in an order
7 of determination certified by the Water Resources Director under ORS
8 539.130.

9 (2) Except as provided in subsections (3) and (4) of this section, during
10 the period that judicial review of the order of determination is pending, a
11 determined claim is:

12 (a) An existing water right that may be leased for a term as provided
13 under ORS 537.348; and

14 (b) A primary water right that is subject to temporary transfer for pur-
15 poses of ORS 540.523.

16 (3) Subsection (2) of this section:

17 (a) Does not apply to a water right determined and established in an order
18 of determination that has been stayed by the filing of a bond or irrevocable
19 letter of credit under ORS 539.180;

20 (b) Does not apply to a water right transfer that includes changing the
21 point of diversion upstream; and

22 (c) Does not allow a person to purchase, lease or accept a gift of a de-
23 termined claim for conversion to an in-stream water right as described in
24 ORS 537.348 [(1)] (2).

25 (4) For purposes of determining under ORS 537.348 [(5)] (6) or 540.523 (2)
26 whether the Water Resources Department may approve a lease or temporary
27 transfer of a determined claim, an injury to another determined claim is an
28 injury to an existing water right. Notwithstanding ORS 537.348 [(6)] (7) or
29 540.523 (5), the department shall deny, modify or revoke the lease or tempo-
30 rary transfer of a determined claim if the department determines that the
31 lease or temporary transfer has resulted in, or is likely to result in:

- 1 (a) Injury to another determined claim or other existing water right; or
2 (b) Enlargement of the determined claim.

3 (5) The department shall revoke the lease or temporary transfer of a de-
4 termined claim if a court judgment stays the determined claim.

5 (6) If a determined claim is removed from land by lease or temporary
6 transfer, the land from which the determined claim is removed may not re-
7 ceive water during the term of the lease or temporary transfer.

8 **SECTION 14. The amendments to ORS 536.900, 537.211, 537.348,**
9 **537.470, 540.520, 540.523, 540.524, 540.570, 540.580, 540.585 and 540.990 and**
10 **section 1, chapter 445, Oregon Laws 2015 by sections 1 to 13 of this 2018**
11 **Act apply to the processing of applications, petitions or other filings**
12 **received by the Water Resources Commission or Water Resources De-**
13 **partment on or after the effective date of this 2018 Act.**

14
