

() Discussion only

(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: SB1153

<p>Background:</p> <p>The Board has been asked to join opposition letter to SB1153. The proposed letter is attached.</p>	<p>Requested Action:</p> <p>Approve joinder of opposition letter</p>
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ATTACHMENTS : Proposed Letter

*****For Internal Use Only*****

Checkoffs:

() Dept. Heard (copy)

() Human Resources (copy)

(X) Legal (copy)

() (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: June 4, 2025

Action taken:

Follow-up:

LOGOS HERE

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The undersigned represent a large proportion of the population of the Lower Umatilla Basin and Mid-Columbia Region of Oregon. We represent three key needs to a sustainable and thriving rural economy (jobs, food and clean water). Our generation of leaders has been handed the arduous task of fixing legacy water sustainability issues including groundwater quantity issues, ground and surface water quality issues and enhancement/repair of ecological issues impacting our two primary surface water bodies (Umatilla River watershed and Columbia River mainstem).

Many of these issues originated in the early 1900's when the state encouraged settlement and development of North Morrow County and West Umatilla County. Science caught up to development in the Mid-1900's which led to a very tense period in the Umatilla Basin of regulation and litigation. During this tense period, more resources were spent on litigation and fighting than on solutions. The region was at a crossroads: either keep fighting the State & amongst ourselves or find a way to compromise with one-another and find solutions to the various goals and values of our diverse population.

In the 1980's the Umatilla Basin, with the help of strong State and Federal leadership, came together and adopted the mantra of "do no harm" for both water users and the environment as well as "collaboration over litigation." That mantra, to this day, has lead to the most successful Bureau of Reclamation exchange project that saw both our irrigation community kept whole while also successfully restoring anadromous fish species in the Umatilla River and its tributaries (work that continues today). That mantra has also lead to a renaissance on use of available and/or mitigated Columbia River water to enable the regional food production land base to slowly lesson their dependence on potable basalt groundwater. That freed up groundwater is planned to be targeted for municipal/potable needs and drought resilience of the food production land base (i.e. in drought years/periods, saved and banked groundwater can be used for irrigation when the fish need all of the water in the rivers for survival).

We collectively oppose SB 1153 as the bill will impact our ability to work together, as a collective society inclusive of all of our public water supply systems, in a meaningful and equitable way to continue to solve our problems and grow & sustain our communities in a sustainable fashion.

One Community Cumulatively Working on Water Sustainability Solutions in the Mid-Columbia

The private water rights holders, cities, counties, ports and special districts have been working together for over three decades to try to solve water quantity issues. We have developed three regional plans and have found a way to communicate and collaborate not just on sharing the available water resources we have available, but also how we can develop publicly owned (note: not just municipal but "public") infrastructure to meet daily needs of farmers, cities, rural residents, industry and other needs of the human population. Today, through various publicly owned water supply systems and through a mix of public and privately held water rights ran through publicly owned systems, our basin is maintaining our food production land base, saving potable groundwater that can be used for drought and/or human consumption, and finding ways to recharge aquifers and solve legacy ecological problems. As a region, we do not see our Columbia River diversions and/or water rights as individual, public or district held; we see our diversions and water rights as a network serving the broader needs of our residents and the State of Oregon.

This has not happened overnight. It has taken a significant amount of local collaboration and a willingness of our municipalities, private water rights holders, special districts and intergovernmental entities. Our basin has learned that, while our cities, farmers and citizens can all compete for business and growth, the best use of our Columbia River water

rests with public water supply systems and using public mechanisms to use individually held water for optimum regional benefit.

Just in the past decade our region has built three regional, multi-beneficial, water supply systems that serve agriculture and municipal/special district interests. These projects are multi-beneficial either directly by their use (i.e. one pipe serving agriculture, industry and municipal needs at the same time) or indirectly by the potable groundwater savings the public water supply system has created (i.e. agriculture using mitigated water in lieu of pumping potable groundwater that can then service human consumption needs.)

Our region's public water supply owners (districts, municipalities, ports and IGA entities) are in on-going planning and negotiations on how we can share the same molecule of water without pumping more out of the Columbia River. We are also finding ways to share in the cost of one pipeline rather than subject tax payers and rate bases of the various users to exorbitant fee increases and capital outlay of building and maintaining a Columbia River diversion and pipeline for one specific use.

We are proud of our efforts to both save taxpayer money and optimize water and infrastructure for maximum sustainability gain in our region. We feel that effort and our willingness to work together should be rewarded and incentivized, not set back.

This bill will add cost, process, and confusion to our efforts to work together and may, outright, kill our ability to cleanly and crisply work together. Should that happen we will once again be forced to look at more costly planning exercises, litigation, battles over interpretation and battles over water and infrastructure. We ask, as a region, why would the State of Oregon want to subject a region that has worked so hard to come together and find a way to help each other out to something that sets us back and potentially leads us, again, to conflict.

This bill will exempt one group of public entities from any additional requirements while subjecting the other public entities, even if their water supplies are traveling through the same pipe or through the same family of diversions, to vague and subjective language, process, new interpretation and most likely litigation. SB 1153 represents everything we have strived to come together to try to avoid.

Our Regional Ask

Our region is asking that you vote no on SB 1153 should the bill include anything other than tribal consultation.

We are asking that you find a way to encourage formation of public water supply jurisdictions, and their willingness to work together to solve problems, rather than inequitably reward one over another simply due to the name that is on the diversion or on the publicly held water right.

We are asking that you dig a little deeper and understand the costs associated with the vague language included in the current bill as it relates to the additional technical staff needs to make the determinations identified within the bill, foresee the litigation and agency protests this may cause.

We request that you consider the further divide this may cause between our local government entities, including public districts, and the State of Oregon agencies and NGO's and consider how this can and should be avoided through empowering implementation of locally developed solutions through publicly held (note: not just municipal) infrastructure and water rights

We are asking that you help empower regions like ours that have come together to share water and financial resources, through public means, to solve problems and help each other out.

Lastly, we ask that you look at the attached map and visualize how practical this bill actually is when a certain color of dots on the map are managed one way while the others are managed differently, if the goals and uses of the water supplies are the same as one-another.

We don't feel that any of these requests have been fully vetted as it relates to SB 1153 and that 2025 is not the time for this bill to pass. Regional discussion on how this bill will impact regional efforts, and regional investment of valuable public resources, to solve problems should be given time to prevent more protest, wasted staff expenditures at the state level and more costly litigation for both the State and the publicly funded districts of the State.

Best regards,

Senate Bill 1153

Sponsored by COMMITTEE ON NATURAL RESOURCES AND WILDFIRE

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 tells an agency to consider if changes to water rights will affect the public interest. The Act tells the agency to allow tribes to review certain requests to change water rights. The Act allows the agency to condition water right changes in certain ways. (Flesch Readability Score: 60.6).

Directs the Water Resources Department to consider whether certain water right transfers will result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.

Directs the department to provide an opportunity for tribes to review certain water right transfer applications.

Authorizes the department to condition water right transfers with water use measurement and reporting, water level measurement and reporting or the installation of fish screening or by-pass devices.

A BILL FOR AN ACT

Relating to water; creating new provisions; and amending ORS 537.211, 537.803, 540.510, 540.520, 540.523, 540.530 and 540.531.

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

CONSIDERING THE EFFECTS OF TRANSFERS ON THE PUBLIC INTEREST

SECTION 1. ORS 537.211 is amended to read:

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

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

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

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 construction of the works or use of the water. The department shall mail a copy of the order to the
2 applicant.

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

6 (a) The use of water on land to which the right is not appurtenant, the change of point of di-
7 version or the change in point of appropriation does not:

8 (A) Result in injury to an existing water right;

9 **(B) Result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic**
10 **species in stream reaches not protected by an existing water right; or**

11 **(C) Contribute to water quality impairment in water quality limited streams;**

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

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

17 (d) Prior approval is obtained from the district if the water is transported or conveyed by an
18 irrigation district organized under ORS chapter 545, a drainage district organized under ORS chap-
19 ter 547, a water improvement district organized under ORS chapter 552, a water control district
20 organized under ORS chapter 553 or a district improvement company or a corporation organized
21 under ORS chapter 554;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 537.803 is amended to read:

537.803. (1) When an application for appropriation of water submitted under ORS 537.211, 537.400, 537.620, 543.210, 543.290 or for a change in the place of use of an existing water right submitted under ORS 540.520 proposes use of water outside the basin of origin, the application shall include, in addition to any other information required, an analysis of the following:

(a) The amount of water in the basin of origin available for future appropriation.

(b) Projected future needs for water in the basin of origin.

(c) Benefits presently and prospectively derived from the return flow of water used within the basin of origin that will be eliminated by the proposed out-of-basin use.

(d) The correlation between surface water and ground water in the basin of origin, and whether the proposed use will be harmful to the supply of either.

(e) Injury to existing water rights of other appropriators or interference with planned uses or developments within the basin of origin for which a permit has been issued or for which an application is pending.

(f) Whether the proposed use will adversely affect the quantity or quality of water available for domestic or municipal use within the basin of origin.

(g) Whether the proposed use will adversely affect public uses, as defined in ORS 537.332, in the basin of origin.

(h) Alternative sources of water for the proposed use that would not rely on transfer of water out of its basin of origin.

(i) Whether the proposed use will:

(A) Result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right; or

(B) Contribute to water quality impairment in water quality limited streams.

(2) This section shall apply only to an application filed on and after October 3, 1989.

(3) This section shall not apply to an application for exchange of water under ORS 540.533 to 540.543.

(4) This section shall not apply to an application for the transfer of less than 0.5 cubic feet per second of water.

(5) Subsection (1) of this section shall not apply to an appropriation or diversion by a city to facilitate regional municipal water service if the city has historically transported water between the basin of origin and proposed receiving basins identified in the application.

SECTION 3. ORS 540.510 is amended to read:

540.510. (1)(a) Except as provided in subsections (2) to (8) of this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use of the water without losing priority of the right. A district may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not approve the transfer of a supplemental water right or permit if the transfer would result in enlargement of the original water right or injury to an existing water right, **result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.** If the department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. ORS 540.520 is amended to read:

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

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

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

(a) The name of the owner;

(b) The previous use of the water;

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

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

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

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

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

6 (3) If the application required under subsection (1) of this section is necessary to allow a change
7 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
8 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in
9 a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources
10 Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and
11 (d) of this section. The assistance provided by the department may include, but need not be limited
12 to, development of an application map.

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

16 (5) Upon the filing of the application the department shall give notice by publication in a
17 newspaper having general circulation in the area in which the water rights are located, for a period
18 of at least two weeks and not less than one publication each week. The notice shall include the date
19 on which the last notice by publication will occur. The cost of the publication shall be paid by the
20 applicant in advance to the department. In applications for only a change in place of use or for a
21 change in the point of diversion of less than one-fourth mile, and where there are no intervening
22 diversions between the old diversion of the applicant and the proposed new diversion, no newspaper
23 notice need be published. The department shall include notice of such applications in the weekly
24 notice published by the department.

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

28 (7) If a timely protest is filed, or in the opinion of the Water Resources Director a hearing is
29 necessary to determine whether the proposed changes as described by the application would result
30 in injury to existing water rights, **result in a loss of in-stream habitat for sensitive, threatened**
31 **or endangered aquatic species in stream reaches not protected by an existing water right or**
32 **contribute to water quality impairment in water quality limited streams**, the department shall
33 hold a hearing on the matter. Notice and conduct of the hearing shall be under the provisions of
34 ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are
35 located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

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

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

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

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

(B) The water right certificate number;

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

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

SECTION 5. ORS 540.523 is amended to read:

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

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

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

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

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

(2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department shall approve by order a request for a temporary transfer under this section if the department determines that the temporary transfer will not injure any existing water right, **result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.**

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

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

(5) The department may revoke a prior approval of the temporary transfer at any time if the department finds that the transfer is causing injury to any existing water right, **resulting in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contributing to water quality impairment in water quality limited streams.**

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

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

(8) When an application for a temporary change of the place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the temporary transfer

1 application, the Water Resources Department shall notify the applicant that the supplemental water
 2 right or permit will be canceled before the department issues the order approving the temporary
 3 transfer of the primary water right, unless within 30 days the applicant modifies the application to
 4 include the supplemental water right or permit or withdraws the application. The department may
 5 approve the temporary transfer of the supplemental water right or permit in accordance with the
 6 provisions of this section. The department may not approve the temporary transfer of a supplemental
 7 water right or permit if the temporary transfer would result in enlargement of the original water
 8 right or injury to an existing water right, **will result in a loss of in-stream habitat for sensitive,**
 9 **threatened or endangered aquatic species in stream reaches not protected by an existing**
 10 **water right or will contribute to water quality impairment in water quality limited streams.**
 11 If the department approves the temporary transfer of the primary water right but does not approve
 12 the temporary transfer of the supplemental water right or permit, the department shall notify the
 13 applicant of the department's intent not to allow the temporary transfer of the supplemental water
 14 right or permit before the department issues the order for the temporary transfer of the primary
 15 water right. If the department does not allow the temporary transfer of the supplemental right, the
 16 supplemental right shall remain appurtenant to the land described in the application, but may not
 17 be exercised until the primary right reverts to the original water use. If the primary water right
 18 does not revert soon enough to allow use of water under the supplemental right within five years,
 19 the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

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

22 **SECTION 6.** ORS 540.530 is amended to read:

23 540.530. (1)(a) If, after hearing or examination, the Water Resources Commission finds that a
 24 proposed change can be effected without injury to existing water rights, **a loss of in-stream**
 25 **habitat for sensitive, threatened or endangered aquatic species in stream reaches not pro-**
 26 **ected by an existing water right or contribution to water quality impairment in water**
 27 **quality limited streams,** the commission shall make an order approving the transfer and fixing a
 28 time limit within which the approved changes may be completed.

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

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

41 (d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c)
 42 of this subsection, the department shall obtain a recommendation from the agency that requested the
 43 in-stream water right. If the recommendation of the agency is to consent to the change, the depart-
 44 ment shall provide public notice of the recommendation and, consistent with state laws regarding
 45 cooperation with Indian tribes in the development and implementation of state agency programs that

1 affect tribes or rights and privileges of tribes, the department shall consult with affected Indian
2 tribes.

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

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

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

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

20 (B) An order approving a change under paragraph (c) of this subsection shall include written
21 findings on the extent of the injury to the in-stream water right, the effect on the resource and the
22 net benefit that will occur as a result of the change. The order shall include any conditions neces-
23 sary to ensure that the change will be consistent with the findings and ensure that the change will
24 result in a continued net benefit to the resource consistent with the purposes of the in-stream water
25 right.

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

29 (f) The time allowed by the commission for completion of an authorized change under paragraphs
30 (a) to (e) of this subsection may not be used when computing a five-year period of nonuse under the
31 provisions of ORS 540.610 (1).

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

39 (b) If the change authorized under subsection (1) of this section is necessary to allow a change
40 in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS
41 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in
42 a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the
43 Water Resources Director, may waive or assist the applicant in satisfying any of the proof of com-
44 pletion requirements of paragraph (a) of this subsection. The assistance provided by the department
45 may include, but need not be limited to, development of a final proof survey map and claim of ben-

eficial use.

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

SECTION 7. ORS 540.531 is amended to read:

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

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

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

(B) The proposed change in point of diversion will not result in enlargement of the original water right or in injury to other water right holders, **will not result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right and will not contribute to water quality impairment in water quality limited streams;**

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

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

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

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

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

(b) The proposed change in the point of diversion will not result in enlargement of the original water right or in injury to other water right holders, **will not result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right and will not contribute to water quality impairment in water quality limited streams;** and

(c) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The department may not require that the use of the new point of diversion affect the surface water

source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

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

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

(6)(a) The department shall approve an application to return to the last authorized surface water point of diversion if a holder of a water use subject to transfer submits an application to the department within five years after the department approves a transfer under this section.

(b) The department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the department allows a transfer under subsection (3) of this section if:

(A) A holder of a water use subject to transfer submits an application to the department[.]; and

(B) The return will not result in injury to an existing water right, **will not result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right and will not contribute to water quality impairment in water quality limited streams.**

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

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

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

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

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

(9) As used in this section:

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

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

TRIBAL REVIEW OF TRANSFER APPLICATIONS

SECTION 8. Section 9 of this 2025 Act is added to and made a part of ORS chapter 540.

SECTION 9. (1) As used in this section, “tribe” means a federally recognized Indian tribe in this state.

(2) The Water Resources Department shall provide an opportunity for tribes to opt in to reviewing water right transfer applications in specific counties.

(3) If a tribe has opted in to reviewing applications as described in subsection (2) of this section, the department shall provide the tribe with notice of any water transfer received for water use in the specific counties.

(4) Not more than 30 days after receiving a notice described in subsection (3) of this section, a tribe may:

(a) Provide information to the department on whether the proposed transfer would:

(A) Cause injury to tribal water rights or other existing water rights;

(B) Enlarge a water right;

(C) Impact tribal cultural resources;

(D) Result in a loss of in-stream habitat for sensitive, threatened or endangered species in a stream reach not protected by existing water rights; or

(E) Contribute to water quality impairment in water quality limited streams.

(b) Request to confer with the applicant.

(5) If a tribe requests to confer with an applicant as described in subsection (4)(b) of this section, the department shall send notice of the requested conference to the applicant.

(6) Not more than 30 days after receiving a notice described in subsection (5) of this section, an applicant shall:

(a) Confer with the tribe.

(b) Notify the department of any changes or outcomes to consider while the department is processing the application.

(7) The department shall encourage persons that apply for transfers under this chapter to engage with tribes before submitting an application.

(8) Notwithstanding any contrary provision of law, a tribe that provides information on an application as described in subsection (4)(a) of this section shall have standing to protest the final order of the department on the application.

DEPARTMENT AUTHORITY TO CONDITION TRANSFERS

SECTION 10. Section 11 of this 2025 Act is added to and made a part of ORS chapter 540.

SECTION 11. (1) Notwithstanding any contrary provision of law, the Water Resources Department may condition a transfer described in this chapter with:

(a) Water use measurement and reporting.

(b) Water level measurement and reporting.

(c) The installation of fish screening or by-pass devices.

(2) The authority granted by subsection (1) of this section applies to an entire water right regardless of the change that is proposed.

CAPTIONS

SECTION 12. The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.