

Requested by Representative BENTZ

**PROPOSED AMENDMENTS TO
HOUSE BILL 2485**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete pages
2 2 and 3 and insert:

3 **“SECTION 1. Sections 2 and 3 of this 2017 Act are added to and
4 made a part of ORS 540.505 to 540.585.**

5 **“SECTION 2. The Water Resources Department, after consultation
6 with the State Department of Fish and Wildlife, shall establish a pilot
7 program area within the John Day River Basin in eastern Oregon. The
8 Water Resources Department shall conduct the pilot program for the
9 purpose of encouraging and facilitating applications under section 3
10 of this 2017 Act for point of diversion changes that the State Depart-
11 ment of Fish and Wildlife believes will benefit fish passage and fish
12 and wildlife habitat and for the purpose of expediting the approval of
13 changes in point of diversion that qualify under section 3 of this 2017
14 Act.**

15 **“SECTION 3. (1) Notwithstanding ORS 540.510 or 540.520, the Water
16 Resources Department may approve an application filed by the holder
17 of a water right subject to transfer for a change in the point of di-
18 version for the water right as described under this section if:**

19 **“(a) The State Department of Fish and Wildlife has reviewed the
20 proposed change and has made written comments supporting the pro-
21 posed change and stating that the proposed change will benefit fish**

1 passage and fish and wildlife habitat;

2 “(b) The authorized point of diversion and proposed new point of
3 diversion are located within the pilot program area established as
4 provided under section 2 of this 2017 Act;

5 “(c) The change in the point of diversion will not enlarge the water
6 right or injure any existing water right; and

7 “(d) The change in the point of diversion is the only modification
8 sought under the application.

9 “(2) Notwithstanding subsection (1)(c) of this section, the Water
10 Resources Department may approve as provided in ORS 540.530 (1) an
11 application for a change in a point of diversion that injures an existing
12 water right.

13 “(3) The holder of a water right subject to transfer that seeks to
14 change a point of diversion under this section must file an application
15 for the change with the Water Resources Department. The application
16 must include:

17 “(a) The name of the holder;

18 “(b) Information identifying the water right;

19 “(c) A description of the authorized point of diversion;

20 “(d) A description of the proposed new point of diversion;

21 “(e) Evidence that the water has been put to beneficial use in the
22 previous five successive years or that the water right is not subject to
23 forfeiture under ORS 540.610;

24 “(f) A description of the water delivery system that demonstrates
25 the applicant is ready, willing and able to exercise the water right; and

26 “(g) Any other information required by Water Resources Commis-
27 sion rules, except a map regarding the place of use.

28 “(4) An application filed under this section must be accompanied
29 by:

30 “(a) A copy of the State Department of Fish and Wildlife written

1 **comments supporting the change in the point of diversion; and**

2 **“(b) Except as provided under subsection (5) of this section, the fee**
3 **required under ORS 536.050.**

4 **“(5) The Water Resources Director may waive or refund all or part**
5 **of the fee required under ORS 536.050 for a change in the point of di-**
6 **version requested under this section.**

7 **“(6) Upon the filing of the application, except as provided in this**
8 **subsection, the Water Resources Department shall give notice by**
9 **publication in a newspaper having general circulation in the area**
10 **where the water rights are located, for a period of at least two weeks**
11 **and not less than one publication each week. The notice shall include**
12 **the date on which the last notice by publication will occur. The cost**
13 **of the publication shall be paid by the applicant in advance to the de-**
14 **partment. Notice by publication in a newspaper is not required if the**
15 **requested change in the point of diversion is less than one-fourth mile**
16 **and there are no intervening diversions. The department shall include**
17 **notice of an application under this section in the weekly notice pub-**
18 **lished by the department.**

19 **“(7) The department shall provide a period for public comment and**
20 **the filing of protests. The period shall commence on the date of the**
21 **last publication of a newspaper notice of the proposed change in the**
22 **point of diversion or the mailing of the department’s weekly notice,**
23 **whichever is later. Any person may file, jointly or severally, with the**
24 **department, a protest against approval of the application.**

25 **“(8) If no timely protest is filed, the department shall make an or-**
26 **der approving the transfer unless the department finds that the**
27 **change in the point of diversion does not qualify under subsection (1)**
28 **of this section.**

29 **“(9) If a timely protest is filed, or in the opinion of the Water Re-**
30 **sources Director a hearing is necessary to determine whether the**

1 proposed change in the point of diversion would result in injury to
2 existing water rights, the department may hold a hearing on the
3 matter. Notice and conduct of the hearing shall be under the pro-
4 visions of ORS chapter 183, pertaining to contested cases and shall be
5 held in the area where the points of diversion are located unless all
6 parties and persons who filed a protest under this section stipulate
7 otherwise.

8 “(10) If the department, after hearing or examination, finds that the
9 proposed change cannot be effected without injury to existing water
10 rights, the department may process the application as described in
11 ORS 540.530 (1)(b) to (e).

12 “(11) ORS 540.525 applies to a change in the point of diversion sub-
13 ject to this section in the same manner and to the same extent as for
14 a change in the point of diversion applied for under ORS 540.520. An
15 approval under this section for a change in the point of diversion must
16 include as conditions that the holder will:

17 “(a) Provide a proper fish screen at the new point of diversion if
18 requested by the State Department of Fish and Wildlife;

19 “(b) Install a water measurement device; and

20 “(c) Remove fish passage barriers at the existing point of diversion.

21 “(12) If the Water Resources Department approves an application
22 under this section, the Water Resources Commission may issue an
23 order approving the change in the point of diversion. An order issued
24 under this subsection shall specify a time limit for completing the
25 change in the point of diversion. The time specified in the order for
26 completing the change may not be used in computing a five-year pe-
27 riod of nonuse under ORS 540.610.

28 “(13) The proof of completion required for a change in a point of
29 diversion approved under this section is a survey map for the new
30 point of diversion and a claim of its beneficial use. The Water Re-

1 sources Department, at the discretion of the Water Resources Direc-
2 tor, may waive or assist the applicant in satisfying the proof of
3 completion requirements. The assistance may include development of
4 the survey map for the new point of diversion and the claim of its
5 beneficial use.

6 “(14) A change in a point of diversion approved under this section
7 does not alter any other provisions of the water right, including but
8 not limited to the status, priority, amount, rate, duty, number of acres
9 or authorized use.

10 “(15) Notwithstanding ORS 537.270, a change in a point of diversion
11 approved under this section does not confirm use of a water right or
12 constitute evidence of a defense against forfeiture. An order and cer-
13 tificate issued for the change shall bear a statement that the change
14 does not confirm use of the water right or constitute evidence a de-
15 fense against forfeiture.

16 “SECTION 4. Sections 1 to 3 of this 2017 Act are repealed January
17 2, 2028.”

18
