

# Senate Bill 1558

Sponsored by Senator KNOPP (Presession filed.)

## 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**.

Identifies water use purposes for which certain processes for transferring or changing water use subject to transfer are applicable, including use for purpose of storage in reservoir. Imposes conditions on certain changes and transfers affecting water use for purpose of storage in reservoir.

Specifies time limits for Water Resources Department to process application by holder of water use subject to transfer to change place of use, point of diversion or use made of water.

Makes existing prohibition and civil penalty regarding certain district use of temporarily transferred water applicable only to use of irrigation waters.

Revises conditions for department approval of request for permanent transfer of place of use or use of water within district.

## A BILL FOR AN ACT

1  
2 Relating to changes to water uses; creating new provisions; amending ORS 536.900, 537.211, 537.348,  
3 537.470, 540.520, 540.523, 540.524, 540.570, 540.580, 540.585 and 540.990 and section 1, chapter 445,  
4 Oregon Laws 2015.

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

6 **SECTION 1.** ORS 537.348 is amended to read:

7 537.348. (1) **As used in this section, "existing water right" includes, but is not limited to,**  
8 **a right to use water for purposes of irrigation, domestic use, manufacturing or storage in a**  
9 **reservoir.**

10 (2) Any person may purchase or lease all or a portion of an existing water right or accept a  
11 gift of all or a portion of an existing water right for conversion to an in-stream water right. Any  
12 water right converted to an in-stream water right under this section shall retain the priority date  
13 of the water right purchased, leased or received as a gift. At the request of the person the Water  
14 Resources Commission shall issue a new certificate for the in-stream water right showing the ori-  
15 ginal priority date of the purchased, gifted or leased water right. Except as provided in subsections  
16 [(2) to (6)] **(3) to (7)** of this section, a person who transfers a water right by purchase, lease or gift  
17 under this subsection shall comply with the requirements for the transfer of a water right under  
18 ORS 540.505 to 540.585.

19 [(2)] **(3)** Subject to subsections [(3) to (6)] **(4) to (7)** of this section, any person who has an ex-  
20 isting water right may lease all or a portion of the existing water right for use as an in-stream water  
21 right for a specified period without the loss of the original priority date. During the term of the  
22 lease, the use of the water right as an in-stream water right shall be considered a beneficial use.  
23 The term of the lease may not exceed five years. There is no limitation on the number of times that  
24 the lease may be renewed. However, the total period for which a water right may be leased for split  
25 use as described in subsection [(3)] **(4)** of this section may not exceed 10 years regardless of the  
26 number of leases or renewals of leases issued for the water right.

27 [(3)] **(4)** A lease of all or a portion of an existing water right for use as an in-stream water right

**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 under subsection [(2)] (3) of this section may allow the split use of the water between the existing  
2 water right and the in-stream water right during the same calendar year, provided:

3 **(a) The existing water right is not for the storage of water in a reservoir;**

4 [(a)] (b) The uses of the existing water right and the in-stream water right are not concurrent;  
5 and

6 [(b)] (c) The holders of the water rights measure and report to the Water Resources Department  
7 the use of the existing water right and the in-stream water right.

8 [(4)] (5) A person who has an existing water right and wishes to lease the water right as de-  
9 scribed in subsection [(2)] (3) of this section must file a request and obtain department approval of  
10 the lease. Upon receipt of the request, the department shall provide notice of the request by inclu-  
11 sion in the weekly notice published by the department. Any allegation of injury must be delivered  
12 to the department no later than 21 days after publication of the request in the weekly notice.

13 [(5)] (6) After publishing notice of a request made under subsection [(2)] (3) of this section and  
14 allowing time for the delivery of allegations of injury, the department shall issue an order approving  
15 the request if the department finds that the leasing of the water right for in-stream use can be ef-  
16 fected without injury to other existing water rights or can be conditioned to prevent injury to other  
17 existing water rights. If the lease is for the split use of water between the existing water right and  
18 the in-stream water right during the same calendar year, the conditions imposed in the order ap-  
19 proving the request must include, but need not be limited to, compliance with subsection [(3)] (4)  
20 of this section.

21 [(6)] (7) The department at any time may revoke or modify an order issued for a lease under  
22 subsection [(2)] (3) of this section if the department determines that the use of the water right for  
23 in-stream use under the lease has resulted in or may result in injury to an existing water right.

24 **SECTION 2.** ORS 537.348, as amended by section 2, chapter 165, Oregon Laws 2013, is amended  
25 to read:

26 537.348. (1) **As used in this section, "existing water right" includes, but is not limited to,**  
27 **a right to use water for purposes of irrigation, domestic use, manufacturing or storage in a**  
28 **reservoir.**

29 (2) Any person may purchase or lease all or a portion of an existing water right or accept a  
30 gift of all or a portion of an existing water right for conversion to an in-stream water right. Any  
31 water right converted to an in-stream water right under this section shall retain the priority date  
32 of the water right purchased, leased or received as a gift. At the request of the person the Water  
33 Resources Commission shall issue a new certificate for the in-stream water right showing the ori-  
34 ginal priority date of the purchased, gifted or leased water right. Except as provided in subsections  
35 [(2) to (5)] (3) to (6) of this section, a person who transfers a water right by purchase, lease or gift  
36 under this subsection shall comply with the requirements for the transfer of a water right under  
37 ORS 540.505 to 540.585.

38 [(2)] (3) Subject to subsections [(3) to (5)] (4) to (6) of this section, any person who has an ex-  
39 isting water right may lease all or a portion of the existing water right for use as an in-stream water  
40 right for a specified period without the loss of the original priority date. During the term of the  
41 lease, the use of the water right as an in-stream water right shall be considered a beneficial use.  
42 The term of the lease may not exceed five years. There is no limitation on the number of times that  
43 the lease may be renewed.

44 [(3)] (4) A person who has an existing water right and wishes to lease the water right as de-  
45 scribed in subsection [(2)] (3) of this section must file a request and obtain department approval of

1 the lease. Upon receipt of the request, the department shall provide notice of the request by inclu-  
 2 sion in the weekly notice published by the department. Any allegation of injury must be delivered  
 3 to the department no later than 21 days after publication of the request in the weekly notice.

4 [(4)] (5) After publishing notice of a request made under subsection [(2)] (3) of this section and  
 5 allowing time for the delivery of allegations of injury, the department shall issue an order approving  
 6 the request if the department finds that the leasing of the water right for in-stream use can be ef-  
 7 fected without injury to other existing water rights or can be conditioned to prevent injury to other  
 8 existing water rights.

9 [(5)] (6) The department at any time may revoke or modify an order issued for a lease under  
 10 subsection [(2)] (3) of this section if the department determines that the use of the water right for  
 11 in-stream use under the lease has resulted in or may result in injury to an existing water right.

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

13 540.520. (1) Except when the application is made under ORS 541.327 or when an application for  
 14 a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer for  
 15 **purposes of** irrigation, domestic use, manufacturing [*purposes*], **storage in a reservoir** or other use,  
 16 for any reason desires to change the place of use, the point of diversion, or the use made of the  
 17 water, an application to make such change, as the case may be, shall be filed with the Water Re-  
 18 sources Department.

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

20 (a) The name of the owner;

21 (b) The previous use of the water;

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

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

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

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

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

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

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

39 **(5) If a change is to a water use for storage in a reservoir, the volume of water author-**  
 40 **ized at the original storage location shall be reduced by the volume of water authorized un-**  
 41 **der the transfer. A water right holder may use the process under this section for**  
 42 **transferring the place of use for water storage in a reservoir in lieu of using the process for**  
 43 **obtaining a new water right under ORS 537.400 or 537.407.**

44 [(5)] (6) [*Upon*] **No later than 60 days after** the filing of the application the **Water Resources**  
 45 Department shall give notice by publication in a newspaper having general circulation in the area

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

8 [(6)] (7) [Within] **No later than** 30 days after the last publication of a newspaper notice of the  
 9 proposed transfer or the mailing of the department's weekly notice, whichever is later, any person  
 10 may file, jointly or severally, with the department, a protest against approval of the application.

11 [(7)] (8) If a timely protest is filed, or [in the opinion of] the Water Resources Director **believes**  
 12 a hearing [is] **to be** necessary to determine whether the proposed changes as described by the ap-  
 13 plication would result in injury to existing water rights, the department shall hold **and complete**  
 14 a hearing on the matter **no later than 180 days after the first receipt of a timely protest or,**  
 15 **if no protest was received, 180 days after the close of the protest period.** Notice and conduct  
 16 of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and  
 17 shall be held in the area where the rights are located unless all parties and persons who filed a  
 18 protest under this subsection stipulate otherwise. **The department shall issue a final order on the**  
 19 **application no later than:**

20 (a) **90 days after the completion of a hearing on the application; or**

21 (b) **180 days after the application is filed if the department does not conduct a hearing**  
 22 **on the application.**

23 [(8)] (9) An application for a change of use under this section is not required if the beneficial  
 24 use authorized by the water use subject to transfer is irrigation and the owner of the water right  
 25 uses the water for incidental agricultural, stock watering and other uses related to irrigation use,  
 26 so long as there is no increase in the rate, duty, total acreage benefited or season of use.

27 [(9)] (10) A water right transfer under subsection (1) of this section is not required for a general  
 28 industrial use that was not included in a water right certificate issued for a specific industrial use  
 29 if:

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

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

35 (c) The person who makes the change in water use provides the following information to the  
 36 [Water Resources] department:

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

38 (B) The water right certificate number;

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

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

42 **SECTION 4.** ORS 540.523 is amended to read:

43 540.523. (1) In accordance with the provisions of this section, any person who holds a water use  
 44 subject to transfer **for irrigation, domestic use, manufacturing purposes, storage in a reservoir**  
 45 **or other use** may request that the Water Resources Department approve the temporary transfer

1 of place of use and, if necessary to convey water to the new temporary place of use, temporarily  
2 change the point of diversion or point of appropriation for a period not to exceed five years. An  
3 application for a temporary transfer shall:

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

5 (b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS  
6 536.050;

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

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

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

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

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

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

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

21 (7) *[The lands]* **Except as provided in subsection (8) of this section, the place of use** from  
22 which the water right is removed during the period of a temporary transfer shall receive no water  
23 under the transferred water right.

24 **(8) If a temporary transfer application under this section is for change to a water use for**  
25 **storage in a reservoir, the volume of water authorized at the original storage location shall**  
26 **be reduced by the volume of water authorized under the transfer. A water right holder may**  
27 **use the process under this section for temporarily transferring the place of use for water**  
28 **storage in a reservoir in lieu of using the process for obtaining a new water right under ORS**  
29 **537.400 or 537.407.**

30 [(8)] (9) When an application for a temporary change of the place of use for a primary water  
31 right is submitted in accordance with this section, the applicant also shall indicate whether the land  
32 described in the application has an appurtenant supplemental water right or permit. If the applicant  
33 also intends to temporarily transfer the supplemental water right or permit, the applicant also shall  
34 include the information required under ORS 540.520 (2) for the supplemental water right or permit.  
35 If the applicant does not include the supplemental water right or permit in the temporary transfer  
36 application, the Water Resources Department shall notify the applicant that the supplemental water  
37 right or permit will be canceled before the department issues the order approving the temporary  
38 transfer of the primary water right, unless within 30 days the applicant modifies the application to  
39 include the supplemental water right or permit or withdraws the application. The department may  
40 approve the temporary transfer of the supplemental water right or permit in accordance with the  
41 provisions of this section. The department may not approve the temporary transfer of a supplemental  
42 water right or permit if the temporary transfer would result in enlargement of the original water  
43 right or injury to an existing water right. If the department approves the temporary transfer of the  
44 primary water right but does not approve the temporary transfer of the supplemental water right  
45 or permit, the department shall notify the applicant of the department's intent not to allow the

1 temporary transfer of the supplemental water right or permit before the department issues the order  
 2 for the temporary transfer of the primary water right. If the department does not allow the tempo-  
 3 rary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land  
 4 described in the application, but may not be exercised until the primary right reverts to the original  
 5 water use. If the primary water right does not revert soon enough to allow use of water under the  
 6 supplemental right within five years, the supplemental right shall become subject to cancellation for  
 7 nonuse under ORS 540.610.

8 [(9)] (10) In issuing an order under subsection (2) of this section, the department shall include  
 9 any condition necessary to protect other water rights.

10 **SECTION 5.** ORS 540.570 is amended to read:

11 540.570. (1) [*Provided that the*] **If a** proposed transfer complies with [*all of the provisions of*] this  
 12 subsection and will not result in injury to any existing water right, a district with a manager may,  
 13 for one irrigation season **or storage season**, temporarily transfer the place of use of [*water*] **a wa-**  
 14 **ter use subject to transfer that is** appurtenant to any land within the legal boundaries of the  
 15 district to [*an equal acreage elsewhere*] **another location** within the legal boundaries of that district  
 16 or temporarily transfer the type of use identified in a right to store water. [*A temporary transfer of*  
 17 *the place of use may occur if:*]

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

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

21 [(c)] *The land from which the water use is being transferred does not receive any water under the*  
 22 *right being transferred during the irrigation season in which the change is made.*] **The following**  
 23 **conditions apply to a transfer under this section:**

24 (a) **The type of use authorized under the water use subject to transfer must remain the**  
 25 **same. This paragraph does not apply to a change in a right to store water in a reservoir.**

26 (b) **If the use is for the purpose of irrigation:**

27 (A) **The rate and duty, and total number of acres to which water will be applied under**  
 28 **the transfer, may not exceed existing limits on the water use subject to transfer; and**

29 (B) **The land from which the water use is being transferred may not receive any water**  
 30 **under the right being transferred during the irrigation season in which the change is made.**

31 (c) **If the transfer changes the use for a right to store water in a reservoir, the volume**  
 32 **of water authorized at the original storage location shall be reduced by the volume of water**  
 33 **authorized under the transfer.**

34 (2) **A water right holder may use the process under subsection (1) of this section for**  
 35 **temporarily transferring the place of use for water storage in a reservoir in lieu of using the**  
 36 **process for obtaining a new water right under ORS 537.400 or 537.407.**

37 [(2)] (3) [*Provided that*] **If** the proposed transfer complies with [*all the provisions of*] this sub-  
 38 section and will not result in injury to or enlargement of an existing water right, a district with a  
 39 manager may, for one irrigation season, temporarily change the point of diversion or appropriation  
 40 combined with a change in place of use, change the point of diversion in the event that an emer-  
 41 gency prevents the district from diverting water from its authorized point of diversion, change the  
 42 point of diversion to allow for the appropriation of ground water or change a primary right to a  
 43 supplemental right if:

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

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

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

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

7 [(3)] (4) When a district or an owner or an owner's agent within a district who is subject to the  
8 charges or assessments of the district wishes to use water on alternate acreage within the district,  
9 if the district has approved the owner's request, the district shall submit to the department a peti-  
10 tion seeking a temporary transfer under this section. The district shall submit the petition prior to  
11 making the proposed change. The petition may contain changes to one or more tax lots within the  
12 district and shall:

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

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

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

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

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

22 [(4)] (5) The district shall notify each affected landowner that the department may reject the  
23 transfer or may require mitigation to avoid injury to other water rights. Upon receipt of a completed  
24 petition under subsection [(3)] (4) of this section, the department shall place a summary of the pe-  
25 tition in the weekly notice published by the department. The department shall accept written public  
26 comments on the petition for 30 days following publication of the weekly notice. The department  
27 shall consider comments that pertain to the potential for injury to an existing water right or to the  
28 enlargement of the water use subject to transfer in determining whether to condition, reject or re-  
29 voke a temporary transfer.

30 [(5)] (6) Use of **irrigation** water on lands from which the right is transferred and in the new  
31 temporary location during the same irrigation season or calendar year is prohibited and may subject  
32 the district and the landowner to civil penalties.

33 [(6)] (7) The department may condition, reject or revoke a temporary transfer at any time to the  
34 extent necessary to avoid injury if the department finds the transfer is causing injury to an existing  
35 water right.

36 [(7)] (8) Upon expiration of the temporary transfer period, all uses of water for which a tempo-  
37 rary transfer is allowed under this section shall revert automatically to the terms and conditions  
38 of the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced  
39 by a court decree.

40 [(8)] (9) The time during which water is used under an approved temporary transfer order does  
41 not apply toward a finding of forfeiture under ORS 540.610.

42 **SECTION 6.** ORS 540.580 is amended to read:

43 540.580. (1) [*In accordance with this section,*] A district may by petition request that the Water  
44 Resources Department approve the permanent transfer of the place of use [*of water*] **or the use**  
45 **made of a water use subject to transfer** within a district. [*as long as the proposed transfer com-*

1 *plies with all of the following:]*

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

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

5 [(c) *The change in place of use will not result in injury to any existing water right; and]*

6 [(d) *The land from which the water right is removed by the transfer shall receive no water under*  
7 *the transferred right.*] **The following conditions apply to a transfer under this section:**

8 **(a) The use authorized under the water use subject to transfer must remain the same.**

9 **(b) The change in place of use may not result in injury to any existing water right.**

10 **(c) If the water right to be changed is for purposes of irrigation:**

11 **(A) The rate, duty and total number of acres to which water is to be applied under the**  
12 **water use subject to transfer are not exceeded; and**

13 **(B) The land from which the water right is removed by the transfer shall receive no**  
14 **water under the transferred right.**

15 **(d) If the water right to be changed is for storage in a reservoir, the volume of water**  
16 **authorized at the original storage location shall be reduced by the volume of water author-**  
17 **ized under the transfer.**

18 **(2) A water right holder may use the process under subsection (1) of this section to**  
19 **permanently transfer the place of use of a water right for storage in a reservoir in lieu of**  
20 **using the process for obtaining a new water right under ORS 537.400 or 537.407.**

21 [(2)] **(3)** A district may submit a petition for a permanent transfer prior to or subsequent to the  
22 change in place of use, but no later than the end of the calendar year in which the change occurs.  
23 The petition submitted by the district may include an unlimited number of transfers within the same  
24 petition. A petition under this section shall:

25 (a) Include the information required under ORS 540.574 (3), except for the statement that a no-  
26 tice under ORS 540.572 (2) has been given;

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

31 (c) Include a statement that each [*landowner affected by a*] **owner of land involved in the per-**  
32 **manent transfer has authorized the transfer in a writing that is on file with the district;**

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

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

35 [(3)] **(4)** If a district allows a change in the place of use of water before obtaining the approval  
36 of the department, the district shall:

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

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

41 (A) The name of the district and the certificate number of each water right that is the subject  
42 of the change;

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

45 (C) A general description of the users' lands by township, range, quarter quarter section and tax



1 lot number, and of the water right, for each parcel from which and to which water rights are to be  
2 transferred; and

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

4 [(4)] (5) Upon receipt of the notice required under subsection [(3)(b)] (4)(b) of this section, the  
5 department shall provide public notice in the weekly notice published by the department.

6 [(5)] (6) If a district allows a change in the place of use of water before obtaining approval of  
7 the department under this section, the department may direct the district to cease delivery of water  
8 or mitigate injury where the change in place of use is causing injury to an existing water right.

9 [(6)] (7) Within 15 days after the filing of a petition under subsection [(2)] (3) of this section, the  
10 department shall include notice of the petition in the weekly notice published by the department.  
11 Within 30 days after the mailing of the department's weekly notice, any potentially affected holder  
12 of an existing water right may file, jointly or severally, with the department, a protest against ap-  
13 proval of the petition.

14 [(7)] (8) Subject to *[the provisions of]* subsection [(8)] (9) of this section, *[whenever]* if a timely  
15 protest is filed, or *[in the opinion of]* the Water Resources Director **believes** a hearing *[is]* to be  
16 necessary to determine whether the proposed changes as described in the petition would result in  
17 injury to existing water rights, the department may hold a hearing on the petition. Notice and con-  
18 duct of the hearing shall be according to the provisions of ORS chapter 183 pertaining to contested  
19 cases, shall be scheduled within 45 days after the filing of the petition, and shall be held in the area  
20 where the rights are located unless all parties and persons who filed a protest under this subsection  
21 stipulate otherwise.

22 [(8)] (9) If a water user within the district files a protest claiming injury to a water right de-  
23 livery by the district, no contested case hearing shall be required, but the district shall resolve the  
24 matter directly with the water user.

25 [(9)] (10) After examination or hearing, the department shall issue an order approving the  
26 transfer if the proposed change can be effected without injury to existing water rights. If no hearing  
27 is scheduled under subsection [(7)] (8) of this section, the order of the department shall be issued  
28 within 90 days after the date of the filing of the petition. If the proposed change cannot be effected  
29 without injury to existing water rights, the department may condition approval, including requiring  
30 mitigation of the effects on other water rights, to the extent necessary to avoid injury. If a hearing  
31 is scheduled, the department shall issue a final order within 120 days after scheduling the hearing.

32 [(10)] (11) Within 20 days after the director issues a final order under this section, the district  
33 or any protestant may file with the commission exceptions to the final order. The commission shall  
34 issue an order granting or denying the exceptions within 30 days after receiving the exceptions.

35 [(11)] (12) If a certificate covering the water right has been previously issued, the department  
36 may amend the certificate or may cancel the certificate and issue a new certificate preserving the  
37 previously established priority of rights and covering the authorized changes. If only a portion of  
38 the water right covered by the previous certificate is affected by the changes, a separate new cer-  
39 tificate may be issued to cover the unaffected portion of the water right. A certificate as amended  
40 or issued under this section has the evidentiary effect provided for in ORS 537.270 as to the new  
41 lands except when the right to appropriate water described in the certificate is abandoned after the  
42 certificate is amended or issued.

43 [(12)] (13) Notwithstanding the provisions of subsection [(2)] (3) of this section, a petition filed  
44 on or before December 31, 1996, may include all changes in place of use allowed by a district after  
45 July 1, 1992, and before November 30, 1996.

1       **SECTION 7.** ORS 536.900 is amended to read:

2       536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources  
3 Commission may impose a civil penalty on a person for any of the following:

4       (a) Violation of any of the terms or conditions of a permit, certificate or license issued under  
5 ORS chapters 536 to 543A.

6       (b) Violation of ORS 537.130 or 537.535.

7       (c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS 537.545 (8).

8       (d) Violation of any rule or order of the Water Resources Commission that pertains to well  
9 maintenance.

10       (e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440,  
11 540.570 [(5)] **(6)**, 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

12       (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,  
13 537.535, 540.045, 540.310, 540.330, 540.570 [(5)] **(6)**, 540.710, 540.720 or 540.730.

14       (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS  
15 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established  
16 by the commission. In addition, the petition and map shall be amended to correct the error at the  
17 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

18       (4) A civil penalty may not be imposed until the commission prescribes a reasonable time to  
19 eliminate the violation. The commission shall notify the violator of the time allowed to correct a  
20 violation within five days after the commission first becomes aware of the violation.

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

24       **SECTION 8.** ORS 537.211 is amended to read:

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

33       (2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or  
34 537.400 indicates that the applicant does not have written authorization or an easement permitting  
35 access to nonowned land crossed by the proposed ditch, canal or other work, the department may  
36 issue a final order approving the application if the approval includes a condition requiring the ap-  
37 plicant to obtain such written authorization, or easement or ownership of such land and to provide  
38 the department with a copy of the written authorization, easement or evidence of ownership.

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

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

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

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

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

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

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

16 (f) *[The holder of the permit complies with the]* Publication *[requirements of]* **as provided under**  
17 ORS 540.520 [(5)] **(6) has been made**, if applicable;

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

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

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

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

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

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

37 (8) If the use of water under the permit is for operation of a mining operation as defined in ORS  
38 517.952:

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

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

45 (c) The permit shall include a condition that additional conditions may be added to the use of

1 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS  
2 540.520 and 540.530 to use for a mine.

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

5 **SECTION 9.** ORS 537.470 is amended to read:

6 537.470. (1) Upon receipt of an application for allocation of conserved water under ORS 537.465,  
7 the Water Resources Commission shall give notice of receipt of the application in accordance with  
8 ORS 540.520 [(5)] (6).

9 (2) The commission shall allocate conserved water as provided in subsection (3) of this section  
10 and approve modifications of water rights as provided in subsection (6) of this section. The com-  
11 mission may not allocate conserved water pursuant to an application under ORS 537.465 if the ap-  
12 plication is filed more than five years after the conservation measure was implemented.

13 (3) After determining the quantity of conserved water, if any, required to mitigate the effects  
14 on other water rights, the commission shall allocate 25 percent of the remaining conserved water  
15 to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the  
16 state or more than 25 percent of the funds used to finance the conservation measures comes from  
17 federal or state public sources. If more than 25 percent of the funds used to finance the conservation  
18 measures comes from federal or state public sources and is not subject to repayment, the commission  
19 shall allocate to the state a percentage equal to the percentage of public funds used to finance the  
20 conservation measures and allocate to the applicant a percentage equal to the percentage of other  
21 funds used to finance the conservation measures. If the commission determines that the water allo-  
22 cated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332  
23 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the  
24 state is not necessary to support in-stream flow purposes, it shall revert to the public for appropri-  
25 ation by the next user in priority. In no event, however, shall the applicant receive less than 25  
26 percent of the remaining conserved water unless the applicant proposes a higher allocation to the  
27 state.

28 (4) The commission shall notify the applicant and any other person requesting notice, of the  
29 action the commission intends to take under subsection (3) of this section. Any person objecting to  
30 the proposed allocation may file a protest requesting a contested case hearing before the commis-  
31 sion.

32 (5) The modification of water rights under an allocation of conserved water may not require a  
33 separate request for transfer under ORS 540.520.

34 (6) After the commission completes the allocation of conserved water under subsection (3) of this  
35 section, the commission shall issue orders for proposed new certificates covering the changes in the  
36 original water rights. Once the conservation project is completed, separate new certificates pre-  
37 serving the previously established priority of rights shall be issued to cover the unaffected portion  
38 of the water rights and separate new certificates indicating the priority of rights as set forth in ORS  
39 537.485 shall be issued to cover the right to the use of the allocated water.

40 **SECTION 10.** ORS 540.524 is amended to read:

41 540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an application submitted  
42 to the Water Resources Department, the holder of both a primary water right originating from a  
43 surface water source and a supplemental water right permit or certificate originating from a ground  
44 water source may substitute the use of the supplemental water right for the primary water right.  
45 A substitution may not be made under this subsection if the use of the supplemental water right

1 results in an enlargement or expansion of the primary water right. This subsection does not au-  
 2 thorize a change in place of use, type of use, point of diversion or point of appropriation.

3 (2) An application required under subsection (1) of this section shall be submitted on forms  
 4 provided by the department. The department may request additional information if necessary to  
 5 assist with the injury evaluation. Each application shall be submitted with the fee described in ORS  
 6 536.050 (1)(s).

7 (3) Upon receiving an application under subsection (1) of this section, the department shall  
 8 provide notice, accept protests and conduct hearings on protests in the manner described in ORS  
 9 540.520 [(5), (6) and (7)] **(6) to (8)**.

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

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

18 (6) A completed and approved substitution of a supplemental ground water right for a primary  
 19 surface water right under this section may be terminated upon a request by the water right holder  
 20 or by an order of the director if the director determines that the use of the ground water as the  
 21 primary water right causes injury to other water rights. Upon termination, the substituted primary  
 22 and supplemental water rights shall revert back to their original status.

23 **SECTION 11.** ORS 540.585 is amended to read:

24 540.585. (1) In accordance with the provisions of this section, a person may request that the  
 25 Water Resources Department approve the temporary transfer of the place of use and type of use and  
 26 temporarily change the point of diversion if necessary to convey water to the new temporary place  
 27 of use, of all or a portion of a water right, for a period not to exceed 25 years if:

28 (a) The person holds a water use subject to transfer;

29 (b) The type of use specified in the original water use subject to transfer is irrigation;

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

31 (A) Located within the Deschutes River Basin; and

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

35 (d) The proposed use is municipal use; and

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

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

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

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

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

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

43 (3)(a) Any portion of the use of a water right that is not temporarily transferred under this  
 44 section may be used on the designated part of the lands described in the original water right permit,  
 45 certificate or adjudication under ORS chapter 539 as evidenced by a court decree, if the use does

1 not encompass more than the remaining portion of the lands, enlarge the water right or increase the  
2 rate, duty, total acreage benefited or season of use.

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

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

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

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

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

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

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

18 (8) The department may:

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

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

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

25 **SECTION 12.** ORS 540.990 is amended to read:

26 540.990. (1) Violation of any provision of ORS 540.440 is a Class C misdemeanor.

27 (2) Violation of any provision of ORS 540.370 (2), 540.570 [(5)] (6), 540.710, 540.720 or 540.730 is  
28 a Class B misdemeanor.

29 **SECTION 13.** Section 1, chapter 445, Oregon Laws 2015, is amended to read:

30 **Sec. 1.** (1) As used in this section, "determined claim" means a water right in the Upper  
31 Klamath Basin determined and established in an order of determination certified by the Water Re-  
32 sources Director under ORS 539.130.

33 (2) Except as provided in subsections (3) and (4) of this section, during the period that judicial  
34 review of the order of determination is pending, a determined claim is:

35 (a) An existing water right that may be leased for a term as provided under ORS 537.348; and

36 (b) A primary water right that is subject to temporary transfer for purposes of ORS 540.523.

37 (3) Subsection (2) of this section:

38 (a) Does not apply to a water right determined and established in an order of determination that  
39 has been stayed by the filing of a bond or irrevocable letter of credit under ORS 539.180;

40 (b) Does not apply to a water right transfer that includes changing the point of diversion up-  
41 stream; and

42 (c) Does not allow a person to purchase, lease or accept a gift of a determined claim for con-  
43 version to an in-stream water right as described in ORS 537.348 [(1)] (2).

44 (4) For purposes of determining under ORS 537.348 [(5)] (6) or 540.523 (2) whether the Water  
45 Resources Department may approve a lease or temporary transfer of a determined claim, an injury

1 to another determined claim is an injury to an existing water right. Notwithstanding ORS 537.348  
2 [(6)] (7) or 540.523 (5), the department shall deny, modify or revoke the lease or temporary transfer  
3 of a determined claim if the department determines that the lease or temporary transfer has resulted  
4 in, or is likely to result in:

5 (a) Injury to another determined claim or other existing water right; or

6 (b) Enlargement of the determined claim.

7 (5) The department shall revoke the lease or temporary transfer of a determined claim if a court  
8 judgment stays the determined claim.

9 (6) If a determined claim is removed from land by lease or temporary transfer, the land from  
10 which the determined claim is removed may not receive water during the term of the lease or tem-  
11 porary transfer.

12 **SECTION 14. The amendments to ORS 536.900, 537.211, 537.348, 537.470, 540.520, 540.523,**  
13 **540.524, 540.570, 540.580, 540.585 and 540.990 and section 1, chapter 445, Oregon Laws 2015, by**  
14 **sections 1 to 13 of this 2018 Act apply to the processing of applications, petitions or other**  
15 **filings received by the Water Resources Commission or Water Resources Department on or**  
16 **after the effective date of this 2018 Act.**

17