

2021 LEGISLATIVE REPORT IRRIGATION DISTRICT PILOT PROJECT TEMPORARY TRANSFERS



OREGON



WATER RESOURCES
DEPARTMENT

STATE OF OREGON

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Executive Summary

Use of water in Oregon generally requires a water right. A water right identifies where the water will be used (place of use), what the water will be used for (the character of use), and the location where water is withdrawn from a stream, lake or well (point of diversion). If water will be used differently than how it was previously used under an existing water right, a water right holder may need to apply and receive approval from the Oregon Water Resources Department for a transfer prior to making the change.

In 2003, the Legislative Assembly authorized a pilot project allowing three irrigation districts to make annual place of use changes to water rights within their legal boundaries without making application to the Water Resources Department for a temporary transfer. The pilot project is intended to provide increased flexibility for irrigation districts to temporarily change the place of use of water rights without reducing protections for existing water users. To temporarily change the place of use of water rights under the pilot project, districts are required to satisfy standard water right transfer criteria and maintain records. This includes ensuring that there is no injury to other water rights or an expansion of the authorized irrigated acres.

Between the 2003 and 2007 legislative sessions, only a small number of transfers were completed and there was insufficient data to assess the pilot. The project was extended in 2007, providing an additional two years for the three districts to test the approach. After showing some success, in 2009, the project was extended to 2016 and expanded to include 15 districts. In 2015, Senate Bill 267 made some adjustments to the project, extended the sunset to January 2, 2022, and required a report to the Legislature by January 31, 2021.

Participating districts find value in the project and note that it provides greater water management flexibility, provides one method to protect water rights from forfeiture, allows districts to test a transfer before filing a permanent transfer, and saves the districts time and money. As outlined in the report, participating districts have shown consistent compliance with the requirements of the pilot project. In addition, since 2015, there have not been instances of injury or enlargement found due to approved pilot project transfers. Trainings conducted by Water Right Services Division staff have also been an important factor in making the project successful.

The Department's Water Right Services Division staff have seen reductions in the time it takes to process district temporary transfers. Field Services Division staff have seen a modest increase in the time it takes for them to review the pilot project transfers and Water Right Services Division staff incur some staff time to manage and oversee the pilot project. Although difficult to calculate, the Department believes that there is a net reduction in staff time spent on district temporary transfers.

To date, the pilot project has worked well for the districts and the OWRD. Recent participation has been more consistent in recent years as districts discover the utility of the pilot process for transfers. Now that participation has been more consistent, the Department would like to initiate conversations with the districts and other stakeholders about the longer-term vision for the pilot including what changes would be needed in order to allow broader participation in the project and make it permanent. To allow time for these discussions and to continue to obtain additional data with the more recent, consistent participation, the Department is proposing to extend the project.

In reviewing the pilot, feedback from Department staff, participating districts, and the Oregon Water Resources Congress indicate that there are further modifications to the project to explore before expanding the project or making it permanent.

Items the Department is interested in exploring before expanding the project or making it permanent include: exploring methods to make the review process more streamlined to reduce field staff time, such as requiring maps to be submitted before the irrigation season or requiring electronic georeferenced maps; making sure the Department has resources to provide services for the districts in the absence of application filing fees; discussing how many successive years a specific parcel may be temporarily transferred under the pilot before a permanent transfer is required; and exploring what qualifying factors for districts to participate would ensure district success while minimizing impacts on agency field staff workloads and minimizing the need for extensive training.

The Department understands that districts have an interest in exploring expansion of the project to include instream leases; point of diversion changes, and transfers among districts when the point of diversion is shared. These are all items that will require a more in-depth discussion with stakeholders and staff, which warrants extending the pilot project to allow for exploration of the above issues.

The Department and the districts would mutually benefit from continuing to work towards implementing a program to allow district temporary transfers through a process like the pilot project. The Department is currently proposing legislation to extend the pilot project to 2030 to further allow for evaluation of the pilot project and exploration of factors necessary to expand the project and make it permanent.

Legislative Requirement to Report

The Oregon Water Resources Department (OWRD), as authorized under Section 23 of Oregon Laws 2003, established a pilot project in which districts may allow a water right transfer for a single season for changes in places of use of water within their district without submitting an application. The stated purpose of the pilot project is “to increase district water management flexibility.” Oregon Laws 2015, chapter 384, section 1, requires the OWRD to report to the Eighty-first Legislative Assembly, no later than January 31, 2021, on the operation of this pilot project. This document is that report.

Introduction to Water Right Transfers

Use of water in Oregon generally requires a water right. A water right identifies where the water will be used (place of use), what the water will be used for (the character of use), and the location where water is withdrawn from a stream, lake or well (point of diversion). The OWRD implements Oregon’s water right laws.

If water will be used differently than how it was previously used under an existing water right, a water right holder may need to apply and receive approval from the OWRD for a transfer prior to making the change. Examples of actions typically needing approval include moving the point where water is diverted from a stream, using water for a different purpose than what is authorized under the existing water right, or changing the location where water was previously used under the existing water right. Oregon Revised Statutes (ORS) Chapter 540.505 to 540.585 outlines authorities and procedures for “transferring” or making changes to water rights. Transfers are typically categorized as a “regular” transfer or a “district” transfer. District transfers are limited to districts as defined in statute [ORS 540.505(1)].

A regular or district transfer can be permanent or temporary. Temporary transfers typically only involve changes to the place where water is being used when that change will be for five years or less (regular transfers), or limited to a single season (district transfers). Lands that will no longer be irrigated are called “from” lands, whereas lands that will begin to be irrigated are called “to” lands.

District temporary transfers (single season) can be further broken down into “standard” district temporary transfers and “pilot project” district temporary transfers.

Overview of Standard District Temporary Transfer Process

ORS 540.570 and Oregon Administrative Rules (OAR), Chapter 690, Division 385, provide for a district with a manager to make application to the OWRD for a temporary transfer to change the place of use for a single season. Both “from” lands and “to” must be within the legal boundaries of the district. Under the standard district temporary transfer process, the district may allow the patrons to begin to irrigate the “to” lands as soon as the OWRD receives a complete application. During the period of the temporary transfer, the lands from which irrigation is being transferred (the “from” lands) may not be irrigated during the same irrigation season.

Under the standard district temporary transfer process, a district must submit a transfer application and fee to the OWRD. Fees typically range from \$850 to several thousand dollars depending on the number of water rights and acres involved. After receiving the application for temporary transfer, the OWRD publishes it on public notice, and the watermaster reviews it for injury and enlargement¹. Transfer staff then review the transfer, prepare a final order, and issue an order approving or denying the transfer.

¹ Injury occurs when a transfer would result in another, existing water right not receiving previously available water to which it is legally entitled. Enlargement means an expansion of the water right proposed for transfer. [OAR 690-385-0100(4)&(6)]

Watermasters may make random field checks during the irrigation season for compliance and investigate complaints. The OWRD may revoke a temporary transfer at any time if injury or enlargement is found after the approval. Transferred lands automatically revert to their original place of use at the end of the irrigation season.

Introduction to Pilot Project District Temporary Transfers

Legislative History: In 2003, the Legislative Assembly authorized a pilot project allowing three districts to make temporary place of use changes to water rights for a single season within their legal boundaries without making application or paying fees for a standard district temporary transfer. The pilot project was extended during the 2007 session. In 2009, the pilot project was expanded to allow 15 districts to participate. The pilot project was again extended in the 2015 session and a process was setup to swap out specified districts to allow other districts to participate if they qualified. The pilot project is scheduled to sunset on June 30, 2021.

The OWRD is currently proposing legislation to extend the pilot project to 2030 to further allow for an evaluation of the project; specifically to develop a process for expanding its use, evaluating when districts may or may not be allowed to use the program, and how use of the program may impact agency revenues and staffing.

Purpose of the Pilot Project: The purpose of the pilot project is to test out a streamlined process for temporary transfers that provides districts with more water management flexibility (which also encourages patrons to protect district water rights), while allowing the OWRD to evaluate this approach.

Participation Requirements for Districts: Any district participating in the project must have defined state district boundaries, a management structure that can ensure that water is applied only where the water use is authorized, a full and accurate measurement of the water appropriated, and have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change.

How Temporary Transfers are Processed Under the Pilot Project: The OWRD transfer staff annually publish public notice of authorized districts planning to participate in the upcoming irrigation season. To temporarily change the place of use of water rights under the pilot project, districts are required to have on file and provide their local watermaster with an accurate map identifying the location of the “from” and “to” lands involved in changes. The watermaster then reviews the transfer locations for injury and enlargement, makes random field checks for compliance, investigates complaints, and maintains records of the place of use changes.

Difference between a Standard District Temporary Transfer and a Pilot Project Transfer: Under the pilot project, districts may temporarily transfer the place of use of water to any lands within district boundaries without filing a transfer application, or paying fees, thereby minimizing processing normally required by the OWRD. Most of the work associated with the transfer is undertaken by watermaster staff instead of the Water Right Services Division staff. For a pilot project transfer, Water Right Services Division staff do not receive, process, or review a transfer application; or draft or issue a final order for approval or denial. Like for other types of transfers, watermasters still review the transfer locations for injury and enlargement, make random field checks for compliance, investigate complaints, and regulate illegal water use. Watermasters also have the additional duty to maintain records of the place of use changes.

Annual Questionnaire Sent to Participating Districts

During the years 2016 through 2020, the OWRD emailed a questionnaire to districts participating in the pilot project after the end of the irrigation season. This questionnaire was used to confirm a district's intent to participate in the pilot project in the upcoming irrigation season, and to report the number of

acres actually transferred in the prior season. As part of the questionnaire, districts self-reported on compliance with pilot project general transfer criteria, partly as a reminder to districts of the criteria, and for comparison with the OWRD records. In addition, the questionnaire gave the districts an opportunity to ask for additional training for using the pilot project, to comment on how the pilot project benefits their district, and to propose specific improvements to the project that would be helpful to them.

Public Notice of Pilot Project Participation

Annually, prior to commencement of the irrigation season, the OWRD published notice of the districts that declared their intention in the questionnaire to make use of the pilot project in the upcoming season. As required by law, the notice identified the districts by name, and included the contact information for each watermaster by district.

District Pilot Project Participation

Table 1 shows the actual participation of 14 districts for the past five years, measured in acres transferred per year. The 15th eligible district did not participate, and therefore is not listed here.

Table 1. Self-reported Pilot Project Participation by Year (2016-2020 Irrigation Seasons)

District	2016	2017	2018	2019	2020
	Acres	Acres	Acres	Acres	Acres
Arnold ID	2	25	47	25	35
Central Oregon ID	165	382	255	274	250
Hermiston ID	35	54	56	91	111
North Unit ID	326	434	378	243	202
Ochoco ID	19	17	3	0	0
Owyhee ID	4	0	0	0	0
Rogue River Valley ID	0	8	28	31	17
Santiam WCD	0	0	797	799	366
Stanfield ID	128	146	143	151	150
Sutherlin WCD	5	0	4	4	5
Talent ID	5	14	15	18	18
Tualatin Valley ID	6,408	5,987	6,061	5,759	5,400
West Extension ID	301	308	247	214	0
Westland ID	0	0	2,299	4,225	3,426
Total:	7,398	7,375	10,333	11,834	9,980

Pilot Project General Eligibility Criteria

Participating districts must:

- (1) Have legally defined irrigation district boundaries;
- (2) Have a management structure that can ensure water is applied only where authorized;
- (3) Fully and accurately measure water appropriated;
- (4) Provide the watermaster with a map identifying lands that will be irrigated under the pilot project; and
- (5) Have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change.

District Feedback

District feedback from questionnaires returned to OWRD from 2016 to 2020 are summarized into one of the five categories shown below.

Testing of a transfer before filing a permanent transfer.

When a permanent place of use transfer is approved, the “from” lands are permanently removed from the water right certificate. The “to” lands must then be “proved up” on by putting the irrigation water to beneficial use on the new lands. When a patron fails to make beneficial use of water on the “to” lands approved in a permanent transfer, and proof cannot be made, it is the district’s water right that is diminished by the amount of water and total number of acres not proven up on.

Pilot project transfers allow for districts to have an economical way to see if a patron will in fact irrigate “to” lands before the district files a permanent transfer application. If a patron successfully irrigates the “to” lands under the pilot project, the district can have confidence that the patron will successfully complete the terms and conditions of a permanent transfer involving the same lands without risk to the district water right.

Method to protect water right from forfeiture.

Pursuant to Oregon Revised Statute 540.610, non-use of water for five consecutive years can result in forfeiture of a water right or a portion thereof. Avoiding loss of district water rights due to a patron’s non-use is important to the district’s financial future. Pilot project transfers are one method for the district to protect district rights from forfeiture. Places of use that will become subject to forfeiture can be temporarily transferred to a new location for use until the current patron is ready to irrigate again, or until a permanent location to use the water can be found with a new patron.

Rotation flexibility.

Pilot project transfers are a simple, quick method for patrons and the district to temporarily rotate irrigation water, including fields with deficient supply. This flexibility allows for rotation of crops between fields for weed and pest management, and for crops with differing levels of water consumption. It also allows for patrons to rotate fields when there is insufficient water right coverage to have permanent water rights on all their fields.

Fiscal savings for the district and patron.

Pilot project transfers do not have application fees, and therefore districts and patrons incur a lower cost compared to standard temporary transfers. Standard transfer application fees are based on the number of water rights and acreages involved in the transfer.

Less district and patron time on temporary transfers.

The district submits a map and works directly with their watermaster to obtain a temporary transfer without needing to submit an application. This process saves the district time in not having to complete a transfer application.

OWRD’s Analysis of the District Temporary Transfer Pilot Project

The OWRD has evaluated current district participants’ compliance with project criteria, injury and enlargement, district training, and general participation as discussed below.

District compliance with project criteria.

Most participating districts have a long history of completing transfers prior to participating in the pilot project. The OWRD believes that a district's prior transfer and water management experience, as well as training by the Department, helps provide the districts with expertise to successfully participate and meet the requirements. Self-reporting of district compliance with pilot project general criteria reveals that districts understand the criteria that must be met in order for their continued participation. The OWRD staff have generally agreed with the district's self-reported compliance.

The criteria for participating districts are met as follows:

- (1) Legally defined irrigation district boundaries are on file with the OWRD;
- (2) Participating districts generally have full time managers and ditch riders to ensure they have a management structure that can ensure water is applied only where authorized;
- (3) The Department considers the requirement to fully and accurately measure water appropriated to be met if water use reports have been submitted;
- (4) Districts must provide the watermaster with a map identifying lands that will be irrigated under the pilot project – watermasters review the maps as they are received; and
- (5) Districts must have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change – the Department has not reviewed these, as they are only checked if complaints are made.

Based on the above information, the Department has determined the districts complied with the requirements of the law as listed in Section 23 (3), Oregon Laws 2003.

Occurrences of injury and enlargement from pilot project transfers.

Section 23 (5), Oregon Laws 2003, states that the OWRD may require use of water under the pilot project to cease and revert to the use allowed under the water right of record if the OWRD determines that the changes made would result in injury to other existing water rights or an enlargement of the original right. For example, if the amount of water or total number of acres irrigated exceeds the existing limits of the water right, this would be considered enlargement.

Watermasters with participating districts field check lands involved in pilot project transfers to ensure no irrigation occurs on "from" lands during the same season and the locations of "to" lands are consistent with pilot project maps. The Department checks a majority of the parcels and ultimately would like to review every acre; however, due to other watermaster workloads, this is not possible.

Watermasters have not found or received any reports of water made at unauthorized locations, or of injury or enlargement as a result of place of use changes under the pilot project since 2015. One minor report of enlargement was reported prior to 2015, which was quickly resolved and has not occurred since. This is likely, in part, due to the Department providing trainings to ensure their districts' success and understanding. In addition, participating in the pilot project provides benefits to the districts allowed to participate, meaning districts also have an incentive to ensure its success as a pilot.

Training pilot project participants.

At the onset of the pilot project, the OWRD provided mandatory training for participating districts. The training outlined the responsibilities of the districts and explained the duties of the OWRD. Subsequent training has been regularly provided at Oregon Water Resources Congress workshops. More recently,

individualized training by phone has been helpful to districts to clarify the process and increase participation. The individual trainings typically require about an hour of time with each district. For example, following training, one district went from not participating to transferring over 2000 acres in 2018. Participants now have the opportunity to request training on the annual questionnaire. Ongoing training is required due to district staff turnover and is a necessary component of pilot project transfers.

District participation.

District participation has more or less remained steady during the past five years, with the one exception noted in the section above. One district's need for temporary transfers may differ greatly from another district based on regional cropping practices, the availability of other sources of water such as groundwater, drought conditions, rapid urban growth on agricultural land, and other factors. Thus, the number of acres transferred under the pilot project for each district varies from under 10 acres annually to up to thousands of acres annually, but seems to be about the same from year-to-year within a district (see Table 1 above).

Reduction in Standard Temporary Transfers, Revenues, and Staff Time to Review Temporary Transfers.

Overall, with up to 15 districts participating in the pilot project, the OWRD has seen a substantial decrease in the total number of standard temporary transfers statewide (blue in Figure 1), countered by the increase in pilot project temporary transfers (green in Figure 1) from the 15 participating districts. In the past, most, but not all, standard temporary transfers had been initiated by the 15 districts now participating in the pilot project.

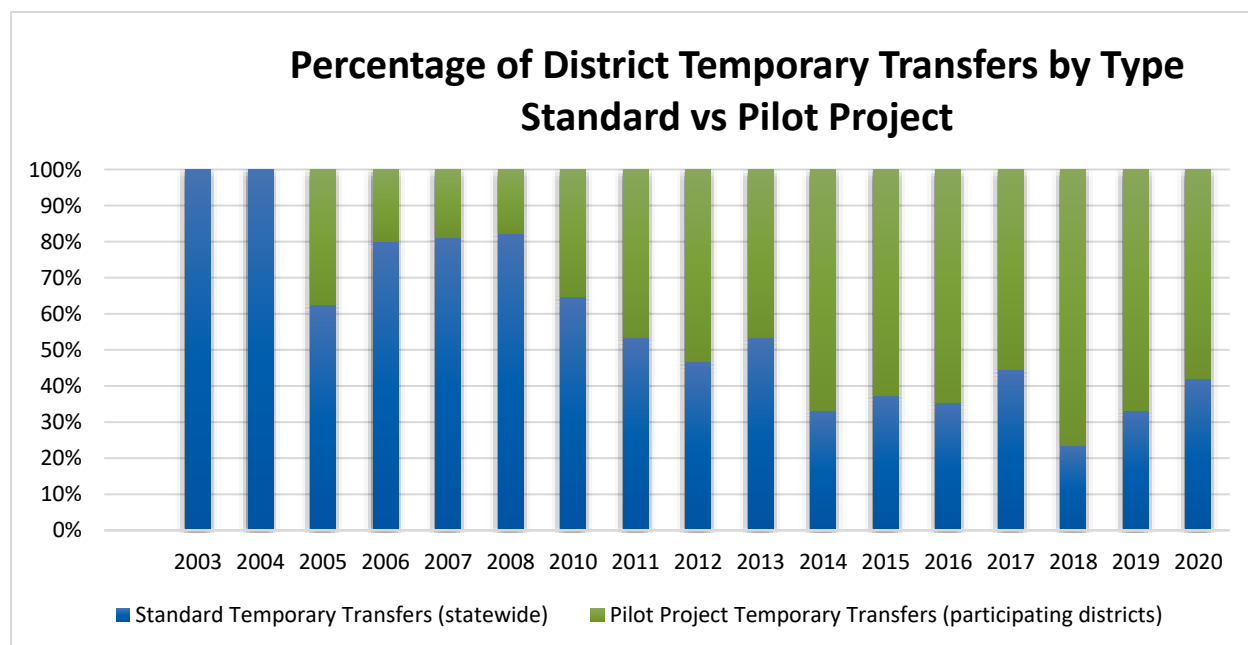


Figure 1. Percentage of District Temporary Transfers by Type

The overall shift from standard temporary transfers to pilot project temporary transfers results in a decrease in agency revenues. Pilot project temporary transfers do not have application fees, whereas the number of acres and number of water rights involved in a standard temporary transfer determines the fees. Any temporary district transfer initiated as a pilot project transfer instead of using the standard

process could result in a loss of fee revenue for the Department ranging from approximately \$850 (transfer involving a single water right under 20 acres) per water right to over \$13,500 (transfer involving a single water right over 5,500 acres) based on the fee structure in 2020. Actual revenue reductions will fluctuate, according to the varying complexity and number of transfers processed in a given year.

The overall shift from standard temporary transfers to pilot project transfers is believed to result in a decrease in Water Right Services Division staff time to process district temporary transfers. Oversight of the pilot project offsets a portion of the staff time savings. The reduced time spent on district temporary transfers, increases Water Right Services Division staff availability to process other water transactions and complete other tasks. OWRD Field Services Division staff described modest increases in the time they spend to review transfers under the pilot project compared to their review of standard temporary transfers. Under the pilot project there is likely a net savings of OWRD staff time, with Field Services Division staff seeing some increase in time spent, and Water Right Services Division staff seeing a decrease in time spent.

Future Work: Developing a plan for transitioning from a pilot to a program.

To date, the pilot project has worked well for the districts and the OWRD. Recent participation has been more consistent in recent years as districts discover the utility of the pilot process for transfers. Now that participation has been more consistent, the Department would like to initiate conversations with the districts and other stakeholders about the longer-term vision for the pilot and what changes would be needed in order to allow broader participation and to make it permanent. To allow time for these discussions and to continue to obtain additional data with the more recent, consistent participation, the Department is proposing to extend the pilot project.

In reviewing the pilot, feedback from Department staff, participating districts, and the Oregon Water Resources Congress indicate that there are further modifications to be explored before expanding the pilot project or making it permanent.

Items the Department is interested in exploring before expanding the pilot project or making it permanent are outlined below. For example, in consideration of watermaster workloads, the Department would like to explore methods to make the review process streamlined for field staff such as requiring maps to be submitted before the irrigation season or requiring electronic georeferenced maps. In addition, there is a need to further look at the fiscal implications of expanding the pilot project and making sure the Department has resources to support services for the districts in the absence of application filing fees. The Department is interested in discussing how many successive years a specific parcel may be temporarily transferred under the pilot before a permanent transfer is required. OWRD would also like to explore what qualifying factors for districts to participate would ensure district success while minimizing impacts on agency field staff workloads and minimizing the need for extensive training. For example, a qualifying factor could be for a district to have demonstrated successful application submissions and implementation of regular and district transfers before being qualified to use the streamlined process.

The Department understands that districts have an interest in exploring expansion of the pilot project to add participants to the program; to include instream leases; point of diversion changes; and transfers among districts when the point of diversion is shared. These are all items that will require a more in-depth discussion with stakeholders and staff, which warrants extending the pilot project to allow for exploration of the above issues.

Conclusion

The Department and the districts would mutually benefit from continuing to work towards implementing a program to allow district temporary transfers through a process like the pilot project. The Department is currently proposing legislation to extend the pilot project to 2030 to further allow for evaluation of the pilot project and exploration of factors necessary to expand the pilot project and make it a permanent program.