

House Bill 3501

Sponsored by Representative 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: The Act is about changing aspects of certain water rights. (Flesch Readability Score: 69.7).

Prohibits the consideration of whether certain changes related to water rights would impair or be detrimental to the public interest.

A BILL FOR AN ACT

1
2 Relating to water rights; amending ORS 536.900, 537.211, 540.510, 540.520, 540.523, 540.524, 540.530,
3 540.531, 540.570 and 540.990.

4 Whereas the Legislative Assembly, acting in the best interests of the citizens of Oregon, has
5 determined that water right transfers must be processed quickly, that existing protections against
6 injury to and enlargement of water rights are sufficient to protect water rights and the environment
7 and that the water right transfer protest process should not be abused by transfer opponents to
8 slow, or increase the cost of, a water right transfer; now, therefore,

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

10 **SECTION 1.** ORS 540.510 is amended to read:

11 540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this
12 state for any purpose shall remain appurtenant to the premises upon which it is used and no change
13 in use or place of use of any water for any purpose may be made without compliance with the pro-
14 visions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may,
15 upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use,
16 the point of diversion or the use of the water without losing priority of the right. A district may
17 change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method
18 provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for
19 a primary water right is submitted in accordance with this section, the applicant also shall indicate
20 whether the land described in the application has an appurtenant supplemental water right or per-
21 mit. If the applicant also intends to transfer the supplemental water right or permit, the applicant
22 also shall include the information required under ORS 540.520 (2) for the supplemental water right
23 or permit. If the applicant does not include the supplemental water right or permit in the transfer
24 application, the Water Resources Department shall notify the applicant that the supplemental water
25 right or permit will be canceled before the department issues the order approving the transfer of the
26 primary water right, unless within 30 days the applicant modifies the application to include the
27 supplemental water right or permit or withdraws the application. The department may approve the
28 transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520
29 and 540.530. The department shall not approve the transfer of a supplemental water right or permit
30 if the transfer would result in enlargement of the original water right or injury to an existing water

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 right. If the department approves the transfer of the primary water right but does not approve the
 2 transfer of the supplemental water right or permit, the department shall notify the applicant of the
 3 department's intent to cancel that portion of the supplemental water right or permit described in the
 4 transfer application before the department issues the primary water right transfer order, unless the
 5 applicant withdraws the transfer application within 90 days.

6 (b) A holder of a water right certificate that authorizes the storage of water may change the
 7 type of use identified in the water right certificate, as described in paragraph (a) of this subsection,
 8 without losing priority of the right.

9 (2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated
 10 by the Water Resources Commission under ORS 537.470 may be severed from the land and trans-
 11 ferred or sold after notice to the commission as required under ORS 537.490.

12 (3)(a) Any water used under a permit or certificate issued to a municipality, or under rights
 13 conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may
 14 be applied to beneficial use on lands to which the right is not appurtenant if:

15 (A) The water is applied to lands which are acquired by annexation or through merger, consol-
 16 idation or formation of a water authority, so long as the rate and use of water allowed in the ori-
 17 ginal certificate is not exceeded;

18 (B) The use continues to be for municipal purposes and would not interfere with or impair prior
 19 vested water rights; or

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

22 (b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to
 23 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter
 24 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

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

28 (5) The relocation of a point of diversion as necessary to follow the movements of a naturally
 29 changing stream channel does not constitute a change in point of diversion for purposes of ORS
 30 540.520 if:

31 (a) The diversion point stays within 500 feet of the point of diversion on record with the Water
 32 Resources Department;

33 (b) The change does not move the diversion point upstream or downstream beyond the diversion
 34 point of another appropriator; and

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

37 (6)(a) In the event that government action results in or creates a reasonable expectation of a
 38 change in the surface level of a surface water source that impairs or threatens to impair access to
 39 a point of diversion authorized by a water right permit, certificate or decree, the owner of the water
 40 right may change the point of diversion or add an additional point of diversion in accordance with
 41 the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530.

42 (b) Before changing the point of diversion **under this subsection**, the water right owner shall
 43 provide written notice of *[the]* a proposed change to the Water Resources Department.

44 (c) Within 15 days after receipt of *[such]* a **written notice of a proposed change described in**
 45 **paragraph (b) of this subsection**, the department shall provide notice by publication in the

1 department's public notice of water right applications.

2 (d) Within 60 days after the department receives a **written notice of a proposed change de-**
 3 **scribed in paragraph (b) of this subsection** [from the owner], the Water Resources Director, by
 4 order, shall approve the change, **without considering whether the change will impair or be**
 5 **detrimental to the public interest**, unless the director finds the [changes] **change** will result in
 6 injury to other existing water rights.

7 (e) **After a change is approved pursuant to paragraph (d) of this subsection**, all other
 8 terms and conditions of the water right shall remain in effect.

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

11 (8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be sub-
 12 sequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without
 13 application for a change in use or place of use under this section.

14 **SECTION 2.** ORS 540.520 is amended to read:

15 540.520. (1)(a) Except when the application is made under ORS 541.327 or when an application
 16 for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer
 17 for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change
 18 the place of use, the point of diversion, or the use made of the water, an application to make such
 19 change, as the case may be, shall be filed with the Water Resources Department.

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

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

23 (a) The name of the owner;

24 (b) The previous use of the water;

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

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

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

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

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

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

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

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

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

6 **(b) The Water Resources Director shall issue an order approving or denying the proposed**
 7 **changes within 120 days after the department receives the complete application, unless the**
 8 **applicant requests one or more extensions, specifying a number of days for the extension or**
 9 **extensions, of up to 125 additional days. Neither the department nor the director may compel**
 10 **an applicant to waive the 120-day period as a condition for taking an action on an application**
 11 **under this section. Notwithstanding any contrary provision of law, an application that is not**
 12 **the subject of an order within the time frames described in this paragraph is approved.**

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

16 **(b) Notwithstanding ORS 536.050 (1)(j), the fee to submit a protest described in paragraph**
 17 **(a) of this subsection shall be \$10,000 if the protest is by a nonapplicant, unless the nonap-**
 18 **plicant is:**

19 **(A) A landowner within the hydrologic basin in which the water right subject to transfer**
 20 **is located; or**

21 **(B) Is the holder of an instream water right within the hydrologic basin in which the**
 22 **water right subject to transfer is located.**

23 (7)(a) If a timely protest is filed, or in the opinion of the [*Water Resources*] director a hearing
 24 is necessary to determine whether the proposed changes as described by the application would re-
 25 sult in injury to existing water rights, the department shall hold a hearing on the matter.

26 **(b) Notice and conduct of the hearing described in paragraph (a) of this subsection shall be**
 27 **under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area**
 28 **where the rights are located unless all parties and persons who filed a protest under this subsection**
 29 **stipulate otherwise.**

30 **(c) Notwithstanding paragraph (b) of this subsection and any other contrary provision**
 31 **of law, at a hearing described in this subsection:**

32 **(A) The only issue that may be considered is whether the proposed changes as described**
 33 **by the application would result in injury to existing water rights.**

34 **(B) Whether the proposed changes as described by the application would impair or be**
 35 **detrimental to the public interest may not be considered.**

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

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

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

45 (b) The location where the water is to be used for general industrial use was owned by the

1 holder of the original water right at the time the water right permit was issued; and

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

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

5 (B) The water right certificate number;

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

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

9 **SECTION 3.** ORS 540.523 is amended to read:

10 540.523. (1) In accordance with the provisions of this section, any person who holds a water use
11 subject to transfer may request that the Water Resources Department approve the temporary
12 transfer of place of use and, if necessary to convey water to the new temporary place of use, tem-
13 porarily change the point of diversion or point of appropriation for a period not to exceed five years.
14 An application for a temporary transfer shall:

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

16 (b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS
17 536.050;

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

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

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

23 **(b) In deciding whether to approve a request for a temporary transfer under this section,**
24 **the department may not consider whether the proposed change would impair or be detri-**
25 **mental to the public interest.**

26 (3) All uses of water for which a temporary transfer is allowed under this section shall revert
27 automatically to the terms and conditions of the water use subject to transfer upon expiration of the
28 temporary transfer period.

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

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

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

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

37 (8) When an application for a temporary change of the place of use for a primary water right
38 is submitted in accordance with this section, the applicant also shall indicate whether the land de-
39 scribed in the application has an appurtenant supplemental water right or permit. If the applicant
40 also intends to temporarily transfer the supplemental water right or permit, the applicant also shall
41 include the information required under ORS 540.520 (2) for the supplemental water right or permit.
42 If the applicant does not include the supplemental water right or permit in the temporary transfer
43 application, the Water Resources Department shall notify the applicant that the supplemental water
44 right or permit will be canceled before the department issues the order approving the temporary
45 transfer of the primary water right, unless within 30 days the applicant modifies the application to

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

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

17 **SECTION 4.** ORS 540.524 is amended to read:

18 540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an application submitted
19 to the Water Resources Department, the holder of both a primary water right originating from a
20 surface water source and a supplemental water right permit or certificate originating from a ground
21 water source may substitute the use of the supplemental water right for the primary water right.
22 A substitution may not be made under this subsection if the use of the supplemental water right
23 results in an enlargement or expansion of the primary water right. This subsection does not au-
24 thorize a change in place of use, type of use, point of diversion or point of appropriation.

25 (2) An application required under subsection (1) of this section shall be submitted on forms
26 provided by the department. The department may request additional information if necessary to
27 assist with the injury evaluation. Each application shall be submitted with the fee described in ORS
28 536.050 (1)(s).

29 (3) Upon receiving an application under subsection (1) of this section, the department shall
30 provide notice, accept protests and conduct hearings on protests in the manner described in ORS
31 540.520 (5), (6) and (7).

32 (4)(a) The Water Resources Director shall issue an order approving or denying the substitution.
33 If the proposed substitution will result in injury to other water rights, the director shall prohibit
34 or condition the use to avoid or mitigate the injury. The director shall issue an order approving or
35 denying the substitution within 90 days after the department receives an application under sub-
36 section (1) of this section.

37 **(b) In deciding whether to approve or deny a substitution under this section, the director**
38 **may not consider whether the substitution would impair or be detrimental to the public in-**
39 **terest.**

40 (5) For the purpose of ORS 540.610, a substituted primary surface water right shall be treated
41 as a supplemental water right, and a substituted supplemental ground water right shall be treated
42 as a primary water right.

43 (6) A completed and approved substitution of a supplemental ground water right for a primary
44 surface water right under this section may be terminated upon a request by the water right holder
45 or by an order of the director if the director determines that the use of the ground water as the

1 primary water right causes injury to other water rights. Upon termination, the substituted primary
2 and supplemental water rights shall revert back to their original status.

3 **SECTION 5.** ORS 540.530 is amended to read:

4 540.530. (1)(a) If, after hearing or examination, the Water Resources Commission finds that a
5 proposed change can be effected without injury to existing water rights, the commission shall make
6 an order approving the transfer and fixing a time limit within which the approved changes may be
7 completed.

8 (b) If, after hearing or examination, the commission finds that a proposed change in point of
9 diversion cannot be effected without injury to existing water rights, upon receipt by the commission
10 of an affidavit consenting to the change from every holder of an affected water right, the commission
11 may make an order approving the transfer and fixing a time limit within which the approved
12 changes may be completed.

13 (c) If, after hearing or examination, the commission finds that a proposed change in point of
14 diversion cannot be effected without injury to an in-stream water right granted pursuant to a re-
15 quest under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water
16 Resources Department may consent to the change only upon a recommendation that the department
17 do so from the agency that requested the in-stream water right. The agency that requested the in-
18 stream water right may recommend that the department consent to the change only if the change
19 will result in a net benefit to the resource consistent with the purposes of the in-stream water right.

20 (d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c)
21 of this subsection, the department shall obtain a recommendation from the agency that requested the
22 in-stream water right. If the recommendation of the agency is to consent to the change, the depart-
23 ment shall provide public notice of the recommendation and, consistent with state laws regarding
24 cooperation with Indian tribes in the development and implementation of state agency programs that
25 affect tribes or rights and privileges of tribes, the department shall consult with affected Indian
26 tribes.

27 (B) The recommendation of an agency under this paragraph must be in writing and, if the rec-
28 ommendation is to consent to the change, must describe the extent of the injury to the in-stream
29 water right, the effect on the resource and the net benefit that will occur as a result of the proposed
30 change. The recommendation may include any proposed conditions that are necessary to ensure that
31 the proposed change will be consistent with the recommendation.

32 (C) In determining whether a net benefit will result from the proposed change, the recommen-
33 dation of an agency must include an analysis of the cumulative impact of any previous changes un-
34 der paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

35 (D) A person may comment on the recommendation of an agency. The comment must be in
36 writing and must be received by the department within 30 days after publication of notice under this
37 paragraph. If a written comment received by the department requests a meeting on the proposed
38 change, the department and the agency that requested the in-stream water right shall hold a joint
39 public meeting within 90 days of the receipt of the comment requesting a meeting.

40 (e)(A) If, after review of public comments and consultation with the agency that requested the
41 in-stream water right, the agency that requested the in-stream water right does not withdraw its
42 recommendation to consent to the change, the department may approve the change consistent with
43 the requirements of paragraphs (b) and (c) of this subsection.

44 (B) An order approving a change under paragraph (c) of this subsection shall include written
45 findings on the extent of the injury to the in-stream water right, the effect on the resource and the

1 net benefit that will occur as a result of the change. The order shall include any conditions neces-
 2 sary to ensure that the change will be consistent with the findings and ensure that the change will
 3 result in a continued net benefit to the resource consistent with the purposes of the in-stream water
 4 right.

5 (C) In determining whether a net benefit will result from the change, the order of the depart-
 6 ment must include an analysis of the cumulative impact of any previous changes approved under
 7 paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

8 **(f) When making a finding under this subsection, the commission may not consider**
 9 **whether the proposed change would impair or be detrimental to the public interest.**

10 [(f)] (g) The time allowed by the commission for completion of an authorized change under par-
 11 agraphs (a) to [(e)] (f) of this subsection may not be used when computing a five-year period of
 12 nonuse under the provisions of ORS 540.610 (1).

13 (2)(a) If a certificate covering the water right has been previously issued, the commission shall
 14 cancel the previous certificate or, if for an irrigation district, the commission may modify the pre-
 15 vious certificate and, when proper proof of completion of the authorized changes has been filed with
 16 the commission, issue a new certificate or, if for an irrigation district, modify the previous certif-
 17 icate, preserving the previously established priority of rights and covering the authorized changes.
 18 If only a portion of the water right covered by the previous certificate is affected by the changes,
 19 a separate new certificate may be issued to cover the unaffected portion of the water right.

20 (b) If the change authorized under subsection (1) of this section is necessary to allow a change
 21 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
 22 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in
 23 a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the
 24 Water Resources Director, may waive or assist the applicant in satisfying any of the proof of com-
 25 pletion requirements of paragraph (a) of this subsection. The assistance provided by the department
 26 may include, but need not be limited to, development of a final proof survey map and claim of ben-
 27 efitial use.

28 (3) Upon receiving notification of the merger or consolidation of municipal water supply entities,
 29 or the formation of a water authority under ORS chapter 450, the commission shall cancel the pre-
 30 vious certificates of the entities replaced by the merger, consolidation or formation and issue a new
 31 certificate to the newly formed municipality or water authority. The new certificate shall preserve
 32 the previously established priority of rights of the replaced entities and shall allow beneficial use
 33 of the water on any lands acquired in the merger, consolidation or formation.

34 **SECTION 6.** ORS 540.531 is amended to read:

35 540.531. (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject
 36 to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground
 37 water if the proposed transfer complies with the requirements of subsection (2) or [(3)] (4) of this
 38 section and with the requirements for a transfer in point of diversion specified in ORS 540.520 and
 39 540.530.

40 (2) The Water Resources Department may allow a transfer of the point of diversion under sub-
 41 section (1) of this section if:

42 (a)(A) The new point of diversion appropriates ground water from an aquifer that is hydrau-
 43 lically connected to the authorized surface water source;

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

1 (C) The use of the new point of diversion will affect the surface water source similarly to the
2 authorized point of diversion specified in the water use subject to transfer; and

3 (D) The withdrawal of ground water at the new point of diversion is located within 500 feet of
4 the surface water source and, when the surface water source is a stream, is also located within 1,000
5 feet upstream or downstream of the original point of diversion as specified in the water use subject
6 to transfer; or

7 (b) The new point of diversion is not located within the distance requirements set forth in par-
8 agraph (a)(D) of this subsection, the holder of the water use subject to transfer submits to the de-
9 partment evidence prepared by a licensed geologist that demonstrates that the use of the ground
10 water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C) of this
11 subsection.

12 **(3) In deciding whether to allow a transfer of the point of diversion under subsections (1)**
13 **and (2) of this section, the department may not consider whether the transfer would impair**
14 **or be detrimental to the public interest.**

15 [(3)] (4) Notwithstanding subsection (2) of this section, the department shall allow a transfer of
16 the point of diversion under subsection (1) of this section in the Deschutes Basin ground water study
17 area if:

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

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

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

27 [(4)] (5) All applicable restrictions that existed at the original point of diversion shall apply at
28 the new point of diversion allowed under this section.

29 [(5)] (6) The new point of diversion shall retain the original date of priority. However, if within
30 five years after approving the transfer, the department finds that the transfer results in substantial
31 interference with existing ground water rights that would not have occurred in the absence of the
32 transfer, the new point of diversion shall be subordinate to any existing right injured by the trans-
33 ferred water right or permit.

34 [(6)(a)] (7)(a) The department shall approve an application to return to the last authorized sur-
35 face water point of diversion if a holder of a water use subject to transfer submits an application
36 to the department within five years after the department approves a transfer under this section.

37 (b) The department shall approve an application to return to the last authorized surface water
38 point of diversion after five years of the date the department allows a transfer under subsection
39 [(3)] (4) of this section if a holder of a water use subject to transfer submits an application to the
40 department, and the return will not result in injury to an existing water right.

41 [(7)] (8) For transfers allowed under this section, the department shall require mitigation meas-
42 ures to prevent depletion from any surface water source not specified in the permit or certificated
43 or decreed water right, except that the department may not require mitigation measures if the
44 transfer complies with subsection [(3)] (4) of this section.

45 [(8)] (9) The Water Resources Commission shall adopt rules that prescribe:

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

2 (b) The persons to whom the department shall provide notice of the receipt of an application
3 submitted under this section; and

4 (c) The persons who may participate in the process of reviewing applications submitted under
5 this section.

6 [(9)] (10) As used in this section:

7 (a) "Deschutes Basin ground water study area" means the part of the Deschutes River Basin
8 that is designated by the Water Resources Commission by rule.

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

13 **SECTION 7.** ORS 540.570 is amended to read:

14 540.570. (1) Provided that the proposed transfer complies with all of the provisions of this sub-
15 section and will not result in injury to any existing water right, a district with a manager may, for
16 one irrigation season, temporarily 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 legal boundaries of that
18 district or temporarily transfer the type of use identified in a right to store water. A temporary
19 transfer of the place of use may occur if:

20 (a) The rate and duty, and the total number of acres to which water will be applied under the
21 transfer, do not exceed existing limits on the water use subject to transfer;

22 (b) The type of use authorized under the water use subject to transfer remains the same; and

23 (c) The land from which the water use is being transferred does not receive any water under
24 the right being transferred during the irrigation season in which the change is made.

25 (2) Provided that the proposed transfer complies with all the provisions of this subsection and
26 will not result in injury to or enlargement of an existing water right, a district with a manager may,
27 for one irrigation season, temporarily change the point of diversion or appropriation combined with
28 a change in place of use, change the point of diversion in the event that an emergency prevents the
29 district from diverting water from its authorized point of diversion, change the point of diversion to
30 allow for the appropriation of ground water or change a primary right to a supplemental right if:

31 (a) The land on which the water is to be used is within the district's legal boundaries established
32 pursuant to ORS chapter 545, 547, 552, 553 or 554;

33 (b) The other terms of the permit or certificate remain the same, including the beneficial use for
34 which the water is used and the number of acres to which water is applied;

35 (c) The diversion is provided with a proper fish screen, if required by the Water Resources De-
36 partment; and

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

39 **(3) In deciding whether to make a temporary transfer under this section, a district with
40 a manager may not consider whether the temporary transfer would impair or be detrimental
41 to the public interest.**

42 [(3)] (4) When a district or an owner or an owner's agent within a district who is subject to the
43 charges or assessments of the district wishes to use water on alternate acreage within the district,
44 if the district has approved the owner's request, the district shall submit to the department a peti-
45 tion seeking a temporary transfer under this section. The district shall submit the petition prior to

1 making the proposed change. The petition may contain changes to one or more tax lots within the
 2 district and shall:

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

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

8 (c) Include a statement that a written authorization for the transfer from each landowner af-
 9 fected by the particular temporary transfer is on file with the district;

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

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

12 [(4)] (5) The district shall notify each affected landowner that the department may reject the
 13 transfer or may require mitigation to avoid injury to other water rights. Upon receipt of a completed
 14 petition under subsection [(3)] (4) of this section, the department shall place a summary of the pe-
 15 tition in the weekly notice published by the department. The department shall accept written public
 16 comments on the petition for 30 days following publication of the weekly notice. The department
 17 shall consider comments that pertain to the potential for injury to an existing water right or to the
 18 enlargement of the water use subject to transfer in determining whether to condition, reject or re-
 19 voke a temporary transfer.

20 [(5)] (6) Use of water on lands from which the right is transferred and in the new temporary
 21 location during the same irrigation season or calendar year is prohibited and may subject the dis-
 22 trict and the landowner to civil penalties.

23 [(6)] (7) The department may condition, reject or revoke a temporary transfer at any time to the
 24 extent necessary to avoid injury if the department finds the transfer is causing injury to an existing
 25 water right.

26 [(7)] (8) Upon expiration of the temporary transfer period, all uses of water for which a tempo-
 27 rary transfer is allowed under this section shall revert automatically to the terms and conditions
 28 of the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced
 29 by a court decree.

30 [(8)] (9) The time during which water is used under an approved temporary transfer order does
 31 not apply toward a finding of forfeiture under ORS 540.610.

32 **SECTION 8.** ORS 540.990 is amended to read:

33 540.990. (1) Violation of any provision of ORS 540.440 is a Class C misdemeanor.

34 (2) Violation of any provision of ORS 540.570 [(5)] (6), 540.710, 540.720 or 540.730 is a Class B
 35 misdemeanor.

36 (3) Failure to comply with a final order issued under ORS 540.461 (4), or with an order issued
 37 by an appellate court on appeal from a final order under ORS 540.461 (4), is a Class B misdemeanor.

38 **SECTION 9.** ORS 536.900 is amended to read:

39 536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources
 40 Commission may impose a civil penalty on a person for violation of:

41 (a) A term or condition of a permit, certificate or license issued under ORS chapters 536 to
 42 543A.

43 (b) ORS 537.130 or 537.535.

44 (c) ORS 537.545 (5) or a rule described in ORS 537.545 (7).

45 (d) A commission rule or order that pertains to well maintenance.

1 (e) ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570
 2 [(5)] (6), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

3 (f) ORS 537.897 or 537.898 (2).

4 (g) ORS 537.387.

5 (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,
 6 537.535, 540.045, 540.310, 540.330, 540.570 [(5)] (6), 540.710, 540.720 or 540.730.

7 (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS
 8 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established
 9 by the commission. In addition, the petition and map shall be amended to correct the error at the
 10 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

11 (4) A civil penalty may not be imposed until the commission prescribes a reasonable time to
 12 eliminate the violation. The commission shall notify the violator of the time allowed to correct a
 13 violation within 10 business days after the commission first becomes aware of the violation.

14 (5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the
 15 use of water under ORS 540.150 may not be considered a violation under subsection (1) of this sec-
 16 tion.

17 (6) The commission may impose a civil penalty of not more than \$2,000 per occurrence for a
 18 violation described in subsection (1)(g) of this section.

19 **SECTION 10.** ORS 537.211 is amended to read:

20 537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set
 21 forth in a water right permit issued by the Water Resources Department. The permit shall specify
 22 the details of the authorized use and shall set forth any terms, limitations and conditions as the
 23 department considers appropriate including but not limited to any applicable condition required
 24 under ORS 537.289. A copy of the permit shall be filed as a public record in the department. The
 25 permit shall be mailed to the applicant, and upon receipt of the permit the permittee may proceed
 26 with the construction of the necessary works and may take all action required to apply the water
 27 to the designated beneficial use and to perfect the proposed appropriation.

28 (2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or
 29 537.400 indicates that the applicant does not have written authorization or an easement permitting
 30 access to nonowned land crossed by the proposed ditch, canal or other work, the department may
 31 issue a final order approving the application if the approval includes a condition requiring the ap-
 32 plicant to obtain such written authorization, or easement or ownership of such land and to provide
 33 the department with a copy of the written authorization, easement or evidence of ownership.

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

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

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

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

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

3 (d) Prior approval is obtained from the district if the water is transported or conveyed by an
 4 irrigation district organized under ORS chapter 545, a drainage district organized under ORS chap-
 5 ter 547, a water improvement district organized under ORS chapter 552, a water control district
 6 organized under ORS chapter 553 or a district improvement company or a corporation organized
 7 under ORS chapter 554;

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

11 (f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if
 12 applicable;

13 (g) Diversion is provided with a proper fish screen, if requested by the State Department of Fish
 14 and Wildlife; and

15 (h) For a request to transfer the point of diversion to allow the appropriation of ground water,
 16 the proposed change meets the standards set forth in ORS 540.531 (2) or [(3)] (4).

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

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

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

25 (6) For an application made by or on behalf of a public corporation, the department may issue
 26 a permit approving the application without requiring the applicant to obtain prior written authori-
 27 zation or an easement permitting access to nonowned lands affected by the proposed project. How-
 28 ever, nothing in this subsection shall be construed to allow any person to trespass on the lands of
 29 another person.

30 (7) When the department receives notice under subsection (4)(e) of this section, the department
 31 shall publish the notice in the department's weekly public notice of water right applications.

32 (8) If the use of water under the permit is for operation of a mining operation as defined in ORS
 33 517.952:

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

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

40 (c) The permit shall include a condition that additional conditions may be added to the use of
 41 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
 42 540.520 and 540.530 to use for a mine.

43 (9) As used in this section, "contiguous" includes land separated from the land to which a water
 44 right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights of way.