Oregon water law statutes provide for the transfer of a water right in the place of use, point of diversion, or type of use. The Oregon Water Resources Department (OWRD) is responsible for the administration of water use transfers. A “water use subject to transfer” means a water use established by 1) an adjudication of water rights evidenced by a court decree, 2) a water right certificate, 3) a water right permit which has been fully developed and a request for issuance of the water right certificate has been received and approved by the Oregon Water Resources Commission (OWRC), and 4) a completed transfer under ORS 540.530. ORS 540.505.

Oregon law provides for both permanent (ORS 540.520) and temporary (ORS 540.523) transfer of a water use.

**Permanent Transfers**

An application for a permanent transfer in the place of use, point of diversion, or a change in use of water is governed by ORS 540.520. An application for a permanent transfer shall be submitted to the Department in writing and contain the following information:

1. The name of the owner;
2. The previous use of the water;
3. A description of the premises upon which the water is used;
4. A description of the premises upon which it is proposed to use the water;
5. The use which is proposed to be made of the water;
6. The reasons for making the proposed change; and
7. 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.

ORS 540.520(2). The application must also contain copies of any deeds relevant to the transfer, a notarized statement from any security holders, a map prepared by a certified water rights examiner (CWRE), and a compatibility approval by the planning department of the affected local government. OAR 690-015-0057. If the application is for a change in the point of diversion, a proper fish screen...
may be required if requested by the Oregon Department of Fish and Wildlife (ODFW). Upon receiving an application for a permanent transfer, the Department must provide notice of the proposed transfer in the local newspaper and the Department’s weekly public notice. ORS 540.520(5). If a protest to the transfer is filed within thirty days of the final publication or of the announcement, or when in the opinion of the Director a hearing is necessary to determine whether the proposed changes as described would result in an injury to existing water rights, the Department must hold a contested case hearing. ORS 540.520(7). An order approving the transfer and fixing the time limit for its completion must be entered if the Department finds that the proposed change can be effected without injury to any existing water rights. However, there is no time limit for the processing of a permanent transfer application. If the use transferred is a certificated right, a new certificate will be issued reflecting the change after a notice of completion is given to the Department.

**Temporary Transfers**

Temporary transfers are allowed only for a change in place of use, and if necessary to convey the water to the new temporary place of use, a temporary change in the point of diversion or change in point of appropriation. ORS 540.523. Temporary transfers are also allowed in the type of use if the change is for use as an in-stream right. See ORS 537.348. A temporary transfer may be granted for up to five years based on an application submitted to the Department in writing and containing substantially the same information as required by a permanent transfer. See ORS 540.523(1)(c). Notwithstanding the notice and waiting requirements necessary for permanent transfers, a request for a temporary transfer must be approved if the Department determines that the transfer will not injure any existing water right. ORS 540.523(2). The Department may add any condition to the temporary transfer if necessary to protect other water rights, and the prior approval of a temporary transfer may be revoked at any time upon a finding that the transfer is causing injury to any existing right. ORS 540.523(5). Upon expiration of the temporary transfer period, all uses of water for which the transfer is allowed shall revert automatically to the terms and conditions of the water use that was transferred. ORS 520.523(3). The lands from which the water right was transferred may not be irrigated during the transfer period, and the transfer period does not apply towards a finding of forfeiture. ORS 540.523(4).

In order to prevent “water spreading,” the Department makes a distinction between the temporary transfer of a primary water right and the transfer of a supplementary water right or permit. When an application for a temporary change in place of use for a primary right is submitted to the Department, and the applicant also wishes to temporarily transfer the supplemental right or permit, the application must contain the information required under ORS 540.520(2) for the supplemental right or permit. ORS 540.523(8). If this information is not submitted, the Department must notify the applicant that the supplemental right or permit will be canceled before the Department issues the order approving the temporary transfer of the primary right. If the supplemental right or permit is not approved for transfer, it will remain appurtenant to the land described in the application, but cannot be exercised until the primary right reverts to the original water use. Interestingly, if the primary right does not revert soon enough to allow use of water under the supplemental right within five years, the supplemental right is subject to cancellation for nonuse.

**Transfer to Ground Water**

Oregon statutes also provide for the transfer of a point of diversion from a surface water source to a point of appropriation for groundwater. ORS 540.531. The new point of diversion must appropriate groundwater from an unconfined aquifer that the applicant has shown is hydraulically connected to
the authorized surface water source. The new withdrawal must be within a certain distance of the designated source, affect the surface water source similarly to the original diversion. The withdrawal must not enlarge the water right or injure other water right holders. ORS 540.531(2). If these conditions are met, the priority date will be retained unless the Department finds within five years of the approval that the transfer results in substantial interference with existing groundwater rights.

**Transfers Within Irrigation Districts Generally [See 1]**

The Department has special provisions for the temporary and permanent transfer of water use within the legal boundaries of a properly formed irrigation district (district). See 540.570 and 540.580. In the case of a temporary transfer, the district patron must make a written request to the district for the application of water to alternative acres within the district’s boundaries for only one year/season. If the district approves, notice of the district’s intent to temporarily transfer the water must be given to the Department prior to making the proposed change. The notice must state that each landowner affected by the transfer has authorized the transfer in a writing on file with the district. The Department may deny the request within sixty days if the intended use on the alternative acres would interfere with existing water rights or result in enlargement of the water right. If the Department fails to deny the request, the transfer is considered approved. This automatic approval provision makes this a popular transfer mechanism. The temporary transfer period must not exceed one year, does not apply towards a finding of forfeiture, and may be revoked or conditioned at any time if the Department finds that the transfer is causing injury to an existing water right. See ORS 540.570

Permanent transfers of the place of use of water within a district are governed by ORS 540.580. The proposed transfer must not exceed the rate, duty, and total number of acres to which water is to be applied under the certificate or decree, must comply with the authorized use under the certificate or decree, and must not injure any existing water right. Additionally, the land from which the water is transferred must not receive water under the transferred right. Subject to special notice requirements provided by statute, the district can allow the change prior to Department approval. See ORS 540.580(2). Within fifteen (15) days after receiving a petition, the Department must provide notice of the proposed transfer in its weekly notice. Affected water right holders then have thirty (30) days in which to protest the approval. If a protest is filed, or the Water Resources Director determines that a hearing is necessary to decide whether the proposed changes would result in injury to existing water rights, a hearing may be scheduled. The Department must issue an order within 90 days if no hearing is scheduled, and 120 days if a hearing is scheduled. The transfer must be approved if the proposed change can be effected without injury to existing water rights.

**Conversion to InStream Right**

Oregon statutes also provide for the temporary or permanent transfer of a water right for conversion into an instream right. ORS 537.348. Such a transfer can occur as a purchase, lease, or gift, and can include the entire water right or a portion thereof. Applicants for instream transfers must comply with the requirements for the transfer of water rights outlined above. The purchased, leased, or gifted instream right will retain the original priority date, and the Commission will issue a new certificate reflecting the change if requested. If an existing water right is leased for use as an instream water right for a specified period, the original priority date will not be lost when the period expires. However, instream water rights are subject to cancellation under the forfeiture statutes.

**Approval Delays**

Oregon transfer applicants for permanent transfers wait anywhere from one to fifteen years to
obtain a transfer order from the OWRC. This delay increases applicant interest in forming irrigation districts through their local county governments in order to facilitate expedient transfers mandated by statute for district temporary and permanent transfers. The delay in approvals for nondistrict transfers also raises special issues regarding who is the applicant-owner when the underlying “from” lands are sold to new owners without the water right transfer order issued. Recently, the OWRD took the position that every landowner subsequent to the “from” transfer applicant must affirmatively commit to the transfer application. In cases where the “from” lands were subdivided, this onerous task becomes very expensive. This OWRD position is being challenged, but in the meantime it is recommended that Oregon practitioners include affirmative language in the “from” purchaser’s conveyance documents that no water rights of use will transfer with the sale. In terms of reducing the delay, across the border in the State of Washington, experience with Conservancy Boards who have statutory authority to issue transfer orders in an expedient fashion is being looked at with some interest. However, the existing OWRC delay in issuing transfer orders, practically requires the Oregon practitioner to either form an irrigation district and use district transfer law, or file simultaneous temporary and permanent transfer applications to make on the ground changes expeditiously.

[1] Note: Special rules may be applicable to specific basins, such as the Deschutes River Basin. See ORS 540.585. Seek legal counsel for special issues.