

# Chapter 540

2007 EDITION

## Distribution of Water; Watermasters; Change in Use, Transfer or Forfeiture of Water Rights

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**WATER DISTRICTS; WATERMASTERS;  
DISTRIBUTION OF WATER  
GENERALLY**

**540.010 Water districts; creation; purposes.** The Water Resources Commission shall divide the state into water districts, which shall be so constituted as to secure the best protection to the claimants for water and the most economical supervision on the part of the state. Water districts shall not be created until necessary. [Amended by 1985 c.673 §82]

**540.020 Watermasters; appointment; removal; powers of Water Resources Director.** (1) The Water Resources Director shall appoint one watermaster for each water district. The watermaster shall hold office until removed by the director, and shall be subject to any applicable provision of the State Personnel Relations Law. The director shall fill all vacancies which occur in the office.

(2) The director, or any duly authorized assistant, shall have the powers and authority of a watermaster in the distribution of water in any water district. [Amended by 1985 c.421 §5]

**540.030 Water Resources Director; duties regarding water distribution.** The Water Resources Director shall:

(1) Have general control over the watermasters.

(2) Execute the laws relative to the distribution of water and perform other functions as may be assigned to the director. [Amended by 1953 c.395 §3; 1985 c.673 §82a]

**540.040** [Amended by 1953 c.395 §3; 1957 c.341 §10; 1963 c.410 §1; repealed by 1985 c.421 §17]

**540.045 Watermaster duties.** (1) Each watermaster shall:

(a) Regulate the distribution of water among the various users of water from any natural surface or ground water supply in accordance with the users' existing water rights of record in the Water Resources Department.

(b) Upon the request of the users, distribute water among the various users under any partnership ditch, pipeline or well or from any reservoir, in accordance with the users' existing water rights of record in the department.

(c) Divide the waters of the natural surface and ground water sources and other sources of water supply among the canals, ditches, pumps, pipelines and reservoirs taking water from the source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other control works at the several points of diversion of surface water or the several points of appropriation

of ground water, according to the users' relative entitlements to water.

(d) Attach to the headgate, valve or other control works the watermaster regulates under paragraph (c) of this subsection, a written notice dated and signed by the watermaster, setting forth that the headgate, valve or other control works has been properly regulated and is wholly under the control of the watermaster.

(e) Perform any other duties the Water Resources Director may require.

(2) When a watermaster must rely on a well log or other documentation to regulate the use or distribution of ground water, the regulation shall be in accordance with ORS 537.545 (3).

(3) For purposes of regulating the distribution or use of water, any stored water released in excess of the needs of water rights calling on that stored water shall be considered natural flow, unless the release is part of a water exchange under the control of, and approved by, the watermaster.

(4) As used in this section, "existing water rights of record" includes all completed permits, certificates, licenses and ground water registration statements filed under ORS 537.605 and related court decrees. [1985 c.421 §3; 1989 c.691 §15; 1991 c.102 §11; 1993 c.157 §5; 1995 c.673 §3]

**540.050 Appearance of district attorney.** The district attorney shall appear on behalf of the Water Resources Director or any watermaster in any case which may arise in the pursuance of the official duties of the director or watermaster within the jurisdiction of the district attorney. [Amended by 1985 c.421 §6]

**540.060 Arrest by watermaster; complaint against offender.** The watermaster or an assistant appointed by the watermaster shall have power to arrest any person violating a provision of the Water Rights Act (as defined in ORS 537.010), ORS 537.120 to 537.360 or 537.505 to 537.795 and 537.992 and turn the person over to the sheriff or other competent police officer within the county. At the time the watermaster delivers the arrested person into the custody of the sheriff, the watermaster or assistant watermaster making the arrest shall file a complaint, as defined in ORS 131.005, against the person arrested. [Amended by 1957 c.341 §11; 1985 c.421 §7]

**540.070** [Repealed by 1957 c.546 §8]

**540.071** [1957 c.546 §2; 1961 c.636 §1; 1963 c.410 §2; repealed by 1985 c.421 §17]

**540.075 Office and equipment for watermaster.** (1) The county court or board of county commissioners of each county in which the water district of the watermaster

is located shall furnish the watermaster a suitable office and office equipment.

(2) If a water district includes all or parts of two or more counties, the office of the watermaster for the water district shall be in the county designated by the Water Resources Director and the county court or board of county commissioners of that county shall provide a suitable office with necessary office equipment for the watermaster. [1985 c.421 §2]

**540.080 Assistant watermasters; compensation and expenses; termination.** (1) With the approval of the Water Resources Director, a watermaster may employ assistants to aid in the discharge of the watermaster's duties. The assistants shall take the same oath as the watermaster and shall obey the watermaster's instructions. Compensation and actual and necessary traveling expenses of an assistant shall be paid by the county court or board of county commissioners upon certificates of the watermaster by an order made at a regular term when sitting for the transaction of county business. If no provision for such payment is made, the assistant's compensation and expenses shall be paid by the water users concerned, as provided in ORS 540.100 to 540.130.

(2) The term of service of an assistant watermaster may be terminated at any time by the director or the watermaster. [Amended by 1957 c.546 §3; 1961 c.636 §2; 1985 c.421 §8]

**540.090** [Amended by 1957 c.546 §4; 1961 c.636 §3; 1979 c.18 §1; repealed by 1985 c.421 §17]

**540.100 Division of water among users; payment.** (1) When water users are unable to agree to the distribution or division of water, a majority of them may request the watermaster of the district in which the distribution or division is in dispute to make a just division or distribution of water among the parties entitled to the use of the water. The request shall be in writing and shall set forth the pertinent facts of the dispute.

(2) If no provision has been made for payment of the necessary assistant watermaster or expenses as provided by ORS 540.080, the assistant shall be paid by the water users among whom the distribution or division is made.

(3) The expense of any assistant watermaster shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water, so that each one shall pay the same rate per acre. [Amended by 1957 c.546 §5; 1961 c.636 §4; 1979 c.18 §2; 1985 c.421 §9]

**540.110** [Amended by 1981 c.897 §58; repealed by 1985 c.421 §17]

**540.120 Lien for wages and expense; notice; foreclosure.** (1) If one or more of the water users concerned in a distribution or division under ORS 540.100 pay the wages and expenses for another user who fails to contribute a just share or proportion of the wages and expenses, the user paying the wages and expenses shall be entitled to a lien upon the lands of the delinquent user entitled to use of water, in the amount of the delinquent user's just share or proportion.

(2) The lien shall be made effective by filing written notice of intent to claim a lien for payment of wages and expenses under subsection (1) of this section with the county clerk of the county in which the lands of the delinquent water user are situated.

(3) The notice of intent filed under subsection (2) of this section shall:

(a) Be verified by the watermaster or assistant watermaster;

(b) Specify the particular items of wages and expenses for which the lien is claimed;

(c) Describe the lands of each water user upon which the lien is claimed; and

(d) State the name of the owner or reputed owner of the lands.

(4) The lien shall be filed within 60 days from the completion of the distribution or division, and suit to foreclose the lien shall be brought in the circuit court of the county in which the lands or any part of the lands are situated, within six months from the date of filing the notice of lien.

(5) The lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property. Except as provided in subsection (6) of this section, the court may award reasonable attorney fees to the prevailing party in an action to foreclose a lien under this section.

(6) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action to foreclose a lien under this section.

(7) A lien filed under this section shall not be considered an exclusive remedy. [Amended by 1985 c.421 §10; 1995 c.696 §26]

**540.130 Advance payment.** If no provision has been made for payment of the assistant watermaster or expenses as provided in ORS 540.080, before proceeding to make any distribution or division the Water Resources Director may require the water users requesting the distribution or division to pay in advance the estimated compensation and expenses involved in the work. The director shall keep a true and full account of all moneys paid in advance under this section. Upon the expiration of the period for which

the services are required, the director shall refund to the water users any unexpended balance of the moneys paid in advance. [Amended by 1957 c.546 §6; 1961 c.636 §5; 1979 c.18 §3; 1985 c.421 §11]

**540.135 Disposition of funds collected under ORS 540.100 to 540.130 and 540.220.**

Any moneys collected under ORS 540.100 to 540.130 and 540.220 shall be paid to the Water Resources Director and deposited by the director in a revolving fund to be disbursed for the purpose for which it was collected. [1961 c.636 §9; 1985 c.421 §12; 1993 c.18 §128]

**540.140 Insufficiency of water; preference of uses.** When the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming such water for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

**540.145 Distribution of water; rules; applicability.** The Water Resources Commission may adopt rules to secure the equal and fair distribution of water in accordance with the rights of the various users. The rules shall apply to all water rights that have been established:

- (1) By court decree;
- (2) Under an order of the commission or the Water Resources Director in proceedings for the determination of relative rights to the use of water; or
- (3) Through permits to appropriate water or certificates of water rights issued by the commission. [1985 c.673 §81]

**540.150 Rotation in water use; notice.** To bring about a more economical use of the available water supply, water users owning lands to which are attached water rights may rotate in the use of the supply to which they may be collectively entitled. Whenever two or more water users notify the watermaster that they desire to use the water by rotation, and present a written agreement as to the manner of rotation, the watermaster shall distribute the water in accordance with the written agreement.

**DISTRIBUTION OF WATER FROM  
IRRIGATION DITCHES  
AND RESERVOIRS**

**540.210 Distribution from ditch or reservoir.** (1) Whenever any water users from any ditch or reservoir, either among themselves or with the owner thereof, are unable to agree relative to the distribution or division of water through or from the

ditch or reservoir, either the owner or any such water user may apply to the watermaster of the district in which the ditch or reservoir is located, by written notice, setting forth such facts, and asking the watermaster to take charge of the ditch or reservoir for the purpose of making a just division or distribution of water from it to the parties entitled to the use thereof.

(2) The watermaster shall then take exclusive charge of the ditch or reservoir, for the purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users of water from the ditch or reservoir, and shall continue the work until the necessity therefor shall cease to exist.

(3) The distribution and division of water shall be made according to the relative and respective rights of the various users from the ditch or reservoir, as determined by the Water Resources Director, by decree of the circuit court, or by written contract between all of the users filed with the watermaster.

(4) The circuit court having jurisdiction may request the watermaster of the district to take charge of any such ditch or reservoir, and to enforce any decree respecting such ditch or reservoir made under the jurisdiction of the court.

**540.220 Payment of assistant watermaster.** (1) A watermaster may appoint an assistant to take charge of the ditch, pipeline or reservoir involved in a distribution or division of water under ORS 540.210. The assistant watermaster shall be paid by the water users from the ditch, pipeline or reservoir for the cost of the distribution. The Water Resources Commission may require the water users to pay in advance the estimated compensation and expenses of the assistant involved in the distribution or division of the water.

(2) In the case of partnership ditches, pipelines or mutual irrigation corporations organized for the benefit of the members or stockholders, the expense of the assistant shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water from the ditch, pipeline or reservoir, so that each shall pay the same rate per acre.

(3) In the case of ditches, pipelines and reservoirs constructed and operated for sale or rental of water, the wages and expense of the assistant shall be paid by the owner of the ditch, pipeline or reservoir, unless otherwise provided in written contracts with water users using water from the ditches, pipelines and reservoirs involved in the distribution or division of water. [Amended by 1957 c.546 §7; 1961 c.636 §6; 1979 c.18 §4; 1985 c.421 §13; 1985 c.673 §83]

**540.230 Distribution of waste or seepage water; payment.** Whenever a watermaster is called upon, in accordance with the provisions of ORS 540.210, to distribute the waters of any ditch containing or carrying waste or seepage water, the holder of the right to the use of such waste or seepage water shall pay the total cost of the installation of measuring devices for the measurement of the waste or seepage water and the total expense of measuring and distributing it.

**540.240 Lien for wages and expense; property subject to lien; monthly payment.** In the case of a partnership ditch, pipeline or reservoir, or a ditch, pipeline or reservoir owned in common or by a mutual irrigation company incorporated under the laws of this state, the wages of the assistant watermaster and expenses incurred by the assistant in making the distribution provided for by ORS 540.210 to 540.240, and the necessary and proper expense of installation and maintenance of measuring devices and headgates to provide for the just distribution of water among the several users in accordance with their respective and relative rights, shall be a lien upon the ditch, pipeline or reservoir. The lien shall attach to each tract of land entitled to the use of water for irrigation from the ditch, pipeline or reservoir, and upon the crops produced upon the lands during the irrigation season for which the distribution is made. If a ditch, pipeline or reservoir is owned or operated by a person engaged in the business of selling or renting water from the ditch, pipeline or reservoir, the wages and expense shall be a lien upon the ditch, pipeline or reservoir. The wages and expense shall be paid monthly by the water users, the mutual irrigation company, or the person engaged in the business of selling or renting water from a ditch, pipeline or reservoir. [Amended by 1985 c.421 §14]

**540.250 Lien, notice of intent to claim; foreclosure; attorney fees.** (1) If not paid, the lien under ORS 540.240 may be made effective by the assistant filing a notice in writing of intention to claim a lien for the assistant's wages and expense with the county clerk of the county in which the ditch, pipeline or reservoir and lands are situated.

(2) The notice filed under subsection (1) of this section shall:

(a) Be verified and subscribed by the watermaster or assistant;

(b) Specify the particular items of wages and expense for which the lien is claimed;

(c) Describe the lands of each water user upon which the lien is claimed; and

(d) Set forth the name of the ditch, pipeline or reservoir and the name of the owner or reputed owner of the lands and ditch, pipeline or reservoir against which the lien is claimed.

(3) The lien shall be filed within 60 days from the completion of distribution. Suit to foreclose the lien shall be brought in the circuit court of the county in which all or part of the lands, ditch, pipeline or reservoir, or any part, are situated, within six months from the date of filing the notice.

(4) The lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property. The court may award reasonable attorney fees to the prevailing party in an action to foreclose a lien under this section. [Amended by 1981 c.897 §59; 1985 c.421 §15; 1995 c.618 §81]

**540.260 Lien for wages and expense; enforcement; remedy not exclusive.** (1) One or more of the water users from any partnership or mutual irrigation company ditch or pipeline may pay the wages and expense of the assistant watermaster and, as against any other user failing to contribute the user's share or proportion of the wages and expense, shall be entitled to a lien upon the lands of the delinquent user entitled to the use of water from the ditch, pipeline and reservoir and upon the share or interest of the owner in the ditch, pipeline or reservoir, for the user's just share or proportion.

(2) The lien shall be made effective by filing a similar notice to that prescribed under ORS 540.250 within 60 days from the date of payment of the wages and expense, with the county clerk. It may be enforced and foreclosed, and the same procedure, including the allowance of reasonable attorney fees, shall be followed in the foreclosure as in the case of a lien claimed and foreclosed by the watermaster under ORS 540.250. The lien shall not be considered an exclusive remedy. [Amended by 1985 c.421 §16]

**540.270 Distribution from irrigation districts and improvement companies; applicability of ORS 540.210 to 540.260.** Nothing contained in ORS 540.210 to 540.260 shall be applicable to the distribution of water from the irrigation systems or works of irrigation districts or district improvement companies unless requested by the district. Distribution of water from such irrigation systems or works shall be under the exclusive control of the directors of the irrigation districts and district improvement companies unless the watermaster has been requested by the district to distribute the water. [Amended by 1969 c.303 §1]

**HYDRAULIC WORKS AND  
STRUCTURES; MEASURING DEVICES;  
DITCH RIGHT OF WAY**

**540.310 Ditches and canals; headgates; measuring devices; flumes along lines of ditches.** (1) The owner of any ditch or canal shall maintain to the satisfaction of the Water Resources Commission a substantial headgate at the point where the water is diverted. It shall be of such construction that it can be locked and kept closed by the watermaster.

(2) The owner shall construct and maintain, when required by the commission, suitable measuring devices at such points along the ditch as may be necessary to assist the watermaster in determining the amount of water that is to be diverted into the ditch from the stream, or taken from it by the various users.

(3) When necessary for the protection of other water users, the commission may require flumes to be installed along the line of any ditch. [Amended by 1985 c.673 §84]

**540.320 Noncompliance with requirements; effect.** If any owner of irrigation works refuses or neglects to construct and put in headgates, flumes or measuring devices, as required under ORS 540.310, after 10 days' notice, the watermaster may close the ditch, and it shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the Water Resources Commission as to such headgates, flumes or measuring devices have been complied with. [Amended by 1985 c.673 §85]

**540.330 Reservoirs; measuring devices; effect of noncompliance.** (1) Any owner or manager of a reservoir, located across or upon the bed of a natural stream, shall construct and maintain, when required by the Water Resources Commission, a measuring device below, and one above, the reservoir on each stream or source of supply discharging into the reservoir, to assist the watermaster in determining the amount of water to which appropriators are entitled and thereafter diverting it for their use.

(2) If any owner or manager of a reservoir located across the bed of a natural stream neglects or refuses to put in a measuring device after 10 days' notice by the commission, the watermaster may open the sluiceway or outlet of the reservoir, and it shall not be closed, under penalties of the law for changing or interfering with headgates, until the requirements of the commission as to such measuring devices are complied with. [Amended by 1985 c.673 §86]

**540.340 Reservoir and diversion dam; suitable outlet; effect of noncompliance.**

(1) Whenever it may be necessary for the protection of other water users, the Water Resources Commission shall require every owner or manager of a reservoir or diversion dam, located across or upon the bed of a natural stream, to construct and maintain a suitable outlet in the reservoir or diversion dam which will allow the free passage of the natural flow of the stream. The commission shall determine what constitutes a suitable outlet.

(2) If any owner or manager of a reservoir or diversion dam refuses or neglects to construct or put in such outlet in the reservoir or diversion dam after 10 days' notice by the commission, the commission may close the ditch carrying water from the reservoir or diversion dam and it shall not be opened or any water diverted from the reservoir or diversion dam, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the commission regarding such outlet have been complied with. [Amended by 1985 c.673 §87]

**540.350 Dams, dikes and other hydraulic works; examination and approval by commission; responsibility of owners; inspections; modification of works; hearing.** (1) No person, firm or private or municipal corporation shall construct any dam, dike, or other hydraulic structure or works, the failure of which the Water Resources Commission finds would result in damage to life or property, unless the commission has made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and has approved them in writing.

(2) When a person, firm or private or municipal corporation seeks the written approval of the Water Resources Commission, of the site, plans, specifications and features for a dam more than 25 feet high at a site where there is an average annual flow exceeding two cubic feet a second, that party must demonstrate that the dam includes measures that make it readily adaptable to power generation in a manner meeting statutory requirements for the safe passage of fish. These measures shall include the installation of a pressure conduit, penstock, drain or similar water diversion system at the time the dam is built.

(3) A person, firm or private or municipal corporation seeking approval for a dam described in subsection (2) of this section need not make the showing required by that subsection if that party demonstrates to the commission's satisfaction that:

(a) It is not likely the installation of hydroelectric generating facilities at the pro-

posed site would be feasible anytime during the life of the proposed dam; or

(b) It would be more feasible to install hydroelectric facilities after construction of the proposed dam.

(4) The commission's approval of the site, plans and specifications, or other features involved in the construction, maintenance and operation of any hydraulic works whatsoever shall not relieve the owners of their legal responsibilities.

(5) The commission may make inspections of any hydraulic structure, the site thereof, and of the plans and specifications, and any other features involved in the construction, maintenance and operation of the works. If, as a result of the inspections, the commission considers any modifications necessary to insure the safety of the works with reference to possible damage to life or property, the commission shall notify the legal owners by registered mail or by certified mail with return receipt, stating why the works are unsafe. The notice shall set forth the modifications necessary to insure the safety of the works in so far as it affects possible damage to life or property. The notice also shall set a hearing at a time and place as will give the owners a reasonable time to prepare for the hearing. [Amended by 1981 c.210 §1; 1985 c.673 §88; 1991 c.249 §51]

**540.360 Order to modify.** After the hearing the Water Resources Commission may issue a written order to the owners to make such modifications as the commission considers necessary to insure the safety of the works with reference to possible damage to life or property and shall fix the time within which work shall begin in good faith and the time for completion. The owners, upon receipt of the order, shall make the modifications ordered within the time limit prescribed or shall initiate an appeal as above provided. [Amended by 1975 c.581 §26a; 1981 c.210 §2; 1985 c.673 §89]

**540.370 Enforcing compliance with order or decree.** (1) If the owners fail to make the modifications within the time limits set by the Water Resources Commission, or to institute their appeal or to comply with the decree of the appellate court in case an appeal is taken, the commission shall issue an order in writing to the owners directing that the gates be kept open, or an opening made in the dam if necessary, or that the structure shall not be used for the storage, restraint or conveyance of water until the modifications have been made.

(2) No owner shall refuse to comply with the orders of the commission or the decree of an appellate court.

(3) In case of noncompliance, the commission shall direct the watermaster or other authorized assistant to carry out the orders, or the commission may file a copy of the commission's order with the Attorney General or with the district attorney of the county within which the works are located. The Attorney General or district attorney shall bring proceedings in the name of the state, in the circuit court of the county within which the works or any part thereof are situated, to abate the offending works. The court, after a full hearing on the matter, may declare the works a nuisance and order their removal, or order any repairs or alterations, and may enforce its orders in the manner provided by law. [Amended by 1985 c.673 §90]

**540.380 Reports of consultants; payment.** The Water Resources Commission may accept the reports of consulting engineers, geologists or other specialists whom the owners of the works in question may have employed. But if, for any reason, the commission considers the reports insufficient, the commission may employ consulting engineers, geologists or other specialists outside the Water Resources Department to make special examinations and inspections and to prepare reports for the commission's guidance. The cost of such special examinations, inspections and reports shall be paid by the commission from any funds at the commission's disposal, or it may be divided by mutual agreement between the state and the owners. [Amended by 1985 c.673 §91]

**540.390 Inspection of dam, dike or hydraulic structure; expenses; deposit by applicant; payment by owner of works; lien.** Should any person residing on or owning land in the neighborhood of any dam, dike or other hydraulic structure after completion, or in course of construction, apply to the Water Resources Commission in writing desiring an inspection of the works, the commission may order an inspection, or the commission may make such order on the commission's own motion. Before doing so the commission may require the applicant for inspection to deposit a sum of money sufficient to pay the expenses of an inspection. If the application appears to the commission not to have been justified the commission may cause the whole or part of the expenses to be paid out of the deposit. If the application appears to have been justified, the commission may require the owner of the works to pay the whole or any part of the expenses of the inspection, and it shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanic's liens. [Amended by 1985 c.673 §92]



**540.400 Applicability of ORS 540.350 to 540.390.** ORS 540.350 to 540.390 shall not apply to:

(1) Any dam less than 10 feet in height or impounding less than 3,000,000 gallons of water.

(2) Splash dams used for driving logs.

(3) Farm dikes constructed by individuals on their own property.

(4) Ditches carrying less than five cubic feet of water per second.

**540.410 Delivery of reservoir water; notice to watermaster; adjustment of headgates; expenses; payment.** Whenever the owner, manager or lessee of a reservoir constructed under the provisions of the Water Rights Act, as defined in ORS 537.010, desires to use the bed of a stream, or other watercourse, to carry stored or impounded water from the reservoir to the consumer of the water, the owner, manager or lessee shall, in writing, notify the watermaster of the district in which the stored or impounded water from the reservoir is to be used, giving the date when it is proposed to discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to its use. The watermaster shall then close, or so adjust the headgates of all ditches from the stream or watercourse, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled. The watermaster shall keep a true and just account of the time spent in the discharge of the watermaster's duties as defined in this section, and the Water Resources Commission shall present a bill of one-half the expense so incurred to the reservoir owner, manager or lessee. If the owner, manager or lessee neglects for 30 days, after presentation of the bill of costs, to pay it, the costs shall be made a charge upon the reservoir and the state shall have a preference lien therefor. Upon notice from the commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed. [Amended by 1955 c.39 §1; 1961 c.636 §7; 1985 c.673 §93]

**540.420 Jointly owned ditches; performance by coowner; recovery for default.** In all cases where ditches are owned by two or more persons and one or more of such persons fails or neglects to do a proportionate share of the work necessary for the proper maintenance and operation of the ditch, or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, the owner desiring the performance of such work may, after having given 10 days' written notice to the other owner who has failed to perform a

proportionate share of the work, perform such share, and recover therefor from the person in default the reasonable expense of the work.

**540.430 Nonpayment by ditch coowner; lien on interest; foreclosure; stoppage of water delivery.** (1) Upon the failure of any coowner to pay a proportionate share of the expense, as mentioned in ORS 540.420, within 30 days after receiving a statement of the same as performed by the coowner, the latter may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of performance and the nature of the labor performed, with the county clerk of the county wherein the ditch is situated. When so filed it shall constitute a valid lien against the interest of the person in default, which lien may be established and enforced in the same manner as provided by law for the enforcement of mechanic's liens.

(2) In lieu of proceeding to enforce the lien, the person performing the labor may file an itemized and sworn statement with the watermaster of the district within which the ditch is located, setting forth the date of performance, the nature of the labor performed, the total expense incurred by the person and the proportion of the expense each owner should pay, together with a written request that the watermaster take charge of the distribution of the water from the ditch to the parties entitled to the use thereof. Thereupon the watermaster may proceed to distribute the water in accordance with established rights. However, if an owner or user has not paid the proportion of expenses of the owner or user incurred for the proper maintenance and operation of the ditch, the watermaster may serve such party with written notice, personally, by registered mail or by certified mail with return receipt, setting forth the proportion of expenses incurred for which the owner or user is obligated to pay. If the party so served refuses or neglects to pay that part of the expense within 10 days after the serving or mailing of the notice, the watermaster may refuse to deliver water to be used upon the lands of such person until after the expense has been paid. [Amended by 1991 c.249 §52]

**540.435 Installation of totalizing measuring device; annual water use report; hearing; effect of failure to comply with order.** (1) In addition to any other authority of the Water Resources Commission to order installation of a measuring device, if the commission finds accurate water use information necessary because of serious water management problems created by ground water decline, unresolved user disputes or frequent water shortages, the commission by rule may require a water right owner using

any surface or ground water source within the state to install a totalizing measuring device and to submit annually a water use report.

(2) Before the commission implements any requirements under subsection (1) of this section the commission shall:

(a) Cause a hearing to be conducted in the affected area to determine whether a serious management problem exists; and

(b) Allow any affected person an opportunity to present alternative methods or devices that could be used to provide the information necessary to manage the water resource or to alleviate the water management problem.

(3) The watermaster may prohibit the diversion or use of water by anyone who has failed to comply with a commission rule or order requiring installation of measuring devices or submission of a water use report. [1987 c.649 §7]

**540.440 Owner to clear weeds from ditch right of way.** All persons owning or controlling any water ditches shall keep their right of way along the ditches clean and free from wild oats, mustard, thistles, or any weeds or obnoxious grasses whatsoever.

#### **CHANGES IN USE OF WATER; TRANSFER OF WATER RIGHTS; EXCHANGE**

**540.505 Definitions.** As used in ORS 540.505 to 540.585:

(1) "District" means an irrigation district formed under ORS chapter 545, a drainage district formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a water control district formed under ORS chapter 553 or a corporation organized under ORS chapter 554.

(2) "Primary water right" means the water right designated by the Water Resources Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(3) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(4) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS chapter 539 as evidenced by a court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission. [1991 c.957 §2; 1995 c.274 §1; 1997 c.42 §2]

**540.510 Appurtenancy of water to premises; restrictions on change of use, place of use or point of diversion; application for transfer of primary and supplemental water rights; right to use conserved water.** (1) 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 theretofore made of the water in all cases without losing priority of the right theretofore established. 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. 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.

(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. [Amended by 1987 c.264 §11; 1989 c.7 §1; 1989 c.707 §3; 1991 c.370 §5; 1991 c.957 §7; 1993 c.577 §36; 1993 c.641 §9; 1995 c.168 §1; 1995 c.274 §2; 1995 c.359 §2; 1997 c.244 §4; 1997 c.286 §10; 1999 c.335 §2; 2003 c.705 §8]

**540.520 Application for change of use, place of use or point of diversion; public notice; protest; hearing; exemptions.** (1) Except when the application is made under ORS 541.327 or when an application for a temporary transfer is made under ORS 540.523, whenever 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.

(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;
- (e) The use which is proposed to be made of the water;
- (f) The reasons for making the proposed change; and
- (g) Evidence that the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or that the water right is not subject to forfeiture under ORS 540.610.

(3) If the application required under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.375, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and (d) of this section. The assistance provided by the department may include, but need not be limited to, development of an application map.

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

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

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

(7) Whenever a timely protest is filed, or in the opinion of the Water Resources Director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, the department shall hold a hearing on the matter. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

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

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

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

(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. [Amended by 1983 c.807 §1; 1985 c.673 §94; 1987 c.339 §3; 1989 c.1000 §7; 1995 c.274 §7; 1995 c.490 §2; 1997 c.42 §3; 1999 c.555 §4; 1999 c.664 §2]

**540.523 Temporary transfer of water right or permit; terms; revocation; status of supplemental water right or permit.** (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 tem-

porary 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.

(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.

(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 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 temporary 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 temporary transfer of the supplemental water right or permit in accordance with the provisions of this section. The department may not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in enlargement of the original water right or injury to an existing water right. If the department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent not to allow the temporary transfer of the supplemental water right or permit before the department issues the order for the temporary transfer of the primary water right. If the department does not allow the temporary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land described in the application, but may not be exercised until the primary right reverts to the original water use. If the primary water right does not revert soon enough to allow use of water under the supplemental right within five years, the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

(9) In issuing an order under subsection (2) of this section, the department shall include any condition necessary to protect other water rights. [1995 c.274 §6; 1997 c.42 §4; 1997 c.587 §12; 2001 c.788 §§3,9]

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

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

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

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

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

(6) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this section may be terminated upon a request by the water right holder or by an order of the director if the director determines that the use of the ground water as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status. [1999 c.555 §2]

**Note:** 540.524 was added to and made a part of 540.505 to 540.585 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**540.525 Installation of fish screening or by-pass device as prerequisite for transfer of point of diversion.** (1) Upon receipt of an application for a change in the point of diversion under ORS 540.520, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the diversion is:

- (a) Equipped with an appropriate fish screening or by-pass device; or
- (b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(2) If the original point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the department, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.

(3) When consulting with the State Department of Fish and Wildlife, the department shall determine whether the installation of an appropriate fish screening

or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(4) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.274 §6a; 2007 c.625 §11]

**540.530 Order authorizing change of use, place of use or point of diversion; consent to injury; new or modified certificate.** (1)(a) If, after hearing or examination, the Water Resources Commission finds that a proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

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

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

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

(B) The recommendation of an agency under this paragraph must be in writing and, if the recommendation is to consent to the

change, must describe the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the proposed change. The recommendation may include any proposed conditions that are necessary to ensure that the proposed change will be consistent with the recommendation.

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

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

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

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

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

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

(2)(a) If a certificate covering the water right has been previously issued, the com-

mission shall cancel the previous certificate or, if for an irrigation district, the commission may modify the previous certificate and, when proper proof of completion of the authorized changes has been filed with the commission, issue a new certificate or, if for an irrigation district, modify the previous certificate, preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right.

(b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.375, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying any of the proof of completion requirements of paragraph (a) of this subsection. The assistance provided by the department may include, but need not be limited to, development of a final proof survey map and claim of beneficial 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. [Amended by 1975 c.581 §26b; 1983 c.807 §2; 1985 c.673 §95; 1989 c.707 §4; 1993 c.577 §37; 1999 c.664 §3; 1999 c.804 §1; 2001 c.299 §§1,2; 2005 c.614 §4]

**540.531 Transfer of surface water point of diversion to ground water; requirements; priority; mitigation measures; return to surface water diversion; rules.** (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;

(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; 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 holder of a water use subject to transfer submits an application to the department, and the return will not result in injury to an existing water right.

(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. [1995 c.274 §4; 1999 c.555 §5; 2003 c.705 §1; subsection (9) of 2003 Edition enacted as 2003 c.705 §3; 2005 c.614 §2]

**540.532 Request for change in point of diversion to reflect historical use; requirements.** (1) Notwithstanding ORS 537.797, 540.510, 540.520 and 540.530, an individual may request a change in the point of diversion to reflect the historical use of wa-



ter at a point of diversion other than that described in the water right certificate or decree if the individual complies with the provisions of subsection (2) of this section.

(2) An individual may request a change in the point of diversion under subsection (1) of this section if:

(a) The actual, current point of diversion has been in use for more than 10 years;

(b) The Water Resources Department has received no claim of injury as a result of the use of water from the current point of diversion prior to the request for the change of diversion;

(c) The individual requesting the change provides written notice to any other affected water right holder, as identified by the Water Resources Department, and the Water Resources Department provides notice of the request in the department's public notice of water right applications; and

(d) The individual provides a map of sufficient detail and clarity to identify the true point of diversion including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion as specified in the water right certificate or decree and the actual, current point of diversion.

(3) Upon receipt of a request for a change in the point of diversion under subsection (1) of this section, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the historical point of diversion is:

(a) Equipped with an appropriate fish screening or by-pass device; or

(b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(4) If the historical point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the Water Resources Department, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropriate fish screening or by-pass device at the point of diversion.

(5) When consulting with the State Department of Fish and Wildlife, the Water Resources Department shall determine whether the installation of an appropriate fish screening or by-pass device is necessary

to prevent fish from leaving the body of water and entering the diversion.

(6) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.359 §3; 2007 c.625 §12]

**Note:** 540.532 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**540.533 Application for exchange of water; fee.** (1) Any person holding a water right established by court decree, a water right certificate or a water right for which proof of beneficial use has been approved by the Water Resources Director or Water Resources Commission or any person applying for or holding a permit issued under ORS 537.211 for use of water for an in-stream purpose may apply to the Water Resources Commission for permission to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from the other source, if:

(a) The source of the person's appropriation is at times insufficient to fully satisfy the appropriation;

(b) Better conservation and use of the waters of the state can be accomplished; or

(c) The person can develop water for appropriation under the permit for use of water for an in-stream purpose, but cannot economically convey the water to its point of use.

(2) A person may apply for an exchange under this section among any combination of surface, storage or ground water rights.

(3) An application for exchange shall be accompanied by:

(a) Any map, plan or other information required by the commission; and

(b) The fee required under ORS 536.050. [1987 c.815 §2]

**540.535 Notice of application for exchange.** After receipt of an exchange application, the Water Resources Commission shall give notice of the application by publishing notice of the application in a newspaper having general circulation in the area in which the water uses are located at least once each week for at least three successive weeks. The cost of providing the notice by publication shall be paid in advance by the applicant to the commission. [1987 c.815 §3]

**540.537 Order allowing exchange; order terminating exchange.** (1) The Water Resources Commission shall issue an order

allowing an exchange unless the commission finds any of the following:

(a) The proposed exchange would adversely affect other appropriators.

(b) The proposed exchanges would be too difficult to administer.

(c) The proposed exchange would adversely affect the public interest as determined under ORS 537.170 (8).

(d) A sufficient quantity of water would not be available to replace the water to be used under the exchange. In determining whether replacement water will be equal to the water exchanged, the commission may consider relative consumptive uses and transmission losses.

(2) The commission may include any condition the commission considers necessary in an order allowing an exchange.

(3) The commission shall issue an order terminating the exchange:

(a) If water is not applied under the exchange within the time fixed by the commission in the order approving the exchange;

(b) Upon written request signed by all parties to the exchange;

(c) Upon finding that any other termination condition specified in the original order has occurred; or

(d) Upon attainment of a termination date specified in the original exchange order.

(4) For purposes of subsection (3) of this section, the time fixed for implementing the exchange shall include any extension granted by the commission for good cause shown. [1987 c.815 §4; 1995 c.416 §38]

**540.539 Exchange subject to beneficial use requirements.** An exchange of water under ORS 540.533 to 540.537 is subject to the requirements of beneficial use under ORS 540.610. [1987 c.815 §5]

**540.540** [Renumbered 540.545 in 1987]

**540.541 Delivery and use of water under exchange.** (1) Any water made available to a person under an exchange shall be delivered in accordance with the order allowing the exchange. The use of water under an exchange is without prejudice to, but shall be considered use and enjoyment of, the permitted, certificated or decreed right held by that water user at the time the exchange was approved.

(2) The use of water under a permit may be perfected by application of exchange water to the use specified in that permit. Upon receipt of proof satisfactory to the Water Resources Commission that water has been used under the exchange for the purposes of and within the limitations of the permit, the commission shall issue a certificate of the

same character as that described in ORS 539.140. The certificate shall incorporate the source, conditions and priority of the permit existing at the time the exchange was approved.

(3) If regulation by the watermaster is required, after implementation of the exchange, water shall be delivered in accordance with the terms and conditions of the order allowing the exchange. [1987 c.815 §6]

**540.543 Regulation of headgates when water provided by exchange.** If water for an in-stream use is provided by exchange, the watermaster shall regulate headgates and other diversion points as necessary to assure that the exchange water is not diverted from the channel at any point above the most downstream point of use specified in the permit or certificate that establishes the right to use of water for an in-stream purpose. [1987 c.815 §7]

**540.545 Transfer of water rights following county acquisition of land.** Whenever the title to lands within a district has been or is acquired by the county within which the land is located, by foreclosure of tax liens or otherwise, the county court or board of county commissioners, upon request of the district, may make application under the provisions of ORS 540.505 to 540.585 to have the water rights appurtenant to such lands transferred to other lands within the district which are owned by the county or privately owned. [Formerly 540.540; 1991 c.957 §8]

**540.550 Ratification of prior transfer of water rights to irrigation district.** All attempted transfers or sales, prior to March 6, 1931, to an irrigation district, of water rights which theretofore had been appurtenant to lands located in the district and which lands at the time of the attempted transfer or sale were owned by the county, shall be considered to be legal and binding, and the water rights which were appurtenant to such lands shall be considered to have become the property of the district to which attempted to be conveyed, but appurtenant only to lands within the boundaries of the district as they existed on March 6, 1931, if the irrigation district applied to the Water Resources Director, within five years after March 6, 1931, under the provisions of section 47-712, Oregon Code 1930, as amended by chapter 102, Oregon Laws 1931, to have the water rights made appurtenant to other lands within the irrigation district. In that event, the county shall sell the lands without any water rights being appurtenant thereto. If the irrigation district failed within five years after March 6, 1931, to make such application, then title to the water rights shall be considered to have been forfeited.

**Note:** 540.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**540.560 Order changing description of land to which water right is appurtenant; limitation; purpose; hearing; effect of final order.** (1) If the Water Resources Commission considers that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery or transfer of that right, the commission may issue an order clarifying and refining the description of the land to which the water right is appurtenant.

(2) An order issued under this section may not reduce the rate, duty or number of acres stated in the certificate of water right. The sole purpose of an addendum to a water right certificate is to better define the location of acreage to which the water right is appurtenant, where the certificate states only that the use is limited to a number of acres within a larger tract.

(3) Any order issued under this section shall be served on the legal owner of the land to which the water right is appurtenant and on the occupant of the land, by certified mail, return receipt requested. If the owner or occupant files a written request for a hearing within 30 days after service of the order, the commission shall conduct a hearing of the matter under ORS 183.413 to 183.484.

(4) A final order under this section shall become an addendum to and shall be filed with the certificate of water right that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant. [1987 c.649 §9]

**540.570 Temporary transfers within districts; procedure; fee.** (1) Provided that the proposed transfer complies with all of the provisions of this subsection and will not result in injury to any existing water right, a district with a manager may, for one irrigation season, temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries of that district or temporarily transfer the type of use identified in a right to store water. A temporary transfer of the place of use may occur if:

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

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

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

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

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

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

(c) The diversion is provided with a proper fish screen, if required by the Water Resources Department; and

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

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

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

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

(c) Include a statement that a written authorization for the transfer from each

landowner affected by the particular temporary transfer is on file with the district;

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

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

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

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

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

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

(8) 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. [1987 c.649 §10; 1991 c.957 §9; 1995 c.554 §4; 2001 c.788 §§4,10; 2003 c.705 §§15,16; 2005 c.401 §1]

**Note:** Sections 22 to 25, chapter 705, Oregon Laws 2003, provide:

**Sec. 22.** Section 23 of this 2003 Act is added to and made a part of ORS 540.505 to 540.580. [2003 c.705 §22]

**Sec. 23.** (1) In order to increase district water management flexibility, the Water Resources Department shall establish a pilot project in which districts may temporarily allow, for water uses subject to transfer, the use of water on any land within the legal boundaries of the district established pursuant to ORS chapter 545, 547, 552, 553 or 554.

(2) The use of water on any land within the legal boundaries of the district may be allowed if:

(a) The rate and duty, and the total number of acres to which water will be applied under the transfer,

do not exceed existing limits on the water use subject to transfer;

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

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

(3) The department shall allow the pilot project to be implemented in the Talent Irrigation District, the Owyhee Irrigation District and the Tualatin Valley Irrigation District or their successor irrigation districts. However, any district participating in the project must:

(a) Have defined state irrigation district boundaries;

(b) Have a management structure that can ensure that water is applied only where the water use is authorized;

(c) Not irrigate an area in any one irrigation season that exceeds the maximum number of acres allowed to be irrigated under the original water right;

(d) Have a full and accurate measurement of the water appropriated;

(e) Have an accurate map identifying the location of authorized use, by priority date, for watermaster review upon request; and

(f) Have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change.

(4) If any of the specified irrigation districts are unable to participate in the project, the department may identify another district for the project.

(5) The department may require that use of water under the pilot project cease and that the use revert to the use allowed under the water right of record if the department determines that:

(a) The district does not meet the qualifications established in subsection (3) of this section;

(b) The water is being used in a manner that violates the requirements in subsection (2) of this section; or

(c) The changes made to the use of water would result in injury to existing water rights or an enlargement of the original water right.

(6) Use of water under the pilot project constitutes a beneficial use of water and does not constitute nonuse for purposes of forfeiture under ORS 540.610. [2003 c.705 §23]

**Sec. 24.** The Water Resources Department shall report to the Seventy-fifth Legislative Assembly, no later than January 31, 2009, on the operation of the pilot project established under section 23, chapter 705, Oregon Laws 2003. [2003 c.705 §24; 2007 c.10 §1]

**Sec. 25.** Sections 22 and 23, chapter 705, Oregon Laws 2003, are repealed on June 30, 2010. [2003 c.705 §25; 2007 c.10 §2]

**540.572 Application of certificated water elsewhere within district; notice.** (1) Upon compliance with this section and ORS 540.574 and 540.576, whenever land within the legal boundaries of a district is no longer irrigated or susceptible of irrigation, the district may apply the certificated water to which such land is entitled to other irrigable lands within the legal boundaries of the district if the district:

(a) Is managed by a full-time manager; and

(b) Is implementing a conservation plan approved by the Water Resources Commission, and meets all other management responsibility criteria for districts and conservation and efficiency criteria required by the Water Resources Commission.

(2) If a water user of a district has not made beneficial use of the water to which the user is entitled for a period of four successive years, the district shall advise the user and any security interest holder of record that if the user does not use the water for a fifth successive year, the district may petition the Water Resources Commission for a transfer of the water right under ORS 540.574.

(3) When a district wishes to transfer the use of water under this section, the district shall provide notice of its intent to petition for a transfer to the user and any security interest holder of record of the land whose right of record would be transferred. The notice shall be sent to the last-known address for the user with a return receipt requested.

(4) The notice required under subsection (3) of this section shall:

(a) Include:

(A) The number of acres for which the user is being charged or assessed;

(B) A general description or tax lot of the land to which the water is assigned;

(C) A description of the use; and

(D) A request for confirmation that the information in the notice is correct.

(b) Advise the user that:

(A) The district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to petition the Water Resources Commission for approval to transfer the user's water right to other lands in the district.

(B) If the user disagrees with the determination of the district that the user's land is no longer irrigated or susceptible of irrigation or if the user has some other objection to the proposed action of the district, the user shall so advise the district in writing within 30 days after the notice is mailed.

(C) The user shall advise the district in writing within the foregoing time period if the user believes the presumption of forfeiture under ORS 540.610 is rebuttable for a reason provided under ORS 540.610.

(5) If the district receives a written objection within 30 days after the mailing of the notice under subsection (3) of this section, the district manager shall attempt to resolve the matter with the user. If the user's objections cannot be resolved by the

manager, a hearing shall be held before the board of directors who shall make a determination whether to proceed with the petition to the Water Resources Commission.

(6) If no written objections are received by the district within 30 days after the mailing of the notice under subsection (3) of this section, or following resolution or hearing under subsection (5) of this section, the district may petition the Water Resources Commission for approval of the transfer under ORS 540.574.

(7) As used in this section:

(a) "Irrigable land" means land that is currently under irrigation or susceptible of irrigation for agricultural, horticultural, viticultural or grazing purposes.

(b) "No longer irrigated or susceptible of irrigation" means:

(A) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(B) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated from or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing, be directly benefited by actual irrigation from the district.

(c) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(d) "User" means an owner of land with an appurtenant water right who is subject to the charges or assessments of a district and from whose land the water right would be transferred by the petition and map filed under ORS 540.574 and an owner of land to which the water right would be transferred. [1991 c.957 §3]

**540.574 Petition for approval of transfer.** (1) In accordance with the requirements of subsection (3) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the transfer of the location and use of the water rights within the district or any part of the district. The map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. In no event shall the petition and map expand a water right of the district or its users beyond the total right of record for the district. If the district complies with the requirements of ORS 540.572 to 540.580, and after the opportunity for hearing under ORS 540.578, the commission shall issue an order approving the transfer and proceed as provided in ORS 540.530 (1) and (2).

(2) If the commission denies the petition under subsection (1) of this section, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be according to the provisions of ORS chapter 183 applicable to a contested case proceeding. The hearing shall be conducted in the area of the state where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(3) The petition required under subsection (1) of this section shall include:

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

(b) The names of all users within the district from whose lands water rights are to be transferred.

(c) The names of all users within the district to whose lands water rights are to be transferred.

(d) A general description of the district boundaries.

(e) A general description of the users' land and the water right for each parcel from which and to which water rights are to be transferred. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

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

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

(h) A statement by the petitioner that notice has been given as required under ORS 540.572 (2), and that the water right has not previously been forfeited under ORS 540.610 due to an earlier or longer period of nonuse. [1991 c.957 §4]

**540.576 Notice of petition; protest; user rights.** After filing a petition under ORS 540.572, the district shall send a copy of the petition and map and a notice to the users of the district whose right of record is to be transferred and who are to receive the transferred right. The copy of the petition and the notice shall be sent to the last-known address of the user with a return receipt requested. The notice accompanying the petition shall advise the user that:

(1) Sixty days after the date of mailing of the notice, the Water Resources Commission shall accept the petition and the water right shall be transferred unless a protest is filed or the petition does not meet the requirements of ORS 540.572 to 540.580; and

(2) The user has the right to protest the petition and transfer in the manner described in ORS 540.578. [1991 c.957 §5]

**540.578 Filing of protest; hearing on proposed transfer.** (1) Any user may file with the Water Resources Commission, within 60 days after the date of mailing the notice under ORS 540.576, a protest against approval of the petition, map and transfer. Whenever a timely protest is filed, or in the opinion of the commission a hearing is necessary to determine whether the district has complied with the requirements of ORS 540.572 to 540.580, or the proposed transfers described in the petition would result in injury to existing water rights, the commission shall hold a hearing on the matter. The hearing shall be conducted according to the provisions of ORS chapter 183 applicable to contested case proceedings. The hearing shall be held in the area of the state where the rights are located unless the parties and the persons who filed the protest under this section stipulate otherwise.

(2) If, after examination or hearing, the commission finds that the petition complies with the requirements of ORS 540.572 to 540.580, and that the proposed changes described in the petition would not result in injury to existing water rights, the commission shall issue an order approving the transfer and proceed as provided in ORS 540.530 (1) and (2).

(3) A certificate issued under this section for the transferred water right shall have the evidentiary effect provided for in ORS 537.270 unless the right to appropriate water described in the certificate is forfeited after the certificate is issued. [1991 c.957 §6]

**540.580 Permanent transfer of place of use of water within district; requirements; procedure.** (1) In accordance with this section, a district may by petition request that the Water Resources Department approve the permanent transfer of the place of use of water within a district as long as the proposed transfer complies with all of the following:

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

(b) The use authorized under the water use subject to transfer remains the same;

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

(d) The land from which the water right is removed by the transfer shall receive no water under the transferred right.

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

(a) Include the information required under ORS 540.574 (3), except for the statement that a notice under ORS 540.572 (2) has been given;

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

(c) Include a statement that each landowner affected by a permanent transfer has authorized the transfer in a writing that is on file with the district;

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

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

(3) If a district allows a change in the place of use of water before obtaining the approval of the department, the district shall:

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

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

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

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

(C) A general description of the users' lands by township, range, quarter quarter section and tax lot number, and of the water right, for each parcel from which and to which water rights are to be transferred; and

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

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

(5) If a district allows a change in the place of use of water before obtaining ap-

proval of the department under this section, the department may direct the district to cease delivery of water or mitigate injury where the change in place of use is causing injury to an existing water right.

(6) Within 15 days after the filing of a petition under subsection (2) of this section, the department shall include notice of the petition in the weekly notice published by the department. Within 30 days after the mailing of the department's weekly notice, any potentially affected holder of an existing water right may file, jointly or severally, with the department, a protest against approval of the petition.

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

(8) If a water user within the district files a protest claiming injury to a water right delivery by the district, no contested case hearing shall be required, but the district shall resolve the matter directly with the water user.

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

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

(11) If a certificate covering the water right has been previously issued, the department may amend the certificate or may can-

cel the certificate and issue a new certificate preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right. A certificate as amended or issued under this section has the evidentiary effect provided for in ORS 537.270 as to the new lands except when the right to appropriate water described in the certificate is abandoned after the certificate is amended or issued.

(12) Notwithstanding the provisions of subsection (2) of this section, a petition filed on or before December 31, 1996, may include all changes in place of use allowed by a district after July 1, 1992, and before November 30, 1996. [1995 c.554 §2; 1997 c.587 §13; 1999 c.804 §2; 2001 c.788 §§5,11]

**540.585 Temporary transfers within Deschutes River Basin; procedure; fee.** (1) In accordance with the provisions of this section, a person may request that the Water Resources Department approve the temporary transfer of the place of use and type of use and temporarily change the point of diversion if necessary to convey water to the new temporary place of use, of all or a portion of a water right, for a period not to exceed 25 years if:

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

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

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

(A) Located within the Deschutes River Basin; and

(B) A city, a quasi-municipal corporation, 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;

(d) The proposed use is municipal use; and

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

(2) An application for a temporary transfer under this section 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 and type 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.

(3)(a) Any portion of the use of a water right that is not temporarily transferred under this section may be used on the designated part of the lands described in the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a court decree, if the use does not encompass more than the remaining portion of the lands, enlarge the water right or increase the rate, duty, total acreage benefited or season of use.

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

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

(5) 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.

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

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

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

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

(8) The department may:

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

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

(c) Determine the parties that may participate in the review of applications submitted under this section. [2003 c.705 §6]

**Note:** Section 11, chapter 705, Oregon Laws 2003, provides:

**Sec. 11.** The Water Resources Department shall submit a report, in the manner provided in ORS 192.245, that shall include a detailed description of the features



of the process employed by the Water Resources Commission to implement section 6 of this 2003 Act [540.585], including any recommendation for further legislation. The report shall be submitted to the Legislative Assembly no later than January 31, 2009. [2003 c.705 §11]

**540.587 Report on implementation of temporary transfer provisions.** The Water Resources Department shall submit a report, in the manner provided in ORS 192.245, that shall include a summary of the features of the process employed by the Water Resources Commission to implement ORS 540.585. The report shall be submitted no later than January 31 of each year to the Legislative Assembly or to an interim committee related to natural resources, as appropriate. [2003 c.705 §10]

**Note:** 540.587 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## FORFEITURE OF WATER RIGHTS

**540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities.** (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the

property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use

the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

**540.612 Exemption from forfeiture.** If a district, as defined in ORS 540.505, petitions for a transfer as provided in ORS 540.574 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610 (1), the forfeiture provisions of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending approval of the district's petition. The time required for the processing of the petition, including any time required for hearings, appeals and completion of an authorized change, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610 (1). [1991 c.957 §11]

**540.615** [1961 c.140 §1; 1987 c.339 §5; repealed by 1989 c.699 §4]

**540.620** [Repealed by 1955 c.671 §1]

**540.621 Cancellation of abandoned water right upon request of owner.** Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [1955 c.670 §1; 1979 c.67 §5; 1985 c.673 §96]

**540.630** [Repealed by 1955 c.671 §1]

**540.631 Cancellation of forfeited water right; notice.** Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2; 1985 c.673 §97; 1989 c.699 §2; 1991 c.249 §53]

**540.640** [Repealed by 1955 c.671 §1]

**540.641 Protest of cancellation; procedure.** (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The commission shall cause written notice of the

hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the commission is an interested party to the proceeding. The hearing shall be held by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to contested cases. After the hearing the commission shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified. [1955 c.670 §3; 1975 c.581 §26c; 1983 c.807 §3; 1985 c.673 §98]

**540.650 Issuance of new water right certificate for water rights not canceled.** If the order of the Water Resources Commission or the final decree on the appeal therefrom under ORS 540.641 cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the commission. Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4; 1979 c.67 §6; 1985 c.673 §99]

**540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right.** (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate issued under ORS 537.250 or 539.140, such as the land to which the water right is appurtenant is covered by an impermeable surface, or the diversion mechanism used to appropriate water under a water right is no longer operable, the watermaster shall file an affidavit with the Water Resources Director. The affidavit shall state that to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate.

(2) If the watermaster files an affidavit under subsection (1) of this section each year for five consecutive years, the affidavits shall constitute prima facie evidence that the water has not been applied to a beneficial use for five years and the Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right.

(3) The Water Resources Department shall provide notice of the affidavit filed with the Water Resources Director under subsection (1) of this section. The department shall provide such notice in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner.

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100.

(c) If the land is within the boundaries of an irrigation district, the department shall mail a copy of the affidavit to the irrigation district.

(4) As used in this section, "record owner" means the person shown as the owner of the land in the county deed records established under ORS chapter 93. [1987 c.339 §1]

**540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date.** (1) The cancellation of a primary water right for nonuse under ORS 540.641 shall not also cancel a supplemental water right unless the supplemental water right also has not been used beneficially for five or more years.

(2) If the Water Resources Commission cancels a primary water right under ORS 540.641 the commission may issue a new water right certificate changing the supplemental water right to a primary right if the commission finds that the change would not result in injury to existing water rights.

(3) A supplemental right changed to a primary right under subsection (2) of this section shall retain the priority date of the supplemental right. [1987 c.339 §2]

## PROHIBITED ACTS; INJUNCTIONS

**540.710 Interference with headgate, or use of water denied by watermaster or other authority; evidence of guilt.** No person shall willfully open, close, change or interfere with any lawfully established headgate or water box without authority, or willfully use water or conduct water into or through the ditch of the person which has been lawfully denied the person by the watermaster or other competent authority. The possession or use of water when the same shall have been lawfully denied by the watermaster or other competent authority shall be prima facie evidence of the guilt of the person using it.

**540.720 Unauthorized use or waste of water; evidence of guilt of user.** No person shall use without authorization water to which another person is entitled, or willfully waste water to the detriment of another. The possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using it.

**540.730 Obstruction interfering with access to or use of works.** Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, no person shall place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto.

**540.740 Injunctive relief against action of watermaster.** Any person who may be injured by the action of any watermaster may appeal to the circuit court for an injunction. The injunction shall only be issued in case it can be shown at the hearing that the watermaster has failed to carry into effect the order of the Water Resources Commission or decrees of the court determining the existing rights to the use of water. [Amended by 1985 c.673 §100]

**540.750 Injunction suits; notice; hearing.** In suits for injunction affecting the use of water from streams upon which the rights to water have been determined, no restraining order shall be granted before hearing had after at least three days' notice thereof, served upon all parties defendant. All suits for injunction involving the use of water shall be heard, either in term time or during

vacation, not later than 15 days after issues joined, unless for good cause shown further time be allowed.

#### PENALTIES

**540.990 Penalties.** (1) Violation of any provision of ORS 540.440 is punishable, upon conviction, by a fine of not less than \$25 nor more than \$150, together with the costs and disbursements of the action, and in default of the payment of the fine and costs, by confinement in the county jail one day for each \$2 thereof. Justice courts shall have concurrent jurisdiction with the circuit courts in the trial of all proceedings under this subsection.

(2) Violation of any provision of ORS 540.370 (2), 540.570 (5), 540.710, 540.720 or 540.730 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$250, or by imprisonment in the county jail for not more than six months, or both. Justice courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this subsection. [Amended by 2001 c.788 §§7,13; 2003 c.14 §§344,345; 2003 c.705 §§19,21]