

D R A F T

SUMMARY

Expands means for temporary or permanent acquisition of all or portion of existing water right for conversion to in-stream water right.

Eliminates sunset and continues in effect provision conditionally allowing water right lease to split use of water between existing right and in-stream right within same year. Imposes conditions for split use.

A BILL FOR AN ACT

Relating to the transfer of water rights to in-stream use; creating new provisions; amending ORS 536.050 and 537.348; and repealing section 3, chapter 205, Oregon Laws 2001.

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

SECTION 1. ORS 537.348, as amended by section 2, chapter 205, Oregon Laws 2001, is amended to read:

537.348. (1) Any person may [*purchase or lease all or a portion of an existing water right or accept a gift of*] **acquire on a temporary or permanent basis** all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the **original** priority date of the water right. [*purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply*] **A permanent transfer under this section must be in compliance** with the requirements for the transfer of

1 a water right under ORS 540.505 to 540.585.

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

9 **(3) A lease of all or a portion of an existing water right for use as**
10 **an in-stream water right under subsection (2) of this section may allow**
11 **the split use of water between the existing water right and the in-**
12 **stream water right during the same calendar year provided:**

13 **(a) The uses of the existing water right and the in-stream water**
14 **right are not concurrent; and**

15 **(b) The holders of the water rights measure and report to the Water**
16 **Resources Department the use of the existing water right and the in-**
17 **stream water right.**

18 **(4) A person who has an existing water right and wishes to lease**
19 **the water right as described in subsection (2) of this section must file**
20 **a request and obtain department approval of the lease. Upon receipt**
21 **of the request, the department shall provide notice of the request by**
22 **inclusion in the weekly notice published by the department. Any**
23 **allegation of injury must be delivered to the department no later than**
24 **21 days after publication of the request in the weekly notice.**

25 **(5) After publishing notice of a request made under subsection (2)**
26 **of this section and allowing time for the delivery of allegations of in-**
27 **jury, the department shall issue an order approving the request if the**
28 **department finds that the leasing of the water right for in-stream use**
29 **can be effected without injury to other existing water rights or can**
30 **be conditioned to prevent injury to other existing water rights. If the**
31 **lease is for the split use of water between the existing water right and**

1 **the in-stream water right during the same calendar year, the condi-**
2 **tions imposed in the order approving the request must include, but**
3 **need not be limited to, compliance with subsection (3) of this section.**

4 **(6) The department at any time may revoke or modify an order is-**
5 **sued for a lease under subsection (2) of this section if the department**
6 **determines that the use of the water right for in-stream use under the**
7 **lease has resulted in or may result in injury to an existing water right.**

8 **SECTION 2.** ORS 536.050, as amended by section 12, chapter 819, Oregon
9 Laws 2009, is amended to read:

10 536.050. (1) The Water Resources Department may collect the following
11 fees in advance:

12 (a) For examining an application for a permit:

13 (A) To appropriate water, except as provided under ORS 543.280 for an
14 application for a hydroelectric project:

15 (i) A base fee of \$500 for an appropriation of water through a single use,
16 point of diversion or point of appropriation;

17 (ii) \$200 for the first second-foot or fraction thereof appropriated under
18 the permit;

19 (iii) \$100 for each additional second-foot or fraction thereof appropriated
20 under the permit;

21 (iv) \$200 for each additional use, point of diversion or point of appropri-
22 ation included in the application; and

23 (v) If appropriating stored water, \$20 for the first acre-foot or fraction
24 thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction
25 thereof.

26 (B) To store water under ORS 537.400 or 537.534 (4):

27 (i) A base fee of \$500; and

28 (ii) \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus
29 \$1 for each additional acre-foot or fraction thereof.

30 (C) To exclusively appropriate stored water:

31 (i) A base fee of \$250; and

1 (ii) \$15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus
2 \$1 for each additional acre-foot or fraction thereof.

3 (b) For recording a permit to appropriate or store water, \$300.

4 (c) For filing and recording the assignment or partial assignment of a
5 water right application, permit or license under ORS 537.220 or 537.635, \$50.

6 (d) For copying records in the department, \$2 for the first page and 50
7 cents for each additional page.

8 (e) For certifying copies, documents, records or maps, \$10 for each certif-
9 icate.

10 (f) For a blueprint copy of any map or drawing, the actual cost of the
11 work.

12 (g) For a computer-generated map, the actual cost of the work.

13 (h) For examining an application for approval of a change to an existing
14 water right or permit:

15 (A) A base fee of \$400 for a change to a single water right or permit;

16 (B) \$400 for each additional type of change requested;

17 (C) For a request for a change in place of use or type of use or for a water
18 exchange under ORS 540.533, \$200 for each second-foot or fraction thereof
19 requested beyond the first second-foot; and

20 (D) \$200 for each additional water right or permit included in the appli-
21 cation.

22 (i) For examining an application for a temporary change in place of use
23 under ORS 540.523, for a temporary transfer under ORS 540.585 or for a
24 temporary change in place of use, a change in the point of diversion to allow
25 for the appropriation of ground water or a change of a primary right to a
26 supplemental right under ORS 540.570, a base fee of \$200 for the first water
27 right or permit, plus \$50 for each additional water right or permit included
28 in the application and:

29 (A) For nonirrigation uses, \$80 for each second-foot or fraction thereof
30 requested beyond the first second-foot; or

31 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application

1 and required map are submitted to the department in a department-approved
2 digital format, 25 cents per acre of land irrigated.

3 (j) For submitting a protest to the department, \$350.

4 (k) For filing an application for extension of time within which irrigation
5 or other works shall be completed or a water right perfected, \$350.

6 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee estab-
7 lished by rule by the Water Resources Commission.

8 (m) For filing, examining and certifying a petition under ORS 541.329,
9 \$250 plus 10 cents per acre of water involved in the application. For purposes
10 of computing this fee, when any acreage within a quarter quarter of a section
11 is involved, the 10 cents per acre shall apply to all acres in that quarter
12 quarter of a section. Notwithstanding the fee amount established in this
13 paragraph, a district notifying the department under ORS 541.327 (4) shall
14 pay the actual cost of filing, examining and certifying the petition.

15 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.

16 (o) For participating in a contested case proceeding under ORS 537.170,
17 537.622 or 543A.130, \$250.

18 (p) Except for an applicant, for obtaining a copy of both a proposed final
19 order and a final order for a water right application under ORS 537.140 to
20 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued
21 under ORS 537.230, 537.248 or 537.630, \$10.

22 (q) For examining an application to store water under ORS 537.409:

23 (A) A base fee of \$80; and

24 (B) \$20 for each acre-foot or fraction thereof.

25 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the
26 amount established by the Water Resources Director under ORS 543A.410.

27 (s) For examining an application for a substitution made under ORS
28 540.524, \$280.

29 (t) For examining an application for an allocation of conserved water
30 under ORS 537.455 to 537.500, \$700.

31 (u) For submitting a water management and conservation plan pursuant

1 to rules of the commission:

2 (A) \$250, if the plan is submitted by an agricultural water supplier;

3 (B) \$500, if the plan is submitted by a municipal water supplier serving
4 a population of 1,000 or fewer persons; or

5 (C) \$1,000, if the plan is submitted by a municipal water supplier serving
6 a population of more than 1,000 persons.

7 (v) For examining a new application for an in-stream water right lease
8 under ORS 537.348 (2):

9 (A) \$200 for an application for a lease with four or more landowners or
10 four or more water rights; or

11 (B) \$100 for all other applications.

12 (w) For examining an application for an in-stream water right lease re-
13 newal, \$50.

14 (2) Notwithstanding the fees established under subsection (1) of this sec-
15 tion, the commission may establish lower examination and permit fees by
16 rule for:

17 (a) The right to appropriate water for a storage project of five acre-feet
18 or less; or

19 (b) The right to appropriate water for the purpose of allowing the appli-
20 cant to water livestock outside of a riparian area, as that term is defined in
21 ORS 541.890.

22 (3)(a) The director may refund all or part of a fee paid to the department
23 under this section if the director determines that a refund of the fee is ap-
24 propriate in the interests of fairness to the public or necessary to correct
25 an error of the department.

26 (b) The director may refund all or part of the protest fee described in
27 subsection (1)(j) of this section to the legal owner or occupant who filed a
28 protest under ORS 540.641 if an order of the Water Resources Commission
29 establishes that all or part of a water right has not been canceled or modi-
30 fied under ORS 540.610 to 540.650.

31 (4) The director may waive all or part of a fee for a change to a water

1 right permit under ORS 537.211 (4), a change to a water right subject to
2 transfer under ORS 540.520 or 540.523 or an allocation of conserved water
3 under ORS 537.470, if the change or allocation of conserved water is:

4 (a) Made pursuant to ORS 537.348;

5 (b) Necessary to complete a project funded under ORS 541.932; or

6 (c) Approved by the State Department of Fish and Wildlife as a change
7 or allocation of conserved water that will result in a net benefit to fish and
8 wildlife habitat.

9 (5) Notwithstanding the fees established pursuant to this section, the
10 commission may adopt by rule reduced fees for persons submitting materials
11 to the department in a digital format approved by the department.

12 (6) All moneys received under this section, less any amounts refunded
13 under subsection (3) of this section, shall be deposited in the Water Re-
14 sources Department Water Right Operating Fund.

15 (7) Notwithstanding subsection (6) of this section, all fees received by the
16 department for power purposes under ORS 543.280 shall be deposited in the
17 Water Resources Department Hydroelectric Fund established by ORS 536.015.

18 **SECTION 3. Section 3, chapter 205, Oregon Laws 2001, as amended**
19 **by section 1, chapter 355, Oregon Laws 2007, is repealed.**

20 **SECTION 4. The amendments to ORS 537.348 by section 1 of this**
21 **2013 Act apply to leases or transfers for which a request is filed with**
22 **the Water Resources Department on or after the effective date of this**
23 **2013 Act.**

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