

Requested by SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**PROPOSED AMENDMENTS TO  
SENATE BILL 946**

1 On page 1 of the printed bill, line 2, delete “540.505” and insert “537.465,  
2 540.505, 540.510, 540.520, 540.523, 540.531, 540.570, 540.580 and 540.585 and  
3 section 23, chapter 705, Oregon Laws 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,  
8 a drainage district formed under ORS chapter 547, a water improvement  
9 district formed under ORS chapter 552, a water control district formed under  
10 ORS chapter 553 or a corporation organized under ORS chapter 554.

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

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

18 “[3] (4) ‘Supplemental water right or permit’ means an additional ap-  
19 propriation of water to make up a deficiency in supply from an existing wa-  
20 ter right. A supplemental water right or permit is used in conjunction with  
21 a primary water right.

1        “[~~(4)~~] (5) ‘Water [*use*] **right** subject to transfer’ means a water [*use*] **right**  
2 established by:

3        “(a) An adjudication under ORS chapter 539 as evidenced by a court de-  
4 cree;

5        “(b) A water right certificate;

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

9        “(d) A transfer application for which an order approving the change has  
10 been issued under ORS 540.530 and for which proper proof of completion of  
11 the change has been filed with the Water Resources Commission.

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

14        **“SECTION 3. (1) The holder of a water right subject to transfer for  
15 storing water in a reservoir or pond may apply to change the type of  
16 use of the water only as provided in this section. Notwithstanding ORS  
17 540.510, 540.520, 540.523, 540.531 and 540.532, the Water Resources Com-  
18 mission shall refuse to accept an application to change a water right  
19 subject to transfer for storing water in a reservoir or pond other than  
20 an application to change the type of use.**

21        **“(2) The commission shall approve an application that is in com-  
22 pliance with this section, unless the commission determines that the  
23 proposed change to the water right subject to transfer will result in  
24 injury to an existing water right, including but not limited to second-  
25 ary water rights, or will result in enlargement of the water right  
26 subject to transfer.**

27        **“(3) The holder of a water right described in subsection (2) of this  
28 section shall file an application for the change in type of use as pro-  
29 vided under ORS 537.520. The application must comply with ORS  
30 540.520 and any applicable provisions of subsection (4) of this section.**

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

5       **“(a) A combined application may be filed to change both the water**  
6 **right subject to transfer and the secondary water right. The commis-**  
7 **sion may approve the change to the secondary water right as provided**  
8 **under ORS 540.520 and 540.530.**

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

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

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

6       **“SECTION 5. Section 3 of this 2019 Act and the amendments to ORS**  
7 **540.505 by section 1 of this 2019 Act apply to applications for changes**  
8 **to water rights made before, on or after the effective date of this 2019**  
9 **Act that are approved or disapproved on or after the effective date of**  
10 **this 2019 Act.**

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

12       “537.465. (1) Any person or group of persons holding a water [use] **right**  
13 subject to transfer as defined in ORS 540.505 may submit an application to  
14 the Water Resources Commission for approval of an allocation of conserved  
15 water for a measure that:

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

17       “(b) Was implemented by the person or group of persons within five years  
18 prior to the submission of the application.

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

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

22       “(b) A description of the existing diversion facilities and an estimate of  
23 the amount of water that can be diverted at the facilities;

24       “(c) The amount of water that will be needed to supply existing rights  
25 after implementation of the conservation measures;

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

28       “(e) The proposed allocation and use of the conserved water if different  
29 from the allocation specified in ORS 537.470;

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

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

2 “(h) Any other information the commission considers necessary to evalu-  
3 ate the effectiveness of the proposal.

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

5 “(a) A description of the measure as implemented and the date on which  
6 the measure was implemented;

7 “(b) A description of the diversion facilities before the conservation  
8 measure was implemented and the amount of water that was diverted at the  
9 facilities before the conservation measure was implemented;

10 “(c) The amount of water needed to supply existing rights after imple-  
11 mentation of the conservation measure;

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

14 “(e) The proposed allocation and use of the conserved water if different  
15 from the allocation specified in ORS 537.470;

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

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

18 “(h) Evidence that the measure was implemented within five years prior  
19 to the date of filing the application; and

20 “(i) Any other information the commission considers necessary to evalu-  
21 ate the application.

22 “(4) If a person proposes conservation measures within the boundaries of  
23 an irrigation district organized under ORS chapter 545 or a water control  
24 district organized under ORS chapter 553, at the time the person submits the  
25 application, the person also must submit evidence that the district has ap-  
26 proved the conservation application.

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

28 “540.510. (1) Except as provided in subsections (2) to (8) of this section,  
29 all water used in this state for any purpose shall remain appurtenant to the  
30 premises upon which it is used and no change in use or place of use of any

1 water for any purpose may be made without compliance with the provisions  
2 of ORS 540.520 and 540.530. However, the holder of any water [use] **right**  
3 subject to transfer may, upon compliance with the provisions of ORS 540.520  
4 and 540.530, change the use and place of use, the point of diversion or the  
5 use theretofore made of the water in all cases without losing priority of the  
6 right theretofore established. A district may change the place of use in the  
7 manner provided in ORS 540.572 to 540.580 in lieu of the method provided in  
8 ORS 540.520 and 540.530. When an application for change of the use or place  
9 of use for a primary water right is submitted in accordance with this section,  
10 the applicant also shall indicate whether the land described in the applica-  
11 tion has an appurtenant supplemental water right or permit. If the applicant  
12 also intends to transfer the supplemental water right or permit, the applicant  
13 also shall include the information required under ORS 540.520 (2) for the  
14 supplemental water right or permit. If the applicant does not include the  
15 supplemental water right or permit in the transfer application, the Water  
16 Resources Department shall notify the applicant that the supplemental water  
17 right or permit will be canceled before the department issues the order ap-  
18 proving the transfer of the primary water right, unless within 30 days the  
19 applicant modifies the application to include the supplemental water right  
20 or permit or withdraws the application. The department may approve the  
21 transfer of the supplemental water right or permit in accordance with the  
22 provisions of ORS 540.520 and 540.530. The department shall not approve the  
23 transfer of a supplemental water right or permit if the transfer would result  
24 in enlargement of the original water right or injury to an existing water  
25 right. If the department approves the transfer of the primary water right but  
26 does not approve the transfer of the supplemental water right or permit, the  
27 department shall notify the applicant of the department's intent to cancel  
28 that portion of the supplemental water right or permit described in the  
29 transfer application before the department issues the primary water right  
30 transfer order, unless the applicant withdraws the transfer application

1 within 90 days.

2 “(2) Subject to the limitations in ORS 537.490, any right to the use of  
3 conserved water allocated by the Water Resources Commission under ORS  
4 537.470 may be severed from the land and transferred or sold after notice to  
5 the commission as required under ORS 537.490.

6 “(3)(a) Any water used under a permit or certificate issued to a munici-  
7 pality, or under rights conferred by ORS 538.410 to 538.450, or under the  
8 registration system set forth in ORS 537.132, may be applied to beneficial use  
9 on lands to which the right is not appurtenant if:

10 “(A) The water is applied to lands which are acquired by annexation or  
11 through merger, consolidation or formation of a water authority, so long as  
12 the rate and use of water allowed in the original certificate is not exceeded;

13 “(B) The use continues to be for municipal purposes and would not in-  
14 terfere with or impair prior vested water rights; or

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

18 “(b) As used in this subsection, ‘municipality’ means a city, a port formed  
19 under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water  
20 supply district formed under ORS chapter 264, a water supplier as defined in  
21 ORS 448.115 or a water authority formed under ORS chapter 450.

22 “(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used  
23 under a permit or certificate issued to a district may be applied to beneficial  
24 use on lands within the district to which the right is not appurtenant.

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

28 “(a) The diversion point stays within 500 feet of the point of diversion on  
29 record with the Water Resources Department;

30 “(b) The change does not move the diversion point upstream or down-

1 stream beyond the diversion point of another appropriator; and

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

4 “(6) In the event that government action results in or creates a reasonable  
5 expectation of a change in the surface level of a surface water source that  
6 impairs or threatens to impair access to a point of diversion authorized by  
7 a water right permit, certificate or decree, the owner of the water right may  
8 change the point of diversion or add an additional point of diversion in ac-  
9 cordance with the provisions of this section in lieu of complying with the  
10 requirements of ORS 540.520 and 540.530. Before changing the point of di-  
11 version, the water right owner shall provide written notice of the proposed  
12 change to the Water Resources Department. Within 15 days after receipt of  
13 such notice, the department shall provide notice by publication in the  
14 department’s public notice of water right applications. Within 60 days after  
15 the department receives notice from the owner, the Water Resources Direc-  
16 tor, by order, shall approve the change unless the director finds the changes  
17 will result in injury to other existing water rights. All other terms and  
18 conditions of the water right shall remain in effect.

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

22 “(8) Ground water applied to an exempt use as set forth in ORS 537.141  
23 or 537.545 may be subsequently applied to land for irrigation purposes under  
24 ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use  
25 or place of use under this section.

26 “**SECTION 8.** ORS 540.520 is amended to read:

27 “540.520. (1) Except when the application is made under ORS 541.327 or  
28 when an application for a temporary transfer is made under ORS 540.523, if  
29 the holder of a water [*use*] **right** subject to transfer for irrigation, domestic  
30 use, manufacturing purposes, or other use, for any reason desires to change



1 the place of use, the point of diversion, or the use made of the water, an  
2 application to make such change, as the case may be, shall be filed with the  
3 Water Resources Department.

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

6 “(a) The name of the owner;

7 “(b) The previous use of the water;

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

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

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

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

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

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

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

29 “(5) Upon the filing of the application the department shall give notice  
30 by publication in a newspaper having general circulation in the area in

1 which the water rights are located, for a period of at least two weeks and  
2 not less than one publication each week. The notice shall include the date  
3 on which the last notice by publication will occur. The cost of the publica-  
4 tion shall be paid by the applicant in advance to the department. In appli-  
5 cations for only a change in place of use or for a change in the point of  
6 diversion of less than one-fourth mile, and where there are no intervening  
7 diversions between the old diversion of the applicant and the proposed new  
8 diversion, no newspaper notice need be published. The department shall in-  
9 clude notice of such applications in the weekly notice published by the de-  
10 partment.

11 “(6) Within 30 days after the last publication of a newspaper notice of the  
12 proposed transfer or the mailing of the department’s weekly notice, which-  
13 ever is later, any person may file, jointly or severally, with the department,  
14 a protest against approval of the application.

15 “(7) If a timely protest is filed, or in the opinion of the Water Resources  
16 Director a hearing is necessary to determine whether the proposed changes  
17 as described by the application would result in injury to existing water  
18 rights, the department shall hold a hearing on the matter. Notice and con-  
19 duct of the hearing shall be under the provisions of ORS chapter 183, per-  
20 taining to contested cases, and shall be held in the area where the rights are  
21 located unless all parties and persons who filed a protest under this sub-  
22 section stipulate otherwise.

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

29 “(9) A water right transfer under subsection (1) of this section is not re-  
30 quired for a general industrial use that was not included in a water right

1 certificate issued for a specific industrial use if:

2 “(a) The quantity of water used for the general industrial use is not  
3 greater than the rate allowed in the original water right and not greater  
4 than the quantity of water diverted to satisfy the authorized specific use  
5 under the original water right;

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

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

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

13 “(B) The water right certificate number;

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

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

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

20 “540.523. (1) In accordance with the provisions of this section, any person  
21 who holds a water [*use*] **right** subject to transfer may request that the Water  
22 Resources Department approve the temporary transfer of place of use and,  
23 if necessary to convey water to the new temporary place of use, temporarily  
24 change the point of diversion or point of appropriation for a period not to  
25 exceed five years. An application for a temporary transfer shall:

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

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

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

30 “(d) Include any other information the Water Resources Commission by

1 rule may require.

2 “(2) Notwithstanding the notice and waiting requirements under ORS  
3 540.520, the department shall approve by order a request for a temporary  
4 transfer under this section if the department determines that the temporary  
5 transfer will not injure any existing water right.

6 “(3) All uses of water for which a temporary transfer is allowed under  
7 this section shall revert automatically to the terms and conditions of the  
8 water [use] **right** subject to transfer upon expiration of the temporary  
9 transfer period.

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

13 “(5) The department may revoke a prior approval of the temporary trans-  
14 fer at any time if the department finds that the transfer is causing injury to  
15 any existing water right.

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

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

21 “(8) When an application for a temporary change of the place of use for  
22 a primary water right is submitted in accordance with this section, the ap-  
23 plicant also shall indicate whether the land described in the application has  
24 an appurtenant supplemental water right or permit. If the applicant also in-  
25 tends to temporarily transfer the supplemental water right or permit, the  
26 applicant also shall include the information required under ORS 540.520 (2)  
27 for the supplemental water right or permit. If the applicant does not include  
28 the supplemental water right or permit in the temporary transfer application,  
29 the Water Resources Department shall notify the applicant that the supple-  
30 mental water right or permit will be canceled before the department issues

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

21 “(9) In issuing an order under subsection (2) of this section, the depart-  
22 ment shall include any condition necessary to protect other water rights.

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

24 “540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a  
25 surface water [*use*] **right** subject to transfer may apply for a transfer of the  
26 point of diversion to allow the appropriation of ground water if the proposed  
27 transfer complies with the requirements of subsection (2) or (3) of this sec-  
28 tion and with the requirements for a transfer in point of diversion specified  
29 in ORS 540.520 and 540.530.

30 “(2) The Water Resources Department may allow a transfer of the point

1 of diversion under subsection (1) of this section if:

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

5 “(B) The proposed change in point of diversion will not result in en-  
6 largement of the original water right or in injury to other water right  
7 holders;

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

11 “(D) The withdrawal of ground water at the new point of diversion is lo-  
12 cated within 500 feet of the surface water source and, when the surface water  
13 source is a stream, is also located within 1,000 feet upstream or downstream  
14 of the original point of diversion as specified in the water [use] **right** subject  
15 to transfer; or

16 “(b) The new point of diversion is not located within the distance re-  
17 quirements set forth in paragraph (a)(D) of this subsection, the holder of the  
18 water [use] **right** subject to transfer submits to the department evidence  
19 prepared by a licensed geologist that demonstrates that the use of the ground  
20 water at the new point of diversion will meet the criteria set forth in para-  
21 graph (a)(A) to (C) of this subsection.

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

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

27 “(b) The proposed change in the point of diversion will not result in en-  
28 largement of the original water right or in injury to other water right  
29 holders; and

30 “(c) The use of the new point of diversion will affect the surface water

1 source hydraulically connected to the authorized point of diversion specified  
2 in the water [use] **right** subject to transfer. The department may not require  
3 that the use of the new point of diversion affect the surface water source  
4 similarly to the authorized point of diversion specified in the water [use]  
5 **right** subject to transfer under this subsection.

6 “(4) All applicable restrictions that existed at the original point of di-  
7 version shall apply at the new point of diversion allowed under this section.

8 “(5) The new point of diversion shall retain the original date of priority.  
9 However, if within five years after approving the transfer, the department  
10 finds that the transfer results in substantial interference with existing  
11 ground water rights that would not have occurred in the absence of the  
12 transfer, the new point of diversion shall be subordinate to any existing right  
13 injured by the transferred water right or permit.

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

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

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

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

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

30 “(b) The persons to whom the department shall provide notice of the re-

1 ceipt of an application submitted under this section; and

2 “(c) The persons who may participate in the process of reviewing appli-  
3 cations submitted under this section.

4 “(9) As used in this section:

5 “(a) ‘Deschutes Basin ground water study area’ means the part of the  
6 Deschutes River Basin that is designated by the Water Resources Commis-  
7 sion by rule.

8 “(b) ‘Similarly’ means that the use of ground water at the new point of  
9 diversion affects the surface water source specified in the permit or certif-  
10 icated or decreed water right and would result in stream depletion of at least  
11 50 percent of the rate of appropriation within 10 days of continuous pumping.

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

13 “540.570. (1) Provided that the proposed transfer complies with all of the  
14 provisions of this subsection and will not result in injury to any existing  
15 water right, a district with a manager may, for one irrigation season, tem-  
16 porarily transfer the place of use of water appurtenant to any land within  
17 the legal boundaries of the district to an equal acreage elsewhere within the  
18 legal boundaries of that district or temporarily transfer the type of use  
19 identified in a right to store water. A temporary transfer of the place of use  
20 may occur if:

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

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

26 “(c) The land from which the water use is being transferred does not re-  
27 ceive any water under the right being transferred during the irrigation sea-  
28 son in which the change is made.

29 “(2) Provided that the proposed transfer complies with all the provisions  
30 of this subsection and will not result in injury to or enlargement of an ex-



1 isting water right, a district with a manager may, for one irrigation season,  
2 temporarily change the point of diversion or appropriation combined with a  
3 change in place of use, change the point of diversion in the event that an  
4 emergency prevents the district from diverting water from its authorized  
5 point of diversion, change the point of diversion to allow for the appropri-  
6 ation of ground water or change a primary right to a supplemental right if:

7 “(a) The land on which the water is to be used is within the district’s  
8 legal boundaries established pursuant to ORS chapter 545, 547, 552, 553 or  
9 554;

10 “(b) The other terms of the permit or certificate remain the same, in-  
11 cluding the beneficial use for which the water is used and the number of  
12 acres to which water is applied;

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

15 “(d) For a proposal to transfer the point of diversion to allow for the  
16 appropriation of ground water, the proposed change meets the standards set  
17 forth in ORS 540.531 (2).

18 “(3) When a district or an owner or an owner’s agent within a district  
19 who is subject to the charges or assessments of the district wishes to use  
20 water on alternate acreage within the district, if the district has approved  
21 the owner’s request, the district shall submit to the department a petition  
22 seeking a temporary transfer under this section. The district shall submit the  
23 petition prior to making the proposed change. The petition may contain  
24 changes to one or more tax lots within the district and shall:

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

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

30 “(c) Include a statement that a written authorization for the transfer from

1 each landowner affected by the particular temporary transfer is on file with  
2 the district;

3 “(d) Include any other information required by rules of the Water Re-  
4 sources Commission; and

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

6 “(4) The district shall notify each affected landowner that the department  
7 may reject the transfer or may require mitigation to avoid injury to other  
8 water rights. Upon receipt of a completed petition under subsection (3) of  
9 this section, the department shall place a summary of the petition in the  
10 weekly notice published by the department. The department shall accept  
11 written public comments on the petition for 30 days following publication  
12 of the weekly notice. The department shall consider comments that pertain  
13 to the potential for injury to an existing water right or to the enlargement  
14 of the water [*use*] **right** subject to transfer in determining whether to con-  
15 dition, reject or revoke a temporary transfer.

16 “(5) Use of water on lands from which the right is transferred and in the  
17 new temporary location during the same irrigation season or calendar year  
18 is prohibited and may subject the district and the landowner to civil penal-  
19 ties.

20 “(6) The department may condition, reject or revoke a temporary transfer  
21 at any time to the extent necessary to avoid injury if the department finds  
22 the transfer is causing injury to an existing water right.

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

28 “(8) The time during which water is used under an approved temporary  
29 transfer order does not apply toward a finding of forfeiture under ORS  
30 540.610.

1       **“SECTION 12.** Sections 23, chapter 705, Oregon Laws 2003, as amended  
2 by section 1, chapter 283, Oregon Laws 2009, and section 2, chapter 384,  
3 Oregon Laws 2015, is amended to read:

4       **“Sec. 23.** (1) In order to increase district water management flexibility,  
5 the Water Resources Department shall establish a pilot project in which  
6 districts may temporarily allow, for water [*uses*] **rights** subject to transfer,  
7 the use of water on any land within the legal boundaries of the district es-  
8 tablished pursuant to ORS chapter 545, 547, 552, 553 or 554.

9       “(2) The use of water on any land within the legal boundaries of the dis-  
10 trict may be allowed if:

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

14       “(b) The type of use authorized under the water [*use*] **right** subject to  
15 transfer is for irrigation and remains the same; and

16       “(c) The land from which the water use is being transferred does not re-  
17 ceive any water under the right being transferred during the irrigation sea-  
18 son in which the change is made.

19       “(3) The department shall allow the pilot project to be implemented in the  
20 Talent Irrigation District, the Owyhee Irrigation District, the Tualatin Val-  
21 ley Irrigation District, the Central Oregon Irrigation District, the Swalley  
22 Irrigation District, the Westland Irrigation District, the North Unit Irri-  
23 gation District, the Arnold Irrigation District, the Stanfield Irrigation Dis-  
24 trict, the West Extension Irrigation District, the Hermiston Irrigation  
25 District, the Medford Irrigation District, the Sutherlin Water Control Dis-  
26 trict, the Santiam Water Control District and the Ochoco Irrigation District  
27 or their successor districts. However, any district participating in the project  
28 must:

29       “(a) Have defined state district boundaries;

30       “(b) Have a management structure that can ensure that water is applied

1 only where the water use is authorized;

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

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

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

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

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

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

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

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

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

28 “(6) The department shall annually, prior to commencement of the irri-  
29 gation season, publish notice of the districts that might intend to make use  
30 of the pilot program during the year. The notice shall identify the districts

1 by name and provide the contact information for the watermasters for the  
2 districts. The department shall publish the notice by publication in the  
3 weekly notice published by the department.

4 “(7) Use of water under the pilot project constitutes a beneficial use of  
5 water and does not constitute nonuse for purposes of forfeiture under ORS  
6 540.610.

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

8 “540.580. (1) In accordance with this section, a district may by petition  
9 request that the Water Resources Department approve the permanent trans-  
10 fer of the place of use of water within a district as long as the proposed  
11 transfer complies with all of the following:

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

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

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

18 “(d) The land from which the water right is removed by the transfer shall  
19 receive no water under the transferred right.

20 “(2) A district may submit a petition for a permanent transfer prior to  
21 or subsequent to the change in place of use, but no later than the end of the  
22 calendar year in which the change occurs. The petition submitted by the  
23 district may include an unlimited number of transfers within the same peti-  
24 tion. A petition under this section shall:

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

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

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

4 “(d) Include any other information required by rules of the Water Re-  
5 sources Commission; and

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

8 “(3) If a district allows a change in the place of use of water before ob-  
9 taining the approval of the department, the district shall:

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

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

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

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

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

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

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

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

1       “(6) Within 15 days after the filing of a petition under subsection (2) of  
2 this section, the department shall include notice of the petition in the weekly  
3 notice published by the department. Within 30 days after the mailing of the  
4 department’s weekly notice, any potentially affected holder of an existing  
5 water right may file, jointly or severally, with the department, a protest  
6 against approval of the petition.

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

17       “(8) If a water user within the district files a protest claiming injury to  
18 a water right delivery by the district, no contested case hearing shall be re-  
19 quired, but the district shall resolve the matter directly with the water user.

20       “(9) After examination or hearing, the department shall issue an order  
21 approving the transfer if the proposed change can be effected without injury  
22 to existing water rights. If no hearing is scheduled under subsection (7) of  
23 this section, the order of the department shall be issued within 90 days after  
24 the date of the filing of the petition. If the proposed change cannot be ef-  
25 fected without injury to existing water rights, the department may condition  
26 approval, including requiring mitigation of the effects on other water rights,  
27 to the extent necessary to avoid injury. If a hearing is scheduled, the de-  
28 partment shall issue a final order within 120 days after scheduling the  
29 hearing.

30       “(10) Within 20 days after the director issues a final order under this

1 section, the district or any protestant may file with the commission ex-  
2 ceptions to the final order. The commission shall issue an order granting or  
3 denying the exceptions within 30 days after receiving the exceptions.

4 “(11) If a certificate covering the water right has been previously issued,  
5 the department may amend the certificate or may cancel the certificate and  
6 issue a new certificate preserving the previously established priority of  
7 rights and covering the authorized changes. If only a portion of the water  
8 right covered by the previous certificate is affected by the changes, a sepa-  
9 rate new certificate may be issued to cover the unaffected portion of the  
10 water right. A certificate as amended or issued under this section has the  
11 evidentiary effect provided for in ORS 537.270 as to the new lands except  
12 when the right to appropriate water described in the certificate is abandoned  
13 after the certificate is amended or issued.

14 “(12) Notwithstanding the provisions of subsection (2) of this section, a  
15 petition filed on or before December 31, 1996, may include all changes in  
16 place of use allowed by a district after July 1, 1992, and before November  
17 30, 1996.

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

19 “540.585. (1) In accordance with the provisions of this section, a person  
20 may request that the Water Resources Department approve the temporary  
21 transfer of the place of use and type of use and temporarily change the point  
22 of diversion if necessary to convey water to the new temporary place of use,  
23 of all or a portion of a water right, for a period not to exceed 25 years if:

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

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

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

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

29 “(B) A city, a quasi-municipal corporation, a domestic water supply dis-  
30 trict formed under ORS chapter 264, a water supplier as defined in ORS



1 448.115 or a water authority formed under ORS chapter 450;

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

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

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

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

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

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

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

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

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

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

26 “(5) The time during which water is used under an approved temporary  
27 transfer order does not apply toward a finding of forfeiture under ORS  
28 540.610.

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

1       “(a) The department finds that the transfer is causing injury to any ex-  
2       isting water right; or

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

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

8       “(8) The department may:

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

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

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

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

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