

SENATE AMENDMENTS TO SENATE BILL 946

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

May 8

1 On page 1 of the printed bill, line 2, delete “540.505” and insert “537.465, 540.505, 540.510,
2 540.520, 540.523, 540.531, 540.570, 540.580 and 540.585 and section 23, chapter 705, Oregon Laws
3 2003”.

4 Delete lines 5 through 30 and delete page 2 and insert:

5 “**SECTION 1.** ORS 540.505 is amended to read:

6 “540.505. As used in ORS 540.505 to 540.585:

7 “(1) ‘District’ means an irrigation district formed under ORS chapter 545, a drainage district
8 formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a wa-
9 ter control district formed under ORS chapter 553 or a corporation organized under ORS chapter
10 554.

11 “(2) ‘Primary water right’ means the water right designated by the Water Resources Commission
12 as the principal water supply for the authorized use, or if no designation has been made, the water
13 right designated by the applicant as the principal water supply for the authorized use.

14 “(3) ‘**Secondary water right**’ means a water right that refers to a reservoir or pond as a
15 source of water, if the supply is stored under a primary water right to store water.

16 “[3] (4) ‘Supplemental water right or permit’ means an additional appropriation of water to
17 make up a deficiency in supply from an existing water right. A supplemental water right or permit
18 is used in conjunction with a primary water right.

19 “[4] (5) ‘Water [*use*] **right** subject to transfer’ means a water [*use*] **right** established by:

20 “(a) An adjudication under ORS chapter 539 as evidenced by a court decree;

21 “(b) A water right certificate;

22 “(c) A water use permit for which a request for issuance of a water right certificate under ORS
23 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

24 “(d) A transfer application for which an order approving the change has been issued under ORS
25 540.530 and for which proper proof of completion of the change has been filed with the Water Re-
26 sources Commission.

27 “**SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS 540.505 to
28 540.585.

29 “**SECTION 3.** (1) The holder of a water right subject to transfer for storing water in a
30 reservoir or pond may apply to change the type of use of the water only as provided in this
31 section. Notwithstanding ORS 540.510, 540.520, 540.523, 540.531 and 540.532, the Water Re-
32 sources Commission shall refuse to accept an application to change a water right subject to
33 transfer for storing water in a reservoir or pond other than an application to change the type
34 of use.

35 “(2) The commission shall approve an application that is in compliance with this section,

1 unless the commission determines that the proposed change to the water right subject to
2 transfer will result in injury to an existing water right, including but not limited to second-
3 ary water rights, or will result in enlargement of the water right subject to transfer.

4 “(3) The holder of a water right described in subsection (2) of this section shall file an
5 application for the change in type of use as provided under ORS 537.520. The application must
6 comply with ORS 540.520 and any applicable provisions of subsection (4) of this section.

7 “(4) The application must identify all secondary water rights that refer to the water right
8 subject to transfer. If the approval of the change to the water right subject to transfer will
9 affect a secondary water right:

10 “(a) A combined application may be filed to change both the water right subject to
11 transfer and the secondary water right. The commission may approve the change to the
12 secondary water right as provided under ORS 540.520 and 540.530.

13 “(b) If an applicant holds the water right subject to transfer and all of the affected sec-
14 ondary water rights, and does not include one or more of the affected secondary water rights
15 in the application, the Water Resources Department shall notify the applicant that any sec-
16 ondary water right that is not included will be canceled before the department issues the
17 order approving the change to the water right subject to transfer unless, no later than 30
18 days after the applicant receives the notification, the applicant modifies the application to
19 include the secondary water right or withdraws the application.

20 “(c) If an applicant under this section that holds the water right subject to transfer does
21 not hold all of the affected secondary water rights, the holder of the water right subject to
22 transfer must submit a joint application with all holders of affected secondary water rights
23 as described in paragraph (a) of this subsection or secure written consent from all the
24 holders of affected secondary water rights to the cancellation of those secondary water
25 rights. If the application does not contain the applications or written consent for all of the
26 affected secondary water rights, the department shall inform the holder of the water right
27 subject to transfer that the department will deny the application unless, no later than 30
28 days after receiving the notification, the holder of the water right subject to transfer modi-
29 fies the application to comply with this section or withdraws the application.

30 “**SECTION 4.** The Legislative Assembly hereby ratifies and declares valid any change to
31 the type of use in a water right for the storage of water in a reservoir or pond that was
32 approved and became final by operation of law or on appeal prior to the effective date of this
33 2019 Act.

34 “**SECTION 5.** Section 3 of this 2019 Act and the amendments to ORS 540.505 by section
35 1 of this 2019 Act apply to applications for changes to water rights made before, on or after
36 the effective date of this 2019 Act that are approved or disapproved on or after the effective
37 date of this 2019 Act.

38 “**SECTION 6.** ORS 537.465 is amended to read:

39 “537.465. (1) Any person or group of persons holding a water [use] **right** subject to transfer as
40 defined in ORS 540.505 may submit an application to the Water Resources Commission for approval
41 of an allocation of conserved water for a measure that:

42 “(a) The person or group of persons intends to implement; or

43 “(b) Was implemented by the person or group of persons within five years prior to the sub-
44 mission of the application.

45 “(2) An application submitted under subsection (1)(a) of this section shall include:

1 “(a) A description of the proposed measures;

2 “(b) A description of the existing diversion facilities and an estimate of the amount of water that

3 can be diverted at the facilities;

4 “(c) The amount of water that will be needed to supply existing rights after implementation of

5 the conservation measures;

6 “(d) The amount of conserved water expected from implementation of the conservation measures;

7 “(e) The proposed allocation and use of the conserved water if different from the allocation

8 specified in ORS 537.470;

9 “(f) The intended use of any water allocated to the applicant;

10 “(g) The applicant’s choice of priority date for the conserved water; and

11 “(h) Any other information the commission considers necessary to evaluate the effectiveness of

12 the proposal.

13 “(3) An application under subsection (1)(b) of this section shall include:

14 “(a) A description of the measure as implemented and the date on which the measure was im-

15 plemented;

16 “(b) A description of the diversion facilities before the conservation measure was implemented

17 and the amount of water that was diverted at the facilities before the conservation measure was

18 implemented;

19 “(c) The amount of water needed to supply existing rights after implementation of the conser-

20 vation measure;

21 “(d) The amount of water conserved by implementing the conservation measure;

22 “(e) The proposed allocation and use of the conserved water if different from the allocation

23 specified in ORS 537.470;

24 “(f) The intended use of any water allocated to the applicant;

25 “(g) The applicant’s choice of priority date for the conserved water;

26 “(h) Evidence that the measure was implemented within five years prior to the date of filing the

27 application; and

28 “(i) Any other information the commission considers necessary to evaluate the application.

29 “(4) If a person proposes conservation measures within the boundaries of an irrigation district

30 organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at

31 the time the person submits the application, the person also must submit evidence that the district

32 has approved the conservation application.

33 “**SECTION 7.** ORS 540.510 is amended to read:

34 “540.510. (1) Except as provided in subsections (2) to (8) of this section, all water used in this

35 state for any purpose shall remain appurtenant to the premises upon which it is used and no change

36 in use or place of use of any water for any purpose may be made without compliance with the pro-

37 visions of ORS 540.520 and 540.530. However, the holder of any water [use] **right** subject to transfer

38 may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of

39 use, the point of diversion or the use theretofore made of the water in all cases without losing pri-

40 ority of the right theretofore established. A district may change the place of use in the manner

41 provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When

42 an application for change of the use or place of use for a primary water right is submitted in ac-

43 cordance with this section, the applicant also shall indicate whether the land described in the ap-

44 plication has an appurtenant supplemental water right or permit. If the applicant also intends to

45 transfer the supplemental water right or permit, the applicant also shall include the information

1 required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not
2 include the supplemental water right or permit in the transfer application, the Water Resources
3 Department shall notify the applicant that the supplemental water right or permit will be canceled
4 before the department issues the order approving the transfer of the primary water right, unless
5 within 30 days the applicant modifies the application to include the supplemental water right or
6 permit or withdraws the application. The department may approve the transfer of the supplemental
7 water right or permit in accordance with the provisions of ORS 540.520 and 540.530. The department
8 shall not approve the transfer of a supplemental water right or permit if the transfer would result
9 in enlargement of the original water right or injury to an existing water right. If the department
10 approves the transfer of the primary water right but does not approve the transfer of the supple-
11 mental water right or permit, the department shall notify the applicant of the department's intent
12 to cancel that portion of the supplemental water right or permit described in the transfer application
13 before the department issues the primary water right transfer order, unless the applicant withdraws
14 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, con-
22 solidation or formation of a water authority, so long as the rate and use of water allowed in the
23 original 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
27 which 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, any water used under a permit or
32 certificate issued to a district may be applied to beneficial use on lands within the district to which
33 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 diver-
40 sion 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 8.** ORS 540.520 is amended to read:

16 “540.520. (1) Except when the application is made under ORS 541.327 or when an application for
17 a temporary transfer is made under ORS 540.523, if the holder of a water [use] **right** subject to
18 transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires
19 to change the place of use, the point of diversion, or the use made of the water, an application to
20 make such change, as the case may be, shall be filed with the Water Resources Department.

21 “(2) The application required under subsection (1) of this section shall include:

22 “(a) The name of the owner;

23 “(b) The previous use of the water;

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

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

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

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

28 “(g) Evidence that the water has been used over the past five years according to the terms and
29 conditions of the owner's water right certificate or that the water right is not subject to forfeiture
30 under ORS 540.610.

31 “(3) If the application required under subsection (1) of this section is necessary to allow a
32 change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under
33 ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will re-
34 sult in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Re-
35 sources Director, may waive or assist the applicant in satisfying the requirements of subsection
36 (2)(c) and (d) of this section. The assistance provided by the department may include, but need not
37 be limited to, development of an application map.

38 “(4) If the application is to change the point of diversion, the transfer shall include a condition
39 that the holder of the water right provide a proper fish screen at the new point of diversion, if re-
40 quested by the State Department of Fish and Wildlife.

41 “(5) Upon the filing of the application the department shall give notice by publication in a
42 newspaper having general circulation in the area in which the water rights are located, for a period
43 of at least two weeks and not less than one publication each week. The notice shall include the date
44 on which the last notice by publication will occur. The cost of the publication shall be paid by the
45 applicant in advance to the department. In applications for only a change in place of use or for a

1 change in the point of diversion of less than one-fourth mile, and where there are no intervening
2 diversions between the old diversion of the applicant and the proposed new diversion, no newspaper
3 notice need be published. The department shall include notice of such applications in the weekly
4 notice published by the department.

5 “(6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or
6 the mailing of the department’s weekly notice, whichever is later, any person may file, jointly or
7 severally, with the department, a protest against approval of the application.

8 “(7) If a timely protest is filed, or in the opinion of the Water Resources Director a hearing is
9 necessary to determine whether the proposed changes as described by the application would result
10 in injury to existing water rights, the department shall hold a hearing on the matter. Notice and
11 conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested
12 cases, and shall be held in the area where the rights are located unless all parties and persons who
13 filed a protest under this subsection stipulate otherwise.

14 “(8) An application for a change of use under this section is not required if the beneficial use
15 authorized by the water [*use*] **right** subject to transfer is irrigation and the owner of the water right
16 uses the water for incidental agricultural, stock watering and other uses related to irrigation use,
17 so long as there is no increase in the rate, duty, total acreage benefited or season of use.

18 “(9) A water right transfer under subsection (1) of this section is not required for a general in-
19 dustrial use that was not included in a water right certificate issued for a specific industrial use if:

20 “(a) The quantity of water used for the general industrial use is not greater than the rate al-
21 lowed in the original water right and not greater than the quantity of water diverted to satisfy the
22 authorized specific use under the original water right;

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

25 “(c) The person who makes the change in water use provides the following information to the
26 Water Resources Department:

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

28 “(B) The water right certificate number;

29 “(C) A description of the location of the industrial facility owned by the holder of the original
30 water right at the time the water right permit was issued; and

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

32 “**SECTION 9.** ORS 540.523 is amended to read:

33 “540.523. (1) In accordance with the provisions of this section, any person who holds a water
34 [*use*] **right** subject to transfer may request that the Water Resources Department approve the tem-
35 porary transfer of place of use and, if necessary to convey water to the new temporary place of use,
36 temporarily change the point of diversion or point of appropriation for a period not to exceed five
37 years. An application for a temporary transfer shall:

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

39 “(b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS
40 536.050;

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

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

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

1 “(3) All uses of water for which a temporary transfer is allowed under this section shall revert
2 automatically to the terms and conditions of the water [use] **right** subject to transfer upon expira-
3 tion of the temporary transfer period.

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

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

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

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

12 “(8) When an application for a temporary change of the place of use for a primary water right
13 is submitted in accordance with this section, the applicant also shall indicate whether the land de-
14 scribed in the application has an appurtenant supplemental water right or permit. If the applicant
15 also intends to temporarily transfer the supplemental water right or permit, the applicant also shall
16 include the information required under ORS 540.520 (2) for the supplemental water right or permit.
17 If the applicant does not include the supplemental water right or permit in the temporary transfer
18 application, the Water Resources Department shall notify the applicant that the supplemental water
19 right or permit will be canceled before the department issues the order approving the temporary
20 transfer of the primary water right, unless within 30 days the applicant modifies the application to
21 include the supplemental water right or permit or withdraws the application. The department may
22 approve the temporary transfer of the supplemental water right or permit in accordance with the
23 provisions of this section. The department may not approve the temporary transfer of a supplemental
24 water right or permit if the temporary transfer would result in enlargement of the original water
25 right or injury to an existing water right. If the department approves the temporary transfer of the
26 primary water right but does not approve the temporary transfer of the supplemental water right
27 or permit, the department shall notify the applicant of the department’s intent not to allow the
28 temporary transfer of the supplemental water right or permit before the department issues the order
29 for the temporary transfer of the primary water right. If the department does not allow the tempo-
30 rary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land
31 described in the application, but may not be exercised until the primary right reverts to the original
32 water use. If the primary water right does not revert soon enough to allow use of water under the
33 supplemental right within five years, the supplemental right shall become subject to cancellation for
34 nonuse under ORS 540.610.

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

37 “**SECTION 10.** ORS 540.531 is amended to read:

38 “540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water [use] **right**
39 subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of
40 ground water if the proposed transfer complies with the requirements of subsection (2) or (3) of this
41 section and with the requirements for a transfer in point of diversion specified in ORS 540.520 and
42 540.530.

43 “(2) The Water Resources Department may allow a transfer of the point of diversion under
44 subsection (1) of this section if:

45 “(a)(A) The new point of diversion appropriates ground water from an aquifer that is hydrau-

1 lically connected to the authorized surface water source;

2 “(B) The proposed change in point of diversion will not result in enlargement of the original
3 water right or in injury to other water right holders;

4 “(C) The use of the new point of diversion will affect the surface water source similarly to the
5 authorized point of diversion specified in the water [use] **right** subject to transfer; and

6 “(D) The withdrawal of ground water at the new point of diversion is located within 500 feet
7 of the surface water source and, when the surface water source is a stream, is also located within
8 1,000 feet upstream or downstream of the original point of diversion as specified in the water [use]
9 **right** subject to transfer; or

10 “(b) The new point of diversion is not located within the distance requirements set forth in
11 paragraph (a)(D) of this subsection, the holder of the water [use] **right** subject to transfer submits
12 to the department evidence prepared by a licensed geologist that demonstrates that the use of the
13 ground water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C)
14 of this subsection.

15 “(3) Notwithstanding subsection (2) of this section, the department shall allow a transfer of the
16 point of diversion under subsection (1) of this section in the Deschutes Basin ground water study
17 area if:

18 “(a) The new point of diversion appropriates ground water from an aquifer that is hydraulically
19 connected to the authorized surface water source;

20 “(b) The proposed change in the point of diversion will not result in enlargement of the original
21 water right or in injury to other water right holders; and

22 “(c) The use of the new point of diversion will affect the surface water source hydraulically
23 connected to the authorized point of diversion specified in the water [use] **right** subject to transfer.
24 The department may not require that the use of the new point of diversion affect the surface water
25 source similarly to the authorized point of diversion specified in the water [use] **right** subject to
26 transfer under this subsection.

27 “(4) All applicable restrictions that existed at the original point of diversion shall apply at the
28 new point of diversion allowed under this section.

29 “(5) The new point of diversion shall retain the original date of priority. However, if within five
30 years after approving the transfer, the department finds that the transfer results in substantial in-
31 terference with existing ground water rights that would not have occurred in the absence of the
32 transfer, the new point of diversion shall be subordinate to any existing right injured by the trans-
33 ferred water right or permit.

34 “(6)(a) The department shall approve an application to return to the last authorized surface
35 water point of diversion if a holder of a water [use] **right** subject to transfer submits an application
36 to the department within five years after the department approves a transfer under this section.

37 “(b) The department shall approve an application to return to the last authorized surface water
38 point of diversion after five years of the date the department allows a transfer under subsection (3)
39 of this section if a holder of a water [use] **right** subject to transfer submits an application to the
40 department, and the return will not result in injury to an existing water right.

41 “(7) For transfers allowed under this section, the department shall require mitigation measures
42 to prevent depletion from any surface water source not specified in the permit or certificated or
43 decreed water right, except that the department may not require mitigation measures if the transfer
44 complies with subsection (3) of this section.

45 “(8) The Water Resources Commission shall adopt rules that prescribe:

1 “(a) The process for reviewing applications submitted under this section;

2 “(b) The persons to whom the department shall provide notice of the receipt of an application

3 submitted under this section; and

4 “(c) The persons who may participate in the process of reviewing applications submitted under

5 this section.

6 “(9) As used in this section:

7 “(a) ‘Deschutes Basin ground water study area’ means the part of the Deschutes River Basin

8 that is designated by the Water Resources Commission by rule.

9 “(b) ‘Similarly’ means that the use of ground water at the new point of diversion affects the

10 surface water source specified in the permit or certificated or decreed water right and would result

11 in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous

12 pumping.

13 “**SECTION 11.** ORS 540.570 is amended to read:

14 “540.570. (1) Provided that the proposed transfer complies with all of the provisions of this

15 subsection and will not result in injury to any existing water right, a district with a manager may,

16 for one irrigation season, temporarily transfer the place of use of water appurtenant to any land

17 within the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries

18 of that district or temporarily transfer the type of use identified in a right to store water. A tem-

19 porary transfer of the place of use may occur if:

20 “(a) The rate and duty, and the total number of acres to which water will be applied under the

21 transfer, do not exceed existing limits on the water [use] **right** subject to transfer;

22 “(b) The type of use authorized under the water [use] **right** subject to transfer remains the same;

23 and

24 “(c) The land from which the water use is being transferred does not receive any water under

25 the right being transferred during the irrigation season in which the change is made.

26 “(2) Provided that the proposed transfer complies with all the provisions of this subsection and

27 will not result in injury to or enlargement of an existing water right, a district with a manager may,

28 for one irrigation season, temporarily change the point of diversion or appropriation combined with

29 a change in place of use, change the point of diversion in the event that an emergency prevents the

30 district from diverting water from its authorized point of diversion, change the point of diversion to

31 allow for the appropriation of ground water or change a primary right to a supplemental right if:

32 “(a) The land on which the water is to be used is within the district’s legal boundaries estab-

33 lished pursuant to ORS chapter 545, 547, 552, 553 or 554;

34 “(b) The other terms of the permit or certificate remain the same, including the beneficial use

35 for which the water is used and the number of acres to which water is applied;

36 “(c) The diversion is provided with a proper fish screen, if required by the Water Resources

37 Department; and

38 “(d) For a proposal to transfer the point of diversion to allow for the appropriation of ground

39 water, the proposed change meets the standards set forth in ORS 540.531 (2).

40 “(3) When a district or an owner or an owner’s agent within a district who is subject to the

41 charges or assessments of the district wishes to use water on alternate acreage within the district,

42 if the district has approved the owner’s request, the district shall submit to the department a peti-

43 tion seeking a temporary transfer under this section. The district shall submit the petition prior to

44 making the proposed change. The petition may contain changes to one or more tax lots within the

45 district and shall:

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

2 “(b) Be accompanied by a map in a form satisfactory to the department and certified by the

3 district. If the water right is on a tract of land of five acres or less, the assessor’s tax map with a

4 notation of the acres of water right shall be sufficient for identification of the tract and place of

5 use;

6 “(c) Include a statement that a written authorization for the transfer from each landowner af-

7 fected by the particular temporary transfer is on file with the district;

8 “(d) Include any other information required by rules of the Water Resources Commission; and

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

10 “(4) The district shall notify each affected landowner that the department may reject the trans-

11 fer or may require mitigation to avoid injury to other water rights. Upon receipt of a completed

12 petition under subsection (3) of this section, the department shall place a summary of the petition

13 in the weekly notice published by the department. The department shall accept written public com-

14 ments on the petition for 30 days following publication of the weekly notice. The department shall

15 consider comments that pertain to the potential for injury to an existing water right or to the en-

16 largement of the water [use] **right** subject to transfer in determining whether to condition, reject

17 or revoke a temporary transfer.

18 “(5) Use of water on lands from which the right is transferred and in the new temporary location

19 during the same irrigation season or calendar year is prohibited and may subject the district and

20 the landowner to civil penalties.

21 “(6) The department may condition, reject or revoke a temporary transfer at any time to the

22 extent necessary to avoid injury if the department finds the transfer is causing injury to an existing

23 water right.

24 “(7) Upon expiration of the temporary transfer period, all uses of water for which a temporary

25 transfer is allowed under this section shall revert automatically to the terms and conditions of the

26 original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a

27 court decree.

28 “(8) The time during which water is used under an approved temporary transfer order does not

29 apply toward a finding of forfeiture under ORS 540.610.

30 “**SECTION 12.** Sections 23, chapter 705, Oregon Laws 2003, as amended by section 1, chapter

31 283, Oregon Laws 2009, and section 2, chapter 384, Oregon Laws 2015, is amended to read:

32 “**Sec. 23.** (1) In order to increase district water management flexibility, the Water Resources

33 Department shall establish a pilot project in which districts may temporarily allow, for water

34 [uses] **rights** subject to transfer, the use of water on any land within the legal boundaries of the

35 district established pursuant to ORS chapter 545, 547, 552, 553 or 554.

36 “(2) The use of water on any land within the legal boundaries of the district may be allowed if:

37 “(a) The rate and duty, and the total number of acres to which water will be applied under the

38 transfer, do not exceed existing limits on the water [use] **right** subject to transfer;

39 “(b) The type of use authorized under the water [use] **right** subject to transfer is for irrigation

40 and remains the same; and

41 “(c) The land from which the water use is being transferred does not receive any water under

42 the right being transferred during the irrigation season in which the change is made.

43 “(3) The department shall allow the pilot project to be implemented in the Talent Irrigation

44 District, the Owyhee Irrigation District, the Tualatin Valley Irrigation District, the Central Oregon

45 Irrigation District, the Swalley Irrigation District, the Westland Irrigation District, the North Unit

1 Irrigation District, the Arnold Irrigation District, the Stanfield Irrigation District, the West Extension
2 Irrigation District, the Hermiston Irrigation District, the Medford Irrigation District, the
3 Sutherlin Water Control District, the Santiam Water Control District and the Ochoco Irrigation
4 District or their successor districts. However, any district participating in the project must:

5 “(a) Have defined state district boundaries;

6 “(b) Have a management structure that can ensure that water is applied only where the water
7 use is authorized;

8 “(c) Not irrigate an area in any one irrigation season that exceeds the maximum number of
9 acres allowed to be irrigated under the original water right;

10 “(d) Have a full and accurate measurement of the water appropriated;

11 “(e) Have an accurate map identifying the location of authorized use, by priority date, for review
12 upon request and provide a copy of the map to the watermaster; and

13 “(f) Have on file statements by any landowner affected by the water use change indicating that
14 the landowner agrees to the change.

15 “(4) If any of the specified districts are unable to participate in the project, the department may
16 identify another district for the project. Before allowing another district to participate in the project
17 for the first time, the department shall publish notice of the planned participation by publication in
18 the weekly notice published by the department and shall allow the public at least 20 days to provide
19 information to assist the department in determining whether the district meets the qualifications
20 required under subsection (3) of this section.

21 “(5) The department may require that use of water under the pilot project cease and that the
22 use revert to the use allowed under the water right of record if the department determines that:

23 “(a) The district does not meet the qualifications established in subsection (3) of this section;

24 “(b) The water is being used in a manner that violates the requirements in subsection (2) of this
25 section; or

26 “(c) The changes made to the use of water would result in injury to existing water rights or an
27 enlargement of the original water right.

28 “(6) The department shall annually, prior to commencement of the irrigation season, publish
29 notice of the districts that might intend to make use of the pilot program during the year. The notice
30 shall identify the districts by name and provide the contact information for the watermasters for the
31 districts. The department shall publish the notice by publication in the weekly notice published by
32 the department.

33 “(7) Use of water under the pilot project constitutes a beneficial use of water and does not
34 constitute nonuse for purposes of forfeiture under ORS 540.610.

35 “**SECTION 13.** ORS 540.580 is amended to read:

36 “540.580. (1) In accordance with this section, a district may by petition request that the Water
37 Resources Department approve the permanent transfer of the place of use of water within a district
38 as long as the proposed transfer complies with all of the following:

39 “(a) The rate, duty and total number of acres to which water is to be applied under the water
40 [use] **right** subject to transfer are not exceeded;

41 “(b) The use authorized under the water [use] **right** subject to transfer remains the same;

42 “(c) The change in place of use will not result in injury to any existing water right; and

43 “(d) The land from which the water right is removed by the transfer shall receive no water un-
44 der the transferred right.

45 “(2) A district may submit a petition for a permanent transfer prior to or subsequent to the

1 change in place of use, but no later than the end of the calendar year in which the change occurs.
2 The petition submitted by the district may include an unlimited number of transfers within the same
3 petition. A petition under this section shall:

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

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

10 “(c) Include a statement that each landowner affected by a permanent transfer has authorized
11 the transfer in a writing that is on file with the district;

12 “(d) Include any other information required by rules of the Water Resources Commission; and

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

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

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

19 “(b) Notify the department in advance of the change. The notice shall include:

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

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

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

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

28 “(4) Upon receipt of the notice required under subsection (3)(b) of this section, the department
29 shall provide public notice in the weekly notice published by the department.

30 “(5) If a district allows a change in the place of use of water before obtaining approval of the
31 department under this section, the department may direct the district to cease delivery of water or
32 mitigate injury where the change in place of use is causing injury to an existing water right.

33 “(6) Within 15 days after the filing of a petition under subsection (2) of this section, the de-
34 partment shall include notice of the petition in the weekly notice published by the department.
35 Within 30 days after the mailing of the department’s weekly notice, any potentially affected holder
36 of an existing water right may file, jointly or severally, with the department, a protest against ap-
37 proval of the petition.

38 “(7) Subject to the provisions of subsection (8) of this section, whenever a timely protest is filed,
39 or in the opinion of the Water Resources Director a hearing is necessary to determine whether the
40 proposed changes as described in the petition would result in injury to existing water rights, the
41 department may hold a hearing on the petition. Notice and conduct of the hearing shall be according
42 to the provisions of ORS chapter 183 pertaining to contested cases, shall be scheduled within 45
43 days after the filing of the petition, and shall be held in the area where the rights are located unless
44 all parties and persons who filed a protest under this subsection stipulate otherwise.

45 “(8) If a water user within the district files a protest claiming injury to a water right delivery

1 by the district, no contested case hearing shall be required, but the district shall resolve the matter
2 directly with the water user.

3 “(9) After examination or hearing, the department shall issue an order approving the transfer
4 if the proposed change can be effected without injury to existing water rights. If no hearing is
5 scheduled under subsection (7) of this section, the order of the department shall be issued within
6 90 days after the date of the filing of the petition. If the proposed change cannot be effected without
7 injury to existing water rights, the department may condition approval, including requiring miti-
8 gation of the effects on other water rights, to the extent necessary to avoid injury. If a hearing is
9 scheduled, the department shall issue a final order within 120 days after scheduling the hearing.

10 “(10) Within 20 days after the director issues a final order under this section, the district or any
11 protestant may file with the commission exceptions to the final order. The commission shall issue
12 an order granting or denying the exceptions within 30 days after receiving the exceptions.

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

21 “(12) Notwithstanding the provisions of subsection (2) of this section, a petition filed on or be-
22 fore December 31, 1996, may include all changes in place of use allowed by a district after July 1,
23 1992, and before November 30, 1996.

24 “**SECTION 14.** ORS 540.585 is amended to read:

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

29 “(a) The person holds a water *[use]* **right** subject to transfer;

30 “(b) The type of use specified in the original water *[use]* **right** subject to transfer is irrigation;

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

32 “(A) Located within the Deschutes River Basin; and

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

36 “(d) The proposed use is municipal use; and

37 “(e) The proposed temporary transfer will not result in injury to any existing water right.

38 “(2) An application for a temporary transfer under this section shall:

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

40 “(b) Be accompanied by the appropriate fee for a change in the place of use and type of use as
41 set forth in ORS 536.050;

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

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

44 “(3)(a) Any portion of the use of a water right that is not temporarily transferred under this
45 section may be used on the designated part of the lands described in the original water right permit,

1 certificate or adjudication under ORS chapter 539 as evidenced by a court decree, if the use does
2 not encompass more than the remaining portion of the lands, enlarge the water right or increase the
3 rate, duty, total acreage benefited or season of use.

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

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

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

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

14 “(a) The department finds that the transfer is causing injury to any existing water right; or

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

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

19 “(8) The department may:

20 “(a) Prescribe the duration of the temporary transfer period allowed under this section, up to
21 25 years;

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

24 “(c) Determine the parties that may participate in the review of applications submitted under
25 this section.

26 **“SECTION 15. This 2019 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
28 **on its passage.”**

29
