

# House Bill 2099

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Water Resources Department)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that Water Resources Director may refund protest fee if order of Water Resources Commission establishes that all or part of water right has not been canceled or modified.

## A BILL FOR AN ACT

1  
2 Relating to water right forfeiture; creating new provisions; and amending ORS 536.050, 537.153 and  
3 537.621.

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

5 **SECTION 1.** ORS 536.050 is amended to read:

6 536.050. (1) The Water Resources Department may collect the following fees in advance:

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

8 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-  
9 droelectric project:

10 (i) A base fee of \$300;

11 (ii) \$200 for the first second-foot or fraction thereof;

12 (iii) \$100 for each additional second-foot or fraction thereof; and

13 (iv) If appropriating stored water, \$20 for the first acre-foot or fraction thereof up to 10 acre-  
14 feet, plus \$1 for each additional acre-foot or fraction thereof.

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

16 (i) A base fee of \$300; and

17 (ii) \$20 for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each additional  
18 acre-foot or fraction thereof.

19 (C) To exclusively appropriate stored water:

20 (i) A base fee of \$150; and

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

23 (b) For recording a permit to appropriate or store water, \$250.

24 (c) For filing or recording any other water right instrument, \$25 for the first page and \$5 for  
25 each additional page.

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

28 (e) For certifying copies, documents, records or maps, \$10 for each certificate.

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (A) A base fee of \$350;
- 2 (B) \$350 for each additional type of change requested; and
- 3 (C) For a request for a change in place of use or type of use or for a water exchange under ORS  
4 540.533, \$175 for each second-foot or fraction thereof requested beyond the first second-foot.
- 5 (i) For examining an application for a temporary change in place of use under ORS 540.523, for  
6 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
7 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
8 a supplemental right under ORS 540.570, a base fee of \$175 and:
- 9 (A) For nonirrigation uses, \$75 for each second-foot or fraction thereof requested beyond the  
10 first second-foot; or
- 11 (B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are  
12 submitted to the department in a department-approved digital format, 25 cents per acre of land ir-  
13 rigated.
- 14 (j) For submitting a protest to the department, \$250.
- 15 (k) For filing an application for extension of time within which irrigation or other works shall  
16 be completed or a water right perfected, \$250.
- 17 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the  
18 Water Resources Commission.
- 19 (m) For filing, examining and certifying a petition under ORS 541.329, \$250 plus 10 cents per  
20 acre of water involved in the application. For purposes of computing this fee, when any acreage  
21 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in  
22 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a  
23 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining  
24 and certifying the petition.
- 25 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$50.
- 26 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
27 \$200.
- 28 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
29 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
30 543A.300, \$10.
- 31 (q) For examining an application to store water under ORS 537.409:
- 32 (A) A base fee of \$40; and
- 33 (B) \$10 for each acre-foot or fraction thereof, not to exceed a total of \$250.
- 34 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
35 by the Water Resources Director under ORS 543A.410.
- 36 (s) For examining an application for a substitution made under ORS 540.524, \$250.
- 37 (t) For examining an application for an allocation of conserved water under ORS 537.455 to  
38 537.500, \$700.
- 39 (u) For submitting a water management and conservation plan pursuant to rules of the [*Water*  
40 *Resources*] commission:
- 41 (A) \$250, if the plan is submitted by an agricultural water supplier;
- 42 (B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or  
43 fewer persons; or
- 44 (C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more  
45 than 1,000 persons.

1 (v) For examining a new application for an in-stream water right lease under ORS 537.348:  
 2 (A) \$200 for an application for a lease with four or more landowners or four or more water  
 3 rights; or  
 4 (B) \$100 for all other applications.  
 5 (w) For examining an application for an in-stream water right lease renewal, \$50.  
 6 (2) Notwithstanding the fees established under subsection (1) of this section, the [*Water Re-*  
 7 *sources*] commission may establish lower examination and permit fees by rule for:  
 8 (a) The right to appropriate water for a storage project of five acre-feet or less; or  
 9 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock  
 10 outside of a riparian area, as that term is defined in ORS 541.351.  
 11 (3)(a) The [*Water Resources*] director may refund all or part of a fee paid to the department  
 12 under this section if the director determines that a refund of the fee is appropriate in the interests  
 13 of fairness to the public or necessary to correct an error of the department.  
 14 **(b) The director may refund all or part of the protest fee described in subsection (1)(j)**  
 15 **of this section to the legal owner or occupant who filed a protest under ORS 540.641 if an**  
 16 **order of the Water Resources Commission establishes that all or part of a water right has**  
 17 **not been canceled or modified under ORS 540.610 to 540.650.**  
 18 (4) The director may waive all or part of a fee for a change to a water right permit under ORS  
 19 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-  
 20 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:  
 21 (a) Made pursuant to ORS 537.348;  
 22 (b) Necessary to complete a project funded under ORS 541.375; or  
 23 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-  
 24 served water that will result in a net benefit to fish and wildlife habitat.  
 25 (5) Notwithstanding the fees established pursuant to this section, the commission may adopt by  
 26 rule reduced fees for persons submitting materials to the department in a digital format approved  
 27 by the department.  
 28 (6) All moneys received under this section, less any amounts refunded under subsection (3) of  
 29 this section, shall be deposited in the Water Resources Department Water Right Operating Fund.  
 30 (7) Notwithstanding subsection (6) of this section, all fees received by the department for power  
 31 purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric  
 32 Fund established by ORS 536.015.  
 33 **SECTION 2.** ORS 537.153 is amended to read:  
 34 537.153. (1) Within 60 days after the Water Resources Department proceeds with the application  
 35 under ORS 537.150 (5), the department shall complete application review and issue a proposed final  
 36 order approving or denying the application or approving the application with modifications or con-  
 37 ditions. The department may request the applicant to provide additional information needed to  
 38 complete the review. If the department requests additional information, the request shall be specific  
 39 and shall be sent to the applicant by registered mail. The department shall specify a date by which  
 40 the information must be returned, which shall be not less than 10 days after the department mails  
 41 the request to the applicant. If the department does not receive the information or a request for a  
 42 time extension under ORS 537.175 by the date specified in the request, the department may reject  
 43 the application and may refund fees in accordance with ORS 536.050 (3)(a). The time period specified  
 44 by the department in a request for additional information shall allow the department to comply with  
 45 the 60-day time limit established by this subsection.

1 (2) In reviewing the application under subsection (1) of this section, the department shall pre-  
 2 sume that a proposed use will not impair or be detrimental to the public interest if the proposed  
 3 use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or  
 4 given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure  
 5 other water rights and if the proposed use complies with rules of the Water Resources Commission.  
 6 This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that  
 7 either:

8 (a) One or more of the criteria for establishing the presumption are not satisfied; or

9 (b) The proposed use will impair or be detrimental to the public interest as demonstrated in  
 10 comments, in a protest under subsection (6) of this section or in a finding of the department that  
 11 shows:

12 (A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally  
 13 affected; and

14 (B) Specifically how the identified public interest would be impaired or detrimentally affected.

15 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
 16 but need not be limited to:

17 (a) Confirmation or modification of the preliminary determinations made in the initial review;

18 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
 19 applicable basin program and the compatibility of the proposed use with applicable land use plans;

20 (c) An assessment of water availability and the amount of water necessary for the proposed use;

21 (d) An assessment of whether the proposed use would result in injury to existing water rights;

22 (e) An assessment of whether the proposed use would impair or be detrimental to the public  
 23 interest as provided in ORS 537.170;

24 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-  
 25 cation;

26 (g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental  
 27 to the public interest has been established; and

28 (h) The date by which protests to the proposed final order must be received by the department.

29 (4) The department shall mail copies of the proposed final order to the applicant and to persons  
 30 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
 31 shall publish notice of the proposed final order by publication in the weekly notice published by the  
 32 department.

33 (5) Any person who supports a proposed final order may request standing for purposes of par-  
 34 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
 35 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
 36 lished under ORS 536.050 (1)(n).

37 (6) Any person may submit a protest against a proposed final order. A protest shall be in writing  
 38 and shall include:

39 (a) The name, address and telephone number of the protestant;

40 (b) A description of the protestant's interest in the proposed final order and, if the protestant  
 41 claims to represent the public interest, a precise statement of the public interest represented;

42 (c) A detailed description of how the action proposed in the proposed final order would impair  
 43 or be detrimental to the protestant's interest;

44 (d) A detailed description of how the proposed final order is in error or deficient and how to  
 45 correct the alleged error or deficiency;

1 (e) Any citation of legal authority supporting the protest, if known; and

2 (f) For persons other than the applicant, the protest fee required under ORS 536.050.

3 (7) Requests for standing and protests on the proposed final order shall be submitted within 45  
 4 days after publication of the notice of the proposed final order in the weekly notice published by the  
 5 department. Any person who asks to receive a copy of the department's final order shall submit to  
 6 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
 7 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the  
 8 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
 9 536.050 (1)(n).

10 (8) Within 60 days after the close of the period for receiving protests, the Water Resources Di-  
 11 rector shall:

12 (a) Issue a final order as provided under ORS 537.170 (6); or

13 (b) Schedule a contested case hearing if a protest has been submitted and if:

14 (A) Upon review of the issues, the director finds that there are significant disputes related to  
 15 the proposed use of water; or

16 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
 17 a contested case hearing.

18 **SECTION 3.** ORS 537.621 is amended to read:

19 537.621. (1) Within 60 days after the Water Resources Department proceeds with the application  
 20 under ORS 537.620 (5), the department shall complete application review and issue a proposed final  
 21 order approving or denying the application or approving the application with modifications or con-  
 22 ditions. The department may request the applicant to provide additional information needed to  
 23 complete the review. If the department requests additional information, the request shall be specific  
 24 and shall be sent to the applicant by registered mail. The department shall specify a date by which  
 25 the information must be returned, which shall be not less than 10 days after the department mails  
 26 the request to the applicant. If the department does not receive the information or a request for a  
 27 time extension under ORS 537.627 by the date specified in the request, the department may reject  
 28 the application and may refund fees in accordance with ORS 536.050 (3)(a). The time period specified  
 29 by the department in a request for additional information shall allow the department to comply with  
 30 the 60-day time limit established by this subsection.

31 (2) In reviewing the application under subsection (1) of this section, the department shall de-  
 32 termine whether the proposed use will ensure the preservation of the public welfare, safety and  
 33 health as described in ORS 537.525. The department shall presume that a proposed use will ensure  
 34 the preservation of the public welfare, safety and health if the proposed use is allowed in the ap-  
 35 plicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under  
 36 ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if  
 37 the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable  
 38 presumption and may be overcome by a preponderance of evidence that either:

39 (a) One or more of the criteria for establishing the presumption are not satisfied; or

40 (b) The proposed use would not ensure the preservation of the public welfare, safety and health  
 41 as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the  
 42 department that shows:

43 (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would  
 44 be impaired or detrimentally affected; and

45 (B) Specifically how the identified aspect of the public welfare, safety and health under ORS

1 537.525 would be impaired or be adversely affected.

2 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include  
3 but need not be limited to:

4 (a) Confirmation or modification of the preliminary determinations made in the initial review;

5 (b) A brief statement that explains the criteria considered relevant to the decision, including the  
6 applicable basin program and the compatibility of the proposed use with applicable land use plans;

7 (c) An assessment of water availability and the amount of water necessary for the proposed use;

8 (d) An assessment of whether the proposed use would result in injury to existing water rights;

9 (e) An assessment of whether the proposed use would ensure the preservation of the public  
10 welfare, safety and health as described in ORS 537.525;

11 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-  
12 cation;

13 (g) Whether the rebuttable presumption under subsection (2) of this section has been established;

14 (h) The date by which protests to the proposed final order must be received by the department;  
15 and

16 (i) The flow rate and duty of water allowed.

17 (4) In establishing the flow rate and duty of water allowed, the department may consider a  
18 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-  
19 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-  
20 vides such information, the department shall authorize the requested rate and duty except upon  
21 specific findings related to the application to support a determination that a lesser amount is  
22 needed. If the applicant does not provide information to demonstrate the need for a flow rate and  
23 duty higher than the general basin-wide standard, the department may apply the general standards  
24 without specific findings related to the application.

25 (5) The department shall mail copies of the proposed final order to the applicant and to persons  
26 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also  
27 shall publish notice of the proposed final order by publication in the weekly notice published by the  
28 department.

29 (6) Any person who supports a proposed final order may request standing for purposes of par-  
30 ticipating in any contested case proceeding on the proposed final order or for judicial review of a  
31 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-  
32 lished under ORS 536.050 (1)(n).

33 (7) Any person may submit a protest against a proposed final order. A protest shall be in writing  
34 and shall include:

35 (a) The name, address and telephone number of the protestant;

36 (b) A description of the protestant's interest in the proposed final order, and if the protestant  
37 claims to represent the public interest, a precise statement of the public interest represented;

38 (c) A detailed description of how the action proposed in the proposed final order would impair  
39 or be detrimental to the protestant's interest;

40 (d) A detailed description of how the proposed final order is in error or deficient and how to  
41 correct the alleged error or deficiency;

42 (e) Any citation of legal authority supporting the protest, if known; and

43 (f) For persons other than the applicant, the protest fee required under ORS 536.050.

44 (8) Requests for standing and protests on the proposed final order shall be submitted within 45  
45 days after publication of the notice of the proposed final order in the weekly notice published by the

1 department. Any person who asks to receive a copy of the department's final order shall submit to  
2 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested  
3 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the  
4 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS  
5 536.050 (1)(n).

6 (9) Within 60 days after the close of the period for receiving protests, the Water Resources Di-  
7 rector shall:

8 (a) Issue a final order as provided under ORS 537.625 (1); or

9 (b) Schedule a contested case hearing if a protest has been submitted and if:

10 (A) Upon review of the issues, the director finds that there are significant disputes related to  
11 the proposed use of water; or

12 (B) Within 30 days after the close of the period for submitting protests, the applicant requests  
13 a contested case hearing.

14 **SECTION 4. The amendments to ORS 536.050 by section 1 of this 2007 Act apply only to**  
15 **protests of the proposed cancellation of water rights filed on or after the effective date of**  
16 **this 2007 Act.**

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