

House Bill 4006

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Agriculture, Land Use, Natural Resources, and Water for Representatives Ken Helm, Mark Owens)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

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 10 years.

A BILL FOR AN ACT

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

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

SECTION 1. ORS 537.211 is amended to read:

537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set forth in a water right permit issued by the Water Resources Department. The permit shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the department considers appropriate including but not limited to any applicable condition required under ORS 537.289. A copy of the permit shall be filed as a public record in the department. The permit shall be mailed to the applicant, and upon receipt of the permit the permittee may proceed with the construction of the necessary works and may take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation.

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

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

(4) The holder of a water right permit may change the point of diversion, change the point of

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 appropriation, change the point of diversion to allow the appropriation of ground water or use the
2 water on land to which the right is not appurtenant if:

3 (a) The use of water on land to which the right is not appurtenant, the change of point of di-
4 version or the change in point of appropriation does not result in injury to an existing water right;

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

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

10 (d) Prior approval is obtained from the district if the water is transported or conveyed by an
11 irrigation district organized under ORS chapter 545, a drainage district organized under ORS chap-
12 ter 547, a water improvement district organized under ORS chapter 552, a water control district
13 organized under ORS chapter 553 or a district improvement company or a corporation organized
14 under ORS chapter 554;

15 (e) The holder of the permit provides written notice to the department at least 60 days before
16 making any changes to the lands, point of diversion or point of appropriation described in the per-
17 mit;

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

20 (g) For a request to transfer the point of diversion to allow the appropriation of ground water,
21 the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

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

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

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

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

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

31 (c) Related to the recovery of stored ground water under an artificial recharge or aquifer stor-
32 age and recovery project.

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

36 (a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts
37 undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered
38 under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544),
39 as determined by the listing agency; and

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

41 **(7)(a) Notwithstanding the requirements of subsection (4) of this section, the holder of a**
42 **water right permit may change the point of diversion or use the water right on land to which**
43 **the right is not appurtenant if the beneficial use authorized by the water right permit is ir-**
44 **rigation, the water right permit identifies all points of diversion as being on the Columbia**
45 **River between and inclusive of river miles 252 and 303 and the holder of the water right**

1 **permit diverts the water for irrigation at one or more points of diversion between and in-**
 2 **clusive of river miles 252 and 303, so long as there is no increase in the rate or season of use.**

3 **(b) As used in this subsection, “irrigation” includes shoulder-season and winter irri-**
 4 **gation.**

5 [(7)] (8) For an application made by or on behalf of a public corporation, the department may
 6 issue a permit approving the application without requiring the applicant to obtain prior written
 7 authorization or an easement permitting access to nonowned lands affected by the proposed project.
 8 However, nothing in this subsection shall be construed to allow any person to trespass on the lands
 9 of another person.

10 [(8)] (9) When the department receives notice under subsection (4)(e) of this section, the de-
 11 partment shall publish the notice in the department’s weekly public notice of water right applica-
 12 tions.

13 [(9)] (10) If the use of water under the permit is for operation of a mining operation as defined
 14 in ORS 517.952:

15 (a) Review of the application and approval or denial of the application shall be coordinated with
 16 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-
 17 proval or denial shall take into consideration all policy considerations for the appropriation of water
 18 as set forth in this chapter and ORS chapter 536.

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

21 (c) The permit shall include a condition that additional conditions may be added to the use of
 22 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
 23 540.520 and 540.530 to use for a mine.

24 [(10)] (11) As used in this section, “contiguous” includes land separated from the land to which
 25 a water right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights
 26 of way.

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

28 540.270. (1) Nothing contained in ORS 540.210 to 540.260 shall be applicable to the distribution
 29 of water from the irrigation systems or works of irrigation districts or district improvement com-
 30 panies unless requested by the district.

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

35 **(3) Distribution of water from [such] irrigation systems or works described in subsection (1)**
 36 **or (2) of this section shall be under the exclusive control of the directors of the irrigation**
 37 **districts, [and] district improvement companies or intergovernmental entities unless the**
 38 **watermaster has been requested by the district or entity to distribute the water.**

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

40 540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application
 41 for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer
 42 for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change
 43 the place of use, the point of diversion, or the use made of the water, an application to make such
 44 change, as the case may be, shall be filed with the Water Resources Department.

45 (b) A holder of a water right certificate that authorizes the storage of water may change the

1 type of use identified in the water right certificate, as described in this section.

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

3 (a) The name of the owner;

4 (b) The previous use of the water;

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

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

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

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

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

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

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

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

24 (6)(a) Upon completion of the initial review, the department shall notify the applicant of its
25 preliminary determinations, identify any outstanding information that is necessary to continue pro-
26 cessing the application and allow the applicant 30 days from the date of notice to:

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

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

30 (b) If, within 30 days from the date of the notice, the applicant does not notify the department
31 as provided in paragraph (a) of this subsection, does not provide all outstanding information as
32 provided in paragraph (a)(B) of this subsection or notifies the department to stop processing the
33 application, the department shall close the file for the application and take no further action on the
34 application. The department may allow an applicant up to 60 additional days to provide outstanding
35 information if the applicant requests additional time and the department determines that the appli-
36 cant is undertaking reasonable efforts to provide the information in a timely manner to the depart-
37 ment.

38 (c) If, within 30 days from the date of the notice or an additional time period allowed under
39 paragraph (b) of this subsection, the applicant notifies the department to proceed with the applica-
40 tion and provides any outstanding information necessary to continue processing the application, the
41 department shall:

42 (A) Proceed with processing the application.

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

45 (7) Upon issuance of a proposed final order, the department shall give notice of the order in the

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

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

8 (9) The provisions of ORS 536.076 and 536.077, and rules adopted thereunder, apply to a con-
 9 tested case proceeding on a proposed final order issued under this section.

10 (10) If in the opinion of the Water Resources Director a hearing is necessary to determine
 11 whether the proposed changes as described by the application would result in injury to existing
 12 water rights, the department shall hold a hearing on the matter.

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

17 **(12)(a) An application for a change of use under this section is not required if the bene-**
 18 **facial use authorized by the water use subject to transfer is irrigation, the water use subject**
 19 **to transfer identifies all points of diversion as being on the Columbia River between and in-**
 20 **clusive of river miles 252 and 303 and the owner of the water right diverts the water for ir-**
 21 **rigation at one or more points of diversion between and inclusive of river miles 252 and 303,**
 22 **so long as there is no increase in the rate or season of use.**

23 **(b) As used in this subsection, "irrigation" includes shoulder-season and winter irri-**
 24 **gation.**

25 [(12)] (13) A water right transfer under subsection (1) of this section is not required for a gen-
 26 eral industrial use that was not included in a water right certificate issued for a specific industrial
 27 use if:

28 (a) The quantity of water used for the general industrial use is not greater than the rate allowed
 29 in the original water right and not greater than the quantity of water diverted to satisfy the au-
 30 thorized specific use under the original water right;

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

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

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

36 (B) The water right certificate number;

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

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

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

41 541.325. As used in ORS 541.327 to 541.333:

42 (1) "District" means:

43 **(a)** Any district or corporation organized under ORS chapter 545, 547, 552, 553 or 554 or any
 44 corporation, cooperative, company or other association formed before 1917 for the purpose of dis-
 45 tributing water for irrigation purposes[.]; **or**

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

3 (2) “Owned” or “controlled” means ownership in fee, purchase on a land sale contract, option
 4 to purchase or lease.

5 (3) “User” means an owner of land with an appurtenant water right that is subject to assessment
 6 by a district and that would be altered by the petition and map filed under ORS 541.329.

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

8 541.327. (1) If a district fails or refuses to act under ORS 541.329 and 541.331, the owner of land
 9 with an appurtenant water right within a district and subject to assessment by the district may
 10 transfer the use or place of use of the water right on or before July 1, 1994, pursuant to ORS
 11 541.333. An owner transferring the use or place of use under this subsection shall comply with ORS
 12 536.050.

13 (2) If the owners of land within a quarter quarter of a section in a district agree as to the use
 14 and place of use of all water rights in the quarter quarter of the section subject to assessment by
 15 the district, the owners may jointly submit an application, without the fees required under ORS
 16 536.050, to the Water Resources Department to conform the department’s records to the present
 17 usage within the quarter quarter of a section. The application must be filed in accordance with ORS
 18 541.333 on or before July 1, 1994.

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

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

26 **(5) Notwithstanding subsection (3) of this section, if the Mid-Columbia Water Commis-**
 27 **sion, or its successor district, notifies the department on or before June 30, 2027, the com-**
 28 **mission may participate in the process described under ORS 541.325 to 541.333 with respect**
 29 **to water rights for which the point of diversion is on the Columbia River between and in-**
 30 **clusive of river miles 252 and 303.**

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

32 541.329. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition
 33 the Water Resources Commission for approval and acceptance of a district map indicating the lo-
 34 cation and use of the water rights within the district or any part thereof. The petition and map shall
 35 be in a form satisfactory to the commission and shall be certified by the district rather than a cer-
 36 tified water right examiner. For a district that notifies the Water Resources Department under ORS
 37 541.327 (4) **or (5)**, the map must be submitted in an electronic format meeting the standards set by
 38 the department. The petition and map may not expand a water right of the district or its users be-
 39 yond the total right of record of the district. If the district has met the requirements of ORS 541.325
 40 to 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct
 41 the director to issue a new certificate **or permit** to the district listing the requested locations and
 42 uses and retaining the original priority date. If the commission denies the petition, the commission
 43 shall hold a hearing on the denial. Notice and conduct of the hearing shall be under the provisions
 44 of ORS chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where
 45 the right is located unless the parties and the persons who file the protest under this section stip-

ulate otherwise.

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

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

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

(c) A general description of the district boundaries.

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

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

(f) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

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

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

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

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

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

(4) Before submitting a petition under subsection (2) of this section, the district shall send a notice to the user of every parcel whose right of record is to be altered, as evidenced by the district's records. This notice shall be sent to the last-known address for the user with a return receipt requested. The notice shall include the number of acre-feet of water or its equivalent, for which the user is being assessed, a general description or tax lot of the land to which the water is assigned, a description of the use and a request for confirmation that the information in the notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as described in subsections (1) and (2) of this section. Payment for water by the user or the user's predecessor for a period of five years before the petition shall create a rebuttable presumption that the number of acres billed and paid by the user or the user's predecessor is equal to the user's water right.

(5) Within 30 days after the commission issues a proposed order regarding the petition, the district shall send notice to the users of the district whose right of record is to be altered by the proposed order. This notice shall be sent to the last-known address of the user with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the user

1 is being assessed, a general description or tax lot number of the land to which the water is assigned
2 and a description of the use. In addition to the notice of the proposed order that the district sends
3 to the users, the district shall publish at the same time notice in a newspaper having general cir-
4 culation in the area in which the water rights are located for a period of at least two weeks. Not
5 less than one publication in each week shall be made. The notice shall state:

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

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

10 (c) That not less than 60 days after the date of first publication, the commission shall approve
11 the petition and map and issue a final order unless a protest is filed or the petition does not meet
12 the requirements of subsections (1) and (2) of this section; and

13 (d) That the user has the right to protest the proposed order and map as described in ORS
14 541.331.

15 (6) If the commission returns a petition or map to a district for correction, the commission may
16 prescribe a deadline for the petitioner to provide additional information or correct the petition or
17 map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may
18 deny the petition.

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

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

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

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