

D R A F T

SUMMARY

Digest: This Act makes changes to laws as they relate to some Columbia River water rights. (Flesch Readability Score: 67.5).

Authorizes holders of certain Columbia River water rights to change the point of diversion or use the water right on land to which the right is not appurtenant, provided certain conditions are met. Exempts certain Columbia River water rights from the application requirements for a change to the use of the water right, provided certain conditions are met.

Exempts the irrigation systems of intergovernmental entities, with respect to certain water rights, from the application of certain laws pertaining to irrigation ditches and reservoirs.

Authorizes the Mid-Columbia Water Commission to participate in the district water rights mapping process, with respect to certain water rights. Requires the commission to report to the Legislative Assembly on the effects of this Act for a period of ten years.

A BILL FOR AN ACT

1
2 Relating to water rights with points of diversion between river miles 252 and
3 303 on the Columbia River; creating new provisions; and amending ORS
4 537.211, 540.270, 540.520, 541.325, 541.327 and 541.329.

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

6 **SECTION 1.** ORS 537.211 is amended to read:

7 537.211. (1) The approval of an application referred to in ORS 537.140 or
8 537.400 shall be set forth in a water right permit issued by the Water Re-
9 sources Department. The permit shall specify the details of the authorized
10 use and shall set forth any terms, limitations and conditions as the depart-
11 ment considers appropriate including but not limited to any applicable con-
12 dition required under ORS 537.289. A copy of the permit shall be filed as a
13 public record in the department. The permit shall be mailed to the applicant,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 and upon receipt of the permit the permittee may proceed with the con-
2 struction of the necessary works and may take all action required to apply
3 the water to the designated beneficial use and to perfect the proposed ap-
4 propriation.

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

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

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

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

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

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

31 (d) Prior approval is obtained from the district if the water is transported

1 or conveyed by an irrigation district organized under ORS chapter 545, a
2 drainage district organized under ORS chapter 547, a water improvement
3 district organized under ORS chapter 552, a water control district organized
4 under ORS chapter 553 or a district improvement company or a corporation
5 organized under ORS chapter 554;

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

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

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

14 (5) The Water Resources Department may deny a change in the point of
15 appropriation under subsection (4) of this section if the proposed point of
16 appropriation is for a source of ground water restricted under ORS 536.415
17 and the proposed use is subject to the restrictions, unless the proposed point
18 of appropriation is:

19 (a)(A) In a critical ground water area designated under ORS 537.730;

20 (B) In the same aquifer as the existing point of appropriation; and

21 (C) In the same portion of the critical ground water area as the existing
22 point of appropriation;

23 (b) In an area for which a ground water bank that is established by law
24 or by rule mitigates the effects of the use of ground water; or

25 (c) Related to the recovery of stored ground water under an artificial re-
26 charge or aquifer storage and recovery project.

27 (6) Notwithstanding the requirements of subsection (4)(b) of this section,
28 the holder of a water right permit may change the place of use of all or any
29 portion of water under the permit to land that is not contiguous to the land
30 to which the permit is appurtenant if:

31 (a) The change to noncontiguous land is in furtherance of mitigation or

1 conservation efforts undertaken for the purposes of benefiting a species listed
2 as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the
3 federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as deter-
4 mined by the listing agency; and

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

6 **(7)(a) Notwithstanding the requirements of subsection (4) of this**
7 **section, the holder of a water right permit may change the point of**
8 **diversion or use the water right on land to which the right is not**
9 **appurtenant if the beneficial use authorized by the water right permit**
10 **is irrigation, the water right permit identifies all points of diversion**
11 **as being on the Columbia River between and inclusive of river miles**
12 **252 and 303 and the holder of the water right permit diverts the water**
13 **for irrigation at one or more points of diversion between and inclusive**
14 **of river miles 252 and 303, so long as there is no increase in the rate**
15 **or season of use.**

16 **(b) As used in this subsection, “irrigation” includes shoulder-season**
17 **and winter irrigation.**

18 [(7)] **(8)** For an application made by or on behalf of a public corporation,
19 the department may issue a permit approving the application without re-
20 quiring the applicant to obtain prior written authorization or an easement
21 permitting access to nonowned lands affected by the proposed project. How-
22 ever, nothing in this subsection shall be construed to allow any person to
23 trespass on the lands of another person.

24 [(8)] **(9)** When the department receives notice under subsection (4)(e) of
25 this section, the department shall publish the notice in the department’s
26 weekly public notice of water right applications.

27 [(9)] **(10)** If the use of water under the permit is for operation of a mining
28 operation as defined in ORS 517.952:

29 (a) Review of the application and approval or denial of the application
30 shall be coordinated with the consolidated application process under ORS
31 517.952 to 517.989. However, such review and approval or denial shall take

1 into consideration all policy considerations for the appropriation of water
2 as set forth in this chapter and ORS chapter 536.

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

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

10 [(10)] (11) As used in this section, "contiguous" includes land separated
11 from the land to which a water right is appurtenant by roads, utility corri-
12 dors, irrigation ditches or publicly owned rights of way.

13 **SECTION 2.** ORS 540.270 is amended to read:

14 540.270. (1) Nothing contained in ORS 540.210 to 540.260 shall be appli-
15 cable to the distribution of water from the irrigation systems or works of
16 irrigation districts or district improvement companies unless requested by
17 the district.

18 (2) **Nothing contained in ORS 540.210 to 540.260 shall be applicable**
19 **to the distribution of water from irrigation systems or works owned**
20 **or controlled by an intergovernmental entity organized under ORS**
21 **chapter 190, provided that the point of diversion of the water is on the**
22 **Columbia River between and inclusive of river miles 252 and 303.**

23 (3) Distribution of water from [*such*] irrigation systems or works **de-**
24 **scribed in subsections (1) or (2) of this section** shall be under the exclu-
25 sive control of the directors of the irrigation districts, [*and*] district
26 improvement companies **or intergovernmental entities** unless the
27 watermaster has been requested by the district **or entity** to distribute the
28 water.

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

30 540.520. (1)(a) Except when the application is made under ORS 541.327 or
31 when an application for a temporary transfer is made under ORS 540.523, if

1 the holder of a water use subject to transfer for irrigation, domestic use,
2 manufacturing purposes, or other use, for any reason desires to change the
3 place of use, the point of diversion, or the use made of the water, an appli-
4 cation to make such change, as the case may be, shall be filed with the
5 Water Resources Department.

6 (b) A holder of a water right certificate that authorizes the storage of
7 water may change the type of use identified in the water right certificate,
8 as described in this section.

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

11 (a) The name of the owner;

12 (b) The previous use of the water;

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

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

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

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

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

21 (3) If the application required under subsection (1) of this section is nec-
22 essary to allow a change in a water right pursuant to ORS 537.348, is nec-
23 essary to complete a project funded under ORS 541.932, or is approved by the
24 State Department of Fish and Wildlife as a change that will result in a net
25 benefit to fish and wildlife habitat, the Water Resources Department, at the
26 discretion of the Water Resources Director, may waive or assist the appli-
27 cant in satisfying the requirements of subsection (2)(c) and (d) of this section.
28 The assistance provided by the department may include, but need not be
29 limited to, development of an application map.

30 (4) If the application is to change the point of diversion, the transfer shall
31 include a condition that the holder of the water right provide a proper fish

1 screen at the new point of diversion, if requested by the State Department
2 of Fish and Wildlife.

3 (5) The Water Resources Department shall undertake an initial review of
4 an application under subsection (1) of this section.

5 (6)(a) Upon completion of the initial review, the department shall notify
6 the applicant of its preliminary determinations, identify any outstanding in-
7 formation that is necessary to continue processing the application and allow
8 the applicant 30 days from the date of notice to:

9 (A) Notify the department to stop processing the application; or

10 (B) Notify the department to continue processing the application and
11 provide any outstanding information to the department.

12 (b) If, within 30 days from the date of the notice, the applicant does not
13 notify the department as provided in paragraph (a) of this subsection, does
14 not provide all outstanding information as provided in paragraph (a)(B) of
15 this subsection or notifies the department to stop processing the application,
16 the department shall close the file for the application and take no further
17 action on the application. The department may allow an applicant up to 60
18 additional days to provide outstanding information if the applicant requests
19 additional time and the department determines that the applicant is under-
20 taking reasonable efforts to provide the information in a timely manner to
21 the department.

22 (c) If, within 30 days from the date of the notice or an additional time
23 period allowed under paragraph (b) of this subsection, the applicant notifies
24 the department to proceed with the application and provides any outstanding
25 information necessary to continue processing the application, the department
26 shall:

27 (A) Proceed with processing the application.

28 (B) Give notice of the initial review in the weekly public notice of the
29 department and accept written public comments for 30 days.

30 (7) Upon issuance of a proposed final order, the department shall give
31 notice of the order in the weekly public notice of the department. If the de-

1 partment determines that more than five water rights would be injured as a
2 result of the change proposed in an application under subsection (1) of this
3 section, the department shall publish notice once each week for two consec-
4 utive weeks in a newspaper of general circulation in the area in which the
5 water rights are located. The cost of the publication shall be paid by the
6 applicant in advance to the department.

7 (8) Within 30 days after the publication in the department's weekly public
8 notice any person may file a protest against the proposed final order.

9 (9) The provisions of ORS 536.076 and 536.077, and rules adopted there-
10 under, apply to a contested case proceeding on a proposed final order issued
11 under this section.

12 (10) If in the opinion of the Water Resources Director a hearing is nec-
13 essary to determine whether the proposed changes as described by the ap-
14 plication would result in injury to existing water rights, the department
15 shall hold a hearing on the matter.

16 (11) An application for a change of use under this section is not required
17 if the beneficial use authorized by the water use subject to transfer is irri-
18 gation and the owner of the water right uses the water for incidental agri-
19 cultural, stock watering and other uses related to irrigation use, so long as
20 there is no increase in the rate, duty, total acreage benefited or season of
21 use.

22 **(12)(a) An application for a change of use under this section is not**
23 **required if the beneficial use authorized by the water use subject to**
24 **transfer is irrigation, the water use subject to transfer identifies all**
25 **points of diversion as being on the Columbia River between and in-**
26 **clusive of river miles 252 and 303 and the owner of the water right di-**
27 **verts the water for irrigation at one or more points of diversion**
28 **between and inclusive of river miles 252 and 303, so long as there is**
29 **no increase in the rate or season of use.**

30 **(b) As used in this subsection, "irrigation" includes shoulder-season**
31 **and winter irrigation.**

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

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

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

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

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

15 (B) The water right certificate number;

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

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

21 **SECTION 4.** ORS 541.325 is amended to read:

22 541.325. As used in ORS 541.327 to 541.333:

23 (1) "District" means:

24 (a) Any district or corporation organized under ORS chapter 545, 547, 552,
25 553 or 554 or any corporation, cooperative, company or other association
26 formed before 1917 for the purpose of distributing water for irrigation
27 purposes[.]; **or**

28 (b) **Any intergovernmental entity organized under ORS chapter 190**
29 **that is established for the purpose of distributing water for irrigation.**

30 (2) "Owned" or "controlled" means ownership in fee, purchase on a land
31 sale contract, option to purchase or lease.

1 (3) "User" means an owner of land with an appurtenant water right that
2 is subject to assessment by a district and that would be altered by the peti-
3 tion and map filed under ORS 541.329.

4 **SECTION 5.** ORS 541.327 is amended to read:

5 541.327. (1) If a district fails or refuses to act under ORS 541.329 and
6 541.331, the owner of land with an appurtenant water right within a district
7 and subject to assessment by the district may transfer the use or place of
8 use of the water right on or before July 1, 1994, pursuant to ORS 541.333.
9 An owner transferring the use or place of use under this subsection shall
10 comply with ORS 536.050.

11 (2) If the owners of land within a quarter quarter of a section in a district
12 agree as to the use and place of use of all water rights in the quarter quarter
13 of the section subject to assessment by the district, the owners may jointly
14 submit an application, without the fees required under ORS 536.050, to the
15 Water Resources Department to conform the department's records to the
16 present usage within the quarter quarter of a section. The application must
17 be filed in accordance with ORS 541.333 on or before July 1, 1994.

18 (3) The district or users within a district authorized to participate in the
19 process described under ORS 541.325 to 541.333 shall be limited to those dis-
20 tricts or users who have notified the department on or before July 1, 1993,
21 of their intention to submit a petition.

22 (4) Notwithstanding subsection (3) of this section, the Walla Walla River
23 Irrigation District, or its successor district formed under ORS chapter 545
24 and created after July 1, 1994, may participate in the process described under
25 ORS 541.325 to 541.333 if the district notifies the department on or before
26 June 30, 2004.

27 **(5) Notwithstanding subsection (3) of this section, if the Mid-**
28 **Columbia Water Commission, or its successor district, notifies the**
29 **department on or before June 30, 2027, the commission may participate**
30 **in the process described under ORS 541.325 to 541.333 with respect to**
31 **water rights for which the point of diversion is on the Columbia River**

1 **between and inclusive of river miles 252 and 303.**

2 **SECTION 6.** ORS 541.329 is amended to read:

3 541.329. (1) Pursuant to the requirements of subsection (2) of this section,
4 a district may petition the Water Resources Commission for approval and
5 acceptance of a district map indicating the location and use of the water
6 rights within the district or any part thereof. The petition and map shall be
7 in a form satisfactory to the commission and shall be certified by the district
8 rather than a certified water right examiner. For a district that notifies the
9 Water Resources Department under ORS 541.327 (4) **or (5)**, the map must be
10 submitted in an electronic format meeting the standards set by the depart-
11 ment. The petition and map may not expand a water right of the district or
12 its users beyond the total right of record of the district. If the district has
13 met the requirements of ORS 541.325 to 541.331 and after the opportunity for
14 hearing under ORS 541.331, the commission shall instruct the director to is-
15 sue a new certificate **or permit** to the district listing the requested locations
16 and uses and retaining the original priority date. If the commission denies
17 the petition, the commission shall hold a hearing on the denial. Notice and
18 conduct of the hearing shall be under the provisions of ORS chapter 183
19 pertaining to contested cases. The hearing shall be conducted in the area
20 where the right is located unless the parties and the persons who file the
21 protest under this section stipulate otherwise.

22 (2) The petition required under subsection (1) of this section shall be
23 submitted on or before July 1, 1994, [or] before June 30, 2010, for a district
24 notifying the department under ORS 541.327 (4), **or before June 30, 2028,**
25 **for a district notifying the department under ORS 541.327 (5)**, and shall
26 include:

27 (a) The name of the district and the certificate **or permit** number of each
28 water right contained in the petition.

29 (b) The names of all users within the district whose lands are included
30 in the petition.

31 (c) A general description of the district boundaries.

1 (d) A general description of the users' land and all water rights per each
2 parcel affected by the petition and the map. If the water right is on a tract
3 of land of five acres or less, a notation of the acres of water right on the
4 assessor's tax map shall be sufficient for identification of the place of use
5 and the extent of use.

6 (e) A description of the use that is proposed to be made of the water on
7 each parcel.

8 (f) An affirmation by the petitioner that the map and petition are accu-
9 rate to the best of the petitioner's knowledge.

10 (3) A petition submitted under this section shall contain no more acres
11 of land than the least of the following:

12 (a) The number of acres assessed by the district as of July 1, 1989;

13 (b) The number of acres assessed by the district as of July 1, 1993; *[or]*

14 (c) If a district notifies the department under ORS 541.327 (4), the number
15 of acres assessed by the district as of December 31, 2003[.]; **or**

16 **(d) If a district notifies the department under ORS 541.327 (5), the**
17 **number of acres within the boundary of the district as of December**
18 **31, 2025. The boundaries of a district subject to this paragraph may for**
19 **administrative convenience encompass lands that are not subject to**
20 **the charges and assessments of the district, without regard to whether**
21 **the lands are susceptible to irrigation. An owner whose land is within**
22 **the boundaries of a district subject to this paragraph and that is not**
23 **subject to the charges and assessments of the district does not have**
24 **the rights or duties under ORS 541.325 to 541.333 of an elector, member**
25 **or owner of land.**

26 (4) Before submitting a petition under subsection (2) of this section, the
27 district shall send a notice to the user of every parcel whose right of record
28 is to be altered, as evidenced by the district's records. This notice shall be
29 sent to the last-known address for the user with a return receipt requested.
30 The notice shall include the number of acre-feet of water or its equivalent,
31 for which the user is being assessed, a general description or tax lot of the

1 land to which the water is assigned, a description of the use and a request
2 for confirmation that the information in the notice is correct. Thirty days
3 after the notice is mailed, the district shall prepare a petition and map as
4 described in subsections (1) and (2) of this section. Payment for water by the
5 user or the user's predecessor for a period of five years before the petition
6 shall create a rebuttable presumption that the number of acres billed and
7 paid by the user or the user's predecessor is equal to the user's water right.

8 (5) Within 30 days after the commission issues a proposed order regarding
9 the petition, the district shall send notice to the users of the district whose
10 right of record is to be altered by the proposed order. This notice shall be
11 sent to the last-known address of the user with a return receipt requested.
12 The notice shall include the number of acres of land, or its equivalent, for
13 which the user is being assessed, a general description or tax lot number of
14 the land to which the water is assigned and a description of the use. In ad-
15 dition to the notice of the proposed order that the district sends to the users,
16 the district shall publish at the same time notice in a newspaper having
17 general circulation in the area in which the water rights are located for a
18 period of at least two weeks. Not less than one publication in each week
19 shall be made. The notice shall state:

20 (a) The number of acres of water right that each parcel shall receive and
21 the associated priority dates;

22 (b) That the proposed map and order are available for inspection at the
23 office of the district during normal business hours for a period of 60 days
24 from the date of first publication;

25 (c) That not less than 60 days after the date of first publication, the
26 commission shall approve the petition and map and issue a final order unless
27 a protest is filed or the petition does not meet the requirements of sub-
28 sections (1) and (2) of this section; and

29 (d) That the user has the right to protest the proposed order and map as
30 described in ORS 541.331.

31 (6) If the commission returns a petition or map to a district for correction,

1 the commission may prescribe a deadline for the petitioner to provide addi-
2 tional information or correct the petition or map. If the petitioner fails to
3 meet the deadline prescribed by the commission, the commission may deny
4 the petition.

5 **SECTION 7. For a period of ten years following the date on which**
6 **the Mid-Columbia Water Commission or its successor district provides**
7 **notice to the Water Resources Department under ORS 541.327, the**
8 **commission or its successor shall provide an annual report, in the**
9 **manner provided by ORS 192.245, to the committees or interim com-**
10 **mittees of the Legislative Assembly related to water. The report must**
11 **include:**

12 (1) **The number of properties that obtained access to the benefits**
13 **of the regional water systems that would not have otherwise secured**
14 **access but for the amendments to statutes by sections 1 to 6 of this**
15 **2026 Act;**

16 (2) **The number of acre-feet of avoided groundwater use due to**
17 **landowners that obtained access to the benefits of the regional water**
18 **systems that would not have otherwise been avoided but for the**
19 **amendments to statutes by sections 1 to 6 of this 2026 Act; and**

20 (3) **The integration value of the implementation of the amendments**
21 **to statutes by sections 1 to 6 of this 2026 Act, including those instances**
22 **in which municipal, industrial or agricultural water needs and users**
23 **shared infrastructure to optimize investments in water infrastructure**
24 **and water rights.**

25
